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5 *Attorneys for Plaintiff Holt and the Putative Class*

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
8 **SAN FRANCISCO DIVISION**

9 CHRISTINE HOLT, individually and on  
behalf of all others similarly situated,

10 *Plaintiff,*

11 v.

12 FACEBOOK, INC., a Delaware corporation,

13 *Defendant*

CASE NO. 16-CV-2266

**COMPLAINT FOR:**

1. **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227;**
2. **Violations of Cal. Bus. & Prof. Code §§ 17200, et seq.**

**CLASS ACTION  
JURY TRIAL DEMANDED**

16 Plaintiff Christine Holt (“Holt”) brings this Class Action Complaint and Demand for Jury  
17 Trial against Defendant Facebook, Inc. (“Facebook”) to stop its practice of sending unsolicited text  
18 messages to the cellular telephones of consumers nationwide and to obtain redress for all persons  
19 injured by its conduct. Plaintiff, for her complaint, alleges as follows upon personal knowledge as to  
20 herself and her own acts and experiences, and, as to all other matters, upon information and belief,  
21 including investigation conducted by her attorneys.

**NATURE OF THE ACTION**

1  
2 1. Defendant Facebook owns and operates four of the top six social networks in the  
3 world, including its flagship social network—www.facebook.com.<sup>1</sup>

4 2. Facebook relies almost exclusively on advertising services to generate revenue  
5 through its assortment of social media networks. In order to capitalize on these advertisements,  
6 Facebook collects and stores an array of user data, including the websites its users visit, the articles  
7 its users read, and its users’ cellular telephone numbers.

8 3. Facebook then uses much of this information to deliver targeted ads to its user base.  
9 But Facebook also goes one step further and uses its members’ cellular telephone information to  
10 send numerous unsolicited text messages to thousands of cellular telephone numbers, without the  
11 consent of the recipients. Defendant sends these text messages using an automatic telephone dialing  
12 system that has the capacity to store and dial telephone numbers, *en masse*. Because these text  
13 messages were sent without the prior express consent of the text recipients, Defendant violated the  
14 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

15 4. The TCPA was enacted to protect consumers from unauthorized calls exactly like  
16 those alleged in this Complaint—autodialed solicitations to cellular phone numbers, placed without  
17 each consumer’s prior express consent.

18 5. Defendant’s violations caused Plaintiff and the members of the putative Classes of  
19 consumers (defined below) to experience actual harm, including the aggravation, nuisance, and  
20 invasion of privacy that necessarily accompanies the receipt of unsolicited text messages.

21 6. In response to Defendant’s unlawful conduct, Plaintiff filed the instant lawsuit,  
22 seeking an injunction requiring Defendant to cease all unsolicited text messaging, prevent similar  
23 conduct by Defendant in the future, as well as an award of statutory damages to the members of the  
24 putative Classes under the TCPA, together with costs and reasonable attorneys’ fees.

25 <sup>1</sup> Matt Kapko, *15 Social networks with the most active users in 2015*, CIO (Dec. 11, 2015,  
26 5:00AM), <http://www.cio.com/article/3014362/social-networking/15-social-networks-with-the-most-active-users-in-2015.html> (last visited April 26, 2016).

1 **PARTIES**

2 7. Plaintiff Christine Holt is a natural person domiciled in the District of Columbia.

3 8. Defendant Facebook is a corporation organized and existing under the laws of the  
4 State of Delaware, with its principal place of business located at 1601 Willow Road, Menlo Park,  
5 California 94025. Defendant Facebook regularly does business throughout the State of California  
6 and in this District.

7 **JURISDICTION**

8 9. This Court has original jurisdiction over the claims in this action pursuant to 28  
9 U.S.C. § 1331 because they arise under the Telephone Consumer Protection Act, 47 U.S.C. § 227,  
10 which is a federal statute.

11 10. The Court has personal jurisdiction over Defendant and venue is proper in this  
12 District pursuant to 28 U.S.C. §1391(b)(2) because Defendant resides in this District, transacts  
13 significant business within this District. Furthermore, the conduct and events giving rise to  
14 Plaintiff’s claims—including the development, execution, and approval of Facebook’s marketing  
15 and advertising strategies and campaigns that led to the mass text messaging campaign at issue—  
16 occurred in and/or emanated from the State of California generally, and this District in particular.

