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13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**

15 AMY VIDRIO, individually and on)
 16 behalf of all others similarly situated,)

Case No.

17 Plaintiff,)

CLASS ACTION

18 vs.)

COMPLAINT FOR VIOLATIONS OF:

19 RASH CURTIS & ASSOCIATES, and)
 20 DOES 1 through 10, inclusive, and each)
 21 of them,)

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]

22 Defendant.)

2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]

3. FAIR DEBT COLLECTION Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*]

4. VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT [CAL. CIV. CODE §1788 ET SEQ.]

DEMAND FOR JURY TRIAL

1
2 Plaintiff AMY VIDRIO (“Plaintiff”), individually and on behalf of all others
3 similarly situated, alleges the following against Defendant RASH CURTIS &
4 ASSOCIATES upon information and belief based upon personal knowledge:

5 **INTRODUCTION**

6 1. Plaintiff’s Class Action Complaint is brought pursuant to the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”).

8 2. Plaintiff, individually, and on behalf of all others similarly situated,
9 brings this Complaint for damages, injunctive relief, and any other available legal
10 or equitable remedies, resulting from the illegal actions of Defendant in
11 negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff’s cellular
12 telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon
13 personal knowledge as to herself and her own acts and experiences, and, as to all
14 other matters, upon information and belief, including investigation conducted by
15 his attorneys.

16 3. In addition to Plaintiff’s Class Claims, Plaintiff also brings an action
17 for damages as an individual consumer for Defendant’s violations of the federal
18 Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
19 “FDCPA”) and the Rosenthal Fair Debt Collection Practices Act, Cal Civ. Code
20 §1788, et seq. (hereinafter “RFDCPA”) which prohibit debt collectors from
21 engaging in abusive, deceptive, and unfair practices.

22 **JURISDICTION AND VENUE**

23
24
25 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
26 a resident of California, seeks relief on behalf of a Class, which will result in at
27 least one class member belonging to a different state than that of Defendant, a
28 California company that does business in the state of California. Plaintiff also seeks

1 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when
2 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
3 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
4 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
5 present, and this Court has jurisdiction.

6 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 over
7 Plaintiff’s claims arising under the FDCPA, 15 U.S.C. § 1692, *et seq.*. Ancillary to
8 this claim, this Court has jurisdiction pursuant to 28 U.S.C. § 1367(a) over
9 Plaintiff’s claims arising under the RFDCPA, Cal. Civ. Code § 1788, *et seq.*

10 6. Venue is proper in the United States District Court for the Central
11 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
12 business within the State of California and Plaintiff resides within this District.

13
14 **PARTIES**

15 7. Plaintiff, AMY VIDRIO (“PLAINTIFF”), is a natural person residing
16 in Tulare County in the state of California, and is a “person” as defined by 47
17 U.S.C. § 153(39). Furthermore, Plaintiff is a “consumer” as defined by the
18 FDCPA, 15 U.S.C. §1692a(3) and a “debtor” as defined by the RFDCPA, Cal.
19 Civ. Code § 1788.2(h).

20 8. At all relevant times herein, DEFENDANT, RASH CURTIS &
21 ASSOCIATES (“DEFENDANT”), is debt collection company, and is a “person”
22 as defined by 47 U.S.C. § 153(39). Furthermore, Defendant, at all relevant times
23 herein, was a company engaged, by use of the mails and telephone, in the business
24 of collecting a debt from PLAINTIFF which qualifies as a “debt,” as defined by
25 15 U.S.C. §1692a(5). DEFENDANT regularly attempts to collect debts alleged to
26 be due another, and therefore is a “debt collector” as defined by the FDCPA, 15
27 U.S.C. §1692a(6) and the RFDCPA, Cal. Civ. Code § 1788.2(c).

1 9. The above named Defendant, and its subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
7 the Complaint to reflect the true names and capacities of the DOE Defendants
8 when such identities become known.

9 10. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions
14 complained of herein was made known to, and ratified by, each of the other
15 Defendants.
16

17 **FACTUAL ALLEGATIONS – TCPA**

18 11. Beginning in or around July of 2016, Defendant contacted Plaintiff on
19 her cellular telephone number ending in -0553, in an effort to collect an alleged
20 debt owed from Plaintiff.

21 12. Defendant called Plaintiff from telephone numbers confirmed to
22 belong to Defendant, including without limitation (707) 454-2010 and (866) 729-
23 2722.

24 13. In its efforts to collect the alleged debt owed from Plaintiff, Defendant
25 used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1)
26 to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

27 14. Defendant’s calls constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 15. Defendant's calls were placed to telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to *47 U.S.C. § 227(b)(1)*.

4 16. In one of Defendant's initial calls to Plaintiff, Plaintiff requested that
5 Defendant cease calling Plaintiff.

6 17. However, despite Plaintiff's request that Defendant cease calling her,
7 Defendant continued to call her in connection with collection on an alleged debt,
8 thereby harassing and annoying her and causing her to feel anxious and distressed.

9 18. During all relevant times, Defendant did not possess Plaintiff's "prior
10 express consent" to receive calls using an automatic telephone dialing system or an
11 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*
12 *227(b)(1)(A)*. Furthermore, Plaintiff orally revoked any and all consent to be
13 contacted using an automated telephone dialing system, to the extent any ever
14 existed.
15

16 **FACTUAL ALLEGATIONS – FDCPA**

17 19. In addition to the facts pled above, at various times prior to the filing
18 of the instant complaint, including within one year preceding the filing of this
19 complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an
20 alleged outstanding debt.

