

EXHIBIT 1

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12 *Attorneys for the Plaintiff and the Putative Classes*

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 BRIAN GLAUSER, individually and on  
16 behalf of all others similarly situated,  
17 **Plaintiff,**  
18  
19 v.  
20 TWILIO, INC., a Delaware corporation,  
GROUPME, INC., a Delaware corporation,  
21 **Defendants.**

Case No. 4:11-cv-02584-PJH

[Honorable Phyllis J. Hamilton]

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**Class Action**

**JURY TRIAL DEMANDED**

1 **FIRST AMENDED CLASS ACTION COMPLAINT**

2 1. Plaintiff Brian Glauser (“Plaintiff” or “Glauser”) brings this first amended  
3 class action complaint against Defendants Twilio, Inc. and GroupMe, Inc. to stop  
4 Defendants’ practice of making unsolicited text message calls to cellular telephones, and to  
5 obtain redress for all persons injured by their conduct. Plaintiff, for his first amended class  
6 action complaint, alleges as follows upon personal knowledge as to himself and his own acts  
7 and experiences, and, as to all other matters, upon information and belief, including  
8 investigation conducted by his attorneys.

9 **PARTIES**

10 2. Plaintiff Brian Glauser is a natural person domiciled in the State of Virginia.

11 3. Defendant Twilio, Inc. is a corporation incorporated and existing under the  
12 laws of the State of Delaware with its principal place of business located at 548 Market St  
13 #14510, San Francisco, California 94104. Twilio does business throughout the United  
14 States, including in the State of California and this District.

15 4. Defendant GroupMe, Inc. is a corporation incorporated and existing under the  
16 laws of the state of Delaware with its principal place of business located at 26 W 17th St  
17 New York, New York 10011. GroupMe does business throughout the United States,  
18 including in the State of California and this District.

19 **JURISDICTION AND VENUE**

20 5. The Court has subject matter jurisdiction over this action pursuant to 28  
21 U.S.C. § 1332 (d), because (a) at least one member of the putative class is a citizen of a state  
22 different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of  
23 interest and costs, and (c) none of the exceptions under that subsection apply to this action.

24 6. Venue is proper in this district under 28 U.S.C. § 1391 (a)(1-2) as Defendant  
25 Twilio resides in this District, and additionally proper because both Defendants transact  
26 business in this District, including soliciting consumers and entering into contracts with  
27 vendors.

1 **COMMON ALLEGATIONS OF FACT**

2 **A. Bulk SMS Marketing**

3 7. In recent years, marketers who have felt stymied by federal laws limiting  
4 solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative  
5 technologies through which to send bulk messages cheaply.

6 8. Bulk text messaging, or SMS marketing, has emerged as a new and direct  
7 method of communicating and soliciting consumer business. The term “Short Message  
8 Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use  
9 their cellular telephones to send and receive short text messages, usually limited to 160  
10 characters. An SMS message is a text message call directed to a wireless device through the  
11 use of the telephone number assigned to the device.

12 9. When an SMS message call is successfully made, the recipient’s cell phone  
13 rings, alerting him or her that a call is being received. As cellular telephones are inherently  
14 mobile and are frequently carried on their owner’s person, calls to cellular telephones,  
15 including SMS messages, may be received by the called party virtually anywhere worldwide.

16 **B. Defendants Make Text Message Calls to Consumers Who Do Not Want**  
17 **Them**

18 10. The newest evolution of text message marketing has taken the form of “group  
19 messaging” applications, such as Defendant GroupMe’s service, in which a single person or  
20 entity is able to create a “group,” and then request that Defendants transmit text message  
21 calls to dozens of people at once. Likewise, a group texting service allows all the recipients  
22 to respond to all other members of the group with a single message.

23 11. GroupMe introduced its service through its website, GroupMe.com, in or  
24 around August 2010. GroupMe is marketed as a “group texting” tool, allowing customers to  
25 request that GroupMe simultaneously transmit SMS text messages to large groups of people  
26 *en masse*, using one common cellular telephone number provided exclusively by Defendant  
27 Twilio.

28 12. To use the GroupMe service, a customer signs up by providing basic

1 information through the GroupMe website or mobile application, creates a “group” of up to  
2 twenty-four individuals, and provides the full names and cellular telephone numbers of each  
3 group member to Defendant GroupMe.

4 13. Group members are not aware that they have been added to a GroupMe  
5 texting group before they receive a text message from Defendants. Defendants do not seek to  
6 obtain consent of consumers that are added to a GroupMe texting group. Instead, GroupMe  
7 merely requires the group creator to represent that they have the consent of the individuals  
8 they intend to add to a group, which almost never happens.

