

The Pride Law Firm

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Attorney for Kyle Miholich

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

Kyle Miholich,
Individually and on Behalf
Of All Others Similarly Situated,

Plaintiffs,

vs.

Welk Resort Group, Inc., Soleil
Communications, Inc., DOES 1-10,
ABC CORPORATIONS 1-10,
ZYZ, LLC's 1-10

Defendants

Civil Case No. '17CV2240 WQHJMA

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATION OF TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. §227, ET SEQ.**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Kyle Miholich (“Plaintiff”), by and through his attorneys, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendants WELK RESORT GROUP, INC., and SOLEIL COMMUNICATIONS, INC., hereinafter

1 “Defendants” in negligently or intentionally contacting Plaintiff on Plaintiff’s
2 cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.
3 C. §227 et seq., (“TCPA”), thereby seriously invading Plaintiff’s privacy. Plaintiff
4 alleges as follows, upon personal knowledge as to himself and his own acts and
5 experiences, and, as to all other matters, upon information and belief, including
6 investigation conducted by his attorneys.
7

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

14 Toward this end, Congress found that
15

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

21 *Id.* at § 12; *see also* Martin v. Leading Edge Recovery Solutions, LLC, 2012 WL
22 3292838, a*4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
23 purpose).

24 3. Congress also specifically found that “the evidence presented to the
25 Congress indicates that automated or prerecorded calls are a nuisance and an
invasion of privacy, regardless of the type of call...” *Id.* At §§ 12-13. See also,

1 *Mims*, 132 S. Ct. At 744. Plaintiff alleges that the call from Defendants was dialed
2 by an automatic telephone dialing system (ATDS). Plaintiff never granted
3 Defendants permission to solicit through telemarketing with an ATDS or
4 otherwise.

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

8 The Telephone Consumer Protection Act...is well known for
9 It's provisions limiting junk-fax transmissions. A less-litigated
10 part of the Act curtails the use of automated dialers and
11 prerecorded messages to cell phones, whose subscribers often
12 Are billed by the minute as soon as the call is answered--and
13 Routing a call to voicemail counts as answering the call. An
14 Automated call to a landline phone can be an annoyance; an
15 Automated call to a cell phone adds expense to annoyance.

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

17 **JURISDICTION AND VENUE**

18 5. This Court has federal question jurisdiction because this case arises
19 out of violation of federal law. 47 U.S.C. §227, et seq; *Mims v. Arrow Fin. Servs.*,
20 LLC, 132 S. Ct. 740 (2012).

21 6. Venue is proper pursuant to 28 U.S.C. § 1391 for the following
22 reasons: (i) Plaintiff resides in the County of San Diego, State of California which
23 is within this judicial district; (ii) the conduct complained of herein occurred within
24 this judicial district; and, (iii) Defendants conducted business within this judicial
25 district at all times relevant.

PARTIES

1
2 7. Plaintiff is, and at all times mentioned herein was, a citizen and
3 resident of the County of San Diego, State of California. Plaintiff is, and at all
4 times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).
5

6 8. Plaintiff is informed and believes, and thereon alleges, that Defendant
7 Welk Resort Group, Inc. is, and at all times mentioned herein was, a corporation
8 whose state of incorporation is in the State of California and its principal place of
9 business is in the State of California, with an operating address of 300 Rancheros
10 Drive, Suite 450, San Marcos, CA 92069.
11

12 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
13 Soleil Communications, Inc. is, and at all times mentioned herein was, a
14 corporation whose state of incorporation is in the State of California and its
15 principal place of business is in the State of California, with an operating address
16 of 8860 Lawrence Welk Drive, Escondido, CA 92026.
17

18 10. Plaintiff alleges that at all times relevant herein Defendants conducted
19 business in the State of California and in the County of San Diego, and within this
20 judicial district.
21

22 /././

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FACTUAL ALLEGATIONS

1
2 11. At all times relevant, Plaintiff was domiciled in and a citizen of the
3 State of California. Plaintiff is, and at all times mentioned herein was, a “person”
4 as defined by 47 U.S.C. § 153 (39).
5

6 12. On September 3, 2017, Defendants called Plaintiff on Plaintiff’s cell
7 phone number 760-845-5823 from 760-269-4382 in an attempt to induce Plaintiff
8 to attend a timeshare sales presentation.
9

10 13. All Defendants named herein are vicariously liable for the acts and
11 actions of its agents for violating the TCPA. See *Gomez vs. Campbell-Ewald Co.*,
12 768 F.3d 871 (2014), upheld by US Supreme Court on January 20, 2016, 136 S.Ct.
13 663 (2016).
14

15 14. The harm and injury in this matter is not divorced from the TCPA
16 violations. Rather, it is because of the TCPA violations (illegal solicitation call to
17 cellular phones with an ATDS) that Plaintiff has suffered an invasion of privacy,
18 additional phone charges, lost minutes on phone plan and additional utility bills.
19

20 15. Defendants failed to provide Plaintiff a written copy of its do not call
21 policy, even after Plaintiff’s express demand.
22

23 16. Plaintiff lost time at work while having to answer the solicitation call
24 of Defendants and thus Plaintiff has lost income that could have been earned
25 working instead of wasted time on the sale call in order to ascertain the identity of

1 the telemarketer. Each Class member also lost time answering Defendant's illegal
2 telemarketing calls and thus each Class member has the same or similar concrete
3 injury.

4 17. Defendants failed to properly scrub their telemarketing lead lists
5 against the national do not call registry in order to delete and redact protected
6 numbers like Plaintiff's cell phone.

7 18. Plaintiff suffered concrete injury as a result of the fact of the
8 solicitation call and not necessarily based on the manner or method in which the
9 call was actually dialed.
10

11 19. At all times relevant Defendants purposefully availed themselves of
12 the benefits and protections of California law as well as conducted business in the
13 State of California and in the County of San Diego, within this judicial district.
14

15 20. At no time has Plaintiff ever provided Defendants with his cellular
16 telephone number.
17

18 21. The calls Defendants placed to Plaintiff's cellular telephone were
19 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
20 U.S.C. § 227(b)(1)(A). Plaintiff never granted permission to Defendants or their
21 agents to call Plaintiff with an ATDS.
22

23 22. This ATDS has the capacity to store or produce telephone numbers to
24 be dialed, using a random or sequential number generator.
25

- 1 i. A valid injury in fact;
- 2 ii. which is traceable to the conduct of Defendants;
- 3 iii. and is likely to be redressed by a favorable judicial decision.

4 See, *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016) at 6, and *Lujan v. Defenders of*
5 *Wildlife*, 504 U.S. 555 at 560. In order to meet the standard laid out in *Spokeo* and
6 *Lujan*, Plaintiffs must clearly allege facts demonstrating all three prongs above.

7
8 A. The “Injury in Fact” Prong

9 Plaintiff’s injury in fact must be both “concrete” and “particularized” in order to
10 satisfy the requirements of Article III of the Constitution, as laid out in *Spokeo*
11 (Id.). For an injury to be “concrete” it must be a de facto injury, meaning that it
12 actually exists. In the present case, Plaintiff was called on his cellular phone by
13 Defendants. Such calls are a nuisance, an invasion of privacy, and an expense to
14 Plaintiff in multiple ways. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637,
15 638 (7th Cir. 2012). Defendant’s invasion of Plaintiff’s right to privacy is further
16 exacerbated by the fact that Plaintiff’s phone number, at all times relevant to this
17 litigation, was on the National Do-Not-Call Registry (hereinafter, “DNC
18 Registry”). As well, Plaintiff had no prior business relationship with Defendants
19 prior to receiving the seriously harassing and annoying calls. All of Plaintiff’s
20 injuries are concrete and de facto. For an injury to be “particularized” means that
21 the injury must “affect the plaintiff in a personal and individual way.” *Spokeo, Inc.*
22
23
24
25

1 *v. Robins*, 578 U.S. ____ (2016) at 7. In the instant case, it was Plaintiff's phone that
2 was called and it was Plaintiff himself who answered the calls. It was Plaintiff's
3 personal privacy and peace that was invaded by Defendant's phone call using an
4 ATDS; despite Plaintiff having no prior business relationship with Defendants and
5 Plaintiff's attempt to avoid the damage by registering his number on the DNC
6 Registry. Finally, Plaintiff alone is responsible to pay the bill on his cellular phone
7 and to pay the bill for his electric utility company kilowatt-hour power usage. All
8 of these injuries are particularized and specific to Plaintiff, and will be the same
9 injuries suffered by each plaintiff separately.
10
11

12 B. The "Traceable to the Conduct of Defendants" Prong

13 The second prong required to establish standing at the pleadings phase is that
14 Plaintiff must allege facts to show that his injury is traceable to the conduct of
15 Defendants. In the instant case, this prong is met by the fact that the call to
16 Plaintiff's cellular phone was placed either by Defendants directly, or by
17 Defendant's agent at the direction of Defendants.
18
19

20 C. The "Injury is Likely to be Redressed by a Favorable Judicial Opinion"
21 Prong

22 The third prong to establish standing at the pleadings phase requires Plaintiff to
23 allege facts to show that the injury is likely to be redressed by a favorable judicial
24 opinion. In the present case, Plaintiff's Prayers for Relief include a request for
25

1 damages for each call made by Defendants, as authorized by statute in 47 U.S.C. §
2 227. The statutory damages were set by Congress and specifically redress the
3 financial damages suffered by Plaintiff. Furthermore, Plaintiff's Prayers for Relief
4 request injunctive relief to restrain Defendants from the alleged abusive practices
5 in the future. The award of monetary damages and the order for injunctive relief
6 redress the injuries of the past, and prevent further injury in the future. Because all
7 standing requirements of Article III of the U.S. Constitution have been met, as laid
8 out in *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), Plaintiff has standing to sue
9 Defendants on the stated claims.
10
11

12 “...[C]ourts in the Ninth Circuit have held that "allegations of
13 nuisance and invasions of privacy in TCPA actions are
14 concrete" injuries that establish standing. See *Mbazomo v.*
15 *ETourandtravel, Inc.*, 16-CV-2229-SB, 2016 U.S. Dist.
16 LEXIS 170186, 2016 WL 7165693, at *2 (E.D. Cal. Dec. 8,
17 2016); *Cabiness v. Educ. Fin. Sols., LLC*, 16-CV-1109-JST,
18 2016 U.S. Dist. LEXIS 142005, 2016 WL 5791411, at *5
19 (N.D. Cal. Sept. 1, 2016); *Juarez v. Citibank, N.A.*, No. 16-
20 CV-1984-WHO, 2016 U.S. Dist. LEXIS 118483, 2016 WL
21 4547914, at *3 (N.D. Cal. Sept. 1, 2016); *Hewlett v.*
22 *Consolidated World Travel, Inc.*, 16-713 WBS AC, 2016 U.S.
23 Dist. LEXIS 112553, 2016 WL 4466536, at *2 (E.D. Cal.
24 Aug. 23, 2016); *Cour v. Life360, Inc.*, 16-CV-00805-TEH,
25 2016 U.S. Dist. LEXIS 98945, 2016 WL 4039279, at *2 (N.D.
Cal. July 28, 2016); *Booth v. Appstack, Inc.*, No. 13-1553JLR,
2016 U.S. Dist. LEXIS 68886, 2016 WL 3030256, at *7
(W.D. Wash. May 25, 2016). In *Mbazamo*, the court held that
a violation of the TCPA represents a concrete injury because
"[t]he history of sustaining claims against both unwelcome

1 intrusion into a plaintiff's seclusion and unceasing debt-
2 collector harassment are squarely 'harm[s] that [have]
3 traditionally been regarded as providing a basis for a lawsuit.'
4 Mbazomo, 2016 U.S. Dist. LEXIS 170186, 2016 WL
5 7165693, at *2 (quoting *Spokeo*, 136 S.Ct. at 1549-50). The
6 court declined to follow *Romero*, explaining that *Romero*
7 "improperly erodes the pleading standard set under Fed. R.
8 Civ. P. 8(a) A plaintiff [need only] plausibly tie the
9 alleged acts of the defendant to the alleged harms suffered."
10 Id.

11 Similarly, in *Cabiness*, the court held that a violation of the
12 TCPA represents a concrete injury because "[e]very
13 unconsented call through the use of an ATDS to a consumer's
14 cellular phone results in actual harm: the recipient wastes her
15 time and incurs charges for the call if she answers the phone,
16 and her cell phone's battery is depleted even if she does not
17 answer the phone unsolicited calls also cause intangible
18 harm by annoying the consumer." *Cabiness*, 2016 U.S. Dist.
19 LEXIS 142005, 2016 WL 5791411, at *5 (internal citations
20 omitted). And in *Juarez*, the court held that the plaintiff's
21 allegation "that he received repeated unwanted calls that
22 caused him aggravation, nuisance, and an invasion of privacy,
23 is sufficient to allege a 'concrete' and 'particularized' injury
24 that establishes standing under *Spokeo*." *Juarez*, 2016 U.S.
25 Dist. LEXIS 118483, 2016 WL 4547914, at *3.

26 *Messerlian v. Rentokil N. Am., Inc.* (C.D.Cal. Dec. 15, 2016, No. CV
27 16-6941-GW (GJSx)) 2016 U.S. Dist. LEXIS 175224, at *7-8.

28 CLASS ACTION ALLEGATIONS

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

1 29. Plaintiff represents, and is a member of the Class, consisting of:

2 All persons within the United States who received any telephone call/s
3 From Defendants or their agent/s and/or employee/s to said person's
4 cellular telephone made through the use of any automatic telephone
5 dialing system within the four years prior to the filing of the
6 Complaint.

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

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

21 32. 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
25

1 right to expand the Class definition to seek recovery on behalf of additional
2 persons as warranted as facts are learned in further investigation and discovery.

3 33. The joinder of the Class members is impractical and the disposition of
4 their claims in the Class action will provide substantial benefits both to the parties
5 and to the court. The Class can be identified through Defendants' records or
6 Defendants' agents' records.
7

8 34. There is a well-defined community of interest in the questions of law
9 and fact involved affecting the parties to be represented. The questions of law and
10 fact to the Class predominate over questions which may affect individual Class
11 members, including the following:
12

- 13 a) Whether, within the four years prior to the filing of the Complaint,
14 Defendants made any call/s (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) to the Class
16 members using any automatic telephone dialing system or an artificial or
17 prerecorded voice to any telephone number assigned to a cellular telephone
18 service.
19
20
21 b) Whether Defendants can meet their burden of showing they obtained prior
22 express consent (i.e., consent that is clearly and unmistakably stated);
23
24 c) Whether Defendants conduct was knowing and/or willful;
25

1 d) Whether Plaintiff and the Class members were damaged thereby, and the
2 extent of damages for such violation; and

3 e) Whether Defendants and their agents should be enjoined from engaging in
4 such conduct in the future.
5

6 35. As a person that received at least one telephonic communication from
7 Defendants' ATDS without Plaintiff's prior express consent, Plaintiff is asserting
8 claims that are typical of the Class. Plaintiff will fairly and adequately represent
9 and protect the interests of the Class as the Plaintiff has no interests antagonistic to
10 any member off the Class.
11

12 36. Plaintiff and the members of the Class have all suffered irreparable
13 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class
14 action, the Class will continue to face the potential for irreparable harm. In
15 addition, these violations of law will be allowed to proceed without remedy and
16 Defendants will likely continue such illegal conduct. Because of the size of the
17 individual Class member's claims, few, if any, Class members could afford to seek
18 legal redress for the wrongs complained of herein.
19
20

21 37. Plaintiff has retained counsel experienced in handling class action
22 claims and claims involving violations of the Telephone Consumer Protection Act.
23

24 38. A class action is a superior method for the fair and efficient
25 adjudication of this controversy. Class-wide damages are essential to induce

1 Defendants to comply with federal and California law. The interest of Class
2 members in individually controlling the prosecution of separate claims against
3 Defendants is small because the maximum statutory damages in an individual
4 action for violation of privacy are minimal. Management of these claims is likely
5 to present significantly fewer difficulties than those presented in many class
6 claims.
7

8 39. Defendants have acted on grounds generally applicable to the Class,
9 thereby making appropriate final injunctive relief and corresponding declaratory
10 relief with respect to the Class as a whole.
11

12 **COUNT I**

13 **NEGLIGENT VIOLATIONS OF THE**

14 **TELEPHONE CONSUMER PROTECTION ACT (TCPA)**

15 **47 U.S.C. 227**

16
17 40. Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.
19

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

CERTIFICATION OF WORD COUNT

I, Dante Pride, hereby certify that, according to the computer program used to prepare this document, Complaint, contains 3884 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 2nd day of November, 2017, in San Diego, California.

/s/ Dante T. Pride
Dante T. Pride
Attorney for Plaintiff
KYLE MIHOLICH

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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

Kyle Miholich, 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)

Dante T. Pride, The Pride Law Firm, 2831 Camino Del Rio S, Ste. 104, San Diego, CA 92108 619-516-8166

DEFENDANTS

Welk Resort Group, Inc., Soleil Communications, Inc., DOES 1-10, ABC CORPORATIONS 1-10, ZYZ, LLC's 1-10

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

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

Attorneys (If Known)

17CV2240 WQHJMA

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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 USC 227 et seq. Brief description of cause: Violation 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 11/02/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Dante Pride

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: [Welk Resort Group, Soleil Communications Accused of Illegal Robocalling](#)
