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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 JESSICA LEE, individually and on behalf) Case No. 3:11-cv-00043-RS
17 of a class of similarly situated individuals,)
)
18 *Plaintiff,*) **AMENDED CLASS ACTION**
) **COMPLAINT FOR:**
19 v.)
) **VIOLATION OF THE TELEPHONE**
20 STONEBRIDGE LIFE INSURANCE) **CONSUMER PROTECTION ACT,**
21 COMPANY, a Vermont corporation and) **47 U.S.C. § 227.**
22 TRIFECTA MARKETING GROUP LLC,)
a Florida limited liability company,)
) **DEMAND FOR JURY TRIAL**
23 *Defendants.*)

1 **AMENDED CLASS ACTION COMPLAINT**

2 Plaintiff Jessica Lee (“Plaintiff” or “Lee”) brings this Amended Class Action Complaint
3 against Stonebridge Life Insurance Company (“Stonebridge”) and Trifecta Marketing Group
4 LLC (“Trifecta”) (collectively, “Defendants”) to stop Defendants’ practice of making unsolicited
5 text message calls to cellular telephones, and to obtain redress for all persons injured by their
6 conduct. Plaintiff, for her Amended Class Action Complaint, alleges as follows upon personal
7 knowledge as to herself and her own acts and experiences, and as to all other matters, upon
8 information and belief, including investigation conducted by her attorneys.

9 **NATURE OF THE CASE**

10 1. Wireless spam is a growing problem in the United States. According to a
11 recent study conducted by the Pew Research Center, “Spam isn’t just for email anymore; it
12 comes in the form of unwanted text messages of all kinds—from coupons to phishing
13 schemes—sent directly to user’s cell phones.” In fact, “57% of adults with cell phones have
14 received unwanted or spam text messages on their phone.” Amanda Lenhart, *Cell Phones*
15 *and American Adults: They Make Just as Many Calls, but Text Less than Teens*, Pew
16 Research Center (2010) at [http://pewinternet.org/Reports/2010/Cell-Phones-and-American-](http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx)
17 [Adults.aspx](http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx).

18 2. In a recent effort to promote the sale of Stonebridge’s insurance products,
19 Stonebridge, a nationwide provider of life insurance and related insurance products, engaged
20 Trifecta, a telemarketing company, to conduct an especially pernicious form of marketing:
21 the transmission of unauthorized advertisements in the form of “text message” calls to the
22 cellular telephones of consumers throughout the nation.

23 3. By effectuating these unauthorized text message calls (hereinafter, “wireless
24 spam”), Defendants have caused consumers actual harm, not only because consumers were
25 subjected to the aggravation that necessarily accompanies wireless spam, but also because
26 consumers frequently have to pay their cell phone service providers for the receipt of such
27 wireless spam.

1 Proc. § 410.10 because both Defendants do business in this District and because certain of
2 the acts alleged herein were committed in California (and, specifically, the Northern District
3 of California).

4 **INTRADISTRICT ASSIGNMENT**

5 12. Some or all of the text message calls at issue were transmitted nationwide
6 from telephone numbers located in this District, including 650-283-0793 which contains an
7 area code encompassing San Mateo and northern Santa Clara counties. Under Local Rule 3-
8 2(c), this civil action should be assigned to either the San Jose division or San Francisco
9 division of the Northern District of California.

10 **CONDUCT COMPLAINED OF**

11 13. In recent years, marketers who often have felt stymied by federal laws
12 limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to
13 alternative technologies through which to send bulk solicitations cheaply.

14 14. One of the newest types of such bulk marketing is to advertise through Short
15 Message Services, commonly known as text messages. The term “Short Message Service,”
16 “SMS,” or “text message” describes a messaging system that allows cellular telephone
17 subscribers to use their cellular telephones to send and/or receive short text messages, usually
18 limited to 160 characters.

19 15. An “SMS message” is a text message call directed to a wireless device
20 through the use of the telephone number assigned to the device. When an SMS message call
21 is successfully made, the recipient’s cell phone rings, alerting him or her that a call is being
22 received.

23 16. Unlike more conventional advertisements, SMS message calls, and
24 particularly wireless spam, can actually cost their recipients money, because cell phone users
25 must frequently pay their respective wireless service providers either for each text message
26 call they receive or incur a usage allocation deduction to their text plan, regardless of whether
27 or not the message is authorized.

