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18	UNITED STATE	S DISTRICT COURT
19		ICT OF CALIFORNIA
20	WESTER	RN DIVISION
21	JENNY BROWN and CARMEN	Case No. 2:13-cv-01170-DMG-E
22	MONTIJO, on behalf of themselves and all others similarly situated,	FIFTH AMENDED COMPLAINT
23	Plaintiffs,	FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO 47 U.S.C. § 227, ET SEQ. (TELEPHONE CONSUMER PROTECTION ACT)
24	v.	CONSUMER PROTECTION ACT)
25	DIRECTV, LLC,	CLASS ACTION
26	Defendant.	JURY TRIAL DEMANDED
27		
28		
		FIFTH AMENDED CLASS ACTION COMPLAINT FOR
	2154544.2	DAMAGES AND INJUNCTIVE RELIEF CASE NO. 2:13-CV-01170-DMG-E

Plaintiffs Jenny Brown and Carmen Montijo, individually and on behalf of
 all others similarly situated, makes the following allegations and claims against
 Defendant DIRECTV, LLC ("Defendant"), upon their personal knowledge, the
 investigation of their counsel, and information and belief as follows:

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INTRODUCTION

Plaintiffs bring this action against Defendant for violations of the 1. 6 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. ("TCPA"), the 7 Federal Communication Commission rules promulgated thereunder, 47 C.F.R. 8 9 §64.1200 ("Rules"), by Defendant and its present, former, and/or future direct and indirect predecessors, parent companies, subsidiaries, affiliates, agents, and/or 10 related entities. Defendant has violated the TCPA and Rules by making telephone 11 calls to Plaintiffs and others similarly situated on their cellular telephones with the 12 use of "an artificial or prerecorded voice" (collectively, "Voice") as described in 47 13 U.S.C. § 227(b)(1)(A) and/or an "automatic telephone dialing system" ("ATDS"), 14 as defined by 47 U.S.C. § 227(a)(1), without their prior express consent within the 15 meaning of the TCPA and the Rules. 16

2. On December 12, 2005, the United States Department of Justice, 17 acting on behalf of the Federal Trade Commission ("FTC" or "Commission"), filed 18 a complaint for civil penalties and injunctive relief against Defendant DIRECTV, 19 20 LLC ("DIRECTV") and telemarketing companies it hired to promote DIRECTV programming for violating the TCPA, the FTC Act, and the Do Not Call provisions 21 of the Commission's Telemarketing Sales Rule. See Complaint, United States v. 22 23 *DirecTV*, *Inc.*, *et al.*, No. 05-1211 (C.D. Cal. Dec. 12, 2005). According to the 24 Complaint, DIRECTV engaged several telemarketing firms and individuals that, "acting on behalf of DIRECTV," engaged in telemarketing conduct that violated 25 the TCPA. The Complaint states that DIRECTV either knew or consciously 26 27 avoided knowing the methods by which their telemarketers were promoting DIRECTV's programming. 28

3. 1 Two days later, on December 14, 2005, DIRECTV and its telemarketers settled the FTC charges against them for \$5,335,000, which was, at 2 that time, the largest penalty announced by the FTC for violation of a consumer 3 protection law. DIRECTV also entered into a permanent injunction requiring it, 4 among other things, to monitor all telemarketing campaigns conducted by its 5 6 authorized telemarketers to confirm that "[n]ot more than three percent (3%) of telemarketing calls answered by a person, measured per day per calling campaign, 7 are being connected to a pre-recorded message in lieu of a live sales call." 8

9 4. Notwithstanding these prior violations of the TCPA and the FTC
10 settlement, Defendant has violated the TCPA and the Rules by making calls to
11 Plaintiffs and others similarly situated on their cellular telephones with the use of a
12 Voice and/or an ATDS without their prior express consent within the meaning of
13 the TCPA.

14 5. Plaintiffs bring this action for damages, and other legal and equitable
15 remedies, resulting from Defendant's conduct in violation of the TCPA and the
16 Rules.

