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22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 IN RE: MIDLAND CREDIT MANAGEMENT,) Case No. 11-md-2286-MMA (MDD)
25 INC., TELEPHONE CONSUMER) Member cases: 10-cv-02261
26 PROTECTION ACT LITIGATION) 10-cv-02600
27) 10-cv-02368
28) 10-cv-02370
) **CONSOLIDATED COMPLAINT**

1 **INTRODUCTION**

2 1. Plaintiffs David Scardina, Eduardo Tovar, and Christopher Robinson (“Plaintiffs”) bring this
3 class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting
4 from the illegal actions of Midland Funding, LLC (“Midland Funding”), Midland Credit Management,
5 Inc. (“MCM”) and Encore Capital Group, Inc. (“Encore”) (collectively referred to as “Defendants”), in
6 negligently and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephones, in violation of the
7 Telephone Consumer Protection Act, 47 U.S.C. §227 et seq., (“TCPA”), thereby invading Plaintiffs’
8 privacy. Defendant MCM, acting on behalf of Defendants Midland Funding and Encore, impermissibly
9 called Plaintiffs’ cell phones without their prior express consent using an automatic telephone dialing
10 service and/or an artificial or prerecorded voice (“Predictive Dialer”). Plaintiffs allege as follows upon
11 personal knowledge as to themselves and their own acts and experiences, and as to all other matters,
12 upon information and belief, including investigation conducted by their attorneys.
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15 **JURISDICTION AND VENUE**

16 2. This matter in controversy exceeds \$5,000,000, as each member of the proposed Class of
17 tens of thousands is entitled to up to \$1,500.00 in statutory damages for each call that has violated the
18 TCPA. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. §1332(d)(2). Further, Plaintiffs
19 allege a national class, which will result in at least one Class member belonging to a different state.
20 Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005
21 (“CAFA”) are present, and this Court has jurisdiction.
22

23 3. Venue is proper in the United States District Court for the Southern District of California
24 pursuant to 18 U.S.C. §1391(b) and 1441(a) because Defendants conduct business in the County of San
25 Diego, and have their primary corporate headquarters within this judicial district.
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PARTIES

Plaintiffs

4. Plaintiff David Scardina is, and at all times mentioned herein was, an individual citizen of the State of Illinois, who resides in Chicago, Illinois.

5. Plaintiff Edwardo Tovar is, and at all times mentioned herein was, an individual citizen the State of Texas, who resides in Laredo Texas.

6. Plaintiff Christopher Robinson is, and at all times mentioned herein was, an individual citizen of the State of California, who resides in Orange, California.

Defendant Midland Credit Management

7. Defendant MCM is a Kansas corporation with its principal place of business also located at 3111 Camino Del Rio N, #1300, San Diego, CA 92108. It is a subsidiary of Encore Capital Group, Inc. Defendant MCM is a collection agency and collects the charged-off debts purchase by other entities within the Midland organization, described below.

8. Defendant MCM is a collection agency and collects the charged-off debts purchased by other entities within the Midland organization, described below.

9. Defendant MCM is a “debt collector” as defined in the FDCPA.

Defendant Midland Funding

10. Midland Funding is a limited liability company chartered under Delaware law. Midland is a subsidiary of Encore Capital Group, Inc.

11. Midland Funding is engaged in the business of taking title to charged-off consumer debts, including credit card, auto deficiency and telecom receivables purchased from national financial institutions, major retail credit corporations, telecom companies and resellers of such portfolios. (Encore’s SEC filing on form 10-Q, Aug. 8, 2008).

1 12. Midland Funding's affiliate Midland Credit Management, Inc. attempts to collect the alleged
2 debts via correspondence and telephone calls. Midland Funding frequently files lawsuits to collect the
3 debts. Midland Funding is the plaintiff in about 500 lawsuits per month in Cook County alone.

4 13. Midland Funding's principal place of business is 8875 Aero Drive, Suite 200, San Diego, CA
5 92123.

6 14. Midland Funding is a "debt collector" as defined by the FDCPA.

