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7 *Attorney for Plaintiffs and the Proposed*
8 *Class*

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 TERRY FABRICANT AND LOUIS
12 FLOYD, individually and on behalf of
13 all others similarly situated,

14 Plaintiffs,

15 v.

16 APPSOLUTELY MEDIA, LLC,

17 Defendant.

Case No.

COMPLAINT FOR:

- 18 **1. VIOLATIONS OF THE**
- 19 **TELEPHONE CONSUMER**
- 20 **PROTECTION ACT, 47**
- 21 **U.S.C. § 227(b)**

Class Action

DEMAND FOR JURY TRIAL

22 Plaintiffs Terry Fabricant and Louis Floyd (“Plaintiffs”) by their
23 undersigned counsel, for this class action complaint against Appsolutely Media,
24 LLC and its present, former, or future direct and indirect parent companies,
25 subsidiaries, affiliates, agents, and/or other related entities (“Appsolutely Media”
26 or “Defendant”), allege as follows:
27
28

1 I. INTRODUCTION

2 1. Nature of Action. As the Supreme Court recently explained,
3 “Americans passionately disagree about many things. But they are largely united in
4 their disdain for robocalls. The Federal Government receives a staggering number
5 of complaints about robocalls—3.7 million complaints in 2019 alone. The States
6 likewise field a constant barrage of complaints. For nearly 30 years, the people’s
7 representatives in Congress have been fighting back. As relevant here, the
8 Telephone Consumer Protection Act of 1991, known as the TCPA, generally
9 prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass'n of Political*
10 *Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (July 6, 2020).

11 2. Plaintiffs, individually and as class representatives for all others
12 similarly situated, bring this action against Appscolutely Media for violations of the
13 Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Appscolutely
14 Media engaged in automated telemarketing in violation of the TCPA using pre-
15 recorded messages that were sent to cellular telephones.

16 3. Because telemarketing campaigns generally place calls to hundreds of
17 thousands or even millions of potential customers *en masse*, Plaintiffs bring this
18 action on behalf of a proposed nationwide class of other persons who received
19 illegal telemarketing calls from or on behalf of Defendant.
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II. PARTIES

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2 4. Plaintiff Terry Fabricant is an individual resident of this District, as he
3 was at the time of receipt of the pre-recorded telemarketing call.
4

5 5. Plaintiff Louis Floyd is an individual resident of this District, as he
6 was at the time of receipt of the pre-recorded telemarketing call.
7

8 6. Defendant Appsolutely Media, LLC is a California limited liability
9 company with its principal place of business in Stanton, CA.
10

11 7. Appsolutely Media engages in telemarketing from and to this District,
12 as it did with the Plaintiffs.

III. JURISDICTION AND VENUE

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14
15 8. Jurisdiction. This Court has subject matter jurisdiction over Plaintiffs'
16 TCPA claims pursuant to 28 U.S.C. § 1331 because Plaintiffs' TCPA claims arise
17 under the laws of the United States, specifically, 47 U.S.C. § 227.
18

19 9. Personal Jurisdiction. This Court has personal jurisdiction over
20 Appsolutely Media because a substantial part of the wrongful acts alleged in this
21 Complaint were committed from California. Furthermore, Appsolutely Media is a
22 resident of this District.
23

24
25 10. Venue. Venue is proper in this District pursuant to 28 U.S.C. §
26 1391(b)(1)-(2) because a substantial part of the events giving rise to Plaintiffs'
27 claims occurred from this District and Defendant resides here.
28

1 **IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47**

2
3 **U.S.C. § 227**

4 11. In 1991, Congress enacted the TCPA in response to a growing number
5 of consumer complaints regarding certain telemarketing practices.
6

7 12. The TCPA makes it unlawful “to make any call (other than a call
8 made for emergency purposes or made with the prior express consent of the called
9 party) using an automatic telephone dialing system or an artificial or prerecorded
10 voice ... to any telephone number assigned to a ... cellular telephone service.” 47
11 U.S.C. § 227(b)(1)(A)(iii). The TCPA provides a private cause of action to
12 persons who receive calls in violation of Section 227(b)(1)(A). 47 U.S.C. §
13 227(b)(3).
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17 13. According to findings by the Federal Communication Commission
18 (“FCC”), the agency Congress vested with authority to issue regulations
19 implementing the TCPA, such calls are prohibited because, as Congress found,
20 automated or prerecorded telephone calls are a greater nuisance and invasion of
21 privacy than live solicitation calls, and such calls can be costly and inconvenient.
22

23
24 14. The FCC also recognized that “wireless customers are charged for
25 incoming calls whether they pay in advance or after the minutes are used.” *In re*
26 *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG
27 Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).
28

1 15. In 2013, the FCC required prior express written consent for all
2 autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers
3 and residential lines. Specifically, it ordered:

4
5 [A] consumer’s written consent to receive telemarketing robocalls
6 must be signed and be sufficient to show that the consumer: (1)
7 received “clear and conspicuous disclosure” of the consequences of
8 providing the requested consent, i.e., that the consumer will receive
9 future calls that deliver prerecorded messages by or on behalf of a
10 specific seller; and (2) having received this information, agrees
11 unambiguously to receive such calls at a telephone number the
12 consumer designates. In addition, the written agreement must be
13 obtained “without requiring, directly or indirectly, that the agreement
14 be executed as a condition of purchasing any good or service.”

15
16 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
17 *1991*, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote omitted).

18 **V.FACTUAL ALLEGATIONS**

19 16. Appsolutely Media offers search engine optimization services.

20 17. One of Appsolutely Media’s strategies for marketing its services and
21 generating new customers is telemarketing.

22 18. Appsolutely Media’s telemarketing includes the use of pre-recorded
23 messages to generate new business.

24 19. Recipients of these calls, including Plaintiffs, did not consent to
25 receive such telephone calls.
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