

1 **EDELSBERG LAW, P.A.**

2 Scott Edelsberg, Esq. (CA Bar No. 330990)

3 1925 Century Park E #1700

4 Los Angeles, CA 90067

5 Telephone: 305-975-3320

6 scott@edelsberglaw.com

Counsel for Plaintiff and Proposed Class

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

10 **PRIESTLEY FAUCETT,**
11 individually and on behalf of all others
12 similarly situated,

Plaintiff,

13 vs.

14 **MOVE, INC. d/b/a**
REALTOR.COM, ,

15 *Defendant.*

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.
(TCPA)**

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff Priestley Faucett (“Plaintiff”), brings this action against
3 Defendant, Move, Inc. d/b/a Realtor.com (“Defendant”), to secure redress for
4 violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is a a real estate listings company that hosts online platforms
9 for buyers, sellers, and renters to post and search for real estate listings. To promote its
10 services, Defendant engages in aggressive unsolicited marketing, harming thousands of
11 consumers in the process.

12 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
13 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
14 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
15 damages on behalf of himself and members of the Class, and any other available legal
16 or equitable remedies.

17 **JURISDICTION AND VENUE**

18 5. This Court has federal question subject matter jurisdiction over this action
19 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
20 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

21 6. The Court has personal jurisdiction over Defendant and venue is proper
22 in this District because Defendant’s primary place of business is in this District, directs,
23 markets, and provides its business activities to this District, and because Defendant’s
24 unauthorized marketing scheme was directed by Defendant to consumers in this
25 District.

1 **PARTIES**

2 7. Plaintiff is a natural person who, at all times relevant to this action, was a
3 resident of Livingston Parish, Louisiana.

4 8. Defendant is a Delaware corporation whose principal office is located at
5 30700 Russell Ranch Road, Westlake Village, California 91362. Defendant directs,
6 markets, and provides its business activities throughout the United States, including
7 throughout the state of California.

8 9. Unless otherwise indicated, the use of Defendant’s name in this
9 Complaint includes all agents, employees, officers, members, directors, heirs,
10 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,
11 and insurers of Defendant.

12 **THE TCPA**

13 10. The TCPA prohibits: (1) any person from calling a cellular telephone
14 number; (2) using an automatic telephone dialing system or an artificial or prerecorded
15 voice; (3) without the recipient’s prior express consent. 47 U.S.C. § 227(b)(1)(A).

16 11. The TCPA defines an “automatic telephone dialing system” (“ATDS”) as
17 “equipment that has the capacity - (A) to store or produce telephone numbers to be
18 called, using a random or sequential number generator; and (B) to dial such numbers.”
19 47 U.S.C. § 227(a)(1).

20 12. The TCPA exists to prevent communications like the ones described
21 within this Complaint. “Voluminous consumer complaints about abuses of telephone
22 technology—for example, computerized calls dispatched to private homes—prompted
23 Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

24 13. In an action under the TCPA, a plaintiff must only show that the
25 defendant “called a number assigned to a cellular telephone service using an automatic
26 dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d
27 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

1 14. The Federal Communications Commission (“FCC”) is empowered to
2 issue rules and regulations implementing the TCPA. According to the FCC’s findings,
3 calls in violation of the TCPA are prohibited because, as Congress found, automated
4 or prerecorded telephone calls are a greater nuisance and invasion of privacy than live
5 solicitation calls, and such calls can be costly and inconvenient. The FCC also
6 recognized that wireless customers are charged for incoming calls whether they pay in
7 advance or after the minutes are used. *Rules and Regulations Implementing the Telephone*
8 *Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd
9 14014 (2003).

10 15. In 2012, the FCC issued an order tightening the restrictions for automated
11 telemarketing calls, requiring “prior express **written** consent” for such calls to wireless
12 numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
13 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

14 16. To obtain express written consent for telemarketing calls, a defendant
15 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff a
16 “‘clear and conspicuous disclosure’ of the consequences of providing the requested
17 consent....and having received this information, agrees unambiguously to receive such
18 calls at a telephone number the [plaintiff] designates.” *In re Rules & Regulations*
19 *Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20,
20 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

21 17. The TCPA regulations promulgated by the FCC define “telemarketing”
22 as “the initiation of a telephone call or message for the purpose of encouraging the
23 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §
24 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a
25 court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas*
26 *Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

1 18. “Neither the TCPA nor its implementing regulations ‘require an explicit
2 mention of a good, product, or service’ where the implication of an improper purpose
3 is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918
4 (9th Cir. 2012)).

