

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

IAN OLSEN; ADAM HANEY; SHARON
MOTLEY; and MEMARY LAROCK,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

CONTEXTLOGIC INC.,

Defendant.

Case No. 2019CH06737

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Ian Olsen, Adam Haney, Sharon Motley, and Memary LaRock, individually and on behalf of all others similarly situated, complain and allege as follows based on personal knowledge as to themselves, on the investigation of their counsel and the advice and consultation of certain third-party agents as to technical matters, and on information and belief as to all other matters:

NATURE OF ACTION

1. Plaintiffs bring this action for legal and equitable remedies to redress the actions of ContextLogic Inc. in transmitting unsolicited, autodialed SMS text message advertisements to Plaintiffs' cellular telephone numbers and the cellular telephone numbers of numerous other consumers across the country, in violation of the federal Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the Defendant and over this action pursuant to 735 ILCS 5/2-209 and 47 U.S.C. § 227, and in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant conducts substantial business in Illinois and committed the tortious acts complained of in substantial part in Illinois. Defendant directed numerous unsolicited, autodialed text message advertisements into Illinois, to cellular telephone numbers assigned area codes that correspond to geographic locations within Illinois, which were

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thereafter received in Illinois by Plaintiffs Olsen and Haney and numerous other unnamed Class members residing in Illinois, such that the conduct and resulting harm from which Plaintiffs' claims arise, on behalf of themselves and the Class, occurred in substantial part in Illinois.

3. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because the causes of action alleged by Plaintiffs, on behalf of themselves and the proposed class defined below, arose in substantial part from Defendant's conduct in Cook County, as Defendant conducts substantial business in Cook County, the text messages at issue were transmitted via a short code utilized to transmit messages in Cook County, and a substantial number of such text messages were received in Cook County, including by Plaintiff Olsen and numerous other unnamed class members whose cellular telephone numbers are assigned area codes that correspond to geographic locations in Cook County.

PARTIES

4. Plaintiff Ian Olsen is, and at all times mentioned herein was, an individual and a "person" as defined by 47 U.S.C. § 153(39) and a citizen and resident of Illinois. Plaintiff Olsen is, and at all times mentioned herein was, the subscriber of the cellular telephone number (630) ***-9633 (the "9633 Number"). The 9633 Number is, and at all times mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

5. Plaintiff Adam Haney is, and at all times mentioned herein was, an individual and a "person" as defined by 47 U.S.C. § 153(39) and a citizen and resident of Illinois. Plaintiff Haney is, and at all times mentioned herein was, the subscriber of the cellular telephone number (217) ***-4083 (the "4083 Number"). The 4083 Number is, and at all times mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

6. Plaintiff Sharon Motley is, and at all times mentioned herein was, an individual and a "person" as defined by 47 U.S.C. § 153(39) and a citizen and resident of Alabama. Plaintiff Motley is, and at all times mentioned herein was, the subscriber of the cellular telephone number

(334) ***-6672 (the “6672 Number”). The 6672 Number is, and at all times mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

7. Plaintiff Memary LaRock is, and at all times mentioned herein was, an individual and a “person” as defined by 47 U.S.C. § 153(39) and a citizen and resident of Washington. Plaintiff LaRock is, and at all times mentioned herein was, the subscriber of the cellular telephone number (360) ***-5824 (the “5824 Number”). The 5824 Number is, and at all times mentioned herein was, assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

8. Defendant ContextLogic Inc. is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(10). Defendant owns and operates several web and app-based e-commerce businesses, including its flagship marketplace Wish.com. Defendant maintains, and at all times mentioned herein maintained, its corporate headquarters in San Francisco, California, and conducts substantial business with consumers located in Cook County, Illinois.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

9. In 1991, Congress enacted the TCPA to address consumer complaints regarding certain abusive telemarketing practices. The TCPA prohibits, inter alia, the use of automated telephone equipment, or “autodialers,” to make any call, including sending a text message, to a wireless number absent an emergency or the “prior express consent” of the party called. And in the case of calls or text messages that constitute “advertisements” or “telemarketing”, as defined by applicable regulations, the TCPA requires the “prior express written consent” of the called party before initiating such calls or texts via an autodialer.

