



1 John P. Kristensen (SBN 224132)
 2 David L. Weisberg (SBN 211675)
KRISTENSEN WEISBERG, LLP
 3 12540 Beatrice Street, Suite 200
 4 Los Angeles, California 90066
 Telephone: (310) 507-7924
 5 Fax: (310) 507-7906
 6 *john@kristensenlaw.com*
david@kristensenlaw.com

7
 8 Jarrett L. Ellzey (*Pro Hac Vice* pending)
 W. Craft Hughes (*Pro Hac Vice* pending)
 9 **HUGHES ELLZEY, LLP**
 2700 Post Oak Boulevard, Suite 1120
 10 Houston, Texas 77056
 Telephone: (713) 554-2377
 11 Fax: (888) 995-3335
 12 *jarrett@hughesellzey.com*
 13 *craft@hughesellzey.com*

14 *Attorneys for Plaintiff and all others*
 15 *similarly situated*

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

17 ERIKA CARRANZA, an individual,
 18 on behalf of herself and all others
 19 similarly situated,

20 Plaintiffs,

21 vs.

22 CREDITREPAIR.COM, INC., a
 23 Florida Limited Liability Company;
 24 and DOE INDIVIDUALS, inclusive,
 and each of them,

25 Defendants.
 26
 27

Case No.: '19CV0164 GPC WVG

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.* (Do Not Call); and
- (2) Violations of the Telephone Consumer Protection Act, 47 C.F.R. § 64.1200(d) (Internal Do Not Call).

DEMAND FOR JURY TRIAL

1 Plaintiff Erika Carranza (“Carranza” or “Plaintiff”), on behalf of herself
2 and all others similar situated, alleges the follow upon information and belief
3 based 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 defendant CREDITREPAIR.COM, INC. and
8 INDIVIDUAL DOES (collectively “Defendants”) in contacting Plaintiff, as well
9 as knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
10 telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. §
11 227, *set seq.* (“TCPA”).

12 2. Defendant CREDITREPAIR.COM, INC. sells solutions to improve
13 personal credit scores. In an effort to solicit potential customers,
14 CreditRepair.com, Inc. recruited, or employed call centers, to place telephone
15 calls, *en masse*, to consumers across the country. On information and belief,
16 Defendant and or its agents purchase phone number databases of consumers’
17 contact information and creates an electronic database from which Defendant
18 makes automated calls.

19 3. Defendants conducted (and continue to conduct) wide scale
20 telemarketing campaigns and repeatedly made unsolicited calls to consumers’
21 telephones—whose numbers appear on the National Do Not Call Registry—
22 without consent, all in violation of the TCPA.

23 4. Defendants continued the calls, even after Plaintiff explicitly told
24 them to stop and revoked any purported assent to receive the illegal calls.

25 5. By making the telephone calls at issue in this Complaint, Defendant
26 caused Plaintiff and the members of a putative Class of consumers (defined
27 below) actual harm, including the aggravation, nuisance, and invasion of privacy
28 that necessarily accompanies the receipt of unsolicited and harassing telephone





1 calls, as well as the monies paid to their carriers for the receipt of such telephone
2 calls.

3 6. Plaintiff brings this class action against Defendants to secure redress
4 because Defendants willfully violated the TELEPHONE CONSUMER PROTECTION
5 ACT (“TCPA”), 47 U.S.C § 227, *et seq.* by causing unsolicited calls to be made
6 to Plaintiff’s and other class members’ telephones through the use of an auto-
7 dialer and/or artificial or pre-recorded voice message.

8 7. Defendants conducted (and continue to conduct) wide scale
9 telemarketing campaigns and repeatedly made/make unsolicited calls to
10 consumers’ telephones—whose numbers appear on the National Do Not Call
11 Registry—without consent, all in violation of the Telephone Consumer
12 Protection Act, 47 U.S.C. § 227 (the “TCPA”), including to Plaintiff and other
13 class members, whose phone numbers were registered with the Do Not Call
14 Registry, at least twice in a 12 month period.

15 8. By making the telephone calls at issue in this Complaint,
16 Defendants caused Plaintiff and the members of the putative Classes of
17 consumers (defined below) actual harm, including the aggravation, nuisance, and
18 invasion of privacy that necessarily accompanies the receipt of unsolicited and
19 harassing telephone calls, as well as the monies paid to their carriers for the
20 receipt of such telephone calls.

