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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **MICHAEL ANTHONY,**

14 **Plaintiff,**

15 **v.**

16 **TWILIO INC.,**

17 **Defendant.**

18 **Case No.:**

19 **COMPLAINT FOR VIOLATIONS**
20 **OF THE TELEPHONE**
21 **CONSUMER PROTECTION ACT,**
22 **47 U.S.C. § 227**

23 **JURY TRIAL DEMANDED**



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1 INTRODUCTION

2 1. Plaintiff MICHAEL ANTHONY (“Plaintiff”) brings this action against
3 Defendant TWILIO, INC. (“Defendant” or “Twilio”) to secure redress for violations
4 of the Telephone Consumer Protection Act (“TCPA”).

5 2. Twilio is a cloud communications company that enables businesses to
6 reach customers around the globe. In doing so, Twilio essentially bridges the gap
7 between web-based applications and the telephone network. In providing this bridge,
8 however, Defendant has been originating illegal robocall traffic.

9 3. As alleged with specificity herein, Defendant has initiated hundreds of
10 calls to Plaintiff’s cellular telephone ending in -555 (“Cell Phone”) in violation of the
11 TCPA.

12 4. Even though Plaintiff notified Defendant *countless times* that he
13 registered his Cell Phone with the Do Not Call Registry, Defendant continually
14 harassed him by transmitting unlawful text messages and making illegal call after
15 illegal call via phone numbers that are registered to Defendant.

16 5. Although Plaintiff notified Twilio that it continually originated unlawful
17 robocalls to his wireless number without consent, Twilio turned a blind eye and did
18 nothing.

19 6. Plaintiff was therefore left with no choice but to file this action to stop
20 the unsolicited and unlawful communications initiated by Twilio.

21 7. Through this action, Plaintiff seeks statutory damages and equitable relief
22 to halt Defendant’s illegal conduct, which has resulted in the invasion of privacy,
23 harassment, aggravation, and disruption of his daily life.

24 8. Plaintiff makes these allegations on information and belief, with the
25 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which
26 Plaintiff alleges on personal knowledge.

27 9. While many violations are described below with specificity, this
28 Complaint alleges violations of the statutes cited in its entirety.



1 10. Unless otherwise stated, all the conduct engaged in by Defendant took
2 place in the Northern District of California.

3 11. Any violations by Defendant were knowing, willful, and intentional, and
4 Defendant did not maintain procedures reasonably adapted to avoid any such
5 violation.

6 12. Unless otherwise indicated, the use of Defendant's names in this
7 Complaint includes all agents, employees, officers, members, directors, heirs,
8 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
9 insurers of Defendant's named.

10 //

11 **NATURE OF THE ACTION**

12 13. In 1991, Congress passed the Telephone Consumer Protection Act, 47
13 U.S.C. § 227, *et seq.*, ("TCPA"), in response to complaints about abusive
14 telemarketing practices.

15 14. At the time of the TCPA's passage, the majority of illegal robo-calls were
16 made "off-line" using pre-recorded voice messages.

17 15. Thereafter, the Federal Communications Commission ("FCC") noted
18 that advertisers seeking to make illegal robo-calls increasingly used computer
19 programs to initiate calls as well as SMS text messages, instead of pre-recorded voice
20 messages, to reach cell phone and "smart phone" users.¹

21 16. A Pew Research Center study conducted almost 10 years ago found that
22 "[t]ext messaging is the most widely-used smartphone feature," and "is also the most
23 frequently-used."²

24 17. Indeed, in 2014, Americans sent over *2 trillion* individual SMS and MMS
25
26
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28 ¹ In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 31 F.C.C. Rcd. 88 (2016).

² <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>

1 messages.³

2 18. As technology evolved and advertisers adapted to the ways it reached
3 potential customers, the FCC made clear that the TCPA still governed. Specifically,
4 the FCC found that merely moving the process of robo-calling to auto-dialing
5 computer programs, or using automated or pre-recorded text messages instead of a
6 pre-recorded voice, did not place these practices outside the scope of the TCPA.
7 Indeed, the FCC issued a number of declaratory rulings with respect to the TCPA
8 liability of online services that permit the sending of illegal text messages via
9 computer program.⁴

10 19. Defendant Twilio is one example of a computer-based robo-calling
11 service and automated text messaging service because it initiates or causes to be
12 initiated *millions* of text messages and/or calls to cell phone users per month via
13 computer program.

14 20. Since it was first launched in 2007, Twilio's cloud-based robo-calling,
15 automated text messaging, and auto dialing service has grown to provide its service to
16 hundreds of advertisers. And as such, Twilio has initiated or caused to be initiated
17 countless text messages and calls to the cell phones of thousands of unfortunate
18 consumers, like Plaintiff, without express consent and in violation of the TCPA.⁵

19 21. This lawsuit seeks to hold Twilio accountable for its integral role in
20 initiating or causing to initiate the relentless unlawful telemarketing that has plagued
21 Plaintiff for years.

22
23
24 ³ See Dr. Robert F. Roche & Kathryn Malarkey, CTIA's Annual Wireless Industry
25 Indices: Annual Wireless Survey Results: A Comprehensive Report from CTIA
26 Analyzing the U.S. Wireless Industry, CTIA, at 144 (Sept. 2015).

27 ⁴ See, e.g., In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot.
28 Act of 1991, 30 F.C.C. Rcd. 7961 (2015).

⁵ See, e.g., Twilio Inc., Programmable SMS, <https://www.twilio.com/sms>; Jason Kincaid, Twilio: Powerful API for Phone Services That Can Recreate GrandCentral's Core Functional in 15 Lines of Code, TechCrunch (Nov. 20, 2008), <http://techcrunch.com/2008/11/20/twiliopowerful-api-for-phone-services-that-can-recreate-grandcentral-in-15-lines-of-code/>.

JURISDICTION AND VENUE

22. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute.

23. Defendant is subject to this Court’s personal jurisdiction because it provides and markets its services within this district.

24. Pursuant to 28 U.S.C. § 1391(b) and (c), venue is proper because Defendant is deemed to reside in any judicial district in which it is subject to the Court’s personal jurisdiction.

PARTIES

25. Plaintiff is an individual and citizen of the Commonwealth of Pennsylvania.

26. Upon information and belief, Defendant is a domestic corporation with its principal place of business located in San Francisco, California.

THE TCPA

27. The TCPA regulations promulgated by the FCC define “telemarketing” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. § 64.1200(f)(12).

28. In determining whether a communication constitutes telemarketing, a court must evaluate the ultimate purpose of the communication.⁶

29. “‘Telemarketing’ occurs when the context of a call indicates that it was initiated and transmitted to a person for the purpose of promoting property, goods, or services.”⁷

30. The FCC has explained that calls motivated in part by the intent to sell

⁶ See *Golan v. Veritas Entm't, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

⁷ *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. § 64.1200(f)(12); In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).





1 property, goods, or services are considered telemarketing under the TCPA.⁸

2 31. This is true whether call recipients are encouraged to purchase, rent, or
3 invest in property, goods, or services during the call or in the future.⁹

4 32. In other words, offers “that are part of an overall marketing campaign to
5 sell property, goods, or services” constitute telemarketing under the TCPA.¹⁰

6 33. In an action under the TCPA, a plaintiff must only show that the
7 defendant “called a number assigned to a cellular telephone service using an automatic
8 dialing system or prerecorded voice.”¹¹

9 34. In 2012, the FCC issued an order tightening the restrictions for automated
10 telemarketing calls, requiring “prior express written consent” for such calls to wireless
11 numbers.¹²

12 35. To obtain express written consent for telemarketing calls, a defendant
13 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff
14 a “‘clear and conspicuous disclosure’ of the consequences of providing the requested
15 consent....and having received this information, agrees unambiguously to receive
16 such calls at a telephone number the [plaintiff] designates.”¹³

17 36. If a call is not deemed telemarketing, a defendant must nevertheless
18 demonstrate that it obtained the plaintiff’s prior express consent.¹⁴

19 37. As held by the United States Court of Appeals for the Ninth Circuit:
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22 ⁸ See In re Rules and Regulations Implementing the Telephone Consumer Protection
Act of 1991, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003).