5 19. “‘Telemarketing’ occurs when the context of a call indicates that it was
6 initiated and transmitted to a person for the purpose of promoting property, goods, or
7 services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. §
8 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
9 *of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).

10 20. The FCC has explained that calls motivated in part by the intent to sell
11 property, goods, or services are considered telemarketing under the TCPA. *See In re*
12 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
13 14014, ¶¶ 139-142 (2003). This is true whether call recipients are encouraged to
14 purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

15 21. In other words, offers “that are part of an overall marketing campaign to
16 sell property, goods, or services constitute” telemarketing under the TCPA. *See In re*
17 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
18 14014, ¶ 136 (2003).

19 22. If a call is not deemed telemarketing, a defendant must nevertheless
20 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of*
21 *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961,
22 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising
23 calls”).

24 23. As held by the United States Court of Appeals for the Ninth Circuit:
25 “Unsolicited telemarketing phone calls or text messages, by their nature, invade the
26 privacy and disturb the solitude of their recipients. A plaintiff alleging a violation under
27 the TCPA ‘need not allege any *additional* harm beyond the one Congress has identified.”

1 *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS 1591, at *12
2 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016)
3 (emphasis original)).

4 **FACTUAL ALLEGATIONS**

5 24. Beginning on or about May 4, 2022, Defendant began bombarding
6 Plaintiff with telemarketing phone calls and voice messages sent to Plaintiff's cellular
7 telephone number ending in 5272 (the "5272 Number").

8 25. When Plaintiff answered his telephone after it rang, a prerecorded voice
9 prompted him to hold for a live representative. When Defendant's live representative
10 appeared on the line, Plaintiff told Defendant to stop calling in an attempt to opt-out
11 of any further communications with Defendant.

12 26. Despite Plaintiff's clear opt-out request, Defendant ignored Plaintiff's
13 opt-out demand and continued to send Plaintiff prerecorded voice messages on or
14 about May 5, 2022, May 6, 2022, May 7, 2022, May 10, 2022, and June 4, 2022. The
15 following is a transcript of one of such voice messages:

16
17 Hi this is Kate calling you back from realtor.com. I wanted to make sure
18 you were getting the help you needed for your request. Our team is ready
19 to learn more about your real estate needs and connect you with a local
20 expert. Please call us back at 855-430-2416 so we may assist you or to let
21 us know you no longer wish to be contacted.

22 27. When Plaintiff listened to the voicemails he was easily able to determine
23 that it was a prerecorded message. *Rahn v. Bank of Am.*, No. 1:15-CV-4485-ODE-JSA,
24 2016 U.S. Dist. LEXIS 186171, at *10-11 (N.D. Ga. June 23, 2016) ("When one receives
25 a call, it is a clear-cut fact, easily discernible to any lay person, whether or not the
26 recipient is speaking to a live human being, or is instead being subjected to a
27 prerecorded message.").

1 28. Defendant's voice messages were transmitted to Plaintiff's cellular
2 telephone, and within the time frame relevant to this action.

3 29. Plaintiff has no existing business relationship with Defendant.

4 30. Defendant's voice messages constitute telemarketing because they
5 encouraged the future purchase or investment in property, goods, or services, i.e.,
6 selling soliciting Plaintiff with Defendant's real estate services.

7 31. Upon information and belief, Defendant does not have a written policy
8 for maintaining an internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

9 32. Upon information and belief, Defendant does not inform and train its
10 personnel engaged in telemarketing in the existence and the use of any internal do not
11 call list pursuant to 47 U.S.C. § 64.1200(d)(2).

12 33. The prerecorded messages Plaintiff received originated from telephone
13 number 504-226-7208, a telephone number owned and/or operated by or on behalf of
14 Defendant.

15 34. Defendant sent or caused to be sent the subject calls with a prerecorded
16 voice from within this judicial district and, therefore, Defendant's violation of the
17 TCPA occurred within this district. Upon information and belief, Defendant caused
18 other prerecorded messages to be sent to individuals residing within this judicial district.