7
8 **Defendant Encore Capital Group**

9 15. MCM and Midland Funding Corporation are under common ownership.

10 16. Both are direct or indirect subsidiaries of Encore Capital Group, Inc., a publicly traded
11 Delaware corporation, with offices at 8875 Aero Drive, Suite 200, San Diego, CA 92123.

12 17. Encore raises money in public securities markets to acquire the debts which are transferred to
13 Midland Funding or other similar entities and collected by MCM. Encore also is responsible for the
14 overall collection strategies used to collect the accounts.

15 18. Encore's webpage states, "If you are one of our consumers, you probably know us as Midland
16 Credit Management. Midland Credit Management is an Encore Capital Group subsidiary[.]" * * * "If
17 you have received a letter or phone call from us, seen our name on your credit report, or received a letter
18 or phone call from a law firm or collection agency acting on our behalf, it means that your obligation
19 (credit card, auto loan, consumer loan, home or cell phone bill, student loan) to a lender is now your
20 obligation to Midland, as a result of our agreement with that lender. Please give us a call or log into our
21 site to create a repayment arrangement or discuss the status of your account"
22 (<http://www.encorecapital.com/consumers>).

23 19. Encore describes itself as "a leading accounts receivable management firm" (Encore Capital
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1 Group Inc., Exhibit 99.1, filed with the SEC on March 15, 2006) and a "purchaser and manager of
2 charged-off consumer receivables portfolios" (Encore Capital Group Inc., Form 424B3, filed March 1,
3 2011, prospectus summary).

4
5 20. On March 10, 2005, Encore stated to public investors that it is a "50 year old purchaser
6 and manager of consumer receivables portfolios" (Form 8-K filed by Encore with the SEC on March 10,
7 2005).

8 21. Encore acquires portfolios for an average of about 3.3 cents on the dollar.

9
10 22. "From inception through December 31, 2010, we have invested approximately \$1.8 billion to
11 acquire 33.0 million consumer accounts with a face value of approximately \$54.7 billion" (Form 10-K
12 filed by Encore with the SEC for the year ending December 31, 2010, original p. 1).

13
14 23. Encore states that it is responsible for developing collection strategies. Its Form 10-K for the
15 year ending December 31, 2010 states: "We expand and build upon the insight developed during our
16 purchase process when developing our account collection strategies for portfolios we have acquired. Our
17 proprietary consumer-level collectability analysis is the primary determinant of whether an account is
18 actively serviced post-purchase. Throughout our ownership period, we periodically refine this analysis
19 to help determine the most effective collection strategy to pursue for each account" (Original page 4).

20
21 24. Among these strategies is outbound telephone calls. "During 2010, we called approximately
22 8.6 million unique consumers, of which 1.8 million, or 21%, made contact with us" (Encore Capital
23 Group, Inc. report on SEC Form 10-K for the year ending December 31, 2010, original page 4).

24
25 25. Similarly, in its Prospectus filed with the SEC on March 1, 2011, Encore Capital Group, Inc.,
26 stated ("Prospectus Summary"):

27 **We are a systems-driven purchaser and manager of charged-off consumer**
28 **receivable portfolios . . . We acquire receivable portfolios at deep discounts from**
their face values using our proprietary valuation process that is based upon an
analysis of the individual consumer attributes of the underlying accounts. Based

1 upon our ongoing analysis of these accounts, we employ a dynamic mix of collection
2 strategies to maximize our return on investment. . . . Acquisitions of receivable
3 portfolios are financed from operating cash flows and borrowings from third
parties. . . .

4 We have been in the collection business for 56 years and started purchasing
5 portfolios for our own account approximately 19 years ago. . . .

6 We have established certain relationships with credit card issuers, other lenders and
7 resellers that allow us to purchase portfolios directly through negotiated
8 transactions, and we participate in the auction-style purchase processes that typify
9 our industry. In addition, we enter into "forward flow" arrangements in which we
agree to buy receivables that meet agreed upon parameters over the course of the
contract term.