23 ⁹ *Id.*

24 ¹⁰ See In re Rules and Regulations Implementing the Telephone Consumer Protection
Act of 1991, 18 FCC Rcd. 14014, ¶ 136 (2003).

25 ¹¹ *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012),
aff’d, 755 F.3d 1265 (11th Cir. 2014).

26 ¹² See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot.
Act of 1991, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis omitted).

27 ¹³ In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 27
F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb.
15, 2012).

28 ¹⁴ See In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot.
Act of 1991, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-
telemarketing and non-advertising calls.”)

1 “Unsolicited telemarketing phone calls or text messages, by their nature, invade the
2 privacy and disturb the solitude of their recipients. A plaintiff alleging a violation
3 under the TCPA ‘need not allege any additional harm beyond the one Congress has
4 identified.’”¹⁵

5 **To “Make” or “Initiate” a Call Under the TCPA**

6 38. The TCPA does not define the term “make,” but the question of who can
7 be held liable for violations of the TCPA was addressed extensively in 2015.¹⁶

8 39. The 2015 FCC Order states that “one can violate the TCPA either by
9 ‘taking the steps necessary to physically place a telephone call,’ or by ‘being so
10 involved in the placing of a specific telephone call as to be deemed to have initiated
11 it.’”¹⁷

12 40. And in making this determination, the adjudicator must “look to the
13 totality of the facts and circumstances surrounding the placing of a particular call.”¹⁸

14 41. In 2016, the FCC weighed in on the question of whether text broadcasters
15 could be “senders” of text messages under § 227(b)(1) of the TCPA.¹⁹

16 42. The FCC clarified that “text broadcasters can be liable for TCPA
17 violations” based on an analysis of the “totality of the facts and circumstances
18 surrounding the placing of a particular call.”²⁰

19 43. As one court put it, “[t]he ‘totality of the circumstances’ approach...will
20 not provide easy answers in close cases. But it makes one thing clear: a provider of
21 auto-dialing services cannot blithely sit back and blame his customers for any TCPA
22
23

24 ¹⁵ *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS 1591, at
25 *12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549
(2016) (emphasis original)).

26 ¹⁶ See Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991, 30 FCC
27 Red. 7961, 7890 (2015) (“the 2015 FCC Order”).

27 ¹⁷ *Id.* at 7890 ¶ 30 (quoting *DISH Network*, 28 FCC Red. at 6583 ¶ 27).

28 ¹⁸ *Id.*

¹⁹ In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of
1991, 31 F.C.C. Rcd. 88, 90 (2016).

²⁰ *Id.* at 91 (emphasis omitted).

1 violations that result from their use of his service.”²¹

2 44. Like the knowledge Twilio obtained through Plaintiff’s communications
3 begging for Twilio to stop contacting him, Courts have refused to dismiss suits where
4 the defendant knew that illegal activity was underway.

5 45. For instance, in *Hurley v. Messer*, the district court refused to dismiss
6 TCPA claims against VoIP providers who knew of the caller’s illegal conduct and
7 could have stopped it, but nevertheless permitted robocalls to be broadcast through
8 their systems.²²

9 46. The *Hurley* court analyzed the factors listed in the 2015 FCC Order and
10 concluded that the allegations “state a plausible claim that [the VoIP providers] offered
11 a calling platform and ‘knowingly allowed [their] client(s) to use that platform for
12 unlawful purposes.’”²³

13 47. This is precisely what happened in this case. Regrettably, Twilio
14 *knowingly* allowed its customers to harass Plaintiff for years and was intimately
15 involved in this malfeasance.

