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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIESTLEY FAUCETT, *individually and on behalf of all others similarly situated*,

Plaintiff,

vs.

MOVE, INC. d/b/a REALTOR.COM,

Defendant.

Case No. 2:22-cv-04948-ODW-AS

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND RENEWED MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES

Date: August 4, 2025
Time: 1:30pm
Courtroom: 5D

Honorable Otis D. Wright, II

NOTICE OF MOTION AND RENEWED MOTION

PLEASE TAKE NOTICE that on August 4, 2025 at 1:30 p.m., Plaintiff Priestley Faucett individually, and on behalf of a class of similarly situated persons, will and hereby does move for class certification before the Honorable Otis D. Wright, II, United States District Court for the Central District of California, First Street Courthouse, 350 W. 1st Street, Los Angeles, California 90012 – Courtroom 5D, 5th Floor. Plaintiff requests that the Court enter an Order as follows:

(1) certifying the proposed Classes under Rules 23(a), 23(b)(2), and 23(b)(3);

(2) appointing Plaintiff as Class Representative of the certified Classes;

(3) appointing as Class Counsel lawyers from the firms of Gold Law, PA, Shamis & Gentile, P.A., and Tycko & Zavareei LLP;

(4) directing the Parties to jointly submit a proposed Notice Plan within sixty (60) days of the Court's Order granting this Motion; and

(5) granting all other further relief that the Court deems equitable and just.

Plaintiff makes this motion on the ground that the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a) are met. Plaintiff also make this motion on the ground that questions of law and fact common to the Classes predominate over any questions affecting individual members, and a class action is the superior method for adjudicating the dispute. Furthermore, Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each Class as a whole.

Plaintiff's motion is supported by this Notice of Motion and Renewed Motion; the accompanying Memorandum of Points and Authorities; the pleadings, record, and other filings in the case; the Declaration of Christopher Gold and its accompanying exhibits, and the Declaration and Expert Report of Aaron Woolfson,

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which are both being filed concurrently herewith; and such other oral and written points, authorities, and evidence as the parties may present at the time of the hearing on the motion.

Dated: June 6, 2025

Respectfully submitted,

By: */s/ Christopher Gold*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Move, Inc. ("Move" or "Defendant") is an online real estate company that operates realtor.com, a website that solicits real estate buyers. Move is a subsidiary of News Corp, a publicly traded global media and entertainment conglomerate with a market cap of approximately $16 billion. Defendant willfully or knowingly violated the Telephone Consumer Protection Act ("TCPA") by spamming [redacted] of consumers with [redacted] of prerecorded telemarketing calls, including [redacted] of calls placed to numbers registered on the National Do Not Call Registry ("National DNC"). Plaintiff now moves to certify a class of the victims of Defendant's harassing telemarketing.

The major issue in dispute in this case is whether Defendant had each Class member's "express written consent" (as legally defined) before it sent them pre-recorded messages. This class action, along with the claims of each Class member, will rise or fall based on one common answer to one common question: whether an online "consent" form satisfies the TCPA's "express written consent" standard if it does not ***both*** (1) specifically identify "prerecorded" calls as a method of communication that is being consented to; ***and*** (2) specifically identify the Defendant—Move, Inc. d/b/a Realtor.com—as the party being granted consent to make such calls.

Defendant did not produce evidence of a single form of "consent" to place calls to the Class that satisfies the above criteria, which, as this Court previously noted when it denied Defendant's motion to dismiss, was Defendant's burden to produce. In fact, Defendant does not possess ***any*** evidence of consent whatsoever for the vast majority of the calls that it placed to any consumer. At bottom there is

