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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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JAMIE SMITH,	:	
<i>on behalf of herself and all others similarly</i>	:	
<i>situated,</i>	:	
	:	Case No.
Plaintiff,	:	
	:	<b>CLASS ACTION COMPLAINT</b>
- against -	:	
	:	
LYFT, INC.,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	
-----x		

Plaintiff JAMIE SMITH (hereinafter “Plaintiff” or “Plaintiff SMITH”), on behalf of herself and all others similarly situated, by her undersigned attorneys, as for her Complaint against the Defendant, LYFT, INC. (“Defendant LYFT” or “LYFT”), alleges the following:

**NATURE OF ACTION**

1. This action is brought by Plaintiff SMITH on behalf of herself and all consumers in the United States who have received unsolicited and unconsented-to commercial text messages to their mobile phones from Defendant in violation of the Telephone Consumer Protection Act 47 U.S.C. § 227 et seq.

## **JURISDICTION AND VENUE**

2. The Court has federal question jurisdiction over this action under 28 U.S.C. § 1331 because this action arises out of a violation of federal law - 7 U.S.C. § 227(b). *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 132 S. Ct. 740 (2012).

3. Venue is proper in this District under 28 U.S.C § 1391 because Defendant's violation of the Telephone Consumer Protection Act (TCPA) took place in this District, where Plaintiff SMITH received an automated text message to his phone.

## **PARTIES**

### ***Plaintiff***

4. Plaintiff SMITH resides in Kings County.

### ***Defendants***

5. Defendant LYFT is a company that develops and markets a mobile app offering ridesharing and other transportation services. It is a Delaware limited liability company with a principal place of business at 185 Berry Street, San Francisco, CA 94107 and an address for service of process at c/o CT Corporation System, 28 Liberty Street, New York, NY 10005.

## **FACTUAL ALLEGATIONS**

### **The Telephone Consumer Protection Act**

6. The Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, was enacted by Congress in 1991 and is implemented by the Federal Communications Commission ("FCC"). The TCPA makes it "unlawful for any person... to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice... to any telephone number assigned to a paging service, cellular telephone service... or any service for which the called party

is charged for the call...” 47 U.S.C. § 227(b)(1)(A)(iii).

7. “Prior express content” requires:

an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

47 C.F.R. § 64.1200(f)(8)

8. In addition, the written agreement must include a clear and conspicuous disclosure informing the signer that:

By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice;

§ 64.1200(f)(8)(i)(A)

and

The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

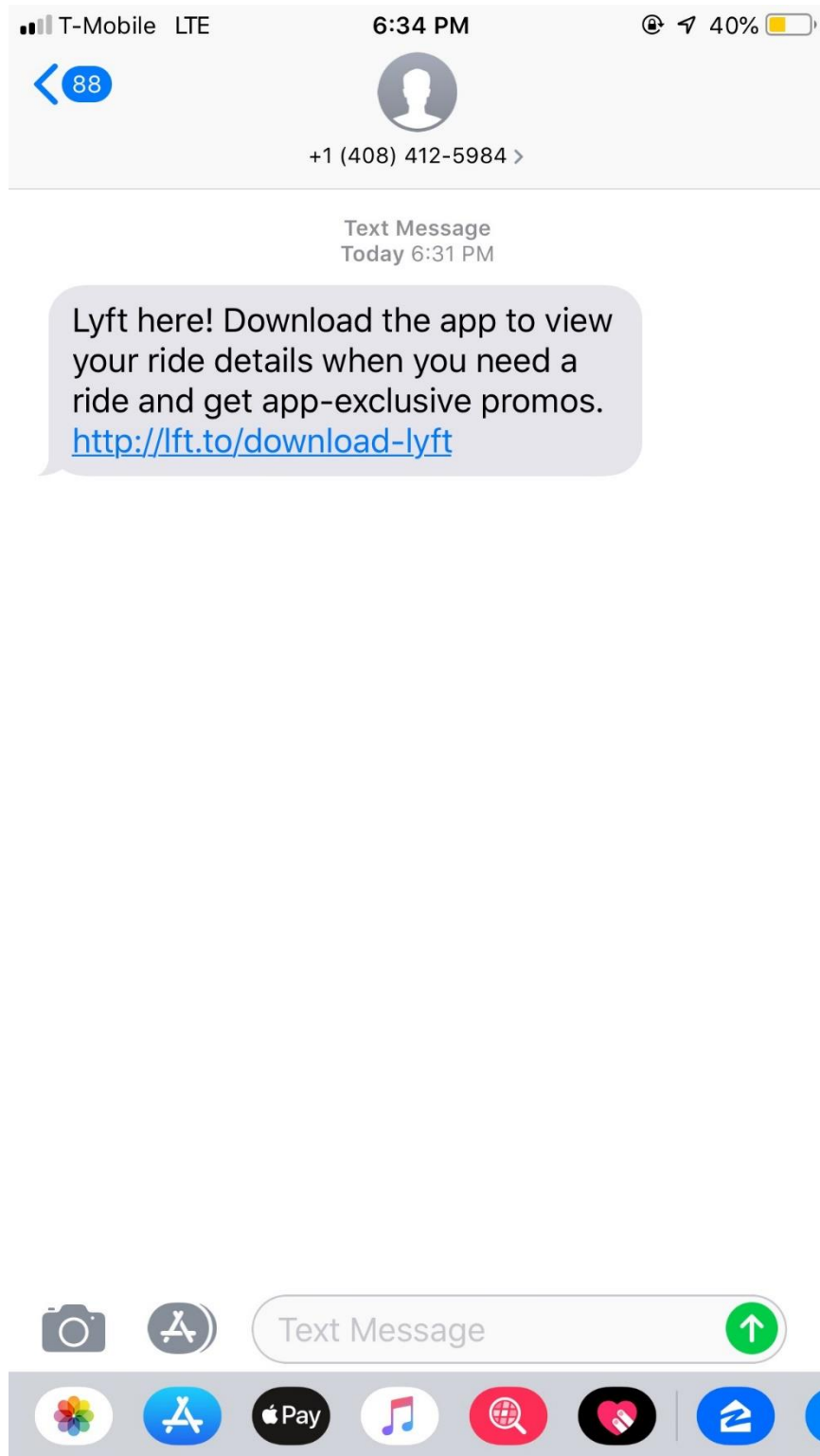
§ 64.1200(f)(8)(i)(B)