10 We evaluate each portfolio for purchase using the proprietary valuation and
11 underwriting processes developed by our in-house team of statisticians. Unlike
12 many of our competitors, which we believe primarily base their purchase decisions
13 on numerous aggregated portfolio-level factors, including the originator, the type of
14 receivables to be purchased, or the number of collection agencies the accounts have
15 been placed with previously, we base our purchase decisions primarily on our
16 analysis of the specific accounts included in a portfolio. Based upon this analysis, we
17 determine a value for each account, which we aggregate to produce a valuation of
18 the entire portfolio. We believe this capability allows us to perform more accurate
19 valuations of receivable portfolios. We have successfully applied this methodology to
20 receivables across multiple asset classes.

21 After we purchase a portfolio, we continuously refine our analysis of the accounts to
22 determine the best strategy for collection. As with our purchase decisions, our
23 collection strategies are based on account level criteria. Our collection strategies
24 include: . . .

25 * outbound calling, driven by proprietary, predictive software, by our own
26 collection workforce located at our three domestic call centers and our international
27 call center in India; . . .

28 26. Encore is a "debt collector" as defined in the FDCPA.

FACTS

Facts Related to Plaintiff Scardina

27 27. MCM in a letter dated April 27, 2011, informed Plaintiff Scardina in part that, "Midland

1 Funding, LLC, has purchased your HSBC BANK NEVADA N.A account and Midland Credit
2 Management, Inc. ('MCM'), a debt collection company, is the new servicer of this obligation.”

3 28. MCM uses at least one Automatic Dial Announcing Device which under Texas law is
4 defined as any automated equipment used for telephone solicitation or collection that (1) is capable of
5 storing numbers to be called, or has a random or sequential number generator capable of producing
6 numbers to be called and (2) alone or in conjunction with other equipment, can convey a prerecorded or
7 synthesized message to the number called without the use of a live operator.
8

9 29. MCM uses at least one "Predictive Dialer" as defined by the Federal Commutation
10 Commission ("FCC").
11

12 30. On information and belief, MCM's Predictive Dialer is capable of dialing telephone numbers
13 without human intervention.

14 31. MCM's Predictive Dialer is capable of delivering an automated prerecorded message.

15 32. Upon a phone call being answered by a live person, MCM's Predictive Dialer has the
16 capability of transferring that phone call to a live operator.
17

18 33. Plaintiff has a cellular telephone assigned the telephone number XXX-XXX-0519. The first
19 six digits of Plaintiff's cellular telephone number are redacted for privacy considerations.

20 34. Plaintiff is the regular user of the cellular telephone and it is generally carried on his person.

21 35. Plaintiff did not provide his cellular phone number to HSBC Bank Nevada N.A., the original
22 creditor of the debt MCM was attempting to collect.
23

24 36. On information and belief, Defendants and their agents obtained Plaintiff's cellular telephone
25 number, XXX-XXX-0519, from HSBC Bank Nevada, N.A. who obtained it from United Recovery
26 Systems, LP, who on or about October 15, 2010, obtained it from Experian. On information and belief,
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1 Experian informed United Recovery Systems, LP the telephone number XXX-XXX-0519 was a cell
2 phone number.

3 37. In a letter dated November 1, 2010, Plaintiff informed United Recovery Systems, LP, "Please
4 stop calling my telephone number XXX-XXX-0519 for collecting the HSBC Bank account you tell me I
5 owe: Account No.: XXXXXXXXXXXXXXX7795", which according to the United States Postal Service
6 was received by United Recovery Systems, LP, on November 4, 2010.

7
8 38. Defendant MCM placed phone calls in an attempt to reach Plaintiff at the telephone number
9 XXX-XXX-0519, at a minimum, on or about the following dates and times

- 10 a. April 27, 2011 at 8:19 a.m.;
- 11 b. April 27, 2011 at 5:03 p.m.;
- 12 c. April 28, 2011 at 8:11 a.m.;
- 13 d. April 28, 2011 at 9:45 a.m.;
- 14 e. April 29, 2011 at 10:13 a.m.;
- 15 f. April 30, 2011 at 9:55 a.m.;
- 16 g. May 1, 2011 at 10:09 a.m.;
- 17 h. May 2, 2011 at 8:07 a.m.;
- 18 i. May 3, 2011 at 8:05 a.m.;
- 19 j. May 3, 2011 at 9:12 a.m.;
- 20 k. May 3, 2011 at 11:36 a.m.;
- 21 l. May 3, 2011 at 12:43 p.m.;
- 22 m. May 4, 2011 at 8:07 a.m.;
- 23 n. May 5, 2011 at 8:12 a.m.;
- 24 o. May 5, 2011 at 10:44 a.m.; and
- 25 p. May 5, 2011 at 2:23 p.m.

26
27 41. On information and belief, each phone call placed to Plaintiff by MCM was with the use of a
28 Predictive Dialer, without a human hand manually dialing the telephone number.

1 42. For each of these phone calls above, Plaintiff's caller ID registered "000".

2 43. Plaintiff answered the call made on or about April 27, 2011 at 5:03 p.m., and was informed
3 by a live person that the call was from Midland Credit. In response, Plaintiff informed the caller to stop
4 calling his telephone.
5

6 44. MCM left the following messages for Plaintiff:

7 a. "(Music Plays)." Call transferred to a live person who said only, "Hello." The call was
8 then disconnected.

9 b. "Hi Dave, Dave Scardina, hello?" The call was then disconnected.

10 c. "(Music Plays). All representatives are temporarily busy assisting other customers.
11 Please continue to hold briefly. (Music Plays). We apologize for the delay. You will be
12 connected in just a moment. Please continue to hold briefly. (Music Plays). Thank you
13 for your patience. Your call is now next in line. We will connect you in just a moment.
(Music Plays)." The call was then transferred to a live person who stated only, "Hello
Dave, Mr. Scardina?" The call was then disconnected.

14 d. "(Music Plays). All representatives are temporarily busy assisting other customers.
15 Please continue to hold briefly. (Music Plays). We apologize for the delay. You will be
16 connected in just a moment. Please continue to hold briefly. (Music Plays).The call was
17 then transferred to a live person who stated, "Hello? [unintelligible]" The call was then
disconnected.

18 e. "(Music Plays). All representatives are temporarily busy assisting other customers.
19 Please continue to hold briefly. (Music Plays). We apologize for the delay. You will be
20 connected in just a moment. Please continue to hold briefly. (Music Plays). Thank you
21 for your patience. Your call is now next in line. We will connect you in just a moment.
(Music Plays)." The call was then transferred to a live person who only stated, "Hello.
Hello." The call was then disconnected.

22 **Facts Related to Plaintiff Eduardo Tovar**

23 45. At all times relevant, Plaintiff Tovar was an individual residing in the State of California.
24 Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. §153(10).

25 46. In November of 2003, the Plaintiff opened a Sears Credit Card Account.

26 47. In Plaintiff Tovar's Original Application for Credit from Sears, he did not list his cellular
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1 telephone number. In fact, Plaintiff did not obtain his current cellular telephone number until June of
2 2007.

3 48. Plaintiff did not list a cellular phone number in or on any other documents at any time during
4 the transaction that resulted in the debt owed, nor did he verbally provide Sears with a cellular phone
5 number at any time during the transaction that resulted in the debt. Additionally, at no time did the
6 Plaintiff provide Defendants or their agents with his cellular phone number, nor did he consent to any
7 collection calls made to his cellular phone.
8

9 49. MCM is, and at all times mentioned herein was, a corporation and a “person,” as defined by
10 47 U.S.C. §153(10).
11

12 50. Notwithstanding the fact Plaintiff did not provide any of the Defendants or their agents with
13 his cellular number at any time during the transaction that resulted in the debt owed to it, MCM
14 repeatedly contacted Plaintiff on Plaintiff’s cellular telephone. Plaintiff Tovar received repeated,
15 harassing calls at all hours.
16

