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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 WINIFRED CABINESS, individually and)
on behalf of all others similarly situated,)
18)
Plaintiff,)

19 v.)

20 EDUCATIONAL FINANCIAL)
21 SOLUTIONS, LLC dba CAMPUS DEBT)
SOLUTIONS, BETA INVESTMENT)
22 GROUP, INC.; EQUITY ACQUISITIONS,)
23 LLC; VENTURETECH SOLUTIONS,)
LLC; DEBT.COM, LLC; and HOWARD)
24 DVORKIN)

25 Defendants.)

Case No. 3:16-cv-01109-JST

CLASS ACTION

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

DEMAND FOR JURY TRIAL

26 Plaintiff WINIFRED CABINESS (“Ms. CABINESS”), on behalf of herself and all
27 others similarly situated, through her attorneys, alleges on personal information and on
28

1 information and belief based upon, *inter alia*, the investigation made by and through her
2 attorneys, as follows.

3 **INTRODUCTION**

4 1. Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. §227 *et*
5 *seq.* (the “TCPA”) in response to widespread complaints about unsolicited and unauthorized
6 telephone calls made to non-consenting consumers through the use of automatic telephone
7 dialing systems (“ATDS”) or by use of artificial or prerecorded voice. Sponsoring Senator
8 Ernest “Fritz” Hollings called such calls “the scourge of modern civilization.” 137 Cong. Rec.
9 30,821-30,822 (1991). Congress found that unwanted automated calls were a “nuisance and an
10 invasion of privacy, regardless of the type of call” and that banning such calls was “the only
11 effective means of protecting telephone consumers from this nuisance and privacy invasion.”
12 Pub. L. No. 102-243, §§2 (10-13) (Dec. 20, 1991), codified at 47 U.S.C. §227. To this end, the
13 TCPA prohibits any person from making any call (other than a call made for emergency
14 purposes or with the prior express consent of the called party) to any cellular telephone using
15 any ATDS, or using artificial or prerecorded voice.

16 2. This case concerns a particularly intrusive practice: namely, Defendant
17 EDUCATIONAL FINANCIAL SERVICES, LLC dba CAMPUS DEBT SOLUTIONS and its
18 related entities BETA INVESTMENT GROUP, INC.; EQUITY ACQUISITIONS, LLC;
19 VENTURETECH SOLUTIONS, LLC; DEBT.COM, LLC; and HOWARD DVORKIN
20 (collectively “CDS”), paid “leads” to forward calls directed to telephone number (800) 848-
21 0979, a telephone number that was previously used by the United States Department of
22 Education (“DoEd”) (the “Number”) and other telephone numbers. The Number is listed as a
23 DoEd on both DoEd forms and numerous websites.

24 3. CDS paid to receive calls from the Number and other telephone numbers as part
25 of a systemic and ongoing course of conduct in order to obtain borrowers’ cellular telephone
26 numbers and call them in order to induce and mislead borrowers into paying CDS for otherwise
27 free federal student loan forgiveness and repayment programs. Upon borrowers calling the
28 Number and other telephone numbers, on their cellular telephones, CDS made false and

1 misleading statements to trick or intentionally mislead the borrowers into believing that they
2 were speaking to the DoEd. CDS made statements that CDS knew to be misleading, untrue, or
3 made with reckless indifference as to their truth or falsity.

4 4. As part of its policies and procedures, once Plaintiff and class members called
5 the Number or other phones numbers, CDS' system would place Plaintiff and class members'
6 cellular telephone numbers, obtained through false pretenses, into the CDS internal database
7 and into dialer campaigns. CDS' automated telephone dialing system, including but not limited
8 to the Presence Administrator Manual Suite, Version 9.2, would then bombard their cellular
9 telephones with telephone solicitation calls in order to continue to induce Plaintiff and the class
10 members into paying for CDS' services.

11 5. CDS places these telephone solicitation calls using an automated telephone
12 dialing system ("ATDS"), and/or by using an artificial or prerecorded voice. CDS placed these
13 telephone solicitation calls without obtaining prior express written consent to place such phone
14 calls.

