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9 Attorneys for Plaintiff

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

12 **Kenneth Picha, Individually and**  
13 **on behalf of All Others Similarly**  
14 **Situated,**

15 **Plaintiff,**

16 **v.**

17 **National Association for Medical**  
18 **and Dental, Inc. and Healthcare**  
19 **National Marketing, Inc.,**

20 **Defendants.**

21 **Case No.: '17CV1400 BEN BLM**

22 **CLASS ACTION**

23 **CLASS ACTION COMPLAINT**  
24 **FOR DAMAGES AND**  
25 **INJUNCTIVE RELIEF**  
26 **PURSUANT TO THE**  
27 **TELEPHONE CONSUMER**  
28 **PROTECTION ACT, 47 U.S.C. §**  
**227 ET SEQ.**

**Jury Trial Demanded**

**INTRODUCTION**

1. Kenneth Picha (referred to individually as “Mr. Picha” or “Plaintiff”), brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of National Association for Medical and Dental, Inc. (“NAFMD”) and Healthcare



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

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

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

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

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

4. Congress also specifically found that “the evidence presented to the Congress  
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 recently explained in a TCPA  
4 case 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  
11 landline phone can be an annoyance; an automated call to a cell  
12 phone adds expense to annoyance.

13 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7<sup>th</sup> Cir. 2012).

### 14 JURISDICTION AND VENUE

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

### 23 PARTIES

- 24 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and  
25 resident of the State of California.  
26 9. Plaintiff is informed and believes, and thereon alleges, that NAFMD are,  
27 and at all times mentioned herein were, a corporation licensed in the state of  
28 Florida and headquartered in New Port Richey, Florida, and at all times

1 mentioned herein was, a Limited Liability Company and a “person,” as  
2 defined by 47 U.S.C. § 153(39).

3 10. Plaintiff is informed and believes, and thereon alleges, that HNM are, and at  
4 all times mentioned herein were, a corporation licensed in the state of  
5 Florida and headquartered in New Port Richey, Florida, and at all times  
6 mentioned herein was, a Limited Liability Company and a “person,” as  
7 defined by 47 U.S.C. § 153(39).

8 11. Plaintiff is informed and believes, and thereon alleges, that at all relevant  
9 times, Defendants conducted business in the State of California and in the  
10 County of San Diego, and within this judicial district.

### 11 **FACTUAL ALLEGATIONS**

12 12. At all times relevant, Plaintiff was a citizen of the State of California.  
13 Plaintiff are, and at all times mentioned herein were, “persons” as defined by  
14 47 U.S.C § 153 (10).

15 13. Defendants are, and at all times mentioned herein were, “persons” as  
16 defined by 47 U.S.C. §153 (10).

17 14. Sometime prior to January 1, 2013, Mr. Picha was assigned, and became the  
18 owner of, a cellular telephone number from his wireless provider.

19 15. On or about March 10, 2017, Mr. Picha received a telephone call on his  
20 cellular telephone from Defendants, in which Defendants utilized an  
21 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §  
22 227(a)(1), using an “artificial or prerecorded voice” as prohibited by 47  
23 U.S.C. § 227(b)(1)(A).

24 16. The first call at issue, to Mr. Picha’ cellular telephone number (ending in  
25 8830) from Defendants, came from phone number: (361) 420-1971 on June  
26 29, 2017.



- 1 17. When Plaintiff answered this call, there was a four to five second pause,  
2 where Plaintiff said hello, but nobody was on the line. Then Plaintiff heard  
3 a click and a man came on the line trying to sell him dental insurance.
- 4 18. Plaintiff was then transferred to sales agent Chris Amandola from NAFMD.  
5 Chris continued the dental insurance sales pitch and asked plaintiff for his  
6 email address. Plaintiff gave Chris his email and later that day received an  
7 email from "[camandola@nafmd.com](mailto:camandola@nafmd.com)" containing information about dental  
8 plans that plaintiff could purchase.
- 9 19. Plaintiff then received two more calls on June 30, 2017, about ten minutes  
10 apart from each other. The calls came from the same telephone number as  
11 the June 29, 2017 call, (361) 420-1971.
- 12 20. Plaintiff then received a third call on June 30, 2017 from (361) 420-1971.
- 13 21. Plaintiff also received two calls on July 3, 2017 from (361) 420-1971.
- 14 22. Plaintiff also received another two calls on July 3, 2017 from (210)  
15 714-4647.
- 16 23. Plaintiff received one more call that same day, July 3, 2017, from (972)  
17 366-7576.
- 18 24. Plaintiff received two calls on July 5, 2017, from (346) 708-0002.
- 19 25. On July 6, 2017, Plaintiff received four calls from (972) 332-5403.
- 20 26. Plaintiff received another call on July 7, 2017 from (972) 332-5403.
- 21 27. That is a total of sixteen calls (16) in just over one week. Whenever plaintiff  
22 answers these calls, there is a 4 or 5 second pause before a sales  
23 representative comes on the line trying to sell him dental insurance.
- 24 28. If you call back any of these numbers that called Plaintiff, you hear a  
25 recorded message that informs you about "a new dental plan that has just  
26 become available to consumers in your area."
- 27 29. Due to all of the calls received from Defendants, Plaintiff registered his  
28 telephone number on the National Do Not Call Registry, on July 8, 2017.



1 30. The ATDS used by Defendants has the capacity to store or produce  
2 telephone numbers to be called, using a random or sequential number  
3 generator.

4 31. The ATDS used by Defendants also has the capacity to, and does, call  
5 telephone numbers from a list of databases of telephone numbers  
6 automatically and without human intervention.

7 32. The telephone number Defendants called was assigned to a cellular  
8 telephone service for which Plaintiff incurred a charge for incoming calls  
9 pursuant to 47 U.S.C. § 227 (b)(1).

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

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

17 35. These telephone calls made by Defendants or their agents were in violation  
18 of 47 U.S.C. § 227(b)(1).

19 **STANDING**

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

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

25 37. See, *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016) at 6, and *Lujan v.*  
26 *Defenders of Wildlife*, 504 U.S. 555 at 560.

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

1           **a.       The “Injury in Fact” Prong**

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

5     40.     For an injury to be “concrete” it must be a *de facto* injury, meaning that it  
6           actually exists. In the present case, Plaintiff was called on his cellular phone  
7           by Defendant. Such calls are a nuisance, an invasion of privacy, and an  
8           expense to Plaintiff. *Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637,*  
9           *638 (7th Cir. 2012)*. All three of these injuries are concrete and *de facto*.

10    41.     For an injury to be “particularized” means that the injury must “affect the  
11           plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins, 578 U.S.*  
12           *\_\_\_ (2016) at 7*. In the instant case, it was plaintiff’s phone that was called  
13           and it was plaintiff himself who answered the calls. It was plaintiff’s  
14           personal privacy and peace that was invaded by Defendants’ persistent  
15           phone calls using an ATDS. Finally, plaintiff alone is responsible to pay the  
16           bill on his cellular phone. All of these injuries are particularized and  
17           specific to plaintiff, and will be the same injuries suffered by each member  
18           of the putative class.

19           **b.       The “Traceable to the Conduct of Defendant” Prong**

20    42.     The second prong required to establish standing at the pleadings phase is  
21           that Plaintiff must allege facts to show that his injury is traceable to the  
22           conduct of Defendant(s).

23    43.     In the instant case, this prong is met simply by the fact that the calls to  
24           plaintiff’s cellular phone were placed either, by Defendants directly, or by  
25           Defendants’ agent at the direction of Defendants.

26           **c.       The “Injury is Likely to be Redressed by a Favorable Judicial**  
27           **Opinion” Prong**







1 44. The third prong to establish standing at the pleadings phase requires Plaintiff  
2 to allege facts to show that the injury is likely to be redressed by a favorable  
3 judicial opinion.

4 45. In the present case, Plaintiff’s Prayer for Relief includes a request for  
5 damages for each call made by Defendants, as authorized by statute in 47  
6 U.S.C. § 227. The statutory damages were set by Congress and specifically  
7 redress the financial damages suffered by Plaintiff and the members of the  
8 putative class.

9 46. Furthermore, Plaintiff’s Prayer for Relief requests injunctive relief to  
10 restrain Defendants from the alleged abusive practices in the future. The  
11 award of monetary damages and the order for injunctive relief redress the  
12 injuries of the past, and prevent further injury in the future.

13 47. Because all standing requirements of Article III of the U.S. Constitution  
14 have been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016),  
15 Plaintiff has standing to sue Defendants on the stated claims.

16 **CLASS ACTION ALLEGATIONS**

17 48. Plaintiff brings this action on behalf of himself and on behalf of all others  
18 similarly situated (“the Class”).

19 49. Plaintiff represents, and is a member of, the Class, consisting of:

20 “All persons within the United States who had or have a number  
21 assigned to a cellular telephone service, who received at least one call  
22 using an ATDS and/or an artificial prerecorded voice from National  
23 Association for Medical and Dental, Inc., or their agents, calling on  
24 behalf of National Association for Medical and Dental, Inc. and/or  
25 Healthcare National Marketing, Inc., between the date of filing this  
26 action and the four years preceding, where such calls were placed for  
27 marketing purposes, to non-customers of National Association for  
28



1 Medical and Dental, Inc. and/or Healthcare National Marketing, Inc., at  
2 the time of the calls.”

3 50. Defendants and their employees or agents are excluded from the Class.  
4 Plaintiff does not know the number of members in the Class, but believes  
5 the Class members number in the thousands, if not more. Thus, this matter  
6 should be certified as a Class action to assist in the expeditious litigation of  
7 this matter.

8 51. Plaintiff and members of the Class were harmed by the acts of Defendants in  
9 at least the following ways: Defendants illegally contacted Plaintiff and the  
10 Class members via their cellular telephones thereby causing Plaintiff and the  
11 Class members to incur certain cellular telephone charges or reduce cellular  
12 telephone time for which Plaintiff and the Class members previously paid,  
13 by having to retrieve or administer messages left by Defendants or their  
14 agents, during those illegal calls, and invading the privacy of said Plaintiff  
15 and the Class members. Plaintiff and the Class members were damaged  
16 thereby.

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

23 53. The joinder of the Class members is impractical and the disposition of their  
24 claims in the Class action will provide substantial benefits both to the parties  
25 and to the Court. The Class can be identified through Defendants' records  
26 and/or Defendants' agent's records.

27 54. There is a well-defined community of interest in the questions of law and  
28 fact involved affecting the parties to be represented. The questions of law

1 and fact to the Class predominate over questions which may affect  
2 individual Class members, including the following:

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

15 55. As a person who received calls from Defendants in which Defendants used  
16 an ATDS or an artificial or prerecorded voice, without Plaintiff's prior  
17 express consent, Plaintiff is asserting claims that are typical of the Class.  
18 Plaintiff will fairly and adequately represent and protect the interests of the  
19 Class in that Plaintiff has no interests antagonistic to any member of the  
20 Class.

21 56. Plaintiff and the members of the Class have all suffered irreparable harm as  
22 a result of the Defendants' unlawful and wrongful conduct. Absent a class  
23 action, the Class will continue to face the potential for irreparable harm. In  
24 addition, these violations of law will be allowed to proceed without remedy  
25 and Defendants will likely continue such illegal conduct. The size of Class  
26 member's individual claims causes, few, if any, Class members to be able to  
27 afford to seek legal redress for the wrongs complained of herein.

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

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

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

12 **FIRST CAUSE OF ACTION:**  
13 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
14 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

15 60. Plaintiff incorporates by reference all of the above paragraphs of this  
16 Complaint as though fully stated herein.

17 61. The foregoing acts and omissions of Defendants constitute numerous and  
18 multiple negligent violations of the TCPA, including but not limited to each  
19 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

20 62. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,  
21 Plaintiff and the Class are entitled to an award of \$500.00 in statutory  
22 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)  
23 (B).

24 63. Plaintiff and the Class are also entitled to and seek injunctive relief  
25 prohibiting such conduct in the future.

26 **SECOND CAUSE OF ACTION:**  
27 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
28 **CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**



1 64. Plaintiff incorporates by reference all of the above paragraphs of this  
2 Complaint as though fully stated herein.

3 65. The foregoing acts and omissions of Defendants constitute numerous and  
4 multiple knowing and/or willful violations of the TCPA, including but not  
5 limited to each and every one of the above-cited provisions of 47 U.S.C. §  
6 227 et seq.

7 66. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §  
8 227 et seq., Plaintiff and each of the Class are entitled to treble damages, as  
9 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 67. Plaintiff and the Class are also entitled to and seek injunctive relief  
12 prohibiting such conduct in the future.

13 **PRAYER FOR RELIEF**

14 68. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the  
15 Class members the following relief against SA:

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

18  
19 69. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),  
20 Plaintiff seeks for himself and each Class member \$500.00 in statutory  
21 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)  
22 (B).

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

25 71. Any other relief the Court may deem just and proper.

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

1 72. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §  
2 227(b)(1), Plaintiff seeks for himself and each Class member treble  
3 damages, as provided by statute, up to \$1,500.00 for each and every  
4 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)  
5 (C).

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

8 74. Any other relief the Court may deem just and proper.

9  
10 **TRIAL BY JURY**

11 75. Pursuant to the seventh amendment to the Constitution of the United States  
12 of America, Plaintiff is entitled to, and demands, a trial by jury.

13  
14  
15  
16 Date: July 10, 2017

HYDE & SWIGART

17  
18 By: s/Kevin Lemieux, Esq.  
19 Kevin Lemieux  
20 HYDE AND SWIGART, APC  
21 *Attorneys for Plaintiff*

22 **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

Kenneth Picha, Individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Kevin Lemieux, Esq., Hyde & Swigart 619-233-7770 2221Camino Del Rio S., Ste. 101, San Diego, CA 92108

DEFENDANTS

National Association for Medical and Dental, Inc. and Healthcare National Marketing, Inc.,

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)

'17CV1400 BEN BLM

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. ("TCPA") Brief description of cause: Defendant violated 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 07/11/2017 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: [CA Man Files TCPA Class Action After Receiving 16 Robocalls in One Week](#)

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