

1 Joshua Swigart, Esq. (SBN: 225557)  
josh@westcoastlitigation.com

2 Kevin Lemieux, Esq (SBN: 225886)  
kevin@westcoastlitigation.com

3 **HYDE AND SWIGART**

4 2221 Camino Del Rio South, Suite 101  
5 San Diego, CA 92108  
6 Telephone: (619) 233-7770  
7 Facsimile: (619) 297-1022

8 [Other Attorneys of Record Listed on Signature Page]

9 Attorneys for Plaintiff

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

<p>12 <b>Rebecca Stacy, Individually and</b> 13 <b>on behalf of All Others Similarly</b> 14 <b>Situated,</b></p> <p>15 <b>Plaintiff,</b></p> <p>16 <b>v.</b></p> <p>17 <b>Burmax, LLC, Next Phase</b> 18 <b>Marketing, and Jeff Richards,</b></p> <p>19 <b>Defendants.</b></p>	<p>20 <b>Case No.: '17CV0756 CAB KSC</b></p> <p>21 <b><u>CLASS ACTION</u></b></p> <p>22 <b>CLASS ACTION COMPLAINT</b> 23 <b>FOR DAMAGES AND</b> 24 <b>INJUNCTIVE RELIEF</b> 25 <b>PURSUANT TO THE</b> 26 <b>TELEPHONE CONSUMER</b> 27 <b>PROTECTION ACT, 47 U.S.C. §</b> 28 <b>227 ET SEQ.</b></p> <p><b>Jury Trial Demanded</b></p>
--	--

INTRODUCTION

1. Rebecca Stacy (referred to individually as “Ms. Stacy” or “Plaintiff”), brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Burmax LLC (“Burmax”), Next Phase Marketing, (“NPM”), and Jeff Richards, an





1 individual (“Richards”), (collectively referred to as “Defendants”), in  
2 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s  
3 cellular telephone, in violation of the Telephone Consumer Protection Act, 47  
4 U.S.C. § 227, et seq., (“TCPA”), thereby invading Plaintiff’s privacy.  
5 Plaintiff alleges as follows upon personal knowledge as to herself and her  
6 own acts and experiences, and, as to all other matters, upon information and  
7 belief, including investigation conducted by her attorneys.

8 2. The TCPA was designed to prevent calls like the ones described within this  
9 complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous  
10 consumer complaints about abuses of telephone technology – for example,  
11 computerized calls dispatched to private homes – prompted Congress to pass  
12 the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

13 3. In enacting the TCPA, Congress intended to give consumers a choice as to  
14 how creditors and telemarketers may call them, and made specific findings  
15 that “[t]echnologies that might allow consumers to avoid receiving such calls  
16 are not universally available, are costly, are unlikely to be enforced, or place  
17 an inordinate burden on the consumer.” TCPA, Pub.L. No. 102-243, § 11.  
18 Toward this end, Congress found that:

19 Banning such automated or prerecorded telephone calls to the  
20 home, except when the receiving party consents to receiving the  
21 call or when such calls are necessary in an emergency situation  
22 affecting the health and safety of the consumer, is the only  
23 effective means of protecting telephone consumers from this  
24 nuisance and privacy invasion.

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

28 4. Congress also specifically found that “the evidence presented to the Congress  
indicates that automated or prerecorded calls are a nuisance and an invasion

1 of privacy, regardless of the type of call [...].” *Id.* At §§ 12-13. *See also,*  
2 *Mims*, 132 S. Ct. at 744.

- 3 5. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case  
4 regarding calls to a non-debtor similar to this one:

5 The Telephone Consumer Protection Act [...] is well known for its  
6 provisions limiting junk-fax transmissions. A less litigated part of  
7 the Act curtails the use of automated dialers and prerecorded  
8 messages to cell phones, whose subscribers often are billed by the  
9 minute as soon as the call is answered – and routing a call to  
10 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.

11 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7<sup>th</sup> Cir. 2012).

