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18 ***Pro Hac Vice Motion To Be Filed***

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 **ETA TIKOTZKY, individually and**
22 **on behalf of all others similarly**
23 **situated,**

24 **Plaintiff**

25 **-against-**

26 **REMAX REAL PROS,**
27 ***A California Corporation***

28 **Defendant.**

Civil Case No.:

CIVIL ACTION

CLASS ACTION COMPLAINT
and
JURY TRIAL DEMAND

1 Plaintiff ETA TIKOTZKY (hereinafter, “Plaintiff”), individually and on
2 behalf of all others similarly situated, bring this Class Action Complaint (the
3 “Complaint”) against Defendant RE/MAX REAL PROS (hereinafter
4 “Defendant”), and allege, upon personal knowledge as to their own conduct, and
5 upon information and belief as to the conduct of others, as follows:

6 **INTRODUCTION**

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1. Plaintiff brings this Complaint against Defendant to secure redress because Defendants willfully violated the Telephone Consumer Protection Act, 47 U.S.C § 227, *et seq.* (“TCPA”) and invaded Plaintiff’s privacy by causing unsolicited phone calls and text message to be made to Plaintiff’s and other class members’ cellular telephones through the use of an auto-dialer and with the use of pre-recorded messages.
 2. Defendant made one or more unauthorized phone call and text message to Plaintiff’s cellular phones using an automatic telephone dialing system (“ATDS”) for the purpose of soliciting business from Plaintiff.
 3. The TCPA was enacted to protect consumers from unsolicited and unwanted telephone calls and text messages exactly like those alleged in this case. In response to Defendant’s unlawful conduct, Plaintiff seeks an injunction requiring Defendant to cease all unsolicited text messaging activities to consumers and/or text messaging activities after a consumer requests that the texts stop, and an award of statutory damages to the members of the Classes (defined below) under the TCPA equal to \$1,500.00 per violation, together with court costs, reasonable attorneys’ fees, and treble damages (for knowing and/or willful violations).

PARTIES

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- 2
- 3 4. Plaintiff Eta Tikotzky is currently a citizen of New Jersey and currently
- 4 resides in Ocean County, New Jersey.
- 5
- 6 5. Defendant Re/Max Real Pros is and was at all relevant times a business entity
- 7 duly formed under the laws of the State of California with an office at 14268
- 8 Schleisman Road, Eastvale, California 92880.
- 9
- 10 6. Whenever in this Complaint it is alleged that Defendants committed any act
- 11 or omission, it is meant that the Defendant's officers, directors, vice-
- 12 principals, agents, servants, or employees committed such act or omission
- 13 and that at the time such act or omission was committed, it was done with
- 14 the full authorization, ratification or approval of Defendants or was done in
- 15 the routine normal course and scope of employment of the Defendants'
- 16 officers, directors, vice-principals, agents, servants, or employees.
- 17
- 18

JURISDICTION AND VENUE

- 19
- 20
- 21 7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this
- 22 action arises under the TCPA, a federal statute.
- 23
- 24 8. The Court has personal jurisdiction over Defendant because it conducts
- 25 significant business in this District, and the unlawful conduct alleged in this
- 26 Complaint occurred in, was directed to, and/or emanated from this District.
- 27
- 28

1 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the
2 wrongful conduct giving rise to this case occurred in, was directed to, and/or
3 emanated from this District.

4
5 10. Defendant is subject to specific personal jurisdiction in this District because
6 it has continuous and systematic contacts with this District through its
7 telemarketing efforts that target this District, and the exercise of personal
8 jurisdiction over Defendant in this District does not offend traditional
9 notions of fair play or substantial justice.

10
11 **LEGAL BASIS FOR THE CLAIMS**

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13
14 11. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
15 telemarketing industry. In doing so, Congress recognized that
16 “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy....”
17 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 § 2(5)
18 (1991) (codified at 47 U.S.C. § 227).

