UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals, Plaintiff, v. YORK RISK SERVICES GROUP, INC. Defendant.	Civil Action No. _____ **NOTICE OF REMOVAL** Removed from the Circuit Court of Cook County, Illinois, No. 2018-ch-14581

PLEASE TAKE NOTICE that defendant York Risk Services Group, Inc. ("York"), by and through its undersigned counsel, hereby removes the state court action captioned *Anthony Oliver v. York Risk Services Group, Inc.*, No. 2018-ch-14581, filed in the Circuit Court of Cook County, Illinois (the "State Court Action") to the United States District Court for the Northern District of Illinois. Removal is based upon 28 U.S.C. §§ 1331, 1441, and 1446. This Court has federal-question jurisdiction over this action under 28 U.S.C. § 1331. In filing this Notice of Removal, York does not waive, and expressly reserves, any and all rights, claims, and defenses it may have. In support of this Notice of Removal, York states as follows:

REMOVED CASE

1. The State Court Action is a civil action filed in the Circuit Court of Cook County, Illinois, under Case No. 2018-ch-14581. On December 4, 2018, a Summons and Complaint was served on York. Copies of the Summons and Complaint are attached hereto as **Exhibit A**.

REMOVAL IS TIMELY

2. A defendant has thirty days from service of the first pleading setting forth a removable claim to file a notice of removal in federal district court. *See* 28 U.S.C. § 1446(b)(1).

3. Plaintiff Anthony Oliver ("Mr. Oliver") commenced this action by filing a Summons and Complaint in the State Court Action on November 27, 2018.

4. York was served with the Summons and Complaint on December 4, 2018.

5. This Notice of Removal is filed within thirty days of the Summons and Complaint being served on the defendant and is therefore timely filed. *See* § 1446(b)(1).

PAPERS FROM REMOVED CASE

6. In accordance with 28 U.S.C. § 1446(a), York attaches hereto true and correct copies of all process, pleadings, and orders served in the State Court Action as of the date of this Notice of Removal, as well as a docket sheet showing all documents filed to date. These documents are attached hereto as **Exhibit A**.

GROUNDS FOR REMOVAL JURIDICTION AND VENUE

7. Removal from a state court to a district court is proper for "any civil action brought in a State court of which the district courts of the United States have original jurisdiction[.]" 28 U.S.C. § 1441(a).

8. This Court has original jurisdiction over this action because the district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

9. Mr. Oliver's claims arise out of alleged violations of the Telephone Consumer Protection Act ("TCPA"). The United States Supreme Court and the Seventh Circuit Court of Appeals have held that district courts have federal question jurisdiction over cases arising out of the TCPA. *Mims v. Arrow Financial Servs., LLC*, 565 U.S. 368, 372 (2012) ("We find no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have

possessed since 1875."); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 451 (7th Cir. 2005) (affirming removal of TCPA claim under § 1441 because "the claim arises under federal law.").

10. Accordingly, this Court has original jurisdiction over the dispute between the parties in this action. *See* 28 U.S.C. § 1331.

11. The United States District Court for the Northern District of Illinois is the proper forum for removal because this case was filed in the Circuit Court of Cook County, Illinois. *See* 28 U.S.C. § 1441(a) (a civil action "may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.").

12. This action must therefore be removed to the United States District Court for the Northern District of Illinois.

PROCEDURAL MATTERS

13. As required by 28 U.S.C. § 1446(d), the defendants will promptly file with the Circuit Court of Cook County, Illinois, a "Notice to Trial Court and Adverse Party of Removal to Federal Court" and will serve upon the plaintiff a true and correct copy of this Notice.

14. No previous application has been made for the relief requested herein.

NON-WAIVER OF DEFENSES

15. York expressly reserves all of its defenses. By removing this action to this Court, York does not waive any rights or defenses available under federal or state law. York expressly reserves the right to move for dismissal of the Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure, and this Notice of Removal is not an Answer or other response to the Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. Nothing in this Notice

of Removal should be taken as an admission that the plaintiff's allegations are sufficient to state a claim or have any substantive merit, or that the courts of the State of Illinois or of the United States have jurisdiction over these claims or York.

Dated: January 3, 2018

By: */s/ James D. Roberts*

James D. Roberts (ARDC #6202460)
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Certificate of Service

I, James D. Roberts, certify that a true copy of the foregoing document was sent by e-mail and first-class mail to all attorneys of record in this action.

Dated: January 3, 2018

By: */s/ James D. Roberts*
James D. Roberts

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
Plaintiff,	)	No. 2018-CH-14581
v.	)	Hon. Thomas R. Allen
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	Cal.: 10
Defendant.	)	JURY TRIAL DEMANDED

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION OR, ALTERNATIVELY, FOR A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY

Plaintiff Anthony Oliver ("Plaintiff"), through his undersigned counsel, pursuant to 735 ILCS 5/2-801, hereby moves this Honorable Court for entry of an Order certifying the below-proposed Class, appointing Plaintiff as Class Representative, and appointing Plaintiff's attorneys as Class Counsel. Alternatively, Plaintiff requests, to the extent the Court determines further evidence is necessary for the purposes of proving any element of 735 ILCS 5/2-801, that the Court defer consideration of Plaintiff's Motion for Class Certification pending a reasonable period to complete discovery, which has not yet commenced with respect to such issues. *See, e.g., Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011). In support of his Motion, Plaintiff submits the following Memorandum of Law.

Dated: November 27, 2018

Respectfully submitted,

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

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MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION OR, ALTERNATIVELY, FOR A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY

This Court should certify a national class of cellular telephone consumers who received unauthorized text messages from Defendant YORK RISK SERVICES GROUP, INC. ("Defendant"). As part of an effort to contact Lyft drivers regarding incident reports that it was assigned to handle, Defendant violated federal law by transmitting, *en masse*, unauthorized text message calls to the cellular telephones of consumers in Illinois and elsewhere in the surrounding region. After receiving such unauthorized text messages from Defendant, Plaintiff Oliver brought suit on behalf of a nationwide class, alleging that Defendant's misconduct violates the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

THE TCPA

"In enacting the TCPA [in 1991], Congress noted the nuisance of rampant telemarketing and the consequent costs of money, time, and the invasion of privacy to consumers." *See Abbas v. Selling Source, LLC*, No. 09CV3413, 2009 WL 4884471, at *7 (N.D. Ill. Dec. 14, 2009) (internal citations omitted); *see also Mims v. Arrow Financial Services*, 132 S.Ct. 740, 744 (2012); *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999, 1008 (N.D. Ill. 2010). Consequently, the TCPA prohibits parties from making:

> 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 or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added).

The Federal Communication Commission – which, under 47 U.S.C. § 227(b)(2), is required to "prescribe regulations to implement the requirements" of the TCPA – has made clear that the transmission of text messages falls under the purview of the TCPA. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. R. 14014, 14115, 2003 WL 21517853 (2003) (ruling that the TCPA prohibition on unsolicited calls "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls provided the call is made to a telephone number assigned to such service.")

The TCPA sets statutory damages in the amount of $500.00 per violation, with an allowance for trebling. *See* 47 U.S.C. § 227(b)(3)(B-C).

