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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13) Case No.
 14 TERRY FABRICANT, individually)
 15 and on behalf of all others similarly)
 16 situated,)

CLASS ACTION

17 Plaintiff,

COMPLAINT FOR VIOLATIONS OF:

18 vs.

19 CLARA CAPITAL LLC., and DOES 1)
 20 through 10, inclusive, and each of them,)
 21 Defendant.)

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

22 Plaintiff TERRY FABRICANT (“Plaintiff”), individually and on behalf of
 23 all others similarly situated, alleges the following upon information and belief

1 based upon personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiff brings this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of CLARA CAPITAL LLC.
6 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
7 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
8 Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related regulations, specifically the
9 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
12 a resident of California, seeks relief on behalf of a Class, which will result in at
13 least one class member belonging to a different state than that of Defendant, New
14 York company. Plaintiff also seeks up to \$1,500.00 in damages for each call in
15 violation of the TCPA, which, when aggregated among a proposed class in the
16 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
17 Therefore, both diversity jurisdiction and the damages threshold under the Class
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to *28 U.S.C. § 1391(b)* and because Defendant does
21 business within the State of California and Plaintiff resides within the County of
22 Los Angeles.

23 **PARTIES**

24 4. Plaintiff, TERRY FABRICANT (“Plaintiff”), is a natural person
25 residing in Los Angeles County, California and is a “person” as defined by *47*
26 *U.S.C. § 153 (39)*.

27 5. Defendant, CLARA CAPITAL LLC (“Defendant”) is company that
28 provides funding to small businesses, and is a “person” as defined by *47 U.S.C. §*

1 153 (39).

2 6. The above named Defendant, and its subsidiaries and agents, are
3 collectively referred to as “Defendants.” The true names and capacities of the
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
6 names. Each of the Defendants designated herein as a DOE is legally responsible
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
8 Complaint to reflect the true names and capacities of the DOE Defendants when
9 such identities become known.

10 7. Plaintiff is informed and believes that at all relevant times, each and
11 every Defendant was acting as an agent and/or employee of each of the other
12 Defendants and was acting within the course and scope of said agency and/or
13 employment with the full knowledge and consent of each of the other Defendants.
14 Plaintiff is informed and believes that each of the acts and/or omissions complained
15 of herein was made known to, and ratified by, each of the other Defendants.

16 **FACTUAL ALLEGATIONS**

17 8. Beginning in or around February of 2019, Defendant contacted
18 Plaintiff on Plaintiff’s cellular telephone number ending in -1083, in an attempt to
19 solicit Plaintiff to purchase Defendant’s services.

20 9. Defendant used an “automatic telephone dialing system” as defined
21 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

22 10. Defendant contacted or attempted to contact Plaintiff from telephone
23 number (516) 758-2334 which Plaintiff alleges on information and belief was a
24 spoofed telephone number, indicating of Defendant’s attempts to mask its identity
25 to avoid accountability from placing illegal robocalls, as well as having used an
26 ATDS to place the calls.

27 11. Defendant’s calls constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 12. During all relevant times, Defendant did not possess Plaintiff’s “prior
2 express consent” to receive calls using an automatic telephone dialing system or an
3 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
4 227(b)(1)(A).

5 13. Further, Plaintiff’s cellular telephone number ending in -1083 was
6 added to the National Do-Not-Call Registry on or about June 4, 2008.

7 14. Defendant placed multiple calls soliciting its business to Plaintiff on
8 his cellular telephone ending in -1083 in or around February 2019.

9 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
10 64.1200(c)(2) as they were attempts to promote or sell Defendant’s services.

11 16. Plaintiff received at least one solicitation call from Defendant within
12 a 12-month period.

13 17. Defendant called Plaintiff in an attempt to solicit its services and in
14 violation of the National Do-Not-Call provisions of the TCPA.

15 18. Upon information and belief, and based on Plaintiff’s experiences of
16 being called by Defendant after being on the National Do-Not-Call list for several
17 years prior to Defendant’s initial call, and at all relevant times, Defendant failed to
18 establish and implement reasonable practices and procedures to effectively prevent
19 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
20 227(c)(5).

21 **CLASS ALLEGATIONS**

22 19. Plaintiff brings this action individually and on behalf of all others
23 similarly situated, as a member the two proposed classes (hereafter, jointly, “The
24 Classes”).

25 20. The class concerning the ATDS claim for no prior express consent
26 (hereafter “The ATDS Class”) is defined as follows:

27 All persons within the United States who received any
28 solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint

7 21. The class concerning the National Do-Not-Call violation (hereafter
8 "The DNC Class") is defined as follows:

9 All persons within the United States registered on the
10 National Do-Not-Call Registry for at least 30 days, who
11 had not granted Defendant prior express consent nor had
12 a prior established business relationship, who received
13 more than one call made by or on behalf of Defendant
14 that promoted Defendant's products or services, within
15 any twelve-month period, within four years prior to the
16 filing of the complaint.

17 22. Plaintiff represents, and is a member of, The ATDS Class, consisting
18 of all persons within the United States who received any collection telephone calls
19 from Defendant to said person's cellular telephone made through the use of any
20 automatic telephone dialing system or an artificial or prerecorded voice and such
21 person had not previously not provided their cellular telephone number to
22 Defendant within the four years prior to the filing of this Complaint.

23 23. Plaintiff represents, and is a member of, The DNC Class, consisting
24 of all persons within the United States registered on the National Do-Not-Call
25 Registry for at least 30 days, who had not granted Defendant prior express consent
26 nor had a prior established business relationship, who received more than one call
27 made by or on behalf of Defendant that promoted Defendant's products or services,
28 within any twelve-month period, within four years prior to the filing of the
complaint.

24. Defendant, its employees and agents are excluded from The Classes.

1 Plaintiff does not know the number of members in The Classes, but believes the
2 Classes members number in the thousands, if not more. Thus, this matter should
3 be certified as a Class Action to assist in the expeditious litigation of the matter.

4 25. The Classes are so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Classes
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Classes includes thousands of members. Plaintiff alleges that The Classes
9 members may be ascertained by the records maintained by Defendant.

10 26. Plaintiff and members of The ATDS Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and ATDS Class members via their cellular telephones thereby causing Plaintiff
13 and ATDS Class members to incur certain charges or reduced telephone time for
14 which Plaintiff and ATDS Class members had previously paid by having to retrieve
15 or administer messages left by Defendant during those illegal calls, and invading
16 the privacy of said Plaintiff and ATDS Class members.

17 27. Common questions of fact and law exist as to all members of The
18 ATDS Class which predominate over any questions affecting only individual
19 members of The ATDS Class. These common legal and factual questions, which
20 do not vary between ATDS Class members, and which may be determined without
21 reference to the individual circumstances of any ATDS Class members, include,
22 but are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant made any telemarketing/solicitation call
25 (other than a call made for emergency purposes or made with
26 the prior express consent of the called party) to a ATDS Class
27 member using any automatic telephone dialing system or any
28 artificial or prerecorded voice to any telephone number

1 assigned to a cellular telephone service;

2 b. Whether Plaintiff and the ATDS Class members were damaged
3 thereby, and the extent of damages for such violation; and

4 c. Whether Defendant should be enjoined from engaging in such
5 conduct in the future.

6 28. As a person that received numerous telemarketing/solicitation calls
7 from Defendant using an automatic telephone dialing system or an artificial or
8 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
9 claims that are typical of The ATDS Class.

10 29. Plaintiff and members of The DNC Class were harmed by the acts of
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
12 and DNC Class members via their telephones for solicitation purposes, thereby
13 invading the privacy of said Plaintiff and the DNC Class members whose telephone
14 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
15 members were damaged thereby.

16 30. Common questions of fact and law exist as to all members of The
17 DNC Class which predominate over any questions affecting only individual
18 members of The DNC Class. These common legal and factual questions, which do
19 not vary between DNC Class members, and which may be determined without
20 reference to the individual circumstances of any DNC Class members, include, but
21 are not limited to, the following:

22 a. Whether, within the four years prior to the filing of this
23 Complaint, Defendant or its agents placed more than one
24 solicitation call to the members of the DNC Class whose
25 telephone numbers were on the National Do-Not-Call Registry
26 and who had not granted prior express consent to Defendant and
27 did not have an established business relationship with
28 Defendant;

- 1 b. Whether Defendant obtained prior express written consent to
- 2 place solicitation calls to Plaintiff or the DNC Class members’
- 3 telephones;
- 4 c. Whether Plaintiff and the DNC Class member were damaged
- 5 thereby, and the extent of damages for such violation; and
- 6 d. Whether Defendant and its agents should be enjoined from
- 7 engaging in such conduct in the future.

8 31. As a person that received numerous solicitation calls from Defendant
9 within a 12-month period, who had not granted Defendant prior express consent
10 and did not have an established business relationship with Defendant, Plaintiff is
11 asserting claims that are typical of the DNC Class.

12 32. Plaintiff will fairly and adequately protect the interests of the members
13 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
14 class actions.

15 33. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Classes members is impracticable. Even if every Classes member could
18 afford individual litigation, the court system could not. It would be unduly
19 burdensome to the courts in which individual litigation of numerous issues would
20 proceed. Individualized litigation would also present the potential for varying,
21 inconsistent, or contradictory judgments and would magnify the delay and expense
22 to all parties and to the court system resulting from multiple trials of the same
23 complex factual issues. By contrast, the conduct of this action as a class action
24 presents fewer management difficulties, conserves the resources of the parties and
25 of the court system, and protects the rights of each Classes member.

26 34. The prosecution of separate actions by individual Classes members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Classes members not parties to

1 such adjudications or that would substantially impair or impede the ability of such
2 non-party Class members to protect their interests.

3 35. Defendant has acted or refused to act in respects generally applicable
4 to The Classes, thereby making appropriate final and injunctive relief with regard
5 to the members of the Classes as a whole.

6 **FIRST CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(b).**

9 **On Behalf of the ATDS Class**

10 36. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-35.

12 37. The foregoing acts and omissions of Defendant constitute numerous
13 and 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(b)*, and in particular
15 *47 U.S.C. § 227 (b)(1)(A)*.

16 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
17 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

19 39. Plaintiff and the ATDS Class members are also entitled to and seek
20 injunctive relief prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

23 **Act**

24 **47 U.S.C. §227(b)**

25 **On Behalf of the ATDS Class**

26 40. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-39.

28 41. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
2 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),
3 and in particular 47 U.S.C. § 227 (b)(1)(A).

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

8 43. Plaintiff and the Class members are also entitled to and seek injunctive
9 relief prohibiting such conduct in the future.

10 **THIRD CAUSE OF ACTION**

11 **Negligent Violations of the Telephone Consumer Protection Act**

12 **47 U.S.C. §227(c)**

13 **On Behalf of the DNC Class**

14 44. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-43.

16 45. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
19 47 U.S.C. § 227 (c)(5).

20 46. As a result of Defendant’s negligent violations of 47 U.S.C. § 227(c),
21 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

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

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27 **FOURTH CAUSE OF ACTION**

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendant’s willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant’s negligent violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(c)

- As a result of Defendant’s willful and/or knowing violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

52. Pursuant to the Seventh Amendment to the Constitution of the United

1 States of America, Plaintiff is entitled to, and demands, a trial by jury.

2 Respectfully Submitted this 21st Day of December, 2020.

3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

4
5 By: /s/ Todd M. Friedman
6 Todd M. Friedman
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8 Attorney for Plaintiff
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