17 **INTRADISTRICT ASSIGNMENT**

18 11. Pursuant to Civil Local Rule 3-2(d), this case should be assigned to the San  
19 Francisco Division.

20 **COMMON FACTUAL ALLEGATIONS**

21 Facebook’s Business Model

22 12. Facebook is a global social network that enables people to connect, share, discover,  
23 and communicate with each other via their mobile devices and personal computers. Since its  
24 founding in 2004, Facebook has accumulated more than 1.5 *billion* users.

25 13. Each of these more than 1.5 billion users accesses Facebook for free. Facebook  
26 doesn’t charge its users for access or use of its services and even boasts that Facebook “I[s] free and  
27

1 always will be.”<sup>2</sup> Instead of charging its user base for access, Facebook capitalizes on them by  
2 collecting their valuable personal information, including their geolocations, browsing histories and  
3 patterns, education, interests, and telephone numbers.

4 14. By expanding its user base and promoting user interaction, Facebook is able to  
5 expose more people to advertising—thereby increasing its own revenues.

6 15. Thus, any invitation to join, post a message to, or interact with Facebook is  
7 ultimately meant to promote the service and entice users to take an action that will result in a  
8 financial benefit to Facebook.

9 16. In order to increase consumer exposure to the advertisements hosted on Facebook, it  
10 relies on—and exploits—the massive database of consumer information that it collects from its  
11 users.

12 Facebook’s Unsolicited Text Messages

13 17. Facebook exploits its vast cache of personal information through the tried and true  
14 method of mobile marketing. Specifically, Facebook sends automated text messages to the cellular  
15 telephone numbers it collects from its users’ accounts.

16 18. However, Facebook fails to update its databases to account for circumstances where  
17 its users have deactivated or relinquished the phone number that they previously provided to the  
18 social media service.

19 19. Cellular telephone subscribers deactivate and relinquish their cellular telephone  
20 numbers for any number of reasons. Once deactivated, the cellular telephone carrier reassigns the  
21 number to another subscriber—a practice known as “recycling.” Recycling times (*i.e.*, the time  
22 between deactivation and reassignment) vary across carriers, generally ranging from thirty days to  
23 six months depending on location and demand. During the recycling period, the cellular telephone  
24 number is considered disconnected.

25 20. Relevant here, when a Facebook user deactivates their phone number, and the  
26 number eventually gets reassigned to a new consumer—Facebook keeps sending multiple

27 <sup>2</sup> See Facebook, <https://www.facebook.com/> (last visited April 26, 2016).

1 automated text messages to the same number, and its new owner, without the new owner's consent.

2 21. In some instances (but not all), the prior owner of a recycled telephone number may  
3 have provided Facebook with their telephone number, or even consented to receiving text messages  
4 from Facebook. However, regardless of any consent provided by the prior owner, that consent  
5 cannot be transferred to the new owner. Ultimately, new owners of recycled cellular telephone  
6 numbers are given no choice in receiving (and paying for) Facebook's unsolicited text messages.

7 22. The mobile marketing industry is acutely aware of cellular telephone number  
8 recycling and, in particular, the risk associated with sending text messages to non-consenting  
9 recycled numbers. For example, the Mobile Marketing Association ("MMA") publishes specific  
10 guidelines based on accepted industry practices for all mobile marketers. In its October 2012 U.S.  
11 Consumer Best Practices for Messaging, the MMA recommends that mobile marketers, like  
12 Facebook,

13 ...have appropriate and effective systems and processes for managing  
14 deactivation and recycled number information. These systems and  
15 processes should be designed to ensure that mobile content programs  
16 subscribed to by previous holders of a specific phone number do not  
17 continue to be delivered or billed to a subsequent holder of that number  
18 when it is reassigned.

19 The MMA further advises mobile marketers to "process deactivation information within  
20 three business days of receipt."<sup>3</sup>

21 23. Moreover, numerous commercially available services exist to help mobile marketers,  
22 such as Facebook, identify and exclude recycled numbers and non-consenting cellular subscribers  
23 from their texting campaigns. These services identify disconnected numbers before they are  
24 recycled and alert mobile marketers that any consent associated with those telephone numbers in the  
25 past had been terminated.