15 6. CDS' unwanted calls caused Plaintiff and the class the very harm that Congress
16 sought to prevent – a "nuisance and invasion of privacy." The calls wasted Plaintiff and the
17 class's time and money, as they trespassed on and interfered with Plaintiff and the class's rights
18 and interest in their cellular telephones. The calls were an intentional intrusion upon their
19 solitude or seclusion, disrupting their peace and quiet; the calls tied up their phone lines,
20 trespassed on Plaintiff and the class's telecommunications equipment for their own purposes,
21 prevented use of the phones for other calls during the time of the intrusion, and used up the
22 limited space on their voice mail. The calls further demanded a return call, which was alarming
23 or confounding, and further wasted the recipients' time.

24 7. Plaintiff brings this action individually and on behalf of a class of all persons
25 similarly situated, as more particularly defined below.

26 **PARTIES**

27 8. Plaintiff WINIFRED CABINESS is, and at all times relevant was, a natural
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1 person and a citizen of California, residing in Contra Costa County, California.

2 9. Defendant EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS
3 DEBT SOLUTIONS, is a corporation organized and existing under the laws of the State of
4 Delaware, with its principal place of business in the State of Florida, address 6360 NW 5th
5 Way, Suite 103, Fort Lauderdale, FL 33309, and doing business in the State of California.

6 10. Defendant BETA INVESTMENT GROUP, INC., is a corporation organized and
7 existing under the laws of the State of Florida, with its principal place of business in the State of
8 Florida, address 6360 NW 5th Way, Suite 302, Fort Lauderdale, FL 33309, and doing business
9 in the State of California. BETA INVESTMENT GROUP, INC., which is owned and
10 controlled by HOWARD DVORKIN, has an ownership interest in and is the managing entity
11 for EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS.

12 11. Defendant EQUITY ACQUISITIONS, LLC, is a corporation organized and
13 existing under the laws of the State of Florida, with its principal place of business in the State of
14 Florida, address 6360 NW 5th Way, Suite 302, Fort Lauderdale, FL 33309, and doing business
15 in the State of California. EQUITY ACQUISITIONS, LLC, along with BETA INVESTMENT
16 GROUP, INC., has an ownership interest in EDUCATIONAL FINANCIAL SOLUTIONS,
17 LLC dba CAMPUS DEBT SOLUTIONS.

18 12. Defendant VENTURETECH SOLUTIONS, LLC, is a corporation organized and
19 existing under the laws of the State of Florida, with its principal place of business in the State of
20 Florida, address 6360 NW 5th Way, Suite 302, Fort Lauderdale, FL 33309, and doing business
21 in the State of California. VENTURETECH SOLUTIONS, LLC is owned and controlled by
22 HOWARD DVORKIN. VENTURETECH SOLUTIONS, LLC operates and maintains the
23 ATDS used to call Plaintiff and the class.

24 13. Defendant DEBT.COM, LLC, is a corporation organized and existing under the
25 laws of the State of Florida, with its principal place of business in the State of Florida, mailing
26 address 6360 NW 5th Way, Suite 302, Fort Lauderdale, FL 33309, and doing business in the
27 State of California. DEBT.COM, LLC sold all “leads” to EDUCATIONAL FINANCIAL
28 SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS at grossly inflated and commercially

1 unreasonable prices.

2 14. Defendant HOWARD DVORKIN is and at all times relevant was, a natural
3 person and a citizen of Florida, residing in Broward County, Florida. HOWARD DVORKIN, at
4 all times relevant, was the president of BETA INVESTMENT GROUP, INC., which is the
5 managing entity for EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT
6 SOLUTIONS. The ownership of EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba
7 CAMPUS DEBT SOLUTIONS, BETA INVESTMENT GROUP, INC., EQUITY
8 ACQUISITIONS, LLC, VENTURETECH SOLUTIONS, LLC, and DEBT.COM, LLC, and
9 each of them, rests in the ownership of one equity owner through various corporate entities, and
10 conduits, but reside in and with HOWARD DVORKIN.

11 **DEFENDANTS' SINGLE BUSINESS ENTERPRISE**

12 15. EDUCATIONAL FINANCIAL SERVICES, LLC dba CAMPUS DEBT
13 SOLUTIONS, BETA INVESTMENT GROUP, INC., EQUITY ACQUISITIONS, LLC,
14 VENTURETECH SOLUTIONS, LLC, and DEBT.COM, LLC are part of a single business
15 enterprise controlled by Defendant HOWARD DVORKIN that were all involved in the placing
16 of telephone solicitation calls to Plaintiff and the class. All named Defendants are controlled by
17 HOWARD DVORKIN as follows:

18 16. EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT
19 SOLUTIONS is owned by BETA INVESTMENT GROUP, INC. and EQUITY
20 ACQUISITIONS, LLC. EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS
21 DEBT SOLUTIONS is managed by BETA INVESTMENT GROUP, INC.

