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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 Richard Winters, Jr., individually and)
12 on behalf of all others similarly situated,)

13 Plaintiff,)

14 vs.)

16 American Senior Benefits, LLC,)
17 Defendant.)

Case No.

13 **CLASS ACTION**

14 **COMPLAINT FOR VIOLATIONS**
15 **OF:**

- 16 1. NEGLIGENT VIOLATIONS
- 17 OF THE TELEPHONE
- 18 CONSUMER PROTECTION
- 19 ACT [47 U.S.C. §227(b)]
- 20 2. WILLFUL VIOLATIONS
- 21 OF THE TELEPHONE
- 22 CONSUMER PROTECTION
- 23 ACT [47 U.S.C. §227(b)]
- 24 3. NEGLIGENT VIOLATIONS
- 25 OF THE TELEPHONE
- 26 CONSUMER PROTECTION
- 27 ACT [47 U.S.C. §227(c)]
- 28 4. WILLFUL VIOLATIONS
- OF THE TELEPHONE
- CONSUMER PROTECTION
- ACT [47 U.S.C. §227(c)]

25 **DEMAND FOR JURY TRIAL**

1 Plaintiff RICHARD WINTERS JR. (“Plaintiff”), individually and on
2 behalf of all others similarly situated, alleges the following upon information and
3 belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of AMERICAN SENIOR BENEFITS,
8 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting
9 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer
10 Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related regulations,
11 thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
14 a resident of Arizona, seeks relief on behalf of a Class, which will result in at
15 least one class member belonging to a different state than that of Defendant, an
16 Ohio limited liability company with its principal place of business in Kansas.
17 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
18 TCPA, which, when aggregated among a proposed class in the thousands,
19 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
20 both diversity jurisdiction and the damages threshold under the Class Action
21 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Jurisdiction is also proper because there exists a federal question
23 based on the fact that Plaintiff’s claims arise from the Telephone Consumer
24 Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”), a federal statute.

25 4. Venue is proper in the United States District Court for the District of
26 Arizona pursuant to *28 U.S.C. § 1391(b)(2)* because a substantial portion, if not
27 all, of the events giving rise to Plaintiff’s claims occurred in this District.
28

PARTIES

1
2 5. Plaintiff is a natural person residing in Mesa, Arizona and is a
3 “person” as defined by 47 U.S.C. § 153 (39).

4 6. Defendant is a company engaged in the insurance industry and is a
5 “person” as defined by 47 U.S.C. § 153 (39).

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

FACTUAL ALLEGATIONS

13
14 8. Beginning in or around October 2020, Defendant contacted Plaintiff
15 on Plaintiff’s cellular telephone number ending in -6678, in an attempt to solicit
16 Plaintiff to purchase Defendant’s services.

17 9. Defendant contacted or attempted to contact Plaintiff from telephone
18 numbers (480) 814-5850 and (480) 832-8559, confirmed to be Defendant’s
19 numbers.

20 10. When Plaintiff picked up Defendant’s calls, he experienced a brief
21 pause and then heard a click prior to someone speaking on the other line.

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

24 12. Defendant used an “automatic telephone dialing system” as defined
25 by 47 U.S.C. § 227(a)(1) to place said calls.

26 13. Defendant’s calls were placed to telephone number assigned to a
27 cellular telephone service for which Plaintiff incurs a charge for incoming calls
28 pursuant to 47 U.S.C. § 227(b)(1).

1 14. During all relevant times, Defendant did not possess Plaintiff's
2 "prior express consent" to receive calls using an automatic telephone dialing
3 system or an artificial or prerecorded voice on his cellular telephone pursuant to
4 *47 U.S.C. § 227(b)(1)(A)*.

5 15. Further, Plaintiff's cellular telephone number ending in -6678 has
6 been on the National Do-Not-Call Registry since at least October 5, 2018.

7 16. Defendant placed multiple calls soliciting its business to Plaintiff on
8 his cellular telephone ending in -6678 between October of 2020 to December of
9 2020.

10 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
11 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

12 18. Plaintiff received multiple solicitation calls from Defendant within a
13 12-month period.

14 19. Defendant continued to call Plaintiff in an attempt to solicit its
15 services and in violation of the National Do-Not-Call provisions of the TCPA.

16 20. Upon information and belief, and based on Plaintiff's experiences of
17 being called by Defendant after being on the National Do-Not-Call list for years
18 prior to Defendant's initial call, and at all relevant times, Defendant failed to
19 establish and implement reasonable practices and procedures to effectively
20 prevent telephone solicitations in violation of the regulations prescribed under 47
21 U.S.C. § 227(c)(5).

22 **CLASS ALLEGATIONS**

23 21. Plaintiff brings this action individually and on behalf of all others
24 similarly situated, as a member of the two proposed classes. The class concerning
25 the ATDS claim for no prior express consent (hereafter "The ATDS Class") is
26 defined as follows:

27 All persons within the United States who received any
28 solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint through to the date of class certification.

