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8 *Attorneys for Plaintiff and the Putative Class*

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 CASE NO. 2:19-cv-02822 FMO (AGRx)

12 **JORGE VALDES**, individually on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 **COLDWELL BANKER REAL**
17 **ESTATE, LLC**, a California limited
18 liability company,

19 Defendant.

AMENDED CLASS
ACTION COMPLAINT

JURY TRIAL DEMAND

20 **AMENDED CLASS ACTION COMPLAINT**
21 **AND DEMAND FOR JURY TRIAL**

22 Plaintiff Jorge Valdes (“Plaintiff Valdes” or “Valdes”) brings this Class
23 Action Complaint and Demand for Jury Trial against Defendant Coldwell Banker
24 Real Estate LLC, (“Coldwell Banker”) to stop Coldwell Banker from directing its
25 realtors to violate the Telephone Consumer Protection Act by making unsolicited
26 autodialed calls (i.e. “cold calls”) to consumers *without their consent*, including
27
28

1 calls to phone numbers registered on the national Do Not Call registry (“DNC”),
2 and to otherwise obtain injunctive and monetary relief for all persons injured by
3 the conduct of Defendant. Plaintiff Valdes, for his Complaint, alleges as follows
4 upon personal knowledge as to himself and his own acts and experiences, and, as
5 to all other matters, upon information and belief, including investigation conducted
6 by his attorneys.
7

8 INTRODUCTION

9
10 1. This case seeks to solve the wide-spread problem plaguing consumers
11 resulting from real estate companies such as Coldwell Banker directing,
12 authorizing, and/or ratifying realtors’ “cold calls” to consumers whose names and
13 phone numbers are provided as “leads” to realtors by real estate companies and
14 well known industry vendors.
15

16
17 2. Coldwell Banker is a worldwide real estate franchise which trains and
18 oversees Coldwell Banker realtors.
19

20 3. In Plaintiff Valdes’ case, Coldwell Banker’s training and oversight
21 resulted in him receiving unsolicited, autodialed calls from multiple Coldwell
22 Banker realtors to his cellular phone number registered on the DNC. These calls to
23 his cell phone were triggered after his property expired on the multiple listing
24 service (“MLS”). The property posted on the MLS did not contain his name or
25 phone number, rather, the Coldwell Banker realtors who called Plaintiff’s cell
26

1 phone used services like RedX to obtain his cell phone number and call him
2 without consent.

3 4. In response to these calls, Plaintiff Valdes files this lawsuit seeking
4 injunctive relief, requiring Defendant to stop its realtors from violating the
5 Telephone Consumer Protection Act (TCPA) by placing unsolicited autodialed
6 calls to consumers' telephone numbers, including telephone numbers that are
7 registered on the DNC, as well as an award of statutory damages to the members of
8 the Classes.
9
10

11 **PARTIES**

12
13 5. Plaintiff Jorge Valdes is a resident of Tustin, California.

14 6. Defendant Coldwell Banker is a California limited liability company
15 with its headquarters located in Madison, New Jersey. Coldwell Banker was
16 founded and incorporated in this District and conducts business throughout this
17 District, California, and the United States.
18

19 **JURISDICTION AND VENUE**

20
21 7. This Court has federal question subject matter jurisdiction over this
22 action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
23 Protection Act, 47 U.S.C. §227 ("TCPA").
24

25 8. This Court has personal jurisdiction over Defendant and venue is
26 proper in this District under 28 U.S.C. § 1391(b) because Defendant does
27

1 significant business in this District and because the wrongful conduct giving rise to
2 this case occurred in this District. Venue is additionally proper because Plaintiff
3 resides in this District and the calls were directed towards Plaintiff in this District.
4

5 **COMMON ALLEGATIONS**

6 **Coldwell Banker Directs, Authorizes, and/or Ratifies** 7 **Its Realtors Unsolicited Cold Calls to Consumers**

8 9. Coldwell Banker directs, authorizes, and/or ratifies its realtors cold
9 calls to consumers in 4 major ways:

- 10 i) By training realtors to engage in cold calling;
- 11 ii) By providing realtors leads to cold call through Coldwell Banker's
12 proprietary CBx Seller Leads system;
- 13 iii) By endorsing training from profession coaches who are known to
14 endorse unsolicited and autodialed cold calls to consumers; and
15 iv) By endorsing vendors such as RedX to acquire leads from so those
16 leads can be cold-called with an autodialer.
17
18
19

20 **Coldwell Banker Trains Realtors to Engage in Cold Calling**

21 10. In the real estate industry, cold calling is accepted as a necessary evil
22 in order to generate property listings. As David Kaufman, a real estate investor
23 stated in a Forbes article "Cold Calling is King: How to start in Real Estate With
24 No Cash," "The more cold calls you make, the larger your contact list of buyers
25
26
27

1 and sellers grows.”¹ Cold calling consumers without consent using an autodialer or
 2 if the consumer’s phone number is registered on the DNC, though, is a clear
 3 violation of the TCPA. This case seeks to stop this cold calling activity which
 4 invades the privacy of consumers, and is disruptive and irritating.
 5

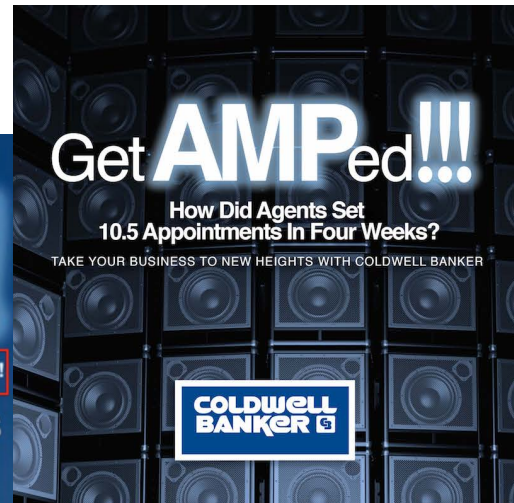
6 11. Coldwell Banker directs, authorizes, and/or ratifies this cold-calling
 7 activity on every level.
 8

9 12. For instance, Coldwell Banker hosts a four-week course called AMP
 10 (Achieve Maximum Potential) for its Coldwell Banker realtors which provides a
 11 strong focus on lead generation to drum up business. This course was promoted
 12 through CBOne, the intranet that Coldwell Banker provides to all of its Coldwell
 13 Banker realtors and on Coldwell Banker’s website: CBCalendars.com.^{2 3}
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 22 ¹ <https://www.forbes.com/sites/forbesrealestatecouncil/2019/01/18/cold-calling-is-king-how-to-start-in-real-estate-with-no-cash/#7c06fad74423>

23 ² <https://www.cbone.me/event-display/358691>

24 ³ <https://sso.nrtinc.com/Login.aspx?TYPE=33554433&REALMOID=06-6c4d914b-9f90-4ab0-972c-2b11333d31a7&GUID=&SMAUTHREASON=0&METHOD=GET&SMREALTORNAME=nrtgwssso&TARGET=-SM-HTTPS%3a%2f%2fsso%2enrtinc%2ecom%2fSiteMinderResultWeb%2fResult%2fSiteMinderResult%2easpx>
 27



13. In one video, a Coldwell Banker sales associate who took the course tells the viewer that AMP teaches the realtors “*to make cold calls*. To follow scripts.”⁴ Vincent then explains that, in the manual that is provided with AMP, it provides actual scripts for realtors to use when placing cold calls to consumers.

14. AMP is just one example of how Coldwell Banker trains realtors to engage in cold calling which by definition is calling consumers they do not have consent to call.

15. Coldwell Banker provides a host of other types of internal programs that *train* its realtors to “cold call” consumers. Coldwell Banker’s realtors have posted about the training they have received from Coldwell Banker regarding cold calling consumers.

16. For example, Mitchell Hall, a former Coldwell Banker realtor posted:

⁴ <https://youtu.be/OP5A65vv2Tk?t=54>

**Mitchell J Hall**

The Corcoran Group - Manhattan, NY
Lic Associate RE Broker - Manhattan & Brooklyn



RAINMAKER
592,135

Tony,

I must take the contrarian view. If you fear cold-calling and don't like it don't do it. There are many other ways to build your business. It's your business do it your way.

I haven't made a cold call in over 10 years. I used to be with Coldwell Banker too. They push cold calling. Floyd Wickman and Mike Ferry training reading scripts and cold calling total strangers on Saturday morning. I was pretty good at it because before real estate I was in ad sales and did most of my business over the phone but it was B2B calling advertisers at their office. Calling people at home is an intrusion. Ever since they passed the Federal DO NOT CALL law I got turned off. My friends and family told me they hate telemarketers.