22 17. EQUITY ACQUISITIONS, LLC is managed and owned by BETA
23 INVESTMENT GROUP, INC.

24 18. BETA INVESTMENT GROUP, INC is wholly owned and controlled by
25 HOWARD DVORKIN.

26 19. VENTURETECH SOLUTIONS, LLC is managed and owned by HOWARD
27 DVORKIN.

28 20. EDUCATIONAL FINANCIAL SERVICES, LLC dba CAMPUS DEBT

1 SOLUTIONS, BETA INVESTMENT GROUP, INC., EQUITY ACQUISITIONS, LLC,
2 VENTURETECH SOLUTIONS, LLC, and DEBT.COM, LLC all share a mailing address of
3 6360 NW 5th Way, Fort Lauderdale, FL 33309.

4 21. Prior to the filing of the First Amended Class Action Complaint in this action,
5 CDS maintained an active website, claiming that:

6 **WE MAJOR IN SAVING MONEY**

7 **Student loan consolidation can mean lower**
8 **monthly payments today.**

9 **Consolidate your federal loans in one easy**
10 **payment every month**

11 **Cut your total monthly payments – if you’re really**
12 **struggling you may pay nothing**

13 **End tax garnishment & prevent wage**
14 **garnishment**

15 **Identify programs to forgive all or part of your**
16 **remaining balances**



17 22. Following the filing of the Class Action Complaint on September 23, 2016, CDS
18 updated its website to show:

19 **Campus Debt Solutions is no longer enrolling new clients.**
20 **The company is fully committed to serving our existing clients to the completion of the program.**
21 **Existing clients may email us or call our offices with any further questions or concerns.**

22 23. Defendant HOWARD DVORKIN has testified that EDUCATIONAL
23 FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS is in “wind-down mode”
24 and will close shortly.

25 **AGENCY AND ALTER EGO**

26 24. At all times mentioned herein each Defendant, shared a common ownership and
27 common business operation. Each Defendant has an identical street address and overlapping
28 owners, officers, and directors.

25 25. At all times mentioned herein, each Defendant was the agent or employee of

1 each of the other Defendants and was acting within the course and scope of such agency or
2 employment. The Defendants are jointly and severally liable to Plaintiff and the class.

3 26. The ownership of EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba
4 CAMPUS DEBT SOLUTIONS, BETA INVESTMENT GROUP, INC., EQUITY
5 ACQUISITIONS, LLC, VENTURETECH SOLUTIONS, LLC, and DEBT.COM, LLC, rests in
6 the ownership of one equity owner through various corporate entities, and conduits, but reside
7 entirely in and with owner HOWARD DVORKIN.

8 27. Defendants are not only influenced by each other and their owner, but there is
9 such a unity of interest and ownership that the individuality of each person and corporation has
10 ceased, and the facts are such that the adherence to the fiction of the separate existence of the
11 corporations would sanction fraud or promote injustice.

12 28. EDUCATIONAL FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT
13 SOLUTIONS, BETA INVESTMENT GROUP, INC., EQUITY ACQUISITIONS, LLC,
14 VENTURETECH SOLUTIONS, LLC, and DEBT.COM, LLC are corporations so closely
15 connected that they are on and the same entity, and represent a joint enterprise in which the
16 entities and HOWARD DVORKIN are jointly and severally liable for the debts of the others.

17 29. There is such a unity of interest and ownership between EDUCATIONAL
18 FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS, BETA INVESTMENT
19 GROUP, INC., EQUITY ACQUISITIONS, LLC, VENTURETECH SOLUTIONS, LLC,
20 DEBT.COM, LLC, and HOWARD DVORKIN that the separate personalities of the
21 corporations and individuals no longer exist. If the acts are treated as those of EDUCATIONAL
22 FINANCIAL SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS alone, an inequitable
23 result will follow.

