IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MATTIE CROSSLEY and SHERYL SEYMOUR, individually and on behalf of all others similarly situated, Plaintiffs, v. JOYA COMMUNICATIONS INC., a Delaware corporation, Defendant.	Case No.

2016CH14771
CALENDAR/ROOM 08
TIME 00:00
Class Action

2016 NOV 10 PM 2:53
CIRCUIT COURT OF COOK COUNTY, IL
CHANCERY DIVISION
DOROTHY BROWN

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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Mattie Crossley and Sheryl Seymour bring this Class Action Complaint and Demand for Jury Trial against Defendant Joya Communications Inc. to stop its practice of making unauthorized text message calls to the cellular telephones of consumers nationwide and to obtain redress for all persons injured by its conduct. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

NATURE OF THE ACTION

1. Defendant Joya operates a social networking and video messaging service called Marco Polo. In an effort to quickly gain more users for its mobile application, Joya secretly collected the cell phone numbers that were stored on its existing users' cell phones, and then sent text message advertisements to such contacts urging them to download its mobile application. This marketing technique is commonly known as "spam-viting" or "growth hacking," and is sometimes used by mobile app developers (like Joya) to gain a larger user base for the purpose of inflating their valuation and attracting investors.

2. Through this unlawful campaign, Joya has sent tens of thousands of spam text messages to consumers without their consent, all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA").

3. To be clear, Plaintiffs and a putative Class of consumers (defined below) have never provided their cell phone numbers to Joya and have never provided Joya with consent to send them text messages of any kind, let alone messages that spam their personal cell phones with advertisements.

4. By sending the spam text messages at issue, Joya has violated the privacy and statutory rights of Plaintiffs and the Class, and caused them to suffer harm, not only by subjecting them to the aggravation that necessarily accompanies the receipt of unauthorized spam text messages, but also because consumers frequently have to pay their wireless providers for the receipt of such unauthorized text message calls.

5. As a result, Plaintiffs, on behalf of themselves and the putative Class, seek an injunction requiring Joya to cease all unauthorized text message call activities alleged herein and an award of statutory damages to Plaintiffs and the Class for each such violation, together with costs and reasonable attorneys' fees.

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PARTIES

6. Plaintiff Mattie Crossley is a natural person and a citizen of the State of Illinois.

7. Plaintiff Sheryl Seymour is a natural person and citizen of the State of Texas.

8. Defendant Joya Communications Inc. is a corporation existing under the laws of the State of Delaware with its principal place of business located at 449 Hawthorne Avenue, Unit 2, Palo Alto, California 94301. Joya conducts business throughout this County, the State of Illinois, and the United States.

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JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(b)(4) and venue is proper because Joya is a corporation that conducts business in Illinois and because Plaintiff Crossley resides and received the unlawful text messages in Cook County.

COMMON FACTUAL ALLEGATIONS

10. Given the relatively low cost associated with sending bulk text messages, many marketers and mobile app developers have turned to disseminating advertisements or promotions through mass text message campaigns.

11. Seeking to market its Marco Polo mobile application to consumers throughout the United States and, in turn, grow its user base, Joya decided to engage in this especially invasive form of advertising.

12. Worse yet, in order to obtain cell phone numbers to send its text messages to, Joya secretly collected cell phone numbers stored on its existing users' cell phones, and then sent text message advertisements to such contacts urging them to download its mobile application.

13. For instance, in early 2016, Plaintiffs' cellular telephones rang, indicating that text message calls were being received.

14. The "from" fields of such transmissions identified a phone number used by Joya. The text messages included the name of the individual that supposedly sent the text messages as well as a hyperlink to Joya's Marco Polo website. For example, many of these text messages read:

[redacted]: for you
onmarcopolo.com/i/[redacted][1]

[1] Joya's text messages include the name of the third party whose cell phone it scraped to make it appear that the text message was being sent by that person (and not Joya). In this case, Plaintiffs have redacted the name to protect the privacy of the third party. Likewise, Plaintiffs

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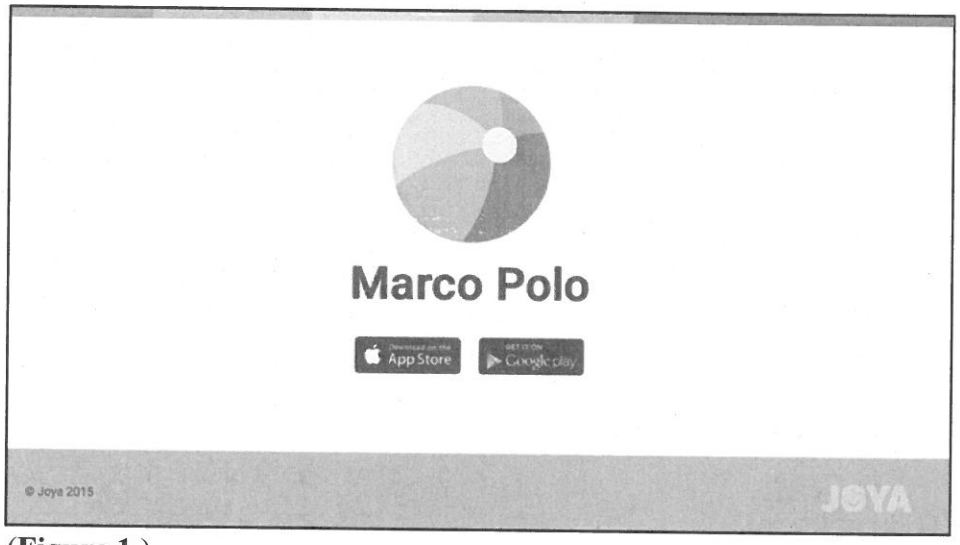
15. Each promotional text message call received by Plaintiffs and the putative Class was substantially similar in that they all contained a hyperlink to Joya's website, where it encouraged them to download its Marco Polo app. (*See* Figure 1 below, showing a screenshot the website associated with Joya's promotional text message calls.)



