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12 **pro hac vice* pending

13 *Attorneys for Plaintiff and the Putative Class*

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 LYNN LAING, Individually and
17 on behalf of a Class of Similarly
18 Situated Individuals,

'17CV2072 WQHJLB

19 *Plaintiff,*

CLASS ACTION

JURY TRIAL DEMANDED

20
21 vs.

22
23 WELLS FARGO BANK, N.A.,
24 a National Association,

25 *Defendant.*
26 _____/

1 Plaintiff LYNN LAING (“Plaintiff”), through her attorneys, on behalf of herself and all
2 others similarly situated, alleges on personal information and upon information and belief based
3 upon, *inter alia*, the investigation made by and through her attorneys, as follows:
4

5 **INTRODUCTION**

6 1. This is an action for damages under 47 U.S.C. § 227 et seq., the Telephone
7 Consumer Protection Act (“TCPA”). The allegations herein directly involve the substantive
8 privacy rights the TCPA was enacted to protect. Specifically, WELLS FARGO BANK, N.A.
9 (“Wells Fargo” or “Defendant”) persisted for years in the abusive practice of placing automated
10 calls to LYNN LAING’s (“Plaintiff”) cellular and residential telephone numbers notwithstanding
11 her repetitive communications that Defendant had reached the wrong number and that she did
12 not wish to receive further calls.
13

14 **JURISDICTION AND VENUE**

15 2. This Court has federal question subject matter jurisdiction over the claims in this
16 case under 28 U.S.C § 1331. The TCPA is a federal statute. *Mims v. Arrow Financial Services,*
17 *LLC*, 132 S. Ct. 740, 753, 565 U.S. 368, 181 L. Ed. 2d 881 (2012). (Federal courts have § 1331
18 jurisdiction over claims that arise under federal law).
19

20 3. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part
21 of the events or omissions giving rise to the claims herein occurred in this judicial district.
22 Defendant conducts business in this district and its contacts here are sufficient to subject it to
23 personal jurisdiction.
24

25 **PARTIES**

26 4. Plaintiff LYNN LAING (“Plaintiff”) is a natural person who, at all times relevant
27 herein, is and was a resident of Vista, California.
28

1 5. Defendant WELLS FARGO BANK, N.A. (“Wells Fargo”) is a national
2 association whose principal office is located at 101 N Phillips Avenue, Sioux Falls, South
3 Dakota 57104 and whose registered agent for service of process in the State of California is
4 Corporation Service Company d/b/a CSC – Lawyers Incorporating Service, 2710 Gateway Oaks
5 Dr. Ste. 150N Sacramento, CA 95833.
6

7 **FACTUAL ALLEGATIONS**

8 6. Plaintiff, at all times relevant herein, is and was the user, with sole dominion and
9 control, of a cellular telephone assigned the number, ###-###-1014 and of her landline telephone
10 number ###-###-6522.
11

12 7. On or about February 2010, Plaintiff started receiving unsolicited autodialed calls
13 on both her cellular telephone and landline phone from multiple different telephone numbers all
14 assigned to Wells Fargo.
15

16 8. The telephone calls Plaintiff received regarded a home loan for “Ruth Phillips.”
17 Wells Fargo was offering to lower the price or refinance a home mortgage.
18

19 9. Defendant also left some voice records on Plaintiff’s voice mail box, one of which
20 had the following content:

21 Hi Ruth, good afternoon, Ida Clairemont with Wells Fargo. I just wanted to thank
22 you again for banking with us. I just wanted to see if everything is okay with
23 regard to your mortgage. I was looking at your mortgage and it looks like we can
24 possibly reduce that rate for you. If you want to do maybe a free annual mortgage
25 review. If you want to do that please give a call back.

26 10. The calls Defendant placed or caused to be placed qualify therefore as
27 telemarketing calls where Defendant was offering its services.
28

11. Plaintiff heard a “click” at the beginning of each call, followed by the voice of the
operator indicating that the system used to place the calls was an autodialer.

