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19 *Attorneys for Plaintiff,*

20  
21 **UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

22 **KECIA FRENCH, INDIVIDUALLY**  
23 **AND ON BEHALF OF ALL OTHERS**  
24 **SIMILARLY SITUATED,**

25 Plaintiffs,

26 v.

27 **TARGET NATIONAL BANK,**

28 Defendant.

**Case No.: '13CV0233 JAH KSC**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF PURSUANT TO  
THE TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. § 227, ET  
SEQ.**

**JURY TRIAL DEMANDED**

1 Plaintiff Kecia French (“Plaintiff”), on behalf of herself and all others similarly situated,  
2 alleges the following upon information and belief based upon personal knowledge:

3 **NATURE OF THE CASE**

4 1. Plaintiff brings this action for herself and others similarly situated seeking  
5 damages and any other available legal or equitable remedies resulting from the illegal actions  
6 of Target National Bank (“Defendant”) in negligently, knowingly, and/or willfully contacting  
7 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection  
8 Act, *47 U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

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

19 3. Venue is proper in the United States District Court for the Southern District of  
20 California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does  
21 business within the Southern District of California and Plaintiff resides within the Southern  
22 District of California.

23 **PARTIES**

24 4. Plaintiff, Kecia French (“Plaintiff”), is a natural person residing in San Diego,  
25 California and is a “person” as defined by *47 U.S.C. § 153 (10)*.

26 5. Defendant, Target National Bank (“Defendant”), is a leader in the consumer  
27 financial lending industry funding consumer retail credit accounts for consumers who are  
28 patrons of the approximate 1,800 retail establishments throughout 49 states and is a “person” as

1 defined by *47 U.S.C. § 153 (10)*.

2 **FACTUAL ALLEGATIONS**

3 6. In or around August of 2005, Plaintiff applied for and ultimately obtained a  
4 consumer based credit card from Defendant for the purchases of consumer retail goods which  
5 could be used at any Target retail establishment throughout the United States.

6 7. At no time during the August 2005 application process did Plaintiff provide  
7 Defendant with her personal cellular telephone number.

8 8. Beginning in or around late 2011, for a variety of personal and financial reasons,  
9 Plaintiff began experiencing difficulties in making her monthly credit card payments to  
10 Defendant.

11 9. As a result of Plaintiff's financial hardships, Defendant began contacting  
12 Plaintiff on her cellular telephone, (858) 822-8381, in an attempt to collect an alleged  
13 outstanding debt owed on her Target consumer credit.

14 10. Plaintiff is unaware of how Defendant obtained Plaintiff's cellular telephone  
15 number as Plaintiff had never previously provided her cellular telephone number to Defendant  
16 at any time for any reason.

17 11. Defendant placed multiple calls a day, often upwards of two (2) to five (5) or  
18 more calls in a single day, on a virtual daily basis to Plaintiff's cellular telephone seeking to  
19 collect the alleged debt owed.

20 12. Defendant used an "automatic telephone dialing system", as defined by *47*  
21 *U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the debt allegedly owed.

22 13. Defendant would occasionally leave voicemail messages on Plaintiff's cellular  
23 telephone if Plaintiff did not answer Defendant's calls. In some of these messages, Defendant  
24 utilized an "artificial or prerecorded voice" as prohibited by *47 U.S.C. § 227(b)(1)(A)*.

25 14. Defendant's calls constituted calls that were not for emergency purposes as  
26 defined by *47 U.S.C. § 227(b)(1)(A)*.

27 15. Defendant's calls were placed to telephone number assigned to a cellular  
28 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. §*

1 227(b)(1).

2 16. On numerous occasions, Plaintiff would either answer Defendant's call or return  
3 Defendant's call and advise Defendant that she did not give Defendant permission to receive  
4 calls on her cellular telephone and demanded that Defendant cease placing any and all calls to  
5 her personal cellular telephone.

6 17. Despite being notified that Plaintiff did not authorize Defendant to contact her  
7 on her cellular telephone and that Plaintiff did not wish to receive any further calls, Defendant  
8 nonetheless continued to place calls to Plaintiff's cellular telephone by way of its "automatic  
9 telephone dialing system" and/or "artificial or prerecorded voice."

10 18. Plaintiff had never provided her cellular telephone number to Defendant for any  
11 purpose whatsoever. Furthermore, Plaintiff repeatedly demanded that Defendant cease placing  
12 any and all calls to Plaintiff's cellular telephone. Accordingly, Defendant never received  
13 Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system  
14 or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. §  
15 227(b)(1)(A).

16 **CLASS ALLEGATIONS**

17 19. Plaintiff brings this action on behalf of herself and all others similarly situated,  
18 as a member of the proposed class (hereafter "The Class") defined as follows:

19 All persons within the United States who received any telephone  
20 calls from Defendant to said person's cellular telephone made  
21 through the use of any automatic telephone dialing system or an  
22 artificial or prerecorded voice and such person had not previously  
23 consented to receiving such calls within the four years prior to  
the filing of this Complaint

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

1           21. Defendant, its employees and agents are excluded from The Class. Plaintiff  
2 does not know the number of members in The Class, but believes the Class members number in  
3 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in  
4 the expeditious litigation of the matter.

5           22. The Class is so numerous that the individual joinder of all of its members is  
6 impractical. While the exact number and identities of The Class members are unknown to  
7 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
8 informed and believes and thereon alleges that The Class includes thousands of members.  
9 Plaintiff alleges that The Class members may be ascertained by the records maintained by  
10 Defendant.

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

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

22           a. Whether, within the four years prior to the filing of this Complaint,  
23 Defendant made any call (other than a call made for emergency purposes  
24 or made with the prior express consent of the called party) to a Class  
25 member using any automatic telephone dialing system or any artificial or  
26 prerecorded voice to any telephone number assigned to a cellular  
27 telephone service;

28           b. Whether Plaintiff and the Class members were damages thereby, and the

1 extent of damages for such violation; and

2 c. Whether Defendant should be enjoined from engaging in such conduct in  
3 the future.

4 25. As a person that received numerous calls from Defendant using an automatic  
5 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express  
6 consent, Plaintiff is asserting claims that are typical of The Class.

7 26. Plaintiff will fairly and adequately protect the interests of the members of The  
8 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

9 27. A class action is superior to other available methods of fair and efficient  
10 adjudication of this controversy, since individual litigation of the claims of all Class members  
11 is impracticable. Even if every Class member could afford individual litigation, the court  
12 system could not. It would be unduly burdensome to the courts in which individual litigation  
13 of numerous issues would proceed. Individualized litigation would also present the potential  
14 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense  
15 to all parties and to the court system resulting from multiple trials of the same complex factual  
16 issues. By contrast, the conduct of this action as a class action presents fewer management  
17 difficulties, conserves the resources of the parties and of the court system, and protects the  
18 rights of each Class member.

19 28. The prosecution of separate actions by individual Class members would create a  
20 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
21 interests of the other Class members not parties to such adjudications or that would  
22 substantially impair or impede the ability of such non-party Class members to protect their  
23 interests.

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

27  
28

1 **FIRST CAUSE OF ACTION**

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

3 **47 U.S.C. §227 et seq.**

4 30. Plaintiff repeats and incorporates by reference into this cause of action the  
5 allegations set forth above at Paragraphs 1-29.

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

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

12 33. Plaintiff and the Class members are also entitled to and seek injunctive relief  
13 prohibiting such conduct in the future.

14 **SECOND CAUSE OF ACTION**

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

16 **47 U.S.C. §227 et seq.**

17 34. Plaintiff repeats and incorporates by reference into this cause of action the  
18 allegations set forth above at Paragraphs 1-33.

19 35. The foregoing acts and omissions of Defendant constitute numerous and  
20 multiple knowing and/or willful violations of the TCPA, including but not limited to each and  
21 every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

22 36. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227*  
23 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory  
24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. §*  
25 *227(b)(3)(C)*.

26 37. Plaintiff and the Class members are also entitled to and seek injunctive relief  
27 prohibiting such conduct in the future.

1 **PRAYER FOR RELIEF**

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

3  
4 **FIRST CAUSE OF ACTION**

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

6 **47 U.S.C. §227 et seq.**

- 7 • As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*,  
8 Plaintiff and the Class members are entitled to and request \$500 in statutory  
9 damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.  
10 • Any and all other relief that the Court deems just and proper.

11  
12 **SECOND CAUSE OF ACTION**

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

14 **47 U.S.C. §227 et seq.**

- 15 • As a result of Defendant's willful and/or knowing violations of *47 U.S.C.*  
16 *§227(b)(1)*, Plaintiff and the Class members are entitled to and request treble  
17 damages, as provided by statute, up to \$1,500, for each and every violation,  
18 pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.  
19 • Any and all other relief that the Court deems just and proper.

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21  
22 Respectfully Submitted this 29th day of January, 2013.

23  
24 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

25  
26 By: /s/ Todd M. Friedman  
27 Todd M. Friedman  
28 Law Offices of Todd M. Friedman  
Attorney for Plaintiff