

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 Plaintiffs

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

<p>12 <b>Jacob Tiffany and Erik Knutson,</b> 13 <b>Individually and on behalf of All</b> 14 <b>Others Similarly Situated,</b></p> <p>15 <b>Plaintiffs,</b></p> <p>16 <b>v.</b></p> <p>17 <b>Roar Construction, Inc.,</b></p> <p>18 <b>Defendant.</b></p>	<p>12 <b>Case No.: '17CV593 JM BGS</b></p> <p>13 <b><u>CLASS ACTION</u></b></p> <p>14 <b>CLASS ACTION COMPLAINT</b> 15 <b>FOR DAMAGES AND</b> 16 <b>INJUNCTIVE RELIEF</b> 17 <b>PURSUANT TO THE</b> 18 <b>TELEPHONE CONSUMER</b> 19 <b>PROTECTION ACT, 47 U.S.C. §</b> 20 <b>227 ET SEQ.</b></p> <p>21 <b>Jury Trial Demanded</b></p>
--	---

23 **INTRODUCTION**

24 1. Jacob Tiffany and Erik Knutson (referred to as “Plaintiffs”), bring this class  
25 action for damages, injunctive relief, and any other available legal or  
26 equitable remedies, resulting from the illegal actions of Roar Construction,  
27 Inc. (referred to as “Defendant”), in negligently, knowingly, and/or willfully  
28





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

7 2. The TCPA was designed to prevent calls and messages like the ones described  
8 within this complaint, and to protect the privacy of citizens like Plaintiffs.  
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 (7<sup>th</sup> Cir. 2012).

12  
13 **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 Plaintiffs alleges violations of federal  
16 law.

17 7. Venue is proper in the United States District Court for the Southern District of  
18 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Plaintiffs live  
19 in San Diego, CA, and the events giving rise to Plaintiffs' causes of action  
20 against Defendant occurred in the State of California within the Southern  
21 District of California and Defendant conducts business in the area of San  
22 Diego, California.

23  
24 **PARTIES**

25 8. Plaintiffs are, and at all times mentioned herein were, individual citizens and  
26 residents of the County of San Diego, in the State of California. Plaintiffs are  
27 both real estate agents in the area of San Diego, CA, and real estate was the  
28 subject of Defendant’s automated marketing call.



- 1 9. Plaintiffs are informed and believe, and thereon allege, that Defendant is, and  
2 at all times mentioned herein was, a company incorporated in the state of  
3 California and headquartered in Santee, CA, and at all times mentioned herein  
4 was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (39).
- 5 10. Plaintiffs is informed and believes, and thereon alleges, that at all relevant  
6 times, Defendant conducted business in the State of California and in the  
7 County of San Diego, and within this judicial district.

8  
9 **FACTUAL ALLEGATIONS**

- 10 11. At all times relevant, Plaintiffs were citizens of the State of California.  
11 Plaintiffs are, and at all times mentioned herein were, “persons” as defined by  
12 47 U.S.C § 153 (39).
- 13 12. Defendant is, and at all times mentioned herein was, a “person” as defined by  
14 47 U.S.C. §153 (39).
- 15 13. Sometime prior to January 1, 2013, Mr. Tiffany was assigned, and became the  
16 owner of, a cellular telephone number from his wireless provider.
- 17 14. Sometime prior to January 1, 2013, Mr. Knutson was assigned, and became  
18 the owner of, a cellular telephone number from his wireless provider.
- 19 15. On or about February 7, 2017, at 10:07 AM, Mr. Tiffany received a  
20 prerecorded message on his cellular telephone from Defendant, in which  
21 Defendant utilized an automatic telephone dialing system (“ATDS”) as  
22 defined by 47 U.S.C. § 227(a)(1), using an “artificial or prerecorded voice” as  
23 prohibited by 47 U.S.C. § 227(b)(1)(A).
- 24 16. On or about February 15, 2017, at 11:42 AM, Mr. Knutson received a  
25 prerecorded message on his cellular telephone from Defendant, in which  
26 Defendant utilized an automatic telephone dialing system (“ATDS”) as  
27 defined by 47 U.S.C. § 227(a)(1), using an “artificial or prerecorded voice” as  
28 prohibited by 47 U.S.C. § 227(b)(1)(A).



1 17. The message sent to Mr. Tiffany’s cellular telephone number (San Diego area  
2 code (858) XXX-1296), from Defendant came from phone number: (619)  
3 839-9040.

