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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Daniel DeClements and Sam Tuli,
10 individually and on behalf of all other
11 similarly situated,

12 Plaintiff,

13 vs.

14 RE/MAX LLC, a Delaware Limited
15 Liability Company,

16 Defendant

Case No.:

CLASS ACTION COMPLAINT

JURY DEMAND

17 **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

18 Plaintiff Daniel DeClements (“Plaintiff DeClements” or “DeClements”) and
19 Plaintiff Sam Tuli (“Plaintiff Tuli” or “Tuli”) bring this Class Action Complaint
20 and Demand for Jury Trial against Defendant Re/Max, LLC. (“Defendant” or
21 “Re/Max”) to stop Re/Max from directing its realtors to violate the Telephone
22 Consumer Protection Act (“TCPA”), or at the very least from ratifying their
23 realtors’ TCPA violative conduct. Specifically, Re/Max’s realtors use third party
24 lead generating services to mine expired property listings from the Multiple Listing
25 Service (“MLS”). These lead generators use skip-tracing to match cell phone
26 numbers of the owners of those expired listings to the properties to allow realtors
27 to cold call them without consent. These calls are often made using an autodialer

1 and/or to telephone numbers on the national Do Not Call registry (“DNC”) in
2 violation of the TCPA.

3 In this case, both Plaintiff DeClements and Plaintiff Tuli received repeated
4 telemarketing calls from Re/Max realtors after their respective property listings
5 expired, canceled, or otherwise withdrawn on the MLS. As a result, Plaintiff Tuli
6 and Plaintiff DeClements seek to obtain injunctive and monetary relief for all
7 persons injured by Re/Max’s ratification and endorsement of this pernicious
8 telemarketing. Plaintiff DeClements and Plaintiff Tuli, for this Complaint, allege
9 as follows upon personal knowledge as to themselves and their own acts and
10 experiences, and, as to all other matters, upon information and belief, including
11 investigation conducted by their attorneys.
12

13 **PARTIES**

- 14 1. Plaintiff Daniel DeClements is a resident of Rio Verde, Arizona.
- 15 2. Plaintiff Sam Tuli is a resident of Allen, Texas.
- 16 3. Defendant Re/Max is a Delaware limited liability company
17 headquartered at 5075 S. Syracuse Street, Denver, CO 80237. Defendant conducts
18 business throughout this District and the United States.

19 **JURISDICTION AND VENUE**

20 4. This Court has federal question subject matter jurisdiction over this
21 action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
22 Protection Act, 47 U.S.C. §227 (“TCPA”).

23 5. This Court has personal jurisdiction over the Defendant since
24 Defendant conducts business in this district. Venue is proper in this District under
25 28 U.S.C. § 1391(b) because Plaintiff DeClements resides in this District and
26 because the wrongful conduct giving rise to this case was directed from and to
27 Plaintiff DeClements in this District.
28

COMMON ALLEGATIONS

1
2 6. In recent years a troubling trend has surfaced in the real estate
3 industry: cold calling owners of properties who have had their MLS listing expire
4 or be canceled or withdrawn.
5

6 7. However, cold calling consumers without consent using an autodialer
7 or when their phone numbers are registered on the DNC is a violation of the
8 TCPA.
9

10 8. This recent trend of cold calling homeowners of expired listings has
11 resulted in many consumers receiving an onslaught of unsolicited telemarketing
12 calls to their cell phone after their listings expire or otherwise canceled or
13 withdrawn, which ties up their phone lines and is a nuisance and aggravation.
14

15 9. Defendant Re/Max is aware of this marketing trend and ratifies
16 realtors' misconduct in a number of ways including (1) endorsing Landvoice as an
17 "Approved Supplier" of Re/Max to its real estate agents, (2) providing Landvoice
18 the platform at annual Re/Max events to solicit its service to Re/Max agents, (3)
19 endorsing Coach Tom Ferry, who specifically recommends cold calling expired
20 listing leads through services like Landvoice, as an "Approved Supplier" of
21 Re/Max to its real estate agents, and (4) providing courses on Re/Max University
22 available to all of Re/Max's agents such as Tom Ferry's "Breakthrough by Design"
23 which specifically directs agents to call leads provided by Landvoice.
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1 **Re/Max University**

2 10. Re/Max University is a learning resource provided to every Re/Max
3 agent.
4

5 11. In 2014, for the third consecutive year, Re/Max University was named
6 by Training magazine as one of the best among corporate-sponsored training
7 programs.¹
8

9 12. Re/Max has made it clear to its agents through Re/Max University
10 that cold calling consumers leads to sales.
11

12 13. There are numerous courses being offered through Re/Max University
13 regarding prospecting, marketing and sales.
14

15 **Approved Suppliers: Landvoice**

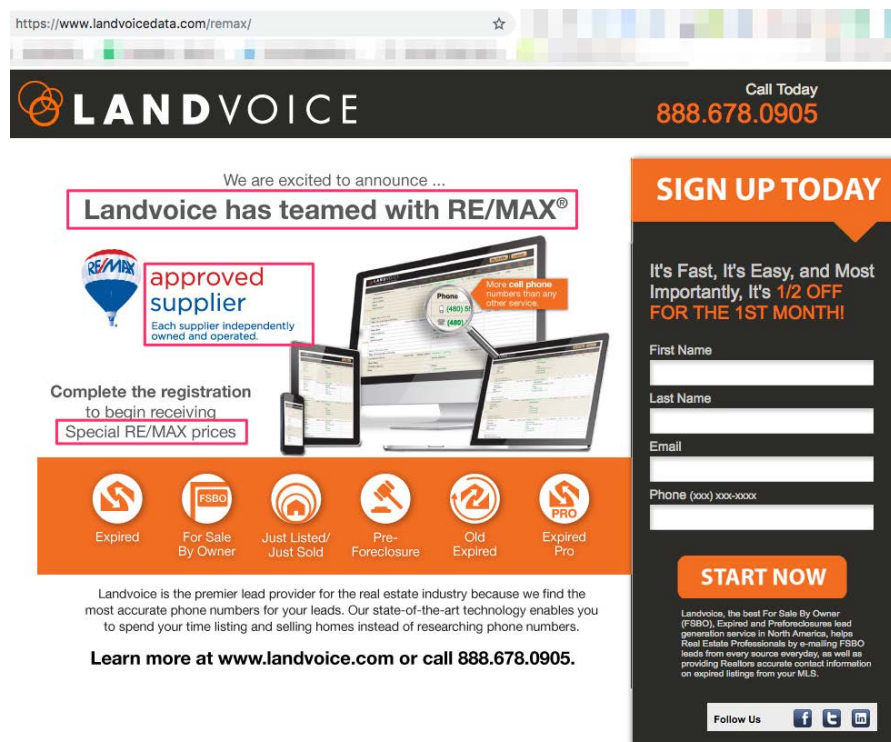
16 14. Re/Max maintains an Approved Suppliers program for its realtors.
17 According to Re/Max, the Approved Supplier program “offers products and
18 services to help [agents] successfully run [their] business.”²
19