16 **FACTUAL ALLEGATIONS**

17 **Twilio’s Business Model**

18 48. Twilio offers a variety of products and services, including a cloud-based
19 automated telecommunications platform enabling the sending of automated text
20 messages *en masse* to consumers.

21 49. Customers of Twilio access the technology platform via an application
22 program interface (“API”) that permits them to programmatically create pre-recorded
23

24 ²¹ *Cunningham v. Montes*, 378 F.Supp.3d 741, 747–48 (W.D. Wis. 2019). *See also*
25 *Hurley v. Messer*, 2018 WL 4927218, at *2 (S.D. W.Va. Oct. 10, 2018) (“whether or
26 not [the defendant] may be held liable will depend upon a totality of the
27 circumstances analysis, which is not appropriate on a motion to dismiss given the
28 allegations in this case.”); *Couser v. Pre-paid Legal Services, Inc.*, 994 F.Supp.2d
1100, 1103 (S.D. Cal. 2014) (“Whatever the true and exact relationship between
[defendant] and its customers is, the Court finds it all too fact intensive ... to be
resolved at the motion to dismiss phase in [defendant's] favor.”)

²² 2018 WL 4854082 (S.D. W.Va. Oct. 4, 2018).

²³ *Id.* at *4 (quoting 2015 FCC Order ¶ 30).

1 messages that are subsequently and automatically transmitted by Twilio.

2 50. According to its website, Twilio’s programmatic text messaging service
3 provides their mobile telemarketing customers with an “SMS API” which interfaces
4 to “cloud software” capable of automatically sending “billions of SMS messages” to
5 the cellular telephones of mobile subscribers via “more than 900 global carriers.”

6 51. Twilio’s SMS API is accessed by Twilio users through a “client
7 program” that incorporates the SMS API. A client program is a software program used
8 by Twilio’s customers incorporating the SMS API software to communicate with
9 Twilio’s platform technology. The SMS API incorporated into the client program
10 enables Twilio’s telemarketing customers to create message text content or portions
11 of content. Telemarketing customers can then upload and store that content on
12 Twilio’s hosted platform. This content is subsequently used by Twilio to automatically
13 and programmatically create, build, copy and initiate any number of SMS messages
14 to be sent to a list of cellular telephone numbers containing that same content—the
15 precise definition of an automated text message program. Other basic functions
16 enabled by the SMS API include the ability to upload the list of cellular telephone
17 numbers to be stored for the automated text messaging program and an automatic
18 means to determine when text messages using the provided content are to be created,
19 built, copied and sent automatically to the stored list of cellular telephone numbers

20 52. The message content provided to Twilio via the SMS API, is simply a
21 template for the textual content portion of a message that Twilio automatically and
22 repeatedly copies and builds into each individual text message it automatically
23 initiates to cellular telephones. The message content is a pre-recorded message that is
24 stored in Twilio’s system to be subsequently and repeatedly used to automatically
25 create, build, and initiate text messages that are then automatically sent by Twilio *en*
26 *masse* to cellular telephone subscribers.

27 53. Client programs that incorporate the Twilio SMS API can be written in a
28 number of programming languages, and are extremely simple. The SMS API enables

1 the client program to communicate remotely with Twilio’s automated text messaging
 2 platform—the platform providing the extensive computational resources needed to
 3 automatically create, build and initiate any number of text messages to cellular
 4 subscribers *en masse*.