THE FACTS

Typical of most actions brought under the TCPA, the facts in this case are relatively straightforward. Defendant is a national provider of insurance and claims adjustment services, including for the ride-sharing service called "Lyft." (Complaint at ¶¶ 6, 9.) In an effort to contact Lyft drivers regarding incident reports that it was assigned to manage, Defendant regularly sent text messages. (*Id.* ¶ 10.) However, Defendant failed to honor requests by recipients of such messages asking to discontinue them and would continue to send such messages. (*Id.* ¶ 11.) To place these calls, Defendant employed certain technology allowing for the bulk transmission of text messages—equipment that the FCC has found to be an "automatic dialing system" subject to the provisions of the TCPA. (*Id.* ¶ 30.) As such, Defendant's text messages individuals who had requested for such messages to stop were sent without authorization in violation of the TCPA. (*Id.* ¶ 31.)

For instance, beginning in or about August 2018, Defendant sent Plaintiff automated text messages regarding an automotive incident supposedly related to Plaintiff's status as a Lyft driver. (Complaint at ¶¶ 12–13.) Plaintiff responded to Defendant's text messages and requested that Defendant no longer contact him. (*Id.* ¶ 14.) However, Defendant ignored Plaintiff's requests and sent at least one more set of automated text messages to Plaintiff on November 1, 2018. (*Id.* ¶ 16.) Plaintiff Oliver – and hundreds or thousands of other members of the Class– received similar such unauthorized text messages from Defendant in the last four years after requesting for the messages to stop. (*Id.* ¶ 26.)

The Proposed Class

Plaintiff seeks to represent one nationwide Class defined as: All persons in the United States and its Territories who, within the applicable statute of limitations, received one or more text messages from Defendant on their cellular telephone regarding the management of an incident claim after communicating to Defendant that it did not have consent to send any further text messages to that telephone number

As explained below, the Class defined above clearly satisfies each of the four certification prongs under Section 2-801 of the Illinois Code of Civil Procedure—numerosity, commonality, adequacy of representation, and fair and efficient adjudication. In the end, a class action is not only appropriate here, it is also the only way that the putative Class members will obtain appropriate redress for Defendant's unlawful conduct.

ARGUMENT

I. Standards for Class Certification

To obtain class certification, it is not necessary for the plaintiff to establish that he will prevail on the merits of the action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974)

("[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.") (internal quotation marks and citation omitted). As such, in determining whether to certify a proposed class, the court accepts the allegations of the complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 880 N.E.2d 653, 655 (Ill. App. Ct. 2007).

To proceed with a class action, the Plaintiff must demonstrate "prerequisites for the maintenance of a class action" as set forth in Section 2-801 of the Illinois Code of Civil Procedure, which provides:

> An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
> (3) The representative parties will fairly and adequately protect the interest of the class.
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. As demonstrated below, each prerequisite is established for the Class, and the Court should therefore certify the proposed Class.

Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801, 819 (Ill. App. Ct. 2005). Circuit courts have broad discretion in determining whether a proposed class meets the requirement for class certification and ought to err in favor of maintaining class certification. *Ramirez*, 880 N.E.2d at 656. While a court may rule on class

certification without requiring further discovery, *see* Manual for Complex Litigation (Fourth) § 21.14, at 255 (2004), courts have found that discovery is helpful prior to addressing a motion for class certification. *See, e.g., Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011) ("Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy off the named plaintiffs . . . . If the parties have yet to fully develop the facts needed for certification, then they can also ask the district court to delay its ruling to provide time for additional discovery or investigation.") (citations omitted).

Accordingly, as explained further below, all the prerequisites for class certification have been met here, despite the fact that Plaintiff has not yet had an opportunity to engage in any discovery. However, in the interests of establishing a more fully developed record before ruling on class certification issues, the Court should defer ruling on this Motion pending discovery and submission of supplemental briefing.

A. The Requirement of Numerosity Is Satisfied

The first step in certifying a class is a showing that "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). This requirement is met when "to join such a large number of plaintiffs in a single suit would render the suit unmanageable and, in contrast, multiple separate claims would be an imposition on the litigants and the courts." *Gordon v. Boden*, 586 N.E.2d 461, 464 (Ill. App. Ct. 1991) (citing *Steinberg v. Chicago Med. Sch.*, 371 N.E.2d 634, 642–43 (Ill. 1977)). To satisfy this requirement a plaintiff need not demonstrate the exact number of class members, but must offer a good faith estimate as to the size of the class. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006).

Plaintiff alleges that there are hundreds, if not thousands of members of the Class.

(Compl. ¶ 26.) Because definitive evidence of numerosity can only come from the records of Defendant and its agents, it is proper to rely upon the allegations of the Complaint in certifying the class. *See* 2 A. Conte & H. Newberg, Newberg on Class Actions § 7.20, at 66 (stating that where class numerosity information is in the possession of the party opposing the class, courts generally rely on the complaint as prima facie evidence or defer ruling.) In this case, the allegations of the Complaint, as well as common sense based on the Defendant's practices, adequately demonstrate numerosity. The nature of Defendant's business is such that these text messages are automatically generated and sent to thousands of individuals who are Lyft drivers and whose incident claims are assigned to Defendant for management, and Defendant's use of generic messages and a short code to send these messages underscores the fact that these messages were sent *en masse* using equipment that allowed for mass transmission of wireless messages to lists of cellular telephone numbers. (Compl. ¶¶ 13, 16, 30.) The number of Class members is almost certainly in the hundreds, and likely in the thousands, a number that more than satisfies the numerosity requirement. *See Kulins v. Malco, A Microdot Co., Inc.*, 459 N.E.2d 1038, 1046 (Ill. App. Ct. 1984) (finding that in Cook County, 30 class members was sufficient to satisfy numerosity to lessen the backlog of cases before the court); *Carrao v. Health Care Serv. Corp.,* 454 N.E.2d 781, 789 (Ill. App. Ct. 1983) (allegation in complaint of over 1,000 class members clearly supports finding that joinder would be impracticable).

There is little question that there is a sufficient number of Class members to satisfy the numerosity requirement. Additionally, the members of the putative Class here can be easily and objectively identified from the records of Defendant, its agents, and telephone carriers, once those records are produced. Furthermore, joinder of the Class members' claims would be completely impracticable because members of the proposed Class are disbursed throughout the

state, and possible the country, and because each proposed Class member's claim is relatively small such that absent a class action, few individuals could afford to bring an individual lawsuit over the amounts at issue. *See Gordon*, 586 N.E.2d at 464. Accordingly, the first prerequisite for class certification is met.

B. Common Questions of Law and Fact Predominate

The second hurdle imposed by Section 2-801(2) is overcome where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been aggrieved by the same or similar misconduct. *See Miner v. Gillette Co.*, 428 N.E.2d 478, 483 (Ill. 1981); *Steinberg*, 371 N.E.2d at 644–45. These common questions must also predominate over any issues affecting individual class members. *See O-Kay Shoes, Inc. v. Rosewell*, 472 N.E.2d 883, 885–86 (Ill. App. Ct. 1984).

