

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOSHUA SOMOGYI, KELLY
WHYLE SOMOGYI, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

FREEDOM MORTGAGE CORP.,

Defendant.

Case No. 1:17-cv-06546-JBS-JS

**CONSOLIDATED SECOND
AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO 47 U.S.C. § 227 ET
SEQ. (TELEPHONE CONSUMER
PROTECTION ACT)**

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs Joshua Somogyi, Kelly Whyte Somogyi, and Stewart Sieleman (collectively, “Plaintiffs”), individually and on behalf of all other persons similarly situated, by and through the undersigned counsel, hereby file this Consolidated Second Amended Class Action Complaint and Jury Demand (“Complaint”) against Freedom Mortgage Corp. (“Defendant” or “Freedom Mortgage”) for damages, injunctive relief, equitable relief, and any other relief deemed just and proper arising from Defendant’s violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C § 227, *et seq.*, and the Federal Communications Commission rules promulgated thereunder, 47 C.F.R. § 64.1200(d) and (e) (“Rules”).

NATURE OF CASE

1. Plaintiffs bring this Complaint against Defendant to seek redress for Defendant’s willful violations of the TCPA, and the Rules, by placing telemarketing

phone calls to Plaintiffs' telephones using automatic telephone dialing systems ("ATDS") and/or prerecorded voices without their express written consent, and by placing telemarketing phone calls to Plaintiffs' and other class members' telephones after they had withdrawn any consent for such calls.

JURISDICTION AND VENUE

2. This Court has original federal question and subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227, *et seq.*, and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). This action arises under the laws of the United States. Plaintiffs allege and believe that there are: i) 100 or more class members; ii) the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; and iii) at least one member of the plaintiff class is from a different state than the Defendant.

3. Venue is proper under 28 U.S.C. § 1391 inasmuch as the Defendant is based in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

4. At all times herein mentioned, Defendant's corporate headquarters are in this state, and it conducted, and continues to conduct, a substantial amount of business activity and violated the TCPA and Rules, in whole or in part, in this judicial district. Defendant is registered to conduct business in this District, and engaged in interstate commerce when it called or attempted to call Plaintiffs and the

members of the proposed classes. Defendant also advertised and promoted its business and derived substantial revenue in this District.

PARTIES

5. Plaintiffs Joshua Somogyi and Kelly Whyte Somogyi are citizens of Pennsylvania.

6. Plaintiff Stewart Sieleman is a citizen of Minnesota.

7. Defendant Freedom Mortgage Corp. is a New Jersey corporation with its principal place of business at 907 Pleasant Avenue - Suite C, Mt. Laurel, NJ 08054.

8. Whenever in this Complaint it is alleged that Defendant committed any act or omission, it is meant that the Defendant's officers, directors, agents, servants, or employees committed such act or omission and that, at the time such act or omission was committed, it was done with the actual or apparent authority, ratification or approval of the Defendant, or was done in the routine normal course and scope of employment of the Defendant's officers, directors, vice-principals, agents, servants, or employees.

LEGAL BASIS FOR COMPLAINT

9. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In doing so, Congress recognized that “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy[.]” Telephone Consumer

Protection Act of 1991, Pub. L. No. 102-243 § 2(5) (1991) (codified at 47 U.S.C. § 227). The statute requires the FCC to promulgate rules to protect telephone subscribers' privacy rights, 47 U.S.C. § 227(c), and permits a private right of action for violations of such rules. 47 U.S.C. § 227(c)(5).

10. All telemarketing calls to cellular telephones placed using an automatic telephone dialing system ("ATDS"), and all telemarketing calls using prerecorded voices to either cell numbers or residential landline numbers, violate the TCPA if the calling party does not first obtain prior express consent from the called party. 47 U.S.C. § 227(b)(i)(A)(iii) and (B). The FCC has defined prior express consent as "an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered." 47 C.F.R. § 464.1200(f)(8).

11. In addition, the FCC rules allow consumers to make "do-not-call" requests that companies must honor and track in internal do-not call lists. 47 U.S.C. § 227(c)(1)(A); 47 C.F.R. § 64.1200(d); 16 C.F.R. § 310.4(b)(1)(ii) and (iii). This rule applies to all residential lines, as well as cell phones.