5 **Twilio’s Intimate Involvement In Transmitting the Unlawful Telemarketing**

6 54. In 2016, the FCC ruled on the question of whether text broadcasters could
 7 be “senders” of text messages under § 227(b)(1) of the TCPA.²⁴

8 55. The FCC clarified that “text broadcasters can be liable for TCPA
 9 violations” based on an analysis of the “totality of the facts and circumstances
 10 surrounding the placing of a particular call.”²⁵

11 56. As part of the totality of the circumstances test, a court will consider: “(1)
 12 who took the steps necessary to physically place the call; and 2) whether another
 13 person or entity was so involved in placing the call as to be deemed to have initiated
 14 it, considering the goals and purposes of the TCPA,” as well as whether a text
 15 broadcaster “knowingly allowed its client(s) to use that platform for unlawful
 16 purposes.”²⁶

17 57. Considering the totality of the circumstances, Twilio makes, initiates,
 18 and/or causes to be initiated the calls and text messages transmitted to Plaintiff within
 19 the meaning of the TCPA because: (1) Twilio software and servers, ***not the user***,
 20 automatically determines what number a text message will come from; (2) Twilio
 21 software and servers, ***not the user***, automatically generates the list of numbers that a
 22 message will be sent ***to***; (3) Twilio’s software, ***not the user***, automatically dials those
 23 numbers and/or sends a text message to those numbers; (4) Twilio’s software and
 24 server, ***not the user***, assembles and constructs the text message itself; and (5) the only
 25 role that the user plays in the process (writing client code to accesses Twilio’s API
 26 _____

27 ²⁴ In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of
 28 1991, 31 F.C.C. Rcd. 88, 90 (2016).

²⁵ *Id.* at 91 (emphasis omitted).

²⁶ *Id.*

1 and servers) is removed by services offered by Twilio itself, such as the Developer
 2 Gallery (which provides a developer that will write code, instead of the user) and
 3 Twimlets (which automatically generates for the user, the client code). As such, when
 4 considered as a whole, Twilio’s platform and related services so limit the role that a
 5 user plays in sending a text message, Twilio itself makes, initiates, and/or causes to be
 6 initiated the texts within the meaning of the TCPA. This conclusion is made clearer
 7 when Twilio’s platform and related servers are considered in the context of the goals
 8 of the TCPA because the Twilio’s SMS API is expressly intended to permit mass text
 9 messaging campaigns, which the TCPA was intended to prevent.

10 58. Twilio acknowledges that its platform technology allows mass text
 11 messaging campaigns that violate the TCPA: “We face a risk of litigation resulting
 12 from customer misuse of our software to send unauthorized text messages in violation
 13 of the Telephone Consumer Protection Act. Text messages may subject us to potential
 14 risks, including liabilities or claims relating to consumer protection laws. For example,
 15 the Telephone Consumer Protection Act of 1991 restricts telemarketing and the use of
 16 automatic SMS text messages without proper consent. This has resulted in civil claims
 17 against the Company and requests for information through third-party subpoenas. The
 18 scope and interpretation of the laws that are or may be applicable to the delivery of
 19 text messages are continuously evolving and developing. If we do not comply with
 20 these laws or regulations or if we become liable under these laws or regulations due
 21 to the failure of our customers to comply with these laws by obtaining proper consent,
 22 we could face direct liability.”²⁷

23 **Twilio’s Long History of Unlawful Telemarketing**

24 59. Over ten years ago, an industry commentator noted that Twilio “took to
 25 their blog to brag about new apps responsible for sending unsolicited text messages.
 26 _____

27 ²⁷ See Twilio Inc., Securities and Exchange Commission, Form S-1 Registration
 28 Statement at 41,
<https://www.sec.gov/Archives/edgar/data/1447669/000119312516733893/d237988ds1.htm>

1 In a recent blog post, they highlighted [a] Google engineer ... for blatantly spamming
 2 mobile phones with 18,000+ text messages through the Twilio SMS platform
 3 Twilio needs to admit there's an SMS spam problem on their platform, stop glorifying
 4 it, and take the needed steps to fix it.”²⁸

