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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Maureen O'Brien, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CVS Pharmacy, Inc.,

Defendant.

Case No.:

**Complaint for Damages and
Injunctive Relief for Violations
of: 47 U.S.C. § 227(c); 47 C.F.R.
§§ 64.1200(c)(2), (d)**

CLASS ACTION COMPLAINT

JURY DEMAND

Plaintiff Maureen O'Brien ("Plaintiff") brings this putative class action against CVS Pharmacy, Inc. ("CVS" or "Defendant") and alleges as follows upon personal knowledge as to herself and her own acts and experiences, and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This action arises from CVS’s violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (the “TCPA”), and regulations promulgated by the Federal Communications Commission (“FCC”) to protect residential telephone subscribers from unwanted telemarketing calls and text messages.
2. CVS sent Plaintiff multiple promotional text messages encouraging her to join its ExtraCare loyalty program even though her personal wireless telephone number had been registered on the National Do Not Call Registry since September 8, 2009.
3. Plaintiff replied “STOP” to CVS’s designated short code. CVS immediately confirmed, “You will no longer receive ExtraCare texts.” Approximately seventy days later, CVS sent another materially identical ExtraCare solicitation from the same short code.
4. Plaintiff seeks statutory and treble damages, injunctive relief, and other available relief for herself and similarly situated consumers whose company-specific do-not-call requests CVS failed to honor and whose numbers were registered on the National Do Not Call Registry when CVS sent repeated telephone solicitations.

PARTIES

5. Plaintiff Maureen O’Brien is a natural person and a citizen and resident of Tehama County, California. Plaintiff is a “person” entitled to bring this action under the TCPA.
6. Plaintiff is the subscriber and regular user of the wireless telephone number ending in 3491 (the “Subject Number”), which she uses for personal, family, and household purposes as her residential telephone line.

1 7. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation authorized to conduct
2 business in California. CVS operates retail pharmacies and markets its goods,
3 services, and ExtraCare loyalty program nationwide, including in this District.

4 8. Unless otherwise indicated, references to Defendant include persons and entities
5 acting on CVS's behalf in connection with the text-message campaign at issue,
6 including its agents, employees, vendors, contractors, affiliates, successors, and
7 assigns.
8

9 **JURISDICTION AND VENUE**

10 9. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action
11 arises under the TCPA. The TCPA supplies a private right of action to a person who
12 receives more than one call within a twelve-month period in violation of regulations
13 prescribed under 47 U.S.C. § 227(c). 47 U.S.C. § 227(c)(5).
14

15 10. This Court has personal jurisdiction over CVS because CVS transacts substantial
16 business in California and purposefully directed the ExtraCare text-message
17 campaign at Plaintiff and other California residents.
18

19 11. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because Plaintiff
20 received the challenged text messages while residing in Tehama County, California,
21 and a substantial part of the events giving rise to her claims occurred in this District.
22

23 12. Because the action arises in Tehama County, assignment to the Sacramento
24 Division is appropriate under Eastern District of California Local Rule 120(d).
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STATUTORY AND REGULATORY BACKGROUND

Telephone Consumer Protection Act

13. Congress enacted the TCPA to protect consumers from unwanted telemarketing and the resulting invasion of privacy, nuisance, and disruption.

14. Section 227(c) directed the FCC to adopt rules protecting residential telephone subscribers' privacy rights and limiting unwanted telephone solicitations. 47 U.S.C. § 227(c)(1)-(2).

15. A text message is a "call" within the meaning of the TCPA. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016).

16. The FCC defines a "telephone solicitation" as the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services. 47 C.F.R. § 64.1200(f)(15).

17. The FCC's company-specific do-not-call rule provides that no person or entity may initiate a call for telemarketing purposes to a residential telephone subscriber unless it has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. 47 C.F.R. § 64.1200(d).

18. Those procedures must include, among other requirements, a written internal do-not-call policy available upon demand; training of personnel engaged in telemarketing; recording and disclosure of do-not-call requests; and honoring such a request within a reasonable time not exceeding ten business days from its receipt. 47 C.F.R. § 64.1200(d)(1)-(6).

1 19. A company-specific do-not-call request terminates an established business
2 relationship for purposes of future telephone solicitations. 47 C.F.R. §
3 64.1200(f)(5)(i).

