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10 **[ADDITIONAL PLAINTIFF’S COUNSEL ON SIGNATURE PAGE]**

11 *Attorneys for Plaintiff,*
12 Seyed M. Kazerouni

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **SEYED M. KAZEROUNI;**
16 **INDIVIDUALLY AND ON**
17 **BEHALF OF ALL OTHERS**
18 **SIMILARLY SITUATED,**

19 Plaintiff,

20 v.

21 **COSMOPOLITAN HOTELS &**
22 **RESORTS, INC.,**

23 Defendant.

24 **Case No.:**

25 **CLASS ACTION**

26 **COMPLAINT FOR DAMAGES AND**
27 **INJUNCTIVE RELIEF PURSUANT**
28 **TO THE TELEPHONE CONSUMER**
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.

JURY TRIAL DEMANDED

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INTRODUCTION

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1. SEYED M. KAZEROUNI (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of COSMOPOLITAN HOTELS & RESORTS, INC. (“Defendant”), in negligently or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
 2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
 3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

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1 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
2 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
3 purpose).

4 4. Congress also specifically found that “the evidence presented to the
5 Congress indicates that automated or prerecorded calls are a nuisance and an
6 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See
7 also, *Mims*, 132 S. Ct. at 744.

8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well known for
11 its provisions limiting junk-fax transmissions. A less-litigated
12 part of the Act curtails the use of automated dialers and
13 prerecorded messages to cell phones, whose subscribers often
14 are billed by the minute as soon as the call is answered—and
15 routing a call to voicemail counts as answering the call. An
automated call to a landline phone can be an annoyance; an
automated call to a cell phone adds expense to annoyance.

16 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

17 **JURISDICTION AND VENUE**

18 6. This Court has federal question jurisdiction because this case arises out of
19 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
20 132 S. Ct. 740 (2012).

21 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
22 Plaintiff resides in the County of Orange, State of California which is within
23 this judicial district; (ii) the conduct complained of herein occurred within
24 this judicial district; and, (iii) Defendant conducted business within this
25 judicial district at all times relevant.

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PARTIES

- 8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the County of Orange, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
- 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of Nevada. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Defendant is a hotel and casino operating in Las Vegas. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of Orange, and within this judicial district.

FACTUAL ALLEGATIONS

- 10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
- 11. Defendant is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).
- 12. At all times relevant Defendant conducted business in the State of California and in the County of Orange, within this judicial district.
- 13. At no time did Plaintiff ever enter into a business relationship with Defendant.
- 14. On December 2, 2014, Cyber Monday, Plaintiff visited Defendant’s website in order to place a reservation for a room at Defendant’s hotel. On that day only, Defendant was offering special rates as part of a Cyber Monday promotion.

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1 15. Due to high internet traffic, Defendant provided consumers with the option
2 to leave a telephone number on Defendant's website in order to receive a
3 telephone call from Defendant when an agent was available to complete
4 Plaintiff's reservation. Since Plaintiff desired the special rates offered by
5 Defendant on Cyber Monday, Plaintiff entered Plaintiff's telephone number
6 in order to receive a telephone call from Defendant to complete Defendant's
7 Cyber Monday reservation only.

8 16. However, nowhere on Defendant's website did Defendant expressly inform
9 Plaintiff, or other consumers for that matter, that Defendant would utilize an
10 automatic telephone dialing system ("ATDS") and/or an artificial or
11 prerecorded voice as defined by 47 U.S.C. § 227(a)(1) to initiate telephone
12 calls and/or transmit text messages to persons that submitted cellular
13 telephone numbers via Defendant's website, for purposes unrelated to Cyber
14 Monday discounts.

15 17. Shortly thereafter, Plaintiff received the following text message from
16 Defendant:

17
18 Thank you for signing up to receive alerts about The
19 Cosmopolitan's Cyber Monday offer. We'll text you when it's
20 time to book.¹

21 18. As stated above, Defendant's website did not inform Plaintiff that Plaintiff
22 was signing up to receive alerts from Defendant. Plaintiff merely desired to
23 receive a telephone call from Defendant's agent in order to take advantage
24 of the Cyber Monday sale.

25 19. Despite Defendant's promise to contact Plaintiff on Cyber Monday, Plaintiff
26 never received a telephone call from Defendant to complete Plaintiff's
27 reservation. Thus, Plaintiff reserved a different hotel room at a different

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¹ For purposes of this action only, Defendant's first text message is not at issue.