1 no evidence that any member of the class provided written consent to receive calls
2 (1) specifically using a prerecorded voice; ***and*** (2) specifically from Move.
3 If the Court agrees with Plaintiff and finds that "express written consent"
4 requires written consent both to (1) receive prerecorded voice calls, specifically; and
5 (2) to receive those calls from Move, specifically, then Plaintiff will have proven
6 that Move placed the calls at issue to Plaintiff and to every Class member without
7 legally sufficient consent, since the only evidence that exists suggests that no Class
8 member was asked to provide any consent meeting both of these two criteria. If the
9 Court disagrees with Plaintiff and finds that consent is sufficient despite no
10 specifically mentioning both prerecorded calls ***and*** Move, then Move will have
11 proven that it placed the calls at issue to Plaintiff and to every Class member with
12 legally sufficient consent. Thus, whether Plaintiff is right or wrong, the question and
13 the answer apply classwide, and this makes class certification appropriate.
14 Even in other cases with far more complex facts than in this case, "[c]ourts
15 routinely certify TCPA class actions." *Physicians Healthsource, Inc. v. Doctor*
16 *Diabetic Supply, LLC*, No. 12-22330-CIV-SEITZ, 2014 U.S. Dist. LEXIS 177222,
17 at *14 (S.D. Fla. Dec. 23, 2014). The TCPA's "simple and administrable" provisions
18 and the "obvious attempt [by Congress] to vindicate the public interest" through the
19 statute's private enforcement provisions, and the overarching congressional intent
20 "to allow consumers to bring their claims at modest personal expense[,]" all combine
21 to make the "claims amenable to class action resolution." *Krakauer v. Dish Network,*
22 *L.L.C.*, 925 F.3d 643, 663 (4th Cir. 2019). "The problems that so often plague class
23 actions under Rule 23(b)(3) are wholly absent from" the TCPA. *Id.*, at 655-56.
24 This case is a simple and straightforward TCPA case, and all of the applicable
25 elements of Rule 23 are satisfied. For these reasons, Plaintiff requests that the Court
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grant this Motion, certify the Classes, appoint Plaintiff Faucett as Class Representative, and appoint Plaintiff's counsel identified herein as Class Counsel.

II. FACTUAL BACKGROUND

A. Defendant's unlawful telemarketing campaign.

Defendant is a telemarketer owned by News Corp.[1] that solicits real estate buyers through calls to [REDACTED] of telephone numbers it purchases from third-party lead generation companies. Ex. 1.[2] Defendant admits that it (or its agents) called Plaintiff and Class members using a prerecorded voice. Ex. 2, Rogg No. 4; *see also* First Amended Complaint, ECF No. 18 ("FAC") at ¶¶ 27, 30, 33. Defendant's calls to the Class used a prerecorded voice that prompts the consumer to hold the line to speak to a live representative. FAC at ¶ 25. If a consumer does not answer, Move leaves a voicemail for the consumer using a prerecorded message. Ex. 3 at No. 1; Ex. 4 ("Woolfson Rpt.") at ¶ 44; FAC at ¶ 26. Move admits that all calls to the Class were made by Move, and that every call identified Move's "realtor.com" brand as the calling party. Ex. 2, Rogg No. 4; Ex. 13[3] ("Alberado Dep."), at 43:11-25.

To fuel its lucrative unlawful telemarketing campaign, Defendant buys telephone numbers (each referred to in the industry as a "lead") from a network of independent third-party lead generation websites—what the Federal Trade Commission refers to as a "consent farm" that harvests consumer personal information along with "phony consent" to then sell those leads to robocallers, like Defendant. Ex. 2; Ex. 1 at 4; *see also Shutler v. Citizens Disability LLC*, No. 2:23-cv-14337-KMM, 2024 U.S. Dist. LEXIS 187701, at *7 (S.D. Fla. Sep. 23, 2024) ("The FTC defines consent farm as a method to 'lure people to a website with the

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[1] Christopher Palmeri et al., News Corp in Talks to Sell Real Estate Site For $3 Billion, https://www.bloomberg.com/news/articles/2023-01-24/news-corp-is-said-in-talks-to-sell-realtor-com-to-costar-group, Bloomberg (Jan. 24, 2023 at 6:16 PM EST).
[2] All Exhibits are attached to the Declaration of Chris Gold ("Gold Decl."), ECF Nos. 53, 54-1.
[3] Declaration of Chris Gold In Further Support of Class Certification, ECF Nos. 88, 89-1.

promise a benefit, . . . harvest their personal information, gin up phony "consent" to get robocalls and other solicitations, and then sell those leads to robocallers.'").

Defendant purchased Plaintiff's contact information as a "lead" from three independent and unrelated lead generation websites operated by three independent and unrelated lead generation companies: REI Network, Realty Store, and Yardi. Between April 26, 2022, and July 20, 2022, Defendant called Plaintiff ***11 times*** using a prerecorded voice (which included ***four calls in a single day*** on April 26, 2022). Ex. 5.