19 35. At no point in time did Plaintiff provide Defendant with his express
20 written consent to be contacted with a prerecorded message.

21 36. Plaintiff is the subscriber and sole user of the 5272 Number and is
22 financially responsible for phone service to the 5272 Number.

23 37. Plaintiff registered his 5272 Number with the national do not call registry
24 on March 6, 2019 and has been registered at all times relevant to this action.

25 38. Defendant's unsolicited prerecorded call caused Plaintiff actual harm,
26 including invasion of his privacy, aggravation, annoyance, intrusion on seclusion,
27 trespass, and conversion. Defendant's prerecorded call also inconvenienced Plaintiff

1 and caused disruption to his work-day as he received the prerecorded messages while
2 at work. *See Patriotic Veterans, Inc. v. Zoeller*, No. 16- 2059, 2017 WL 25482, at *2 (7th Cir.
3 Jan. 3, 2017) (“Every call uses some of the phone owner's time and mental energy, both
4 of which are precious.”).

5 39. Defendant’s unsolicited voice messages caused Plaintiff actual harm.
6 Specifically, Plaintiff estimates that he has wasted fifteen minutes reviewing all of
7 Defendant’s unwanted messages. Each time, Plaintiff had to stop what he was doing
8 to either retrieve his phone and/or look down at the phone to review the message.

9 40. Next, Plaintiff wasted approximately fifteen minutes locating and
10 retaining counsel for this case in order to stop Defendant’s unwanted calls.

11 41. In all, Defendant’s violations of the TCPA caused Plaintiff to waste at
12 least fifteen minutes of her time in addressing and attempting to stop Defendant’s
13 solicitations.

14 CLASS ALLEGATIONS

15 PROPOSED CLASS

16 42. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,
17 on behalf of himself and all others similarly situated.

18 43. Plaintiff brings this case on behalf of the Class defined as follows:

19 **No Consent Class: All persons within the United**
20 **States who, within the four years prior to the filing**
21 **of this Complaint, were sent a call or voicemail**
22 **using an artificial or prerecorded voice, from**
23 **Defendant or anyone on Defendant’s behalf, to said**
person’s cellular telephone number, without
emergency purpose and without the recipient’s
prior express written consent.

24 **Do Not Call Registry Class: All persons in the**
25 **United States who from four years prior to the filing**
26 **of this action (1) were sent a call or voicemail by or**
27 **on behalf of Defendant; (2) more than one time**
within any 12-month period; (3) where the person’s
telephone number had been listed on the National
Do Not Call Registry for at least thirty days; (4) for
the purpose of selling Defendant’s products and

1 services; and (5) for whom Defendant claims (a) it
2 did not obtain prior express written consent, or (b)
3 it obtained prior express written consent in the
4 same manner as Defendant claims it supposedly
5 obtained prior express written consent to call the
6 Plaintiff.

7 **Internal Do Not Call Class:** All persons within the
8 United States who, within the four years prior to the
9 filing of this Complaint, were sent a call or voicemail
10 from Defendant or anyone on Defendant's behalf,
11 to said person's cellular telephone number *after*
12 making a request to Defendant to not receive future
13 calls or messages.

14 44. Defendant and its employees or agents are excluded from the Class.
15 Plaintiff does not know the number of members in the Class but believes the Class
16 members number in the several thousands, if not more.

17 **NUMEROSITY**

18 45. Upon information and belief, Defendant has placed automated calls to
19 cellular telephone numbers belonging to thousands of consumers throughout the
20 United States without their prior express consent. The members of the Class, therefore,
21 are believed to be so numerous that joinder of all members is impracticable.

22 46. The exact number and identities of the members of the Class are unknown
23 at this time and can only be ascertained through discovery. Identification of the Class
24 members is a matter capable of ministerial determination from Defendant's call records.