24 30. The Court should lift the corporate veil between EDUCATIONAL FINANCIAL
25 SOLUTIONS, LLC dba CAMPUS DEBT SOLUTIONS, BETA INVESTMENT GROUP,
26 INC., EQUITY ACQUISITIONS, LLC, VENTURETECH SOLUTIONS, LLC, and
27 DEBT.COM, LLC impose liability upon Defendants as these entities, along with HOWARD
28

1 DVORKIN, are one and the same, constitute a seamless web, and represent one entity.
2 Otherwise, Plaintiff and the class will suffer a severe injustice at the hands of the Defendants
3 who profit from their corporate shell games.

4 **JURISDICTION**

5 31. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
6 § 1331 as the claims alleged herein arise under the Telephone Consumer Protection Act, 47
7 U.S.C. § 277. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740 (2012). This Court also has
8 jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because this matter is a class action in which
9 class members are citizens of a different state than that of Defendant and the amount in
10 controversy (including attorneys' fees), upon information and belief, exceeds \$5,000,000.00,
11 exclusive of interest and costs.

12 32. Declaratory relief is available under 28 U.S.C. §2201. Injunctive relief is
13 available under 47 U.S.C. §227(b)(3)(A).

14 **VENUE**

15 33. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant
16 conducts business in this District, and the actions giving rise to this suit occurred within this
17 District.

18 **FCC RULINGS AND OTHER LEGAL AUTHORITY IMPACTING CLAIMS**
19 **BROUGHT UNDER THE TCPA**

20
21 **A. The FCC Has Broadly Interpreted the TCPA to Protect Consumers**

22 34. Congress has vested the Federal Communications Commission ("FCC") with the
23 authority to issue interpretations, rules and regulations to implement the TCPA, and the FCC
24 has done so in a series of Orders broadly interpreting the protections the TCPA provides to
25 consumers. 47 U.S.C. §227(b)(2). According to findings by the FCC, such calls as those
26 alleged herein are prohibited because, as Congress found, automated or prerecorded telephone
27 calls are a greater nuisance and invasion of privacy, and such calls can be costly and
28 inconvenient. The FCC also recognized that wireless customers are charged for incoming calls

1 whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing*
 2 *the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18
 3 FCC Rcd 14014 (2003).

4 35. In enacting the TCPA, Congress intended to give consumers a choice as to how
 5 creditors and telemarketers may call them, and made specific findings that “[t]echnologies that
 6 might allow consumers to avoid receiving such calls are not universally available, are costly, are
 7 unlikely to be enforced, or place an inordinate burden on the consumer.” TCPA, Pub.L. No.
 8 102–243, §11. Toward this end, Congress found that:

9
 10 Banning such automated or prerecorded telephone calls to the home, except when
 11 the receiving party consents to receiving the call or when such calls are necessary
 12 in an emergency situation affecting the health and safety of the consumer, is the
 only effective means of protecting telephone consumers from this nuisance and
 privacy invasion[.]

13 *Id.* at §12. Congress also specifically found that:

14 [T]he evidence presented to the Congress indicates that automated or prerecorded
 15 calls are a nuisance and an invasion of privacy, regardless of the type of call[.]

16 *Id.* at §§12-13.

17 **B. The FCC Has Broadly Interpreted What Constitutes an ATDS**

18 36. The FCC has ruled that the “capacity (A) to store or produce telephone numbers
 19 to be called, using a random or sequential number generator; and (B) to dial such numbers”
 20 without human intervention in the calling process is the hallmark of an ATDS. *In the Matter of*
 21 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 2008*, CG
 22 Docket No. 02-278, FCC 07-232 (1/4/08) ¶13; *In the Matter of Rules and Regulations*
 23 *Implementing the Telephone Consumer Protection Act of 1991*, 2003 WL 21517583, 18
 24 F.C.C.R. 14014, ¶132 (Fed. Comm’n July 3, 2003) (“2003 TCPA Order”).

25 37. Following Congress’ directive, the FCC has expanded the definition of ATDS to
 26 include predictive dialers. *In the Matter of Rules and Regulations Implementing the Telephone*
 27 *Consumer Protection Act of 1991*, CG Docket No. 02-278, 18 FCC Rcd 14014, 14092-93 (June
 28 26, 2003) at ¶133.

1 38. Moreover “capacity” includes systems that include hardware and software that
2 can be paired to function together to act as an ATDS, even where the equipment would not be
3 able to do so separately. *In re Matters of Rules and Regulations Implementing the Telephone*
4 *Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC
5 Docket No. 07-135, FCC 15-72 (July 10, 2015) (“2015 TCPA Order”), ¶10.

