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6

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 JOAN SPENCER-RUPER,
12 individually and on behalf of all
13 others similarly situated,

14 Plaintiff,

15 v.

16 MY MIXTAPEZ, INC. D/B/A MY
MIXTAPEZ, DUENAS MOBILE
17 APPLICATIONS LLC D/B/A
VUZIQ, AND D/B/A MY
18 MIXTAPEZ, JUAN CARLOS
DUENAS, RICKY DUENAS, AND
19 DANNY DUENAS,

20 Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

21 **CLASS ACTION COMPLAINT**
22

23 Plaintiff Joan Spencer-Ruper, individually and on behalf of all others similarly
24 situated, brings this Class Action Complaint to secure redress for violations of the
25 Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, resulting from
26 repeated text messages made by or behalf of Defendants to the cellular telephones of
27 Plaintiff and others using an automatic telephone dialing system. Plaintiff alleges as
28

1 follows upon personal knowledge as to herself and her own acts and experiences, and,
2 as to all other matters, upon information and belief.

3 **PARTIES**

4 1. Plaintiff Joan Spencer-Ruper is a citizen of the State of California and
5 resides in Orange County, California.

6 2. Defendant My Mixtapez, Inc. d/b/a My Mixtapez, is a Florida
7 corporation and has its principal place of business at 30063 SW 157th Place,
8 Homestead, FL 33033.

9 3. Defendant Duenas Mobile Applications LLC d/b/a MyMixTapez and
10 d/b/a VUZIQ, is a Florida limited liability and has its principal office at 30063 SW
11 157th Place, Homestead, FL 33033.

12 4. My Mixtapez, Inc., is a subsidiary of DMA.

13 5. Defendant Juan Carlos Dueñas is Co-Founder and CEO of My Mixtapez,
14 Inc., and, on information and belief, resides at 30063 SW 157th Place, Homestead, FL
15 33033.

16 6. He is CEO of Duenas Mobile Applications LLC.

17 7. Defendant Ricky Dueñas is Co-Founder and CFO of My Mixtapez, Inc.,
18 and, on information and belief, resides at 30063 SW 157th Place, Homestead, FL
19 33033.

20 8. He is COO of Duenas Mobile Applications LLC.

21 9. Defendant Danny Dueñas is Co-Founder and VP of My Mixtapez, Inc.,
22 and, on information and belief, resides at 30063 SW 157th Place, Homestead, FL
23 33033.

24 10. He is CFO of Duenas Mobile Applications LLC, as well as its registered
25 agent.

26 11. The Dueñas Defendants are brothers and, on information and belief,
27 control or are involved in the marketing activities of their My Mixtapez, Inc.

28

1 **JURISDICTION AND VENUE**

2 12. This Court has federal question subject matter jurisdiction pursuant to 28
3 U.S.C. § 1331 and 47 U.S.C. § 227.

4 13. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2),
5 because a substantial part of the events or omissions giving rise to the claims in this
6 case occurred in this District.

7 14. The Court has personal jurisdiction over Defendants because they
8 conduct business in this state and have committed tortious acts within this state related
9 to the sending of unlawful text messages into this state.

10 15. Neither My Mixtapez, Inc., nor Duenas Mobile Applications LLC
11 registered with California Secretary of State to transact business in California;
12 however, the website <https://mymixtapez.com/> (last visited Mar. 18, 2020), lists the
13 following locations above the email address and telephone number for “My
14 Mixtapez”: “Atlanta • Los Angeles • Miami • Goiânia.”

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

16 16. The TCPA, passed into law in 1991, regulates and restricts the use of an
17 automatic telephone dialing system (ATDS).

18 17. “[T]he term automatic telephone dialing system means equipment which
19 has the capacity—(1) to store numbers to be called or (2) to produce numbers to be
20 called, using a random or sequential number generator—and to dial such numbers.”
21 *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1045 (9th Cir. 2018), *cert.*
22 *dismissed*, 139 S. Ct. 1289 (2019).

