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19 **THE UNITED STATES DISTRICT COURT**  
20 **EASTERN DISTRICT OF CALIFORNIA**

21 MEGAN IVEY, an individual, and  
22 RONNISSA TOLEFREE, on  
23 behalf of themselves and all others  
24 similarly situated,

25 Plaintiffs,

26 vs.

27 CLICKSPARK, LLC, a New York  
28 Limited Liability Company; and  
DOE INDIVIDUALS, inclusive, and  
each of them,

Defendants.

) Case No.:

) **CLASS ACTION**

) **PLAINTIFFS' 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  
U.S.C. § 227, *et seq.* (cell phone).

) **DEMAND FOR JURY TRIAL**



1 Plaintiffs Megan Ivey (“Ivey”) and Roniessa Tolefree (“Tolefree”)  
2 (collectively “Plaintiffs”), on behalf of themselves and all others similar situated,  
3 alleges the follow upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiffs, on behalf of themselves and others similarly situated,  
6 seeking damages and any other available legal or equitable remedies resulting  
7 from the illegal actions of defendant CLICKSPARK, LLC and INDIVIDUAL  
8 DOES (collectively “Defendants”) in contacting Plaintiffs, as well as knowingly,  
9 and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephone in violation  
10 of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *set seq.* (“TCPA”).

11 2. Defendant is a limited liability company that regularly engages in  
12 aggressive and reckless marketing as an agent for profit educational entities  
13 while outright ignore controlling federal law, and the rights of the called party.

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

18 4. Defendants continued the calls, even after Plaintiffs explicitly told  
19 them to stop and revoked any purported assent to receive the illegal calls.

20 5. By making the telephone calls at issue in this Complaint,  
21 Defendants caused Plaintiff and the members of a putative Class of consumers  
22 (defined below) actual harm, including the aggravation, nuisance, and invasion  
23 of privacy that necessarily accompanies the receipt of unsolicited and harassing  
24 telephone calls, as well as the monies paid to their carriers for the receipt of such  
25 telephone calls.

26 6. Plaintiff brings this class action against Defendants to secure redress  
27 because Defendants willfully violated the TELEPHONE CONSUMER PROTECTION  
28 ACT (“TCPA”), 47 U.S.C § 227, *et seq.* by causing unsolicited calls to be made



1 to Plaintiff's and other class members' telephones through the use of an auto-  
2 dialer and/or artificial or pre-recorded voice message.

3 7. By making the telephone calls at issue in this Complaint, Defendant  
4 caused Plaintiff actual harm, including the aggravation, nuisance, and invasion of  
5 privacy that necessarily accompanies the receipt of unsolicited and harassing  
6 telephone calls, as well as the monies paid to her carrier(s) for the receipt of such  
7 telephone calls.

8 8. Congress enacted the TCPA to protect consumers from unsolicited  
9 telephone calls exactly like those alleged in this case. In response to Defendant's  
10 unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction  
11 requiring Defendant to cease all illegal telephone calling activities to her cellular  
12 telephone, and other individuals cellular phones and an award of statutory  
13 damages under the TCPA equal to \$500.00 per violation, together with court  
14 costs, reasonable attorneys' fees (including under Cal. *Code Civ. Proc.* §  
15 1021.5), and treble damages (for knowing and/or willful violations). Plaintiff  
16 also seeks an award of court costs and reasonable attorney's fees.

### 17 **JURISDICTION & VENUE**

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

22 10. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
23 violation of the TCPA, which, when aggregated among a proposed class in the  
24 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
25 Therefore, both diversity jurisdiction and the damages threshold under the Class  
26 Action Fairness Act of 2005 ("CAFA") are present, and this Court has  
27 jurisdiction.

28 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331,



1 as this action arises under the TCPA, which is a federal statute.

2 12. The Court has personal jurisdiction over Defendant because it  
3 conduct significant business in this District, and the unlawful conduct alleged in  
4 this Complaint occurred in, was directed to, and/or emanated from this District.

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

8 14. Defendant is subject to specific personal jurisdiction in this District  
9 because it has continuous and systematic contacts with this District through their  
10 marketing efforts and services that target this District, and the exercise of  
11 personal jurisdiction over Defendant in this District does not offend traditional  
12 notions of fair play or substantial justice.

13 **PARTIES**

14 15. Plaintiff MEGAN IVEY (“Plaintiff” or “Ivey”) is a citizen of the  
15 State of California who resides in Tracey, San Joaquin County, California.