9 14. A consumer’s participation in the group is opt-out, meaning that a consumer  
10 may be added to and kept in the group without authorization. Often times, however, a  
11 consumer who has been added to a group will continue to receive unauthorized text message  
12 calls even after they have attempted to opt out of a group.

13 15. Once all group members receive a message, they too can respond to everyone  
14 else in the group an unlimited number of times, creating an ongoing “chat room” effect of  
15 nearly constant text message calls. Because the messages come from an unknown number,  
16 and the group creator can easily input a fake name, the resulting chat room can be a chaotic  
17 storm of text messages in which people are both attempting to figure out what the group is,  
18 who the creator is, how they were made a part of the group, and how to stop it.

19 16. If a group member does not respond, he or she will eventually be removed  
20 from the group; however, GroupMe’s removal does not occur until a group member has  
21 received anywhere from fifteen to thirty messages, including at least four messages directly  
22 from GroupMe.

23 17. Defendant Twilio plays an essential role in the delivery, receipt and general  
24 transmission of each text message call from GroupMe. Without the technology, service, and  
25 expertise provided by Twilio, GroupMe would be unable to make the text message calls at  
26 issue in this case.

27 18. In particular, Twilio provides the application program interface, phone  
28

1 numbers, and equipment that transmits all text messages from GroupMe. As described by  
2 Twilio on its website, its “communications platform” allows SMS applications like GroupMe  
3 to transmit text messages with little effort and in complete reliance on Twilio’s equipment  
4 and technology. In consideration of its services, Twilio monetarily benefits from each text  
5 message sent by GroupMe.

6 19. Unlike common carriers, who have a general obligation to make their services  
7 available to the public without regard to the content of material that travels over their  
8 network, Twilio selectively enters into private contracts with third parties like GroupMe to  
9 transmit SMS text messages. Twilio solicits creators of SMS texting applications to utilize  
10 its communications platform, and is likewise able to refuse to transmit content in its sole  
11 discretion.

12 20. Twilio’s technology is specifically designed to transmit mass numbers of text  
13 messages from a single phone number or SMS short code. Indeed, Twilio markets its ability  
14 to send bulk text message advertisements on behalf of third parties, stating on its website that  
15 its service is “Great for applications that need to send marketing SMS messages” in “large  
16 volumes.”

17 21. Once a user creates a GroupMe texting group, Twilio maintains lists and/or  
18 databases of the recipient’s cell phone numbers that they use to direct GroupMe text  
19 messages to those individuals. Twilio is aware that members of GroupMe texting groups  
20 have no prior relationship with Twilio or GroupMe.

21 22. Twilio is able to monitor the nature and content of text messages that it  
22 transmits to cell phone numbers, including text message calls initiated by GroupMe. As a  
23 result, Twilio has knowledge of the content of the text message calls that it transmits to  
24 members of GroupMe texting groups, including text message calls advertising the GroupMe  
25 service and mobile application.

26 23. Despite its knowledge of the nature and content of text message calls from  
27 GroupMe, Twilio has taken no steps to prevent the transmission of unsolicited text messages

1 from GroupMe.

2 24. Accordingly, Twilio maintains a high degree of involvement in transmitting  
3 each text message call from GroupMe. Moreover, Twilio has actual notice of the content of  
4 the text message calls that it transmits from GroupMe, including text message calls  
5 advertising GroupMe's service and mobile application.

6 25. As a result of Defendants' software and application design, thousands of  
7 consumers receive text message calls from and through Defendant GroupMe's service that  
8 they neither consented to nor wanted.

9 **C. Defendants Harvest the Phone Numbers Submitted by Group Creators**  
10 **to Promote the GroupMe Service Through Text Spam**

11 26. Because Defendants have access to the phone numbers of individuals who are  
12 involuntarily added to texting groups and control the flow of messages, Defendants are able  
13 to transmit wireless spam for their own individual benefit to the thousands of phone numbers  
14 added by consumers who are creating GroupMe texting groups.

15 27. In conjunction with Defendant Twilio, Defendant GroupMe harvests all phone  
16 numbers added by group creators in order to independently transmit its own text message  
17 advertisements promoting its service and mobile application.

18 28. The moment a consumer creates a GroupMe texting group, but before the  
19 group creator actually tries to have GroupMe text anyone in the new group, every member of  
20 the group instantly receives two text message calls directly from GroupMe using a telephone  
21 number and equipment provided by Twilio. GroupMe causes and Twilio transmits these text  
22 message calls to consumers.

23 29. These text message calls include generic advertisements of GroupMe's  
24 service and mobile application (the "GroupMe Mobile App Text"). The GroupMe Mobile  
25 App Text contains a direct link to download the GroupMe mobile application.