21 9. Congress enacted the TCPA to protect consumers from unsolicited
22 telephone calls exactly like those alleged in this case. In response to Defendant’s
23 unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction
24 requiring Defendant to cease all illegal telephone calling activities to her cellular
25 telephone, and other individuals cellular phones and an award of statutory
26 damages under the TCPA equal to \$500.00 per violation, together with court
27 costs, reasonable attorneys’ fees (including under Cal. *Code Civ. Proc.* §
28 1021.5), and treble damages (for knowing and/or willful violations). Plaintiff

1 also seeks an award of court costs and reasonable attorney’s fees.

2 **PARTIES**

3 10. Plaintiff ERIKA CARRANZA (“Plaintiff” or “Carranza”) is a
4 citizen of the State of California who resides in San Diego County, California.

5 11. Defendant CREDIT REPAIR.COM, INC. (“Defendant” or “Credit
6 Repair”) is organized under the laws of the State of Florida. Defendant maintains
7 its principal place of business in Salt Lake City, Utah. Defendant may be served
8 with process by serving its registered agent, CT Corporation System, 1200 South
9 Pine Island Road, Plantation, FL 33324.

10 12. The true names and capacities of the Defendants sued herein as
11 DOE INDIVIDUALS, inclusive, are currently unknown to Plaintiff, who
12 therefore sues such Defendants by fictitious names. Each of the Defendants
13 designated herein as a DOE is legally responsible for the unlawful acts alleged
14 herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the
15 true names and capacities of the DOE Defendants when such identities become
16 known.

17 13. Plaintiff does not yet know the identity of Defendants’
18 employees/agents, identified as DOE INDIVIDUALS that had direct, personal
19 participation in or personally authorized the conduct found to have violated the
20 statute, and were not merely tangentially involved. They are named tentatively as
21 numerous District Courts have found that individual officers/principals of
22 corporate entities may be personally liable (jointly and severally) under the
23 TCPA if they had direct, personal participation in or personally authorized the
24 conduct found to have violated the statute, and were not merely tangentially
25 involved. *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 899 (W.D. Tex.
26 2001); *Sandusky Wellness Center, LLC v. Wagner Wellness, Inc.*, No. 3:12 CV
27 2257, 2014 WL 1333472, at *3 (N.D. Ohio March 28, 2014); *Maryland v.*
28 *Universal Elections*, 787 F.Supp.2d 408, 415–416 (D.Md. 2011); *Baltimore-*



1 *Washington Tel Co. v. Hot Leads Co.*, 584 F.Supp.2d 736, 745 (D.Md. 2008);
2 *Covington & Burling v. Int'l Mktg. & Research, Inc.*, No. CIV.A. 01-0004360,
3 2003 WL 21384825, at *6 (D.C. Super Apr. 17, 2003); *Chapman v. Wagener*
4 *Equities, Inc.*, No. 09 C 07299, 2014 WL 540250, at *16–17 (N.D. Ill. Feb. 11,
5 2014); *Versteeg v. Bennett, Deloney & Noyes, P.C.*, 775 F.Supp.2d 1316, 1321
6 (D.Wy.2011). Upon learning of the identities of said individuals, Plaintiff will
7 move to amend to name the individuals as defendants.

8 14. Plaintiff is informed and believes and thereon alleges that at all
9 relevant times, each and every Defendant was acting as an agent and/or
10 employee of each of the other Defendants and was the owner, agent, servant,
11 joint venturer and employee, each of the other and each was acting within the
12 course and scope of its ownership, agency, service, joint venture and
13 employment with the full knowledge and consent of each of the other
14 Defendants. Plaintiff is informed and believes and thereon alleges that each of
15 the acts and/or omissions complained of herein was made known to, and ratified
16 by, each of the other Defendants.

17 15. At all times mentioned herein, each and every Defendant was the
18 successor of the other and each assumes the responsibility for each other's acts
19 and omissions.

20 **JURISDICTION & VENUE**

21 16. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because the
22 Plaintiff, a resident of California, seeks relief on behalf of a Class, which will
23 result in at least one class member belonging to a different state than that of the
24 Defendant, which is based in California.

25 17. Plaintiff also seeks up to \$1,500.00 in damages for each call in
26 violation of the TCPA, which, when aggregated among a proposed class in the
27 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
28 Therefore, both diversity jurisdiction and the damages threshold under the Class



1 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
2 jurisdiction.

