

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
8950 Clairemont Mesa Blvd
8950 Clairemont Mesa Blvd
San Diego, CA 92123

SMALL CLAIMS CASE NO: 37-2008-00009227-SC-SC-CTL

<p>NOTICE TO ALL PLAINTIFFS AND DEFENDANTS: Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights.</p>	<p>AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS: Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener informacion de importancia acerca de sus derechos.</p>
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PLAINTIFF/DEMANDANTE (Name, street address, and telephone number of each):

James M. Kinder
8480 Via Sonoma #20
La Jolla, CA 92037
Telephone No: (858) 412-4792

DEFENDANT/DEMANDADO* (Name, street address, and telephone number of each):

Fairlane Credit LLC
c/o Mark Horgan
34442 Woodshire Drive
Winchester, CA 92596
Telephone No: (877) 663-8610

See attached sheet for additional plaintiffs and defendants:

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered as checked below on (date): 03/04/2009

- Defendant (name, if more than one) :
shall pay plaintiff (name, if more than one) :
principal and: costs on plaintiff's claim.
- Defendant does not owe plaintiff any money on plaintiff's claim.
- Plaintiff (name, if more than one) :
shall pay defendant (name, if more than one) :
principal and: costs on defendant's claim.
- Plaintiff does not owe defendant any money on defendant's claim.
- Possession of the following property is awarded to plaintiff (describe property) :
- Payments are to be made at the rate of : \$: per (specify period) : , beginning on (date) :
and on the (specify day) :
may become due immediately . day of each month thereafter until paid in full. If any payment is missed , the entire balance
- Dismissed in court with prejudice without prejudice.
- Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment) (form SC-132) is attached.
- Other (specify) : See attached decision of the court
- This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid , the judgment creditor may apply to have the judgment debtor's driver's license suspended.
- Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
- This notice was personally delivered to (insert name and date) :
- CLERK'S CERTIFICATE OF MAILING - I certify that I am not a party to this action. This Notice of Entry of Judgment was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below .

Place of mailing : San Diego , California

Date of mailing : 03/06/2009

Barbara Harmon
B. Harmon ,Deputy
Clerk, by

—The county provides Small Claims Advisor services free of charge. Read the information sheet on the reverse.—



San Diego Superior Court
CENTRAL SMALL CLAIMS DIVISION
 8950 CLAIREMONT MESA BLVD.
 SAN DIEGO, CA 92123
 SMALL CLAIMS TELEPHONE (858) 634-1919

SMALL CLAIMS Case Numbers: 37-2008-00009227SC-CTL Decision: March 4, 2009

Date of Trial: February 23, 2009

Plaintiff: James M. Kinder
 vs.
 Defendant: Fairlane Credit, LLC

MEMORANDUM OF SMALL CLAIMS DECISION

In a civil case, the party making a claim has the legal burden of proving by a preponderance of the evidence presented in court that the opposing party should be held liable for the amount of each item of damages claimed. The Court has considered the testimony of the parties, witnesses and the documentary evidence submitted. The court finds in the instant case, Plaintiff is precluded from recovery under the TCPA. A private right of action exists under the TCPA in state court only if otherwise permitted by laws of the State of California. In this State, the defense of the assumption of the risk is available where a Plaintiff under takes to encounter a known risk.

Based upon Defendant's legal arguments, the Court is persuaded, Plaintiff's conduct of intentionally subjecting himself to unwanted telephone calls at his 619-999-9999 number, subjects his actions to the defense of assumption of the risk. *Grey v. Fibreboard Paper Products Co.* (1966) 65 Cal. 2d 240, 245; *Priebe v Nelson* (2006) 39 Cal. 4th 1112, 1120-1121 citing *Neighbarger v. Irwin Industries, Inc* (1994) 8 Cal. 4th 532, 537.

Judgment for the Defendant.

Each party to bear their own court costs.
 Dated: March 4, 2009

KERI KATZ
 COMMISSIONER of the San Diego Superior Court



CLERK'S CERTIFICATE

The foregoing document, consisting of _____ pages, is a full, true, and correct copy of the original copy as of this date.

Clerk of the Superior Court
 3/4/09 by *[Signature]*
 Date Deputy