5

17. On Indeed.com (a job posting website), a Coldwell Banker realtor wrote, "A typical day begins with a meeting or training followed by cold calling a list of potential clients... you cannot be afraid to reach out to strangers"⁶

18. A former Coldwell Banker realtor wrote on Indeed, "Typical day involved cold calling, door knocking... I [learned] how to cold call and be more efficient."⁷

⁵ <https://activerain.com/questions/show/43937/how-do-you-overcome-fear-of-the-phone->

⁶ <https://www.indeed.com/cmp/Coldwell-Banker/reviews?fcountry=ALL&fjobtitle=Real+Estate+Realtor&sort=helpfulness>



⁷ *Id.*

1 19. On Glassdoor, a former Coldwell Banker realtor wrote about her
2 experience as a Coldwell Banker realtor as, “Training is old fashioned, they tell
3 you to cold call FSBO’s for clients.”⁸
4

5 20. Coldwell Banker trains its realtors through its online learning portal
6 on generating clients by calling expired listings as is seen in the video below where
7 the Coldwell Banker trainer teaches Coldwell Banker realtors how to generate
8 leads by calling consumers associated with an expired listing.⁹
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25 ⁸ [https://www.glassdoor.com/Reviews/Coldwell-Banker-new-realtors-Reviews-](https://www.glassdoor.com/Reviews/Coldwell-Banker-new-realtors-Reviews-EI_IE13952.0,15_KH16,26.htm)
26 [EI_IE13952.0,15_KH16,26.htm](https://www.glassdoor.com/Reviews/Coldwell-Banker-new-realtors-Reviews-EI_IE13952.0,15_KH16,26.htm)

27 ⁹ <https://florida.nrtsalespro.com/content/live-morning-spark>

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6 **LIVE Morning Spark**

7  Posted by Robert Burns on Wed, 06/13/2012 - 9:01am **70938 views** [+ Save to Favorites](#)

8  **Bob Burns** **MORNING SPARK**

9

10 **Date & Time:**
Wednesday, June 13, 2012 9:15am - 9:30am

11 **Presenters:**
Robert Burns

12 Webinar has concluded
Please check back to view the recorded version.

13

14

15 ☆☆☆☆☆

16 Tags: [Morning Spark](#)

17 In today's LIVE broadcast, we will be discussing expired listings with a twist that you may not have thought about. We'll share some interesting statistics that you can share with potential sellers TODAY to generate listing appointments TODAY.

18

19 21. Coldwell Banker through its Coldwell Banker University provides a

20 handbook for its realtors called “Dash to Cash – 30 Days to Real Estate Success.”¹⁰

21

22 On days 15-19, the Coldwell Banker handbook directs realtors to call expired

23 listings (like Plaintiff Valdes). As part of the training, Coldwell Banker even

24

25 ¹⁰

26 [https://www.cbflorida.com/files/user_files/library/support_services/education/docs](https://www.cbflorida.com/files/user_files/library/support_services/education/docs/Final-30DayPlan.pdf)

27 [/Final-30DayPlan.pdf](https://www.cbflorida.com/files/user_files/library/support_services/education/docs/Final-30DayPlan.pdf)

28 AMENDED CLASS ACTION COMPLAINT

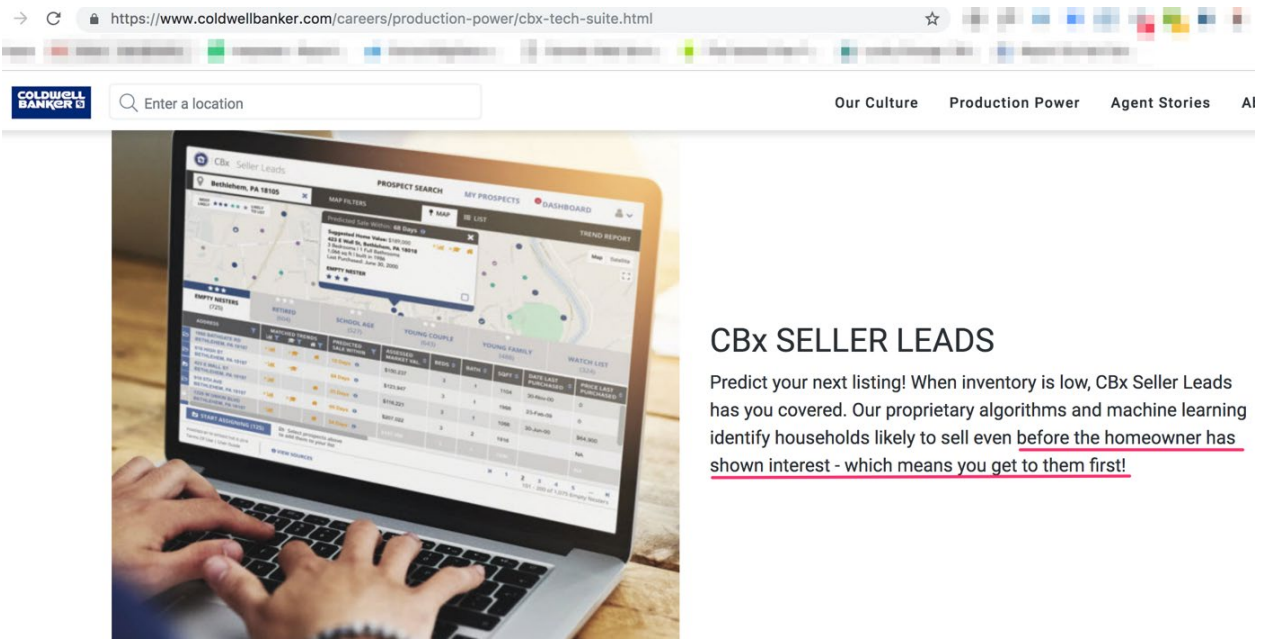
1 provides its realtors with scripts to use when making these cold calls to numbers
2 associated with an expired listing. Coldwell Banker provides its realtors with a
3 daily tracking form to ensure its realtors adhere to Coldwell Banker's marketing
4 methods of calling consumers with expired MLS listings.¹¹