Plaintiff's expert analyzed electronic call records produced by Defendant and determined that between September 12, 2018, and July 20, 2022, Defendant placed [REDACTED] ***prerecorded calls to*** [REDACTED] ***unique phone numbers*** that Defendant acquired from these same three lead generation companies. Woolfson Rpt. at ¶¶ 40-43.[4]

Each of Defendant's calls to the Class were "telephone solicitations" within the meaning of the TCPA because they were initiated "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." 47 C.F.R. § 64.1200(f)(15). Specifically, Defendant's calls solicited Plaintiff and Class members to hire a real estate agent from Defendant's network of agents who retain Defendant to connect them with potential real estate buyers. FAC at ¶ 30; *see also* ECF No.15 at 5. The fact that Defendant "called [Plaintiff] in order to connect him with a real estate agent" and "encouraged [Plaintiff] to purchase

[4] Defendant produced electronic records of calls that it placed to Class members between September 12, 2018, and July 20, 2022. Thus, the total number of calls and that total number of class members will increase when Defendant produces records of the calls it placed to the Class between July 20, 2022, and the end of the certified class period. Woolfson Decl. at ¶¶ 32-35 & n.17.

property or services by attempting to connect him to a real estate agent" demonstrates that Defendant's calls were telephone solicitations. ECF No. 28 at 9.

B. Defendant lacked prior express consent to place prerecorded voice calls to the Class.

As this Court noted when it previously denied Defendant's motion to dismiss, "'[e]xpress consent is not an element of a plaintiff's prima facie case but is an affirmative defense for which the ***defendant bears the burden of proof***.'" *Faucett v. Move, Inc.*, No. 2:22-cv-04948-ODW (ASx), 2023 U.S. Dist. LEXIS 45655, at *7-8 (C.D. Cal. Mar. 17, 2023) (emphasis added). This Court further explained that "express written consent under the TCPA requires written agreement sufficient to show that consumer '(1) received "clear and conspicuous disclosure" of ***the consequences*** of providing the requested consent, *i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.'" *Id.*, at *9-10 (quoting *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 F.C.C. Rcd. 1830, 1843-44 (Feb. 15, 2012)).

In an attempt to carry its burden, Defendant produced copies of the "consent" language it alleges Plaintiff agreed to when interacting with three different lead generation websites operated by one of the three lead generation companies at issue (*i.e.* REI Network, Realty Store, and Yardi). Ex. 2 at No. 8; ECF No. 51-3 at 16. Defendant does not possess ***any*** evidence of consent to place the vast majority of calls it places and, thus, was only able to produce copies of the "consent" language for a small sampling of the Class members it called using a prerecorded voice.

Every form of purported "consent" language that Defendant produced is identical in its legal deficiency in that neither provided a "clear and conspicuous disclosure" that the consumer would both (1) receive future ***prerecorded*** calls, ***and***

(2) that those calls would be made ***by or on behalf of a "specific seller"*** *i.e.* Move. *See* ECF No. 51-3 at 16.

C. Defendant's violations of the TCPA were knowing or willful.

Although Defendant continues to argue that Class members gave consent before Defendant called them, Defendant had no actual evidence of that purported consent in its possession when Plaintiff requested those documents in discovery, and Defendant struggled to obtain these documents from its third-party lead generators. *See* ECF No. 51-5 at ¶¶ 2-6. This means that Defendant abdicated it duty to obtain consumer "express written consent" to its lead generation "consent farm" and placed prerecorded calls to the Class without knowing for certain whether prior express written consent existed at all.

Defendant also concedes that it made no effort to confirm whether the numbers it called were registered on the National DNC. Ex. 3 at Rogg No. 9. Indeed, Plaintiff's number, for example, was registered on the National DNC as of March 2019, yet Defendant called Plaintiff at least 11 times in 2022. FAC at ¶ 37; Ex. 5.