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

5 19. The Court has personal jurisdiction over Defendant because it
6 conduct significant business in this District, and the unlawful conduct alleged in
7 this Complaint occurred in, was directed to, and/or emanated from this District.

8 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
9 because the wrongful conduct giving rise to this case occurred in, was directed
10 to, and/or emanated from this District. Defendants were targeting individuals in
11 this district. The calls were made with the intent to sell credit repair products and
12 services.

13 21. Defendant is subject to specific personal jurisdiction in this District
14 because it has continuous and systematic contacts with this District through their
15 marketing efforts and services that target this District, and the exercise of
16 personal jurisdiction over Defendant in this District does not offend traditional
17 notions of fair play or substantial justice. The Court has personal jurisdiction
18 over Defendants because they conduct significant business in this District, and
19 the unlawful conduct alleged in this Complaint occurred in, was directed to,
20 and/or emanated from this District.

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

24 **TELEPHONE CONSUMER PROTECTION ACT**

25 23. Congress enacted the TCPA in 1991 to address certain practices
26 thought to be an invasion of consumer privacy and a risk to public safety. The
27 TCPA and the Federal Communications Commission’s (“FCC”) implemented
28 rules prohibit: (1) making telemarketing calls using an artificial or prerecorded

1 voice to residential telephones without prior express consent; and (2) making any
 2 non-emergency call using an automatic telephone dialing system (hereinafter
 3 “ATDS”) or an artificial or prerecorded voice to a wireless telephone number
 4 without prior express consent. If the call includes or introduces an advertisement,
 5 or constitutes telemarketing, consent must be in writing.¹ The TCPA grants
 6 consumers a private right of action, with a provision for \$500 or the actual
 7 monetary loss in damages for each violation, whichever is greater, and treble
 8 damages for each willful or knowing violation, as well as injunctive relief.

9 24. In 2008, the FCC held that “a creditor on whose behalf an
 10 autodialed or prerecorded message call is made to a wireless number bears the
 11 responsibility for any violation of the Commission’s rules.” In re Rules and
 12 Regulations Implementing the Telephone Consumer Protection Act, Declaratory
 13 Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559,
 14 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, No. 12 C
 15 4069, 2012 WL 7062748 (N.D. Ill. Dec. 31, 2012).

16 25. The TCPA restricts telephone solicitations (*i.e.*, telemarketing) and
 17 the use of automated telephone equipment. The TCPA limits the use of automatic
 18 dialing systems, artificial or prerecorded voice messages, SMS text messages,
 19 and fax machines. It also specifies several technical requirements for fax
 20 machines, autodialers, and voice messaging systems—principally with
 21 provisions requiring identification and contact information of the entity using the
 22 device to be contained in the message.

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 1 ¹ Prior express written consent means “an agreement, in writing, bearing the
 signature of the person called that clearly authorizes the seller to deliver or
 cause to be delivered to 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 26. In its initial implementation of the TCPA rules, the FCC included an
2 exemption to its consent requirement for prerecorded telemarketing calls. Where
3 the caller could demonstrate an “established business relationship” with a
4 customer, the TCPA permitted the caller to place pre-recorded telemarketing
5 calls to residential lines. The new amendments to the TCPA, effective October
6 16, 2013, eliminate this established business relationship exemption. Therefore,
7 all pre-recorded telemarketing calls to residential lines and wireless numbers
8 violate the TCPA if the calling party does not first obtain express written consent
9 from the called party.

10 27. As of October 16, 2013, unless the recipient has given prior express
11 written consent, the TCPA and Federal Communications Commission (FCC)
12 rules under the TCPA generally:

- 13 • Prohibits solicitors from calling residences before 8 a.m.
14 or after 9 p.m., local time.
- 15 • Requires solicitors provide their name, the name of the
16 person or entity on whose behalf the call is being made,
17 and a telephone number or address at which that person or
18 entity may be contacted.
- 19 • Prohibits solicitations to residences that use an artificial
20 voice or a recording.
- 21 • Prohibits any call or text made using automated telephone
22 equipment or an artificial or prerecorded voice to a
23 wireless device or telephone.
- 24 • Prohibits any call made using automated telephone
25 equipment or an artificial or prerecorded voice to an
26 emergency line (e.g., “911”), a hospital emergency
27 number, a physician’s office, a hospital/health care
28 facility/elderly room, a telephone, or any service for which
the recipient is charged for the call.



