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13 **UNITED STATES DISTRICT COURT**  
 14 **EASTERN DISTRICT OF CALIFORNIA**

	)	Case No:
SUSAN HAYES, individually and on	)	
behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS
NEXTGEN LEADS, LLC, and DOES 1)	)	OF THE TELEPHONE
through 10, inclusive, and each of them,	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227 <i>et seq.</i> ]
	)	2. WILLFUL VIOLATIONS
Defendant.	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227 <i>et seq.</i> ]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	
	)	

25 Plaintiff SUSAN HAYES (“Plaintiff”), individually and on behalf of all  
 26 others similarly situated, alleges the following upon information and belief based  
 27 upon personal knowledge:  
 28

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others  
3 similarly situated seeking damages and any other available legal or equitable  
4 remedies resulting from the illegal actions of NEXTGEN LEADS, LLC  
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on  
6 Plaintiff’s home telephone in violation of the Telephone Consumer Protection Act,  
7 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National  
8 Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

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

18 3. Venue is proper in the United States District Court for the Eastern  
19 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
20 business within the State of California and Plaintiff resides within the County of  
21 Sacramento.

22 **PARTIES**

23 4. Plaintiff, SUSAN HAYES (“Plaintiff”), is a natural person residing in  
24 Folsom, California and is a “person” as defined by 47 U.S.C. § 153 (39).

25 5. Defendant, NEXTGEN LEADS, LLC (“Defendant”) is a nationwide  
26 lead generating business, and is a “person” as defined by 47 U.S.C. § 153 (39).

27 6. The above named Defendant, and its subsidiaries and agents, are  
28 collectively referred to as “Defendants.” The true names and capacities of the

1 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
2 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
3 names. Each of the Defendants designated herein as a DOE is legally responsible  
4 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
5 Complaint to reflect the true names and capacities of the DOE Defendants when  
6 such identities become known.

7 7. Plaintiff is informed and believes that at all relevant times, each and  
8 every Defendant was acting as an agent and/or employee of each of the other  
9 Defendants and was acting within the course and scope of said agency and/or  
10 employment with the full knowledge and consent of each of the other Defendants.  
11 Plaintiff is informed and believes that each of the acts and/or omissions complained  
12 of herein was made known to, and ratified by, each of the other Defendants.

13 **FACTUAL ALLEGATIONS**

14 8. Beginning in or around August of 2016, Defendant contacted Plaintiff  
15 on Plaintiff's home telephone number ending in -7970, in an attempt to solicit  
16 Plaintiff to purchase Defendant's services.

17 9. Plaintiff's home telephone number ending in -7970 was added to the  
18 National Do-Not-Call Registry well over thirty days before Defendant called  
19 Plaintiff.

20 10. Defendant contacted or attempted to contact Plaintiff from telephone  
21 numbers including (916) 246-1252 and (916) 241-4700.

22 11. Defendant's calls constituted calls that were not for emergency  
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 12. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
25 64.1200(c)(2), as they were an attempt to promote or sell Defendant's services.

26 13. Plaintiff has received numerous solicitation calls from Defendant  
27 within a 12-month period.

28 14. Plaintiff did not have an established business relationship with

1 Defendant during the time of the solicitation calls from Defendant.

2 15. Plaintiff did not give Defendant prior express written consent for  
3 Defendant to call Plaintiff's home telephone for marketing or solicitation purposes.

4 16. Furthermore, Defendant was reluctant to give Plaintiff information as  
5 to who they were or how they obtained Plaintiff's contact information unless  
6 Plaintiff purchase something from Defendant.

7 17. Plaintiff requested for Defendant to stop calling Plaintiff during one  
8 of the initial calls from Defendant, thus revoking any prior express consent that had  
9 existed and terminating any established business relationship that had existed, as  
10 defined under 16 C.F.R. 310.4(b)(iii)(B).

11 18. Plaintiff's request for Defendant to stop calling Plaintiff terminated  
12 any established business relationship that may have existed between Plaintiff and  
13 Defendant pursuant to 47 CFR § 64.1200(f)(5)(i).

14 19. Despite this, Defendant continued to call Plaintiff in an attempt to  
15 solicit its services and in violation of the National Do-Not-Call provisions of the  
16 TCPA thus repeatedly violating Plaintiff's privacy.

17 20. Upon information and belief, at all relevant times, Defendant failed to  
18 establish and implement reasonable practices and procedures to effectively prevent  
19 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
20 227(c)(5).

21 **CLASS ALLEGATIONS**

22 21. The class concerning the National Do-Not-Call violation (hereafter  
23 "The DNC Class") is defined as follows:

24 All persons within the United States registered on the National  
25 Do-Not-Call Registry for at least 30 days, who had not granted  
26 Defendant prior express consent nor had a prior established  
27 business relationship, who received more than one call made by  
28 or on behalf of Defendant that promoted Defendant's products  
or services, within any twelve-month period, within four years

1 prior to the filing of the complaint.

2 22. The class concerning the National Do-Not-Call violation following  
3 revocation of consent and prior business relationship, to the extent they existed  
4 (hereafter “The DNC Revocation Class”) is defined as follows:

5 All persons within the United States registered on the National  
6 Do-Not-Call Registry for at least 30 days, who received more  
7 than one call made by or on behalf of Defendant that promoted  
8 Defendant’s products or services, after having revoked consent  
9 and any prior established business relationship, within any  
10 twelve-month period, within four years prior to the filing of the  
11 complaint.

12 23. Plaintiff represents, and is a member of, The DNC Class, consisting  
13 of all persons within the United States registered on the National Do-Not-Call  
14 Registry for at least 30 days, who had not granted Defendant prior express consent  
15 nor had a prior established business relationship, who received more than one call  
16 made by or on behalf of Defendant that promoted Defendant’s products or services,  
17 within any twelve-month period, within four years prior to the filing of the  
18 complaint.

