UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GINO D'OTTAVIO,
individually and on behalf of
all others similarly
situated,

1:18-cv-09082-NLH-AMD

      Plaintiff/Counter-
      Defendant,

v.

SLACK TECHNOLOGIES,

      Defendant/Counter-
      Claimant.

MEMORANDUM
OPINION & ORDER

APPEARANCES:

PAUL JEFFREY BOND
MARK S. MELODIA
ZALIKA T. PIERRE
HOLLAND & KNIGHT LLP
2929 ARCH STREET
SUITE 800
PHILADELPHIA, PA 19104

    On behalf of Defendant/Counter-Defendant

HILLMAN, District Judge

    WHEREAS, Plaintiff, Gino D'Ottavio, filed a putative class

action alleging that Defendant, Slack Technologies, transmitted

dozens of unsolicited commercial text messages to Plaintiff on

Plaintiff's cellular telephone, in violation of the Telephone

Consumer Protection Act("TCPA"), 47 U.S.C. § 227 et seq., thereby

invading Plaintiff's privacy; and

    WHEREAS, Slack filed an answer to Plaintiff's complaint

denying his claims and lodging a counterclaim, claiming that

Plaintiff abused a feature on Slack's website to deliberately

send himself the texts at issue; and

WHEREAS, on April 15, 2019, the Court granted Plaintiff's

motion to dismiss his claims against Slack, but denied without

prejudice Slack's motion for sanctions, as well as Plaintiff's

counsel's motion to withdraw as counsel (Docket No. 36, 37); and

WHEREAS, on July 3, 2019, the Court granted Plaintiff's

counsel's motion to withdraw (Docket No. 45); and

WHEREAS, because Slack's counterclaim remained pending for

separate adjudication,[1] in that same Order, the Court directed

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[1] The basis for subject matter jurisdiction over Plaintiff's complaint, which asserted a violation of federal law, is 28 U.S.C. § 1331. Because those claims have been dismissed, the Court must determine whether it may exercise subject matter jurisdiction over Slack's counterclaims. See Barefoot Architect, Inc. v. Bunge, 632 F.3d 822, 836 (3d Cir. 2011) (other citation omitted) (explaining that "[g]enerally speaking, the dismissal of the complaint will not preclude adjudication of a counterclaim over which the court has an independent basis of jurisdiction"); id. (citing Fed. R. Civ. P. 13(a)) (further explaining had the defendants filed first, they could have invoked § 1332 to bring their state law claims in federal court in the first instance, and the plaintiff could have filed its causes of action as counterclaims, but as things actually transpired, the defendants were forced to file their state law claims as compulsory counterclaims since they arose out of the same "transaction or occurrence" as the plaintiff's complaint). Slack's counterclaims arise under state law and arise out of the same transaction or occurrence as Plaintiff's claims. See id. at 836 n.9 (citations omitted) (explaining that to be deemed part of the same "transaction or occurrence" for Rule 13(a) purposes, a claim need only bear a logical relationship to the subject matter of the complaint). It appears that subject

that within 20 days, Plaintiff was to either (1) enter his

appearance *pro se*;[2] or (2) obtain new counsel; and

WHEREAS, to date, Plaintiff has failed to respond to the

Court's Order, and has not otherwise contacted the Court;

THEREFORE,

IT IS on this ___7th___ day of _October_, 2019

ORDERED that Slack Technologies shall commence prosecution

of its claims against Plaintiff consistent with the Federal Rules

of Civil Procedure.[3]

s/ Noel L. Hillman
At Camden, New Jersey   NOEL L. HILLMAN, U.S.D.J.

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matter jurisdiction may continue under 28 U.S.C. § 1332(a)
because Plaintiff is a citizen of New Jersey and Slack is a
citizen of California. (Docket No. 1 at 3, Docket No. 6 at 11.)

[2] Plaintiff's counsel represents that Plaintiff has been
attending Rutgers Law School for several years, and although
counsel is not certain that Plaintiff is still attending law
school due to Plaintiff's failure to communicate with them,
Plaintiff's Facebook page currently lists him as attending law
school. (Docket No. 43-1 at 23.)

[3] See, e.g., Fed. R. Civ. P. 55 (concerning when a party against
whom a judgment for affirmative relief is sought has failed to
plead or otherwise defend).