16 16. Defendant CLICKSPARK, LLC (“Defendant” or “ClickSpark  
17 Bureau”) is a New York limited liability company (with its founding roots within  
18 the last ten years in the Bay Area of California). It is organized under the laws of  
19 the State of New York and registered with the California Secretary of State.  
20 Defendant maintains its principle place of business at 530 Summit Point Drive,  
21 Henrietta, New York, 14467, but regularly conducts business in this District.  
22 Defendant can be served with process by serving its registered agent, Thomas M.  
23 Tortora at 530 Summit Point Drive, Henrietta, New York, 14467.

24 17. The true names and capacities of the Defendants sued herein as  
25 DOE INDIVIDUALS, inclusive, are currently unknown to Plaintiff, who  
26 therefore sues such Defendants by fictitious names. Each of the Defendants  
27 designated herein as a DOE is legally responsible for the unlawful acts alleged  
28 herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the

1 true names and capacities of the DOE Defendants when such identities become  
2 known.

3 18. Plaintiffs does not yet know the identity of Defendants’  
4 employees/agents, identified as DOE INDIVIDUALS that had direct, personal  
5 participation in or personally authorized the conduct found to have violated the  
6 statute, and were not merely tangentially involved. They are named tentatively as  
7 numerous District Courts have found that individual officers/principals of  
8 corporate entities may be personally liable (jointly and severally) under the  
9 TCPA if they had direct, personal participation in or personally authorized the  
10 conduct found to have violated the statute, and were not merely tangentially  
11 involved. *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 899 (W.D. Tex.  
12 2001) (“*American Blastfax*”); *Sandusky Wellness Center, LLC v. Wagner*  
13 *Wellness, Inc.*, 2014 WL 1333472, at \* 3 (N.D. Ohio March 28, 2014); *Maryland*  
14 *v. Universal Elections*, 787 F.Supp.2d 408, 415-16 (D.Md. 2011) (“*Universal*  
15 *Elections*”); *Baltimore-Washington Tel Co. v. Hot Leads Co.*, 584 F.Supp.2d  
16 736, 745 (D.Md. 2008); *Covington & Burling v. Int’l Mktg. & Research, Inc.*,  
17 2003 WL 21384825, at \*6 (D.C.Super Apr. 17, 2003); *Chapman v. Wagener*  
18 *Equities, Inc.* 2014 WL 540250, at \*16-17 (N.D.Ill. Feb. 11, 2014); *Versteeg v.*  
19 *Bennett, Deloney & Noyes, P.C.*, 775 F.Supp.2d 1316, 1321 (D.Wy.2011)  
20 (“*Versteeg*”). Upon learning of the identities of said individuals, Plaintiff will  
21 move to amend to name the individuals as defendants.

22 19. Plaintiffs are informed and believe and thereon allege that at all  
23 relevant times, each and every Defendant was acting as an agent and/or  
24 employee of each of the other Defendants and was the owner, agent, servant,  
25 joint venturer and employee, each of the other and each was acting within the  
26 course and scope of its ownership, agency, service, joint venture and  
27 employment with the full knowledge and consent of each of the other  
28 Defendants. Plaintiffs are informed and believe and thereon allege that each of



1 the acts and/or omissions complained of herein was made known to, and ratified  
2 by, each of the other Defendants.

3 20. At all times mentioned herein, each and every Defendant was the  
4 successor of the other and each assumes the responsibility for each other's acts  
5 and omissions.

6 **TELEPHONE CONSUMER PROTECTION ACT**

7 21. Congress enacted the TCPA in 1991 to address certain practices  
8 thought to be an invasion of consumer privacy and a risk to public safety. The  
9 TCPA and the Federal Communications Commission's (hereinafter "FCC")  
10 implemented rules prohibit: (1) making telemarketing calls using an artificial or  
11 prerecorded voice to residential telephones without prior express consent; and (2)  
12 making any non-emergency call using an automatic telephone dialing system  
13 (hereinafter "ATDS") or an artificial or prerecorded voice to a wireless telephone  
14 number without prior express consent. If the call includes or introduces an  
15 advertisement, or constitutes telemarketing, consent must be in writing.<sup>1</sup> The  
16 TCPA grants consumers a private right of action, with a provision for \$500 or the  
17 actual monetary loss in damages for each violation, whichever is greater, and  
18 treble damages for each willful or knowing violation, as well as injunctive relief.

