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

KHOI NGUYEN, on behalf of himself,
and all others similarly situated,

Plaintiff,

v.

CREDIT CONTROL, LLC,

Defendant.

Case No.: '16CV2805 DMS MDD

CLASS ACTION

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

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Khoi Nguyen (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Credit Control, LLC (“Defendant”), in
5 negligently, and/or willfully contacting Plaintiff through telephone calls on
6 Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”) and for recording telephone conversations
8 with Plaintiff without consent, in violation of the California Invasion of Privacy Act,
9 Cal. Pen. Code § 632.7 (“CIPA”), thereby invading Plaintiff’s privacy. Plaintiff
10 alleges as follows upon personal knowledge as to his own acts and experiences, and,
11 as to all other matters, upon information and belief, including investigation
12 conducted by his attorneys.

13 **NATURE OF THE ACTION**

14 2. Defendant Credit Control, LLC is a company that specializes in debt
15 collection.

16 3. In an effort to collect on past-due accounts, Defendant repeatedly
17 contacts individuals on their cellular phone, without their consent, using automatic
18 telephone dialing equipment having the capacity to store and dial telephone
19 numbers. As a result, Defendant has repeatedly violated the TCPA. Further,
20 Defendant records such confidential communications without consent in violation
21 of CIPA.

22 4. The TCPA was enacted to protect consumers from unauthorized and
23 repeated calls exactly like those alleged in this Complaint – autodialed calls to
24 cellphone numbers, placed without consent, and continued even after receiving
25 requests to stop.

26 5. CIPA was also enacted to protect consumers from a violation of their
27 privacy, requiring that a party warn an individual if a call is to be monitored or
28 recorded. Defendant violated Plaintiff’s constitutionally protected privacy rights by

1 failing to advise or otherwise provide notice at the beginning of the recorded
2 conversations with Plaintiff that the calls would be recorded and Defendant did not
3 try to obtain the Plaintiff's consent before such recording

4 6. Defendant's violations caused Plaintiff and the members of the putative
5 Classes (defined below) to experience actual harm, including the aggravation,
6 nuisance, and invasion of privacy, as well as a violation of their statutory rights.

7 7. Plaintiff and members of the Classes suffered a concrete injury in fact,
8 whether tangible or intangible, that is directly traceable to Defendant's conduct, and
9 is likely to be redressed by a favorable decision in this action.

10 8. In response to Defendant's unlawful conduct, Plaintiff brings the
11 instant lawsuit and seeks an injunction requiring Defendant to cease all unsolicited
12 text messaging, cease recording conversations with consent of the parties, and award
13 actual and statutory damages to the members of the putative Classes, together with
14 costs and reasonably attorneys' fees.

15 **JURISDICTION AND VENUE**

16 9. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
17 seeks up to \$1,500 in damages for each violation of the TCPA and \$5,000 in damages
18 for each violation of the CIPA, which, when aggregated among a proposed class
19 number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court
20 jurisdiction. Further, Plaintiff alleges a national class, which will result in at least
21 one class member belonging to a different state than that of the Defendant, providing
22 jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore, both elements of diversity
23 jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and
24 this Court has jurisdiction.

25 10. This Court has federal question subject matter jurisdiction under 28
26 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

27 11. This court has supplemental jurisdiction under 28 U.S.C. § 1367, as the
28 CIPA claims alleged herein are part of the same case or controversy as the TCPA

1 claims.

2 12. Venue is proper in the United States District Court for the Southern
3 District of California pursuant to 28 U.S.C. §§ 1391(b) because Defendant, at all
4 times herein mentioned, was doing business in the County of San Diego, State of
5 California and is licensed in California as entity number 2001129110138. Further,
6 venue is proper in this district because Plaintiff has resided in this district at all times
7 herein mentioned such that a substantial part of the events giving rise to the claim
8 occurred in this district.

9 **PARTIES**

10 13. Plaintiff Khoi Nguyen is, and at all times mentioned herein was, a
11 resident of the State of California, County of San Diego. He is, and at all times
12 mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32) and Cal. Pen.
13 Code § 632(b).