Defendant also admits that it failed to institute the TCPA-mandated "procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity," as required by 47 C.F.R. § 64.1200(d). *See* Ex. 3 at Rogg. No. 8; Alberado Dep., at 99:19-111:2. Instead, when Defendant receives a do-not-call request from a consumer, Defendant associates that request with the lead generation website from which that lead was purchased. But if Defendant purchased that lead from multiple lead generation websites—as it did in Plaintiff's case—the "lead" will continue to receive calls from Defendant even after making a stop request, as was the case with Plaintiff.

Plaintiff made multiple do-not-call requests to Defendant, including in writing via U.S. mail on May 11, 2022 (one day after Defendant called Plaintiff during his

best friend's funeral), Ex. 6; *see also* ECF No. 20 at 6, and then again orally on June 4, 2022, after Defendant called Plaintiff for the second time that day. Exs. 5, 7. Defendant's internal records that were visible to its telemarketing callers show a transcript of Plaintiff's June 4 opt-out request, Ex. 8. Yet Defendant nevertheless continued to call Plaintiff, including on June 6, 2022 and July 20, 2022. Ex.

Plaintiff's expert analyzed Defendant's electronic call records and concluded that Defendant placed [redacted] calls to [redacted] unique numbers where the number received two or more calls within any 12-month period after appearing on Defendant's internal "do-not-call" list. Woolfson Rpt. at ¶ 36.

III. LEGAL STANDARDS

Class certification is appropriate if the four requirements of Federal Rule of Civil Procedure 23(a), and at least one of the requirements of Rule 23(b), are satisfied. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979-80 (9th Cir. 2011). In addition, the class definition must allow the Court to readily identify class members by reference to objective criteria. *J.L. v. Cissna*, No. 18-cv-04914-NC, 2019 WL 415579, at *7 (N.D. Cal. Feb. 1, 2019).

While courts may consider the merits of the plaintiff's underlying claims to determine if Rule 23's requirements have been satisfied, this does not extend to a free-ranging merits inquiry. *See Amgen, Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 466 (2013); *Stockwell v. City & Cty. of S.F.*, 749 F.3d 1107, 1112 (9th Cir. 2014) (quoting *Amgen*, 568 U.S. at 466). "***[D]oubts*** regarding the propriety of class certification ***should be resolved in favor of certification***." *Edwards v. First Am. Corp.*, No. CV 07-03796 SJO (FFMx), 2012 U.S. Dist. LEXIS 174957, at *4 (C.D. Cal. Nov. 30, 2012).

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IV. THE COURT SHOULD CERTIFY THE PROPOSED CLASSES

Plaintiff seeks certification of the following Class under Rule 23(a), (b)(2), and (b)(3):

> **Prerecorded Voice Class:** All persons within the United States who, (1) between September 12, 2018, and an Order granting class certification, (2) received a call or voicemail using an artificial or prerecorded voice, (3) from Defendant or anyone acting on Defendant's behalf, (4) to said person's cellular telephone number, (5) without emergency purpose, and (5) without their prior express written consent to receive prerecorded calls from Defendant, (6) where Defendant obtained such person's telephone number from REI Network, Realty Store, or Yardi.

Plaintiff also seeks certification of the following Subclass under Rule 23(a), (b)(2), and (b)(3):

> **National DNC Subclass:** All members of the Prerecorded Voice Class who, between September 12, 2018, and an Order granting class certification, (1) received two or more calls or voicemails (2) within any 12-month period (3) by or on behalf of Defendant; (4) for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services; (4) where the person's telephone number had been listed on the National Do Not Call Registry for at least thirty days.

The Class and Subclass above are collectively referred to herein as the "Class."

Although the Ninth Circuit has expressly rejected an ascertainability requirement, *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1123 (9th Cir. 2017), the Class is objectively defined and will allow the Court to readily identify its

members and, in fact, Class members have already been identified from Defendant's electronic call records. *See* Wolfson Rpt. at ¶¶ 34-37. Providing notice to Class members will be a simple administrative task that can be handled by a class administrator by direct notice where available, employing a reverse phone number lookup to find addresses associated with the cell phone numbers called. *Barani v. Wells Fargo Bank, N.A.*, No. 12CV2999-GPC(KSC), 2014 U.S. Dist. LEXIS 49838, at *27 (S.D. Cal. 2014) (approving of reverse phone lookup in settlement context for locating consumers who were texted by Wells Fargo).

