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Attorneys for Plaintiff and the Proposed Class

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

EMIR BALANZAR, on behalf of
herself, and all others similarly situated,

Plaintiff,

v.

FINANCIAL CREDIT NETWORK,
INC.,

Defendant.

Case No.: '17CV558 H BGS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §§
227 et seq.**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT AND JURY DEMAND**

2 Plaintiff Emir Balanzar (“Plaintiff”) brings this class action complaint against
3 Defendant Financial Credit Network, Inc. (“FNC” or “Defendant”) to stop
4 Defendant’s practice of making unsolicited phone calls to telephones of consumers
5 nationwide in violation of the Telephone Consumer Protection Act, 47 U.S.C. § §
6 227 *et seq.*, (“TCPA”), and to obtain redress for all persons injured by its conduct.
7 Plaintiff alleges as follows upon personal knowledge as to her own acts and
8 experiences and, as to all other matters, upon information and belief, including
9 investigation conducted by her attorneys.

10 **NATURE OF THE ACTION**

11 1. The TCPA strictly forbids nuisance calls exactly like those alleged in
12 this Complaint – intrusive phone calls to private cellular phones, placed to numbers
13 obtained without the prior express consent of the call recipients.

14 2. FNC’s violations caused Plaintiff and members of the Class actual
15 harm, included aggravation, nuisance, and invasion of privacy that necessarily
16 accompanies the receipt of unsolicited phone calls, as well as the violation of their
17 statutory rights.

18 3. Plaintiff and members of the Class suffered a concrete injury in fact,
19 whether tangible or intangible, that is directly traceable to Defendant’s conduct, and
20 is likely to be redressed by a favorable decision in this action.

21 4. Plaintiff seeks an injunction stopping Defendant from making
22 unsolicited phone calls, as well as an award of statutory damages under the TCPA,
23 together with costs and reasonable attorneys’ fees.

24 **JURISDICTION AND VENUE**

25 5. This Court has federal question subject matter jurisdiction under 28
26 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act,
27 47 U.S.C. § 227 *et seq.*, a federal statute. *Mims v. Arrow Financial Services, LLC*,
28 132 S.Ct. 740, 751-53 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446

1 (7th Cir. 2005). Subject matter jurisdiction over this action is further appropriate in
2 this Court pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least one member of the
3 putative Classes is a citizen of a state different than Defendant, (ii) the amount in
4 controversy exceeds \$5,000,000.00, exclusive of interest and costs, and (iii) none of
5 the exceptions under that subsection apply to this action.

6 6. The Court has personal jurisdiction over Defendant and venue is proper
7 in this District because Defendant transacts significant amounts of business within
8 this District.

9 7. Personal jurisdiction over Defendant is also proper in this District
10 because Defendant, at all times herein mentioned, was doing business in the County
11 of San Diego, State of California, and a substantial part of the events giving rise to
12 the claim, mainly Plaintiff’s receipt of the offending calls, occurred in this
13 jurisdiction.

14 **PARTIES**

15 8. Plaintiff Emir Balanzar is, and at all times mentioned was, a resident of
16 the State of California, County of San Diego. She is, and at all times mentioned
17 herein, was a “person” as defined by 47 U.S.C. § 153 (39).

18 9. Defendant Financial Credit Network, Inc. is a California corporation
19 that maintains a business office at 1300 West Main Street, Visalia, California 93291.
20 Defendant is a “person” as defined by 47 U.S.C. § 153 (39).

21 10. Plaintiff alleges that at all times relevant herein Defendant conducted
22 business in the state of California and in the County of San Diego, and within this
23 judicial district.

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1 **THE TELEPHONE CONSUMERS PROTECTION ACT OF 1991 (“TCPA”)**

2 **47 U.S.C. §§ 227 et seq.**

3 11. In 1991, Congress enacted the Telephone Consumer Protection Act, 47
4 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints
5 regarding certain telemarketing practices.

6 12. The TCPA regulates, among other things, the use of automated
7 telephone equipment, or “autodialers.” Specifically, the plain language of section
8 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless
9 number in the absence of an emergency or the prior express consent of the called
10 party.²

11 13. According to findings by the Federal Communication Commission
12 (“FCC”), the agency Congress vested with authority to issue regulations
13 implementing the TCPA, such calls are prohibited because, as Congress found,
14 automated or prerecorded telephone calls are a greater nuisance and invasion of
15 privacy than live solicitation calls, and such calls can be costly and inconvenient.
16 The FCC also recognized that wireless customers are charged for incoming calls
17 whether they pay in advance or after the minutes are used.³

18 14. The Ninth Circuit has noted that “[e]xpress consent is “[c]onsent that is
19 clearly and unmistakably stated.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d
20 946,955 (9th Cir. 2009).

23 ¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394
24 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the
25 Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

26 ² 47 U.S.C. § 227(b)(1)(A)(iii).