14 14. Defendant is a company that specializes in debt collection and
15 maintains its principal place of business at 5757 Phantom Drive, Suite 330,
16 Hazelwood, MO 63042 and maintains an agent for service of process in California
17 with CT Corporation Systems, 818 West Seventh St. 2nd Floor, Los Angeles CA
18 90017, and is a “person” as defined by 47 U.S.C. § 153 (32) and Cal. Pen. Code §
19 632(b).

20 15. Plaintiff alleges that at all times relevant herein Defendant conducted
21 business in the state of California and in the County of San Diego, and within this
22 judicial district.

23 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

24 **47 U.S.C. §§ 227 ET SEQ.**

25 16. In 1991, Congress enacted the Telephone Consumer Protection Act, 47
26
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1 U.S.C. § 227,¹ in response to a growing number of consumer complaints regarding
2 certain telemarketing practices.

3 17. The TCPA regulates, among other things, the use of automated
4 telephone equipment, or “autodialers.” Specifically, the plain language of section
5 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless
6 number in the absence of an emergency or the prior express consent of the called
7 party.²

8 18. According to findings by the Federal Communication Commission
9 (“FCC”), the agency Congress vested with authority to issue regulations
10 implementing the TCPA, such calls are prohibited because, as Congress found,
11 automated or pre-recorded telephone calls are a greater nuisance and invasion of
12 privacy than live solicitation calls, and such calls can be costly and inconvenient.
13 The FCC also recognized that wireless customers are charged for incoming calls
14 whether they pay in advance or after the minutes are used.³

15 19. On January 4, 2008, the FCC released a Declaratory Ruling wherein it
16 confirmed that autodialed and pre-recorded message calls to a wireless number by a
17 creditor (or on behalf of a creditor) are permitted only if the calls are made with the
18 “prior express consent” of the called party.⁴ The FCC “emphasize[d] that prior
19 express consent is deemed to be granted only if the wireless number was provided
20 by the consumer to the creditor, and that such number was provided during the
21
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23 ¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394
24 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the
25 Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

26 ² 47 U.S.C. § 227(b)(1)(A)(iii).

27 ³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁴ *In the Matter of Rules and Regulations Implementing the Telephone Consumer*
Protection Act of 1991 (“FCC Declaratory Ruling”), 23 F.C.C.R. 559, 23 FCC Rcd.
559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

1 transaction that resulted in the debt owed.”⁵

2 20. Under the TCPA and pursuant to the FCC’s January 2008 Declaratory
3 Ruling, the burden is on Defendant to demonstrate that Plaintiffs provided express
4 consent within the meaning of the statute.

5
6 **FACTUAL ALLEGATIONS**

7 21. On September 7, 2016, Plaintiff received an unsolicited telephone call
8 from Defendant to his cellular telephone for which Plaintiff provided no prior
9 express consent to call, in attempt to collect an alleged debt owed. Plaintiff told
10 Defendant that he is represented by Daniel G. Shay (“Attorney”) and directed
11 Defendant to stop calling him and contact Attorney. The telephone number that
12 placed the unsolicited telephone call to Plaintiff, 866-383-9209, is owned by
13 Defendant.

14 22. On, September 13, 2016, Plaintiff through Attorney sent a Cease and
15 Desist Letter to Defendant on behalf of Plaintiff stating he “hereby revokes any prior
16 express consent that may have been given to receive telephone calls, especially to
17 Client’s cellular telephone, from an automated telephone dialing system or an
18 artificial or pre-recorded voice, as outlined in the Telephone Consumer Protection
19 Act, 47 USC § 227 et seq”.

20 23. However, despite revocation of any possible prior express consent to
21 be contacted on Plaintiff’s cellular telephone, on September 20, 2016, Plaintiff
22 received an unsolicited telephone call from Defendant to his cell phone for which
23 Plaintiff provided no consent to call, in attempt to collect an alleged debt owed. The
24 telephone number that placed the unsolicited telephone call to Plaintiff, 866-383-
25 9209, is owned by Defendant. When Plaintiff answered the call he again told
26 Defendant to stop calling him because he is represented by Attorney and directed
27 Defendant to contact Attorney.

28 _____
⁵ *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (¶ 10).

1 24. On September 22, 2016, Plaintiff received another unsolicited
2 telephone call from Defendant to his cellular telephone for which Plaintiff provided
3 no consent to call, in attempt to collect an alleged debt owed. The telephone number
4 that placed the unsolicited telephone call to Plaintiff, 866-383-9209, is owned by
5 Defendant. There was a long delay when Plaintiff answered before anyone
6 responded. Immediately, Defendant's agent asked Plaintiff to verify the account.
7 The agent asked for Plaintiff's partial social security number and then asked for his
8 date of birth. After confirming Plaintiff's identity via the confidential information
9 requested, the agent advised Plaintiff that the call was recorded. Angered about the
10 call and lack of communication regarding the call being recorded, Plaintiff advised
11 Defendant's agent to no longer contact him and to contact his attorney.

12 25. On September 29, 2016, Plaintiff received another unsolicited
13 telephone call from Defendant to his cellular telephone. The telephone number that
14 placed the unsolicited telephone call to Plaintiff, 888-401-9025, is owned by
15 Defendant. Defendant asked for Trinity Nguyen ("Trinity").

16 26. Plaintiff advised Defendant he had not spoken to Trinity in years and
17 again advised Defendant to stop calling his cell phone.

18 27. The unsolicited calls placed to Plaintiff's wireless telephone were
19 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
20 U.S.C. § 227 (a)(1) and/or by using "an artificial or pre-recorded voice" system as
21 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
22 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
23 to Plaintiff's cellular telephone.

24 28. The telephone number that Defendant, or its agents, called was assigned
25 to a cellular telephone service for which Plaintiff incurred a charge for incoming
26 calls pursuant to 47 U.S.C. § 227 (b)(1).

27 29. The telephone calls constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

1 30. Plaintiff did not provide Defendant or its agents prior express consent
2 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

3 31. The telephone calls by Defendant, or its agents, therefore violated 47
4 U.S.C. § 227(b)(1).

5 32. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
6 Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express
7 consent within the meaning of the statute.

8 33. The calls were confidential communications that Plaintiff did not desire
9 to be recorded by Defendant. The telephone calls between Plaintiff and Defendant's
10 representative concerned personal information that Plaintiff had not openly
11 discussed with others.

12 34. Unbeknownst to Plaintiff, the calls between Plaintiff and Defendant
13 were recorded by Defendant without Plaintiff's knowledge or consent.

14 35. Plaintiff provided confidential information during the recorded call.

15 36. At the commencement of the call, Defendant did not warn Plaintiff that
16 the calls between them would be recorded and Plaintiff never gave consent for the
17 calls to be recorded until after confidential information was discussed.

18 37. Plaintiff did not hear intermittent beeping sounds during the calls that
19 may have alerted Plaintiff that the calls were being recorded.

20 38. Plaintiff was completely unaware that Defendant was recording the
21 calls.

22 39. Reasonable California residents expect that their telephone
23 communications are not being recorded in the absence of a call recording advisement
24 of some kind at the outset of the telephone call/s, since call recording advisements
25 given at the outset of telephonic communications with businesses are ubiquitous
26 today.

27 40. Due to the lack of a recording advisement at the outset of the telephone
28 calls, Plaintiff reasonably believed and expected that Defendant was not secretly

1 recording the telephone conversations with Plaintiff, which concerned an alleged
2 debt.