26 30. The GroupMe Mobile App Text is sent directly by Defendants to every group  
27 member, and its transmission is exclusively under the control of Defendants.

1           **D.     Plaintiff's Experience with Defendants**

2           31.     On or about April 23, 2011, Plaintiff's cell phone rang, indicating that a text  
3 call was being received.

4           32.     The "from" field of such transmission was identified cryptically as 804-742-  
5 4986. The phone number 804-742-4986 is a dedicated telephone number owned and/or  
6 operated by Defendant Twilio, and provided by Twilio to Defendant GroupMe, which then  
7 transmits text messages *en masse* through devices known as modem banks and/or carrier  
8 gateways.

9           33.     The body of the first text message read:

10                                 Hi Brian Glauser, it's [group creator].

11   Welcome to GroupMe!

12   I just added you to "Poker" w/ [group member],  
13 [group member], [group member], [group member],  
14 [group member], [group member] & 3 more.

15   Text back to join the conversation.

16           34.     This text message call was made directly by Defendants and not initiated or  
17 consented to by Plaintiff or the group creator.

18           35.     Almost immediately after receiving the text message call alleged above,  
19 Plaintiff then received a second message, the GroupMe Mobile App Text, which read:

20   GroupMe is a group texting service.

21   Standard SMS rates may apply.

22   Get the app at <http://groupme.com/a> to chat for free.

23   Reply #exit to quit or #help for more.

24           36.     This text message call was made directly by Defendants for their own benefit  
25 and not initiated or consented to by Plaintiff or the group creator.

26           37.     Following these two text message calls, Plaintiff received a flurry of 7 other  
27 text message calls from GroupMe at the request of the other group members, during and after



1 which Plaintiff did not reply or otherwise interact with the texting group.

2 38. Eventually, Plaintiff received the following message directly from GroupMe:

3 Hey, are you there?

4 GroupMe is more fun when you participate.

5 We'll remove you soon unless you reply  
6 to the group or text #stay. Reply #exit to leave.

7 39. Thereafter, Plaintiff again did not reply or otherwise interact with the texting  
8 group. Plaintiff received at least five more messages from the group, until finally receiving a  
9 message from GroupMe stating:

10 We haven't heard from you, so we removed you  
11 from this group to be on the safe side.  
12 Don't worry though. You can always get back in  
13 by replying to this text.

14 40. At no time did Plaintiff consent to the receipt of the text message calls alleged  
15 above or any other such wireless spam text messages transmitted by or through Defendants.  
16 Plaintiff did not consent to or request to be made a part of the GroupMe group "Poker."  
17 Plaintiff had no reason to be in contact with Defendants and did not provide his cell phone  
18 number to GroupMe or Twilio.

19 41. Accordingly, Plaintiff was added to a group texting service, received fifteen  
20 text message calls, and eventually was removed from the group, entirely without his input or  
21 consent.

22 42. By effectuating these unauthorized text message calls, Defendants have  
23 caused Plaintiff and members of the Classes actual harm. In the present case, because of the  
24 nature of GroupMe's service, a consumer could be subjected to hundreds of text messages  
25 before having an opportunity to opt out and sometimes even after they have attempted to opt  
26 out.

27 43. In order to redress these injuries, Plaintiff, on behalf of himself and a  
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1 nationwide class of similarly situated individuals, brings suit under the Telephone Consumer  
2 Protection Act, 47 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits unsolicited  
3 voice and text calls to cell phones.

4 44. On behalf of two Classes, Plaintiff seeks an injunction requiring Defendants to  
5 cease all wireless spam activities and an award of statutory damages to the members of the  
6 Classes, together with costs and reasonable attorneys’ fees.

7 **CLASS ACTION ALLEGATIONS**

8 45. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure  
9 23(b)(2) and Rule 23(b)(3) on behalf of himself and two Classes defined as follows:

10 **The Automatic Opt-Out Class**

11 All persons who received one or more text messages from GroupMe who were  
12 automatically unsubscribed from a GroupMe group because they never opted-in.

13 **The GroupMe Mobile App Text Class**

14 All persons who received the GroupMe Mobile App Text, or a substantially  
15 similar text message call from GroupMe, that advertised GroupMe’s mobile  
16 application.

17 46. The following individuals are excluded from the Classes: (1) any Judge or  
18 Magistrate presiding over this action and members of their families; (2) Defendants,  
19 Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which  
20 Defendants or their parents have a controlling interest and their current or former employees,  
21 officers and directors; (3) Plaintiffs’ attorneys, (4) persons who properly execute and file a  
22 timely request for exclusion from the class; (5) the legal representatives, successors or  
23 assigns of any such excluded persons; and (6) persons whose claims against Defendants have  
24 been fully and finally adjudicated and/or released.

