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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

) Case No.
LAURENCE CLAYTON, individually)
and on behalf of all others similarly) **CLASS ACTION**
situated,)
) **COMPLAINT FOR VIOLATIONS**
Plaintiff,) **OF:**
)
vs.) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
RHINO RELOCATION, and DOES 1) ACT [47 U.S.C. §227(b)]
through 10, inclusive, and each of them,) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
Defendant.) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(b)]
) 3. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(c)]
) 4. WILLFUL VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff LAURENCE CLAYTON (“Plaintiff”), individually and on behalf
2 of all others similarly situated, alleges the following upon information and belief
3 based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of RHINO RELOCATION
8 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
9 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
10 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
14 a resident of California, seeks relief on behalf of a Class, which will result in at
15 least one class member belonging to a different state than that of Defendant, a
16 California company that does business within and beyond the State of California.
17 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
18 TCPA, which, when aggregated among a proposed class in the thousands, exceeds
19 the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
20 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
21 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Eastern
23 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
24 business within the State of California and Plaintiff resides within the County of
25 Kern.

26 **PARTIES**

27 4. Plaintiff, LAURENCE CLAYTON (“Plaintiff”), is a natural person
28 residing in Ridgecrest, California and is a “person” as defined by 47 U.S.C. § 153

1 (39).

2 5. Defendant, RHINO RELOCATION (“Defendant”) is relocation
3 company, and is a “person” as defined by 47 U.S.C. § 153 (39).

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants.

18 **FACTUAL ALLEGATIONS**

19 8. Beginning in or around May of 2016, Defendant contacted Plaintiff
20 on Plaintiff’s cellular telephone number ending in -1596, in an attempt to solicit
21 Plaintiff to purchase Defendant’s services.

22 9. Defendant used an “automatic telephone dialing system” as defined
23 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

24 10. Defendant contacted or attempted to contact Plaintiff from telephone
25 number (818) 476-7198 confirmed to be Defendant’s number.

26 11. Defendant’s calls constituted calls that were not for emergency
27 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

28 12. Defendant’s calls were placed to telephone number assigned to a

cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

13. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14. Further, Plaintiff's cellular telephone number ending in -1596 was added to the National Do-Not-Call Registry on or about April 7, 2011.

15. Defendant placed multiple calls soliciting its business to Plaintiff on his cellular telephone ending in -1596 in or around May of 2016.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

18. Defendant continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

19. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after being on the National Do-Not-Call list for several years prior to Defendant's initial call, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

21. The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

1 All persons within the United States who received any
2 solicitation/telemarketing telephone calls from
3 Defendant to said person's cellular telephone made
4 through the use of any automatic telephone dialing
5 system or an artificial or prerecorded voice and such
6 person had not previously consented to receiving such
7 calls within the four years prior to the filing of this
8 Complaint

9 22. The class concerning the National Do-Not-Call violation (hereafter
10 "The DNC Class") is defined as follows:

11 All persons within the United States registered on the
12 National Do-Not-Call Registry for at least 30 days, who
13 had not granted Defendant prior express consent nor had
14 a prior established business relationship, who received
15 more than one call made by or on behalf of Defendant
16 that promoted Defendant's products or services, within
17 any twelve-month period, within four years prior to the
18 filing of the complaint.

19 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
20 of all persons within the United States who received any collection telephone calls
21 from Defendant to said person's cellular telephone made through the use of any
22 automatic telephone dialing system or an artificial or prerecorded voice and such
23 person had not previously not provided their cellular telephone number to
24 Defendant within the four years prior to the filing of this Complaint.

25 24. Plaintiff represents, and is a member of, The DNC Class, consisting
26 of all persons within the United States registered on the National Do-Not-Call
27 Registry for at least 30 days, who had not granted Defendant prior express consent
28 nor had a prior established business relationship, who received more than one call
made by or on behalf of Defendant that promoted Defendant's products or services,
within any twelve-month period, within four years prior to the filing of the

1 complaint.

2 25. Defendant, its employees and agents are excluded from The Classes.
3 Plaintiff does not know the number of members in The Classes, but believes the
4 Classes members number in the thousands, if not more. Thus, this matter should
5 be certified as a Class Action to assist in the expeditious litigation of the matter.

6 26. The Classes are so numerous that the individual joinder of all of its
7 members is impractical. While the exact number and identities of The Classes
8 members are unknown to Plaintiff at this time and can only be ascertained through
9 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
10 The Classes includes thousands of members. Plaintiff alleges that The Classes
11 members may be ascertained by the records maintained by Defendant.

12 27. Plaintiff and members of The ATDS Class were harmed by the acts of
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
14 and ATDS Class members via their cellular telephones thereby causing Plaintiff
15 and ATDS Class members to incur certain charges or reduced telephone time for
16 which Plaintiff and ATDS Class members had previously paid by having to retrieve
17 or administer messages left by Defendant during those illegal calls, and invading
18 the privacy of said Plaintiff and ATDS Class members.

