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

15 BRYAN ROBBINS and MARVIN
16 FEIGES, on behalf of themselves, all
17 others similarly situated, and the
18 general public,

19 Plaintiffs,

20 v.

21 THE COCA-COLA COMPANY, a
22 Delaware Corporation,

23 Defendant.

Case No.: '13CV0132 IEG NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. §§ 227 et seq.**

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Bryan Robbins and Marvin Feiges (“Plaintiffs”) bring this Class
3 Action Complaint for damages, injunctive relief, and any other available legal or
4 equitable remedies, resulting from the illegal actions of The Coca-Cola Company
5 (“Defendant”), in negligently, and/or willfully contacting Plaintiffs through SMS
6 or “text” messages on Plaintiffs’ cellular telephones, in violation of the Telephone
7 Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
8 Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to their
9 own acts and experiences, and, as to all other matters, upon information and belief,
10 including investigation conducted by their attorneys.

11 **JURISDICTION AND VENUE**

12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs
13 seek up to \$1,500 in damages for each text message in violation of the TCPA,
14 which, when aggregated among a proposed class number in the tens of thousands,
15 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiffs
16 allege a national class, which will result in at least one class member belonging to
17 a different state than that of Defendant, providing jurisdiction under 28 U.S.C.
18 Section 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the
19 Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
20 jurisdiction.

21 3. Venue is proper in the United States District Court for the Southern
22 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
23 Defendant, a Delaware corporation, is, and at all times herein mentioned was,
24 doing business in the County of San Diego, State of California and because
25 Plaintiff Bryan Robbins is a citizen and resident of the State of California and of
26 this District.

1 **PARTIES**

2 4. Plaintiff Bryan Robbins is, and at all times mentioned herein was, a
3 citizen and resident of the State of California and of this District. He is, and at all
4 times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

5 5. Plaintiff Marvin Feiges is, and at all times mentioned herein was, a
6 citizen and resident of the State of Maryland. He is, and at all times mentioned
7 herein was a “person” as defined by 47 U.S.C. § 153 (32).

8 6. Plaintiffs are informed and believe, and thereon allege, that Defendant
9 is, and at all times mentioned herein was, a Delaware corporation, and a “person,”
10 as defined by 47 U.S.C. § 153 (32).

11 7. On information and belief, Defendant The Coca-Cola Company
12 maintains offices in Atlanta, Georgia and is registered to do business in California.

13 8. Plaintiffs allege that at all times relevant herein Defendant conducted
14 business in the state of California and in the County of San Diego, and within this
15 judicial district.

16 **FACTUAL ALLEGATIONS**

17 9. One of the newest types of bulk marketing is to advertise through
18 Short Message Services. The term “Short Message Service” or “SMS” is a
19 messaging system that allows cellular telephone subscribers to use their cellular
20 telephones to send and receive short text messages, usually limited to 160
21 characters.

22 10. An “SMS message” is a text message call directed to a wireless device
23 through the use of the telephone number assigned to the device. When an SMS or
24 “text” message call is successfully made, the recipient’s cell phone rings or
25 otherwise notes the receipt of the text message, alerting him or her that a call is
26 being received. As cellular telephones are inherently mobile and are frequently
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1 carried on their owner's person, calls to cellular telephones, including SMS
2 messages, may be received by the called party virtually anywhere worldwide.

3 11. Unlike more conventional advertisements, such text messages actually
4 costs its recipients money, because cell phone users must frequently pay their
5 wireless service providers either for each text message call they receive or incur a
6 usage allocation deduction to their text plan, regardless of whether or not the
7 message is authorized.

8 12. Over the course of an extended period beginning no later than in
9 2012, Defendant and their agents directed the mass transmission of text messages
10 to the cell phones nationwide of what they hoped were customers or potential
11 customers of Defendant's Coke products.

12 13. In or around 2012, Plaintiff Bryan Robbins received unsolicited SMS
13 or "text" messages to his wireless phone, for which Plaintiff provided no consent
14 to receive the text messages, in an effort to promote the sale of Defendant's Coke
15 products.

16 14. During that time period, Plaintiff Bryan Robbins received various text
17 messages from The Coca-Cola Company; the solicitation included an
18 advertisement to promote Coke Zero.

19 15. Plaintiff Bryan Robbins, in efforts to stop receiving text messages
20 from The Coca-Cola Company, replied the word "STOP" to one of the text
21 messages received; however, Plaintiff continued receiving text messages.

22 16. In or around 2012, Plaintiff Marvin Feiges received unsolicited SMS
23 or "text" messages to his wireless phone, for which Plaintiff provided no consent
24 to receive the text messages, in an effort to promote the sale of Defendant's Coke
25 products.

