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16 *Attorneys for Plaintiff and Proposed Class*

17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 EVELYN OFITERU, individually  
 20 and on behalf of all others similarly  
 21 situated,

22 Plaintiff,

23 vs.

24 FIRST CALIFORNIA FINANACIAL,  
 25 INC., a California corporation,

26 Defendant.

Case No. 3:21-cv-03423

**CLASS ACTION**

**COMPLAINT FOR  
 VIOLATIONS OF THE  
 TELEPHONE CONSUMER  
 PROTECTION ACT, 47 U.S.C. §§  
 227, ET SEQ. (TCPA)**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1  
2 1. Plaintiff, Evelyn Ofiteru, brings this action against Defendant, First  
3 California Finanacial, Inc., to secure redress for violations of the Telephone  
4 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.  
5

6 **NATURE OF THE ACTION**

7 2. This is a putative class action pursuant to the Telephone Consumer  
8 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).  
9

10 3. Defendant markets itself as “your full-service California home loan and  
11 refinance pros.”<sup>1</sup>  
12

13 4. Defendant also uses prerecorded messages to send mass automated  
14 marketing calls to individuals’ cellular phone numbers without first obtaining the  
15 required express written consent.  
16

17 5. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s  
18 illegal conduct, which has resulted in the invasion of privacy, harassment,  
19 aggravation, and disruption of the daily life of thousands of individuals. Plaintiff  
20 also seeks statutory damages on behalf of Plaintiff and members of the Class, and  
21 any other available legal or equitable remedies.  
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27 <sup>1</sup> [www.firstcaliforniafinancial.com/Home](http://www.firstcaliforniafinancial.com/Home)

**JURISDICTION AND VENUE**

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6. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

7. The Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant directs, markets, and provides its business activities to this District, and because Defendant’s unauthorized marketing scheme was directed by Defendant to consumers in this District, including Plaintiff.

**PARTIES**

8. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Sonoma County, California.

9. Defendant is a California corporation whose principal office is located at 30531 Via Ventana, San Juan Capistrano, CA 92675. Defendant directs, markets, and provides its business activities throughout the United States, including throughout the state of California.

10. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

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**THE TCPA**

1  
2 11. The TCPA prohibits: (1) any person from calling a cellular telephone  
3 number; (2) using an automatic telephone dialing system or an artificial or  
4 prerecorded voice; (3) without the recipient’s prior express consent. 47 U.S.C. §  
5 227(b)(1)(A).  
6

7 12. The TCPA exists to prevent communications like the ones described  
8 within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744  
9 (2012).  
10

11 13. In an action under the TCPA, a plaintiff must show only that the  
12 defendant “called a number assigned to a cellular telephone service using an  
13 automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*,  
14 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).  
15  
16

17 14. The Federal Communications Commission (“FCC”) is empowered to  
18 issue rules and regulations implementing the TCPA. According to the FCC’s  
19 findings, calls in violation of the TCPA are prohibited because, as Congress found,  
20 automated or prerecorded telephone calls are a greater nuisance and invasion of  
21 privacy than live solicitation calls, and such calls can be costly and inconvenient.  
22 The FCC also recognized that wireless customers are charged for incoming calls  
23 whether they pay in advance or after the minutes are used. *Rules and Regulations*  
24  
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1 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-  
2 278, Report and Order, 18 FCC Rcd 14014 (2003).

3 15. In 2012, the FCC issued an order further restricting automated  
4 telemarketing calls, requiring “prior express written consent” for such calls. *See In*  
5 *the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*  
6 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

7  
8  
9 16. To obtain express written consent for telemarketing calls, a defendant  
10 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff  
11 a “‘clear and conspicuous disclosure’ of the consequences of providing the requested  
12 consent....and having received this information, agrees unambiguously to receive  
13 such calls at a telephone number the [plaintiff] designates.” *In re Rules &*  
14 *Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830,  
15 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

16  
17  
18 17. The TCPA regulations promulgated by the FCC define “telemarketing”  
19 as “the initiation of a telephone call or message for the purpose of encouraging the  
20 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §  
21 64.1200(f)(12). In determining whether a communication constitutes telemarketing,  
22 a court must evaluate the ultimate purpose of the communication. *See Golan v.*  
23 *Veritas Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

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1 18. “Neither the TCPA nor its implementing regulations ‘require an  
2 explicit mention of a good, product, or service’ where the implication of an improper  
3 purpose is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*,  
4 705 F.3d 913, 918 (9th Cir. 2012)).