25 **COMMON QUESTIONS OF LAW AND FACT**

26 47. There are numerous questions of law and fact common to members of
27 the Class which predominate over any questions affecting only individual members of
28 the Class. Among the questions of law and fact common to the members of the Class
are:

- a) Whether Defendant made non-emergency prerecorded telemarketing calls to Plaintiff's and Class members' cellular telephones;
- b) Whether Defendant can meet its burden of showing that it obtained prior express written consent to make such calls;

- c) Whether Defendant's conduct was knowing and willful;
- d) Whether Defendant violated 47 C.F.R. § 64.1200(d);
- e) Whether Defendant violated 47 C.F.R. § 64.1200(c);
- f) Whether Defendant has any written policies for maintaining an internal do not call list;
- g) Whether Defendant is liable for damages, and the amount of such damages; and
- h) Whether Defendant should be enjoined from such conduct in the future.

48. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits prerecorded calls or voice messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

49. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

50. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

51. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual

1 damages incurred by each member of the Class resulting from Defendant’s wrongful
2 conduct are too small to warrant the expense of individual lawsuits. The likelihood of
3 individual Class members prosecuting their own separate claims is remote, and, even if
4 every member of the Class could afford individual litigation, the court system would be
5 unduly burdened by individual litigation of such cases.

6 52. The prosecution of separate actions by members of the Class would create
7 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
8 Defendant. For example, one court might enjoin Defendant from performing the
9 challenged acts, whereas another may not. Additionally, individual actions may be
10 dispositive of the interests of the Class, although certain class members are not parties
11 to such actions.

12 **COUNT I**
13 **Violations of the TCPA, 47 U.S.C. § 227(b)**
14 **(On Behalf of Plaintiff and the No Consent Class)**

15 53. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set
16 forth herein.

17 54. It is a violation of the TCPA to make “any call (other than a call made for
18 emergency purposes or made with the prior express consent of the called party) using
19 any automatic telephone dialing system or an artificial or prerecorded voice ... to any
20 telephone number assigned to a ... cellular telephone service” 47 U.S.C. §
21 227(b)(1)(A)(iii).

22 55. Defendant – or third parties directed by Defendant – transmitted calls
23 using an artificial or prerecorded voice to the cellular telephone numbers of Plaintiff
24 and members of the putative class.

25 56. These calls were made without regard to whether Defendant had first
26 obtained express permission from the called party to make such calls. In fact, Defendant
27 did not have prior express consent to call the cell phones of Plaintiff and the other
28 members of the putative Class when its calls were made.

1 57. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by
2 using an artificial or prerecorded voice to make non-emergency telephone calls to the
3 cell phones of Plaintiff and the other members of the putative Class without their prior
4 express consent.

5 58. Defendant knew that it did not have prior express consent to make these
6 calls, and knew or should have known that it was using an artificial or prerecorded
7 voice. The violations were therefore willful or knowing.

8 59. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the
9 TCPA, Plaintiff and the other members of the putative Class were harmed and are each
10 entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the class
11 are also entitled to an injunction against future calls. *Id.*

12 **COUNT II**
13 **Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)**
14 **(On Behalf of Plaintiff and No Consent the Class)**

15 60. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set
16 forth herein.

17 61. At all times relevant, Defendant knew or should have known that its
18 conduct as alleged herein violated the TCPA.

19 62. Defendant knew that it did not have prior express consent to make these
20 calls, and knew or should have known that its conduct was a violation of the TCPA.

21 63. Because Defendant knew or should have known that Plaintiff and Class
22 Members had not given prior express consent to receive its prerecorded calls, the Court
23 should treble the amount of statutory damages available to Plaintiff and the other
24 members of the putative Class pursuant to § 227(b)(3) of the TCPA.

25 64. As a result of Defendant's violations, Plaintiff and the Class Members are
26 entitled to an award of \$1,500.00 in statutory damages, for each and every violation,
27 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
28

COUNT III

Violation of the TCPA, 47 U.S.C. § 227

(On Behalf of Plaintiff and the Do Not Call Registry Class)

65. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

66. 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 has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

67. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”¹

68. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.”

69. 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” 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. 47 U.S.C. § 227(c).

70. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

1 the National Do Not Call Registry, a listing of persons who do not wish to receive
2 telephone solicitations that is maintained by the federal government.

3 71. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not
4 Call Registry Class received more than one telephone call in a 12-month period made
5 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.
6 As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call
7 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are
8 entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. §
9 64.1200.

10 72. To the extent Defendant’s misconduct is determined to be willful and
11 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
12 statutory damages recoverable by the members of the Do Not Call Registry Class.

