

1 Todd M. Friedman (216752)  
 2 Adrian R. Bacon (280332)  
**Law Offices of Todd M. Friedman, P.C.**  
 3 21550 Oxnard St., Suite 780  
 4 Woodland Hills, CA 91367  
 5 Phone: (323) 306-4234  
 6 Fax: (866)633-0228  
 tfriedman@toddfllaw.com  
 abacon@toddfllaw.com  
 7 *Attorneys for Plaintiff*

8  
 9 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

10	MARLON ROMERO, individually and	)	Case No. 5:21-cv-1233
11	on behalf of all others similarly	)	
12	situated,	)	<b><u>CLASS ACTION</u></b>
13		)	
14	Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
15		)	<b>OF:</b>
16	vs.	)	1. NEGLIGENT VIOLATIONS OF
17	FIDELITY FIRST REAL ESTATE	)	THE TELEPHONE CONSUMER
18	AND MORTGAGE INC. DBA	)	PROTECTION ACT [47 U.S.C.
19	FIDELITY FIRST FUNDING and	)	§227 ET SEQ.]
20	DOES 1 through 10, inclusive,	)	2. WILLFUL VIOLATIONS OF THE
21	Defendants.	)	TELEPHONE CONSUMER
22		)	PROTECTION ACT [47 U.S.C.
23		)	§227 ET SEQ.]
24		)	<b><u>DEMAND FOR JURY TRIAL</u></b>
25		)	

26 Plaintiff, MARLON ROMERO (“Plaintiff”), individually and on behalf of  
 27 all others similarly situated, allege the following upon information and belief based  
 28 upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and others similarly situated seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of FIDELITY FIRST REAL ESTATE AND MORTGAGE INC.  
2 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on  
3 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection  
4 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’ privacy.

5 **JURISDICTION & VENUE**

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

15 3. Venue is proper in the United States District Court for the Central  
16 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)  
17 because Defendant does business within the state of California and Plaintiff resides  
18 within this District.

19 **PARTIES**

20 4. Plaintiff, MARLON ROMERO (“Plaintiff”), is a natural person  
21 residing in Winchester, California and is a “person” as defined by 47 U.S.C. § 153  
22 (39).

23 5. Defendant, FIDELITY FIRST REAL ESTATE AND MORTGAGE  
24 (“Defendant”), is a mortgage lending company and is a “person” as defined by 47  
25 U.S.C. § 153 (39).

26 6. The above-named Defendant, and its subsidiaries and agents, are  
27 collectively referred to as “Defendants.” The true names and capacities of the  
28 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are

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

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

12 **FACTUAL ALLEGATIONS**

13 8. Beginning in or around February 19, 2021, Defendant contacted  
14 Plaintiff on his cellular telephone, number ending in -3890, in an effort to sell or  
15 solicit its services.

16 9. Defendant called Plaintiff at 11:38 AM on February 19, 2021, 12:04  
17 PM on February 19, 2021, and twice at 11:04 AM on March 9, 2021.

18 10. Defendant's calls constituted calls that were not for emergency  
19 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

20 11. Defendant's calls were placed to telephone number assigned to a  
21 cellular telephone service for which Plaintiff incur a charge for incoming calls  
22 pursuant to *47 U.S.C. § 227(b)(1)*.

23 12. Plaintiff is not a customer of Defendant's services and has never  
24 provided any personal information, including his cellular telephone numbers, to  
25 Defendant for any purpose whatsoever. Accordingly, Defendant never received  
26 Plaintiff "prior express consent" to receive calls using an automatic telephone  
27 dialing system or an artificial or prerecorded voice on their cellular telephone  
28 pursuant to *47 U.S.C. § 227(b)(1)(A)*.

**CLASS ALLEGATIONS**

1  
2 13. Plaintiff bring this action on behalf of themselves and all others  
3 similarly situated, as a member of the proposed class (hereafter “The Class”)  
4 defined as follows:

5  
6 All persons within the United States who received any  
7 telephone calls from Defendant to said person’s cellular  
8 telephone made through the use of any automatic  
9 telephone dialing system or an artificial or prerecorded  
10 voice and such person had not previously consented to  
11 receiving such calls within the four years prior to the  
12 filing of this Complaint

13 14. Plaintiff represents, and is a member of, The Class, consisting of All  
14 persons within the United States who received any telephone calls from Defendant  
15 to said person’s cellular telephone made through the use of any automatic telephone  
16 dialing system or an artificial or prerecorded voice and such person had not  
17 previously not provided their cellular telephone number to Defendant within the  
18 four years prior to the filing of this Complaint.