19
20 12. Specifically, the TCPA restricts telephone solicitations (i.e., telemarketing)
21 and the use of automated telephone equipment. The TCPA limits the use of
22 automatic dialing systems, artificial or prerecorded voice messages, SMS
23 text messages, and fax machines. It also specifies several technical
24 requirements for fax machines, auto dialers, and voice messaging systems –
25 principally with provisions requiring identification and contact information
26 of the entity using the device to be contained in the message.

27
28 13. In its initial implementation of the TCPA rules, the FCC included an

1 exemption to its consent requirement for prerecorded telemarketing calls.
2 Where the caller could demonstrate an “established business relationship”
3 with a customer, the TCPA permitted the caller to place pre-recorded
4 telemarketing calls to residential lines. The new amendments to the TCPA,
5 effective October 16, 2013, eliminated this established business relationship
6 exemption. Therefore, all pre-recorded telemarketing calls to residential
7 lines and all ATDS calls to wireless numbers violate the TCPA if the calling
8 party does not first obtain express written consent from the called party.
9

10 14. As of October 16, 2013, unless the recipient has given prior express written
11 consent,¹ the TCPA and Federal Communications Commission (“FCC”)
12 rules under the TCPA generally:
13

- 14 • Prohibit solicitors from calling residences before 8 a.m. or after 9 p.m.,
15 local time.
- 16 • Require that solicitors provide their name, the name of the person or
17 entity on whose behalf the call is being made, and a telephone number
18 or address at which that person or entity may be contacted.
- 19 • Prohibit solicitations to residences that use an artificial voice or a
20 recording.
21
22
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25

26 ¹ Prior express written consent means “an agreement, in writing, bearing the signature of the person
27 called that clearly authorizes the seller to deliver or cause to be delivered to the person called
28 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).

- 1 • Prohibit any call or text made using automated telephone equipment
2 or an artificial or prerecorded voice to a wireless device or cellular
3 telephone.
- 4
- 5 • Prohibit any call made using automated telephone equipment or an
6 artificial or prerecorded voice to an emergency line (e.g., "911"), a
7 hospital emergency number, a physician's office, a hospital/health
8 care facility/elderly room, a cellular telephone, or any service for
9 which the recipient is charged for the call.
- 10
- 11 • Prohibit autodialed calls that engage two or more lines of a multi-line
12 business.
- 13
- 14 • Prohibit unsolicited advertising faxes.
- 15 • Prohibit certain calls to members of the National Do Not Call
16 Registry.
- 17

18 15. Furthermore, in 2008, the FCC held that “a creditor on whose behalf an
19 autodialed or prerecorded message call is made to a wireless number bears
20 the responsibility for any violation of the Commission’s rules.” In re Rules
21 and Regulations Implementing the Telephone Consumer Protection Act,
22 Declaratory Ruling on Motion by ACA International for Reconsideration, 23
23 FCC Rcd. 559, 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise*
24 *Line, Inc.*, 2012 WL 7062748 (N.D. Ill., Dec. 31, 2012).

25

26 16. Accordingly, the entity can be liable under the TCPA for a call made on its
27 behalf, even if the entity did not directly place the call. Under those
28 circumstances, the entity is deemed to have initiated the call through the

1 person or entity.

2
3 17. With respect to misdialed or wrong-number calls, the FCC recently clarified
4 that “callers who make calls without knowledge of reassignment and with a
5 reasonable basis to believe that they have valid consent to make the call
6 should be able to initiate one call after reassignment as an additional
7 opportunity to gain actual or constructive knowledge of the reassignment and
8 cease future calls to the new subscriber.” In the Matter of Rules and
9 Regulations Implementing the Tel. Consumer Prot. Act of 1991, FCC 15–
10 72, 30 F.C.C.R. 7961, ¶¶ 71-72 (July 10, 2015). “If this one additional call
11 does not yield actual knowledge of reassignment, we deem the caller to have
12 constructive knowledge of such.” Id. Thus, any second call placed to a
13 wrong number violates the TCPA.
14

