

1 Joshua Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com

2 Kevin Lemieux, Esq (SBN: 225886)
3 kevin@westcoastlitigation.com

HYDE AND SWIGART

4 2221 Camino Del Rio South, Suite 101
5 San Diego, CA 92108
6 Telephone: (619) 233-7770
7 Facsimile: (619) 297-1022

8 [Other Attorneys of Record Listed on Signature Page]

9 Attorneys for Plaintiff

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

<p>12 Rene Sandoval, Individually and 13 on behalf of All Others Similarly 14 Situated,</p> <p>15 Plaintiff,</p> <p>16 v.</p> <p>17 Friendlum, Inc., d/b/a Direct 18 Home Energy Solutions,</p> <p>19 Defendants.</p>	<p>Case No.: <u>'17CV1917 MMABGS</u></p> <p><u>CLASS ACTION</u></p> <p>CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227 ET SEQ.</p> <p>Jury Trial Demanded</p>
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20 **INTRODUCTION**

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- 23
- 24
- 25 1. Rene Sandoval (referred to individually as “Mr. Sandoval” or “Plaintiff”),
- 26 brings this class action for damages, injunctive relief, and any other available
- 27 legal or equitable remedies, resulting from the illegal actions of Friendlum,
- 28 Inc., d/b/a Direct Home Energy Solutions (referred to as “Defendants”), in



1 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's
2 cellular telephone, in violation of the Telephone Consumer Protection Act, 47
3 U.S.C. § 227, et seq., ("TCPA"), thereby invading Plaintiff's privacy.
4 Plaintiff alleges as follows upon personal knowledge as to himself and his
5 own acts and experiences, and, as to all other matters, upon information and
6 belief, including investigation conducted by his attorneys.

7 2. The TCPA was designed to prevent calls like the ones described within this
8 complaint, and to protect the privacy of citizens like Plaintiff. "Voluminous
9 consumer complaints about abuses of telephone technology – for example,
10 computerized calls dispatched to private homes – prompted Congress to pass
11 the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

12 3. In enacting the TCPA, Congress intended to give consumers a choice as to
13 how creditors and telemarketers may call them, and made specific findings
14 that "[t]echnologies that might allow consumers to avoid receiving such calls
15 are not universally available, are costly, are unlikely to be enforced, or place
16 an inordinate burden on the consumer." TCPA, Pub.L. No. 102-243, § 11.
17 Toward this end, Congress found that:

18 Banning such automated or prerecorded telephone calls to the
19 home, except when the receiving party consents to receiving the
20 call or when such calls are necessary in an emergency situation
21 affecting the health and safety of the consumer, is the only
22 effective means of protecting telephone consumers from this
23 nuisance and privacy invasion.

24 *Id.* at § 12; *see also, Martin v. Leading Edge Recovery Solutions, LLC*, 2012
25 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional finding
26 on TCPA's purpose).

27 4. Congress also specifically found that "the evidence presented to the Congress
28 indicates that automated or prerecorded calls are a nuisance and an invasion

1 of privacy, regardless of the type of call [...].” *Id.* At §§ 12-13. *See also,*
2 *Mims*, 132 S. Ct. at 744.

- 3 5. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case
4 regarding calls to a non-debtor similar to this one:

5 The Telephone Consumer Protection Act [...] is well known for its
6 provisions limiting junk-fax transmissions. A less litigated part of
7 the Act curtails the use of automated dialers and prerecorded
8 messages to cell phones, whose subscribers often are billed by the
9 minute as soon as the call is answered – and routing a call to
10 voicemail counts as answering the call. An automated call to a
landline phone can be an annoyance; an automated call to a cell
phone adds expense to annoyance.

11 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

12 **JURISDICTION AND VENUE**

- 13
- 14 6. Jurisdiction is proper under 47 U.S.C §227(b); *Mims v. Arrow Fin. Servs.,*
15 *LLC*, 132 S.Ct. 740 (2012), because Plaintiff alleges violations of federal law.
- 16 7. Venue is proper in the United States District Court for the Southern District of
17 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Plaintiff
18 works in San Diego, CA, and the events giving rise to Plaintiff’s causes of
19 action against Defendants occurred in the State of California within the
20 Southern District of California and Defendants conduct business in the area of
21 San Diego, California.