26 24. Despite these industry guidelines and practices, and other available resources

27 <sup>3</sup> The MMA is a global trade organization that issues codes of conduct, best practices,  
28 guidelines, rules and instructions for companies engaged in mobile marketing. Its  
U.S. Consumer Best Practices for Messaging are based on accepted industry practices, common  
wireless carrier policies and regulatory guidance. *See U.S. Consumer Best Practices for Messaging*,  
Mobile Marketing Association (Oct. 16, 2012), available at <http://www.ctia.org/docs/default-source/default-document-library/industry-best-practices.pdf?sfvrsn=0> (last visited April 26, 2016).

1 available to it, Facebook failed (and continues to fail) to take the necessary steps to ensure that its  
2 automated text messages are sent only to consenting recipients.

3         25. To that end, Facebook simply treats the new recycled cellular telephone number  
4 owner as if he or she were the previous owner. If the previous owner gave consent to receive  
5 Facebook's text messages, Facebook continues to treat that consent as valid. Facebook then sends  
6 multiple text messages to the new owner's cellular telephone without their consent. New owners are  
7 then forced to incur the cost and invasion of privacy of receiving Facebook's unauthorized text  
8 messages.

9         26. Notably, new owners are not provided any explicit means to contact Facebook to  
10 make the messages stop. In some instances, the messages do not even identify "Facebook" as the  
11 sender, and some consumers—having no prior relationship with Facebook—may be completely  
12 unaware that Facebook is the sender.

13         27. If the telephone number is associated with its previous owner's online Facebook  
14 account, the new cellular subscriber has no way of accessing that account (belonging to the previous  
15 owner) to opt out of receiving Facebook's text messages. And, worse yet, Facebook often ignores  
16 direct demands from the text recipients that the text messages stop.

17         28. Ignoring consumer demands that the texts cease is particularly easy for Facebook  
18 because it makes it notoriously difficult for consumers to opt-out of or unsubscribe from its texting  
19 campaigns.

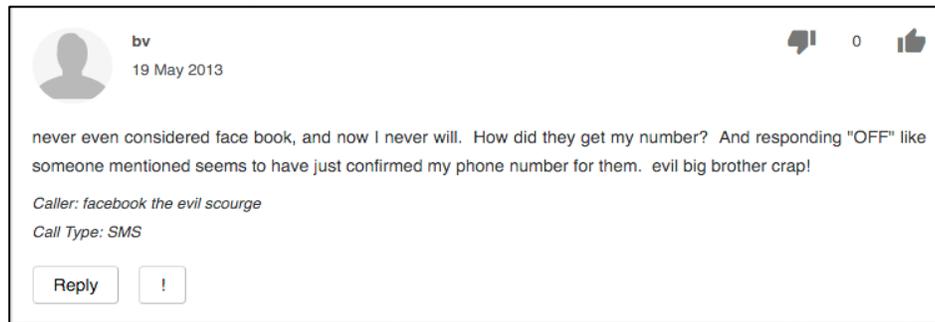
20         29. In fact, Facebook fails to provide *any* information or instruction in its text messages  
21 informing the recipients how to make the text messages stop.

22         30. Because consumers are not provided sufficient information to make Facebook's text  
23 messages cease, they often reply with repeated—and ignored—demands that Facebook stop sending  
24 the unlawful messages.