5 60. A few years later, on November 20, 2015, CTIA – The Wireless
 6 Association® (“CTIA”) opposed the Petition for Expedited Declaratory Ruling filed
 7 by Twilio that called for Title II classification of SMS (text messaging), MMS
 8 (multimedia messaging) – and the distinct Short Code system.²⁹

9 61. There, the CTIA noted that Twilio had served as the conduit for spam
 10 and it had previously been sued for transmitting unsolicited long-code text messages
 11 from GroupMe.³⁰

12 62. In addition, a Court in the District of Nevada found that Twilio faced
 13 potential TCPA liability because it offered functionality allowing clients to bypass
 14 spam filter.³¹

15 63. *And less than a year ago*, the FCC determined that Twilio is originating
 16 illegal robocall traffic on behalf of one or more of its clients.³²

17 64. In the Cease-and-Desist Letter to Twilio, the FCC mandated that Twilio
 18 take steps to address the illegal traffic, and take steps to prevent Twilio’s network from
 19 *continuing* to be a source of illegal robocalls.³³

20 65. Indeed, the FCC made the following potentially devastating ultimatum:
 21

22
 23 ²⁸ Derek Johnson, Twilio Continues to Send SMS Spam, Even After Lawsuit,
 24 <http://www.tatango.com/blog/twilio-continues-to-send-sms-spam-even-after-lawsuit/>
 (Apr. 19, 2012).

25 ²⁹ [https://api.ctia.org/docs/default-source/fcc-filings/151120---filed-ctia-opposition-](https://api.ctia.org/docs/default-source/fcc-filings/151120---filed-ctia-opposition-to-twilio-pdr---incl-exhibit.pdf)
 26 [to-twilio-pdr---incl-exhibit.pdf](https://api.ctia.org/docs/default-source/fcc-filings/151120---filed-ctia-opposition-to-twilio-pdr---incl-exhibit.pdf)

27 ³⁰ *Id.* citing 4 See generally Derek Johnson, Twilio Continues to Send SMS Spam,
 Even After Lawsuit,
 TATANGO (Apr. 9, 2012), [http://www.tatango.com/blog/twilio-continues-to-send-](http://www.tatango.com/blog/twilio-continues-to-send-sms-spameven-after-lawsuit/)
 28 [sms-spameven-after-lawsuit/](http://www.tatango.com/blog/twilio-continues-to-send-sms-spameven-after-lawsuit/).

29 ³¹ See *Bauman v. Saxe*, 2019 WL 591439, at *6 (D. Nev. Feb. 13, 2019).

30 ³² <https://docs.fcc.gov/public/attachments/DOC-390811A1.pdf>

31 ³³ *Id.*

1 “Failure to comply with the steps outlined in this letter **may result in downstream**
2 **voice service providers blocking all of Twilio’s traffic, permanently.**³⁴

3 **Unsolicited Telemarketing Received By Plaintiff**

4 66. On May 20, 2004, Plaintiff registered his Cell Phone on the Do Not Call
5 Registry.

6 67. Pursuant to 47 U.S.C. § 227(c)(3)(F), Defendant is required to check the
7 National Do Not Call Registry before attempting to call.

8 68. Nevertheless, as early as June 2021, Plaintiff received text messages from
9 phone numbers assigned to Defendant.

10 69. For instance, Plaintiff received multiple text messages from (919) 750-
11 8278 soliciting Plaintiff for available rooms to rent.

12 70. On or around October 28, 2021, Plaintiff received text messages
13 regarding the purchase of his property from another phone number assigned to
14 Defendant, i.e. (817) 904-4148.

15 71. These messages constitute telephone solicitation because it encouraged
16 the future purchase or investment in property, goods, or services under 47 U.S.C. §
17 227(a)(4), i.e., attempting to buy Plaintiff’s property.

18 72. In accordance with the definition of telemarketing as provided in 47
19 C.F.R. § 64.1200(f)(10), the texts Plaintiff received were for the purpose of
20 encouraging the purchase of goods making it telemarketing.