4 18. The message sent to Mr. Knutson’s cellular telephone number (San Diego  
5 area code (619) XXX-6675), from Defendant came from phone number:  
6 (619) 839-9040.

7 19. Both plaintiffs received an identical pre-recorded message. The recording  
8 said, “Hi, this is Chris Bill with Roar Construction in San Diego. We’re a  
9 local cash buyer looking to partner with local real estate agents here in San  
10 Diego. We’re looking to purchase on and off market, distressed, fixer  
11 properties with value-add and renovation potential. We’d like you to  
12 represent us as the buyer, and possibly represent us on the resale of the  
13 property after we’ve completed the rehab. We’re buying anywhere from six  
14 to eight properties a month, and once again we are cash buyers here in San  
15 Diego. It’s Chris Bill with Roar Construction. Please give me a call if you  
16 can help us, at (619) 839-9040. Once again, (619) 839-9040. Thank you.”

17 20. This message was sent to Plaintiffs’ cellular telephone’s voicemail using a  
18 pre-recorded voice. However, this was not a “regular” phone call that was  
19 missed and a message left on their voicemail. Instead, both plaintiffs’ phones  
20 rang for a split second, or less than half of a regular ring. Then, about thirty  
21 seconds later, plaintiffs were notified that they had a voicemail waiting for  
22 them.

23 21. Plaintiffs are informed and believe that Defendant used a computer program  
24 or software application in which Defendant input a list of numbers and the  
25 computer, in an automated fashion, proceeded to “call” each number and go  
26 straight to their voicemail to leave the identical pre-recorded message.



- 1 22. Plaintiffs are informed and believe that Defendant did not intend for them to
- 2 answer their phones, and indeed the software application is designed to send a
- 3 message directly to their voicemail.
- 4 23. The pre-recorded messages left for Plaintiffs was for marketing purposes and
- 5 does not refer to any specific property or transaction. Neither Plaintiff has
- 6 any business relationship with Defendant.
- 7 24. Plaintiffs are informed and believe, and thereon allege, that Defendant holds
- 8 contractor license number 1009498.
- 9 25. The ATDS used by Defendant has the capacity to store or produce telephone
- 10 numbers to be called, using a random or sequential number generator.
- 11 26. The ATDS used by Defendant also has the capacity to, and does, call
- 12 telephone numbers from a list of databases of telephone numbers
- 13 automatically and without human intervention.
- 14 27. The telephone number Defendant called was assigned to a cellular telephone
- 15 service for which Plaintiffs incurred a charge for incoming calls pursuant to
- 16 47 U.S.C. § 227 (b)(1).
- 17 28. Plaintiffs at no time provided “prior express consent” for Defendant to place
- 18 telephone calls to Plaintiffs' cellular telephone with an artificial or
- 19 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)
- 20 (1)(A).
- 21 29. Plaintiffs had not provided their cellular telephone number to Defendant.
- 22 Plaintiffs were not customers of Defendant. Plaintiffs had no “established
- 23 business relationship” with Defendant, as defined by 47 U.S.C. § 227 (a)(2).
- 24 30. These telephone calls made by Defendant or its agents were in violation of 47
- 25 U.S.C. § 227(b)(1).
- 26
- 27
- 28

**STANDING**

31. Standing is proper under Article III of the Constitution of the United States of America because Plaintiffs' claims state:

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

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

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

**A. The “Injury in Fact” Prong**

33. Plaintiffs' injury in fact must be both “concrete” and “particularized” in order to satisfy the requirements of Article III of the Constitution, as laid out in *Spokeo (Id.)*.

34. For an injury to be “concrete” it must be a *de facto* injury, meaning that it actually exists. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7<sup>th</sup> Cir. 2012). In the present case, Plaintiffs was “called” on their cellular phones by Defendant, who utilized an ATDS and a pre-recorded voice. The “call” was made using an ATDS that allows a pre-recorded message to be sent directly to Plaintiff’s voicemails. Plaintiffs were notified, by their phones, of the existence of a new voicemail, as if it were a real call. Instead, they found a pre-recorded marketing message that was delivered directly to their voicemail. Such calls are a nuisance, an invasion of privacy, and an expense to Plaintiff. All three of these injuries are concrete and *de facto*.

