



3. The TCPA regulates, among other things, the use of auto-dialers. Specifically, the TCPA prohibits the use of auto-dialers to make any call to a cellular telephone number in the absence of an emergency or the prior express consent of the person being called. 47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added).

4. The TCPA defines ATDS as “equipment that has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227 (a)(1).

5. The FCC is empowered to issue rules and regulations implementing the TCPA. The FCC has clarified that text messages qualify as “calls” under the TCPA, affirming that:

under the TCPA, it is unlawful to make any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. Both the statute and our rules prohibit these calls, with limited exceptions, “to any telephone number assigned to a paging service, cellular service, or any service for which the party is charged.” **This encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service.**

*In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order (“2003 Order”), 18 FCC Rcd. 14014, 14115 (July 3, 2003) (emphasis added); *see Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 269 n.2 (3rd Cir. 2013).

6. The FCC has further clarified that, except for calls made by tax-exempt nonprofit organizations or health care messages, any telephone call using an automatic telephone dialing system that includes or introduces an advertisement or constitutes telemarketing must have prior express written consent as provided at 47 C.F.R. § 64.1200(f)(8) to be compliant with the TCPA. 47 C.F.R. § 64.1200(a)(2). (emphasis added). The FCC defines “telemarketing” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. § 64.1200(f)(12).

7. The FCC has found that automated or prerecorded calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they can pay in advance or after the minutes are used. *2003 Order*, 18 FCC Rcd. 14014, 14115.

8. The TCPA also prohibits telemarketers from making telephone solicitations to persons who have listed their telephone numbers on the National Do Not Call Registry, a database established by the FCC in 2003 to allow consumers to exclude themselves from telemarketing calls unless they consent to receive the calls in a signed, written consent.

9. Consumers who do not want to receive telemarketing calls may indicate their preference by registering their telephone numbers on the National Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2). TCPA regulation 47 C.F.R. § 64.1200(c) provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government.”

10. These registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. *Id.*

11. Because a telephone subscriber listed on the Registry must take an affirmative step to register his or her number, a telemarketer who wishes to call a person listed on the Registry must take a similarly affirmative step, and must obtain the registrant’s signed, written agreement to be contacted by the telemarketer. *Id.* § 64.1200(c)(2)(ii). The written agreement must also include the telephone number to which the calls may be placed. *Id.*

12. A person whose number is on the Registry and has received more than one telephone solicitation within any twelve-month period by or on behalf of the same entity in

violation of the TCPA, can sue the violator and seek the greater of actual damages or \$500, a figure that may be trebled for willful or knowing violations. 47 U.S.C. § 227(c)(5).

13. Plaintiff, on behalf of himself and all others similarly situated, brings this case as a class action asserting claims against Defendant under the TCPA.

14. Plaintiff is informed and believes, and upon such information and belief avers, that this action is based upon a common nucleus of operative facts because the unsolicited automated text messages at issue were and are being sent in the same or similar manner. This action is based on the same legal theory, namely liability under the TCPA.

15. This action seeks relief expressly authorized by the TCPA: (a) injunctive relief enjoining Defendant from sending unsolicited automated text messages without prior express consent; (b) injunctive relief enjoining Defendant from sending unsolicited automated text messages that includes or introduces an advertisement or constitutes telemarketing without prior express written consent; and (c) an award of statutory damages in the minimum amount of \$500 for each violation of the TCPA, and, in the event of finding a willful or knowing violation, to have such damages trebled, as provided by § 227(b)(3) of the Act.

### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant has its principal place of business in this district.

### **PARTIES**

18. Plaintiff is, and at all times mentioned herein was, a citizen and resident of Illinois. Plaintiff is the owner of a sports bar and grill (Pap's Café, Inc.), located in Mount Prospect, Illinois.

19. Defendant, MyPizza Technologies, Inc., also known as Slice, is a company headquartered in New York, New York.

20. Defendant provides online and mobile pizza ordering software and is the creator and owner of the app, Slice. Slice allows users to connect with local pizzerias and place orders for pickup or delivery. On information and belief, Defendant solicits independent pizzerias to participate in the app and sell their items and other items suggested by Defendant to users of the app. Slice allows users of the app to save money through its exclusive deals and charges pizzerias less for the services it provides.<sup>1</sup>

### **FACTS**

21. On or about February 12, 2020, Plaintiff received a text message on his personal cellular telephone suggesting that he should add Valentine's Day Specials, like heart shaped pizzas, to his menu and requested Plaintiff to email Defendant. A screenshot of the February 12 text is attached hereto as Exhibit A at 1.

22. On or about March 4, 2020, Plaintiff received a second text message from Defendant on the same cellular telephone stating that it has a "March Madness" deal for his shop. The text stated that Plaintiff could add this item to its menu by replying "yes" and further stated that while Defendant would not be covering the costs of the deal, it would heavily promote it. A screenshot of the March 4 text is attached hereto as Exhibit A at 1.

23. On or about June 30, 2020, Plaintiff received a third text from Defendant on the same cellular telephone regarding Defendant's new "Camp Slice" summer promotion. In the text, Defendant requested Plaintiff to add the "Camp Slice" deal to his menu by July 3 and to "check

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<sup>1</sup> Information obtained from Defendant's website, [www.slicelife.com](http://www.slicelife.com), last visited July 7, 2020.

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