

1 Todd M. Friedman (216752)  
 2 Adrian R. Bacon (280332)  
 3 Thomas E. Wheeler (308789)  
 4 **Law Offices of Todd M. Friedman, P.C.**  
 5 21550 Oxnard St., Suite 780  
 6 Woodland Hills, CA 91367  
 7 Phone: (323) 306-4234  
 8 Fax: (866)633-0228  
 9 tfriedman@toddfllaw.com  
 abacon@toddfllaw.com  
 twheeler@toddfllaw.com  
*Attorneys for Plaintiff*

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

12	MARLON ROMERO, individually,	)	Case No. 5:21-CV-00942
13	and on behalf of all others similarly	)	
14	situated,	)	<b><u>CLASS ACTION</u></b>
15	Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
16		)	<b>OF:</b>
17	vs.	)	1. NEGLIGENT VIOLATIONS OF
18		)	THE TELEPHONE CONSUMER
19	DISCOVER FINANCIAL SERVICES,	)	PROTECTION ACT [47 U.S.C.
20	INC., and DOES 1 through 10,	)	§227 ET SEQ.]
21	inclusive, and each of them,	)	2. WILLFUL VIOLATIONS OF THE
22	Defendants.	)	TELEPHONE CONSUMER
23		)	PROTECTION ACT [47 U.S.C.
		)	§227 ET SEQ.]
		)	<b><u>DEMAND FOR JURY TRIAL</u></b>

24 Plaintiff, MARLON ROMERO (“Plaintiff”), individually and on behalf of  
 25 all others similarly situated, allege the following upon information and belief based  
 26 upon personal knowledge:

27 **NATURE OF THE CASE**

28 1. Plaintiff brings this action individually and others similarly situated

1 seeking damages and any other available legal or equitable remedies resulting from  
2 the illegal actions of DISCOVER FINANCIAL SERVICES, INC. (“Defendant”),  
3 in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s  
4 cellular telephone in violation of the Telephone Consumer Protection Act, 47.  
5 *U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’ privacy.

6  
7 **JURISDICTION & VENUE**

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

17 3. Venue is proper in the United States District Court for the Central  
18 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*  
19 because Defendant does business within the state of California and Plaintiff resides  
20 within this District.

21 **PARTIES**

22 4. Plaintiff, MARLON ROMERO (“Plaintiff”), is a natural person  
23 residing in Winchester, California and is a “person” as defined by *47 U.S.C. § 153*  
24 *(39)*.

25 5. Defendant, DISCOVER FINANCIAL SERVICES, INC.  
26 (“Defendant”), is a financial services company that owns and operates Discover  
27 Bank, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

28 6. The above named Defendant, and its subsidiaries and agents, are

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

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

14 **FACTUAL ALLEGATIONS**

15 8. Beginning in or around May 18, 2021, Defendant contacted Plaintiff  
16 on his landline telephone, number ending in -4906, in an effort to sell or solicit its  
17 services.

18 9. Defendant continued to call Plaintiff’s landline telephone practically  
19 daily to solicit its services from multiple different phone numbers, including, but  
20 not limited to (205) 896-5878, even after Plaintiff changed his phone number to a  
21 new number ending in -3890.

22 10. Defendant’s calls constituted calls that were not for emergency  
23 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

24 11. Defendant’s calls were placed to telephone number assigned to a  
25 cellular telephone service for which Plaintiff incur a charge for incoming calls  
26 pursuant to *47 U.S.C. § 227(b)(1)*.

27 12. Plaintiff is not a customer of Defendant’s services and has never  
28 provided any personal information, including his cellular telephone numbers, to

1 Defendant for any purpose whatsoever. In addition, Plaintiff told Defendant at  
2 least once to stop contacting them and Plaintiff has been registered on the Do-Not-  
3 Call Registry for at least thirty (30) days prior to Defendant contacting him.  
4 Accordingly, Defendant never received Plaintiff “prior express consent” to receive  
5 calls using an automatic telephone dialing system or an artificial or prerecorded  
6 voice on their cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

7 **CLASS ALLEGATIONS**

8 13. Plaintiff bring this action on behalf of themselves and all others  
9 similarly situated, as a member of the proposed class (hereafter “The Class”)  
10 defined as follows:

11 All persons within the United States who received any  
12 telephone calls from Defendant to said person’s cellular  
13 telephone made through the use of any automatic  
14 telephone dialing system or an artificial or prerecorded  
15 voice and such person had not previously consented to  
16 receiving such calls within the four years prior to the  
filing of this Complaint

17 14. Plaintiff represent, and are members of, The Class, consisting of All  
18 persons within the United States who received any telephone calls from Defendant  
19 to said person’s cellular telephone made through the use of any automatic telephone  
20 dialing system or an artificial or prerecorded voice and such person had not  
21 previously not provided their cellular telephone number to Defendant within the  
22 four years prior to the filing of this Complaint.

