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

ERIC LAGUARDIA, SOPHIA  
WINGATE, LINDSAY RUCKER,  
and NICOLE R. AUSTIN, on  
behalf of themselves and all others  
similarly situated,

Plaintiff,

vs.

DESIGNER BRANDS INC., f/k/a  
DSW, INC., an Ohio corporation;  
and DSW SHOE WAREHOUSE,  
INC., a Missouri corporation,

Defendants.

CASE NO.: 3:19-cv-01568-JM-BLM

CLASS ACTION

**FIRST AMENDED COMPLAINT  
FOR COMPENSATORY,  
STATUTORY AND OTHER  
DAMAGES, AND INJUNCTIVE  
RELIEF**

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1 Plaintiffs Eric LaGuardia, Sophia Wingate, Lindsay Rucker, and Nicole R.  
2 Austin (collectively, “Plaintiffs”) bring this action on behalf of themselves and all  
3 others similarly-situated against Designer Brands, Inc., an Ohio Corporation formerly  
4 known as DSW, Inc. and DSW Shoe Warehouse, Inc., a Missouri corporation  
5 (collectively, “DSW” or “Defendants”). Plaintiffs allege, on information and belief,  
6 except for information based on personal knowledge, as follows:

7 **INTRODUCTION**

8 1. Plaintiffs bring this class action against DSW to stop it from making  
9 unsolicited and auto-dialed “spam” text message calls to cellular phones, and to  
10 obtain redress for all persons injured by this illegal conduct.

11 2. Among other things, DSW sells brand name and designer footwear and  
12 accessories. Today, it operates more brick and mortar locations in 44 states.

13 3. In an effort to promote its sales, DSW transmits unauthorized  
14 advertisements in the form of bulk spam text message calls to the cellular telephones  
15 of unwilling consumers, and it bombards consumers with unwanted spam even after  
16 they tell DSW that they want the spam to stop. Moreover, DSW bombarded some  
17 consumers with unwanted spam even though they were registered on the National Do  
18 Not Call registry.

19 4. By sending these unauthorized text message calls, or wireless spam,  
20 DSW has caused consumers actual harm, not only because consumers were subjected  
21 to the aggravation that necessarily accompanies wireless spam, but also because  
22 consumers frequently have to pay their cell phone service providers for the receipt of  
23 such wireless spam.

24 5. In order to redress these injuries, Plaintiffs, on behalf of themselves and  
25 others similarly situated, bring suit under the Telephone Consumer Protection Act,  
26 47 U.S.C. Sections 227, *et seq.* (“47 U.S.C. § 227”) which prohibits unsolicited voice  
27 and text calls to cell phones.  
28

1           6.     On behalf of the class, Plaintiffs seek an injunction requiring DSW to  
2     cease all wireless spam activities and an award of statutory damages to the class  
3     members.

4                                     **PARTIES**

5           7.     Plaintiff Eric LaGuardia is an individual and a citizen of the State of  
6     California and resident of San Diego County, California.

7           8.     Plaintiff Sophia Wingate is an individual and a citizen of the State of  
8     California and resident of Oakley, California.

9           9.     Plaintiff Lindsay Rucker is an individual and a citizen of the State of  
10     California and resident of Novato, California.

11           10.    Plaintiff Nicole R. Austin is an individual and a citizen of the State of  
12     California and resident of Los Angeles County.

13           11.    Defendant Designer Brands, Inc. is an Ohio Corporation headquartered  
14     at 810 DSW Drive, Columbus, Ohio. It is formerly known as DSW, Inc. Together  
15     with its subsidiaries, including co-Defendant Designer Shoe Warehouse, Inc.,  
16     Designer Brands owns, operates, and controls the “Designer Shoe Warehouse” (aka  
17     “DSW”) chain of shoe stores. At all relevant times, Designer Brands, Inc. has been  
18     doing business in at least 44 U.S. States, including California.

19           12.    Upon information and belief, at all relevant times Defendant DSW Shoe  
20     Warehouse, Inc., a Missouri corporation also headquartered at 810 DSW Drive,  
21     Columbus, Ohio, has been doing business in at least 44 U.S. States, including  
22     California. Upon information and belief, DSW Shoe Warehouse, Inc. is a wholly  
23     owned subsidiary of co-Defendant Designer Brands, Inc. and, together, Defendants  
24     collectively own, operate, and control the “Designer Shoe Warehouse” (aka “DSW”)  
25     chain of shoe stores. Defendants, at all relevant times, have had a common practice  
26     and policy of sending bulk unwanted spam messages, including those described more  
27     fully below.  
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**JURISDICTION AND VENUE**

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2 13. This Court has original jurisdiction over this case pursuant to 28 U.S.C.  
3 § 1331 because it arises under the laws of the United States.