35. For an injury to be “particularized” means that the injury must “affect the Plaintiffs in a personal and individual way.” *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016) at 7. In the instant case, it was Plaintiffs' phone that was called



1 and it was Plaintiffs themselves who had to go into their voicemails and listen  
2 to this advertisement. It was Plaintiffs' personal privacy and peace that was  
3 invaded by Defendant's prerecorded message that was delivered using an  
4 ATDS. Finally, Plaintiffs alone are responsible to pay the bill on their cellular  
5 phones. All of these injuries are particularized and specific to Plaintiffs, and  
6 will be the same injuries suffered by each member of the putative class.

7  
8 **B. *The "Traceable to the Conduct of Defendant" Prong***

- 9 36. The second prong required to establish standing at the pleadings phase is that  
10 Plaintiffs must allege facts to show that their injuries are traceable to the  
11 conduct of Defendant(s).
- 12 37. In the instant case, this prong is met simply by the fact that the message was  
13 delivered to Plaintiffs' cellular phones directly by Defendant, or by  
14 Defendant's agent at the direction of Defendant.

15  
16 **C. *The "Injury is Likely to be Redressed by a Favorable Judicial Opinion"***  
17 ***Prong***

- 18 38. The third prong to establish standing at the pleadings phase requires Plaintiffs  
19 to allege facts to show that the injury is likely to be redressed by a favorable  
20 judicial opinion.
- 21 39. In the present case, Plaintiffs' Prayers for Relief include a request for damages  
22 for each call made, and message delivered, by Defendant, as authorized by  
23 statute in 47 U.S.C. § 227. The statutory damages were set by Congress and  
24 specifically redress the financial damages suffered by Plaintiffs and the  
25 members of the putative class.
- 26 40. Furthermore, Plaintiffs' Prayers for Relief request injunctive relief to restrain  
27 Defendant from the alleged abusive practices in the future. The award of  
28





1 monetary damages and the order for injunctive relief redress the injuries of  
2 the past, and prevent further injury in the future.

3 41. Because all standing requirements of Article III of the U.S. Constitution have  
4 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016), Plaintiffs  
5 have standing to sue Defendant on the stated claims.

6  
7 **CLASS ACTION ALLEGATIONS**

8 42. Plaintiffs brings this action on behalf of themselves and on behalf of all others  
9 similarly situated (“the Class”).

10 43. Plaintiffs represent, and are members of, the Class, consisting of:

11  
12 a. All persons within the United States who had or have a number  
13 assigned to a cellular telephone service, who received at least one pre-  
14 recorded message delivered directly to their voicemail using an ATDS  
15 and/or an artificial or prerecorded voice from Roar Construction, Inc.,  
16 or their agents calling on behalf of Roar Construction, Inc., between the  
17 date of filing this action and the four years preceding, where such calls  
18 were placed for the purpose of marketing, to non-customers of Roar  
19 Construction, Inc., at the time of the calls.

20  
21 44. Defendant and their employees or agents are excluded from the Class.  
22 Plaintiffs do not know the number of members in the Class, but believes the  
23 Class members number in the hundreds, if not more. Thus, this matter should  
24 be certified as a Class action to assist in the expeditious litigation of this  
25 matter.

26 45. Plaintiffs and members of the Class were harmed by the acts of Defendant in  
27 at least the following ways: Defendant illegally contacted Plaintiffs and the  
28 Class members via their cellular telephones thereby causing Plaintiffs and the



1 Class members to incur certain cellular telephone charges or reduce cellular  
2 telephone time for which Plaintiffs and the Class members previously paid, by  
3 having to retrieve or administer messages left by Defendant or their agents,  
4 during those illegal calls, and invading the privacy of said Plaintiffs and the  
5 Class members. Plaintiffs and the Class members were damaged thereby.

6 46. This suit seeks only damages and injunctive relief for recovery of economic  
7 injury on behalf of the Class and it expressly is not intended to request any  
8 recovery for personal injury and claims related thereto. Plaintiffs reserve the  
9 right to expand the Class definition to seek recovery on behalf of additional  
10 persons as warranted as facts are learned in further investigation and  
11 discovery.

12 47. The joinder of the Class members is impractical and the disposition of their  
13 claims in the Class action will provide substantial benefits both to the parties  
14 and to the Court. The Class can be identified through Defendant's records  
15 and/or Defendant's agent's records.

16 48. There is a well-defined community of interest in the questions of law and fact  
17 involved affecting the parties to be represented. The questions of law and fact  
18 to the Class predominate over questions which may affect individual Class  
19 members, including the following:

- 20 i. Whether, within the four years prior to the filing of the  
21 Complaint, Defendant made any call(s) (other than a call made  
22 for emergency purposes or made with the prior express consent  
23 of the called party) to the Class members using any ATDS or an  
24 artificial or prerecorded voice to any telephone number assigned  
25 to a cellular telephone service;
- 26 ii. Whether Defendant called non-customers of Defendant for  
27 marketing purposes;
- 28



- 1           iii. Whether Plaintiffs and the Class members were damaged
- 2           thereby, and the extent of damages for such violation(s); and
- 3           iv. Whether Defendant should be enjoined from engaging in such
- 4           conduct in the future.

5   49. As a person that received calls/messages from Defendant in which Defendant  
6   used an ATDS or an artificial or prerecorded voice, without Plaintiffs' prior  
7   express consent, Plaintiffs are asserting claims that are typical of the Class.  
8   Plaintiffs will fairly and adequately represent and protect the interests of the  
9   Class in that Plaintiffs have no interests antagonistic to any member of the  
10   Class.

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

18   51. Plaintiffs have retained counsel experienced in handling class action claims  
19   and claims involving violations of the Telephone Consumer Protection Act.

20   52. A class action is a superior method for the fair and efficient adjudication of  
21   this controversy. Class-wide damages are essential to induce Defendant to  
22   comply with federal and California law. The interest of Class members in  
23   individually controlling the prosecution of separate claims against Defendant  
24   is small because the maximum statutory damages in an individual action for  
25   violation of privacy are minimal. Management of these claims is likely to  
26   present significantly fewer difficulties than those that would be presented in  
27   numerous individual claims.

1 53. Defendant has acted on grounds generally applicable to the Class, thereby  
2 making appropriate final injunctive relief and corresponding declaratory relief  
3 with respect to the Class as a whole.

4  
5 **FIRST CAUSE OF ACTION:**  
6 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
7 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

8 54. Plaintiffs incorporate by reference all of the above paragraphs of this  
9 Complaint as though fully stated herein.

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

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

16 57. Plaintiffs and the Class are also entitled to and seek injunctive relief  
17 prohibiting such conduct in the future.

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

21 58. Plaintiffs incorporate by reference all of the above paragraphs of this  
22 Complaint as though fully stated herein.

23 59. The foregoing acts and omissions of Defendant constitute numerous and  
24 multiple knowing and/or willful violations of the TCPA, including but not  
25 limited to each and every one of the above-cited provisions of 47 U.S.C. §  
26 227 et seq.

27 60. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
28 227 et seq., Plaintiffs and each of the Class are entitled to treble damages, as

1 provided by statute, up to \$1,500.00, for each and every violation, pursuant to  
2 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

3 61. Plaintiffs and the Class are also entitled to and seek injunctive relief  
4 prohibiting such conduct in the future.

5  
6 **PRAYER FOR RELIEF**

7 62. Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and the  
8 Class members the following relief against Defendant :

9  
10 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**  
11 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

12 63. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),  
13 Plaintiffs seeks for themselves and each Class member \$500.00 in statutory  
14 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

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

17 65. Any other relief the Court may deem just and proper.

18  
19 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**  
20 **VIOLATION**  
21 **OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

22 66. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §  
23 227(b)(1), Plaintiffs seeks for themselves and each Class member treble  
24 damages, as provided by statute, up to \$1,500.00 for each and every violation,  
25 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

28 68. Any other relief the Court may deem just and proper.

**TRIAL BY JURY**

69. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs is entitled to, and demands, a trial by jury.

Respectfully submitted,

Date: March 24, 2017

**HYDE & SWIGART**

By: s/Kevin Lemieux.  
Kevin Lemieux  
Attorneys for Plaintiff

**Other Attorneys of Record, besides caption page:**

Abbas Kazerounian, Esq. (SBN: 249203)

ak@kazlg.com

**KAZEROUNI LAW GROUP, APC**

245 Fischer Avenue, Suite D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

Facsimile: (800) 520-5523



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 and Erik Knutson, individually and on behalf of all others similarly situated

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

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

DEFENDANTS

Roar Construction, 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) '17CV593 JM 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)

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 03/24/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Kevin Lemieux

FOR OFFICE USE ONLY

## 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: [Roar Construction Sued Over Alleged Robocalls](#)

---