

1 Michael R. Lozeau (SBN 142893)

2 michael@lozeaudrury.com

3 Rebecca Davis (SBN 271662)

4 rebecca@lozeaudrury.com

5 **LOZEAU DRURY LLP**

6 1939 Harrison Street, Suite 150

7 Oakland, CA 94612

8 Telephone: (510) 836-4200

9 Facsimile: (510) 836-4205

10 [Additional counsel appearing on signature page]

11 *Attorneys for Plaintiffs and the Alleged Class*

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **EDWIN WILLIAMS**, individually and
15 on behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.

19 **ZEETO, LLC**, a Delaware limited
20 liability company,

21 Defendant.

Case No. '21CV1646 L BLM

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

22 **CLASS ACTION COMPLAINT**

23 Plaintiff Edwin Williams (“Williams” or “Plaintiff”) brings this Class Action
24 Complaint and Demand for Jury Trial (“Complaint”) against Defendant Zeeto, LLC
25 (“Defendant” or “Zeeto”) to: (1) stop Defendant’s practice of sending text
26 messages using an “automatic telephone dialing system” (“ATDS”) to the
27
28

1 cellphones of consumers nationwide without their prior express consent; (2) stop
2 Defendant’s practice of sending repeated text messages to consumers on the
3 National Do Not Call Registry; (3) obtain an injunction prohibiting Defendant’s
4 continued sent text messages to consumers; and (4) obtain redress for all persons
5 injured by Defendant’s conduct.

6 Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to
7 himself and his own acts and experiences, and, as to all other matters, upon
8 information and belief, including investigation conducted by his attorneys.

9 **JURISDICTION & VENUE**

10 1. The Court has subject matter jurisdiction over this action pursuant to
11 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection
12 Act, 47 U.S.C. § 227, *et seq.*, (“TCPA” or the “Act”) a federal statute. The Court
13 also has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332
14 (“CAFA”). The alleged Class consists of over 100 persons, there is minimal
15 diversity, and the claims of the class members when aggregated together exceed \$5
16 million. Further, none of the exceptions to CAFA applies.

17 2. This Court has personal jurisdiction over Defendant because Zeeto is
18 headquartered in and resides in this district, has solicited and entered into business
19 contracts in this District, and a significant portion of the unlawful conduct alleged
20 in this Complaint occurred in and/or emanated from this District.

21 3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a significant
22 portion of Defendant’s wrongful conduct giving rise to this case occurred in and/or
23 emanated from this District.

24 **PARTIES**

25 4. Plaintiff Edwin Williams is an individual residing in Statesboro,
26 Bulloch County, Georgia, 30461.

1 Defendant and/or its agents has the capacity to store and/or produce numbers using
2 a random or sequential number generator, and to dial such numbers, *en masse*, in an
3 automated fashion without human intervention. Defendant's automated dialing
4 equipment includes features substantially similar to a predictive dialer in that it is
5 capable of sending numerous text messages simultaneously, without human
6 intervention.

7 12. The text messages were sent by or on Zeeto's behalf and with its
8 knowledge and approval. Zeeto knew about the messages, received the benefits of
9 the messages, directed that the messages be sent, and/or ratified the sending of the
10 messages.

11 13. The TCPA was enacted to protect consumers from unsolicited
12 telephone text messages like those alleged in this case. In response to Defendant's
13 unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction
14 requiring Defendant to cease all unsolicited text messages activities to consumers as
15 complained of herein and an award of statutory damages to the members of the
16 Class, together with costs and reasonable attorneys' fees.

17 **FACTS SPECIFIC TO PLAINTIFF WILLIAMS**

18 14. Plaintiff is the of the cellphone number ending in 9607.

19 15. In or around June 2020, Plaintiff Williams received a text message
20 from a number he did not recognize, nor had any affiliation with. The text message
21 contained a link to getitfree.us, a website owned and operated by Defendant.

22 16. Following the initial text message from getitfree.us, Williams received
23 numerous text messages that all listed and provided advertisements for getitfree.us.

24 17. Plaintiff continued to receive repeated, unsolicited text messages from
25 several unknown numbers, all of which contain the link getitfree.us.