22 **PARTIES**

- 23
- 24 8. Plaintiff is, and at all times mentioned herein was, an individual citizen and
25 resident of the County of Riverside, in the State of California. Plaintiff works
26 in the County and City of San Diego, which was where he received the phone
27 calls referred to below.
- 28

1 9. Plaintiff is informed and believes, and thereon alleges, that Friendlum, Inc. is,
2 and at all times mentioned herein was, a Corporation registered in the state of
3 California and headquartered in Irvine, CA, and at all times mentioned herein
4 was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (39).

5 10. Plaintiff is informed and believes, and thereon alleges, that Friendlum, Inc. is
6 doing business as (d.b.a.) Direct Home Energy Solutions.

7 11. Plaintiff is informed and believes, and thereon alleges, that at all relevant
8 times, Defendants conducted business in the State of California and in the
9 County of San Diego, and within this judicial district.

10
11 **FACTUAL ALLEGATIONS**

12 12. At all times relevant, Plaintiff was a citizen of the State of California.
13 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
14 U.S.C § 153 (39).

15 13. Defendants are, and at all times mentioned herein were, “persons” as defined
16 by 47 U.S.C. §153 (39).

17 14. Sometime prior to July 1, 2016, Mr. Sandoval was assigned, and became the
18 owner of, a cellular telephone number from his wireless provider.

19 15. On or about September 6, 2017, Mr. Sandoval received a telephone call on his
20 cellular telephone from Defendants, in which Defendants utilized an
21 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
22 227(a)(1), using an “artificial or prerecorded voice” as prohibited by 47
23 U.S.C. § 227(b)(1)(A).

24 16. The call to Mr. Sandoval’s cellular telephone number (San Diego area code
25 (619) XXX-3868), from Defendants came at approximately 2:54 pm from
26 phone number: (619) 354-6212.

27 17. During this call from Defendants to Mr. Sandoval’s cellular telephone,
28 Plaintiff answered his phone and said “hello,” but there was no one on the

1 line. Plaintiff repeated “hello” about five times, then Plaintiff heard someone
2 ask if Mr. Sandoval was there.

3 18. The man introduced himself as Eddie from Direct Home Energy Solutions,
4 and asked Plaintiff about his windows. Eddie was inquiring about a home in
5 San Diego, CA where Plaintiff used to live.

6 19. Plaintiff asked Eddie how he got his phone number and Eddie responded he
7 didn’t know, that it was “auto-dialed.”

8 20. Approximately twelve minutes later, at 3:06 PM, Plaintiff received a call from
9 (949) 537-7860. Plaintiff was busy and could not answer the call.

10 21. Plaintiff thought the missed call might be work related, so he called the
11 number back a few minutes later. It was not a work-related call, as the
12 number rang to someone named “Jessica” who stated that she had called
13 Plaintiff because he recently spoke to one of her employees about home
14 energy.

15 22. Jessica said she was calling from Direct Home Energy Solutions.

16 23. Jessica requested that Plaintiff make an appointment with her supervisor to
17 come out to his house to discuss home energy solutions. Plaintiff told Jessica
18 that he was not interested and not to call him again.

19 24. After Plaintiff instructed Jessica to not call him anymore because he was not
20 interested, he received three more calls from her, one right after the other.

21 25. The three subsequent calls came from phone number (949) 537-7860 and they
22 came one right after the other at 3:11 PM.

23 26. The ATDS used by Defendants has the capacity to store or produce telephone
24 numbers to be called, using a random or sequential number generator.

25 27. The ATDS used by Defendants also has the capacity to, and does, call
26 telephone numbers from a list of databases of telephone numbers
27 automatically and without human intervention.
28

1 28. The telephone number Defendants called was assigned to a cellular telephone
2 service for which Plaintiff incurred a charge for incoming calls pursuant to 47
3 U.S.C. § 227 (b)(1).

4 29. Plaintiff at no time provided “prior express consent” for Defendants to place
5 telephone calls to Plaintiff’s cellular telephone with an artificial or
6 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. § 227(b)
7 (1)(A).

8 30. Plaintiff had not provided his cellular telephone number to Defendants.
9 Plaintiff was not a customer of Defendants. Plaintiff had no “established
10 business relationship” with Defendants, as defined by 47 U.S.C. § 227 (a)(2).

11 31. These telephone calls made by Defendants or their agents were in violation of
12 47 U.S.C. § 227(b)(1).

13 14 **STANDING**

15 32. Standing is proper under Article III of the Constitution of the United States of
16 America because Plaintiff’s claims state:

- 17 a. a valid injury in fact;
18 b. which is traceable to the conduct of Defendants;
19 c. and is likely to be redressed by a favorable judicial decision.