23 18. The TCPA protects consumers from unwanted text messages and calls
24 and that are made with an ATDS.

25 19. Specifically, 47 U.S.C. § 227(b)(1)(A) provides:

26
27 (1) **Prohibitions** It shall be unlawful for any person within the United
28 States, or any person outside the United States if the recipient is
within the United States—

1
2 (A) to make any call (other than a call made for emergency purposes
3 or made with the prior express consent of the called party) using
4 any automatic telephone dialing system . . . (iii) to any telephone
5 number assigned to a paging service, cellular telephone service,
6 specialized mobile radio service, or other radio common carrier
7 service, or any service for which the called party is charged for the
8 call.

9 20. The Federal Communications Commission (FCC), which is empowered
10 to issue rules and regulations implementing the TCPA, has issued rulings and clarified
11 that in order to obtain an individual’s consent, a clear, unambiguous, and conspicuous
12 written disclosure must be provided to the individual. *See* 2012 FCC Order, 27 FCC
13 Rcd. at 1839 (“requiring prior written consent will better protect consumer privacy
14 because such consent requires conspicuous action by the consumer—providing
15 permission in writing—to authorize autodialed or prerecorded telemarketing calls”).

16 21. Further, the FCC has issued rulings and clarified that consumers are
17 entitled to the same consent-based protections for text messages as they are for calls to
18 wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th
19 Cir. 2009) (FCC has determined that text message falls within meaning of “to make
20 any call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d
21 727, 734 (N.D. Ill. 2014) (noting defendant bears burden of showing that it obtained
22 plaintiff’s prior express consent before sending her text message).

23 22. According to findings by the FCC, such calls are prohibited because, as
24 Congress found, automated or prerecorded telephone calls are a greater nuisance and
25 invasion of privacy than live solicitation calls, and such calls can be costly and
26 inconvenient. The FCC also recognized that wireless customers are charged for
27 incoming calls whether they pay in advance or after the minutes are used. *See Rules
28 and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG
Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

1 23. The FCC has “repeatedly acknowledged the existence of vicarious
2 liability under the TCPA.” *See Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878
3 (9th Cir. 2014) (citing *In re Joint Petition Filed by Dish Network, LCC*, 28 FCC. Rcd.
4 6574, 6574 (2013)). Principles of apparent authority and ratification may also provide
5 a basis for vicarious seller liability for violations of section 227(b). *See Thomas v.*
6 *Taco Bell Corp.*, 582 F. App’x 678 (9th Cir. 2014) (citing 28 F.C.C. Rcd. at 6590
7 n.124). A ratification occurs when the benefits of the purportedly unauthorized acts
8 are accepted with knowledge of material facts demonstrating the intent to adopt the
9 unauthorized arrangement. *Kristensen v. Credit Payment Servs., Inc.*, 879 F.3d 1010,
10 1014 (9th Cir. 2018).

11 24. The TCPA provides for statutory damages of \$500 to \$1,500 per
12 violation of Section 227(b) of the TCPA and of the implementing regulation, 47
13 C.F.R. § 64.1200. *See* 47 U.S.C. § 227(b)(3).

14 25. Specifically, the TCPA’s damages provision states,

15 (3) **Private right of action** A person or entity may, if otherwise permitted
16 by the laws or rules of court of a State, bring in an appropriate court of that
17 State—

18 (A) an action based on a violation of this subsection or the
19 regulations prescribed under this subsection to enjoin such violation,

20 (B) an action to recover for actual monetary loss from such a
21 violation, or to receive **\$500 in damages for each such violation**,
22 whichever is greater, or

23 (C) both such actions.

24 47 U.S.C. § 227(b)(3)(A)-(C) (second emphasis added).

