OF: vs. 18 RESEARCH TRIANGLE INSTITUTE, d.b.a. RTI INTERNATIONAL; and DOES 1 through 10, inclusive, OF: NEGLIGENT VIO OF THE TELEPHO CONSUMER PRO ACT [47 U.S.C. §2	Todd M. Friedman (SBN 216752) Adrian R. Bacon (SBN 280332) Meghan E. George (SBN 274525) Thomas E. Wheeler (SBN 308789) LAW OFFICES OF TODD M. FRIEDM 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 Phone: 877-206-4741 Fax: 866-633-0228 tfriedman@ toddflaw.com abacon@ toddflaw.com mgeorge@toddflaw.com twheeler@toddflaw.com Attorneys for Plaintiff	AN, P.C.
and on behalf of all others similarly situated, Plaintiff, VS. RESEARCH TRIANGLE INSTITUTE, d.b.a. RTI INTERNATIONAL; and DOES 1 through 10, inclusive, Defendant. Defendant. CLASS ACTION COMPLAINT FOR VIOL OF: VS. ACT [47 U.S.C. §2 DEMAND FOR JURY TR		
25	and on behalf of all others similarly situated, Plaintiff, vs. RESEARCH TRIANGLE INSTITUT d.b.a. RTI INTERNATIONAL; and DOES 1 through 10, inclusive,) CLASS ACTION) COMPLAINT FOR VIOLATIONS) OF:) 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE
Plaintiff KRISTYNA SOUDERS ("Plaintiff"), individually and o all others similarly situated, alleges the following upon information based upon personal knowledge:	all others similarly situated, alleges	

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, RESEARCH TRIANGLE INSTITUTE d.b.a. RTI INTERNATIONAL ("Defendant"), in negligently contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 et seq. ("TCPA"), thereby causing Plaintiff to incur unwanted and unnecessary charges and invading Plaintiff's privacy.

JURISDICTION & VENUE

- 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a North Carolina company. Plaintiff also seeks \$500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.
- 3. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within the County of Kern.

PARTIES

- 4. Plaintiff, KRISTYNA SOUDERS ("Plaintiff"), is a natural person residing in North Edwards, California and is a "person" as defined by 47 U.S.C. § 153 (39).
- 5. Defendant, CLEARONE ADVANTAGE, LLC ("Defendant"), is a research company, and is a "person" as defined by 47 U.S.C. § 153 (39).

- 6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.
- 7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

- 8. Beginning in or around February or March of 2018, Defendant contacted Plaintiff on Plaintiff's cellular telephone numbers ending in -4086 in an attempt to acquire information from Plaintiff for purposes of survey research.
- 9. Defendants contacted or attempted to contact Plaintiff from telephone numbers belonging to Defendants, including without limitation (510) 319-8185.
- 10. Defendants used an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to acquire information from Plaintiff for purposes of survey research.
- 11. Furthermore, at one or more instance during these calls, Defendant utilized an "artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).
- 12. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

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- 13. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
- Plaintiff is not a customer of Defendant's services and has never 14. provided any personal information, including her telephone number, to Defendant for any purpose whatsoever.
- During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).
- 16. Defendant placed multiple calls attempting to gather survey research from Plaintiff on his cellular telephone ending in -8176 beginning in or around February or Marcy of 2018.
- 17. Plaintiff received numerous survey calls from Defendant within a 12month period.
- 18. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent survey calls made by an automatic dialer and/or an artificial or prerecorded voice in violation of the regulations prescribed under 47 U.S.C. § 227(b)(3).

CLASS ALLEGATIONS

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the proposed class (hereafter "The Class"). The Class is defined as follows:

> All persons within the United States who received any survey telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to

receiving such calls within the four years prior to the filing of this Complaint

- 20. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any survey telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.
- 21. Defendant, their employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.
- 22. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.
- 23. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.
- 24. Common questions of fact and law exist as to all members of The Class which predominate over any questions affecting only individual members of The Class. These common legal and factual questions, which do not vary between

Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any survey call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and The Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.
- 25. As a person that received numerous survey calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.
- 26. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.
- 27. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual

issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

- 28. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.
- 29. Defendant have acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227(b).

On Behalf of The Class

- 30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-30.
- 31. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227(b)(1)(A).
- 32. As a result of Defendant' negligent violations of 47 U.S.C. § 227(b), Plaintiff and The Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- 33. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227(b)

- As a result of Defendant' negligent violations of 47~U.S.C. \$227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47~U.S.C.~227(b)(3)(B).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

34. 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 this 2nd Day of August, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff

FOR OFFICE USE ONLY

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

Case 1:18-cv-01043-DAD-JLT Document 1-1 Filed 08/02/18 Page 1 of 2

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
KRISTYNA SOUDERS, individually and on behalf of all others similarly **DEFENDANTS** RESEARCH TRIANGLE INSTITUTE, d.b.a. RTI INTERNATIONAL; situated and DOES 1 through 10, inclusive **(b)** County of Residence of First Listed Plaintiff Kern County of Residence of First Listed Defendant (EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY) IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. (c) Attorneys (Firm Name, Address, and Telephone Number) Attorneys (If Known) Law Offices of Todd M. Friedman, P.C., 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367; (877) 206-4741 II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant) **★** 3 Federal Question PTF DEF □ 1 U.S. Government DEF Plaintiff (U.S. Government Not a Party) Citizen of This State \Box 1 ☐ 1 Incorporated or Principal Place 4 **1** 4 of Business In This State 2 U.S. Government Diversity Citizen of Another State \square 2 2 Incorporated and Principal Place **5** Defendant (Indicate Citizenship of Parties in Item III) of Business In Another State Citizen or Subject of a ☐ 3 Foreign Nation □ 6 **1** 3 Foreign Country NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions CONTRACT FORFEITURE/PENALTY BANKRUPTCY OTHER STATUTES PERSONAL INJURY PERSONAL INJURY □ 110 Insurance ☐ 625 Drug Related Seizure 422 Appeal 28 USC 158 375 False Claims Act □ 120 Marine □ 310 Airplane □ 365 Personal Injury of Property 21 USC 881 ☐ 423 Withdrawal □ 376 Qui Tam (31 USC ☐ 315 Airplane Product □ 130 Miller Act Product Liability ☐ 690 Other 28 USC 157 3729(a)) □ 140 Negotiable Instrument Liability □ 367 Health Care/ ☐ 400 State Reapportionment PROPERTY RIGHTS □ 320 Assault, Libel & ☐ 410 Antitrust ☐ 150 Recovery of Overpayment Pharmaceutical 430 Banks and Banking & Enforcement of Judgmen Slander Personal Injury ☐ 820 Copyrights ■ 151 Medicare Act 330 Federal Employers' Product Liability ■ 830 Patent ☐ 450 Commerce □ 152 Recovery of Defaulted Liability ☐ 368 Asbestos Personal ☐ 840 Trademark ☐ 460 Deportation □ 340 Marine Injury Product ■ 470 Racketeer Influenced and Student Loans SOCIAL SECURITY (Excludes Veterans) □ 345 Marine Product Liability Corrupt Organizations LABOR ☐ 153 Recovery of Overpayment PERSONAL PROPERTY 480 Consumer Credit Liability 710 Fair Labor Standards ■ 861 HIA (1395ff) ☐ 350 Motor Vehicle ☐ 490 Cable/Sat TV of Veteran's Benefits ☐ 370 Other Fraud ☐ 862 Black Lung (923) Act ■ 863 DIWC/DIWW (405(g)) □ 160 Stockholders' Suits □ 355 Motor Vehicle □ 371 Truth in Lending ☐ 720 Labor/Management ■ 850 Securities/Commodities/ ■ 190 Other Contract Product Liability ☐ 380 Other Personal Relations □ 864 SSID Title XVI Exchange 195 Contract Product Liability ☐ 360 Other Personal Property Damage ☐ 740 Railway Labor Act □ 865 RSI (405(g)) ■ 890 Other Statutory Actions ☐ 751 Family and Medical ■ 196 Franchise Injury 385 Property Damage ■ 891 Agricultural Acts 362 Personal Injury -Product Liability Leave Act ■ 893 Environmental Matters Medical Malpractice ☐ 790 Other Labor Litigation □ 895 Freedom of Information REAL PROPERTY PRISONER PETITIONS CIVIL RIGHTS □ 791 Employee Retirement FEDERAL TAX SUITS Act 440 Other Civil Rights **Habeas Corpus:** 870 Taxes (U.S. Plaintiff ■ 896 Arbitration 210 Land Condemnation Income Security Act ☐ 220 Foreclosure □ 441 Voting 463 Alien Detainee or Defendant) □ 899 Administrative Procedure ■ 871 IRS—Third Party ■ 230 Rent Lease & Ejectment □ 442 Employment 510 Motions to Vacate Act/Review or Appeal of □ 240 Torts to Land □ 443 Housing/ Sentence 26 USC 7609 Agency Decision 245 Tort Product Liability Accommodations 950 Constitutionality of ☐ 290 All Other Real Property ☐ 445 Amer. w/Disabilities 535 Death Penalty IMMIGRATION State Statutes Employment ☐ 462 Naturalization Application Other: ☐ 446 Amer. w/Disabilities ☐ 540 Mandamus & Other ☐ 465 Other Immigration ☐ 550 Civil Rights Other Actions ☐ 448 Education ☐ 555 Prison Condition 560 Civil Detainee Conditions of Confinement V. ORIGIN (Place an "X" in One Box Only) ★1 Original ☐ 2 Removed from \square 3 Remanded from ☐ 4 Reinstated or ☐ 5 Transferred from ☐ 6 Multidistrict □ 8 Multidistrict Proceeding State Court Appellate Court Litigation -Litigation -Reopened Another District Direct File 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. VI. CAUSE OF ACTION Brief description of cause: Violation of the telephone consumer protections act VII. REQUESTED IN **DEMAND \$** CHECK YES only if demanded in complaint: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. 5,000,000.01 **COMPLAINT:** JURY DEMAND: X Yes VIII. RELATED CASE(S) (See instructions): IF ANY JUDGE DOCKET NUMBER DATE SIGNATURE OF ATTORNEY OF RECORD 08/02/2018 s/Todd M. Friedman

Case 1:18-cv-01043-DAD-JLT Document 1-1 Filed 08/02/18 Page 2 of 2 INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- **II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- **III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- **IV.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.
- **V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

- 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: <u>RTI International Facing Lawsuit Over Allegedly Unlawful Survey Phone Calls</u>