

1 (A) an action based on a violation of this subsection or
2 the regulations prescribed under this subsection to enjoin such
3 violation,

4 (B) an action to recover for actual monetary loss from
5 such a violation, or to receive \$500 in damages for each such
6 violation, whichever is greater, or

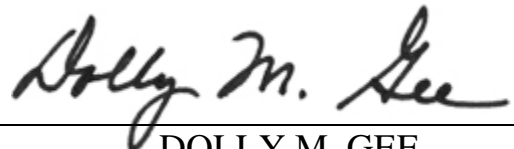
7 (C) both such actions.

8 47 U.S.C. § 227(b)(3). The Ninth Circuit has held that pursuant to section 227(b)(3),
9 “state courts have exclusive jurisdiction over a cause of action created by . . . the
10 Telephone Consumer Protection Act of 1991.” *Murphey v. Lanier*, 204 F.3d 911, 915
11 (9th Cir. 2000) (joining the Second, Third, Fourth, Fifth, and Eleventh Circuits in “the
12 somewhat unusual conclusion that state courts have exclusive jurisdiction over a cause of
13 action created by a federal statute” (internal quotations omitted)). It is axiomatic that if
14 this Court determines at any time that it lacks subject-matter jurisdiction, the Court must
15 dismiss the action. Fed. R. Civ. P. 12(h)(3).

16 Accordingly, Plaintiff is hereby ordered to show cause in writing why this action
17 should not be dismissed for lack of subject matter jurisdiction. Plaintiff shall file his
18 response to this Order to Show Cause (“OSC”) by September 3, 2010. Defendant may
19 file a response, if any, by September 10, 2010. The August 30, 2010 hearing on
20 Defendant’s Motion to Dismiss is vacated pending the Court’s ruling on the OSC and
21 shall be re-set by the Court if needed.

22 IT IS SO ORDERED.

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24 DATED: August 26, 2010

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27 DOLLY M. GEE
28 United States District Judge