20 15. As of February 2019, Landvoice was an “Approved Supplier” of
21 Defendant Re/Max.
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27 ¹ <https://www.remax.com/newsroom/press-releases/remax-university-under-new-leadership.htm>

28 ² <https://shop.remax.net/collections/approved-suppliers>

1 16. In fact, in order to ensure that its realtors use Landvoice, Re/Max
2 agents are provided with “special Re/Max prices”³ and Re/Max realtors even
3 receive a discount of “1/2 off for the 1st month!”⁴
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19 17. Landvoice’s leads are aggregated from expired listings from the MLS.
20 Landvoice then uses state-of-the-art technology to “take additional steps to deliver
21 the highest quality and quantity of owner contact information including cell phone
22 numbers.”⁶ Landvoice uses technology to harvest the owner names of the expired
23 listings and their associated phone numbers (including cell phone numbers and
24

25
26 ³ <https://www.landvoicedata.com/remax/>

27 ⁴ Id.

28 ⁵ <https://www.landvoicedata.com/remax/>

⁶ <https://www.linkedin.com/company/landvoice/>

1 other numbers listed on the DNC) for each lead to ensure that the agent calling has
 2 the best chance of reaching the individual. (This type of lead gathering
 3 information has been commonly used by debt collectors for instance who use skip-
 4 tracing to track every possible contact related to a particular individual.)

5 18. Landvoice’s service includes the automatic loading of the Landvoice-
 6 generated leads lists, using a sequential number generator, into a “Power Dialer,”
 7 an automatic telephone dialing system that “dial[s] leads” at a rate of 80 to 300 per
 8 hour and delivers a pre-recorded message if calls are not answered:⁷
 9

10 <https://landvoice.com/power-dialer/>

11 **LANDVOICE** SOLUTIONS ▾ PRICING CONTACT US ▾ LOG IN 888-678-0905

12 **POWER DIALER**

13 [pou-er] [dahy-ler] | **noun**

14 Starting at **\$100/mo**

15 **GET STARTED**

16 1. A computerized system that will dial leads for you.
 17 2. A tool used by top agents to dial more leads in less time to help them list
 18 more properties.

19 **Save Time** **Answer Detection** **Stay Organized** **Integrated System**

20 Contact more leads in less time. By using the Landvoice single-
 21 line dialer, you can dial up to 80 calls per hour. Upgrade to the
 22 4-line dialer to call more than 300 leads each hour.

23 The Landvoice dialer allows you to quickly move from one call to
 24 the next. Instantly leave pre- recorded messages with a
 25 simple click. Avoid busy signals, disconnected phone numbers,
 26 and unanswered calls.

27 Call the right people at the right time with the built-in lead
 28 management tools. Access customer history and notes. Keep track of your effectiveness
 with system analytics and reports.

29 Your new Landvoice expired, FSBO, and pre-foreclosure leads are automatically pushed
 30 into the dialer. Have other leads you want to call? Simply import a CSV file.

31 ⁷ Landvoice’s lists of leads are also intended by Landvoice to be easily integrated and loaded to
 32 any autodialer, not just the one provided as part of Landvoice’s service. See blog available at,
 33 <http://activerain.com/blogview/1170875/mojo-and-landvoice--we-play-well-together--->
 34 CLASS ACTION COMPLAINT JURY DEMAND - 6

1 19. The problem with this whole system is that Landvoice is providing
2 multiple phone numbers (including cell phone numbers and numbers listed on the
3 DNC) along with access to an autodialer system to agents, and neither Landvoice
4 nor the agents have consent to call these consumers' phone numbers using an
5 autodialer in clear violation of the TCPA.

6 Notwithstanding, Re/Max has approved Landvoice as one of its "Approved
7 Suppliers" to all of its realtors and directs its realtors to use the Landvoice system,
8 which by definition knowingly promotes their violating the TCPA.

9
10 20. In addition, Re/Max has included Landvoice as a regular participant in
11 its annual R4 convention which hosts more than 6,000 Re/Max agents:



Photos and Comments

Photos Comments

Tried this Pin? Add a photo to show how it went

Add photo



RE/MAX Korea saved to #2014 R4

↑ 2

Landvoice booth 544-546 at annual Re/Max Convention "R4" at the Mandalay Bay Convention Center, Las Vegas, March 3-6, 2014

8

21 21. Landvoice has also been invited to provide private training sessions
22 for Re/Max franchises:
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24
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28 ⁸ <https://www.pinterest.com/pin/532409987170717200/>
CLASS ACTION COMPLAINT JURY DEMAND - 7



Christoph Malzl is with Mark Cabrera at RE/MAX Reinvented. ...
October 27, 2015 at 12:30 PM · Kensington, MD · 🌐 · 🌐

I just have to do a shout out to RE/MAX Reinvented in Kensington, MD!
When I stepped into their office to do a 2-hr #Landvoice prospecting training, I immediately felt an unusual, exciting energy coming from broker/owner Mark Cabrera and his amazing group of agents! You guys really rock!!!