25 26. If the Court finds that Defendants “willfully or knowingly” violated
26 Section 227(b) “or the regulations prescribed under this subsection,” the Court may
27 increase the award amount up to threefold, i.e., \$1,500 per violation of the statute and
28 per violation of the regulation. 47 U.S.C. § 227(b)(3); *see Lary v. Trinity Physician*

1 *Fin. & Ins. Servs.*, 780 F.3d 1101, 1106 (11th Cir. 2015) (holding that district court
2 erred in limiting damages to one violation per call; “the statute allows a person to
3 recover ‘\$500 in damages for each’ ‘violation of this subsection’”; “Section 227(b)(1)
4 has no language limiting the recovery to \$500 per ‘call’ or ‘fax’”).

5 27. A “violation of the TCPA is a concrete, de facto injury.” *Van Patten v.*
6 *Vertical Fitness Group, LLC*, 847 F.3d 1037 (9th Cir. 2017).

7 **FACTS**

8 28. Defendants, directly or through other persons acting on their behalf,
9 conspired to, agreed to, contributed to, assisted with, or otherwise caused the wrongful
10 acts and omissions, including the dissemination of the text messages that are the
11 subject matter of this Complaint.

12 29. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

13 30. Defendants are each a “person” as defined by 47 U.S.C. § 153(39).

14 31. Defendants own, manage, run, or operate “MyMixtapez,” which is a hip-
15 hop mixtape app for Android, iPhone, and Windows operating systems.

16 32. The MyMixtapez app is described in detail at <https://mymixtapez.com/>
17 (last visited Mar. 18, 2020).

18 33. A subpage, attached in full as **Exhibit A**, and quoted in part below
19 summarizes what the app provides and notes that a Premium Membership is available
20 for purchase:

21
22 THE FOLLOWING TERMS AND CONDITIONS OF USE (“**Terms**”)
23 govern the use of the website – mymixtapez.com (“**Website**”) – and the
24 My Mixtapez Music & Mixtapez mobile application currently available
25 on Apple iTunes, Google Play and provided by Microsoft on its store
26 (“**Mobile Application**”) brought to you (“**you**” or “**your**”) by Duenas
27 Mobile Applications LLC d/b/a VUZIQ (“**My Mixtapez**” or “**we**” or “**us**”
28 or “**our**”), and any content, material, features or functionality made
available by or through this Website and Mobile Application, including
any subdomains thereof. The Website and Mobile Application is made
available to you by Duenas Mobile Applications LLC, or one of its

1 subsidiaries, each having adopted the following Terms. My Mixtapez
2 provides downloadable software for the purpose of streaming and
3 downloading music via an application for mobile and wireless devices;
4 and downloadable software in the nature of a mobile application for
streaming and downloading music mixtapes (“**My Mixtapez Service**” or
“**Service**”). *

5
6 * * *

13. Premium Membership; Payment Transactions.

7 My Mixtapez offers a variation of the My Mixtapez Service free of
8 charge for all users. However, you have the option to purchase a
9 premium membership (Premium Membership”) for use pursuant to the
10 My Mixtapez Service. Premium Membership allows you the ability to
11 use the My Mixtapez Service without advertisements, and may include
12 other benefits that we have the right to amend from time-to-time without
13 changing these Terms. Premium Membership also gives you the
14 opportunity to try new features and receive exclusive offers from the My
Mixtapez store. By purchasing the Premium Membership (or anything
else directly from My Mixtapez) you warrant and represent the
following:

- 15 1. any and all credit card information submitted by you is complete,
16 true and accurate as it relates to you;
- 17 2. any and all charges incurred by you will be honored by your credit
card company; and
- 18 3. any and all charges incurred by you will be paid by you at the
19 posted price, including any applicable taxes.

20 * * *

21 * The Service is memorialized and incorporated in and by federally
22 recognized registered trademarks owned by Duenas Mobile Applications
23 LLC (See Registration Nos. 4648593 (“My Mixtapez”); 4648615 (a
24 design mark for “My Mixtapez”); and 4731673 (a design mark for “My
25 Mixtapez”)). My Mixtapez has additional trademark applications with
the U.S. Patent and Trademark Office that are currently pending as of the
date of the latest update of these Terms.

