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9 Attorneys for Plaintiff

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

<p>12 Jacob Tiffany, Individually and 13 on Behalf of All Others Similarly 14 Situated,</p> <p>15 Plaintiff,</p> <p>16 v.</p> <p>17 Eric Lukas, and Sell It Fast CA,</p> <p>18 Defendants.</p>	<p>12 Case No.: '17CV1491 JLS BGS</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>
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22 **INTRODUCTION**

23
24
25 1. Jacob Tiffany (referred to as “ Plaintiff”), brings this class action for damages,
26 injunctive relief, and any other available legal or equitable remedies, resulting
27 from the illegal actions of Eric Lukas and Sell it Fast CA (referred to as
28 “Defendants”), in negligently, knowingly, and/or willfully contacting



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

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

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

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**

- 13
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
18 lives in San Diego, CA, and the events giving rise to Plaintiff’s causes of
19 action against Defendants occurred in the State of California within the
20 Southern District of California and Defendants conduct business in the area of
21 San Diego, California.

22 **PARTIES**

- 23
24 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and
25 resident of the County of San Diego, in the State of California. Plaintiff is a
26 real estate agent in the area of San Diego, CA, and real estate was the subject
27 of Defendants' automated marketing call.
28

1 9. Plaintiff is informed and believes, and thereon allege, that Defendant Eric
2 Lukas is, and at all times mentioned herein was, an individual and a “person,”
3 as defined by 47 U.S.C. § 153 (39).

4 10. Plaintiff is informed and believes, and thereon allege, that Defendant Sell It
5 Fast CA is, and at all times mentioned herein was, a “person,” as defined by
6 47 U.S.C. § 153 (39).

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

10 12. Plaintiff is informed and believes, and thereon alleges, that Defendant Eric
11 Lukas owns and operates the business Sell It Fast CA. He also operates the
12 website www.sellitfastca.com wherein he identifies himself as the “owner” of
13 Sell It Fast CA. The website states that Eric Lukas holds BRE (Bureau of
14 Real Estate) License # 01939336 and contains the phrase, “San Diego Real
15 Estate Experts.”

17 **FACTUAL ALLEGATIONS**

18 13. At all times relevant, Plaintiff was a citizen of the State of California.
19 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
20 U.S.C § 153 (39).

21 14. Defendants are, and at all times mentioned herein were, “persons” as defined
22 by 47 U.S.C. §153 (39).

23 15. Sometime prior to January 1, 2013, Mr. Tiffany was assigned, and became the
24 owner of, a cellular telephone number from his wireless provider.

25 16. On or about January 26, 2017, at 11:03 AM, Mr. Tiffany received a
26 prerecorded message on his cellular telephone from Defendants, in which
27 Defendants utilized an automatic telephone dialing system (“ATDS”) as
28

1 defined by 47 U.S.C. § 227(a)(1), using an “artificial or prerecorded voice” as
2 prohibited by 47 U.S.C. § 227(b)(1)(A).

3 17. On or about February 1, 2017, at 1:03 PM, Mr. Tiffany received another
4 prerecorded message on his cellular telephone from Defendants, in which
5 Defendants utilized an automatic telephone dialing system (“ATDS”) as
6 defined by 47 U.S.C. § 227(a)(1), using an “artificial or prerecorded voice” as
7 prohibited by 47 U.S.C. § 227(b)(1)(A). This pre-recorded message was
8 identical to the one left on January 26, 2017.

9 18. The messages sent to Mr. Tiffany’s cellular telephone number (San Diego area
10 code (858) XXX-1296), from Defendants, came from phone number: (858)
11 276-0713.

12 19. Plaintiff received the pre-recorded messages, sent to his voicemail, which
13 were meant to sound like regular voicemail messages. The recording said,
14 “Hi, sorry I missed you, my name is Eric. I’m a contractor here in San Diego,
15 and I’m looking for a property, I was hoping that you could represent me. I
16 was wondering if you had any pocket listings or off-market opportunities.
17 I’m actually looking for a fixer. Um, so give me a call, this is my cell phone.
18 I was hoping you could write an offer for me on a fixer property. Give me a
19 call. Take care.”

20 20. This messages were sent to Plaintiff’s cellular telephone’s voicemail using a
21 pre-recorded voice. However, this was not a “regular” phone call that was
22 missed and a message left on his voicemail. Instead, Plaintiff believes his
23 phone rang for a split second, or less than half of a regular ring. Then, about
24 thirty seconds later, Plaintiff was notified that he had a voicemail waiting for
25 him.

26 21. Plaintiff is informed and believes that Defendants used a computer program
27 or software application in which Defendants input a list of numbers and the
28

1 computer, in an automated fashion, proceeded to “call” each number and go
2 straight to his voicemail to leave the identical pre-recorded messages.