1 12. At no point in time did Plaintiff provide Defendant with her express consent,
2 written or otherwise, to be contacted on her cellular telephone using an autodialer or a
3 prerecorded voice. Plaintiff also never consented to receive Wells Fargo's telemarketing calls to
4 her landline telephone number, and she expressly requested both her numbers to be removed
5 from Defendant's calling list.
6

7 13. Fruitlessly, Plaintiff repeatedly communicated to each Wells Fargo's operator
8 who called her that they had reached the wrong number and that she wished not to be called in
9 the future. The operators often responded that they would make a notation on the file not to call
10 Plaintiff's cellphone number. Nevertheless, Plaintiff continued receiving hundreds of calls.
11

12 14. On or about September 24, 2016 Plaintiff connected on the phone with Leesa
13 Whitt-Potter, Senior VP of Wells Fargo Home Lending, a division of Wells Fargo Bank, N.A.,
14 who assured her that Defendant would have opened an investigation as to why Plaintiff
15 continued receiving unwanted and harassing phone calls from Wells Fargo to her landline
16 telephone number ###-###-6522. On September 27, 2016, Defendant sent Plaintiff a letter
17 confirming that an investigation would have started in response to Plaintiff's inquiry.
18

19 15. On October 12, 2016, Plaintiff received a second letter from Defendant in which
20 Well Fargo confirmed the results of their research: Plaintiff's number was mistakenly listed on a
21 home mortgage account of another person, and Plaintiff's telephone number had been removed
22 from those files.
23

24 16. Plaintiff received a total of approximately 120 autodialed calls from Wells Fargo
25 to her cellphone and landline during a period of 7 years regarding a home loan for "Ruth
26 Phillips." The callers were offering some options to "Ruth Phillips" to save money on her home
27 loan with Wells Fargo. Plaintiff answered approximately 96 of those calls.
28

1 17. Plaintiff does not currently have, nor did she ever had, a business relationship
2 with Wells Fargo.

3 18. Plaintiff's number has been on the National Do Not Call Registry since January
4 2010.

5
6 19. Plaintiff has suffered "an invasion of a legally protected interest" that is "concrete
7 and particularized" and "actual or imminent, not conjectural or hypothetical." She therefore has
8 standing to bring this action. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1543, 578 U.S., 194 L. Ed.
9 2d 635 (2016). The kind of alleged injury here is particularized and concrete— supported by
10 common law and legislative pronouncements. *See generally Mohamed v. Off Lease Only, Inc.*,
11 No. 1:15-cv-23352-MGC (S.D. Fla. Mar. 22, 2017) (explaining requirements of Article III
12 standing).
13

14 THE TELEPHONE CONSUMER PROTECTION ACT

15 20. The TCPA establishes the substantive right to be free from certain types of phone
16 calls and texts absent consumer consent. *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d
17 1037, 1043 (9th Cir. 2017).
18

19 21. Specifically, 47 U.S.C. § 227(b) provides:

20 (1) Prohibitions

21 It shall be unlawful for any person within the United States, or any person
22 outside the United States if the recipient is within the United States—

23 (A) to make any call (other than a call made for emergency purposes or
24 made with the prior express consent of the called party) using any
25 automatic telephone dialing system or an artificial or prerecorded voice—

26 * * *

27 (iii) to any telephone number assigned to a paging service, cellular
28 telephone service, specialized mobile radio service, or other radio

1 common carrier service, or any service for which the called party is
2 charged for the call;

3 22. Additionally, 47 C.F.R. § 64.1200(a)(2) provides:

4 (a) No person or entity may:

5 * * *

6 (2) Initiate, or cause to be initiated, any telephone call that includes or
7 introduces an advertisement or constitutes telemarketing, using an
8 automatic telephone dialing system or an artificial or prerecorded
9 voice, to any of the lines or telephone numbers described in paragraphs
10 (a)(1)(i) through (iii) of this section, other than a call made with the
11 prior express written consent of the called party or the prior express
12 consent of the called party when the call is made by or on behalf of a
13 tax-exempt nonprofit organization, or a call that delivers a “health
14 care” message made by, or on behalf of, a “covered entity” or its
15 “business associate,” as those terms are defined in the HIPAA Privacy
16 Rule, 45 CFR 160.103.

