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

DIANA HANSON, individually and on) Case No. '20 CV0448 CAB LL
behalf of all others similarly situated,)

Plaintiff,)

vs.)

XPRESS WEB MARKETING)

Defendant.)

CLASS ACTION

**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)]

DEMAND FOR JURY TRIAL

Plaintiff DIANA HANSON (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of XPRESS WEB MARKETING.
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related regulations.

8 **JURISDICTION & VENUE**

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

17 3. Venue is proper in the United States District Court for the Southern
18 District of California pursuant to *28 U.S.C. § 1391(b)(2)* because Plaintiff resides
19 within the County of San Diego.

20 **PARTIES**

21 4. Plaintiff, DIANA HANSON (“Plaintiff”), is a resident of San Diego
22 County, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

23 5. Defendant, XPRESS WEB MARKETING (“Defendant”) is an online
24 advertising company and is a “person” as defined by *47 U.S.C. § 153 (39)*.

25 **FACTUAL ALLEGATIONS**

26 1. Beginning in or around March 2019, Defendant contacted Plaintiff on
27 Plaintiff’s cellular telephone number ending in -5542, in an attempt to
28

1 solicit Plaintiff to purchase Defendant's services.

2 2. Defendant used an "automatic telephone dialing system" as defined
3 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

4 3. Defendant contacted or attempted to contact Plaintiff from telephone
5 number (407)278-4614 confirmed to be Defendant's number

6 4. Defendant's call constituted call that was not for emergency purposes
7 as defined by *47 U.S.C. § 227(b)(1)(A)*.

8 5. Defendant's call was placed to telephone number assigned to a cellular
9 telephone service for which Plaintiff incurs a charge for incoming call pursuant to
10 *47 U.S.C. § 227(b)(1)*.

11 6. During all relevant times, Defendant did not possess Plaintiff's "prior
12 express consent" to receive call using an automatic telephone dialing system or an
13 artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. §*
14 *227(b)(1)(A)*.

15 7. Such call constitutes solicitation call pursuant to *47 C.F.R. §*
16 *64.1200(c)(2)* as they were attempts to promote or sell Defendant's services.

17 8. Plaintiff never granted Defendant any prior express consent nor was
18 any established business relationship with Defendant in existence as defined under
19 *16 C.F.R. 310.4(b)(1)(iii)(B)*.

20 9. Upon information and belief and based on Plaintiff's experiences of
21 being called by Defendant after requesting they stop calling, and at all relevant
22 times, Defendant failed to establish and implement reasonable practices and
23 procedures to effectively prevent telephone solicitations in violation of the
24 regulations prescribed under *47 U.S.C. § 227(c)(5)*.

25
26 **CLASS ALLEGATIONS**

27 10. Plaintiff brings this action individually and on behalf of all others
28 similarly situated, as a member the four proposed classes (hereafter, jointly, "The

1 Classes”). The class concerning the ATDS claim for no prior express consent
2 (hereafter “The ATDS Class”) is defined as follows:

3 All persons within the United States who received any
4 solicitation/telemarketing telephone call from Defendant
5 to said person’s cellular telephone made through the use
6 of any automatic telephone dialing system or an artificial
7 or prerecorded voice and such person had not previously
8 consented to receiving such call within the four years
9 prior to the filing of this Complaint.

10 **FIRST CAUSE OF ACTION**

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

12 **47 U.S.C. §227(b).**

13 11. Plaintiff repeats and incorporates by reference into this cause of action
14 the allegations set forth in the paragraphs above.

15 12. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
18 *47 U.S.C. § 227 (b)(1)(A)*.

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

22 14. Plaintiff and the ATDS Class are also entitled to and seek injunctive
23 relief prohibiting such conduct in the future.

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25 ///

1 **SECOND CAUSE OF ACTION**

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

3 **Act**

4 **47 U.S.C. §227(b)**

5 **On Behalf of the ATDS Class**

6 15. Plaintiff repeats and incorporates by reference into this cause of action
7 the allegations set forth in the paragraphs above.

8 16. The foregoing acts and omissions of Defendant constitute numerous
9 and multiple knowing and/or willful violations of the TCPA, including but not
10 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
11 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

12 17. As a result of Defendant' knowing and/or willful violations of *47*
13 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class are entitled an award of \$1,500.00
14 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
15 *227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

16 18. Plaintiff and the Class members are also entitled to and seek injunctive
17 relief prohibiting such conduct in the future.

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19 **PRAYER FOR RELIEF**

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

21
22 **FIRST CAUSE OF ACTION**

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

24 **47 U.S.C. §227(b)**

- 25 • As a result of Defendant' negligent violations of *47 U.S.C.*
26 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and
27 request \$500 in statutory damages, for each and every violation,
28 pursuant to *47 U.S.C. 227(b)(3)(B)*.

- 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(b)

- As a result of Defendant’ 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.

JURY DEMAND

19. 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 10th Day of March, 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