21 20. On or about July through October of 2016, Plaintiff received
22 numerous calls from Defendant.

23 21. Each of these calls were made to Plaintiff in connection with
24 collection on an alleged debt.

25 22. Plaintiff told Defendant to stop calling her, but Defendant continued
26 to call.

27 23. DEFENDANT'S conduct violated the FDCPA and RFDCPA in
28

1 multiple ways, including but not limited to:

- 2
- 3 a) Causing a telephone to ring repeatedly or continuously to annoy
4 Plaintiff (Cal. Civ. Code § 1788.11(d));
- 5 b) Communicating, by telephone or in person, with Plaintiff with such
6 frequency as to be unreasonable and to constitute an harassment to
7 Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
- 8 c) Causing Plaintiffs telephone to ring repeatedly or continuously with
9 intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
- 10 d) Communicating with Plaintiff at times or places which were known
11 or should have been known to be inconvenient for Plaintiff (15
12 U.S.C. § 1692c(a)(1)); and
- 13 e) Engaging in conduct the natural consequence of which is to harass,
14 oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).

15 24. As a result of the above violations of the FDCPA and RFDCPA,
16 Plaintiff suffered and continues to suffer injury to PLAINTIFF'S feelings, personal
17 humiliation, embarrassment, mental anguish and emotional distress, and
18 DEFENDANT is liable to PLAINTIFF for PLAINTIFF'S actual damages,
19 statutory damages, and costs and attorney's fees.

20 **CLASS ACTION ALLEGATIONS**

21 25. Plaintiff brings this action individually and on behalf of all others
22 similarly situated, as a member of the proposed class (hereafter "The Class")
23 defined as follows:
24

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

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

3 26. Plaintiff represents, and is a member of, The Class, consisting of All
4 persons within the United States who received any collection telephone calls from
5 Defendant to said person's cellular telephone made through the use of any
6 automatic telephone dialing system or an artificial or prerecorded voice and such
7 person had not previously not provided their cellular telephone number to
8 Defendant within the four years prior to the filing of this Complaint.

9 27. Defendant, its employees and agents are excluded from The Class.
10 Plaintiff does not know the number of members in The Class, but believes the Class
11 members number in the thousands, if not more. Thus, this matter should be
12 certified as a Class Action to assist in the expeditious litigation of the matter.

13 28. The Class is so numerous that the individual joinder of all of its
14 members is impractical. While the exact number and identities of The Class
15 members are unknown to Plaintiff at this time and can only be ascertained through
16 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
17 The Class includes thousands of members. Plaintiff alleges that The Class
18 members may be ascertained by the records maintained by Defendant.

19 29. Plaintiff and members of The Class were harmed by the acts of
20 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
21 and Class members via their cellular telephones thereby causing Plaintiff and Class
22 members to incur certain charges or reduced telephone time for which Plaintiff and
23 Class members had previously paid by having to retrieve or administer messages
24 left by Defendant during those illegal calls, and invading the privacy of said
25 Plaintiff and Class members.

26 30. Common questions of fact and law exist as to all members of The
27 Class which predominate over any questions affecting only individual members of
28 The Class. These common legal and factual questions, which do not vary between

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

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

14 31. As a person that received numerous collection calls from Defendant
15 using an automatic telephone dialing system or an artificial or prerecorded voice,
16 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
17 typical of The Class.

18 32. Plaintiff will fairly and adequately protect the interests of the members
19 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 33. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Class members is impracticable. Even if every Class member could afford
24 individual litigation, the court system could not. It would be unduly burdensome
25 to the courts in which individual litigation of numerous issues would proceed.
26 Individualized litigation would also present the potential for varying, inconsistent,
27 or contradictory judgments and would magnify the delay and expense to all parties
28 and to the court system resulting from multiple trials of the same complex factual

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

4 34. The prosecution of separate actions by individual Class members
5 would create a risk of adjudications with respect to them that would, as a practical
6 matter, be dispositive of the interests of the other Class members not parties to such
7 adjudications or that would substantially impair or impede the ability of such non-
8 party Class members to protect their interests.

9 35. Defendant has acted or refused to act in respects generally applicable
10 to The Class, thereby making appropriate final and injunctive relief with regard to
11 the members of The Class as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227 et seq.**

15 **By Plaintiff and The Class Against Defendant**

16 36. Plaintiff repeats and incorporates by reference into this cause of
17 action the allegations set forth above at Paragraphs 1-35.

18 37. The foregoing acts and omissions of Defendant constitute numerous
19 and multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

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

24 39. Plaintiff and the Class members are also entitled to and seek
25 injunctive relief prohibiting such conduct in the future.

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27 ///

28

CIVIL COVER SHEET

Case 1:17-cv-00407-DAD-EPG Document 1-1 Filed 03/20/17 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

AMY VIDRIO, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C. 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367 (877) 206-4741

DEFENDANTS

RASH CURTIS & ASSOCIATES, and DOES 1 through 10, inclusive, and each of them,

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, 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. Brief description of cause: Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/20/2017 SIGNATURE OF ATTORNEY OF RECORD s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:17-cv-00407-DAD-EPG Document 1-1 Filed 03/20/17 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 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: [Rash Curtis & Associates Hit with Lawsuit Over Unwanted Cell Phone Calls](#)
