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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 RONALD CHINITZ, individually, and on
18 behalf of a class of similarly situated persons,

19 Plaintiff,

20 v.

21 INTERO REAL ESTATE SERVICES,

22 Defendant.

Case No. 5:18-cv-05623

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

23 Plaintiff Ronald Chinitz (“Plaintiff”), through his undersigned attorneys, on behalf of himself
24 and all persons similarly situated, complaint against Intero Real Estate Services (“Intero”), as follows:

25 **INTRODUCTION**

26 1. Plaintiff brings this class action complaint for damages, injunctive relief, and any other
27 available legal or equitable remedies, resulting from the illegal actions of Intero in making unlawful calls
28 to his residential telephone lines, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §
227 *et seq.* (“TCPA”) and Plaintiff’s privacy rights.

1 exclusive of interest and costs, and is a class action in which any member of the classes of plaintiffs is a
2 citizen of a state different from any defendant.

3 9. This Court also has federal question jurisdiction over this case pursuant to 28 U.S.C. §
4 1331, pursuant to Defendant’s violation of the TCPA, and supplemental jurisdiction over Plaintiff’s state
5 law claim under 28 U.S.C. § 1367.

6 10. Venue is proper in this District under 28 U.S.C. § 1391(b) because significant events
7 giving rise to this case took place in this District.

8 **PARTIES**

9 8. Plaintiff Ronald Chinitz is a citizen residing in Santa Cruz, California.

10 9. Defendant Intero is a real estate brokerage firm. Its principal place of business is 10275
11 N. De Anza Boulevard, Cupertino, California 95014.

12 **FACTS**

13 10. Shortly after the creation of the National Do Not Call Registry in 2003, Mr. Chinitz
14 placed his landline number (831-420-####) on the National Do Not Call Registry. In or around 2015,
15 Mr. Chinitz a VOIP provider line (408-501-####) on the National Do Not Call Registry. In or around
16 June 2017, Mr. Chinitz re-registered both numbers, under the mistaken impression that his original
17 registration had expired.

18 11. On or around May 17, 2017, Mr. Chinitz, through his real estate agent, Katy Cowley,
19 listed his home in Santa Cruz, California for sale.

20 12. Ms. Cowley placed the listing on an online real estate listing portal, Multiple Listing
21 Service (“MLS”).

22 13. The MLS listing for Mr. Chinitz’s home expired on November 1, 2017.

23 14. The listing included a private instruction to real estate agents that read, “OWNERS
24 HAVE REQUESTED NOT TO BE CONTACTED.”

25 15. On or around November 1, 2017—the day the MLS listing expired—Mr. Chinitz began
26 to receive unwanted calls from Intero.

27 16. Intero, directly through its agents as well as through a third-party call center in the
28 Philippines, began to call Mr. Chinitz on both of his residential telephone numbers.

1 17. The calls happened as early as 7 a.m. and as late as 10 p.m.

2 18. On the first call from Intero, Mr. Chinitz requested Intero no longer call him as he was
3 not interested in their services.

4 19. Despite his request, Intero, through its agents and a third-party call center, continued to
5 call.

6 20. More than once, Mr. Chinitz repeated the request to stop calling him.

7 21. On more than one occasion, Mr. Chinitz would receive a call from or on behalf of
8 Intero with a pre-recorded message, stating that the person on the other end could not hear Mr. Chinitz
9 and that he or she would call Mr. Chinitz back. After the call with the pre-recorded message ended, Mr.
10 Chinitz would then receive a call from a live person calling on behalf of Intero.

11 22. In particular, Intero real estate agent Keith Vong made more than one call to Mr.
12 Chinitz, directly or through a call center.

13 23. On one occasion, Mr. Vong left Mr. Chinitz a voicemail message. In return, Mr. Chinitz
14 left Mr. Vong a voicemail message, angrily asking him to stop calling. Mr. Vong called Mr. Chinitz and
15 denied that he had called him. Mr. Chinitz repeated his request that the calls stop.

16 24. Despite Mr. Chinitz's request, Mr. Vong called again and left another voicemail
17 message. Mr. Chinitz returned the call and again Mr. Vong denied calling him.

18 25. After receiving a few calls from or on behalf of Intero, Mr. Chinitz searched online for
19 local offices of Intero and called 5 or 6 offices in or around San Jose, California. Employees at Intero's
20 local offices repeatedly hung up on Mr. Chinitz.

21 26. Mr. Chinitz found a phone number for Intero's headquarters in Cupertino, California.
22 He called and spoke to an employee about the unwanted calls, and the employee advised that he would
23 relay the concerns to his boss who would call Mr. Chinitz back. Mr. Chinitz never received a call.

24 27. Frustrated, Mr. Chinitz called real estate companies that were affiliated with Berkshire
25 Hathaway. It was Mr. Chinitz's understanding from his research that Berkshire Hathaway controlled
26 Intero. In fact, Berkshire Hathaway is the parent company of HomeServices of America, Inc., which
27 acquired Intero in 2014 ("HomeServices").
28

1 28. Mr. Chinitz spoke to an individual in a real estate company in New England, who gave
2 Mr. Chinitz a number for Berkshire Hathaway.

3 29. Mr. Chinitz called the number and spoke to an individual at Berkshire Hathaway, who
4 gave him the number of Liz Litin and advised that Berkshire Hathaway would have Ms. Litin call him.
5 Ms. Litin, upon information and relief, is the Marketing Manager of HomeServices.

6 30. Before Ms. Litin had a chance to call him, Mr. Chinitz called Ms. Litin himself.

7 31. Mr. Chinitz advised Ms. Litin that the calls from Intero were unwanted and repeated his
8 request that the calls stop. Ms. Litin advised Mr. Chinitz in a separate call minutes later that he would be
9 expecting a call from the President of Intero.

10 32. Mr. Chinitz received a call from an executive from Intero, who identified himself either
11 as a President or a Senior Vice President of Intero. The executive advised that once Intero received a
12 request not to call, it was not permitted to call again.

13 33. Despite the Intero executive's assurances, Mr. Chinitz continued to receive unwanted
14 calls from Intero.

15 34. Mr. Chinitz then received another call from a person who identified himself as a
16 manager at a local Intero real estate office and stated that he was on the line with Keith Vong. Mr.
17 Vong initially repeated his denials of calling Mr. Chinitz. Later in the conversation, however, he
18 admitted to making calls. Mr. Vong also denied using a third-party call center to make calls on his
19 behalf. Again, later in the conversation he admitted that he did use a call center but he had since ceased
20 business with them. Mr. Vong represented that Intero would no longer call Mr. Chinitz and that Intero
21 would send Mr. Chinitz \$100 check for his trouble.

22 35. A couple of days later, Mr. Chinitz received a check in the amount of \$100.

23 36. Again, despite assurances from Mr. Vong, Mr. Chinitz continued to receive unwanted
24 calls from Intero, though the calls were less frequent.

25 37. Relief from incessant calls was only temporary. In the beginning of 2018, the frequent
26 calls resumed.

27

28

1 38. Mr. Chinitz again spoke to Ms. Litin, who represented that she had kept notes of their
2 prior correspondence in November 2017. Ms. Litin advised that she would call the Chief Executive
3 Officer of Intero.

4 39. A few days later, Mr. Chinitz received a call from a woman who identified herself as a
5 paralegal of Intero's Legal Department. She advised Mr. Chinitz of regulations regarding the National
6 Do Not Call Registry and asked Mr. Chinitz what Intero could do to assist him. Mr. Chinitz again
7 repeated his request that the calls stop.

8 40. A few days later, in early February 2018, Mr. Chinitz received a call from Intero's CEO,
9 Tom Tognoli. Mr. Tognoli denied any responsibility for the calls, advising that Intero agents were
10 independent contractors.

11 41. Though he denied any responsibility, Mr. Tognoli sent Mr. Chinitz a letter that read:

12 I am sorry to learn that Intero agents have called your residence after being told that
13 the calls were unwanted. Intero agents are independent contractors and they
14 commonly purchase parking lists from 3rd party vendors who may from time to time
15 include inappropriate members on their lists. I will circulate an email to the company
16 instructing that our agents not dial the numbers you have identified in your most recent
17 complaint.

