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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JOHN KRISTENSEN,
individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

RESEARCH AMERICA, INC.,
and DOES 1 through 10, inclusive,

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. JOHN KRISTENSEN (“Plaintiff”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of RESEARCH AMERICA, INC. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

2. The TCPA was designed to prevent calls and messages like the ones

1 described within this complaint, and to protect the privacy of citizens like Plaintiff.
2 “Voluminous consumer complaints about abuses of telephone technology – for
3 example, computerized calls dispatched to private homes – prompted Congress to
4 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

5 3. In enacting the TCPA, Congress intended to give consumers a choice
6 as to how creditors and telemarketers may call them, and made specific findings
7 that “[t]echnologies that might allow consumers to avoid receiving such calls are
8 not universally available, are costly, are unlikely to be enforced, or place an
9 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this
10 end, Congress found that

11
12 [b]anning such automated or prerecorded telephone calls to the home,
13 except when the receiving party consents to receiving the call or when
14 such calls are necessary in an emergency situation affecting the health
15 and safety of the consumer, is the only effective means of protecting
16 telephone consumers from this nuisance and privacy invasion.

17 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
18 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
19 purpose).

20 4. Congress also specifically found that “the evidence presented to the
21 Congress indicates that automated or prerecorded calls are a nuisance and an
22 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
23 *Mims*, 132 S. Ct. at 744.

24 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
25 TCPA case regarding calls to a non-debtor similar to this one:

26
27 The Telephone Consumer Protection Act is well known for its
28 provisions limiting junk-fax transmissions. A less-litigated part of the
Act curtails the use of automated dialers and prerecorded messages to

1 cell phones, whose subscribers often are billed by the minute as soon
2 as the call is answered—and routing a call to voicemail counts as
3 answering the call. An automated call to a landline phone can be an
4 annoyance; an automated call to a cell phone adds expense to
5 annoyance.

6 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

7 **JURISDICTION AND VENUE**

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

17 7. Venue is proper in the United States District Court for the Eastern
18 District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(1) because Defendant’s
19 principle place of business is located in the County of Delaware, State of
20 Pennsylvania.

21 **PARTIES**

22 8. Plaintiff is, and at all times mentioned herein was, a natural person
23 and citizen and resident of the State of California. Plaintiff is, and at all times
24 mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

25 9. Defendant is, and at all times mentioned herein was, a marketing
26 research company, and is therefore a “person” as defined by 47 U.S.C. § 153(39).
27
28

1 including a text message sent to and received by Plaintiff on or about May 6, 2018
2 from Defendant's phone number, (916) 438-9641.

3 17. On May 6, 2018, Plaintiff received a text from Defendant that read:

4 California Opinion Research is
5 doing a 2 minute voter survey
6 regarding issues in CA. Please
7 click the link.

8 18. This text message placed to Plaintiff's cellular telephone were placed
9 via Defendant's *SMS Blasting Platform*, i.e., an "automatic telephone dialing
10 system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C.
11 § 227 (b)(1)(A).

12 19. The telephone number that Defendant, or their agent, called was
13 assigned to a cellular telephone service for which Plaintiff incurs a charge for
14 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

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

17 21. Plaintiff was never a customer of Defendant's and never provided his
18 cellular telephone number Defendant for any reason whatsoever. Accordingly,
19 Defendant and their agent never received Plaintiff's prior express consent to
20 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

21 22. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
22 § 227(b)(1).

23
24 **CLASS ACTION ALLEGATIONS**

25 23. Plaintiff brings this action on behalf of himself and on behalf of and
26 all others similarly situated ("the Class").

27 24. Plaintiff represents, and is a member of, the Class, consisting of all
28 persons within the United States who received any unsolicited text messages from

1 Defendant which text message was not made for emergency purposes or with the
2 recipient's prior express consent within the four years prior to the filing of this
3 Complaint.

4 25. Defendant and their employees or agents are excluded from the Class.
5 Plaintiff does not know the number of members in the Class, but believes the Class
6 members number in the hundreds of thousands, if not more. Thus, this matter
7 should be certified as a Class action to assist in the expeditious litigation of this
8 matter.

9 26. Plaintiff and members of the Class were harmed by the acts of
10 Defendant in at least the following ways: Defendant, either directly or through their
11 agents, illegally contacted Plaintiff and the Class members via their cellular
12 telephones by using marketing research surveys and text messages, thereby causing
13 Plaintiff and the Class members to incur certain cellular telephone charges or
14 reduce cellular telephone time for which Plaintiff and the Class members
15 previously paid, and invading the privacy of said Plaintiff and the Class members.
16 Plaintiff and the Class members were damaged thereby.

17 27. This suit seeks only damages and injunctive relief for recovery of
18 economic injury on behalf of the Class, and it expressly is not intended to request
19 any recovery for personal injury and claims related thereto. Plaintiff reserves the
20 right to expand the Class definition to seek recovery on behalf of additional persons
21 as warranted as facts are learned in further investigation and discovery.

22 28. The joinder of the Class members is impractical and the disposition of
23 their claims in the Class action will provide substantial benefits both to the parties
24 and to the court. The Class can be identified through Defendant's records or
25 Defendant's agent's records.

26 29. There is a well-defined community of interest in the questions of law
27 and fact involved affecting the parties to be represented. The questions of law and
28

1 fact to the Class predominate over questions which may affect individual Class
2 members, including the following:

- 3 a) Whether, within the four years prior to the filing of this Complaint,
4 Defendant or their agents sent any text messages to the Class (other
5 than a message made for emergency purposes or made with the prior
6 express consent of the called party) to a Class member using any
7 automatic dialing system to any telephone number assigned to a
8 cellular phone service;
- 9 b) Whether Plaintiff and the Class members were damaged thereby, and
10 the extent of damages for such violation; and
- 11 c) Whether Defendant and their agents should be enjoined from
12 engaging in such conduct in the future.