A. The requirements of Rule 23(b)(3) are satisfied.

1. Common questions predominate.

The commonality requirement Rule 23(a) "requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The "claims must depend on a common contention" that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. Commonality "is a 'relatively light burden' that 'does not require that all the questions of law and fact raised by the dispute be common . . . or that the common questions of law or fact predominate over individual issues.'" *Esparza v. SmartPay Leasing, Inc.*, No. 17-cv-03421-WHA, 2019 WL 2372447, at *2 (N.D. Cal. June 5, 2019).

The commonality inquiry overlaps with the predominance inquiry under Rule 23(b)(3). *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010). The predominance requirement tests whether "proposed classes are sufficiently cohesive to warrant adjudication by representation," *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016), by testing whether "the main issues in a case" present common or individualized issues. *Zinser v. Accufix*

1 *Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001). "An individual question
2 is one 'where members of a proposed class will need to present evidence that varies
3 from member to member,' while a common question is one where 'the same
4 evidence will suffice for each member to make prima facie showing [or] the issue is
5 susceptible to generalized, classwide proof.'" *Tyson Foods v. Bouaphakeo*, 136 S.Ct.
6 1036, 1045 (2016) (quoting 2 W. Rubenstein, Newberg on Class Actions § 4:50,
7 196–97 (5th ed. 2012)); *Torres*, 835 F.3d at 1134 (same). "[M]ore important
8 questions apt to drive the resolution of the litigation are given more weight in the
9 predominance analysis over individualized questions which are of considerably less
10 significance to the claims of the class." *Id*.

11 Here, the commonality requirement is satisfied because Class members have
12 suffered the same injury, and their claims share common questions with answers that
13 will resolve issues central to the validity of each of their claims in one stroke. Those
14 common questions include (1) whether Defendant placed non-emergency
15 prerecorded or artificial calls to the cellular phones of Plaintiff and the Class
16 members cellular telephones; (2) whether Defendant can meet its burden of showing
17 that it obtained prior express consent to place prerecorded calls to Plaintiff and Class
18 members; (3) whether Defendant initiated telephone solicitations to phone numbers
19 on the National DNC; (5) whether Defendant's conduct was knowing and willful;
20 (6) whether Defendant is liable for damages and the amount of such damages; and
21 (7) whether Defendant should be enjoined from continuing to engage in such
22 conduct. *See, e.g.*, *Whitaker v. Bennett Law, PLLC*, No. 13-cv-03145-L-NLS, 2014
23 WL 5454398, at *5 (S.D. Cal. Oct. 27, 2014) (commonality met where "[t]he core
24 issue to be resolved" was whether defendant used a prerecorded or artificial voice
25 message to make unsolicited calls).
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These significant questions predominate and will all be proven using evidence common to every Class member. *See, e.g.*, *Chinitz v. Intero Real Estate Servs.*, No. 18-cv-05623-BLF, 2020 WL 7391299, at *13-15 (N.D. Cal. July 22, 2020); *Abante Rooter & Plumbing, Inc. v. Alarm.com Inc.*, No. 15-CV-6314-YGR, 2017 WL 1806583, at *6–7 (N.D. Cal. May 5, 2017); *Bumpus v. Realogy Brokerage Group LLC et al.*, No. 3:19-003309-JD at 12-13 (N.D. Cal. Mar. 23, 2022).

i. Common evidence will prove the claims of Plaintiff and the Prerecorded Voice Class.

Plaintiff will use common evidence to prove that Defendant violated the TCPA by (1) calling a residential landline or a mobile number (2) using an artificial or prerecorded voice. *See* 47 U.S.C. § 227(b)(1)(A)(iii) & (b)(1)(B). And this common evidence will simultaneously prove these elements for each member of the Prerecorded Voice Class. First, Defendant's Interrogatory Responses concede that Defendant, or agents acting on Defendant's behalf, placed calls to Plaintiff and Class members using a prerecorded voice. Ex. 2 at No. 4. Second, Plaintiff's expert witness analyzed Defendant's electronic call records and identified [REDACTED] prerecorded calls that Defendant placed to [REDACTED] unique phone numbers belonging to members of the Prerecorded Voice Class. Woolfson Rpt. at ¶ 35.