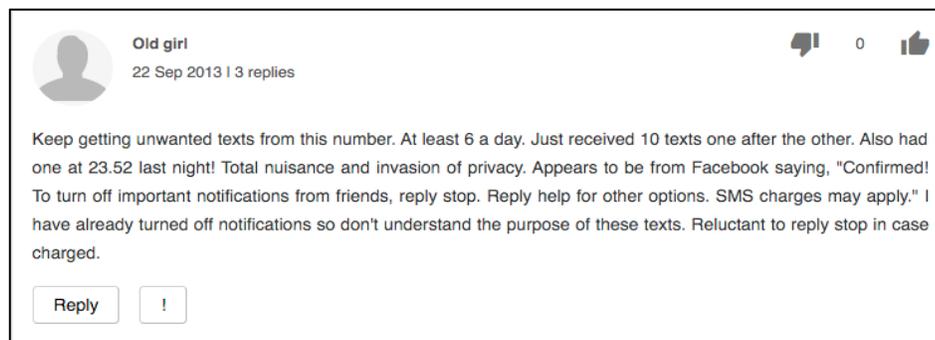
25         31. Any stop request sent by a consumer is, by design, sent to Facebook's short code  
26 32665, directly informing Facebook (as intended) that any subsequent messages are unauthorized.

27         32. The internet is replete with consumer complaints arising from Facebook's texting  
28

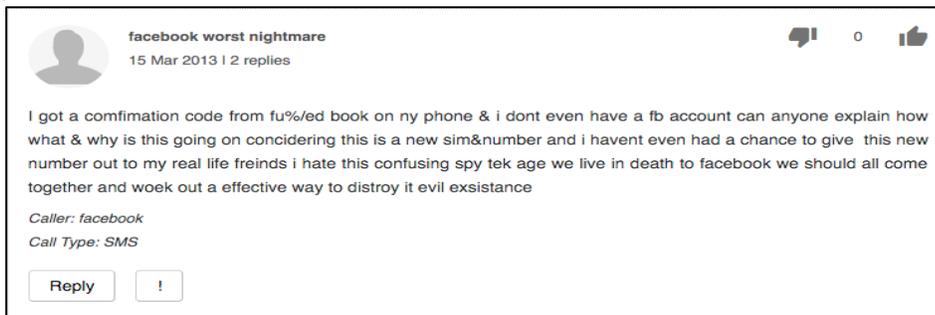
1 campaign originating from the “32665” number. (See Figures 1–5.)



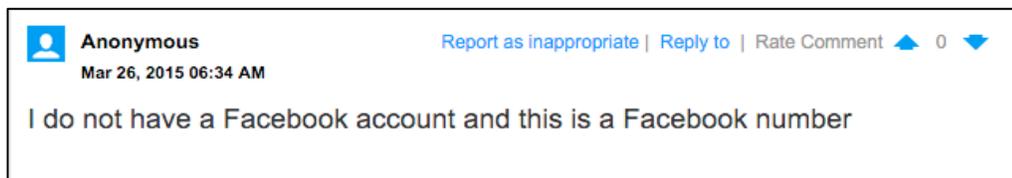
8 (Figure 1.)<sup>4</sup>



15 (Figure 2.)

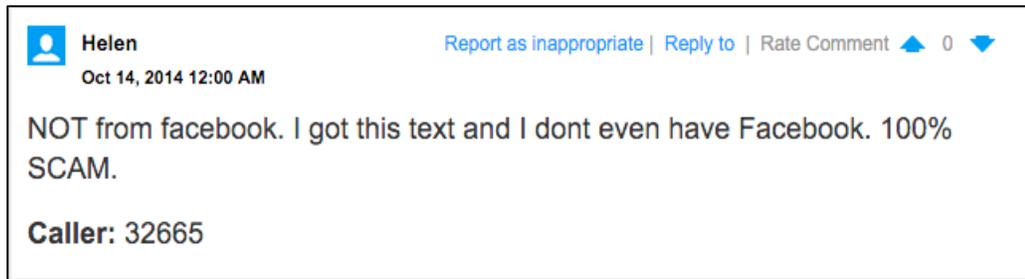


21 (Figure 3.)



25 <sup>4</sup> Figures 1–3 are just a few examples of the hundreds of consumer complaints regarding  
 26 Facebook’s conduct available on a single website. See <http://whocallsme.com/Phone-Number.aspx/32665> (last visited April 26, 2016). Likewise, Figures 4–5 are representative of a  
 27 sampling of the numerous complaints available at another website. See  
 28 <https://www.everycaller.com/phone-number/3-2665/> (last visited April 26, 2016).

1 (Figure 4.)



7 (Figure 5.)