17 23. Next, 47 U.S.C. § 227(c)(1) provides:

18 **(1)Rulemaking proceeding required**

19 Within 120 days after December 20, 1991, the Commission shall initiate
20 a rulemaking proceeding concerning the need to protect residential
21 telephone subscribers’ privacy rights to avoid receiving telephone
22 solicitations to which they object.

23 24. Accordingly, 47 C.F.R. 64.1200(c)(2) states:

24 No person or entity shall initiate any telephone
25 solicitation to:

26 (2) A residential telephone subscriber who has
27 registered his or her telephone number on the national do-not-call
28 registry of persons who do not wish to receive telephone solicitations
that is maintained by the Federal Government. Such do-not-call
registrations must be honored indefinitely, or until the registration is
cancelled by the consumer or the telephone number is removed by the
database administrator.

29 25. Through the TCPA, Congress outlawed telemarketing via unsolicited automated

1 or pre-recorded telephone calls (“robocalls”), finding:

2 [R]esidential telephone subscribers consider automated or prerecorded telephone
3 calls, regardless of the content or the initiator of the message, to be a nuisance and
4 an invasion of privacy.

5

6 Banning such automated or prerecorded telephone calls to the home, except when
7 the receiving party consents to receiving the call[,] . . . is the only effective means
8 of protecting telephone consumers from this nuisance and privacy invasion.

9 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(10)
(1991); *see also Mims*, 132 S. Ct. at 745.

10 26. The TCPA also prohibits any entity from initiating more than one telephone call
11 to a person within any twelve month period when that person previously stated that they do not
12 wish to receive telephone calls by or on behalf of the seller whose goods or services are being
13 offered. 47 U.S.C. § 227(c)(5); *see also* 47 C.F.R. § 64.1200(d); 47 C.F.R. § 64.1200(e); In the
14 Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,
15 *Report and Order*, ¶ 167, CG Docket No. 02-278, FCC 03-153 (July 3, 2003).

16 27. In order to insure compliance with § 227(c)(5), companies are required to
17 maintain an internal Do Not Call List.

18 28. Under § 227(b)(3), a person or entity may bring an action to recover actual
19 monetary loss for a violation of the above prohibition or to receive \$500 in statutory damages for
20 each violation (which may be tripled in the event of a willful or knowing violation). *Id.* at §
21 227(b)(3). "The TCPA is essentially a strict liability statute" that "does not require any intent for
22 liability except when awarding treble damages." *Alea London Ltd. v. Am. Home Servs., Inc.*, 638
23 F.3d 768, 776 (11th Cir.2011) (quoting *Penzer v. Transp. Ins. Co.*, 545 F.3d 1303, 1311 (11th
24 Cir.2008)).

25 29. To demonstrate a violation of the TCPA, a Plaintiff need only show that
26
27
28

1 Defendant called a number assigned to a cellular telephone service using an automatic dialing
2 system or prerecorded voice. *Breslow v. Wells Fargo Bank, NA*, 857 F. Supp. 2d 1316, 1319
3 (S.D. Fla. 2012).

4
5 30. While neither the TCPA nor FCC regulations provide a definition for willful and
6 knowing, most courts have interpreted the willful or knowing standard to require only that a
7 party's actions were intentional, not that it was aware that it was violating the statute. *Davis v.*
8 *Diversified Consultants, Inc.*, 36 F. Supp. 3d 217, 226 (D. Mass. 2014).

9
10 31. With respect to telemarketing, the FCC has issued rulings and clarified that in
11 order to obtain an individual's consent, a clear, unambiguous, and conspicuous written disclosure
12 must be provided to the individual. See 2012 FCC Order, 27 FCC Rcd. at 1839 ("[R]equiring
13 prior written consent will better protect consumer privacy because such consent requires
14 conspicuous action by the consumer — providing permission in writing — to authorize
15 autodialed or prerecorded telemarketing calls...."). *Mais v. Gulf Coast Collection Bureau, Inc.*,
16 768 F.3d 1110, 1123-1124 (11th Cir. 2014).

17
18 32. Congress also found in its passage of the TCPA that unregulated telemarketing
19 was "intrusive," a "nuisance," and "rightly regarded" as an "invasion of privacy." *Mims*, 565
20 U.S. at 372 (internal citations and quotation marks omitted).