19 22. Since the TCPA's passage in 1991, the FCC has taken multiple  
20 actions implementing and interpreting the TCPA, and has issued numerous  
21 Declaratory Rulings clarifying specific aspects of the TCPA. The most recent,  
22 FCC Omnibus Order of July 10, 2015, (the "Order") provided further protection  
23

24 <sup>1</sup> Prior express written consent means "an agreement, in writing, bearing the  
25 signature of the person called that clearly authorizes the seller to deliver or  
26 cause to be delivered to the person called advertisements or telemarketing  
27 messages using an automatic telephone dialing system or an artificial or  
28 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 to consumers by, among other things, clarifying that ATDS is broadly defined,  
2 confirming liability attaches to calls made to the wrong number or reassigned  
3 number, and clarifying consumers may revoke consent through reasonable  
4 methods. *In the Matter of Rules and Regulations Implementing the Tel.*  
5 *Consumer Prot. Act of 1991*, FCC 15–72, 30 F.C.C.R. 7961, (July 10, 2015),  
6 available at [https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-](https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order)  
7 [order](https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order). The Order defines an “autodialer” as equipment/software that has the  
8 future capacity to dial randomly or sequentially. “In other words, the capacity of  
9 an autodialer is not limited to its current configuration but also includes its  
10 potential functionalities.” The Order clarifies the meaning of “capacity” and that  
11 “any call” made using a device with the capacity to serve as an ATDS requires  
12 consent under the TCPA, even if the caller is not “actually...using those  
13 functionalities to place calls” at the time. *Derby v. AOL, Inc.*, No. 5:15-CV-  
14 00452-RMW, 2015 WL 5316403, at \*3 (N.D. Cal. Sept. 11, 2015).

15 23. The Order also states that calls placed to the wrong number or a  
16 reassigned number are made with knowledge of the error after the first call; and  
17 consumers may revoke consent through any reasonable method, including orally:  
18 “[w]e clarify, however, that callers who make calls without knowledge of  
19 reassignment and with a reasonable basis to believe that they have valid consent  
20 to make the call should be able to initiate one call after reassignment as an  
21 additional opportunity to gain actual or constructive knowledge of the  
22 reassignment and cease future calls to the new subscriber. If this one additional  
23 call does not yield actual knowledge of reassignment, we deem the caller to have  
24 constructive knowledge of such;” “[c]onsumers generally may revoke, for  
25 example, by way of a consumer-initiated call, directly in response to a call  
26 initiated or made by a caller, or at an in-store bill payment location, among other  
27 possibilities.”

28 24. Finally, in 2008, the FCC held that “a creditor on whose behalf an

1 autodialed or prerecorded message call is made to a wireless number bears the  
2 responsibility for any violation of the Commission’s rules.” In re Rules and  
3 Regulations Implementing the Telephone Consumer Protection Act, Declaratory  
4 Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559,  
5 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, 2012 WL  
6 7062748 (Dec. 31, 2012).

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

14 26. In its initial implementation of the TCPA rules, the FCC included an  
15 exemption to its consent requirement for prerecorded telemarketing calls. Where  
16 the caller could demonstrate an “established business relationship” with a  
17 customer, the TCPA permitted the caller to place pre-recorded telemarketing  
18 calls to residential lines. The new amendments to the TCPA, effective October  
19 16, 2013, eliminate this established business relationship exemption. Therefore,  
20 all pre-recorded telemarketing calls to residential lines and wireless numbers  
21 violate the TCPA if the calling party does not first obtain express written consent  
22 from the called party.

23 27. As of October 16, 2013, unless the recipient has given prior express  
24 written consent,<sup>2</sup> the TCPA and Federal Communications Commission (FCC)

25 \_\_\_\_\_  
26 <sup>2</sup> Prior express written consent means “an agreement, in writing, bearing the signature of the  
27 person called that clearly authorizes the seller to deliver or cause to be delivered to the  
28 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 rules under the TCPA generally:

- 2
- 3 • Prohibits solicitors from calling residences before 8 a.m. or after 9 p.m., local time.
- 4
- 5 • Requires solicitors provide their name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity may be contacted.
- 6
- 7
- 8 • Prohibits solicitations to residences that use an artificial voice or a recording.
- 9
- 10 • Prohibits any call or text made using automated telephone equipment or an artificial or prerecorded voice to a wireless device or telephone.
- 11
- 12
- 13 • Prohibits any call made using automated telephone equipment or an artificial or prerecorded voice to an emergency line (e.g., “911”), a hospital emergency number, a physician’s office, a hospital/health care facility/elderly room, a telephone, or any service for which the recipient is charged for the call.
- 14
- 15
- 16
- 17 • Prohibits autodialed calls that engage two or more lines of a multi-line business.
- 18
- 19 • Prohibits unsolicited advertising faxes.
- 20
- 21 • Prohibits certain calls to members of the Do-Not-Call Registry
- 22

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



1 7062748 (Dec. 31, 2012).