4 14. This Court has subject matter jurisdiction over this action pursuant to 47  
5 U.S.C. § 227(b)(3).

6 15. Defendants are subject to personal jurisdiction in California because this  
7 suit arises out of and relates to Defendants’ significant contacts with this State.  
8 Defendants initiated and directed, or caused to be initiated and directed by its  
9 agent(s), telemarketing and/or advertisement text messages into California, via an  
10 ATDS and without the recipients’ prior express written consent, in violation of the  
11 TCPA.

12 16. Specifically, Defendants initiated and directed, or caused to be initiated  
13 and directed by its agent(s), the transmission of unsolicited advertisement or  
14 telemarketing SMS text messages to Plaintiffs’ cellular telephone numbers to sell  
15 products and services in California. Plaintiffs’ telephone numbers have area codes  
16 that specifically coincide with locations in California, and Plaintiffs received such  
17 messages on their cellular telephones while residing in and physically present in  
18 California.

19 17. Plaintiffs’ claims for violation of the TCPA against Defendants, and the  
20 resulting injuries caused to Plaintiffs by Defendants’ advertisement and  
21 telemarketing messages, which includes the invasion of Plaintiffs’ privacy, arose in  
22 substantial part from Defendants’ direction of those messages into California.

23 18. Further, Defendant has employees and regularly transacts substantial  
24 business in California through its 48 brick-and-mortar locations located in California;  
25 the most locations in any state in which Defendants operate, followed only by Texas  
26 which consists of 47 locations. In Ohio – claimed by Defendants as their primary  
27 place of business – Defendants only operate 21 locations.

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1 19. Defendants' California locations account for the largest percentage of  
2 its total locations throughout the United States, which establishes that Defendants  
3 derive substantial revenue from goods and services its sells in California.

4 20. Defendants target consumers in California, including through print,  
5 radio, and/or television advisements.

6 21. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1)  
7 because a substantial part of Defendants' actions and omissions, as well as Plaintiffs'  
8 suffered injuries, which gave rise to the claims asserted in this action occurred, in  
9 part, in this District.

10 **FACTS**

11 22. In recent years, marketers and salesman, stymied by California and  
12 federal laws limiting solicitation by telephone, fax, and e-mail, have increasingly  
13 looked to alternative technologies through which to send bulk solicitations cheaply.

14 23. One of the newer types of such bulk marketing is advertising through  
15 Multimedia Messaging Service ("MMS") and Short Message Services ("SMS").  
16 SMS is a messaging system that allows marketers and cellular telephone subscribers  
17 to send and receive short text messages, usually limited to 160 characters. The MMS  
18 standard extends the core SMS capability, allowing exchange of text messages  
19 greater than 160 characters in length as well as the exchange non-text media.  
20 Collectively, SMS and MMS messages are often referred to, simply, as "text  
21 messages."

22 24. Text messages are calls to a wireless device. When a text message is  
23 sent, the recipient's cell phone rings, alerting him or her that a call is being received.  
24 As cellular telephones are inherently mobile and are frequently carried on their  
25 owner's person, calls to cellular telephones, including text messages, may be received  
26 by the called party virtually anywhere worldwide.

27 25. Many marketers and sellers use auto-dialers, or "robo-callers" to blast  
28 identical commercial text messages in bulk. DSW used and continues to use these

1 auto-dialers to send unsolicited commercial spam messages to consumers like the  
2 Plaintiffs.

3 26. Unlike more conventional advertisements, wireless spam costs some  
4 recipients money because cell phone users must frequently pay their respective  
5 wireless service providers either for each text message call they receive, or for a text  
6 plan, whether the message is authorized or not. As our own Federal Communications  
7 Commission (“FCC”) has said: not only are such unsolicited messages “annoying  
8 and time-consuming,” they “can be intrusive and costly.” (FCC Guide, *Spam:  
9 Unwanted Text Messages and Email.*)

10 27. Further, the Federal Trade Commission has identified slower cell phone  
11 performance caused by space taken up on the phone’s memory as a real harm. *See*  
12 <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that  
13 text message solicitations like the ones sent by Defendant present a “triple threat” of  
14 identity theft, unwanted cell phone charges, and slower cell phone performance).