12. The TCPA provides for statutory damages of \$500 for each call placed in violation of TCPA and the Rules, which may be trebled if the violation is willful. 47 U.S.C. § 227(b)(3).

Freedom Mortgage's Use of Automatic Telephone Dialing Systems

13. Defendant places telephone calls to consumers' cellular telephones in an attempt to solicit their business and to promote its mortgage-lending and refinancing services.

14. In sending these solicitation phone calls to individuals whose mortgages Freedom Mortgage had originated or serviced, Defendant takes no steps to acquire the oral or written prior express written consent of the Plaintiffs, or Class Members who received them.

15. Defendant placed, or had placed on its behalf, telephone calls en masse to thousands of cellular telephone numbers throughout the United States.

16. In placing the solicitation telephone calls at issue in this Complaint, Defendant utilized an automatic telephone dialing system ("ATDS"). Specifically, the hardware and software used by Defendant or its agent has the capacity to store, produce, and dial random or sequential numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, en masse, in an automated fashion without human intervention. Defendant's ATDS includes features substantially similar to a predictive dialer, inasmuch as it is capable of placing numerous

telephone calls simultaneously (all without human intervention). The system requires only that a calling agent press one button to cause the next number to be dialed.

17. The dialing system used by Freedom Mortgage has the capacity to store telephone numbers.

18. The dialing system used by Freedom Mortgage chooses the number to be dialed when a loan agent signals that he or she is ready. The choice is made randomly from a list of numbers that have been entered into the system from Freedom Mortgage's records. Thus, the dialing system produces numbers to be called randomly.

19. In fact, Defendant advertises its use of automated technology on its very own website. There, Defendant explicitly states that it may use automated technology to contact consumers. The image below (emphasis added) was copied in 2017 from the Company's website, <https://www.freedommortgage.com>:

By clicking "submit", you are providing Freedom Mortgage with your express consent to be contacted through automated means such as autodialing, text SMS/MMS (charges may apply), and prerecorded messaging, even if your telephone number or cellular phone number is on a corporate, state, or the National Do Not Call Registry. Providing your consent for contact does not require you to select Freedom Mortgage Corporation for your mortgage. By communicating with us by phone, you consent to calls being recorded and monitored.

You may also receive marketing/[promotional emails](#) from us.

20. Freedom Mortgage published a job posting (emphasis added) seeking employees that have autodialing experience:

Essential Job Functions:

- Serve as subject matter expert in telephony technology, specifically outbound dialer functionality and optimization
- Identify and execute short and long-term strategy adjustments or enhancements to drive contact center performance
- Must have experience with call center and financial reporting, key performance indicators, and website and telephony applications
- Ability to create, deliver and analyze reports using Business Objects or other relational database extraction tools
- Ability to extract, summarize, and utilize data from varied sources, providing data-driven recommendations to business units and stakeholders
- Ensure all investor requirements are met while remaining within compliance of all statutory and regulatory obligations
- Provide guidance and day to day support for the Servicing Group including technical support
- Acts as a first contact for business system issues
- Experience participating in successful projects with cross functional teams and departments
- Must be able to work independently
- High attention to detail and organizational skills
- Ability to work a flexible schedule outside of typical business hours

21. The essential job functions include to “[s]erve as subject matter expert in telephony technology, specifically outbound dialer functionality and optimization.”

22. In addition, a disgruntled employee wrote on the website glassdoor.com about her experience working for Freedom Mortgage: “Inbound Leads are TERRIBLE!! They come from an autodialer making ‘ringless calls’ to people that DON’T even OWN HOMES, NOR DO THEY WANT TO PURCHASED A HOME.”¹

23. Defendant was and is aware that its unsolicited telephone calls were and are being placed to consumers without their prior express written consent.

24. Defendant knowingly placed (and continues to place) unsolicited telephone calls to cellular telephones without the prior express written consent of the

¹ See https://www.glassdoor.com/Reviews/Freedom-Mortgage-Reviews-E346796_P5.htm.

recipients. In so doing, Defendant not only invaded the personal privacy of Plaintiffs and members of the putative Classes, but also intentionally and repeatedly violated the TCPA.