4 20. Separately, the FCC's National Do Not Call Registry rule prohibits initiating a
5 telephone solicitation to a residential telephone subscriber who has registered the
6 subscriber's telephone number on the National Do Not Call Registry. 47 C.F.R. §
7 64.1200(c)(2).

8 21. The protections in 47 C.F.R. § 64.1200(c) and (d) apply to telephone solicitations
9 and telemarketing calls placed to wireless telephone numbers. 47 C.F.R. §
10 64.1200(e). Whether a wireless number is residential depends on how the subscriber
11 customarily uses the number. *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1224-26
12 (9th Cir. 2022).

13 22. A person who receives more than one telephone call within a twelve-month period
14 by or on behalf of the same entity in violation of regulations prescribed under §
15 227(c) may seek actual monetary loss or \$500 for each violation, whichever is
16 greater, and injunctive relief. 47 U.S.C. § 227(c)(5).

17 23. If a defendant willfully or knowingly violates the regulations prescribed under §
18 227(c), the Court may increase the award to as much as three times the amount
19 otherwise available. 47 U.S.C. § 227(c)(5)(C).

24 **FACTUAL ALLEGATIONS**

25 24. Plaintiff has maintained the Subject Number on the National Do Not Call Registry
26 since September 8, 2009. She uses the number for personal, family, and household
27 purposes, including personal communications, and not as a business line.
28

1 25. Plaintiff did not enroll in CVS ExtraCare, did not open a CVS account, and did not
2 authorize CVS to send promotional text messages to the Subject Number. Plaintiff
3 has never filled a prescription at CVS and has not entered a CVS store in years. At
4 most, Plaintiff made an isolated retail purchase at a CVS store years before the
5 messages at issue, and she provided CVS no telephone number in connection with
6 any such purchase.
7

8 26. At the times relevant to this action, Plaintiff had not made a purchase or transaction
9 with CVS within the preceding eighteen months and had not made an inquiry or
10 application to CVS within the preceding three months.
11

12 27. On May 12, 2026, at approximately 2:07 p.m., CVS sent Plaintiff a text message
13 from short code 28732 stating: “CVS ExtraCare: No more missing out! To start
14 saving extra, tap link to finish joining ExtraCare” and providing a CVS link. The
15 message instructed Plaintiff to “Text STOP to opt out.”
16

17 28. On May 17, 2026, at approximately 4:05 p.m., CVS sent Plaintiff a second
18 materially identical ExtraCare promotional text message from the same short code.
19

20 29. Plaintiff responded “STOP” on May 17, 2026, thereby unequivocally requesting not
21 to receive further telemarketing text messages from CVS and revoking any prior
22 permission CVS might contend she had provided.
23

24 30. CVS immediately processed and confirmed Plaintiff’s request, responding: “CVS
25 ExtraCare: You will no longer receive ExtraCare texts.”
26

27 31. CVS’s confirmation establishes that CVS received and understood Plaintiff’s
28 company-specific do-not-call request and associated it with the Subject Number and
the ExtraCare text-message campaign.

1 32. After receiving CVS's confirmation, Plaintiff reasonably expected CVS to place the
2 Subject Number on its internal do-not-call list and suppress further ExtraCare
3 promotional text messages.

4 33. Between May 17 and July 26, 2026, Plaintiff did not visit CVS, enter the Subject
5 Number at a CVS register or self-checkout, respond affirmatively to any CVS
6 prompt, press "yes" or "accept," or otherwise agree to resume receiving CVS
7 ExtraCare text messages.
8

9 34. Nevertheless, on July 26, 2026, at approximately 12:19 p.m.—more than ten
10 business days and approximately seventy days after Plaintiff's opt-out request—
11 CVS sent Plaintiff another materially identical ExtraCare solicitation from short
12 code 28732.
13

14 35. The July 26 message again encouraged Plaintiff to "finish joining ExtraCare" and
15 again instructed her to "Text STOP to opt out," notwithstanding CVS's prior
16 confirmation that she would no longer receive ExtraCare texts.
17

18 36. The challenged messages were telephone solicitations and telemarketing because
19 their purpose was to promote CVS, induce Plaintiff to join CVS's ExtraCare
20 program, encourage future purchases at CVS, and advertise savings and rewards
21 connected to CVS goods and services.
22

23 37. Plaintiff did not provide CVS prior express invitation or permission to send the
24 challenged telephone solicitations, and no established business relationship existed
25 during the relevant period. In any event, Plaintiff's May 17 STOP request terminated
26 any established business relationship or permission CVS might contend previously
27 existed.
28

1 38. True and correct copies of the May 12, May 17, and July 26 messages, Plaintiff's
2 STOP request, and CVS's confirmation are attached as Exhibit A and incorporated
3 by reference.