6 **Coldwell Banker Provides Realtors With Leads to Cold Call**
7 **Through Its Proprietary CBx Seller Leads System**

8 22. CBx Seller Leads “leverages the power of big data and machine
9 learning to give Coldwell Banker affiliated realtors an unbeatable edge for
10 generating inventory. The tool utilizes predictive analytics, running on data from
11 previous sales and publicly available demographic information, to identify
12 households that are likely to list – before they even contact an agent.”¹²
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26 ¹¹ <https://slideplayer.com/slide/11486116/>

27 ¹² <https://blog.coldwellbanker.com/cbx-seller-leads/>



CBx SELLER LEADS

Predict your next listing! When inventory is low, CBx Seller Leads has you covered. Our proprietary algorithms and machine learning identify households likely to sell even before the homeowner has shown interest - which means you get to them first!

13

23. A Coldwell Banker realtor enters a zip code they want to analyze in the CBx Seller Leads portal for opportunities, and the CBx Seller Leads system provide by Coldwell Banker will produce a list of leads and associated phone number for the Coldwell Banker realtor to cold call.

¹³ <https://www.coldwellbanker.com/careers/production-power/cbx-tech-suite.html>

| LISTING STATUS | ADDRESS | FIRST NAME | LAST NAME | PHONE NUMBER |
|----------------|--|------------|-----------|--------------|
| | 2659 120th Ave Allegan , MI 49010 | JAMES | HAYDON | 269-615-2XXX |
| | 4170 112th Ave Allegan , MI 49010 | NOELLE | FACCONE | |
| | 2497 36th St Allegan , MI 49010 | ROXEANNE | LONG | |
| | 113 Charles St Allegan , MI 49010 | NICOLE | RICHMOND | 269-680-2XXX |
| | 203 Eastern Ave Allegan , MI 49010 | MARIE | URBAN | |
| | 1690 Nature View Ln Allegan , MI 49010 | SHELLY | HOLT | |
| | 3116 110th Ave Allegan , MI 49010 | KELSEY | STEWART | |
| | 227 River St Allegan , MI 49010 | BECKY | ROSTAR | 269-355-1515 |
| | 1331 Red Fox Ct Allegan , MI 49010 | ALYSSA | MCFANIN | 269-355-1488 |
| | 515 Maple St Allegan , MI 49010 | RYAN | RECK | 269-355-1132 |
| | 423 Grand St Allegan , MI 49010 | BRADLEY | VANMELLE | 269-355-1358 |
| | 1241 42nd St Allegan , MI 49010 | JEREMY | PROUTY | |
| | 279 40th St Allegan , MI 49010 | ELISE | HEMSTEGER | |
| | 4301 104th Ave Allegan , MI 49010 | JAMES | SILVA | |

Figure 1: CBx Seller Leads Provided by Coldwell Banker to Its Realtors Phone Numbers to Call Who They Do Not Have Consent to Call

24. The phone numbers generated from Coldwell Banker's CBx Seller Leads are not scrubbed against the Do Not Call registry and do not even indicate whether the phone numbers are registered on the DNC.

¹⁴ <https://www.youtube.com/watch?v=ee2dm36d6QA&feature=youtu.be&t=283>

25. A Coldwell Banker trainer acknowledged as of December 20, 2018 the fact that the phone numbers provided by Coldwell Banker's CBx Seller Leads do not indicate if they are registered on the DNC. The trainer replied, **"We are working on that... We are working on a solution to get access to the Do Not Call list."**¹⁵ However, providing this service to thousands of realtors without first implementing a DNC scrub is setting up thousands of realtors to call consumers registered on the DNC like Plaintiff Valdes. This video was posted on December 20, 2018 and Valdes was called by Coldwell Banker realtors in May and October of 2018 and again in February of 2019 though his number is registered on the DNC.

