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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 **Rachael Gilburd**, individually and on behalf of
13 all others similarly situated,

14 Plaintiff,

15 v.

16 **L’Oreal USA Inc.**,

17 Defendant.

Case No.

CLASS ACTION COMPLAINT

(JURY TRIAL DEMANDED)

18 **CLASS ACTION COMPLAINT**

19 Plaintiff, Rachael Gilburd, brings this action against Defendant, L’Oreal USA, Inc., to
20 secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §
21 227.

22 **NATURE OF THE ACTION**

23 1. This is a putative class action pursuant to the Telephone Consumer Protection Act,
24 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

25 2. To promote its goods and services, Defendant engages in unsolicited text
26 messaging and continues to text message consumers after they have opted out of Defendant’s
27 solicitations.
28

1 3. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s illegal
2 conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of
3 the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of
4 Plaintiff and members of the Class, and any other available legal or equitable remedies.

5 **JURISDICTION AND VENUE**

6 4. This Court has federal question subject matter jurisdiction over this action pursuant
7 to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C.
8 §§ 227, *et seq.* (“TCPA”).

9 5. The Court has personal jurisdiction over Defendant and venue is proper in this
10 District because Defendant directs, markets, and provides its business activities to this District,
11 and because Defendant’s unauthorized marketing scheme was directed by Defendant to consumers
12 in this District, including Plaintiff.

13 **PARTIES**

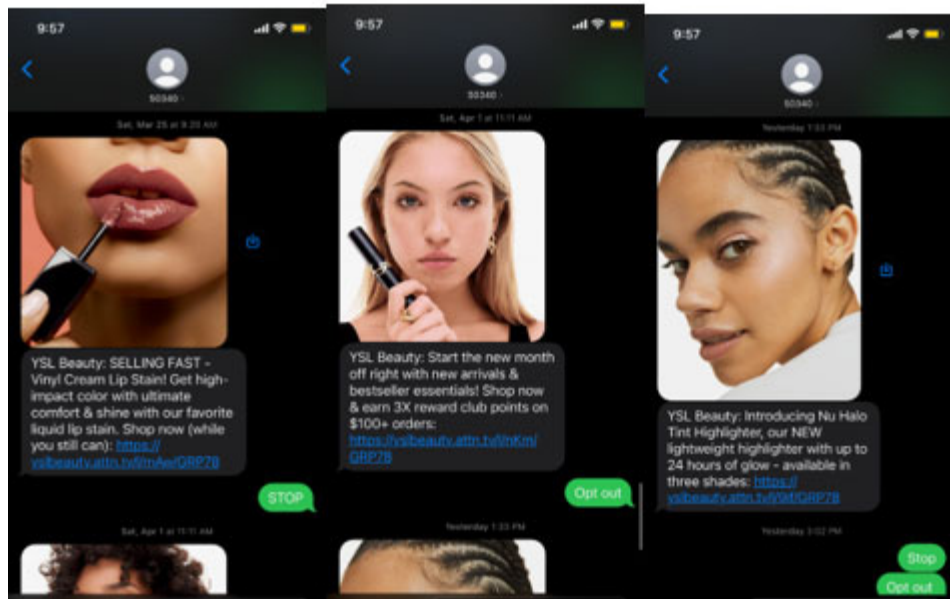
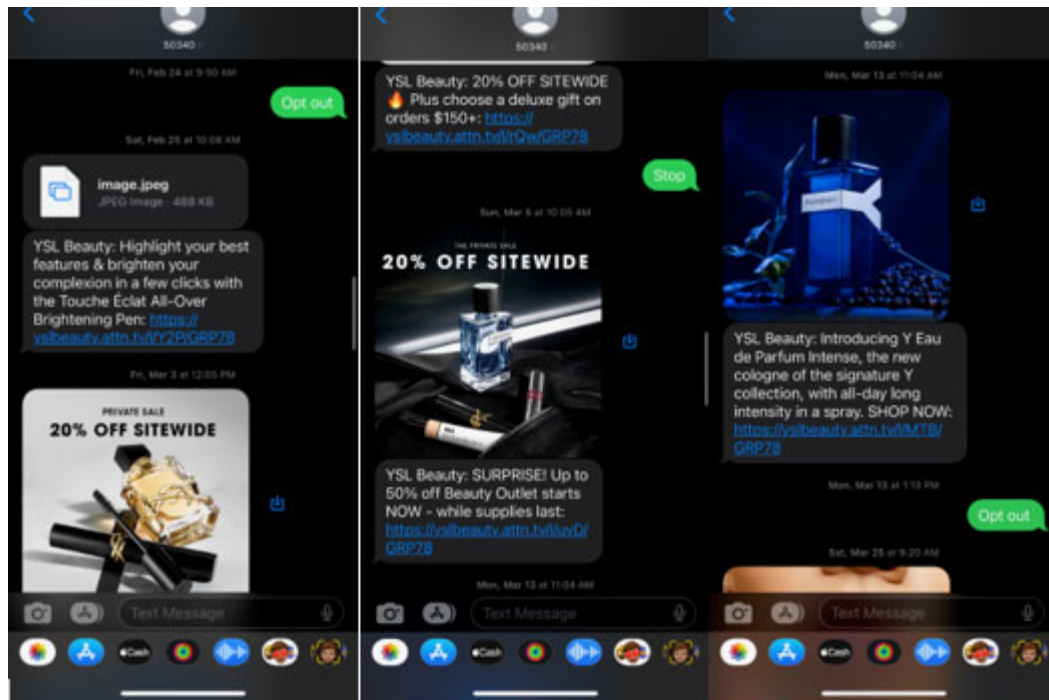
14 6. Plaintiff is a natural person who, at all times relevant to this action, was a resident
15 of the State of Arizona.

16 7. Defendant is a corporation whose principal office is located in New York.
17 Defendant directs, markets, and provides its business activities throughout the state of Arizona.

18 8. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes
19 all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees,
20 sureties, subrogees, representatives, vendors, and insurers of Defendant.

21 **FACTS**

22 9. Defendant has caused multiple text messages to be transmitted to Plaintiff’s cellular
23 telephone number ending in 3994 (“3994 Number”):



22 10. Plaintiff has asked Defendant many times to stop contacting her but Defendant
23 continues to send her text messages as shown above.

24 11. As demonstrated by the above screenshots, the purpose of Defendant's text
25 messages was to solicit the sale of consumer goods and/or services.

26 12. As demonstrated by the above screenshots, the purpose of Defendant's text
27 messages was to advertise, promote, and/or market Defendant's property, goods, and/or services.
28

1 13. As demonstrated by the above screenshots, Defendant does not honor consumer
2 requests to opt-out of text message solicitations. Indeed, Plaintiff attempted to opt-out of
3 Defendant's text message solicitations by responding, but Defendant continued to text message

4 14. Defendant sent at least two solicitations after Plaintiff's initial opt-out request.

5 15. Plaintiff is the regular user of the telephone number that received the above
6 telephonic sales calls.

7 16. Plaintiff utilizes the cellular telephone number for personal purposes and the
8 number is Plaintiff's residential telephone line.

9 17. Upon information and belief, Defendant maintains and/or has access to outbound
10 transmission reports for all text messages sent advertising/promoting its services and goods. These
11 reports show the dates, times, target telephone numbers, and content of each message sent to
12 Plaintiff and the Class members.

13 18. Defendant's failure to honor opt-out requests demonstrates that Defendant does not
14 1) maintain written policies and procedures regarding its text messaging marketing; (2) provide
15 training to its personnel engaged in telemarketing; and/or (3) maintain a standalone do-not-call
16 list.

17 19. Defendant's failure to (1) maintain the required written policies and procedures, (2)
18 provide training to its personnel engaged in telemarketing, (3) maintain a standalone do-not-call
19 list, and (4) honor consumer opt-out requests caused Plaintiff and the class members harm as they
20 continued to receive text message solicitations after asking for those messages to stop.

21 20. Defendant's telephonic sales calls caused Plaintiff and the Class members harm,
22 including statutory damages, inconvenience, invasion of privacy, aggravation, annoyance, and
23 violation of their statutory privacy rights.

24 21. Defendant's text message spam caused Plaintiff and the Class members harm,
25 including violations of their statutory rights, trespass, annoyance, nuisance, invasion of their
26 privacy, and intrusion upon seclusion. Defendant's text messages also occupied storage space on
27 Plaintiff's and the Class members' telephones.

1 **CLASS ALLEGATIONS**

2 **PROPOSED CLASS**

3 22. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf
4 of herself and all others similarly situated.

5 23. Plaintiff brings this case on behalf of the Class defined as follows:

6 **INTERNAL DO NOT CALL CLASS: All persons within the United States
7 who, within the four years prior to the filing of this Complaint, (1) were sent
8 a text message from Defendant or anyone on Defendant's behalf, (2)
9 regarding Defendant's goods, products or services, (3) to said person's
residential telephone number, (4) after making a request to Defendant to not
receive future text messages.**

10 24. Plaintiff reserves the right to modify the Class definitions as warranted as facts are
11 learned in further investigation and discovery.

12 25. Defendant and its employees or agents are excluded from the Class. Plaintiff does
13 not know the number of members in the Class but believes the Class members number in the
14 several thousands, if not more.

15 **NUMEROSITY**

16 26. Upon information and belief, Defendant has placed prerecorded message calls to
17 cellular telephone numbers belonging to thousands of consumers throughout the United States
18 without their prior express consent. The members of the Class, therefore, are believed to be so
19 numerous that joinder of all members is impracticable.

20 27. The exact number and identities of the members of the Class are unknown at this
21 time and can only be ascertained through discovery. Identification of the Class members is a
22 matter capable of ministerial determination from Defendant's call records.