10. According to findings by the Federal Communication Commission (“FCC”), which is vested with authority to issue regulations implementing the TCPA, autodialed calls and texts are prohibited because such transmissions are a greater nuisance and invasion of privacy than live solicitation calls and receiving and addressing such calls and texts can be costly and inconvenient. The FCC also recognized that wireless customers are charged for such incoming calls and texts whether they pay in advance or after the minutes or texts are used.

11. One of the most prevalent bulk advertising methods employed by companies today involves the use of “Short Message Services” (or “SMS”), which is a system that allows for the transmission and receipt of short text messages to and from wireless telephones. According to a recent study conducted by the Pew Research Center, “Spam isn’t just for email anymore; it comes in the form of unwanted text messages of all kinds – from coupons to phishing schemes – sent directly to user’s cell phones.”¹

12. SMS text messages are directed to a wireless device through a telephone number assigned to the device. When an SMS text message is successfully transmitted, the recipient’s wireless phone alerts the recipient that a message has been received. Because wireless telephones are carried on their owner’s person, SMS text messages are received virtually anywhere in the world.

13. Unlike more conventional advertisements, SMS message advertisements can actually cost their recipients money because wireless phone users must pay their wireless service providers either for each text message they receive or incur a usage allocation deduction to their text messaging or data plan, regardless of whether the message is authorized.

14. Moreover, the transmission of an unsolicited SMS text message to a cellular device is distracting and aggravating to the recipient; intrudes upon the recipient’s seclusion; wastes a quantifiable amount of available data on the recipient’s cellular device, thereby reducing its data storage capacity; temporarily reduces the available computing power and application processing speed on the recipient’s device; diminishes the available battery power, and thus shortens the battery life, of the recipient’s cellular device; and requires expending a quantifiable amount of energy (i.e., electricity) to recoup the battery power lost as a result of receiving such a message.

¹ Amanda Lenhart, Cell Phones and American Adults: They Make Just as Many Calls, but Text Less than Teens, Pew Research Center (2010), <http://www.pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx> (last visited May 28, 2019).

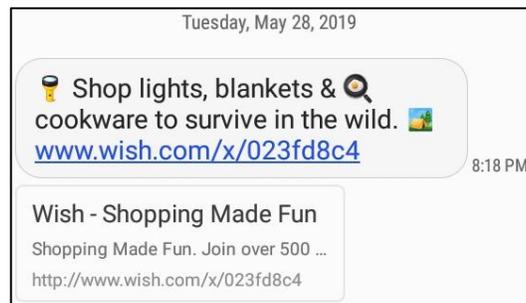
FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

15. During the applicable statutory period, Defendant transmitted or caused to be transmitted, by itself or through an intermediary or intermediaries, numerous SMS text message advertisements to Plaintiff Olsen's 9633 Number, Plaintiff Haney's 4083 Number, Plaintiff Motley's 6672 Number, and Plaintiff LaRock's 5824 Number, as well as to the cellular telephone numbers of the proposed Class members, without first obtaining any of these individuals' prior express written consent to be sent such text messages.

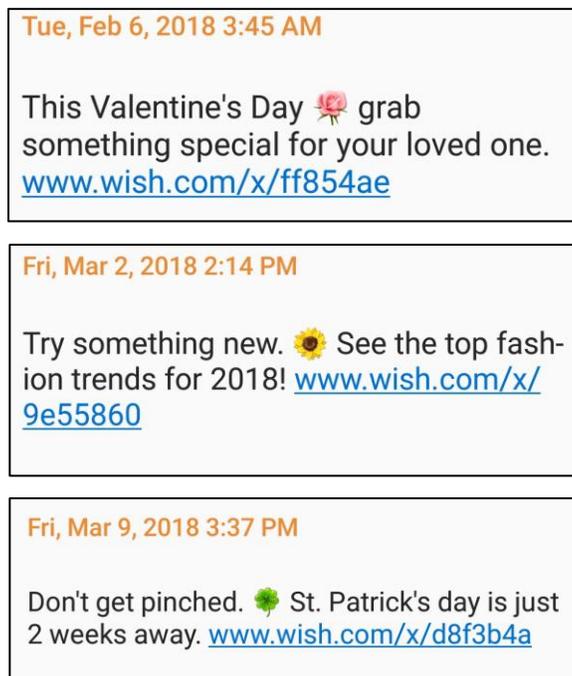
16. For example, in or about September and October 2018 (and at various other times during the statutory period as well), Defendant transmitted or caused to be transmitted several SMS text message advertisements to Plaintiff Olsen's 9633 Number without his prior express written consent, examples of which are depicted below in screenshots extracted from his cellular device:



17. Similarly, in or about May 2019 (and at various other times during the statutory period as well), Defendant transmitted or caused to be transmitted several SMS text message advertisements to Plaintiff Haney's 4083 Number without his prior express written consent, an example of which is depicted below in a screenshot extracted from his cellular device:

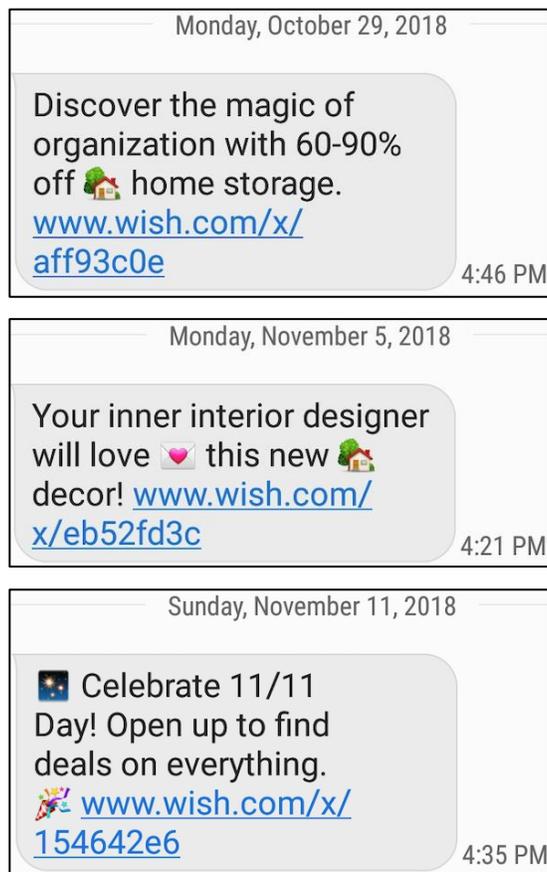


18. Likewise, in or about February and March 2018 (and at various other times during the statutory period as well), Defendant transmitted or caused to be transmitted several SMS text message advertisements to Plaintiff Motley's 6672 Number without her prior express written consent, examples of which are depicted below in screenshots extracted from her cellular device:



19. As a final example, in or about October and November 2018 (and at various other times during the statutory period as well), Defendant transmitted or caused to be transmitted

several SMS text message advertisements to Plaintiff LaRock's 5824 Number without her prior express written consent, examples of which are depicted below in screenshots extracted from her cellular device:



20. The sources of the SMS text message advertisements sent by Defendant to each of the Plaintiffs' cellular telephone numbers was at times "89293", which is an SMS short code number leased by Defendant or Defendant's agent(s) or affiliate(s) and used for operating Defendant's SMS text message marketing program, and was at other times "8558947420", which is a 10-digit long code number also leased by Defendant or Defendant's agent(s) or affiliate(s) and also used for operating Defendant's SMS text message marketing program.

21. Because Plaintiffs are alerted by their cellular devices, by auditory or visual means, whenever they receive an SMS text message, the unsolicited SMS text messages that Defendant transmitted to Plaintiffs' cellular telephone numbers invaded their privacy and intruded upon their

seclusion upon receipt. Plaintiffs became distracted and aggravated as a result of receiving Defendant's unsolicited SMS text messages.

22. All telephone contact by Defendant or affiliates, subsidiaries, or agents of Defendant to Plaintiffs' cellular telephone numbers and to the cellular telephone numbers of the members of the class defined below occurred via an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(b)(1)(A).