1 17. On or about August 18, 2010, Defendant Stonebridge entered into an
2 agreement with Defendant Trifecta entitled the Call Back Agreement (“Call Back
3 Agreement”) for the purpose of marketing Stonebridge’s insurance-related products and
4 services.

5 18. As part of the Call Back Agreement, Defendants agreed to give Defendant
6 Trifecta authority to perform “marketing” services for Defendant Stonebridge’s “insurance”
7 and “sweepstakes” products. Such marketing services included Defendant Trifecta offering
8 Defendant Stonebridge’s products during inbound calls received by Trifecta’s “call center
9 locations” as well as outbound calls, or so-called “call-backs,” Trifecta placed to potential
10 customers.

11 19. In order to generate inbound calls to Defendant Trifecta’s call centers,
12 Defendants caused mass transmissions of wireless spam to be sent to the cell phones of what
13 Defendants hoped were potential customers of Stonebridge’s products.

14 20. Indeed, Defendants designed the transmission of such wireless spam to
15 maximize the number of inbound calls placed to Defendant Trifecta’s call centers by
16 recipients of such wireless spam so that Defendant Stonebridge’s insurance products could be
17 offered for sale to the largest number of potential Stonebridge customers.

18 21. For instance, on or about November 28, 2010, Plaintiff’s cell phone rang,
19 indicating that a text call was being received.

20 22. The “from” field of the transmission was identified as “650-283-0793,” which
21 is a dedicated telephone number operated by Defendants’ agents that transmits text messages
22 *en masse* through devices known as modem banks and/or carrier gateways. The body of the
23 text message read:

24 THANKS 4 VISITING OUR WEBSITE PLEASE
25 CALL 877-711-5429 TO CLAIM YOUR \$100
26 WALMART GIFT CARD VOUCHER!
27 REPLY STOP 2 UNSUB

28 23. As with other forms of advertising, marketers control the content that appears
in the body of an SMS message in order to maximize the effectiveness of the advertisement.

1 In certain cases, marketers employ misleading or deceptive content in the body of the
2 message in order to increase the likelihood that the recipient will respond to the message.

3 24. In the instant matter, Defendants and/or their agents reference the name of
4 Walmart,¹ a well-known and prevalent company, in the body of the text message and promise
5 a \$100 gift card in order to induce a response from recipients.

6 25. The toll-free telephone number contained in the above text message was
7 operated by Defendant Trifecta's call centers for the purpose of selling Defendant
8 Stonebridge's life insurance products to recipients of such text message.

9 26. Defendants' and/or their agents' use of dedicated telephone numbers enabled
10 Defendants' mass transmission of wireless spam to a list of cellular telephone numbers,
11 including that belonging to Plaintiff and the proposed Class.

12 27. At no time did Plaintiff consent to the receipt of the above-referenced text
13 message or any other such wireless spam text message from Defendants.

14 **CLASS ALLEGATIONS**

15 28. Plaintiff brings this action on behalf of herself and a class (the "Class")
16 defined as follows: All persons in the United States and its territories who received one or
17 more unauthorized text message advertisements on behalf of Stonebridge.

18 29. Upon information and belief, there are over 5,000 members of the Class such
19 that joinder of all members is impracticable.

20 30. Common questions of law and fact exist as to all members of the Class and
21 such questions predominate over questions affecting Plaintiff or individual members.

22 Common questions for the Class include:

- 23 (a) Does the wireless spam Defendants distributed violate the TCPA?
24 (b) Are the Class members entitled to treble damages based on the
25 willfulness of Defendants' conduct?

26 ¹ Walmart is a registered trademark of Walmart Stores, Inc. Plaintiff's investigation to date has not
27 revealed any involvement by Walmart Stores, Inc. in the scheme described herein.

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1. An order certifying the Class as defined above;
2. An injunction requiring Defendants to cease all wireless spam activities;
3. An award of actual and statutory damages;
4. An award of reasonable attorneys' fees and costs; and
5. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

July 28, 2011

JESSICA LEE, individually and on behalf of a class of similarly situated individuals

By: /s/ John C. Ochoa
One of Plaintiff's attorneys

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