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 on Signature Page

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 Russel Smith

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

RUSSEL SMITH, individually and on
 behalf of others similarly situated

Plaintiff,

v.

Citibank, N.A.,

Defendant.

Case No: '16CV3007 AJB JLB

**COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF
 FOR:**

- 1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT (TCPA), 47 U.S.C. § 227
 ET SEQ.**
- 2. WILLFUL VIOLATIONS OF
 THE TELEPHONE
 CONSUMER PROTECTION
 ACT (TCPA), 47 U.S.C. § 227
 ET SEQ.**

CLASS ACTION

JURY TRIAL DEMANDED

INTRODUCTION

1. Russel Smith, (“Plaintiff”), through Plaintiff’s attorneys, brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Citibank, N.A. (“Defendant”), in negligently or intentionally contacting Plaintiff on Plaintiff’s cellular telephones and leaving Plaintiff pre-recorded and artificial messages, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff allege as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

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

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

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

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

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
7. This action arises out of Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”).
8. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.
9. Plaintiff reside in San Diego County, as defined by 28 U.S.C. § 1391c(1), the judicial district in which this lawsuit is brought.

10. Defendant regularly attempts to collect alleged debts against consumers in San Diego County by making phone calls to consumers, as Defendant did to Plaintiff as well.

11. Defendant made unwanted calls to Plaintiff where it had no permission to do so, and therefore failed to comply with federal laws.

12. Because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and Plaintiff reside in City and County of San Diego, venue is proper pursuant to 28 U.S.C. § 1391b(2).

13. At all times relevant, Defendant conducted business within the State of California.

14. Because Defendant's continuously and systematically conducts business in the State of California, personal jurisdiction is established.

PARTIES

15. Plaintiff, Russel Smith ("Plaintiff" or "Smith") is also a resident in the City of San Diego, State of California.

16. Plaintiff is, and at all times mentioned herein was, "persons" as defined by 47 U.S.C. § 153 (39).

17. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a national bank with principal place of business is in the City of Sioux Falls, State of South Dakota.

18. Defendant, is and at all times mentioned herein was, a national association, and is a "person," as defined by 47 U.S.C. § 153 (39).

FACTUAL ALLEGATIONS

SMITH V. CITIBANK

19. Sometime prior to October 7, 2015, Smith began receiving telephone calls from Defendant on his cellular telephone ending with "5440" via an "automatic telephone dialing system" ("ATDS"), as defined by 47 U.S.C. §

227(a)(1), using “an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).

20. Defendant’s phone calls referenced Smith’s Best Buy closed credit card account.

21. Smith’s only Best Buy credit card was closed sometime in September, 2015.

22. At all material times hereto, Smith did not consent to Defendant’s telephone calls on his cell phone.

23. On October 7, 2015, at 1:03 pm, the Law Office of Daniel Shay (“Shay”) faxed and mailed a cease and desist letter to Defendant informing Citibank of the following:

[Smith] hereby revokes any prior express consent that may have been given to receive telephone calls, expressively to [Smith’s] cellular telephone, from an Automated Telephone Dialing System or an artificial or pre-recorded voice, as outlined in the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*”

24. Despite Shay’s faxed cease and desist correspondence, on October 7, 2015 at 1:03 pm, Citibank called on Smith’s cellular phone with a robotic pre-recorded and artificial message on October 7, 2015, at 6:41 pm, after listening to which, Smith, was transferred to a representative.

25. Furthermore, despite Shay’s cease and desist correspondence, on October 7, 2015, on October 8, 2015, at 1:30 pm, Citibank called on Smith’s cellular phone with a robotic pre-recorded and artificial message, after listening to which, Smith, after a pause was transferred to a representative.

26. On October 12, 2015, Defendant sent a letter to Shay acknowledging receipt of Shay’s cease and desist correspondence.

27. Defendant’s telephone calls on Smith’s cellular telephone were made via an “automatic telephone dialing system” (“ATDS”), as defined by 47 U.S.C. § 227(a)(1), using “an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).

- 1 28. The calls from Defendant came from phone numbers including, but not
2 limited to, (877)-561-2272.
- 3 29. This ATDS has the capacity to store or produce telephone numbers to be
4 called, using a random or sequential number generator.
- 5 30. Upon information and belief, Smith had never given Defendant his consent to
6 receive calls on his cellular phone, pursuant to 47 U.S.C. §§ 227 (b)(1)(A).
- 7 31. Subsequent to Shay's cease and desist letter on October 7, 2015, Smith did
8 not provide Defendant with his "prior express consent" to receive calls on his
9 cellular phone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 10 32. Smith did not provide "prior express consent" to Defendant to place telephone
11 calls to Plaintiff's cellular telephone with an artificial or prerecorded voice
12 utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)(1)(A).
- 13 33. Smith revoked any consent (if it was ever given or Defendant mistakenly
14 believed existed) through Shay's cease and desist correspondence on October
15 7, 2015.
- 16 34. Through this action, Smith suffered an invasion of his legally protected
17 interest in privacy, which is specifically addressed and protected by the
18 TCPA.
- 19 35. Smith was personally affected because he was frustrated and distressed that
20 despite his telling Defendant to stop calling his on his cell phone, Defendant
21 continued to harass Smith with calls using an ATDS.
- 22 36. Defendant's calls forced Smith to live without the utility of Plaintiff's cell
23 phone by forcing him to silence his cell phone and/or block incoming
24 numbers.
- 25 37. Smith is informed and believes and here upon alleges, that these calls were
26 made by Defendant or Defendant's agent, with Defendant's permission,
27 knowledge, control and for Defendant's benefit.
- 28