15 28. DSW, upon information and belief, and either itself or in conjunction  
16 with one or more marketing partners, acquired lists of consumer cell phone numbers.

17 29. Once DSW acquired its phone numbers, it sent massive amounts of  
18 spam commercial text message advertisements using automatic telephone dialing  
19 system, including to Plaintiffs. Upon information and belief, DSW continues to do so  
20 today.

21 30. DSW not only sent and continues to send unsolicited text messages to  
22 consumers without their express consent, DSW persists in sending spam to  
23 consumers even after they have affirmatively and expressly told DSW that they do  
24 not want to receive such texts. DSW also sent its wireless spam to those consumers  
25 who were previously registered to the National Do Not Call Registry, pursuant to the  
26 TCPA, 47 USC 227(c).

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1           31. For example, in July and August of 2019, DSW used an automatic  
2 telephone dialing system to make spam commercial text message calls to consumers,  
3 including to Plaintiff Eric LaGuardia’s cellular telephone.

4           32. DSW sent one such message on July 3, 2019. DSW used the following  
5 “short-code” to transmit the message: 748-588. The body of that commercial spam  
6 message stated:

7           DSW: 20% off + FREE gift! In  
8 stores & online thru 7/8:  
9 <https://bit.ly/31q6AEK>  
10 Exclusions apply. Reply HELP  
11 for help or STOP to end. Msg &  
12 Data rates may apply.

13           33. Plaintiff LaGuardia did not provide Defendants with his express written  
14 consent to receive the above text message.

15           34. Plaintiff LaGuardia immediately replied to DSW’s message with “Stop”  
16 and received the following response immediately thereafter from DSW:

17           DSW SMS Alerts: You’ve been  
18 unsubscribed and will receive  
19 no further alerts from DSW.  
20 Reply HELP or call  
21 866-379-7463 for info.  
22 Msg&DataRatesMayApply

23           35. Despite Plaintiff LaGuardia’s “Stop” request, and DSW’s  
24 acknowledgement and promise that it would send no further spam texts, on July 15,  
25 2019, DSW sent Plaintiff *another* unsolicited and unauthorized spam text message  
26 from the same number. The body of that commercial spam message stated:

27           DSW: Get 20% off + a FREE  
28 beach blanket! Shop now:  
<https://bit.ly/2LMZWWTN>. Reply  
HELP for help or STOP to end.  
Msg & Data rates may apply.

          36. And DSW did not stop there. Several days later, on July 29, 2019, DSW  
sent Plaintiff LaGuardia yet another spam text message from the short-code. The  
body of that spam message stated:



1 DSW: Get \$10 off + an EXTRA  
2 \$5 off when you shop in-app:  
3 <https://bit.ly/2K3kZQW>. Reply  
4 HELP 4 help or STOP 2 end.  
5 Msg & Data rates may apply.

6 37. Plaintiff LaGuardia replied a few hours later with another “Stop” request  
7 and, once again, DSW sent the following reply:

8 DSW SMS Alerts: You’ve been  
9 unsubscribed and will receive  
10 no further alerts from DSW.  
11 Reply HELP or call  
12 866-379-7463 for info.  
13 Msg&DataRatesMayApply

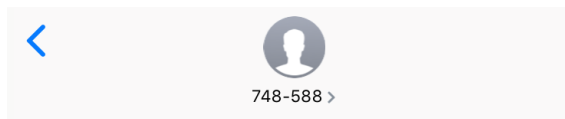
14 38. However, DSW’s second promise to stop spamming was again false.  
15 Days later, on August 15, 2019, DSW sent Plaintiff LaGuardia another spam text  
16 message from the same short-code. The message said, in pertinent part:

17 DSW: Get \$20 bonus card with  
18 \$49+ sneaker purchase! In  
19 stores & online. Shop now:  
20 <https://bit.ly/2MaOLop>. Reply  
21 HELP 4 help or STOP 2 end.  
22 Msg/Data rates apply.

23 39. Plaintiff LaGuardia then had to send several more “stop” messages.

24 40. The following is a depiction of what the frustratingly long series bulk  
25 spam messages looked like on Plaintiff LaGuardia’s phone, starting on July 3rd:  
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Text Message  
Wed, Jul 3, 11:12 AM

DSW: 20% off + FREE gift! In stores & online thru 7/8: <https://bit.ly/31q6AEK>  
Exclusions apply. Reply HELP for help or STOP to end. Msg & Data rates may apply.