### 12 **JURISDICTION AND VENUE**

- 13  
14 6. Jurisdiction is proper under 47 U.S.C §227(b); *Mims v. Arrow Fin. Servs.,*  
15 *LLC*, 132 S.Ct. 740 (2012), because Plaintiff alleges violations of federal law.  
16 7. Venue is proper in the United States District Court for the Southern District of  
17 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Plaintiff lives  
18 in San Diego County, CA, and the events giving rise to Plaintiff’s causes of  
19 action against Defendants occurred in the State of California within the  
20 Southern District of California and Defendants conducts business in the area  
21 of San Diego, California.

### 22 **PARTIES**

- 23  
24 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and  
25 resident of the County of San Diego, in the State of California.  
26 9. Plaintiff is informed and believes, and thereon alleges, that Burmax is, and at  
27 all times mentioned herein was, a California Limited Liability Company  
28 (LLC) headquartered in San Diego, CA, doing business throughout CA, and

1 at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153  
2 (39).

3 10. Plaintiff is informed and believes, and thereon alleges, that NPM is, and at all  
4 times mentioned herein was, a “cancelled” Limited Liability Company  
5 headquartered in Pleasant Hill, CA, doing business throughout CA, and at all  
6 times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153 (39).  
7 Plaintiff is unaware of the current corporate structure of NPM.

8 11. Plaintiff is informed and believes, and thereon alleges, that Richards is, and at  
9 all times mentioned herein was, an individual living in Pleasant Hill, CA, and  
10 is the owner/operator of NPM, and is currently doing business throughout  
11 CA, and at all times mentioned herein was, a “person,” as defined by 47  
12 U.S.C. § 153 (39).

13 12. Plaintiff is informed and believes, and thereon alleges, that at all relevant  
14 times, Defendants conducted business in the State of California and in the  
15 County of San Diego, and within this judicial district.

### 17 **FACTUAL ALLEGATIONS**

18 13. At all times relevant, Plaintiff was a citizen of the State of California.  
19 Plaintiff is, and at all times mentioned herein was, “persons” as defined by 47  
20 U.S.C § 153 (39).

21 14. Defendants are, and at all times mentioned herein were, “persons” as defined  
22 by 47 U.S.C. §153 (39).

23 15. Sometime prior to January 1, 2013, Ms. Stacy was assigned, and became the  
24 owner of, a cellular telephone number ending in 6635 from her wireless  
25 provider.

26 16. Beginning on or about August 16, 2016, Ms. Stacy received numerous  
27 telephone calls on her cellular telephone from Defendants, in which  
28 Defendants utilized an automatic telephone dialing system (“ATDS”) as

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

3 17. Ms. Stacy received three calls on August 16, 2016; one at 3:22 PM and one at  
4 3:23 PM. The first two calls utilized an artificial voice recording. The pre-  
5 recorded voice identified itself as “Chris Nelson.” “Chris Nelson was an  
6 automated voice and/or a voice recognition system—this was not a live  
7 person. These were not normal conversations because the automated voice  
8 could not answer questions properly. Plaintiff terminated the calls. A third  
9 call came later that day at 3:55 PM from telephone number (415) 513-5344.  
10 This was a live person who identified himself as “Eric.” Eric tried to sell  
11 Plaintiff a solar system over the phone. Plaintiff told Eric to remove her from  
12 the call list.

13 18. Ms. Stacy received another call on September 26, 2016 at 4:48 PM from  
14 (716) 406-4973. This call utilized the same pre-recorded voice which  
15 identified itself as “Chris Nelson.”

16 19. Ms. Stacy received another call on October 10, 2016 at 2:42 PM from (716)  
17 406-4973. This call utilized the same pre-recorded voice which identified  
18 itself as “Chris Nelson.”

19 20. Ms. Stacy received another call on October 13, 2016 at 4:58 PM from (716)  
20 406-4973. This call utilized the same pre-recorded voice which identified  
21 itself as “Chris Nelson.”

22 21. Ms. Stacy received another call on October 13, 2016 at 5:57 PM from (877)  
23 988-9378. This call was a live person again trying to sell Ms. Stacy a solar  
24 system. She again requested to be removed from the call list.

25 22. Ms. Stacy received another call on October 14, 2016 at 11:48 AM from (716)  
26 406-4973. This call utilized the same pre-recorded voice which identified  
27 itself as “Chris Nelson.”  
28

1 23. Ms. Stacy received another call on November 11, 2016 at 1:58 PM from (716)  
2 406-4973. This call utilized the same pre-recorded voice which identified  
3 itself as “Chris Nelson.” On this call, Plaintiff “played along” with “Chris  
4 Nelson” and answered the questions in hopes that she would be transferred to  
5 a human so that she can again ask to be removed from the call list. After  
6 answering the questions asked by the pre-recorded voice, she was transferred  
7 to a “senior supervisor.” This person verified her name and address and tried  
8 to sell her a solar system for her home.

9 24. Ms. Stacy received another call to her cellular telephone number from  
10 Defendants on March 14, 2017 at 11:47 AM. This call came from a disguised  
11 phone number: (999) 999-9999, and when Plaintiff answered it was once  
12 again the artificial voice identifying itself as “Chris Nelson.” “Chris Nelson”  
13 asked Mrs. Stacy all of the same questions that it asked every other time it  
14 called. Ms. Stacy answered the questions and was transferred to a “senior  
15 supervisor.” Ms. Stacy does not get this person’s name, but it was a live  
16 person with a very thick accent, who informed Plaintiff that she would be  
17 receiving a follow up call from the solar company later in the day.

18 25. Later that same day at 1:52 PM, Ms. Stacy received a call from phone number  
19 (559) 736-2337. This call was from a man named “Mark” from Burmex  
20 Energy. It was clear that this was the follow up call related to her  
21 conversation with “Chris Nelson.”

22 26. Plaintiff is informed and believes, and thereon alleges that NPM is the entity  
23 making the calls using the artificial or prerecorded voice identifying itself as  
24 “Chris Nelson.” NPM is the alter ego of Jeff Richards. NPM is listed on the  
25 Secretary of State website as a “cancelled” LLC, and has been listed that way  
26 for at least 90 days. However, Plaintiff has received calls from NPM after the  
27 LLC was cancelled.  
28

1 27. Plaintiff is informed and believes, and thereon alleges that Jeff Richards and  
2 NPM continue to make the “Chris Nelson” calls even though the LLC is listed  
3 as “cancelled.”

4 28. Plaintiff is informed and believes, and thereon alleges that the solar leads  
5 produced by NPM and Richards are sold to solar companies, including but not  
6 limited to, Burmex, under a contractual agreement.

7 29. Plaintiff is informed and believes, and thereon alleges that NPM is an agent of  
8 Burmex, and thus Burmex is vicariously liable for the actions of NPM.

9 30. Plaintiff revoked any consent, if it was ever given, or Defendants mistakenly  
10 believed it was given, when she requested to be taken off the call list on  
11 August 16, 2016, and October 13, 2016.

12 31. The ATDS used by Defendants has the capacity to store or produce telephone  
13 numbers to be called, using a random or sequential number generator.

14 32. The ATDS used by Defendants also has the capacity to, and does, call  
15 telephone numbers from a list of databases of telephone numbers  
16 automatically and without human intervention.

17 33. The telephone number Defendants called was assigned to a cellular telephone  
18 service for which Plaintiff incurred a charge for incoming calls pursuant to 47  
19 U.S.C. § 227 (b)(1).

20 34. Plaintiff at no time provided “prior express consent” for Defendants to place  
21 telephone calls to Plaintiff’s cellular telephone with an artificial or  
22 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)  
23 (1)(A).

24 35. Plaintiff had not provided her cellular telephone number to Defendants.  
25 Plaintiff was not a customer of Defendants. Plaintiff had no “established  
26 business relationship” with defendant, as defined by 47 U.S.C. § 227 (a)(2).

27 36. These telephone calls made by Defendants or their agents were in violation of  
28 47 U.S.C. § 227(b)(1).



