

1 Mark L. Javitch (CA SBN 323729)  
2 JAVITCH LAW OFFICE  
3 480 S. Ellsworth Ave.  
4 San Mateo, CA 94401  
5 Telephone: (650) 781-8000  
6 Facsimile: (650) 648-0705  
7 mark@javitchlawoffice.com  
8 *Attorney for Plaintiff*  
9 And those similarly situated

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

9 CLYDE CHENG, individually and on behalf of  
10 all others similarly situated,  
11 Plaintiff,  
12 v.  
13 CONGRESSWOMAN JACKIE SPEIER, in her  
14 official and individual capacities,  
15 Defendant.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

16 **CLASS ACTION COMPLAINT**

17 Plaintiff CLYDE CHENG (“Plaintiff”) brings this Class Action Complaint and Demand for Jury  
18 Trial against defendant CONGRESSWOMAN JACKIE SPEIER, (“Ms. Speier” or “Rep. Speier” or  
19 “Defendant”) in her official and individual capacities, to stop her from placing telephone calls that play  
20 her prerecorded voice without first obtaining permission, and to obtain redress for all persons injured by  
21 her conduct. Plaintiff alleges as follows upon personal knowledge as to Plaintiff and Plaintiff’s own acts  
22 and experiences, and, as to all other matters, upon information and belief, including investigation  
23 conducted by Plaintiff’s attorney.  
24  
25  
26  
27  
28

**NATURE OF THE ACTION**

1  
2 1. Congresswoman Speier is the elected representative to the United States Congress from  
3 California’s District 14. Ms. Speier placed calls that played her prerecorded voice inviting people to  
4 virtual town hall discussion groups.

5 2. However, Ms. Speier did not obtain consent or introduce the call with a live person prior  
6 to playing her prerecorded voice.

7 3. Therefore, Defendant is in violation of the Telephone Consumer Protection Act (“TCPA”),  
8 47 U.S.C. § 227(b) and California Public Utilities Codes §§ 2872(b) 2874, and 2876.

9  
10 4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing  
11 equipment. Congress found that these calls were not only a nuisance and an invasion of privacy to  
12 consumers specifically, but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-  
13 178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

14 5. Congresswoman Speier herself recognizes the importance of strong laws prohibiting  
15 robocalls. On April 17, 2019, she Tweeted: “It’s clear [that] the Do Not Call Registry has failed to solve  
16 the problem of harassing robocalls & Congress can no longer wait for the FCC or telephone companies  
17 to take the necessary action. I urge the House & Senate to swiftly take up & pass the ROBOCOP Act.”<sup>1</sup>

18  
19 6. To illustrate the scale of the problem facing the country, it is estimated that there were over  
20 50 billion robocalls placed in 2021. The FTC received 3.4 million robocall complaints in 2021.

21 7. Accordingly, the TCPA targets unauthorized calls exactly like the ones Defendant made to  
22 Plaintiff, based on the use of technological equipment that can automatically call phone numbers and  
23 play prerecorded voice messages.  
24

---

25  
26  
27 <sup>1</sup> <https://twitter.com/repSpeier/status/1118589624136491008>



1 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) because  
2 Defendant resides in this district and the wrongful conduct giving rise to this case substantially occurred  
3 in this District.

4 **DIVISIONAL ASSIGNMENT**

5 16. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this case should be assigned to the San Francisco  
6 / Oakland Division because a substantial part of the events or omissions that give rise to the claims  
7 occurred in Plaintiff's residence in the County of San Mateo, California.

8 **COMMON FACTUAL ALLEGATIONS**

9 17. Rep. Speier placed calls playing her prerecorded voice to invite people to virtual town halls.

10 18. Ms. Speier obtained some phone numbers from unknown sources without the subscribers'  
11 consent.

12 19. Ms. Speier called and played her prerecorded voice to Plaintiff and members of the Classes.  
13 Ms. Speier included instructions on how to participate in a town hall, but did not include instructions to  
14 stop future calls. Plaintiff was unable to remove himself.

15 20. People that did ask to be removed from Defendant's calling lists continued to be called.

16 **FACTS SPECIFIC TO PLAINTIFF CLYDE CHENG**

17 21. On November 23, 2020 at 12:06 p.m., Plaintiff received a call on his cellular telephone  
18 number ending in 5718. The call was a prerecorded voice that said "Hello, this is Jackie Speier, your  
19 Congresswoman. I'm calling first to wish you a blessed Thanksgiving, I know it's been a really tough  
20 year for everybody, and secondly, to invite you to participate in my town hall that is going to provide an  
21 update on the coronavirus you should expect a phone call to this number on Tuesday, Number 24 at 6  
22 p.m. If you would prefer to participate from a different phone with do so my calling 866-383-2725 at the  
23 time of the event. Or, you can stream the event by going to my speier.house.gov/live or to my Facebook  
24 page. If you have any questions you can call my office at 650-342-0300. Thank you."  
25  
26  
27  
28

1           22.     On November 24, 2020, Plaintiff received another call from Defendant at 5:58 p.m. from  
2 the phone number (650) 451-0926. The prerecorded voice was again from Ms. Speier inviting Plaintiff  
3 to join a town hall.

