

1 Joshua B. Swigart, Esq. (SBN: 225557)
2 josh@westcoastlitigation.com
3 Yana A. Hart, Esq. (SBN: 306499)
4 yana@westcoastlitigation.com
5 **HYDE & SWIGART**
6 2221 Camino Del Rio South, Suite 101
7 San Diego, CA 92108
8 Telephone: (619) 233-7770
9 Facsimile: (619) 297-1022

Daniel G. Shay, Esq (SBN: 250548)
danielshay@tcpafdcpa.com
LAW OFFICE OF DANIEL G. SHAY
409 Camino Del Rio South, Ste 101B
San Diego, CA 92108
Telephone: (619) 222-7429
Facsimile: (866) 431-3292

[Additional Attorneys on Signature Page]

Attorneys for Plaintiff,
Cristina Wiseman

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

**CRISTINA WISEMAN,
Individually and On Behalf of All
Others Similarly Situated,**

Plaintiff,

v.

**USCB, INC. d/b/a USCB
AMERICA,**

Defendant.

Case No.: '17CV1256 LAB JLB

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.**

JURY TRIAL DEMANDED

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SAN DIEGO, CA 92108**

INTRODUCTION

1. Plaintiff Cristina Wiseman (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of defendant USCB, Inc. d/b/a USCB America (hereinafter, referred to as “Defendant”) in negligently and/or willfully or knowingly contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorney.
2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings

1 on TCPA’s purpose).

- 2 4. Congress also specifically found that “the evidence presented to the Congress
3 indicates that automated or prerecorded calls are a nuisance and an invasion
4 of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also, Mims,*
5 132 S. Ct. at 744.

6 **JURISDICTION AND VENUE**

- 7 5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331
8 because this case arises out of violation of federal law. *See* 47 U.S.C. §227(b).
9 6. Defendant continuously conducts business in California. Defendant is also
10 registered in the State of California.
11 7. Venue is proper in the United States District Court for the Southern District of
12 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) at all
13 material times hereto, Plaintiff resided in the County of San Diego, State of
14 California which is within this judicial district; (ii) the conduct complained of
15 herein occurred within this judicial district; and, (iii) many of the acts and
16 transactions giving rise to this action occurred in this district because
17 Defendant placed an unlawful call to Plaintiff in this judicial district.
18 8. Upon information and belief, Defendant regularly and continuously conducts
19 business in the State of California, and thus, personal jurisdiction is
20 established.

21 **PARTIES**

- 22 9. Plaintiff is and was, at all times mentioned herein, is a natural person that
23 resided in the County of San Diego, State of California. Plaintiff is, and at all
24 times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).
25 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
26 at all times mentioned herein was, a corporation organized under the laws of
27 California, registered to conduct business in the State of California, and is a
28 “person” as defined by 47 U.S.C. § 153 (39).

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1 11. Plaintiff alleges that at all times relevant herein Defendant conducted business
2 in the State of California and in the County of San Diego, and within this
3 judicial district.

4 **FACTUAL ALLEGATIONS**

5 12. Defendant is a legal recovery and collection company that focuses on national
6 collections. Defendant regularly makes autodialed phone calls with a pre-
7 recorded message to consumers in order to collect various debts.

8 13. Plaintiff did not provide her cellular telephone number ending in “6159” to
9 Defendant or Defendant’s agents.

10 14. In fact, Plaintiff expressly revoked any consent that could have existed to
11 contact her on her cellular telephone. On August 24, 2016, Plaintiff’s
12 attorney Daniel G. Shay (“Attorney”) sent Cease and Desist letters to
13 Plaintiff’s creditors for Plaintiff. One or more of these creditor accounts were
14 later sold, transferred or conveyed to Defendant and Defendant received
15 notice of the Cease and Desist letters with the information that was
16 transferred to it. The revocation of consent to receive calls is effective as to
17 any subsequent collection efforts. The Cease and Desist letters expressly
18 stated:

19
20 “Client hereby revokes any prior consent that may have
21 been given to receive telephone calls, especially to
22 Client’s cellular telephone, from an automated telephone
23 dialing system or an artificial pre-recorded voice, as
24 outlines in the Telephone Consumer Protection Act, 47
U.S.C. § 227.”