JURISDICTION AND VENUE

Pursuant to 28 U.S.C. § 1331, this Court has original subject matter 6. 18 19 jurisdiction over the claims set forth herein arising under the TCPA and the Rules. In addition, this matter in controversy exceeds \$5,000,000, as each 7. 20 member of the proposed Class of at least tens of thousands is entitled to up to 21 \$1,500.00 in statutory damages for each call that violated the TCPA and the Rules. 22 Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). 23 Further, Plaintiffs allege a national Class, which will result in at least one Class 24 member belonging to a different state. Therefore, both elements of diversity 25 jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and 26 this Court has jurisdiction. 27

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1	8. Venue is proper in the United States District Court for the Central		
2	District of California pursuant to 28 U.S.C. §§ 1391(b), (c) and (d), because		
3	Defendant is deemed to reside in any judicial district in which it is subject to		
4	personal jurisdiction at the time the action is commenced. DIRECTV resides in and		
5	has its principal place of business in the Central District of California.		
6	PARTIES		
7	9. At all times pertinent hereto, Plaintiff Jenny Brown resided in the St.		
8	Louis, Missouri area.		
9	10. Plaintiff Carmen Montijo resides in Orlando, Florida.		
10	11. DIRECTV is a leading provider of digital television entertainment		
11	throughout the United States, acquiring, promoting, selling, and distributing digital		
12	entertainment programming primarily via satellite to millions of residential and		
13	commercial subscribers.		
14	12. At all times pertinent hereto prior to December 22, 2011, DIRECTV,		
15	Inc. was a corporation organized and existing under the laws of the State of		
16	California.		
17	13. Since July 2002, DIRECTV has been, and remains, a limited liability		
18	company organized and existing under the laws of the State of California and		
19	having its principal place of business at 2230 E. Imperial Highway, El Segundo,		
20	California 90245.		
21	14. Effective December 22, 2011, DIRECTV, Inc. merged into DIRECTV,		
22	with the latter becoming the surviving limited liability company; and by virtue of		
23	this merger, DIRECTV assumed, and succeeded to, all of the liabilities of		
24	DIRECTV, Inc., including liability for the TCPA claims alleged herein.		
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	- 3 - FIFTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF CASE NO. 2:13-CV-01170-DMG-E		

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA), 47 U.S.C. § 227

In 1991, Congress enacted the TCPA¹ in response to a growing 15. number of consumer complaints regarding certain telemarketing practices.

The TCPA regulates, among other things, the use of Voice and ATDS. 16. 5 Specifically, the plain language of section 227(b)(1)(A) prohibits the use of an 6 ATDS to make any call to a wireless number, or to use a Voice during such a call, 7 in the absence of an emergency or the prior express consent of the called party.² 8

17. According to findings by the FCC, the agency Congress vested with 9 authority to issue regulations implementing the TCPA, such calls are prohibited 10 because, as Congress found, telephone calls using a Voice or an ATDS are a greater 11 nuisance and invasion of privacy than live solicitation calls, and such calls can be 12 costly and inconvenient. The FCC also recognized that wireless customers are 13 charged for incoming calls whether they pay in advance or after the minutes are 14 used.³ 15

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18. On January 4, 2008, the FCC released a Declaratory Ruling wherein it 16 confirmed that Voice and ATDS debt collection calls to a wireless number by a 17 creditor or a debt collector are permitted only if the calls are made with the "prior 18 express consent" of the called party.⁴ The FCC "emphasize[d] that prior express 19 consent is deemed to be granted only if the wireless number was provided by the 20 consumer to the creditor, and that such number was provided during the transaction 21 that resulted in the debt owed."⁵ 22

⁵ FCC Declaratory Ruling, 23 F.C.C.R. at 564-65 (¶ 10). - 4 -

²³

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991). 24 codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq.

²⁵ ² 47 U.S.C. § 227(b)(1)(A).

³ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG 26 Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁴ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 ("FCC Declaratory Ruling"), 23 F.C.C.R. 559, 23 FCC Red. 559, 43 Communications Reg. 27 (P&F) 877, 2008 WL 65485 (F.C.C.) (2008). 28

19. The Declaratory Ruling further dictates that: "a creditor on whose
 behalf an autodialed or prerecorded message call is made to a wireless number
 bears the responsibility for any violation of the Commission's rules. Calls placed
 by a third party collector on behalf of that creditor are treated as if the creditor itself
 placed the call."⁶

20. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
Ruling, the burden is on Defendant to demonstrate that Plaintiffs and Class
Members (as defined below) gave their prior express consent to a Voice or an
ATDS call to their cell phone within the meaning of the statute.⁷