21 CLASS ALLEGATIONS

22
23 33. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

24 34. Plaintiff brings this action on behalf of a class of similarly situated individuals
25 consisting of:

26 The No Consent class

27 (i) All persons within the United States (ii) to whom Defendant, directly or
28 through its agents, (iii) made a call to their cellular phone (iv) using the
same or similar system that was used to call Plaintiff (v) within the four

1 years prior to the filing of the original Complaint; (vi) excluded from the
2 class are those persons who provided his or her cell phone number to the
3 Defendant in connection with the transaction that was the subject of the
4 call, or who did not request not to receive calls.

5 The No Written Consent Sub Class

6 (i) All persons within the United States (ii) to whom Defendant, directly or
7 through its agents, (iii) made a call to their cellular phone (iv) using any
8 automatic telephone dialing system or an artificial or prerecorded voice (v)
9 within the four years prior to the filing of the original Complaint, (vi)
without first obtaining the prior express written consent of the recipient of
the call.

10 The "Do Not Call" List Class

11 (i) All persons within the United States (ii) to whom Defendant, directly or
12 through a vendor, (iii) made more than one call to their telephone (iv)
13 within a twelve month period (v) within the four years prior to the filing of
14 the original Complaint, (vi) where Defendant or a vendor's records show
the person previously stated that he or she did not wish to received
telephone calls from or on behalf of Defendant.

15 35. Excluded from the class are the Defendant, any entities in which the Defendant
16 have a controlling interest, the Defendant's agents and employees, any Judge to whom this action
17 is assigned, and any member of the Judge's staff and immediate family.

18 36. **Numerosity:** Defendant has, upon information and belief, placed hundreds, if not
19 thousands, of automatically dialed calls to consumers' cellular telephone numbers without their
20 prior express consent— certainly more than forty. *Manno v. Healthcare Revenue Recovery*
21 *Group, LLC*, No. 11-61357 SCOLA (S.D. Fla. Mar. 26, 2013) (the general rule of thumb in the
22 Eleventh Circuit is that "less than twenty-one is inadequate, more than forty adequate). The
23 members of the Class, therefore, are believed to be so numerous that joinder of all members is
24 impracticable.
25
26
27
28

1 37. The exact number and identities of the Class members are unknown at this time
2 and can only be ascertained through discovery. Identification of the Class members is a matter
3 capable of ministerial determination from Defendant’s call records.
4

5 38. **Typicality:** Plaintiff’s claims are typical of the claims of other members of the
6 Class, in that Plaintiff and the members of the Class sustained damages arising out of
7 Defendant’s uniform wrongful conduct and unsolicited telephone calls.

8 39. **Adequate Representation:** Plaintiff will fairly and adequately represent and
9 protect the interests of the Class, and has retained counsel competent and experienced in
10 complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant
11 has no defenses unique to Plaintiff.
12

13 40. **Commonality and Predominance:** There are several questions of law and fact
14 common to the claims of Plaintiff and the Class, and those questions predominate over any
15 questions that may affect individual members of the Class. Common questions for the Class
16 include, but are not necessarily limited to the following:
17

- 18 a) Whether, within the four years prior to the filing of this action, Defendant used
19 any automatic telephone dialing system or an artificial or prerecorded voice to
20 make any call (other than a call made for emergency purposes or made with the
21 prior express consent of the called party);
- 22 b) Whether, within the four years prior to the filing of this action, Defendant
23 used any automatic telephone dialing system or an artificial or prerecorded
24 voice to make telemarketing calls;
25
26
27
28

- 1 c) Whether Defendant placed its calls by automatic telephone dialing system
- 2 without obtaining the recipients' valid prior express consent, or where
- 3 applicable, prior express written consent;
- 4
- 5 d) Whether Defendant placed telemarketing calls to persons who asked to be
- 6 placed on Defendant's "Do Not Call" list;
- 7
- 8 e) Whether Defendant had implemented, with due care, reasonable practices
- 9 and procedures to prevent telemarketing calls to persons who were on
- 10 Defendant's "Do Not Call" list;
- 11
- 12 f) Whether Defendant had an established business relationship;
- 13
- 14 g) Whether the Defendant's violations of the TCPA were willful or knowing;
- 15 and
- 16
- 17 h) Whether the Plaintiff and the class members are entitled to statutory
- 18 damages as a result of the Defendant's actions.