20 See, *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016) at 6, and *Lujan v.*
21 *Defenders of Wildlife*, 504 U.S. 555 at 560.

22 33. In order to meet the standard laid out in *Spokeo* and *Lujan*, Plaintiff must
23 clearly allege facts demonstrating all three prongs above.

24 25 **A. The “Injury in Fact” Prong**

26 34. Plaintiff’s injury in fact must be both “concrete” and “particularized” in order
27 to satisfy the requirements of Article III of the Constitution, as laid out in
28 *Spokeo (Id.)*.

1 35. For an injury to be “concrete” it must be a *de facto* injury, meaning that it
2 actually exists. In the present case, Plaintiff was called on his cellular phone
3 by Defendants, who utilized an ATDS and/or a pre-recorded voice. Such calls
4 are a nuisance, an invasion of privacy, and an expense to Plaintiff. *Soppet v.*
5 *Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of
6 these injuries are concrete and *de facto*.

7 36. For an injury to be “particularized” means that the injury must “affect the
8 plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins*, 578 U.S.
9 ____ (2016) at 7. In the instant case, it was Plaintiff’s phone that was called
10 and it was plaintiff himself who answered the calls. It was Plaintiff’s personal
11 privacy and peace that was invaded by Defendant’s phone call using an
12 ATDS. Finally, Plaintiff alone is responsible to pay the bill on his cellular
13 phone. All of these injuries are particularized and specific to Plaintiff, and
14 will be the same injuries suffered by each member of the putative class.

15
16 **B. *The “Traceable to the Conduct of Defendants” Prong***

17 37. The second prong required to establish standing at the pleadings phase is that
18 Plaintiff must allege facts to show that his injury is traceable to the conduct of
19 Defendants(s).

20 38. In the instant case, this prong is met simply by the fact that the calls to
21 plaintiff’s cellular phone were placed either, by Defendants directly, or by
22 Defendants’ agent at the direction of Defendants.

23
24 **C. *The “Injury is Likely to be Redressed by a Favorable Judicial Opinion”***
25 ***Prong***

26 39. The third prong to establish standing at the pleadings phase requires Plaintiff
27 to allege facts to show that the injury is likely to be redressed by a favorable
28 judicial opinion.

1 40. In the present case, Plaintiff's Prayers for Relief include a request for
2 damages for each call made by Defendants, as authorized by statute in 47
3 U.S.C. § 227. The statutory damages were set by Congress and specifically
4 redress the financial damages suffered by Plaintiff and the members of the
5 putative class.

6 41. Furthermore, Plaintiff's Prayers for Relief request injunctive relief to restrain
7 Defendants from the alleged abusive practices in the future. The award of
8 monetary damages and the order for injunctive relief redress the injuries of
9 the past, and prevent further injury in the future.

10 42. Because all standing requirements of Article III of the U.S. Constitution have
11 been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), Plaintiff
12 has standing to sue Defendants on the stated claims.

13 14 **CLASS ACTION ALLEGATIONS**

15 43. Plaintiff brings this action on behalf of himself and on behalf of all others
16 similarly situated ("the Class").

17 44. Plaintiff represents, and is a member of, the Class, consisting of:

- 18 a. All persons within the United States who had or have a number
19 assigned to a cellular telephone service, who received at least one call
20 using an ATDS and/or an artificial prerecorded voice from Defendants
21 Friendlum, Inc., d/b/a Direct Home Energy Solutions, between the date
22 of filing this action and the four years preceding, where such calls were
23 placed for the marketing purposes, to non-customers of Defendants
24 Friendlum, Inc., d/b/a Direct Home Energy Solutions, at the time of the
25 calls.

26 45. Defendants and their employees or agents are excluded from the Class.
27 Plaintiff does not know the number of members in the Class, but believes the
28 Class members number in the thousands, if not more. Thus, this matter

1 should be certified as a Class action to assist in the expeditious litigation of
2 this matter.

3 46. Plaintiff and members of the Class were harmed by the acts of Defendants in
4 at least the following ways: Defendants illegally contacted Plaintiff and the
5 Class members via their cellular telephones thereby causing Plaintiff and the
6 Class members to incur certain cellular telephone charges or reduce cellular
7 telephone time for which Plaintiff and the Class members previously paid, by
8 having to retrieve or administer messages left by Defendants or their agents,
9 during those illegal calls, and invading the privacy of said Plaintiff and the
10 Class members. Plaintiff and the Class members were damaged thereby.