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FACTUAL ALLEGATIONS

At all times pertinent hereto, DIRECTV has carried on its business by 21. 11 engaging third-party debt collectors, including but not limited to Credit 12 Management, LP and Diversified Consultants, Inc. (collectively, "DIRECTV Debt 13 Collectors") who, acting on behalf of DIRECTV, have made telephone calls to the 14 cellular telephones of consumers for purposes of collecting debts allegedly owed by 15 them to DIRECTV. DIRECTV has controlled or had the right to control the 16 DIRECTV Debt Collectors, including through written contracts that require 17 DIRECTV Debt Collectors to collect debt on behalf of DIRECTV and by supplying 18 the DIRECTV Debt Collectors with the names and/or telephone numbers of 19 20 consumers to be called. DIRECTV has directly benefitted from such calls because, among other reasons, DIRECTV Debt Collectors request that consumers pay such 21 debts directly to DIRECTV and DIRECTV has received payments pursuant to such 22 requests. 23

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I.

- <u>Challenged Practice: DIRECTV Debt Collectors' Calls To Cellular</u> <u>Telephones Using A Voice And/Or An ATDS</u>
- 25
 22. At all times pertinent hereto, the DIRECTV Debt Collectors, including
 but not limited to Credit Management, LP ("CMI") and Diversified Consultants,
- 28 ⁶ *Id.* ⁷ See FCC Declaratory Ruling, 23 F.C.C.R. at 565 (¶ 10).

Inc. ("DCI"), have utilized a Voice during debt collection calls made on behalf of
 DIRECTV to the cellular telephones of consumers who had not, during the
 transaction that resulted in the debt, previously given DIRECTV express consent to
 receive such calls.

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23. Calls utilizing a Voice allow DIRECTV to collect more debt.

At all times pertinent hereto, DIRECTV has been aware that its
DIRECTV Debt Collectors have utilized a Voice during debt collection calls made
on behalf of DIRECTV. For example, prior to March 26, 2012, The CMI Group,
Inc.'s public website (http://thecmigroup.com) stated that one of The CMI Group's
"industry innovations" was "agentless' recorded messages as reminders."

25. At all times pertinent hereto, DIRECTV Debt Collectors have also
 utilized a Voice, including a predictive dialer, to make debt collection calls on
 behalf of Defendant DIRECTV to the cellular telephones of consumers who had
 not, during the transaction that resulted in the debt, previously given DIRECTV
 express consent to receive such calls.

26. A predictive dialer is an ATDS within the meaning of the TCPA,
because it is equipment that, when paired with certain computer software, has the
capacity to store or produce telephone numbers to be called and without human
intervention to dial such numbers at random, in sequential order, and/or from a
database of numbers.

27. DIRECTV has entered into written contracts with its DIRECTV Debt
Collectors to use predictive dialers. For example, the terms of the Collection
Services Agreement utilized by Credit Management, LP require that consumers be
contacted "via mail and predictive dialer in an effort to collect on past due
balances." *See Lee v. Credit Mgmt., LP*, 2012 WL 113793, at *11 & n. 17 (S.D.
Tex. 2012).

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28. Calls utilizing an ATDS allow DIRECTV to collect more debt.

1	29. At all times pertinent hereto, DIRECTV has been aware that its
2	DIRECTV Debt Collectors have utilized an ATDS because, <i>inter alia</i> , the use of an
3	ATDS is standard industry practice among third-party debt collectors and because
4	The CMI Group, Inc. detailed The CMI Group's debt collection techniques on its
5	public website. For example, prior to March 26, 2012, The CMI Group, Inc.'s
6	public website (http://thecmigroup.com) stated (A) that The CMI Group's
7	"predictive dialer enables us to reach more of our client's customers while
8	maintaining a cost-effective approach" and (B) that The CMI Group's "dialer ***
9	completes call campaigns more quickly *** conducts the most effective calling
10	strategies *** ."
11	30. On information and belief, within the past four years, DIRECTV Debt
12	Collectors have made thousands of Voice and/or ATDS calls on behalf of
13	DIRECTV to the cellular telephones of consumers who had not, during the
14	transaction that resulted in the debt, previously given DIRECTV prior express
15	consent to receive such calls.
16	II. <u>Plaintiff Jenny Brown</u>
16 17	II.Plaintiff Jenny Brown31.Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C.
17	31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C.
17 18	31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C.§ 153(39).
17 18 19	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls
17 18 19 20	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone.
17 18 19 20 21	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls
 17 18 19 20 21 22 	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls from Credit Management, LP on at least the following dates:
 17 18 19 20 21 22 23 	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls from Credit Management, LP on at least the following dates: a. July 13, 2011;
 17 18 19 20 21 22 23 24 	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls from Credit Management, LP on at least the following dates: a. July 13, 2011; b. July 15, 2011;
 17 18 19 20 21 22 23 24 25 	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls from Credit Management, LP on at least the following dates: a. July 13, 2011; b. July 15, 2011; c. July 19, 2011 (two calls);
 17 18 19 20 21 22 23 24 25 26 	 31. Plaintiff Jenny Brown is a "person" as defined by 47 U.S.C. § 153(39). 32. In 2011, Plaintiff Brown began receiving automated telephone calls from CMI on her cellular telephone. 33. For example, Plaintiff Brown's records show that she received calls from Credit Management, LP on at least the following dates: a. July 13, 2011; b. July 15, 2011; c. July 19, 2011 (two calls); d. July 21, 2011;