4 39. CVS's transmission of a materially identical campaign message after receiving and
5 confirming Plaintiff's STOP request demonstrates a failure to timely record,
6 synchronize, maintain, and enforce company-specific suppression data across CVS's
7 telemarketing systems and vendors.

8 40. Upon information and belief, CVS used centralized systems, common campaign
9 templates, and common policies and procedures to send ExtraCare text messages,
10 receive opt-out responses, and determine whether telephone numbers were eligible
11 for further marketing.

12 41. Upon information and belief, CVS and its vendors maintain outbound transmission
13 logs identifying the dates, times, target telephone numbers, short codes, campaigns,
14 message content, delivery status, and opt-out status associated with the ExtraCare
15 messages.

16 42. Those records can identify consumers whose numbers were registered on the
17 National Do Not Call Registry, consumers who submitted company-specific opt-out
18 requests, the dates on which the requests were received, and any later CVS
19 telemarketing text messages.

20 43. CVS's conduct caused Plaintiff actual harm, including invasion of privacy,
21 annoyance, nuisance, loss of time, occupation of her telephone, and interference with
22 the use and enjoyment of her device.
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1 44. CVS acted knowingly or willfully because the Subject Number had been registered
 2 on the National Do Not Call Registry for years, CVS and its systems received and
 3 automatically confirmed Plaintiff's opt-out request, and CVS nevertheless caused
 4 the same ExtraCare campaign to transmit another promotional text message to the
 5 Subject Number.
 6

7 CLASS ALLEGATIONS

8 Proposed Classes

9 45. Plaintiff brings this action under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal
 10 Rules of Civil Procedure on behalf of herself and the following proposed classes:
 11

12 **Internal Do-Not-Call Class:** All persons in the United States to whom,
 13 from four years before the filing of this action through the date of class
 14 certification, CVS or a person acting on its behalf sent more than one
 15 text message within a twelve-month period promoting the CVS
 16 ExtraCare program or other CVS goods or services, at a wireless
 17 telephone number, where (1) records of CVS or its messaging vendors
 18 reflect that the subscriber or user of that number replied "STOP" or
 19 another opt-out keyword recognized by CVS's messaging platform, and
 (2) at least one such message was sent more than ten business days after
 that reply.

20 **National Do Not Call Registry Class:** All persons in the United States
 21 to whom, from four years before the filing of this action through the date
 22 of class certification, CVS or a person acting on its behalf sent more than
 23 one text message within a twelve-month period promoting the CVS
 24 ExtraCare program or other CVS goods or services, at a wireless
 25 telephone number that had been registered on the National Do Not Call
 26 Registry for at least thirty-one days at the time the messages were sent.
 27
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1 46. Plaintiff reserves the right to refine the Class definitions based on discovery and
2 further investigation. Each Class is defined by reference to objective criteria
3 ascertainable from the outbound-message, inbound-response, suppression, and
4 National Do Not Call Registry screening records of CVS and its messaging vendors,
5 without resort to individualized testimony. A wireless telephone number that an
6 individual subscriber has registered on the National Do Not Call Registry is
7 presumed to be a residential telephone line, and the burden rests with CVS to rebut
8 that presumption as to any particular number. *Chennette v. Porch.com, Inc.*, 50 F.4th
9 1217, 1224-26 (9th Cir. 2022).
10
11

12 47. Excluded from the Classes are Defendant; Defendant's parents, subsidiaries,
13 affiliates, officers, directors, and employees; the judicial officers assigned to this
14 action and their immediate family members and staff; and persons who timely and
15 validly request exclusion.
16

17 48. The Classes are so numerous that joinder is impracticable. CVS operates a
18 nationwide retail and loyalty program, and the number and identities of Class
19 members can be ascertained from CVS's and its vendors' standardized outbound-
20 message, inbound-response, suppression, and campaign records.
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Common Questions and Rule 23 Requirements

49. Common questions of law and fact include whether CVS initiated or caused the challenged text messages; whether the messages constituted telemarketing or telephone solicitations; whether CVS maintained and implemented compliant do-not-call policies, training, records, and suppression procedures; whether CVS honored STOP requests within ten business days; whether CVS sent repeated solicitations to National Do Not Call Registry numbers; and whether CVS's conduct was knowing or willful.