38. Smith's telephone number Defendant called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

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

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

41. Through Defendant's aforementioned conduct, Plaintiff suffered an invasion of a legally protected interest in privacy, which is specifically addressed and protected by the TCPA.

42. Plaintiff was personally affected by Defendant's aforementioned conduct because Plaintiff was frustrated and distressed that, Defendant interrupted Plaintiff with unwanted calls using an ATDS.

43. Defendant's calls forced Plaintiff and other similarly situated class members to live without the utility of their cellular phones by occupying their cellular telephone with one or more unwanted calls, causing a nuisance and lost time.

CAUSES OF ACTION

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action on behalf of herself and on behalf of and all others similarly situated (the "Class"). The proposed Class that Plaintiff seeks to represent are defined as follows:

All persons within the United States who received any telephone call from Defendant or its agent/s and/or employee/s, not sent for emergency purposes, to said person's cellular telephone made through the use of any automatic telephone dialing system and/or with an artificial or prerecorded message within the four years prior to the filing of this Complaint.

45. Plaintiff represents, and is a member of, the Class, because Plaintiff received telephone calls from Defendant to Plaintiff's cellular telephone using a

1 prerecorded voice, some or all of which Plaintiff was billed for receiving such
2 calls.

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

8 47. Plaintiff and members of the Class were harmed by the acts of Defendant in at
9 least the following ways:

- 10 • Plaintiff and members of the Class were harmed by the acts of
11 Defendants in at least the following ways: Defendant, either directly or
12 through its agents, illegally contacting Plaintiff and the Class members
13 via their cellular telephones by using an ATDS, thereby causing Plaintiff
14 and the Class members to incur certain cellular telephone charges or
15 reduce cellular telephone time for which Plaintiff and the Class
16 members previously paid, and invading the privacy of said Plaintiff and
17 the Class members. Plaintiff and the Class members were damaged
18 thereby.

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

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

1 50. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the parties to be represented. The questions of law and fact
3 to the Class predominate over questions which may affect individual Class
4 members, including, but not limited to, the following:

- 5 • Whether, within the four years prior to the filing of this Complaint,
6 Defendant made any call (other than a call made for emergency
7 purposes or made with the prior express consent of the called party) to a
8 Class member using any automatic telephone dialing system or an
9 artificial or prerecorded voice to any telephone number assigned to a
10 cellular telephone service.
- 11 • Whether Plaintiff and the Class were damaged thereby, and the extent of
12 damages for such violation; and
- 13 • Whether Defendant should be enjoined from engaging in such conduct
14 in the future.

15 51. As a person that received numerous calls using an automatic telephone dialing
16 system or an artificial or prerecorded voice, without Plaintiff's express prior
17 consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff
18 will fairly and adequately represent and protect the interests of the Class in
19 that Plaintiff has no interests antagonistic to any member of the Class.

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

53. Plaintiff have retained counsel experienced in handling class action claims and claims involving consumer actions and violations of the Telephone Consumer Protection Act.

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

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

COUNT I

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT (TCPA)

47 U.S.C. § 227

56. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above paragraphs of this Complaint as though fully stated herein.

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

58. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

59. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

COUNT II

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT (TCPA)**

47 U.S.C. § 227

60. Plaintiff repeats, re-alleges, and incorporates by reference, all of the above paragraphs of this Complaint as though fully stated herein.

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

62. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

Prayer For Relief

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- That the action regarding each violation of the TCPA be certified as a class action on behalf of the Class and requested herein;
- That Plaintiff be appointed as representatives of the Class;
- That Plaintiff's counsel be appointed as counsel for the Class;
- Statutory damages of \$500.00 for each negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) for each plaintiff and putative class member;
- Statutory damages of \$1,500.00 for each knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);

- Pursuant to 47 U.S.C § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future;
- any and all other relief that this Court deems just and proper;

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

Respectfully submitted,

HYDE & SWIGART

Date: December 12, 2016

By: s/Joshua Swigart
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Attorneys for Plaintiff

Additional Attorneys for Plaintiff:

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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

Russell Smith, individually and for all 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 Swigart, Esq. HYDE & SWIGART (619) 233-7770
2221 Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS

Citibank, N.A.

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)

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

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question **mxn**
(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
<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 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 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. ("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 \$
5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/12/2016

SIGNATURE OF ATTORNEY OF RECORD

s/ Joshua Swigart

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

Print

Save As...

Reset

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: [Citibank Facing Class Action Suit Over TCPA Violations](#)
