

**DAPEER ROSENBLIT & LITVAK, LLP**

William Litvak, Esq.  
Cal. Bar No. 90533  
11500 W. Olympic Blvd., Suite 550  
Los Angeles, CA 90064  
E: wlitvak@drllaw.com  
T: (310) 477-5575

**IJH LAW**

Ignacio Hiraldo, Esq. (*pro hac vice forthcoming*)  
FL. Bar No. 56031  
1200 Brickell Ave., Suite 1950  
Miami, FL 33131  
E: IJhiraldo@IJhlaw.com  
T: (786) 496-4469

**EISENBAND LAW, P.A.**

Michael Eisenband, Esq. (*pro hac vice forthcoming*)  
FL Bar No. 94235  
515 E. Las Olas Blvd., Suite 120  
Fort Lauderdale, Florida 33301  
E: MEisenband@Eisenbandlaw.com  
T: (954) 533-4092

*Attorneys for Plaintiff and Proposed Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MATHEW HUFNUS, individually and  
on behalf of all others similarly situated,

Plaintiff,

vs.

DONOTPAY, INC., a Delaware  
Corporation,

Defendant.

Case No. 3:20-cv-8701

**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, Mathew Hufnus, brings this action against Defendant,  
3 Donotpay, Inc., to secure redress for violations of the Telephone Consumer  
4 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 operates an app which claims to be “the world’s first robot  
9 lawyer.”<sup>1</sup>

10 4. Defendant also uses an automatic telephone dialing system to send  
11 mass automated marketing text messages to individuals’ cellular phone numbers  
12 without first obtaining the required express written consent.

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

18 **JURISDICTION AND VENUE**

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

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

26 \_\_\_\_\_  
27 <sup>1</sup> <https://donotpay.com/>

1 **PARTIES**

2 8. Plaintiff is a natural person who, at all times relevant to this action, was  
3 a resident of the State of Illinois.

4 9. Defendant is a Delaware corporation whose principal office is located  
5 at 164 Townsend Street, Suite 2A Breather, San Francisco CA 94107. Defendant  
6 directs, markets, and provides its business activities throughout the United States,  
7 including throughout the state of California.

8 10. 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,  
11 vendors, and insurers of Defendant.

12 **THE TCPA**

13 11. The TCPA prohibits: (1) any person from calling a cellular telephone  
14 number; (2) using an automatic telephone dialing system (“ATDS”) or an artificial  
15 or prerecorded voice; (3) without the recipient’s prior express consent. 47 U.S.C. §  
16 227(b)(1)(A).

17 12. The TCPA exists to prevent communications like the ones described  
18 within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744  
19 (2012).

20 13. In an action under the TCPA, a plaintiff must show only that the  
21 defendant “called a number assigned to a cellular telephone service using an  
22 automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*,  
23 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

24 14. The Federal Communications Commission (“FCC”) is empowered to  
25 issue rules and regulations implementing the TCPA. According to the FCC’s  
26 findings, calls in violation of the TCPA are prohibited because, as Congress found,  
27 automated or prerecorded telephone calls are a greater nuisance and invasion of  
28

1 privacy than live solicitation calls, and such calls can be costly and inconvenient.  
2 The FCC also recognized that wireless customers are charged for incoming calls  
3 whether they pay in advance or after the minutes are used. *Rules and Regulations*  
4 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-  
5 278, Report and Order, 18 FCC Rcd 14014 (2003).

6 15. In 2012, the FCC issued an order further restricting automated  
7 telemarketing calls, requiring “prior express written consent” for such calls. *See In*  
8 *the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*  
9 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

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

17 17. The TCPA regulations promulgated by the FCC define “telemarketing”  
18 as “the initiation of a telephone call or message for the purpose of encouraging the  
19 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §  
20 64.1200(f)(12). In determining whether a communication constitutes telemarketing,  
21 a court must evaluate the ultimate purpose of the communication. *See Golan v.*  
22 *Veritas Entm't, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

23 18. “Neither the TCPA nor its implementing regulations ‘require an  
24 explicit mention of a good, product, or service’ where the implication of an improper  
25 purpose is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*,  
26 705 F.3d 913, 918 (9th Cir. 2012)).

1 19. “‘Telemarketing’ occurs when the context of a call indicates that it was  
2 initiated and transmitted to a person for the purpose of promoting property, goods,  
3 or services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R.  
4 § 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone*  
5 *Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL  
6 21517853, at \*49).

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

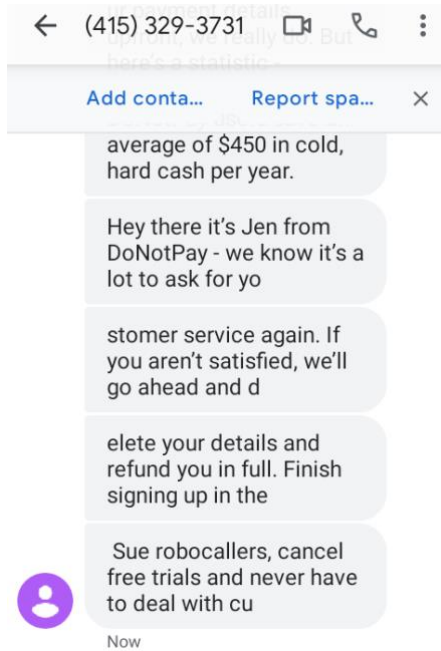
13 21. In other words, offers “that are part of an overall marketing campaign  
14 to sell property, goods, or services constitute” telemarketing under the TCPA. *See*  
15 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*  
16 *of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

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

22 23. In regard to what constitutes an ATDS, the Ninth Circuit has explained  
23 “that the statutory definition of ATDS includes device that stores telephone numbers  
24 to be called, whether or not those numbers have been generated by a random or  
25 sequential number generator.” *Marks v. Crunch San Diego, LLC*, 904 F. 3d 1041,  
26 1043 (9<sup>th</sup> Cir. 2018).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



26. The text messages state: Hey there it's Jen from DoNotPay – we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic – DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the.”

27. Plaintiff is the subscriber and/or sole user of the 2163 number.

28. Defendant's text messages constitute telemarketing/advertising because they promote Defendants business, goods and services.

29. Specifically, the text message asks Plaintiff to sign-up for Defendant's services.

30. At no point in time did Plaintiff provide Defendant with his express written consent to be contacted by marketing text messages sent using an ATDS.

31. The number used by Defendant (415-329-3731) is known as a “long code,” a standard 10-digit phone number that enabled Defendant to send SMS text

1 messages en masse, while deceiving recipients into believing that the message was  
2 personalized and sent from a telephone number operated by an individual.

3 32. Long codes work as follows: Private companies known as SMS  
4 gateway providers have contractual arrangements with mobile carriers to transmit  
5 two-way SMS traffic. These SMS gateway providers send and receive SMS traffic  
6 to and from the mobile phone networks' SMS centers, which are responsible for  
7 relaying those messages to the intended mobile phone. This allows for the  
8 transmission of a large number of SMS messages to and from a long code.

9 33. The impersonal and generic nature of Defendant's text messages,  
10 demonstrates that Defendant utilized an ATDS in transmitting the messages. The  
11 messages include no personal identifiers and are formatted in a generic manner.

12 34. Upon information and belief, Defendant caused similar text messages  
13 to be sent to individuals residing within this judicial district.

14 35. Indeed, the internet is filled with people who received identical  
15 messages as Plaintiff from the same number as Plaintiff as shown below:

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

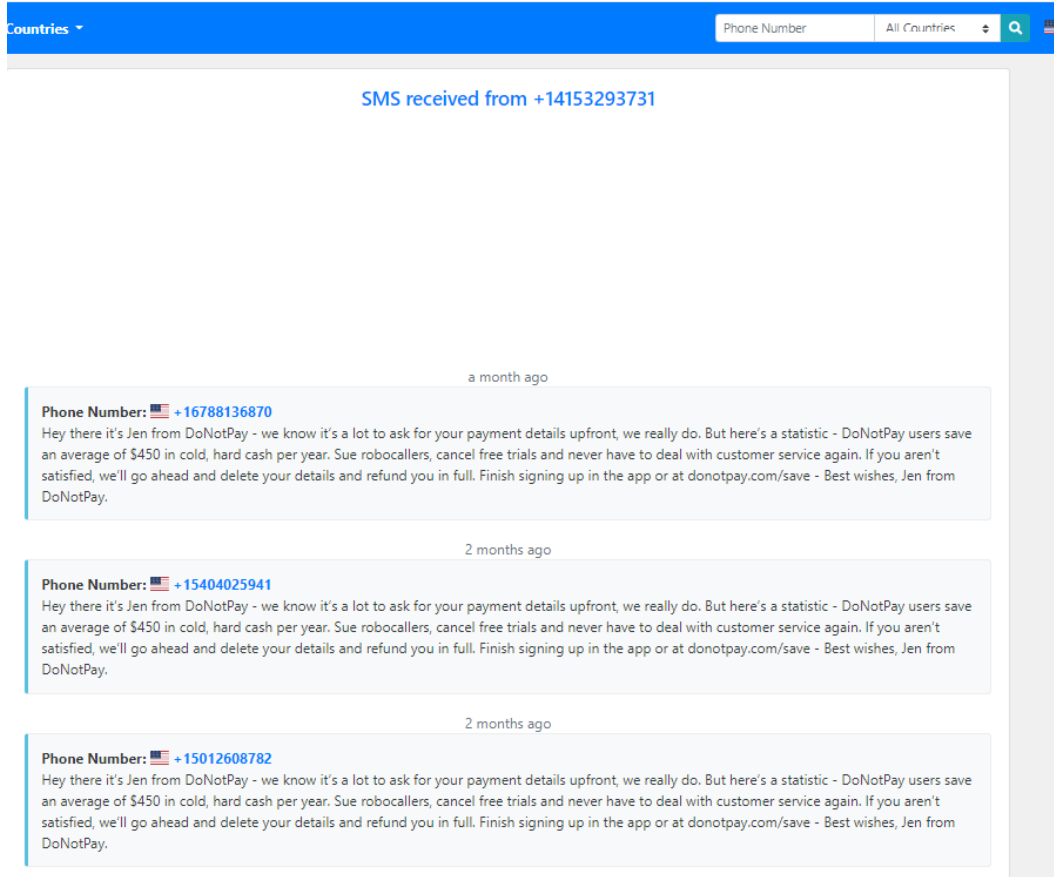
25 //

26 //

27 //

28





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

//  
//  
//  
//  
//  
//  
//  
//

<sup>2</sup> <https://sms24.me/messages/14153293XXX>

2 months ago

Phone Number:  +15595866033

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

3 months ago

Phone Number:  +19294510662

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

3 months ago

Phone Number:  +13364945921

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

4 months ago

Phone Number:  +14147929579

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

4 months ago

Phone Number:  +17652337659

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

4 months ago

Phone Number:  +18023270886

[1/3] Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year

4 months ago

Phone Number:  +18023270886

[3/3] he app or at donotpay.com/save - Best wishes, Jen from DoNotPay.

4 months ago

Phone Number:  +18023270886

[2/3] . Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in t

6 months ago

<sup>3</sup> <https://sms24.me/messages/14153293XXX>

<sup>4</sup> <https://sms24.me/messages/14153293XXX>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Receiver: [12528227127](#)

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at [donotpay.com/save](https://donotpay.com/save) - Best wishes, Jen from DoNotPay.

— 3 weeks ago

Receiver: [16209128005](#)

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at [donotpay.com/save](https://donotpay.com/save) - Best wishes, Jen from DoNotPay.

— 3 weeks ago

Receiver: [18192724789](#)

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at [donotpay.com/save](https://donotpay.com/save) - Best wishes, Jen from DoNotPay.

— 3 weeks ago

Receiver: [12052458094](#)

Hey there it's Jen from DoNotPay - we know it's a lot to ask for your payment details upfront, we really do. But here's a statistic - DoNotPay users save an average of \$450 in cold, hard cash per year. Sue robocallers, cancel free trials and never have to deal with customer service again. If you aren't satisfied, we'll go ahead and delete your details and refund you in full. Finish signing up in the app or at [donotpay.com/save](https://donotpay.com/save) - Best wishes, Jen from DoNotPay.