26 <https://mymixtapez.com/about/terms-service> (last visited Mar. 18, 2020).

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1 34. In the past four years, using an ATDS, Defendants or someone acting on
2 their behalf sent Plaintiff many text messages advertising the My Mixtapez app or
3 service, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

4 35. Plaintiff received those text messages on her cellular telephone number
5 ending 7874, on February 2, 6, and 7, 2020, as well as prior to February 2020. A
6 screenshot from Plaintiff's cell phone showing those three February 2020 texts is
7 attached as **Exhibit B**.

8 36. Defendants' text messages, (a) annoyed, disturbed, and harassed Plaintiff,
9 (b) intruded upon her solitude and seclusion, (c) invaded her privacy, (d) wasted her
10 time, and (e) diminished her cellular telephone's battery.

11 37. Not only did the receipt of the text messages distract Plaintiff away from
12 her personal activities, she was forced to spend time investigating the source of the
13 text messages and who sent them to her.

14 38. Plaintiff never gave Defendants any consent to send her text messages,
15 much less prior express consent.

16 39. Upon information and belief, Defendants' ATDS has the capacity to store
17 or produce telephone numbers to be called, using a random or sequential number
18 generator.

19 40. Upon information and belief, Defendants' ATDS has the capacity to store
20 numbers and to dial numbers without human intervention.

21 41. Upon information and belief, Defendants used a combination of hardware
22 and software systems which have the capacity to generate or store random or
23 sequential numbers or to dial sequentially or randomly in an automated fashion
24 without human intervention.

25 42. The impersonal and generic nature of Defendants' text messages further
26 demonstrates that Defendants used an ATDS to send them.

27 43. The text messages made to Plaintiff and the Class Members were for the
28 purpose of marketing, advertising, and promoting Defendants' app or services.

1 44. These text messages were not for emergency purposes as defined by 47
2 U.S.C. § 227(b)(1)(A)(i).

3 45. Plaintiff did not provide Defendants or their agents prior express consent
4 to receive text message, to her cellular telephone, pursuant to 47 U.S.C. § 227(b)(1).

5 46. The unsolicited text messages by Defendants or their agents violated 47
6 U.S.C. § 227(b)(1).

7 47. Defendants were aware that they were sending text messages to Plaintiff
8 and other persons without their prior express consent.

9 **CLASS ACTION ALLEGATIONS**

10 48. Plaintiff brings this class action under Rule 23(a), (b)(2), and (b)(3) of the
11 Federal Rules of Civil Procedure on behalf of herself and of a similarly situated
12 “Class” or “Class Members” defined as:

13 All persons within the United States who, within the four years prior to the
14 filing of this Complaint, were sent text messages by Defendants or anyone
15 on Defendants’ behalf, to said person’s cellular telephone number, using the
16 same equipment used to send text messages to Plaintiff.

17 49. Excluded from the Class are Defendants, and any subsidiary or affiliate
18 of Defendants, and the directors, officers and employees of Defendants or their
19 subsidiaries or affiliates, and members of the federal judiciary.

20 50. This action has been brought and may properly be maintained as a class
21 action against Defendants pursuant to Rule 23 because there is a well-defined
22 community of interest in the litigation and the proposed Class is easily ascertainable.
23 Plaintiff reserves the right to amend the Class definition if discovery and further
24 investigation reveal that any Class should be expanded or otherwise modified.

25 51. **Numerosity:** At this time, Plaintiff does not know the exact number of
26 Class Members, but among other things, given the nature of the claims and that
27 Defendants’ conduct consisted of a standardized text messages to cellular telephone
28 numbers, Plaintiff believes there are greater than 40 Class Members. Plaintiff believes

1 that the Class is so numerous that joinder of all members of the Class is impracticable
2 and the disposition of their claims in a class action rather than incremental individual
3 actions will benefit the Parties and the Court by eliminating the possibility of
4 inconsistent or varying adjudications of individual actions.