3 41. California Penal Code § 632.7(a) is very clear in its prohibition against
4 such unauthorized tape recording without the consent of the other party to the
5 conversation: “Every person who, without the consent of all parties to a
6 communication, intercepts or receives and intentionally records, or assists in the
7 interception or reception and intentional recordation of, a communication
8 transmitted between two cellular radio telephones, a cellular radio telephone and a
9 landline telephone, two cordless telephones, a cordless telephone and a landline
10 telephone, or a cordless telephone and a cellular radio telephone [violates this
11 section]”. California Penal Code § 637.2 permits Plaintiff to bring this action for
12 any violation of California Penal Code § 632.7(a) and provides for statutory damages
13 of \$5,000.00 for each violation and injunctive relief.

14 42. This suit seeks only damages and injunctive relief for recovery of
15 economic injury and it expressly is not intended to request any recovery for personal
16 injury and claims related thereto.

17 43. Plaintiff is informed and believes, and thereon alleges, that Defendant
18 intentionally recorded parts of communications transmitted between a cellular radio
19 telephone and a landline telephone without Plaintiff’s consent as prohibited by
20 California Penal Code § 632.7(a).

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

25 45. Plaintiff is informed and believes, and thereon alleges, that during the
26 relevant time period, Defendant has had a policy and a practice of verifying accounts
27 during outbound calls by discussing private social security numbers and dates of
28 birth, prior to letting the call recipients know that the calls were recorded.

1 Defendant's employees and agents are directed, trained and instructed to, and do,
2 record telephone conversations with the public, including Plaintiff and other
3 California residents.

4 46. Plaintiff is informed and believes, and thereon alleges, that during the
5 relevant time period, Defendant had a policy and a practice of recording California
6 consumers prior to providing any disclosure/s and/or warning/s as to said recording/s
7 on its outbound calls.

8 47. Plaintiff is informed and believes, and thereon alleges, that during the
9 relevant time period, Defendant had installed and/or caused to be installed certain
10 recording equipment in its employees' or agents' telephone lines. Defendant uses
11 these devices to record each and every telephone conversation on said telephone
12 lines.

13 48. Plaintiff is informed and believes, and thereon alleges, that during the
14 relevant time period, Defendant had all of its calls with the public, including those
15 with California residents, parts of which were recorded without the knowledge or
16 consent of the public, including Plaintiff and other California residents.

17 49. Defendant's conduct alleged herein constitutes violations of the right to
18 privacy of the public, including Plaintiff and other California residents, and
19 California Penal Code § 630 *et seq.*

20 50. Defendant concealed from Plaintiff, and similarly situated California
21 residents, that Defendant was recording the telephone outbound calls between itself
22 on the one hand and Plaintiff and other similarly situated California residents on the
23 other until midway through the telephone calls.

24 51. Defendant concealed the fact that it was recording the afore-mentioned
25 phone calls to create the false impression in the minds of Plaintiff and similarly
26 situated California residents that they were not being recorded. At the outset of the
27 calls there was no warning that the calls were, or even may be, recorded.

28 52. As a result thereof, Plaintiff and the class have been damaged as set

1 forth in the Prayer for Relief herein.

2 53. Plaintiff seeks statutory damages for himself and the class and
3 injunctive relief under California Penal Code § 637.2.

4 **TCPA CLASS ACTION ALLEGATIONS**

5 54. Plaintiff brings this action on behalf of himself and on behalf of all
6 others similarly situated (“the TCPA Class” or “the Class”).

7 55. Plaintiff represents, and is a member of, the Class defined as follows:

8 **TCPA Class:** Any person in the United States who (1) Defendant or its
9 agents placed a call; (2) to that person’s cellular telephone number; (3)
10 through the use of any automatic telephone dialing system as set forth in
11 47 U.S.C. § 227(b)(1)(A)(3); and (4) where Defendant has no record of
12 prior express consent for such individual to make such call or where the
13 individual revoked consent, within four years prior to the filing of the
14 Complaint through the date of final approval.

15 56. Defendant and its employees or agents are excluded from the Class.
16 Plaintiff does not know the number of members in the Class, but believes the Class
17 members number in the hundreds of thousands, if not more. Thus, this matter should
18 be certified as a Class action to assist in the expeditious litigation of this matter.