7 22. The class concerning the National Do-Not-Call violation (hereafter
8 "The DNC Class") is defined as follows:

9 All persons within the United States registered on the
10 National Do-Not-Call Registry for at least 30 days, who
11 had not granted Defendants prior express consent nor
12 had a prior established business relationship, who
13 received more than one call made by or on behalf of
14 Defendant that promoted Defendant's products or
15 services, within any twelve-month period, within four
16 years prior to the filing of this Complaint through the
17 date of class certification.

18 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
19 of all persons within the United States who received any collection telephone
20 calls from Defendant to said person's cellular telephone made through the use of
21 any automatic telephone dialing system or an artificial or prerecorded voice and
22 such person had not previously not provided their cellular telephone number to
23 Defendant within the four years prior to the filing of this Complaint through the
24 date of class certification.

25 24. Plaintiff represents, and is a member of, The DNC Class, consisting
26 of all persons within the United States registered on the National Do-Not-Call
27 Registry for at least 30 days, who had not granted Defendant prior express
28 consent nor had a prior established business relationship, who received more than
one call made by or on behalf of Defendant that promoted Defendant's products
or services, within any twelve-month period, within four years prior to the filing

1 of this Complaint through the date of class certification.

2 25. Defendant, including their employees and agents, are excluded from
3 The Classes. Plaintiff does not know the number of members in The Classes, but
4 believes members of The Classes number in the thousands, if not more. Thus,
5 this matter should be certified as a Class Action to assist in the expeditious
6 litigation of the matter.

7 26. The Classes are so numerous that the individual joinder of all of their
8 members is impractical. While the exact number and identities of the members of
9 The Classes are unknown to Plaintiff at this time and can only be ascertained
10 through appropriate discovery, Plaintiff is informed and believes and thereon
11 alleges that The Classes include thousands of members. Plaintiff alleges that
12 members of The Classes may be ascertained by the records maintained by
13 Defendant.

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

22 28. Common questions of fact and law exist as to all members of The
23 ATDS Class which predominate over any questions affecting only individual
24 members of The ATDS Class. These common legal and factual questions, which
25 do not vary between The ATDS Class members, and which may be determined
26 without reference to the individual circumstances of any members of The ATDS
27 Class include, but are not limited to, the following:

28 a. Whether, within the four years prior to the filing of this

1 Complaint through the date of class certification, Defendant
2 made any telemarketing/solicitation call (other than a call
3 made for emergency purposes or made with the prior express
4 consent of the called party) to a member of The ATDS Class
5 using any automatic telephone dialing system or any artificial
6 or prerecorded voice to any telephone number assigned to a
7 cellular telephone service;

8 b. Whether Plaintiff and The ATDS Class members were
9 damaged thereby, and the extent of damages for such
10 violation; and

11 c. Whether Defendant should be enjoined from engaging in such
12 conduct in the future.

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

17 30. Plaintiff and members of The DNC Class were harmed by the acts of
18 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
19 and The DNC Class members via their telephones for solicitation purposes,
20 thereby invading the privacy of said Plaintiff and The DNC Class members
21 whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff
22 and The DNC Class members were damaged thereby.

23 31. Common questions of fact and law exist as to all members of The
24 DNC Class which predominate over any questions affecting only individual
25 members of The DNC Class. These common legal and factual questions, which
26 do not vary between The DNC Class members, and which may be determined
27 without reference to the individual circumstances of any members of The DNC
28 Class include, but are not limited to, the following:

- 1 a. Whether, within the four years prior to the filing of this
- 2 Complaint through the date of class certification, Defendant or
- 3 its agents placed more than one solicitation call to the
- 4 members of The DNC Class whose telephone numbers were
- 5 on the National Do-Not-Call Registry and who had not
- 6 granted prior express consent to Defendant and did not have
- 7 an established business relationship with Defendant;
- 8 b. Whether Defendant obtained prior express written consent to
- 9 place solicitation calls to Plaintiff or The DNC Class
- 10 members' telephones;
- 11 c. Whether Plaintiff and The DNC Class members were
- 12 damaged thereby, and the extent of damages for such
- 13 violation; and
- 14 d. Whether Defendant should be enjoined from engaging in such
- 15 conduct in the future.

16 32. As a person that received numerous solicitation calls from Defendant
17 within a 12-month period, who had not granted Defendant prior express consent
18 and did not have an established business relationship with Defendant, Plaintiff is
19 asserting claims that are typical of The DNC Class.

20 33. Plaintiff will fairly and adequately protect the interests of the
21 members of The Classes. Plaintiff has retained attorneys experienced in the
22 prosecution of class actions.

23 34. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all members of The Classes is impracticable. Even if every member of The
26 Classes could afford individual litigation, the court system could not. It would be
27 unduly burdensome to the courts in which individual litigation of numerous issues
28 would proceed. Individualized litigation would also present the potential for

1 varying, inconsistent, or contradictory judgments and would magnify the delay
2 and expense to all parties and to the court system resulting from multiple trials of
3 the same complex factual issues. By contrast, the conduct of this action as a class
4 action presents fewer management difficulties, conserves the resources of the
5 parties and of the court system, and protects the rights of each member of The
6 Classes.

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

12 36. Defendant has acted or refused to act in respects generally applicable
13 to The Classes, thereby making appropriate final and injunctive relief with regard
14 to the members of The Classes as a whole.