18 Intero respects your privacy. Please accept the enclosed check for \$100 as a token of
19 our sincerity.

20 42. Again, despite the assurances from yet another Intero employee, Mr. Chinitz still
21 received several calls from Intero, including three calls on July 27, 2018.

22 43. Intero called Mr. Chinitz using an artificial or pre-recorded voice to deliver a message.

23 44. Intero did not have prior express consent pursuant to 47 U.S.C. § 227(b)(1)(B) to make
24 those calls.

25 45. Intero's calls were not made for an emergency purpose or to collect on a debt pursuant
26 to 47 U.S.C. § 227(b)(1)(B).

27 46. Intero made calls to Mr. Chinitz before 8 a.m. and after 9 p.m. in violation of 47 U.S.C.
28 § 64.1200(c)(1).

 47. Upon information and belief, Intero has no written procedures to comply with National
Do Not Call Registry regulations pursuant to 47 U.S.C. § 64.1200(c)(2)(i)(A).

1 48. Upon information and belief, Intero does not train personnel on any procedures to
2 comply with National Do Not Call Registry regulations pursuant to 47 U.S.C. § 64.1200(c)(2)(i)(B).

3 49. Upon information and belief, Intero does not maintain and record a list of telephone
4 numbers that it may not contact pursuant to 47 U.S.C. § 64.1200(c)(2)(i)(C).

5 50. Upon information and belief, Intero does not use any process to prevent telephone
6 solicitations of any number on the National Do Not Call Registry and does not maintain records
7 documenting its process pursuant to 47 U.S.C. § 64.1200(c)(2)(i)(D).

8 51. Upon information and belief, Intero does not have a written policy for maintaining an
9 internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

10 52. Upon information and belief, Intero does not inform and train its personnel engaged in
11 telemarketing in the existence and the use of any internal do not call list pursuant to 47 U.S.C. §
12 64.1200(d)(2).

13 53. Upon information and belief, individuals or entities making a call for telemarketing
14 purposes for or on behalf of Intero do not record any request from a telephone subscriber not to
15 receive calls and do not place the subscriber's name and number on an internal do not call list pursuant
16 to 47 U.S.C. §64.1200(d)(3).

17 **CLASS ACTION ALLEGATIONS**

18 54. Plaintiff brings this action on behalf of himself and a class of all others similarly situated
19 pursuant to Fed. R. Civ. P. 23:

20 55. Plaintiff proposes to represent the following classes:

- 21 a. **National Do Not Call Registry Class ("Class A")**: All persons in the United States
22 who received more than one call made by Defendant in a 12-month period on their
23 residential land line and whose residential land line number appears on the National Do
24 Not Call Registry for the time period beginning September 13, 2014 to present.
- 25 b. **National Internal Do Not Call Class ("Class B")**: All persons in the United States
26 who received more than one call made by Defendant in a 12-month period on their
27 residential land line and who made a request not to receive calls for the time period
28 beginning September 13, 2014 to present.

1 c. **National Early/Late Calls Class (“Class C”)**: All persons in the United States who
2 received more than one call made by Defendant in a 12-month period on their
3 residential land line before 8 a.m. or after 9 p.m. for the time period beginning
4 September 13, 2014 to present.

5 d. **National Artificial or Pre-recorded Message Class (“Class D”)**: All persons in the
6 United States who received a call on their residential telephone line with an artificial or
7 pre-recorded message, initiated by or on behalf of Defendant, and without the
8 recipient’s prior express consent, for the time period beginning September 13, 2014 to
9 present.

10 56. Defendant and their employees or agents are excluded from the Classes.

11 57. Members of the Classes are so numerous that joinder is impracticable. While the exact
12 number of class members is unknown to Plaintiff, it is believed that the Classes are comprised of
13 thousands of members geographically disbursed throughout the United States. The Classes are readily
14 identifiable from information and records in the possession of Defendant and third parties.

