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18 *similarly situated*

19 **THE UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 NIKKI BELL, an individual, on
22 behalf of herself and all others
23 similarly situated,

24 Plaintiff,

25 vs.

26 DEPARTMENT STORES
27 NATIONAL BANK, a South Dakota
28 Entity; FDS BANK, an Ohio
Corporation; MACY's
INCORPORATED, an Ohio
Corporation; and DOES 1 through
50, inclusive, and each of them,

Defendants.

Case No.:

CLASS ACTION

**PLAINTIFF'S COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

- (1) Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*; and
- (2) Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*

DEMAND FOR JURY TRIAL



1 Plaintiff Nikki Bell (“Plaintiff” or “Bell”), on behalf of herself and all
2 others similarly situated, alleges the follow upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff, on behalf of herself and others similarly situated, is
6 seeking damages and any other available legal or equitable remedies resulting
7 from the illegal actions of defendants DEPARTMENT STORES NATIONAL
8 BANK (“Defendant or “DSNB”) Defendants MACY’S INCORPORATED
9 (“Defendant” or “Macy’s”), FDS BANK (“Defendants or “FDS”), and
10 INDIVIDUAL DOES (collectively “Defendants”) in contacting Plaintiff, as well
11 as knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
12 telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. §
13 227, *set seq.* (“TCPA”).

14 2. Defendants are companies that regularly engage in aggressive and
15 reckless debt collection practices which outright ignore controlling federal law,
16 and the rights of the called party.

17 3. Defendants repeatedly made unsolicited calls to Plaintiff’s cellular
18 telephone in violation of the TCPA. Defendants made the calls using an
19 automated telephone dialing system (“ATDS”) or pre-recorded voice for the
20 purpose of collecting a debt allegedly owed to Defendants by another individual.
21 Defendants repeatedly called Plaintiff, even after Plaintiff informed Defendants
22 that they had the wrong number, that Plaintiff was not the individual Defendants
23 were attempting to contact, and Plaintiff did not wish to be called again.

24 4. By making the telephone calls at issue in this Complaint,
25 Defendants’ caused Plaintiff actual harm, including the aggravation, nuisance,
26 and invasion of privacy that necessarily accompanies the receipt of unsolicited
27 and harassing telephone calls, as well as the monies paid to her carrier(s) for the
28 receipt of such telephone calls.



1 5. Congress enacted the TCPA to protect consumers from unsolicited
2 telephone calls exactly like those alleged in this case. In response to Defendants'
3 unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction
4 requiring Defendants to cease all illegal telephone calling activities to her
5 cellular telephone and an award of statutory damages under the TCPA equal to
6 \$500.00 per violation, together with court costs, reasonable attorneys' fees, and
7 treble damages (for knowing and/or willful violations). Plaintiff also seeks an
8 award of statutory damages under the FDCPA equal to \$1,000.00 per violation,
9 together with court costs and reasonable attorney's fees.

10 JURISDICTION & VENUE

11 6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because the
12 Plaintiff, a resident of California, seeks relief on behalf of a Class, which will
13 result in at least one class member belonging to a different state than that of the
14 Defendants, which are based in South Dakota and Ohio.

15 7. Plaintiff also seeks up to \$1,500.00 in damages for each call in
16 violation of the TCPA, which, when aggregated among a proposed class in the
17 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
18 Therefore, both diversity jurisdiction and the damages threshold under the Class
19 Action Fairness Act of 2005 ("CAFA") are present, and this Court has
20 jurisdiction.

21 8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331,
22 as this action arises under the TCPA, which is a federal statute.

23 9. The Court has personal jurisdiction over Defendants because they
24 conduct significant business in this District, and the unlawful conduct alleged in
25 this Complaint occurred in, was directed to, and/or emanated from this District.

26 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
27 because the wrongful conduct giving rise to this case occurred in, was directed
28 to, and/or emanated from this District.



1 11. Defendants are subject to specific personal jurisdiction in this
2 District because they have continuous and systematic contacts with this District
3 through their marketing efforts and services that target this District, and the
4 exercise of personal jurisdiction over Defendants in this District does not offend
5 traditional notions of fair play or substantial justice.

