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8 *Attorneys for Plaintiff and the Proposed Classes*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 SIDNEY NAIMAN, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 TRANZVIA LLC,

17 Defendant.

18 NO.

19 **COMPLAINT FOR DAMAGES AND
20 INJUNCTIVE RELIEF**

21 **DEMAND FOR JURY TRIAL**

22 **Class Action**

23 Plaintiff Sidney Naiman (“Plaintiff”), by his undersigned counsel, for this class action
24 complaint against Tranzvia LLC and its present, former and future direct and indirect parent
25 companies, subsidiaries, affiliates, agents, and/or other related entities (“Tranzvia” or
26 “Defendant”), alleges as follows:
27

I. INTRODUCTION

1
2 1. Nature of Action. Plaintiff, individually and as class representative for all others
3 similarly situated, brings this action against Tranzvia for violations of the Telephone Consumer
4 Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

II. PARTIES

5
6 2. Plaintiff Sidney Naiman is an individual residing in California, in this District.
7
8 3. Defendant Tranzvia LLC is a Texas limited liability company with its principal place
9 of business in Plano, Texas. Tranzvia does business in California and throughout the United
10 States.

III. JURISDICTION AND VENUE

11 4. Jurisdiction. This Court has subject matter jurisdiction over Plaintiff’s claims
12 pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims arise under the laws of the United States,
13 specifically, 47 U.S.C. § 227.

14 5. Personal Jurisdiction. This Court has personal jurisdiction over Tranzvia because a
15 substantial part of the wrongful acts alleged in this Complaint were committed in California.

16 6. Venue. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)-(2)
17 because Plaintiff resides in this District and a substantial part of the events giving rise to
18 Plaintiff’s claims occurred in this District.

19 7. Intradistrict Assignment. Assignment to this Division is proper pursuant to Civil L.R.
20 3-2(c) because a substantial part of the events or omissions that give rise to Plaintiff’s claims
21 occurred in the County of Contra Costa.

IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. § 227

22
23 8. In 1991, Congress enacted the TCPA in response to a growing number of consumer
24 complaints regarding certain telemarketing practices.

25 9. The TCPA makes it unlawful “to make any call (other than a call made for
26 emergency purposes or made with the prior express consent of the called party) using an
27 automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone

1 number assigned to a ... cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA
2 provides a private cause of action to persons who receive calls in violation of Section
3 227(b)(1)(A). 47 U.S.C. § 227(b)(3).

4 10. According to findings of the Federal Communication Commission (“FCC”), the
5 agency vested by Congress with authority to issue regulations implementing the TCPA,
6 automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live
7 solicitation calls and can be costly and inconvenient.

8 11. The FCC also recognized that “wireless customers are charged for incoming calls
9 whether they pay in advance or after the minutes are used.” *In re Rules and Regulations*
10 *Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order,
11 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

12 12. The FCC requires prior express written consent for all autodialed or prerecorded
13 telemarketing calls (“robocalls”) to wireless numbers and residential lines. The FCC ruled:

14 [A] consumer’s written consent to receive telemarketing robocalls must be signed
15 and be sufficient to show that the consumer: (1) received “clear and conspicuous
16 disclosure” of the consequences of providing the requested consent, i.e., that the
17 consumer will receive future calls that deliver prerecorded messages by or on
18 behalf of a specific seller; and (2) having received this information, agrees
unambiguously to receive such calls at a telephone number the consumer
designates. In addition, the written agreement must be obtained “without
requiring, directly or indirectly, that the agreement be executed as a condition of
purchasing any good or service.”

19 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
20 27 F.C.C. Rcd. 1830, 1844 ¶ 33 (2012) (footnote omitted).

21 13. The FCC regulations “generally establish that the party on whose behalf a solicitation
22 is made bears ultimate responsibility for any violations.” *In the Matter of Rules and Regulations*
23 *Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 92-90, Memorandum and
24 Order, 10 F.C.C. Rcd. 12391, 12397 ¶ 13 (1995).

25 14. The FCC confirmed this principle in 2013, when it explained that “a seller ... may be
26 held vicariously liable under federal common law principles of agency for violations of either
27 section 227(b) or section 227(c) that are committed by third-party telemarketers.” *In the Matter*

1 of the Joint Petition Filed by Dish Network, LLC, 28 F.C.C. Rcd. 6574, 6574 (2013) (“May 2013
2 FCC Ruling”).

3 **V. FACTUAL ALLEGATIONS**

4 **A. Factual Allegations Regarding Tranzvia**

5 15. Tranzvia offers various payment technologies for businesses. *About TranzVia*,
6 TranzVia, <http://www.tranzvia.com/about.cfm> (last visited Aug. 14, 2017).

7 16. Tranzvia “is a registered ISO of Wells Fargo Bank, N.A,” i.e., an Independent Selling
8 Organization of Wells Fargo Bank. *Id.* (emphasis deleted).

9 17. One of Tranzvia’s strategies for marketing its payment services included hiring
10 Gordon Rose, an individual who operates a telemarketing company.

11 18. Mr. Rose’s strategy for generating new customers involved the use of an automatic
12 telephone dialing system (“ATDS”) to solicit business.

13 19. Mr. Rose uses ATDS equipment that has the capacity to store or produce telephone
14 numbers to be called, that includes autodialers and predictive dialers, and that plays a
15 prerecorded message once the calls connect.

16 20. Recipients of these calls, including Plaintiff, did not consent to receive such telephone
17 calls.

18 **B. Factual Allegations Regarding Plaintiff**

19 21. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C.
20 § 153(39).

21 22. Plaintiff’s telephone number, (925) 935-XXXX, is registered to a cellular telephone
22 service.

23 23. On June 8, 2017, Plaintiff’s telephone number was called with a pre-recorded
24 message by Mr. Rose’s office.

25 24. The caller ID showed the telephone call was from (270) 594-7041.

1 25. When the call was answered, there was a lengthy pause and a click followed by
2 silence before any voice came on the line, which indicated that the call was made using an
3 ATDS.

4 26. Following the lengthy pause and extended silence, a prerecorded message played
5 words to the effect that the call was being made to sell credit card processing services. The called
6 party was instructed to press a button on his telephone for further information.

7 27. In an attempt to determine the identity of the caller, the recipient pressed the button
8 for further information and was instructed by another prerecorded voice to leave a voice message
9 with a telephone number.

10 28. Shortly after leaving his voice message, Plaintiff received a call from Brandon
11 Arvizu, who claimed to be with Tranzvia and proceeded to try to sell Tranzvia products.

12 29. Mr. Arvizu called from the phone number (209) 257-6277.

13 30. After the phone call, Mr. Arvizu sent Plaintiff e-mails from a Tranzvia e-mail address
14 attempting to sell Tranzvia products.

15 31. In June of 2017, Plaintiff received another pre-recorded message on his residential
16 telephone line, (925) 735-XXXX.

17 32. When the call was answered, there was a lengthy pause and a click followed by
18 silence before any voice came on the line, which indicated that the call was made using an
19 ATDS.

20 33. Following the lengthy pause and extended silence, a prerecorded message played
21 words to the effect that the call was being made to sell credit card processing services. The called
22 party was instructed to press a button on his telephone for further information.

23 34. In an attempt to determine the identity of the caller, the recipient pressed the button
24 for further information and was instructed by another prerecorded voice to leave a voice message
25 with a telephone number.

26 35. Shortly after leaving his voice message, Plaintiff received a call from Jassan Sanford,
27 who claimed to be with Tranzvia and proceeded to try to sell Tranzvia products.

1 36. Mr. Sanford called from the phone number (209) 257-6277.

2 37. After the phone call, Mr. Sanford sent Plaintiff e-mails from a Tranzvia e-mail
3 address attempting to sell Tranzvia products.

4 38. Plaintiff has never been a customer of Tranzvia, nor has he ever been interested in
5 being a customer of Tranzvia.

6 39. Plaintiff did not provide prior express written consent to receive ATDS-generated or
7 prerecorded calls from, or on behalf of, Tranzvia.

8 40. Plaintiff's privacy has been violated by the above-described calls from, or on behalf
9 of, Tranzvia. The calls were an annoying, harassing nuisance.

10 41. Plaintiff and all members of the Class, defined below, have been harmed by the acts
11 of Tranzvia because their privacy has been violated, they were subjected to annoying and
12 harassing calls that constituted a nuisance, and they were charged for incoming calls. The calls
13 also occupied their cellular telephone lines, rendering them unavailable for legitimate
14 communication.

15 **VI. TRANZVIA'S ARRANGEMENT WITH MR. ROSE**

16 42. Tranzvia is a "person," as defined by 47 U.S.C. § 153(39).

17 43. In its January 4, 2008 ruling, the FCC reiterated that a company on whose behalf a
18 telephone call is made bears the responsibility for any violations. *See In re Rules and*
19 *Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA*
20 *International for Clarification and Declaratory Ruling*, CG Docket No. 02-278, FCC Docket No.
21 07-232, 23 F.C.C. Rcd. 559, 565 ¶ 10 (2008) ("Calls placed by a third party collector on behalf
22 of that creditor are treated as if the creditor itself placed the call.").
23

24 44. On May 9, 2013, the FCC again confirmed this principle in a Declaratory Ruling
25 holding that sellers such as Tranzvia may not avoid liability by outsourcing telemarketing:
26
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1 [A]llowing the seller to avoid potential liability by outsourcing its telemarketing
2 activities to unsupervised third parties would leave consumers in many cases
3 without an effective remedy for telemarketing intrusions. This would particularly
4 be so if the telemarketers were judgment proof, unidentifiable, or located outside
5 the United States, as is often the case. Even where third-party telemarketers are
6 identifiable, solvent, and amenable to judgment, limiting liability to the
7 telemarketer that physically places the call would make enforcement in many
8 cases substantially more expensive and less efficient, since consumers (or law
9 enforcement agencies) would be required to sue each marketer separately in order
10 to obtain effective relief. As the FTC noted, because “[s]ellers may have
11 thousands of ‘independent’ marketers, suing one or a few of them is unlikely to
12 make a substantive difference for consumer privacy.”

13 *May 2013 FCC Ruling*, 28 F.C.C. Rcd. at 6588 ¶ 37 (footnotes and alteration omitted) (second
14 alteration in original).

15 45. More specifically, the May 2013 FCC Ruling held that, even in the absence of
16 evidence of a formal contractual relationship between the seller and the telemarketer, a seller is
17 liable for telemarketing calls if the telemarketer “has apparent (if not actual) authority” to make
18 the calls. *Id.* at 6586 ¶ 34.

19 46. The May 2013 FCC Ruling rejected a narrow view of TCPA liability, including the
20 assertion that a seller’s liability requires a finding of formal agency and immediate direction and
21 control over the third-party who placed the telemarketing call. *Id.* at 6587 n.107.

22 47. Tranzvia is legally responsible for ensuring that Mr. Rose complied with the TCPA,
23 even if Tranzvia did not itself make the calls.

24 48. Tranzvia knowingly and actively accepted business that originated through the illegal
25 telemarketing calls from Mr. Rose.

26 49. By hiring a company to make calls on its behalf, Tranzvia “manifest[ed] assent to
27 another person . . . that the agent shall act on the principal’s behalf and subject to the principal’s
control,” as described in the Restatement (Third) of Agency.

1 50. Similarly, by accepting these contracts, the company that Mr. Rose hired
2 “manifest[ed] assent or otherwise consent[ed] . . . to act” on behalf of Tranzvia. As such, Mr.
3 Rose and the company are agents of Tranzvia.

4 51. Tranzvia had control over Mr. Rose’s actions on its behalf. For example:

5 a. Tranzvia limited the types of businesses that Mr. Rose could solicit for
6 Tranzvia.

7 b. Tranzvia restricted the geography within which Mr. Rose could promote
8 Tranzvia.

9 c. Tranzvia decided whether, and under what circumstances, it would accept
10 a customer from Mr. Rose.

11 d. Tranzvia instructed Mr. Rose with respect to the volume of calling and the
12 number of leads it would purchase.

13 e. Tranzvia had day-to-day control over Mr. Rose’s actions, including the
14 ability to prohibit him from using an ATDS to contact potential customers of Tranzvia.

15
16 52. Nevertheless, Tranzvia failed to prohibit Mr. Rose from using an ATDS to contact
17 potential customers of Tranzvia.

18 53. Mr. Rose transferred prospective customer information, including information about
19 Plaintiff, directly to Tranzvia. Thus, the company that Tranzvia hired has the “ability . . . to enter
20 consumer information into the seller’s sales or customer systems,” as discussed in the May 2013
21 FCC Ruling. As such, the company that Tranzvia hired is an apparent agent of Tranzvia.

22 54. Tranzvia knew that Mr. Rose was violating the TCPA on its behalf and let him
23 continue doing so.

24 55. Tranzvia received other complaints regarding the telemarketing Mr. Rose was
25 engaging in, and the fact that it was violating the TCPA.
26
27

1 56. Other individuals have complained about receiving pre-recorded calls from the same
2 phone number that called the Plaintiff:

3 Telemarket Spam - VM Msg (1st few seconds cut off so purpose of call was lost)
4 “...leave your name & # and...if you’d like to be removed from ..”

5 270-594-7041, 800Notes, <http://800notes.com/Phone.aspx/1-270-594-7041> (June 8, 2017)
6 (omissions in original) (report of Charles).

7 Merchant Services calling you with an important announcement you may have
8 heard recently that credit and debit card processing fees for equipment rental
9 companies and the rates cut substantially by the federal government through the
10 Durbin Amendment of the Dodd Frank add we have found that many processors
11 are not passing these cuts through to their merchants and instead keeping the
12 discounts as profits for themselves getting these cuts now could add thousands of
13 dollars per year back to YOUR BOTTOM LINE by lowering your bill every
14 month if you would like to learn more about this rate cut program for equipment
15 rental companies press 1 now to leave your name phone number and best contact
16 time 1 of our agents will get back with you at your convenience if you would like
17 to be removed from our list press 9.

18 (270) 594-7041 is a Business Scam, Nomorobo, [https://www.nomorobo.com/lookup/270-594-](https://www.nomorobo.com/lookup/270-594-7041)
19 7041 (June 8, 2017) (as in original).

20 57. In fact, Tranzvia was sued for TCPA violations relating to the conduct of Mr. Rose in
21 *Cunningham v. Tranzvia, LLC*, No. 16-cv-00905-ALM (E.D. Tex. Nov. 26, 2016).

22 58. Tranzvia appeared in *Cunningham* over five months *before* the call to the Plaintiff in
23 this matter, and yet Tranzvia continued to do business with Mr. Rose, and had him engage in pre-
24 recorded telemarketing for them until August of 2017.

25 59. By engaging Mr. Rose to make calls on behalf of Tranzvia’s agents to generate new
26 business, and by accepting the benefits of the resulting sales of Tranzvia products, Tranzvia
27 thereby ratified the use of unlawful calls as alleged in this case.

 60. In any event, the May 2013 FCC Ruling states that called parties may obtain
“evidence of [agency] relationships . . . through discovery, if they are not independently privy to

1 such information.” 28 F.C.C. Rcd. at 6592-93 ¶ 46. Moreover, evidence of circumstances
 2 pointing to apparent authority on behalf of the telemarketer “should be sufficient to place upon
 3 the seller the burden of demonstrating that a reasonable consumer would not sensibly assume
 4 that the telemarketer was acting as the seller’s authorized agent.” *Id.* at 6593 ¶ 46.

5 6 **VII. CLASS ACTION ALLEGATIONS**

7 61. Class Definitions. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiff brings this
 8 case as a class action on behalf of national classes (“Classes”) defined as follows:

9 CELLULAR TELEPHONE CLASS

10 All persons to whom: (a) Tranzvia and/or a third party acting on Tranzvia’s
 11 behalf made one or more non-emergency telephone calls; (b) promoting
 12 Tranzvia’s goods or services; (c) to their cellular telephone numbers; (d) through
 the use of an automatic telephone dialing system or an artificial or prerecorded
 voice; (e) at any time in the period that begins four years before the date of filing
 this Complaint and ends at the date of trial.

13 RESIDENTIAL TELEPHONE CLASS

14 All persons to whom: (a) Tranzvia and/or a third party acting on Tranzvia’s
 15 behalf made one or more non-emergency telephone calls; (b) promoting
 16 Tranzvia’s goods or services; (c) to their residential telephone numbers; (d)
 through the use of an artificial or prerecorded voice; (e) at any time in the period
 that begins four years before the date of filing this Complaint and ends at the date
 of trial.

17 Excluded from the Classes are Tranzvia, any entity in which Tranzvia has a controlling interest
 18 or that has a controlling interest in Tranzvia, and Tranzvia’s legal representatives, assignees, and
 19 successors. Also excluded are the judge to whom this case is assigned and any member of the
 20 judge’s immediate family.

21 62. Numerosity. The Classes are so numerous that joinder of all members is
 22 impracticable. On information and belief, the Classes have more than 100 members. Moreover,
 23 the disposition of the claims of the Classes in a single action will provide substantial benefits to
 24 all parties and the Court.

1 63. Commonality. There are numerous questions of law and fact common to Plaintiff and
2 members of the Classes. These common questions of law and fact include, but are not limited to,
3 the following:

4 a. Whether Tranzvia and/or its affiliates or agents, and/or other persons or
5 entities acting on Tranzvia's behalf, violated 47 U.S.C. § 227(b)(1)(A) by making any call,
6 except for emergency purposes, to a cellular telephone number using an ATDS and/or artificial
7 or prerecorded voice;

8 b. Whether Tranzvia and/or its affiliates or agents, and/or other persons or
9 entities acting on Tranzvia's behalf, knowingly and/or willfully violated 47 U.S.C. §
10 227(b)(1)(A) by making any call, except for emergency purposes, to a cellular telephone number
11 using an ATDS and/or artificial or prerecorded voice, thus entitling Plaintiff and the Classes to
12 treble damages;

13 c. Whether Tranzvia is liable for ATDS-generated and/or automated or
14 prerecorded calls promoting Tranzvia's products or services made by Tranzvia's affiliates,
15 agents, and/or other persons or entities acting on Tranzvia's behalf; and

16 d. Whether Tranzvia and/or its affiliates or agents, and/or other persons or
17 entities acting on Tranzvia's behalf, violated 47 U.S.C. § 227(b)(1)(B) by making any call,
18 except for emergency purposes, to a residential telephone number using an artificial or
19 prerecorded voice; and

20 e. Whether Tranzvia and/or its affiliates, agents, and/or other persons or
21 entities acting on Tranzvia's behalf should be enjoined from violating the TCPA in the future.

22 64. Typicality. Plaintiff's claims are typical of the claims of the Classes. Plaintiff's
23 claims and those of the Classes arise out of the same course of conduct by Tranzvia and are
24 based on the same legal and remedial theories.

25 65. Adequacy. Plaintiff will fairly and adequately protect the interests of the Classes.
26 Plaintiff has retained competent and capable attorneys with significant experience in complex
27 and class action litigation, including consumer class actions and TCPA class actions. Plaintiff

1 and his counsel are committed to prosecuting this action vigorously on behalf of the Classes and
2 have the financial resources to do so. Neither Plaintiff nor his counsel have interests contrary to
3 or conflicting with those of the proposed Classes.

4 66. Predominance. Tranzvia has engaged in a common course of conduct toward
5 Plaintiff and members of the Classes. The common issues arising from this conduct that affect
6 Plaintiff and members of the Classes predominate over any individual issues. Adjudication of
7 these common issues in a single action has important and desirable advantages, including judicial
8 economy.

9 67. Superiority. A class action is the superior method for the fair and efficient
10 adjudication of this controversy. Classwide relief is essential to compel Tranzvia to comply with
11 the TCPA. The interest of individual members of the Classes in individually controlling the
12 prosecution of separate claims against Tranzvia is small because the damages in an individual
13 TCPA action are dwarfed by the costs of bringing it. Management of this action is likely to
14 present significantly fewer difficulties than are presented in many class actions because the calls
15 at issue are all automated and because the TCPA articulates bright-line standards for liability and
16 damages. Class treatment is superior to multiple individual suits or piecemeal litigation because
17 it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a
18 forum for small claimants, and deters illegal activities. There will be no significant difficulty in
19 the management of this case as a class action.

20 68. Injunctive and Declaratory Relief is Appropriate. Tranzvia has acted on grounds
21 generally applicable to the Classes, thereby making final injunctive relief and corresponding
22 declaratory relief with respect to the Classes appropriate on a Classwide basis.