Class certification is not defeated even if there is some possibility that "separate proceedings of some character will be required to determine the entitlements of the individual class members to relief." *Carnegie v. Household Int'l Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). While the common issues must predominate, they "need not be exclusive." *Maxwell v. Arrow Fin. Servs., LLC*, No. 03-cv-1995, 2004 WL 719278, at *5 (N.D. Ill. Mar. 31, 2004); *see also Pleasant v. Risk Mgmt. Alternatives, Inc.*, No. 02-cv-6886, 2003 WL 22175390, at *5 (N.D. Ill. Sept. 19, 2003) (certifying class where "the central factual inquiry will be common to all" the class members); *Kremnitzer v. Cabrera & Rephen, P.C.*, 202 F.R.D. 239, 242 (N.D. Ill. 2001) (finding predominance met in class action where liability is predicated on the same legal theory and the same alleged misconduct). In fact, common legal and factual issues have been found to predominate in other TCPA class actions where the class members' claims arose under the

TCPA and where the claims focused on the same course of conduct by the defendants. *See, e.g.*, *CE Design v. Beaty Const., Inc.*, 07-cv-3340, 2009 WL 192481, *5 (N.D. Ill. Jan. 26, 2009); *Lee v. Stonebridge Life Ins. Co.*, 289 F.R.D. 292, 294–95 (N.D. Cal. 2013).

As alleged in this case, all Class members share a claim that arose out of the same activity of Defendant, that is based on the same legal theory, and that implicates the following issues of fact: whether Defendant sent text messages to the cellular phones of persons who requested that Defendant stop sending such messages; whether those text message calls were sent using equipment that constituted an automatic telephone dialing system; whether the text messages violated the TCPA; and whether Defendant's unauthorized conduct was willful; and whether Defendant should be enjoined from engaging in such conduct.

As alleged, and as will be set forth in the evidence to be obtained, it cannot be disputed that Defendant engaged in a common course of conduct by sending, or causing to be sent via its agents, hundreds or thousands of nearly identical messages from an identical short code to Class members who had previously requested not to receive such messages. *See Kavu v. Omnipak Corp.*, 246 F.R.D. 642, 647 (W.D. Wash. 2007) (finding commonality satisfied where defendant engaged in a common course of conduct by obtaining a list of fax numbers in the same way and sending the same fax to all recipients on the list in a short amount of time in an effort to generate business); *CE Design Ltd. v. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135, 141 (N.D. Ill. 2009). Any potential individual issues remaining after the above common issues are decided would be *de minimis* in comparison to these common issues. Accordingly, common issues of fact and law predominate over any individual issues, and Plaintiff has satisfied this low hurdle to certification.

C. Adequate Representation

The third element of Section 2-801 requires that "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). The Class Representative's interests must be generally aligned with those of the Class members, and Class Counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *See Miner*, 428 N.E.2d at 482; *see also Eshaghi v. Hanley Dawson Cadillac Co., Inc.*, 574 N.E.2d 760, 763 (Ill. App. Ct. 1991). The purpose of this adequacy of representation requirement is "to insure that all Class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Purcell & Wardrope Chtd. v. Hertz Corp*., 530 N.E.2d 994, 1000 (Ill. App. Ct. 1988); *Gordon*, 586 N.E.2d at 466.

In this case, Plaintiff has the same interests as the proposed Class members – all have allegedly received unauthorized SMS messages from Defendant after requesting for such messages to stop – and his pursuit of this matter has demonstrated that he will be a zealous advocate for the Class.

Further, proposed class counsel has regularly engaged in major complex and class action litigation, and has extensive experience in consumer class action lawsuits involving telephone technology. (*See* Declaration of Eugene Y. Turin ("Turin Decl."), attached hereto, ¶¶ 2–3, 5.) Proposed class counsel also has an in-depth knowledge of the substantive law at issue in this case, having been involved in other TCPA class actions. (*Id*.) Further, Plaintiff's counsel has been appointed as class counsel in several complex consumer class actions, including similar TCPA class actions. *See, e.g., Murray et al. v. Bill Me Later, Inc.*, (N.D. Ill. 2014); *Stonebridge*, 289 F.R.D. 292; *In re Citibank HELOC Reduction Litigation*, 09-cv-0350-MMC (N.D. Cal).

Accordingly, the proposed Class representative and proposed class counsel will adequately protect the interests of the Class, satisfying Section 2-801(3).

D. Fair and Efficient Adjudication of the Controversy

The final prerequisite to class certification is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 586 N.E.2d at 467. In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id.*; *Purcell & Wardrope Chtd*, 530 N.E.2d at 1001 ("the predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute.") Thus, the fact that numerosity, commonality and predominance, and adequacy of representation have been demonstrated in the instant case makes it "evident" that the appropriateness requirement is satisfied as well.

Other considerations further support certification in this case. A "controlling factor in many cases is that the class action is the only practical means for class members to receive redress." *Gordon*, 586 N.E.2d at 467; *Eshaghi*, 574 N.E.2d at 766 ("In a large and impersonal society, class actions are often the last barricade of consumer protection.") A class action is superior to multiple individual actions "where the costs of litigation are high, the likely recovery is limited" and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell*, 2004 WL 719278, at *6. Here, absent a class action, most members of the Class would find the cost of litigating their statutorily-limited claim to be prohibitive, and such multiple individual actions would be judicially inefficient.

Certification of the proposed Class is another needed step toward ensuring that consumers cease being harassed by unauthorized SMS messages and also to compensate those individuals who have had had their statutorily-protected privacy rights violated and/or who have wrongfully been charged money for such SMS messages. Were this case not to proceed on a class-wide basis, it is unlikely that any significant number of Class members would be able to obtain redress or that Defendant would willingly cease sending unauthorized SMS messages. Accordingly, proceeding with this matter as a class action is an appropriate method to fairly and efficiently adjudicate the controversy.

CONCLUSION

For the reasons discussed above, the requirements of 735 ILCS 5/2-801 are satisfied. Therefore, Plaintiff Anthony Oliver respectfully requests that the Court enter an order certifying the proposed Class pursuant to Section 2-801 of the Code of Civil Procedure, appointing Plaintiff as Class Representative, appointing Eugene Y. Turin of McGuire Law, P.C. as Class Counsel, and awarding such additional relief as the Court deems reasonable and just. Alternatively, the Court should defer ruling on this Motion pending the completion of appropriate discovery and supplemental briefing.

Dated: November 27, 2018

Respectfully submitted,

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
Plaintiff,	)	No. 2018-CH-14581
v.	)	Hon. Thomas R. Allen
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	Cal.: 10
Defendant.	)	JURY TRIAL DEMANDED

DECLARATION OF EUGENE Y. TURIN

I, Eugene Y. Turin, hereby aver, pursuant to 735 ILCS 5/1-109, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and would testify thereto if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the State of Illinois.

2. I am fully competent to make this Declaration and I do so in support of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery.

3. I am an associate of the law firm McGuire Law, P.C. I am licensed to practice law in the State of Illinois, and I am one of the attorneys representing the Plaintiff in this matter.

4. McGuire Law, P.C. is a litigation firm based in Chicago, Illinois that focuses on class action litigation, representing clients in both state and federal trial and appellate courts throughout the country.