The only real issue in dispute at trial will be whether Defendant can prove its affirmative defense that it placed the prerecorded calls at issue with "prior express consent." This central dispute is common to all Class members. Indeed,"[c]onsent can be resolved on a classwide basis if consent was obtained in an identical or substantially similar manner from class members." *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 174 (S.D. Cal. 2019). That is the case here.

Defendant did not produce any form of "consent" for the vast majority of prerecorded calls it placed. With respect to the few instances of "consent" forms that Defendant did produce, they all fail to satisfy the TCPA's requirements because seek

consent from Class members (1) to receive prerecorded calls, ***specifically***, or (2) to receive those calls from Move, ***specifically***. *See Tyner v. Hi.Q, Inc*., No. CIV-21-608-F, 2022 U.S. Dist. LEXIS 220099, at *14 (W.D. Okla. Dec. 7, 2022) ("The web form at issue did not 'clearly authorize' Health IQ to deliver or cause to be delivered to Tyner telemarketing messages using an artificial or prerecorded voice. Instead, it clearly authorized 'CAC' and the 'Marketing Partners' to make such calls. The web form also doesn't state that Tyner agrees to be contacted specifically by Health IQ. This is no mere technicality. Because the web form did not clearly authorize Health IQ to deliver or cause to be delivered telemarketing messages using an artificial or prerecorded voice and did not state that Tyner agreed to be contacted by Health IQ, the court concludes that Health IQ is not entitled to summary judgment…[.]"); *See also Faucett*, 2023 U.S. Dist. LEXIS 45655, at *9-10 (holding that "express written consent under the TCPA requires written agreement sufficient to show that consumer '(1) received "clear and conspicuous disclosure" of ***the consequences*** of providing the requested consent, *i.e*., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.'").

Notably, this Court has already rejected Defendant's arguments that submission of an online inquiry expressing interest in connecting with a real estate agent is, alone, sufficient to establish "express written consent" under the TCPA. *Id.* at *8-9.

Thus, resolution of the issue of Defendant's affirmative defense of "express written consent" is the predominant common issue in this case and all Class members' claims will rise or fall together when that issue is resolved.

ii. Common evidence will prove the claims of Plaintiff and the National DNC Subclass.

Plaintiff will prove that Defendant violated the TCPA's national do-not-call provisions by (1) placing more than one telemarketing call (2) within a 12-month period (3) to a residential subscriber registered on the National DNC for more than 30 days. *See* Section 227(c) and Section 64.1200(c). Plaintiff will prove these elements for himself and each member of the National DNC Class in one stroke using common evidence.

Plaintiff's expert analyzed the electronic call records that Defendant produced and cross-referenced the numbers Defendant called with the National DNC. Woolfson Rpt. at ¶ 37. He determined that Plaintiff's number has been registered on the National DNC since March 2019, yet Defendant called Plaintiff at least four times (other discovery produced by Defendant shows that Defendant actually called Plaintiff 10 times, Ex. 5). Woolfson Rpt. at ¶ 37; FAC at ¶ 37. Plaintiff's expert also determined that Defendant placed 16,880,140 calls to 7,997,294 unique numbers registered on the National DNC. *Id.* Plaintiff's expert can easily apply simple filters to the data to identify the number of calls Defendant placed to members of the the National DNC Subclass.

iii. Common evidence will prove that Defendant's violations of the TCPA were committed knowingly and willfully.

Plaintiff will also use common evidence to prove that Defendant's violations of the TCPA were committed knowingly and/or willfully in that Defendant's actions—and conspicuous inaction—"demonstrate[] indifference to ongoing violations and a conscious disregard for compliance with the law." *Krakauer*, 925 F.3d at 662. This common evidence includes Defendant's reliance on third-party lead generators' boilerplate contractual promises to "comply" with the TCPA

without ensuring that Defendant actually had "express written consent" that satisfied the TCPA. Defendant's Interrogatory responses confirm that Defendant makes no effort to determine whether the numbers it calls are listed on the National DNC. Ex 3. And deposition testimony of Defendant's corporate representative further confirms that Defendant does not take reasonable steps honor consumer requests to not receive further calls. *See* Ex. 3 at Rogg. No. 8; Alberado Dep., at 99:19-111:2

iv. Common evidence will be used to prove Class-wide relief.