26 ///

27 ///

1 17. These unsolicited text messages placed to Plaintiffs' cellular
2 telephones were placed via an "automatic telephone dialing system," ("ATDS") as
3 defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A)
4 which had the capacity to store or produce and dial numbers randomly or
5 sequentially, to place telephone calls and/or SMS or text messages to Plaintiffs'
6 cellular telephones.

7 18. The telephone numbers that the Defendant, or its agents, called and/
8 or sent the text messages to were assigned to cellular telephone services for which
9 Plaintiffs incurred a charge for incoming calls or text messages pursuant to
10 47 U.S.C. § 227(b)(1).

11 19. These telephone text messages constituted "calls" under the TCPA
12 that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

13 20. Plaintiffs did not provide Defendant or its agents prior express consent
14 to receive unsolicited text messages pursuant to 47 U.S.C. § 227 (b)(1)(A).

15 21. These telephone confirmatory text messages by Defendant or its
16 agents violated 47 U.S.C. § 227(b)(1).

17 22. These text messages were telephone "calls" under the TCPA that were
18 not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

19 23. These text messages by Defendant or its agents therefore violated 47
20 U.S.C. § 227(b)(1).

21 **CLASS ACTION ALLEGATIONS**

22 24. Plaintiffs bring this action on behalf of themselves and on behalf of all
23 others similarly situated ("the Class").

24 25. Plaintiffs represent, and are members of the Class, consisting of all
25 persons within the United States who received any unsolicited SMS or text
26 messages from Defendant or their agents on their paging service, cellular phone
27 service, mobile radio service, radio common carrier service, or other service for
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1 which they were charged for the SMS or text messages, through the use of any
2 automatic telephone dialing system as set forth in 47 U.S.C. Section
3 227(B)(1)(A)(3) or artificial or prerecorded voice, which SMS or text messages by
4 Defendant or its agents were not made for emergency purposes or with the
5 recipients' prior express consent, within the four years prior to the filing of this
6 Complaint.

7 26. Defendant and its employees or agents are excluded from the Class.
8 Plaintiffs do not know the number of members in the Class, but believe the Class
9 members number in the hundreds of thousands, if not more. Thus, this matter
10 should be certified as a Class action to assist in the expeditious litigation of this
11 matter.

12 27. Plaintiffs and members of the Class were harmed by the acts of
13 Defendant in at least the following ways: Defendant, either directly or through its
14 agents, illegally contacted Plaintiffs and the Class members via their cellular
15 telephones by using unsolicited SMS or text messages, thereby causing Plaintiffs
16 and the Class members to incur certain cellular telephone charges or reduce
17 cellular telephone time for which Plaintiffs and the Class members previously paid,
18 and invading the privacy of said Plaintiffs and the Class members. Plaintiffs and
19 the Class members were damaged thereby.

20 28. This suit seeks only damages and injunctive relief for recovery of
21 economic injury on behalf of the Class and it expressly is not intended to request
22 any recovery for personal injury and claims related thereto. Plaintiffs reserve the
23 right to expand the Class definition to seek recovery on behalf of additional
24 persons as warranted as facts are learned in further investigation and discovery.

25 29. The joinder of the Class members is impractical and the disposition of
26 their claims in the Class action will provide substantial benefits both to the parties
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1 and to the court. The Class can be identified through Defendant's records or
2 Defendant's agents' records.

3 30. There is a well-defined community of interest in the questions of law
4 and fact involved affecting the parties to be represented. The questions of law and
5 fact to the Class predominate over questions which may affect individual Class
6 members, including the following:

- 7 a. Whether, within the four years prior to the filing of this Complaint,
8 Defendant or its agents placed cellular telephone SMS or text
9 messages without the recipients' prior express consent (other than
10 SMS or text messages made for emergency purposes or made with
11 the prior express consent of the called party) to a Class member
12 using any automatic telephone dialing to any telephone number
13 assigned to a cellular telephone service;
- 14 b. Whether Plaintiffs and the Class members were damaged thereby,
15 and the extent of damages for such violation; and
- 16 c. Whether Defendant and its agents should be enjoined from engaging
17 in such conduct in the future.

18 31. As people who received at least one unsolicited telephone SMS or text
19 message without Plaintiffs' prior express consent, Plaintiffs are asserting claims
20 that are typical of the Class. Plaintiffs will fairly and adequately represent and
21 protect the interests of the Class in that Plaintiffs have no interests antagonistic to
22 any member of the Class.