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- Prohibits autodialed calls that engage two or more lines of a multi-line business.
- Prohibits unsolicited advertising faxes.
- Prohibits certain calls to members of the Do-Not-Call Registry

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

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

A. DO NOT CALL VIOLATIONS OF THE TCPA

30. There are just a handful of elements need to be proven for violations of the Do Not Call provision of the TCPA.

31. More Than One Call within Any 12 Month Period. 47 U.S.C. § 227(c) provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.

32. Calls to Phones on the Do Not Call List. The TCPA’s implementing regulation—47 C.F.R. § 64.1200(c)—provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who

1 has registered his or her telephone number on the national do-not-call registry of
 2 persons who do not wish to receive telephone solicitations that is maintained by
 3 the federal government.” See 47 C.F.R. § 64.1200(c).

4 33. Including Wireless Lines on the Do Not Call List. Owners of
 5 wireless telephone numbers (aka mobile or cellular phones) receive the same
 6 protections from the Do Not Call provision as owners or subscribers of wireline
 7 (“landline”) phone numbers. 47 C.F.R. § 64.1200(e), provides that 47 C.F.R. §§
 8 64.1200(c) and (d) “are applicable to any person or entity making telephone
 9 solicitations or telemarketing calls to wireless telephone numbers to the extent
 10 described in the Commission’s Report and Order, CG Docket No. 02-278, FCC
 11 03-153, ‘Rules and Regulations Implementing the Telephone Consumer
 12 Protection Act of 1991,’” which the Report and Order, in turn, provides as
 13 follows:

14
 15 The Commission’s rules provide that companies making telephone
 16 solicitations to residential telephone subscribers must comply with
 17 time of day restrictions and must institute procedures for
 18 maintaining do-not-call lists. For the reasons described above, we
 19 conclude that these rules apply to calls made to wireless telephone
 numbers. We believe that wireless subscribers should be afforded
 the same protections as wireline subscribers.

20 34. The Affirmative Defense of Prior Express Consent. The Ninth
 21 Circuit has defined “express consent” to mean “clearly and unmistakably stated.”
 22 *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009). “Prior
 23 express consent is an affirmative defense for which the defendant bears the burden
 24 of proof.” See *Grant v. Capital Management Services, L.P.*, No. 11-56200, 2011
 25 WL 3874877, at *1, n.1. (9th Cir. Sept. 2, 2011) (“express consent is not an
 26 element of a TCPA plaintiff’s prima facie case, but rather is an affirmative defense
 27 for which the defendant bears the burden of proof”); see also *Robbins v. Coca-*
 28 *Cola Company*, No. 13-cv-132, 2013 WL 2252646, at *2 (S.D. Cal. May 22,

1 2013).

2 **FACTUAL ALLEGATIONS**

3 35. Defendant is a company that sells solutions to improve personal
4 credit scores. During spring 2015 (starting in March 2015), in an effort to solicit
5 potential customers, Defendant began making telephone calls, *en masse*, to
6 consumers across the country. On information and belief Defendant and or its
7 agents purchase “leads” containing consumer’s contact information and creates
8 an electronic database from which Defendant makes automated calls.

9 36. Defendant knowingly made these telemarketing calls without the
10 prior express written consent of the call recipients, and knowingly continue to
11 call them after requests to stop. As such, Defendant not only invaded the
12 personal privacy of Plaintiff and members of the putative Class, but also
13 intentionally and repeatedly violated the TCPA.

14 **FACTS SPECIFIC TO PLAINTIFF ERIKA CARRANZA**

15 37. On or about March 16, 2009 Plaintiff Carranza registered her
16 cellular phone number with the area code (619) and ending in 0058 with the
17 National Do Not Call Registry.

18 38. Plaintiff Carranza is the regular carrier and exclusive user of the
19 telephone assigned the number ending in 0058. The number is assigned to a
20 cellular telephone service for which Plaintiff Carranza is charged for incoming
21 calls pursuant to 47 U.S.C. § 227(b)(1).

22 39. In the spring of 2015, Plaintiff Carranza began receiving calls on her
23 cellular telephone from the number (718) 509-9927, claiming to be Defendant,
24 CreditRepair.com

25 40. Plaintiff Carranza never had a business relationship with Defendant.
26 Yet, she received at least 9 calls from Defendant.

