

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

Todd M. Friedman, Esq. (SBN: 216752)
Nicholas J. Bontrager, Esq. (SBN: 252114)
Suren N. Weerasuriya, Esq. (SBN 278521)
tfriedman@attorneysforconsumers.com
nbontrager@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com

369 S. Doheny Dr., #415
Beverly Hills, CA 90211
Telephone: (877) 206-4741
Facsimile: (866) 633-0228

[Other Counsel on Signature Page]

Attorneys for Plaintiff

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

ERIC MILLER, INDIVIDUALLY) Case No.
AND ON BEHALF OF ALL)
OTHERS SIMILARLY SITUATED,) CLASS ACTION COMPLAINT
) FOR DAMAGES
Plaintiff,) **JURY TRIAL DEMANDED**

vs.

EDSOUP.COM L.L.C., AND)
EDUTREK, LLC,)
Defendants.)

1. ERIC MILLER(“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of EDSOUP.COM L.L.C. (“Defendant

1 EDSOUP”) and EDUTREK, LLC (“Defendant EDUTREK”) (collectively
2 “Defendants”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s
3 residential telephone, in violation of the Telephone Consumer Protection Act, 47
4 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff
5 alleges as follows upon personal knowledge as to herself and his own acts and
6 experiences, and, as to all other matters, upon information and belief, including
7 investigation conducted by his attorneys.

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

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

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

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

1 4. Congress also specifically found that “the evidence presented to the
2 Congress indicates that automated or prerecorded calls are a nuisance and an
3 invasion of privacy, regardless of the type of call...” Id. at §§ 12-13. See also,
4 *Mims*, 132 S. Ct. at 744.

5 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
6 TCPA case regarding calls to a non-debtor similar to this one:

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

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

18 **JURISDICTION AND VENUE**

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

22 7. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 18 U.S.C. § 1391(b)(2), because a substantial
24 part of the events or omissions giving rise to Plaintiff’s claims occurred in this
25 district; Plaintiff is a resident of Alameda County, California, which falls within
26 the Northern District of California.

27 ///

28 ///

///

1 **PARTIES**

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

5 9. Plaintiff is informed and believes, and thereon alleges, that
6 Defendant EDSOUP, and at all times mentioned herein was, a corporation whose
7 State of Incorporation and principal place of business is in the State of Utah.
8 Defendant EDSOUP, is and at all times mentioned herein was, a corporation and
9 is a “person,” as defined by 47 U.S.C. § 153 (38). Plaintiff alleges that at all
10 times relevant herein Defendant EDSOUP conducted business in the State of
11 California and in the County of Alameda, within this judicial district.
12

13 10. Plaintiff is informed and believes, and thereon alleges, that
14 Defendant EDUTREK is, and at all times mentioned herein was, a corporation
15 whose State of Incorporation and principal place of business is in the State of
16 Utah. Defendant EDUTREK, is and at all times mentioned herein was, a
17 corporation and is a “person,” as defined by 47 U.S.C. § 153 (39). Plaintiff
18 alleges that at all times relevant herein Defendant EDUTREK conducted business
19 in the State of California and in the County of Alameda, within this judicial
20 district.

21 **FACTUAL ALLEGATIONS**

22 11. On or about November 26, 2013, Defendants started calling
23 Plaintiff’s residential telephone ending in 4885, and soliciting their services.

24 12. Defendant called Plaintiff’s residential telephone ending in 4885 on
25 at least November 26, 2013, and November 29, 2013, from telephone number
26 402-936-7000; while Plaintiff did not answer these calls in particular, the other
27 instances where Plaintiff answered Defendant’s calls resulted in Plaintiff hearing
28 a pre-recorded message from Defendants, about their education related services.

1 13. Plaintiff is not a customer of either Defendant, and has never
2 provided any personal information, including his home telephone number, to
3 either Defendant, for any purpose whatsoever; nor has Plaintiff purchased or used
4 any goods or services offered by either Defendant, at any time prior to the filing
5 of this Complaint.

6 14. Defendant placed the above cited calls using an artificial or
7 prerecorded voice to deliver messages to Plaintiff regarding Defendants' services,
8 without his prior express consent.

9 15. All calls placed by Defendant to Plaintiff utilized an "automatic
10 telephone dialing system" ("ATDS") as defined by 47 U.S.C. § 227(a)(1).
11

12 16. This ATDS has the capacity to store or produce telephone numbers
13 to be called, using a random or sequential number generator.

14 17. These calls made by Defendant to Plaintiff's landline telephone
15 utilized an artificial or prerecorded voice (*see* 47 U.S.C. § 227(b)(1)(B)).

16 18. Defendant's calls constituted calls that were not for emergency
17 purposes as defined by 47 U.S.C. § 227(b)(1)(B).

18 19. These telephone calls by Defendant, or its agent, violated 47 U.S.C.
19 § 227(b)(1)(B).
20

CLASS ACTION ALLEGATIONS

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

23 21. Plaintiff represents, and is a member of, the Class, consisting of:

24 **All persons within the United States who received**
25 **messages soliciting Defendants' services, from**
26 **Defendants or their agents, to said person's**
27 **residential telephone, initiated by Defendants**
28 **through the use of an artificial or prerecorded voice**
within the four years prior to the filing of the
Complaint.

1
2 22. Defendant EDSOUP, Defendant EDUTREK, and their employees or
3 agents are excluded from the Class. Plaintiff does not know the number of
4 members in the Class, but believes the Class members number in the thousands, if
5 not more. Thus, this matter should be certified as a Class action to assist in the
6 expeditious litigation of this matter.