1 hotel in order to take advantage of the special rates offered by Planet
2 Hollywood.

3 20. On January 7, 2014, more than one month later, Plaintiff received yet
4 another text message from Defendant attempting to solicit Plaintiff's
5 business. Said text message stated the following:

6
7 You previously signed up to see offers from The Cosmopolitan.
8 This is your last chance to opt-in and receive offers like \$150
9 on us: <http://bit.ly/150onus>

10 21. For the second time, Defendant misconstrued Plaintiff's request. By
11 inputting Plaintiff's telephone number, Plaintiff only desired to receive a
12 telephone call on Cyber Monday to complete the reservation process. At no
13 time was Plaintiff informed that Defendant would send Plaintiff text
14 messages nor was Plaintiff ever informed that Defendant would utilize
15 Plaintiff's cellular telephone number after Cyber Monday.

16 22. Plaintiff did not provide Defendant with prior express consent to contact
17 Plaintiff on Plaintiff's cellular telephone while using an ATDS for any
18 purpose.

19 23. Plaintiff solely entered Plaintiff's cellular telephone number on Defendant's
20 website to receive a telephone call from Defendant on December 2, 2014 to
21 obtain the special rates offered by Defendant on that date only.

22 24. By providing Plaintiff's cellular telephone number on Defendant's website,
23 Plaintiff did not consent to receiving future telephone calls from Defendant.

24 25. By providing Plaintiff's cellular telephone number on Defendant's website,
25 Plaintiff did not consent to receiving telephone calls from Defendant
26 wherein Defendant utilized an ATDS.

27 26. By providing Plaintiff's cellular telephone number on Defendant's website,
28 Plaintiff did not consent to receiving text messages from Defendant.

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1 27.This ATDS has the capacity to store or produce telephone numbers to be
2 called, using a random or sequential number generator.

3 28.The telephone number Defendants called was assigned to a cellular
4 telephone service for which Plaintiff incurred a charge for incoming calls
5 and texts pursuant to 47 U.S.C. § 227(b)(1).

6 29.These telephone communications constituted communications that were not
7 for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

8 30.These telephone communications constituted telephone solicitations as
9 defined by 47 U.S.C. § 227(a)(4).

10 31.Plaintiff did not provide prior express consent to receive calls or messages
11 on Plaintiff’s cellular telephones, pursuant to 47 U.S.C. § 227 (b)(1)(A).

12 32.These telephone communications by Defendants, or its agent, violated 47
13 U.S.C. § 227(b)(1).

14 **CLASS ACTION ALLEGATIONS**

15 33.Plaintiff brings this action on behalf of himself and on behalf of all others
16 similarly situated (“the Class”).

17 34.Plaintiff represents, and is a member of the Class, consisting of all persons
18 within the United States who received any text message from Defendant or
19 their agent/s and/or employee/s to said person’s cellular telephone made
20 through the use of any automatic telephone dialing system or with an
21 artificial or prerecorded message, which text message was not sent for
22 emergency purposes within the four years prior to the filing of this
23 Complaint.

24 35.Defendant and its employees or agents are excluded from the Class.
25 Plaintiff does not know the number of members in the Class, but believes the
26 Class members number in the hundreds of thousands, if not more. Thus, this
27 matter should be certified as a Class action to assist in the expeditious
28 litigation of this matter.

1 36. Plaintiff and members of the Class were harmed by the acts of Defendant in
2 at least the following ways: Defendants, either directly or through its agents,
3 illegally contacted Plaintiff and the Class members via their cellular
4 telephones by using an ATDS, thereby causing Plaintiff and the Class
5 members to incur certain cellular telephone charges or reduce cellular
6 telephone time for which Plaintiff and the Class members previously paid,
7 and invading the privacy of said Plaintiff and the Class members. Plaintiff
8 and the Class members were damaged thereby.

9 37. This suit seeks only damages and injunctive relief for recovery of economic
10 injury on behalf of the Class, and it expressly is not intended to request any
11 recovery for personal injury and claims related thereto. Plaintiff reserves the
12 right to expand the Class definition to seek recovery on behalf of additional
13 persons as warranted as facts are learned in further investigation and
14 discovery.