8 33. Each of the text messages sent by Facebook was made with equipment having the  
9 capacity to store or produce telephone numbers, and to dial such numbers, *en masse*, without any  
10 need for human intervention. Furthermore, these campaigns were not executed with the prior  
11 express consent of the text recipients in violation of the TCPA.

12 34. Despite knowing that its text messages violate the TCPA, Defendant continues to  
13 send thousands of text messages to recycled numbers without the text recipients' consent.  
14 Facebook's ongoing text messaging is hardly surprising given that each text message sent by  
15 Facebook has the potential to directly increase its advertising revenues.

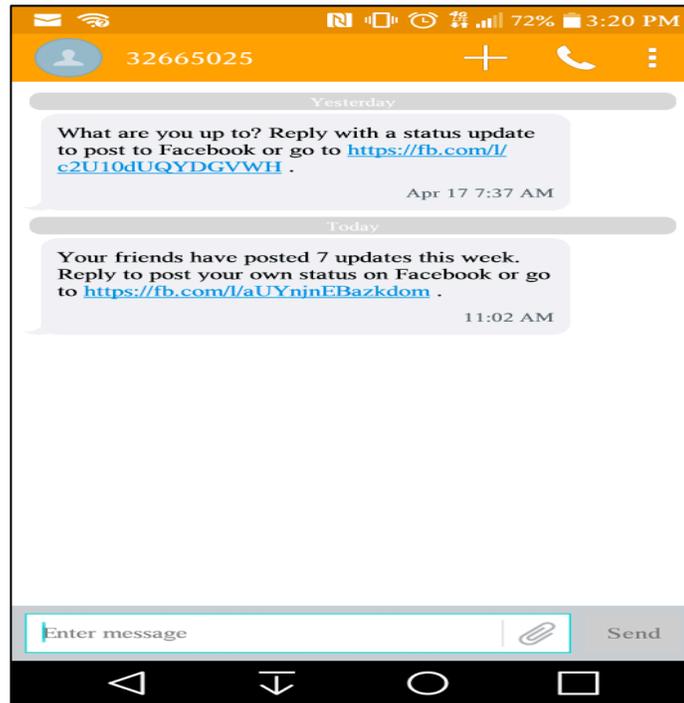
16 35. The TCPA was enacted to give consumers control over how and where they receive  
17 calls and text messages. When Facebook's text messages are sent to consumers without their  
18 consent, it fails to address or respect the limitations imposed by the TCPA, thereby taking control  
19 away from consumers and violating the spirit and letter of the TCPA.

20 **FACTS SPECIFIC TO PLAINTIFF CHRISTINE HOLT**

21 36. Plaintiff Christine Holt is the subscriber to and primary user of her personal cellular  
22 telephone number.

23 37. In or around March 2016, Plaintiff obtained a new cellular telephone number from  
24 MetroPCS. Almost immediately after obtaining her new cellular phone number, Plaintiff began  
25 receiving impersonal, promotional text messages. The messages were identified cryptically from  
26 "32665" and "32665025" which Plaintiff later learned were short codes owned and/or operated by  
27 Facebook.

1           38.       Beginning in March of 2016 and continuing through April 2016, Plaintiff Holt  
2 received multiple text messages from 32665025, asking her to post status updates to Facebook. For  
3 example, on April 17, 2016, Plaintiff received the following unsolicited text messages:



16 (Figure 6.)

17           39.       The website “http://fb.com,” in turn, redirects visitors to www.facebook.com.  
18 On or about April 13, 2016, Plaintiff replied to Defendant’s text messages with multiple written  
19 demands that Facebook stop texting her—but Defendant disregarded these demands and continued  
20 to send unsolicited text messages to Plaintiff, including as recently as April 20, 2016.

21           40.       Plaintiff is not a www.facebook.com user and never provided her prior express  
22 consent for Facebook to contact her. She did not express an interest in receiving information about  
23 Facebook to any person or entity, including Defendant.

24           41.       Plaintiff did not provide her phone number to Defendant or any third party operating  
25 on its behalf, let alone provide her consent to receive text message calls from, or on the behalf of,  
26 Facebook.



1 counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns  
2 of any such excluded persons.