15
16 18. Finally, the TCPA established the National Do-Not-Call list, as well as the
17 requirement that all businesses that place calls for marketing purposes
18 maintain an “internal” Do-Not-Call list (“IDNC list”). The IDNC is “a list
19 of persons who request not to receive telemarketing calls made by or on
20 behalf of that [seller].” Id. The TCPA prohibits a company from calling
21 individuals on its IDNC list or on the IDNC list of a seller on whose behalf
22 the telemarketer calls, even if those individuals’ phone numbers are not on
23 the National Do-Not-Call Registry. Id. at § 64.1200(d)(3), (6). Any
24 company, or someone on the company’s behalf, who calls a member of the
25 company IDNC violates the TCPA. The called party is then entitled to bring
26 a private action under the TCPA for monetary and injunctive relief.
27
28

FACTUAL ALLEGATIONS

1 19. Re/Max Real Pros operates a real estate company.

2
3 20. Unfortunately for consumers, Re/Max Real Pros utilizes a sophisticated
4 telephone dialing system to call consumers with pre-recorded messages and
5 with text individuals en masse promoting its services. However, Re/Max
6 Real Pros fails to get the requisite prior consent prior to sending these text
7 messages.

8
9 21. Furthermore, Defendant fails to have procedure in place to ensure that they
10 were not calling and/or messaging consumers on the National Do Not Call
11 Registry.

12
13 22. In Re/Max Real Pros overzealous attempt to market its services, Defendant
14 knowingly made (and continues to make) telemarketing phone calls with a
15 pre-recorded messages and text messages without the prior express written
16 consent of the call recipients, and continued to send messages after requests
17 that the text messages stop. As such, Re/Max Real Pros not only invaded
18 the personal privacy of Plaintiffs and members of the Classes, but also
19 intentionally and repeatedly violated the TCPA.
20

21
22 **FACTUAL BACKGROUND AS TO PLAINTIFF**

23
24 23. Sometime prior to 2010, Plaintiff was assigned, and became the owner
25
26 of a cellular telephone number of 323-333-7815.

27
28 24. During and around June of 2019, Defendant began calling Plaintiff on her

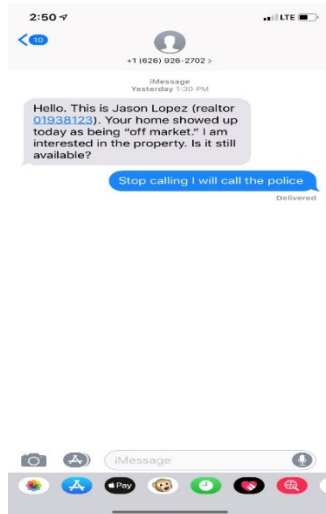
1 cellular telephone number via an ATDS and with a pre-recorded message, as
2 defined by 47 U.S.C. § 227(a)(1).

3
4 25. One of the pre-recorded messages, left on a voicemail and began after a two
5 second pause, stated:

6
7 “Hi I was calling about your home that was for sale. I am wondering
8 if its still available or if its been sold. If you could call me back I would
9 appreciate it. My name is Jason Lopez and my number is area code
10 626-926-2702. Thank You.”
11

12
13 26. Additionally, Defendant texted Plaintiff on her cellular telephone number via
14 an ATDS, as defined by 47 U.S.C. § 227(a)(1).

15
16 27. One text message was as follows:



28. Each text message included an unsolicited advertisement from the Defendant

1 and failed to provide Plaintiff with instructions on how to stop receiving said
2 messages.

3
4 29. On information and belief, and based on the circumstances as described
5 above, Defendant texted and called Plaintiff using an ATDS.
6

7 **LEGAL CLAIMS**
8

9 30. Defendant's calls constituted calls that were not for emergency purposes as
10 defined by 47 U.S.C. § 227(b)(1)(A)(i).
11

12 31. Plaintiff did not provide Defendant prior express written consent to receive
13 calls to their cellular telephones utilizing an ATDS or artificial or pre-
14 recorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A).
15

16 32. All text messages Defendant made to Plaintiff invaded Plaintiff's privacy
17 and violated 47 U.S.C. § 227(b)(1).
18

