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

13 TERRY FABRICANT, individually 14 and on behalf of all others similarly 15 situated, 16 Plaintiff, 17 vs. 18 19 20 21 22 23 24 25 26 27 28) Case No. 2:21-cv-8403)) <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>))
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29 Plaintiff, TERRY FABRICANT (“Plaintiff”), individually and on behalf of
 30 all others similarly situated, allege the following upon information and belief based
 31 upon personal knowledge:

32 **NATURE OF THE CASE**

33 1. Plaintiff brings this action individually and others similarly situated
 34 seeking damages and any other available legal or equitable remedies resulting from

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

5 **JURISDICTION & VENUE**

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

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

19 **PARTIES**

20 4. Plaintiff, TERRY FABRICANT (“Plaintiff”), is a natural person
21 residing in Winnetka, California and is a “person” as defined by 47 U.S.C. § 153
22 (39).

23 5. Defendant, TEXLARK EXPLORATION CO., INC.. (“Defendant”),
24 is an oil and natural gas company and is a “person” as defined by 47 U.S.C. § 153
25 (39).

26 6. The above-named Defendant, and its subsidiaries and agents, are
27 collectively referred to as “Defendants.” The true names and capacities of the
28 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are

1 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
2 names. Each of the Defendants designated herein as a DOE is legally responsible
3 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
4 Complaint to reflect the true names and capacities of the DOE Defendants when
5 such identities become known.

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

12 **FACTUAL ALLEGATIONS**

13 8. Beginning in or around August 22, 2018, Defendant contacted
14 Plaintiff on his cellular telephone, number ending in -8950, in an effort to sell or
15 solicit its services.

16 9. Defendant called Plaintiff once on August 22, 2018.

17 10. The phone calls placed to Plaintiff's cellular telephone were placed
18 via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C.
19 §227(a)(1) and as prohibited by 47 U.S.C. §227b(1)(A).

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

22 12. Defendant's calls were placed to telephone number assigned to a
23 cellular telephone service for which Plaintiff incur a charge for incoming calls
24 pursuant to 47 U.S.C. § 227(b)(1).

25 13. Plaintiff is not a customer of Defendant's services and has never
26 provided any personal information, including his cellular telephone numbers, to
27 Defendant for any purpose whatsoever. In addition, Plaintiff told Defendant at
28 least once to stop contacting them and Plaintiff has been registered on the Do-Not-

1 Call Registry for at least thirty (30) days prior to Defendant contacting him.
2 Accordingly, Defendant never received Plaintiff’ “prior express consent” to receive
3 calls using an automatic telephone dialing system or an artificial or prerecorded
4 voice on their cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

5 **CLASS ALLEGATIONS**

6 14. Plaintiff brings this action on behalf of himself and all others similarly
7 situated, as a member of the proposed class (hereafter “The Class”) defined as
8 follows:

9
10 All persons within the United States who received any
11 telephone calls from Defendant to said person’s cellular
12 telephone made through the use of any automatic
13 telephone dialing system or an artificial or prerecorded
14 voice and such person had not previously consented to
receiving such calls within the four years prior to the
filing of this Complaint

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

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

25 17. The Class is so numerous that the individual joinder of all of its
26 members is impractical. While the exact number and identities of The Class
27 members are unknown to Plaintiff at this time and can only be ascertained through
28 appropriate discovery, Plaintiff is informed and believes and thereon alleges that

1 The Class includes thousands of members. Plaintiff alleges that The Class
2 members may be ascertained by the records maintained by Defendant.

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

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

- 15
- 16 a. Whether, within the four years prior to the filing of this
17 Complaint, Defendant made any call (other than a call made for
18 emergency purposes or made with the prior express consent of
19 the called party) to a Class member using any automatic
20 telephone dialing system or any artificial or prerecorded voice
21 to any telephone number assigned to a cellular telephone
22 service;
 - 23 b. Whether Plaintiff and the Class members were damages
24 thereby, and the extent of damages for such violation; and
 - 25 c. Whether Defendant should be enjoined from engaging in such
26 conduct in the future.

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

21. Plaintiff will fairly and adequately protect the interests of the members

1 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
2 class actions.

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

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

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

22
23 **FIRST CAUSE OF ACTION**

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

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

28 26. The foregoing acts and omissions of Defendant constitute numerous
and multiple negligent violations of the TCPA, including but not limited to each

1 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

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

5 28. Plaintiff and the Class members are also entitled to and seek
6 injunctive relief prohibiting such conduct in the future.

7
8 **SECOND CAUSE OF ACTION**

9 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. §227 et seq.**

11 29. Plaintiff repeats and incorporates by reference into this cause of
12 action the allegations set forth above at Paragraphs 1-28.

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

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

21 32. Plaintiff and the Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

25 **FIRST CAUSE OF ACTION**

26 **Negligent Violations of the Telephone Consumer Protection Act**
27 **47 U.S.C. §227 et seq.**

- 28
- 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 23rd Day of October, 2021.

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

By: s/ Todd M. Friedman
Todd M. Friedman
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