50. These common questions predominate because liability can be determined principally from standardized text content and CVS's centralized campaign, inbound-message, National Do Not Call Registry, and suppression records rather than from individualized testimony. Residential use is established by the presumption applicable to registered wireless numbers and, to the extent contested, is subject to common proof from carrier, subscriber, and account records rather than member-by-member inquiry.

51. Plaintiff's claims are typical because she received multiple CVS ExtraCare solicitations while her residential wireless number was registered on the National Do Not Call Registry, submitted a STOP request that CVS confirmed, and later received another ExtraCare promotional text.

52. Plaintiff will fairly and adequately protect the interests of the Classes. Her interests do not conflict with those of the Classes, and she has retained counsel experienced in TCPA and complex litigation.

1 53. A class action is superior to individual actions because the statutory recovery
2 available to each Class member is modest compared with the burden and expense of
3 separate litigation, and common adjudication will promote efficiency and consistent
4 results.

5
6 54. Certification under Rule 23(b)(2) is also appropriate because CVS has acted or
7 refused to act on grounds generally applicable to the Classes, making final injunctive
8 and corresponding declaratory relief appropriate for the Classes as a whole.

9
10 **COUNT I**
11 **VIOLATION OF 47 U.S.C. § 227(c) AND 47 C.F.R. § 64.1200(d)**
12 ***(On Behalf of Plaintiff and the Internal Do-Not-Call Class)***

13 55. Plaintiff re-alleges and incorporates paragraphs 1 through 54 as if fully set forth
14 herein.

15 56. CVS initiated, or caused to be initiated on its behalf, calls in the form of text
16 messages for telemarketing purposes to Plaintiff and the Class at wireless telephone
17 numbers used for personal, family, or household purposes.

18 57. Plaintiff and the Class made clear company-specific requests not to receive further
19 telemarketing calls or text messages from CVS, including by replying STOP.

20
21 58. CVS failed to honor those requests within a reasonable time not exceeding ten
22 business days and failed to maintain and enforce the requests as required by 47
23 C.F.R. § 64.1200(d).
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1 59. CVS's failure to suppress Plaintiff's Subject Number after receiving and confirming
2 her STOP request demonstrates that CVS failed to institute or effectively implement
3 one or more required internal do-not-call procedures, including maintaining an
4 effective written policy, training personnel, recording do-not-call requests, and
5 honoring those requests.
6

7 60. To the extent CVS delegated transmission, opt-out processing, list maintenance,
8 National Do Not Call Registry screening, or suppression to a vendor or other third
9 party, CVS remains responsible for calls initiated on its behalf and for failures to
10 honor do-not-call requests.
11

12 61. Plaintiff and each Class member received more than one telephone-solicitation call
13 or text message within a twelve-month period by or on behalf of CVS in violation of
14 regulations prescribed under 47 U.S.C. § 227(c), including at least one message after
15 CVS was required to honor the request.
16

17 62. CVS's violations were knowing or willful because CVS and its systems received or
18 recorded the opt-out requests but nevertheless initiated or caused further
19 telemarketing messages.
20

21 63. Under 47 U.S.C. § 227(c)(5), Plaintiff and the Class are entitled to actual monetary
22 loss or \$500 for each violation, whichever is greater, and injunctive relief.
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24 64. Because CVS's violations were knowing or willful, Plaintiff and the Class are
25 entitled to an award of up to \$1,500 for each violation. 47 U.S.C. § 227(c)(5)(C).
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COUNT II
VIOLATION OF 47 U.S.C. § 227(c) AND 47 C.F.R. § 64.1200(c)(2)
(On Behalf of Plaintiff and the National Do Not Call Registry Class)

65. Plaintiff re-alleges and incorporates paragraphs 1 through 64 as if fully set forth herein.

66. CVS initiated, or caused to be initiated on its behalf, telephone solicitations in the form of text messages to Plaintiff and the Class at wireless telephone numbers used for personal, family, or household purposes.