19 33. Plaintiff has reason to believe that Defendant has messaged, and continues
20 to message, thousands of wireless telephone customers to market its products
21 and services without consent and/or after consumers revoked their consent
22 in a reasonable manner.
23

24 34. In order to redress injuries caused by Defendant's violations of the TCPA,
25 Plaintiff, on behalf of themselves and the Classes of similarly situated
26 individuals, bring suit under the TCPA, 47 U.S.C. § 227, et seq., which
27 prohibits certain unsolicited voice and text calls to cellular phones.
28

1 35. On behalf of Plaintiff and the Classes, Plaintiff seeks an award of statutory
2 damages to the Class members, together with costs and reasonable attorneys'
3 fees.
4

5 **CLASS ACTION ALLEGATIONS**
6

7 36. Plaintiff brings this action pursuant to Rule 23(a), Rule 23(b)(2), and Rule
8 23(b)(3) of the Federal Rules of Civil Procedure individually and on behalf
9 of the Classes, which include:
10

11 a. "The Text Message Class", consisting of all
12 individuals in the United States who received a text message
13 made by or on behalf of Re/Max Real Pros to the individual's
14 cellular telephone through the use of an automatic telephone
15 dialing system, without prior express consent.
16

17 b. "The Phone Call Class", consisting of all
18 individuals in the United States who received a phone call
19 initiated by an automatic telephone dialing system or with the
20 use of a pre-recorded message made by or on behalf of Re/Max
21 Real Pros to the individual's cellular telephone, without prior
22 express consent.
23

24
25
26
27 37. Plaintiff reserve the right to modify the Class definitions as warranted as
28 facts are learned in further investigation and discovery.

1 38. Plaintiff and the Class members were harmed by Defendant's acts in at least
2 the following ways: Defendant, either directly or through its agents, illegally
3 contacted Plaintiff and the Classes via their cellular telephones by using an
4 ATDS, thereby causing Plaintiff and the Classes to incur certain cellular
5 telephone charges or reduce cellular telephone time for which Plaintiffs and
6 the Class members previously paid; and Plaintiffs and Class members'
7 privacy was invaded.
8

9 39. The exact size of the Classes is presently unknown but can be ascertained
10 through a review of Defendant's records, and it is clear that individual
11 joinder is impracticable. Defendant made telephone calls to thousands of
12 consumers who fall into the definition of the Classes.
13

14 40. There are many questions of law and fact common to the claims of Plaintiff
15 and the Classes, and those questions predominate over any questions that
16 may affect individual members of the Classes.
17

18 41. Common questions for the Classes include, without limitation:
19

- 20
- 21 a. Whether Defendant's conduct violated the TCPA;
 - 22 b. Whether Class members are entitled to treble damages based on
23 the willfulness of Defendant's conduct;
 - 24 c. Whether Defendant made phone calls to consumers using any
25 automatic dialing system to any telephone number assigned to
26 a cellular phone service; and
27
28

- 1 d. Whether Defendant made text messages to consumers using
2 any automatic dialing system to any telephone number assigned
3 to a cellular phone service; and
4 e. Whether Defendant and its agents should be enjoined from
5 engaging in such conduct in the future.
6

7
8 42. Plaintiff's claims are typical of the claims of the other members of the Class.
9 Plaintiff and the Classes sustained damages as a result of Defendant's
10 uniform wrongful conduct during transactions with Plaintiff and the Classes.
11

12 43. Plaintiff will fairly and adequately represent and protect the interests of the
13 Classes and has retained counsel competent and experienced in complex
14 class actions.
15

16 44. Plaintiff has no interest antagonistic to those of the Classes, and Defendant
17 has no defenses unique to Plaintiff.
18

19 45. This class action is appropriate for class certification because Defendant has
20 acted or refused to act on grounds generally applicable to the Classes as a
21 whole, thereby requiring the Court's imposition of uniform relief to ensure
22 compatible standards of conduct toward the Classes, and making final
23 injunctive relief appropriate with respect to the Classes as a whole.
24

25 46. Defendant's practices challenged herein apply to and affect the Class
26 members uniformly, and Plaintiff's challenge of those practices hinges on
27 Defendant's conduct with respect to the Classes as a whole, not on facts or
28 law applicable only to Plaintiff.