4           23.     On July 13, 2021, Plaintiff received another call from Defendant at 3:07 p.m. from the  
5 phone number (650) 451-0926. The prerecorded voice said “Hi, this is Jackie Speier, your  
6 Congresswoman. I’m calling to invite you to participate in my upcoming telephone town hall to provide  
7 you a Congressional update and answer your questions. You should expect a phone call to this number  
8 on Wednesday, July 14 at 6:30 p.m. If you prefer to participate from a different phone, you can do so by  
9 calling 866-383-2725 at the time of the event or you can stream the event by going to  
10 speier.house.gov/live. If you have any questions please call my office at 650-342-0300. Thank you.”

11           24.     On July 14, 2021, Plaintiff received another call from Defendant on his cell phone. When  
12 Plaintiff answered, Plaintiff heard Rep. Speier’s prerecorded voice. He said “hello” several times, but  
13 the message about Rep. Speier’s town hall just kept playing. Plaintiff tried to opt out but there were no  
14 instructions on how to do so.

15           25.     Plaintiff never consented to receive calls from Defendant.

16           26.     Plaintiff reported the unsolicited calls to the undersigned attorney in July 2021.

17           27.     In July 2021, Plaintiff’s attorney wrote a letter to Ms. Speier’s office informing Ms. Speier  
18 of the violation, requesting Plaintiff be added to Ms. Speier’s “do not call” list, and asking how Defendant  
19 obtained Plaintiff’s phone number or consent in the first place.

20           28.     On July 27, 2021, Plaintiff’s attorney received a response from Ms. Speier’s office  
21 confirming that Plaintiff would be placed on the “do not call” list, but did not explain how she obtained  
22 Plaintiff’s phone number.



1           34.     **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the  
2 interests of the other members of the Classes. Plaintiff’s claims are made in a representative capacity on  
3 behalf of the other members of the Classes. Plaintiff has no interests antagonistic to the interests of the  
4 other members of the proposed Classes and is subject to no unique defenses. Plaintiff has retained  
5 competent counsel to prosecute the case on behalf of Plaintiff and the proposed Classes. Plaintiff and  
6 Plaintiff’s counsel are committed to vigorously prosecuting this action on behalf of the members of the  
7 Classes and have the financial resources to do so.

8  
9           35.     **Policies Generally Applicable to the Classes:** This class action is appropriate for  
10 certification because Defendant acted or refused to act on grounds generally applicable to the Classes as  
11 a whole, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of  
12 conduct toward the members and making final injunctive relief appropriate with respect to the Classes as  
13 a whole. Defendant’s practices challenged herein apply to and affect the members uniformly, and  
14 Plaintiff’s challenge of those practices hinge on Defendant’s conduct with respect to the Classes as a  
15 whole, not on facts or law applicable only to Plaintiff.

16  
17           36.     **Commonality and Predominance:** There are many questions of law and fact common to  
18 the claims of Plaintiff and the Classes, and those questions predominate over any questions that may  
19 affect individual members of the Classes. Common questions for the Classes, but are not necessarily  
20 limited to the following:

- 21                   i.   Whether Defendant’s conduct violated the TCPA;
- 22                   ii.   Whether Defendant’s conduct violated the TCPA *willingly* and/or *knowingly*
- 23                   iii.   Whether treble damages should be awarded;
- 24                   iv.   Whether Defendant obtained consent from Plaintiff and the Classes prior to calling  
25                           and playing Defendant’s prerecorded voice;
- 26
- 27
- 28

- v. Whether Defendant used an “automatic dialing-announcing device” under Cal. Pub. Util. Code § 2871;
- vi. Whether the calls were initiated with a live person prior to playing Ms. Speier’s prerecorded voice as required by Cal. Pub. Util. Code § 2874;
- vii. Whether members of the TCPA Class are entitled to treble damages based on the knowingness or willfulness of Defendant’s conduct.

37. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy as joinder of all parties is impracticable. The damages suffered by the individual members of the Classes will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant’s actions. Thus, it would be virtually impossible for the individual members of the Classes to obtain effective relief from Defendant’s misconduct. Even if members of the Classes could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort and expense will be fostered, and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION**  
Violation of 47 U.S.C. § 227(b)  
Telephone Consumer Protection Act  
On behalf of Plaintiff and the TCPA Class

38. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

39. Defendant placed telephone calls to Plaintiff’s and the TCPA Class members’ cellular telephones.









- 1 D. An order finding that Defendant made the violating calls willfully and/or knowingly  
2 under 47 U.S.C. § 227(b)(3)(C);  
3 E. An order increasing the damages per violation to \$1500 per violation under 47  
4 U.S.C. § 227(b)(3)(C);  
5 F. An award of reasonable attorneys' fees and costs pursuant to Cal. Civ. Proc. Code  
6 § 1021.5;  
7  
8 G. Such other and further relief that the Court deems reasonable and just.  
9

10 **JURY DEMAND**

11 Plaintiff requests a trial by jury of all claims that can be so tried.  
12

13 Dated: January 6, 2022

Respectfully submitted,

14 CLYDE CHENG, individually and on  
15 behalf of all others similarly situated,

16 By: /s/ Mark L. Javitch

17 Mark L. Javitch (California SBN 323729)

JAVITCH LAW OFFICE

18 480 S. Ellsworth Ave.

San Mateo, CA 94401

19 Tel: (650) 781-8000

20 Fax: (650) 648-0705

mark@javitchlawoffice.com

21 *Attorney for Plaintiff*

and those similarly situated  
22  
23  
24  
25  
26  
27  
28