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Yvonne Madrid*

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

**YVONNE MADRID, individually
and on behalf of others similarly
situated,**

Plaintiff,

vs.

STERLING JEWELERS, INC.,

Defendant.

Case No: '17CV1711 CAB BGS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF:**

- 1. UNLAWFUL RECORDING
OF CELLULAR
COMMUNICATIONS
UNDER CALIFORNIA
PENAL CODE SECTION
632.7**
- 2. INVASION OF PRIVACY
INTRUSION INTO PRIVATE
AFFAIRS**

JURY TRIAL DEMANDED

INTRODUCTION

1. Yvonne Madrid (“Plaintiff”), individually and on behalf of all others similarly situated California residents (“Class Members”), brings this action for damages and injunctive relief against Sterling Jewelers, Inc. (hereinafter, referred to as “Defendant”), and its present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, related entities for unauthorized recordings of conversations with Plaintiff and Class Members without any notification nor warning to Plaintiff or Class Members in violation of the California Invasion of Privacy Act, Cal. Pen. Code § 630, et seq. (“CIPA”).
2. The California State Legislature passed CIPA in 1967 to protect the right of privacy of the people of California, replacing prior laws which permitted the recording of telephone conversations with the consent of one party to the conversation. California Penal Code § 632.7 was added to CIPA in 1992 due to specific privacy concerns over the increased use of cellular and cordless telephones. Section 632.7 prohibits intentionally recording all communications involving cellular and cordless telephones, not just confidential communications.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which Plaintiff alleges on her personal knowledge.
4. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.
5. All violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.
6. Unless otherwise indicated, the use of Defendant’s names in this Complaint includes all agents, employees, officers, members, directors, heirs, successors,

1 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
2 the named Defendant.

3 **Jurisdiction and Venue**

- 4 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks
5 \$5,000 in damages for each violation of the CIPA, which, when aggregated
6 among a proposed class number in the tens of thousands, exceeds the
7 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
8 statewide class, which will result in at least one class member belonging to a
9 different state than that of the Defendant (which is a foreign entity from
10 Delaware with the principal place of business in Ohio), providing jurisdiction
11 under 28 U.S.C. § 1332(d)(2)(A). Therefore, the elements of the Class Action
12 Fairness Act of 2005 (“CAFA”) are met, and this Court has jurisdiction.
- 13 8. Venue is proper in the United States District Court for the Southern District of
14 California pursuant to 28 U.S.C. §§ 1391(b) because Defendant, at all times
15 herein mentioned, was doing business in the County of San Diego, State of
16 California. Further, venue is proper in this district because Plaintiff has resided
17 in this district at all times herein mentioned such that a substantial part of the
18 events giving rise to the claim occurred in this district.

19 **Parties**

- 20 9. Plaintiff is, and at all times mentioned herein was, an individual citizen and
21 resident of the State of California, City of San Diego, in this judicial district.
- 22 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at
23 all times mentioned herein was, a corporation registered in the state of Delaware
24 with its principal place of business in the state of Ohio. Plaintiff alleges that at
25 all times relevant herein Defendant conducted business in the State of
26 California, in the County of San Diego, within this judicial district. Defendant
27 is, and at all times mentioned herein was, a “person”, as defined by Cal. Pen.
28 Code § 632(b).

FACTUAL ALLEGATIONS

11. On or around April 13, 2017 at 8:31 AM, Defendant called Plaintiff on her cellular telephone ending 8836. Defendant called from the telephone number 310-819-1491.
12. At no point during the conversation with Defendant was Plaintiff advised that the conversation was being recorded by Defendant, nor did Plaintiff consent to the call being recorded.
13. At the end of the telephone call Plaintiff asked Defendant's representative if the call was being recorded. Defendant's representative responded "yes."
14. On or around April 13, 2017 at 8:41 AM, Defendant called Plaintiff on her cellular telephone ending 8836. Defendant called from the telephone number 909-320-5360.
15. At no point during the conversation with Defendant was Plaintiff advised that the conversation was being recorded by Defendant, nor did Plaintiff consent to the call being recorded.
16. Upon information and belief, Defendant records all of its outbound telephone calls, including the call that was initiated from the telephone number 909-320-5360.
17. Plaintiff was personally affected by Defendant's aforementioned conduct because Plaintiff was shocked, upset and angry that Defendant audio recorded one or more cellular telephone conversations with Plaintiff without Plaintiff's knowledge or consent.
18. California Penal Code § 632.7(a) is very clear in its prohibition against such unauthorized tape recording without the consent of the other party to the conversation: "Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and