## STANDING

1  
2 37. Standing is proper under Article III of the Constitution of the United States of  
3 America because Plaintiff's claims state:

- 4 a. a valid injury in fact;  
5 b. which is traceable to the conduct of Defendant(s);  
6 c. and is likely to be redressed by a favorable judicial decision.

7 See, *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016) at 6, and *Lujan v.*  
8 *Defenders of Wildlife*, 504 U.S. 555 at 560.

9 38. In order to meet the standard laid out in *Spokeo* and *Lujan*, Plaintiff must  
10 clearly allege facts demonstrating all three prongs above.

### 11 A. *The "Injury in Fact" Prong*

12 39. Plaintiff's injury in fact must be both "concrete" and "particularized" in order  
13 to satisfy the requirements of Article III of the Constitution, as laid out in  
14 *Spokeo (Id.)*.

15 40. For an injury to be "concrete" it must be a *de facto* injury, meaning that it  
16 actually exists. In the present case, Plaintiff was called on her cellular phone  
17 at least ten times by Defendants. Such calls are a nuisance, an invasion of  
18 privacy, and an expense to Plaintiff. *Soppet v. Enhanced Recovery Co., LLC*,  
19 679 F.3d 637, 638 (7<sup>th</sup> Cir. 2012). All three of these injuries are concrete and  
20 *de facto*.

21 41. For an injury to be "particularized" means that the injury must "affect the  
22 plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S.  
23 \_\_\_\_ (2016) at 7. In the instant case, it was plaintiff's phone that was called  
24 and it was plaintiff herself who answered the calls. It was plaintiff's personal  
25 privacy and peace that was invaded by Defendants' persistent phone calls  
26 using an ATDS. Finally, plaintiff alone is responsible to pay the bill on her  
27  
28



1 cellular phone. All of these injuries are particularized and specific to plaintiff,  
2 and will be the same injuries suffered by each member of the putative class.

3  
4 **B. *The “Traceable to the Conduct of Defendant” Prong***

5 42. The second prong required to establish standing at the pleadings phase is that  
6 Plaintiff must allege facts to show that her injury is traceable to the conduct of  
7 Defendant(s).

8 43. In the instant case, this prong is met simply by the fact that the calls to  
9 plaintiff’s cellular phone were placed either, by Defendants directly, or by  
10 Defendants’ agent at the direction of Defendants.

11  
12 **C. *The “Injury is Likely to be Redressed by a Favorable Judicial Opinion”***  
13 ***Prong***

14 44. The third prong to establish standing at the pleadings phase requires Plaintiff  
15 to allege facts to show that the injury is likely to be redressed by a favorable  
16 judicial opinion.

17 45. In the present case, Plaintiff’s Prayers for Relief include a request for  
18 damages for each call made by Defendants, as authorized by statute in 47  
19 U.S.C. § 227. The statutory damages were set by Congress and specifically  
20 redress the financial damages suffered by Plaintiff and the members of the  
21 putative class.

22 46. Furthermore, Plaintiff’s Prayers for Relief request injunctive relief to restrain  
23 Defendants from the alleged abusive practices in the future. The award of  
24 monetary damages and the order for injunctive relief redress the injuries of  
25 the past, and prevent further injury in the future.

26 47. Because all standing requirements of Article III of the U.S. Constitution have  
27 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016), Plaintiff  
28 has standing to sue Defendants on the stated claims.

## CLASS ACTION ALLEGATIONS

1  
2 48. Plaintiff brings this action on behalf of herself and on behalf of all others  
3 similarly situated (“the Class” and “Revocation Subclass”).

4 49. Plaintiff represents, and is a member of, the Class, consisting of:

- 5 a. All persons within the United States who had or have a number  
6 assigned to a cellular telephone service, who received at least one call  
7 using an ATDS and/or an artificial prerecorded voice from Burmex,  
8 LLC, Next Phase Marketing, or Jeff Richards, or their agents calling  
9 on behalf of Burmex, LLC, Next Phase Marketing, or Jeff Richards,  
10 between the date of filing this action and the four years preceding,  
11 where such calls were placed for marketing purposes, to non-  
12 customers of Burmex, LLC, Next Phase Marketing, or Jeff Richards, at  
13 the time of the calls.

