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

TERRY DOW, individually, and on behalf of
all other similarly situated,

Plaintiff,

v.

DOORDASH, INC.,

Defendant.

Case No. 3:21-cv-01122

**CLASS ACTION COMPLAINT FOR
DAMAGES**

**VIOLATION OF THE TELEPHONE
CONSUMER PROTECTION ACT
("TCPA") PURSUANT TO 47 U.S.C. §227.**

JURY TRIAL DEMANDED

NOW COMES TERRY DOW ("Plaintiff"), on behalf of himself and all others similarly situated by and through his undersigned attorney, on behalf of himself and all others similarly situated, complaining of DOORDASH, INC., ("Defendant") as follows:

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of himself and numerous other individuals pursuant to the seeking redress for violations of the Telephone Consumer Protection Act ("TCPA") pursuant to 47 U.S.C. §227.

2. Subject matter jurisdiction is conferred upon this Court by the TCPA, and 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant is headquartered in this District and the wrongful conduct giving rise to this case emanated from this

1 District.

2 **PARTIES**

3 4. Plaintiff is a consumer and natural person over 18-years-of-age who, at all times
4 relevant, is a “person” as defined by 47 U.S.C. §153(39).

5 5. Defendant provides a service that allows consumers to place food orders from
6 restaurants and to have those orders delivered by contracted DoorDash drivers who are known as
7 Dashers.

8 6. Defendant acted through its agents, employees, officers, members, directors, heirs,
9 successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all
10 times relevant to the instant action.

11 7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

12 **FACTS SUPPORTING CAUSES OF ACTION**

13 8. Around November 2020, Plaintiff began receiving numerous unsolicited and
14 unwanted text messages and phone calls from Defendant to his cellular phone number, (360)
15 XXX-4804.

16 9. At all times relevant, Plaintiff was the sole subscriber, owner, possessor, and
17 operator of his cellular telephone number ending in 4804. Plaintiff is and has always been
18 financially responsible for this telephone and its services.

19 10. Defendant’s text messages and calls were regarding deliveries for a costumer
20 named “Vein Yang.”

21 11. Plaintiff was perplexed, as he does not know a “Vein Yang.” Moreover, Plaintiff
22 never used the Door Dash app nor does he have it installed on his cellular phone.

23 12. Around December 2020, Plaintiff answered a call from Defendant. During this call,
24 Plaintiff explained that the text messages and phone calls were disturbing to him, that he did not
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1 have Door Dash, and that he was not “Vein Yang.”

2 13. Despite Plaintiff informing Defendant he was not “Vien Yang,” Defendant
3 continued to text and call Plaintiff.

4 14. Frustrated, Plaintiff answered several calls and reiterated that he was not “Vien
5 Yang” and was the wrong party.

6 15. Notwithstanding Plaintiff informing Defendant on several occasions that he was
7 the wrong party, Defendant sent or caused to be sent numerous text messages and automated calls
8 to Plaintiff’s cellular phone between November 2020 and the present day, often with multiple text
9 messages and calls being sent within an hour.

10 16. Defendant intentionally harassed and abused Plaintiff on numerous occasions by
11 texting multiple times, which such frequency as can be reasonably expected to harass.

12 **Class Allegations**

13 17. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2)
14 and 23(b)(3) and seek certification of the following Class:

15 **Unsolicited Text Message Class:** All persons in the United States
16 who from four years prior to the filing of this action (1) Defendant
17 (or an agent acting on behalf of Defendant) texted, (2) for
18 substantially the same reason Defendant texted Plaintiff, (3) after
19 they informed Defendant they were the wrong party, (4) using
20 automated messaging.

21 18. The following individuals are excluded from the Class: (1) any Judge or Magistrate
22 presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents,
23 successors, predecessors, and any entity in which either Defendant or its parents have a controlling
24 interest and their current or former employees, officers and directors; (3) Plaintiff’s attorneys; (4)
25 persons who properly execute and file a timely request for exclusion from the Class; (5) the legal
26 representatives, successors or assigns of any such excluded persons; and (6) persons whose claims
27 against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the
28

1 need to amend the Class definitions following appropriate discovery.

2 19. **Numerosity:** On information and belief, there are hundreds, if not thousands
3 members of the Classes such that joinder of all members is impracticable.

4 20. **Commonality and Predominance:** There are many questions of law and fact
5 common to the claims of the Plaintiff and the Class, and those questions predominate over any
6 questions that may affect individual members of the Class. Common questions for the Class
7 include, but are not necessarily limited to the following:

8 (a) whether Defendant DoorDash placed automated text messages to consumers after
9 being instructed they were the contacting the wrong party;

10 (b) whether the Defendant engaged in placed automated text messages without
11 implementing adequate internal policies and procedures for maintaining an internal do not
12 contact list;

13 (c) whether Defendant's conduct constitutes a violation of the TCPA;

14 (d) whether members of the Classes are entitled to treble damages based on the willfulness
15 of Defendant's conduct.

16 21. **Adequate Representation:** Plaintiff will fairly and adequately represent and
17 protect the interests of the Classes, and has retained counsel competent and experienced in class
18 actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no
19 defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this
20 action on behalf of the members of the Classes, and have the financial resources to do so. Neither
21 Plaintiff nor his counsel have any interest adverse to the Classes.

22 22. **Appropriateness:** This class action is also appropriate for certification because
23 Defendant has acted or refused to act on grounds generally applicable to the Classes and as a
24 whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards
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1 of conduct toward the members of the Classes and making final class-wide injunctive relief
2 appropriate. Defendant's business practices apply to and affect the members of the Classes
3 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect
4 to the Classes as wholes, not on facts or law applicable only to Plaintiff. Additionally, the damages
5 suffered by individual members of the Classes will likely be small relative to the burden and
6 expense of individual prosecution of the complex litigation necessitated by Defendant's actions.
7 Thus, it would be virtually impossible for the members of the Classes to obtain effective relief
8 from Defendant's misconduct on an individual basis. A class action provides the benefits of single
9 adjudication, economies of scale, and comprehensive supervision by a single court.
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11 **COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**

12 23. Plaintiff restates and realleges paragraphs 1 through 22 as though fully set forth
13 herein.

14 24. Defendant repeatedly sent or caused to be sent frequent non-emergency text
15 messages, including but not limited to the messages referenced above, to Plaintiff's cellular
16 telephone number using a telephone facsimile machine ("TFM") or transmitting text without
17 Plaintiff's prior consent in violation of 47 U.S.C. §227 (b)(1)(C).
18

19 25. The TCPA defines TFM as "equipment which has the capacity...to transcribe text
20 or images, or both from paper into an electronic signal and to transmit that signal over a regular
21 telephone line." 47 U.S.C. §227(a)(3).
22

23 26. Alternatively, Defendant sent these texts an automated telephone dialing system
24 ("ATDS") in violation of 47 U.S.C. § 227(b)(1)(iii). The TCPA, under 47 U.S.C. § 227(a)(1),
25 defines an ATDS as "equipment which has the capacity...to store or produce telephone numbers
26 to be called, using a random or sequential number generator; and to dial such numbers."
27

28 27. Defendant used an ATDS in connection with its communications directed towards

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