Stop

DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info. Msg&DataRatesMayApply

Mon, Jul 15, 11:27 AM

DSW: Get 20% off + a FREE HELP for help or STOP to end. Msg & Data rates may apply.

Mon, Jul 29, 9:32 AM

DSW: Get \$10 off + an EXTRA \$5 off when you shop in-app: <https://bit.ly/2K3kZQW>. Reply HELP 4 help or STOP 2 end. Msg & Data rates may apply.

Mon, Jul 29, 2:42 PM

Stop

DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info. Msg&DataRatesMayApply

I do not want these texts.

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DSW Alerts: Sorry, keyword not recognized. Visit [tinyurl.com/dswsms](http://tinyurl.com/dswsms), call [866-379-7463](tel:866-379-7463) for more info. Reply HELP for help, STOP to cancel.  
Msg&DataRatesMayApply

Stop

DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info.  
Msg&DataRatesMayApply

Today 9:17 AM

DSW: \$20 bonus card with \$49+ sneaker purchase! In stores & online. Shop now: <https://bit.ly/2MaOLOP>. Reply HELP 4 help or STOP 2 end. Msg/Data rates apply.

Stop

STOP

STOP 2

DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info.  
Msg&DataRatesMayApply

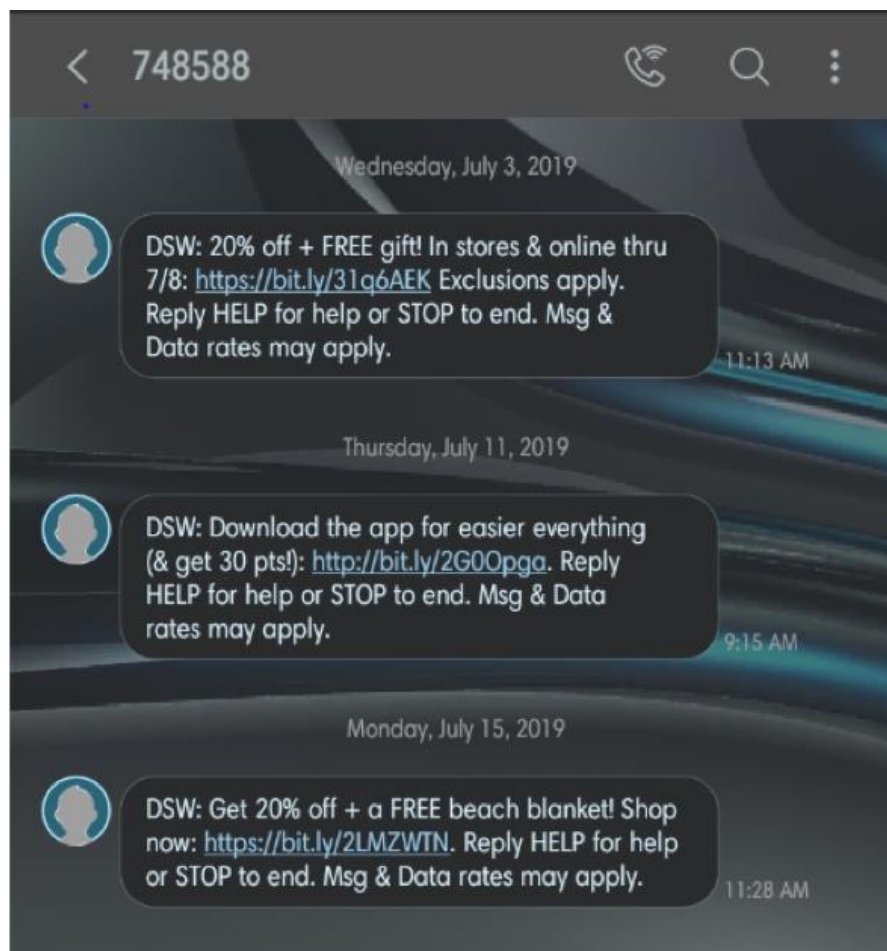
DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info.  
Msg&DataRatesMayApply

DSW SMS Alerts: You've been unsubscribed and will receive no further alerts from DSW. Reply HELP or call [866-379-7463](tel:866-379-7463) for info.  
Msg&DataRatesMayApply



1 41. Prior to receiving Defendants' text messages, Plaintiff LaGuardia had  
2 registered his number on the National Do Not Calls List.