21 73. At no point in time did Plaintiff provide Defendant with his express
22 written consent to be contacted.

23 74. After learning through a certain automated robocall surveillance system
24 that Defendant owned these phone numbers, Plaintiff communicated with Twilio’s
25 compliance department and in-house counsel via email and telephone.

26 75. Specifically, in the summer of 2021, Plaintiff communicated by email
27

28 _____
³⁴ *Id.* (emphasis in original).



1 with Twilio’s Litigation counsel, Katie Chang as well as lead paralegal, Matthew
2 Gainer.

3 76. In these communications, Plaintiff identified his Cell Number and
4 *repeatedly* asked that Defendant stop the abusive behavior that originated from
5 multiple phone numbers owned by Twilio.

6 77. Defendant simply refused to implement a system-wide block to his Cell
7 Phone and transmitted, and continued to transmit, countless unlawful telemarketing to
8 his Cell Phone.

9 78. By way of example only, in 2022, Plaintiff received pre-recorded calls
10 and text messages from a company called Fulcrum Home Solutions, LLC (“FHS”)
11 that did not obtain his consent.

12 79. Plaintiff contacted FHS and they expressly identified Twilio as the
13 service being used to generate pre-recorded calls in violation of the TCPA.

14 80. Despite Plaintiff bringing this to Twilio’s attention and Twilio knowing
15 his Cell Number, Twilio kept inundating him with unsolicited calls and text messages.

16 81. Towards the end of 2022, Plaintiff accessed a phone carrier database to
17 determine that Twilio owned the phone numbers at issue.

18 82. Plaintiff confirmed that in October 2022, Plaintiff received unsolicited
19 pre-recorded calls and text messages from the following numbers **all owned by**
20 **Twilio:**

21 936-215-6987

22 206-312-6891

23 865-344-1748

24 702-506-0992

25 83. Plaintiff confirmed that in November 2022 Plaintiff received unsolicited
26 pre-recorded calls and text messages from the following numbers **all owned by**
27 **Twilio:**

28 717-527-6784





1 540-299-1005
2 931-340-9636
3 608-496-8453
4 910-788-4727
5 302-248-3720

6 84. Such unsolicited communications caused Plaintiff actual harm.
7 Specifically, Plaintiff estimates that he spent numerous hours investigating the
8 unwanted phone calls including how they obtained his number and who the Defendant
9 was.

10 85. Furthermore, Defendant’s messages took up memory on Plaintiff’s
11 cellular phone. The cumulative effect of unsolicited messages like Defendant’s poses
12 a real risk of ultimately rendering the phone unusable for other purposes as a result of
13 the phone’s memory being taken up.

14 **FIRST CAUSE OF ACTION**
15 **NEGLIGENT AND WILLFUL VIOLATIONS OF THE TCPA, U.S.C. § 227(C)(5)**

16 86. Plaintiff re-alleges and incorporates the foregoing allegations as if fully
17 set forth herein.

18 87. A person who has received more than one telephone call within any 12-
19 month period by or on behalf of the same entity in violation of the regulations
20 governing the Do-Not-Call registry, if otherwise permitted by the laws or rules of court
21 of a State, bring an action in an appropriate court of that State.

22 88. Without obtaining Plaintiff’s prior express written consent, Twilio
23 initiated or caused to be initiated calls, including, but not limited to, the calls and text
24 messages as alleged with specificity herein.

25 89. Moreover, Twilio is so involved in the calls and text messages that it
26 functionally initiates or causes to be initiated the calls/texts because, among other
27 things, it determines who a message will be sent from, creates the queue of the
28 numbers the message will be sent to, and assembles the messages themselves.

1 Dated: May 17, 2024

Respectfully submitted,

2 **KAZEROUNI LAW GROUP, APC**

3
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7 ATTORNEY FOR PLAINTIFF
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