3 22. Plaintiff is informed and believes that Defendants did not intend for him to
4 answer his phone, and indeed the software application is designed to send
5 messages directly to his voicemail.

6 23. The pre-recorded messages left for Plaintiff were for marketing purposes and
7 do not refer to any specific property or transaction. Plaintiff has no business
8 relationship with Defendants.

9 24. On May 10, 2017 Defendants sent to Plaintiff, using an ATDS, and automated
10 text message which read, “+18587077601 - Hi! I’m a contractor looking for
11 “fixers” in San Diego County. I have \$850k cash. Do you know of any off-
12 market deals or pocket listings not yet on MLS? -Eric”

13 25. The text message, even though it refers to an (858) number, came from (972)
14 676-9465. When you call the (858) number referenced in the text message,
15 you are directed to the voicemail for “Eric Lukas.”

16 26. The ATDS used by Defendants has the capacity to store or produce telephone
17 numbers to be called, using a random or sequential number generator.

18 27. The ATDS used by Defendants also has the capacity to, and does, call
19 telephone numbers from a list of databases of telephone numbers
20 automatically and without human intervention.

21 28. The telephone number Defendants called was assigned to a cellular telephone
22 service for which Plaintiff incurred a charge for incoming calls pursuant to
23 47 U.S.C. § 227 (b)(1).

24 29. Plaintiff at no time provided “prior express consent” for Defendants to place
25 telephone calls to Plaintiff’s cellular telephone with an artificial or
26 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)
27 (1)(A).
28

1 30. Plaintiff had not provided his cellular telephone number to Defendants.
2 Plaintiff was not a customer of Defendants. Plaintiff had no “established
3 business relationship” with Defendants, as defined by 47 U.S.C. § 227 (a)(2).

4 31. These telephone calls made, and messages left, by Defendants or its agents
5 were in violation of 47 U.S.C. § 227(b)(1).

6 7 **STANDING**

8 32. Standing is proper under Article III of the Constitution of the United States of
9 America because Plaintiff’s claims state:

- 10 a. a valid injury in fact;
11 b. which is traceable to the conduct of Defendants ;
12 c. and is likely to be redressed by a favorable judicial decision.

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

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

17 **A. The “Injury in Fact” Prong**

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

21 35. For an injury to be “concrete” it must be a *de facto* injury, meaning that it
22 actually exists. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638
23 (7th Cir. 2012). In the present case, Plaintiff was “called” on his cellular
24 phone by Defendants, who utilized an ATDS and a pre-recorded voice. The
25 “call” was made using an ATDS that allows a pre-recorded message to be sent
26 directly to Plaintiff’s voicemails. Plaintiff was notified, by his phone, of the
27 existence of a new voicemail, as if it were a real call. Instead, he found a pre-
28

1 recorded marketing message that was delivered directly to his voicemail.
2 Such calls are a nuisance, an invasion of privacy, and an expense to Plaintiff.
3 All three of these injuries are concrete and *de facto*.

4 36. For an injury to be “particularized” means that the injury must “affect the
5 Plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins*, 578 U.S.
6 ____ (2016) at 7. In the instant case, it was Plaintiff’s phone that was called
7 and it was Plaintiff himself who had to go into his voicemails and listen to
8 this advertisement. It was Plaintiff’s personal privacy and peace that was
9 invaded by Defendants’ prerecorded message that was delivered using an
10 ATDS. Finally, Plaintiff alone is responsible to pay the bill on his cellular
11 phone. All of these injuries are particularized and specific to Plaintiff, and
12 will be the same injuries suffered by each member of the putative class.

13
14 **B. *The “Traceable to the Conduct of Defendant” Prong***

15 37. The second prong required to establish standing at the pleadings phase is that
16 Plaintiff must allege facts to show that his injuries are traceable to the conduct
17 of Defendant(s).

18 38. In the instant case, this prong is met simply by the fact that the message was
19 delivered to Plaintiff’s cellular phone directly by Defendants, or by
20 Defendants’ agent at the direction of Defendants.

21
22 **C. *The “Injury is Likely to be Redressed by a Favorable Judicial Opinion”***
23 ***Prong***

24 39. The third prong to establish standing at the pleadings phase requires Plaintiff
25 to allege facts to show that the injury is likely to be redressed by a favorable
26 judicial opinion.

27 40. In the present case, Plaintiff’s Prayers for Relief include a request for
28 damages for each call made, and message delivered, by Defendants, as

1 authorized by statute in 47 U.S.C. § 227. The statutory damages were set by
2 Congress and specifically redress the financial damages suffered by Plaintiff
3 and the members of the putative class.

4 41. Furthermore, Plaintiff’s Prayers for Relief request injunctive relief to restrain
5 Defendants from the alleged abusive practices in the future. The award of
6 monetary damages and the order for injunctive relief redress the injuries of
7 the past, and prevent further injury in the future.