23 **VIII. FIRST CLAIM FOR RELIEF**
24 **(Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A))**

25 69. Plaintiff realleges and incorporates by reference each and every allegation set forth in
26 the preceding paragraphs.
27

X. THIRD CLAIM FOR RELIEF
(Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(B))

1
2 75. Plaintiff realleges and incorporates by reference each and every allegation set forth in
3 the preceding paragraphs.

4 76. The foregoing acts and omissions of Tranzvia, its affiliates or agents, and/or other
5 persons or entities acting on Tranzvia's behalf constitute numerous and multiple violations of the
6 TCPA, 47 U.S.C. § 227(b)(1)(B), by making non-emergency calls to the residential telephone
7 numbers of Plaintiff and members of the Residential Telephone Class using an artificial or
8 prerecorded voice.

9 77. As a result of violations of the TCPA, 47 U.S.C. § 227(b)(1)(B), by Tranzvia, its
10 affiliates or agents, and/or other persons or entities acting on its behalf, Plaintiff and members of
11 the Residential Telephone Class are entitled to an award of \$500 in damages for each and every
12 call made to their residential telephone numbers using an artificial or prerecorded voice in
13 violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

14 78. Plaintiff and members of the Residential Telephone Class are also entitled to and do
15 seek injunctive relief prohibiting Tranzvia, its affiliates and agents, and/or any other persons or
16 entities acting on its behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(B), by making calls,
17 except for emergency purposes, to any residential telephone numbers using an artificial or
18 prerecorded voice.

19
20 **XI. FOURTH CLAIM FOR RELIEF**
(Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C.
21 **§ 227(b)(1)(B))**

22 79. Plaintiff realleges and incorporates by reference each and every allegation set forth in
23 the preceding paragraphs.

24 80. As a result of knowing and/or willful violations of the TCPA, 47 U.S.C.
25 § 227(b)(1)(A), by Tranzvia, its affiliates or agents, and/or other persons or entities acting on its
26 behalf, Plaintiff and members of the Residential Telephone Class are entitled to treble damages
27

1 of up to \$1,500 for each and every call made to their residential telephone numbers using an
2 artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

3 **XII. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on his own behalf and on behalf of all members of the Classes,
5 prays for judgment against Tranzvia as follows:

- 6 A. Certification of the proposed Classes;
- 7 B. Appointment of Plaintiff as representative of the Classes;
- 8 C. Appointment of the undersigned counsel as counsel for the Classes;
- 9 D. A declaration that actions complained of herein by Tranzvia and/or its affiliates,
10 agents, or related entities violate the TCPA;
- 11 E. An order enjoining Tranzvia and its affiliates, agents and related entities from
12 engaging in the unlawful conduct set forth herein;
- 13 F. An award to Plaintiff and the Classes of damages, as allowed by law;
- 14 G. An award to Plaintiff and the Classes of attorneys' fees and costs, as allowed by
15 law and/or equity;
- 16 H. Leave to amend this Complaint to conform to the evidence presented at trial; and
- 17 I. Orders granting such other and further relief as the Court deems necessary, just,
18 and proper.

19 **XIII. DEMAND FOR JURY**

20 Plaintiff demands a trial by jury for all issues so triable.

21 **XIV. SIGNATURE ATTESTATION**

22 The ECF user filing this Complaint attests that concurrence in its filing has been obtained
23 from each of the other signatories.

24
25 RESPECTFULLY SUBMITTED AND DATED this 17th day of August, 2017.

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27 By: /s/ Jon B. Fougner

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CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SIDNEY NAIMAN, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Contra Costa, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) (see attachment)

DEFENDANTS

TRANZVIA LLC

County of Residence of First Listed Defendant Collin County, Texas (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, HABEAS CORPUS, OTHER, 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 (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

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

Brief description of cause:

A putative class action lawsuit for automated telemarketing pursuant to the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/17/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jon B. Fougner

Print

Save As...

Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

CIVIL COVER SHEET
FORM JS-CAND 44
ATTACHMENT

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I. (c): Attorneys for Plaintiffs

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tranzvia Hit with Class Action Over Autodialed Telemarketing Calls](#)