27 41. Plaintiff Carranza never provided Defendant with prior consent to
28 contact her on her phone via a text message or telephone call.



1 to the conduct of Defendants; and (c) is likely to be redressed by a favorable
 2 judicial decision. *See Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016); *Robins v.*
 3 *Spokeo*, 867 F.3d 1108 (9th Cir. 2017) (cert denied. 2018 WL 491554 (Jan. 22
 4 2018)); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); and *Chen v.*
 5 *Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016).

6 **A. INJURY IN FACT**

7 51. A Plaintiff's injury must be both "concrete" and "particularized" in
 8 order to satisfy the requirements of Article III of the Constitution. *Id.*

9 52. For an injury to be concrete it must be a de facto injury, meaning it
 10 actually exists. In the present case, Plaintiff took the affirmative step of enrolling
 11 herself on the National Do-Not-Call Registry for the purpose of preventing
 12 marketing calls to their telephones. Such telemarketing calls are a nuisance, an
 13 invasion of privacy, and an expense to Plaintiff. *See Soppet v. enhanced*
 14 *Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of these injuries
 15 are present in this case. *See also Chen, supra.*

16 53. Furthermore, the Third Circuit recently stated, Congress found that
 17 "[u]nsolicited telemarketing phone calls or text messages, by their nature, invade
 18 the privacy and disturb the solitude of their recipients," *Van Patten*, 847 F.3d at
 19 1043, and sought to protect the same interests implicated in the traditional
 20 common law cause of action. Put differently, Congress was not inventing a new
 21 theory of injury when it enacted the TCPA. Rather, it elevated a harm that, while
 22 "previously inadequate in law," was of the same character of previously existing
 23 "legally cognizable injuries." *Spokeo*, 136 S.Ct. at 1549. *Spokeo* addressed, and
 24 approved, such a choice by Congress. *Susinno v. Work Out World Inc.*, No. 16-
 25 3277, 2017 WL 2925432, at *4 (3d Cir. July 10, 2017).

26 54. For an injury to be particularized means that the injury must affect
 27 the plaintiff in a personal and individual way. *See Spokeo*, 136 S.Ct. at 1548. In
 28 the instant case, Defendants placed calls to Plaintiff's phone. It was Plaintiff's



1 personal privacy and peace that Defendants invaded by placing the calls to her
2 phone. Furthermore, Plaintiff is the person who pays for the phone, and is the
3 regular carrier and user of the phone. All of these injuries are particular to
4 Plaintiff.

5 **B. TRACEABLE TO THE CONDUCT OF EACH SEPARATE DEFENDANT**

6 55. Plaintiff must allege at the pleading stage of the case facts to show
7 that her injury is traceable to the conduct of Defendants. In this case, Plaintiff
8 satisfies this requirement by alleging that Defendants, and/or agent of Defendants
9 on behalf of Defendants, placed illegal calls to Plaintiff's phone.

10 **C. INJURY LIKELY TO BE REDRESSED BY A FAVORABLE JUDICIAL OPINION**

11 56. The third prong to establish standing at the pleadings phase requires
12 Plaintiff to allege facts to show that the injury is likely to be redressed by a
13 favorable judicial opinion. In the present case, Plaintiff's Prayers for Relief
14 include a request for damages for each call made by Defendants, as authorized by
15 statute in 47 U.S.C. § 227. The statutory damages were set by Congress and
16 specifically redress the financial damages suffered by Plaintiff and the members
17 of the putative class. Furthermore, Plaintiff's Prayers for Relief request
18 injunctive relief to restrain Defendant from the alleged abusive practices in the
19 future. The award of monetary damages and the order for injunctive relief redress
20 the injuries of the past, and prevent further injury in the future.

21 57. Because all standing requirements of Article III of the U.S.
22 Constitution have been met, as laid out in *Spokeo*, and in the context of a TCPA
23 claim, as explained by the Ninth Circuit in *Chen v. Allstate Inc. Co.*, 819 F.3d
24 1136 (9th Cir. 2016), Plaintiff has standing to sue Defendant on the stated
25 claims. Plaintiffs have standing to sue Defendants on the stated claims.