5. The attorneys of McGuire Law, P.C. have regularly engaged in complex litigation on behalf of consumers and have extensive experience prosecuting class action lawsuits similar in

size and complexity to the instant case. I and/or attorneys at my firm have served as class counsel in numerous complex consumer class actions. *See, e.g., Shen et al v. Distributive Networks, Inc.* (N.D. Ill. 2007); *McFerren et al v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al v. Mobile Messenger Americas, Inc. et al.,* (S.D. Fla. 2008); *Gresham et al v. Keppler & Associates, LLC et al.,* (Sup. Ct. Los Angeles County, Cal. 2008); *Weinstein et al v. The Timberland Co., et al.* (N.D. Ill. 2008); *Sims et al v. Cellco Partnership* et al., (N.D. Cal. 2009); *Van Dyke et al v. Media Breakaway, LLC et al.,* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al*., (Cir. Ct. Cook County, Ill. 2009); *Valdez et al v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Parone et al v. m-Qube, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2010); *Satterfield et al v. Simon & Schuster* (N.D. Cal. 2010); *Espinal et al v. Burger King Corporation et al.,* (S.D. Fla. 2010); *Lozano v. Twentieth Century Fox,* (N.D. Ill. 2011); *Williams et al v. Motricity, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2011); *Walker et al v. OpenMarket, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2011); *Schulken at al v. Washington Mutual Bank, et al.,* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal 2012); *Kramer et al v. Autobytel* et al., (N.D. Cal. 2011); *Rojas et al v. Career Education Co.* (N.D. Ill. 2012); *Ellison et al v. Steven Madden, Ltd.* (C.D. Cal. 2013); *Robles et al v. Lucky Brand Dungarees, Inc.* et al., (N.D. Cal. 2013); *Pimental et al v. Google, Inc. et al.,* (N.D. Cal. 2013); *In re Jiffy Lube Spam Text Litigation* (S.D. Cal. 2013); *Lee et al v. Stonebridge Life Ins. Co. et al*., (N.D. Cal. 2013); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Murray et al. v. Bill Me Later, Inc.,* 12-cv-4789 (N.D. Ill. 2014); *Valladares et al v. Blackboard, Inc.* (Cir. Ct. Cook County, Ill. 2016); *Hooker et al. v. Sirius XM Radio, Inc*. (E.D. Va. 2016); *Seal et al. v. RCN Telecom Services, LLC,* (Cir. Ct. Cook County, Ill. 2017); *Manouchehri, et al. v. Styles for Less, Inc., et al.,* (S.D. Cal. 2017); *Vergara et al. v. Uber Technologies, Inc.* (N.D. Ill. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct.

Cook County 2017).

6. I am a graduate of Loyola University Chicago School of Law. I have been practicing law since 2014 and have been admitted to practice in the Illinois Supreme Court and in the U.S. District Court for the Northern District of Illinois.

7. McGuire Law, P.C. has diligently investigated the facts and claims in this matter and will continue to diligently investigate and prosecute this matter. McGuire Law, P.C. has also dedicated substantial resources to this matter and will continue to do so. McGuire Law, P.C. has the financial resources necessary to fully prosecute this action through trial and to provide the necessary and appropriate notice to the class members should this proposed class be certified.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 27, 2018, in Chicago, Illinois.

/s/ Eugene Y. Turin
Eugene Y. Turin

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
	)	No. 2018-CH-14581
Plaintiff,	)	
	)	Hon. Thomas R. Allen
v.	)	
	)	Cal.: 10
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	
	)	JURY TRIAL DEMANDED
Defendant.	)	

NOTICE OF MOTION

To:

YORK RISK SERVICES GROUP, INC.
c/o Illinois Corporation Service Company
801 Adlai Stevenson Drive
Springfield, IL 62703

On March 26, 2019 at 9:30 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Neil H. Cohen or any Judge sitting in that Judge's stead, in courtroom 2302, located at the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois 60602, and present *Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery*.

Name: McGuire Law, P.C.
Address: 55 W. Wacker Dr., 9th Fl.
Telephone: (312) 893-7002

Attorney for: Plaintiff
City: Chicago, IL 60601
Firm ID.: 56618

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on November 27, 2018, a copy of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery was sent to Defendant's Registered Agent by way of first class mail by depositing the same in a United States Mailbox.

/s/ Eugene Y. Turin
Eugene Y. Turin, Esq.

EXHIBIT B

12-Person Jury

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals, *Plaintiff,* v. YORK RISK SERVICES GROUP, INC., a New York corporation *Defendant.*	)	No. 2018CH14581 Hon. **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Anthony Oliver ("Plaintiff"), individually and on behalf of other similarly situated individuals, brings this class action complaint against Defendant York Risk Services Group, Inc. ("Defendant") to stop Defendant's practice of making unauthorized text message calls to consumer's cellular telephones, and to obtain redress for all persons injured by its conduct. Plaintiff alleges as follows based upon personal knowledge as to him and his own acts and experiences and, as to all other matters, upon information and belief including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. In an attempt to streamline its claim management services, Defendant, an insurance adjustment and claims agency, engaged in an invasive and unlawful form of communication through the transmission of unauthorized text message calls to the cellular telephones of consumers throughout the nation.

2. By effectuating these unauthorized text message calls, Defendant and its agents

have violated the called parties' statutory rights and have caused consumers actual harm, not only because consumers were subjected to the aggravation and invasion of privacy that necessarily accompanies unauthorized automated text messages, but also because consumers, like Plaintiff, must frequently pay their cell phone service providers or incur a usage allocation deduction from their calling plans for the receipt of such messages, notwithstanding that the text messages were made in violation of specific legislation on the subject.

3. In order to redress these injuries, Plaintiff, on behalf of himself and the proposed Class defined below, brings this suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), which protects the privacy right of consumers to be free from receiving unauthorized text messages.

4. On behalf of the proposed Class, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized text messages and an award of actual and statutory damages to the class members, together with costs and reasonable attorneys' fees.

PARTIES

5. Plaintiff a resident and citizen of the State of Georgia.

6. Defendant York Risk Services Group, Inc. is a national provider of insurance and claims adjustments. It is a New York corporation with its principal place of business located in New Jersey.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the Defendant pursuant to 735 ILCS 5/2-209 and in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is registered to do business within the State, is doing business within the State, and because Defendant transacts business within this State.

8. Venue is proper in Cook County under 735 ILCS 5/2-101, because the transaction out of which this cause of action arises occurred in Cook County, as Defendant conducts business in Cook County and the unauthorized text messages at issue were transmitted from Cook County and directed Plaintiff to contact a telephone number registered in Cook County.

COMMON ALLEGATIONS OF FACT

9. Defendant, through a contract with Lyft, Inc., provides insurance claims adjustment services to Lyft drivers.

10. As an ordinary business practice, Defendant attempts to contact Lyft drivers who have submitted an incident report by sending text message calls to their cellular telephones.

11. However, Defendant fails to honor requests to discontinue text message calls and routinely sends unauthorized text messages to cell phones of individuals who have revoked their consent to be sent messages by Defendant and its agents.

12. For example, beginning at least as early as August 2018, Defendant began to send Plaintiff automated text message calls regarding an automotive incident supposedly related to Plaintiff's status as a Lyft driver.

13. Specifically, on or about August 29, 2018, Plaintiff received two consecutive automated text messages from "340-35"—an abbreviated telephone number known as an SMS short code operated by Defendant and/or its agents. The text messages stated:

> 1/2 York Documentation Team! Please give us a call at 773-596-9624 regarding the incident reported while driving for Lyft. M-F 8am-7pm CST.
>
> 2/2 Thanks!