6 19. “‘Telemarketing’ occurs when the context of a call indicates that it was  
7 initiated and transmitted to a person for the purpose of promoting property, goods,  
8 or services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R.  
9 § 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone*  
10 *Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL  
11 21517853, at \*49).

14 20. The FCC has explained that calls motivated in part by the intent to sell  
15 property, goods, or services are considered telemarketing under the TCPA. *See In*  
16 *re Rules and Regulations Implementing the Telephone Consumer Protection Act of*  
17 *1991*, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003). This is true whether call recipients  
18 are encouraged to purchase, rent, or invest in property, goods, or services during the  
19 call *or in the future. Id.*

22 21. In other words, offers “that are part of an overall marketing campaign  
23 to sell property, goods, or services constitute” telemarketing under the TCPA. *See*  
24 *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*  
25 *of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

1 22. If a call is not deemed telemarketing, a defendant must nevertheless  
2 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter*  
3 *of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC  
4 Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-telemarketing and  
5 non-advertising calls”).  
6

7 **FACTS**  
8

9 23. On or about January 27, 2021, Defendant caused a prerecorded voice  
10 message to be transmitted to Plaintiff’s cellular telephone number ending in 5576  
11 (“5576 Number”):  
12

13 24. The prerecorded voice message states that they were being sent from  
14 Kemmer Matteson of First California Financial and states, “just wanted to give you  
15 a follow-up call on mortgage interest rates, currently we’re at 2.75% with 0 points,  
16 so if you’re interested give me a call back 714 606 8400 and I’ll be happy to go over  
17 the options with you. Have a great day.”  
18

19 25. Plaintiff is the subscriber and/or sole user of the 5576 number.  
20

21 26. The prerecorded message came from the number 949-421-1000.  
22

23 27. When Plaintiff listened to the voice messages, she was easily able to  
24 determine that it was a prerecorded message. *Rahn v. Bank of Am.*, No. 1:15-CV-  
25 4485-ODE-JSA, 2016 U.S. Dist. LEXIS 186171, at \*10-11 (N.D. Ga. June 23, 2016)  
26 (“When one receives a call, it is a clear-cut fact, easily discernible to any lay person,  
27  
28

1 whether or not the recipient is speaking to a live human being, or is instead being  
2 subjected to a prerecorded message.”).

3 28. Defendant’s prerecorded message calls constitute  
4 telemarketing/advertising because they promote Defendant’s business, goods and  
5 services.  
6

7 29. At no point in time did Plaintiff provide Defendant with her express  
8 written consent to be contacted by prerecorded message.  
9

10 30. Upon information and belief, Defendant caused similar prerecorded  
11 messages to be sent to individuals residing within this judicial district.  
12

13 31. Defendant’s unsolicited prerecorded messages caused Plaintiff  
14 additional harm, including invasion of privacy, aggravation, annoyance, intrusion on  
15 seclusion, trespass, and conversion. Defendant’s call also inconvenienced Plaintiff  
16 and caused disruption to Plaintiff’s daily life.  
17

18 **CLASS ALLEGATIONS**

19 **PROPOSED CLASS**

20  
21 32. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,  
22 on behalf of herself and all others similarly situated.

23 33. Plaintiff brings this case on behalf of the Class defined as follows:  
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1        **NO CONSENT CLASS:** All persons in the United States who, within  
2        four years prior to the filing of this action, (1) were sent a prerecorded  
3        message by or on behalf of Defendant, (2) regarding Defendant's  
4        goods, products or services, and (4) for which Defendant failed to  
5        secure the called party's express written consent

6  
7        34. Plaintiff reserves the right to modify the Class definitions as warranted  
8  
9        as facts are learned in further investigation and discovery.

10        35. Defendant and its employees or agents are excluded from the Class.  
11        Plaintiff does not know the number of members in the Class but believes the Class  
12        members number in the several thousands, if not more.