23 **COMMON QUESTIONS OF LAW AND FACT**

24 28. There are numerous questions of law and fact common to members of the Class
25 which predominate over any questions affecting only individual members of the Class. Among
26 the questions of law and fact common to the members of the Class are:
27

- a. Whether Defendant initiated telephonic sales calls to Plaintiff and the Class members;
- b. Whether Defendant continued to send text message solicitations after opt-out requests;
- c. Whether Defendants maintain an internal do-not-call list and instruct their employees on how to use the list; and
- d. Whether Defendant is liable for damages, and the amount of such damages.

29. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits calls to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

30. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

31. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

32. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

1 33. The prosecution of separate actions by members of the Class would create a risk of
2 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For
3 example, one court might enjoin Defendant from performing the challenged acts, whereas another
4 may not. Additionally, individual actions may be dispositive of the interests of the Class, although
5 certain class members are not parties to such actions.

6 **COUNT I**
7 **VIOLATION OF 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d)**
8 **(On Behalf of Plaintiff and the Internal Do Not Call Class)**

9 34. Plaintiff re-alleges and incorporates the foregoing as if fully set forth herein.

10 35. In pertinent part, 47 C.F.R. § 64.1200(d) provides:

11 No person or entity shall initiate any call for telemarketing
12 purposes to a residential telephone subscriber unless such person
13 or entity has instituted procedures for maintaining a list of persons
14 who request not to receive telemarketing calls made by or on
15 behalf of that person or entity. The procedures instituted must meet
16 the following minimum standards:

17 (1) *Written policy.* Persons or entities making calls for
18 telemarketing purposes must have a written policy, available upon
19 demand, for maintaining a do-not-call list.

20 (2) *Training of personnel engaged in telemarketing.* Personnel
21 engaged in any aspect of telemarketing must be informed and
22 trained in the existence and use of the do-not-call list.

23 (3) *Recording, disclosure of do-not-call requests.* If a person or
24 entity making a call for telemarketing purposes (or on whose
25 behalf such a call is made) receives a request from a residential
26 telephone subscriber not to receive calls from that person or entity,
27 the person or entity must record the request and place
28 the subscriber's name, if provided, and telephone number on the
do-not-call list at the time the request is made. Persons or entities
making calls for telemarketing purposes (or on whose behalf such
calls are made) must honor a residential subscriber's do-not-call
request within a reasonable time from the date such request is
made. This period may not exceed thirty days from the date of
such request. If such requests are recorded or maintained by a party
other than the person or entity on whose behalf the telemarketing

1 call is made, the person or entity on whose behalf the
2 telemarketing call is made will be liable for any failures to honor
3 the do-not-call request. A person or entity making a call for
4 telemarketing purposes must obtain a consumer's prior express
5 permission to share or forward the consumer's request not to be
6 called to a party other than the person or entity on whose behalf a
7 telemarketing call is made or an affiliated entity.

8 36. Under 47 C.F.R § 64.1200(e), the rules set forth in 47 C.F.R. § 64.1200(d) are
9 applicable to any person or entity making telephone solicitations or telemarketing calls to wireless
10 telephone numbers.

11 37. Plaintiff and the Internal Do Not Call Class members made requests to Defendant
12 not to receive calls from Defendant.

13 38. Defendant failed to honor Plaintiff and the Internal Do Not Call Class members
14 opt-out requests.

15 39. Defendant's refusal to honor opt-out requests is indicative of Defendant's failure to
16 implement a written policy for maintaining a do-not-call list and to train its personnel engaged in
17 telemarketing on the existence and use of the do-not-call-list.

18 40. Thus, Defendant has violated 47 C.F.R. § 64.1200(d).

19 41. Pursuant to section 227(c)(5) of the TCPA, Plaintiff and the Internal Do Not Call
20 Class members are entitled to an award of \$500.00 in statutory damages, for each and every
21 negligent violation.

22 42. As a result of Defendant's knowing or willful conduct, Plaintiff and the Internal Do
23 Not Call Class members are entitled to an award of \$1,500.00 in statutory damages per violation.

24 43. Plaintiff and the Internal Do Not Call Class members are also entitled to and seek
25 injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to section
26 227(c)(5).

27 **JURY DEMAND**

28 Plaintiff hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

1 Plaintiff demands that Defendant take affirmative steps to preserve all records, lists,
2 electronic databases or other itemization of telephone numbers associated with Defendant and the
3 calls as alleged herein.

4 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the
5 following relief:

- 6 a) An order certifying this case as a class action on behalf of the Classes as defined
7 above, and appointing Plaintiff as the representative of the Classes and Plaintiff's
8 counsel as Class Counsel;
- 9 a) An award of statutory damages for Plaintiff and each member of the Classes as
10 applicable under the TCPA;
- 11 b) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- 12 c) An injunction requiring Defendant to comply with 47 C.F.R. § 64.1200(d) by (1)
13 maintaining the required written policies; (2) providing training to their personnel
14 engaged in telemarketing; and (3) maintaining a do-not-call list
- 15 d) Such further and other relief as the Court deems necessary.
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1 Dated: April 24, 2023

2 Respectfully submitted,

3 **HIRALDO P.A.**

4 /s/ Manuel S. Hiraldo

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