13
14 30. As a person that received at least one marketing research survey and
15 text message without Plaintiff's prior express consent, Plaintiff is asserting claims
16 that are typical of the Class. Plaintiff will fairly and adequately represent and
17 protect the interests of the Class in that Plaintiff has no interests antagonistic to any
18 member of the Class.

19 31. Plaintiff and the members of the Class have all suffered irreparable
20 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
21 action, the Class will continue to face the potential for irreparable harm. In
22 addition, these violations of law will be allowed to proceed without remedy and
23 Defendant will likely continue such illegal conduct. Because of the size of the
24 individual Class member's claims, few, if any, Class members could afford to seek
25 legal redress for the wrongs complained of herein.

26 32. Plaintiff has retained counsel experienced in handling class action
27 claims and claims involving violations of the Telephone Consumer Protection Act.
28

1 33. A class action is a superior method for the fair and efficient
2 adjudication of this controversy. Class-wide damages are essential to induce
3 Defendant to comply with federal and California law. The interest of Class
4 members in individually controlling the prosecution of separate claims against
5 Defendant are small because the maximum statutory damages in an individual
6 action for violation of privacy are minimal. Management of these claims is likely
7 to present significantly fewer difficulties than those presented in many class claims.

8 34. Defendant has acted on grounds generally applicable to the Class,
9 thereby making appropriate final injunctive relief and corresponding declaratory
10 relief with respect to the Class as a whole.

11 **FIRST CAUSE OF ACTION**
12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
13 **47 U.S.C. § 227 ET SEQ.**
14

15 35. Plaintiff incorporates by reference all of the above paragraphs of this
16 Complaint as though fully stated herein.

17 36. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

20 37. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 et
21 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

23 38. Plaintiff and the Class are also entitled to and seek injunctive relief
24 prohibiting such conduct in the future.

25 ///
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- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

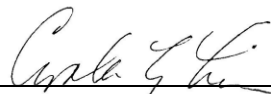
TRIAL BY JURY

43. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: September 10, 2018

Respectfully submitted,

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

By: 
 Cynthia Z. Levin, Esq.
 Law Offices of Todd M. Friedman
 Attorney for Plaintiff

JS 44 (Rev 06/17)

CIVIL COVER SHEET

18 cv - 4026

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN KRISTENSEN, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C., 1150 First Ave., Ste 501 King of Prussia, PA 19406

DEFENDANTS

RESEARCH AMERICA, INC. and DOES 1 through 10, inclusive.

County of Residence of First Listed Defendant Delaware (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation Transfer
8 Multidistrict Litigation Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity) 47 U.S.C. 227, et seq. Telephone Consumer Protection Act. Brief description of cause: Violations of 47 U.S.C. 227, et seq. Telephone Consumer Protection Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.01. CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions) JUDGE DOCKET NUMBER SEP 17 2018

DATE 09/18/2018 SIGNATURE OF A ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

JD

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

18cv 4026

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2413 Ocean Avenue, Venice, CA 90291

Address of Defendant: 33 Bishop Hollow Road, Newtown Sq., PA 19073

Place of Accident, Incident or Transaction: 2413 Ocean Avenue, Venice, CA 90291

RELATED CASE, IF ANY:

Case Number _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when Yes is answered to any of the following questions

- 1 Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
- 2 Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
- 3 Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes No
- 4 Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above

DATE 09/18/2018

[Signature]
Attorney-at-Law / Pro Se Plaintiff

27050
Attorney I D # (if applicable)

CIVIL: (Place a v in one category only)

A. Federal Question Cases:

- 1 Indemnity Contract, Marine Contract, and All Other Contracts
- 2 FELA
- 3 Jones Act-Personal Injury
- 4 Antitrust
- 5 Patent
- 6 Labor-Management Relations
- 7 Civil Rights
- 8 Habeas Corpus
- 9 Securities Act(s) Cases
- 10 Social Security Review Cases
- 11 All other Federal Question Cases (Please specify) TCPA

B. Diversity Jurisdiction Cases:

- 1 Insurance Contract and Other Contracts
- 2 Airplane Personal Injury
- 3 Assault, Defamation
- 4 Marine Personal Injury
- 5 Motor Vehicle Personal Injury
- 6 Other Personal Injury (Please specify) _____
- 7 Products Liability
- 8. Products Liability - Asbestos
- 9. All other Diversity Cases (Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000 00 exclusive of interest and costs
- Relief other than monetary damages is sought.

SEP 17 2018

DATE _____ Attorney-at-Law / Pro Se Plaintiff _____ Attorney I D # (if applicable) _____

NOTE A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

JD

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

JOHN KRISTENSEN, individually, and on behalf of all others similarly situated, v. RESEARCH AMERICA, INC., and DOES 1 through 10, inclusive,

CIVIL ACTION

NO. 18cv4026

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255. ()
(b) Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
(d) Asbestos - Cases involving claims for personal injury or property damage from exposure to asbestos. ()
(e) Special Management - Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
(f) Standard Management - Cases that do not fall into any one of the other tracks. ()

9/10/2018 Date 877-206-4741 Telephone
Crest of the Attorney-at-law 866-633-0228 FAX Number
Plaintiff Attorney for clevin@attorneysforconsumers.com E-Mail Address

SEP 17 2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TCPA Suit Filed Against Research America Over Allegedly Unsolicited Survey Text Messages](#)