25 15. On or about August 26, 2016, Defendant initiated a telephone call from 855-
26 757-6923 to Plaintiff’s cellular phone ending with “6159,” using an
27 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
28 227(a)(1), with an “artificial or prerecorded voice” as prohibited by 47 U.S.C.

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1 § 227(b)(1)(A). Defendant left a message with a robotic pre-recorded voice
2 message.

3 16. On or about August 29, 2016, Defendant initiated another telephone call from
4 855-757-6923 to Plaintiff’s cellular phone ending with “6159,” using an
5 ATDS with an artificial or prerecorded voice.

6 17. Defendant stated the following in an artificial and/or prerecorded voice during
7 the telephone calls to Plaintiff:

8 This message is for [brief pause, robotic voice] Wiseman
9 Christina. If we have reached a wrong number please call
10 855-233-6432. If you are not [brief pause, robotic voice]
11 Wiseman Christina, hang up now. If you are [brief pause,
12 robotic voice] Wiseman Christina continue to listen to
13 this message, but not in the presence of others as it
14 contains personal and private information this is Patty
Lopez from USCB America. This is made in attempt to
collect a debt . . .

15 18. Plaintiff did not provide Defendant or its agent with a “prior express consent”
16 nor written consent to receive calls to her cellular telephone, including those
17 calls by means of an ATDS and/or artificial or prerecorded voice message,
18 regarding 47 U.S.C. § 227(b)(1)(A) and 47 C.F.R. § 64.1200(a)(2). Rather,
19 Plaintiff expressly revoked any prior consent.

20 19. Upon information and belief, Defendant’s ATDS has the capacity to store or
21 produce telephone numbers to be called, using a random or sequential number
22 generator.

23 20. Upon information and belief, the ATDS equipment used by Defendant to
24 place the calls at issue has the capacity to dial telephone numbers
25 automatically from a stored list or database without human intervention, using
26 a random or sequential number generator.

27 21. Defendant did not have prior express consent nor written consent to place
28 calls to Plaintiff’s cellular number.

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1 22. Defendant’s calls were not made for emergency purposes, as defined by 47
2 U.S.C. § 227(b)(1)(A).

3 23. Defendant’s calls were placed to a telephone number assigned to a cellular
4 telephone service for which Plaintiff incurs a charge for incoming calls
5 pursuant to 47 U.S.C. § 227(b)(1).

6 24. Plaintiff was personally affected by Defendant’s aforementioned conduct
7 because Plaintiff was frustrated and distressed that Defendant interrupted
8 Plaintiff with unwanted calls using an ATDS and/or prerecorded voice.

9 25. Through Defendant’s aforementioned conduct, Plaintiff suffered an invasion
10 of a legally protected interest in privacy, which is specifically addressed and
11 protected by the TCPA.

12 26. Defendant’s calls forced Plaintiff and other similarly situated class members
13 to live without the utility of their cellular phones by occupying their cellular
14 telephone with one or more unwanted calls, causing a nuisance and lost time.

15 27. Plaintiff is informed and believes and here upon alleges, that the calls were
16 made by Defendant and/or Defendant’s agent(s), with Defendant’s
17 permission, knowledge, control and for Defendant’s benefit.

18 28. Through the aforementioned conduct, Defendant or its agent(s) has violated
19 47 U.S.C. § 227(b)(1).

20 **CLASS ACTION ALLEGATIONS**

21 29. Plaintiff brings this action on behalf of herself and on behalf of all others
22 similarly situated (the “Class”).

23 30. Plaintiff represents, and is a member of the Class, consisting of:

24
25 All persons within the United States who received any
26 telephone call from Defendant or its agent/s and/or
27 employee/s, not sent for emergency purposes, to said
28 person’s cellular telephone made through the use of any
automatic telephone dialing system and/or with an

1 artificial or prerecorded voice within the four years prior
2 to the filing of this Complaint.

3 31. Defendant and its employees or agents are excluded from the Class. Plaintiff
4 does not know the number of members in the Class, but believes the Class
5 members number in the thousands, if not more. Thus, this matter should be
6 certified as a Class action to assist in the expeditious litigation of this matter.

7 32. Plaintiff and members of the Class were harmed by the acts of Defendant in at
8 least the following ways: Defendant, either directly or through their agents,
9 illegally contacted Plaintiff and the Class members via their cellular
10 telephones by using an ATDS, thereby causing Plaintiff and the Class
11 members to incur certain cellular telephone charges or reduce cellular
12 telephone time for which Plaintiff and the Class members previously paid,
13 and invading the privacy of said Plaintiff and the Class members. Plaintiff
14 and the Class members were damaged thereby.

