Beth E. Terrell, CSB #178181 1 Email: bterrell@tmdwlaw.com FILED CLERK, U.S. DISTRICT COURT Michael D. Daudt, CSB #161575 2 Email: mdaudt@tmdwlaw.com NOV 15 2012 TERRELL MARSHALL DAUDT & WILLIE PLLC 3 936 North 34th Street, Suite 400 4 Seattle, Washington 98103-8869 CENTRAL DISTRICT OF CALIFORNIA Telephone: (206) 816-6603 5 Facsimile: (206) 350-3528 6 [Additional counsel appearing on signature page] 7 Attorneys for Plaintiff 8 UNITED STATES DISTRICT COURT 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA 10 PAUL GANNON, individually and on behalf CV12-9777 RGK(PJWY) of all others similarly situated, 11 NO. Plaintiff, 12 CLASS ACTION COMPLAINT FOR 13 V. DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF NETWORK TELEPHONE SERVICES, INC., a 14 47 U.S.C. § 227 California corporation; DECADE 15 COMMUNICATIONS, INC., a California **DEMAND FOR JURY TRIAL** corporation; FRONTIER CREDIT, INC., a 16 California corporation; AMERICAN OPERATOR SERVICES, INC., a California 17 corporation: JOHN and JANE DOES 1 through 18 100; and JOHN DOE ENTITIES 1 through 10, 19 Defendants. 20 21 I. INTRODUCTION 22 Plaintiff Paul Gannon, individually and as a class representative for all persons 1.1 23 in the United States who have received unsolicited commercial text messages on their cellular 24 telephones from Defendants, brings this class action to stop Defendants' practice of making 25 unsolicited text message calls to cellular telephones, and to obtain redress for all persons 26 CLASS ACTION COMPLAINT FOR 27 DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF 47 U.S.C. § 227 - 1

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injured by their conduct. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

- 1.2 Defendant Network Telephone Services, Inc. ("NTS") is engaged in the business of "telephone entertainment" and related billing services. NTS's services include "phone sex" and "SexText," for which consumers are charged by the minute or text to engage in sexually explicit conversations over the telephone. NTS, either directly or through agents or affiliates, operates one or more call centers in which it employs "telephone actresses" to engage in sexually explicit conversations with consumers.
- 1.3 NTS markets its phone sex business through the unauthorized transmission of sexually explicit advertisements in the form of "text message" calls to the cellular telephones of consumers throughout the nation.
- 1.4 By effectuating these unauthorized text message calls (hereinafter, "wireless spam"), NTS has caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies wireless spam and the distress of receiving an unsolicited sexually explicit text message, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam.
- 1.5 In order to redress these injuries, Plaintiff, on behalf of himself and a nationwide class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("47 U.S.C. § 227"), which prohibits unsolicited voice and text calls to cell phones.
- 1.6 On behalf of the class, Plaintiff seeks an injunction requiring Defendants to cease all wireless spam activities and an award of statutory damages to the class members, together with costs and reasonable attorneys' fees.

- 2.1 Plaintiff Paul Gannon ("Plaintiff") is an individual citizen and resident of the State of Colorado.
- 2.2 Defendant NTS is a California corporation that maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California 91367. NTS is, and all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).
- 2.3 Defendant Decade Communications, Inc. ("Decade") is a California corporation that maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California 91367. Decade is, and all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).
- 2.4 Defendant Frontier Credit, Inc. ("Frontier") is a California corporation that maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California 91367. Frontier is, and all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).
- 2.5 Defendant American Operator Services, Inc. ("AOS") is a California corporation that maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California 91367. AOS is, and all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).
- 2.6 Defendants NTS, Decade, Frontier and AOS have acted in concert in doing the things alleged herein, and/or have used each other as mere alter egos or agents in doing the things alleged herein.
- 2.7 Defendants JOHN and JANE DOES 1 through 100, whose true names are unknown, are individuals who have acted in concert with Defendants in doing the things alleged herein, and/or have used other Defendants herein as mere alter egos or agents in doing the things alleged herein.

2.8 Defendants JOHN DOE ENTITIES 1 through 10, whose true names are unknown, are corporations, limited liability companies, or other business entities who have acted in concert with Defendants in doing the things herein alleged, and/or have used other Defendants herein as mere alter egos or agents in doing the things alleged herein.

III. JURISDICTION AND VENUE

- 3.1 This court has federal question subject matter jurisdiction under 28 U.S.C § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., which is a federal statute.
- 3.2 This Court has personal jurisdiction over Defendants under California Code of Civil Procedure § 410.10 because certain of the acts alleged herein were committed in California and because Defendants do business in California.
- 3.3 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendants reside in this District.

IV. FACTUAL ALLEGATIONS

- 4.1 In recent years, marketers who have often felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative technologies through which to send bulk solicitations cheaply.
- 4.2 A recent innovation in such bulk marketing is to advertise through Short Message Services. The term "Short Message Service" or "SMS" is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.
- 4.3 An "SMS message" is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their

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owner's person, calls to cellular telephones, including SMS messages, may be received by the called party virtually anywhere worldwide.