1 a landline telephone, two cordless telephones, a cordless telephone and a
2 landline telephone, or a cordless telephone and a cellular radio telephone
3 [violates this section]”. California Penal Code § 637.2 permits Plaintiff to bring
4 this action for any violation of California Penal Code § 632.7(a) and provides
5 for statutory damages of \$5,000.00 for each violation.

6 19. Defendant recorded or otherwise made an unauthorized connection to the
7 Plaintiff’s conversations with Defendant and its employees in violation of
8 California’s statutory and common law against such unlawful intrusions into a
9 person’s private affairs, including the California Constitution’s prohibition in
10 Article 1, Section 1.

11 20. This suit seeks only damages and injunctive relief for recovery of economic
12 injury and it expressly is not intended to request any recovery for personal injury
13 and claims related thereto.

14 21. Plaintiff is informed and believes, and thereon alleges, that Defendant
15 intentionally recorded a communication transmitted between a cellular radio
16 telephone and a landline telephone without Plaintiff’s consent as prohibited by
17 California Penal Code § 632.7(a).

18 22. Defendant violated Plaintiff’s constitutionally protected privacy rights by failing
19 to advise or otherwise provide notice at the beginning of the recorded
20 conversations with Plaintiff that the calls would be recorded and Defendant did
21 not try to obtain the Plaintiff’s consent before such recording.

22 23. The recording or other unauthorized connection was done over the telephone,
23 without Plaintiff’s prior knowledge or consent. Plaintiff was damaged thereby,
24 as detailed herein, in at least an amount permitted by the statutory damages
25 mandated by California Penal Code § 637.2(a).

26 24. Defendant, and its employees and agents, surreptitiously recorded calls made by
27 Defendant to Plaintiff. At no time before the calls was Plaintiff warned, told,
28

advised or otherwise given any indication by Defendant, its employees or agents, that the calls would be recorded.

25. As a result thereof, Plaintiff has been damaged as set forth in the Prayer for Relief herein.

26. Plaintiff seeks statutory damages and injunctive relief under California Penal Code § 637.2.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this lawsuit as a class action on behalf of herself and Class Members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

28. Plaintiff proposes the following Class consisting of and defined as follow:

All persons in California whose cellular telephone conversations were recorded without their consent by Defendant and/or its agent/s within the one year prior to the filing of the Complaint.

29. Excluded from the Class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; and (3) those persons who have suffered personal injuries as a result of the facts alleged herein.

30. Plaintiff reserves the right to redefine the Class and to add subclasses as appropriate based on discovery and specific theories of liability

31. Numerosity: The Class Members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is currently unknown to Plaintiff at this time; however, given that, on information and belief, Defendant called thousands of class members nationwide and recorded those calls during the class period, it is reasonable to presume that the

members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

32. Commonality: There are common questions of law and fact as to Class Members that predominate over questions affecting only individual members, including, but not limited to:

- Whether, within the statutory period Defendant recorded any call with the Class Members;
- Whether Defendant had, and continue to have, a policy during the relevant period of recording telephone calls made to the Class Members;
- Whether Defendant's policy or practice of recording telephone communications with Class Members constitutes an invasion of privacy and a violation of Cal. Penal Code § 632.7;
- Whether Plaintiff and the Class Members were damaged thereby, and the extent of damages for such violation; and
- Whether Defendant should be enjoined from engaging in such conduct in the future.

33. Typicality Plaintiff's conversations were unlawfully recorded without a warning of such recording, and thus, her injuries are also typical to Class Members.

34. Plaintiff and Class Members were harmed by the acts of Defendant in at least the following ways: Defendant, either directly or through its agents, illegally recorded the Plaintiff and Class Members' conversations with Defendant, and Defendant invading the privacy of said Plaintiff and Class. Plaintiff and Class Members were damaged thereby.

35. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom she is similarly situated, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationships, conflicts, or differences with any Class

1 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
2 rules governing class action discovery, certification, and settlement. In addition,
3 the proposed class counsel is experienced in handling claims involving
4 consumer actions and violations of the California Penal Code section 632.7.
5 Plaintiff has incurred, and throughout the duration of this action, will continue to
6 incur costs and attorneys' fees that have been, are, and will be, necessarily
7 expended for the prosecution of this action for the substantial benefit of each
8 Class Member.

9 36. Predominance: Questions of law or fact common to the Class Members
10 predominate over any questions affecting only individual members of the Class.
11 The elements of the legal claims brought by Plaintiff and Class Members are
12 capable of proof at trial through evidence that is common to the Class rather
13 than individual to its members.

14 37. Superiority: A class action is a superior method for the fair and efficient
15 adjudication of this controversy because:

- 16 a. Class-wide damages are essential to induce Defendants to comply with
17 California law.
- 18 b. Because of the relatively small size of the individual Class Members'
19 claims, it is likely that only a few Class Members could afford to seek
20 legal redress for Defendant's misconduct.
- 21 c. Management of these claims is likely to present significantly fewer
22 difficulties than those presented in many class claims.
- 23 d. Absent a class action, most Class Members would likely find the cost
24 of litigating their claims prohibitively high and would therefore have no
25 effective remedy at law.
- 26 e. Class action treatment is manageable because it will permit a large
27 number of similarly situated persons to prosecute their common claims in
28 a single forum simultaneously, efficiently, and without the unnecessary

1 duplication of effort and expense that numerous individual actions would
2 endanger.

3 f. Absent a class action, Class Members will continue to incur damages,
4 and Defendant's misconduct will continue without remedy.

5 38. Plaintiff and the Class Members have all suffered and will continue to suffer
6 harm and damages as a result of Defendant's unlawful and wrongful conduct. A
7 class action is also superior to other available methods because as individual
8 Class Members have no way of discovering that Defendant recorded their
9 telephone conversations without Class Members' knowledge or consent,
10 especially since Defendant's representatives at times falsely state that they do
11 not record such conversations.

12 39. The Class may also be certified because:

- 13 • the prosecution of separate actions by individual Class Members would
14 create a risk of inconsistent or varying adjudication with respect to
15 individual Class Members, which would establish incompatible standards
16 of conduct for Defendant;
- 17 • the prosecution of separate actions by individual Class Members would
18 create a risk of adjudications with respect to them that would, as a
19 practical matter, be dispositive of the interests of other Class Members
20 not parties to the adjudications, or substantially impair or impede their
21 ability to protect their interests; and
- 22 • Defendant has acted or refused to act on grounds generally applicable to
23 the Class, thereby making appropriate final and injunctive relief with
24 respect to the members of the Class as a whole.

25 40. This suit seeks only damages and injunctive relief for recovery of economic
26 injury on behalf of Class Members and it expressly is not intended to request
27 any recovery for personal injury and claims related thereto. Plaintiff reserves
28

1 the right to expand Class definitions to seek recovery on behalf of additional
2 persons as warranted as facts are learned in further investigation and discovery.

- 3 41. The joinder of Class Members is impractical and the disposition of their claims
4 in the Class action will provide substantial benefits both to the parties and to the
5 court. The Class Members can be identified through Defendant's records.

6 **FIRST CAUSE OF ACTION**
7 **ILLEGAL RECORDING OF CELLULAR PHONE CONVERSATIONS**
8 **UNDER CALIFORNIA PENAL CODE § 632.7**

- 9 42. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
10 43. At all relevant times hereto, Defendant had and followed a policy and practice
11 of using a telecommunications system that enabled it to surreptitiously record
12 cellular telephone communications between Defendant and Plaintiff and Class
13 Members.
14 44. At all relevant times hereto, Defendant intentionally and surreptitiously
15 recorded cellular telephone calls concerning confidential matters between
16 Defendant and Plaintiff and Class Members.
17 45. At all relevant times hereto, Defendant had and followed a policy and practice
18 of not advising or warning Plaintiff and Class Members that their cellular
19 telephone communications with Defendant would be recorded.
20 46. Defendant failed to obtain consent of Plaintiff and Class Members prior to
21 recording any of their cellular telephone conversations.
22 47. This conduct by Defendant violated section 632.7(a) of the California Penal
23 Code.
24 48. Plaintiff and Class Members are entitled to recovery actual and statutory
25 damages in the amount of \$5,000.00 per violation of Cal. Pen. Code § 632.7.
26 49. Plaintiff's counsel is also entitled to attorneys' fees and costs pursuant to Cal.
27 Code of Civ. Proc. § 1021.5.
28

