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*Counsel for Plaintiff and Proposed Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LIZETTE VELEZ,  
individually and on behalf of all others  
similarly situated,

*Plaintiff,*

vs.

ALPHA CORE, INC. d/b/a  
ENJOYMINT DELIVERED, a  
California corporation,

*Defendant.*

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT, 47 U.S.C. §§ 227, ET SEQ.  
(TCPA)**

**JURY TRIAL DEMANDED**

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, Lizette Velez, brings this action against Defendant, Alpha Core,  
3 Inc. d/b/a Enjoymint Delivered, to secure redress for violations of the Telephone  
4 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer  
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is a cannabis delivery service. To promote its services,  
9 Defendant engages in aggressive unsolicited marketing, harming thousands of  
10 consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s  
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,  
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory  
14 damages on behalf of herself and members of the Class, and any other available legal  
15 or equitable remedies.

16 **JURISDICTION AND VENUE**

17 5. This Court has federal question subject matter jurisdiction over this action  
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer  
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper  
21 in this District because Defendant directs, markets, and provides its business activities  
22 to this District, and because Defendant’s unauthorized marketing scheme was directed  
23 by Defendant to consumers in this District, including Plaintiff.

24 **PARTIES**

25 7. Plaintiff is a natural person who, at all times relevant to this action, was a  
26 resident of Alameda County, California.

1 8. Defendant is a California corporation whose principal office is located at  
2 7052 Santa Teresa Blvd., Suite 156, San Jose, California 95139. Defendant directs,  
3 markets, and provides its business activities throughout the United States, including  
4 throughout the state of California.

5 9. Unless otherwise indicated, the use of Defendant's name in this  
6 Complaint includes all agents, employees, officers, members, directors, heirs,  
7 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,  
8 and insurers of Defendant.

9 **THE TCPA**

10 10. The TCPA prohibits: (1) any person from calling a cellular telephone  
11 number; (2) using an automatic telephone dialing system; (3) without the recipient's  
12 prior express consent. 47 U.S.C. § 227(b)(1)(A).

13 11. The TCPA defines an "automatic telephone dialing system" ("ATDS") as  
14 "equipment that has the capacity - (A) to store or produce telephone numbers to be  
15 called, using a random or sequential number generator; and (B) to dial such numbers."  
16 47 U.S.C. § 227(a)(1).

17 12. In an action under the TCPA, a plaintiff must only show that the  
18 defendant "called a number assigned to a cellular telephone service using an automatic  
19 dialing system or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d  
20 1316, 1319 (S.D. Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

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

1 *Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd  
2 14014 (2003).

3 14. In 2012, the FCC issued an order tightening the restrictions for automated  
4 telemarketing calls, requiring “prior express **written** consent” for such calls to wireless  
5 numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*  
6 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

7 15. To obtain express written consent for telemarketing calls, a defendant  
8 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff a  
9 “‘clear and conspicuous disclosure’ of the consequences of providing the requested  
10 consent....and having received this information, agrees unambiguously to receive such  
11 calls at a telephone number the [plaintiff] designates.” *In re Rules & Regulations*  
12 *Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20,  
13 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

14 16. The TCPA regulations promulgated by the FCC define “telemarketing”  
15 as “the initiation of a telephone call or message for the purpose of encouraging the  
16 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §  
17 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a  
18 court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas*  
19 *Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

20 17. “Neither the TCPA nor its implementing regulations ‘require an explicit  
21 mention of a good, product, or service’ where the implication of an improper purpose  
22 is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918  
23 (9th Cir. 2012)).

24 18. “‘Telemarketing’ occurs when the context of a call indicates that it was  
25 initiated and transmitted to a person for the purpose of promoting property, goods, or  
26 services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. §  
27

1 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*  
2 *of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at \*49).

3 19. The FCC has explained that calls motivated in part by the intent to sell  
4 property, goods, or services are considered telemarketing under the TCPA. *See In re*  
5 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.  
6 14014, ¶¶ 139-142 (2003). This is true whether call recipients are encouraged to  
7 purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

8 20. In other words, offers “that are part of an overall marketing campaign to  
9 sell property, goods, or services constitute” telemarketing under the TCPA. *See In re*  
10 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.  
11 14014, ¶ 136 (2003).

12 21. If a call is not deemed telemarketing, a defendant must nevertheless  
13 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of*  
14 *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961,  
15 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising  
16 calls”).

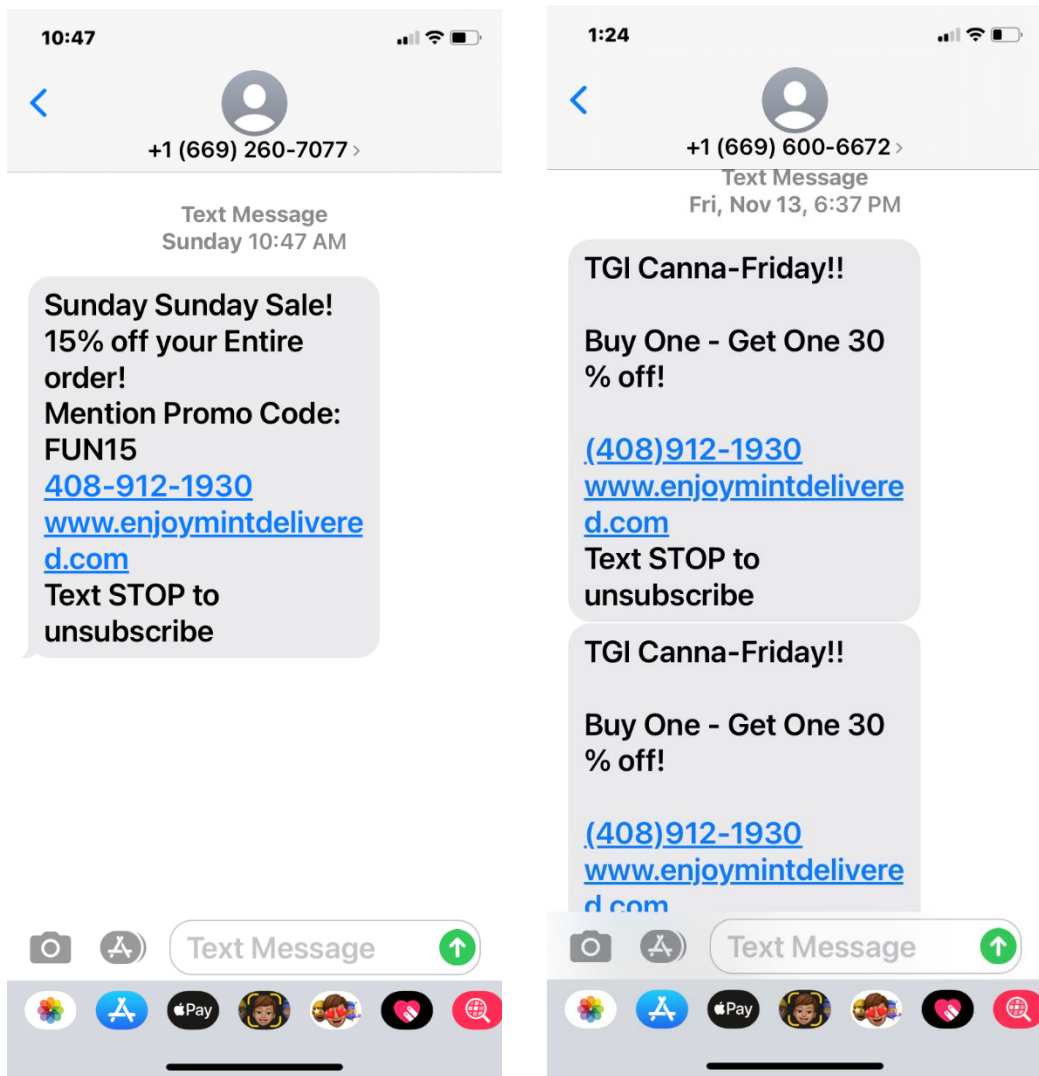
17 22. Further, the FCC has issued rulings and clarified that consumers are  
18 entitled to the same consent-based protections for text messages as they are for calls to  
19 wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009)  
20 (The FCC has determined that a text message falls within the meaning of “to make any  
21 call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v. Quality Res., Inc.*, 2014 WL 6757978, at \*3  
22 (N.D. Ill. Dec. 1, 2014) (Defendant bears the burden of showing that it obtained  
23 Plaintiff’s prior express consent before sending him the **text message**). (emphasis  
24 added).

25 23. As recently held by the United States Court of Appeals for the Ninth  
26 Circuit: “Unsolicited telemarketing phone calls or text messages, by their nature, invade  
27 the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation  
28

1 under the TCPA ‘need not allege any *additional* harm beyond the one Congress has  
2 identified.’” *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS  
3 1591, at \*12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549  
4 (2016) (emphasis original)).

5 **FACTUAL ALLEGATIONS**

6 24. Beginning around November of 2020, Defendant sent the following  
7 telemarketing text messages to Plaintiff’s cellular telephone number ending in 2608 (the  
8 “2608 Number”):



1 25. Defendant's text messages were transmitted to Plaintiff's cellular  
2 telephone, and within the time frame relevant to this action.

3 26. Defendant's text messages constitute telemarketing because they  
4 encouraged the future purchase or investment in property, goods, or services, i.e.,  
5 selling Plaintiff cannabis products.

6 27. The information contained in the text message advertises Defendant's  
7 various discounts and promotions, which Defendant sends to promote its business.

8 28. Plaintiff received the subject texts within this judicial district and,  
9 therefore, Defendant's violation of the TCPA occurred within this district. Upon  
10 information and belief, Defendant caused other text messages to be sent to individuals  
11 residing within this judicial district.

12 29. At no point in time did Plaintiff provide Defendant with her express  
13 written consent to be contacted using an ATDS.

14 30. Plaintiff is the subscriber and sole user of the 2608 Number and is  
15 financially responsible for phone service to the 2608 Number.

16 31. Plaintiff has been registered with the national do not call registry since July  
17 27, 2015.

18 32. The impersonal and generic nature of Defendant's text message  
19 demonstrates that Defendant utilized an ATDS in transmitting the messages. *See Jenkins*  
20 *v. LL Atlanta, LLC*, No. 1:14-cv-2791-WSD, 2016 U.S. Dist. LEXIS 30051, at \*11  
21 (N.D. Ga. Mar. 9, 2016) ("These assertions, combined with the generic, impersonal  
22 nature of the text message advertisements and the use of a short code, support an  
23 inference that the text messages were sent using an ATDS.") (citing *Legg v. Voice Media*  
24 *Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D. Fla. 2014) (plaintiff alleged facts sufficient to  
25 infer text messages were sent using ATDS; use of a short code and volume of mass  
26 messaging alleged would be impractical without use of an ATDS); *Kramer v. Autobytel,*  
27 *Inc.*, 759 F. Supp. 2d 1165, 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants  
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1 used an ATDS where messages were advertisements written in an impersonal manner  
2 and sent from short code); *Hickey v. Voxernet LLC*, 887 F. Supp. 2d 1125, 1130; *Robbins*  
3 *v. Coca-Cola Co.*, No. 13-CV-132-IEG NLS, 2013 U.S. Dist. LEXIS 72725, 2013 WL  
4 2252646, at \*3 (S.D. Cal. May 22, 2013) (observing that mass messaging would be  
5 impracticable without use of an ATDS)).

6 33. The text messages originated from telephone numbers 669-260-7077 and  
7 669-600-6672, both numbers which upon information and belief are owned and  
8 operated by or on behalf of Defendant.

9 34. The numbers used by Defendant are known as a “long code,” a standard  
10 10-digit code that enables Defendant to send SMS text messages *en masse*, while  
11 deceiving recipients into believing that the message was personalized and sent from a  
12 telephone number operated by an individual.

13 35. Long codes work as follows: Private companies known as SMS gateway  
14 providers have contractual arrangements with mobile carriers to transmit two-way SMS  
15 traffic. These SMS gateway providers send and receive SMS traffic to and from the  
16 mobile phone networks' SMS centers, which are responsible for relaying those messages  
17 to the intended mobile phone. This allows for the transmission of a large number of  
18 SMS messages to and from a long code.

19 36. Specifically, upon information and belief, Defendant utilized a  
20 combination of hardware and software systems to send the text messages at issue in  
21 this case. The systems utilized by Defendant have the capacity to store telephone  
22 numbers using a random or sequential number generator, and to dial such numbers  
23 from a list without human intervention.

24 37. To send the text messages, Defendant used a messaging platform (the  
25 “Platform”) that permitted Defendant to transmit thousands of automated text  
26 messages without any human involvement.



1 38. The Platform has the capacity to store telephone numbers, which capacity  
2 was in fact utilized by Defendant.

3 39. The Platform has the capacity to generate sequential numbers, which  
4 capacity was in fact utilized by Defendant.

5 40. The Platform has the capacity to dial numbers in sequential order, which  
6 capacity was in fact utilized by Defendant.

7 41. The Platform has the capacity to dial numbers from a list of numbers,  
8 which capacity was in fact utilized by Defendant.

9 42. The Platform has the capacity to dial numbers without human  
10 intervention, which capacity was in fact utilized by Defendant.

11 43. The Platform has the capacity to schedule the time and date for future  
12 transmission of text messages, which occurs without any human involvement.

13 44. To transmit the messages at issue, the Platform automatically executed the  
14 following steps:

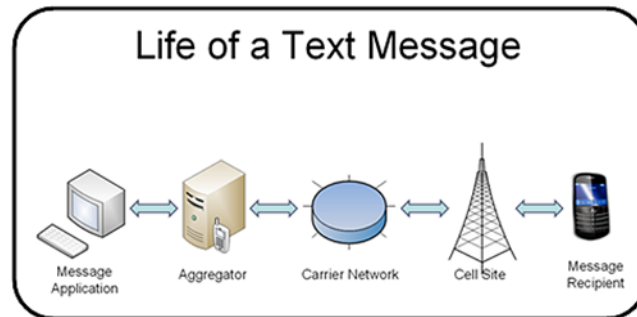
- 15 a) The Platform retrieved each telephone number from a list of numbers  
16 in the sequential order the numbers were listed;
- 17 b) The Platform then generated each number in the sequential order  
18 listed and combined each number with the content of Defendant's  
19 message to create "packets" consisting of one telephone number and  
20 the message content;
- 21 c) Each packet was then transmitted in the sequential order listed to an  
22 SMS aggregator, which acts an intermediary between the Platform,  
23 mobile carriers (e.g. AT&T), and consumers.
- 24 d) Upon receipt of each packet, the SMS aggregator transmitted each  
25 packet – automatically and with no human intervention – to the  
26 respective mobile carrier for the telephone number, again in the  
27

1 sequential order listed by Defendant. Each mobile carrier then sent  
2 the message to its customer's mobile telephone.

3 45. The above execution these instructions occurred seamlessly, with no  
4 human intervention, and almost instantaneously. Indeed, the Platform is capable of  
5 transmitting thousands of text messages following the above steps in minutes, if not  
6 less.

7 46. Further, the Platform "throttles" the transmission of the text messages  
8 depending on feedback it receives from the mobile carrier networks. In other words,  
9 the platform controls how quickly messages are transmitted depending on network  
10 congestion. The platform performs this throttling function automatically and does not  
11 allow a human to control the function.

12 47. The following graphic summarizes the above steps and demonstrates that  
13 the dialing of the text messages at issue was done by the Platform automatically and  
14 without any human intervention:



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20 48. Defendant's unsolicited text messages caused Plaintiff actual harm,  
21 including invasion of her privacy, aggravation, annoyance, intrusion on seclusion,  
22 trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and  
23 caused disruption to her daily life.

24 49. Defendant's unsolicited text messages caused Plaintiff actual harm.  
25 Specifically, Plaintiff estimates that she has wasted fifteen to thirty seconds reviewing  
26 each of Defendant's unwanted messages. Each time, Plaintiff had to stop what she was  
27

1 doing to either retrieve her phone and/or look down at the phone to review the  
2 message.

3 50. Next, Plaintiff wasted approximately fifteen minutes locating and  
4 retaining counsel for this case in order to stop Defendant's unwanted calls.

5 51. In all, Defendant's violations of the TCPA caused Plaintiff to waste at  
6 least fifteen minutes of her time in addressing and attempting to stop Defendant's  
7 solicitations.

### 8 CLASS ALLEGATIONS

#### 9 PROPOSED CLASS

10 52. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,  
11 on behalf of herself and all others similarly situated.

12 53. Plaintiff brings this case on behalf of the Class defined as follows:

13 **No Consent Class: All persons in the United States**  
14 **who, within four years prior to the filing of this**  
15 **action, (1) were sent a text message by or on behalf**  
16 **of Defendant, (2) using an automatic telephone**  
17 **dialing system, (3) for the purpose of soliciting**  
18 **Defendant's goods and services, (4) without prior**  
19 **express consent of the recipient, or with the same**  
20 **manner of purported consent Defendant claims to**  
21 **have obtained from Plaintiff, if any.**

22 **Do Not Call Registry Class: All persons in the**  
23 **United States who from four years prior to the filing**  
24 **of this action (1) were sent a text message by or on**  
25 **behalf of Defendant; (2) more than one time within**  
26 **any 12-month period; (3) where the person's**  
27 **telephone number had been listed on the National**  
28 **Do Not Call Registry for at least thirty days; (4) for**  
**the purpose of selling Defendant's products and**  
**services; and (5) for whom Defendant claims (a) it**  
**did not obtain prior express written consent, or (b)**  
**it obtained prior express written consent in the**  
**same manner as Defendant claims it supposedly**  
**obtained prior express written consent to call the**  
**Plaintiff.**

1 54. Defendant and its employees or agents are excluded from the Class.  
2 Plaintiff does not know the number of members in the Class but believes the Class  
3 members number in the several thousands, if not more.

4 **NUMEROSITY**

5 55. Upon information and belief, Defendant has placed automated calls to  
6 cellular telephone numbers belonging to thousands of consumers throughout the  
7 United States without their prior express consent. The members of the Class, therefore,  
8 are believed to be so numerous that joinder of all members is impracticable.

9 56. The exact number and identities of the members of the Class are unknown  
10 at this time and can only be ascertained through discovery. Identification of the Class  
11 members is a matter capable of ministerial determination from Defendant's call records.

12 **COMMON QUESTIONS OF LAW AND FACT**

13 57. There are numerous questions of law and fact common to members of  
14 the Class which predominate over any questions affecting only individual members of  
15 the Class. Among the questions of law and fact common to the members of the Class  
16 are:

- 17 a) Whether Defendant made non-emergency calls to Plaintiff's and Class  
18 members' cellular telephones using an ATDS;
- 19 b) Whether Defendant can meet its burden of showing that it obtained  
20 prior express written consent to make such calls;
- 21 c) Whether Defendant's conduct was knowing and willful;
- 22 d) Whether Defendant is liable for damages, and the amount of such  
23 damages; and
- 24 e) Whether Defendant should be enjoined from such conduct in the  
25 future.

26 58. The common questions in this case are capable of having common  
27 answers. If Plaintiff's claim that Defendant routinely transmits text messages to  
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1 telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the  
2 Class members will have identical claims capable of being efficiently adjudicated and  
3 administered in this case.

4 **TYPICALITY**

5 59. Plaintiff's claims are typical of the claims of the Class members, as they  
6 are all based on the same factual and legal theories.

7 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

8 60. Plaintiff is a representative who will fully and adequately assert and protect  
9 the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is  
10 an adequate representative and will fairly and adequately protect the interests of the  
11 Class.

12 **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

13 61. A class action is superior to all other available methods for the fair and  
14 efficient adjudication of this lawsuit, because individual litigation of the claims of all  
15 members of the Class is economically unfeasible and procedurally impracticable. While  
16 the aggregate damages sustained by the Class are in the millions of dollars, the individual  
17 damages incurred by each member of the Class resulting from Defendant's wrongful  
18 conduct are too small to warrant the expense of individual lawsuits. The likelihood of  
19 individual Class members prosecuting their own separate claims is remote, and, even if  
20 every member of the Class could afford individual litigation, the court system would be  
21 unduly burdened by individual litigation of such cases.

22 62. The prosecution of separate actions by members of the Class would create  
23 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
24 Defendant. For example, one court might enjoin Defendant from performing the  
25 challenged acts, whereas another may not. Additionally, individual actions may be  
26 dispositive of the interests of the Class, although certain class members are not parties  
27 to such actions.

**COUNT I**  
**Violations of the TCPA, 47 U.S.C. § 227(b)**  
**(On Behalf of Plaintiff and the Class)**

63. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

64. It is a violation of the TCPA 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 ... to any telephone number assigned to a ... cellular telephone service ....” 47 U.S.C. § 227(b)(1)(A)(iii).

65. Defendant – or third parties directed by Defendant – used equipment having the capacity to dial numbers without human intervention to make non-emergency telephone calls to the cellular telephones of Plaintiff and the other members of the Class defined below.

66. These calls were made without regard to whether or not Defendant had first obtained express permission from the called party to make such calls. In fact, Defendant did not have prior express consent to call the cell phones of Plaintiff and the other members of the putative Class when its calls were made.

67. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by using an automatic telephone dialing system to make non-emergency telephone calls to the cell phones of Plaintiff and the other members of the putative Class without their prior express written consent.

68. Defendant knew that it did not have prior express consent to make these calls, and knew or should have known that it was using equipment that constituted an automatic telephone dialing system. The violations were therefore willful or knowing.

69. As a result of Defendant’s conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class were harmed and are each

1 entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the  
2 members of the Class are also entitled to an injunction against future calls. *Id.*

3 **COUNT II**  
4 **Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)**  
5 **(On Behalf of Plaintiff and the Class)**

6 70. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set  
7 forth herein.

8 71. At all times relevant, Defendant knew or should have known that its  
9 conduct as alleged herein violated the TCPA.

10 72. Defendant knew that it did not have prior express consent to make these  
11 calls, and knew or should have known that its conduct was a violation of the TCPA.

12 73. Because Defendant knew or should have known that Plaintiff and Class  
13 Members had not given prior express consent to receive its autodialed calls, the Court  
14 should treble the amount of statutory damages available to Plaintiff and the other  
15 members of the putative Class pursuant to § 227(b)(3) of the TCPA.

16 74. As a result of Defendant's violations, Plaintiff and the Class Members are  
17 entitled to an award of \$1,500.00 in statutory damages, for each and every violation,  
18 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 **COUNT III**  
20 **Violation of the TCPA, 47 U.S.C. § 227**  
21 **(On Behalf of Plaintiff and the Do Not Call Registry Class)**

22 75. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set  
23 forth herein.

24 76. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides  
25 that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential  
26 telephone subscriber who has registered his or her telephone number on the national  
27 do-not-call registry of persons who do not wish to receive telephone solicitations that  
28 is maintained by the federal government."

1 77. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable  
2 to any person or entity making telephone solicitations or telemarketing calls to wireless  
3 telephone numbers.”<sup>1</sup>

4 78. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall  
5 initiate any call for telemarketing purposes to a residential telephone subscriber unless  
6 such person or entity has instituted procedures for maintaining a list of persons who  
7 request not to receive telemarketing calls made by or on behalf of that person or entity.”

8 79. Any “person who has received more than one telephone call within any  
9 12-month period by or on behalf of the same entity in violation of the regulations  
10 prescribed under this subsection may” may bring a private action based on a violation  
11 of said regulations, which were promulgated to protect telephone subscribers’ privacy  
12 rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

13 80. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be  
14 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do  
15 Not Call Registry Class members who registered their respective telephone numbers on  
16 the National Do Not Call Registry, a listing of persons who do not wish to receive  
17 telephone solicitations that is maintained by the federal government.

18 81. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not  
19 Call Registry Class received more than one telephone call in a 12-month period made  
20 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.  
21 As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call  
22 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are  
23 entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. §  
24 64.1200.

25  
26 <sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report  
27 and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)



1 82. To the extent Defendant's misconduct is determined to be willful and  
2 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
3 statutory damages recoverable by the members of the Do Not Call Registry Class.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the  
6 following relief:

- 7 a) An order certifying this case as a class action on behalf of the Class as  
8 defined above, and appointing Plaintiff as the representative of the Class  
9 and Plaintiff's counsel as Class Counsel;
- 10 b) An award of actual and statutory damages for Plaintiff and each member  
11 of the Class;
- 12 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*,  
13 Plaintiff seeks for herself and each member of the Class \$500.00 in  
14 statutory damages for each and every violation pursuant to 47 U.S.C. §  
15 277(b)(3)(B);
- 16 d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C.  
17 §§ 227, *et seq.*, Plaintiff seeks for herself and each member of the Class  
18 treble damages, as provided by statute, up to \$1,500.00 for each and every  
19 violation pursuant to 47 U.S.C. § 277(b)(3)(B) and § 277(b)(3)(C);
- 20 e) An order declaring that Defendant's actions, as set out above, violate the  
21 TCPA;
- 22 f) A declaratory judgment that Defendant's telephone calling equipment  
23 constitutes an automatic telephone dialing system under the TCPA;
- 24 g) An injunction requiring Defendant to cease all unsolicited text messaging  
25 activity, and to otherwise protect the interests of the Class;
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- 1 h) An injunction prohibiting Defendant from using, or contracting the use  
2 of, an automatic telephone dialing system without obtaining, recipient's  
3 consent to receive calls made with such equipment;
- 4 i) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,  
5 California Code of Civil Procedure § 1021.5; and
- 6 j) Such further and other relief as the Court deems necessary.

7 **JURY DEMAND**

8 Plaintiff hereby demands a trial by jury.

9 **DOCUMENT PRESERVATION DEMAND**

10 Plaintiff demands that Defendant take affirmative steps to preserve all records,  
11 lists, electronic databases or other itemizations associated with the allegations herein,  
12 including all records, lists, electronic databases or other itemizations in the possession  
13 of any vendors, individuals, and/or companies contracted, hired, or directed by  
14 Defendant to assist in sending the alleged communications.  
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17  
18 Dated: February 5, 2021

Respectfully submitted,

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21 By: /s/ Scott Edelsberg

22 **EDELSBERG LAW, P.A.**

Scott Edelsberg, Esq. (CA Bar No. 330990)

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Los Angeles, CA 90067

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25  
26 **SHAMIS & GENTILE, P.A.**

Joshua Moyer, Esq. (CA Bar No. 259908)

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2 San Diego, CA 92101  
3 Telephone: 305-479-2299  
4 [jmoyer@shamisgentile.com](mailto:jmoyer@shamisgentile.com)

5 *Counsel for Plaintiff and the Proposed Class*

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lizette Velez, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Alameda County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Edelsberg Law, PA
1925 Century park E #1700, Los Angeles, CA 90067
(305) 975-3320

DEFENDANTS

Alpha Core, Inc. d/b/a Enjoymint Delivered

County of Residence of First Listed Defendant Santa Clara County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

Brief description of cause:

This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 02/05/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott Edelsberg

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

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

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