14. Plaintiff responded to Defendant and attempted to unsubscribe from Defendant's communications by texting Defendant "Stop" and "No more texts".

15. However, despite texting "Stop" and "No more texts", Plaintiff continued to receive

automated text messages from Defendant.

16. Indeed, on or about November 1, 2108, Plaintiff again received two consecutive automated text messages from Defendant regarding an incident report that Defendant was managing. The body of the text messages read:

> York Documentation Team! Please reply to this text with a photo of your VIN, mileage, 4 corners, license plate, and 4 photos of the damage. Thanks!
>
> York Documentation Team! Please reply back with a photo of your insurance declarations page. Questions, please call 773-596-9624. Thanks!

17. Plaintiff again attempted to unsubscribe from Defendant's invasive text messaging program by texting Defendant "Stop" and "Stop these messages right now".

18. At no time after Plaintiff revoked consent in August 2018 did Plaintiff again provide consent to receive Defendant's communications making all text messages sent by Defendant thereafter unauthorized.

19. The unauthorized text messages received by Plaintiff contained generic content and were automatically distributed by Defendant.

20. In addition to being a nuisance and an invasion of privacy, Defendant's unauthorized automated text messages consistently interfered with Plaintiff's, and Class members', use of their cellular telephones.

CLASS ALLEGATIONS

21. Plaintiff brings this action on behalf of himself, and a Class of individuals, defined as: All persons in the United States and its Territories who, within the applicable statute of limitations, received one or more text messages from Defendant on their cellular telephone regarding the management of an incident claim after communicating to Defendant that it did not have consent to send any further text messages to that telephone number.

22. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

23. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive and would have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

24. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

25. The factual and legal bases of Defendant's liability to Plaintiff and to the members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class. Plaintiff and the other members of the Class have all suffered harm and damages as a result of Defendant's unlawful and wrongful conduct.

26. Upon information and belief, there are hundreds, if not thousands, of members of the Class such that joinder of all members is impracticable.

27. There are many questions of law and fact common to the claims of Plaintiff and the other members of the 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 limited to, the following:

(a) Whether Defendant sent one or more text messages to members of the Class after they had revoked consent to receive any such text messages;

(b) Whether Defendant and/or its agents used an automatic telephone dialing system to transmit the text message alerts at issue;

(c) Whether Defendant systematically continued to transmit text messages to individuals who communicated to Defendant that they did not consent to receive such automated text messages from Defendant;

(d) Whether Defendant's conduct violated the Plaintiff's and Class members' respective rights to privacy;

(e) Whether Defendant's conduct was willfully in violation of the TCPA such that the Class members are entitled to treble damages;

(f) Whether Defendant should be enjoined from engaging in such conduct in the future.

COUNT I
Violation of the Telephone Consumer Protection Act (47 U.S.C. § 227, et seq.)
on behalf of the Class

28. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

29. Defendant made unsolicited and unauthorized text message calls using an automatic telephone dialing system to the cellular telephone numbers of Plaintiff and the other members of the Class after Plaintiff and the members of the Class communicated to Defendant that it did not have consent to send such messages.

30. These text messages calls were made *en masse* using a short code and equipment

that had the capacity at the time the calls were placed to store or produce telephone numbers to be called using a random or sequential number generator and to automatically dial lists of such numbers without human intervention.

31. Defendant has, therefore, violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

32. As a result of Defendant's illegal conduct, the members of the Class have had their privacy rights violated, have suffered statutory and actual damages, and under section 227(b)(3)(B), are each entitled to, inter alia, a minimum of $500.00 in damages for each such violation of the TCPA.

33. To the extent the Court determines the Defendant's conduct was willful and knowing, the Court should, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and members of the Class.

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

A. An Order certifying the Class as defined above;

B. An award of actual and statutory damages;

C. An injunction requiring Defendant to cease all unauthorized automated telephone activities;

D. An award of reasonable attorneys' fees and costs; and

E. Such other and further relief the Court deems just and equitable.

JURY DEMAND

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

Dated: November 26, 2018

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

Eugene Y. Turin
MCGUIRE LAW, P.C. (firm ID 56618)
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
Fax: (312) 275-7895
eturin@mcgpc.com

Attorneys for Plaintiff

EXHIBIT C

2120 - Served 2121 - Served
2220 - Not Served 2221 - Not Served
2320 - Served By Mail 2321 - Served By Mail
2420 - Served By Publication 2421 - Served By Publication
Summons - Alias Summons (06/28/18) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ANTHONY OLIVER

(Name all parties)

v.

YORK RISK SERVICES GROUP, INC.
c/o Illinois Corporation Service Company
801 Adlai Stevenson Drive
Springfield, IL 62703

Case No. 2018-CH-14581

☑ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please visit www.cookcountyclerkofcourt.org to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

If you fail to do so, a judgment by default may be entered against you for the relief requested in the complaint.

To the Officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit https://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp.

Witness: _____

11/27/2018 1:24 PM DOROTHY BROWN

DOROTHY BROWN, Clerk of Court

Date of Service: _____
(To be inserted by officer on copy left with Defendant or other person):

Atty. No.: 56618
Atty Name: MCGUIRE LAW, P.C.
Atty. for: ANTHONY OLIVER
Address: 55 W. WACKER DR., 9th Fl.
City: CHICAGO State: IL
Zip: 60601
Telephone: (312) 893-7002
Primary Email: eturin@mcgpc.com
Secondary Email: _____
Tertiary Email: _____

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

- ○ Richard J Daley Center
  50 W Washington
  Chicago, IL 60602
- ○ District 2 - Skokie
  5600 Old Orchard Rd
  Skokie, IL 60077
- ○ District 3 - Rolling Meadows
  2121 Euclid
  Rolling Meadows, IL 60008
- ○ District 4 - Maywood
  1500 Maybrook Ave
  Maywood, IL 60153
- ○ District 5 - Bridgeview
  10220 S 76th Ave
  Bridgeview, IL 60455
- ○ District 6 - Markham
  16501 S Kedzie Pkwy
  Markham, IL 60428
- ○ Domestic Violence Court
  555 W Harrison
  Chicago, IL 60607
- ○ Juvenile Center Building
  2245 W Ogden Ave, Rm 13
  Chicago, IL 60602
- ○ Criminal Court Building
  2650 S California Ave, Rm 526
  Chicago, IL 60608

Daley Center Divisions/Departments

- ○ Civil Division
  Richard J Daley Center
  50 W Washington, Rm 601
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ◉ Chancery Division
  Richard J Daley Center
  50 W Washington, Rm 802
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Domestic Relations Division
  Richard J Daley Center
  50 W Washington, Rm 802
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Civil Appeals
  Richard J Daley Center
  50 W Washington, Rm 801
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Criminal Department
  Richard J Daley Center
  50 W Washington, Rm 1006
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ County Division
  Richard J Daley Center
  50 W Washington, Rm 1202
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Probate Division
  Richard J Daley Center
  50 W Washington, Rm 1202
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Law Division
  Richard J Daley Center
  50 W Washington, Rm 801
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm
- ○ Traffic Division
  Richard J Daley Center
  50 W Washington, Lower Level
  Chicago, IL 60602
  Hours: 8:30 am - 4:30 pm

EXHIBIT D

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
Plaintiff,	)	No. 2018-CH-14581
v.	)	Hon. Thomas R. Allen
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	Cal.: 10
Defendant.	)	JURY TRIAL DEMANDED

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION OR, ALTERNATIVELY, FOR A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY

Plaintiff Anthony Oliver ("Plaintiff"), through his undersigned counsel, pursuant to 735 ILCS 5/2-801, hereby moves this Honorable Court for entry of an Order certifying the below-proposed Class, appointing Plaintiff as Class Representative, and appointing Plaintiff's attorneys as Class Counsel. Alternatively, Plaintiff requests, to the extent the Court determines further evidence is necessary for the purposes of proving any element of 735 ILCS 5/2-801, that the Court defer consideration of Plaintiff's Motion for Class Certification pending a reasonable period to complete discovery, which has not yet commenced with respect to such issues. *See, e.g., Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011). In support of his Motion, Plaintiff submits the following Memorandum of Law.

