

1 Todd M. Friedman (216752)
 2 Nicholas J. Bontrager (252114)
Law Offices of Todd M. Friedman, P.C.
 3 324 S. Beverly Dr. #725
 4 Beverly Hills, CA 90212
 Phone: (877) 206-4741
 5 Fax: (866)633-0228
 6 tfriedman@attorneysforconsumers.com
 nbontrager@attorneysforconsumers.com
 7 Attorney for Plaintiff
 8 *Attorneys for Plaintiff*

9
 10 [Additional counsel for Plaintiffs listed on last page]

11 *Attorneys for Plaintiffs,*

12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **MONIQUE PEREZ, Individually**
 16 **and On Behalf of All Others**
 17 **Similarly Situated,**
 18 **Plaintiff,**
 19 **v.**
 20 **GENERAL MOTORS FINANCIAL**
 21 **COMPANY, INC.,**
 22 **Defendant.**

Case No.:
CLASS ACTION COMPLAINT
FOR DAMAGES

JURY TRIAL DEMANDED

23
 24 **INTRODUCTION**

25 1. MONIQUE PEREZ (“Plaintiff”) brings this Class Action Complaint for
 26 damages, injunctive relief, and any other available legal or equitable
 27 remedies, resulting from the illegal actions of GENERAL MOTORS
 28 FINANCIAL COMPANY, INC. (“Defendant”), in negligently and/or

1 willfully contacting Plaintiff on Plaintiff's cellular telephone, in violation of
2 the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"),
3 thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon
4 personal knowledge as to themselves and their own acts and experiences,
5 and, as to all other matters, upon information and belief, including
6 investigation conducted by her attorneys.

7 2. The TCPA was designed to prevent calls and text messages like the ones
8 described herein, and to protect the privacy of citizens like Plaintiff.
9 "Voluminous consumer complaints about abuses of telephone technology –
10 for example, computerized calls dispatched to private homes – prompted
11 Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct.
12 740, 744 (2012).

13 3. In enacting the TCPA, Congress intended to give consumers a choice as to
14 how corporate similar entities may contact them, and made specific findings
15 that "[t]echnologies that might allow consumers to avoid receiving such
16 calls are not universally available, are costly, are unlikely to be enforced, or
17 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243,
18 § 11. In support of this, Congress found that

19 [b]anning such automated or prerecorded telephone calls
20 to the home, except when the receiving party consents to
21 receiving the call or when such calls are necessary in an
22 emergency situation affecting the health and safety of the
23 consumer, is the only effective means of protecting
24 telephone consumers from this nuisance and privacy
25 invasion.

26 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012
27 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings
28 on TCPA's purpose).

29 4. Congress also specifically found that "the evidence presented to the
30 Congress indicates that automated or prerecorded calls are a nuisance and an
31 invasion of privacy, regardless of the type of call...." Id. at §§ 12-13. See

1 also, *Mims*, 132 S. Ct. at 744.

2 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
3 case regarding calls similar to this one:

4 The Telephone Consumer Protection Act ... is well known for
5 its provisions limiting junk-fax transmissions. A less-litigated
6 part of the Act curtails the use of automated dialers and
7 prerecorded messages to cell phones, whose subscribers often
8 are billed by the minute as soon as the call is answered—and
9 routing a call to voicemail counts as answering the call. An
10 automated call to a landline phone can be an annoyance; an
11 automated call to a cell phone adds expense to annoyance.

12 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

13 **JURISDICTION AND VENUE**

14 6. This Court has federal question jurisdiction because this case arises out of
15 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
16 *LLC*, 132 S. Ct. 740 (2012).

17 7. Venue is proper in the United States District Court for the Central District of
18 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant
19 is subject to personal jurisdiction in the County of Ventura, State of
20 California and County of Orange, State of California as not only does
21 Defendant regularly conduct business throughout the State of California, but
22 Plaintiff resides within the County of Orange within the State of California.

23 **PARTIES**

24 8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
25 the State of California. Plaintiff is, and at all times mentioned herein was a
26 “person” as defined by 47 U.S.C. § 153 (39).

