

LAW OFFICES OF RONALD A. MARRON

1 RONALD A. MARRON (SBN 175650)

2 *ron@consumersadvocates.com*

3 ALEXIS WOOD (SBN 270200)

4 *alexis@consumersadvocates.com*

5 KAS GALLUCCI (SBN 288709)

6 *kas@consumersadvocates.com*

7 651 Arroyo Drive

8 San Diego, California 92103

9 Telephone: (619) 696-9006

10 Facsimile: (619) 564-6665

11 *Attorneys for Plaintiff and the Proposed Class*

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MICHELE HUNT, on behalf of herself,
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 SOUTHERN CALIFORNIA EDISON,

19 Defendant.

Case No.:

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§§ 227 *et seq.***

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Michele Hunt (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Southern California Edison (“SCE” or
5 “Defendant”), in negligently, and/or willfully contacting Plaintiff through telephone
6 calls on Plaintiff’s cellular telephone, in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s
8 privacy. Plaintiff alleges as follows upon personal knowledge as to her own acts and
9 experiences, and, as to all other matters, upon information and belief, including
10 investigation conducted by her attorneys.

11 **NATURE OF THE ACTION**

12 2. Southern California Edison is the primary electricity supply company
13 for much of California. However Southern California Edison also pushes incentives
14 offered through the California Solar Initiative by making unsolicited calls to
15 individual’s cellular phones without their prior express consent.

16 3. The TCPA strictly forbids nuisance calls exactly like those alleged in
17 this Complaint – intrusive phone calls to private cellular phones, placed to numbers
18 obtained without the prior express consent of the call recipients.

19 4. Southern California Edison’s violations caused Plaintiff and members
20 of the Class actual harm, including aggravation, nuisance, and invasion of privacy
21 that necessarily accompanies the receipt of unsolicited phone calls, as well as the
22 violation of their statutory rights.

23 5. Plaintiff seeks an injunction stopping Southern California Edison from
24 making unsolicited phone calls, as well as an award of statutory damages under the
25 TCPA, together with costs and reasonable attorneys’ fees.

26 **JURISDICTION AND VENUE**

27 6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
28 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when

1 aggregated among a proposed class numbering in the tens of thousands, exceeds the
2 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
3 national class, which will include class members residing in different states than that
4 of Defendant, providing jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore,
5 both elements of diversity jurisdiction under the Class Action Fairness Act of 2005
6 (“CAFA”) are present, and this Court has jurisdiction.

7 7. This Court has federal question subject matter jurisdiction under 28
8 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

9 8. Venue is proper in the United States District Court for the Central
10 District of California pursuant to 28 U.S.C. §§ 1391(b) and 1441(a) because
11 Defendant, at all times herein mentioned, was doing business in the County of Los
12 Angles State of California and is located in Rosemead, California.

13 **PARTIES**

14 9. Plaintiff Michele Hunt is, and at all times mentioned herein was, a resident of
15 the State of California. She is, and at all times mentioned herein was a “person” as
16 defined by 47 U.S.C. § 153 (39).

17 10. Defendant Southern California Edison maintains its principal place of
18 business at 2244 Walnut Grove Avenue, Rosemead, California 91770. At all times
19 mentioned herein, Southern California Edison was a “person” as defined by 47
20 U.S.C. § 153 (39).

21 11. Southern California Edison actively conducted and continues to
22 conduct telemarketing campaigns for the purpose of soliciting the California Solar
23 Initiative.

24 12. Plaintiff alleges that at all times relevant herein Defendant conducted
25 business in the State of California and in the County of Los Angeles, and within this
26 judicial district.

1 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA),**
2 **47 U.S.C. §§ 227 *et seq.***

3 13. In 1991, Congress enacted the Telephone Consumer Protection Act, 47
4 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints
5 regarding certain telemarketing practices.

6 14. The TCPA regulates, among other things, the use of automated
7 telephone equipment, or “autodialers.” Specifically, the plain language of section
8 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless
9 number in the absence of an emergency or the prior express consent of the called
10 party.²

11 15. According to findings by the Federal Communication Commission
12 (“FCC”), the agency Congress vested with authority to issue regulations
13 implementing the TCPA, such calls are prohibited because, as Congress found,
14 automated or prerecorded telephone calls are a greater nuisance and invasion of
15 privacy than live solicitation calls, and such calls can be costly and inconvenient.
16 The FCC also recognized that wireless customers are charged for incoming calls
17 whether they pay in advance or after the minutes are used.³

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23 ¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394
24 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the
25 Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

26 ² 47 U.S.C. § 227(b)(1)(A)(iii).

27 ³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (F.C.C. 2003)
 (“2003 FCC Order”).

1 16. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
2 Ruling,⁴ the burden is on Defendant to demonstrate that Plaintiff provided prior
3 express consent within the meaning of the statute.

4 17. Further, as of October 16, 2013, express **written** consent is required to
5 many any such telemarketing calls.⁵ The express written consent must be signed
6 and be sufficient to show the consumer received clear and conspicuous disclosure of
7 the significance of providing consent and must further unambiguously agree to
8 receive future phone calls.⁶

9 **FACTUAL ALLEGATIONS**

10 18. Commencing no later than September of 2016, Plaintiff began
11 receiving a number of unsolicited phone calls to her wireless phone, for which
12 Plaintiff provided no consent to call.

13 19. In total, Plaintiff has received approximately 7 phone calls to her
14 cellular phone.

15 20. Most of the incoming calls from Southern California Edison received
16 by Plaintiff came from the following numbers: 800-655-4555 and 800-684-8123.

17 21. During the phone calls to Plaintiff's cellular telephone, there would be
18 a short delay before Plaintiff would be connected to a live representative. Once
19 connected with a live representative of Defendant, Defendant would solicit Plaintiff,
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22 ⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
23 *1991*, 23 F.C.C.R. 559, 2008 WL 65485 (F.C.C. Jan. 4, 2008) ("2008 FCC Order").

24 ⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
25 *1991*, Report and Order, 27 F.C.C.R. 1830, 1837 ¶ 18, 1839 ¶ 20, 1858 ¶ 71 (F.C.C.
Feb. 15, 2012) ("2012 FCC Order").

26 ⁶ 2012 FCC Order at 1844 ¶ 13; *see also Satterfield v. Simon & Schuster, Inc.*, 569
27 F.3d 946, 955 (9th Cir. 2009); *Gutierrez v. Barclays Grp.*, 2011 WL 579238, at *2
28 (S.D. Cal. Feb. 9, 2011).

1 the call recipient, to schedule an appointment to have an agent evaluate her home for
2 solar.

3 22. Numerous times, during these same phone calls, Plaintiff would
4 instruct Defendant to stop calling and that she was not interested in setting up an
5 appointment. Despite Plaintiff's efforts to stop Defendant's calls, Plaintiff continued
6 to receive unsolicited phone calls from Defendant.

7 23. These unsolicited phone calls placed to Plaintiff's wireless telephone
8 were placed via an "automatic telephone dialing system," ("ATDS") as defined by
9 47 U.S.C. § 227 (a)(1) and by using "an artificial or prerecorded voice" system as
10 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
11 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
12 to Plaintiff's cellular telephone.

13 24. The existence of the ATDS is further evidenced by the sheer volume of
14 calls received by Plaintiff and Class Members, as such calls would only be made
15 using automated equipment.

16 25. The telephone number that Defendant, or its agents, called was assigned
17 to a cellular telephone service for which Plaintiff incurred a charge for incoming
18 calls pursuant to 47 U.S.C. § 227 (b)(1).

19 26. These telephone calls constitute calls that were not for emergency
20 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

21 27. Plaintiff did not provide Defendant or its agents prior express consent
22 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

23 28. These telephone calls by Defendant or its agents therefore violated 47
24 U.S.C. § 227(b)(1).

25 CLASS ACTION ALLEGATIONS

26 29. Plaintiff brings this action on behalf of herself and on behalf of all
27 others similarly situated ("the Class").
28

1 30. Plaintiff represents, and is a member of the Class, consisting of all
2 persons within the United States who: (1) received a telephone call from Defendant
3 or its agents; (2) on his or her cellular telephone number; (3) through the use of any
4 automatic telephone dialing systems or artificial or pre-recorded voice system as set
5 forth in 47 U.S.C. § 227(b)(1)(A)(3); and (4) where Defendant has no record of prior
6 express consent for such individual to make such call, within four years prior to the
7 filing of the Complaint through the date of final approval.

8 31. Defendant and its employees or agents are excluded from the Class.

9 32. Plaintiff does not know the exact number of members in the Class, but
10 believes the Class members number in the hundreds of thousands, if not more. Thus,
11 this matter should be certified as a Class action to assist in the expeditious litigation
12 of this matter.

13 33. Plaintiff and members of the Class were harmed by the acts of
14 Defendant in at least the following ways: Defendant, either directly or through its
15 agents, illegally contacted Plaintiff and the Class members via their cellular
16 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
17 Class members to incur certain cellular telephone charges or reduce cellular
18 telephone time for which Plaintiff and the Class members previously paid, and
19 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
20 members were damaged thereby.

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

26 35. The joinder of the Class members is impractical and the disposition of
27 their claims in the Class action will provide substantial benefits both to the parties
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1 and to the Court. The Class can be identified through Defendant's records or
2 Defendant's agents' records.

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

- 7 a. Whether, within the four years prior to the filing of this Complaint,
8 Defendant or its agents placed telephone calls without the recipients'
9 prior express consent (other than a telephone call made for emergency
10 purposes or made with the prior express consent of the called party)
11 to a Class member using any automatic telephone dialing system or
12 an artificial or pre-recorded voice system, to any telephone number
13 assigned to a cellular telephone service;
- 14 b. Whether the equipment Defendant or its agents used to make the
15 telephone calls in question was an automatic telephone dialing system
16 as contemplated by the TCAP;
- 17 c. Whether Defendant or its agents systematically made telephone calls
18 to persons featuring an artificial or pre-recorded voice;
- 19 d. Whether Defendant or its agents systematically made telephone calls
20 to persons who did not previously provide Defendant with their prior
21 express consent to receive such telephone calls;
- 22 e. Whether Plaintiff and the Class members were damaged thereby, and
23 the extent of damages for such violations; and
- 24 f. Whether Defendant and its agents should be enjoined from engaging
25 in such conduct in the future.

26 37. As a person that received at least one unsolicited telephone call to her
27 cell phone without prior express consent, Plaintiff is asserting claims that are typical
28

1 of the Class. Plaintiff will fairly and adequately represent and protect the interests
2 of the Class in that Plaintiff has no interest antagonistic to any member of the Class.

3 38. Plaintiff and the members of the Class have all suffered irreparable
4 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
5 action, the Class will continue to face the potential for irreparable harm. In addition,
6 these violations of law will be allowed to proceed without remedy and Defendant
7 will likely continue such illegal conduct. Because of the size of the individual Class
8 member's claims, few, if any, Class members could afford to individually seek legal
9 redress for the wrongs complained of herein.

10 39. Plaintiff has retained counsel experienced in handling class action
11 claims and claims involving violations of the Telephone Consumer Protection Act.

12 40. A class action is a superior method for the fair and efficient adjudication
13 of this controversy. Class-wide damages are essential to induce Defendant to
14 comply with federal law. The interest of Class members in individually controlling
15 the prosecution of separate claims against Defendant is small because the maximum
16 statutory damages in an individual action for violation of privacy are minimal.
17 Management of these claims is likely to present significantly fewer difficulties than
18 those presented in many class claims.

19 41. This class action is appropriate for certification because Defendant has
20 acted or refused to act on grounds generally applicable to the Class as a whole,
21 thereby requiring the Court's imposition of uniform relief to ensure compatible
22 standards of conduct toward the Class members and making final injunctive relief
23 appropriate with respect to the Class as a whole. Defendant's practices challenged
24 herein apply to and affect each of the Class members uniformly. Plaintiff's challenge
25 to those practices hinges on Defendant's conduct with respect to the Class as whole,
26 not on facts or law applicable only to Plaintiff.

27

28

1 **FIRST CAUSE OF ACTION**
2 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
3 **47 U.S.C. §§ 227 ET SEQ.**

4 42. Plaintiff incorporates by reference all of the above paragraphs of this
5 Complaint as though fully stated herein.

6 43. Each such telephone call described herein was made using equipment
7 that, upon information and belief, had the capacity to store or produce telephone
8 numbers to be called, using a random or sequential number generator, and to dial
9 such numbers. By using such equipment, Defendant was able to in effect make
10 hundreds or thousands of phone calls simultaneously to lists of thousands of
11 consumers' wireless phone numbers without human intervention.

12 44. The foregoing acts and omissions by Defendant and its agents
13 constitute numerous and multiple negligent violations of the TCPA, including but
14 not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

15 45. As a result of Defendant's, and Defendant's agents', negligent
16 violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award
17 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
18 § 227(b)(3)(B).

19 46. Plaintiff and the Class are also entitled to and seek injunctive relief
20 prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**
22 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
23 **TELEPHONE CONSUMER PROTECTION ACT**
24 **47 U.S.C. §§ 227 ET SEQ.**

25 47. Plaintiff incorporates by reference the above paragraphs 1 through 43
26 inclusive, of this Complaint as though fully stated herein.

27 48. Each such telephone call was made using equipment that, upon
28 information and belief, had the capacity to store or produce telephone numbers to be

1 called, using a random or sequential number generator, and to dial such numbers.
2 By using such equipment, Defendant was able to in effect make hundreds or
3 thousands of phone calls simultaneously to lists of thousands of consumers' wireless
4 phone numbers without human intervention.

5 49. The foregoing acts and omissions by Defendant and its agents
6 constitute numerous and multiple knowing and/or willful violations of the TCPA,
7 including but not limited to each of the above-cited provisions of 47 U.S.C. §§ 227
8 *et seq.*

9 50. As a result of Defendants' knowing and/or willful violations of 47
10 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as
11 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
12 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

13 51. Plaintiff and the Class are also entitled to and seek injunctive relief
14 prohibiting such conduct in the future.

15 **PRAYER FOR RELIEF**

16 **Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the
17 Class members the following relief against Defendant:

18 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA,**
19 **47 U.S.C. §§ 227 *ET SEQ.***

20 52. As a result of Defendant's, and Defendant's agents', negligent
21 violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class
22 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
23 U.S.C. § 227(b)(3)(B).

24 53. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief
25 prohibiting such conduct in the future.

26 54. Any other relief the Court may deem just and proper.
27
28

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

3 55. As a result of Defendant's, and Defendant's agents', willful and/or
4 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each
5 Class member treble damages, as provided by statute, up to \$1,500.00 for each and
6 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 56. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
8 conduct in the future.

9 57. Any other relief the Court may deem just and proper.

10
11 **JURY DEMAND**

12 Plaintiff hereby demands a trial by jury on all issues so triable.

13
14 Dated: January 17, 2017

/s/ Ronald A. Marron
By: Ronald A. Marron
LAW OFFICES OF RONALD A.
MARRON
RONALD A. MARRON
ALEXIS WOOD
KAS GALLUCCI
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

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