

Susan S. Brown, SBN #287986
SUSAN BROWN LEGAL SERVICES
388 Market Street, Suite 1300
San Francisco, CA 94111
Telephone: (415) 712-3026
Email: susan@susanbrownlegal.com

*Attorney for Plaintiff and the Proposed
Classes*

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ROBERT BERNSTEIN, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

SOUTHERN CALIFORNIA
TELEPHONE COMPANY,

Defendant.

Case No. 5:19-cv-01888

COMPLAINT FOR:

**1. VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47
U.S.C. § 227(c)(5)**

Class Action

DEMAND FOR JURY TRIAL

1 Plaintiff Robert Bernstein (“Plaintiff”), by his undersigned counsel, for this
2 class action complaint against Southern California Telephone Company and its
3 present, former, or future direct and indirect parent companies, subsidiaries,
4 affiliates, agents, and/or other related entities (“Southern California Telephone
5 Company” or “Defendant”), alleges as follows:

6 I. INTRODUCTION

7 1. Nature of Action. Plaintiff, individually and as class representative
8 for all others similarly situated, brings this action against Southern California
9 Telephone Company for violations of the Telephone Consumer Protection Act,
10 47 U.S.C. § 227 (“TCPA”).

11 2. Plaintiff alleges that Southern California Telephone Company made
12 telemarketing calls to Plaintiff despite his phone number’s presence on the
13 National Do Not Call Registry.

14 3. Plaintiff also alleges that Southern California Telephone Company
15 made telemarketing calls to individuals in the absence of any “do not call” policy
16 or training, as well as making such calls to individuals who previously indicated
17 that they no longer wanted to be contacted, such as Plaintiff.

18 4. Because telemarketing campaigns generally place calls to hundreds of
19 thousands or even millions of potential customers *en masse*, and because Plaintiff’s
20 investigation has revealed facts—as set forth below—indicating that he was the
21 target of one such massive campaign, Plaintiff brings this action on behalf of two
22 proposed nationwide classes of other persons who received illegal telemarketing
23 calls from or on behalf of Defendant.

24 II. PARTIES

25 5. Plaintiff Robert Bernstein is an individual residing in Goleta,
26 California, in this District.
27
28

1 6. Defendant Southern California Telephone Company is a California-
2 based Competitive Local Exchange Carrier located at 27515 Enterprise Circle
3 West, Temecula, California 92590.

4 **III. JURISDICTION AND VENUE**

5 7. Jurisdiction. This Court has subject matter jurisdiction over Plaintiff's
6 TCPA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's TCPA claims arise
7 under the laws of the United States, specifically, 47 U.S.C. § 227.

8 8. Personal Jurisdiction. This Court has personal jurisdiction over
9 Southern California Telephone Company because a substantial part of the
10 wrongful acts alleged in this Complaint were committed in California.

11 9. Venue. Venue is proper in this District pursuant to 28 U.S.C.
12 § 1391(b)(1)-(2) because Plaintiff resides in this District and a substantial part of
13 the events giving rise to Plaintiff's claims occurred in this District.

14 **IV. THE TELEPHONE CONSUMER PROTECTION 15 ACT OF 1991, 47 U.S.C. § 227**

16 10. In 1991, Congress enacted the TCPA in response to a growing number
17 of consumer complaints regarding certain telemarketing practices.

18 11. The TCPA specifically required the FCC to "initiate a rulemaking
19 proceeding concerning the need to protect residential telephone subscribers'
20 privacy rights to avoid receiving telephone solicitations to which they object."
21 47 U.S.C. § 227(c)(1).

22 12. The FCC was instructed to "compare and evaluate alternative methods
23 and procedures (including the use of ... company-specific 'do not call' systems
24 ...)" and "develop proposed regulations to implement the methods and procedures
25 that the Commission determines are most effective and efficient to accomplish
26 purposes of this section." *Id.* at (c)(1)(A), (E).
27
28

1 13. Pursuant to this statutory mandate, the FCC established company-
2 specific “do not call” rules. *In the Matter of Rules and Regulations Implementing*
3 *the Telephone Consumer Protection Act of 1991*, 7 F.C.C. Rcd. 8752 (Oct. 16,
4 1992) (“TCPA Implementation Order”).

5 14. The FCC found that “the company-specific do-not-call list alternative
6 is the most effective and efficient means to permit telephone subscribers to avoid
7 unwanted telephone solicitations.” *Id.* at 8765, ¶ 23.