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⁹ <https://www.facebook.com/christoph.malzl.1>
CLASS ACTION COMPLAINT JURY DEMAND - 8

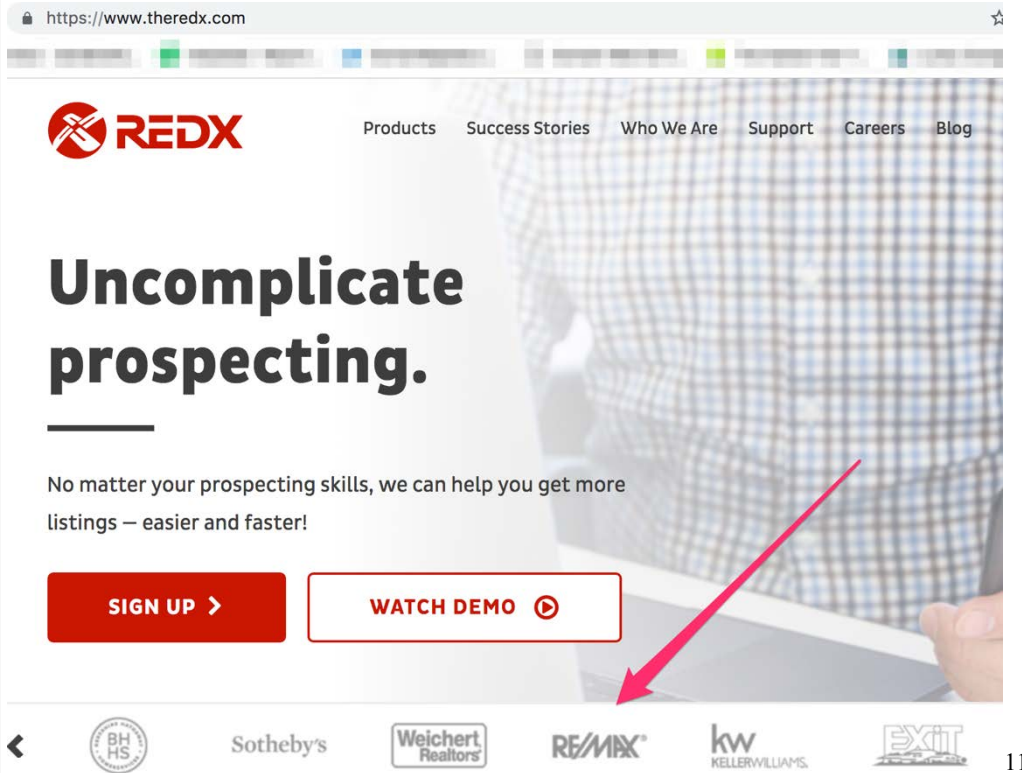
1  Christoph Malzl added 3 new photos from November 5, 2015 at 7:30 PM — with Pam Adam.
2 November 5, 2015 at 5:30 PM · 🌐 · 🌐

3 Over a dozen top real estate agents took our #Landvoice office-training
4 class on how to help more clients sell their home faster and for more
5 money! Congrats to all you fantastic, and ever-learning #REMAX agents!



16 22. Landvoice is not the exclusive lead generation platform that Re/Max
17 agents use to cold call consumers. Other platforms include Vulcan7 and RedX. In
18 fact, RedX even has authorization to use Re/Max's logo on its main website:
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28 ¹⁰ *Id.*



23. Re/Max set the precedent for agents to use programs such as Landvoice in order to generate leads. In doing so, Re/Max ratified the use of programs like Landvoice for the sake of placing unsolicited calls to consumers.

Approved Suppliers: SmartZip

24. Another popular supplier that Re/Max promotes is SmartZip: predictive marketing for real estate agents.

¹¹ <https://theredx.com>
CLASS ACTION COMPLAINT JURY DEMAND - 10



Home / All Products / SmartZip



SmartZip

SmartZip is a national leader in analytics-powered targeted marketing solutions for the real estate industry. SmartZip's SmartTargeting platform combines big data, patent-pending predictive analytics, and marketing automation to help agents identify and connect with the best listing prospects in any neighborhood across the United States.



Call: (855) 661-1064

12

25. SmartZip provides agents with a platform that uses predictive analytics to determine which homeowners are most likely to sell in the next few months based on factors such as divorce, death and other significant life events/changes.¹³

26. Using a system such as SmartZip encourages a Re/Max agent to contact a consumer *before* the consumer has even reached out for assistance in selling their home, providing yet another market of potential leads that have not

¹² <https://shop.remax.net/products/smart-zip>

¹³ <http://www.prweb.com/releases/2014/02/prweb11613786.htm>

1 provided any consent to be called, similar to the leads provided by Landvoice for
2 expired listings.
3

4 27. All an agent has to do is look up an area that they are looking to
5 represent a home in and use SmartZip to find opportunities for Re/Max agents to
6 begin soliciting a sale from the most likely potential homeowners.
7

8 **Re/Max Coaching: Tom Ferry**

9 28. Re/Max coaching and training programs are an integral part of the
10 Re/Max franchise system.
11

12 29. Re/Max lists Tom Ferry as an “Approved Supplier” on its main
13 website:
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Approved Suppliers Awards Marketing Collateral Contact

Home / Approved Suppliers / Tom Ferry/YourCoach.com

← Prev | Next →



Tom Ferry/YourCoach.com

Tom's coaching clients on average close 78% more business when they work with their coach. Tom's relevant lead-generation ideas, simple to learn dialogues, team structures for more transactions and accountability prepare you to double your production!

[Visit Our Website](#)

Call: 888-866-3377



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30. Ferry's training is also provided as a significant part of Re/Max University:

¹⁴ <https://shop.remax.net/collections/approved-suppliers?page=2>
CLASS ACTION COMPLAINT JURY DEMAND - 13

- Watch a Video
- Take a Course
- Earn CE
- Specials
- Quick Links
 - Broker/Owner Training
 - CE Shop
 - Coaching
 - Quicken Loans

Coaching

RE/MAX University provides you access to the top Coaches in the industry.



TOM FERRY'S
BREAKTHROUGH

remaxuniversity For the Way You Live, Learn and Earn
 Looking for training content when you want it? RE/MAX University offers many courses for you to choose from on demand. Browse the courses below and then click on or hover over any title for more information.