5 52. Upon information and belief, a more precise Class size and the identities
6 of the individual member thereof are ascertainable through Defendants' records,
7 including, but not limited to Defendants' text message and marketing records.

8 53. Members of the Class may additionally or alternatively be notified of the
9 pendency of this action by techniques and forms commonly used in class actions, such
10 as by published notice, e-mail notice, website notice, fax notice, first class mail, or
11 combinations thereof, or by other methods suitable to this class and deemed necessary
12 or appropriate by the Court.

13 54. **Existence and Predominance of Common Questions of Fact and Law:**
14 There is a well-defined community of common questions of fact and law affecting the
15 Plaintiff and members of the Class. Common questions of law or fact exist as to all
16 members of the Class and predominate over the questions affecting individual Class
17 Members. These common legal or factual questions include, but are not limited to, the
18 following:

19 a. Whether, within the four years prior to the filing of this Complaint,
20 Defendants or their agents sent a text message (other than a message made for
21 emergency purposes or made with the prior express consent of the called party)
22 to a Class Member's cellular telephone number;

23 b. Whether the dialing system used to send the text messages is an
24 ATDS;

25 c. Whether any Defendant is vicariously liable for the TCPA
26 violations committed by others involved in the text-messaging campaigns;

27 d. Whether any Defendant ratified the TCPA violations committed
28 by others involved in the text-messaging campaigns;

1 e. How Defendants obtained the cellular telephone numbers of
2 Plaintiff and the Class;

3 f. Whether sending the text messages to Plaintiff and the Class
4 violates the TCPA or its regulations, 47 CFR § 64.1200;

5 g. Whether Defendants willfully or knowingly violated the TCPA or
6 its regulations, 47 CFR § 64.1200;

7 h. Whether Plaintiff and the members of the Class are entitled to
8 statutory damages, treble statutory damages, and attorneys' fees and costs for
9 Defendants' acts and conduct; and

10 i. Whether Plaintiff and members of the Class are entitled to a
11 permanent injunction enjoining Defendants from continuing to engage in their
12 unlawful conduct; and

13 55. One or more questions or issues of law or fact regarding Defendants'
14 liability are common to all Class Members and predominate over any individual issues
15 that may exist and may serve as a basis for class certification under Rule 23(c)(4).

16 56. **Typicality:** Plaintiff's claims are typical of the claims of the members of
17 the Class. The claims of the Plaintiff and members of the Class are based on the same
18 legal theories and arise from the same course of conduct that violates the TCPA.

19 57. Plaintiff and members of the Class each received at least one text
20 message, advertising the My Mixtapez app, which Defendants sent or caused to be
21 placed to Plaintiff's and the Class Members' cellular telephone numbers.

22 58. **Adequacy of Representation:** Plaintiff is an adequate representative of
23 the Class because her interests do not conflict with the interests of the members of the
24 Class. Plaintiff will fairly, adequately and vigorously represent and protect the
25 interests of the members of the Class and has no interests antagonistic to the members
26 of the Class. Plaintiff has retained counsel competent and experienced in litigation in
27 the federal courts, TCPA litigation and class action litigation.

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1 59. **Superiority:** A class action is the superior method for adjudicating this
2 controversy fairly and efficiently. While the aggregate damages which may be
3 awarded to the members of the Class are likely to be substantial, the damages suffered
4 by individual members of the Class are relatively small. As a result, the expense and
5 burden of individual litigation makes it economically infeasible and procedurally
6 impracticable for each member of the Class to individually seek redress for the
7 wrongs done. Plaintiff does not know of any other litigation concerning this
8 controversy already commenced against Defendants by any member of the Class.

9 60. **Class-Wide Injunctive Relief and Rule 23(b)(2):** Moreover, as an
10 alternative to or in addition to certification of the Class under Rule 23(b)(3), class
11 certification is warranted under Rule 23(b)(2) because Defendants have acted on
12 grounds generally applicable to Plaintiff and the Class, thereby making appropriate
13 final injunctive relief with respect to Plaintiff and Class Members as a whole.
14 Plaintiff seeks injunctive relief on behalf of Class Members on grounds generally
15 applicable to the entire Class in order to enjoin and prevent Defendants' ongoing
16 violations of the TCPA, and to order Defendants to provide notice to them of their
17 rights under the TCPA to statutory damages and to be free from unwanted calls.

18 61. Defendants—or third parties directed by Defendants—used equipment
19 having the capacity to randomly or sequentially generate telephone numbers and to
20 dial such numbers without human intervention to send non-emergency telephone text
21 messages to the cellular telephones of Plaintiffs and the other members of the Class
22 defined above.

23 62. These text messages were made without regard to whether Defendants
24 had first obtained express permission from the recipients to send the communications.
25 In fact, Defendants did not have prior express consent to send text messages to the
26 cellular phones of Plaintiff and the other members of the putative Class when the text
27 messages were sent.

28

1 63. Defendants have therefore violated Section 227(b)(1)(A)(iii) of the
2 TCPA.

3 64. As a result of Defendant’s negligent violations of Section 227, Plaintiff
4 and the Class are entitled to an award of \$500.00 in statutory damages, for each
5 violation, pursuant to Section 227(b)(3)(B).

6 65. At all relevant times, Defendants knew or should have known that their
7 conduct as alleged herein violated the TCPA.

8 66. Defendants knew that they did not have prior express consent to send text
9 messages to Plaintiff and the Class, and they knew or should have known that their
10 conduct was a violation of the TCPA; therefore, the Court should treble the amount of
11 statutory damages available to Plaintiff and the Class pursuant to Section
12 227(b)(3)(C).

13 67. Likewise, since Defendants knew or should have known that Plaintiff and
14 Class Members did not give prior express consent to receive the text messages,
15 Plaintiff and the Class should be awarded \$1,500.00 in statutory damages, for each
16 violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

17 68. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **COUNT I**
20 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
21 **47 U.S.C. § 227(b)**

22 69. Plaintiff incorporates by reference all of the allegations contained in all of
23 the above paragraphs of this Complaint as though fully stated herein.

24 70. It is a violation of the TCPA to make “any call (other than a call made for
25 emergency purposes or made with the prior express consent of the called party) using
26 any automatic telephone dialing system . . . to any telephone number assigned to a . . .
27 cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii).

1 71. Automatic telephone dialing system refers to “equipment which has the
2 capacity---(A) to store or produce telephone numbers to be called, using a random or
3 sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).

4 72. Defendants – or third parties directed by Defendants – used equipment
5 having the capacity to randomly or sequentially generate telephone numbers and to
6 dial such numbers without human intervention to make non-emergency telephone
7 calls to the cellular telephones of Plaintiff and the other members of the Class defined
8 above.

9 73. These calls were made without regard to whether Defendants had first
10 obtained express permission from the called party to make such calls. In fact,
11 Defendants did not have prior express consent to call the cellular phones of Plaintiff
12 and the other members of the putative Class when its calls were made.

13 74. Defendants have, therefore, violated Section 227(b)(1)(A)(iii) of the
14 TCPA by using an automatic telephone dialing system to make non-emergency
15 telephone calls to the cellular phones of Plaintiff and the other members of the
16 putative Class without their prior express written consent.

17 75. Furthermore, it is a violation of the TCPA “to initiate any telephone call
18 to any residential telephone line using an artificial or prerecorded voice to deliver a
19 message without the prior consent of the called party, unless the call is initiated for
20 emergency purposes.” 47 U.S.C. 227(b)(1)(B).

21 76. These calls were made without regard to whether Defendants had first
22 obtained express permission from the called party to make such calls. In fact,
23 Defendants did not have prior express consent to call any of these cellular phones.