17 51. “During the transaction that resulted in the debt owed,” Plaintiff did not provide a wireless
18 number to Defendants or their agents or Sears nor otherwise provide express consent to receive
19 prerecorded calls by Defendants or their agents on Plaintiff’s cellular phone. At some point, Sears sold
20 the alleged debt in question to Defendants and their agents.
21

22 52. Plaintiff did not own his current cellular telephone at the time he took out a line of credit with
23 Sears. He therefore could not have given Defendants or their agents express consent at that time to
24 contact him on that cellular phone via an automatic telephone dialing system.
25

26 53. Plaintiff did not provide “express consent” allowing Defendants or their agents to place
27 telephone calls to Plaintiff’s cellular phone utilizing an “artificial or prerecorded voice” or placed by an
28 “automatic telephone dialing system,” within the meaning of 47 U.S.C. §227(b)(1)(A).

1 **Facts Related to Christopher Robinson**

2 54. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all
3 times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

4 55. Defendants and their agents are, and at all times mentioned herein were, either a corporation
5 or an LLC, and both were “persons,” as defined by 47 U.S.C. § 153 (10).

6 56. At all times relevant Defendants and their agents conducted business in, and have their
7 corporate headquarters in, the State of California and in the County of San Diego, within this judicial
8 district.

9 57. Plaintiff applied for credit from Providian/Washington Mutual.

10 58. At no point did Plaintiff provide Providian/Washington Mutual with his cellular telephone
11 number or give Providian/Washington Mutual prior express consent to call Plaintiff on his cellular
12 telephone with the use of an auto-dialer and/or prerecorded message, as Plaintiff did not have his current
13 cellular telephone number at the time the applications was filled out.

14 59. At no point did Plaintiff provide Defendants or their agents with his cellular telephone
15 number and/or give Defendants or their agents prior express consent to call Plaintiff on his cellular
16 telephone with the use of an auto-dialer and/or prerecorded message.

17 60. In early 2009, Plaintiff fell on hard times and became delinquent on one or more accounts.

18 61. One account was assigned, transferred, or otherwise given to Defendants and their agents for
19 the purposes of collection.

20 62. On information and belief, Defendants and their agents obtained Plaintiff’s cellular telephone
21 number from a third party and/or in another manner, but not from Plaintiff.

22 63. Almost immediately Defendants and their agents, or their agents, began calling Plaintiff on
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1 his cellular telephone via an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227 (a)(1)
2 using “an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A). This ATDS has the
3 capacity to store or produce telephone numbers to be called, using a random or sequential number
4 generator.

5
6 64. The telephone number Defendants, or their agents, called was assigned to a cellular
7 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
8 227(b)(1).

9
10 65. These telephone calls constituted calls that were not for emergency purposes as defined by 47
11 U.S.C. § 227(b)(1)(A)(i).

12
13 66. Plaintiff did not provide Defendants or their agents prior express consent to receive calls with
14 an auto-dialer or by a prerecorded voice message on Plaintiff’s cellular telephone, pursuant to 47 U.S.C.
15 § 227(b)(1)(A).

16 67. These telephone calls by Defendants or their agents violated 47 U.S.C. § 227(b)(1).

17 **General Facts**

18
19 68. All telephone contact by Midland to Plaintiffs on their cellular telephones occurred via an
20 “automatic telephone dialing system,” as defined by 47 U.S.C. §227(a)(1), and all calls that are the
21 subject of this Complaint occurred within four years of the filing of this Complaint.

22
23 69. The telephone calls placed by Defendants and their agents to Plaintiffs’ cellular telephones
24 via the automatic telephone dialing system used “an artificial or prerecorded voice” as described in 47
25 U.S.C. §227(b)(1)(A).

26
27 70. The telephone numbers that Defendants and their agents used to contact Plaintiffs, with a
28 “prerecorded voice” made by an “automatic telephone dialing system,” were assigned to cellular
telephone services as specified in 47 U.S.C. §227(b)(1)(A)(iii).

1 71. The complained of telephone calls constituted calls not for emergency purposes as defined by
2 47 U.S.C. §227(b)(1)(A)(i).