19 24. Plaintiff represents, and is a member of, The DNC Revocation Class,  
20 consisting of all persons within the United States registered on the National Do-  
21 Not-Call Registry for at least 30 days, who received more than one call made by or  
22 on behalf of Defendant that promoted Defendant’s products or services, after  
23 having revoked consent and any prior established business relationship, within any  
24 twelve-month period, within four years prior to the filing of the complaint.

25 25. Defendant, its employees and agents are excluded from The Classes.  
26 Plaintiff does not know the number of members in The Classes, but believes the  
27 Classes members number in the thousands, if not more. Thus, this matter should  
28 be certified as a Class Action to assist in the expeditious litigation of the matter.

26. The Classes are so numerous that the individual joinder of all of its

1 members is impractical. While the exact number and identities of The Classes  
2 members are unknown to Plaintiff at this time and can only be ascertained through  
3 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
4 The Classes includes thousands of members. Plaintiff alleges that The Classes  
5 members may be ascertained by the records maintained by Defendant.

6 27. Plaintiff and members of The DNC Class and DNC Revocation Class  
7 were harmed by the acts of Defendant in at least the following ways: Defendant  
8 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members  
9 via their telephones for solicitation purposes, thereby invading the privacy of said  
10 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone  
11 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
12 and DNC Revocation Class members were damaged thereby.

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

- 19 a. Whether, within the four years prior to the filing of this  
20 Complaint, Defendant or its agents placed more than one  
21 solicitation call to the members of the DNC Class whose  
22 telephone numbers were on the National Do-Not-Call Registry  
23 and who had not granted prior express consent to Defendant and  
24 did not have an established business relationship with  
25 Defendant;
- 26 b. Whether Defendant obtained prior express written consent to  
27 place solicitation calls to Plaintiff or the DNC Class members'  
28 telephones;

1 c. Whether Plaintiff and the DNC Class member were damaged  
2 thereby, and the extent of damages for such violation; and

3 d. Whether Defendant and its agents should be enjoined from  
4 engaging in such conduct in the future.

5 29. As a person that received numerous solicitation calls from Defendant  
6 within a 12-month period, who had not granted Defendant prior express consent  
7 and did not have an established business relationship with Defendant, Plaintiff is  
8 asserting claims that are typical of the DNC Class.

9 30. Common questions of fact and law exist as to all members of The  
10 DNC Class which predominate over any questions affecting only individual  
11 members of The DNC Revocation Class. These common legal and factual  
12 questions, which do not vary between DNC Revocation Class members, and which  
13 may be determined without reference to the individual circumstances of any DNC  
14 Revocation Class members, include, but are not limited to, the following:

15 a. Whether, within the four years prior to the filing of this  
16 Complaint, Defendant or its agents placed more than one  
17 solicitation call to the members of the DNC Class whose  
18 telephone numbers were on the National Do-Not-Call Registry  
19 and who had revoked any prior express consent and any  
20 established business relationship with Defendant;

21 b. Whether Plaintiff and the DNC Class member were damaged  
22 thereby, and the extent of damages for such violation; and

23 c. Whether Defendant and its agents should be enjoined from  
24 engaging in such conduct in the future.

25 31. As a person that received numerous solicitation calls from Defendant  
26 within a 12-month period, who, to the extent one existed, had revoked any prior  
27 express consent and any established business relationship with Defendant, Plaintiff  
28 is asserting claims that are typical of the DNC Revocation Class.

1 32. Plaintiff will fairly and adequately protect the interests of the members  
2 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
3 class actions.

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

15 34. The prosecution of separate actions by individual Classes members  
16 would create a risk of adjudications with respect to them that would, as a practical  
17 matter, be dispositive of the interests of the other Classes members not parties to  
18 such adjudications or that would substantially impair or impede the ability of such  
19 non-party Class members to protect their interests.

20 35. Defendant has acted or refused to act in respects generally applicable  
21 to The Classes, thereby making appropriate final and injunctive relief with regard  
22 to the members of the Classes as a whole.

23 **FIRST CAUSE OF ACTION**

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

25 **47 U.S.C. §227(c)**

26 **On Behalf of the DNC Class and the DNC Revocation Class**

27 36. Plaintiff repeats and incorporates by reference into this cause of action  
28 the allegations set forth above at Paragraphs 1-35.



1 37. The foregoing acts and omissions of Defendant constitute numerous  
2 and multiple negligent violations of the TCPA, including but not limited to each  
3 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
4 *47 U.S.C. § 227 (c)(5)*.

5 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
6 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an  
7 award of \$500.00 in statutory damages, for each and every violation, pursuant to  
8 *47 U.S.C. § 227(c)(5)(B)*.

9 39. Plaintiff and the DNC Class and DNC Revocation Class members are  
10 also entitled to and seek injunctive relief prohibiting such conduct in the future.

11 **SECOND CAUSE OF ACTION**

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

13 **Act**

14 **47 U.S.C. §227 et seq.**

15 **On Behalf of the DNC Class and DNC Revocation Class**

16 40. Plaintiff repeats and incorporates by reference into this cause of action  
17 the allegations set forth above at Paragraphs 1-35.

18 41. The foregoing acts and omissions of Defendant constitute numerous  
19 and multiple knowing and/or willful violations of the TCPA, including but not  
20 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
21 in particular *47 U.S.C. § 227 (c)(5)*.

22 42. As a result of Defendant's knowing and/or willful violations of *47*  
23 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members  
24 are entitled an award of \$1,500.00 in statutory damages, for each and every  
25 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

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

28

