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23 **UNITED STATES DISTRICT COURT**  
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 JAMES MEYERS, on behalf of himself  
26 and all others similarly situated,

27 Plaintiff,

28 FACEBOOK, INC.,

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](http://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  
28

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  
28

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.  
28

1           21. A class action is the superior method for the fair and efficient  
2 adjudication of this controversy. Class wide relief is essential to compel Defendant  
3 to comply with the TCPA. Management of these claims is likely to present  
4 significantly fewer difficulties than are presented in many class claims because the  
5 calls at issue are all automated and the members of the classes, by definition, did not  
6 provide the prior express consent required under the statute to authorize calls to their  
7 telephones.

8           22. As persons who received text messages on their telephone using an  
9 artificial or prerecorded voice, without their prior express written consent, and  
10 Plaintiff asserts claims that are typical of each member of the class. Plaintiff will  
11 fairly and adequately represent and protect the interests of the Class members, and  
12 has no interests that are antagonistic to any member of the Class members.

13           23. Defendant has acted on grounds generally applicable to the Class  
14 members, thereby making final injunctive relief and corresponding declaratory relief  
15 with respect to the Class members as a whole appropriate. Moreover, on information  
16 and belief, Plaintiff alleges that the TCPA violations complained of herein are  
17 substantially likely to continue in the future if an injunction is not entered.

18   **FIRST COUNT**  
19   **TELEPHONE CONSUMER PROTECTION ACT**  
  **[47 U.S.C. § 227, *et seq.*]**

20           24. Plaintiff incorporates by reference the foregoing paragraphs of this  
21 complaint as if fully stated herein.

22           25. Defendant has utilized an ATDS to send unsolicited text message calls  
23 to Plaintiff and Class members' cell phone numbers.

24           26. Plaintiff and Class members did not provide Defendant with prior  
25 written consent to receive text messages from Defendant. The foregoing acts and  
26 omissions of Defendant constitutes numerous and multiple knowing and/or willful  
27 violations of the TCPA, including but not limited to each of the above-cited  
28

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  
28



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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