19 57. Plaintiff and members of the Class were harmed by the acts of
20 Defendant in at least the following ways: Defendant, either directly or through its
21 agents, illegally contacted Plaintiff and the Class members via their cellular
22 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
23 Class members to incur certain cellular telephone charges or reduce cellular
24 telephone time for which Plaintiff and the Class members previously paid, and
25 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
26 members were damaged thereby.

27 58. This suit seeks only damages and injunctive relief for recovery of
28 economic injury on behalf of the Class and it expressly is not intended to request

1 any recovery for personal injury and claims related thereto. Plaintiff reserves the
2 right to expand the Class definition to seek recovery on behalf of additional persons
3 as warranted as facts are learned in further investigation and discovery.

4 59. The joinder of the Class members is impractical and the disposition of
5 their claims in the Class action will provide substantial benefits both to the parties
6 and to the Court. The Class can be identified through Defendant's records or
7 Defendant's agents' records.

8 60. There is a well-defined community of interest in the questions of law
9 and fact involved affecting the parties to be represented. The questions of law and
10 fact to the Class predominate over questions which may affect individual Class
11 members, including the following:

- 12 a. Whether, within the four years prior to the filing of this Complaint,
13 Defendant or its agents placed telephone calls without the recipients' prior
14 express consent (other than a telephone call made for emergency purposes
15 or made with the prior express consent of the called party) to a Class
16 member using any automatic telephone dialing system or pre-recorded
17 voice system, to any telephone number assigned to a cellular telephone
18 service;
- 19 b. Whether the equipment Defendant, or its agents, used to make the
20 telephone calls in question was an automatic telephone dialing system as
21 contemplated by the TCPA;
- 22 c. Whether Defendant, or its agents, systematically made telephone calls to
23 persons featuring an artificial or pre-recorded voice;
- 24 d. Whether Defendant, or its agents, systematically made telephone calls to
25 persons who did not previously provide Defendant with their prior express
26 consent to receive such telephone calls;
- 27 e. Whether Plaintiff and the Class members were damaged thereby, and the
28 extent of damages for such violation; and

1 f. Whether Defendant and its agents should be enjoined from engaging in
2 such conduct in the future.

3 61. As a person that received at least one unsolicited telephone call to his
4 cellular telephone without Plaintiff's prior express consent, Plaintiff is asserting
5 claims that are typical of the Class. Plaintiff will fairly and adequately represent and
6 protect the interests of the Class in that Plaintiff has no interest antagonistic to any
7 member of the Class.

8 62. Plaintiff and the members of the Class have all suffered irreparable
9 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
10 action, the Class will continue to face the potential for irreparable harm. In addition,
11 these violations of law will be allowed to proceed without remedy and Defendant
12 will likely continue such illegal conduct. Because of the size of the individual Class
13 member's claims, few Class members could afford to individually seek legal redress
14 for the wrongs complained of herein.

15 63. Plaintiff has retained counsel experienced in handling class action
16 claims and claims involving violations of the Telephone Consumer Protection Act.

17 64. A class action is a superior method for the fair and efficient adjudication
18 of this controversy. Class-wide damages are essential to induce Defendant to
19 comply with federal law. The interest of Class members in individually controlling
20 the prosecution of separate claims against Defendant is small because the maximum
21 statutory damages in an individual action for violation of privacy are minimal.
22 Management of these claims is likely to present significantly fewer difficulties than
23 those presented in many class claims.

24 65. Defendant has acted on grounds generally applicable to the Class,
25 thereby making appropriate final injunctive relief and corresponding declaratory
26 relief with respect to the Class as a whole.