25. Consumers have gone online to voice their complaints and to warn others:

- They will not quit calling me although every time they call me I ask them to never call me again. I told them if they called me again I would get a new mortgage company. Now they call and ask me not to switch.”²
- We have one mortgage with them. They have been told MULTIPLE times to stop calling for re-finance or other methods to take cash out of home value. They continue to call from multiple numbers. We have no decided to block ALL their calls. If they want to reach us for legitimate reasons, they have both mailing and emailing addresses.³
- Called me at work to ask me to refinance ... unprofessional ... Also, please know that calling work phone numbers to solicit business in extremely unprofessional.⁴

FACTS RELATING TO PLAINTIFFS

A. The Somogyis

26. Plaintiffs Joshua Somogyi and Kelly Whyte Somogyi obtained a home mortgage from Defendant in 2012.

² See <https://www.yelp.com/biz/freedom-mortgage-virginia-beach>.

³ See <https://800notes.com/Phone.aspx/1-855-690-5900>.

⁴ *Id.*

27. The mortgage documentation did not contain terms through which the Plaintiffs provided express written consent to receive telemarketing calls using prerecorded voices on cellular or residential landline phone, or calls placed through an ATDS on their cellular phones from Defendant.

28. Plaintiffs Joshua Somogyi and Kelly Whyte Somogyi are the owners and regular users of the residential landline telephone that is assigned a number ending in 2700. Kelly Whyte Somogyi is the owner, and Joshua Somogyi is the regular user of the cellular telephone that is assigned a phone number ending in 4292. Joshua Somogyi was the regular user of a landline telephone assigned numbers ending in 3025 and 1070, at all relevant times. The latter telephone was at Joshua Somogyi's former place of employment. Defendant called the Somogyis on their residential landline beginning in 2014 and continuing through August 24, 2017, and also called Plaintiff Joshua Somogyi on his cellular phone using an ATDS, and on his work phone, multiple times between 2014 and 2016. Some of the calls may have involved the use of prerecorded voice. The most recent call to Joshua Somogyi's business phone known to Mr. Somogyi was placed on or about February 8, 2017, shortly after he had left that place of employment. Freedom Mortgage possesses records, and voice recordings where applicable, of many of these calls and can retrieve them without undue burden.

29. All of these calls were for the purpose of marketing products and/or services, in each case, mortgage refinancing. Defendant placed these phone calls without the prior express written consent of any of the Plaintiffs.

30. On each telephone number, the Somogyis orally requested on several occasions that further calls cease. In mid-2016, Kelly Whyte Somogyi placed a call to Freedom Mortgage to request that calls cease.

31. On August 8, 2017, Kelly Whyte Somogyi returned a call from Freedom Mortgage. After a loan advisor explained that the purpose of the call had been to offer an opportunity to refinance, Somogyi stated, “I have actually asked to be removed from that list. We’re not interested in refinancing.” The agent responded, “Okay. I’ll put a note in the system.” Yet the calls continued.

32. Defendant continued to call Plaintiffs on each of the lines despite their requests to “opt-out” of receiving further telemarketing calls made during the first call they answered at each number. Although Plaintiffs wanted the calls from Defendant to cease, Defendant continued to call.

B. Stewart Sieleman

33. In 2015, Defendant Freedom Mortgage acquired Plaintiff Sieleman’s home mortgage from his previous mortgage lender Bell Bank Mortgage.

34. Within a few months of being informed that his mortgage was transferred to Freedom Mortgage, Plaintiff began to receive auto-dialed calls to his cellular phone, encouraging him to refinance his mortgage with Freedom Mortgage.

35. When Sieleman would answer these calls, he would hear a noticeable pause/delay. This artificial pause/delay is indicative of the use of an ATDS. Sieleman has answered approximately four (4) calls.

36. Sieleman has requested that Freedom Mortgage stop calling him at least twice. On October 16, 2016, and again on January 18, 2017, Mr. Sieleman requested to be removed from the call list in a recorded call. Nonetheless, he received additional calls after those dates. Despite these requests, the calls to his cell phone continued. Some calls may have used a prerecorded voice.

37. In September 2017, Freedom Mortgage again attempted to contact Sieleman in an effort to solicit his business, despite the two stop-call requests that he made. Sieleman did not answer and Freedom Mortgage left a message on his voicemail. Freedom Mortgage's agent stated that the purpose of the call was to refinance Sieleman's loan.

38. Sieleman has never provided his telephone number directly to Freedom Mortgage, or requested that Freedom Mortgage place solicitation telephone calls to him or alert him of its services. Simply put, Sieleman has never provided his prior

express written consent to Freedom Mortgage to place solicitation telephone calls to him.