23 15. Defendant, its employees and agents are excluded from The Class.  
24 Plaintiff do not know the number of members in The Class, but believes the Class  
25 members number in the thousands, if not more. Thus, this matter should be  
26 certified as a Class Action to assist in the expeditious litigation of the matter.

27 16. The Class is so numerous that the individual joinder of all of its  
28 members is impractical. While the exact number and identities of The Class

1 members are unknown to Plaintiff at this time and can only be ascertained through  
2 appropriate discovery, Plaintiff are informed and believe and thereon allege that  
3 The Class includes thousands of members. Plaintiff allege that The Class members  
4 may be ascertained by the records maintained by Defendant.

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

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

- 17
- 18 a. Whether, within the four years prior to the filing of this  
19 Complaint, Defendant made any call (other than a call made for  
20 emergency purposes or made with the prior express consent of  
21 the called party) to a Class member using any automatic  
22 telephone dialing system or any artificial or prerecorded voice  
23 to any telephone number assigned to a cellular telephone  
24 service;
  - 25 b. Whether Plaintiff and the Class members were damages  
26 thereby, and the extent of damages for such violation; and
  - 27 c. Whether Defendant should be enjoined from engaging in such  
28 conduct in the future.

19. As persons that received numerous calls from Defendant using an  
automatic telephone dialing system or an artificial or prerecorded voice, without  
Plaintiff' prior express consent, Plaintiff are asserting claims that are typical of The

1 Class.

2 20. Plaintiff will fairly and adequately protect the interests of the members  
3 of The Class. Plaintiff have retained attorneys experienced in the prosecution of  
4 class actions.

5 21. A class action is superior to other available methods of fair and  
6 efficient adjudication of this controversy, since individual litigation of the claims  
7 of all Class members is impracticable. Even if every Class member could afford  
8 individual litigation, the court system could not. It would be unduly burdensome  
9 to the courts in which individual litigation of numerous issues would proceed.  
10 Individualized litigation would also present the potential for varying, inconsistent,  
11 or contradictory judgments and would magnify the delay and expense to all parties  
12 and to the court system resulting from multiple trials of the same complex factual  
13 issues. By contrast, the conduct of this action as a class action presents fewer  
14 management difficulties, conserves the resources of the parties and of the court  
15 system, and protects the rights of each Class member.

16 22. The prosecution of separate actions by individual Class members  
17 would create a risk of adjudications with respect to them that would, as a practical  
18 matter, be dispositive of the interests of the other Class members not parties to such  
19 adjudications or that would substantially impair or impede the ability of such non-  
20 party Class members to protect their interests.

21 23. Defendant has acted or refused to act in respects generally applicable  
22 to The Class, thereby making appropriate final and injunctive relief with regard to  
23 the members of the California Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**  
26 **47 U.S.C. §227 et seq.**

27 24. Plaintiff repeat and incorporate by reference into this cause of action  
28 the allegations set forth above at Paragraphs 1-25.

1 25. The foregoing acts and omissions of Defendant constitute numerous  
2 and multiple negligent violations of the TCPA, including but not limited to each  
3 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

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

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

9  
10 **SECOND CAUSE OF ACTION**

11 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**  
12 **47 U.S.C. §227 et seq.**

13 28. Plaintiff repeat and incorporate by reference into this cause of action  
14 the allegations set forth above at Paragraphs 1-29.

15 29. The foregoing acts and omissions of Defendant constitute numerous  
16 and multiple knowing and/or willful violations of the TCPA, including but not  
17 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*  
18 *seq.*

19 30. As a result of Defendant's knowing and/or willful violations of *47*  
20 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of  
21 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
22 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff request judgment against Defendant for the following:

27 **FIRST CAUSE OF ACTION**

28 **Negligent Violations of the Telephone Consumer Protection Act**  
**47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of *47 U.S.C.*

§227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and

- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant’s willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the 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); and

- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 3rd Day of June, 2021.

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

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff