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14 Maria Thrasher

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 Maria Thrasher,

19 Plaintiff,

20 vs.

21 GrubHub Inc.,

22 Defendant.

Case No.:

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

**1. THE TELEPHONE CONSUMER
PROTECTION ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Maria Thrasher (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against GrubHub Inc. (hereafter “Defendant”) and alleges as
3 follows:

4 **JURISDICTION**

5 1. This action arises out of Defendant’s repeated violations of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

7 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3) and 28
8 U.S.C. § 1331.

9 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
10 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
11 where Defendant transacts business in this district.

12 **PARTIES**

13 4. Plaintiff is an adult individual residing in Orange, California, and is a
14 “person” as defined by 47 U.S.C. § 153(39).

15 5. Defendant is a business entity located in Chicago, Illinois, and is a
16 “person” as the term is defined by 47 U.S.C. § 153(39).

17 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

18 6. The TCPA regulates, among other things, the use of automatic telephone
19 dialing systems (“ATDS”).

20 7. Specifically, 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an ATDS
21 to a cellular phone without prior express consent by the person being called or an
22 emergency purpose.

23 8. 47 U.S.C. § 227(a)(1) defines an ATDS as equipment having the
24 capacity—

25 (A) to store or produce telephone numbers to be called, using a random or
26 sequential number generator; and

27 (B) to dial such numbers.
28

1 9. According to the Federal Communications Commission (“FCC”), an
2 ATDS “encompass[es] any equipment that stores telephone numbers in a database and
3 dials them without human intervention.” *Nunes v. Twitter, Inc.*, No. 14-cv-02843-VC,
4 2014 WL 6708465, at *1 (N.D. Cal. Nov. 26, 2014); *Fields v. Mobile Messengers*
5 *Am., Inc.*, No. 12-cv-05160-WHA, 2013 WL 6774076, at *3 (N.D. Cal. Dec. 23,
6 2013) (concluding there were genuine disputes of material fact regarding whether
7 messages were sent using an ATDS where plaintiffs alleged that the equipment used
8 functioned similarly to a predictive dialer in that it received numbers from a computer
9 database and dialed those numbers without human intervention.”).

10 10. “Human intervention” means significant human involvement in the
11 dialing of a number, and any human involvement with phone number compilation is
12 irrelevant. *See In re Rules and Regulations Implementing the Telephone Consumer*
13 *Protection Act of 1991*, CG Docket No. 02–278, Report and Order, 18 FCC Rcd.
14 14014, ¶ 132 (2003) (“2003 FCC Order”) (“The basic function of [ATDS], however,
15 has not changed—the capacity to dial numbers without human intervention.”
16 (emphasis added and omitted)); *Moore v. Dish Network L.L.C.*, 57 F. Supp. 3d 639,
17 654 (N.D.W. Va. 2014) (“[I]t is irrelevant under the FCC’s definition of a predictive
18 dialer that humans are involved in the process of creating the lists that are entered into
19 the Campaign Manager software.”).

20 11. Moreover, the FCC has made clear that it is a system’s capacity to dial
21 randomly or sequentially that determines whether it is an ATDS, not its “present
22 ability.” *In re Rules & Regulations Implementing the Telephone Consumer Protection*
23 *Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, FCC 15-72, at ¶
24 15 (July 10, 2015) (“2015 FCC Order”); *see also Meyer v. Portfolio Recovery Assocs.*,
25 *LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012) (“[T]he clear language of the TCPA
26 ‘mandates that the focus be on whether the equipment has the capacity to store or
27 produce telephone numbers to be called, using a random or sequential number
28

1 generator.” (quoting *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 (9th
2 Cir. 2009))). In other words, “even when the equipment presently lack[s] the
3 necessary software, it nevertheless [may have] the requisite capacity to be an
4 autodialer.” 2015 FCC Order, at ¶ 16.

5 12. A piece of equipment can possess the requisite “capacity” to satisfy the
6 statutory definition of “autodialer” even if, for example, it requires the addition of
7 software to actually perform the functions described in the definition. 2015 FCC
8 Ruling, at ¶ 18.

9 13. The FCC has clarified that text messages qualify as “calls” under the
10 TCPA

11 We affirm that under the TCPA, it is unlawful to make any call using an
12 automatic telephone dialing system or an artificial or prerecorded
13 message to any wireless telephone number. Both the statute and our
14 rules prohibit these calls, with limited exceptions, “to any telephone
15 number assigned to a paging service, cellular telephone service,
16 specialized mobile radio service, or other common carrier service, or any
17 service for which the party is charged.” This encompasses both voice
18 calls and text calls to wireless numbers including, for example, short
19 message service (SMS) calls, provided the call is made to a telephone
20 number assigned to such service.

21 2003 FCC Order, at ¶ 165; *see Satterfield*, 569 F.3d at 953.

22 ALLEGATIONS APPLICABLE TO ALL COUNTS

23 14. Defendant is an American online and mobile prepared food ordering and
24 delivery platform that connects diners with local restaurants.

25 15. At all times mentioned herein where Defendant communicated with any
26 person via telephone, such communication was done via Defendant’s agent,
27 representative, or employee.

28 16. At all times mentioned herein, Plaintiff utilized a cellular telephone
service and was assigned the following telephone number: 626-XXX-6396 (hereafter
“Number”).

1 17. Within the last year, Defendant contacted Plaintiff by way of text
2 messages sent to Plaintiff's Number.

3 18. Defendant placed text messages from number "303-68," an abbreviated
4 telephone number known as an SMS short code licensed and operated by Defendant
5 or one of its agents on its behalf.

6 19. Defendant also placed text messages from number +1 (312) 345-6639, a
7 number owned and operated by Defendant or one of its agents on its behalf.

8 20. The text messages were placed using an automatic telephone dialing
9 system ("ATDS").

10 21. Defendant's text messages to Plaintiff were template-based. They
11 consisted of a notification that a restaurant was preparing Plaintiff's order, an
12 estimated delivery time, and a link to Defendant's app.

13 22. Other text messages consisted of delivery time updates.

14 23. Other text messages consisted of a notification that Plaintiff's order was
15 left outside of the door.

16 24. All of Defendant's text messages were template-based and were
17 impersonal to Plaintiff. She had not ordered anything from Defendant or from any
18 restaurant. Indeed, she had not provided Defendant with her Number, nor did she
19 provide her prior express consent to receive Defendant's autodialed text messages.

20 25. Plaintiff has no business relationship with Defendant and never requested
21 by an agreement or otherwise that she be contacted.

22 26. In an effort to stop the text messages, Plaintiff called Defendant
23 repeatedly and advised Defendant that she was receiving text messages in error and
24 directed Defendant to cease all communications to her Number.

25 27. In a further effort to stop the text messages, Plaintiff replied to
26 Defendant's text messages with "STOP."
27
28



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