15 **FIRST CAUSE OF ACTION**

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

17 **47 U.S.C. §227(b)**

18 **On Behalf of The ATDS Class**

19 37. Plaintiff repeats and incorporates by reference into this cause of
20 action the allegations set forth above.

21 38. The foregoing acts and omissions of Defendant constitute numerous
22 and multiple negligent violations of the TCPA, including but not limited to each
23 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in
24 particular *47 U.S.C. § 227 (b)(1)(A)*.

25 39. As a result of Defendant's negligent violations of *47 U.S.C. §*
26 *227(b)*, Plaintiff and The ATDS Class members are entitled to an award of
27 \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
28 *§ 227(b)(3)(B)*.

1 40. Plaintiff and The ATDS Class members are also entitled to and seek
2 injunctive relief prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
5 **Act**

6 **47 U.S.C. §227(b)**

7 **On Behalf of The ATDS Class**

8 41. Plaintiff repeats and incorporates by reference into this cause of
9 action the allegations set forth above.

10 42. The foregoing acts and omissions of Defendant constitute numerous
11 and multiple knowing and/or willful violations of the TCPA, including but not
12 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
13 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

14 43. As a result of Defendant's knowing and/or willful violations of *47*
15 *U.S.C. § 227(b)*, Plaintiff and The ATDS Class members are entitled to an award
16 of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
17 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

18 44. Plaintiff and The ATDS Class members are also entitled to and seek
19 injunctive relief prohibiting such conduct in the future.

20 **THIRD CAUSE OF ACTION**

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

22 **47 U.S.C. §227(c)**

23 **On Behalf of The DNC Class**

24 45. Plaintiff repeats and incorporates by reference into this cause of
25 action the allegations set forth above.

26 46. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple negligent violations of the TCPA, including but not limited to each
28

1 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in
2 particular *47 U.S.C. § 227 (c)(5)*.

3 47. As a result of Defendant's negligent violations of *47 U.S.C. §*
4 *227(c)*, Plaintiff and The DNC Class members are entitled to an award of
5 \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
6 *§ 227(c)(5)(B)*.

7 48. Plaintiff and The DNC Class members are also entitled to and seek
8 injunctive relief prohibiting such conduct in the future.

9 **FOURTH CAUSE OF ACTION**

10 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
11 **Act**

12 **47 U.S.C. §227(c)**

13 **On Behalf of The DNC Class**

14 49. Plaintiff repeats and incorporates by reference into this cause of
15 action the allegations set forth above.

16 50. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple knowing and/or willful violations of the TCPA, including but not
18 limited to each and every one of the above cited provisions of *47 U.S.C. §*
19 *227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

20 51. As a result of Defendant's knowing and/or willful violations of *47*
21 *U.S.C. § 227(c)*, Plaintiff and The DNC Class members are entitled to an award
22 of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
23 *U.S.C. § 227(c)(5)*.

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

26
27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

1
2 **FIRST CAUSE OF ACTION**

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

4 **47 U.S.C. §227(b)**

- 5 • As a result of Defendant’s negligent violations of *47 U.S.C.*
6 *§227(b)(1)*, Plaintiff and The ATDS Class members are entitled to
7 and request \$500 in statutory damages, for each and every violation,
8 pursuant to *47 U.S.C. § 227(b)(3)(B)*.
9 • Any and all other relief that the Court deems just and proper.

10
11 **SECOND CAUSE OF ACTION**

12 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

13 **Act**

14 **47 U.S.C. §227(b)**

- 15 • As a result of Defendant’s willful and/or knowing violations of *47*
16 *U.S.C. §227(b)(1)*, Plaintiff and The ATDS Class members are
17 entitled to and request treble damages, as provided by statute, up to
18 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
19 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
20 • Any and all other relief that the Court deems just and proper.

21
22 **THIRD CAUSE OF ACTION**

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

24 **47 U.S.C. §227(c)**

- 25 • As a result of Defendant’s negligent violations of *47 U.S.C.*
26 *§227(c)(5)*, Plaintiff and The DNC Class members are entitled to
27 and request \$500 in statutory damages, for each and every violation,
28 pursuant to *47 U.S.C. 227(c)(5)*.

- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant’s willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and The DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

45. 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 16th Day of December, 2020.

KAZEROUNI LAW GROUP

By: /s/ Ryan L. McBride
Ryan L. McBride, Esq.
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

**Richard Winters, Jr., individually and
Plaintiff(s): on behalf of all others similarly
situated**

Defendant(s): American Senior Benefits, LLC

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Ryan L. McBride
Kazerouni Law Group
2633 E Indian School Road, Suite 460
Phoenix, Arizona 85016
602-900-1288**

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

**III. Citizenship of Principal
Parties (Diversity Cases Only)**

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 890 Other Statutory Actions

**VI. Cause of Action: Plaintiff alleges Defendant called him in violation of the Telephone
Consumer Protection Act, 47. U.S.C. § 227 et seq. ("TCPA")**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/Ryan L. McBride

Date: 12/16/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [American Senior Benefits Faces Class Action Over Alleged Spam Calls](#)