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1	3	4. Defendant made other calls, too, of which Plaintiff Brown was unable	
2	to make a record.		
3	3	5. Plaintiff Brown has no relationship with defendant Credit	
4	Management, LP.		
5	3	6. Plaintiff Brown has no relationship with defendant DIRECTV. There	
6	exists no contract between Plaintiff Brown and DIRECTV, for arbitration or		
7	otherwi	ise.	
8	3	7. Credit Management, LP, acting on behalf of DIRECTV, utilized a	
9	predict	we dialer to make all of the calls described above.	
10	3	8. Credit Management, LP, acting on behalf of DIRECTV, utilized a	
11	Voice d	luring at least some of the calls described above.	
12	3	9. All of the calls described above were made by Credit Management,	
13	LP, on behalf of DIRECTV, to Plaintiff Brown's cellular telephone solely to collect		
14	a debt a	allegedly owed to DIRECTV.	
15	III. <u>I</u>	<u>Plaintiff Carmen Montijo</u>	
15 16		Plaintiff Carmen Montijo 0. Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C.	
		0. Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C.	
16	4 § 153(3	0. Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C.	
16 17	4 § 153(3 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. 9). 	
16 17 18	4 § 153(3 4 cellular	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her 	
16 17 18 19	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her telephone. 	
16 17 18 19 20	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her telephone. For example, Defendant's records show that she received calls from 	
16 17 18 19 20 21	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her telephone. For example, Defendant's records show that she received calls from at least the following dates: 	
16 17 18 19 20 21 22	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her telephone. For example, Defendant's records show that she received calls from at least the following dates: a. June 19, 2013 (two calls); 	
 16 17 18 19 20 21 22 23 	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on her telephone. For example, Defendant's records show that she received calls from at least the following dates: a. June 19, 2013 (two calls); b. June 20, 2013; 	
 16 17 18 19 20 21 22 23 24 	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on here telephone. For example, Defendant's records show that she received calls from at least the following dates: a. June 19, 2013 (two calls); b. June 20, 2013; c. June 25, 2013 (two calls); 	
 16 17 18 19 20 21 22 23 24 25 	4 § 153(3 4 cellular 4	 Plaintiff Carmen Montijo is a "person" as defined by 47 U.S.C. Plaintiff Montijo received automated telephone calls from DCI on here telephone. For example, Defendant's records show that she received calls from at least the following dates: a. June 19, 2013 (two calls); b. June 20, 2013; c. June 25, 2013 (two calls); d. June 28, 2013; 	

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1	43. Plaintiff Montijo has no relationship with DCI.		
2	44. Plaintiff Montijo has no relationship with defendant DIRECTV. There		
3	exists no contract between Plaintiff Montijo and DIRECTV, for arbitration or		
4	otherwise.		
5	45. DCI, acting on behalf of DIRECTV, utilized a predictive dialer to		
6	make all of the calls described above.		
7	46. DCI, acting on behalf of DIRECTV, utilized a Voice during at least		
8	some of the calls described above.		
9	47. All of the calls described above were made by DCI on behalf of		
10	DIRECTV, to Plaintiff Montijo's cellular telephone solely to collect a debt		
11	allegedly owed to DIRECTV.		
12	CLASS ACTION ALLEGATIONS		
13	48. Plaintiffs bring this action on behalf of themselves and on behalf of all		
14	other persons similarly situated (the "Class").		
15	49. Plaintiffs propose the following class definition for the Class, subject		
16	to amendment as appropriate:		
17	All persons residing within the United States who, within four years prior to and after the filing of this action,		
18	received a non-emergency telephone call(s) from DIRECTV and/or its third-party debt collectors regarding		
19	received a non-emergency telephone call(s) from DIRECTV and/or its third-party debt collectors regarding a debt allegedly owed to DIRECTV, to a cellular phone through the use of an artificial or prerecorded voice, and		
20	who has not been a DIRECTV customer at any time since October 1, 2004		
21	Plaintiffs represent, and are members of, the Class. Excluded from the Class are		
22	DIRECTV and any entities in which DIRECTV has a controlling interest,		
23	DIRECTV's agents and employees, any Judge and Magistrate Judge to whom this		
24	action is assigned and any member of such Judges' staffs and immediate families,		
25	claims related to telemarketing calls, and claims for personal injury, wrongful death		
26	and/or emotional distress.		
27			
28	DETU MENDED OF 102 LOTION ON THE DOD		
28	6 FIFTH AMENDED CLASS ACTION COMPLAINT FOR		