8 15. However, recognizing that an honor system would probably be
9 insufficient, the FCC found that it “must mandate procedures for establishing
10 company-specific do-not-call lists to ensure effective compliance with and
11 enforcement of the requirements for protecting consumer privacy.” *Id.* at ¶ 24.

12 16. It accordingly placed the burden on telemarketers to implement and
13 prove the implementation of their compliance procedures.

14 17. These regulations are codified at 47 C.F.R. 64.1200(d)(1)-(7).

15 18. Specifically, these regulations require a company to keep a written
16 policy, available upon demand, for maintaining a do-not-call list, train personnel
17 engaged in telemarketing on the existence and use of its internal do-not-call list,
18 and record and honor “do not call” requests for no less than five years from the
19 time the request is made. 47 C.F.R. § 64.1200(d)(1, 2, 3, 6).

20 19. This includes the requirement that “[a] person or entity making a call
21 for telemarketing purposes must provide the called party with the name of the
22 individual caller, the name of the person or entity on whose behalf the call is being
23 made, and a telephone number or address at which the person or entity can be
24 contacted.” 47 C.F.R. 64.1200(d)(4).

25 20. These policies and procedures prohibit a company from making
26 telemarketing calls unless they have implemented these policies and procedures.
27 47 CFR 64.1200(d).
28

1 32. Plaintiff placed his residential telephone number on the National Do
2 Not Call Registry in 2003.

3 33. It has been continuously on the Do Not Call Registry since that time.

4 34. In July and August of 2019, Plaintiff received numerous solicitation
5 calls.

6 35. During a number of those calls, Plaintiff requested that he no longer
7 be called.

8 36. During one of the calls, Defendant informed Plaintiff that he would be
9 placed on its do not call list

10 37. The calls continued.

11 38. Plaintiff received another solicitation call on August 8, 2019 and
12 lodged a public complaint against the company on the internet.

13 39. While Defendant responded and apologized while acknowledging the
14 solicitation, they continued to make solicitation calls, including another call in
15 September of 2019.

16 40. This conduct demonstrates that the Defendant engages in
17 telemarketing conduct despite not having:

18 (i) A written policy pertaining to “do not call” requests;

19 (ii) Not training their personnel on the existence or use of any
20 internal “do not call” list;

21 (iii) Not recording or honoring “do not call” requests.

22 41. Plaintiff’s privacy has been violated by the above-described calls
23 from, or on behalf of, Southern California Telephone Company. The calls were
24 annoying, harassing nuisances.

25 42. The calls came from (800) 481-4999.

26 43. Numerous individuals have complained about calls from that number:
27
28

1 Caller left a message saying they were "Jackie from the
2 Southern California Telephone Company" calling
3 "regarding your Verizon monthly residential bill", but I do
4 not have a Verizon monthly residential bill. Did not
5 respect "Do Not Call" list. Also, although they called using
6 a caller ID of "Temecula" from 1-951-719-8700, the
7 woman gave a callback number of 1-800-481-4999 X430

8 Received call on cell phone (so it costs me money),
9 supposedly from Frontier regarding a discount I'm eligible
10 for, with return number of 800-481-4999. Call was made
11 from 443-765-1487. It is definitely a scam. Not only do all
12 scammers ignore the Do Not Call (hence they are
13 scammers)

14 Rec'd call today from same company. I also am on DNC
15 list.

16 See <https://800notes.com/Phone.aspx/1-800-481-4999> (last visited September 25,
17 2019).

18 44. Plaintiff did not provide his prior express written consent to Southern
19 California Telephone Company to receive the calls.

20 45. Plaintiff and all members of the Classes, defined below, have been
21 harmed by the acts of Southern California Telephone Company because their
22 privacy has been violated, they were annoyed and harassed, and, in some instances,
23 they were charged for incoming calls. The calls occupied their telephone lines,
24 rendering them unavailable for legitimate communication.

25 VI. CLASS ACTION ALLEGATIONS

26 46. Class Definition. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
27 Plaintiff brings this case on behalf of the following classes:

28 National Do Not Call Registry Class: All persons in the
United States to whom: (a) Defendant and/or any person
or entity acting on Defendant's behalf initiated more than
one telephone solicitation call; (b) promoting Defendant's

1 goods or services; (c) in a 12-month period; (d) on their
2 residential telephone line, including on a cellular
3 telephone; (e) whose residential telephone number had
4 been on the National Do-Not-Call registry for at least 31
5 days; and (f) at any time in the period that begins four
6 years before the date of filing this Complaint to trial.

7 Internal Do Not Call List Class: All persons in the United
8 States to whom: (a) Defendant and/or any person or entity
9 acting on Defendant's behalf initiated more than one
10 telephone solicitation call; (b) promoting Defendant's
11 goods or services; (c) on their cellular telephone line or
12 residential telephone line; and (d) at any time in the period
13 that begins four years before the date of filing this
14 Complaint to trial.

15 47. Numerosity. The Classes are so numerous that joinder of all members
16 is impracticable. On information and belief, the Classes have more than 100
17 members. Moreover, the disposition of the claims of the Classes in a single action
18 will provide substantial benefits to all parties and the Court.

19 48. Commonality. There are numerous questions of law and fact common
20 to Plaintiff and members of the Classes. These common questions of law and fact
21 include, but are not limited to, the following:

- 22 a. Whether Defendant violated the TCPA by making
23 telemarketing calls to numbers on the National Do Not Call Registry;
- 24 b. Whether Defendant maintained a written "do not call"
25 policy;
- 26 c. Whether Defendant trained their employees or agents
27 engaged in telemarketing on the existence and usage of any "do not call" policy;
- 28 d. Whether Defendants recorded or honored "do not call"
requests;

1 e. Whether Defendant placed calls without obtaining the
2 recipients' prior express invitation or permission for the call; and

3 f. Whether the Plaintiff and the Classes members are entitled
4 to statutory damages because of Defendant's actions.

5 49. Typicality. Plaintiff's claims are typical of the claims of the Classes.
6 Plaintiff's claims and those of the Classes arise out of the same course of conduct
7 by Southern California Telephone Company and are based on the same legal and
8 remedial theories.

9 50. Adequacy. Plaintiff will fairly and adequately protect the interests of
10 the Classes. Plaintiff has retained competent and capable counsel with experience
11 in TCPA class action litigation. Plaintiff and his counsel are committed to
12 prosecuting this action vigorously on behalf of the Classes and have the financial
13 resources to do so. Neither Plaintiff nor his counsel have interests contrary to or
14 conflicting with those of the proposed Classes.

15 51. Predominance. Southern California Telephone Company has engaged
16 in a common course of conduct toward Plaintiff and members of the Classes. The
17 common issues arising from this conduct that affect Plaintiff and members of the
18 Classes predominate over any individual issues. For example, the TCPA's
19 statutory damages obviate the need for mini-trials on actual damages. Adjudication
20 of these common issues in a single action has important and desirable advantages,
21 including judicial economy.

22 52. Superiority. A class action is the superior method for the fair and
23 efficient adjudication of this controversy. Classwide relief is essential to compel
24 Southern California Telephone Company to comply with the TCPA. The interest
25 of individual members of the Classes in individually controlling the prosecution of
26 separate claims against Southern California Telephone Company is small because
27 the damages in an individual action for violation of the TCPA are small.
28

1 Management of these claims is likely to present significantly fewer difficulties than
2 are presented in many class actions because the calls at issue are all automated and
3 because the TCPA articulates bright-line standards for liability and damages.
4 Class treatment is superior to multiple individual suits or piecemeal litigation
5 because it conserves judicial resources, promotes consistency and efficiency of
6 adjudication, provides a forum for small claimants and deters illegal activities.
7 There will be no significant difficulty in the management of this case as a class
8 action.

9 53. Injunctive and Declaratory Relief is Appropriate. Southern California
10 Telephone Company has acted on grounds generally applicable to the Classes,
11 thereby making final injunctive relief and corresponding declaratory relief with
12 respect to the Classes appropriate on a classwide basis.

13 54. Notice. Plaintiff anticipates that the mailing address and/or electronic
14 mailing address of Class members will be obtained during discovery from
15 Defendant's calling records (potentially in conjunction with third-party databases
16 that map phone numbers to such addresses). Plaintiff anticipates that Class counsel
17 will notify Class members in writing at such addresses.
18

19 **VII. FIRST CLAIM FOR RELIEF**

20 **Violations of 47 C.F.R. § 64.1200(c) & 47 U.S.C. § 227(c)(5) – National Do Not 21 Call Registry**

22 55. Plaintiff realleges and incorporates by reference each and every
23 allegation set forth in the preceding paragraphs.

24 56. The foregoing acts and omissions of Defendant, either directly or
25 through the actions of others, constitute numerous and multiple violations of 47
26 C.F.R. § 64.1200(c), by initiating more than one telephone solicitation within a 12-
27 month period to Plaintiff and members of the National Do Not Call Registry Class
28

1 who have registered their telephone numbers with the National Do-Not-Call
2 Registry for at least 31 days.