25 47. There are thousands of members of the Classes such that joinder of all  
26 members is impracticable.

27 48. Plaintiff’s claims are typical of the claims of all of the other members of the  
28

1 Classes. Plaintiff and each member of the Classes were affected in substantially the same  
2 way by Defendants' unlawful conduct of transmitting wireless spam.

3 49. Plaintiff will fairly and adequately represent and protect the interests of the  
4 other members of the Classes. Plaintiff has retained counsel with substantial experience in  
5 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to  
6 vigorously prosecuting this action on behalf of the members of the Classes, and have the  
7 financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to  
8 those of the other members of the Classes.

9 50. Absent a class action, most members of the Classes would find the cost of  
10 litigating their claims to be prohibitive, and will have no effective remedy. The class  
11 treatment of common questions of law and fact is also superior to multiple individual actions  
12 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and  
13 promotes consistency and efficiency of adjudication.

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

18 52. The factual and legal bases of Defendants' liability to Plaintiff and to the other  
19 members of the Classes are the same, resulting in injury to the Plaintiff and to all of the other  
20 members of the Classes as a result of the transmission of the wireless spam alleged herein.  
21 Plaintiff and the other members of the Classes have all suffered harm and damages as a result  
22 of Defendants' unlawful and wrongful conduct of transmitting wireless spam.

23 53. There are many questions of law and fact common to the claims of Plaintiff  
24 and the other members of the Classes, and those questions predominate over any questions  
25 that may affect individual members of the Classes. Common questions for the Classes  
26 include but are not limited to the following:  
27  
28

1 (a) Does the wireless spam transmitted by Defendants violate 47 U.S.C. §  
2 227?

3 (b) Are members of the Classes entitled to treble damages based on the  
4 willfulness of Defendants' conduct?

5 **FIRST CAUSE OF ACTION**  
6 **(Violation of 47 U.S.C. § 227)**  
7 **(On Behalf of Plaintiff and both Classes)**

8 54. Plaintiff incorporates by reference the foregoing allegations as if fully set  
9 forth herein.

10 55. Defendants made unsolicited text calls, including the text message calls  
11 referenced in paragraphs 31 through 42, to the wireless telephone numbers of all members of  
12 the Classes. Each such text message call was made using equipment and software  
13 maintained, operated, and/or provided in part by Defendant Twilio, that, upon information  
14 and belief, had the capacity to store or produce telephone numbers to be called, using a  
15 random or sequential number generator.

16 56. These text calls were made *en masse* and without the prior express consent of  
17 the Plaintiff and the other members of the Classes to receive such wireless spam. The text  
18 message calls included advertisements about GroupMe's service and mobile application that  
19 were written in an impersonal and generic manner and came from a phone number assigned  
20 solely to transmit such text message calls.

21 57. As detailed herein, Defendant Twilio played an essential role in the delivery  
22 of each text message call from Defendant GroupMe. Twilio had knowledge of the nature and  
23 content of text message calls from GroupMe and took no steps to prevent the transmission of  
24 the unsolicited text message calls.

25 58. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result  
26 of Defendants' conduct, the members of the Classes are each entitled to, under section  
27 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

28 59. Because Defendants had knowledge that Plaintiff and other members of the

1 Classes did not consent to the receipt of the aforementioned wireless spam, the Court should,  
2 pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages  
3 recoverable by the Plaintiff and the other members of the Classes.

4 WHEREFORE, Plaintiff Brian Glauser, on behalf of himself and the Classes, prays  
5 for the following relief:

- 6 1. An order certifying this case as a class action on behalf of the Classes  
7 as defined above; appointing Plaintiff Glauser as the representative of  
8 the Classes; and appointing his counsel as class counsel;
- 9 2. An award of actual and statutory damages;
- 10 3. An injunction requiring Defendants to cease all wireless spam  
11 activities, and otherwise protecting the interest of the Classes;
- 12 4. An award of reasonable attorneys' fees and costs; and
- 13 5. Such further and other relief the Court deems reasonable and just.

14  
15 **JURY DEMAND**

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

17 Dated: September 15, 2011

Respectfully submitted,

18 BRIAN GLAUSER, individually and on behalf  
19 of all others similarly situated,

20  
21 By:  /s/ Sean P. Reis \_\_\_\_\_  
22 Sean P. Reis  
23 EDELSON MCGUIRE LLP  
One of the Attorneys for Plaintiff

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8 and the Putative Classes

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