50. 1 Plaintiffs reasonably believe that Class members number at minimum in the hundreds of thousands. 2 51. The identity of the Class members can be readily ascertained from the 3 records of Defendant. 4 52. Plaintiffs and all members of the Class have been harmed by the acts 5 6 of Defendant in that many of them were charged additional money for the cell phone minutes taken up by Defendant's illegal calls, and all have had their privacy 7 invaded and been inconvenienced by such calls. 8 This Class Action Complaint seeks injunctive relief, declaratory relief, 9 53. and damages. 10

54. The joinder of all Class members is impracticable due to the size of
each class and the relatively modest value of each individual claim. The disposition
of the claims in a class action will provide substantial benefit to the parties and the
Court in avoiding a multiplicity of identical suits.

15 55. There are well-defined, nearly identical, questions of law and fact
16 affecting all parties. The questions of law and fact involving the class claims
17 predominate over questions which may affect individual Class members. Those
18 common questions of law and fact include, but are not limited to, the following:

a. Whether the non-emergency calls made to Plaintiffs' and Class
members' cellular telephones used a Voice and/or an ATDS;

b. Whether such calls were made by or on behalf of Defendant;
c. Whether the Defendant can meet its burden of showing it
obtained prior express consent (*i.e.*, consent that is clearly and unmistakably stated),
during the transaction that resulted in the debt owed, to make such calls;
d. Whether the Defendant's conduct was knowing and/or willful;

e. Whether the Defendant is liable for damages, and the amount of
such damages; and

f. Whether the Defendant should be enjoined from engaging in such conduct in the future. 2

As persons who received numerous and repeated telephone calls using 3 56. an ATDS and/or a Voice, without their prior express consent within the meaning of 4 the TCPA, Plaintiffs assert claims that are typical of each Class member. Plaintiffs 5 6 will fairly and adequately represent and protect the interests of the Class, and have no interests which are antagonistic to any member of the Class. 7

57. Plaintiffs have retained counsel experienced in handling class action 8 9 claims involving violations of federal and state consumer protection statutes, including class action claims under the TCPA. 10

A class action is the superior method for the fair and efficient 11 58. adjudication of this controversy. Classwide relief is essential to compel Defendant 12 to comply with the TCPA and the Rules. The interest of Class members in 13 individually controlling the prosecution of separate claims against Defendant is 14 small because the statutory damages in an individual action for violation of the 15 TCPA and the Rules are relatively small. Management of these claims is likely to 16 present significantly fewer difficulties than are presented in many class claims 17 because the calls at issue are all automated and the Class members, by definition, 18 did not provide the prior express consent required under the statute to authorize 19 20 calls to their cellular telephones.

59. Defendant has acted on grounds generally applicable to the Class, 21 thereby making final injunctive relief and corresponding declaratory relief with 22 23 respect to the Class as a whole appropriate. Moreover, on information and belief, Plaintiffs allege that the TCPA and the Rules violations complained of herein are 24 substantially likely to continue in the future if an injunction is not entered. 25