Dated: November 27, 2018

Respectfully submitted,

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

Eugene Y. Turin
MCGUIRE LAW, P.C. (Firm ID: 56618)
55 W. Wacker Drive, 9th Floor
Chicago, Illinois 60601
Tel: (312) 893-7002
Fax: (312) 275-7895
eturin@mcgpc.com

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION OR, ALTERNATIVELY, FOR A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY

This Court should certify a national class of cellular telephone consumers who received unauthorized text messages from Defendant YORK RISK SERVICES GROUP, INC. ("Defendant"). As part of an effort to contact Lyft drivers regarding incident reports that it was assigned to handle, Defendant violated federal law by transmitting, *en masse*, unauthorized text message calls to the cellular telephones of consumers in Illinois and elsewhere in the surrounding region. After receiving such unauthorized text messages from Defendant, Plaintiff Oliver brought suit on behalf of a nationwide class, alleging that Defendant's misconduct violates the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

THE TCPA

"In enacting the TCPA [in 1991], Congress noted the nuisance of rampant telemarketing and the consequent costs of money, time, and the invasion of privacy to consumers." *See Abbas v. Selling Source, LLC*, No. 09CV3413, 2009 WL 4884471, at *7 (N.D. Ill. Dec. 14, 2009) (internal citations omitted); *see also Mims v. Arrow Financial Services*, 132 S.Ct. 740, 744 (2012); *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999, 1008 (N.D. Ill. 2010). Consequently, the TCPA prohibits parties from making:

> 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 or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added).

The Federal Communication Commission – which, under 47 U.S.C. § 227(b)(2), is required to "prescribe regulations to implement the requirements" of the TCPA – has made clear that the transmission of text messages falls under the purview of the TCPA. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. R. 14014, 14115, 2003 WL 21517853 (2003) (ruling that the TCPA prohibition on unsolicited calls "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls provided the call is made to a telephone number assigned to such service.")

The TCPA sets statutory damages in the amount of $500.00 per violation, with an allowance for trebling. *See* 47 U.S.C. § 227(b)(3)(B-C).

THE FACTS

Typical of most actions brought under the TCPA, the facts in this case are relatively straightforward. Defendant is a national provider of insurance and claims adjustment services, including for the ride-sharing service called "Lyft." (Complaint at ¶¶ 6, 9.) In an effort to contact Lyft drivers regarding incident reports that it was assigned to manage, Defendant regularly sent text messages. (*Id.* ¶ 10.) However, Defendant failed to honor requests by recipients of such messages asking to discontinue them and would continue to send such messages. (*Id.* ¶ 11.) To place these calls, Defendant employed certain technology allowing for the bulk transmission of text messages—equipment that the FCC has found to be an "automatic dialing system" subject to the provisions of the TCPA. (*Id.* ¶ 30.) As such, Defendant's text messages individuals who had requested for such messages to stop were sent without authorization in violation of the TCPA. (*Id.* ¶ 31.)

For instance, beginning in or about August 2018, Defendant sent Plaintiff automated text messages regarding an automotive incident supposedly related to Plaintiff's status as a Lyft driver. (Complaint at ¶¶ 12–13.) Plaintiff responded to Defendant's text messages and requested that Defendant no longer contact him. (*Id.* ¶ 14.) However, Defendant ignored Plaintiff's requests and sent at least one more set of automated text messages to Plaintiff on November 1, 2018. (*Id.* ¶ 16.) Plaintiff Oliver – and hundreds or thousands of other members of the Class– received similar such unauthorized text messages from Defendant in the last four years after requesting for the messages to stop. (*Id.* ¶ 26.)

The Proposed Class

Plaintiff seeks to represent one nationwide Class defined as: All persons in the United States and its Territories who, within the applicable statute of limitations, received one or more text messages from Defendant on their cellular telephone regarding the management of an incident claim after communicating to Defendant that it did not have consent to send any further text messages to that telephone number

As explained below, the Class defined above clearly satisfies each of the four certification prongs under Section 2-801 of the Illinois Code of Civil Procedure—numerosity, commonality, adequacy of representation, and fair and efficient adjudication. In the end, a class action is not only appropriate here, it is also the only way that the putative Class members will obtain appropriate redress for Defendant's unlawful conduct.

ARGUMENT

I. Standards for Class Certification

To obtain class certification, it is not necessary for the plaintiff to establish that he will prevail on the merits of the action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974)

("[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.") (internal quotation marks and citation omitted). As such, in determining whether to certify a proposed class, the court accepts the allegations of the complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 880 N.E.2d 653, 655 (Ill. App. Ct. 2007).

To proceed with a class action, the Plaintiff must demonstrate "prerequisites for the maintenance of a class action" as set forth in Section 2-801 of the Illinois Code of Civil Procedure, which provides:

> An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
> (3) The representative parties will fairly and adequately protect the interest of the class.
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. As demonstrated below, each prerequisite is established for the Class, and the Court should therefore certify the proposed Class.

Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801, 819 (Ill. App. Ct. 2005). Circuit courts have broad discretion in determining whether a proposed class meets the requirement for class certification and ought to err in favor of maintaining class certification. *Ramirez*, 880 N.E.2d at 656. While a court may rule on class

certification without requiring further discovery, *see* Manual for Complex Litigation (Fourth) § 21.14, at 255 (2004), courts have found that discovery is helpful prior to addressing a motion for class certification. *See, e.g., Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011) ("Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy off the named plaintiffs . . . . If the parties have yet to fully develop the facts needed for certification, then they can also ask the district court to delay its ruling to provide time for additional discovery or investigation.") (citations omitted).

Accordingly, as explained further below, all the prerequisites for class certification have been met here, despite the fact that Plaintiff has not yet had an opportunity to engage in any discovery. However, in the interests of establishing a more fully developed record before ruling on class certification issues, the Court should defer ruling on this Motion pending discovery and submission of supplemental briefing.

A. The Requirement of Numerosity Is Satisfied

The first step in certifying a class is a showing that "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). This requirement is met when "to join such a large number of plaintiffs in a single suit would render the suit unmanageable and, in contrast, multiple separate claims would be an imposition on the litigants and the courts." *Gordon v. Boden*, 586 N.E.2d 461, 464 (Ill. App. Ct. 1991) (citing *Steinberg v. Chicago Med. Sch.*, 371 N.E.2d 634, 642–43 (Ill. 1977)). To satisfy this requirement a plaintiff need not demonstrate the exact number of class members, but must offer a good faith estimate as to the size of the class. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006).