27 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
28 at all times mentioned herein was, a corporation whose corporate
headquarters is in Fort Worth, TX. Defendant, is and at all times mentioned
herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153
(39). Plaintiff alleges that at all times relevant herein Defendant conducted

1 business in the State of California and in the County of Orange, and within
2 this judicial district.

3 **FACTUAL ALLEGATIONS**

4 10. At all times relevant, Plaintiff was a citizen of the State of California.

5 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
6 47 U.S.C. § 153 (39).

7 11. Defendant is, and at all times mentioned herein was, a Corporation and a
8 “person,” as defined by 47 U.S.C. § 153 (39).

9 12. At all times relevant Defendant conducted business in the State of California
10 and in the County of Orange, within this judicial district.

11 13. Beginning in or around late 2013, Defendant began to utilize Plaintiff’s
12 cellular telephone number, ending in 7972, to place virtually daily incessant
13 calls to Plaintiff pertaining to an alleged debt owed by another person named
14 “Melanie.”

15 14. Plaintiff did not provide Defendant with her cellular telephone.

16 15. During this time, Defendant placed calls on a daily basis, often placing
17 numerous calls a day.

18 16. The calls Defendant placed to Plaintiff’s cellular telephones were placed via
19 an “automatic telephone dialing system,” (“ATDS”) as defined by 47 U.S.C.
20 § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

21 17. This ATDS has the capacity to store or produce telephone numbers to be
22 dialed, using a random or sequential number generator.

23 18. The telephone numbers that Defendant, or its agents, called was assigned to
24 cellular telephone services for which Plaintiff incurs a charge for incoming
25 calls pursuant to 47 U.S.C. § 227 (b)(1).

26 19. These telephone calls constituted calls that were not for emergency purposes
27 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

28 20. Plaintiff has never provided any personal information, including her cellular

1 telephone number to Defendant for any purpose. As such, neither Defendant
2 nor its agents were provided with prior express consent to place calls via its
3 ATDS to Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227
4 (b)(1)(A).

5 21. These telephone calls by Defendant, or its agents, violated 47 U.S.C. §
6 227(b)(1).

7 **CLASS ACTION ALLEGATIONS**

8 22. Plaintiff brings this action on behalf of herself and on behalf of and all
9 others similarly situated ("the Class").

10 23. Plaintiff represents, and is a member of, the Class, consisting of All persons
11 within the United States who received any telephone call/s from Defendant
12 or its agent/s and/or employee/s to said person's cellular telephone made
13 through the use of any automatic telephone dialing system within the four
14 years prior to the filing of the Complaint.

15 24. Defendant and its employees or agents are excluded from the Class.
16 Plaintiff does not know the number of members in the Class, but believes the
17 Class members number in the thousands, if not more. Thus, this matter
18 should be certified as a Class action to assist in the expeditious litigation of
19 this matter.

20 25. Plaintiff and members of the Class were harmed by the acts of Defendant in
21 at least the following ways: Defendant, either directly or through its agents,
22 illegally contacted Plaintiff and the Class members via their cellular
23 telephones, thereby causing Plaintiff and the Class members to incur certain
24 cellular telephone charges or reduce cellular telephone time for which
25 Plaintiff and the Class members previously paid, and invading the privacy of
26 said Plaintiff and the Class members. Plaintiff and the Class members were
27 damaged thereby.

28 26. This suit seeks only damages and injunctive relief for recovery of economic

1 injury on behalf of the Class, and it expressly is not intended to request any
2 recovery for personal injury and claims related thereto. Plaintiff reserves the
3 right to expand the Class definition to seek recovery on behalf of additional
4 persons as warranted as facts are learned in further investigation and
5 discovery.

6 27. The joinder of the Class members is impractical and the disposition of their
7 claims in the Class action will provide substantial benefits both to the parties
8 and to the court. The Class can be identified through Defendant's records or
9 Defendant's agents' records.

10 28. There is a well-defined community of interest in the questions of law and
11 fact involved affecting the parties to be represented. The questions of law
12 and fact to the Class predominate over questions which may affect
13 individual Class members, including the following:

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

23 29. As a person that received numerous calls from Defendant via an automated
24 telephone dialing system, Plaintiff is asserting claims that are typical of the
25 Class. Plaintiff will fairly and adequately represent and protect the interests
26 of the Class in that Plaintiff has no interests antagonistic to any member of
27 the Class.