24 77. Defendants have, therefore, violated Section 227(b)(2) of the TCPA by
25 initiating telephone class while using an artificial or prerecorded voice to deliver non-
26 emergency telephone calls to the cellular phones of Plaintiff and the other members of
27 the putative Class without their prior express written consent.
28

1 78. The foregoing acts and omissions of Defendants constitute numerous and
2 multiple violations of the TCPA, including but not limited to each of the above-cited
3 provisions of Section 227.

4 79. As a result of Defendants' negligent violations of Section 227, Plaintiff
5 and the Class are entitled to an award of \$500.00 in statutory damages, for each
6 violation, pursuant to Section 227(b)(3)(B).

7 80. At all relevant times, Defendants knew or should have known that its
8 conduct as alleged herein violated the TCPA.

9 81. Defendants knew that it did not have prior express consent to make these
10 calls and knew or should have known that its conduct was a violation of the TCPA.

11 82. Because Defendants knew or should have known that Plaintiff and Class
12 Members did not give prior express consent to receive autodialed calls, the Court
13 should treble the amount of statutory damages available to Plaintiff and members of
14 the Putative Class pursuant to Section 227(b)(3)(C).

15 83. Likewise, since Defendants knew or should have known that Plaintiff and
16 Class Members did not give prior express consent to receive calls using artificial or
17 prerecorded voice, the Court should treble the amount of statutory damages available
18 to Plaintiff and members of the Putative Class pursuant to Section 227(b)(3).

19 84. As a result of Defendants knowing or willful violations of Section §
20 227(b), Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory
21 damages, for each violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

22 85. Plaintiff and the Class are also entitled to and seek injunctive relief
23 prohibiting such conduct in the future.

24 WHEREFORE, Plaintiff requests the Court grant Plaintiff and the Class
25 Members relief against Defendants, as set forth in the Prayer for Relief below.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and
3 in favor of the Class, against Defendants, jointly and severally, for:

- 4 a. certify this action as a class action and appoint Plaintiff as Class
5 Representative;
- 6 b. appoint the undersigned counsel as Class Counsel;
- 7 c. award damages of \$500 per violation per text message pursuant to 47
8 U.S.C. § 227(a)(3)(B);
- 9 d. award enhanced damages of up to \$1,500 per violation per text message
10 pursuant to 47 U.S.C. § 227(a)(3);
- 11 e. enjoin Defendants and their contractors, agents, and employees from
12 continuing to send TCPA-violating text messages pursuant to 47 U.S.C.
13 § 227(a)(3)(A);
- 14 f. award Class Counsel reasonable attorneys' fees and all expenses of this
15 action and require Defendants to pay the costs and expenses of class
16 notice and claim administration;
- 17 g. award Plaintiff an incentive award for her efforts on behalf of, and
18 benefits conferred to, the Class and other relevant factors;
- 19 h. award Plaintiff prejudgment interest and costs; and
- 20 i. grant Plaintiff all other relief deemed just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a trial by jury.
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DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendants take affirmative steps to preserve all text message logs, spreadsheets, invoices, records, lists, electronic databases, or other itemization of telephone numbers associated with Defendants and the communication or transmittal of advertisements as alleged herein.

DATED: March 30, 2020

EDWARDS POTTINGER LLC

Bv: /s/ Seth M. Lehrman
Seth M. Lehrman
Attorney for Plaintiff
Joan Spencer-Ruper

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5 Attorney for Plaintiff
Joan Spencer-Ruper
6

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 JOAN SPENCER-RUPER,
12 individually and on behalf of all
13 others similarly situated,

14 Plaintiff,

15 v.