3 47. **Numerosity:** The exact size of each Class is unknown and not available to Plaintiff  
4 at this time, but it is clear that individual joinder is impracticable. On information and belief,  
5 Defendant has sent text messages to thousands of consumers who fall into the definitions of the  
6 Classes. Members of the Classes can be identified through Defendant's records.

7 48. **Typicality:** Plaintiff's claims are typical of the claims of other members of the  
8 Classes in that Plaintiff and the members of the Classes sustained damages arising out of  
9 Defendant's uniform wrongful conduct.

10 49. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect  
11 the interests of the Classes and has retained counsel competent and experienced in complex class  
12 actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses  
13 unique to Plaintiff.

14 50. **Commonality and Predominance:** There are many questions of law and fact  
15 common to the claims of Plaintiff and the Classes, and those questions predominate over any  
16 questions that may affect individual members of the Classes. Common questions for the Classes  
17 include, but are not necessarily limited to the following:

18 **No Consent Class:**

- 19 (a) Whether Defendant's text messages were sent to consumers' cellular  
20 telephones utilizing an automatic telephone dialing system;
- 21 (b) Whether Defendant maintains records of prior express consent to place the  
22 text messages it sent to consumers;
- 23 (c) Whether Defendant's conduct violated the TCPA; and
- 24 (d) Whether Plaintiff and the members of the No Consent Class are entitled to  
25 statutory and treble damages based on the willfulness of Defendant's  
26 conduct.
- 27

1                    **Stop Text Class:**

- 2                    (a)      Whether Defendant’s text messages were sent to consumers’ cellular  
3                                       telephones utilizing an automatic telephone dialing system;
- 4                    (b)      Whether Defendant continued to send messages to the Stop Text Class’s  
5                                       cellular telephones after receiving a request that the text messages cease;
- 6                    (c)      Whether Defendant’s conduct violated the TCPA;
- 7                    (d)      Whether Plaintiff and the members of the Stop Text Class are entitled to  
8                                       statutory and treble damages based on the willfulness of Defendant’s  
9                                       conduct.

10                    51.      **Superiority:** This case is also appropriate for class certification because class  
11 proceedings are superior to all other available methods for the fair and efficient adjudication of this  
12 controversy. Joinder of all parties is impracticable, and the damages suffered by the individual  
13 members of the Classes will likely be relatively small, especially given the burden and expense of  
14 individual prosecution of the complex litigation necessitated by Defendant’s actions. Thus, it would  
15 be virtually impossible for the individual members of the Classes to obtain effective relief from  
16 Defendant’s misconduct. Even if members of the Classes could sustain such individual litigation, it  
17 would still not be preferable to a class action, because individual litigation would increase the delay  
18 and expense to all parties due to the complex legal and factual controversies presented in this  
19 Complaint. By contrast, a class action presents far fewer management difficulties and provides the  
20 benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court.  
21 Economies of time, effort and expense will be fostered, and uniformity of decisions ensured.

22                    **FIRST COUNT**  
23                    **Violation of the TCPA, 47 U.S.C. § 227**  
24                    **(On behalf of Plaintiff and the No Consent Class)**

25                    37.      Plaintiff incorporates the foregoing allegations as if fully set forth herein.

26                    38.      Defendant and/or its agents sent unsolicited text messages to cellular telephone  
27 numbers belonging to Plaintiff and the members of the No Consent Class without their prior express  
28 consent.



1 simultaneously and without human intervention.

2 48. By having these unsolicited text messages sent to Plaintiff and the Stop Text Class,  
3 Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's unlawful conduct,  
4 the members of the Stop Text Class suffered actual damages in the form of monies paid to receive  
5 the unsolicited text messages on their cellular phones and, under 47 U.S.C. § 227(b)(3)(B), are each  
6 entitled to, *inter alia*, a minimum of \$500.00 in damages for each such violation of the TCPA.

7 49. Should the Court determine that Defendant's conduct was willful and knowing, the  
8 Court should, pursuant to 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages  
9 recoverable by Plaintiff and the other members of the Stop Text Class.

10 **THIRD COUNT**  
11 **Violations of California's Unfair Competition Law**  
12 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***  
13 **(On Behalf of Plaintiff and the Classes)**

14 50. Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
15 herein.

