

Todd M. Friedman (SBN 216752)
Law Offices Of Todd M. Friedman, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com

Attorneys for Plaintiff

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

JACKIE WINTERS, individually and) Case No:
on behalf of all others similarly situated,)

Plaintiff,)

vs.)

ASAP MARKETING, INC., D/B/A JP)
MARKETING, and DOES 1 through)
10, inclusive,)
Defendant.)

CLASS ACTION

**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.*]

DEMAND FOR JURY TRIAL

Plaintiff JACKIE WINTERS (“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 ASAP MARKETING, INC., D/B/A JP MARKETING (“Defendant”), in negligently, knowingly, and/or willfully

1 contacting Plaintiff on Plaintiff's home telephone in violation of the Telephone
2 Consumer Protection Act, *47 U.S.C. § 227 et seq.* ("TCPA") and related
3 regulations, specifically the National Do-Not-Call provisions, thereby invading
4 Plaintiff's privacy.

5 JURISDICTION & VENUE

6 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
7 resident of California, seek 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 with its principal place of business and State of Incorporation in California state.
10 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
11 TCPA, which, when aggregated among a proposed class in the thousands, exceeds
12 the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
13 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
14 ("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, JACKIE WINTERS ("Plaintiff"), is a natural person
21 residing in Canoga Park, California and is a "person" as defined by *47 U.S.C. § 153*
22 *(39)*.

23 5. Defendant, ASAP MARKETING, INC., D/B/A JP MARKETING
24 ("Defendant"), is a marketing company and is a "person" as defined by *47 U.S.C.*
25 *§ 153 (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 is informed and believes 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 February of 2019, Defendant contacted
14 Plaintiff on Plaintiff's home telephone number ending in -5544, in an attempt to
15 solicit Plaintiff to purchase Defendant's services.

16 9. Plaintiff's home telephone number ending in -5544 was added to the
17 National Do-Not-Call Registry on or about July 2, 2003.

18 10. Defendant contacted or attempted to contact Plaintiff from telephone
19 numbers including and not necessarily limited to (818) 646-3473.

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. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
23 64.1200(c)(2), as they were an attempt to promote or sell Defendant's services.

24 13. Plaintiff has received numerous solicitation calls from Defendant
25 within a 12-month period.

26 14. Plaintiff did not have an established business relationship with
27 Defendant during the time of the solicitation calls from Defendant.

28 15. Plaintiff did not give Defendant prior express written consent for

1 Defendant to call Plaintiff's home telephone for marketing or solicitation purposes.
2 Indeed, during one phone call, Plaintiff asked where Defendant had obtained his
3 phone number, and one of Defendant's agents stated that they obtained Plaintiff's
4 phone number from a third party company, namely "Lending Tree," with which
5 Plaintiff had no business relationship and thereby lacked consent to give out
6 Plaintiff's phone number.

7 16. Plaintiff requested for Defendant to stop calling Plaintiff during one
8 of the initial calls from Defendant, thus revoking any prior express consent that had
9 existed and terminating any established business relationship that had existed, as
10 defined under 16 C.F.R. 310.4(b)(iii)(B).

11 17. Plaintiff's request for Defendant to stop calling Plaintiff terminated
12 any established business relationship that may have existed between Plaintiff and
13 Defendant pursuant to 47 CFR § 64.1200(f)(5)(i).

14 18. Despite this, Defendant continued to call Plaintiff in an attempt to
15 solicit its services and in violation of the National Do-Not-Call provisions of the
16 TCPA thus repeatedly violating Plaintiff's privacy.

17 19. Upon information and belief, at all relevant times, Defendant failed to
18 establish and implement reasonable practices and procedures to effectively prevent
19 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
20 227(c)(5).

21 CLASS ALLEGATIONS

22 20. The class concerning the National Do-Not-Call violation (hereafter
23 "The DNC Class") is defined as follows:

24 All persons within the United States registered on the National
25 Do-Not-Call Registry for at least 30 days, who had not granted
26 Defendant prior express consent nor had a prior established
27 business relationship, who received more than one call made by
28 or on behalf of Defendant that promoted Defendant's products
or services, within any twelve-month period, within four years

1 prior to the filing of the complaint.

2 21. The class concerning the National Do-Not-Call violation following
3 revocation of consent and prior business relationship, to the extent they existed
4 (hereafter “The DNC Revocation Class”) is defined as follows:
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6 All persons within the United States registered on the National
7 Do-Not-Call Registry for at least 30 days, who received more
8 than one call made by or on behalf of Defendant that promoted
9 Defendant’s products or services, after having revoked consent
10 and any prior established business relationship, within any
11 twelve-month period, within four years prior to the filing of the
12 complaint.

13 22. Plaintiff represents, and is a member of, The DNC Class, consisting
14 of all persons within the United States registered on the National Do-Not-Call
15 Registry for at least 30 days, who had not granted Defendant prior express consent
16 nor had a prior established business relationship, who received more than one call
17 made by or on behalf of Defendant that promoted Defendant’s products or services,
18 within any twelve-month period, within four years prior to the filing of the
19 complaint.