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

6 **FACTUAL ALLEGATIONS**

7 30. Beginning in or around October 6, 2015, Defendants contacted  
8 Plaintiff Ivey on her cellular telephone number ending in 2343 *via* ATDS, as  
9 defined by 47 U.S.C. § 227(a)(1), without first obtaining Plaintiff's consent. The  
10 calls continued even after Plaintiff Ivey told them she was not interested in going  
11 back to school and to take her off their lists. Plaintiff Ivey's number has been on  
12 the do not call list since approximately 2009.

13 31. Despite Plaintiff Ivey's reasonable requests to stop calling her,  
14 Defendant called her approximately 20 times.

15 32. Plaintiff Ivey's caller ID read "209-390-8102" as the calls were  
16 incoming. These numbers are assigned to the Defendants and their agents.

17 33. When Plaintiff Ivey answered the phone, she experienced dead air  
18 and a computer generated voice, before he could hear the call being routed a live  
19 representative.

20 34. To the extent Plaintiff ever consented to the calls, she revoked such  
21 consent but the calls continued.

22 35. Plaintiff was extremely frustrated by the calls and wanted  
23 Defendants to stop calling. The calls invaded her privacy and used up capacity on  
24 her cellular plan.

25 36. On information and belief, Defendants' automated system had  
26 called Plaintiff Ivey on every occasion.

27 37. Based on the circumstances of the calls – including but not limited  
28 to the multiple calls, Defendants called despite Plaintiff's requests to Defendants



1 to stop calling (indicating a computer automatically dialed the number again) –  
2 Plaintiff believes Defendants called her cellular telephone using an ATDS that  
3 automatically selected her number from a computer database that had the ability  
4 to store numbers

5 38. On information and belief, Defendants’ ATDS called Plaintiff Ivey  
6 on every occasion.

7 39. On information and belief, and based on the circumstances of the all  
8 the calls, Defendants called Plaintiff Ivey using an ATDS.

9 40. Plaintiff Ivey understood the purpose of Defendants’ calls was to  
10 solicit business from Plaintiff.

11 41. The telephone number Defendants called Plaintiff Ivey was assigned  
12 to a cellular telephone.

13 42. Plaintiff Ivey is the regular carrier and exclusive user of the cellular  
14 telephone assigned the number ending in 2343.

15 43. Defendants’ calls constituted calls that were not for emergency  
16 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

17 44. Plaintiff Ivey did not provide Defendants with prior express written  
18 consent to receive calls to her cellular telephone utilizing an ATDS or artificial  
19 or pre-recorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A) and 47 C.F.R. §  
20 64.1200(a)(3).

21 45. All calls Defendants made to Plaintiff violate 47 U.S.C. § 227, and  
22 15 U.S.C. § 1692.

23 46. Beginning in February 2017, Defendants contacted Plaintiff  
24 Tolefree on her cellular telephone number ending in 7653 *via* ATDS, as defined  
25 by 47 U.S.C. § 227(a)(1), without first obtaining Plaintiff’s consent. Plaintiff  
26 Tolefree’s number has been on the do not call list since approximately 2005.

27 47. Despite Plaintiff Tolefree’s reasonable requests to stop calling her,  
28 Defendant called her at least 20 times.



1 48. Plaintiff Tolefree's caller ID read "510-340-9402" as the calls were  
2 incoming. These numbers are assigned to the Defendants and their agents.

3 49. When Plaintiff Tolefree answered the phone, she experienced dead  
4 air and a computer generated voice, before he could hear the call being routed a  
5 live representative.

6 50. To the extent Plaintiff ever consented to the calls, she revoked such  
7 consent but the calls continued.

8 51. Plaintiff was extremely frustrated by the calls and wanted  
9 Defendants to stop calling. The calls invaded her privacy and used up capacity on  
10 her cellular plan.

11 52. On information and belief, Defendants' automated system had  
12 called Plaintiff Tolefree on every occasion.

13 53. Based on the circumstances of the calls – including but not limited  
14 to the multiple calls, Defendants called despite Plaintiff's requests to Defendants  
15 to stop calling (indicating a computer automatically dialed the number again) –  
16 Plaintiff believes Defendants called her cellular telephone using an ATDS that  
17 automatically selected her number from a computer database that had the ability  
18 to store numbers

19 54. On information and belief, Defendants' ATDS called Plaintiff  
20 Tolefree on every occasion.

21 55. On information and belief, and based on the circumstances of the all  
22 the calls, Defendants called Plaintiff Ivey using an ATDS.

23 56. Plaintiff Tolefree understood the purpose of Defendants' calls was  
24 to solicit business from Plaintiff.

25 57. The telephone number Defendants called Plaintiff Tolefree was  
26 assigned to a cellular telephone.

27 58. Plaintiff Tolefree is the regular carrier and exclusive user of the  
28 cellular telephone assigned the number ending in 7653.

1 59. Defendants' calls constituted calls that were not for emergency  
2 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

3 60. Plaintiff Tolefree did not provide Defendants with prior express  
4 written consent to receive calls to her cellular telephone utilizing an ATDS or  
5 artificial or pre-recorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A) and 47  
6 C.F.R. § 64.1200(a)(3).

7 61. All calls Defendants made to Plaintiff violate 47 U.S.C. § 227, and  
8 15 U.S.C. § 1692.

9 62. Plaintiffs seeks an injunction requiring Defendants to cease all  
10 illegal, abusive, and harassing telephone calls using an ATDS and an award of  
11 statutory damages, together with costs and reasonable attorneys' fees. Plaintiffs,  
12 once they learn the identity of DOE INDIVIDUALS will seek an appropriate  
13 injunction that will at a minimum require DOE INDIVIDUALS to cease all  
14 illegal, abusive, and harassing telephone calls using an ATDS and confirm with  
15 this Court they are doing so with any future employer or entity with whom they  
16 are engaged.

### 17 STANDING

18 63. Plaintiffs have standing to bring this suit on behalf of themselves  
19 and the members of the class under Article III of the United States Constitution  
20 because Plaintiffs' claims state: (a) a valid injury in fact; (b) an injury which is  
21 traceable to the conduct of Defendants; and (c) is likely to be redressed by a  
22 favorable judicial decision. *See Spokeo v. Robins*, 578 U.S. \_\_\_ (2016) at 6;  
23 *Robins v. Spokeo*, 867 F.3d 1108 (9th Cir. 2017) (cert denied. 2018 WL 491554,  
24 U.S., Jan. 22 2018); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992);  
25 and *Chen v. Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016).

#### 26 **A. INJURY IN FACTS**

27 64. A Plaintiff's injury must be both "concrete" and "particularized" in  
28 order to satisfy the requirements of Article III of the Constitution. (*Id.*)

1           65. For an injury to be concrete it must be a de facto injury, meaning it  
2 actually exists. In the present case, Plaintiffs took the affirmative step of  
3 enrolling himself on the National Do-Not-Call Registry for the purpose of  
4 preventing marketing calls to their telephones. Such telemarketing calls are a  
5 nuisance, an invasion of privacy, and an expense to Plaintiff. *See Soppet v.*  
6 *enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of  
7 these injuries are present in this case. (See also *Chen v. Allstate Inc. Co.*, 819  
8 F.3d 1136 (9th Cir. 2016).

9           66. Furthermore, the Third Circuit recently stated, Congress found that  
10 “[u]nsolicited telemarketing phone calls or text messages, by their nature, invade  
11 the privacy and disturb the solitude of their recipients,” *Van Patten*, 847 F.3d at  
12 1043, and sought to protect the same interests implicated in the traditional  
13 common law cause of action. Put differently, Congress was not inventing a new  
14 theory of injury when it enacted the TCPA. Rather, it elevated a harm that, while  
15 “previously inadequate in law,” was of the same character of previously existing  
16 “legally cognizable injuries.” *Spokeo*, 136 S.Ct. at 1549. *Spokeo* addressed, and  
17 approved, such a choice by Congress. *Susinno v. Work Out World Inc.*, No. 16-  
18 3277, 2017 WL 2925432, at \*4 (3d Cir. July 10, 2017).

19           67. For an injury to be particularized means that the injury must affect  
20 the plaintiff in a personal and individual way. *See Spokeo* at 7. In the instant  
21 case, Defendants placed calls to Plaintiff’s phone, and left messages on  
22 Plaintiff’s phone. It was Plaintiff’s personal privacy and peace that Defendants  
23 invaded by placing the calls to his phone. Furthermore, Plaintiff is the person  
24 who pays for the phone, and is the regular carrier and user of the phone. All of  
25 these injuries are particular to Plaintiff.

26 **B. TRACEABLE TO THE CONDUCT OF DEFENDANT**

27           68. Plaintiffs must allege at the pleading stage of the case facts to show  
28 that their injury is traceable to the conduct of Defendants. In this case, Plaintiffs

1 satisfies this requirement by alleging that Defendants, and/or agent of Defendants  
2 on behalf of Defendants, placed illegal calls to Plaintiffs' phones.