Courses SEARCH

Your current location in the guide: Courses

Available channels:

- Courses
- CRS Legends Video: Developing a Team
- Tom Ferry's Breakthrough by Design
- Peak Producers
- ABR
- ABR 2013
- ABR: Marketing Reboot
- Accredited Commercial Professional
- CDPE
- Certified Investor Agent Specialist
- CLHMS
- Certified New Home Specialist
- CIPS
- CRB: Teams

5	1	1	2
CRS Legends Video: Developing a Team	Tom Ferry's Breakthrough by Design	Peak Producers	ABR
7	10	9	1
Accredited Commercial	CDPE	Certified Investor Agent	CLHMS
4	1	8	5
Certified New Home Specialist	CIPS	CRB: Teams	CRS

¹⁵ <https://www.youtube.com/watch?v=82YNQx4liYM>

¹⁶ *Id.*

1 31. Ferry is known throughout the real estate industry as an expert when it
2 comes to cold calling. In fact, Ferry provides scripts directly to agents, telling the
3 agents exactly what they should say when placing cold calls to consumers:
4



17

14 32. Relevant to this case, Ferry provides scripts regarding expired listings,
15 telling agents exactly what they should say when placing an unsolicited call to a
16 consumer with an expired listing:
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28 ¹⁷ <https://www.tomferry.com/category/real-estate-scripts/>
CLASS ACTION COMPLAINT JURY DEMAND - 15

1 **EXPIREDS**

2
3 **DIALOGUE #1**

4
5 Hi ... I am looking for _____. This is _____ with _____. I noticed your home was no longer on the market. I was calling to see ... do you still want to sell it?

6 *[If it is clear they are getting lots of calls, use these effective lines]*

- 7
- 8 • Are you just taking your home off the market?
 - 9 • Are you getting a lot of calls?
 - 10 • These agents are like rats coming out of the woodwork...aren't they?
 - 11 • Can you imagine if you had to work with these people everyday like I do?

12 1. If you ... sold this home ... where would you be going to next?

13 2. What is your time frame to be moved? (Ouch)

18

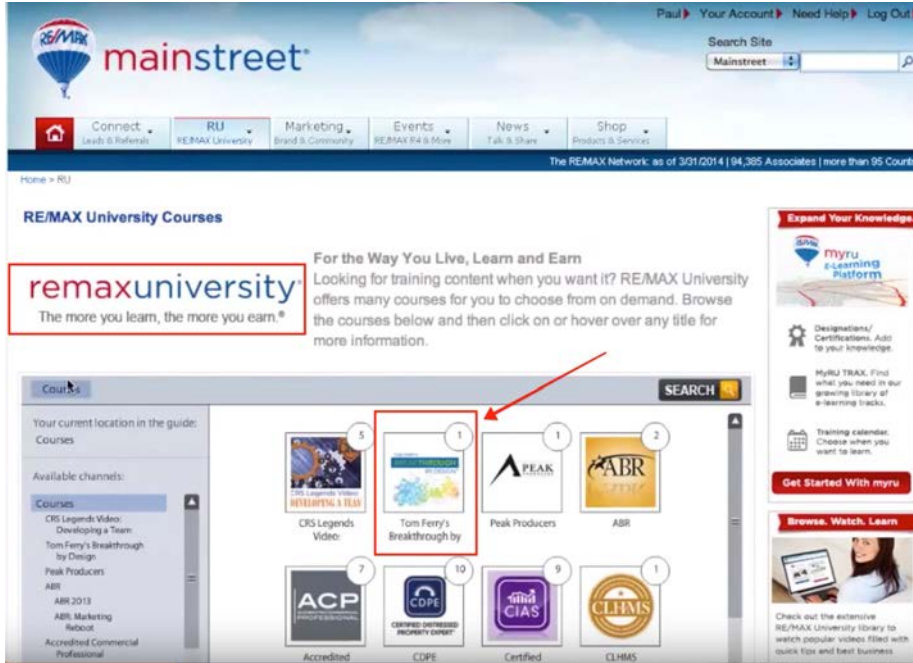
14 33. Coach Tom Ferry specifically trains real estate agents to cold call expired listings.

15 34. As Tom Ferry puts it “When pursuing Expireds, persistence pays. It isn’t about calling 100 Expired one time each. You’re much better off calling 10 Expireds 10 times each.”¹⁹

16 35. In the Tom Ferry course “Breakthrough by Design” specifically promoted on Re/Max University, within the coursebook and in Session 1, Tom Ferry provides the tools to succeed, one of which is Landvoice.

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28 ¹⁸ <http://www.tomferry.com/wp-content/uploads/2016/08/Agent-Script-Book.pdf>

¹⁹ <https://www.tomferry.com/blog/7tips-expireds/>

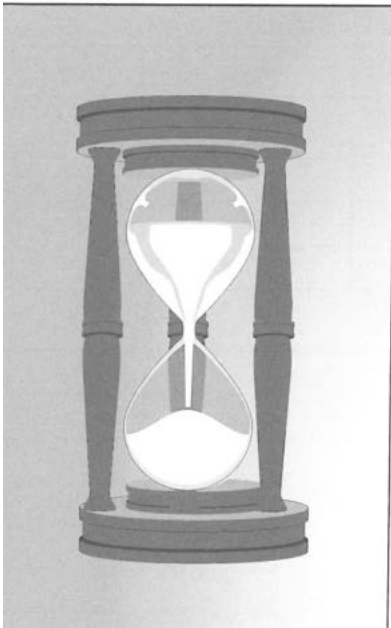


1.4 TOOLS YOU WILL RECEIVE

- Our App - Head to iTunes and download it today
- Nudge - Email Marketing tool for your database to generate business
www.GetNudgeApp.com
- Landvoice - Data you need right now to do more business
- Member Section of TomFerry.com - Additional resources for you are housed here
- A website for your business - A Tom Ferry designed website with Zillow



1.8 PLANNING



WHO DO I CONNECT WITH DURING THE HOUR OF POWER?

1. People you know
2. Past leads
3. Past database
4. Drip campaigns
5. People on Landvoice

SESSION 1

BREAKTHROUGH BY

36. By promoting Tom Ferry and his courses to its agents, Re/Max has ratified the core strategies of Ferry, which consists primarily of unsolicited telemarketing to consumers to drum up business.

37. Ferry is an ideal representation of the values and direction Re/Max provides to its agents. Ferry even regularly promotes and encourages the use of Landvoice (and related systems) to agents.

38. Despite its knowledge of the TCPA, Re/Max still directs and/or ratifies its realtors' cold calling, especially towards consumers with expired listings, through the directions to use and or ratification of realtors' use of lead generation systems and autodialers like Landvoice and trainers like Tom Ferry.