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

21 34. The joinder of the Class members is impractical and the disposition of their
22 claims in the Class action will provide substantial benefits both to the parties
23 and to the court. The Class can be identified through Defendant's records or
24 Defendant's agents' records.

25 35. 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 predominate over questions which may affect individual Class
28 members, including the following:

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- a) Whether, within the four years prior to the filing of this Complaint, Defendant or their agents initiated any telephonic communications to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) using any automatic dialing system or prerecorded voice to any telephone number assigned to a cellular phone service;
- b) Whether Defendant can meet its burden of showing Defendant obtained prior express written consent;
- c) Whether Defendant’s conduct was knowing and/or willful;
- d) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- e) Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

36. As a person that received at least one telephonic communication from Defendant’s ATDS without Plaintiff’s prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

37. Plaintiff and the members of the Class have all suffered irreparable harm as a result of Defendant’s unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member’s claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

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

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1 39. A class action is a superior method for the fair and efficient adjudication of
2 this controversy. Class-wide damages are essential to induce Defendant to
3 comply with federal and California law. The interest of Class members in
4 individually controlling the prosecution of separate claims against Defendant
5 is small because the maximum statutory damages in an individual action for
6 violation of privacy are minimal. Management of these claims is likely to
7 present significantly fewer difficulties than those presented in many class
8 claims.

9 40. Defendant has acted on grounds generally applicable to the Class, thereby
10 making appropriate final injunctive relief and corresponding declaratory relief
11 with respect to the Class as a whole.

12 **FIRST CAUSE OF ACTION**
13 **NEGLIGENT VIOLATIONS OF THE TCPA**
14 **47 U.S.C. § 227 ET SEQ.**

15 41. Plaintiff incorporates by reference all of the above paragraphs of this
16 Complaint as though fully stated herein.

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

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

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

25 **SECOND CAUSE OF ACTION**
26 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA**
27 **47 U.S.C. § 227 ET SEQ.**

28 45. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

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1 46. The foregoing acts and omissions of Defendant constitute numerous and
2 multiple knowing and/or willful violations of the TCPA, including but not
3 limited to each and every one of the above-cited provisions of 47 U.S.C. §
4 227, *et seq.*

5 47. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
6 227, *et seq.*, Plaintiff and the Class are entitled to an award of \$1,500.00 in
7 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
8 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

9 48. Plaintiff and the Class are also entitled to and seek injunctive relief
10 prohibiting such conduct in the future.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff and the Class members pray for judgment as
13 follows against Defendant:

- 14 • Certify the Class as requested herein;
- 15 • Appoint Plaintiff to serve as the Class Representative in this matter;
- 16 • Appoint Plaintiff’s Counsel as Class Counsel in this matter;
- 17 • Provide such further relief as may be just and proper.

18 In addition, Plaintiff and the Class members pray for further judgment as follows
19 against Defendant:

20 **NEGLIGENT VIOLATION OF**
21 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 22 • As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
23 Plaintiff seeks for herself and each Class member \$500.00 in statutory
24 damages, for each and every violation, pursuant to 47 U.S.C.
25 § 227(b)(3)(B).
- 26 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
27 conduct in the future.
- 28 • Any other relief the Court may deem just and proper.

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**KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

49. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demand, a trial by jury.

Dated: June 20, 2017

Respectfully submitted,

HYDE & SWIGART

By: s/ JOSHUA B. SWIGART
JOSHUA B. SWIGART, ESQ.
josh@westcoastlitigation.com
ATTORNEY FOR PLAINTIFF

Additional Plaintiff’s Counsel:

Abbas Kazerounian, Esq. (SBN: 249203)
ak@kazlg.com
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue
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
Cristina Wiseman, Individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Joshua B. Swigart, Esq., Hyde & Swigart 619-233-7770
2221Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS
USCB, Inc. d/b/a USCB America
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'17CV1256 LAB JLB

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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE _____ DOCKET NUMBER _____

DATE 06/20/2017
SIGNATURE OF ATTORNEY OF RECORD
s/ Joshua B. Swigart

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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: [Lawsuit: USCB Places Illegal Robocalls Despite Revoked Consent](#)
