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

TERRY FABRICANT, individually and on behalf of all others similarly situated, Plaintiff, vs. US FUND SOURCE LLC, and DOES 1 through 10, inclusive, Defendant.) Case No.)) <u>CLASS ACTION</u>)) COMPLAINT FOR VIOLATIONS OF:)) 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)])) <u>DEMAND FOR JURY TRIAL</u>
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Plaintiff TERRY FABRICANT (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendants US FUND SOURCE LLC

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

5 **JURISDICTION & VENUE**

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

15 3. Venue is proper in the United States District Court for the Central
16 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
17 business within the State of California and Plaintiff resides within the County of
18 Los Angeles.

19 **PARTIES**

20 4. Plaintiff TERRY FABRICANT is an individual living in California
21 and is a “person” as defined by 47 U.S.C. § 153 (39).

22 5. Defendant, US FUND SOURCE LLC (hereinafter “USFS”), is a
23 lender providing business loans, lines of credit and other financial products, and is
24 a “person” as defined by 47 U.S.C. § 153 (39).

25 6. The above named Defendant, and its subsidiaries and agents, are
26 collectively referred to as “Defendants.” The true names and capacities of the
27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

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

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

11 **FACTUAL ALLEGATIONS**

12 8. Beginning in or around November of 2018, Defendants contacted
13 Plaintiff on Plaintiff's cellular telephone number ending in -1083 in an attempt to
14 solicit Plaintiff to purchase Defendants' services.

15 9. Defendants used an "automatic telephone dialing system" as defined
16 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its services.

17 10. Defendants contacted or attempted to contact Plaintiff from telephone
18 numbers belonging to Defendants.

19 11. Defendant contacted or attempted to contact Plaintiff on multiple
20 occasions, including November 20, 2018, and November 21, 2018.

21 12. Defendants' calls constituted calls that were not for emergency
22 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

23 13. Defendants' calls were placed to telephone number assigned to a
24 cellular telephone service for which Plaintiff incurs a charge for incoming calls
25 pursuant to *47 U.S.C. § 227(b)(1)*.

26 14. During all relevant times, Defendants did not possess Plaintiff's "prior
27 express consent" to receive calls using an automatic telephone dialing system or an
28 artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. §*

1 227(b)(1)(A).

2 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
3 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

4 **CLASS ALLEGATIONS**

5 16. Plaintiff brings this action individually and on behalf of all others
6 similarly situated, as a member the class concerning the ATDS claim for no prior
7 express consent (hereafter "The Class") is defined as follows:

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

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

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

26 19. The Class is so numerous that the individual joinder of all of its
27 members is impractical. While the exact number and identities of The Class
28 members are unknown to Plaintiff at this time and can only be ascertained through
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 Defendants.

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

10 21. 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 ATDS Class members, and which may be determined without reference to the
14 individual circumstances of any ATDS Class members, include, but are not limited
15 to, the following:

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

27 22. As a person that received numerous telemarketing/solicitation calls
28 from Defendants using an automatic telephone dialing system or an artificial or

1 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
2 claims that are typical of The Class.

3 23. Plaintiff will fairly and adequately protect the interests of the members
4 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
5 class actions.

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

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

22 26. Defendants have acted or refused to act in respects generally
23 applicable to The Class, thereby making appropriate final and injunctive relief with
24 regard to the members of the Class as a whole.

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1 **FIRST CAUSE OF ACTION**

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

3 **47 U.S.C. §227(b).**

4 **On Behalf of Plaintiff and The Class**

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

7 28. The foregoing acts and omissions of Defendants constitute numerous
8 and multiple negligent violations of the TCPA, including but not limited to each
9 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
10 *47 U.S.C. § 227 (b)(1)(A)*.

11 29. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
12 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
13 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

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

16 **SECOND CAUSE OF ACTION**

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

18 **Act**

19 **47 U.S.C. §227(b)**

20 **On Behalf of Plaintiff and The Class**

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

23 32. The foregoing acts and omissions of Defendants constitute numerous
24 and multiple knowing and/or willful violations of the TCPA, including but not
25 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
26 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

27 33. As a result of Defendants' knowing and/or willful violations of *47*
28 *U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of

1 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
2 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

3 34. Plaintiff and the Class members are also entitled to and seek injunctive
4 relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

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

7 **FIRST CAUSE OF ACTION**

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

9 **47 U.S.C. §227(b)**

- 10 • As a result of Defendants’ negligent violations of 47 U.S.C.
- 11 §227(b)(1), Plaintiff and The Class members are entitled to and
- 12 request \$500 in statutory damages, for each and every violation,
- 13 pursuant to 47 U.S.C. 227(b)(3)(B).
- 14 • Any and all other relief that the Court deems just and proper.

15 **SECOND CAUSE OF ACTION**

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

17 **Act**

18 **47 U.S.C. §227(b)**

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

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JURY DEMAND

35. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 14th day of September, 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

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