SECOND CAUSE OF ACTION
INVASION OF PRIVACY INTRUSION INTO PRIVATE AFFAIRS

50. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

51. At all relevant times hereto, Defendant had and followed a policy and practice of using a telecommunications system that enabled it to surreptitiously record cellular telephone communications between Defendant and Plaintiff and Class Members.

52. At all relevant times hereto, Defendant intentionally and surreptitiously recorded cellular telephone calls concerning confidential matters between Defendant and Plaintiff and Class Members.

53. At all relevant times hereto, Defendant had and followed a policy and practice of not advising or warning Plaintiff and Class Members that their cellular telephone communications with Defendant would be recorded.

54. Defendant failed to obtain consent of Plaintiff and Class Members prior to recording any of their cellular telephone conversations.

55. This conduct by Defendant violated section 632.7(a) of the California Penal Code.

56. Plaintiff and Class Members are entitled to recovery actual and statutory damages in the amount of \$5,000.00 per violation of Cal. Pen. Code § 632.7.

57. Plaintiff's counsel is also entitled to attorneys' fees and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members pray that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- Certify the Class as requested herein;
- Appoint Plaintiff to serve as the Class Representative for the Class;
- Appoint Plaintiff's Counsel as Class Counsel in this matter for the Class;
- In addition, Plaintiff and the Class Members pray for further judgment as

1 follows against Defendant:

2 **ILLEGAL TELEPHONE RECORDING OF CELLULAR PHONE CONVERSATIONS**
3 **UNDER CALIFORNIA PENAL CODE § 632.7**

- 4 • Special, general, compensatory and punitive damages;
- 5 • As a result of Defendant's violation of California Penal Code Sections 630 *et*
6 *seq.*, Plaintiff seeks statutory damages of \$5,000.00 pursuant to California Penal
7 Code § 637.2(a);
- 8 • Reasonable attorneys' fees pursuant to Cal. Code of Civ. Proc. § 1021.5;
- 9 • Injunctive relief to prevent the further occurrence of such illegal acts pursuant to
10 California Penal Code § 637.2(b);
- 11 • An award of costs to Plaintiff and;
- 12 • Any other relief the Court may deem just and proper including interest.

13 **INVASION OF PRIVACY**
14 **INTRUSION INTO PRIVATE AFFAIRS**

- 15 • Special, general, compensatory and punitive damages;
- 16 • Reasonable attorneys' fees pursuant to Cal. Code of Civ. Proc. § 1021.5;
- 17 • Injunctive relief, prohibiting such conduct in the future; and,
- 18 • Any other relief the Court may deem just and proper.

19 **TRIAL BY JURY**

20 72. Pursuant to the seventh amendment to the Constitution of the United States of
21 America, Plaintiff and Class Members are entitled to, and demands, a trial by jury.

22
23 Respectfully submitted,

24 **HYDE & SWIGART**

25
26 Date: August 24, 2017

27 By: s/Joshua Swigart

28 Joshua B. Swigart, Esq.

josh@westcoastlitigation.com

Attorney for Plaintiff

Additional Attorneys for Plaintiff:

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ak@kazlg.com

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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

YVONNE MADRID, individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Joshua B. Swigart, Esq. Hyde & Swigart 619-233-7770
2221 Camino Del Rio S., Ste. 101, San Diego, CA 92108**DEFENDANTS**

STERLING JEWELERS, INC.,

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)

'17CV1711 CAB BGS**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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. §§ 227 et seq. ("TCPA")

Brief description of cause:

Defendant violated the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

50,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:☒ Yes☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

08/24/2017

SIGNATURE OF ATTORNEY OF RECORD

s/Joshua B. Swigart

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [Sterling Jewelers Facing Class Action in CA Over Recorded Phone Calls](#)
