

Douglas J. Champion (SBN: 75381)
doug@djcampion.com
Law Offices of Douglas J. Champion, APC
409 Camino Del Rio South, Suite 303
San Diego, CA 92108
Telephone: (619) 299-2091
Facsimile: (619) 858-0034

Attorneys for Plaintiffs

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

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Lillian Franklin, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>Wells Fargo Bank, N.A.,</p> <p style="text-align: center;">Defendant.</p> | <p>Case No: <u>'14CV2349 MMABGS</u></p> <p><u>CLASS ACTION</u></p> <p>Complaint For Damages and Injunctive Relief Pursuant To The Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.</p> <p>Jury Trial Demanded</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

INTRODUCTION

1. Lillian Franklin (“Plaintiff”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Wells Fargo Bank N.A. (“Wells Fargo”) referred to as (“Defendant”), in negligently, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer

1 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
2 Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to
3 herself and her own acts and experiences, and, as to all other matters, upon
4 information and belief, including investigation conducted by her attorneys.

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up
7 to \$1,500 in damages for each call in violation of the TCPA, which, when
8 aggregated among a proposed class number in the tens of thousands, exceeds
9 the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff seeks
10 relief on behalf of a national class, which will result in at least one class
11 member belonging to a different state than that of Defendant. Therefore, both
12 elements of diversity jurisdiction under the Class Action Fairness Act of 2005
13 (“CAFA”) are present, and this Court has jurisdiction.

14 3. Venue is proper in the United States District Court for the Southern District of
15 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant does
16 business within the State of California and the County of San Diego.

17 **PARTIES**

18 4. Plaintiff is, and at all times mentioned herein was, an individual citizen and
19 resident of the State of California. Plaintiff is, and at all times mentioned
20 herein was, a “person” as defined by 47 U.S.C. § 153 (10).

21 5. Plaintiff is informed and believed, and thereon allege, that Defendant is, and at
22 all times mentioned herein was a corporation.

23 6. Wells Fargo’s primary corporate address is 1 Home Campus Mac X2401-049,
24 Des Moines, IA 50328. Wells Fargo is, and at all times mentioned herein was, a
25 corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

26 7. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
27 Defendant conducted business in the State of California and in the County of San
28 Diego.

FACTUAL ALLEGATIONS

1
2 8. At all times relevant, Plaintiff Lillian Franklin was an individual residing
3 within the County of San Diego in the State of California. Plaintiff Lillian
4 Franklin is, and at all times mentioned herein was, a “person” as defined by
5 47 U.S.C. § 153 (10).

6 9. Defendant is and at all times mentioned herein was, a corporation and a
7 “person,” as defined by 47 U.S.C. § 153 (10).

8 10. At all times relevant Defendant conducted business in the State of California
9 and in the County of San Diego.

10 11. On multiple occasions over numerous days, all prior to the date this
11 Complaint was filed, but sometime after four years prior to the date this
12 Complaint was filed, Defendant contacted Plaintiff on Plaintiff’s cellular
13 telephone via an “automatic telephone dialing system,” as defined by 47
14 U.S.C. § 227 (a)(1).

15 12. During these telephone calls Defendant used “an artificial or prerecorded
16 voice” as prohibited by 47 U.S.C. § 227 (b)(1)(A).

17 13. The telephone number Defendant called was assigned to a cellular telephone
18 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
19 U.S.C. § 227 (b)(1).

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

22 15. Plaintiff Lillian Franklin did not provide prior express consent to receive calls
23 on her cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A). Lillian
24 Franklin did not have a credit card account with Wells Fargo and the calls that
25 she received were intended for the collection of the account of another person,
26 a deceased individual.

27 16. These telephone calls by Defendants violated 47 U.S.C. § 227(b)(1).