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

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

14 70. Because all standing requirements of Article III of the U.S.  
15 Constitution have been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_  
16 (2016), Plaintiffs have standing to sue Defendants on the stated claims.

17 **CLASS ALLEGATIONS**

18 71. Plaintiffs brings this action pursuant to Rule 23 of the Federal Rules  
19 of Civil Procedure and/or other applicable law, on behalf of themselves and all  
20 others similarly situated, as a member of two proposed classes (hereafter "the  
21 DNC Class" and the "Cellphone Class").

22 72. The Cellphone Class is defined as follows:

23 All persons within the United States who received any telephone calls  
24 from Defendant(s) to said person's cellular telephone made through the  
25 use of any automatic telephone dialing system or an artificial or  
26 prerecorded voice and such person had not previously provided express  
27 consent to receiving such calls within the four years prior to the filing of  
28 this Complaint.

1 73. Plaintiffs represents, and are members of the Cellphone Class,  
2 consisting of all persons within the United States who received any telephone  
3 call from Defendant(s) to said person's cellular telephone made through the use  
4 of any automatic telephone dialing system or an artificial or prerecorded voice  
5 and such person had not previously not provided their cellular telephone number  
6 to Defendant within the four years prior to the filing of this Complaint.

7 74. Excluded from the Cellphone Class are governmental entities,  
8 Defendants, any entity in which Defendants have a controlling interest, and  
9 Defendants' officers, directors, affiliates, legal representatives, employees, co-  
10 conspirators, successors, subsidiaries, and assigns. Also excluded from the  
11 Cellphone Class are any judges, justices or judicial officers presiding over this  
12 matter and the members of their immediate families and judicial staff.

13 75. The DNC Class is defined as follows:

14 All individuals in the United States who: (1) received more than one  
15 telephone call made by or on behalf of Defendants within a 12-month  
16 period; (2) to a telephone number that had been registered with the  
17 National Do Not Call Registry for at least 30 days; and (3) for whom  
18 Defendants had no consent to place such calls within the four years prior  
19 to the filing of this Complaint.

20 76. Excluded from the DNC Class are governmental entities,  
21 Defendants, any entity in which Defendants have a controlling interest, and  
22 Defendants' officers, directors, affiliates, legal representatives, employees, co-  
23 conspirators, successors, subsidiaries, and assigns. Also excluded from the  
24 Cellphone Class are any judges, justices or judicial officers presiding over this  
25 matter and the members of their immediate families and judicial staff.

26 77. Plaintiffs reserve the right to expand or further define the Class  
27 definitions to seek recovery on behalf of additional persons as warranted as facts  
28 are learned in further investigation and discovery.



1           78. Plaintiffs and members of the Classes were harmed by Defendants’  
2 acts in at least the following ways: Defendants, either directly or through agents,  
3 illegally contacted Plaintiff and the Class members *via* their telephones, after  
4 Plaintiff and the Class members took the affirmative step of registering their  
5 numbers on the DNC and/or illegal contacted Plaintiffs and the Class members  
6 on their cellular phones.

7           79. This action is properly maintainable as a class action. This action  
8 satisfies the numerosity, typicality, adequacy, predominance and superiority for a  
9 class action.

10           80. **Numerosity:** The proposed Classes are so numerous that individual  
11 joinder of all members is impracticable. Due to the nature of the trade and  
12 commerce involved, Plaintiffs do not know the number of members in the  
13 Classes, but believes the Class members number in the thousands, if not more.  
14 Plaintiffs allege that the Class may be ascertained by the records maintained by  
15 Defendants.

16           81. Plaintiffs and members of the Classes were harmed by the acts of  
17 Defendant(s) in at least the following ways: Defendant(s) illegally contacted  
18 Plaintiffs and Class members via their telephones thereby causing Plaintiff and  
19 Class members, without their “prior express consent,” to incur certain charges or  
20 reduced telephone time for which Plaintiffs and Class members had previously  
21 paid by having to retrieve or administer message(s) left by Defendant during  
22 those illegal calls, and invading the privacy of said Plaintiffs and Class members.