23 32. Plaintiffs and the members of the Class have all suffered irreparable
24 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
25 action, the Class will continue to face the potential for irreparable harm. In
26 addition, these violations of law will be allowed to proceed without remedy and
27 Defendant will likely continue such illegal conduct. Because of the size of the
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1 individual Class member's claims, few, if any, Class members could afford to
2 individually seek legal redress for the wrongs complained of herein.

3 33. Plaintiffs have retained counsel experienced in handling class action
4 claims and claims involving violations of the Telephone Consumer Protection Act.
5 A class action is a superior method for the fair and efficient adjudication of this
6 controversy. Class-wide damages are essential to induce Defendant to comply
7 with federal law. The interest of Class members in individually controlling the
8 prosecution of separate claims against Defendant is small because the maximum
9 statutory damages in an individual action for violation of privacy are minimal.
10 Management of these claims is likely to present significantly fewer difficulties than
11 those presented in many class claims.

12 34. Defendant has acted on grounds generally applicable to the Class,
13 thereby making appropriate final injunctive relief and corresponding declaratory
14 relief with respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**

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

17 **47 U.S.C. § 227 ET SEQ.**

18 35. Plaintiffs incorporate by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.

20 36. Each such text message call was made using equipment that, upon
21 information and belief, had the capacity to store or produce telephone numbers to
22 be called, using a random or sequential number generator. By using such
23 equipment, Defendant was able to effectively send thousands of text messages
24 simultaneously to lists of thousands of wireless phone numbers of consumers
25 without human intervention. These text messages were made en masse through the
26 use of a short code and without the prior express consent of the Plaintiffs and the
27 other members of the Class to receive such text messages.

1 37. The foregoing acts and omissions of Defendant and its agents
2 constitute numerous and multiple negligent violations of the TCPA, including but
3 not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227
4 et seq.

5 38. As a result of Defendant's, and Defendant's agents', negligent
6 violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to an
7 award of \$500.00 in statutory damages, for each and every violation, pursuant to
8 47 U.S.C. § 227(b)(3)(B).

9 39. Plaintiffs and the Class are also entitled to and seek injunctive relief
10 prohibiting such conduct in the future.

11 **SECOND CAUSE OF ACTION**
12 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
13 **TELEPHONE CONSUMER PROTECTION ACT**
14 **47 U.S.C. § 227 ET SEQ.**

15 40. Plaintiffs incorporate by reference the above paragraphs 1 through 34
16 inclusive, of this Complaint as though fully stated herein.

17 41. Each such text message call was made using equipment that, upon
18 information and belief, had the capacity to store or produce telephone numbers to
19 be called, using a random or sequential number generator. By using such
20 equipment, Defendant was able to effectively send thousands of text messages
21 simultaneously to lists of thousands of wireless phone numbers of consumers
22 without human intervention. These text messages were made en masse through the
23 use of a short code and without the prior express consent of the Plaintiffs and the
24 other members of the Class to receive such text messages.

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

3 43. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to treble damages, as
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
6 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 44. Plaintiffs and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 **Wherefore**, Plaintiffs respectfully request the Court grant Plaintiffs and the Class
11 members the following relief against Defendant:

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

14 45. As a result of Defendant's, and Defendant's agents', negligent
15 violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class
16 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227(b)(3)(B).

18 46. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiffs seek injunctive relief
19 prohibiting such conduct in the future.

20 47. Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
22 **VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

23 48. As a result of Defendant's, and Defendant's agents', willful and /or
24 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and
25 each Class member treble damages, as provided by statute, up to \$1,500.00 for
26 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
27 227(b)(3)(C).

1 49. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
2 such conduct in the future.

3 50. Any other relief the Court may deem just and proper.
4

5 **JURY DEMAND**

6 Plaintiffs hereby demand a trial by jury on all issues so triable.
7

8 Dated: January 16, 2013

/s/ Ronald A. Marron _____

9 By: Ronald A. Marron

10 **LAW OFFICES OF RONALD A.**

11 **MARRON, APLC**

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20 *Class*
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
BRYAN ROBBINS and MARVIN FEIGES, on behalf of themselves and all others similarly situated

DEFENDANTS
THE COCA-COLA COMPANY, a Delaware Corporation

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Offices of Ronald A. Marron, APLC
3636 Fourth Ave., Suite 202, San Diego, CA 92103
(619) 696-9006

Attorneys (If Known)
'13CV0132 IEG NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. Section 227 - Telephone Consumer Protection Act ; 5 : 552
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 01/16/2013 SIGNATURE OF ATTORNEY OF RECORD /s/Ronald A. Marron

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE