

1 Joshua Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com

2 Kevin Lemieux, Esq (SBN: 225886)
3 kevin@westcoastlitigation.com

HYDE AND SWIGART

4 2221 Camino Del Rio South, Suite 101
5 San Diego, CA 92108
6 Telephone: (619) 233-7770
7 Facsimile: (619) 297-1022

[Other Attorneys of Record Listed on Signature Page]

8 Attorneys for Plaintiff

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

<p>12 Rebecca Stacy, Individually and 13 on behalf of All Others 14 Similarly Situated,</p> <p>15 Plaintiff,</p> <p>16 v.</p> <p>17 PowerScout, Inc,</p> <p>18 Defendant.</p>	<p>12 Case No.: '16CV2878 CAB KSC</p> <p>13 <u>CLASS ACTION</u></p> <p>14 CLASS ACTION COMPLAINT 15 FOR DAMAGES AND 16 INJUNCTIVE RELIEF 17 PURSUANT TO THE 18 TELEPHONE CONSUMER 19 PROTECTION ACT, 47 U.S.C. § 20 227 ET SEQ.</p> <p>21 Jury Trial Demanded</p>
--	---

23 **INTRODUCTION**

24
25 1. Rebecca Stacy (referred to individually as “Ms. Stacy” or “Plaintiff”), brings
26 this class action for damages, injunctive relief, and any other available legal
27 or equitable remedies, resulting from the illegal actions of POWERSCOUT,
28 INC. (“PSI” or “Defendant”), in negligently, knowingly, and/or willfully



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

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

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

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

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

28 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 explained in a TCPA case
4 regarding calls to a non-debtor similar to this one:

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

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

12 **JURISDICTION AND VENUE**

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

22 **PARTIES**

- 23 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and
24 resident of the County of San Diego, in the State of California.
25 9. Plaintiff is informed and believes, and thereon alleges, that PSI is, and at all
26 times mentioned herein was, a Delaware corporation headquartered in Tustin,
27 CA, doing business throughout CA, and at all times mentioned herein was, a
28 “person,” as defined by 47 U.S.C. § 153 (39).

1 10. Plaintiff is informed and believes, and thereon alleges, that at all relevant
2 times, PSI conducted business in the State of California and in the County of
3 San Diego, and within this judicial district.

4
5 **FACTUAL ALLEGATIONS**

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

9 12. Defendant is, and at all times mentioned herein was, a “person” as defined by
10 47 U.S.C. §153 (39).

11 13. Sometime prior to January 1, 2015, Ms. Stacy was assigned, and became the
12 owner of, a cellular telephone number ending in 6635 from her wireless
13 provider.

14 14. Beginning on or about August 16, 2016, Ms. Stacy received numerous
15 telephone calls on her cellular telephone from PSI, in which PSI utilized an
16 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
17 227(a)(1), using an “artificial or prerecorded voice” as prohibited by 47
18 U.S.C. § 227(b)(1)(A).

19 15. The calls to Ms. Stacy’s cellular telephone number (ending in 6635) from PSI
20 came from phone number, including but not limited to: (716) 406-4973.

21 16. Ms. Stacy received three calls on August 16, 2016; one at 3:22 PM and one at
22 3:23 PM. The first two calls utilized an artificial voice recording. The pre-
23 recorded voice identified itself as “Chris Nelson.” It was not a normal
24 conversation because the automated voice could not answer questions.
25 Plaintiff terminated the calls. A third call came later that day at 3:55 PM from
26 telephone number (415) 513-5344. This was a live person who identified
27 himself as “Eric.” Eric tried to sell Plaintiff a solar system over the phone.
28 Plaintiff told Eric to remove her from the call list.



1 17. Ms. Stacy received another call on September 26, 2016 at 4:48 PM from
2 (716) 406-4973. This call utilized the same pre-recorded voice which
3 identified itself as “Chris Nelson.”

4 18. Ms. Stacy received another call on October 10, 2016 at 2:42 PM from (716)
5 406-4973. This call utilized the same pre-recorded voice which identified
6 itself as “Chris Nelson.”

7 19. Ms. Stacy received another call on October 13, 2016 at 4:58 PM from (716)
8 406-4973. This call utilized the same pre-recorded voice which identified
9 itself as “Chris Nelson.”