(Figure 1.)

16. If a consumer clicks on the hyperlink displayed in the promotional text message call, the effect of Joya's text message marketing campaign becomes apparent. That is, after clicking that hyperlink, the recipient of Joya's promotional text messages is directed to one of its websites and encouraged to download its Marco Polo app.

17. Joya created the promotional text message campaign at issue, and maintained exclusive control over the manner and means by which such text messages were sent.

18. Ostensibly, Joya made, and continues to make, these unauthorized text message calls to consumers so that it can solicit them to download their Marco Polo application.

19. Plaintiffs did not consent to, request, or otherwise desire or permit Joya to

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also redacted the web address in the hyperlink given that the associated website is uniquely identifiable to that individual.

transmit or make any promotional text message calls to their cellular telephones.

20. Joya did not obtain consent from Plaintiffs or the putative Class to make promotional text message calls to their cellular telephones. Moreover, none of Joya's promotional text message calls provided Plaintiffs or the putative Class with a reasonable opportunity to opt out of receiving future promotional text message calls.

21. The promotional text message calls alleged herein were not made by any other consumer and were solely made by Joya.

22. Joya made, or had made on its behalf, the same (or substantially the same) text message calls *en masse* to thousands of cellular telephone numbers.

23. On information and belief, Joya made these text message calls to Plaintiffs and putative Class members using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers.

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CLASS ACTION ALLEGATIONS

24. **Class Definition**: Plaintiffs Crossley and Seymour bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a Class defined as follows:

> All persons in the United States who received one or more unauthorized text message calls from Joya Communications Inc.

Excluded from the Class are: (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 parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

25. **Numerosity**: The exact number of Class members is unknown and not available to Plaintiffs at this time, but it is clear that individual joinder is impracticable. On information and belief, Joya has made unauthorized promotional text message calls to thousands of consumers who fall into the definition of the Class. Class members can be identified through Defendant's records.

26. **Commonality and Predominance**: There are many questions of law and fact common to the claims of Plaintiffs and the putative Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

(a) whether Defendant's conduct constitutes a violation of the TCPA;

(b) whether the equipment Defendant used to make the text message calls in question was an automatic telephone dialing system as contemplated by the TCPA; and

(c) whether Class members are entitled to treble damages based on the willfulness of Defendant's conduct.

27. **Adequate Representation**: Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

28. **Appropriateness**: This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate.

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Defendant's practices apply to and affect members of the Class uniformly and Plaintiffs' challenge of these practices hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiffs. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief for Defendant's misconduct. Even if each member of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expenses to all parties due to the complex legal and factual controversies presented in the Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

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FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On behalf of Plaintiffs and the Class)

29. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

30. In an effort to promote is services, Joya made unsolicited and unwanted text message calls to Plaintiffs' and the Class's cellular telephones without their prior express consent.

31. Joya made unauthorized commercial text message calls to the cellular telephone numbers of Plaintiffs and the Class using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers *en masse*.

32. Joya utilized equipment that made the text message calls to Plaintiffs and other members of the putative Class simultaneously and without human intervention.

33. By making unsolicited text message calls to Plaintiffs' and members of the

Class's cellular telephones without prior express consent, and by utilizing an ATDS, Joya violated 47 U.S.C. § 227(b)(1)(A)(iii).

34. As a result of Joya's unlawful conduct, Plaintiffs and the members of the putative Class suffered actual damages and have also had their rights to privacy adversely impacted. Plaintiffs and the Class are therefore entitled to, among other things, a minimum of $500 in statutory damages for each such violation under 47 U.S.C. § 227(b)(3)(B).

35. Because Joya's misconduct was willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by the Plaintiffs and the other members of the putative Class.

36. Additionally, as a result of Joya's unlawful conduct, Plaintiffs and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that Joya's violations of the TCPA do not continue into the future.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Mattie Crossley and Sheryl Seymour individually and on behalf of the Class, pray for the following relief:

(a) An order certifying the Class as defined above, appointing Plaintiffs Crossley and Seymour as the representatives of the Class, and appointing their counsel as Class Counsel;

(b) A declaration that Joya's actions, as set out above, violate the TCPA;

(c) An award of actual, statutory, and treble damages;

(d) An injunction requiring Joya to cease all unlawful text message activities and enjoining Joya from using automated or computerized dialing equipment to place text message calls without consent;

(e) An award of reasonable attorneys' fees and costs; and

(f) Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiffs request a trial by jury of all claims that can be so tried.

Respectfully submitted,

MATTIE CROSSLEY and **SHERYL SEYMOUR**, individually and on behalf of all others similarly situated,

Dated: November 10, 2016

By: _____
One of Plaintiffs' Attorneys

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