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

11) Case No.
12 Richard Winters Jr., individually and on)
13 behalf of all others similarly situated,)

14 Plaintiff,)

15 vs.)

16 LendingTree LLC and LendingTree)
17 (Parent), Inc.,)

18 Defendant(s).)
19)
20)
21)
22)
23)
24)
25)
26)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff Richard Winters Jr. (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 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 LendingTree LLC and LendingTree
8 (Parent), Inc. (“Defendants”), in negligently, knowingly, and/or willfully
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
10 Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related
11 regulations, specifically the National Do-Not-Call provisions, thereby invading
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

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

22 3. Jurisdiction is also proper because there exists a federal question based
23 on the fact Plaintiff’s claims arise from the Telephone Consumer Protection Act,
24 *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)* because Defendants do business within
27 the State of Arizona and Plaintiff resides within the County of Maricopa.

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 LendingTree LLC is an online lending marketplace, and is
5 a “person” as defined by *47 U.S.C. § 153 (39)*.

6 7. Defendant LendingTree (Parent), Inc., is an online lending
7 marketplace, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

8 8. The above-named Defendants, and their subsidiaries and agents, are
9 collectively referred to as “Defendants.”

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

16 **FACTUAL ALLEGATIONS**

17 10. Beginning on or around February 26, 2021, Defendants contacted
18 Plaintiff on Plaintiff’s cellular telephone number ending in -6678, in an attempt to
19 solicit Plaintiff to purchase Defendant’s services.

20 11. Defendants used an “automatic telephone dialing system” as defined
21 by *47 U.S.C. § 227(a)(1)* to place their call to Plaintiff seeking to solicit its services.

22 12. Defendant contacted or attempted to contact Plaintiff on at least five
23 separate occasions from telephone number (480) 923-6562 confirmed to be
24 Defendants’ number.

25 13. Defendants’ calls constituted calls that were not for emergency
26 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

27 14. During all relevant times, Defendants did not possess Plaintiff’s “prior
28 express consent” to receive calls using an automatic telephone dialing system or an

1 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*
2 *227(b)(1)(A)*.

3 15. Further, Plaintiff's cellular telephone number ending in -6678 was
4 added to the National Do-Not-Call Registry for over 30 days prior to Plaintiff's
5 receipt of Defendants' phone calls.

6 16. Defendants placed multiple calls soliciting their business to Plaintiff
7 on his cellular telephone ending in -6678 in or around February and March 2021.

8 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

10 18. Plaintiff received at least one solicitation call from Defendants within
11 a 12-month period.

12 19. Defendants called Plaintiff in an attempt to solicit their services and
13 in violation of the National Do-Not-Call provisions of the TCPA.

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

20 **CLASS ALLEGATIONS**

21 21. Plaintiff brings this action individually and on behalf of all others
22 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
23 Classes").

24 22. The class concerning the ATDS claim for no prior express consent
25 (hereafter "The ATDS Class") is defined as follows:

26 All persons within the United States who received any
27 solicitation/telemarketing telephone calls from
28 Defendants to said person's cellular telephone made

1 through the use of any automatic telephone dialing
2 system or an artificial or prerecorded voice and such
3 person had not previously consented to receiving such
4 calls within the four years prior to the filing of this
Complaint

5 23. The class concerning the National Do-Not-Call violation (hereafter
6 “The DNC Class”) is defined as follows:

7
8 All persons within the United States registered on the
9 National Do-Not-Call Registry for at least 30 days, who
10 had not granted Defendants prior express consent nor
11 had a prior established business relationship, who
12 received more than one call made by or on behalf of
13 Defendants that promoted Defendants’ products or
services, within any twelve-month period, within four
years prior to the filing of the complaint.

14 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
15 of all persons within the United States who received any collection telephone calls
16 from Defendants to said person’s cellular telephone made through the use of any
17 automatic telephone dialing system or an artificial or prerecorded voice and such
18 person had not previously not provided their cellular telephone number to
19 Defendants within the four years prior to the filing of this Complaint.

