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9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JOUBIN MORTEZAPOUR, individually  
 and on behalf of all others similarly  
 12 situated,

13 Plaintiff,

14 vs.

15 BOSTON MARKET CORPORATION,

16 Defendant.

Case No.:

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF PURSUANT  
 TO THE TELEPHONE CONSUMER  
 PROTECTION ACT (“TCPA”), 47  
 U.S.C. §§ 227, ET SEQ.**

**JURY TRIAL DEMANDED**





1 burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end,  
2 Congress found that:

3 [b]anning such automated or prerecorded telephone calls to  
4 the home, except when the receiving party consents to  
5 receiving the call or when such calls are necessary in an  
6 emergency situation affecting the health and safety of the  
7 consumer, is the only effective means of protecting  
8 telephone consumers from this nuisance and privacy  
9 invasion.

10 *Id.* at § 12.

11 7. The Federal Trade Commission (“FCC”) is charged with the authority  
12 to issue regulations implementing the TCPA. According to findings by the FCC,  
13 automated calls and text messages are prohibited under the TCPA because receiving  
14 them is a greater invasion of privacy and nuisance compared to live solicitation calls.  
15 The FCC has also acknowledged that wireless customers are charged for any  
16 incoming calls and text messages.

17 8. In 2015, the FCC noted, “[m]onth after month, unwanted robocalls and  
18 texts, both telemarketing and informational, top the list of consumer complaints  
19 received by the Commission.” *In re Rules and Regulations Implementing the  
20 Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶ 1 (2015).

21 9. The FCC has issued rulings and clarified that consumers are entitled to  
22 the same consent-based protections for text messages as they are for calls to wireless  
23 numbers.

24 10. One of the most prevalent advertising methods employed by companies  
25 today involves the use of “Short Message Services” (or “SMS”), which is a text  
26 messaging system allows for the transmission and receipt of text messages to and  
27 from wireless telephones.  
28



1 11. According to a recent study, “[s]pam isn’t just for email anymore; it  
2 comes in the form of unwanted text messages of all kinds - from coupons to phishing  
3 schemes - sent directly to user’s cell phones.”<sup>1</sup>

4 12. Unlike more conventional advertisements, text message advertisements  
5 can actually cost their recipients money because wireless phone users must pay their  
6 wireless service providers either for each text message they receive or incur a usage  
7 allocation deduction to their text messaging or data plan, regardless of whether the  
8 message is authorized.

9 13. The transmission of an unsolicited text messages to a cellular device is  
10 distracting and aggravating to the recipient and intrudes upon the recipient’s  
11 seclusion.

12 **JURISDICTION AND VENUE**

13 14. This Court has subject matter jurisdiction over this action pursuant to 28  
14 U.S.C. § 1331 because this case arises out of violation of federal law. 47 U.S.C §  
15 227(b).

16 15. Because Defendant directs and conducts business within the State of  
17 California and this judicial district, personal jurisdiction is established.

18 16. Personal jurisdiction and venue are proper in the Central District of  
19 California pursuant to 28 U.S.C. § 1391 for the following reasons: (1) Plaintiff  
20 resides within this judicial district; (2) the conduct complained of herein occurred  
21 within this judicial district; and (3) Defendant conducted business within this judicial  
22 district at all times relevant. Specifically, Defendant invaded Plaintiff’s privacy by  
23 contacting Plaintiff on his cellular telephone, which occurred while Plaintiff was  
24 located in the County of Los Angeles, State of California, which is within this  
25 judicial district.

26 \_\_\_\_\_  
27 <sup>1</sup> Amanda Lenhart, *Cell Phones and American Adults*, Pew Research Center (Sept. 2,  
28 2010), <https://www.pewresearch.org/internet/2010/09/02/cell-phones-and-american-adults/>.

**PARTIES**

1  
2 17. Plaintiff is an individual residing in the County of Los Angeles, State of  
3 California, and is, and at all times mentioned herein was, a “person” as defined by 47  
4 U.S.C. § 153(39).