1 47. This case is also appropriate for class certification because class proceedings
2 are superior to all other available methods for the fair and efficient
3 adjudication of this controversy given that joinder of all parties is
4 impracticable.

5
6 48. The damages suffered by the individual members of the Classes will likely
7 be relatively small, especially given the burden and expense of individual
8 prosecution of the complex litigation necessitated by Defendant's actions.

9
10 49. Thus, it would be virtually impossible for the individual members of the
11 Classes to obtain effective relief from Defendant's misconduct.

12
13 50. Even if members of the Classes could sustain such individual litigation, it
14 would still not be preferable to a class action, because individual litigation
15 would increase the delay and expense to all parties due to the complex legal
16 and factual controversies presented in this Complaint.

17
18
19 51. By contrast, a class action presents far fewer management difficulties and
20 provides the benefits of single adjudication, economy of scale, and
21 comprehensive supervision by a single court. Economies of time, effort and
22 expense will be fostered, and uniformity of decisions ensured.

23
24 **FIRST CAUSE OF ACTION**

25 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

26 **47 U.S.C. § 227**

27
28 52. Plaintiff re-alleges and incorporates by reference each preceding paragraph

1 as though fully set forth herein.

2
3 53. Defendant made unsolicited and unauthorized text messages using an ATDS
4 to Plaintiff's and the Class members cellular telephones for the purpose of
5 marketing products and/or services to Plaintiff and the Class.

6
7 54. Defendant sent the text messages and continued to send said messages after
8 being told to stop.

9
10 55. The foregoing acts and omissions of Defendant constitute numerous and
11 multiple violations of the TCPA, including but not limited to each and every
12 one of the above-cited provisions of 47 U.S.C. § 227, et seq.

13
14 56. Defendant made unsolicited and unauthorized calls to Plaintiff for the
15 purpose of marketing products and/or services to those Plaintiffs and the
16 Class.

17
18 57. Defendant's conduct invaded Plaintiff's privacy.

19
20 58. As a result of Defendant's violations of 47 U.S.C. § 227, et seq., Plaintiff
21 and the Class are entitled to an award of \$500.00 in statutory damages, for
22 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

23
24 59. Because Defendant had knowledge that Plaintiff and the Class never gave
25 express prior consent to be called, the Court should, pursuant to 47 U.S.C. §
26 227(b)(3)(C), treble the amount of statutory damages recoverable by
27 Plaintiff and the Classes.
28

1 60. Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3
4 **JURY DEMAND**

5 Plaintiff and the Class demand a jury trial on all issues so triable.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff, individually and on behalf of the Class,
8 respectfully request the following relief:

- 9 a. An order certifying this matter as a class action with Plaintiff as Class
10 Representative, and designating Marcus & Zelman, LLC as Class
11 Counsel.
12 b. An award of actual or statutory damages for each and every negligent
13 violation to each member of the Classes pursuant to 47 U.S.C. §
14 227(b)(3)(B);
15 c. An award of treble actual or statutory damages for each and every
16 knowing and/or willful violation to each member of the Classes pursuant
17 to 47 U.S.C § 227(b)(3)(B);
18 d. Injunctive relief prohibiting Defendant's conduct complained of
19 herein, pursuant to 47 U.S.C. § 227(b)(3)(A);
20 e. Pre-judgment and post-judgment interest on monetary relief; and
21 f. All other and further relief as the Court deems necessary, just, and
22 proper.
23
24

25 Dated: August 8, 2019

26
27 /s/ Jonathan A. Stieglitz
28 JONATHAN A. STIEGLITZ
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8 **PRO HAC VICE MOTION TO BE FILED**

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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: [Re/Max Facing Class Action for Allegedly Illegal Robocalls, Texts](#)