13 **COUNT IV**

14 **Violation Of 47 U.S.C. § 227(c)(2)**

15 **(Individually and on behalf of the Internal Do Not Call Class)**

16 73. Plaintiff repeats and realleges the paragraphs 1 through 52 of this
17 Complaint and incorporates them by reference herein.

18 74. The TCPA provides that any “person who has received more than one
19 telephone call within any 12-month period by or on behalf of the same entity in
20 violation of the regulations prescribed under this subsection may” bring a private action
21 based on a violation of said regulations, which were promulgated to protect telephone
22 subscribers’ privacy rights to avoid receiving telephone solicitations to which they
23 object. 47 U.S.C. § 227(c)(5).

24 75. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call
25 for telemarketing purposes to a residential telephone subscriber unless such person or
26 entity has instituted procedures for maintaining a list of persons who request not to
27

1 receive telemarketing calls made by or on behalf of that person or entity. The
2 procedures instituted must meet certain minimum standards, including:

3
4 (3) Recording, disclosure of do-not-call requests. If a person or entity
5 making a call for telemarketing purposes (or on whose behalf such a call
6 is made) receives a request from a residential telephone subscriber not to
7 receive calls from that person or entity, the person or entity must record
8 the request and place the subscriber's name, if provided, and telephone
9 number on the do-not call list at the time the request is made. Persons or
10 entities making calls for telemarketing purposes (or on whose behalf such
11 calls are made) must honor a residential subscriber's do-not-call request
12 within a reasonable time from the date such request is made. This period
13 may not exceed thirty days from the date of such request

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

18 47 C.F.R. § 64.1200(d)(3), (6).

19 76. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d)
20 are applicable to any person or entity making telephone solicitations or telemarketing
21 calls to wireless telephone numbers:

22 (e) The rules set forth in paragraph (c) and (d) of this section are applicable
23 to any person or entity making telephone solicitations or telemarketing
24 calls to wireless telephone numbers to the extent described in the
25 Commission's Report and Order, CG Docket No. 02-278, FCC 03-153,
26 "Rules and Regulations Implementing the Telephone Consumer
27 Protection Act of 1991.

28 47 C.F.R. § 64.1200(e).

77. Plaintiff and the Internal Do Not Call Class members made requests to
Defendant not to receive calls from Defendant.

1 78. Defendant failed to honor Plaintiff and the Internal Do Not Call Class
2 members' requests.

3 79. Upon information and belief, Defendant has not instituted procedures for
4 maintaining a list of persons who request not to receive telemarketing calls made by or
5 on behalf of their behalf, pursuant to 47 C.F.R. § 64.1200(d).

6 80. Because Plaintiff and the Internal Do Not Call Class members received
7 more than one call in a 12-month period made by or on behalf of Defendant in violation
8 of 47 C.F.R. § 64.1200(d), as described above, Defendant violated 47 U.S.C. § 227(c)(5).

9 81. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and
10 the Internal Do Not Call Class members are entitled to an award of \$500.00 in statutory
11 damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5).

12 82. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and
13 the Internal Do Not Call Class members are entitled to an award of \$1,500.00 in
14 statutory damages, for each and every knowing and/or willful violation, pursuant to 47
15 U.S.C. § 227(c)(5).

16 83. Plaintiff and the Internal Do Not Call Class members also suffered
17 damages in the form of invasion of privacy.

18 84. Plaintiff and the Internal Do Not Call Class members are also entitled to
19 and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant
20 to 47 U.S.C. § 227(c)(5).

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the
23 following relief:

- 24 a) An order certifying this case as a class action on behalf of the Class as
25 defined above, and appointing Plaintiff as the representative of the Class
26 and Plaintiff's counsel as Class Counsel;

1 Dated: July 20, 2022

Respectfully submitted,

2
3 By: */s/ Scott Edelsberg*

4 **EDELSBERG LAW, P.A.**

5 Scott Edelsberg, Esq. (CA Bar No. 330990)

6 1925 Century Park E #1700

7 Los Angeles, CA 90067

8 Telephone: 305-975-3320

9 scott@edelsberglaw.com

10 *Counsel for Plaintiff and the Proposed Class*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Realtor.com Hit with Class Action Over Alleged Robocalls](#)