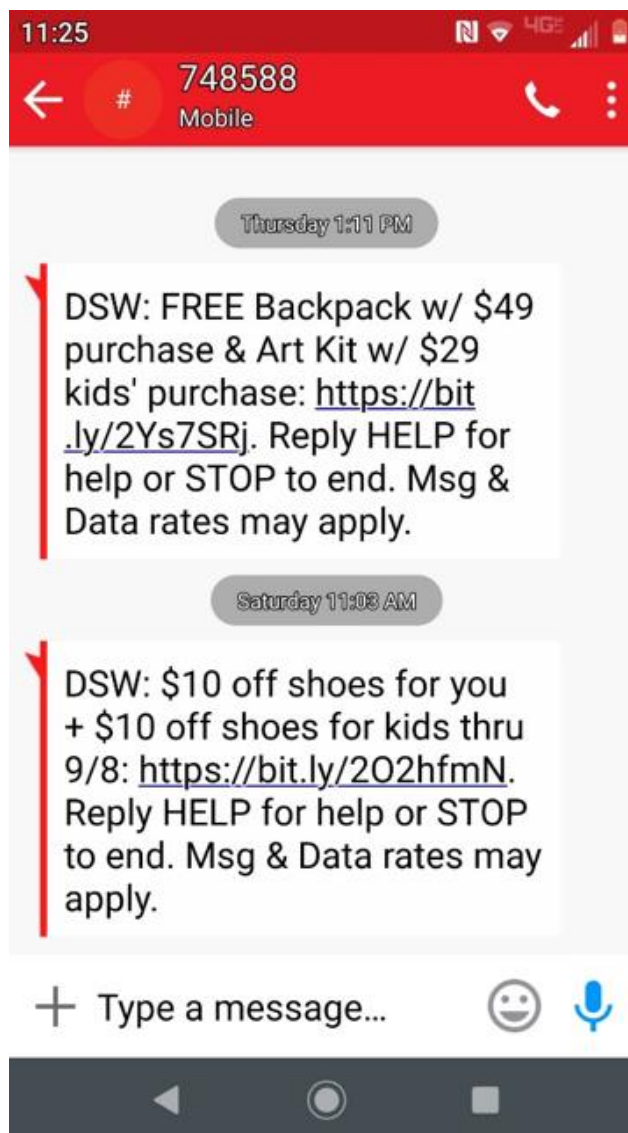
3 42. Similarly, on or about July 3, 2019, July 11, 2019, and July 15, 2019,  
4 DSW sent the following text messages to Plaintiff Lindsay Rucker from the same  
5 short-code:



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21 43. Plaintiff Rucker did not provide Defendants with her express written  
22 consent to receive the above text messages.

23 44. Similarly, on or about August 7, 2019 and August 10, 2019, DSW sent  
24 the following text messages to Plaintiff Sophia Wingate from the same short-code:  
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45. Plaintiff Wingate did not provide Defendants with her express written consent to receive the above text messages.

46. On July 15, 2019, Defendants sent a text message to Plaintiff Austin’s cellular phone number offering a 20% discount and free gift if she would click on a link, which leads to Defendant’s storefront website. The text message also stated “Reply ... STOP to end.”

47. She responded to the text message by typing “Stop.”

1           48. She received an immediate response “DSW SMS Alerts: You've been  
2 unsubscribed and will receive no further alerts from DSW. Reply HELP or call 866-  
3 379-7463 for info. Msg&DataRatesMayApply.”

4           49. Nevertheless, between July 29, 2019 and August 15, 2019, Defendants  
5 sent five additional text messages, with similar content encouraging Plaintiff Austin  
6 to click on a link to Defendants’ storefront website.

7           50. Like the other Plaintiffs herein, Plaintiff Austin did not provide  
8 Defendants with her express written consent to receive the above text messages.

9           51. Prior to receiving Defendants’ text messages, Plaintiff LaGuardia had  
10 registered his number on the National Do Not Calls List.

11           52. In short, DSW knowingly and intentionally sent multiple bulk  
12 commercial spam text messages to thousands of mobile phone users, including  
13 Plaintiffs, without their consent and even after consumers expressly and repeatedly  
14 told DSW they wanted no such messages.

15           53. As is apparent, the text messages above advertised the commercial  
16 availability of Defendants’ property, goods, and services and encourages the future  
17 purchase or investment in property, goods, or services.