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PLAINTIFF TULI'S ALLEGATIONS

Re/Max Realtors Repeatedly Called Plaintiff Tuli's Cell Phone Numbers Without His Consent, Despite His Numbers Being Listed on the DNC

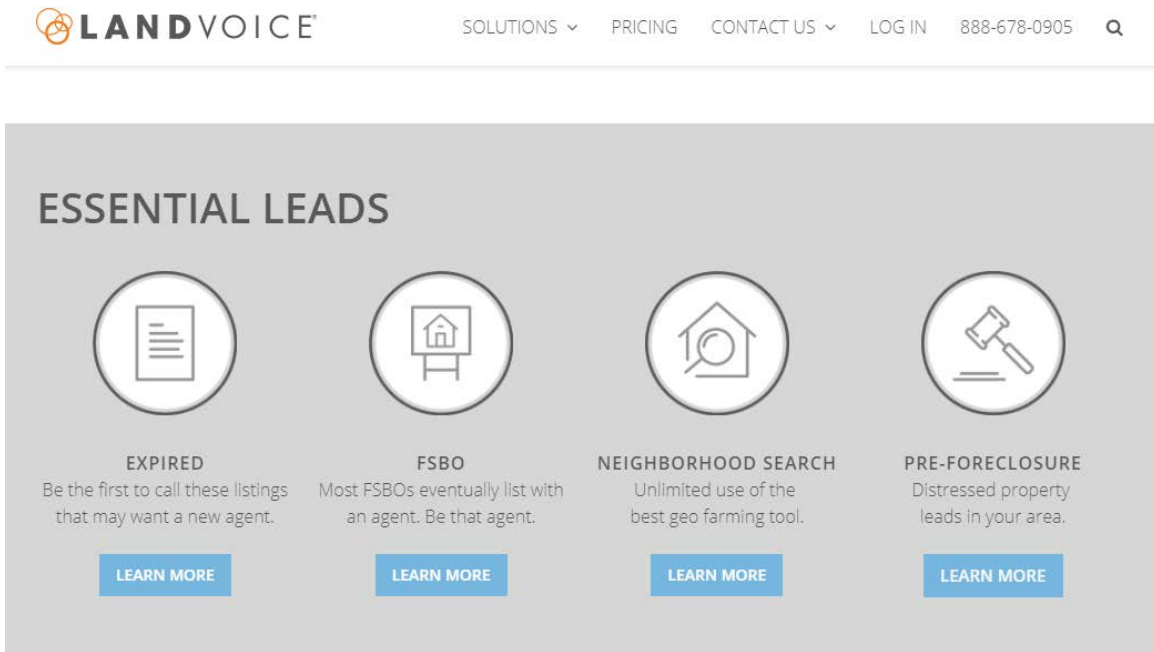
39. Plaintiff Tuli is the subscriber of two telephone numbers that he uses for personal purposes only, and which he registered with the DNC on August 4, 2007 and September 8, 2011.

40. One is a cellular phone number and the other is a Google Voice phone number that forwards directly to Plaintiff Tuli's cell phone.

41. Plaintiff Tuli had a property listed for sale, but he caused the listing to be taken down by his realtor for a short period of time on July 16, 2018 so the listing could be changed. Re/Max realtors called him immediately after taking down his listing to solicit him to re-list his property with them.

42. Not surprisingly, this is one of the advertised features of Landvoice: to immediately identify and allow agents to call phone numbers related to "expired" listings.²⁰

²⁰ Landvoice webpage, <https://landvoice.com/>.
CLASS ACTION COMPLAINT JURY DEMAND - 19



43. The following chart provides a breakdown of the calls received by Tuli from Defendant's agents by phone number, calling phone number, date, and time:

Plaintiff Tuli's Google DNC Protected Phone Number

- July 17, 2018 at 9:12 AM using phone number 940-453-3585
- July 17, 2018 at 11:52 AM using phone number 972-251-0297
- July 17, 2018 at 8:18 AM using phone number 940-320-9656
- July 18, 2018 at 8:52 AM using phone number 940-320-9656
- July 18, 2018 at 10:05 AM using phone number 940-453-3585
- July 19, 2018 at 8:48 AM using phone number 940-320-9656

Plaintiff Tuli's Cell Phone DNC Protected Number

- July 18, 2018 using phone number 940-453-3585
- July 18, 2018 using phone number 972-251-0297
- July 18, 2018 using phone number 940-320-9656
- July 19, 2018 at 8:52 AM using phone number 940-320-9656

- 1 • July 19, 2018 at 10:05 AM using phone number 940-453-3585
- 2 • July 24, 2018 using phone number 940-453-3585

3 44. The phone calls that Tuli received from 940-453-3585 were from
4 Mike Rekart of Re/Max Legacy.

5
6 45. Rekart carries forward the marketing plan established and/or ratified
7 by Re/Max's head office by placing unsolicited calls to consumers with expired
8 listings.
9

10 46. There are numerous complaints posted online regarding unsolicited
11 calls Rekart placed to consumers regarding expired listings. For example:
12

- 13 • "Licensed Real Estate Agent wanting us to relist our house with him.
14 Won't. Stop. Calling."²¹
- 15 • "Got a call this morning."²²
- 16 • "I just got a call from this number to my cell phone."²³

17 47. The phone calls that Tuli received from 972-251-0297 were from
18 Melissa Loan Bui of Re/Max Dallas Suburbs.

19 48. Re/Max Dallas Suburbs carries forward the marketing plan
20 established and/or ratified by Re/Max's head office by ensuring that its agents are
21 trained and guided by Tom Ferry.
22

23
24
25 _____
26 ²¹ <https://findwhocallsyou.com/9404533585?CallerInfo>

27 ²² <https://whocallsme.com/Phone-Number.aspx/9404533585>

28 ²³ <https://800notes.com/Phone.aspx/1-940-453-3585>

1 49. The Re/Max Dallas Suburbs Facebook page contains many references
2 to Tom Ferry, encouraging agents to learn from Ferry directly. For example:
3



²⁴ https://www.facebook.com/pg/DallasSuburbs/posts/?ref=page_internal



RE/MAX Dallas Suburbs

March 12, 2015 · 🌐

...

SCHEDULE YOUR SUCCESS with Tom Ferry

Two AMAZING Events:

1. FREE Tom Ferry's Elevate Event on March 24th at the Embassy Suites Hotel in Frisco 9-12:30 with a Tom Ferry Coach.
2. Discounted price for Tom Ferry's Blue Print 3 Day Seminar, April 21-23, The Hilton Dallas/Plano Granite Park in Plano, 9-5 each day. Tom Ferry in person.