15 58. Common questions of law and fact exist as to all members of the Classes. These
16 questions predominate over questions that may affect only individual class members because Defendant
17 has acted on grounds generally applicable to the Classes. Such common and legal factual questions
18 include:

- 19 a. Whether Defendant’s conduct violates the TCPA;
- 20 b. Whether Defendant obtained valid prior express consent from artificial or prerecorded
21 voice call recipients;
- 22 c. Whether Defendant’s calls were made for an emergency purpose;
- 23 d. Whether Defendant’s calls were made to collect on a debt;
- 24 e. Whether Defendant adhered to requests by Class members to stop making calls to their
25 residential telephone numbers;
- 26 f. Whether Defendant keeps records of call recipients who revoked consent to receive
27 calls;
- 28

- 1 g. Whether Defendant has established written procedures to comply with National Do
- 2 Not Call Registry registrations;
- 3 h. Whether Defendant trains personnel on any procedures to comply with National Do
- 4 Not Call Registry regulations;
- 5 i. Whether Defendant maintains and records a list of telephone numbers that it may not
- 6 contact;
- 7 j. Whether Defendant uses any process to prevent telephone solicitations of any number
- 8 on the National Do Not Call Registry and maintain records documenting its process;
- 9 k. Whether Defendant has any written policies for maintaining an internal do not call list;
- 10 l. Whether Defendant informs and trains its personnel engaged in telemarketing in the
- 11 existence and the use of any internal do not call list pursuant to 47 U.S.C.
- 12 §64.1200(d)(2).
- 13 m. Whether individuals or entities making a call for telemarketing purposes for or on behalf
- 14 of Defendant record any request from a telephone subscriber not to receive calls and
- 15 place the subscriber's name and number on an internal do not call list pursuant.
- 16 n. Whether Plaintiff and members of the Classes are entitled to damages, costs, or
- 17 attorney's fees from Defendant;
- 18 o. Whether Defendant violated the privacy rights of Plaintiff and members of the Classes;
- 19 p. Whether Defendant's conduct caused Plaintiff and members of the Classes
- 20 inconvenience or annoyance;
- 21 q. Whether Plaintiff and members of the Classes are entitled to compensatory damages;
- 22 r. Whether Plaintiff and members of the Classes are entitled to treble damages based on
- 23 the willfulness of Defendant's conduct;
- 24 s. Whether Plaintiff and members of the Classes are entitled to a permanent injunction
- 25 enjoining Defendant from continuing to engage in its unlawful conduct.

26 59. Plaintiff's claims are typical of the members of Class A as all members of Class A are
27 similarly affected by the Defendant's actionable conduct. Defendant's conduct that gave rise to the
28

1 claims of Plaintiff and members of Class A (*i.e.* making a call to a residential land line number that
2 appears on the National Do Not Call Registry) is the same for all members of Class A.

3 60. Plaintiff's claims are typical of the members of Class B as all members of Class B are
4 similarly affected by the Defendant's actionable conduct. Defendant's conduct that gave rise to the
5 claims of Plaintiff and members of Class B (*i.e.* failing to honor a residential telephone subscriber's do
6 not-call request) is the same for all members of Class B.

7 61. Plaintiff's claims are typical of the members of Class C as all members of Class C are
8 similarly affected by the Defendant's actionable conduct. Defendant's conduct that gave rise to the
9 claims of Plaintiff and members of Class C (*i.e.* making calls to a residential land line before 8 a.m. or
10 after 9 p.m.) is the same for all members of Class C.

11 62. Plaintiff's claims are typical of the members of Class D as all members of Class D are
12 similarly affected by the Defendant's actionable conduct. Defendant's conduct that gave rise to the
13 claims of Plaintiff and members of Class D (*i.e.* using an artificial or prerecorded voice to make a call to
14 a residential land line number) is the same for all members of Class D.

15 63. Plaintiff will fairly and adequately protect the interests of the Classes because he has no
16 interests antagonistic to, or in conflict with, the Classes that Plaintiff seeks to represent. Furthermore,
17 Plaintiff has retained counsel experienced and competent in the prosecution of complex class action
18 litigation.

19 64. Class action treatment is a superior method for the fair and efficient adjudication of this
20 controversy, in that, among other things, such treatment will permit a large number of similarly situated
21 persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and
22 without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or
23 contradictory judgments that numerous individual actions would engender. The benefits of the class
24 mechanism, including providing injured persons or entities with a method for obtaining redress on
25 claims that might not be practicable to pursue individually, substantially outweigh any difficulties that
26 may arise in the management of this class action.