28 //

CLASS ACTION ALLEGATIONS

- 1
- 2 17. Plaintiff brings this action on behalf of herself and on behalf of and all others
- 3 similarly situated (“The Class and Subclass One”).
- 4 18. Plaintiff represents, and is a member of, The Class, consisting “**of all persons**
- 5 **within the United States who received any telephone call from Defendant**
- 6 **to said person’s cellular telephone made through the use of any automatic**
- 7 **telephone dialing system or an artificial or prerecorded voice, within the**
- 8 **four years prior to the filing of this Complaint regarding the collections**
- 9 **of alleged debt/s for Wells Fargo credit card accounts”.**
- 10 19. Defendant, its employees and agents are excluded from The Class. Plaintiff
- 11 does not know the number of members in The Class, but believes The Class
- 12 number in the tens of thousands, if not more. Thus, this matter should be
- 13 certified as a Class action to assist in the expeditious litigation of this matter.
- 14 20. Plaintiff and members of The Class were harmed by the acts of Defendant in
- 15 at least the following ways: Defendant illegally contacted Plaintiff and Class
- 16 members via their cellular telephones thereby causing Plaintiff and Class
- 17 members to incur certain cellular telephone charges or reduce cellular
- 18 telephone time for which Plaintiff and Class members previously paid, by
- 19 having to retrieve or administer messages left by Defendant during those
- 20 illegal calls, and invading the privacy of said Plaintiff and Class members.
- 21 Plaintiff and The Class were damaged thereby.
- 22 21. This suit seeks only damages and injunctive relief for recovery of economic
- 23 injury on behalf of The Class and it expressly is not intended to request any
- 24 recovery for personal injury and claims related thereto. Plaintiff reserves the
- 25 right to expand The Class definition to seek recovery on behalf of additional
- 26 persons as warranted as facts are learned in further investigation and
- 27 discovery.
- 28

1 22. The joinder of the Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the court. The Class can be identified through Defendant's records.

4 23. There is a well-defined community of interest in the questions of law and fact
5 involved affecting the parties to be represented. The questions of law and fact
6 to the Class predominate over questions which may affect individual Class
7 members, including the following:

8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendant made any call (other than a call made for
10 emergency purposes or made with the prior express consent of
11 the called party) to a Class member using any automatic
12 telephone dialing system or an artificial or prerecorded voice to
13 any telephone number assigned to a cellular telephone service.

14 b. Whether Plaintiff and the Class were damaged thereby, and the
15 extent of damages for such violation; and

16 c. Whether Defendant should be enjoined from engaging in such
17 conduct in the future.

18 24. As people that received numerous calls using an automatic telephone dialing
19 system or an artificial or prerecorded voice, without Plaintiff's express prior
20 consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff
21 will fairly and adequately represent and protect the interests of the Class in
22 that Plaintiff has no interest antagonistic to any member of the Class.

23 25. Plaintiff and the members of the Class have all suffered irreparable harm as a
24 result of the Defendant's unlawful and wrongful conduct. Absent a class
25 action, the Class will continue to face the potential for irreparable harm. In
26 addition, these violations of law will be allowed to proceed without remedy
27 and Defendant will likely continue such illegal conduct. Because of the size
28

1 of the individual Class member's claims, few, if any, Class members could
2 afford to seek legal redress for the wrongs complained of herein.

3 26. Plaintiff has retained counsel experienced in handling class action claims and
4 claims involving violations of the Telephone Consumer Protection Act.

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

13 28. Defendant has acted on grounds generally applicable to the Class, thereby
14 making appropriate final injunctive relief and corresponding declaratory relief
15 with respect to the Class as a whole.

16 **FIRST CAUSE OF ACTION**
17 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
18 **47 U.S.C. § 227 ET SEQ.**

19 29. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.

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

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

27 32. Plaintiff and The Class are also entitled to and seek injunctive relief prohibiting
28 such conduct in the future.

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lillian Franklin, Individually and on Behalf of All Others Similarly Situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Douglas J. Champion, Esq. (SBN: 75381) Law Offices of Douglas J. Champion, APC 409 Camino Del Rio South, Suite 303, San Diego, CA 92108

DEFENDANTS

Wells Fargo Bank, N.A.

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)

'14CV2349 MMABGS

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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

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. 15-1692. Brief description of cause: Violation of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/03/2014 SIGNATURE OF ATTORNEY OF RECORD s/Douglas J. Champion

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 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.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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.
- Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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 Rule 23, F.R.Cv.P.
- 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.