18           54. Upon information and belief, Defendants caused other text messages  
19 identical to the one above to be sent to individuals residing within this judicial district  
20 and throughout the United States.

21           55. Plaintiffs are the subscribers and/or sole users of the cellular telephones  
22 that received Defendant’s text message solicitations.

23           56. Defendants knew or should have known that they were transmitting text  
24 messages to Plaintiffs, individuals located in California, prior to transmitting the  
25 messages.

26           57. The source of each of the unsolicited SMS text messages sent by  
27 Defendants to Plaintiffs was 748-588, which is an SMS short code owned or leased  
28 by or on behalf of Defendants or Defendants’ agent(s) or affiliate(s), and is used for

1 operating Defendants' text message campaigns, including the sending of SMS text  
2 messages telemarketing and advertising various of Defendants' goods and services.

3 58. The source of each of the unsolicited SMS text messages sent by  
4 Defendants, i.e., short code telephone number 748-588, is a short code telephone  
5 number that is registered as having been assigned to Defendants.

6 59. All telephone contact by Defendants and/or affiliates, subsidiaries, or  
7 agents of Defendants to Plaintiffs occurred via an ATDS ("automated telephone  
8 dialing system") as defined by 47 U.S.C. § 227(b)(1)(A) because the unsolicited  
9 telemarketing SMS text messages were sent from 748-588, which is a short code  
10 telephone number used to message consumers *en masse*, and because the hardware  
11 and software used by Defendants to send such messages have the capacity to store,  
12 produce, and dial either random or sequential numbers, and to dial such numbers, *en*  
13 *masse*, in an automated fashion without human intervention. Further, the complained  
14 of SMS text messages were written in a generic and impersonal manner, thus  
15 demonstrating that the text messages were sent to numerous other consumers.

16 60. To send the text messages, Defendants used a messaging platform (the  
17 "Platform") that permitted Defendants to transmit thousands of automated text  
18 messages without any human involvement.

19 61. The Platform has the capacity to store telephone numbers.

20 62. The Platform has the capacity to generate sequential numbers.

21 63. The Platform has the capacity to dial numbers in sequential order.

22 64. The Platform has the capacity to dial numbers from a list of numbers.

23 65. The Platform has the capacity to dial numbers without human  
24 intervention.

25 66. The Platform has the capacity to schedule the time and date for future  
26 transmission of text messages, which occurs without any human involvement.

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1           67. Defendants’ text message invaded Plaintiffs’ privacy, intruded upon  
2 their seclusion and solitude, constituted a nuisance, and wasted their time by requiring  
3 them to interact with the messages.

4           68. Furthermore, Defendants’ text messages took up 190 bytes of memory  
5 per message on Plaintiffs’ cellular telephones. The cumulative effect of unsolicited  
6 text messages like Defendants’ poses a real risk of ultimately rendering the phone  
7 unusable for text messaging purposes as a result of the phone’s memory being taken  
8 up. In fact, the FTC has identified slower cell phone performance caused by space  
9 taken up on the phone’s memory as a real harm. *See*  
10 <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that  
11 text message solicitations like the ones sent by Defendant present a “triple threat” of  
12 identity theft, unwanted cell phone charges, and slower cell phone performance).

13           69. Defendants’ text messages also caused the depletion of Plaintiffs’  
14 cellular telephone battery. The battery used to power Plaintiffs’ cellular telephone  
15 can only be recharged a limited number of times before the battery’s voltage begins  
16 to decrease, causing the cellular phone to turn off completely, without warning, if the  
17 battery drops below the minimum voltage needed to safely power Plaintiff’s cellular  
18 telephone.

19   **CLASS ALLEGATIONS**

20           70. Upon information and belief, DSW has had a common practice of  
21 sending bulk illegal spam text messages to consumers without their consent, and even  
22 after they have requested for the messages to stop.

23           71. Plaintiffs, therefore, bring this action pursuant to Federal Rules of Civil  
24 Procedure, Rule 23(a) and 23(b)(2) and 23(b)(3) on behalf of themselves and the  
25 following classes defined as follows:

26                   **No Consent Class: All persons within the United States**  
27                   **who, within the four years prior to the filing of this**  
28                   **action, were sent a text message by Defendants or**  
                     **anyone on Defendants’ behalf, to said person’s cellular**  
                     **telephone number, using the same equipment used to**

1 text message Plaintiffs' cellular telephones, for the  
2 purpose of advertising Defendants' goods or services.