26 18. Some of the copied text messages can be found below:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Hey edwin! You're just a few steps away from getting new Milwaukee tools shipped to your doorstep: getitfree.us/Milwaukee
Reply BYE to opt out

Hungry edwin? Get Burger King chicken nuggets delivered straight to your door! Tap here: sms.getitfree.us/s/LvTUhg
Reply BYE to opt out

Now's your chance edwin! Get free samples of Gain Ultra Flings today. Redeem here: sms.getitfree.us/s/_Oxfjw
Reply BYE to opt out

Hey edwin, this offer hits it out of the park! Get a free Grand Slam at Denny's! Tap here: sms.getitfree.us/s/lXygVw
Reply BYE to opt out

Father's Day is just around the corner! Check out all our favorite freebies to help you celebrate Father's Day: sms.getitfree.us/s/63u6aA
Reply BYE to opt out
[#6232590870](https://sms.getitfree.us/s/63u6aA)

Check it out edwin! Get a free slice of cheesecake from Cheesecake Factory today! Redeem here: sms.getitfree.us/s/168FUA
Reply BYE to opt out
[#6232590870](https://sms.getitfree.us/s/168FUA)

(912) 531-9607 • Jun 13, 2020
Father's Day is just around the corner! Check out all our favorite freebies to help you celebrate Father's Day: sms.getitfree.us/s/63u6aA
Reply BYE to opt out
[#623-259-0870 3](https://sms.getitfree.us/s/63u6aA) in a row same #

Check it out edwin! Get a free slice of cheesecake from Cheesecake Factory today! Redeem here: sms.getitfree.us/s/168FUA
Reply BYE to opt out

Offer confirmed edwin! Get a free Burger and Fries from Steak 'n Shake today! Redeem here: sms.getitfree.us/s/gU4CqA
Reply BYE to opt out
(912) 531-9607 • Jun 23, 2020

1 19. All of the text messages were sent via an ATDS at the direction and
2 oversight of Defendant. Defendant knew about, directed, ratified, and benefitted
3 from the text messages.

4 20. Defendant was, and still is, aware that the above-described autodialed
5 text messages were sent to consumers like Plaintiff who have not consented to
6 receive them.

7 21. On information and belief, the equipment used to send the texts at
8 issue has the capacity to use a random or sequential number generator in the process
9 of storing numbers from a pre-produced list for texting at a later date.

10 22. The equipment at issue also has the capacity to produce telephone
11 numbers using a random or sequential number generator. Specifically, the texting
12 software, by virtue of being inextricably linked to a computer operating system, has
13 the capacity to generator random or sequential telephone numbers.

14 23. By sending unsolicited text messages as alleged herein, Defendant has
15 caused Plaintiff and members of the Class actual harm. This includes the
16 aggravation, nuisance, and invasions of privacy that result from the placement of
17 such text messages, in addition to the wear and tear on their phones, interference
18 with the use of their phones, consumption of battery life, loss of value realized for
19 monies consumers paid to their carriers for the receipt of such messages, and the
20 diminished use, enjoyment, value, and utility of their telephone plans. Furthermore,
21 Defendant sent the messages knowing they trespassed against and interfered with
22 Plaintiff and the other Class members' use and enjoyment of, and the ability to
23 access, their phones, including the related data, software, and hardware
24 components.

25 24. To redress these injuries, Plaintiff, on behalf of himself and Class of
26 similarly situated individuals, brings this suit under the TCPA, which prohibits

1 unsolicited telemarketing calls and text messages to cell phones. On behalf of the
2 Class, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized
3 calling activities and an award of statutory damages to Class members, together
4 with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

5 **CLASS ACTION ALLEGATIONS**

6 25. Plaintiff brings this action in accordance with Federal Rule of Civil
7 Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and the following Class
8 defined as follows:

9 **No Consent Text Class:** All persons in the United States from four
10 years prior to the filing of the instant action who (1) Defendant (or a
11 third person acting on behalf of Defendant) sent text messages, (2) on
12 the person's cellular telephone number, (3) using the same dialing
13 equipment used to text Plaintiff, (4) for the purpose of promoting a
14 product or service, and (5) for whom Defendant claims to have obtained
15 prior express consent in the same manner it claims Plaintiff consented.

16 **DNC Registry Class:** All persons in the United States from four years
17 prior to the filing of the initial complaint in this action to the present
18 who: (1) having never authorized unsolicited text messages from
19 Defendant; (2) Defendant, or a third person acting on behalf of
20 Defendant, sent at least two text messages within any 12-month period
21 after the person replied "STOP", "BYE", or a substantially similar
22 command; (3) where the person's telephone number had been listed on
23 the National Do Not Call Registry for at least thirty (30) days; (4) for
24 the same purpose as text messages were sent to Williams; (5) for whom
25 Defendant claims it obtained prior express consent in the same manner
26 as Defendant claims it supposedly obtained prior express consent to send
27 text messages to Williams.

28 26. The following people are excluded from the Class: (1) any Judge or
Magistrate presiding over this action and members of their families; (2) Defendant,
Defendant's subsidiaries, parents, successors, predecessors, and any entity in which
the Defendant or its parent have a controlling interest and their current or former

1 employees, officers and directors; (3) persons who properly execute and file a
2 timely request for exclusion from the Class; (4) persons whose claims in this matter
3 have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's
4 counsel and Defendant's counsel; and (6) the legal representatives, successors, and
5 assignees of any such excluded persons. Plaintiff anticipates the need to amend the
6 class definitions following a period of appropriate discovery regarding the purpose
7 of the text messages, any consent obtained, and any third party on whose behalf the
8 text messages were sent.