27 65. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that
28 would preclude its maintenance as a class action.

1 numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive
2 telephone solicitations that is maintained by the federal government.

3 72. Upon information and belief, Defendant does not have written procedures to comply
4 with the national do not call rules, pursuant to 47 C.F.R. § 64.1200(c)(2)(i)(A).

5 73. Upon information and belief, Defendant does not train its personnel in procedures
6 established pursuant to national do not call rules, pursuant to 47 C.F.R. § 64.1200(c)(2)(i)(B).

7 74. Upon information and belief, Defendant does not maintain or record a list of telephone
8 numbers that it may not contact, pursuant to 47 C.F.R. § 64.1200(c)(2)(i)(C).

9 75. Upon information and belief, Defendant does not employ a version of the National Do
10 Not Call Registry obtained from the administrator of a registry no more than 31 days prior to the date
11 any call is made, and maintains records documenting this process, pursuant to 47 C.F.R. §
12 64.1200(c)(2)(i)(D).

13 76. Because Plaintiff and Class A members received more than one telephone call in a 12-
14 month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200(c)(2), as described
15 above, Defendant further violated 47 U.S.C. § 227(c)(5).

16 77. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and members of
17 Class A are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation,
18 pursuant to 47 U.S.C. § 227(c)(5).

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

22 79. Plaintiff and members of Class A also suffered damages in the form of invasion of
23 privacy.

24 80. Plaintiff and members of Class A are also entitled to and seek injunctive relief
25 prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

26 **COUNT II**

27 **Violation of 47 U.S.C. § 227(c)(2)**

28 **(On behalf of Plaintiff and Class B – National Internal Do Not Call Class)**

1 81. Plaintiff incorporate by reference all above paragraphs as though fully repeated herein.

2 82. The TCPA provides that any “person who has received more than one telephone call
3 within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed
4 under this subsection may” bring a private action based on a violation of said regulations, which were
5 promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations
6 to which they object. 47 U.S.C. § 227(c)(5).

7 83. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call for
8 telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted
9 procedures for maintaining a list of persons who request not to receive telemarketing calls made by or
10 on behalf of that person or entity. The procedures instituted must meet certain minimum standards,
11 including:

12 “(3) Recording, disclosure of do-not-call requests. If a person or entity making a call
13 for telemarketing purposes (or on whose behalf such a call is made) receives a request
14 from a residential telephone subscriber not to receive calls from that person or entity,
15 the person or entity must record the request and place the subscriber’s name, if
16 provided, and telephone number on the do-not call list at the time the request is made.
17 **Persons or entities making calls for telemarketing purposes (or on whose behalf
18 such calls are made) must honor a residential subscriber’s do-not-call request
19 within a reasonable time from the date such request is made.** This period may
not exceed thirty days from the date of such request

20 (6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing
21 purposes must maintain a record of a consumer’s request not to receive further
22 telemarketing calls. **A do-not-call request must be honored for 5 years from the
23 time the request is made.**”

24 47 C.F.R. § 64.1200(d)(3), (6) (emphasis added).

25 84. Plaintiff and Class B members made requests to Defendant not to receive calls from
26 Defendant.

27 85. Defendant failed to honor Plaintiff and Class B members’ requests.

28 86. Upon information and belief, Defendant has not instituted procedures for maintaining a
list of persons who request not to receive telemarketing calls made by or on behalf of their behalf,
pursuant to 47 C.F.R. § 64.1200(d).

1 87. Because Plaintiff and Class B members received more than one telephone call in a 12-
2 month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200(d), as described
3 above, Defendant violated 47 U.S.C. § 227(c)(5).

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

7 89. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and members of
8 Class B are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or
9 willful violation, pursuant to 47 U.S.C. § 227(c)(5).

10 90. Plaintiff and members of Class B also suffered damages in the form of invasion of
11 privacy.