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

17 48. The joinder of the Class members is impractical and the disposition of their
18 claims in the Class action will provide substantial benefits both to the parties
19 and to the Court. The Class can be identified through Defendants' records
20 and/or Defendants' agent's records.

21 49. There is a well-defined community of interest in the questions of law and fact
22 involved affecting the parties to be represented. The questions of law and fact
23 to the Class predominate over questions which may affect individual Class
24 members, including the following:

- 25 i. Whether, within the four years prior to the filing of the
26 Complaint, Defendants made any call(s) (other than a call made
27 for emergency purposes or made with the prior express consent
28 of the called party) to the Class members using any ATDS or an

1 artificial or prerecorded voice to any telephone number assigned
2 to a cellular telephone service;

3 ii. Whether Defendants called non-customers of Defendants for
4 marketing purposes;

5 iii. Whether Plaintiff and the Class members were damaged thereby,
6 and the extent of damages for such violation(s); and

7 iv. Whether Defendants should be enjoined from engaging in such
8 conduct in the future.

9 50. As a person that received calls from Defendants in which Defendants used an
10 ATDS or an artificial or prerecorded voice, without Plaintiff's prior express
11 consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
12 fairly and adequately represent and protect the interests of the Class in that
13 Plaintiff has no interests antagonistic to any member of the Class.

14 51. Plaintiff and the members of the Class have all suffered irreparable harm as a
15 result of the Defendants' unlawful and wrongful conduct. Absent a class
16 action, the Class will continue to face the potential for irreparable harm. In
17 addition, these violations of law will be allowed to proceed without remedy
18 and Defendants will likely continue such illegal conduct. The size of Class
19 member's individual claims causes, few, if any, Class members to be able to
20 afford to seek legal redress for the wrongs complained of herein.

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

23 53. A class action is a superior method for the fair and efficient adjudication of
24 this controversy. Class-wide damages are essential to induce Defendants to
25 comply with federal and California law. The interest of Class members in
26 individually controlling the prosecution of separate claims against Defendants
27 is small because the maximum statutory damages in an individual action for
28 violation of privacy are minimal. Management of these claims is likely to

1 present significantly fewer difficulties than those that would be presented in
2 numerous individual claims.

3 54. Defendants have acted on grounds generally applicable to the Class, thereby
4 making appropriate final injunctive relief and corresponding declaratory relief
5 with respect to the Class as a whole.

6
7 **FIRST CAUSE OF ACTION:**
8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
9 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

10 55. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 56. The foregoing acts and omissions of Defendants constitute numerous and
13 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 et seq.

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

18 58. Plaintiff and the Class are also entitled to and seek injunctive relief
19 prohibiting such conduct in the future.

20 **SECOND CAUSE OF ACTION:**
21 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
22 **CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

23 59. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 60. The foregoing acts and omissions of Defendants constitute numerous and
26 multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above-cited provisions of 47 U.S.C. §
28 227 et seq.

1 61. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §
2 227 et seq., Plaintiff and each of the Class are entitled to treble damages, as
3 provided by statute, up to \$1,500.00, for each and every violation, pursuant to
4 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

5 62. Plaintiff and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7
8 **PRAYER FOR RELIEF**

9 63. Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the
10 Class members the following relief against Defendants:

11
12 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
13 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

14 64. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),
15 Plaintiff seeks for himself and each Class member \$500.00 in statutory
16 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

17 65. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
18 conduct in the future.

19 66. Any other relief the Court may deem just and proper.

20 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
21 **VIOLATION**
22 **OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

23 67. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §
24 227(b)(1), Plaintiff seeks for himself and each Class member treble damages,
25 as provided by statute, up to \$1,500.00 for each and every violation, pursuant
26 to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

27 68. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
28 conduct in the future.

1 69. Any other relief the Court may deem just and proper.

2
3 **TRIAL BY JURY**

4 70. Pursuant to the seventh amendment to the Constitution of the United States of
5 America, Plaintiff is entitled to, and demands, a trial by jury.

6
7 Respectfully submitted,

8 Date: September 20, 2017

HYDE & SWIGART

9
10 By: s/Kevin Lemieux
11 Kevin Lemieux
12 Attorneys for Plaintiff

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16 **Other Attorneys of Record, besides caption page:**

17
18 Abbas Kazerounian, Esq. (SBN: 249203)
19 ak@kazlg.com
20 **KAZEROUNI LAW GROUP, APC**
21 245 Fischer Avenue, Suite D1
22 Costa Mesa, CA 92626
23 Telephone: (800) 400-6808
24 Facsimile: (800) 520-5523
25
26
27
28