15 38. The joinder of the Class members is impractical and the disposition of their
16 claims in the Class action will provide substantial benefits both to the parties
17 and to the court. The Class can be identified through Defendants' records or
18 Defendants' agents' records.

19 39. There is a well-defined community of interest in the questions of law and
20 fact involved affecting the parties to be represented. The questions of law
21 and fact to the Class predominate over questions which may affect
22 individual Class members, including the following:

- 23 a) Whether, within the four years prior to the filing of this Complaint,
24 Defendant or its agents initiated any telephonic communications to the
25 Class (other than a message made for emergency purposes or made
26 with the prior express consent of the called party) to a Class member
27 using any automatic dialing and/or SMS texting system to any
28 telephone number assigned to a cellular phone service;

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- 1 b) Whether Defendant can meet its burden of showing it obtained prior
- 2 express consent (i.e., consent that is clearly and unmistakably stated);
- 3 c) Whether Defendant’s conduct was knowing and/or willful;
- 4 d) Whether Plaintiff and the Class members were damaged thereby, and
- 5 the extent of damages for such violation; and
- 6 e) Whether Defendants and its agents should be enjoined from engaging
- 7 in such conduct in the future.

8 40. As a person that received at least one telephonic communication from
9 Defendant’s ATDS without Plaintiff’s prior express consent, Plaintiff is
10 asserting claims that are typical of the Class. Plaintiff will fairly and
11 adequately represent and protect the interests of the Class in that Plaintiff
12 has no interests antagonistic to any member of the Class.

13 41. Plaintiff and the members of the Class have all suffered irreparable harm as
14 a result of the Defendants’ unlawful and wrongful conduct. Absent a class
15 action, the Class will continue to face the potential for irreparable harm. In
16 addition, these violations of law will be allowed to proceed without remedy
17 and Defendants will likely continue such illegal conduct. Because of the
18 size of the individual Class member’s claims, few, if any, Class members
19 could afford to seek legal redress for the wrongs complained of herein.

20 42. Plaintiff has retained counsel experienced in handling class action claims
21 and claims involving violations of the Telephone Consumer Protection Act.

22 43. A class action is a superior method for the fair and efficient adjudication of
23 this controversy. Class-wide damages are essential to induce Defendants to
24 comply with federal and California law. The interest of Class members in
25 individually controlling the prosecution of separate claims against
26 Defendants is small because the maximum statutory damages in an
27 individual action for violation of privacy are minimal. Management of these
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1 claims is likely to present significantly fewer difficulties than those
2 presented in many class claims.

3 44. Defendant has acted on grounds generally applicable to the Class, thereby
4 making appropriate final injunctive relief and corresponding declaratory
5 relief with respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

8 **47 U.S.C. § 227 ET SEQ.**

9 45. Plaintiff incorporates by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.

11 46. The foregoing acts and omissions of Defendant constitutes numerous and
12 multiple negligent violations of the TCPA, including but not limited to each
13 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

14 47. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
15 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
16 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

17 48. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **SECOND CAUSE OF ACTION**

20 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

21 **TELEPHONE CONSUMER PROTECTION ACT**

22 **47 U.S.C. § 227 ET SEQ.**

23 49. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 50. The foregoing acts and omissions of Defendant constitutes numerous and
26 multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above-cited provisions of 47 U.S.C. §
28 227 et seq.

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1 51. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
2 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
3 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
4 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

5 52. Plaintiff and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff and The Class Members pray for judgment as follows:

- 9 • Certifying the Class as requested herein;
- 10 • Providing such further relief as may be just and proper.

11
12 In addition, Plaintiff and The Class Members pray for further judgment as
13 follows:

14 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
15 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 16 • As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
17 Plaintiff seeks for himself and each Class member \$500.00 in statutory
18 damages, for each and every violation, pursuant to 47 U.S.C. §
19 227(b)(3)(B).
- 20 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
21 conduct in the future.
- 22 • Any other relief the Court may deem just and proper.

23 **SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF**
24 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 25 • As a result of Defendant’s knowing and/or willful violations of 47 U.S.C.
26 § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00
27 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
28 § 227(b)(3)(B).

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- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: April 11, 2014

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Matthew M. Loker
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[ADDITIONAL PLAINTIFF’S COUNSEL]

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