67. The Subject Number had been registered on the National Do Not Call Registry since September 8, 2009, long before CVS sent the May 12, May 17, and July 26, 2026 solicitations.

68. Plaintiff did not provide prior express invitation or permission for the challenged solicitations and did not have an established business relationship with CVS during the relevant period. Any purported permission or relationship was independently terminated by Plaintiff's May 17, 2026 company-specific STOP request.

69. CVS initiated or caused more than one telephone solicitation to Plaintiff and each Class member within a twelve-month period while their residential telephone numbers were registered on the National Do Not Call Registry, in violation of 47 C.F.R. § 64.1200(c)(2).

70. CVS's violations were knowing or willful because it knew or should have known that the numbers were registered on the National Do Not Call Registry and failed to screen, suppress, or otherwise prevent the prohibited solicitations. As to Plaintiff, CVS also received and confirmed an express STOP request before sending the July 26 solicitation.

1 71. Under 47 U.S.C. § 227(c)(5), Plaintiff and the Class are entitled to actual monetary
2 loss or \$500 for each violation, whichever is greater, and injunctive relief.

3 72. Because CVS's violations were knowing or willful, Plaintiff and the Class are
4 entitled to an award of up to \$1,500 for each violation. 47 U.S.C. § 227(c)(5)(C).
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes,
8 respectfully requests that the Court enter judgment in her favor and against Defendant
9 and award the following relief:
10

- 11 a) An order certifying this action as a class action under Rule 23, appointing Plaintiff
12 as Class Representative, and appointing Plaintiff's counsel as Class Counsel;
13
14 b) Actual monetary loss or statutory damages of \$500 for each violation, whichever is
15 greater;
16
17 c) Treble damages of up to \$1,500 for each knowing or willful violation;
18
19 d) Injunctive and declaratory relief requiring CVS to honor company-specific do-not-
20 call requests, refrain from sending telephone solicitations to National Do Not Call
21 Registry numbers absent a lawful exception, and maintain compliant policies,
22 training, records, screening, suppression systems, and vendor controls;
23
24 e) Costs, expenses, and reasonable attorneys' fees to the extent permitted by law or
25 payable from any common fund, together with pre-judgment and post-judgment
26 interest; and
27
28 f) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff and the members of the proposed Classes demand a trial by jury on all issues so triable.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that CVS take affirmative steps to preserve all records and electronically stored information relevant to the allegations, including outbound text-message logs, inbound STOP messages, opt-out confirmations, National Do Not Call Registry screening records, suppression lists, consent and ExtraCare enrollment records, vendor contracts and instructions, campaign configurations, written do-not-call policies, training materials, and communications concerning the messages at issue.

