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 15 *Attorneys for Plaintiff*

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 17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19
 20 JAMES MEYERS, on behalf of himself
 21 and all others similarly situated,

22 Plaintiff,

23
 24 FACEBOOK, INC.,

25 Defendant.

Case No. 5:17-cv-2029

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, James Meyers (“Plaintiff”), individually and on behalf of all others
2 similarly situated, allege the following on information and belief, except that
3 Plaintiff’s allegations as to his own actions are based on personal knowledge.

4 **NATURE OF THE ACTION**

5 1. Facebook, Inc. sent text messages (i.e. automated/prerecorded voice
6 message delivered by autodialing equipment) to Plaintiff and the Class members
7 without their prior express written consent. Plaintiff brings this action for injunctive
8 relief and statutory damages arising out of the conduct of Defendant Facebook in
9 negligently, knowingly, and willfully transmitting unauthorized text messages
10 containing birthday acknowledgements or announcements (hereinafter “Birthday
11 Texts”) to consumers’ cell phones. Facebook’s unsolicited and unauthorized
12 Birthday Texts state: “Today is [Facebook friend’s] birthday. Reply to post a wish
13 on his Timeline or reply with 1 to post “Happy Birthday!” in violation of the
14 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”). Plaintiff
15 seeks an injunction requiring Facebook to stop sending Birthday Texts to users
16 without their consent and an award of statutory damages to the Class members.

17 **PARTIES**

18 2. Plaintiff, James Meyers is, and at all times mentioned herein was, a
19 resident of Riverside County and a citizen of the State of California.

20 3. Defendant Facebook, Inc. is a California corporation with its principal
21 place of business located at Menlo Park, California and owns the website
22 www.facebook.com.

23 **JURISDICTION AND VENUE**

24 4. For the reasons stated in in *Mims v. Arrow Financial Services, LLC*, 132
25 S. Ct. 740 (2012), the Court has federal subject matter jurisdiction under 47 U.S.C. §
26 227. This Court also has subject matter jurisdiction over this action pursuant to the
27 Class Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter*

1 *alia*, amends 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction
2 over class actions where, as here: (a) there are 100 or more members in the Class
3 members; (b) some members of the Class members have a different citizenship from
4 Defendant; and (c) the claims of the Class members exceed the sum or value of five
5 million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2) and (6).

6 5. This Court also has federal question jurisdiction pursuant to 28 U.S.C. §
7 1331 because this action involves violations of a federal statute, the Telephone
8 Consumer Protection Act.

9 6. Venue is proper in this Court under 28 U.S.C. § 1391 because
10 Defendant transacts significant business within this District and a substantial part of
11 the events giving rise to Plaintiff’s claims took place within this District.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 **A. The Telephone Consumer Protection Act of 1991**

14 7. In 1991, Congress enacted the TCPA in response to a growing number
15 of consumer complaints regarding certain telemarketing practices. Congress
16 intended to provide consumers a choice how telemarketers may contact them,
17 finding that “[e]vidence presented to Congress indicates that automated or
18 prerecorded calls are a nuisance. . . .” Pub. L. No. 102-243, §12-13 (1991).
19 “Voluminous consumer complaints about abuses of telephone technology—for
20 example, computerized calls dispatched to private homes—prompted Congress to
21 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

22 8. Among other things, the TCPA prohibits “initiating any telephone call
23 to any residential telephone line using an artificial or prerecorded voice to deliver a
24 message without the prior express consent of the called party. . . .”. According to
25 findings by the Federal Communications Commission (“FCC”), such calls are
26 prohibited because prerecorded telephone calls are a greater nuisance and invasion of
27 privacy than live solicitation calls, and such calls are costly and inconvenient. The
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1 FCC has stated that telemarketing occurs when a call is initiated and transmitted to a
2 person for the purpose of promoting property, goods, or services. 47 C.F.R.
3 §64.1200(a)(2)(iii); 47 C.F.R. §64.1200(f)(12); 18 FCC Rcd. 14014, 14098 ¶141
4 (FCC 2003).

5 9. The FCC has issued rulings clarifying that in order to obtain an
6 individual's consent, a clear, unambiguous, and conspicuous written disclosure must
7 be provided by the individual. 2012 FCC Order, 27 FCC Rcd. at 1839 (“[r]equiring
8 prior written consent will better protect consumer privacy because such consent
9 requires conspicuous action by the consumer—providing permission in writing—to
10 authorize autodialed or prerecorded telemarketing calls. . . .”).

11 10. According to 47 U.S.C. §227(a)(1), the ban on telephone calls made by
12 using an automatic telephone dialing system (“ATDS”) extends to unsolicited
13 autodialed text messages sent to cellular phones. *Gager v. Dell Fin. Servs., Inc.*, 727
14 F.3d 265, 269 n.2 (7th Cir. 2013); FCC Declaratory Ruling, 27 F.C.C.R. 15391, 2012
15 WL 5986338 (Nov. 29, 2012). The Federal Communications Commission has
16 declared that unsolicited text messages are “[a]nnoying and time-consuming,” as
17 well as “[i]ntrusive and costly.” FCC Guide, Spam: Unwanted Text Messages and
18 Email, <http://www.fcc.gov/guides/spam-unwanted-text-messages-and-email>.
19 Pursuant to 47 U.S.C. §227(b)(1)(A)(iii), it is illegal for Facebook to send
20 unsolicited text messages to its users without their prior consent.