19 41. **Superiority:** This case is also appropriate for class certification because
20 class proceedings are superior to all other available methods of fair and efficient
21 adjudication of this controversy, and joinder of all parties is impracticable. The damages
22 suffered by the individual members of the Class will likely be relatively small, especially
23 given the burden and expense which would result from individual prospection of the
24 complex litigation necessitated by Defendant's actions. Thus, it would be virtually
25 impossible for the individual members of the Class to obtain effective relief from
26 Defendant's misconduct. Even if members of the Class could sustain such individual
27 litigation, it would still not be preferable to a class action, because individual litigation
28 would increase the delay and expense to all parties due to the complex legal and factual

1 controversies presented in this Complaint. By contrast, a class action presents far fewer
2 management difficulties and provides the benefits of single adjudication, economy of
3 scale, and comprehensive supervision by a single court. Economies of time, effort, and
4 expense will be fostered and uniformity of decisions ensured.
5

6
7 **COUNT I**

8 **Violation of the TCPA 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(2)**

9 42. Plaintiff re-alleges and incorporates paragraphs 1 through 41 as fully set forth
10 herein.
11

12 43. 47 C.F.R. § 64.1200(a)(2) is a regulation prescribed under 47 U.S.C. § 227.

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

18 45. Defendant made unsolicited calls to Plaintiff’s and the class members’ cellular
19 telephones, using an automatic telephone dialing system or an artificial or prerecorded voice.

20 46. The calls were made without the Plaintiff’s and the class members’ prior express
21 written consent, and were not made for any emergency purpose.
22

23 47. Defendant’s violation of the TCPA resulted in an invasion of Plaintiff’s privacy
24 and right to enjoy the full utility of her cellular device; a legally protected interest.

25 48. 47 U.S.C. § 227(b)(3) provides:

26 **(3) Private right of action.** A person or entity may, if otherwise
27 permitted by the laws or rules of court of a State, bring in an
28 appropriate court of that State—

1 (A) an action based on a violation of this subsection or the regulations
2 prescribed under this subsection to enjoin such violation,

3 (B) an action to recover for actual monetary loss from such a violation,
4 or to receive \$500 in damages for each such violation, whichever is
5 greater, or

6 (C) both such actions.

7 If the court finds that the defendant willfully or knowingly violated
8 this subsection or the regulations prescribed under this subsection, the
9 court may, in its discretion, increase the amount of the award to an
10 amount equal to not more than 3 times the amount available under
subparagraph (B) of this paragraph.

11 49. Defendant's calls violated the TCPA. *See* 47 U.S.C. § 227. Accordingly,
12 Defendant is liable to Plaintiff and the class for statutory damages pursuant to section
13 227(b)(3)(B).
14

15 50. For those of Defendant's calls that were willful or knowing, the Court may,
16 pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff
17 and other members of the Class. *See* 47 U.S.C. § 227(b)(3)(C).
18

19 **COUNT II**

20 **Violation of the TCPA 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c)(2)**

21 51. Plaintiff re-alleges and incorporates paragraphs 1 through 41 as fully set forth
22 herein.

23 52. 47 C.F.R. § 64.1200(c)(2) is a regulation prescribed under 47 U.S.C. § 227.

24 It is a violation of the TCPA to "initiate any telephone solicitation to: (2) A residential
25 telephone subscriber who has registered his or her telephone number on the national do-not-call
26 registry of persons who do not wish to receive telephone solicitations ..." 47 C.F.R. §
27 64.1200(c)(2).
28

1 53. Defendant made unsolicited calls to Plaintiff's and the class members' residential
2 telephones who were registered on the "Do Not Call" list, using an automatic telephone dialing
3 system or an artificial or prerecorded voice.

4 54. The calls were made without the Plaintiff's and the class members' prior, express
5 written consent, and were not made for any emergency purpose.