16 51. California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code §§ 17200, *et*  
17 *seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice. A business practice need  
18 only meet one of these three criteria to be considered unfair competition.

19 52. As described herein, Facebook has engaged in unfair and unlawful business practices  
20 as defined by the UCL by sending, or having sent on its behalf, text messages to cellular telephone  
21 numbers utilizing an automated telephone dialing system without the prior express consent of the  
22 called parties, or by having such text messages sent to cellular telephone numbers after receiving  
23 demands that it cease sending such text messages, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

24 53. Defendant knew that it used automated telephone dialing equipment to send text  
25 messages to cellular telephone numbers belonging to Plaintiff and the members of the Classes.

26 54. Defendant violated the UCL's unfair prong and caused substantial injury to  
27 consumers by knowingly accessing their cellular telephone equipment without consent, thereby  
28 consuming battery life and diminishing their use, enjoyment, and utility of their cellular telephones  
and cellular telephone plans. The injuries caused by Defendant's unfair conduct are not outweighed

1 by any countervailing benefits to consumers or competition, and the injuries are such that  
2 consumers themselves could not have reasonably avoided them.

3 55. Defendant has also violated the UCL's unlawful prong by violating the TCPA, as  
4 described above.

5 56. Defendant's unlawful and unfair conduct occurred during attempts to induce  
6 consumer use of, and participation in, its social media network in order to generate advertising  
7 revenues for itself, and therefore occurred in the course of Defendant's business practices.

8 57. Defendant's unfair and unlawful conduct directly and proximately caused Plaintiff  
9 and members of the Classes a loss of money or property in the form of the wear and tear on their  
10 cellular telephone equipment, consumed battery life, and the diminishment in the use, enjoyment,  
11 value, and utility of their cellular telephone plans.

12 58. Facebook's critical decisions related to the text messaging campaign at issue were  
13 coordinated in, occurred in and emanated from its headquarters in California.

14 59. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order (1) requiring  
15 Defendant to cease the unfair and unlawful practices described herein; (2) requiring Defendant to  
16 restore to Plaintiff and each member of the Classes any money acquired by means of unfair and/or  
17 unlawful competition (restitution); and, (3) awarding reasonable costs and attorneys' fees pursuant  
18 to Cal. Code Civ. Proc. § 1021.5.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Christine Holt, individually and on behalf of the Classes, prays for  
21 the following relief:

22 A. An order certifying the Classes as defined above, appointing Plaintiff Christine Holt  
23 as the representative of the Classes, and appointing her counsel as Class Counsel;

24 B. An award of actual and statutory damages;

25 C. An order declaring that Defendant's actions, as set out above, violate the TCPA;

26 D. A declaratory judgment that Defendant's telephone calling equipment constitutes an  
27 automatic telephone dialing system under the TCPA;

1 E. An order declaring that Defendant's actions, as set out above, violate the UCL;

2 F. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of  
3 its unlawful telephone calling practices;

4 G. An order requiring Defendant to pay restitution for the money and property lost as a  
5 result of its unlawful telephone calling practices;

6 H. An order requiring Defendant to identify any third party involved in the text  
7 messaging activities as set out above, as well as the terms of any contract or compensation  
8 arrangement it has with such third parties;

9 I. An injunction requiring Defendant to cease all unsolicited text message activities and  
10 otherwise protecting the interests of the Classes;

11 J. An injunction prohibiting Defendant from using, or contracting the use of, an  
12 automatic telephone dialing system without obtaining and maintaining records of call recipients'  
13 prior express consent to receive calls made with such equipment;

14 K. An injunction prohibiting Defendant from conducting any future telemarketing  
15 activities until it has established an internal Do Not Call List as required by the TCPA;

16 L. An award of reasonable attorneys' fees and costs; and

17 M. Such other and further relief that the Court deems reasonable and just.

18 **JURY DEMAND**

19 Plaintiff requests a trial by jury of all claims that can be so tried.  
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Respectfully submitted,

Dated: April 26, 2016

**CHRISTINE HOLT**, individually and on behalf of all others similarly situated,

By: /s/ Todd Logan  
One of Plaintiff's Attorneys

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