3 **Revocation Class:** All persons who from four years  
4 prior to the filing of this action were sent a text message  
5 to their cellular phone number by Defendants or on  
6 Defendants' behalf, using the same equipment used to  
7 send the text messages to Plaintiffs, for the purpose of  
8 advertising Defendants' goods or services, *after making*  
9 a request to Defendants to not receive future text  
10 messages.

11 72. Plaintiff LaGuardia and Plaintiff Austin also bring this lawsuit on behalf  
12 of themselves and the following proposed sub-class of consumers who were  
13 registered on the National Do Not Call Registry:

14 **Do Not Call Registry Class:** All persons in the United  
15 States who from four years prior to the filing of this  
16 action were sent a text message by or on behalf of  
17 Defendants, more than one time within any 12-month  
18 period, where the person's telephone number had been  
19 listed on the National Do Not Call Registry for at least  
20 thirty days, for the purpose of selling Defendants'  
21 products and/or services.

22 73. Subject to additional information obtained through further investigation  
23 and discovery, the foregoing definition of the Classes may be expanded or narrowed  
24 by amendment, amended complaint, or at the time of moving for class certification.

25 74. *Numerosity.* The members of the Classes are so numerous that their  
26 individual joinder is impracticable. Plaintiffs are informed and believe, and on that  
27 basis allege, that the proposed Classes contain tens of thousands of members. The  
28 precise number of Class members is unknown to Plaintiffs. The true number of Class  
members is known by DSW, however, and thus, Class members may be ascertained and  
may be notified of the pendency of this action by first class mail, electronic mail, text  
message, and by published notice, to the extent necessary.

1           75.    ***Existence and Predominance of Common Questions of Law and Fact.***

2 Common questions of law and fact exist as to all members of the Classes and  
3 predominate over any questions affecting only individual Class members. These  
4 common legal and factual questions include, but are not limited to, the following:

5           (a) Does the wireless spam DSW distributed violate 47 U.S.C. Section  
6           227?

7           (b) Are the Class members entitled to damages or penalties?

8           (c) Are the Class members entitled to treble damages based on the  
9           willfulness of DSW's conduct?

10          (d) Are the Class members entitled to declaratory and/or injunctive  
11          relief?

12          76.    ***Typicality.*** Plaintiffs' claims are typical of the claims of the members  
13 of the Classes in that all Class members were subject to the same kind of illegal spam  
14 text messaging at the hands of DSW.

15          77.    ***Adequacy of Representation.*** Plaintiffs will fairly and adequately  
16 protect the interests of the Classes. Plaintiffs have retained counsel experienced in  
17 complex consumer class action litigation, and Plaintiffs intend to prosecute this action  
18 vigorously. Plaintiffs have no interests adverse or antagonistic to those of the  
19 Classes.

20          78.    ***Superiority.*** A class action is superior to all other available means for  
21 the fair and efficient adjudication of this controversy. The damages or other financial  
22 detriment suffered by individual Class members is relatively small compared to the  
23 burden and expense in litigating claims individually against DSW. It would thus be  
24 virtually impossible for the Class members, on an individual basis, to obtain effective  
25 redress for the wrongs done to them. Furthermore, even if Class members could  
26 afford such individualized litigation, the court system could not. Individualized  
27 litigation would create the danger of inconsistent or contradictory judgments arising  
28 from the same set of facts. Individualized litigation would also increase the delay

1 and expense to all parties and the court system from the issues raised by this action.  
2 By contrast, the class action device provides the benefits of adjudication of these  
3 issues in a single proceeding, economies of scale, and comprehensive supervision by  
4 a single court, and presents no unusual management difficulties under the  
5 circumstances here.

6 79. Unless the Classes are certified and a class-wide injunction is issued,  
7 DSW will continue to commit and wrongly profit from the violations alleged, and the  
8 members of the Classes and the general public will continue to be injured.

9 80. DSW has acted and failed to act on grounds generally applicable to the  
10 Plaintiffs and the other members of the Classes in transmitting the wireless spam at  
11 issue, requiring the Court's imposition of uniform relief to ensure compatible  
12 standards of conduct toward the members of the Class.