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

27 26. Defendants, their employees and agents are excluded from The
28 Classes. Plaintiff does not know the number of members in The Classes, but

1 believes the Classes members number in the thousands, if not more. Thus, this
2 matter should be certified as a Class Action to assist in the expeditious litigation of
3 the matter.

4 27. The Classes are so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Classes
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Classes includes thousands of members. Plaintiff alleges that The Classes
9 members may be ascertained by the records maintained by Defendants.

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

17 29. Common questions of fact and law exist as to all members of The
18 ATDS Class which predominate over any questions affecting only individual
19 members of The ATDS Class. These common legal and factual questions, which
20 do not vary between ATDS Class members, and which may be determined without
21 reference to the individual circumstances of any ATDS Class members, include,
22 but are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendants made any telemarketing/solicitation
25 call (other than a call made for emergency purposes or made
26 with the prior express consent of the called party) to a ATDS
27 Class member using any automatic telephone dialing system or
28 any artificial or prerecorded voice to any telephone number

1 assigned to a cellular telephone service;

2 b. Whether Plaintiff and the ATDS Class members were damaged
3 thereby, and the extent of damages for such violation; and

4 c. Whether Defendants should be enjoined from engaging in such
5 conduct in the future.

6 30. As a person that received numerous telemarketing/solicitation calls
7 from Defendants using an automatic telephone dialing system or an artificial or
8 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
9 claims that are typical of The ATDS Class.

10 31. Plaintiff and members of The DNC Class were harmed by the acts of
11 Defendants in at least the following ways: Defendants illegally contacted Plaintiff
12 and DNC Class members via their telephones for solicitation purposes, thereby
13 invading the privacy of said Plaintiff and the DNC Class members whose telephone
14 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
15 members were damaged thereby.

16 32. Common questions of fact and law exist as to all members of The
17 DNC Class which predominate over any questions affecting only individual
18 members of The DNC Class. These common legal and factual questions, which do
19 not vary between DNC Class members, and which may be determined without
20 reference to the individual circumstances of any DNC Class members, include, but
21 are not limited to, the following:

22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendants or their agents placed more than one
24 solicitation call to the members of the DNC Class whose
25 telephone numbers were on the National Do-Not-Call Registry
26 and who had not granted prior express consent to Defendants
27 and did not have an established business relationship with
28 Defendants;

- 1 b. Whether Defendants obtained prior express written consent to
- 2 place solicitation calls to Plaintiff or the DNC Class members’
- 3 telephones;
- 4 c. Whether Plaintiff and the DNC Class member were damaged
- 5 thereby, and the extent of damages for such violation; and
- 6 d. Whether Defendants and their agents should be enjoined from
- 7 engaging in such conduct in the future.

8 33. As a person that received numerous solicitation calls from Defendants
9 within a 12-month period, who had not granted Defendants prior express consent
10 and did not have an established business relationship with Defendants, Plaintiff is
11 asserting claims that are typical of the DNC Class.

12 34. Plaintiff will fairly and adequately protect the interests of the members
13 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
14 class actions.

15 35. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Classes members is impracticable. Even if every Classes member could
18 afford individual litigation, the court system could not. It would be unduly
19 burdensome to the courts in which individual litigation of numerous issues would
20 proceed. Individualized litigation would also present the potential for varying,
21 inconsistent, or contradictory judgments and would magnify the delay and expense
22 to all parties and to the court system resulting from multiple trials of the same
23 complex factual issues. By contrast, the conduct of this action as a class action
24 presents fewer management difficulties, conserves the resources of the parties and
25 of the court system, and protects the rights of each Classes member.

26 36. The prosecution of separate actions by individual Classes members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Classes members not parties to

1 such adjudications or that would substantially impair or impede the ability of such
2 non-party Class members to protect their interests.

3 37. Defendants have acted or refused to act in respects generally
4 applicable to The Classes, thereby making appropriate final and injunctive relief
5 with regard to the members of the Classes as a whole.