19 15. Defendant, its employees and agents are excluded from The Class.  
20 Plaintiff does not know the number of members in The Class, but believes the Class  
21 members number in the thousands, if not more. Thus, this matter should be  
22 certified as a Class Action to assist in the expeditious litigation of the matter.

23 16. The Class is so numerous that the individual joinder of all of its  
24 members is impractical. While the exact number and identities of The Class  
25 members are unknown to Plaintiff at this time and can only be ascertained through  
26 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
27 The Class includes thousands of members. Plaintiff alleges that The Class  
28 members may be ascertained by the records maintained by Defendant.

17. Plaintiff and members of The Class were harmed by the acts of  
Defendant in at least the following ways: Defendant illegally contacted Plaintiff

1 and Class members via their cellular telephones thereby causing Plaintiff and Class  
2 members to incur certain charges or reduced telephone time for which Plaintiff and  
3 Class members had previously paid by having to retrieve or administer messages  
4 left by Defendant during those illegal calls, and invading the privacy of said  
5 Plaintiff and Class members.

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

- 11
- 12 a. Whether, within the four years prior to the filing of this  
13 Complaint, Defendant made any call (other than a call made for  
14 emergency purposes or made with the prior express consent of  
15 the called party) to a Class member using any automatic  
16 telephone dialing system or any artificial or prerecorded voice  
17 to any telephone number assigned to a cellular telephone  
18 service;
  - 19 b. Whether Plaintiff and the Class members were damages  
20 thereby, and the extent of damages for such violation; and
  - 21 c. Whether Defendant should be enjoined from engaging in such  
22 conduct in the future.

23 19. As a person that received numerous calls from Defendant using an  
24 automatic telephone dialing system or an artificial or prerecorded voice, without  
25 Plaintiff' prior express consent, Plaintiff is asserting claims that are typical of The  
26 Class.

27 20. Plaintiff will fairly and adequately protect the interests of the members  
28 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
class actions.

21. A class action is superior to other available methods of fair and  
efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford  
2 individual litigation, the court system could not. It would be unduly burdensome  
3 to the courts in which individual litigation of numerous issues would proceed.  
4 Individualized litigation would also present the potential for varying, inconsistent,  
5 or contradictory judgments and would magnify the delay and expense to all parties  
6 and to the court system resulting from multiple trials of the same complex factual  
7 issues. By contrast, the conduct of this action as a class action presents fewer  
8 management difficulties, conserves the resources of the parties and of the court  
9 system, and protects the rights of each Class member.

10 22. The prosecution of separate actions by individual Class members  
11 would create a risk of adjudications with respect to them that would, as a practical  
12 matter, be dispositive of the interests of the other Class members not parties to such  
13 adjudications or that would substantially impair or impede the ability of such non-  
14 party Class members to protect their interests.

15 23. Defendant has acted or refused to act in respects generally applicable  
16 to The Class, thereby making appropriate final and injunctive relief with regard to  
17 the members of the California Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**  
20 **47 U.S.C. §227 et seq.**

21 24. Plaintiff repeats and incorporates by reference into this cause of  
22 action the allegations set forth above at Paragraphs 1-23.

23 25. The foregoing acts and omissions of Defendant constitute numerous  
24 and multiple negligent violations of the TCPA, including but not limited to each  
25 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26 26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*  
27 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
28 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

1 27. Plaintiff and the Class members are also entitled to and seek  
2 injunctive relief prohibiting such conduct in the future.

3  
4 **SECOND CAUSE OF ACTION**  
5 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**  
6 **47 U.S.C. §227 et seq.**

7 28. Plaintiff repeats and incorporates by reference into this cause of  
8 action the allegations set forth above at Paragraphs 1-23.

9 29. The foregoing acts and omissions of Defendant constitute numerous  
10 and multiple knowing and/or willful violations of the TCPA, including but not  
11 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*

12 *seq.*  
13 30. As a result of Defendant's knowing and/or willful violations of *47*  
14 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of  
15 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
16 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

17 31. Plaintiff and the Class members are also entitled to and seek  
18 injunctive relief prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

21 **FIRST CAUSE OF ACTION**  
22 **Negligent Violations of the Telephone Consumer Protection Act**  
23 **47 U.S.C. §227 et seq.**

- 24 • As a result of Defendant's negligent violations of *47 U.S.C.*  
25 *§227(b)(1)*, Plaintiff and the Class members are entitled to and  
26 request \$500 in statutory damages, for each and every violation,  
27 pursuant to *47 U.S.C. 227(b)(3)(B)*; and  
28 • Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant’s willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 23<sup>rd</sup> Day of July, 2021.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fidelity First Funding Placed Unlawful Telemarketing Calls Without Consumers' Consent, Class Action Alleges](#)

---