

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (SBN 178444)
Alex Tomasevic (SBN 245598)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: craig@nicholaslaw.org
Email: alex@nicholaslaw.org

HIRALDO P.A.

Manuel S. Hiraldo, Esq.
(*pro hac vice* to be filed)
401 E. Las Olas Boulevard, Suite 1400
Ft. Lauderdale, Florida 3330
Tel: (954) 400-4713
Email: mhiraldo@hirdolaw.com

KIRKLAND LAW LLC

Jonathan M. Kirkland, Esq.
(*pro hac vice* to be filed)
One Galleria Blvd Suite 1900,
Metairie, Louisiana 70001
Tel: (504) 370-9077
Email: jmk@kirkland.lw.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NAZRIN MASSARO, on behalf of
herself and all others similarly
situated,

Plaintiff,

vs.

BEYOND MEAT, INC., and
PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

Defendants.

CASE NO.: '20CV0510 AJB MSB

CLASS ACTION

**COMPLAINT FOR
COMPENSATORY, STATUTORY
AND OTHER DAMAGES, AND
INJUNCTIVE RELIEF**

Plaintiff Nazrin Massaro brings this action on behalf of herself and all others similarly situated against Defendants Beyond Meat, Inc., (“Beyond Meat”), and People for the Ethical Treatment of Animals, Inc., (“PETA”). Plaintiff alleges, on information and belief, except for information based on personal knowledge, as follows:

INTRODUCTION

1
2 1. This is a putative class action under the Telephone Consumer Protection
3 Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”), arising from Defendants’ violations of the
4 TCPA

5 2. Defendant Beyond Meat is a publicly traded company that develops and
6 sells alternative animal food products made from protein isolate, rice and bean
7 proteins, and various plant extracts.

8 3. Defendant PETA is a non-profit animal rights organization.

9 4. To promote Defendant Beyond Meat’s products, Defendants engage in
10 unsolicited text message advertising with no regard for consumers’ privacy rights.

11 5. Upon information and belief, Defendants caused thousands of text
12 messages to be placed to the cellular telephones of Plaintiff and Class Members,
13 causing them injuries.

14 6. Through this action, Plaintiff seeks injunctive relief to halt Defendants’
15 unlawful conduct. Plaintiff also seeks statutory damages on behalf of herself and the
16 Class Members, as defined below, and any other available legal or equitable remedies
17 resulting from the illegal actions of Defendants.

PARTIES

18
19 7. Plaintiff is, and at all times relevant hereto was, an individual and a
20 “person” as defined by 47 U.S.C. § 153(39), a citizen and resident of San Diego
21 County, California, and the subscriber and/or sole user of the cellular telephone
22 number (858) ***-9991 (the “9991 Number”).

23 8. Defendant Beyond Meat is a corporation organized and existing under
24 the laws of the State of Delaware with its principal place of business at 119 Standard
25 Street, El Segundo, CA 90245.

26 9. Defendant PETA is a non-profit corporation organized and existing
27 under the laws of the State of Virginia with its principal place of business at 501 Front
28 Street, Norfolk, VA 23510.

1 prerecorded voice; (3) without the recipient's prior express consent. 47 U.S.C. §
2 227(b)(1)(A).

3 18. The TCPA further prohibits: (1) any person from initiating a call to any
4 residential telephone line; (2) using an artificial or prerecorded voice; (3) without the
5 recipient's prior express consent. 47 U.S.C. § 227(b)(1)(B).

6 19. The TCPA defines an "automatic telephone dialing system" ("ATDS")
7 as "equipment that has the capacity - (A) to store or produce telephone numbers to
8 be called, using a random or sequential number generator; and (B) to dial such
9 numbers." 47 U.S.C. § 227(a)(1).

10 20. The TCPA exists to prevent communications like the ones described
11 within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744
12 (2012).

13 21. In an action under the TCPA, a plaintiff must show only that the
14 defendant "called a number assigned to a cellular telephone service using an
15 automatic dialing system or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*,
16 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

17 22. The Federal Communications Commission ("FCC") is empowered to
18 issue rules and regulations implementing the TCPA. According to the FCC's
19 findings, calls in violation of the TCPA are prohibited because, as Congress found,
20 automated or prerecorded telephone calls are a greater nuisance and invasion of
21 privacy than live solicitation calls, and such calls can be costly and inconvenient. The
22 FCC also recognized that wireless customers are charged for incoming calls whether
23 they pay in advance or after the minutes are used.

24 23. In 2012, the FCC issued an order further restricting automated
25 telemarketing calls, requiring "prior express written consent" for such calls. *See In*
26 *the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
27 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

28

1 24. To obtain express written consent for telemarketing calls, a defendant
2 must establish that it secured the plaintiff's signature in a form that gives the plaintiff
3 a "clear and conspicuous disclosure" of the consequences of providing the requested
4 consent....and [the plaintiff] having received this information, agrees unambiguously
5 to receive such calls at a telephone number the [plaintiff] designates." *In re Rules &*
6 *Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830,
7 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

8 25. The TCPA regulations promulgated by the FCC define "telemarketing"
9 as "the initiation of a telephone call or message for the purpose of encouraging the
10 purchase or rental of, or investment in, property, goods, or services." 47 C.F.R. §
11 64.1200(f)(12). In determining whether a communication constitutes telemarketing,
12 a court must evaluate the ultimate purpose of the communication. *See Golan v.*
13 *Veritas Entm't, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

14 26. "Neither the TCPA nor its implementing regulations 'require an explicit
15 mention of a good, product, or service' where the implication of an improper purpose
16 is 'clear from the context.'" *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d
17 913, 918 (9th Cir. 2012)).

18 27. "'Telemarketing' occurs when the context of a call indicates that it was
19 initiated and transmitted to a person for the purpose of promoting property, goods, or
20 services." *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii) & 47 C.F.R.
21 § 64.1200(f)(12)); *In re Rules and Regulations Implementing the Telephone*
22 *Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL
23 21517853, at *49).

24 28. The FCC has explained that calls motivated in part by the intent to sell
25 property, goods, or services are considered telemarketing under the TCPA. *See In re*
26 *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
27 *1991*, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003). This is true whether call recipients
28



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