6 39. With respect to whether a device is considered an “automatic telephone dialing
7 system” for purposes of the TCPA, the Ninth Circuit has specifically noted that “a system need
8 not actually store, produce, or call randomly or sequentially generated numbers, it need only
9 have the *capacity* to do it.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009)
10 (emphasis added).

11 40. The FCC also ruled, “We also reject [the] argument that the Commission should
12 adopt a ‘human intervention’ test by clarifying that an autodialer is not an autodialer unless it
13 has the capacity to dial numbers without human intervention. Because the Commission has
14 previously rejected a restrictive interpretation of autodialer in favor of one based on a piece of
15 equipment’s potential ability, we find that [the] argument amounts to a simple variation on the
16 ‘present ability’ arguments we reject above.” 2015 TCPA Order at ¶20.

17 41. Enforcement of the TCPA is subject to a four-year statute of limitations pursuant
18 to 28 U.S.C. §1658.

19 **STATEMENT OF FACTS**

20 **A. CDS’ Acquisition and Use of the DoEd Number and Other Telephone Numbers**

21 42. Sometime prior to May 2015, Defendant CDS contracted to receive calls directed
22 to telephone number (800) 848-0979, a telephone number that had belonged to the United States
23 Department of Education (“DoEd”) (the “Number”). The DoEd had previously used the
24 Number as a call center for federally backed student loans, and it had listed the Number on both
25 DoEd forms and websites. CDS does not advertise or otherwise publish the (800) 848-0979
26 Number. The (800) 848-0979 Number is only published as a DoEd number.

27 43. CDS has also contracted to receive calls directed to other telephone numbers and
28

1 controls other telephone numbers.

2 44. Beginning on an exact date unknown to Plaintiff, but at least within four (4)
3 years prior to the filing of the complaint and continuing to the present, CDS has engaged in a
4 systematic, ongoing course of conduct with the intent to obtain moneys from Plaintiff and the
5 class by false or fraudulent pretenses, willful misrepresentations, false promises, and willful
6 avoidance.

7 45. CDS used the acquired Number and other telephone numbers to trick or
8 intentionally mislead consumers into calling the Number. Statements made during the course of
9 consumer-initiated phone calls to the Number telephone numbers were known by CDS to be
10 misleading, untrue, or made with reckless indifference as to their truth or falsity with the intent
11 to defraud.

12 46. Believing that the Number and other telephone numbers belonged to the DoEd or
13 other third parties, consumers called the Number and other telephone numbers and thus
14 provided CDS with the consumers' telephone numbers. Upon a consumer calling the Number
15 and other telephone numbers, and the call being directed to CDS, CDS entered the calling
16 consumer's cellular telephone number into CDS' database. CDS then used the numbers in its
17 database to generate dialer campaigns that placed telephone solicitation calls to consumers'
18 cellular telephones using an ATDS, including but not limited to, Presence Administrator
19 Manual Suite, Version 9.2, in order to continue to induce consumers into paying money to CDS.

20 47. False and misleading statements made in the subsequent telephone solicitations
21 were made with the intent to obtain cellular telephone numbers and other personal information
22 from consumers and to obtain money from consumers by tricking or intentionally misleading
23 them into believing that they were calling a DoEd telephone number and speaking with a DoEd
24 agent. In doing so, CDS misrepresented, directly and by implication, its affiliation with the
25 Federal Government and the DoEd. The ultimate purpose of this systematic, ongoing course of
26 conduct was to trick or intentionally mislead consumers into paying CDS for otherwise free
27 federal student loan forgiveness and payment programs.

28 //

1 **B. CDS' Calls to Plaintiff**

2 48. In mid-May 2015, Ms. CABINESS attempted to contact the DoEd regarding her
3 student loans. She found the (800) 848-0979 Number listed on one of her old DoEd account
4 statements and she called it, unaware that she was being forwarded to CDS through a third-
5 party, Palo Media, that forwarded leads to CDS.

6 49. On the call with CDS, the CDS representative willfully avoided disclosing his
7 identity and employer for the vast majority of the call in order to trick or intentionally mislead
8 Ms. CABINESS into believing that she was speaking with a representative of the DoEd.

9 50. The CDS representative requested and obtained Ms. CABINESS' social security
10 number, her full name, and created a new National Student Loan Data System account – the
11 DoEd's website for borrowers to access their loan information. In addition, the representative
12 asked Ms. CABINESS for authorization to withdraw fees directly from her bank account.
13 However, Ms. CABINESS did not have that information with her at the time, and told the
14 representative that she would call back the next day.

15 51. Ms. CABINESS attempted to call what she believed to be the DoED back the
16 next day. She connected to a message system that identified the company, not as DoED, but as
17 Campus Debt Solutions. Ms. CABINESS immediately ended the call and did not call back
18 again.

19 52. Over the next several days, an employee of CDS named Daniel Benitez
20 repeatedly called Ms. CABINESS on her cellular telephone, (xxx) xxx-0913, from numbers
21 belonging to CDS, and tried to pressure her to enter into a loan repayment plan through CDS.

22 53. With the assistance of the East Bay Community Law Center ("EBCLC"), Ms.
23 CABINESS sent an e-mail to CDS, addressed to DBenitez@campusdebt.com, asking to be
24 placed on CDS' do not call list. She stated in the e-mail: "I am not interested in any services
25 with your company, Campus Debt Solutions. Please destroy any information you have collected
26 from me and cease all contact immediately." (**Exhibit A**)

27 54. On June 23, 2015, Ms. CABINESS received two calls from (510) 270-2836 – a
28 number that belongs to CDS, that she did not recognize. She did not answer the calls.

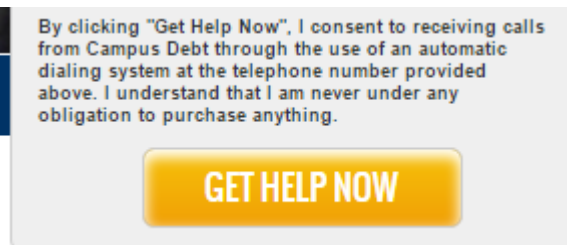
1 55. Continuing through the new year, CDS called Ms. CABINESS' cell phone
2 repeatedly from the (510) 270-2836 number and other numbers, often several times in the same
3 day. These repeated calls to Ms. CABINESS, particularly during the holidays, caused her a
4 large amount of stress and anxiety. She did not answer the calls. CDS called Ms. CABINESS'
5 cellular telephone no fewer than 34 times. As of February 2016, Ms. CABINESS was still
6 receiving calls from CDS to her cell phone.

7 **C. CDS' Use of an ATDS**

8 56. CDS used equipment that has or had the capacity to store or produce telephone
9 numbers to be called, using random or sequential number generator and to dial such numbers,
10 also known as an "automatic telephone dialing system," as defined by 47 U.S.C. §227(a)(1), to
11 place calls and/or text messages to the cellular telephone number belonging to Plaintiff.

12 57. One of the ATDS that CDS used to call Plaintiff and other members of the class
13 is the "Presence Solution Suite Version 9.2" a predictive dialer and auto dialer.

14 58. CDS indicates on its website (www.campusdebt.com), and specifically on its
15 privacy policy page (www.campusdebt.com/about/privacy-policy) that it uses an Automatic
16 Telephone Dialing System to place both phone calls and text messages. On its main page it sets
17 forth:



19
20
21
22
23 [\(http://www.campusdebt.com/ /\)](http://www.campusdebt.com/)

24 59. And the CDS terms and conditions set forth:

25 By subscribing to Campus Debt you consent to receive electronic
26 communications from Campus Debt in electronic form, via email, Short Message
27 Service ("SMS Service") or wireless internet ("WAP Service") and may be sent
28 via automatic telephone dialing systems which may use pre-recorded messages
[\(http://www.campusdebt.com/about/terms-conditions/\)](http://www.campusdebt.com/about/terms-conditions/)

60. CDS employed some or all of these practices and these systems when placing

1 calls to the cellular telephone numbers belonging to Plaintiff and the putative class members.
2 Any human participation on the part of CDS was incidental to the harvesting and storage of
3 Plaintiff's cell phone numbers and placement of the calls, and wholly immaterial to the capacity
4 of CDS' calling system.

5 61. On February 11, 2016, Ms. CABINESS answered a call from (510) 270-2836.
6 The phone rang for several seconds before she answered. Upon answering, Ms. CABINESS
7 heard only silence for several seconds, and then Ms. CABINESS hung up the phone.