27 **CIPA CLASS ALLEGATIONS**

28 66. Plaintiff also brings this action on behalf of himself and on behalf of all

1 other similar situated (“the CIPA Class”). Because Plaintiff’s cellular phone calls
2 were recorded, the representative Plaintiff represents, and is a member of the Class
3 he seeks to represent, persons whose cellular telephone calls were recorded by
4 Defendant in the Class Period from one year prior to the filing of this Complaint
5 through the date of trial, with the CIPA Class and Subclasses defined as follows:

6 **CIPA Class:** All persons from one year prior to the filing of this Complaint
7 through the date of trial that were physically in California at the time the
8 persons, or entities, through their employees and agents, engaged in telephone
9 conversations with Defendant, their employees, agents or other persons
10 working on Defendant’s behalf, which were recorded by Defendant, their
11 employees and agents, while engaging in such communication using a cellular
12 telephone, prior to consenting to such recording.

13 67. Defendant, and its employees and agents are excluded from the Class.
14 Plaintiff does not know the number of members in the Class, but believes the Class
15 members number in the several thousands, if not more. Thus, this matter should be
16 certified as a Class action to assist in the expeditious litigation of this matter.

17 68. 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 modify or expand the definition of the Class to seek recovery on behalf of
21 additional persons as warranted as facts are learned in further investigation and
22 discovery.

23 69. The joinder of the Class members is impractical and the disposition of
24 their claims in the Class action will provide substantial benefits both to the parties
25 and to the Court. The Class can be identified through Defendant’s records and/or
26 Defendant’s agent’s records.

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

1 fact to the Class predominate over questions which may affect individual Class
2 members, including, but not limited to, the following:

- 3 a. Whether Defendant has a policy of recording its calls;
- 4 b. Whether Defendant discloses to California consumer/s and/or obtains
5 their consent that Defendant's telephone conversations were recorded
6 at the outset of the conversation;
- 7 c. Whether Defendant recorded its telephone conversations with persons
8 in California while those persons were on a cellular telephone;
- 9 d. Whether Defendant's policy of recording all of its calls without the
10 required call recording disclosure constituted a violation of California
11 Penal Code § 632.7;
- 12 e. Whether Defendant should be enjoined from engaging in such
13 conduct in the future; and,
- 14 f. Whether Plaintiff and Class members are entitled to any other relief.

15 71. Plaintiff is asserting claims that are typical of the Class because every
16 other member of the Class, like Plaintiff, was exposed to virtually identical conduct
17 and are entitled to the greater of statutory damages of \$5,000 per violation or three
18 times actual damages per violation pursuant to Penal Code § 637.2(a).

19 72. Plaintiff will fairly and adequately represent and protect the interests of
20 the Class in that Plaintiff has no interests antagonistic to any member of the Class.
21 Plaintiff has retained counsel experienced in handling class actions and claims under
22 California's Invasion of Privacy Act to further ensure such protection.

23 73. Plaintiff and the members of the Class have all suffered irreparable
24 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
25 action, the Class will continue to face the potential for irreparable harm. In addition,
26 these violations of law will be allowed to proceed without remedy and Defendants
27 will likely continue such illegal conduct. Because of the size of the individual Class
28 members' claims, few Class members could afford to seek legal redress for the

1 wrongs complained of herein.

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

9 75. Defendant has acted on grounds generally applicable to the Class,

10 76. Californians have a constitutional right to thereby making appropriate
11 final injunctive relief and corresponding declaratory relief with respect to the Class
12 as a whole.

13 **FIRST CAUSE OF ACTION**
14 **NEGLIGENT VIOLATIONS OF**
15 **THE TELEPHONE CONSUMER PROTECTION ACT**
16 **47 U.S.C. §§ 227 ET SEQ.**

17 77. Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.

19 78. The telephone calls were made using equipment that, upon information
20 and belief, had the capacity to store or produce telephone numbers to be called, using
21 a random or sequential number generator, and to dial such numbers. By using such
22 equipment, Defendant was able to effectively make thousands of phone calls
23 simultaneously to lists of thousands of wireless phone numbers of consumers
24 without human intervention. The telephone calls were made without the prior
25 express consent of the Plaintiff and other members of the Class to receive such
26 telephone calls.

