

1 Todd M. Friedman (SBN 216752)
 2 Adrian R. Bacon (SBN 280332)
 3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 4 21550 Oxnard St., Suite 780
 5 Woodland Hills, CA 91367
 6 Phone: 323-306-4234
 7 Fax: 866-633-0228
 8 tfriedman@toddfllaw.com
 9 abacon@toddfllaw.com
 10 *Attorneys for Plaintiff,*

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

<p>11 MARIANO BENITEZ, individually) 12 and on behalf of all others similarly) 13 situated,) 14 Plaintiff,) 15 vs.) 16) 17 FIRST MERIDIAN FINANCIAL) 18 INC; DOES 1 through 10, inclusive,) 19 Defendant.) 20) 21)</p>	<p>Case No. <u>'20CV2469 WQHAHG</u> <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF: 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.] 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.] <u>DEMAND FOR JURY TRIAL</u></p>
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22 Plaintiff, MARIANO BENITEZ (“Plaintiff”), individually and all others
 23 similarly situated, alleges the following upon information and belief based upon
 24 personal knowledge:

25 **NATURE OF THE CASE**

26 1. Plaintiff brings this action individually and on behalf of all others
 27 similarly situated seeking damages and any other available legal or equitable
 28 remedies resulting from the illegal actions of FIRST MERIDIAN FINANCIAL

1 INC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff
2 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
3 Act, *47 U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

4 **JURISDICTION & VENUE**

5 2. Jurisdiction is proper under *28 U.S.C. § 1331* because the claims of
6 this case arise under a law of the United States, the TCPA.

7 3. Venue is proper in the United States District Court for the Southern
8 District of California pursuant to *18 U.S.C. § 1391(b)* because a substantial portion
9 of the events giving rise to Plaintiff’s claims occurred in this District.

10 **PARTIES**

11 4. Plaintiff, Mariano Benitez (“Plaintiff”), is a natural person residing in
12 San Diego County of the state of California and is a “person” as defined by *47*
13 *U.S.C. § 153 (10)*.

14 5. Defendant, First Meridian Financial Inc (“Defendant”), is a small
15 business loan company incorporated in Delaware and is a “person” as defined by
16 *47 U.S.C. § 153 (10)*.

17 6. The above-named Defendant, and its subsidiaries and agents, are
18 collectively referred to as “Defendants.” The true names and capacities of the
19 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
20 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
21 names. Each of the Defendants designated herein as a DOE is legally responsible
22 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
23 Complaint to reflect the true names and capacities of the DOE Defendants when
24 such identities become known.

25 7. Plaintiff is informed and believes that at all relevant times, each and
26 every Defendant was acting as an agent and/or employee of each of the other
27 Defendants and was acting within the course and scope of said agency and/or
28 employment with the full knowledge and consent of each of the other Defendants.

1 Plaintiff is informed and believes that each of the acts and/or omissions complained
2 of herein was made known to, and ratified by, each of the other Defendants.

3 **FACTUAL ALLEGATIONS**

4 8. Beginning on or around July 18, 2019, Defendant called Plaintiff on
5 his cellular telephone, ending in -7919, in an effort to sell or solicit its services.

6 9. Defendant used an “automatic telephone dialing system”, as defined
7 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to sell or solicit its
8 business services. At one or more instance during these communications,
9 Defendant utilized an “artificial or prerecorded voice” as prohibited by *47 U.S.C.*
10 *§ 227(b)(1)(A)*.

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

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

16 12. Plaintiff is not a customer of Defendant’s services and has never
17 provided any personal information, including his cellular telephone number, to
18 Defendant for any purpose whatsoever. Accordingly, Defendant never received
19 Plaintiff’s “prior express consent” to receive calls using an automatic telephone
20 dialing system or an artificial or prerecorded voice on his cellular telephone
21 pursuant to *47 U.S.C. § 227(b)(1)(A)*.

22 **CLASS ALLEGATIONS**

23 13. Plaintiff brings this action on behalf of himself and all others similarly
24 situated, as a member of the proposed class (hereafter “The Class”). The Class is
25 defined as follows:

26
27 All persons within the United States who received any
28 telephone calls from Defendant to said person’s cellular
telephone made through the use of any automatic

1 telephone dialing system or an artificial or prerecorded
2 voice and such person had not previously consented to
3 receiving such calls within four years prior to the filing
4 of the complaint through the date of class certification.

5 14. Plaintiff represents, and is a member of, The Class, consisting of All
6 persons within the United States who received any telephone calls from Defendant
7 to said person's cellular telephone made through the use of any automatic telephone
8 dialing system or an artificial or prerecorded voice and such person had not
9 previously not provided their cellular telephone number to Defendant within four
10 years prior to the filing of the complaint through the date of class certification.

11 15. Defendant, its employees and agents are excluded from The Class.
12 Plaintiff does not know the number of members in The Class, but believes The
13 Class members number in the thousands, if not more. Thus, this matter should be
14 certified as a Class Action to assist in the expeditious litigation of the matter.

15 16. The Class is so numerous that the individual joinder of all of its
16 members is impractical. While the exact number and identities of The Class
17 members are unknown to Plaintiff at this time and can only be ascertained through
18 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
19 The Class includes thousands of members. Plaintiff alleges that The Class
20 members may be ascertained by the records maintained by Defendant.

21 17. Plaintiff and members of The Class were harmed by the acts of
22 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
23 and The Class members via their cellular telephones thereby causing Plaintiff and
24 The Class members to incur certain charges or reduced telephone time for which
25 Plaintiff and The Class members had previously paid by having to retrieve or
26 administer messages left by Defendant during those illegal calls and text messages,
27 and invading the privacy of said Plaintiff and The Class members.

28 18. Common questions of fact and law exist as to all members of The
Class which predominate over any questions affecting only individual members of

1 The Class. These common legal and factual questions, which do not vary between
2 The Class members, and which may be determined without reference to the
3 individual circumstances of any members, include, but are not limited to, the
4 following:

- 5 a. Whether, within the four years prior to the filing of this Complaint
6 through the date of class certification, Defendant made any call (other
7 than a call made for emergency purposes or made with the prior express
8 consent of the called party) to a member of The Class using any automatic
9 telephone dialing system or any artificial or prerecorded voice to any
10 telephone number assigned to a cellular telephone service;
- 11 b. Whether Plaintiff and The Class members were damaged thereby, and the
12 extent of damages for such violation; and
- 13 c. Whether Defendant should be enjoined from engaging in such conduct in
14 the future.

15 19. As a person that received calls from Defendant using an automatic
16 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's
17 prior express consent, Plaintiff is asserting claims that are typical of The Class.

18 20. Plaintiff will fairly and adequately protect the interests of the members
19 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
20 class actions.

21 21. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all The Class members is impracticable. Even if every member of The Class
24 could afford individual litigation, the court system could not. It would be unduly
25 burdensome to the courts in which individual litigation of numerous issues would
26 proceed. Individualized litigation would also present the potential for varying,
27 inconsistent, or contradictory judgments and would magnify the delay and expense
28 to all parties and to the court system resulting from multiple trials of the same
complex factual issues. By contrast, the conduct of this action as a class action

1 presents fewer management difficulties, conserves the resources of the parties and
2 of the court system, and protects the rights of each member of The Class.

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

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

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**
13 **47 U.S.C. §227 et seq.**

14 24. Plaintiff repeats and incorporates by reference into this cause of
15 action the allegations set forth above.

16 25. 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 et seq.*

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

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

SECOND CAUSE OF ACTION

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

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

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 18th day of December, 2020.

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