6 **INTRA-DISTRICT ASSIGNMENT**

7 12. Pursuant to Local Rule 3.2(d), this action must be assigned to either
8 the San Francisco Division or the Oakland Division of the United States District
9 Court for the Northern District of California because Plaintiff Nikki Bell is a
10 resident of Contra Costa County, California.

11 **PARTIES**

12 13. Plaintiff NIKKI BELL (“Plaintiff”) is a citizen of the State of
13 California who resides in Richmond, Contra Costa County, California.

14 14. Defendant MACY’S INCORPORATED (“Defendant” or “Macy’s”)
15 is a Delaware corporation organized under the laws of the State of Ohio.
16 Defendant maintains its principle place of business in Cincinnati, Ohio, but
17 regularly conducts business in this District. Defendant can be served with
18 process by serving its registered agent, CSC – Lawyers Incorporating Service
19 (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus,
20 Ohio 43215.

21 15. Defendant DEPARTMENT STORES NATIONAL BANK
22 (“Defendant” or “DSNB”) is a corporation organized under the laws of the State
23 of South Dakota. Defendant maintains its principle place of business in Sioux
24 Falls, South Dakota, but regularly conducts business in this District. Defendant
25 can be served with process by serving its registered agent, Department Stores
26 National Bank, P.O. Box 8066, Mason, OH 45040.

27 16. Defendant FDS BANK (“Defendant” or “FDS”) is a corporation
28 organized under the laws of the State of Ohio. Defendant maintains its principle



1 place of business at 9111 Duke Boulevard, Suite 100, Mason Ohio, 45040 but
2 regularly conducts business in this District.

3 17. The true names and capacities of the Defendants sued herein as
4 DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore
5 sues such Defendants by fictitious names. Each of the Defendants designated
6 herein as a DOE is legally responsible for the unlawful acts alleged herein.
7 Plaintiff will seek leave of Court to amend the Complaint to reflect the true
8 names and capacities of the DOE Defendants when such identities become
9 known.

10 18. Plaintiff does not yet know the identity of Defendants'
11 employees/agents, identified as DOE INDIVIDUALS that had direct, personal
12 participation in or personally authorized the conduct found to have violated the
13 statute, and were not merely tangentially involved. They are named tentatively as
14 numerous District Courts have found that individual officers/principals of
15 corporate entities may be personally liable (jointly and severally) under the
16 TCPA if they had direct, personal participation in or personally authorized the
17 conduct found to have violated the statute, and were not merely tangentially
18 involved. *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 899 (W.D. Tex.
19 2001) (“*American Blastfax*”); *Sandusky Wellness Center, LLC v. Wagner*
20 *Wellness, Inc.*, 2014 WL 1333472, at * 3 (N.D. Ohio March 28, 2014); *Maryland*
21 *v. Universal Elections*, 787 F.Supp.2d 408, 415-16 (D.Md. 2011) (“*Universal*
22 *Elections*”); *Baltimore-Washington Tel Co. v. Hot Leads Co.*, 584 F.Supp.2d
23 736, 745 (D.Md. 2008); *Covington & Burling v. Int’l Mktg. & Research, Inc.*,
24 2003 WL 21384825, at *6 (D.C.Super Apr. 17, 2003); *Chapman v. Wagener*
25 *Equities, Inc.* 2014 WL 540250, at *16-17 (N.D.Ill. Feb. 11, 2014); *Versteeg v.*
26 *Bennett, Deloney & Noyes, P.C.*, 775 F.Supp.2d 1316, 1321 (D.Wy.2011)
27 (“*Versteeg*”). Upon learning of the identities of said individuals, Plaintiff will
28 move to amend to name the individuals as defendants.

1 19. Plaintiff is informed and believes and thereon alleges that at all
 2 relevant times, each and every Defendant was acting as an agent and/or
 3 employee of each of the other Defendants and was the owner, agent, servant,
 4 joint venturer and employee, each of the other and each was acting within the
 5 course and scope of its ownership, agency, service, joint venture and
 6 employment with the full knowledge and consent of each of the other
 7 Defendants. Plaintiff is informed and believes and thereon alleges that each of
 8 the acts and/or omissions complained of herein was made known to, and ratified
 9 by, each of the other Defendants.

10 20. At all times mentioned herein, each and every Defendant was the
 11 successor of the other and each assumes the responsibility for each other's acts
 12 and omissions.

TELEPHONE CONSUMER PROTECTION ACT

14 21. Congress enacted the TCPA in 1991 to address certain practices
 15 thought to be an invasion of consumer privacy and a risk to public safety. The
 16 TCPA and the Federal Communications Commission's (hereinafter "FCC")
 17 implemented rules prohibit: (1) making telemarketing calls using an artificial or
 18 prerecorded voice to residential telephones without prior express consent; and (2)
 19 making any non-emergency call using an automatic telephone dialing system
 20 (hereinafter "ATDS") or an artificial or prerecorded voice to a wireless telephone
 21 number without prior express consent. If the call includes or introduces an
 22 advertisement, or constitutes telemarketing, consent must be in writing.¹ The
 23 TCPA grants consumers a private right of action, with a provision for \$500 or the
 24

25 _____
 26 ¹ Prior express written consent means "an agreement, in writing, bearing the signature of
 27 the person called that clearly authorizes the seller to deliver or cause to be delivered to
 28 the person called advertisements or telemarketing messages using an automatic
 telephone dialing system or an artificial or prerecorded voice, and the telephone number
 to which the signatory authorizes such advertisements or telemarketing messages to be
 delivered. 47 C.F.R. § 64.1200(f)(8).



1 actual monetary loss in damages for each violation, whichever is greater, and
2 treble damages for each willful or knowing violation, as well as injunctive relief.

3 22. Since the TCPA's passage in 1991, the FCC has taken multiple
4 actions implementing and interpreting the TCPA, and has issued numerous
5 Declaratory Rulings clarifying specific aspects of the TCPA. The most recent,
6 FCC Omnibus Order of July 10, 2015, (the "Order") provided further protection
7 to consumers by, among other things, clarifying that ATDS is broadly defined,
8 confirming liability attaches to calls made to the wrong number or reassigned
9 number, and clarifying consumers may revoke consent through reasonable
10 methods. *In the Matter of Rules and Regulations Implementing the Tel.*
11 *Consumer Prot. Act of 1991*, FCC 15-72, 30 F.C.C.R. 7961, (July 10, 2015),
12 available at [https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-](https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order)
13 [order](https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order). The Order defines an "autodialer" as equipment/software that has the
14 future capacity to dial randomly or sequentially. "In other words, the capacity of
15 an autodialer is not limited to its current configuration but also includes its
16 potential functionalities." The Order clarifies the meaning of "capacity" and that
17 "any call" made using a device with the capacity to serve as an ATDS requires
18 consent under the TCPA, even if the caller is not "actually...using those
19 functionalities to place calls" at the time. *Derby v. AOL, Inc.*, No. 5:15-CV-
20 00452-RMW, 2015 WL 5316403, at *3 (N.D. Cal. Sept. 11, 2015).

21 23. The Order also states that calls placed to the wrong number or a
22 reassigned number are made with knowledge of the error after the first call; and
23 consumers may revoke consent through any reasonable method, including orally:
24 "[w]e clarify, however, that callers who make calls without knowledge of
25 reassignment and with a reasonable basis to believe that they have valid consent
26 to make the call should be able to initiate one call after reassignment as an
27 additional opportunity to gain actual or constructive knowledge of the
28 reassignment and cease future calls to the new subscriber. If this one additional



1 call does not yield actual knowledge of reassignment, we deem the caller to have
2 constructive knowledge of such;” “[c]onsumers generally may revoke, for
3 example, by way of a consumer-initiated call, directly in response to a call
4 initiated or made by a caller, or at an in-store bill payment location, among other
5 possibilities.”

6 24. The repeated calls were asking for someone other than Plaintiff,
7 who told them repeatedly they had the wrong number, but Defendants refused.

8 25. Furthermore, the TCPA established the National Do-Not-Call List,
9 and also mandates all businesses that place calls for marketing purposes maintain
10 an “internal” do-not-call list (“IDNC”). See 47 C.F.R. § 64.1200(d). The IDNC
11 is “a list of persons who request not to receive telemarketing calls made by or on
12 behalf of that [seller].” *Id.* The TCPA prohibits a company from calling
13 individuals on its IDNC list or on the IDNC list of a seller on whose behalf the
14 telemarketer calls, even if those individuals’ phone numbers are not on the
15 National Do-Not-Call Registry. *Id.* at § 64.1200(d)(3), (6). Any company, or
16 someone on the company’s behalf, who calls a member of the company IDNC is
17 liable to that person under the TCPA. The called party is then entitled to bring a
18 private action under the TCPA for monetary and injunctive relief.

19 26. Finally, in 2008, the FCC held that “a creditor on whose behalf an
20 autodialed or prerecorded message call is made to a wireless number bears the
21 responsibility for any violation of the Commission’s rules.” In re Rules and
22 Regulations Implementing the Telephone Consumer Protection Act, Declaratory
23 Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559,
24 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, 2012 WL
25 7062748 (Dec. 31, 2012).

26 27. Accordingly, the entity can be liable under the TCPA for a call
27 made on its behalf, even if the entity did not directly place the call. Under those
28 circumstances, the entity is deemed to have initiated the call through the person



1 or entity.

2 **FACTUAL ALLEGATIONS**

3 28. Beginning in or around January 2016, Defendant contacted Plaintiff
4 Bell on her cellular telephone number ending in 8454 *via* ATDS, as defined by
5 47 U.S.C. § 227(a)(1), at least fifty (50) times over a two-month period without
6 first obtaining Bell’s written consent.

7 29. Bell’s caller ID read “800-266-2278” as the calls were incoming.
8 This number is assigned to the Defendants and their agents.

9 30. Bell would answer some of the calls even though she had
10 memorized the number assigned to Defendants as a result of the constant abusive
11 calling techniques employed by Defendants. When Bell answered the phone, she
12 experienced dead air before she could hear the call being routed a live
13 representative.

14 31. To the extent Bell ever consented to the calls, she revoked such
15 consent but the calls continued.

16 32. Despite being informed by Bell that she was not the individual they
17 were attempting to contact, as well as several reasonable requests that
18 Defendants cease all further contact, Defendants called Bell at least thirty (30)
19 times.

20 33. Bell was extremely frustrated by the calls and wanted Defendants to
21 stop calling. The calls invaded her privacy and caused her to lose time on her
22 cellular plan.

23 34. On information and belief, Defendants’ automated system had
24 called Bell on every occasion.

25 35. Based on the circumstances of the calls – including but not limited
26 to the multiple calls, Bell never spoke to the same representative, and Defendants
27 called despite Bell’s requests to Defendants to stop calling (indicating a
28 computer automatically dialed the number again) – Bell believed Defendants



1 called her cellular telephone using an ATDS that automatically selected her
2 number from a computer database.

3 36. On information and belief, Defendants' ATDS called Bell on every
4 occasion.

5 37. On information and belief, and based on the circumstances of the all
6 the calls, Defendants called Bell using an ATDS.

7 38. The telephone number Defendants called was assigned to a cellular
8 telephone.

9 39. Bell is the regular carrier and exclusive user of the cellular
10 telephone assigned the number ending in 8454.

11 40. Defendants' calls constituted calls that were not for emergency
12 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13 41. Bell did not provide Defendants with prior express written consent
14 to receive calls to her cellular telephone utilizing an ATDS or artificial or pre-
15 recorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A) and 47 C.F.R. §
16 64.1200(a)(3).

17 42. All calls Defendants made to Bell violate 47 U.S.C. § 227.

18 43. Bell seeks an injunction requiring Defendants to cease all illegal,
19 abusive, and harassing telephone calls using an ATDS and an award of statutory
20 damages, together with costs and reasonable attorneys' fees. This is necessary as
21 Defendants settled a prior class case, but continue their illegal activities.

22 **CLASS ALLEGATIONS**

23 44. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules
24 of Civil Procedure and/or other applicable law, on behalf of herself and all others
25 similarly situated, as a member of the proposed class (hereafter "the Class")
26 defined as follows:

27 All persons within the United States who received any telephone calls
28 from Defendant(s) to said person's cellular telephone made through the



1 use of any automatic telephone dialing system or an artificial or
2 prerecorded voice and such person had not previously provided express
3 consent to receiving such calls from July 23, 2015 to the filing of this
4 Complaint.

5 45. Plaintiff represents, and is a member of the Class, consisting of All
6 persons within the United States who received any telephone call from
7 Defendant(s) to said person's cellular telephone made through the use of any
8 automatic telephone dialing system or an artificial or prerecorded voice and such
9 person had not previously not provided their cellular telephone number to
10 Defendant within the four years prior to the filing of this Complaint.

11 46. Excluded from the Class are governmental entities, Defendants, any
12 entity in which Defendants have a controlling interest, and Defendants' officers,
13 directors, affiliates, legal representatives, employees, co-conspirators, successors,
14 subsidiaries, and assigns. Also excluded from the Class are any judges, justices
15 or judicial officers presiding over this matter and the members of their immediate
16 families and judicial staff.

17 47. This action is properly maintainable as a class action. This action
18 satisfies the numerosity, typicality, adequacy, predominance and superiority for a
19 class action.

20 48. **Numerosity:** The proposed Class is so numerous that individual
21 joinder of all members is impracticable. Due to the nature of the trade and
22 commerce involved, Plaintiff does not know the number of members in the
23 Class, but believes the Class members number in the thousands, if not more.
24 Plaintiff alleges that the Class may be ascertained by the records maintained by
25 Defendants.

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



1 Plaintiff and Class members, without their “prior express consent,” to incur
2 certain charges or reduced telephone time for which Plaintiff and Class members
3 had previously paid by having to retrieve or administer message(s) left by
4 Defendant during those illegal calls, and invading the privacy of said Plaintiff
5 and Class members.

6 50. **Common Questions of Law and Fact Predominate:** There are
7 only a few legal and factual issues to determine if there is liability under the
8 TCPA and for each of those questions of law and fact, common issues to the
9 Class predominate over any questions that may affect individual Class members,
10 in that the claims of all Class members for each of the claims herein can be
11 established with common proof. Common questions of fact and law include, but
12 are not limited to, the following:

- 13 (a) Whether, within the four years prior to the filing of this
14 Complaint, Defendant(s) made any calls (other than a call
15 made for emergency purposes or made with the prior express
16 consent of the called party) to a Class member using any
17 automated dialing system or an artificial or prerecorded voice
18 to any telephone number assigned to a cellular telephone
19 service;
- 20 (b) Whether Plaintiff and the Class members were damaged
21 thereby, and the extent of the statutory damages for each such
22 violation; and
- 23 (c) Whether the Defendant(s) should be enjoined from engaging
24 in such conduct in the future.

25 51. **Typicality:** Plaintiff’s claims are typical of the claims of members
26 of the Class, as Plaintiff was subject to the same common course of conduct by
27 Defendant(s) as all Class members. The injuries to each member of the Class
28 were caused directly by Defendant(s)’ wrongful conduct as alleged herein.



1 52. **Adequacy of Representation:** Plaintiff will fairly and adequately
2 represent and protect the interests of the Class. Plaintiff has retained counsel with
3 substantial experience in handling complex class action litigation. Plaintiff and
4 his counsel are committed to prosecuting this action vigorously on behalf of the
5 Class and have financial resources to do so.

6 53. **Superiority of Class Action:** A class action is superior to other
7 available methods for the fair and efficient adjudication of the present
8 controversy. Class members have little interest in individually controlling the
9 prosecution of separate actions because the individual damage claims of each
10 Class member are not substantial enough to warrant individual filings. In sum,
11 for many, if not most, Class members, a class action is the only feasible
12 mechanism that will allow them an opportunity for legal redress and justice.
13 Plaintiff is unaware of any litigation concerning the present controversy already
14 commenced by members of the Class. The conduct of this action as a class action
15 in this forum, with respect to some or all of the issues presented herein, presents
16 fewer management difficulties, conserves the resources of the parties and of the
17 court system, and protects the rights of each Class member.

18 54. Moreover, individualized litigation would also present the potential
19 for varying, inconsistent, or incompatible standards of conduct for Defendants,
20 and would magnify the delay and expense to all parties and to the court system
21 resulting from multiple trials of the same factual issues. The adjudication of
22 individual Class members' claims would also, as a practical matter, be
23 dispositive of the interests of other members not parties to the adjudication, and
24 could substantially impair or impede the ability of other Class members to
25 protect their interests.