25

50. In addition, Ivy Boland, the Broker/Owner of Re/Max Dallas Suburbs lists herself as a mentor for Tom Ferry, meaning Boland is a mentor for Ferry's coaching practices:

²⁵ *Id.*



Ivy Boland

Broker, Owner REMAX Dallas Suburbs



RE/MAX Dallas Suburbs

42 yrs

Broker Manager

Mar 1988 – Present · 31 yrs 7 mos

3915 McDermott Road, Plano TX 75025

REMAX Dallas Suburbs is an office owned by Top Producing Agents. Our core value is to help agents buiild a successful and prosperous career in Real Estate.

As Broker Manager my expertise is in the following:

New Agent Training

Mentor for Abundant Agent Training

Mentor for Star Power, Tom Ferry and Brian Buffini

Responsible for Office Administration, Office Policy,

Handle day to day Activiites and problem solving. See less

26

51. Tuli was called by 940-320-9656. WhitePages Premium has this phone number listed as Re/Max Advantage, but it is not yet known which agent uses this number.

²⁶ <https://www.linkedin.com/in/ivyboland/>

whitepages PREMIUM

PERSON

REVERSE PHONE

1-940-320-9656

**(940) 320-9656**

Registered to Remax Advantage in Texas

Owner's Details

Phone Metadata

Phone Reputation

OWNER'S DETAILS

Remax Advantage

Search for

Corinth Texas
76210

27

52. Caller complaints about 940-320-9656 show that the Re/Max Advantage agent that uses this phone number regularly places unsolicited calls to consumers with expired listings:

- “Just called the day after we took our house off the market. Never did tell us his name just that he was with Remax, and asked a lot of questions about our house and didn’t know anything about it or from the listing.”²⁸
- “This person has called me and my husband multiple times and has contacted my estranged father asking questions about me and my property that I recently took [off] the market. This has to stop.”²⁹

²⁷ <https://premium.whitepages.com/phone/1-940-320-9656>

²⁸ <https://800notes.com/Phone.aspx/1-940-320-9656>

²⁹ <https://whocallsme.com/Phone-Number.aspx/9403209656>

- 1 • “unsolicited call asking why we took house off the market.”³⁰
- 2 • “Some guy calling about property”³¹
- 3 • “Unsolicited call”³²

4
5 53. Plaintiff Tuli never provided his cellular phone number, or any phone
6 number to Re/Max, or otherwise consented to any Re/Max agent placing
7 solicitation telephone calls to the phone numbers Tuli placed on the DNC.
8

9
10 54. On information and belief, many of the calls Tuli received were made
11 by an autodialer since multiple Re/Max agencies called him, he received a high
12 volume of calls, and Re/Max endorses autodialer use.
13

14 **PLAINTIFF DECLEMENTS’ ALLEGATIONS**

15 16 **Re/Max Realtors Called Plaintiff DeClements’ Cell Phone Number** 17 **Without His Consent Using a Prerecorded Message and/or Autodialer**

18 55. Plaintiff DeClements had a property listed for sale, but he terminated
19 his contract with the realtor that he was working with in the beginning of
20 September 2019, causing his listing to be removed from the MLS.
21
22
23
24

25
26 ³⁰ <https://www.shouldianswer.com/phone-number/9403209656>

27 ³¹ *Id.*

28 ³² *Id.*

1 56. On September 2, 2019 at 7:51 PM, the same day DeClements had the
2 listing removed, he received a prerecorded voicemail on his cell phone from a
3 Re/Max agent using phone number 602-413-8195. The prerecorded voicemail
4 states:
5

6 “Hello, this is Monique at 602-413-8195. I had a couple of questions
7 regarding your home and wanted to...” (The voicemail cuts off at this point.)
8

9 57. DeClements believes this voicemail was prerecorded due to its
10 generic nature and the fact that it cuts off prematurely before the full message
11 plays.
12

13 58. 602-413-8195 is a phone number used by Monique Walker of Re/Max
14 Excalibur.³³
15

16 59. Walker carries forward the marketing plan established and/or ratified
17 by Re/Max’s head office by placing unsolicited calls to consumers with expired
18 listings.
19

20 60. This has resulted in numerous consumer complaints that have been
21 posted online. For example:
22

- 23 • “I continue to receive unwanted and unsolicited calls from
24 Monique Walker of ReMax in regards to a real estate listing that
25 expired LAST YEAR. I am on the National Do Not Call List and
26

27
28 ³³ <https://www.moniquesells.com/>

1 have filed a number of complaints, but that clearly doesn't matter
2 to this 'person'."34

- 3
- 4 • "This agent has been calling my husband and I since 7 am this
5 morning.. I call agents vultures now because as soon as listing gets
6 taken off the market they swarm and try to pick it back up...
7 LEAVE US ALONE!! There is a reason our MLS listing says to
8 not bother us!!"35
 - 9 • "I forgot my listing expired yesterday. That would explain the
10 sudden calls I'm getting from unknown numbers. I google this one
11 and found it belonging to a realtor in Phoenix along with this post.
12 I blocked the number so she won't be getting through to me
13 again... She won't be calling continually now!"36
 - 14 • "Yes, this is a realtor looking to snag an expired listing. Mine just
15 expired so I suppose I'll get a lot of these calls."37
 - 16 • "Same as the rest, early morning call and no voicemail. My house
17 just went off the market a few days ago."38
 - 18 • "Annoying has calling 7 times even when asked to be removed
19 from call list."39

20 61. Walker has even posted a video online, encouraging consumers to
21 relist their homes with her realty franchise after the listing expired:
22

23
24
25 ³⁴ <https://800notes.com/Phone.aspx/1-602-413-8195>

26 ³⁵ *Id.*

27 ³⁶ *Id.*

28 ³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

1 Are You Ready to Put Your Home Back on the
2 Market?



10 Should you relist your home after it expires or you pull it off the market?
11 Yes, but make sure you work with a proactive agent.