6 **FIRST CAUSE OF ACTION**

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

8 **47 U.S.C. §227(b).**

9 **On Behalf of the ATDS Class**

10 38. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-37.

12 39. The foregoing acts and omissions of Defendants constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
15 *47 U.S.C. § 227 (b)(1)(A)*.

16 40. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
17 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

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

21 **SECOND CAUSE OF ACTION**

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

24 **47 U.S.C. §227(b)**

25 **On Behalf of the ATDS Class**

26 42. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-40.

28 43. The foregoing acts and omissions of Defendants constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
3 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

4 44. As a result of Defendants' knowing and/or willful violations of *47*
5 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of
6 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
7 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

8 45. Plaintiff and the Class members are also entitled to and seek injunctive
9 relief prohibiting such conduct in the future.

10 **THIRD CAUSE OF ACTION**

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

12 **47 U.S.C. §227(c)**

13 **On Behalf of the DNC Class**

14 46. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-44.

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

20 48. As a result of Defendants' negligent violations of *47 U.S.C. § 227(c)*,
21 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **Act**

4 **47 U.S.C. §227 et seq.**

5 **On Behalf of the DNC Class**

6 50. Plaintiff repeats and incorporates by reference into this cause of action
7 the allegations set forth above at Paragraphs 1-48.

8 51. The foregoing acts and omissions of Defendants constitute numerous
9 and multiple knowing and/or willful violations of the TCPA, including but not
10 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
11 in particular *47 U.S.C. § 227 (c)(5)*.

12 52. As a result of Defendants' knowing and/or willful violations of *47*
13 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of
14 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
15 *§ 227(c)(5)*.

16 53. Plaintiff and the DNC Class members are also entitled to and seek
17 injunctive relief prohibiting such conduct in the future.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests judgment against Defendants for the following:

20 **FIRST CAUSE OF ACTION**

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

22 **47 U.S.C. §227(b)**

- 23 • As a result of Defendants' negligent violations of *47 U.S.C.*
24 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and
25 request \$500 in statutory damages, for each and every violation,
26 pursuant to *47 U.S.C. 227(b)(3)(B)*.
- 27 • Any and all other relief that the Court deems just and proper.

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1 **SECOND CAUSE OF ACTION**

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

3 **Act**

4 **47 U.S.C. §227(b)**

- 5 • As a result of Defendants’ willful and/or knowing violations of 47
- 6 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are
- 7 entitled to and request treble damages, as provided by statute, up to
- 8 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
- 9 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- 10 • Any and all other relief that the Court deems just and proper.

11 **THIRD CAUSE OF ACTION**

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

13 **47 U.S.C. §227(c)**

- 14 • As a result of Defendants’ negligent violations of *47 U.S.C.*
- 15 *§227(c)(5)*, Plaintiff and the DNC Class members are entitled to and
- 16 request \$500 in statutory damages, for each and every violation,
- 17 pursuant to *47 U.S.C. 227(c)(5)*.
- 18 • Any and all other relief that the Court deems just and proper.

19 **FOURTH CAUSE OF ACTION**

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

21 **Act**

22 **47 U.S.C. §227(c)**

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

28 ///

1 54. Pursuant to the Seventh Amendment to the Constitution of the United
2 States of America, Plaintiff is entitled to, and demands, a trial by jury.

3
4 Respectfully Submitted this 12th Day of August, 2021.

5 **Kazerouni Law Group, APC**

6
7 By: /s/ Ryan L. McBride
8 Ryan L. McBride, Esq.
9 Attorney for Plaintiff
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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): LendingTree LLC ; LendingTree
(Parent), Inc.**

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 Rd Ste 460
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6029001288**

**David J. McGlothlin
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2633 E Indian School Rd Ste 460
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6022653332**

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's claims arise from 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: 08/12/2021

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: [LendingTree Hit with Lawsuit Over Alleged Telemarketing Calls](#)