19 28. Common questions of fact and law exist as to all members of The
20 ATDS Class which predominate over any questions affecting only individual
21 members of The ATDS Class. These common legal and factual questions, which
22 do not vary between ATDS Class members, and which may be determined without
23 reference to the individual circumstances of any ATDS Class members, include,
24 but are not limited to, the following:

- 25 a. Whether, within the four years prior to the filing of this
26 Complaint, Defendant made any telemarketing/solicitation call
27 (other than a call made for emergency purposes or made with
28 the prior express consent of the called party) to a ATDS Class

1 member using any automatic telephone dialing system or any
2 artificial or prerecorded voice to any telephone number
3 assigned to a cellular telephone service;

4 b. Whether Plaintiff and the ATDS Class members were damaged
5 thereby, and the extent of damages for such violation; and

6 c. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 29. As a person that received numerous telemarketing/solicitation calls
9 from Defendant using an automatic telephone dialing system or an artificial or
10 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
11 claims that are typical of The ATDS Class.

12 30. Plaintiff and members of The DNC Class were harmed by the acts of
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
14 and DNC Class members via their telephones for solicitation purposes, thereby
15 invading the privacy of said Plaintiff and the DNC Class members whose telephone
16 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
17 members were damaged thereby.

18 31. Common questions of fact and law exist as to all members of The
19 DNC Class which predominate over any questions affecting only individual
20 members of The DNC Class. These common legal and factual questions, which do
21 not vary between DNC Class members, and which may be determined without
22 reference to the individual circumstances of any DNC Class members, include, but
23 are not limited to, the following:

24 a. Whether, within the four years prior to the filing of this
25 Complaint, Defendant or its agents placed more than one
26 solicitation call to the members of the DNC Class whose
27 telephone numbers were on the National Do-Not-Call Registry
28 and who had not granted prior express consent to Defendant and

1 did not have an established business relationship with
2 Defendant;

3 b. Whether Defendant obtained prior express written consent to
4 place solicitation calls to Plaintiff or the DNC Class members'
5 telephones;

6 c. Whether Plaintiff and the DNC Class member were damaged
7 thereby, and the extent of damages for such violation; and

8 d. Whether Defendant and its agents should be enjoined from
9 engaging in such conduct in the future.

10 32. As a person that received numerous solicitation calls from Defendant
11 within a 12-month period, who had not granted Defendant prior express consent
12 and did not have an established business relationship with Defendant, Plaintiff is
13 asserting claims that are typical of the DNC Class.

14 33. Plaintiff will fairly and adequately protect the interests of the members
15 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
16 class actions.

17 34. A class action is superior to other available methods of fair and
18 efficient adjudication of this controversy, since individual litigation of the claims
19 of all Classes members is impracticable. Even if every Classes member could
20 afford individual litigation, the court system could not. It would be unduly
21 burdensome to the courts in which individual litigation of numerous issues would
22 proceed. Individualized litigation would also present the potential for varying,
23 inconsistent, or contradictory judgments and would magnify the delay and expense
24 to all parties and to the court system resulting from multiple trials of the same
25 complex factual issues. By contrast, the conduct of this action as a class action
26 presents fewer management difficulties, conserves the resources of the parties and
27 of the court system, and protects the rights of each Classes member.

28 35. The prosecution of separate actions by individual Classes members

1 would create a risk of adjudications with respect to them that would, as a practical
2 matter, be dispositive of the interests of the other Classes members not parties to
3 such adjudications or that would substantially impair or impede the ability of such
4 non-party Class members to protect their interests.

5 36. Defendant has acted or refused to act in respects generally applicable
6 to The Classes, thereby making appropriate final and injunctive relief with regard
7 to the members of the Classes as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(b).**

11 **On Behalf of the ATDS Class**

12 37. Plaintiff repeats and incorporates by reference into this cause of action
13 the allegations set forth above at Paragraphs 1-36.

14 38. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular
17 47 U.S.C. § 227 (b)(1)(A).

18 39. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
19 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

21 40. Plaintiff and the ATDS Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227(b)**

27 **On Behalf of the ATDS Class**

28 41. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-36.

2 42. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple knowing and/or willful violations of the TCPA, including but not
4 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
5 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

6 43. As a result of Defendant's knowing and/or willful violations of *47*
7 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of
8 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
9 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

10 44. Plaintiff and the Class members are also entitled to and seek injunctive
11 relief prohibiting such conduct in the future.

12 **THIRD CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(c)**

15 **On Behalf of the DNC Class**

16 45. Plaintiff repeats and incorporates by reference into this cause of action
17 the allegations set forth above at Paragraphs 1-36.

18 46. The foregoing acts and omissions of Defendant constitute numerous
19 and multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
21 *47 U.S.C. § 227 (c)(5)*.

22 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
23 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

25 48. Plaintiff and the DNC Class members are also entitled to and seek
26 injunctive relief prohibiting such conduct in the future.

27 ///

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-36.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

52. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

53. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 6th Day of March, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Rhino Relocation Ignored National Do-Not-Call List](#)