10 20. Ms. Stacy received another call on October 13, 2016 at 5:57 PM from (877)
11 988-9378. This call was a live person again trying to sell Ms. Stacy a solar
12 system. She again requested to be removed from the call list.

13 21. Ms. Stacy received another call on October 14, 2016 at 11:48 AM from (716)
14 406-4973. This call utilized the same pre-recorded voice which identified
15 itself as “Chris Nelson.”

16 22. Ms. Stacy received another call on November 11, 2016 at 1:58 PM from (716)
17 406-4973. This call utilized the same pre-recorded voice which identified
18 itself as “Chris Nelson.” On this call, Plaintiff “played along” with “Chris
19 Nelson” and answered the questions in hopes that she would be transferred to
20 a human so that she can again ask to be removed from the call list. After
21 answering the questions asked by the pre-recorded voice, she was transferred
22 to a “senior supervisor.” This person verified her name and address and tried
23 to sell her a solar system for her home. Plaintiff verified the information and
24 acted as if she were interested in buying solar, so that she would be
25 transferred to a more senior person who could actually take her off the call
26 list. The “senior supervisor” after verifying Plaintiff’s information, told her
27 that she would be receiving a call call shortly, directly from the solar provider.

28 ///



1 23. At 3:20 that same day (about an hour later) Plaintiff received a call from (310)
2 235-3924 from a salesperson at PowerScout, Inc. who said something like, “I
3 see you were talking to my colleague...”. This was the follow-up call directly
4 from the solar company.

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

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

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

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

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

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

22 **STANDING**

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

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

28 ///

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

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

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

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

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

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

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

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

1 36. In the instant case, this prong is met simply by the fact that the calls to
2 plaintiff's cellular phone were placed either, by Defendant directly, or by
3 Defendant's agent at the direction of Defendant.
4

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

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

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

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

19 40. Because all standing requirements of Article III of the U.S. Constitution have
20 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), Plaintiff
21 has standing to sue Defendant on the stated claims.
22

23 **CLASS ACTION ALLEGATIONS**

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

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

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

1 using an ATDS and/or an artificial prerecorded voice from
2 POWERSCOUT, INC., or its agents, calling on behalf of
3 POWERSCOUT, INC., between the date of filing this action and the
4 four years preceding, where such calls were placed for marketing
5 purposes, to non-customers of POWERSCOUT, INC., at the time of
6 the calls.

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

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

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

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



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

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

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

23 49. Plaintiff and the members of the Class have all suffered irreparable harm as a
24 result of the Defendant's unlawful and wrongful conduct. Absent a class
25 action, the Class will continue to face the potential for irreparable harm. In
26 addition, these violations of law will be allowed to proceed without remedy
27 and Defendant will likely continue such illegal conduct. The size of Class
28

1 member's individual claims causes, few, if any, Class members to be able to
2 afford to seek legal redress for the wrongs complained of herein.

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

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

13 52. Defendant has acted on grounds generally applicable to the Class, thereby
14 making appropriate final injunctive relief and corresponding declaratory relief
15 with respect to the Class as a whole.

16 **FIRST CAUSE OF ACTION:**

17 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**

18 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

19 53. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.

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

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

27 56. Plaintiff and the Class are also entitled to and seek injunctive relief
28 prohibiting such conduct in the future.

SECOND CAUSE OF ACTION:

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

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

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

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

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

PRAYER FOR RELIEF

61. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against PSI:

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

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

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

64. Any other relief the Court may deem just and proper.

///

///



JS 44 (Rev. 12/12)

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.)

<p>I. (a) PLAINTIFFS Rebecca Stacy, individually and for all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua Swigart, Esq. HYDE & SWIGART (619) 233-7770 2221 Camino Del Rio South, Suite 101, San Diego, CA 92108</p>	<p>DEFENDANTS Powerscout, Inc.</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p> <p style="text-align: right; font-size: 1.2em;">'16CV2878 CAB KSC</p>
---	--

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Alien Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit (lrf) <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions (lrf) <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

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 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 11/23/2016 SIGNATURE OF ATTORNEY OF RECORD
s/ Joshua Swigart

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: PowerScout Illegally Used Autodialer, Violated TCPA](#)