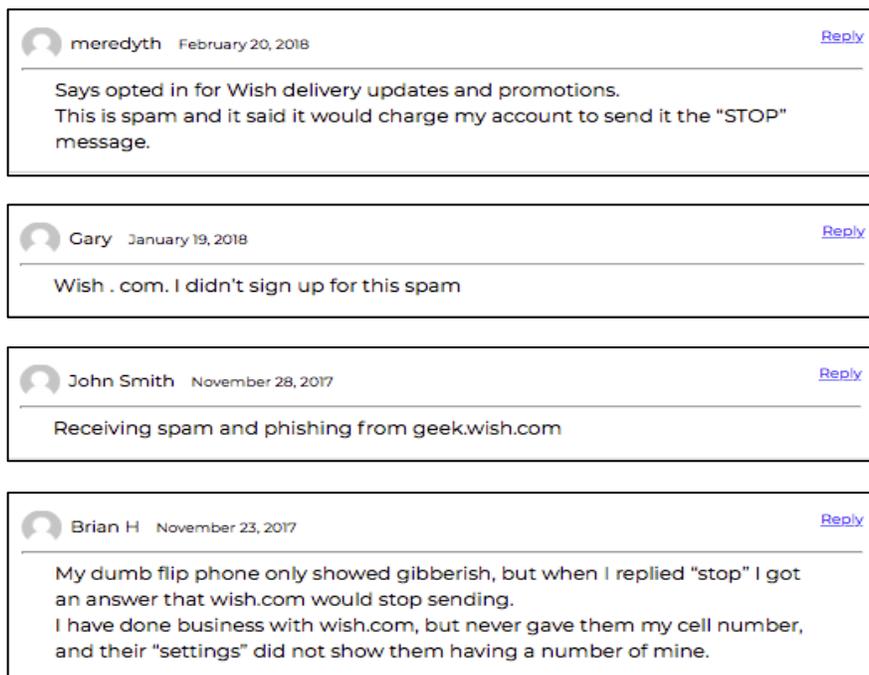
23. Specifically, Defendant utilized an "automatic telephone dialing system" to transmit the unsolicited SMS text messages at issue to Plaintiffs' cellular telephone numbers and to the cellular telephone numbers of the members of the class defined below because such messages were sent from telephone numbers used to message consumers *en masse*; because Defendant's automated dialing equipment includes features substantially similar to a predictive dialer, inasmuch as it is capable of making numerous calls or texts simultaneously (all without human intervention); and because the hardware and software used by Defendant to send such messages have the capacity to store, produce, and dial random or sequential numbers, and to receive and store lists of telephone numbers and to then dial such numbers, *en masse*, in an automated fashion and without human intervention. And indeed, Defendant actually transmitted the text messages at issue in this case to Plaintiffs and all other putative class members in an automated fashion and without human intervention, with hardware and software that received and stored lists of telephone numbers to be dialed, and which then dialed such numbers automatically.

24. During the time period relevant to this action, the publicly-accessible "Terms of Use" page on Defendant's Wish.com website has stated that Defendant sends "recurring autodialed marketing texts from or on behalf of" Wish.com.² Defendant's website has also stated that "[s]tandard data and message rates" may be charged to the recipients of such messages.³

² "Terms of Use," Wish.com, available at <https://www.wish.com/terms> (last accessed April 6, 2018).

³ "Privacy Policy," Wish.com, available at https://www.wish.com/privacy_policy (last accessed April 6, 2018).

25. Numerous consumers across the country have voiced complaints online in response to receiving Defendant's unsolicited SMS text message advertisements, as shown below in a sampling of screenshots from the website shortcodes.org (on the webpage accessible at the URL <http://shortcodes.org/uncategorized/89293-short-code/>), which were taken on April 6, 2018:



26. The complained of SMS text messages that Defendant sent to Plaintiff Olsen's 9633 Number, Plaintiff Haney's 4083 Number, Plaintiff Motley's 6672 Number, Plaintiff LaRock's 5824 Number, and the cellular telephone numbers of the proposed class members constituted telephone solicitations as defined by 47 U.S.C. § 227(a)(4) and/or advertisements as defined by 47 C.F.R. 64.1200(f)(1). Indeed, during the applicable class period, Defendant has characterized the text messages it sends as "promotional communications . . . about [Wish.com], about [its] products and/or services," and has stated that it sends such messages for "marketing purposes."⁴