27 79. The foregoing acts and omissions of Defendant and its agents constitute
28 numerous and multiple negligent violations of the TCPA including, but not limited

1 to, each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

2 80. As a result of Defendant's, and Defendant's agents', negligent
3 violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award
4 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
5 § 227(b)(3)(B).

6 81. Plaintiff and the Class are also entitled to and seek injunctive relief
7 prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**
9 **KNOWING AND/OR WILLFUL VIOLATIONS OF**
10 **THE TELEPHONE CONSUMER PROTECTION ACT**
11 **47 U.S.C. §§ 227 *ET SEQ.***

12 82. Plaintiff incorporates by reference the above paragraphs of this
13 Complaint as though fully stated herein.

14 83. The telephone calls were made using equipment that, upon information
15 and belief, had the capacity to store or produce telephone numbers to be called, using
16 a random or sequential number generator, and to dial such numbers. By using such
17 equipment, Defendant was able to effectively make thousands of phone calls
18 simultaneously to lists of thousands of wireless phone numbers of consumers
19 without human intervention. These telephone calls were made without the prior
20 express consent of the Plaintiff and other members of the Class to receive such
21 telephone calls.

22 84. The foregoing acts and omissions of Defendant constitutes numerous
23 and multiple knowing and/or willful violations of the TCPA, including but not
24 limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227 *et*
25 *seq.*

26 85. As a result of Defendant's knowing and/or willful violations of 47
27 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as
28 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47

1 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

2 86. Plaintiff and the Class are also entitled to and seek injunctive relief
3 prohibiting such conduct in the future.

4 **THIRD CAUSE OF ACTION**

5 **UNLAWFUL INVASION OF PRIVACY**

6 **CALIFORNIA PENAL CODE SECTION 632.7**

7 87. Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 88. Californians have a constitutional right to privacy. Moreover, the
10 California Supreme Court has definitively linked the constitutionally protected right
11 to privacy within the purpose, intent and specific protections of the Privacy Act,
12 including specifically, Penal Code § 632. In addition, California's explicit
13 constitutional privacy provision (Cal. Const., 1 § 1) was enacted in part specifically
14 to protect California from overly intrusive business practices that were seen to pose
15 a significant and increasing threat to personal privacy. Thus, we believe that
16 California must be viewed as having a strong and continuing interest in the full and
17 vigorous application of the provisions of section 632 prohibiting the recording of
18 telephone conversations without the knowledge or consent of all parties to the
19 conversation. *See Kearney v. Salmon Smith Barney, Inc.*, (2006) 39 Cal. 4th 95, 125.

20 89. California Penal Code § 632.7 prohibits one party to a telephone call
21 from intentionally recording any part of the conversation without the knowledge or
22 consent of the other party, where a cellular telephone is involved. Cal. Pen. Code §
23 632.7 is violated the moment the recording is made without the consent of all parties
24 thereto, regardless of whether it is subsequently disclosed that the telephone call was
25 recorded. The only intent required by Cal. Pen. Code § 632.7 is that the act of
26 recording itself be done intentionally. There is no requisite intent on behalf of the
27 party doing the surreptitious recording to break California law or any other law, or
28 to invade the privacy right of any other person.

1 90. Plaintiff is informed and believes and thereupon alleges that Defendant
2 employed and/or caused to be employed certain recording equipment on the
3 telephone lines of all employees, officers, directors, and managers of Defendant.

4 91. Plaintiff is informed and believes and thereupon alleges that all these
5 devices were maintained and utilized to record each and every one of Defendant's
6 telephone conversations over said telephone lines.

7 92. Said recording equipment was used to record Defendant's telephone
8 conversations with Plaintiff and the members of the Class, all in violation of
9 California Penal Code § 632.7.

10 93. Defendant or any employees, agents, managers, officers, or directors of
11 Defendant, and any other person, failed to inform Plaintiff or any other member of
12 the Class, at the outset of Defendant's telephone conversations, that the recording of
13 the telephone conversations were taking place, and at no time did Plaintiff or any
14 other member of the Class consent to this activity.