12 **Buying a Phoenix Home? Search all Homes for Sale**
13 **Selling a Phoenix Home? Check out our FREE Home Value Report**

14 If your home was on the market for a long period of time and your listing
15 expired or was canceled, you should consider relisting your property
16 with a more proactive agent, like me. 40

17 62. On September 3, 2019, DeClements received an autodialed call from a
18 Re/Max realtor on his cell phone using phone number 480-544-4976. After a
19 pause, and then what seemed to be a difficulty connecting to the realtor, the call
20 disconnected, indicating the use of an autodialer. The realtor then called
21 DeClements back, and after a pause, introduced himself as Michael with Re/Max.
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⁴⁰ <http://moniquewalker1.blogspot.com/2017/>

1 63. 480-544-4976 is a phone number used by Michael Kent, a Re/Max
2 Infinity agent.⁴¹
3

4 64. Re/Max Infinity and Michael Kent himself carry forward the
5 marketing plan established and/or ratified by Re/Max's head office by placing
6 unsolicited calls to consumers with expired listings.
7

8 65. There are numerous complaints posted about calls consumers have
9 received from Kent, including complaints related to expired listings and including
10 complaints that show Kent uses an autodialer. For example:
11

- 12 • "Got several calls over a 10 minute period from this firm, offering to
13 list a house in Gilbert, AZ, which we never owned. The calls were
14 placed to my cell phone..."⁴²
- 15 • "Relentlessly harassed me by calling my cell phone several times a
16 day for about a week. Reported to FTC..."⁴³
- 17 • "number keeps calling no answer and called back no one on the line
18 annoying sales call"⁴⁴
- 19 • "I don't live in Phoenix and do not know anyone who does. Stop
20 calling"⁴⁵

21
22
23
24 ⁴¹ <http://7930camelback703.agentmarketing.com/mlsmax/loans.htm>

25 ⁴² <https://www.yelp.com/biz/michael-kent-re-max-infinity-chandler>

26 ⁴³ https://www.facebook.com/pg/TheMichaelKentTeam/reviews/?ref=page_internal

27 ⁴⁴ <https://www.reportedcalls.com/report/4805444976>

28 ⁴⁵ *Id.*

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- “This number keeps calling me as well. I have received probably 8 calls from them in the last 5 days.”⁴⁶
- “This number keeps calling me and I want it to stop.”⁴⁷
- “I received 5 calls in the last 24 hours from this number.”⁴⁸

66. In addition, Re/Max Infinity itself strongly re-enforces the teachings and training of Tom Ferry that Re/Max’s head office promotes.

67. For example, the Facebook page for Re/Max Infinity contains numerous references to Tom Ferry’s training, including:

⁴⁶ *Id.*
⁴⁷ *Id.*
⁴⁸ *Id.*

1  **Infinity & Associates Real Estate** is 😊 feeling blessed at ...
2 **Infinity & Associates Real Estate.**
September 25, 2018 · Chandler, AZ · 🌐

3 Part of being a great business owner is looking for inspiration, support
4 and leadership in your coworkers, mentors and favorite authors. Today's
message from Tom Ferry is just what the Doctor ordered.
#BelInspired #whyInfinity



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12 YOUTUBE.COM i
13 **Lessons of Success from 8 Extraordinary Individuals |**
#TomFerryShow 49

14  **Infinity & Associates Real Estate** ...
15 October 22, 2014 · 🌐
16 \$50 savings on Tom Ferry course ends next week! Enter promo code
17 REMAX when purchasing BreakThrough By Design to enjoy the savings.
http://www.joinremax.com/.../Publ.../BTBD_RemaxPromoCode_OCT.pdf



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27 ⁴⁹ https://www.facebook.com/pg/InfinityRealEstateChandler/posts/?ref=page_internal

28 ⁵⁰ *Id.*

1 68. Plaintiff DeClements has never provided his cellular phone number,
2 or any phone number to Re/Max, or otherwise consented to any Re/Max agent
3 placing solicitation telephone calls to his cell phone number.
4

5 69. The unauthorized telephone calls made by Re/Max agents at
6 Re/Max's direction, as alleged herein, have harmed Plaintiff Tuli and Plaintiff
7 DeClements in the form of annoyance, nuisance, and invasion of privacy, and
8 disturbed the use and enjoyment of their phones, in addition to the wear and tear on
9 the phones' hardware (including the phones' battery) and the consumption of
10 memory on the phones.

11 70. Seeking redress for these injuries, Plaintiff Tuli and Plaintiff
12 DeClements on behalf of themselves and Classes of similarly situated individuals,
13 bring suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*,
14 which prohibits unsolicited prerecorded and autodialed voice calls to cellular
15 telephones, and unsolicited calls to telephone numbers registered on the DNC.
16

17 CLASS ALLEGATIONS

18 **Class Treatment Is Appropriate for Plaintiffs' TCPA Claims**

19 71. Plaintiff Tuli and Plaintiff DeClements bring this action pursuant to
20 Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seeks certification of
21 the following three Classes:
22
23

24 **Prerecorded No Consent Class:** All persons in the
25 United States who from four years prior to the filing of this action (1)
26 at least one of Defendant's realtors called, (2) using a prerecorded voice,
27
28

1 (3) for a substantially similar reason that Plaintiff DeClements was
2 called, and (4) for whom Defendant claims (a) they obtained prior
3 express written consent in the same manner as Defendant claims they
4 supposedly obtained prior express written consent to call Plaintiff
5 DeClements, or (b) they did not obtain prior express written consent.
6
7

8
9 **Autodialed No Consent Class:** All persons in the United
10 States who from four years prior to the filing of this action (1) at least
11 one of Defendant's realtors called, (2) on the person's cellular
12 telephone number, (3) using a calling platform substantially similar to
13 the calling platform used to call Plaintiff Tuli and Plaintiff DeClements,
14 and (4) for whom Defendant claims (a) they obtained prior express
15 written consent in the same manner as Defendant claims they
16 supposedly obtained prior express written consent to call Plaintiffs Tuli
17 or DeClements, or (b) they did not obtain prior express written consent.
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23 **Do Not Call Registry Class:** All persons in the United
24 States who from four years prior to the filing of this action (1)
25 Defendant's realtors called more than one time within any 12-month
26 period, (2) where the person's residential telephone number had been
27
28

1 listed on the DNC for at least thirty days, (3) for a substantially similar
2 reason that Plaintiff Tuli was called, and (4) for whom Defendant
3 claims (a) they obtained prior express written consent in the same
4 manner as Defendant claims they supposedly obtained prior express
5 written consent to call Plaintiff Tuli, or (b) they did not obtain prior
6 written consent to call Plaintiff Tuli, or (b) they did not obtain prior
7 express written consent.
8

9
10 72. The following individuals are excluded from the Classes: (1) any
11 Judge or Magistrate presiding over this action and members of their families; (2)
12 Defendant, its subsidiaries, parents, successors, predecessors, and any entity in
13 which Defendant or its parents have a controlling interest and their current or
14 former employees, officers and directors; (3) Plaintiffs' attorneys; (4) persons who
15 properly execute and file a timely request for exclusion from the Classes; (5) the
16 legal representatives, successors or assigns of any such excluded persons; and (6)
17 persons whose claims against Defendant have been fully and finally adjudicated
18 and/or released. Plaintiff Tuli and Plaintiff DeClements anticipate the need to
19 amend the Class definitions following appropriate discovery.