13 81. The factual and legal bases of DSW's liability to Plaintiffs and to the  
14 other members of the Class are the same, resulting in injury to the Plaintiffs and to  
15 all the other members of the Class as a result of the transmission of the wireless spam  
16 alleged here. Plaintiffs and the other Class members have all suffered harm and  
17 damages as a result of DSW's unlawful and wrongful conduct as a result of the  
18 transmission of wireless spam.

19 **COUNT NO. 1**

20 **(Violation of the TCPA, 47 U.S.C. § 227, on  
21 behalf of all Plaintiffs, the No Consent Class, and the Revocation Class)**

22 82. Plaintiffs incorporate by reference all of the foregoing allegations as if  
23 fully set forth here.

24 83. DSW, either on its own or in concert with one or more of its authorized  
25 agents, acquired lists of consumer phone numbers for the purpose of sending  
26 commercial spam text messages for its own monetary gain.

27 84. DSW then made thousands of unauthorized commercial text calls,  
28 including, but not limited to, the messages copied above, to wireless telephone  
numbers belonging to the Class members, including to Plaintiffs. Each such text

1 message call was made using equipment that had the capacity to store or produce  
2 telephone numbers to be called, using a random or sequential number generator. By  
3 using such equipment, DSW was able to effectively send thousands of spam text  
4 messages simultaneously to thousands of wireless phones without human  
5 intervention.

6 85. DSW's text calls were made *en masse* and without the prior express  
7 written consent of the Plaintiffs and the other members of the Class to receive such  
8 wireless spam.

9 86. DSW has, therefore, violated the TCPA, including 47 U.S.C. Section  
10 227(b)(1)(A)(iii). As a result of DSW's conduct, the members of the Class suffered  
11 actual damages including by having to pay their respective wireless carriers for the  
12 text messages and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a  
13 minimum of \$500 in damages for each violation.

14 87. Moreover, because DSW knowingly and willfully violated the TCPA,  
15 and had knowledge that Plaintiffs and the Class did not consent to the receipt of  
16 wireless spam and, in fact, did not want such spam, the Court should, pursuant to 47  
17 U.S.C. Section 227(b)(3), treble the amount of statutory damages recoverable by the  
18 Plaintiff and the other members of the Class.

19 **COUNT NO. 2**  
20 **(Violation of the TCPA, 47 U.S.C. § 227,**  
21 **on behalf of Plaintiff LaGuardia and Plaintiff Austin,**  
22 **and the Do Not Call Registry Class)**

23 88. Plaintiffs incorporate by reference all of the foregoing allegations as if  
24 fully set forth here.

25 89. As mentioned above, DSW made thousands of unauthorized and illegal  
26 commercial text calls, including, but not limited to, the messages copied above, to  
27 wireless telephone numbers belonging to the Class, including to Plaintiffs. Many of  
28 those class members, including Plaintiff LaGuardia and Austin, had been previously

1 registered on the National “Do Not Call” Registry pursuant to 47 U.S.C. § 227(c),  
2 i.e., were members of the Do Not Call Registry Class as defined above.

3 90. Plaintiff Eric LaGuardia has been registered on the national Do Not Call  
4 Registry since at least 2014. Plaintiff Austin was registered on the national Do Not  
5 Call Registry since May 2019 or earlier. Plaintiffs and their fellow Do Not Call  
6 Registry Class members were registered on that list when they received DSW’s  
7 wireless spam.

8 91. DSW has, therefore, committed additional violations of the TCPA,  
9 including 47 U.S.C. Section 227(c). As a result of DSW’s conduct, Plaintiff and the  
10 members of the Do Not Call Registry Sub-Class are each entitled to, *inter alia*, an  
11 additional \$500, at a minimum, for each violation.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs Eric LaGuardia, Sophia Wingate, Lindsay Rucker,  
14 Nicole R. Austin, on behalf of themselves and the Class prays for the following relief:

- 15 1. An order certifying the Class as defined above, including all sub-classes;  
16 2. An award of actual and statutory damages, where appropriate;  
17 3. Punitive or treble damages according to statute or where otherwise  
18 appropriate;  
19 4. An injunction requiring DSW to cease all wireless spam activities;  
20 5. An award of reasonable attorneys’ fees and costs; and  
21 6. Such further and other relief the Court deems reasonable and just.

22 **JURY DEMAND**

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

24 Respectfully submitted,  
25 Dated: November 21, 2019

**NICHOLAS & TOMASEVIC, LLP**

26  
27 By: /s/ Craig M. Nicholas  
Alex Tomasevic  
28 Craig M. Nicholas

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