16 MY MIXTAPEZ, INC. D/B/A MY
MIXTAPEZ, DUENAS MOBILE
17 APPLICATIONS LLC D/B/A
VUZIQ, AND D/B/A MY
18 MIXTAPEZ, JUAN CARLOS
DUENAS, RICKY DUENAS, AND
19 DANNY DUENAS,

20 Defendants.
21

**COMPLETE LIST OF
DEFENDANTS**

JURY TRIAL DEMANDED

22 MY MIXTAPEZ, INC. D/B/A MY MIXTAPEZ, DUENAS MOBILE
23 APPLICATIONS LLC D/B/A VUZIQ, AND D/B/A MY MIXTAPEZ, JUAN
24 CARLOS DUEÑAS, RICKY DUEÑAS, AND DANNY DUEÑAS
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Exhibit A



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You agree to release, indemnify, defend and hold harmless My Mixtapez and its parents, subsidiaries, lawyers, affiliates, agents, employees, independent contractors, directors, managers, members and agencies, as well as the officers, directors, employees, shareholders and representatives of any of the foregoing entities, from and against any and all losses, liabilities, expenses, damages, costs (including reasonable attorney's fees and costs), claims, or actions of any kind whatsoever that may arise out of or result from your use of the Website, Mobile Application, or My Mixtapez Service, your violation of these Terms, and any of your acts or omissions that may implicate a violation or infringement of a third party's proprietary or intellectual property rights. My Mixtapez reserves the right, at its own expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you. In such case, you agree to fully cooperate with My Mixtapez in the defense of such matter.

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My Mixtapez offers a variation of the My Mixtapez Service free of charge for all users. However, you have the option to purchase a premium membership ("**Premium Membership**") for use pursuant to the My Mixtapez Service. Premium Membership allows you the ability to use the My Mixtapez Service without advertisements, and may include other benefits that we have the right to amend from time-to-

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- A signature (electronic or physical) of the person authorized to act on behalf of the rightful owner of the copyrighted material; and
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- Your name, address, telephone number and email address;
- A statement saying that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or Miami-Dade County, Florida if your address is outside of the United States), and that you will accept service of process from the person or authorized agent who provided the initial DMCA notification to take down the material;
- A statement expressing your good faith belief, under penalty of perjury, that the material removed or disabled was the result of a mistake or misidentification of the material to be removed or





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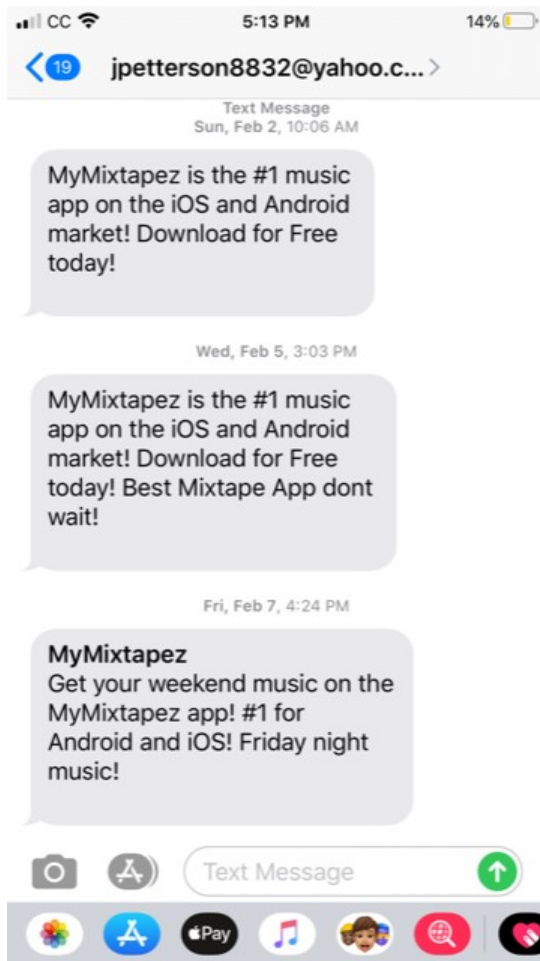
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [MyMixtapez Hit with California Woman's Class Action Over Alleged Telemarketing Text Messages](#)