27. None of the Plaintiffs, nor any of the unnamed members of the class defined below, provided Defendant their "prior express written consent" to permit Defendant or any affiliate, subsidiary, or agent of Defendant to transmit SMS text messages to their cellular telephone

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Id.

numbers by means of an “automatic telephone dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

28. Class Definition. This action is brought as a Class Action pursuant to 735 ICLS Section 5/2-801. Plaintiffs propose the following “Class,” defined as follows, subject to modification by the Court as required:

All persons within the United States who, from April 8, 2014 up to and including the date on which the Court grants class certification, used or subscribed to a wireless or cellular service and were sent one or more text message(s) promoting the sale of goods or services by ContextLogic Inc. or an affiliate, subsidiary, or agent of ContextLogic Inc.

29. Defendant (and its employees and agents) and counsel for Plaintiffs are excluded from the Class.

30. Plaintiffs reserve the right to modify the definition of the Class (or to add one or more subclasses), as necessary and at the appropriate stage of the proceedings.

31. Plaintiffs and all Class members have been impacted and harmed by the acts of Defendant or its affiliates, agents, or subsidiaries acting on its behalf.

32. This Class Action Complaint seeks injunctive relief and monetary damages on behalf of the Plaintiffs and the members of the Class.

33. This action may properly be brought and maintained as a class action because the Class satisfies the numerosity, typicality, adequacy, commonality, predominance, and superiority requirements.

34. Upon application by Plaintiffs’ counsel for certification of the Class, the Court may also be requested to utilize and certify subclasses in the interests of manageability, justice, or judicial economy.

35. Numerosity. The number of persons within the Class is substantial, believed to amount to millions of persons dispersed throughout the United States. It is, therefore, impractical to join each member of the Class as a named plaintiff, as required by 735 ILCS 5/2-801(1).

Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation.

36. Typicality. While residing in the United States, each of the Plaintiffs received, on a device assigned to wireless or cellular service to which they used or subscribed, at least one SMS text message promoting the sale of goods or services that was sent by or on behalf of Defendant. All of Defendant's text messages were sent via the same dialing technology, which qualifies as an "automatic telephone dialing system" within the meaning of the TCPA. None of the Plaintiffs, and none of the unnamed members of the Class, provided Defendant their "prior express written consent" to authorize Defendant's transmission of such text messages to their cellular telephones, as required by the TCPA. Consequently, the claims of the Plaintiffs are typical of the claims of the members of the Class, and Plaintiffs' interests are consistent with and not antagonistic to those of the other Class members they seek to represent. Plaintiffs and all members of the Class have been impacted by, and face continuing harm arising out of, Defendant's TCPA-violative misconduct as alleged herein.

37. Adequacy. As Class representatives, the Plaintiffs have no interests adverse to, or which conflict with, the interests of the absent members of the Class, and are able to fairly and adequately represent and protect the interests of such a Class, as required by 735 ILCS 5/2-801(3). Plaintiffs have raised viable statutory claims of the type reasonably expected to be raised by members of the Class and will vigorously pursue such claims. If necessary, Plaintiffs may seek leave to amend this Class Action Complaint to add additional Class representatives or assert additional claims.

38. Competency of Class Counsel. Plaintiffs have retained and are represented by experienced, qualified, and competent counsel committed to prosecuting this action, as required by 735 ILCS 5/2-801(3). Counsel are experienced in handling complex class action litigation,

including actions brought to redress class-wide violations of the TCPA and other similar data privacy and consumer protection statutes.

39. Commonality and Predominance. There are well-defined common questions of fact and law that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. *See* 735 ILCS 5/2-801(2). These common legal and factual questions, which do not vary from Class member to Class member and may be determined without reference to the individual circumstances of any class member, include (but are not limited to) the following:

- a) Whether Defendant or affiliates, subsidiaries, or agents of Defendant transmitted advertising or telemarketing text messages to Plaintiffs' and Class members' cellular telephones;
- b) Whether such text messages were sent using an "automatic telephone dialing system";
- c) Whether Defendant can meet its burden to show that it obtained the requisite "prior express written consent" (as defined by 47 C.F.R. 64.1200(f)(8)) to send the text messages complained of, assuming such an affirmative defense is raised;
- d) Whether the complained of conduct was knowing or willful;
- e) Whether Defendant or affiliates, subsidiaries, or agents of Defendant should be enjoined from engaging in such conduct in the future.

40. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as required by 735 ILCS 5/2-801(4), because individual litigation of the claims of all Class members is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory

judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiffs anticipate no difficulty in the management of this action as a class action. Class wide relief is essential to compel compliance with the TCPA. The interest of Class members in individually controlling the prosecution of separate claims is small because the statutory damages in an individual action for violation of the TCPA are small. Management of these claims is likely to present significantly fewer difficulties than are presented in many class actions because the text messages at issue are all automated and none of the Class members expressly consented in writing to authorize the transmission of such text messages to their cellular telephones. The Class members can be readily located and notified of this class action through Defendant's records, the records of its agent(s), and, if necessary, the records of cellular telephone providers.

41. Additionally, the prosecution of separate actions by individual Class members may create a risk of multiple adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to such adjudications, thereby substantially impairing or impeding the ability of such nonparty Class members to protect their interests. The prosecution of individual actions by Class members could further establish inconsistent results and/or establish incompatible standards of conduct for Defendant.

42. Defendant or any affiliates, subsidiaries, or agents of Defendant have acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate. Moreover, Plaintiffs are informed and believe, and thereupon allege, that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

CLAIM FOR RELIEF
VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
(47 U.S.C. § 227)

43. Plaintiffs incorporate by reference paragraphs 1-42 of this Class Action Complaint as if fully stated herein.

44. Each of the Plaintiffs and each member of the Class received, on a device assigned to cellular or wireless telephone service to which they used or subscribed, at least one text message promoting the sale of goods or services that was sent by Defendant or on Defendant's behalf via an "automatic telephone dialing system." Each such text message constituted "advertising" or "telemarketing" material within the meaning of the TCPA and its implementing regulations. None of the Plaintiffs nor any other member of the Class provided Defendant with their "prior express written consent" to receive such text messages.

45. Defendant's use of an automatic telephone dialing system to transmit text message advertisements to telephone numbers assigned to a cellular or wireless telephone service, including to Plaintiff Olsen's 9633 Number, Plaintiff Haney's 4083 Number, Plaintiff Motley's 6672 Number, Plaintiff LaRock's 5824 Number, and the numbers of all members of the proposed Class, absent any of the Plaintiffs' or the Class members' "prior express written consent," as set forth above, constituted violations of the TCPA by Defendant, including but not limited to violations of 47 U.S.C. § 227(b)(1)(A).

46. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A), Plaintiffs and all Class members are entitled to, and do seek, injunctive relief prohibiting such TCPA-violative conduct in the future pursuant to 47 U.S.C. § 227(b)(3)(A).

47. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A), Plaintiffs and all Class members are also entitled to, and do seek, an award of statutory damages of \$500.00 for each such violation committed by Defendant (or \$1,500.00 to the extent it is established that such violations were committed by Defendant willfully or knowingly) pursuant to 47 U.S.C. § 227(b)(3)(B).

48. Plaintiffs and Class members also seek an award of attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ian Olsen, Adam Haney, Sharon Motley, and Memary LaRock pray for relief and judgment in their favor, as follows:

A. Statutory damages of \$500.00 (or \$1,500.00 for any willful or knowing violations) for Plaintiffs and members of the Class for each of Defendant’s violations of 47 U.S.C. § 227(b)(1)(A) pursuant to 47 U.S.C. § 227(b)(3);

B. Injunctive relief prohibiting such violations of the TCPA in the future pursuant to 47 U.S.C. § 227(b)(3)(A);

C. An Order certifying this action to be a proper class action, establishing the Class proposed herein, finding that Plaintiffs are proper representatives of the Class, and appointing the law firm representing Plaintiffs as counsel for the Class.

D. An award of reasonable attorneys’ fees and costs.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the Class, hereby demand a trial by jury on all claims so triable.

Dated: June 3, 2019

Respectfully submitted,

By: /s/ Eugene Y. Turin

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* *Pro Hac Vice* Application Forthcoming

Counsel for Plaintiffs and Putative Class