28 30. Plaintiff and the members of the Class have all suffered irreparable harm as

1 a result of the Defendant's unlawful and wrongful conduct. Absent a class
2 action, the Class will continue to face the potential for irreparable harm. In
3 addition, these violations of law will be allowed to proceed without remedy
4 and Defendant will likely continue such illegal conduct. Because of the size
5 of the individual Class member's claims, few, if any, Class members could
6 afford to seek legal redress for the wrongs complained of herein.

7 31. Plaintiff has retained counsel experienced in handling class action claims
8 and claims involving violations of the Telephone Consumer Protection Act.

9 32. A class action is a superior method for the fair and efficient adjudication of
10 this controversy. Class-wide damages are essential to induce Defendant to
11 comply with federal and California law. The interest of Class members in
12 individually controlling the prosecution of separate claims against Defendant
13 is small because the maximum statutory damages in an individual action for
14 violation of privacy are minimal. Management of these claims is likely to
15 present significantly fewer difficulties than those presented in many class
16 claims.

17 33. Defendant has acted on grounds generally applicable to the Class, thereby
18 making appropriate final injunctive relief and corresponding declaratory
19 relief with respect to the Class as a whole.

20 **FIRST CAUSE OF ACTION**

21 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**

22 **PROTECTION ACT**

23 **47 U.S.C. § 227 ET SEQ.**

24 34. Plaintiff incorporates by reference all of the above paragraphs of this
25 Complaint as though fully stated herein.

26 35. The foregoing acts and omissions of Defendant constitute numerous and
27 multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

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

4 37.Plaintiff and the Class are also entitled to and seek injunctive relief
5 prohibiting such conduct in the future.

6 **SECOND CAUSE OF ACTION**

7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**

8 **CONSUMER PROTECTION ACT**

9 **47 U.S.C. § 227 ET SEQ.**

10 38.Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

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

16 40.As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
17 227 et seq, Plaintiffs and The Class are entitled to an award of \$1,500.00 in
18 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
19 227(b)(3)(C).

20 41.Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
24 Class members the following relief against Defendant:

25 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**

26 **TCPA, 47 U.S.C. § 227 ET SEQ.**

27 42.As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
28 Plaintiff seeks for herself and each Class member \$500.00 in statutory

1 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
2 43. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
3 conduct in the future.

4 44. Any other relief the Court may deem just and proper.

5 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
6 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

7 45. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
8 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in
9 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
10 227(b)(3)(C).

11 46. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
12 conduct in the future.

13 47. Any other relief the Court may deem just and proper.

14
15 **Trial By Jury**

16 48. Pursuant to the seventh amendment to the Constitution of the United States
17 of America, Plaintiff is entitled to, and demands, a trial by jury.

18
19 Dated: May 9, 2014

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

20 BY: /s/ TODD M. FRIEDMAN

21 TODD M. FRIEDMAN, ESQ.

22 ATTORNEYS FOR PLAINTIFF
23
24
25
26
27
28

1 ADDITIONAL COUNSEL FOR PLAINTIFF

2 **KAZEROUNI LAW GROUP, APC**

3 Abbas Kazerounian, Esq. (SBN 249203)

4 ak@kazlg.com

5 Jason A. Ibey, Esq. (SBN: 284607)

6 jason@kazlg.com

7 245 Fischer Avenue, Unit D1

8 Costa Mesa, CA 92626

9 Telephone: (800) 400-6808

10 Facsimile: (800) 520-5523

11 **HYDE & SWIGART**

12 Joshua B. Swigart, Esq. (SBN: 225557)

13 josh@westcoastlitigation.com

14 Jessica R. K. Dorman, Esq. (SBN: 279919)

15 Jessica@westcoastlitigation.com

16 2221 Camino Del Rio South, Suite 101

17 San Diego, CA 92108-3551

18 Telephone: (619) 233-7770

19 Facsimile: (619) 297-1022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28