9. In its June 18, 2015 Declaratory Ruling and Order (“2015 TCPA Order”), the FCC reaffirmed its longstanding position that text messages qualify as “calls” under the TCPA: “... the Commission in 2003 determined that the TCPA applies to SMS texts. Thus, we find no uncertainty on this use...” ¶107.

### **Defendants Violated the TCPA**

10. Plaintiff has had no association at all with Defendant. Plaintiff did not give Defendant her contact information or her consent to be sent automated text messages.

Nevertheless, on October 1, 2020, Plaintiff received the following text from Defendant promoting its products and services:



11. Defendant sent similar unsolicited marketing texts using an automated telephone dialing system to other similarly situated persons, who likewise never consented to receiving them.

12. The text messages sent to Plaintiff SMITH were unwanted, annoying, and a nuisance. Plaintiff SMITH was expecting important messages but had to open and unlock her phone to view Defendant's invasive message. The message was disruptive and diminished Plaintiff's enjoyment of her phone. Such non-financial injuries suffice to support standing under Article III of the Constitution. *See Melito v. Experian Mktg. Solutions, Inc.*, 923 F.3d 85, 88 (2<sup>nd</sup> Cir. 2019) ("The principal question we are tasked with deciding is whether Plaintiffs' receipt of the unsolicited text messages, sans any other injury, is sufficient to demonstrate injury-in-fact. We hold that it is."); *Van Patten v Vertical Fitness Group, LLC*, 847 F.3d 1037(9th Cir. 2017) ("Unsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA need not allege any additional harm beyond the one Congress has identified.") (internal quotes and citation omitted).

13. Courts have recognized and the general and impersonal nature of the text Defendant sent Plaintiff are telltale signs that an autodialer has been used. *See Kazemi v. Payless Shoesource, Inc.*, 09-cv-5142, 2010 U.S. Dist. LEXIS 27666, at \*6-7 (N.D. Cal. Mar. 12, 2010) ("plaintiff's description of the received messages as being ... scripted in an impersonal manner and sent en masse supports a reasonable inference that the text messages were sent using an ATDS"); *Abbas v. Selling Source, LLC*, 09-cv-3413, 2009 U.S. Dist. LEXIS 116697, at \*12 (N.D. Ill. Dec. 14, 2009) ("the text of the SMS message Abbas allegedly received clearly suggests that it is from an institutional sender without any personalization"); *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165, 1171 (N.D. Cal. 2010) ("The messages were advertisements written in an impersonal

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