14 50. Plaintiff represents, and is a member of, the Revocation Subclass, consisting  
15 of:

- 16 b. All persons within the United States who had or have a number  
17 assigned to a cellular telephone service, who received at least one call  
18 using an ATDS and/or an artificial prerecorded voice from Burmex,  
19 LLC, Next Phase Marketing, or Jeff Richards, or their agents calling  
20 on behalf of Burmex, LLC, Next Phase Marketing, or Jeff Richards,  
21 after the persons revoked consent, between the date of filing this action  
22 and the four years preceding, where such calls were placed for  
23 marketing purposes, to non-customers of Burmex, LLC, Next Phase  
24 Marketing, or Jeff Richards, at the time of the calls. (“Revocation  
25 Subclass”)

26 51. Defendants and their employees or agents are excluded from the Class and  
27 Revocation Subclass. Plaintiff does not know the number of members in the  
28 Class and Revocation Subclass, but believes the Class and Revocation  
Subclass members number in the thousands, if not more. Thus, this matter

1 should be certified as a class action to assist in the expeditious litigation of  
2 this matter.

3 52. Plaintiff and members of the Class and Revocation Subclass were harmed by  
4 the acts of Defendants in at least the following ways: Defendants illegally  
5 contacted Plaintiff and the Class and Revocation Subclass members via their  
6 cellular telephones thereby causing Plaintiff and the Class and Revocation  
7 Subclass members to incur certain cellular telephone charges or reduce  
8 cellular telephone time for which Plaintiff and the Class and Revocation  
9 Subclass members previously paid, by having to retrieve or administer  
10 messages left by Defendants or their agents, during those illegal calls, and  
11 invading the privacy of said Plaintiff and the Class and Revocation Subclass  
12 members. Plaintiff and the Class and Revocation Subclass members were  
13 damaged thereby.

14 53. This suit seeks only damages and injunctive relief for recovery of economic  
15 injury on behalf of the Class and Revocation Subclass and it expressly is not  
16 intended to request any recovery for personal injury and claims related  
17 thereto. Plaintiff reserves the right to expand the Class and Revocation  
18 Subclass definitions to seek recovery on behalf of additional persons as  
19 warranted as facts are learned in further investigation and discovery.

20 54. The joinder of the Class and Revocation Subclass members is impractical and  
21 the disposition of their claims in the Class action will provide substantial  
22 benefits both to the parties and to the Court. The Class and Revocation  
23 Subclass can be identified through Defendants' records and/or Defendants'  
24 agent's records.

25 55. There is a well-defined community of interest in the questions of law and fact  
26 involved affecting the parties to be represented. The questions of law and fact  
27 to the Class and Revocation Subclass predominate over questions which may  
28

1 affect individual Class and Revocation Subclass members, including the  
2 following:

- 3 i. Whether, within the four years prior to the filing of the  
4 Complaint, Defendants made any call(s) (other than a call made  
5 for emergency purposes or made with the prior express consent  
6 of the called party) to the Class and Revocation Subclass  
7 members using any ATDS or an artificial or prerecorded voice to  
8 any telephone number assigned to a cellular telephone service;
- 9 ii. Whether Defendants called non-customers of Defendants for  
10 marketing purposes;
- 11 iii. Whether Plaintiff and the Class and Revocation Subclass  
12 members were damaged thereby, and the extent of damages for  
13 such violation(s); and
- 14 iv. Whether Defendants should be enjoined from engaging in such  
15 conduct in the future.

16 56. As a person who received numerous calls from Defendants in which  
17 Defendants used an ATDS or an artificial or prerecorded voice, without  
18 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of  
19 the Class and Revocation Subclass. Plaintiff will fairly and adequately  
20 represent and protect the interests of the Class and Revocation Subclass in  
21 that Plaintiff has no interests antagonistic to any member of the Class or  
22 Revocation Subclass.