Plaintiff alleges that there are hundreds, if not thousands of members of the Class.

(Compl. ¶ 26.) Because definitive evidence of numerosity can only come from the records of Defendant and its agents, it is proper to rely upon the allegations of the Complaint in certifying the class. *See* 2 A. Conte & H. Newberg, Newberg on Class Actions § 7.20, at 66 (stating that where class numerosity information is in the possession of the party opposing the class, courts generally rely on the complaint as prima facie evidence or defer ruling.) In this case, the allegations of the Complaint, as well as common sense based on the Defendant's practices, adequately demonstrate numerosity. The nature of Defendant's business is such that these text messages are automatically generated and sent to thousands of individuals who are Lyft drivers and whose incident claims are assigned to Defendant for management, and Defendant's use of generic messages and a short code to send these messages underscores the fact that these messages were sent *en masse* using equipment that allowed for mass transmission of wireless messages to lists of cellular telephone numbers. (Compl. ¶¶ 13, 16, 30.) The number of Class members is almost certainly in the hundreds, and likely in the thousands, a number that more than satisfies the numerosity requirement. *See Kulins v. Malco, A Microdot Co., Inc.*, 459 N.E.2d 1038, 1046 (Ill. App. Ct. 1984) (finding that in Cook County, 30 class members was sufficient to satisfy numerosity to lessen the backlog of cases before the court); *Carrao v. Health Care Serv. Corp.,* 454 N.E.2d 781, 789 (Ill. App. Ct. 1983) (allegation in complaint of over 1,000 class members clearly supports finding that joinder would be impracticable).

There is little question that there is a sufficient number of Class members to satisfy the numerosity requirement. Additionally, the members of the putative Class here can be easily and objectively identified from the records of Defendant, its agents, and telephone carriers, once those records are produced. Furthermore, joinder of the Class members' claims would be completely impracticable because members of the proposed Class are disbursed throughout the

state, and possible the country, and because each proposed Class member's claim is relatively small such that absent a class action, few individuals could afford to bring an individual lawsuit over the amounts at issue. *See Gordon*, 586 N.E.2d at 464. Accordingly, the first prerequisite for class certification is met.

B. Common Questions of Law and Fact Predominate

The second hurdle imposed by Section 2-801(2) is overcome where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been aggrieved by the same or similar misconduct. *See Miner v. Gillette Co.*, 428 N.E.2d 478, 483 (Ill. 1981); *Steinberg*, 371 N.E.2d at 644–45. These common questions must also predominate over any issues affecting individual class members. *See O-Kay Shoes, Inc. v. Rosewell*, 472 N.E.2d 883, 885–86 (Ill. App. Ct. 1984).

Class certification is not defeated even if there is some possibility that "separate proceedings of some character will be required to determine the entitlements of the individual class members to relief." *Carnegie v. Household Int'l Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). While the common issues must predominate, they "need not be exclusive." *Maxwell v. Arrow Fin. Servs., LLC*, No. 03-cv-1995, 2004 WL 719278, at *5 (N.D. Ill. Mar. 31, 2004); *see also Pleasant v. Risk Mgmt. Alternatives, Inc.*, No. 02-cv-6886, 2003 WL 22175390, at *5 (N.D. Ill. Sept. 19, 2003) (certifying class where "the central factual inquiry will be common to all" the class members); *Kremnitzer v. Cabrera & Rephen, P.C.*, 202 F.R.D. 239, 242 (N.D. Ill. 2001) (finding predominance met in class action where liability is predicated on the same legal theory and the same alleged misconduct). In fact, common legal and factual issues have been found to predominate in other TCPA class actions where the class members' claims arose under the

TCPA and where the claims focused on the same course of conduct by the defendants. *See, e.g.*, *CE Design v. Beaty Const., Inc.*, 07-cv-3340, 2009 WL 192481, *5 (N.D. Ill. Jan. 26, 2009); *Lee v. Stonebridge Life Ins. Co.*, 289 F.R.D. 292, 294–95 (N.D. Cal. 2013).

As alleged in this case, all Class members share a claim that arose out of the same activity of Defendant, that is based on the same legal theory, and that implicates the following issues of fact: whether Defendant sent text messages to the cellular phones of persons who requested that Defendant stop sending such messages; whether those text message calls were sent using equipment that constituted an automatic telephone dialing system; whether the text messages violated the TCPA; and whether Defendant's unauthorized conduct was willful; and whether Defendant should be enjoined from engaging in such conduct.

As alleged, and as will be set forth in the evidence to be obtained, it cannot be disputed that Defendant engaged in a common course of conduct by sending, or causing to be sent via its agents, hundreds or thousands of nearly identical messages from an identical short code to Class members who had previously requested not to receive such messages. *See Kavu v. Omnipak Corp.*, 246 F.R.D. 642, 647 (W.D. Wash. 2007) (finding commonality satisfied where defendant engaged in a common course of conduct by obtaining a list of fax numbers in the same way and sending the same fax to all recipients on the list in a short amount of time in an effort to generate business); *CE Design Ltd. v. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135, 141 (N.D. Ill. 2009). Any potential individual issues remaining after the above common issues are decided would be *de minimis* in comparison to these common issues. Accordingly, common issues of fact and law predominate over any individual issues, and Plaintiff has satisfied this low hurdle to certification.

C. Adequate Representation

The third element of Section 2-801 requires that "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). The Class Representative's interests must be generally aligned with those of the Class members, and Class Counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *See Miner*, 428 N.E.2d at 482; *see also Eshaghi v. Hanley Dawson Cadillac Co., Inc.*, 574 N.E.2d 760, 763 (Ill. App. Ct. 1991). The purpose of this adequacy of representation requirement is "to insure that all Class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Purcell & Wardrope Chtd. v. Hertz Corp*., 530 N.E.2d 994, 1000 (Ill. App. Ct. 1988); *Gordon*, 586 N.E.2d at 466.

In this case, Plaintiff has the same interests as the proposed Class members – all have allegedly received unauthorized SMS messages from Defendant after requesting for such messages to stop – and his pursuit of this matter has demonstrated that he will be a zealous advocate for the Class.

Further, proposed class counsel has regularly engaged in major complex and class action litigation, and has extensive experience in consumer class action lawsuits involving telephone technology. (*See* Declaration of Eugene Y. Turin ("Turin Decl."), attached hereto, ¶¶ 2–3, 5.) Proposed class counsel also has an in-depth knowledge of the substantive law at issue in this case, having been involved in other TCPA class actions. (*Id*.) Further, Plaintiff's counsel has been appointed as class counsel in several complex consumer class actions, including similar TCPA class actions. *See, e.g., Murray et al. v. Bill Me Later, Inc.*, (N.D. Ill. 2014); *Stonebridge*, 289 F.R.D. 292; *In re Citibank HELOC Reduction Litigation*, 09-cv-0350-MMC (N.D. Cal).

Accordingly, the proposed Class representative and proposed class counsel will adequately protect the interests of the Class, satisfying Section 2-801(3).