20 23. Plaintiff represents, and is a member of, The DNC Revocation Class,
21 consisting of all persons within the United States registered on the National Do-
22 Not-Call Registry for at least 30 days, who received more than one call made by or
23 on behalf of Defendant that promoted Defendant’s products or services, after
24 having revoked consent and any prior established business relationship, within any
25 twelve-month period, within four years prior to the filing of the complaint.

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

1 25. The Classes are so numerous that the individual joinder of all of its
2 members is impractical. While the exact number and identities of The Classes
3 members are unknown to Plaintiff at this time and can only be ascertained through
4 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
5 The Classes includes thousands of members. Plaintiff alleges that The Classes
6 members may be ascertained by the records maintained by Defendant.

7 26. Plaintiff and members of The DNC Class and DNC Revocation Class
8 were harmed by the acts of Defendant in at least the following ways: Defendant
9 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
10 via their telephones for solicitation purposes, thereby invading the privacy of said
11 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
12 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
13 and DNC Revocation Class members were damaged thereby.

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

- 20 a. Whether, within the four years prior to the filing of this
21 Complaint, Defendant or its agents placed more than one
22 solicitation call to the members of the DNC Class whose
23 telephone numbers were on the National Do-Not-Call Registry
24 and who had not granted prior express consent to Defendant and
25 did not have an established business relationship with
26 Defendant;
- 27 b. Whether Defendant obtained prior express written consent to
28 place solicitation calls to Plaintiff or the DNC Class members'

1 telephones;

2 c. Whether Plaintiff and the DNC Class member were damaged
3 thereby, and the extent of damages for such violation; and

4 d. Whether Defendant and its agents should be enjoined from
5 engaging in such conduct in the future.

6 28. As a person that received numerous solicitation calls from Defendant
7 within a 12-month period, who had not granted Defendant prior express consent
8 and did not have an established business relationship with Defendant, Plaintiff is
9 asserting claims that are typical of the DNC Class.

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

16 a. Whether, within the four years prior to the filing of this
17 Complaint, Defendant or its agents placed more than one
18 solicitation call to the members of the DNC Class whose
19 telephone numbers were on the National Do-Not-Call Registry
20 and who had revoked any prior express consent and any
21 established business relationship with Defendant;

22 b. Whether Plaintiff and the DNC Class member were damaged
23 thereby, and the extent of damages for such violation; and

24 c. Whether Defendant and its agents should be enjoined from
25 engaging in such conduct in the future.

26 30. As a person that received numerous solicitation calls from Defendant
27 within a 12-month period, who, to the extent one existed, had revoked any prior
28 express consent and any established business relationship with Defendant, Plaintiff

1 is asserting claims that are typical of the DNC Revocation Class.

2 31. Plaintiff will fairly and adequately protect the interests of the members
3 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
4 class actions.

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

16 33. The prosecution of separate actions by individual Classes 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 Classes members not parties to
19 such adjudications or that would substantially impair or impede the ability of such
20 non-party Class members to protect their interests.

21 34. Defendant has acted or refused to act in respects generally applicable
22 to The Classes, thereby making appropriate final and injunctive relief with regard
23 to the members of the Classes 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(c)**

4 **On Behalf of the DNC Class and the DNC Revocation Class**

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

7 36. The foregoing acts and omissions of Defendant 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(c)*, and in particular
10 *47 U.S.C. § 227 (c)(5)*.

11 37. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
12 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
13 award of \$500.00 in statutory damages, for each and every violation, pursuant to
14 *47 U.S.C. § 227(c)(5)(B)*.

15 38. Plaintiff and the DNC Class and DNC Revocation Class members are
16 also entitled to and seek injunctive relief prohibiting such conduct in the future.

17 **SECOND CAUSE OF ACTION**

18 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
19 **Act**

20 **47 U.S.C. §227 et seq.**

21 **On Behalf of the DNC Class and DNC Revocation Class**

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

24 40. The foregoing acts and omissions of Defendant constitute numerous
25 and multiple knowing and/or willful violations of the TCPA, including but not
26 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
27 in particular *47 U.S.C. § 227 (c)(5)*.

28 41. As a result of Defendant's knowing and/or willful violations of *47*

1 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
2 are entitled an award of \$1,500.00 in statutory damages, for each and every
3 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

4 42. Plaintiff and the DNC Class and DNC Revocation Class members are
5 also entitled to and seek injunctive relief prohibiting such conduct in the future.

6 **PRAYER FOR RELIEF**

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

8 **FIRST CAUSE OF ACTION**

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

10 **47 U.S.C. §227(c)**

- 11 • As a result of Defendant’s negligent violations of *47 U.S.C.*
12 *§227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation Class
13 members are entitled to and request \$500 in statutory damages, for
14 each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- 15 • Any and all other relief that the Court deems just and proper.

16 **SECOND CAUSE OF ACTION**

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

19 **47 U.S.C. §227(c)**

- 20 • As a result of Defendant’s willful and/or knowing violations of *47*
21 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation
22 Class members are entitled to and request treble damages, as provided
23 by statute, up to \$1,500, for each and every violation, pursuant to *47*
24 *U.S.C. §227(c)(5)*.
- 25 • Any and all other relief that the Court deems just and proper.

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DEMAND FOR JURY

43. 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 27th Day of December, 2019.

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