27 ³ *In Rules and Regulations Implementing the Telephone Consumer Protection Act of*
28 *1991*, Report and Order, 18 FCC Rcd. 14014 (FCC July 3, 2003).

1 20. Plaintiff never gave Defendant or SDG&E her cellular telephone
2 number and never provided any prior express consent to Defendant or SDG&E to
3 call her on her cellular number.

4 21. In fact, Plaintiff did not have the cellular telephone number ending
5 “6903” at the time she had service with SDG&E, therefore she could not have
6 provided that number to SDG&E.

7 22. On February 20, 2017, Plaintiff received an unsolicited phone call from
8 Defendant on her cellphone ending “6903”. During that call, the number that
9 showed up on Plaintiff’s caller identification was 559-733-7550.

10 23. When Plaintiff answered the call, a pre-recorded voice message told
11 Plaintiff “if this is Emir, press one”. Plaintiff pressed one and was connected to a
12 live representative.

13 24. On March 6, 2016 Plaintiff received another unsolicited robo-call from
14 Defendant on her cellphone ending “6903”. During that call, the number that
15 showed up on Plaintiff’s caller identification was 559-733-7550 and a pre-recorded
16 voice message told Plaintiff “if this is Emir, press one”. Again, Plaintiff pressed one
17 and was connected to a live representative.

18 25. These unsolicited phone calls placed to Plaintiff’s wireless telephone
19 were placed via an “automatic telephone dialing system,” (“ATDS”) as defined by
20 47 U.S.C. § 227 (a)(1) and by using “an artificial or prerecorded voice” system as
21 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
22 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
23 to Plaintiff’s cellular telephone.

24 26. The telephone number that Defendant, or its agents, called was assigned
25 to a cellular telephone service for which Plaintiff incurred a charge for incoming
26 calls pursuant to 47 U.S.C. § 227 (b)(1).

27 27. These telephone calls constitute calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

1 28. Plaintiff did not provide Defendant or its agents prior express consent
2 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

3 29. These telephone calls by Defendant or its agents therefore violated 47
4 U.S.C. § 227(b)(1).

5 30. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
6 Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express
7 consent within the meaning of the statute.

8 **CLASS ACTION ALLEGATIONS**

9 31. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
10 23(b)(2) and 23(b)(3) on behalf of herself and on behalf of and all others similarly
11 situated ("the Class").

12 32. Plaintiff represents, and is a member of the Class, consisting of all
13 persons within the United States who: (1) received a telephone call from Defendant
14 or its agents; (2) on his or her cellular telephone number; (3) through the use of any
15 automatic telephone dialing systems or artificial or prerecorded voice system as set
16 forth in 47 U.S.C. § 227(b)(1)(A)(3); and (4) where Defendant has no record of prior
17 express consent for such individual to make such call, within four years prior to the
18 filing of the Complaint through the date of final approval.

19 33. Defendant and its employees or agents are excluded from the Class.
20 Plaintiff does not know the number of members in the Class, but believes the Class
21 members number in the hundreds of thousands, if not more. Thus, this matter should
22 be certified as a Class action to assist in the expeditious litigation of this matter.

23 34. Plaintiff and members of the Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant, either directly or through its
25 agents, illegally contacted Plaintiff and the Class members via their cellular
26 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
27 Class members to incur certain cellular telephone charges or reduce cellular
28 telephone time for which Plaintiff and the Class members previously paid, and

1 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
2 members were damaged thereby.

3 35. This suit seeks only statutory damages and injunctive relief on behalf
4 of the Class and it expressly is not intended to request any recovery for personal
5 injury and claims related thereto. Plaintiff reserves the right to expand the Class
6 definition to seek recovery on behalf of additional persons as warranted as facts are
7 learned in further investigation and discovery.

8 36. The joinder of the Class members is impractical and the disposition of
9 their claims in the Class action will provide substantial benefits both to the parties
10 and to the Court. The Class can be identified through Defendant's records or
11 Defendant's agents' records.

12 37. There is a well-defined community of interest in the questions of law
13 and fact involved affecting the parties to be represented. The questions of law and
14 fact to the Class predominate over questions which may affect individual Class
15 members, including the following:

- 16 a. Whether, within the four years prior to the filing of this Complaint
17 through the date of final approval, Defendant or its agents placed
18 telephone calls without the recipients' prior express consent (other
19 than a telephone call made for emergency purposes or made with the
20 prior express consent of the called party) to a Class member using any
21 automatic telephone dialing system or an artificial or prerecorded
22 voice system, to any telephone number assigned to a cellular
23 telephone service;
- 24 b. Whether the equipment Defendant, or its agents, used to make the
25 telephone calls in question was an automatic telephone dialing system
26 as contemplated by the TCPA;
- 27 c. Whether Defendant, or its agents, systematically made telephone calls
28 to persons featuring an artificial or prerecorded voice;

- 1 d. Whether Defendant, or its agents, systematically made telephone calls
2 to persons who did not previously provide Defendant with their prior
3 express consent to receive such telephone calls;
- 4 e. Whether Plaintiff and the Class members were damaged thereby, and
5 the extent of damages for such violation; and
- 6 f. Whether Defendant and its agents should be enjoined from engaging
7 in such conduct in the future.

8 38. As a person that received at least one unsolicited telephone call to her
9 cell phone without Plaintiff's prior express consent, Plaintiff is asserting claims that
10 are typical of the Class. Plaintiff will fairly and adequately represent and protect the
11 interests of the Class in that Plaintiff has no interest antagonistic to any member of
12 the Class.

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

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

22 41. A class action is a superior method for the fair and efficient adjudication
23 of this controversy because joinder of all parties is impracticable. Class-wide
24 damages are essential to induce Defendant to comply with federal law. The interest
25 of Class members in individually controlling the prosecution of separate claims
26 against Defendant is small because the maximum statutory damages in an individual
27 action for violation of privacy are minimal, especially given the burden and expense
28 of individual prosecution of the complex litigation necessitated by Defendant's

1 actions. Thus, it would be virtually impossible for the individual members of the
2 Class to obtain effective relief from Defendant's misconduct. Even if members of
3 the Class could sustain such individual litigation, it would still not be preferable to
4 a class action, because individual litigation would increase the delay and expense to
5 all parties due to the complex legal and factual controversies presented in this
6 Complaint. By contrast, a class action presents far fewer management difficulties
7 and provides the benefits of single adjudication, economy of scale, and
8 comprehensive supervision by a single Court. Economies of time, effort and expense
9 will be fostered and uniformity of decisions ensured.

10 42. Defendant has acted on grounds generally applicable to the Class,
11 thereby making appropriate final injunctive relief and corresponding declaratory
12 relief with respect to the Class as a whole.

13 **COUNT 1**

14 **NEGLIGENT VIOLATIONS OF THE TCPA**

15 **47 U.S.C. §§ 227 ET SEQ.**

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

18 44. Each such telephone call was made using equipment that, upon
19 information and belief, had the capacity to store or produce telephone numbers to be
20 called, using a random or sequential number generator, and to dial such numbers.
21 By using such equipment, Defendant was able to effectively make thousands of
22 phone calls simultaneously to lists of thousands of wireless phone numbers of
23 consumers without human intervention.

24 45. Defendant also made telephone calls featuring a prerecorded or
25 artificial voice message without the prior express consent of the Plaintiff and other
26 member of the Class to receive such telephone calls.

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1 46. The foregoing acts and omissions of Defendant and its agents constitute
2 numerous and multiple negligent violations of the TCPA, including but not limited
3 to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

4 47. As a result of Defendant's, and Defendant's agents', negligent
5 violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award
6 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
7 § 227(b)(3)(B).

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

10 **COUNT 2**

11 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA**

12 **47 U.S.C. §§ 227 *ET SEQ.***

13 49. Plaintiff incorporates by reference paragraphs 1-42 of this Complaint
14 as though fully stated herein.

15 50. Each such telephone call was made using equipment that, upon
16 information and belief, had the capacity to store or produce telephone numbers to be
17 called, using a random or sequential number generator, and to dial such numbers.
18 By using such equipment, Defendant was able to effectively make thousands of
19 phone calls simultaneously to lists of thousands of wireless phone numbers of
20 consumers without human intervention.

21 51. Defendant also made telephone calls featuring a prerecorded or
22 artificial voice message without the prior express consent of the Plaintiff and other
23 member of the Class to receive such telephone calls.

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

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

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

7 **PRAYER FOR RELIEF**

8 **Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the
9 Class members the following relief against Defendant:

10 **FIRST COUNT FOR NEGLIGENT VIOLATION OF THE TCPA**

11 **47 U.S.C. §§ 227 *ET SEQ.***

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

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

18 **SECOND COUNT FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA**

19 **47 U.S.C. §§ 227 *ET SEQ.***

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

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

26 * * *

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12 *Attorneys for Plaintiff*
13 *and the Proposed Class*
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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

EMIR BALANZAR, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Ronald A. Marron, 651 Arroyo Dr, San Diego, CA 92103 619-696-9006 & Law Offices of Daniel G. Shay, 409 Camino Del Rio South, Ste 101B San Diego, CA 92108 - 619-222-7429

DEFENDANTS

FINANCIAL CREDIT NETWORK, 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) '17CV558 H 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 Property, 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 (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

Brief description of cause: Telephone Consumer Protection Act class action case

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE: 03/21/2017, SIGNATURE OF ATTORNEY OF RECORD: s/ Ronald A. Marron

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: [Financial Credit Network Sued Over 'Nuisance' Robocalls](#)