12 91. Plaintiff and members of Class B are also entitled to and seek injunctive relief
13 prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

14 **COUNT III**

15 **Violation of 47 U.S.C. § 227(c)(2)**

16 **(On behalf of Plaintiff and Class C – National Early/Late Calls Class)**

17 92. Plaintiff incorporate by reference all above paragraphs as though fully repeated herein.

18 93. The TCPA provides that any “person who has received more than one telephone call
19 within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed
20 under this subsection may” bring a private action based on a violation of said regulations, which were
21 promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations
22 to which they object. 47 U.S.C. § 227(c)(5).

23 94. Under 47 C.F.R. § 64.1200(c)(1), “[n]o person or entity shall initiate any telephone
24 solicitation to” “[a]ny residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local
25 time at the called party’s location).”

26 95. Defendant initiated more than one telephone solicitation to Plaintiff and Class B
27 members’ residential telephone line before 8 a.m. and/or after 9 p.m.

28

1 96. Because Plaintiff and Class B members received more than one telephone call in a 12-
2 month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200(c)(1), as described
3 above, Defendant violated 47 U.S.C. § 227(c)(5).

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

7 98. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and members of
8 Class B are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or
9 willful violation, pursuant to 47 U.S.C. § 227(c)(5).

10 99. Plaintiff and members of Class B also suffered damages in the form of invasion of
11 privacy.

12 100. Plaintiff and members of Class B are also entitled to and seek injunctive relief
13 prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

14 **COUNT IV**

15 **Violation of 47 U.S.C. § 227(b)(1)(B)**

16 **(On behalf of Plaintiff and Class D - National Artificial or Pre-recorded Message Class)**

17 101. Plaintiff incorporate by reference all above paragraphs as though fully repeated herein.

18 102. The TCPA prohibits a caller from initiating any telephone call to a residential telephone
19 line using an artificial or prerecorded voice to deliver a message without the prior express consent of
20 the contacted party unless the call was initiated for emergency purposes, is made solely to collect a debt
21 owed or guaranteed by the United States or is exempted by a FCC rule or order.

22 103. Defendant initiated multiple telephone calls using an artificial or prerecorded voice to
23 residential telephone lines to Plaintiff and other members of Class D.

24 104. Defendant failed to obtain prior express consent to initiate such calls.

25 105. By initiating unsolicited telephone calls to Plaintiff and Class D members' residential
26 telephone lines without prior express consent, and by using artificial or prerecorded messages to deliver
27 a message, Defendant has violated 47 U.S.C. § 227(b)(1)(B).

28

1 d. Defendant's practice of initiating calls to residential telephone using an artificial or pre-
2 recorded message is unlawful and a violation of the UCL.

3 e. Each of Defendant's violations of the TCPA and its regulations constitute a separate
4 and independent violation of the UCL because such conduct was illegal and unfair
5 competition within the meaning of the UCL.

6 113. Defendant's illegal business practices are immoral, unethical, oppressive, unscrupulous,
7 and/or substantially injurious to Plaintiff and members of the Classes.

8 114. Unless enjoined by this Court, Defendant will continue to engage in the illegal acts and
9 practices alleged above.

10 115. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Classes are therefore
11 entitled to an Order enjoining Defendant to cease the unlawful acts alleged herein and payment of their
12 attorneys' fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff and the Classes demand a jury trial on all claims so triable and
15 judgment as follows:

- 16 1. Statutory damages of \$500.00 for each negligent violation of the TCPA over the last
17 four years;
- 18 2. Statutory damages of \$1,500.00 for each knowing or willful violation of the TCPA over
19 the last four years;
- 20 3. Actual and punitive damages arising from Defendant's wrongful and illegal conduct;
- 21 4. A permanent injunction prohibiting Defendant from using artificial or prerecorded
22 messages to make calls without recipients' prior express consent;
- 23 5. Attorney's fees;
- 24 6. Litigation expenses and costs of the instant suit; and
- 25 7. Such other or further relief as the Court deems proper.

26 **JURY DEMAND**

27 Plaintiff demands trial by jury on all counts for which a jury trial is permitted.
28

1 Dated: September 13, 2018

Respectfully submitted,

2
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CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

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)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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 (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.