8 42. Because all standing requirements of Article III of the U.S. Constitution have
9 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), Plaintiff
10 has standing to sue Defendants on the stated claims.

11
12 **CLASS ACTION ALLEGATIONS**

13 43. Plaintiff brings this action on behalf of himself and on behalf of all others
14 similarly situated (“the Class”).

15 44. Plaintiff represents, and is a member of, the Class, consisting of:

16
17 a. All persons within the United States who had or have a number
18 assigned to a cellular telephone service, who received at least one pre-
19 recorded message delivered directly to his voicemail, and/or text
20 message, using an ATDS and/or an artificial or prerecorded voice from
21 Eric Lukas and/or Sell It Fast CA, or their agents calling on behalf of
22 Erik Lukas and/or Sell It Fast CA, between the date of filing this action
23 and the four years preceding, where such calls/texts were sent for the
24 purpose of marketing, to non-customers of Eric Lukas and/or Sell It
25 Fast CA, at the time of the calls.

26
27 45. Defendants and their employees or agents are excluded from the Class.
28 Plaintiff does not know the number of members in the Class, but believes the



1 Class members number in the hundreds, if not more. Thus, this matter should
2 be certified as a Class action to assist in the expeditious litigation of this
3 matter.

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

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

18 48. The joinder of the Class members is impractical and the disposition of his
19 claims in the Class action will provide substantial benefits both to the parties
20 and to the Court. The Class can be identified through Defendants' records
21 and/or Defendants' agent's records.

22 49. There is a well-defined community of interest in the questions of law and fact
23 involved affecting the parties to be represented. The questions of law and fact
24 to the Class predominate over questions which may affect individual Class
25 members, including the following:

- 26 i. Whether, within the four years prior to the filing of the
27 Complaint, Defendants made any call(s) (other than a call made
28 for emergency purposes or made with the prior express consent

1 of the called party) to the Class members using any ATDS or an
2 artificial or prerecorded voice to any telephone number assigned
3 to a cellular telephone service;

4 ii. Whether Defendants called non-customers of Defendants for
5 marketing purposes;

6 iii. Whether Plaintiff and the Class members were damaged thereby,
7 and the extent of damages for such violation(s); and

8 iv. Whether Defendants should be enjoined from engaging in such
9 conduct in the future.

10 50. As a person who received calls/messages from Defendants in which
11 Defendants used an ATDS or an artificial or prerecorded voice, without
12 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of
13 the Class. Plaintiff will fairly and adequately represent and protect the
14 interests of the Class in that Plaintiff have no interests antagonistic to any
15 member of the Class.

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

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

25 53. A class action is a superior method for the fair and efficient adjudication of
26 this controversy. Class-wide damages are essential to induce Defendants to
27 comply with federal and California law. The interest of Class members in
28 individually controlling the prosecution of separate claims against Defendants

1 is small because the maximum statutory damages in an individual action for
2 violation of privacy are minimal. Management of these claims is likely to
3 present significantly fewer difficulties than those that would be presented in
4 numerous individual claims.

5 54. Defendants has acted on grounds generally applicable to the Class, thereby
6 making appropriate final injunctive relief and corresponding declaratory relief
7 with respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION:**
9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
10 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

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

13 56. The foregoing acts and omissions of Defendants constitutes numerous and
14 multiple negligent violations of the TCPA, including but not limited to each
15 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

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

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

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

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

27 60. The foregoing acts and omissions of Defendants constitute numerous and
28 multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. §
2 227 et seq.

3 61. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §
4 227 et seq., Plaintiff and each of the Class are entitled to treble damages, as
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant to
6 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

9
10 **PRAYER FOR RELIEF**

11 63. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the
12 Class members the following relief against Defendants:

13
14 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
15 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

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

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

21 66. Any other relief the Court may deem just and proper.

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

25 67. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §
26 227(b)(1), Plaintiff seeks for himself and each Class member treble damages,
27 as provided by statute, up to \$1,500.00 for each and every violation, pursuant
28 to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

3 69. Any other relief the Court may deem just and proper.

4
5 **TRIAL BY JURY**

6 70. Pursuant to the seventh amendment to the Constitution of the United States of
7 America, Plaintiff is entitled to, and demands, a trial by jury.

8
9 Respectfully submitted,

10 Date: July 20, 2017

HYDE & SWIGART

11
12 By: s/Kevin Lemieux.
13 Kevin Lemieux
14 Attorneys for Plaintiff

15
16 **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

Jacob Tiffany, Individually and on behalf of all others similarly situated

DEFENDANTS

Eric Lukas, and Sell It Fast CA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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.

(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

Attorneys (If Known)

'17CV1491 JLS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

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

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 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 07/24/2017 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: [Sell It Fast CA, Owner Hit with Suit Over Marketing Robocalls](#)
