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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>12 Patrick Cross, Individually and 13 on behalf of All Others Similarly 14 Situated,</p> <p>15 Plaintiff,</p> <p>16 v.</p> <p>17 Noli Construction dba GW 18 Construction,</p> <p>19 Defendant.</p>	<p>20 Case No.: '17CV133 BEN NLS</p> <p>21 <u>CLASS ACTION</u></p> <p>22 CLASS ACTION COMPLAINT 23 FOR DAMAGES AND 24 INJUNCTIVE RELIEF 25 PURSUANT TO THE 26 TELEPHONE CONSUMER 27 PROTECTION ACT, 47 U.S.C. § 28 227 ET SEQ.</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

1. Patrick Cross (referred to individually as “Mr. Cross” or “Plaintiff”), brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Noli Construction dba GW Construction (referred to as “Noli” or “Defendant”), in negligently,



1 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
2 telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C.
3 § 227, et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff
4 alleges as follows upon personal knowledge as to himself and his own acts
5 and experiences, and, as to all other matters, upon information and belief,
6 including investigation conducted by his attorneys.

7 2. The TCPA was designed to prevent calls like the ones described within this
8 complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous
9 consumer complaints about abuses of telephone technology – for example,
10 computerized calls dispatched to private homes – prompted Congress to pass
11 the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

12 3. In enacting the TCPA, Congress intended to give consumers a choice as to
13 how creditors and telemarketers may call them, and made specific findings
14 that “[t]echnologies that might allow consumers to avoid receiving such calls
15 are not universally available, are costly, are unlikely to be enforced, or place
16 an inordinate burden on the consumer.” TCPA, Pub.L. No. 102-243, § 11.
17 Toward this end, Congress found that:

18 Banning such automated or prerecorded telephone calls to the
19 home, except when the receiving party consents to receiving the
20 call or when such calls are necessary in an emergency situation
21 affecting the health and safety of the consumer, is the only
22 effective means of protecting telephone consumers from this
23 nuisance and privacy invasion.

24 *Id.* at § 12; *see also, Martin v. Leading Edge Recovery Solutions, LLC*, 2012
25 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional finding
26 on TCPA’s purpose).

27 4. Congress also specifically found that “the evidence presented to the Congress
28 indicates that automated or prerecorded calls are a nuisance and an invasion

1 of privacy, regardless of the type of call [...].” *Id.* At §§ 12-13. *See also,*
2 *Mims*, 132 S. Ct. at 744.

- 3 5. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case
4 regarding calls to a non-debtor similar to this one:

5 The Telephone Consumer Protection Act [...] is well known for its
6 provisions limiting junk-fax transmissions. A less litigated part of
7 the Act curtails the use of automated dialers and prerecorded
8 messages to cell phones, whose subscribers often are billed by the
9 minute as soon as the call is answered – and routing a call to
10 voicemail counts as answering the call. An automated call to a
landline phone can be an annoyance; an automated call to a cell
phone adds expense to annoyance.

11 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

12 **JURISDICTION AND VENUE**

- 13
14 6. Jurisdiction is proper under 47 U.S.C §227(b); *Mims v. Arrow Fin. Servs.,*
15 *LLC*, 132 S.Ct. 740 (2012), because Plaintiff alleges violations of federal law.
16 7. Venue is proper in the United States District Court for the Southern District of
17 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Plaintiff lives
18 in San Diego, CA, and the events giving rise to Plaintiff’s causes of action
19 against Defendant occurred in the State of California within the Southern
20 District of California and Defendant conducts business in the area of San
21 Diego, California.

22 **PARTIES**

- 23
24 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and
25 resident of the County of San Diego, in the State of California. Plaintiff owns
26 real property in the County and City of San Diego, which was the subject of
27 Defendant’s automated call marketing home improvement and solar systems.
28

1 9. Plaintiff is informed and believes, and thereon alleges, that NOLI is, and at all
2 times mentioned herein was, a company incorporated in the state of California
3 and headquartered in San Diego, CA, and at all times mentioned herein was, a
4 corporation and a “person,” as defined by 47 U.S.C. § 153 (39).

5 10. Plaintiff is informed and believes, and thereon alleges, that at all relevant
6 times, NOLI conducted business in the State of California and in the County
7 of San Diego, and within this judicial district.

8
9 **FACTUAL ALLEGATIONS**

10 11. At all times relevant, Plaintiff was a citizen of the State of California.
11 Plaintiff is, and at all times mentioned herein was, “persons” as defined by 47
12 U.S.C § 153 (39).

13 12. Defendant is, and at all times mentioned herein were, “persons” as defined by
14 47 U.S.C. §153 (39).

15 13. Sometime prior to January 1, 2012, Mr. Cross was assigned, and became the
16 owner of, a cellular telephone number from his wireless provider.

17 14. On or about January 13, 2017, Mr. Cross received a telephone call on his
18 cellular telephone from Defendant, in which Defendant utilized an automatic
19 telephone dialing system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1),
20 using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)
21 (1)(A).

22 15. The call to Mr. Cross’s cellular telephone number (San Diego area code (858)
23 XXX-4677), from Defendant came from phone number: (858) 260-1322.

24 16. During this call from Defendant to Mr. Cross’s cellular telephone, there was a
25 long pause after Mr. Cross answered the call wherein Mr. Cross said “Hello”
26 two or three times. Then Mr. Cross heard a click and someone came on the
27 line asking if he was interested in solar or needed work done on his house.
28



1 17. Mr. Cross was then transferred to the “manager” who identified himself as
2 Kevin Thomas. Mr. Thomas stated that they were calling from GW
3 Remodeling and referred Mr. Cross to their website, gwremodeling.com. Mr.
4 Thomas indicated that Mr. Cross could call him back at (619) 900-7250.

5 18. The ATDS used by Defendant has the capacity to store or produce telephone
6 numbers to be called, using a random or sequential number generator.

7 19. The ATDS used by Defendant also has the capacity to, and does, call
8 telephone numbers from a list of databases of telephone numbers
9 automatically and without human intervention.

10 20. The telephone number Defendant called was assigned to a cellular telephone
11 service for which Plaintiff incurred a charge for incoming calls pursuant to 47
12 U.S.C. § 227 (b)(1).

13 21. Plaintiff at no time provided “prior express consent” for Defendant to place
14 telephone calls to Plaintiff’s cellular telephone with an artificial or
15 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)
16 (1)(A).

17 22. Plaintiff had not provided his cellular telephone number to Defendant.
18 Plaintiff was not a customer of Defendant. Plaintiff had no “established
19 business relationship” with Defendant, as defined by 47 U.S.C. § 227 (a)(2).

20 23. These telephone calls made by Defendant or their agents were in violation of
21 47 U.S.C. § 227(b)(1).

22
23 **STANDING**

24 24. Standing is proper under Article III of the Constitution of the United States of
25 America because Plaintiff’s claims state:

- 26 a. a valid injury in fact;
27 b. which is traceable to the conduct of Defendant;
28 c. and is likely to be redressed by a favorable judicial decision.

1 See, *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016) at 6, and *Lujan v.*
2 *Defenders of Wildlife*, 504 U.S. 555 at 560.

3 25. In order to meet the standard laid out in *Spokeo* and *Lujan*, Plaintiff must
4 clearly allege facts demonstrating all three prongs above.

5
6 **A. *The “Injury in Fact” Prong***

7 26. Plaintiff’s injury in fact must be both “concrete” and “particularized” in order
8 to satisfy the requirements of Article III of the Constitution, as laid out in
9 *Spokeo (Id.)*.

10 27. For an injury to be “concrete” it must be a *de facto* injury, meaning that it
11 actually exists. In the present case, Plaintiff was called on his cellular phone
12 by Defendant, who utilized an ATDS and a pre-recorded voice. Such calls are
13 a nuisance, an invasion of privacy, and an expense to Plaintiff. *Soppet v.*
14 *Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of
15 these injuries are concrete and *de facto*.

16 28. For an injury to be “particularized” means that the injury must “affect the
17 plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins*, 578 U.S.
18 ____ (2016) at 7. In the instant case, it was Plaintiff’s phone that was called
19 and it was plaintiff himself who answered the calls. It was Plaintiff’s personal
20 privacy and peace that was invaded by Defendant’ phone call using an ATDS.
21 Finally, Plaintiff alone is responsible to pay the bill on his cellular phone. All
22 of these injuries are particularized and specific to Plaintiff, and will be the
23 same injuries suffered by each member of the putative class.

24
25 **B. *The “Traceable to the Conduct of Defendant” Prong***

26 29. The second prong required to establish standing at the pleadings phase is that
27 Plaintiff must allege facts to show that his injury is traceable to the conduct of
28 Defendant(s).

1 30. In the instant case, this prong is met simply by the fact that the calls to
2 plaintiff's cellular phone were placed either, by Defendant directly, or by
3 Defendant' agent at the direction of Defendant.

4
5 **C. *The "Injury is Likely to be Redressed by a Favorable Judicial Opinion"***
6 ***Prong***

7 31. The third prong to establish standing at the pleadings phase requires Plaintiff
8 to allege facts to show that the injury is likely to be redressed by a favorable
9 judicial opinion.

10 32. In the present case, Plaintiff's Prayers for Relief include a request for
11 damages for each call made by Defendant, as authorized by statute in 47
12 U.S.C. § 227. The statutory damages were set by Congress and specifically
13 redress the financial damages suffered by Plaintiff and the members of the
14 putative class.

15 33. Furthermore, Plaintiff's Prayers for Relief request injunctive relief to restrain
16 Defendant from the alleged abusive practices in the future. The award of
17 monetary damages and the order for injunctive relief redress the injuries of
18 the past, and prevent further injury in the future.

19 34. Because all standing requirements of Article III of the U.S. Constitution have
20 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), Plaintiff
21 has standing to sue Defendant on the stated claims.

22
23 **CLASS ACTION ALLEGATIONS**

24 35. Plaintiff brings this action on behalf of himself and on behalf of all others
25 similarly situated ("the Class").

26 36. Plaintiff represents, and is a member of, the Class, consisting of:

- 27 a. All persons within the United States who had or have a number
28 assigned to a cellular telephone service, who received at least one call

1 using an ATDS and/or an artificial prerecorded voice from Noli
2 Construction dba GW Construction, or their agents, calling on behalf of
3 Noli Construction dba GW Construction, between the date of filing this
4 action and the four years preceding, where such calls were placed for
5 the purpose of marketing home improvement services including but not
6 limited to the sale or installation of home solar systems, to non-
7 customers of Noli Construction dba GW Construction, at the time of the
8 calls.

9 37. Defendant and their employees or agents are excluded from the Class.
10 Plaintiff does not know the number of members in the Class, but believes the
11 Class members number in the thousands, if not more. Thus, this matter
12 should be certified as a Class action to assist in the expeditious litigation of
13 this matter.

14 38. Plaintiff and members of the Class were harmed by the acts of Defendant in at
15 least the following ways: Defendant illegally contacted Plaintiff and the Class
16 members via their cellular telephones thereby causing Plaintiff and the Class
17 members to incur certain cellular telephone charges or reduce cellular
18 telephone time for which Plaintiff and the Class members previously paid, by
19 having to retrieve or administer messages left by Defendant or their agents,
20 during those illegal calls, and invading the privacy of said Plaintiff and the
21 Class members. Plaintiff and the Class members were damaged thereby.

22 39. This suit seeks only damages and injunctive relief for recovery of economic
23 injury on behalf of the Class and it expressly is not intended to request any
24 recovery for personal injury and claims related thereto. Plaintiff reserves the
25 right to expand the Class definition to seek recovery on behalf of additional
26 persons as warranted as facts are learned in further investigation and
27 discovery.
28



1 40. The joinder of the Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the Court. The Class can be identified through Defendant’ records and/
4 or Defendant’ agent’s records.

5 41. There is a well-defined community of interest in the questions of law and fact
6 involved affecting the parties to be represented. The questions of law and fact
7 to the Class predominate over questions which may affect individual Class
8 members, including the following:

- 9 i. Whether, within the four years prior to the filing of the
10 Complaint, Defendant made any call(s) (other than a call made
11 for emergency purposes or made with the prior express consent
12 of the called party) to the Class members using any ATDS or an
13 artificial or prerecorded voice to any telephone number assigned
14 to a cellular telephone service;
- 15 ii. Whether Defendant called non-customers of Defendant for
16 marketing purposes;
- 17 iii. Whether Plaintiff and the Class members were damaged thereby,
18 and the extent of damages for such violation(s); and
- 19 iv. Whether Defendant should be enjoined from engaging in such
20 conduct in the future.

21 42. As a person that received calls from Defendant in which Defendant used an
22 ATDS or an artificial or prerecorded voice, without Plaintiff’s prior express
23 consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
24 fairly and adequately represent and protect the interests of the Class in that
25 Plaintiff has no interests antagonistic to any member of the Class.

26 43. Plaintiff and the members of the Class have all suffered irreparable harm as a
27 result of the Defendant’ unlawful and wrongful conduct. Absent a class
28 action, the Class will continue to face the potential for irreparable harm. In



1 addition, these violations of law will be allowed to proceed without remedy
2 and Defendant will likely continue such illegal conduct. The size of Class
3 member’s individual claims causes, few, if any, Class members to be able to
4 afford to seek legal redress for the wrongs complained of herein.

5 44. Plaintiff has retained counsel experienced in handling class action claims and
6 claims involving violations of the Telephone Consumer Protection Act.

7 45. A class action is a superior method for the fair and efficient adjudication of
8 this controversy. Class-wide damages are essential to induce Defendant to
9 comply with federal and California law. The interest of Class members in
10 individually controlling the prosecution of separate claims against Defendant
11 is small because the maximum statutory damages in an individual action for
12 violation of privacy are minimal. Management of these claims is likely to
13 present significantly fewer difficulties than those that would be presented in
14 numerous individual claims.

15 46. Defendant have acted on grounds generally applicable to the Class, thereby
16 making appropriate final injunctive relief and corresponding declaratory relief
17 with respect to the Class as a whole.

18 **FIRST CAUSE OF ACTION:**
19 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
20 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

21 47. Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.

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

26 49. As a result of Defendant’ negligent violations of 47 U.S.C. § 227 et seq.,
27 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
28 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

1 50. Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3
4 **SECOND CAUSE OF ACTION:**
5 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
6 **CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

7 51. Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 52. The foregoing acts and omissions of Defendant constitute numerous and
10 multiple knowing and/or willful violations of the TCPA, including but not
11 limited to each and every one of the above-cited provisions of 47 U.S.C. §
12 227 et seq.

13 53. As a result of Defendant’ knowing and/or willful violations of 47 U.S.C. §
14 227 et seq., Plaintiff and each of the Class are entitled to treble damages, as
15 provided by statute, up to \$1,500.00, for each and every violation, pursuant to
16 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

17 54. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 55. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the
21 Class members the following relief against Defendant:

22
23 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
24 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

25 56. As a result of Defendant’ negligent violations of 47 U.S.C. § 227(b)(1),
26 Plaintiff seeks for himself and each Class member \$500.00 in statutory
27 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
28



1 57. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
2 conduct in the future.

3 58. Any other relief the Court may deem just and proper.

4 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
5 **VIOLATION**
6 **OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

7 59. As a result of Defendant’ willful and/or knowing violations of 47 U.S.C. §
8 227(b)(1), Plaintiff seeks for himself and each Class member treble damages,
9 as provided by statute, up to \$1,500.00 for each and every violation, pursuant
10 to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

11 60. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
12 conduct in the future.

13 61. Any other relief the Court may deem just and proper.

14 **TRIAL BY JURY**

15
16 62. Pursuant to the seventh amendment to the Constitution of the United States of
17 America, Plaintiff is entitled to, and demands, a trial by jury.

18
19 Respectfully submitted,

20 Date: January 25, 2017

HYDE & SWIGART

21
22 By: s/Joshua B. Swigart
23 Joshua B. Swigart
24 Attorneys for Plaintiff
25
26
27
28



1 **Other Attorneys of Record, besides caption page:**

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Patrick Cross, Individually and on behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua B. Swigart, Esq. (225557); Kevin Lemieux, Esq. (225886) Hyde & Swigart (619) 233-7770 2221 Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS

Noli Construction dba GW Construction

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. §§227 et seq. Brief description of cause: Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/25/2017 SIGNATURE OF ATTORNEY OF RECORD s/Kevin Lemieux

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Noli Construction Violated TCPA With Robocalls](#)