8 62. Ms. CABINESS is informed and believes, and on the basis of such information
9 and belief alleges that her experience with the call from CDS – answering the phone but hearing
10 only silence or “dead air” – indicates that the call was placed using a predictive dialing system.
11 A predictive dialing system allows a single human operator to make calls to multiple consumers
12 at the same time. Whichever consumer answers the phone first will be connected to the human
13 operator. All further consumers that answer the phone will hear only silence.

14 63. CDS' telephone solicitation calls to Plaintiff and the proposed class, by means of
15 the use of an ATDS or pre-recorded calling system, without their prior express written consent,
16 is an intrusion on seclusion that is highly offensive, and would be highly offensive to any
17 reasonable person.

18
19 **INJURY IN FACT**

20 64. Plaintiff and the class members had a legally protected privacy interest arising
21 out of the TCPA to be free from unwanted calls and prerecorded messages to their cellular
22 phones.

23 65. That privacy interest barred entities like CDS from intruding upon the Plaintiff's
24 and the class members' privacy. Specifically, the TCPA barred CDS from calling these
25 individuals on their cellular phones using an ATDS, unless CDS first obtained express consent.

26 66. Plaintiff and the class members received calls directed at them by CDS.

27 67. Those calls violated the individual rights of the Plaintiff and the class members.

28 68. As such, the harms to the Plaintiff and class members arose directly from the

1 violation of their respective rights by CDS.

2 69. These invasions of privacy caused frustration and annoyance by the Plaintiff and
3 class members, who had not consented to these intrusions caused by CDS. Plaintiff and class
4 members have suffered an injury in fact.

5 **CLASS ACTION ALLEGATIONS**

6 70. It is CDS' policy and practice, in the course of business, to place calls using an
7 ATDS and/or prerecorded voice to individuals whose cellular telephone numbers CDS obtained
8 through false pretenses due to such individual calling the (800) 848-0979 Number using their
9 cellular telephones.

10 71. Therefore, Plaintiff brings this class action on behalf of herself and on behalf of
11 all other persons similarly situated as members of the proposed class, pursuant to Federal Rule
12 of Civil Procedure 23(a) and (b)(3). This action satisfied the numerosity, commonality,
13 typicality, adequacy, predominance, and superiority requirements of Rule 23.

14 72. The proposed class consists of:

15 All persons in the United States and its Territories:

- 16 (a) who received one of more telephone solicitation calls on their cellular
17 telephone advertising CDS' student loan consolidation and loan
18 forgiveness services, made by or on behalf of CDS;
19 (b) using an automated telephone dialing system, or artificial or prerecorded
20 voice;
21 (c) without providing prior express written consent to receive such phone
22 calls;
23 (d) since October 16, 2013.

24 73. The members of the class are so numerous that joinder of all claims would be
25 impracticable. While the exact number of class members is unknown to Plaintiff at this time,
26 Plaintiff alleges that there are more than 40 members of the class.

27 74. There are questions of law and fact common to the class, which predominate
28

1 over any questions affecting individual class members. The predominant common questions
2 include:

- 3 (a) Whether CDS used an ATDS, or an artificial or prerecorded voice within
4 the meaning of the TCPA and applicable FCC regulations, to place calls to
5 the class;
- 6 (b) Whether CDS marketed its student loan consolidation and loan
7 forgiveness services by placing automated telephone calls;
- 8 (c) Whether CDS placed telephone solicitation calls marketing its student
9 loan consolidation and loan forgiveness services using an ATDS after
10 October 16, 2013 to persons who did not previously provide CDS with
11 prior express written consent to receive such calls on their cellular
12 telephone numbers;
- 13 (d) Whether the unauthorized calls made by CDS using an ATDS in violation
14 of the TCPA;
- 15 (e) Whether CDS should be enjoined from continuing to engage in such
16 conduct;
- 17 (f) Damages, including whether the violations were negligent, willful or
18 knowing.
19

20 75. Plaintiff's claims are typical of the claims of the other members of the class.
21 CDS' conduct has caused Plaintiff and members of the class to sustain the same or substantially
22 similar injuries and damages. CDS' conduct has caused each member of the class to suffer a
23 nuisance or invasion of privacy, intrusion upon their seclusion and use of the cell phones for
24 which they paid a subscriber fee. CDS has acted in a uniform manner with respect to Plaintiff
25 and the other class members. Plaintiff have no interests antagonistic to the interests of the other
26 members of the class.