13  
14        **NUMEROSITY**

15        36. Upon information and belief, Defendant has placed automated calls to  
16        cellular telephone numbers belonging to thousands of consumers throughout the  
17        United States without their prior express consent. The members of the Class,  
18        therefore, are believed to be so numerous that joinder of all members is  
19        impracticable.  
20  
21

22        37. The exact number and identities of the members of the Class are  
23        unknown at this time and can only be ascertained through discovery. Identification  
24        of the Class members is a matter capable of ministerial determination from  
25        Defendant's call records.  
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**COMMON QUESTIONS OF LAW AND FACT**

1  
2 38. There are numerous questions of law and fact common to members of  
3  
4 the Class which predominate over any questions affecting only individual members  
5 of the Class. Among the questions of law and fact common to the members of the  
6 Class are:

- 7 a. Whether Defendant made non-emergency calls to Plaintiff's and  
8 Class members' cellular telephones using a prerecorded  
9 message;  
10  
11 b. Whether Defendant can meet its burden of showing that it  
12 obtained prior express written consent to make such calls;  
13  
14 c. Whether Defendant's conduct was knowing and willful;  
15  
16 d. Whether Defendant is liable for damages, and the amount of such  
17 damages; and  
18  
19 e. Whether Defendant should be enjoined from such conduct in the  
20 future.

21 39. The common questions in this case are capable of having common  
22 answers. If Plaintiff's claim that Defendant routinely transmits calls to telephone  
23 numbers assigned to cellular telephone services is accurate, Plaintiff and the Class  
24 members will have identical claims capable of being efficiently adjudicated and  
25 administered in this case.  
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1                   **TYPICALITY**

2           40. Plaintiff's claims are typical of the claims of the Class members, as  
3 they are all based on the same factual and legal theories.

4                   **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

5           41. Plaintiff is a representative who will fully and adequately assert and  
6 protect the interests of the Class, and has retained competent counsel. Accordingly,  
7 Plaintiff is an adequate representative and will fairly and adequately protect the  
8 interests of the Class.  
9  
10

11                   **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

12           42. A class action is superior to all other available methods for the fair and  
13 efficient adjudication of this lawsuit, because individual litigation of the claims of  
14 all members of the Class is economically unfeasible and procedurally impracticable.  
15 While the aggregate damages sustained by the Class are in the millions of dollars,  
16 the individual damages incurred by each member of the Class resulting from  
17 Defendant's wrongful conduct are too small to warrant the expense of individual  
18 lawsuits. The likelihood of individual Class members prosecuting their own separate  
19 claims is remote, and, even if every member of the Class could afford individual  
20 litigation, the court system would be unduly burdened by individual litigation of  
21 such cases.  
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1 43. The prosecution of separate actions by members of the Class would  
2 create a risk of establishing inconsistent rulings and/or incompatible standards of  
3 conduct for Defendant. For example, one court might enjoin Defendant from  
4 performing the challenged acts, whereas another may not. Additionally, individual  
5 actions may be dispositive of the interests of the Class, although certain class  
6 members are not parties to such actions.  
7

8  
9 **COUNT I**

10 **Violations of the TCPA, 47 U.S.C. § 227(b)**

11 **(On Behalf of Plaintiff and No Consent Class)**

12 44. Plaintiff re-alleges and incorporates the foregoing allegations as if fully  
13 set forth herein.  
14

15 45. It is a violation of the TCPA to make “any call (other than a call made  
16 for emergency purposes or made with the prior express consent of the called party)  
17 using any ...artificial or prerecorded voice to any telephone number assigned to a ...  
18 cellular telephone service ....” 47 U.S.C. § 227(b)(1)(A)(iii).  
19

20 46. It is a violation of the TCPA regulations promulgated by the FCC to  
21 “initiate any telephone call...using an... artificial or prerecorded voice to any  
22 telephone number assigned to a paging service, cellular telephone service,  
23 specialized mobile radio service, or other radio common carrier service, or any  
24

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1 service for which the called party is charged for the call.” 47 C.F.R. §  
2 64.1200(a)(1)(iii).

3 47. Additionally, it is a violation of the TCPA regulations promulgated by  
4 the FCC to “[i]nitiate, or cause to be initiated, any telephone call that includes or  
5 introduces an advertisement or constitutes telemarketing, ...artificial or prerecorded  
6 voice ...other than a call made with the prior express written consent of the called  
7 party or the prior express consent of the called party when the call is made...” 47  
8 C.F.R. § 64.1200(a)(2).

9  
10  
11 48. Defendant – or third parties directed by Defendant – used prerecorded  
12 messages to make non-emergency telephone calls to the cellular telephones of  
13 Plaintiff and the other members of the Class defined below.

14  
15 49. Defendant – or third parties directed by Defendant – used prerecorded  
16 messages to make non-emergency telephone calls to the telephones of Plaintiff and  
17 other members of the Class.

18  
19 50. These calls were made without regard to whether or not Defendant had  
20 first obtained express permission from the called party to make such calls. In fact,  
21 Defendant did not have prior express consent to call the cell phones of Plaintiff and  
22 the other members of the putative Class when its calls were made.

23  
24 51. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by  
25 using a prerecorded message to make non-emergency telephone calls to the cell  
26  
27

1 phones of Plaintiff and the other members of the putative Class without their prior  
2 express written consent.

3 52. Defendant has therefore violated § 64.1200(a)(1)(iii) and §  
4 64.1200(a)(2) by using prerecorded messages to make non-emergency telephone  
5 calls to the telephones of Plaintiff and the other members of the putative Class  
6 without their prior express written consent.  
7

8 53. Defendant knew that it did not have prior express consent to make these  
9 calls, and knew or should have known that it was using prerecorded messages. The  
10 violations were therefore willful or knowing.  
11

12 54. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the  
13 TCPA, Plaintiff and the other members of the putative Class were harmed and are  
14 each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and  
15 the members of the Class are also entitled to an injunction against future calls. *Id.*  
16  
17

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for  
20 the following relief:  
21

- 22 a) An order certifying this case as a class action on behalf of the Class as  
23 defined above, and appointing Plaintiff as the representative of the  
24 Class and Plaintiff's counsel as Class Counsel;  
25

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- 1           b) An award of actual and statutory damages for Plaintiff and each  
2           member of the Class;
- 3           c) As a result of Defendant’s negligent violations of 47 U.S.C. §§ 227, *et*  
4           *seq.*, Plaintiff seeks for herself and each member of the Class \$500.00  
5           in statutory damages for each and every violation pursuant to 47 U.S.C.  
6           § 277(b)(3)(B);
- 7           d) As a result of Defendant’s knowing and/or willful violations of 47  
8           U.S.C. §§ 227, *et seq.*, Plaintiff seeks for herself and each member of  
9           the Class treble damages, as provided by statute, up to \$1,500.00 for  
10          each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B) and §  
11          277(b)(3)(C);
- 12          e) An order declaring that Defendant’s actions, as set out above, violate  
13          the TCPA;
- 14          f) An injunction requiring Defendant to cease all unsolicited call activity,  
15          and to otherwise protect the interests of the Class;
- 16          g) An injunction prohibiting Defendant from using, or contracting the use  
17          of, prerecorded messages without obtaining, recipient’s consent to  
18          receive calls made with such equipment;
- 19          h) An award of reasonable attorneys’ fees and costs pursuant to, *inter alia*,  
20          California Code of Civil Procedure § 1021.5; and
- 21  
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1 i) Such further and other relief as the Court deems necessary.

2 **JURY DEMAND**

3 Plaintiff hereby demand a trial by jury.

4 **DOCUMENT PRESERVATION DEMAND**

5  
6 Plaintiff demands that Defendant take affirmative steps to preserve all records,  
7 lists, electronic databases or other itemization of telephone numbers associated with  
8 Defendant and the calls as alleged herein.  
9

10 Respectfully submitted,

11  
12 Dated: May 6, 2021

13 By: /s/ William Litvak  
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27 *Attorneys for Plaintiff and the Proposed*  
28 *Class*



JS-CAND 44 (Rev. 10/2020)

**CIVIL COVER SHEET**

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

EVELYN OFITERU, individually and on behalf of all others similarly situated,

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

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

William Litvak, Dapeer Rosenblit & Litvak, 11500 W. Olympic Blvs., #550,  
Manuel Hiraldo, Hiraldo P.A., 401 E. Las Olas Blvd., Suite 1400, Fort Lauderdale, FL 33301, T: 954-400-4713

**DEFENDANTS**

FIRST CALIFORNIA FINANACIAL, INC., a California Corporation,

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

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

Attorneys (If Known)

Los Angeles, CA 90064, T:310-477-5575  
Lauderdale, FL 33301, T: 954-400-4713

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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 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 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	
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881 690 Other <b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit <input checked="" type="checkbox"/> 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	<b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	<b>PRISONER PETITIONS</b> <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 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-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 et seq

Brief description of cause:

Statutory violations of the Telephone Consumer Protection Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 05/06/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ William Litvak

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23.
- 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- 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: [First California Financial Hit with Class Action Over Alleged Telemarketing Calls](#)

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