— 1 month ago

5

<sup>5</sup> <https://www.getfreesmsnumber.com/virtual-phone/sender/14153293731>



1 **NO CONSENT CLASS:** All persons within the United States who,  
2 within the four years prior to the filing of this Complaint, were sent a  
3 text message using the same type of equipment used to text message  
4 Plaintiff, from Defendant or anyone on Defendant's behalf, to said  
5 person's cellular telephone number for the purpose of promoting and/or  
6 advertising Defendant's goods and/or services.

7 42. Plaintiff reserves the right to modify the Class definitions as warranted  
8 as facts are learned in further investigation and discovery.

9 43. Defendant and its employees or agents are excluded from the Class.  
10 Plaintiff does not know the number of members in the Class but believes the Class  
11 members number in the several thousands, if not more.

12 **NUMEROSITY**

13 44. Upon information and belief, Defendant has placed automated calls to  
14 cellular telephone numbers belonging to thousands of consumers throughout the  
15 United States without their prior express consent. The members of the Class,  
16 therefore, are believed to be so numerous that joinder of all members is  
17 impracticable.

18 45. The exact number and identities of the members of the Class are  
19 unknown at this time and can only be ascertained through discovery. Identification  
20 of the Class members is a matter capable of ministerial determination from  
21 Defendant's call records.

22 **COMMON QUESTIONS OF LAW AND FACT**

23 46. There are numerous questions of law and fact common to members of  
24 the Class which predominate over any questions affecting only individual members  
25 of the Class. Among the questions of law and fact common to the members of the  
26 Class are:

- 27 a) Whether Defendant made non-emergency calls to Plaintiff's and  
28 Class members' cellular telephones using an ATDS;

- 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 is liable for damages, and the amount of such damages; and
- e) Whether Defendant should be enjoined from such conduct in the future.

47. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits calls 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**

48. 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**

49. 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**

50. 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 damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual

1 lawsuits. The likelihood of individual Class members prosecuting their own separate  
2 claims is remote, and, even if every member of the Class could afford individual  
3 litigation, the court system would be unduly burdened by individual litigation of  
4 such cases.

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

11 **COUNT I**  
12 **Violations of the TCPA, 47 U.S.C. § 227(b)**  
13 **(On Behalf of Plaintiff and Do Not Consent Class)**

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

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

20 54. The TCPA defines an “automatic telephone dialing system”  
21 (hereinafter “ATDS”) as “equipment which has the capacity – (A) to store or produce  
22 telephone numbers to be called, using a random or sequential number generator; and  
23 (B) to dial such numbers.” *Id.* at § 227(a)(1).

24 55. Defendant – or third parties directed by Defendant – used an ATDS to  
25 make non-emergency telephone calls to the cellular telephones of Plaintiff and the  
26 other members of the Class defined below.





1 in statutory damages for each and every violation pursuant to 47 U.S.C.  
2 § 277(b)(3)(B);

3 d) As a result of Defendant's knowing and/or willful violations of 47  
4 U.S.C. §§ 227, *et seq.*, Plaintiff seeks for himself and each member of  
5 the Class treble damages, as provided by statute, up to \$1,500.00 for  
6 each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B) and §  
7 277(b)(3)(C);

8 e) An order declaring that Defendant's actions, as set out above, violate  
9 the TCPA;

10 f) An injunction requiring Defendant to cease all unsolicited call activity,  
11 and to otherwise protect the interests of the Class;

12 g) An injunction prohibiting Defendant from using, or contracting the use  
13 of, an ATDS without obtaining, recipient's consent to receive calls  
14 made with such equipment;

15 h) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,  
16 California Code of Civil Procedure § 1021.5; and

17 i) Such further and other relief as the Court deems necessary.

18 **JURY DEMAND**

19 Plaintiff hereby demand a trial by jury.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: ['World's First Robot Lawyer' Hit with Class Action Over Alleged Telemarketing Texts](#)

---