7 23. Plaintiff and members of the Class were harmed by the acts of
8 Defendant EDSOUP and Defendant EDUTREK in at least the following ways:
9 Defendants, either directly or through their agents, illegally contacted Plaintiff
10 and the Class members on their residential telephones and delivered messages
11 regarding their services, using an artificial or prerecorded voice, thereby invading
12 the privacy of Plaintiff and the Class members, to be free of unwanted
13 telemarketing calls at their private residences.

14 24. This suit seeks only damages and injunctive relief for recovery of
15 economic injury on behalf of the Class, and it expressly is not intended to request
16 any recovery for personal injury and claims related thereto. Plaintiff reserves the
17 right to expand the Class definition to seek recovery on behalf of additional
18 persons as warranted as facts are learned in further investigation and discovery.

19 25. The joinder of the Class members is impractical and the disposition
20 of their claims in the Class action will provide substantial benefits both to the
21 parties and to the court. The Class can be identified through Defendant EDSOUP
22 and/or Defendant EDUTREK's records or their agents' records.

23 26. There is a well-defined community of interest in the questions of law
24 and fact involved affecting the parties to be represented. The questions of law
25 and fact to the Class predominate over questions which may affect individual
26 Class members, including the following:
27
28

- 1 a) Whether, within the four years prior to the filing of this Complaint,
2 Defendants or their Agents initiated and placed telephone calls (for
3 non-emergency purposes or without the prior express consent of the
4 called party) to the residential telephones of Plaintiff or class
5 members member, to deliver a message, using an artificial or pre-
6 recorded voice.
7
8 b) Whether Plaintiff and the Class members were damaged thereby, and
9 the extent of damages for such violation; and
10
11 c) Whether Defendant EDSOUP, Defendant EDUTREK, and their
12 respective agents should be enjoined from engaging in such conduct
13 in the future.

14 27. As a person that received calls and solicitation messages from
15 Defendants via an artificial or prerecorded voice, without Plaintiff's prior express
16 consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
17 fairly and adequately represent and protect the interests of the Class in that
18 Plaintiff has no interests antagonistic to any member of the Class.

19 28. Plaintiff and the members of the Class have all suffered irreparable
20 harm as a result of the Defendant EDSOUP and Defendant EDUTREK's
21 unlawful and wrongful conduct. Absent a class action, the Class will continue to
22 face the potential for irreparable harm. In addition, these violations of law will be
23 allowed to proceed without remedy and Defendant EDSOUP and Defendant
24 EDUTREK will likely continue such illegal conduct. Because of the size of the
25 individual Class member's claims, few, if any, Class members could afford to
26 seek legal redress for the wrongs complained of herein.

27 29. Plaintiff has retained counsel experienced in handling class action
28 claims and claims involving violations of the Telephone Consumer Protection
Act.

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

9
10 31. Defendant EDSOUP and Defendant EDUTREK have acted on
11 grounds generally applicable to the Class, thereby making appropriate final
12 injunctive relief and corresponding declaratory relief with respect to the Class as
13 a whole.

14
15 **FIRST CAUSE OF ACTION**
16 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
17 **PROTECTION ACT**
18 **47 U.S.C. § 227 ET SEQ.**
19 **(Against All Defendants)**

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

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

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

///
28

1 35. Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**
4 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
5 **TELEPHONE CONSUMER PROTECTION ACT**
6 **47 U.S.C. § 227 ET SEQ.**

7 **(Against All Defendants)**

8 36. Plaintiff incorporates by reference all of the above paragraphs of this
9 Complaint as though fully stated herein.

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

14 38. As a result of Defendant EDSOUP and Defendant EDUTREK's
15 knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The
16 Class are entitled to an award of \$1,500.00 in statutory damages, for each and
17 every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

18 39. Plaintiff and the Class are also entitled to and seek injunctive relief
19 prohibiting such conduct in the future.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
22 Class members the following relief against Defendant EDSOUP and Defendant
23 EDUTREK:

24 **FIRST CAUSE OF ACTION**
25 **FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 26 • As a result of Defendant EDSOUP and Defendant EDUTREK's
27 negligent violations of 47 U.S.C. § 227(b)(1), Plaintiffs seeks for
28

1 themselves and each Class member \$500.00 in statutory damages, for
2 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- 3 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
4 such conduct in the future.
5 • Any other relief the Court may deem just and proper.

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

- 9 • As a result of Defendant EDSOUP and Defendant EDUTREK's
10 willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiffs
11 seek for themselves and each Class member treble damages, as
12 provided by statute, up to \$1,500.00 for each and every violation,
13 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
14 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
15 such conduct in the future.
16 • Any other relief the Court may deem just and proper.

17 **TRIAL BY JURY**

18
19 46. Pursuant to the seventh amendment to the Constitution of the United
20 States of America, Plaintiff is entitled to, and hereby does demand, a trial by jury.

21
22 **Dated:** March 19, 2014

23
24 **By: /s/Todd M. Friedman**

25 Todd M. Friedman

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

Attorney for Plaintiff

27 **HYDE & SWIGART**

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

josh@westcoastlitigation.com

1 2221 Camino Del Rio South, Suite 101
2 San Diego, CA 92108
3 Telephone: (619) 233-7770
4 Facsimile: (619) 297-1022

5 **KAZEROUNI LAW GROUP, APC**

6 Abbas Kazerounian, Esq. (SBN: 249203)
7 ak@kazlg.com
8 245 Fischer Avenue, Unit D1
9 Costa Mesa, CA 92626
10 Telephone: (800) 400-6808
11 Facsimile: (800) 520-5523
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
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)
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)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

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

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

DATE SIGNATURE OF ATTORNEY OF RECORD

(Place an "X" in One Box Only)
() SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

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.