5 18. Boston Market is a corporation who is a “person” as defined by 47  
6 U.S.C. § 153(39) incorporated under the laws of the State of Delaware and has a  
7 principal place of business at 7700 E. Arapahoe Rd. Ste 220 Centennial, Colorado  
8 80112-1268.

9 19. Boston Market is a privately-owned company founded in 1985. This  
10 company prepares and sells rotisserie-centric meals such as chicken, cookies,  
11 cornbread, and mashed potatoes. Boston Market has 351 locations in thirty different  
12 states.

13 20. Plaintiff alleges that at all times relevant herein, Defendant conducted  
14 business in the State of California, in the County of Los Angeles, and within this  
15 judicial district.

**FACTUAL ALLEGATIONS**

16  
17 21. Plaintiff is, and at all times mentioned herein was, the subscriber of the  
18 cellular telephone number (818) \*\*\*-8768 (the “8768 Number”). The 8768 Number  
19 is, and at all times mentioned herein was, assigned to a cellular telephone service as  
20 specified in 47 U.S.C. § 227(b)(1)(A)(iii).

21 22. On November 25, 2020, Plaintiff called Defendant to inquire about a  
22 holiday meal package. However, Plaintiff was not able to speak to a live  
23 representative regarding his inquiry. Instead, Plaintiff heard a pre-recorded messaged  
24 that stated it was unable to take his call at the moment due to a high volume of calls,  
25 and the call ended.

26 23. Boston Market advertises a number of its meal packages, including the  
27 one that Plaintiff was inquiring about on its website.

28 24. Several hours after making this call, Plaintiff received an unsolicited

1 text message to his cellular telephone from Defendant.

2 25. Defendant's text message to the 8768 Number read:

3 Thank you for choosing Boston Market, we were unable to  
4 answer your call due to high call volumes. To place an  
5 order, please visit us at [www.bostonmarket.com](http://www.bostonmarket.com). You can  
6 call us on 303-317-6900 we are open 24 hours a day. Thank  
7 you again for choosing Boston Market!

8 26. At no time prior to or during the November 25 call to Defendant did  
9 Plaintiff provide Defendant with the 8768 Number or give Defendant his express  
10 consent to receive such text messages from Defendant.

11 27. Plaintiff has had the 8768 Number registered on the National Do Not  
12 Call Registry since March 10, 2017.

13 28. Upon information and belief, Defendant used Caller ID technology to  
14 capture and store the phone number of incoming calls so that marketing text  
15 messages can be transmitted to potential customers. Defendant used this same  
16 method to capture Plaintiff's number and thus sent him a text message.

17 29. Furthermore, the text message that Defendant sent to Plaintiff contained  
18 no method for Plaintiff to instruct Defendant to stop sending Plaintiff unwanted text  
19 messages.

20 30. Because Plaintiff is alerted when a text message is received to  
21 Plaintiff's cellular device, the unsolicited text message that Defendant transmitted to  
22 Plaintiff's cellular device was a nuisance to Plaintiff, invaded Plaintiff's privacy, and  
23 distracted Plaintiff upon receipt.

24 31. Defendant sent the aforementioned text message to Plaintiff's cellular  
25 telephone using a telephone number that is owned or leased by Defendant or  
26 Defendant's agent(s) or affiliate(s) and is used for operating Defendant's text  
27 message marketing campaign.

28 32. Defendant sent or transmitted, or had sent or transmitted on its behalf,  
the same or substantially similar unsolicited text message to thousands of customers'  
cellular telephones during the class period.

1 33. The automated text messaging system used by Defendant to send the  
2 text message to Plaintiff has the capacity to store or produce telephone numbers to  
3 be called, using a random or sequential number generator.

4 34. Upon information and belief, Defendant utilized an “automated  
5 telephone dialing system” because the text message sent to the 8768 Number was  
6 sent from a telephone number utilized to send text messages to consumers without  
7 human intervention; and because the hardware and software used by Defendant to  
8 send such messages have the capacity to store, produce, and dial random or  
9 sequential numbers, or receive and store lists of telephone numbers, and to dial such  
10 numbers automatically.

11 35. The text message at issue sent by Defendant constituted an  
12 “advertisement” and/ or “telemarketing” as prohibited by the TCPA because  
13 Defendant sent the text message to Plaintiff in order to advertise its rotisserie meals  
14 and catering services and encourage Plaintiff to place an order with Defendant.

15 36. Defendant’s telephonic communications to Plaintiff were not made for  
16 emergency purposes, as defined by 47 U.S.C. § 227(b)(1)(A)(iii).

17 37. Plaintiff never provided “prior express written consent” or any other  
18 form of consent to Defendant or any affiliate, subsidiary, or agent of Defendant to  
19 transmit text messages to the 8768 Number by means of an “automatic telephone  
20 dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A).

21 38. Through Defendant’s aforementioned conduct, Plaintiff suffered an  
22 invasion of a legally protected interest in privacy, which is specifically addressed  
23 and protected by the TCPA.

24 39. Plaintiff was personally affected by Defendant’s aforementioned  
25 conduct because Plaintiff was frustrated that Defendant annoyed Plaintiff with an  
26 uninvited marketing text message without Plaintiff’s prior express consent.

27 40. The text messages from Defendant, or its agent(s), violated 47 U.S.C. §  
28 227(b)(1)(A)(iii).



1 CLASS ACTION ALLEGATIONS

2 41. Plaintiff brings this action on behalf of Plaintiff and all others similarly  
3 situated (the “Class”).

4 42. Plaintiff represents, and is a member of, the Class, pursuant to Fed. R.  
5 Civ. P. 23(b)(2) and/or (b)(3), which is defined as follows:

6 All persons within the United States who were sent a  
7 automated marketing text message by Defendant and/or its  
8 employees and/or agents to said person’s cellular telephone,  
following a call to Defendant by said person, within the  
four years prior to the filing of the Complaint.

9 43. Excluded from the Class are: (1) Defendant, any entity or division in  
10 which Defendant has a controlling interest, and their legal representatives, officers,  
11 directors, assigns, and successors; (2) the Judge to whom this case is assigned and  
12 the Judge’s staff; and (3) those persons who have suffered personal injuries as a  
13 result of the facts alleged herein.

14 44. Plaintiff reserves the right to redefine the Class, and to add and redefine  
15 any additional subclass as appropriate based on discovery and specific theories of  
16 liability.

17 45. The Class that Plaintiff seeks to represent contains numerous members  
18 and is clearly ascertainable including, without limitation, by using Defendant’s  
19 records to determine the size of the Class and to determine the identities of  
20 individual Class members.

21 **Numerosity**

22 46. The Class members are so numerous that joinder of all members would  
23 be unfeasible and impractical. The membership of the Class is currently unknown to  
24 Plaintiff at this time. However, given that, on information and belief, Defendant sent  
25 or transmitted, or had sent or transmitted on its behalf, unsolicited text messages to  
26 hundreds, if not thousands, of customers’ cellular telephones nationwide during the  
27 proposed class period, it is reasonable to presume that the members of the Class are  
28 so numerous that joinder of all members is impracticable. The disposition of their



1 claims in a class action will provide substantial benefits to the parties and the Court.

2 **Commonality**

3 47. There are questions of law and fact common to the Class that  
4 predominate over any questions affecting only individual Class members. Those  
5 common questions of law and fact include, without limitation, the following:

- 6 a) Whether within the four years prior to the filing of this Complaint,  
7 Defendant or employees or agents transmitted any marketing text  
8 messages without the prior express written consent of Plaintiff and  
9 Class members using an “automatic telephone dialing system”;
- 10 b) Whether Defendant can meet its burden to show Defendant obtained  
11 prior express written consent (as defined by 47 C.F.R. 64.1200(f)(8)) to  
12 send marketing text messages complained of, assuming such an  
13 affirmative defense is raised;
- 14 c) Whether Defendant’s conduct was knowing and/or willful;
- 15 d) Whether Plaintiff and the members of the Class were damaged thereby,  
16 and the extent of damages for such violation; and,
- 17 e) Whether Defendant or affiliates, subsidiaries, or agents of Defendant  
18 should be enjoined from engaging in such conduct in the future.

19 **Typicality**

20 48. Plaintiff is qualified to, and will, fairly and adequately protect the  
21 interests of each Class member with whom they are similarly situated, and Plaintiff’s  
22 claims (or defenses, if any) are typical of all Class members’ as demonstrated herein.

23 49. Plaintiff represents and is a Class member of the Class because Plaintiff  
24 received at least one marketing text message through the use of an automatic  
25 telephone dialing system, without providing prior express written consent to the  
26 Defendant within the meaning of the TCPA. Consequently, the claims of Plaintiff  
27 are typical of the claims of Class members and Plaintiff’s interests are consistent  
28 with and not antagonistic to those of the other Class members Plaintiff seeks to

1 represent.

2 50. Plaintiff and all members of the Class have been impacted by, and face  
3 continuing harm arising out of, Defendant's violations or misconduct as alleged  
4 herein.

5 **Adequacy**

6 51. Plaintiff is qualified to, and will, fairly and adequately protect the  
7 interests of each Class member with whom Plaintiff is similarly situated, as  
8 demonstrated herein. Plaintiff acknowledges that Plaintiff has an obligation to make  
9 known to the Court any relationship, conflicts, or differences with any Class  
10 member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules  
11 governing class action discovery, certification, and settlement. In addition, the  
12 proposed class counsel is experienced in handling claims involving consumer actions  
13 and violations of Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.*  
14 Plaintiff has incurred, and throughout the duration of this action, will continue to  
15 incur costs and attorneys' fees that have been, are, and will be, necessarily expended  
16 for the prosecution of this action for the substantial benefit of each Class member.  
17 Neither Plaintiff nor Plaintiff's counsel have any interests adverse to those of the  
18 other Class members.

19 **Predominance**

20 52. Questions of law or fact common to the members of the Class  
21 predominate over any questions affecting only individual members of the class. The  
22 elements of the legal claims brought by Plaintiff and members of the Class are  
23 capable of proof at trial through evidence that is common to the class rather than  
24 individual to its members.

25 **Superiority**

26 53. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this controversy because individual litigation of the claims  
28 of all Class members is impracticable and questions of law and fact common to the

1 Class predominate over any questions affecting only individual members of the  
2 Class. Even if every individual Class member could afford individual litigation, the  
3 court system could not. It would be unduly burdensome to the courts if individual  
4 litigation of the numerous cases were to be required.

5 54. Individualized litigation also would present the potential for varying,  
6 inconsistent, or contradictory judgments, and would magnify the delay and expense  
7 to all parties and to the court system resulting from multiple trials of the same factual  
8 issues. By contrast, conducting this action as a class action will present fewer  
9 management difficulties, conserve the resources of the parties and the court system,  
10 and protect the rights of each Class member. Further, it will prevent the very real  
11 harm that would be suffered by numerous Class members who will be unable to  
12 enforce individual claims of this size on their own, and by Defendant's competitors,  
13 who will be placed at a competitive disadvantage because they chose to obey the  
14 law. Plaintiff anticipates no difficulty in the management of this case as a class  
15 action.

16 55. The prosecution of separate actions by individual Class members may  
17 create a risk of adjudications with respect to them that would, as a practical matter,  
18 be dispositive of the interests of other Class members not parties to those  
19 adjudications, or that would otherwise substantially impair or impede the ability of  
20 those non-party Class members to protect their interests.

21 56. The prosecution of individual actions by Class members would  
22 establish inconsistent standards of conduct for Defendant.

23 57. Defendant has acted or refused to act in ways generally applicable to the  
24 Class, thereby making appropriate final and injunctive relief or corresponding  
25 declaratory relief with regard to members of the Class as a whole. Likewise,  
26 Defendant's conduct as described above is unlawful, is capable of repetition, and  
27 will continue unless restrained and enjoined by the Court.

28 58. The Class may also be certified because:

1 (a) the prosecution of separate actions by individual Class members  
2 would create a risk of inconsistent or varying adjudication with  
3 respect to individual Class members, which would establish  
4 incompatible standards of conduct for Defendants;

5 (b) the prosecution of separate actions by individual Class members  
6 would create a risk of adjudications with respect to them that would,  
7 as a practical matter, be dispositive of the interests of other Class  
8 members not parties to the adjudications, or substantially impair or  
9 impede their ability to protect their interests; and,

10 (c) Defendants have acted or refused to act on grounds generally  
11 applicable to the Class, thereby making appropriate final and  
12 injunctive relief with respect to the members of the Class as a whole.

13 59. This suit seeks only damages and injunctive relief for recovery of  
14 statutory damages on behalf of Class and it expressly is not intended to request any  
15 recovery for personal injury and claims related thereto.

16 **FIRST CAUSE OF ACTION**  
17 **VIOLATIONS OF THE TCPA**  
18 **47 U.S.C. §§ 227, *ET SEQ.***

19 60. Plaintiff repeats and incorporates by reference the allegations set forth  
20 above as though fully stated herein.

21 61. The foregoing acts and omissions of Defendant constitute numerous and  
22 multiple negligent violations of the TCPA, including but not limited to each and  
23 every one of the above-cited provisions of 47 U.S.C. §§ 227, *et seq.*

24 62. As a result of Defendant's negligent violations of 47 U.S.C. § 227,  
25 Plaintiff and all Class members are entitled to, and do seek, injunctive relief  
26 prohibiting such conduct violating the TCPA in the future.

27 63. As a result of Defendant's negligent violations of 47 U.S.C. § 227,  
28 Plaintiff and all Class members are also entitled to, and do seek, an award of \$500.00  
statutory damages, for each and every violation, pursuant to 47 U.S.C. §

1 227(b)(3)(B).

2 64. As a result of Defendant's knowing and/or willful violations of 47  
3 U.S.C. § 227, *et seq.*, Plaintiff and all Class members are also entitled to, and do  
4 seek, an award of \$1,500.00 in statutory damages, for each and every violation,  
5 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and members of the Class, prays  
8 for the following relief:

- 9
- 10 • That this action be certified as a Class Action, establishing the Class and  
any appropriate sub-classes that the Court may deem appropriate;
  - 11 • Appointing Plaintiff as the representative of the Class;
  - 12 • Appointing the law firms representing Plaintiff as Class Counsel;
  - 13 • An award of \$500.00 in statutory damages to Plaintiff and each Class  
14 member for each and every negligent violation of 47 U.S.C. § 227(b)(1)  
15 by Defendant, pursuant to 47 U.S.C. § 227(b)(3)(B);
  - 16 • An award of \$1,500.00 in statutory damages to Plaintiff and each Class  
17 member for each and every knowing and/or willful violation of 47 U.S.C.  
18 § 227(b)(1) by Defendant, pursuant to 47 U.S.C. § 227(b)(3)(B);
  - 19 • An order providing injunctive relief prohibiting such conduct in the  
20 future, pursuant to 47 U.S.C. § 227(b)(3)(A);
  - 21 • Costs of suit;
  - 22 • An award of reasonable attorneys' fees and costs to Plaintiff and the  
23 Class, pursuant to the common fund doctrine and, *inter alia*, California  
24 Code of Civil Procedure § 1021.5;
  - 25 • Pre-judgment and post-judgment interest;
  - 26 • Any other further relief that the court may deem just and proper.

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**JURY DEMAND**

65. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and hereby demands, a trial by jury.

Dated: March 25, 2021

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By:           /s/ Abbas Kazerounian          

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