6 55. Defendant's violation of the TCPA resulted in an invasion of Plaintiff's privacy
7 and right to enjoy the full utility of his cellular device; a legally protected interest.

8 56. 47 U.S.C. § 227(c)(1) provides:

9
10 A person who has received more than one telephone call within any 12-month
11 period by or on behalf of the same entity in violation of the regulations prescribed
12 under this subsection may, if otherwise permitted by the laws or rules of court of a
13 State bring in an appropriate court of that State—

14 (A) an action based on a violation of the regulations prescribed under this
15 subsection to enjoin such violation,

16 (B) an action to recover for actual monetary loss from such a violation, or to
17 receive up to \$500 in damages for each such violation, whichever is greater, or

18 (C) both such actions.

19 56. Defendant's calls violated the TCPA. *See* 47 U.S.C. § 227. Accordingly,
20 Defendant is liable to Plaintiff and the class for statutory damages pursuant to section 227(c)(5).
21 Further, "If the court finds that the defendant willfully or knowingly violated the regulations
22 prescribed under this subsection, the court may, in its discretion, increase the amount of the
23 award to an amount equal to not more than 3 times the amount available under subparagraph (B)
24 of this paragraph." *See* 47 U.S.C. § 227(c)(5).

25 **COUNT THREE**

26 ***Violation of 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(e)***

27 57. Plaintiff incorporates the allegations from all previous paragraphs as if fully set
28 forth herein.

1 58. The Defendant violated the TCPA by calling persons who asked to be placed on
2 Defendant's IDNC list.

3 59. At all times relevant, Defendants did not have reasonable practices and
4 procedures in place to effectively prevent telephone solicitations in violation of the TCPA as
5 evidenced by its calls to Plaintiff who repeatedly requested Defendants stop calling.
6

7 60. Defendant's calls violated the TCPA. *See* 47 U.S.C. § 227. Accordingly,
8 Defendant is liable to Plaintiff and the class for statutory damages pursuant to section 227(c)(5).
9 Further, "If the court finds that the defendant willfully or knowingly violated the regulations
10 prescribed under this subsection, the court may, in its discretion, increase the amount of the
11 award to an amount equal to not more than 3 times the amount available under subparagraph (B)
12 of this paragraph." *See* 47 U.S.C. § 227(c)(5).
13

14 **JURY DEMAND**

15 Plaintiff requests a trial by jury of all claims that can be so tried.

16 **PRAYER FOR RELIEF**

17
18 WHEREFORE, Plaintiff LYNN LAING, individually and on behalf of the Class,
19 respectfully requests the following relief:

- 20 a. An order certifying the Class as defined above, appointing Plaintiff LYNN
21 LAING as the representative of the Class, and appointing Scott D. Owens and
22 Eric W. Kem as Class Counsel;
23
24 b. Judgment in favor of Plaintiff and the Class against Defendant, awarding
25 statutory damages of \$500 per call for each call placed in violation of the
26 TCPA;
27
28

- 1 c. Judgment in favor of Plaintiff and the Class against Defendant, awarding
2 damages of up to \$1,500 per call for each call held to be placed willfully or
3 knowingly;
4
5 d. To the extent provided by law, reasonable attorneys' fees and costs; and
6
7 e. Such other and further relief that the Court deems reasonable and just.

8
9
10 Dated: October 9, 2017

11 Respectfully submitted,

12 /s/ Eric W. Kem

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27 *pro hac vice pending

28 *Attorneys for Plaintiff and the Putative Class*

CIVIL COVER SHEET

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

LYNN LAING, individually and on behalf of a class of similarly situated individuals

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Eric W. Kem, P.A. | 352-275-7151 2233 NW 41st St., Ste. 700-H, Gainesville, FL 32606

DEFENDANTS

WELLS FARGO BANK, N.A., a National Banking Association,

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

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

Attorneys (If Known)

'17CV2072 WQHJLB

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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, 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 USC 227, The Telephone Consumer Protection Act. Brief description of cause: Unlawful calling practices

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/09/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Eric W. Kem

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Wells Fargo Places Over One Hundred Calls to Wrong Number](#)