D. Fair and Efficient Adjudication of the Controversy

The final prerequisite to class certification is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 586 N.E.2d at 467. In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id.*; *Purcell & Wardrope Chtd*, 530 N.E.2d at 1001 ("the predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute.") Thus, the fact that numerosity, commonality and predominance, and adequacy of representation have been demonstrated in the instant case makes it "evident" that the appropriateness requirement is satisfied as well.

Other considerations further support certification in this case. A "controlling factor in many cases is that the class action is the only practical means for class members to receive redress." *Gordon*, 586 N.E.2d at 467; *Eshaghi*, 574 N.E.2d at 766 ("In a large and impersonal society, class actions are often the last barricade of consumer protection.") A class action is superior to multiple individual actions "where the costs of litigation are high, the likely recovery is limited" and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell*, 2004 WL 719278, at *6. Here, absent a class action, most members of the Class would find the cost of litigating their statutorily-limited claim to be prohibitive, and such multiple individual actions would be judicially inefficient.

Certification of the proposed Class is another needed step toward ensuring that consumers cease being harassed by unauthorized SMS messages and also to compensate those individuals who have had had their statutorily-protected privacy rights violated and/or who have wrongfully been charged money for such SMS messages. Were this case not to proceed on a class-wide basis, it is unlikely that any significant number of Class members would be able to obtain redress or that Defendant would willingly cease sending unauthorized SMS messages. Accordingly, proceeding with this matter as a class action is an appropriate method to fairly and efficiently adjudicate the controversy.

CONCLUSION

For the reasons discussed above, the requirements of 735 ILCS 5/2-801 are satisfied. Therefore, Plaintiff Anthony Oliver respectfully requests that the Court enter an order certifying the proposed Class pursuant to Section 2-801 of the Code of Civil Procedure, appointing Plaintiff as Class Representative, appointing Eugene Y. Turin of McGuire Law, P.C. as Class Counsel, and awarding such additional relief as the Court deems reasonable and just. Alternatively, the Court should defer ruling on this Motion pending the completion of appropriate discovery and supplemental briefing.

Dated: November 27, 2018

Respectfully submitted,

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
Plaintiff,	)	No. 2018-CH-14581
v.	)	Hon. Thomas R. Allen
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	Cal.: 10
Defendant.	)	JURY TRIAL DEMANDED

DECLARATION OF EUGENE Y. TURIN

I, Eugene Y. Turin, hereby aver, pursuant to 735 ILCS 5/1-109, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and would testify thereto if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the State of Illinois.

2. I am fully competent to make this Declaration and I do so in support of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery.

3. I am an associate of the law firm McGuire Law, P.C. I am licensed to practice law in the State of Illinois, and I am one of the attorneys representing the Plaintiff in this matter.

4. McGuire Law, P.C. is a litigation firm based in Chicago, Illinois that focuses on class action litigation, representing clients in both state and federal trial and appellate courts throughout the country.

5. The attorneys of McGuire Law, P.C. have regularly engaged in complex litigation on behalf of consumers and have extensive experience prosecuting class action lawsuits similar in

size and complexity to the instant case. I and/or attorneys at my firm have served as class counsel in numerous complex consumer class actions. *See, e.g., Shen et al v. Distributive Networks, Inc.* (N.D. Ill. 2007); *McFerren et al v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al v. Mobile Messenger Americas, Inc. et al.,* (S.D. Fla. 2008); *Gresham et al v. Keppler & Associates, LLC et al.,* (Sup. Ct. Los Angeles County, Cal. 2008); *Weinstein et al v. The Timberland Co., et al.* (N.D. Ill. 2008); *Sims et al v. Cellco Partnership* et al., (N.D. Cal. 2009); *Van Dyke et al v. Media Breakaway, LLC et al.,* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al*., (Cir. Ct. Cook County, Ill. 2009); *Valdez et al v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Parone et al v. m-Qube, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2010); *Satterfield et al v. Simon & Schuster* (N.D. Cal. 2010); *Espinal et al v. Burger King Corporation et al.,* (S.D. Fla. 2010); *Lozano v. Twentieth Century Fox,* (N.D. Ill. 2011); *Williams et al v. Motricity, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2011); *Walker et al v. OpenMarket, Inc. et al.,* (Cir. Ct. Cook County, Ill. 2011); *Schulken at al v. Washington Mutual Bank, et al.,* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal 2012); *Kramer et al v. Autobytel* et al., (N.D. Cal. 2011); *Rojas et al v. Career Education Co.* (N.D. Ill. 2012); *Ellison et al v. Steven Madden, Ltd.* (C.D. Cal. 2013); *Robles et al v. Lucky Brand Dungarees, Inc.* et al., (N.D. Cal. 2013); *Pimental et al v. Google, Inc. et al.,* (N.D. Cal. 2013); *In re Jiffy Lube Spam Text Litigation* (S.D. Cal. 2013); *Lee et al v. Stonebridge Life Ins. Co. et al*., (N.D. Cal. 2013); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Murray et al. v. Bill Me Later, Inc.,* 12-cv-4789 (N.D. Ill. 2014); *Valladares et al v. Blackboard, Inc.* (Cir. Ct. Cook County, Ill. 2016); *Hooker et al. v. Sirius XM Radio, Inc*. (E.D. Va. 2016); *Seal et al. v. RCN Telecom Services, LLC,* (Cir. Ct. Cook County, Ill. 2017); *Manouchehri, et al. v. Styles for Less, Inc., et al.,* (S.D. Cal. 2017); *Vergara et al. v. Uber Technologies, Inc.* (N.D. Ill. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct.

Cook County 2017).

6. I am a graduate of Loyola University Chicago School of Law. I have been practicing law since 2014 and have been admitted to practice in the Illinois Supreme Court and in the U.S. District Court for the Northern District of Illinois.

7. McGuire Law, P.C. has diligently investigated the facts and claims in this matter and will continue to diligently investigate and prosecute this matter. McGuire Law, P.C. has also dedicated substantial resources to this matter and will continue to do so. McGuire Law, P.C. has the financial resources necessary to fully prosecute this action through trial and to provide the necessary and appropriate notice to the class members should this proposed class be certified.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 27, 2018, in Chicago, Illinois.

/s/ Eugene Y. Turin
Eugene Y. Turin

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

ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals,	)	
	)	No. 2018-CH-14581
Plaintiff,	)	
	)	Hon. Thomas R. Allen
v.	)	
	)	Cal.: 10
YORK RISK SERVICES GROUP, INC., a New York corporation,	)	
	)	JURY TRIAL DEMANDED
Defendant.	)	

NOTICE OF MOTION

To:

YORK RISK SERVICES GROUP, INC.
c/o Illinois Corporation Service Company
801 Adlai Stevenson Drive
Springfield, IL 62703

On March 26, 2019 at 9:30 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Neil H. Cohen or any Judge sitting in that Judge's stead, in courtroom 2302, located at the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois 60602, and present *Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery*.

Name: McGuire Law, P.C.
Address: 55 W. Wacker Dr., 9th Fl.
Telephone: (312) 893-7002

Attorney for: Plaintiff
City: Chicago, IL 60601
Firm ID.: 56618

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on November 27, 2018, a copy of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery was sent to Defendant's Registered Agent by way of first class mail by depositing the same in a United States Mailbox.

/s/ Eugene Y. Turin
Eugene Y. Turin, Esq.