15 94. If any consent and/or disclosure were given, such disclosure/s and/or
16 consent was not at the inception of the call/s.

17 95. Defendant, knowing that it was unlawful and a violation of Plaintiff's
18 and Class members' right to privacy and a violation of California Penal Code § 630,
19 et seq., intruded on Plaintiff's and Class members' right to privacy by intentionally
20 engaging in recording activities relative to the telephone conversations between
21 Plaintiff and the Class on the one hand, and Defendant on the other hand, as alleged
22 herein.

23 96. Based on the foregoing, Plaintiff and the members of the Class are
24 entitled to, and below herein do pray for, their statutory remedies and damages,
25 including but not limited to, those set forth in California Penal Code § 637.2.

26 97. Because this case is brought for the purposes of enforcing important
27 rights affecting the public interest, Plaintiff and the Class seek recovery of their
28 attorneys' fees pursuant to the private attorney general doctrine codified in Code of

1 Civil Procedure § 1021.5, or any other statutory basis.

2 **PRAYER FOR RELIEF**

3 Wherefore, Plaintiff respectfully requests the Court to grant Plaintiff and the
4 Class members the following relief against Defendant:

5 **FIRST CAUSE OF ACTION**

6 **NEGLIGENT VIOLATION OF**

7 **THE TELEPHONE CONSUMER PROTECTION ACT**

8 **47 U.S.C. §§ 227 ET SEQ.**

9 98. As a result of Defendant's, and Defendant's agents', negligent
10 violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class
11 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
12 U.S.C. § 227(b)(3)(B).

13 99. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief
14 prohibiting such conduct in the future.

15 100. Any other relief the Court may deem just and proper including attorney
16 fees and costs.

17 **SECOND CAUSE OF ACTION**

18 **KNOWING AND/OR WILLFUL VIOLATION OF**

19 **THE TELEPHONE CONSUMER PROTECTION ACT**

20 **47 U.S.C. §§ 227 ET SEQ.**

21 101. As a result of Defendant's, and Defendant's agents', willful and/or
22 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each
23 Class member treble damages, as provided by statute, up to \$1,500.00 for each and
24 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

25 102. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
26 conduct in the future.

27 103. Any other relief the Court may deem just and proper including attorney
28 fees and costs.

1 **THIRD CAUSE OF ACTION**

2 **UNLAWFUL INVASION OF PRIVACY**

3 **CALIFORNIA PENAL CODE SECTION 632.7**

4 104. As a result of Defendant's, and Defendant's agents', willful and/or
5 knowing violations of Cal. Pen Code § 637.2(a), Plaintiff seeks for himself and each
6 Class member the greater of \$5,000.00 for each and every violation or three times
7 actual damage per violation, pursuant to Cal. Pen Code § 637.2(a).

8 105. Pursuant to California Penal Code § 637.2(a), injunctive relief
9 prohibiting such conduct in the future.

10 106. Any other relief the Court may deem just and proper including attorney
11 fees and costs.

12 **JURY DEMAND**

13 Plaintiff hereby demands a trial by jury on all issues so triable.

14
15 Dated: November 15, 2016

s/ Ronald A. Marron

By: Ronald A. Marron

16 **LAW OFFICES OF RONALD A.**
17 **MARRON**

18 RONALD A. MARRON

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24 s/ Daniel G. Shay

By: Daniel G. Shay

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*Attorneys for Plaintiff and the
Proposed 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.

I. (a) PLAINTIFFS
KHOI NGUYEN, on behalf of himself, and all others similarly situated,
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Ronald A. Marron
Law Offices of Ronald A. Marron
651 Arroyo Drive San Diego, CA 92103 (619) 696-9006

DEFENDANTS
CREDIT CONTROL, LLC
County of Residence of First Listed Defendant
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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
6 Multidistrict Litigation

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.
Brief description of cause:
Telephone Consumer Protection Act

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 11/15/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Ronald A. Marron

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: [Class Action: Credit Control Illegally Recorded Consumers' Calls](#)