26 55. Plaintiff and the members of the Class have suffered and will
27 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful
28 conduct. Defendant(s) have acted, or refused to act, in respects generally



1 applicable to the Class, thereby making appropriate final and injunctive relief
2 with regard to the members of the Class as a whole.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**
5 **47 U.S.C. § 227, *ET SEQ.***

6 **(By Plaintiff Against All Defendants)**

7 56. Plaintiff hereby incorporates by reference and re-alleges each and
8 every allegation set forth in each and every preceding paragraph of this
9 Complaint, as though fully set forth herein.

10 57. The foregoing acts and omissions of Defendants constitute
11 numerous and multiple 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.* and 47
13 C.F.R. §64.1200, *et seq.*

14 58. As a result of Defendants' violations of 47 U.S.C. § 227, *et seq.*, and
15 47 C.F.R. §64.1200, *et seq.*, Plaintiff is entitled to an award of \$500.00 in
16 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
17 227(b)(3)(B).

18 59. Plaintiff is also entitled to and seeks injunctive relief prohibiting
19 such conduct in the future.

20 **SECOND CAUSE OF ACTION**

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

23 **(By Plaintiff Against All Defendants)**

24 60. Plaintiff hereby incorporates by reference and re-allege each and
25 every allegation set forth in each and every preceding paragraph of this
26 Complaint, as though fully set forth herein.

27 61. The foregoing acts and omissions of Defendants constitute
28 numerous and multiple knowing and/or willful violations of the TCPA, including



1 but not limited to each and every one of the above cited provisions of 47 U.S.C.
2 § 227, *et seq.* and 47 C.F.R. §64.1200, *et seq.*

3 62. As a result of Defendants' violations of 47 U.S.C. § 227, *et seq.*, and
4 47 C.F.R. §64.1200, *et seq.* Plaintiff is entitled to an award of \$1,500.00 in
5 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 63. Plaintiff is also entitled to and seeks injunctive relief prohibiting
8 such conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
11 relief and judgment as follows:

12 1. An order certifying this action as a class action and appointing
13 Plaintiff and his counsel to represent the Class;

14 2. For the first cause of action:

- 15 • Plaintiff and Class members are entitled to and request \$500.00
16 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227, *et seq.*;
- 18 • Preliminary and permanent injunctive relief enjoining
19 Defendant(s), their agents, servants and employees, and all
20 persons acting in concert with them, from engaging in, and
21 continuing to engage in, the unlawful calls made with automated
22 dialing systems to cellular phones without prior express consent;
- 23 • Attorneys' fees, costs and any and all other relief that the Court
24 deems just and proper.

25 3. For the second cause of action:

- 26 • Plaintiff and Class members are entitled to and request \$1,500.00
27 in statutory damages, for each and every violation, pursuant to 47
28 U.S.C. § 227, *et seq.*;



- Preliminary and permanent injunctive relief enjoining Defendant(s), their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unlawful calls made with automated dialing systems to cellular phones without prior express consent;
- Attorneys' fees, costs and any and all other relief that the Court deems just and proper.

Dated: January 9, 2017

Respectfully submitted,

By: /s/ John P. Kristensen

John P. Kristensen (SBN 224132)

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues that may be decided by jury.

Dated: January 9, 2017

Respectfully submitted,

By: /s/ John P. Kristensen

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JS-CAND 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 NIKKI BELL, an individual, on behalf of herself and all others similarly situated,
(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
 Kristensen Weisberg, LLP, 12304 Santa Monica Blvd. #100, Los Angeles, CA 90025; (310) 507-7924
 Hughes Ellzey, LLP, 2700 Post Oak Blvd. #1120, Houston, TX 77056; (713) 554-2377

DEFENDANTS
 DEPARTMENT STORES NATIONAL BANK, a South Dakota Entity; FDS BANK, an Ohio Corporation; MACY'S INCORPORATED, an Ohio Corporation; and DOES 1 through 50, inclusive, and each of them,
 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)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 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)
 (For Diversity Cases Only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<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 of Veteran's Benefits <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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <input type="checkbox"/> 370 Other 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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <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 type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <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


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-Transfer
 8 Multidistrict Litigation-Direct File

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:
 Violations of Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. 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

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
 (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 01/09/2017 SIGNATURE OF ATTORNEY OF RECORD: 

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Companies Hit with Robocall Class Action Lawsuit](#)