26 **CLASS ALLEGATIONS**

27 58. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules
28 of Civil Procedure and/or other applicable law, on behalf of themselves and all



1 others similarly situated, as a member of a proposed class (hereafter “the DNC
2 Class” and the “Internal DNC Class”).

3 59. The DNC Class is defined as follows:

4 All persons within the United States who: (1) received more than one
5 telephone call made by or on behalf of Defendant(s) within a 12-month
6 period, in the four years preceding the initial Complaint to trial; and (2) to
7 a telephone number that had been registered with the National Do Not Call
8 Registry for at least 30 days.

9 60. The Internal DNC Class is defined as follows:

10 All persons in the United States to whom: (a) received more than one
11 telephone call made by or on behalf of Defendant(s); (b) promoting
12 Defendants’ goods or services; (c) more than 30 days after requesting not
13 to receive further calls; (d) in a 12-month period; (e) on their cellular
14 telephone line or residential telephone line; and (f) at any time in the
15 period that begins four years before the date of filing this Complaint to
16 trial.

17 61. **Numerosity:** The proposed Classes are so numerous that individual
18 joinder of all members is impracticable. Due to the nature of the trade and
19 commerce involved, Plaintiffs do not know the number of members in the
20 Classes, but believes the Class members number in the thousands, if not more.
21 Plaintiffs allege that the Class may be ascertained by the records maintained by
22 Defendants.

23 62. Plaintiffs and members of the Classes were harmed by the acts of
24 Defendant(s) in at least the following ways: Defendants illegally contacted
25 Plaintiffs and Class members via their telephones thereby causing Plaintiff and
26 Class members, without their “prior express consent,” to incur certain charges or
27 reduced telephone time for which Plaintiffs and Class members had previously
28 paid by having to retrieve or administer message(s) left by Defendant during

1 those illegal calls, and invading the privacy of said Plaintiffs and Class members.

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

- 9 (a) Whether, within the four years prior to the filing of this Complaint,
10 Defendant(s) made any calls (other than a call made for emergency
11 purposes or made with the prior express consent of the called party)
12 to a Class member using any automated dialing system or an
13 artificial or prerecorded voice to any telephone number assigned to a
14 cellular telephone service;
- 15 (b) Whether, within the four years prior to the filing of this Complaint,
16 Defendant(s) made any calls (other than a call made for emergency
17 purposes or made with the prior express consent of the called party)
18 to a Class member using any automated dialing system or an
19 artificial or prerecorded voice to any telephone number assigned to a
20 cellular telephone service;
- 21 (c) Whether Defendants systematically made telephone calls to
22 consumers whose telephone numbers were registered with the
23 National do Not Call Registry;
- 24 (d) Whether Defendants failed to comply with the internal DNC
25 mandates of 47 C.F.R. §§ 64.1200(d).
- 26 (e) Whether members of the Class are entitled to treble damages based
27 on the willfulness of Defendants' conduct;
- 28 (f) Whether Plaintiff and the Class members were damaged thereby,





1 and the extent of the statutory damages for each such violation; and
2 (g) Whether the Defendant(s) should be enjoined from engaging in such
3 conduct in the future.

4 64. **Typicality:** Plaintiffs' claims are typical of the claims of members
5 of the Classes, as Plaintiffs were subject to the same common course of conduct
6 by Defendants as all Class members. The injuries to each member of the Class
7 were caused directly by Defendant(s)' wrongful conduct as alleged herein.

8 65. **Adequacy of Representation:** Plaintiffs will fairly and adequately
9 represent and protect the interests of the Class. Plaintiffs have retained counsel
10 with substantial experience in handling complex class action litigation. Plaintiffs
11 and their counsel are committed to prosecuting this action vigorously on behalf
12 of the Class and have financial resources to do so.

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

25 67. Moreover, individualized litigation would also present the potential
26 for varying, inconsistent, or incompatible standards of conduct for Defendants,
27 and would magnify the delay and expense to all parties and to the court system
28 resulting from multiple trials of the same factual issues. The adjudication of

1 individual Class members’ claims would also, as a practical matter, be
2 dispositive of the interests of other members not parties to the adjudication, and
3 could substantially impair or impede the ability of other Class members to
4 protect their interests.