CLASS ACTION ALLEGATIONS

39. In order to redress injuries caused by Defendant's violations of the TCPA and Rules, Plaintiffs, on behalf of themselves and a class of similarly situated individuals, bring suit under the TCPA, 47 U.S.C. § 227, *et seq.*

40. On behalf of themselves and the proposed classes, Plaintiffs seek an injunction requiring Defendant to cease all calls to consumers who have requested that they stop calling customers for telemarketing purposes and an award of statutory damages to the class members.

41. All Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of themselves and the following class defined as follows (the "Call Stop Class"):

All individuals in the United States who received telemarketing phone calls sent by or on behalf of Defendant to the individual's telephone from September 1, 2013 to the date this Class is certified, where the individuals contacted had previously requested that Defendant stop calling.

42. Plaintiffs Joshua Somogyi and Kelly Whyte Somogyi bring this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3), on behalf of themselves and the following class ("the Residential Non-Consent Class"):

All individuals in the United States who received on their residential telephones, telemarketing phone calls sent by or on

behalf of Defendant using an artificial or prerecorded voice, from September 1, 2013 to the date this Class is certified, without prior express written consent.

43. Plaintiffs Joshua Somogyi and Stewart Sieleman bring this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of himself and the following class (the “Cellular Non-Consent Class”):

All individuals in the United States whose telephone numbers had been assigned to cellular phones, and who received phone calls sent by or on behalf of Defendant placed through the use of an automatic telephone dialing system and/or an artificial or prerecorded voice, from September 1, 2013 to the date this Class is certified, without prior express written consent.

44. The following individuals are excluded from the proposed classes (the “Classes”): (1) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and the current or former officers and directors of any of the foregoing; (2) persons who properly execute and file a timely request for exclusion from any of the Classes; (3) the legal representatives, successors or assigns of any such excluded persons; and (4) persons whose claims against Defendant have otherwise been fully and finally adjudicated and/or released.

45. Plaintiffs reserve the right to amend the Class definitions and to seek recovery on behalf of additional persons as warranted as additional facts are learned in further investigation and discovery.

46. Plaintiffs and the members of the proposed Classes were harmed by Defendant's acts in at least the following ways: Defendant, either directly or through agents, illegally contacted Plaintiffs and the Class members despite oral or written requests that the calls stop, thereby invading the privacy of Plaintiffs and Class members, and subjecting Plaintiffs and the Class members to annoying and harassing calls that constitute a nuisance.

NUMEROSITY

47. The exact size of the Classes is unknown and not available to Plaintiffs at this time, but it is clear that individual joinder is impracticable.

48. According to a September 6, 2018 report in *The Wall Street Journal*, "The New Mortgage Kings," Freedom Mortgage is now the 11th largest mortgage lender in the U.S., up from number 78 in 2012, with reportedly \$17.4 billion in mortgage originations. On information and belief, it placed phone calls to thousands of consumers who fall into the definitions of the Classes. Members of the proposed Classes can be easily identified through Defendant's records.

COMMONALITY

49. There are many questions of law and fact common to the claims of Plaintiffs and the proposed Classes, and those questions predominate over any questions that may affect individual members of the proposed Classes.

50. Common questions for the proposed Classes include, but are not necessarily limited to the following:

- a. For the Call Stop Class, whether Defendant failed to honor “do not call” requests;
- b. For the Residential Non-Consent Class, whether Defendant had a practice of calling its customers for telemarketing purposes on their residential phones using prerecorded voices without the customers’ prior express written consent;
- c. For the Cellular Non-Consent Classes, whether Defendant had a practice of calling its customers for telemarketing purposes on their cell phones using ATDS or prerecorded voices without the customers’ prior express written consent;
- d. Whether Defendant’s conduct violated the TCPA;
- e. Whether Class members are entitled to treble damages based on the willful and/or knowing nature of Defendant’s conduct; and
- f. Whether Defendant should be enjoined from engaging in such conduct in the future.

TYPICALITY

51. Plaintiffs’ claims are typical of the claims of the other members of the Classes.

52. Plaintiffs and the Classes sustained damages as a result of Defendant’s uniform wrongful conduct during transactions with Plaintiffs and the Classes.