Dated: September 23, 2026

Respectfully submitted,

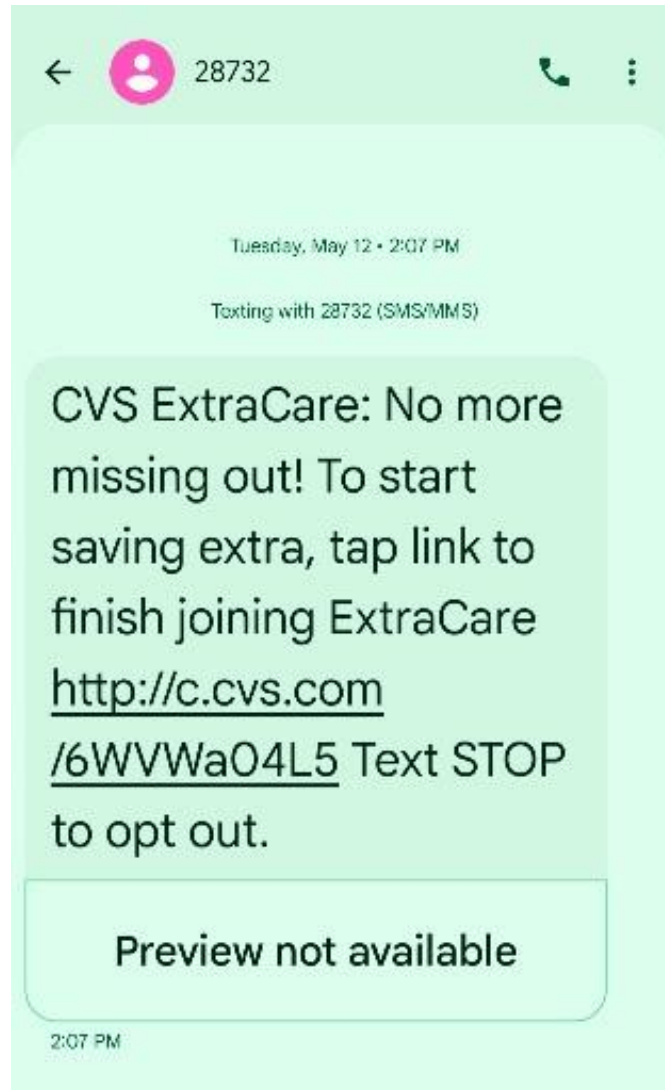
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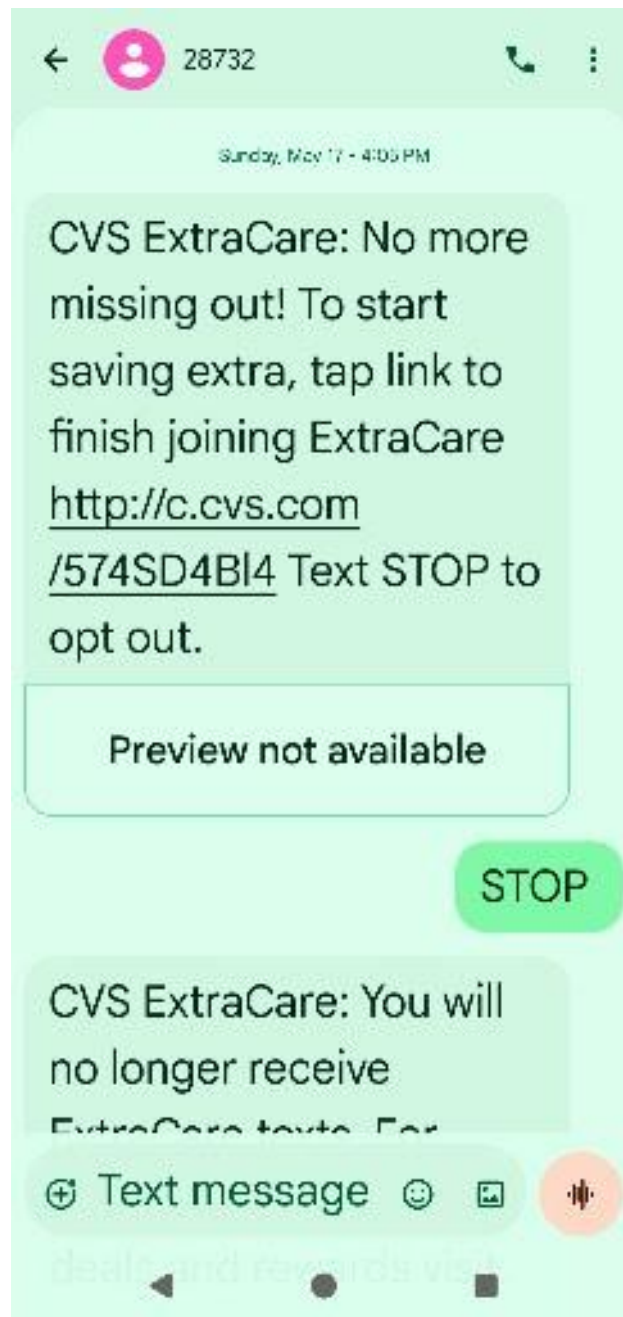
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EXHIBIT A

May 12, 2026 — Initial CVS ExtraCare Promotional Text



May 17, 2026 — Second CVS ExtraCare Promotional Text and STOP Request



May 17, 2026 — CVS Confirmation of the Opt-Out Request

CVS ExtraCare: You will
no longer receive
ExtraCare texts. For
information about your
deals and rewards visit.
www.cvs.com/extracare.
Text HELP for help.



Tap to load preview

July 26, 2026 — CVS ExtraCare Promotional Text After the Opt-Out Request