23           82. **Common Questions of Law and Fact Predominate:** There are  
24 only a few legal and factual issues to determine if there is liability under the  
25 TCPA and for each of those questions of law and fact, common issues to the  
26 Class predominate over any questions that may affect individual Class members,  
27 in that the claims of all Class members for each of the claims herein can be  
28



1 established with common proof. Common questions of fact and law include, but  
2 are not limited to, the following:

- 3 (a) Whether, within the four years prior to the filing of this  
4 Complaint, Defendant(s) made any calls (other than a call  
5 made for emergency purposes or made with the prior express  
6 consent of the called party) to a Class member using any  
7 automated dialing system or an artificial or prerecorded voice  
8 to any telephone number assigned to a cellular telephone  
9 service;
- 10 (b) Whether, within the four years prior to the filing of this  
11 Complaint, Defendant(s) made any calls (other than a call  
12 made for emergency purposes or made with the prior express  
13 consent of the called party) to a Class member using any  
14 automated dialing system or an artificial or prerecorded voice  
15 to any telephone number assigned to a cellular telephone  
16 service;
- 17 (c) Whether Defendants systematically made telephone calls to  
18 consumers whose telephone numbers were registered with the  
19 National do Not Call Registry;
- 20 (d) Whether members of the Class are entitled to treble damages  
21 based on the willfulness of Defendants' conduct;
- 22 (e) Whether Plaintiff and the Class members were damaged  
23 thereby, and the extent of the statutory damages for each such  
24 violation; and
- 25 (f) Whether the Defendant(s) should be enjoined from engaging  
26 in such conduct in the future.

27 83. **Typicality:** Plaintiffs' claims are typical of the claims of members  
28 of the Classes, as Plaintiffs were subject to the same common course of conduct

1 by Defendant(s) as all Class members. The injuries to each member of the Class  
2 were caused directly by Defendant(s)' wrongful conduct as alleged herein.

3 84. **Adequacy of Representation:** Plaintiffs will fairly and adequately  
4 represent and protect the interests of the Class. Plaintiffs have retained counsel  
5 with substantial experience in handling complex class action litigation. Plaintiffs  
6 and their counsel are committed to prosecuting this action vigorously on behalf  
7 of the Class and have financial resources to do so.

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

20 86. Moreover, individualized litigation would also present the potential  
21 for varying, inconsistent, or incompatible standards of conduct for Defendants,  
22 and would magnify the delay and expense to all parties and to the court system  
23 resulting from multiple trials of the same factual issues. The adjudication of  
24 individual Class members' claims would also, as a practical matter, be  
25 dispositive of the interests of other members not parties to the adjudication, and  
26 could substantially impair or impede the ability of other Class members to  
27 protect their interests.

28 87. Plaintiffs and the members of the Classes have suffered and will

1 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful  
2 conduct. Defendant(s) have acted, or refused to act, in respects generally  
3 applicable to the Class, thereby making appropriate final and injunctive relief  
4 with regard to the members of the Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **DNC CLAIM IN VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**  
7 **47 U.S.C. § 227, ET SEQ.**

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

9 88. Plaintiffs hereby incorporate by reference and re-allege each and  
10 every allegation set forth in each and every preceding paragraph of this  
11 Complaint, as though fully set forth herein.

12 89. 47 U.S.C. § 227(c) provides that any “person who has received  
13 more than one telephone call within any 12-month period by or on behalf of the  
14 same entity in violation of the regulations prescribed under this subsection may”  
15 bring a private action based on a violation of said regulations, which were  
16 promulgated to protect telephone subscribers' privacy rights to avoid receiving  
17 telephone solicitations to which they object.

18 90. The TCPA's implementing regulation—47 C.F.R. § 64.1200(c)—  
19 provides that “[n]o person or entity shall initiate any telephone solicitation” to  
20 “[a] residential telephone subscriber who has registered his or her telephone  
21 number on the national do-not-call registry of persons who do not wish to receive  
22 telephone solicitations that is maintained by the federal government.” *See* 47  
23 C.F.R. § 64.1200(c).

24 91. 47 C.F.R. § 64.1200(e), provides that 47 C.F.R. §§ 64.1200(c) and  
25 (d) “are applicable to any person or entity making telephone solicitations or  
26 telemarketing calls to wireless telephone numbers to the extent described in the  
27 Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules  
28 and Regulations Implementing the Telephone Consumer Protection Act of



1 1991,’” which the Report and Order, in turn, provides as follows:

2  
3 The Commission’s rules provide that companies making telephone  
4 solicitations to residential telephone subscribers must comply with  
5 time of day restrictions and must institute procedures for  
6 maintaining do-not-call lists. For the reasons described above, we  
7 conclude that these rules apply to calls made to wireless telephone  
8 numbers. We believe that wireless subscribers should be afforded  
9 the same protections as wireline subscribers.