5 68. Plaintiff and the members of the Classes have suffered and will
6 continue to suffer harm as a result of Defendant(s)’ unlawful and wrongful
7 conduct. Defendant(s) have acted, or refused to act, in respects generally
8 applicable to the Class, thereby making appropriate final and injunctive relief
9 with regard to the members of the Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **DNC CLAIM IN VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**
12 **47 U.S.C. § 227, ET SEQ. (64 C.F.R. § 64.1200(C))**

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

14 69. Plaintiff hereby incorporates by reference and re-alleges each and
15 every allegation set forth in each and every preceding paragraph of this
16 Complaint, as though fully set forth herein.

17 70. 47 U.S.C. § 227(c) provides that any “person who has received
18 more than one telephone call within any 12-month period by or on behalf of the
19 same entity in violation of the regulations prescribed under this subsection may”
20 bring a private action based on a violation of said regulations, which were
21 promulgated to protect telephone subscribers’ privacy rights to avoid receiving
22 telephone solicitations to which they object.

23 71. The TCPA’s implementing regulation—47 C.F.R. § 64.1200(c)—
24 provides that “[n]o person or entity shall initiate any telephone solicitation” to
25 “[a] residential telephone subscriber who has registered his or her telephone
26 number on the national do-not-call registry of persons who do not wish to receive
27 telephone solicitations that is maintained by the federal government.” *See* 47
28 C.F.R. § 64.1200(c). Defendants violated 47 C.F.R. § 64.1200(c) by initiating, or





1 causing to be initiated, telephone solicitations to wireless and residential
2 telephone subscribers such as Plaintiff and the DNC Class members who
3 registered their respective telephone numbers on the National Do Not Call
4 Registry, a listing of persons who do not wish to receive telephone solicitations
5 that is maintained by the federal government. These consumers requested to not
6 receive calls from Defendants, as set forth in 47 C.F.R. § 64.1200(d)(3).

7 72. 47 C.F.R. § 64.1200(e), provides that 47 C.F.R. §§ 64.1200(c) and
8 (d) “are applicable to any person or entity making telephone solicitations or
9 telemarketing calls to wireless telephone numbers to the extent described in the
10 Commission’s Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules
11 and Regulations Implementing the Telephone Consumer Protection Act of
12 1991,’” which the Report and Order, in turn, provides as follows:

13
14 The Commission’s rules provide that companies making telephone
15 solicitations to residential telephone subscribers must comply with
16 time of day restrictions and must institute procedures for
17 maintaining do-not-call lists. For the reasons described above, we
18 conclude that these rules apply to calls made to wireless telephone
19 numbers. We believe that wireless subscribers should be afforded
20 the same protections as wireline subscribers.

21 73. As a result of Defendants and/or their affiliates, agents, and/or other
22 persons or entities acting on Defendants’ behalf violations of 47 C.F.R. §
23 64.1200(c), Plaintiff and members of the DNC Class are entitled to an award of
24 \$500 in statutory damages for each and every call initiated to them, after
25 registering their telephone numbers with the National Do-Not-Call Registry,
26 pursuant to 47 U.S.C. § 227(c)(5)(B).

27 74. Plaintiff and members of the National Do-Not-Call Class are also
28 entitled to and do seek injunctive relief prohibiting Defendants and/or their
affiliates, agents, and/or other persons or entities acting on Defendants’ behalf

1 from violating 47 C.F.R. § 64.1200(c) by initiating more than one telephone
2 solicitation to any residential telephone subscriber who has registered his or her
3 telephone numbers with the National Do-Not-Call Registry in the future,
4 pursuant to 47 U.S.C. § 227(c)(5)(A).

5 **SECOND CAUSE OF ACTION**

6 **INTERNAL DNC CLAIM IN VIOLATION OF**
7 **THE TELEPHONE CONSUMER PROTECTION ACT,**
8 **47 U.S.C. § 227, ET SEQ. (64 C.F.R. § 64.1200(D))**

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

10 75. Plaintiff hereby incorporates by reference and re-alleges each and
11 every allegation set forth in each and every preceding paragraph of this
12 Complaint, as though fully set forth herein.

13 76. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity
14 shall initiate any call for telemarketing purposes to a residential telephone
15 subscriber unless such person or entity has instituted procedures for maintaining
16 a list of persons who request not to receive telemarketing calls made by or on
17 behalf of that person or entity. The procedures instituted must meet the following
18 minimum standards:

19
20 (1) Written policy. Persons or entities making calls for
21 telemarketing purposes must have a written policy, available upon
22 demand, for maintaining a do-not-call list.