3 57. As a result of Defendant's and/or its affiliates, agents, and/or other
4 persons or entities acting on Defendant's behalf's violations of 47 C.F.R.
5 § 64.1200(c), Plaintiff and members of the National Do Not Call Registry Class are
6 entitled to an award of \$500 in statutory damages for each and every call initiated
7 to them, after registering their telephone numbers with the National Do Not Call
8 Registry for at least 31 days, pursuant to 47 U.S.C. § 227(c)(5)(B).

9 58. Furthermore, Plaintiff requests that the Court use its discretion and
10 treble the requested damages to \$1,500 for each and every call initiated to them,
11 after registering their telephone numbers with the National Do Not Call Registry
12 for at least 31 days, pursuant to 47 U.S.C. § 227(c)(5)(B).

13
14 **VIII. SECOND CLAIM FOR RELIEF**
15 **Violations of 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5) - Internal Do Not**
16 **Call Provisions**

17 59. Plaintiff realleges and incorporates by reference each allegation set
18 forth in the preceding paragraphs.

19 60. The foregoing acts and omissions of Defendant and/or its affiliates,
20 agents, and/or other persons or entities acting on Defendant's behalf constitute
21 numerous and multiple violations of 47 C.F.R. § 64.1200(d), by initiating any call
22 for telephone solicitation purposes to Plaintiff and members of the Internal Do Not
23 Call List Class, without following procedures for maintaining a list of persons who
24 request not to receive telephone solicitation calls ("internal do-not-call list"). This
25 includes Defendant's failure to properly record do-not-call requests, failure to
26 maintain a record of do-not-call requests, and failure to honor do-not-call requests.

27 61. As a result of Defendant's and/or its affiliates, agents, and/or other
28 persons or entities acting on Defendant's behalf's violations of 47 C.F.R.

1 § 64.1200(d), Plaintiff and members of the Internal Do Not Call List Class are
2 entitled to an award of \$500 in statutory damages for each and every call in
3 violation of the internal do-not-call list regulation, pursuant to 47 U.S.C.
4 § 227(c)(5)(B).

5 62. Furthermore, Plaintiff requests that the Court use its discretion and
6 treble the requested damages to \$1,500 for each and every call in violation of the
7 internal do-not-call list regulation, pursuant to 47 U.S.C. § 227(c)(5)(B).

8 63. Plaintiff and members of the Internal Do Not Call List Class are also
9 entitled to and do seek injunctive relief prohibiting Defendant and/or its affiliates,
10 agents, and/or other persons or entities acting on Defendant's behalf from violating
11 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of
12 persons who request not to receive telephone solicitation calls in the future,
13 pursuant to 47 U.S.C. § 227(c)(5)(A).

14 **IX. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on his own behalf and on behalf of all members of
16 the Classes, prays for judgment against Southern California Telephone Company
17 as follows:

- 18 A. Certification of the proposed Classes;
- 19 B. Appointment of Plaintiff as representative of the Classes;
- 20 C. Appointment of the undersigned counsel as counsel for the Classes;
- 21 D. A declaration that actions complained of herein by Southern
22 California Telephone Company and/or its affiliates, agents, or related entities
23 violate the TCPA;
- 24 E. An award to Plaintiff and the Classes of damages, as allowed by law;
- 25 F. An award to Plaintiff and the Classes of attorney's fees and costs, as
26 allowed by law and/or equity;
- 27
- 28

1 G. Leave to amend this Complaint to conform to the evidence presented
2 at trial; and

3 H. Orders granting such other and further relief as the Court deems
4 necessary, just and proper.
5

6 **X. DEMAND FOR JURY**

7 Plaintiff demand a trial by jury for all issues so triable.

8 RESPECTFULLY SUBMITTED AND DATED this 2nd day of October,
9 2019.
10

11 SUSAN BROWN LEGAL SERVICES

12
13 By: /s/ Susan S. Brown, SBN #287986
14 Susan S. Brown, SBN #287986
15 388 Market Street, Suite 1300
16 San Francisco, CA 94111
17 Telephone: (415) 712-3026
18 Email: susan@susanbrownlegal.com

19 *Attorney for Plaintiff and the Proposed Classes*
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Southern California Telephone Company Illegally Placed Calls to Numbers on Do-Not-Call Registry, Class Action Claims](#)