- 4.4 Unlike more conventional advertisements, wireless spam actually costs its recipients money, because cell phone users must frequently pay their wireless service providers either for each text message call they receive or incur a usage allocation deduction to their text plan, regardless of whether or not the message is authorized.
- 4.5 Beginning no later than the year 2009, Defendants directed the mass transmission of wireless spam to the cell phones nationwide of what they hoped were potential customers of Defendants' phone sex services.
- 4.6 For instance, on or about September 4, 2012, Plaintiff's cell phone rang, indicating that a text call was being received. The "from" field of such transmission was identified as "18183070155," which, upon information and belief, is a telephone number assigned to Defendants. The body of such text message read: "Hot honeys r ready to pleasure u and make u cumm. \$25 credit on your first call! Call 800-999-2428. Want to SEXTEXT, Rply A! Rply END to be remvd. (18+,\$)."
- 4.7 The telephone number in the body of the text message to Plaintiff, 800-999-2428, is, upon information and belief, also assigned to Defendants.
- 4.8 At no time did Plaintiff consent to the receipt of the above-referenced message or any other such wireless spam text messages from Defendants.

V. CLASS ACTION ALLEGATIONS

5.1 <u>Class Definition</u>. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and a class (the "Class") defined as follows:

All persons in the United States and its Territories who received one or more unauthorized text messages by or on behalf of Defendants, or their agents or affiliates.

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Excluded from the Class are Defendants, any entity in which a Defendant has a controlling interest or that has a controlling interest in a Defendant, Defendants' employees or agents, legal representatives, assignees, and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

- 5.2 <u>Numerosity</u>. Defendants have sent unsolicited, sexually explicit text messages similar to that received by Plaintiff to numerous other Class members without their prior consent. The Class members number in the thousands, such that joinder of all members is impracticable. The disposition of the claims of the Class in a single action will provide substantial benefits to all parties and the Court.
- 5.3 Adequacy. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff, nor his counsel, has any interest adverse to those of the other members of the Class or each other.
- 5.4 <u>Superiority</u>. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.
- 5.5 <u>Typicality</u>. The factual and legal bases of Defendants' liability to Plaintiff and to the other members of the Class are the same, resulting in injury to Plaintiff and to all of the other members of the Class as a result of the transmission of the wireless spam alleged herein. Plaintiff and the other Class members have all suffered harm and damages as a result of Defendants' unlawful and wrongful conduct as a result of the transmission of the wireless

spam. Defendants have acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class in transmitting the wireless spam at issue, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class.

- 5.6 <u>Commonality</u>. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:
 - (a) Does the wireless spam that Defendants distributed violate 47 U.S.C. § 227?
- (b) Are the Class members entitled to treble damages based on the willfulness of Defendants' conduct?
 - (c) Did the conduct described above violate the Class's right to privacy?

VI. FIRST CLAIM FOR RELIEF VIOLATION OF 47 U.S.C. § 227

- 6.1 Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.
- 6.2 Defendants made unsolicited commercial text calls as alleged herein to the wireless telephone numbers of the Plaintiff and the Class. Each such text message call was made using equipment that had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator. By using such equipment, Defendants were able to effectively send thousands of text messages simultaneously to thousands of wireless phone numbers of consumers without human intervention.
- 6.3 These text calls were made *en masse* without the prior express consent of the Plaintiff and the other members of the Class to receive such wireless spam.
- 6.4 Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiff and the other members of the Class are each entitled, under

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1	section 227(b)(3)(B), to a minimum of \$500 in damages for each violation, and an injunction to	
2	prevent further violations.	
3	6.5	Because Defendants had knowledge that Plaintiff and the Class did not consent
4	to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47	
5	U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the	
6	other members of the Class.	
7		VII. RELIEF REQUESTED
8	Plaintiff requests the Court enter judgment against Defendants as follows:	
9	A.	An order certifying the Class as defined above;
10	В.	An award of actual and statutory damages;
11	C.	An injunction requiring Defendants to cease all wireless spam activities;
12	D.	An award of reasonable attorneys' fees and costs; and
13	E.	Such further and other relief as the Court deems reasonable and just.
14	VIII. DEMAND FOR JURY TRIAL	
15	Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues	
16	in this action	so triable of right.
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1 RESPECTFULLY SUBMITTED AND DATED this 13th day of November, 2012. 2 TERRELL MARSHALL DAUDT & WILLIE PLLC 3 4 5 Beth E. Terrell, CSB #178181 Email: bterrell@tmdwlaw.com 6 Michael D. Daudt, CSB #161575 7 Email: mdaudt@tmdwlaw.com 936 North 34th Street, Suite 400 8 Seattle, Washington 98103-8869 Telephone: (206) 816-6603 9 Facsimile: (206) 350-3528 10 Stefan Coleman [Pro Hac Vice Motion to be Filed] 11 Email: Law@StefanColeman.com LAW OFFICES OF STEFAN COLEMAN 12 201 S Biscayne Blvd, 28th Floor Miami, Florida 33131 13 Telephone: (877) 333-9427 Facsimile: (888) 498-8946 14 15 Attorneys for Plaintiff 16 17 18 19 20 21 22 23 24 25 26 CLASS ACTION COMPLAINT FOR 27

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