9 27. **Numerosity:** The exact number of members within the Class is
10 unknown and not available to Plaintiff at this time, but individual joinder is
11 impracticable. On information and belief, Defendant has sent unsolicited text
12 messages to thousands of consumers who fall into the defined Class. The number of
13 members of the Class and Class membership can be identified through objective
14 criteria, including Defendant's phone records.

15 28. **Typicality:** Plaintiff's claims are typical of the claims of other
16 members of the Class in that Plaintiff and the members of the Class sustained the
17 same legal injuries and damages arising out of Defendant's uniform wrongful
18 conduct. If Plaintiff has an entitlement to relief, so do the rest of the Class
19 Members.

20 29. **Adequate Representation:** Plaintiff will fairly and adequately
21 represent and protect the interests of the Class and has retained counsel competent
22 and experienced in complex class actions, including class actions under the TCPA.
23 Neither Plaintiff nor his counsel has any interest in conflict with or antagonistic to
24 those of the Class, and Defendant has no defenses unique to Plaintiff.

25 30. **Commonality and Predominance:** There are questions of law and
26 fact common to the claims of Plaintiff and the Class, and those questions will drive

1 the litigation and predominate over any questions that may affect individual
2 members of the Class. Common questions for the Class include, but are not
3 necessarily limited to the following:

- 4 (a) Whether Defendant’s conduct violated the TCPA;
- 5 (b) Whether the text messages were sent by or on behalf of
6 Defendant and/or whether Defendant knew about, approved, or benefitted
7 from the messages;
- 8 (c) Whether Defendant sent the text messages using an ATDS;
- 9 (d) Whether Defendant had any prior express written consent to
10 send the text messages; and
- 11 (e) Whether Defendant’s conduct was willful or knowing such that
12 members of the Class are entitled to treble damages.

13 **31. Conduct Similar Towards All Class Members:** By committing the
14 acts set forth in this pleading, Defendant has acted or refused to act on grounds
15 substantially similar towards all members of the Class so as to render certification
16 of the Class for final injunctive relief and corresponding declaratory relief
17 appropriate under Rule 23(b)(2).

18 **32. Superiority & Manageability:** This case is also appropriate for class
19 certification because class proceedings are superior to all other available methods
20 for the fair and efficient adjudication of this controversy. Joinder of all parties is
21 impracticable, and the damages suffered by the individual members of the Class
22 will likely be relatively small, especially given the burden and expense of individual
23 prosecution of the complex litigation necessitated by Defendant’s actions. Thus, it
24 would be virtually impossible for the individual members of the Class to obtain
25 effective relief from Defendant’s misconduct. Even if members of the Class could
26 sustain such individual litigation, it would still not be preferable to a class action,

1 because individual litigation would increase the delay and expense to all parties due
2 to the complex legal and factual controversies presented in this Complaint. By
3 contrast, a class action presents far fewer management difficulties and provides the
4 benefits of single adjudication, economies of scale, and comprehensive supervision
5 by a single Court. Economies of time, effort and expense will be fostered, and
6 uniformity of decisions ensured. Also, there are no pending governmental actions
7 against Defendant for the same conduct.

8 **FIRST CAUSE OF ACTION**
9 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.**
10 **On behalf of Plaintiff and the No Consent Class**

11 33. Plaintiff incorporates the foregoing allegations as if fully set forth
12 herein.

13 34. Defendant sent unsolicited and unwanted autodialed telemarketing text
14 messages to cellular telephone numbers belonging to Plaintiff and the other
15 members of the No Consent Class, without their prior express written consent in an
16 effort to generate leads for Defendant's business.

17 35. Defendant failed to obtain any prior express consent that included, as
18 required by 47 C.F.R. § 64.1200(f)(8)(i), a "clear and conspicuous" disclosure
19 informing the person signing that:

20 (A) By executing the agreement, such person authorizes the seller to
21 deliver or cause to be delivered to the signatory telemarketing text
22 messages using an automatic telephone dialing system; and

23 (B) The person is not required to sign the agreement (directly or
24 indirectly), or agree to enter into such an agreement as a condition of
25 purchasing any property, goods, or services.

26 36. Further, Defendant sent the autodialed text messages using equipment
27 that has the capacity to store or produce telephone numbers to be contacted using a

1 random or sequential number and to dial such numbers, *en masse*, simultaneously
2 and without human intervention.

3 37. By sending unsolicited text messages to Plaintiff and members of the
4 No Consent Class’s cellular telephones without prior express consent, and by
5 utilizing an ATDS, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

6 38. As a result of Defendant’s unlawful conduct, Plaintiff and the members
7 of the No Consent Class suffered actual damages in the form of monies paid to
8 receive the unsolicited autodialed text messages on their cellular telephones and,
9 under Section 227(b)(3), are each entitled to, *inter alia*, a minimum of \$500 in
10 damages for each such violation of the TCPA.

11 39. Should the Court determine that Defendant’s conduct was willful and
12 knowing, the Court may, pursuant to section 227(b)(3), treble the amount of
13 statutory damages recoverable by Plaintiff and the other members of the No
14 Consent Class.

15 **SECOND CAUSE OF ACTION**
16 **Violation of the TCPA, 47 U.S.C. § 227, *et seq.***
17 **(On behalf of Plaintiff and the DNC Registry Class)**

18 40. Plaintiff incorporates by reference the forgoing allegations as if fully
19 set forth herein.

20 41. 47 U.S.C. § 227(c) provides that any “person who has received more
21 than one telephone call within any 12-month period by or on behalf of the same
22 entity in violation of the regulations prescribed under this subsection may” bring a
23 private action based on a violation of said regulations, which were promulgated to
24 protect telephone subscribers’ privacy and their right to avoid receiving telephone
25 solicitation to which they object.

1 42. The TCPA’s implementing regulation 47 C.F.R. § 64.1200(c),
2 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]
3 residential telephone subscriber who has registered his or her telephone number on
4 the national do-not-call registry of persons who do not wish to receive telephone
5 solicitations that is maintained by the federal government.”

6 43. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are
7 applicable to any person or entity making telephone solicitations or telemarketing
8 calls to wireless telephone numbers to the extent described in the Commission’s
9 Report and Order, CG Docket No. 02-278, FCC 03-153, ‘*Rules and Regulations*
10 *Implementing the Telephone Consumer Protection Act of 1991.*’” The Report and
11 Order, in turn, provides as follows:

12 The Commission’s rules provide that companies making telephone
13 solicitations to residential telephone subscribers must comply with time
14 of day restrictions and must institute procedures for maintaining do-
15 not-call lists. For the reasons described above, we conclude that these
16 rules apply to calls made to wireless telephone numbers. We believe
17 that wireless subscribers should be afforded the same protections as
18 wireline subscribers.²

19 44. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity
20 shall initiate any call for telemarketing purposes to a residential telephone
21 subscriber unless such person or entity has instituted procedures for maintaining a
22 list of persons who request not to receive telemarketing call made by or on behalf of
23 that person or entity. The procedures instituted must meet the following minimum
24 standards:

- 25 (1) Written policy. Persons or entities making calls for telemarketing
26 purposes must have a written policy, available upon demand, for
27 maintaining a do-not-call list.

28 ² 68 Fed. Reg. 44143, 44166 (July 25, 2003).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request . . .

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

- 1 A. An order certifying the Class as defined above, appointing Plaintiff as
- 2 the representative of the Class, and appointing his counsel as Class
- 3 Counsel;
- 4 B. An order declaring that Defendant’s actions, as set out above, violate
- 5 the TCPA;
- 6 C. An injunction requiring Defendant to cease all practices of sending
- 7 unsolicited text messages to consumers whose numbers are listed on
- 8 the Do Not Call Registry;
- 9 D. An injunction requiring Defendant to honor STOP requests and similar
- 10 requests and otherwise protecting the interests of the Class;
- 11 E. An award of actual monetary loss from such violations or the sum of
- 12 five hundred dollars (\$500.00) for each violation, whichever is greater
- 13 all to be paid into a common fund for the benefit of the Plaintiff and
- 14 the Class Members;
- 15 F. An award of trebled damages if willful or knowing violations are
- 16 shown;
- 17 G. An award of reasonable attorneys’ fees and costs to be paid out of the
- 18 common fund prayed for above; and
- 19 H. Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

23 Dated: September 15, 2021

EDWIN WILLIAMS, individually and on behalf of all others similarly situated,

By: /s/ Michael R. Lozeau
One of Plaintiff’s Attorneys

Michael R. Lozeau (SBN 142893)
michael@lozeaudrury.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rebecca Davis (SBN 271662)
rebecca@lozeaudrury.com
LOZEAU DRURY LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612
Telephone: (510) 836-4200
Facsimile: (510) 836-4205

Patrick H. Peluso*
ppeluso@woodrowpeluso.com
WOODROW & PELUSO, LLC
3900 East Mexico Ave., Suite 300
Denver, Colorado 80210
Telephone: (720) 213-0676
Facsimile: (303) 927-0809

Counsel for Plaintiff and the Putative Class
*pro hac vice application to be filed