21 **B. Facebook Birthday Texts**

22 11. Facebook sends unsolicited Birthday Texts to its users and/or third
23 parties. Although its users do not have to supply their cell phone numbers (or
24 provide such numbers without consent of receiving text messages) to Facebook,
25 Facebook gathers that information from other sources, an expense that Facebook
26 undertakes into order to generate even greater profits. In pursuit of even greater
27 revenue, Facebook uses an ATDS to send thousands to tens of thousands of
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1 unsolicited Birthday Texts to individuals.

2 12. Facebook sent the Birthday Texts with standard response prompts.
3 Facebook's business platform and revenue streams are built on user engagement.
4 Every prompt solicits the receiver to engage on Facebook. And, any such user
5 engagement generates revenue for Facebook. Facebook's Birthday Texts are sent to
6 increase revenue at the expense of violating the privacy rights of Plaintiff, and the
7 Class members, through the use of text messages.

8 13. On or about June 14, 2016, Facebook, through its short code SMS
9 number 32665033, texted Plaintiff's cell phone 951-XXX-1949, with an unsolicited
10 non-emergency text message referred to as the "Birthday Text".

11 14. Prior to the text message(s) at issue in this action, Plaintiff, James
12 Meyers never provided Facebook with consent to text him.

13 15. Facebook has caused actual concrete harm to Plaintiff and the Class
14 members, because such individuals have been subjected to invasion of privacy,
15 unwanted/intrusive text messages, have been required to pay cell phone service
16 providers for unwanted text messages, lost use of their cell at the time of receiving
17 the unwanted text message, wasted time on receipt of and reading of the unwanted
18 text messages, and have been subjected to increased electricity charges from receipt
19 of unwanted text messages.

20 **CLASS ACTION ALLEGATIONS**

21 16. Plaintiff brings this action on behalf of themselves and on behalf of all
22 other persons similarly situated. Plaintiff proposes the following class ("Class"):

23 "All persons residing in the United States who received one or more Birthday
24 Texts without their consent from Facebook through the use of an automatic dialing
25 system".

26 17. Plaintiff does not know the exact number of members in the Class
27 members, but reasonably believes based on the scale of Defendant's businesses, and
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1 the number of unsolicited text messages that they received, that the classes are so
2 numerous that individual joinder would be impracticable.

3 18. Plaintiff and all members of the Class members have been harmed by
4 the acts of Defendant in the form of multiple involuntary telephone and electrical
5 charges, the aggravation, nuisance, and invasion of privacy that necessarily
6 accompanies the receipt of unsolicited and harassing text messages, the and
7 violations of their statutory rights.

8 19. The disposition of the claims in a class action will provide substantial
9 benefit to the parties and the Court in avoiding a multiplicity of identical suits. The
10 Class members can be identified easily through records maintained by Defendant.
11 There are well-defined, nearly identical, questions of law and fact affecting all
12 parties. The questions of law and fact involving the class claims predominate over
13 questions that may affect individual members of the Class members. Those common
14 questions of law and fact include, but are not limited to, the following:

- 15 a. Whether Facebook sent Plaintiff and Class members text messages;
16 b. Whether Facebook's conduct was knowing and/or willful;
17 c. Whether the Birthday Texts distributed by the Facebook violate the TCPA;
18 d. Whether Facebook sent non-emergency text messages to Plaintiff and the
19 Class members;
20 e. Whether Facebook and/or its agents used an automatic telephone dialing
21 system to transmit the unsolicited Birthday Texts;
22 f. Whether Facebook transmitted Birthday Texts to plaintiff and Class
23 members without consent;
24 g. Whether Facebook is liable for damages; and
25 h. Whether Facebook should be enjoined;

26 20. Plaintiff has retained counsel experienced in handling class action
27 claims involving violations of federal and state consumer protection statutes.
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1 provisions of 47 U.S.C. § 227 *et seq.*

2 27. As a result of Defendant’s violations of 47 U.S.C. § 227 *et seq.*, Plaintiff
3 and members of the classes are entitled to an award of \$500.00 in statutory damages
4 for each and every call in violation of the statute, pursuant to 47 U.S.C. §
5 227(b)(3)(B).

6 28. As a result of Defendant’s knowing and/or willful violations of 47
7 U.S.C. § 227 *et seq.*, Plaintiff and members of the Class members are entitled to
8 treble damages of up to \$1,500.00 for each and every call in violation of the statute,
9 pursuant to 47 U.S.C. § 227(b)(3)(C).

10 29. Plaintiff and members of the Class members are also entitled to and do
11 seek injunctive relief prohibiting such conduct violating the TCPA by Defendant in
12 the future.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully request that the Court grant Plaintiff and
15 all members of the Class members the following relief against Defendant:

- 16 a. Injunctive relief prohibiting such violations of the TCPA by Defendant
17 in the future;
- 18 b. As a result of Defendant’s violations of the TCPA, Plaintiff seeks for
19 himself and each member of the Class members \$500.00 in statutory
20 damages for each and every text message call that violated the TCPA;
- 21 c. As a result of Defendant’s willful and/or knowing violations of the
22 TCPA, Plaintiff seeks for himself and each member of the Class
23 members treble damages, as provided by statute, of up to \$1,500.00 for
24 each and every text message call that violated the TCPA;
- 25 d. An order certifying this action to be a proper class action pursuant to
26 Federal Rule of Civil Procedure 23, establishing appropriate classes,
27 finding that Plaintiff is a proper representative of the classes, and
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1 appointing the lawyers and law firm representing Plaintiff as counsel for
2 the classes;

3 e. Such other relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by
6 jury of any and all issues in this action so triable of right.

7
8 Dated: October 3, 2017

BURSOR & FISHER, P.A.

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