Class-wide damages can be proven on a common basis, and Plaintiff's measure of damages fits Plaintiff's liability theory, as required by *Comcast v. Behrend*, 569 U.S. 27 (2013). Here, Class members' entitlement to statutory damages all derive from the same event: Defendant's pervasive and continuing practice of placing telemarketing calls in violation of the TCPA. Damages can be calculated from Defendant's electronic call records as analyzed by Plaintiff's expert, who will determine the number of calls Defendant placed in violation of the TCPA within the class period. Woolfson Rpt. at ¶¶ 34-37. From there, all that is required to establish the amount of damages owed to each Class member is to multiply the statutory damage amount of $500 per violation (or $1,500 per willful or knowing violation) by the number of illegal calls. This calculation is formulaic and feasible, but even if it were not so straightforward, "[t]he presence of individualized damages calculations, however, does not defeat predominance." *Torres v. Mercer Canyons Inc*., 835 F.3d at 1136 .

Likewise, the need for and suitability of injunctive relief can be proven on a common basis. Defendant's violations of the TCPA continue to this day—Defendant has neither modified its business practices nor implemented more stringent compliance practices.

2. A class action is superior to other available methods of adjudication.

Rule 23(b)(3)'s second prong requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "A district court must evaluate this issue in comparative terms[.]" *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304- 05 (11th Cir. 2021).

Courts routinely find class actions to be the superior method of adjudicating TCPA claims. *See McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 178-79 (S.D. Cal. 2019) ("Courts recognize that given these damages relative to the costs of litigation, a class action is a superior means of adjudicating TCPA claims against a defendant."); *Bee, Denning, Inc. v. Cap. All. Grp.*, 310 F.R.D. 614, 630 (S.D. Cal. 2015) ("In the context of the TCPA, the class action device likely is the optimal means of forcing corporations to internalize the social costs of their actions.").

B. The Requirements of Rule 23(b)(2) are met.

Rule 23(b)(2) requires a plaintiff to show that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). To meet these requirements, plaintiff must only make a showing of cohesiveness of the class claims, *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998), and show that "class members seek uniform relief from a practice applicable to all of them," *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010).

Here, Defendant acted on grounds that apply generally to the Class by calling Class members using a prerecorded voice without express written consent in violation of the TCPA. There is a single result that would provide relief to all of the Class members: injunctive relief requiring Defendant to stop placing calls using a

prerecorded or artificial voice or to numbers on the National DNC without prior express consent.

Numerous courts in this district and in the Ninth Circuit have held that Rule 23(b)(2) and 23(b)(3) classes can be certified in tandem. *See, e.g.*, *Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228, 233-34 (C.D. Cal. 2018*); Raffin v. Medicredit, Inc.*, No. CV 15-4912 GHK, 2017 WL 131745 at *10 (C.D. Cal. Jan. 3. 2017) (collecting authority from several districts regarding parallel certification of injunctive and damages relief under Rules 23(b)(2) and 23(b)(3), respectively); *Barrett v. Wesley Fin. Grp., LLC*, 2015 WL 1910740, at *7 (S.D. Cal. Mar. 30. 2015); *Chinitz*, 2020 WL 7391299, at *11. Indeed, this court has expressly disagreed with the arguments like those previously made by Defendant that "parallel request[s] for injunctive relief cannot be certified under Rule 23(b)(2) simply because putative class members are also entitled to statutory damages." *Makaron*, 324 F.R.D. at 234, n.1.

Thus, the Rule 23(b)(2) class should be certified along the Rule 23(b)(3) classes.

C. The remaining requirements of Rule 23(a) are met.

1. The Classes satisfy the numerosity requirement.

A class must be "so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a)(1). No specific number is required, but "[g]enerally, 40 or more members will satisfy the numerosity requirement." *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (citation omitted). Here, numerosity is easily satisfied since the Class includes over 1 million members. Woolfson Rpt. at ¶ 35.