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CAUSES OF ACTION 1 FIRST COUNT 2 KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE 3 CONSUMER PROTECTION ACT, 47 U.S.C. § 227 ET SEO., AND THE FCC RULES PROMULGATED THEREUNDER, 47 C.F.R. §64.1200 4 (On Behalf of Plaintiffs and All Class Members) 5 6 Plaintiffs incorporate by reference the foregoing paragraphs of this 60. 7 Complaint as if fully stated herein. 8 61 The foregoing acts and omissions of Defendant constitute numerous 9 and multiple knowing and/or willful violations of the TCPA and Rules, including 10 but not limited to each of the above-cited provisions of 47 U.S.C. § 227 et seq. 11 62. As a result of Defendant's knowing and/or willful violations of 47 12 U.S.C. § 227 et seq. and 47 C.F.R. §64.1200, Plaintiffs and members of the Class 13 are entitled to treble damages of up to \$1,500.00 for each and every call made in 14 violation of the statute and Rules, pursuant to 47 U.S.C. 227(b)(3)(C). 15 63 Plaintiffs and all Class members are also entitled to and do seek 16 injunctive relief prohibiting such conduct violating the TCPA and Rules by 17 Defendant in the future. 18 64. Plaintiffs and Class members are also entitled to an award of attorneys' 19 fees and costs on an equitable basis to be paid through a "common fund," or similar 20 theory. 21 **SECOND COUNT** 22 VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 23 47 U.S.C. 227 ET SEO.. AND THE FCC RULES PROMUL **THEREUNDER, 47 C.F.R. §64.1200** 24 (On Behalf of Plaintiffs and All Class Members) 25 65. Plaintiffs incorporate by reference the foregoing paragraphs of this 26 Complaint as if fully set forth herein. 27 28 FIFTH AMENDED CLASS ACTION COMPLAINT FOR - 12 -DAMAGES AND INJUNCTIVE RELIEF

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1	66. The foregoing acts and omissions of Defendant constitute numerous
2	and multiple violations of the TCPA and Rules, including but not limited to each of
3	the above cited provisions of 47 U.S.C. § 227 et seq.
4	67. As a result of Defendant's violations of 47 U.S.C. § 227 et seq. and 47
5	C.F.R. § 64.1200 Plaintiffs and Class members are entitled to an award of \$500.00
6	in statutory damages for each and every call made in violation of the statute and
7	Rules, pursuant to 47 U.S.C. § 227(b)(3)(B).
8	68. Plaintiffs and Class members are also entitled to and do seek injunctive
9	relief prohibiting Defendant's violation of the TCPA and Rules in the future.
10	69. Plaintiffs and Class members are also entitled to an award of attorneys'
11	fees and costs on an equitable basis to be paid out of a common fund, or similar
12	theory.
13	PRAYER FOR RELIEF
14	WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs
15	and all Class members the following relief against Defendant:
16	A. Injunctive relief prohibiting such violations of the TCPA and the Rules
17	by Defendant in the future;
18	B. As a result of Defendant's willful and/or knowing violations of 47
19	U.S.C. § 227(b)(1) and 47 C.F.R. § 64.1200, Plaintiffs seek for themselves and
20	each Class member treble damages, as provided by statute, of up to \$1,500.00 for
21	each and every call that violated the TCPA and Rules;
22	C. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1) and 47
23	C.F.R. § 64.1200, Plaintiffs seek for themselves and each Class member \$500.00 in
24	statutory damages for each and every call that violated the TCPA and Rules;
25	D. An award of reasonable attorneys' fees and costs to counsel for
26	Plaintiffs and the Class on an equitable basis, for example, paid out of a "common
27	fund";
28	E. An order certifying this action to be a proper class action pursuant to

1	Federal Rule of Civil Procedure	23, establishing the appropriate Class, as the Court
2	deems appropriate, finding that	Plaintiffs are proper representatives of the Class,
3	and appointing the lawyers and	law firms representing Plaintiffs as counsel for the
4	Class; and	
5	F. Such other relief as	s the Court deems just and proper.
6	Dated: May 7, 2021	By: <u>/s/ Michael J. Boyle, Jr.</u> Michael J. Boyle, Jr.
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		- 14 - FIFTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIED

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	- 15 - FIFTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF CASE NO. 2:13-CV-01170-DMG-E

1	DEMAND	έωρ μίρν τριλι
1	DEMAND FOR JURY TRIAL Dursuant to Endered Pule of Civil Procedure 28(b) Plaintiffs domand a trial	
2	Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.	
3	by jury of any and an issues in this act	ion so triable of right.
4		
5 6	Dated: May 7, 2021	By: <u>/s/ Michael J. Boyle, Jr.</u> Michael J. Boyle, Jr.
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		- 16 - FIFTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF CASE NO. 2:13-CV-01170-DMG-E

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	- 17 - FIFTH AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF CASE NO. 2:13-CV-01170-DMG-E