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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **ERIK TRIMBLE**, individually and on) Case No.
 15 behalf of all others similarly situated,)

16) **CLASS ACTION**

17 Plaintiff,)

18) **COMPLAINT FOR VIOLATIONS**
 19) **OF:**

20 vs.)

21 **LIBERTY ACTION GROUP PAC;**)
 22 **DOES 1 through 10, inclusive,**)

- 23) 1. NEGLIGENT VIOLATIONS OF
 24) THE TELEPHONE CONSUMER
 25) PROTECTION ACT [47 U.S.C.
 26) §227 ET SEQ.]
 27) 2. WILLFUL VIOLATIONS OF THE
 28) TELEPHONE CONSUMER
 PROTECTION ACT [47 U.S.C.
 §227 ET SEQ.]

Defendant(s).)

29) **DEMAND FOR JURY TRIAL**

30 Plaintiff, ERIK TRIMBLE (“Plaintiff”), on behalf of himself and all others
 31 similarly situated, alleges the following upon information and belief based upon
 32 personal knowledge:

33 **NATURE OF THE CASE**

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

1 the illegal actions of LIBERTY ACTION GROUP PAC (“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’s 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 Florida
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 Northern
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, ERIK TRIMBLE (“Plaintiff”), is a natural person residing in
21 San Francisco, California and is a “person” as defined by 47 U.S.C. § 153 (39).

22 5. Defendant, LIBERTY ACTION GROUP PAC (“Defendant” or
23 “DEFENDANT”), is a revenue management company and is a “person” as defined
24 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 August 2016, Defendant contacted Plaintiff on
13 his cellular telephone ending in -5080, in an effort to sell or solicit its services.
14 Defendant called, including but not limited to around August 8, 2016 at 9:32 a.m.,
15 August 12, 2016 at 3:19 p.m., August 15, 2016 at 9:41 a.m., August 16, 2016 at
16 4:35 p.m., and August 17, 2016 at 10:55 a.m. Defendant often called from
17 telephone numbers (646) 604-9033, (202) 813-9371, (646) 600-8266, and (202)
18 599-9203.

19 9. Defendant used an “automatic telephone dialing system”, as defined
20 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to sell or solicit its
21 business services.

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

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

27 12. Plaintiff is not a customer of Defendant’s services and has never
28 provided any personal information, including his cellular telephone number, to

1 Defendant for any purpose whatsoever. In addition, on at least one occasion,
2 Plaintiff answered the telephone and told Defendant to stop calling him.
3 Accordingly, Defendant never received Plaintiff's "prior express consent" to
4 receive calls using an automatic telephone dialing system or an artificial or
5 prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

6
7 **CLASS ALLEGATIONS**

8 13. Plaintiff brings this action on behalf of himself and all others similarly
9 situated, as a member of the proposed class (hereafter "The Class") defined as
10 follows:

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

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

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

28 16. The Class is so numerous that the individual joinder of all of its

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

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

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

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

19. As a person that received numerous calls from Defendant using an
automatic telephone dialing system or an artificial or prerecorded voice, without

1 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The
2 Class.

3 20. 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 21. 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 22. 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 23. Defendant has acted or refused to act in respects generally applicable
23 to The Class, thereby making appropriate final and injunctive relief with regard to
24 the members of the California Class as a whole.

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27 **FIRST CAUSE OF ACTION**

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

47 U.S.C. §227 et seq.

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent 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.*

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

27. Plaintiff and the Class members are also entitled to and seek 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 at Paragraphs 1-23.

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 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.

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SECOND CAUSE OF ACTION

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

47 U.S.C. §227 et seq.

- 1 • As a result of Defendant's willful and/or knowing violations of 47
2 *U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to
3 and request treble damages, as provided by statute, up to \$1,500, for
4 each and every violation, pursuant to 47 *U.S.C. §227(b)(3)(B)* and 47
5 *U.S.C. §227(b)(3)(C)*; and
- 6 • Any and all other relief that the Court deems just and proper.

7
8 Respectfully Submitted this 31st day of August, 2016.

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

10 By: /s Todd M. Friedman

11 Todd M. Friedman

12 Law Offices of Todd M. Friedman

13 Attorney for Plaintiff
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ERIK TRIMBLE, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C. 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 Phone: 877-206-4741

DEFENDANTS

LIBERTY ACTION GROUP PAC; DOES 1 through 10, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47. U.S.C. § 227 et seq. Brief description of cause: Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE: 08/31/2016 SIGNATURE OF ATTORNEY OF RECORD: s/Todd M. Friedman

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.