2. Plaintiff's claims are typical of each Class member's claims.

Under Rule 23(a)(3), "[t]he test of typicality is 'whether other members have the same or similar injury, whether the action is based on conduct which is not

unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *B.K. v. Snyder*, 922 F.3d 957, 970 (9th Cir. 2019). If the named plaintiffs' claims are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Id*. Here, Plaintiff's and each Class member's claims arise from the same facts and legal theories. Defendant called Plaintiff and Class members in a uniform manner and for the same reason—to solicit real estate business—using a prerecorded voice, including to number registered on the National DNC, without prior express written consent. Plaintiff is a member of the Class he seeks to represent, and Defendant does not have any unique affirmative defenses that could defeat typicality as to Plaintiff. Thus, the typicality requirement is satisfied. *See Bennett v. GoDaddy.com LLC*, No. CV-16-3908, 2019 WL 1552911, at *5 (D. Ariz. Apr. 8, 2019) ("Plaintiff and all putative class members suffered the same injury based on the same conduct by Defendant in the form of unauthorized calls to their cellular telephone lines."); *McCurley v. Royal Seas Cruises, Inc*., 331 F.R.D. 142, 169-70 (S.D. Cal. 2019) (plaintiffs "raise claims and legal theories typical of the class they seek to represent—a class of individuals who did not consent to receive calls to their cellular phones made by or on behalf of Royal with a prerecorded voice and/or an ATDS").

3. Plaintiff and Plaintiff's Counsel are adequate representatives of the Class.

Adequacy is satisfied when the class representatives will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Courts "must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis*, 657 F.3d at 985 (quoting *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1020 (9th Cir. 1998)). In considering the adequacy of counsel, the court must consider "(i) the work counsel

has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Plaintiff has no antagonistic or conflicting interest with the members of the Classes. To the contrary, he has demonstrated his commitment to the Classes by seeking out and retaining counsel and actively participating in this litigation. He worked with counsel to develop the Classes' claims, prepared responses to requests for production and interrogatories (that Defendant later withdrew), and arranged his availability to sit for a deposition (that Defendant also ultimately canceled).

Plaintiff retained experienced and capable counsel who have been appointed as lead counsel in numerous class actions, including TCPA cases, and will vigorously prosecute the class claims. Ex. 15[5] (Gold Law, PA firm resume); Ex. 10 (Shamis & Gentile, P.A firm resume; Ex. 11 (Tycko & Zavareei LLP firm resume); *see also Ikuseghan v. Multicare Health Sys*., No. C 14-5539 BHS, 2015 WL 4600818, at *6 (W.D. Wash. July 29, 2015) (finding adequacy satisfied where plaintiff's counsel served as counsel "in other class action lawsuits, including a previous TCPA case").

Counsel have devoted a significant amount of time and money to the case, including by briefing and beating Defendant's motion to dismiss, engaging in numerous meet-and-confers over Defendant's discovery responses, reviewing a substantial document production, retaining and working with an expert witness, briefing and winning a motion to compel, taking multiple depositions of Defendant's corporate representatives, and preparing this Motion. Gold Decl. ¶ 2. Plaintiff's

[5] Attached to the Declaration of Christopher Gold In Support of Plaintiff's Renewed Motion for Class Certification.

counsel also briefed Defendant's appeal to the Ninth Circuit of this Court's Order denying Defendant's motion to compel arbitration, which the Ninth Circuit ultimately affirmed. ECF No. 110. Plaintiff's counsel also continues to actively pursue discovery, including by successfully moving to compel a deposition of Defendant. The adequacy requirement is therefore satisfied. *Id.* at ¶ 3.

V. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant this Motion as follows:

(1) certify the Class and Subclass defined herein under Rules 23(a), 23(b)(2), and 23(b)(3);

(2) appoint Plaintiff as Class Representative of the Class and Subclass;

(3) appoint as Class Counsel Christopher Gold, Esq. of Gold Law, PA; Andrew J. Shamis of Shamis & Gentile, P.A.; and Sabita J. Soneji of Tycko & Zavareei LLP as Class Counsel;

(4) Order the Parties to jointly submit a proposed Notice Plan within sixty (60) days of the Court's Order granting this Motion; and

(5) grant all other relief the Court deems equitable and just.

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Dated: June 6, 2025

Respectfully submitted,

By: */s/ Christopher Gold*

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Certificate of Compliance Pursuant to Local Rule 11-6.2

The undersigned, counsel of record for Plaintiff, certifies that this brief contains 5,633 words, which complies with the word limit of L.R. 11-6.1.

By: */s/ Christopher Gold*
Christopher Gold, Esq.