ASCERTAINABILITY

53. Members of the proposed Classes can be ascertained through Defendant’s records.

54. Defendant maintains computerized records showing the names and addresses, as well as telephone numbers, of individuals called for telemarketing purposes.

55. Freedom Mortgage is required by law to maintain lists of all telephone numbers from which it has received requests that calls stop. *See* 47 C.F.R. § 64.1200(d)(3).

56. With respect to the Non-Consent Classes, Defendant's records can easily be sorted to separate numbers assigned to cell phones from numbers assigned to landlines. Any affirmative defense of consent by Defendant must be established by Defendant from its own records.

ADEQUACY OF REPRESENTATION

57. Plaintiffs will fairly and adequately represent and protect the interests of the Classes, and have retained counsel competent and experienced in complex class actions involving violations of federal and state consumer protection statutes, including claims under the TCPA.

58. Plaintiffs have no interest antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiffs.

SUPERIORITY

59. 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 given, among other things, that joinder of all parties is impracticable. Classwide relief is essential to compel Defendant to comply with the TCPA.

60. 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.

61. Even if members of the proposed 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 alleged herein. 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. Defendant has acted on grounds generally applicable to the Classes, thereby making final injunctive relief and corresponding declaratory relief with respect to the Classes as a whole appropriate. Moreover, on information and belief, Plaintiffs allege that the TCPA and Rules complained of herein are substantially likely to continue in the future if an injunction is not entered.

CLAIMS FOR RELIEF

First Cause of Action

**(Violations of The Telephone Consumer Protection Act
47 U.S.C §227(b)(1)(A)(iii))**

62. Plaintiffs re-allege each and every allegation of this Complaint contained in each of the previous paragraphs inclusive as if more fully set forth herein.

63. Defendant placed calls to Plaintiffs Stewart Sieleman and Joshua Somogyi on their cell phone that were made using an ATDS and/or a prerecorded voice, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

Second Cause of Action

**(Violations of The Telephone Consumer Protection Act,
47 U.S.C. § 227(b)(1)(B))**

64. Defendant placed calls to the Somogyi Plaintiffs on their residential landline using a prerecorded voice without their prior express consent, in violation of 47 U.S.C. § 227(b)(1)(B).

Third Cause of Action

**(Violations of The Telephone Consumer Protection Act,
47 U.S.C. § 227(c)(1)(a))**

65. Defendant placed phone calls to all of the Plaintiffs after the Plaintiffs requested that they stop, and Defendant did so for the purpose of marketing products and/or services to Plaintiffs and also did so to other members of the proposed

Classes, in violation of 47 U.S.C. § 227(c)(1)(a), 47 C.F.R. § 64.1200(d), and 16 C.F.R. § 310.4(b)(I)(iii).

66. Defendant's acts and omissions constitute numerous and multiple violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

67. As a result of Defendant's violations of 47 U.S.C. § 227 *et seq.*, and accompanying regulations, Plaintiff and each member of the proposed Classes are entitled to damages for each and every violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

68. Plaintiffs and the members of the proposed Classes are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs individually and on behalf of the proposed Classes alleged herein, demand judgment against Defendant on each of the above-referenced claims as follows:

- a. An order certifying this matter as a class action pursuant to Federal Rules of Civil Procedure 23 with Plaintiffs as Class Representatives;
- b. An order designating Berger Montague PC and Mahany Law Firm as Class Counsel;

- c. An award of actual and statutory damages of \$500 for each and every statutory violation to each member of the Classes pursuant to 47 U.S.C § 227(b)(3)(B);
- d. Alternatively, an award of actual and statutory damages of up to \$1,500 for each and every willful/and or wanton violation to each member of the Classes pursuant to 47 U.S.C § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);
- e. Injunctive relief prohibiting such violations of the TCPA and Rules by Defendant in the future;
- f. Pre-judgment interest on monetary relief;
- g. Post-judgment interest on monetary relief;
- h. An award of attorneys' fees and costs to the fullest extent permitted by law; and
- i. All other and further relief as the Court deems necessary, just, and proper.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

Dated: March 4, 2019

Respectfully submitted,

By: /s/ Lane L. Vines

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I filed the foregoing document with the Clerk of the Court via CM/ECF on this 4th day of March, 2019. I also certify that the foregoing document is being served this day on all counsel of record and parties, via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Lane L. Vines
Lane L. Vines