3 72. Defendants and their agents did not make telephone calls to Plaintiffs' cellular phones "for
4 emergency purposes" utilizing an "artificial or prerecorded voice" or placed by an "automatic telephone
5 dialing system," as described in 47 U.S.C. §227(b)(1)(A).

6 73. Defendants', and their agents', telephone calls to Plaintiffs' cellular phones utilizing an
7 "artificial or prerecorded voice" or placed by an "automatic telephone dialing system" for non-
8 emergency purposes and in the absence of Plaintiffs' prior express consent violated 47 U.S.C.
9 227(b)(1)(A).

10 74. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is
11 on Defendants and their agents to demonstrate that Plaintiffs provided express consent within the
12 meaning of the statute.

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15 **FIRST COUNT**
16 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
17 **47 U.S.C. § 227 ET SEQ.**

18 75. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully set
19 forth herein.

20 76. The foregoing acts and omissions of Defendants and their agents constitute numerous and
21 multiple negligent violations of the TCPA, including but not limited to each of the above cited
22 provisions of 47 U.S.C. § 227 et seq.

23 77. As a result of the negligent violations of 47 U.S.C. § 227 et seq. by Defendants and their
24 agents, Plaintiffs and Class members are entitled to an award of \$500.00 in statutory damages for each
25 and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

26 78. Plaintiffs and Class members are also entitled to and do seek injunctive relief prohibiting
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1 Defendants', and their agents,' violation of the TCPA in the future.

2 79. Plaintiffs and Class members are also entitled to an award of attorneys' fees and costs.

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4 **SECOND COUNT**
5 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**
6 **PROTECTION ACT, 47 U.S.C. § 227 ET SEQ.**

7 80. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully
8 stated herein.

9 81. The foregoing acts and omissions of Defendants and their agents constitute numerous and
10 multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-
11 cited provisions of 47 U.S.C. § 227 et seq.

12 82. As a result of Defendants', and their agents', knowing and/or willful violations of 47 U.S.C.
13 § 227 et seq., Plaintiffs and each member of the Class is entitled to treble damages of up to \$1,500.00 for
14 each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

15 83. Plaintiffs and all Class members are also entitled to and do seek injunctive relief prohibiting
16 such conduct violating the TCPA by Defendants and their agents in the future.

17 84. Plaintiffs and Class members are also entitled to an award of attorneys' fees and costs.

18
19 **CLASS ALLEGATIONS**

20 85. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly
21 situated ("the Class").

22 86. Plaintiffs represent, and are members of, the Class, consisting of:

- 23
24 **(a) all persons within the United States (b) who, on or after November 2, 2006 (four**
25 **years prior to the filing of this action) (28 U.S.C. §1658) (c) received any telephone**
26 **call from Defendants or their agents to said person's cellular telephone made**
27 **through the use of any automatic telephone dialing system or with an artificial or**
28 **prerecorded voice, (d) which call was not made for emergency purposes or (e) where**
defendant's records do not show that the person provided the number to defendant
or the original creditor (for example, where the number was obtained through skip
tracing or captured by the defendant's equipment from an inbound call).

1
2 87. Defendants and their employees or agents are excluded from the Class. Plaintiffs do not
3 know the number of members in the Class, but believe the Class members number in the tens of
4 thousands, if not more. Thus this matter should be certified as a Class action to assist in the expeditious
5 litigation of this matter.

6 88. Plaintiffs and members of the Class were harmed by the acts of Defendants and their agents
7 in at least the following ways: Defendants, either directly or through their agents, illegally contacted
8 Plaintiffs and the Class members via their cellular telephones, by using an auto-dialer and/or with a
9 prerecorded voice message, thereby causing Plaintiff and the Class members to incur certain cellular
10 telephone charges or reduce cellular telephone time for which Plaintiffs and the Class members
11 previously paid, by having to retrieve or administer messages left by Defendants and their agents during
12 those illegal calls, and invading the privacy of said Plaintiffs and the Class members. Plaintiffs and the
13 Class members were damaged thereby.
14

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

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

24 91. There is a well-defined community of interest in the questions of law and fact involved
25 affecting the parties to be represented. The questions of law and fact to the Class predominate over
26 questions which may affect the individual Class members, including the following:
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- 1 (a) Whether, within the four years prior to the filing of this Complaint, Defendants and their
2 agents made any call (other than a call made for emergency purposes or made with the
3 prior express consent of the called party) to a Class member using any automatic
4 telephone dialing system or an artificial or prerecorded voice to any telephone number
5 assigned to a cellular telephone service;
- 6 (b) Whether Plaintiffs and the Class members were damaged thereby, and the extent of
7 damages for such violation; and
- 8 (c) Whether Defendants and their agents should be enjoined from engaging in such conduct
9 in the future.

10 92. As persons that received numerous calls using an automatic telephone dialing system or an
11 artificial or prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting claims
12 that are typical of the Class. Plaintiffs will fairly and adequately represent and protect the interests of the
13 Class in that Plaintiffs have no interests antagonistic to any member of the Class.

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

20 94. Plaintiffs have retained counsel experienced in handling class action claims and claims
21 involving violations of the Telephone Consumer Protection Act.

22 95. A class action is a superior method for the fair and efficient adjudication of this controversy.
23 Class-wide damages are essential to induce Defendants and their agents to comply with federal and
24 California law. The interest of Class members in individually controlling the prosecution of separate
25 claims against Defendants is small because the maximum statutory damages in an individual action for
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1 violation of privacy are minimal. Management of these claims is likely to present significantly fewer
2 difficulties than those presented in many class claims.

3 96. Defendants and their agents have acted on grounds generally applicable to the Class, thereby
4 making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class
5 as a whole.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs and all Class
9 members the following relief against Defendants and their agents:
10

- 11 A. As a result of Defendants', and their agents,, negligent violations of 47 U.S.C. § 227(b)(1),
12 Plaintiffs seek for themselves and each Class member \$500.00 in statutory damages for each
13 and every call that violated the TCPA;
- 14 B. As a result of Defendants', and their agents', willful and/or knowing violations of 47 U.S.C.
15 § 227(b)(1), Plaintiffs seek for themselves and each Class member treble damages, as
16 provided by statute, of up to \$1,500.00 for each and every call that violated the TCPA;
- 17 C. Injunctive relief prohibiting such violations of the TCPA by Defendants and their agents in
18 the future;
- 19 D. An award of attorneys' fees and costs to counsel for Plaintiffs and the class;
- 20 E. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil
21 Procedure 23, establishing an appropriate Class and any Subclasses the Court deems
22 appropriate, finding that Plaintiffs are proper representatives of the Class, and appointing the
23 lawyers and law firms representing Plaintiffs as counsel for the Class;
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1 F. Such other relief as the Court deems just and proper.
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3 EDELMAN, COMBS, LATTURNER & GODDWIN, LLC
4

5 By: /s/ James O. Lattuner
6 James O. Lattuner
7 Attorney for Plaintiff David Scardina

8 LAW OFFICES OF DOUGLAS J. CAMPION

9 By: /s/ Douglas J. Campion
10 Douglas J. Campion
11 Attorney for Plaintiff Christopher Robinson

12 LAW OFFICES OF DARRELL PALMER PC

13 By: /s/ Joseph Darrell Palmer
14 Joseph Darrell Palmer
15 Attorney for Plaintiff Eduardo Tovar

16 **ATTESTATION**

17 The filer of this document, attests that all other signatories listed, and on whose behalf the filing
18 is submitted, concur in the filing's content and have authorized the filing.
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CERTIFICATE OF SERVICE

I, Darrell Palmer, hereby certify that on July 11, 2012, I electronically filed the foregoing **CONSOLIDATED COMPLAINT** with the Clerk of the Court of the United States District Court for the Southern District of California, by using the USDC CM/ECF system, a copy of which filing was sent to the following parties via email:

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/s/ Joseph Darrell Palmer _____
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