20 73. **Numerosity:** On information and belief, there are hundreds, if not
21 thousands of members of the Classes such that joinder of all members is
22 impracticable.

23 74. **Commonality and Predominance:** There are many questions of law
24 and fact common to the claims of Plaintiff Tuli, Plaintiff DeClements, and the
25 Classes, and those questions predominate over any questions that may affect
26 individual members of the Classes. Common questions for the Classes include, but
27 are not necessarily limited to the following:
28

- 1 (a) whether Defendant ratified its real estate agents' use of a prerecorded
2 message for calling phone numbers of expired leads without consent
3 violating the TCPA;
4 (b) whether Defendant ratified its real estate agents' use of an autodialer
5 for calling cell phone numbers of expired leads without consent
6 violating the TCPA;
7 (c) whether Defendant's real estate agents used an automatic telephone
8 dialing system to make their calls to Plaintiff Tuli, Plaintiff
9 DeClements and the members of the Classes;
10 (d) whether Defendant's real estate agents systematically made multiple
11 telephone calls to Plaintiff Tuli, and consumers whose telephone
12 numbers were registered with the National Do Not Call Registry;
13 (e) whether Defendant's real estate agents made calls to Plaintiff Tuli,
14 Plaintiff DeClements and members of the Classes without first
15 obtaining prior express written consent to make the calls;
16 (f) whether Defendant is liable under the TCPA for its realtors' conduct;
17

18 and

19 (g) whether members of the Classes are entitled to treble damages based
20 on the willfulness of Defendant's conduct.

21 75. **Adequate Representation:** Plaintiff Tuli and Plaintiff DeClements
22 will fairly and adequately represent and protect the interests of the Classes, and has
23 retained counsel competent and experienced in class actions. The Plaintiffs have no
24 interests antagonistic to those of the Classes, and Defendant has no defenses
25 unique to the Plaintiff's. Plaintiff Tuli, Plaintiff DeClements and their counsel are
26 committed to vigorously prosecuting this action on behalf of the members of the
27

1 Classes, and have the financial resources to do so. Neither Plaintiff Tuli, Plaintiff
2 DeClements or their counsel have any interests adverse to the Classes.

3 76. **Appropriateness:** This class action is also appropriate for
4 certification because Defendant has acted or refused to act on grounds generally
5 applicable to the Classes and as a whole, thereby requiring the Court's imposition
6 of uniform relief to ensure compatible standards of conduct toward the members of
7 the Classes and making final class-wide injunctive relief appropriate. Defendant's
8 business practices apply to and affect the members of the Classes uniformly, and
9 Plaintiffs' challenge of those practices hinges on Defendant's conduct with respect
10 to the Classes as wholes, not on facts or law applicable only to the Plaintiff's.
11 Additionally, the damages suffered by individual members of the Classes will
12 likely be small relative to the burden and expense of individual prosecution of the
13 complex litigation necessitated by Defendant's actions. Thus, it would be virtually
14 impossible for the members of the Classes to obtain effective relief from
15 Defendant's misconduct on an individual basis. A class action provides the
16 benefits of single adjudication, economies of scale, and comprehensive supervision
17 by a single court.
18

19 **FIRST CLAIM FOR RELIEF**

20 **Telephone Consumer Protection Act**
21 **(Violation of 47 U.S.C. § 227)**
22 **(On Behalf of Plaintiff DeClements and the Prerecorded No Consent Class)**
23

24 77. Plaintiff DeClements repeats and realleges paragraphs 1 through 76 of
25 this Complaint and incorporates them by reference.
26
27
28

1 78. Defendant and/or its agents transmitted unwanted solicitation
2 telephone calls to Plaintiff DeClements and the other members of the Prerecorded
3 No Consent Class using a prerecorded voice message.
4

5 79. These prerecorded voice calls were made *en masse* without the prior
6 express written consent of the Plaintiff DeClements and the other members of the
7 Prerecorded No Consent Class.
8

9 80. Defendant has, therefore, violated 47 U.S.C. §§ 227(b)(1)(A)(iii),
10 (b)(1)(B). As a result of Defendant's conduct, Plaintiff DeClements and the other
11 members of the Prerecorded No Consent Class are each entitled to a minimum of
12 \$500 in damages, and up to \$1,500 in damages, for each violation.
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1 86. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c),
2 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]
3 residential telephone subscriber who has registered his or her telephone number on
4 the national do-not-call registry of persons who do not wish to receive telephone
5 solicitations that is maintained by the federal government.”

6 87. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) is “applicable to
7 any person or entity making telephone solicitations or telemarketing calls to
8 wireless telephone numbers.”⁵¹

9
10 88. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to
11 be initiated, telephone solicitations to telephone subscribers such as Plaintiff Tuli,
12 and the Do Not Call Registry Class members who registered their respective
13 telephone numbers on the National Do Not Call Registry, a listing of persons who
14 do not wish to receive telephone solicitations that is maintained by the federal
15 government.

16 89. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff Tuli, and
17 the Do Not Call Registry Class received more than one telephone call in a 12-
18 month period made by or on behalf of Defendant in violation of 47 C.F.R. §
19 64.1200, as described above. As a result of Defendant’s conduct as alleged herein,
20 Plaintiff Tuli, and the Do Not Call Registry Class are each entitled to up to \$1,500
21 in damages for each violation.

22 **PRAYER FOR RELIEF**

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27 ⁵¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG
28 Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

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Attorneys for Plaintiff Tuli and the putative Classes

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Re/Max Agents Placed Illegal Cold Calls to Sellers of Expired Property Listings](#)