27 76. Plaintiff will fairly and adequately represent and protect the interests of the
28 members of the class. Plaintiff is a member of the class and does not have any conflict of

1 interest with other class members. Plaintiff has retained and is represented by competent
2 counsel who are experienced in complex class action litigation and claims involving violations
3 of the TCPA.

4 77. The nature of this action makes a class action the superior and appropriate
5 procedure to afford relief for the wrongs alleged herein. There will be no difficulty in the
6 management of this class action. The identity of the putative class, as well as the fact and time
7 of calls made to putative class members, is ascertainable from electronic databases within CDS'
8 custody or control. Individualized litigation presents the potential for inconsistent or
9 contradictory judgments. A class action presents far fewer management difficulties and
10 provides the benefits of single adjudication, economy of scale, and comprehensive supervision
11 by a single court.

12 **FIRST CAUSE OF ACTION**

13 **(Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.)**

14 78. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

15 79. The TCPA provides that it is unlawful for any person to make a non-emergency
16 call using an automatic telephone dialing system or an artificial or recorded voice to any cellular
17 phone service without prior express consent of the called party.

18 80. CDS violated the TCPA by impermissibly placing calls to the cellular telephones
19 of Plaintiff and the members of the class using an ATDS or an artificial or prerecorded voice
20 without their prior express written consent.

21 81. Plaintiff and the members of the class have a legally protected interest in being
22 free from the intrusion of autodialed calls and calls using an artificial or prerecorded voice.
23 These unauthorized and offensive calls harmed Plaintiff and the members of the proposed class,
24 because they caused Plaintiff and the members of the proposed class to suffer a nuisance and an
25 invasion of privacy, all as more particularly described above. Such harm was fairly traceable to
26 CDS's violations of the TCPA.

27 82. CDS has policies, practices or procedures of placing calls to cell phones using an
28

1 ATDS or artificial or prerecorded voice, without the prior consent of the called parties.

2 83. CDS' violations were negligent, or alternatively, they were willful or knowing.
3 47 U.S.C. §312(f)(1).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests that the Court grant the following relief:

- 6 A. Certify this matter as a class action under Rule 23(b)(2) and 23(b)(3);
7 B. Appoint the named plaintiff as the class representative;
8 C. Appoint the undersigned as Class Counsel for the classes to be represented;
9 D. Award, statutory damages of \$500 per violation determined to be negligent;
10 E. Award statutory damages of \$1,500 per violation determined to be willful;
11 F. Grant a declaration that CDS's equipment and messages are regulated by the
12 TCPA;
13 G. Enter an order enjoining CDS from further violations of the TCPA; namely
14 prohibiting CDS from using the (800) 848-0979 Number and prohibiting CDS
15 placing non-emergency calls using an automatic telephone dialing system or an
16 artificial or prerecorded voice, pursuant to 47 U.S.C. § 227(b)(3)(A);
17 H. Grant costs of suit incurred herein;
18 I. Award reasonable attorneys' fees as part of a common fund, if any; and
19 J. Provide such other or further relief as the Court deems just and proper.

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JURY DEMAND

Plaintiff hereby demands trial by jury.

Dated: March 24, 2017

KEMNITZER, BARRON & KRIEG, LLP

By: /s/ Bryan Kemnitzer
BRYAN KEMNITZER
ELLIOT CONN
Attorneys for Plaintiff Winifred Cabiness, and the
putative class

EAST BAY COMMUNITY LAW CENTER

By: /s/ Sharon Djemal
SHARON DJEMAL
Attorneys for Plaintiff Winifred Cabiness, and the
putative class

EXHIBIT A

----- Forwarded message -----

From: **winifred cabiness** <cabinew@gmail.com>

Date: Wed, May 27, 2015 at 4:00 PM

Subject: Re: Daniel - Campus Debt Follow up - Student Loans

To: Daniel Benitez <DBenitez@campusdebt.com>

Dear Mr. Benitez,

I am not interested in any services with your company, Campus Debt Solutions. Please destroy any information you have collected from me and cease all contact immediately.

Sincerely,
Winifred H Cabiness