10 92. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity  
11 shall initiate any call for telemarketing purposes to a residential telephone  
12 subscriber unless such person or entity has instituted procedures for maintaining  
13 a list of persons who request not to receive telemarketing calls made by or on  
14 behalf of that person or entity. The procedures instituted must meet the following  
15 minimum standards:

16 (1) Written policy. Persons or entitles making calls for  
17 telemarketing purposes must have a written policy, available upon  
18 demand, for maintaining a do-not-call list.

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

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



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

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

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

21 93. Defendants violated 47 C.F.R. § 64.1200(c) by initiating, or causing  
22 to be initiated, telephone solicitations to wireless and residential telephone  
23 subscribers such as Plaintiffs and the DNC Class members who registered their  
24 respective telephone numbers on the National Do Not Call Registry, a listing of  
25 persons who do not wish to receive telephone solicitations that is maintained by  
26 the federal government. These consumers requested to not receive calls from  
27 Defendants, as set forth in 47 C.F.R. § 64.1200(d)(3).

28 94. Defendants made more than one unsolicited telephone call to  
Plaintiffs and members of the DNC Class within a 12-month period without their  
prior express consent to place such calls. Plaintiffs 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.



1 95. Defendants violated 47 C.F.R. § 64.1200(d) by initiating calls for  
2 telemarketing purposes to residential and wireless telephone subscribers, such as  
3 Plaintiff and the Class, without instituting procedures that comply with the  
4 regulatory minimum standards for maintaining a list of persons who request not  
5 to receive telemarketing calls from them.

6 96. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiffs and the  
7 DNC Class received more than one telephone call in a 12-month period made by  
8 or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described  
9 above. As a result of Defendants' conduct as alleged herein, Plaintiffs and the  
10 DNC Class and the Class suffered actual damages and, under section 47 U.S.C. §  
11 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such  
12 violations of 47 C.F.R. § 64.1200.

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

16 98. Plaintiffs are also entitled to and seek injunctive relief prohibiting  
17 such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**

20 **47 U.S.C. § 227, *ET SEQ.***

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

22 99. Plaintiffs hereby incorporate by reference and re-allege each and  
23 every allegation set forth in each and every preceding paragraph of this  
24 Complaint, as though fully set forth herein.

25 100. The foregoing acts and omissions of Defendants constitute  
26 numerous and multiple violations of the TCPA, including but not limited to each  
27 and every one of the above cited provisions of 47 U.S.C. § 227, *et seq.* and 47  
28 C.F.R. §64.1200, *et seq.*



1 101. As a result of Defendants' violations of 47 U.S.C. § 227, *et seq.*, and  
2 47 C.F.R. §64.1200, *et seq.*, Plaintiff is entitled to an award of \$500.00 in  
3 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
4 227(b)(3)(B).

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

8 103. Plaintiffs are also entitled to and seek injunctive relief prohibiting  
9 such conduct in the future.

10  
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf of the Classes, prays  
13 for relief and judgment as follows:

- 14 (a) An order certifying the Classes as defined above, appointing  
15 Plaintiffs as the representative of the Classes, and appointing their  
16 counsel, KRISTENSEN WEISBERG, LLP & HUGHES ELLZEY, LLP as  
17 lead Class Counsel;
- 18 (b) An award of actual and statutory damages for each and every  
19 negligent violation to each member of the Class pursuant to 47  
20 U.S.C. § 227(b)(3)(B);
- 21 (c) An award of actual and statutory damages for each and every  
22 knowing and/or willful violation to each member of the Class  
23 pursuant to 47 U.S.C § 227(b)(3)(B);
- 24 (d) An injunction requiring Defendants and Defendants' agents to cease  
25 all unsolicited telephone calling activities, and otherwise protecting  
26 the interests of the Class, pursuant to 47 U.S.C. § 227(b)(3)(A);
- 27 (e) Pre-judgment and post-judgment interest on monetary relief;
- 28 (f) An award of reasonable attorneys' fees and court costs; and



1 (g) All other and further relief as the Court deems necessary, just, and  
2 proper.

3  
4 Dated: March 9, 2018

Respectfully submitted,

5 By: /s/ John P. Kristensen

6 John P. Kristensen (SBN 224132)

7 *john@kristensenlaw.com*

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10 Los Angeles, California 90066

11 Telephone: (310) 507-7924

12 Fax: (310) 507-7906



**DEMAND FOR JURY TRIAL**

1  
2 Plaintiffs hereby demand a trial by jury for all issues that may be decided  
3 by jury.

4  
5 Dated: March 9, 2018

Respectfully submitted,

6 By: /s/ John P. Kristensen

7 John P. Kristensen (SBN 224132)

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# ClassAction.org

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

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