23 (2) Training of personnel engaged in telemarketing. Personnel
24 engaged in any aspect of telemarketing must be informed and
25 trained in the existence and use of the do-not-call list.

26 (3) Recording, disclosure of do-not-call requests. If a person or
27 entity making a call for telemarketing purposes (or on whose behalf
28 such a call is made) receives a request from a residential telephone
subscriber not to receive calls from that person or entity, the person
or entity must record the request and place the subscriber’s name, if





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provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber’s do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request...

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber’s do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

77. Defendants made more than one unsolicited telephone call to Plaintiff and members of the Internal DNC Class within a 12-month period . Plaintiff and members of the DNC Class never provided any form of consent to receive telephone calls from Defendants do not have a record of consent to place telemarketing calls to them and/or Plaintiffs and members of the DNC Class revoked consent.

78. Defendants violated 47 C.F.R. § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as



1 Plaintiff and the Class, without instituting procedures that comply with the
2 regulatory minimum standards for maintaining a list of persons who request not
3 to receive telemarketing calls from them.

4 79. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and the
5 Internal DNC Class received more than one telephone call in a 12-month period
6 made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as
7 described above. As a result of Defendants’ conduct as alleged herein, Plaintiff
8 and the DNC Class and the Class suffered actual damages and, under section 47
9 U.S.C. § 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages
10 for such violations of 47 C.F.R. § 64.1200.

11 80. To the extent Defendants’ misconduct is determined to be willful
12 and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the
13 amount of statutory damages recoverable by the members of the Class.

14 81. Plaintiff is also entitled to and seeks injunctive relief prohibiting
15 such conduct in the future.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays
18 for relief and judgment as follows:

- 19 (a) An order certifying the Classes as defined above, appointing
20 Plaintiffs as the representative of the Classes, and appointing their
21 counsel, KRISTENSEN WEISBERG, LLP & HUGHES ELLZEY, LLP as
22 lead Class Counsel;
- 23 (b) An award of actual and statutory damages for each and every
24 negligent violation to each member of the Class pursuant to 47
25 U.S.C. § 227(b)(3)(B);
- 26 (c) An award of actual and statutory damages for each and every
27 knowing and/or willful violation to each member of the Class
28 pursuant to 47 U.S.C § 227(b)(3)(B);

- 1 (d) An injunction requiring Defendants and Defendants' agents to cease
- 2 all unsolicited telephone calling activities, and otherwise protecting
- 3 the interests of the Class, pursuant to 47 U.S.C. § 227(b)(3)(A);
- 4 (e) Pre-judgment and post-judgment interest on monetary relief;
- 5 (f) An award of reasonable attorneys' fees and court costs; and
- 6 (g) All other and further relief as the Court deems necessary, just, and
- 7 proper.

8 Dated: January 24, 2019

Respectfully submitted,

9
10 By: /s/ John P. Kristensen

11 John P. Kristensen (SBN 224132)

12 *john@kristensenlaw.com*

13 **KRISTENSEN WEISBERG, LLP**

14 12540 Beatrice Street, Suite 200

15 Los Angeles, California 90066

16 Telephone: (310) 507-7924

17 Fax: (310) 507-7906



DEMAND FOR JURY TRIAL

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

Dated: January 24, 2019

Respectfully submitted,

By: /s/ John P. Kristensen

John P. Kristensen (SBN 224132)

john@kristensenlaw.com

KRISTENSEN WEISBERG, LLP

12540 Beatrice Street, Suite 200

Los Angeles, California 90066

Telephone: (310) 507-7924

Fax: (310) 507-7906



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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

ERIKA CARRANZA, an individual, on behalf of herself and 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) John P. Kristensen / David L. Weisberg 12540 Beatrice Street, Suite 200 Los Angeles, California 90066 // (310) 507-7924

DEFENDANTS

CREDITREPAIR.COM, INC., a Florida Limited Liability Company; and DOE INDIVIDUALS, inclusive, and each of them

County of Residence of First Listed Defendant Salt Lake County, Utah (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) '19CV0164 GPC WVG

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 and business location (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, CIVIL RIGHTS, TORTS, 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 (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, et seq. Brief description of cause: Violations of the 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: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/24/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ John P. Kristensen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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: [CreditRepair.Com Hit with Class Action Over Alleged Spam Calls](#)