23 57. Plaintiff and the members of the Class and Revocation Subclass have all  
24 suffered irreparable harm as a result of the Defendants' unlawful and wrongful  
25 conduct. Absent a class action, the Class and Revocation Subclass will  
26 continue to face the potential for irreparable harm. In addition, these  
27 violations of law will be allowed to proceed without remedy and Defendants  
28 will likely continue such illegal conduct. The size of Class and Revocation  
Subclass member's individual claims causes, few, if any, Class and



1 Revocation Subclass members to be able to afford to seek legal redress for the  
2 wrongs complained of herein.

3 58. Plaintiff has retained counsel experienced in handling class action claims and  
4 claims involving violations of the Telephone Consumer Protection Act.

5 59. A class action is a superior method for the fair and efficient adjudication of  
6 this controversy. Class-wide damages are essential to induce Defendants to  
7 comply with federal and California law. The interest of Class and Revocation  
8 Subclass members in individually controlling the prosecution of separate  
9 claims against Defendants is small because the maximum statutory damages  
10 in an individual action for violation of privacy are minimal. Management of  
11 these claims is likely to present significantly fewer difficulties than those that  
12 would be presented in numerous individual claims.

13 60. Defendants have acted on grounds generally applicable to the Class and  
14 Revocation Subclass, thereby making appropriate final injunctive relief and  
15 corresponding declaratory relief with respect to the Class as a whole and  
16 Revocation Subclass.

17 **FIRST CAUSE OF ACTION:**  
18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
19 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

20  
21 61. Plaintiff incorporates by reference all of the above paragraphs of this  
22 Complaint as though fully stated herein.

23 62. The foregoing acts and omissions of Defendants constitutes numerous and  
24 multiple negligent violations of the TCPA, including but not limited to each  
25 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

26 63. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,  
27 Plaintiff and the Class and Revocation Subclass are entitled to an award of  
28

1 \$500.00 in statutory damages, for each and every violation, pursuant to 47  
2 U.S.C. § 227(b)(3)(B).

3 64. Plaintiff and the Class and Revocation Subclass are also entitled to and seek  
4 injunctive relief prohibiting such conduct in the future.

5 **SECOND CAUSE OF ACTION:**  
6 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
7 **CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

8  
9 65. Plaintiff incorporates by reference all of the above paragraphs of this  
10 Complaint as though fully stated herein.

11 66. The foregoing acts and omissions of Defendants constitute numerous and  
12 multiple knowing and/or willful violations of the TCPA, including but not  
13 limited to each and every one of the above-cited provisions of 47 U.S.C. §  
14 227 et seq.

15 67. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §  
16 227 et seq., Plaintiff and each of the Class and Revocation Subclass are  
17 entitled to treble damages, as provided by statute, up to \$1,500.00, for each  
18 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §  
19 227(b)(3)(C).

20 68. Plaintiff and the Class and Revocation Subclass are also entitled to and seek  
21 injunctive relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23  
24 69. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the  
25 Class and Revocation Subclass members the following relief against  
26 Defendants:  
27  
28

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 70. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Revocation Subclass member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- 71. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- 72. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL  
VIOLATION  
OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 73. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Revocation Subclass member 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).
- 74. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- 75. Any other relief the Court may deem just and proper.





**TRIAL BY JURY**

76. 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,

Date: April 13, 2017

**HYDE & SWIGART**

By: s/Kevin Lemieux  
Kevin Lemieux  
Attorneys for Plaintiff

**Other Attorneys of Record, besides caption page:**

Abbas Kazerounian, Esq. (SBN: 249203)  
ak@kazlg.com

**KAZEROUNI LAW GROUP, APC**  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626  
Telephone: (800) 400-6808  
Facsimile: (800) 520-5523



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

Rebecca Stacy, Individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Kevin Lemieux, Esq., Hyde & Swigart 619-233-7770 2221Camino Del Rio S., Ste. 101, San Diego, CA 92108

DEFENDANTS

Burmax, LLC, Next Phase Marketing, and Jeff Richards

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)

'17CV0756 CAB KSC

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. ("TCPA") Brief description of cause: Defendant violated 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 04/14/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Kevin Lemieux

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: [Solar Panel Company Sued Over Pre-Recorded Marketing Calls](#)

---