26. The fact that Coldwell Banker provides a service CBx Seller Leads whose primary goal is to enable Coldwell Banker realtors to cold call consumers is the greatest proof and endorsement to its realtors that cold calling consumers, whether or not their phone numbers are registered on the DNC, is accepted and even encouraged.

**Coldwell Banker Partners with Coach Tom Ferry
to Train Its Realtors to Cold Call Consumers**

27. In addition to Coldwell Banker directly training its realtors to cold call consumers, and even providing its realtors with phone numbers to call without

¹⁵ <https://youtu.be/ee2dm36d6QA?t=368>

consent, Coldwell Banker partners with world-famous real estate coach and trainer Tom Ferry, to train its realtors in cold calling and calling expired listings:

**Coldwell Banker Real Estate
Partners with Tom Ferry to
Provide a Variety of Customized
Agent Coaching Programs**



16

28. As part of this partnership, Tom Ferry provides customized training to Coldwell Banker realtors through online programs, one-on-one coaching, special event pricing, access to the Tom Ferry Results App and regular appearances by Ferry himself at Coldwell Banker events.¹⁷

29. Ferry was a guest speaker at the Coldwell Banker annual event Gen Blue in 2015¹⁸, 2017¹⁹ and 2019.²⁰

¹⁶ <https://www.prnewswire.com/news-releases/coldwell-banker-real-estate-partners-with-tom-ferry-to-provide-a-variety-of-customized-realtor-coaching-programs-300146449.html>

¹⁷ *Id.*

¹⁸ <https://coldwellbankercaine.com/coldwell-banker-gen-blue-2015-speakers/>

¹⁹ <https://www.youtube.com/watch?v=HU3Mh3J3JgM>

²⁰ <https://www.genblueexperience.com/speakers>



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

²¹ <https://www.youtube.com/watch?v=HU3Mh3J3JgM>

1 <https://www.tomferry.com/category/real-estate-scripts/>


2 **TomFerry** About Real Estate Coaching Events Training Resources Store **HUB**


3 **Tom Ferry | Real Estate Scripts For Cold Calling And Prospecting**
Real Estate Agent Scripts. Get Prospecting and Phone Call Scripts for Real Estate Agents

4 Join Tom's VIP List Get Ideas, Inspiration, and Insights of Tom Ferry | Real Estate Scripts For Cold
5 Calling And Prospecting and other Real Estate topics directly to your inbox... [Sign Up for Free](#)

6 **Conversion Made Easier: 3 Reasons to Overcome Your Aversion to Scripts**

7 We've all had one of those experiences with a salesperson or customer service rep who is obviously
8 reading from a script... and doing it poorly. Do you know why that's a total bummer to me? Sure, it's cringe-
9 worthy and we feel embarrassed for the guy. But the real reason it bums me out is because [...]

10 

11 Search
Enter your search term... 

22

31. Ferry provides scripts to realtors calling consumers with expired listings as shown below taken from Tom Ferry "Agent Script Book."²³



²² <https://www.tomferry.com/category/real-estate-scripts/>

²³ <http://www.tomferry.com/wp-content/uploads/2016/08/Agent-Script-Book.pdf>

EXPIREDS

DIALOGUE #1

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?

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

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

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

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

24

32. Coldwell Banker has endorsed, directed, and ratified Ferry's training to its Coldwell Banker realtors, which consists of unsolicited telemarketing to consumers.

Coldwell Banker Knows or Should Know About Its Realtors' Use of RedX and Similar Services to Make Unsolicited, Autodialed Calls to Leads, But Does Nothing to Stop It

33. RedX sells realtors lists of real estate leads based on expired listings and for sale by owner listings. For expired listings, RedX associates phone

²⁴ <http://www.tomferry.com/wp-content/uploads/2016/08/Realtor-Script-Book.pdf>

1 numbers to those expired listings, and provide realtors with an automatic telephone
2 dialing system to call those leads.

3 34. The leads from RedX are aggregated from expired listings, FSBO's,
4 old expired leads, and pre-foreclosure leads. State-of-the-art technology is used to
5 "take additional steps to deliver the highest quality and quantity of owner contact
6 information including cell phone numbers."²⁵ RedX generates multiple phone
7 numbers (including cell phone numbers and other numbers listed on the DNC) for
8 each lead to ensure that the realtor calling has the best chance of reaching the client
9 by calling all possible numbers associated with the owner of the expired listing.²⁶

10 35. In addition to providing phone numbers, RedX provides its
11 subscribers with an autodialer to call those leads in rapid succession to cycle
12 through as many leads as possible.

13 36. RedX funnels all of the leads it generates into what it calls the Vortex.
14 These leads are then automatically loaded into the "Storm Dialer" provided by
15 RedX which lets realtors autodial all leads at the click of a button:
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17
18
19
20
21
22
23
24

25 ²⁵ <https://www.linkedin.com/company/landvoice/>

26 ²⁶ Landvoice is owned by Domega, Inc., "the world leader of data aggregation and
27 lead generation [which uses] hi-tech creative systems to give clients hard-to-get
28 data and leads." See <https://www.linkedin.com/company/domega-inc-/>

STORM[®] Dialer

Double your listings while prospecting less with a power dialer. Reach 4x more homeowners per hour with one, two, or three lines instead of dialing by hand.



Eliminate importing and exporting leads. Storm is built into Vortex, which means all you have to do is hit "dial" to start prospecting.



Hear "Hello" more often. Storm connects the call fast so you know when a lead has answered and when to begin talking.
Avoid not hearing the "Hello" and missing your cue.

27

37. During a call that Plaintiff Valdes received, the calling Coldwell Banker realtor revealed the fact that he used RedX to obtain Plaintiff's cell phone number.

38. Systems such as RedX are commonly used by Coldwell Banker realtors.

39. Upon information and belief, RedX provides discounted pricing to Coldwell Banker realtors for a product that involves both RedX leads and a RedX autodialer to call those leads, as demonstrated in the following link on the RedX website:

²⁷ <https://www.theredx.com/>

AMENDED CLASS ACTION COMPLAINT



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40. The above image shows that RedX has provided Coldwell Banker with a special Geo and Storm Monthly. Geo is RedX's leads product. Storm is RedX's autodialer that calls the leads provided by RedX.

41. Tom Ferry, the coach that Coldwell Banker partnered with, regularly promotes and encourages the use of RedX, and its competitors such as Landvoice and Vulcan7 (and related lead generating and autodialer systems), to realtors.

42. In a training session Coach Ferry gave in April of 2017, he specifically suggested using systems such as RedX and Vulcan7:

²⁸ <http://redx.elikirk-dev.com/blog/affiliate/cbp-geo-storm-monthly/>

Master your sales persuasion & objection handling skills. You'll dramatically increase your lead to appointment conversion rate. Bulletproof your listing & buyer presentations. Commit to practicing your listing & buyer presentations.

Getting lead phone numbers: Intellius, Spokeo, Corelogic, Redx, Vulcan7.

Stand up for phone call prospecting.

29

43. Ultimately, Coldwell Banker directs, authorizes, and/or ratifies realtors cold calls to consumers without consent in violation of the TCPA.

PLAINTIFF'S ALLEGATIONS

Multiple Coldwell Banker Realtors Made Unsolicited, Autodialed Cold Calls to Plaintiff Without His Consent and Despite His Phone Number Being Registered on the DNC

44. On February 8, 2010, Plaintiff Valdes registered his cellular phone number on the DNC to avoid receiving unsolicited phone calls. Since that time, the cellular phone number has been primarily for personal use. Plaintiff has never held the cellular phone number out to the public in connection with a business.

45. Valdes had a property listed for sale through a realtor, which he withdrew from the market on May 15, 2018. The listing for Plaintiff's property never included Plaintiff's cellular phone number (or any other number associated with him) as a means for inquiring about the property.

²⁹ <https://www.facebook.com/notes/grand-lux-realty-inc/training-tip-tom-ferry-coaching-session/10155215938422417/>

1 46. As a result of having his MLS listing removed, on May 26, 2018 at
2 9:51 AM, Valdes received an unsolicited phone call on his cellular phone from a
3 Coldwell Banker realtor from the phone number 949-280-0322.
4

5 47. Months later, when Valdes' agreement with his realtor expired on
6 October 29, 2018, a Coldwell Banker realtor called him again.
7

8 48. On October 29, 2018 at 9:14 AM, Valdes received an unsolicited
9 phone call on his cellular phone from a Coldwell Banker realtor from 949-574-
10 3550.
11

12 49. On one or more of these above calls, Plaintiff told them that he was on
13 the do not call list and/or to stop calling.
14

15 50. On February 7, 2019 at 10:15 AM, Valdes received another
16 unsolicited call on his cellular phone from a Coldwell Banker realtor from 714-
17 988-4040.
18

19 51. The realtor began the call by asking if Valdes was still in the market
20 to sell his home. Valdes asked the realtor how the realtor acquired his phone
21 number. The realtor replied that he used RedX to get Plaintiff Valdes' cell phone
22 number. Valdes then told the realtor not to call him back and ended the call.
23

24 52. On information and belief, this call was autodialed. In fact, RedX
25 supplies list of leads that are configured to be loaded into a number of different
26 autodialers, all of which have the capacity to store and automatically dial all of the
27

1 numbers from the list without human intervention and to dial multiple numbers at
2 one time.

3 53. RedX includes within its system a Storm Dialer. As RedX puts it “Let
4 RedX find the number and Storm dial them – all from one platform! List up to 4x
5 more homes over dialing by hand when dialer technology by Storm powers your
6 prospecting!”³⁰
7
8



17 54. RedX’s Storm Dialer even boasts that their dialer will avoid the
18 awkward pauses (which TCPA plaintiffs often plead as an indicator that an
19 autodialer was used): “Storm connects faster than any real estate sales dialer. Hear
20 the ‘Hello’ more often and avoid awkward starts.”³¹ This is likely why Plaintiff
21 Valdes did not hear a noticeable pause or have to say hello more than once, not
22
23
24

25 ³⁰ <https://www.theredx.com/products/storm-dialer/>

26 ³¹ *Id.*

1 because the realtor did not use an autodialer, but because the realtor may have
 2 specifically used RedX's Storm dialer specifically advertised to avoid those
 3 obviously autodialed and awkward starts to calls.



Let Storm and REDX Get You More Appointments

Storm connects faster than any real estate sales dialer. Hear the "Hello" more often and avoid awkward starts. Let Storm help you convert more leads, referrals, past clients, and your sphere of influence into listing appointments.

55. RedX even provides a case study as part of their RedX advertisement on their website. Their case study focuses oddly enough on a Coldwell Banker realtor that purchased the expired leads package from RedX and uses their Storm Dialer. As the Coldwell Banker puts it in her testimonial video on RedX's website "I found that with Mojo the connection time was lagging and I wasn't getting people until after they said hello which made the call awkward, I've never had that

problem with Storm [dialer], and it makes the calls so much easier.”³²



CASE STUDY:

Prospector Discovers Power Dialer, Earns \$368,000 Listing Homes

WATCH THE VIDEO 

Lagging Issues



I signed up with a different company's dialer and it worked pretty well, but I kept having this awkward experience where it wouldn't connect until after the person said "hello." The lagging connection time meant by the time I heard the other person, the call already felt disingenuous. Because this made it difficult to start good conversations, I knew I needed to change something.



Hearing "Hello" Every Time

Since then, I've switched to REDX's Storm Dialer. Here's why: I have better conversations and it's more efficient. I hear them say "hello" every single time. I have my leads uploaded immediately without having to go through multiple processes like I used to. I can get to my numbers faster, get on the phone faster, and am the first person to talk to those homeowners in the morning.

56. RedX actively discourages its users to dial by hand, and to use their Storm Dialer:

³² <https://www.theredx.com/blog/case-study/realtor-discovers-power-dialer-doubles-listings/>



Stop Dialing By Hand

Prospecting is a numbers game. The more sellers you reach, the more listings you'll take. Time spent hand dialing leads and leaving voicemails is time not spent talking to prospects. Get more listings in less time. Stop hand dialing your leads and sphere, and let Storm do the work for you.

57. Plaintiff does not have a relationship with Defendant or their realtors and has never consented to be contacted by them. To the contrary, Plaintiff registered his cell phone number with the DNC and hired a realtor when he was trying to sell his property specifically to avoid such calls.

58. Defendant's unauthorized telephone calls harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Valdes' use and enjoyment of his cellular phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

59. Seeking redress for these injuries, Valdes, on behalf of himself and Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits autodialed calls to cellular phone numbers and other unsolicited calls to phone numbers registered on the DNC.

CLASS ALLEGATIONS

Class Treatment Is Appropriate for Plaintiff's TCPA Claims

60. Plaintiff Valdes brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following Classes:

Autodialed No Consent Class: All persons in the United States who from four years prior to the filing of this action (1) one of Defendant's realtors called, (2) on the person's cellular telephone, (3) for substantially the same reason Defendant's realtors called Plaintiff (4) using substantially the same dialing equipment as Defendant's realtors used to call Plaintiff, and (5) for whom Defendant claims (a) it obtained prior express written consent in the same manner as Defendant claims it supposedly obtained prior express written consent to call Plaintiff, or (b) it did not obtain prior express written consent.

Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action (1) one of Defendant's realtors called more than one time, (2) within any 12-month period, (3) where the person's telephone number had been listed on the national Do Not Call registry for at least thirty days, (4) for substantially the same reason Defendant's realtors called Plaintiff, and (5) for whom Defendant claims (a) it obtained prior express written consent in the same manner as Defendant claims they supposedly obtained prior express written consent to call Plaintiff, or (b) it did not obtain prior express written consent.

Internal Do Not Call Class: All persons in the United States who from four years prior to the filing of this action (1) one of Defendant's realtors called more than one time (2) within any 12-month period, (3) for substantially the same reason Defendant's realtors called Plaintiff.

61. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2)

1 Defendant, its subsidiaries, parents, successors, predecessors, and any entity in
2 which Defendant or its parents have a controlling interest and their current or
3 former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who
4 properly execute and file a timely request for exclusion from the Classes; (5) the
5 legal representatives, successors or assigns of any such excluded persons; and (6)
6 persons whose claims against Defendant have been fully and finally adjudicated
7 and/or released. Plaintiff anticipates the need to amend the Class definitions
8 following appropriate discovery.
9

10
11 62. **Numerosity:** On information and belief, there are hundreds, if not
12 thousands of members of the Classes such that joinder of all members is
13 impracticable.
14

15 63. **Commonality and Predominance:** There are many questions of law
16 and fact common to the claims of Plaintiff and the Classes, and those questions
17 predominate over any questions that may affect individual members of the Classes.
18 Common questions for the Classes include, but are not necessarily limited to the
19 following:
20

21 (a) whether Defendant's realtors systematically placed autodialed
22 telephone calls to Plaintiff and other consumers;
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1 (b) whether Defendant's realtors systematically made multiple telephone
2 calls to Plaintiff and other consumers whose telephone numbers were registered
3 with the DNC;

4
5 (c) whether Defendant's realtors failed to implement policies and
6 procedures for maintaining a list of persons who request not to be called by
7 Defendant before engaging in telemarketing;

8
9 (d) whether Defendant's realtors placed calls to Plaintiff and consumers
10 without having the necessary prior express written consent required for such calls;

11 (e) whether Defendant is vicariously liable for its realtors calls;

12 (f) whether Defendant's conduct constitutes a violation of the TCPA; and

13 (g) whether members of the Classes are entitled to treble damages based
14 on the willfulness of Defendant's conduct.
15

16
17 64. **Adequate Representation:** Plaintiff will fairly and adequately
18 represent and protect the interests of the Classes, and has retained counsel
19 competent and experienced in class actions. Plaintiff has no interests antagonistic
20 to those of the Classes, and the Defendant has no defenses unique to Plaintiff.
21 Plaintiff and his counsel are committed to vigorously prosecuting this action on
22 behalf of the members of the Classes, and have the financial resources to do so.
23 Neither Plaintiff nor his counsel have any interest adverse to the Classes.
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1 65. **Appropriateness:** This class action is also appropriate for
2 certification because the Defendant have acted or refused to act on grounds
3 generally applicable to the Classes and as a whole, thereby requiring the Court's
4 imposition of uniform relief to ensure compatible standards of conduct toward the
5 members of the Classes and making final class-wide injunctive relief appropriate.
6 Defendant's business practices apply to and affect the members of the Classes
7 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's
8 conduct with respect to the Classes as wholes, not on facts or law applicable only
9 to Plaintiff. Additionally, the damages suffered by individual members of the
10 Classes will likely be small relative to the burden and expense of individual
11 prosecution of the complex litigation necessitated by Defendant's actions. Thus, it
12 would be virtually impossible for the members of the Classes to obtain effective
13 relief from Defendant's misconduct on an individual basis. A class action provides
14 the benefits of single adjudication, economies of scale, and comprehensive
15 supervision by a single court.
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FIRST CLAIM FOR RELIEF

**Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the Autodialed No Consent Class)**

66. Plaintiff repeats and realleges paragraphs 1 through 65 of this Complaint and incorporates them by reference.

67. Defendant's realtors made unwanted solicitation calls to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

68. These solicitation telephone calls were made *en masse* without the prior express written consent of Plaintiff and the other members of the Autodialed No Consent Class.

69. Defendant's realtors made these calls, negligently or willfully and knowingly.

70. Defendant are vicariously liable for their realtors calls because they directed and/or ratified the realtors' actions.

71. Defendant have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Autodialed

1 No Consent Class are each entitled to a minimum of \$500 in damages, and up to
2 \$1,500 in damages, for each violation.

3
4 **SECOND CAUSE OF ACTION**

5 **Telephone Consumer Protection Act**
6 **(Violation of 47 U.S.C. § 227)**
7 **(On Behalf of Plaintiff Valdes and the Do Not Call Registry Class)**

8 72. Plaintiff repeats and realleges paragraphs 1 through 65 of this
9 Complaint and incorporates them by reference.

10 73. The TCPA's implementing regulations provide that "[n]o person or
11 entity shall initiate any telephone solicitation" to "[a] residential telephone
12 subscriber who has registered his or her telephone number on the national do-not-
13 call registry of persons who do not wish to receive telephone solicitations that is
14 maintained by the federal government." 47 C.F.R. § 64.1200(c).
15

16 74. This regulation is "applicable to any person or entity making
17 telephone solicitations or telemarketing calls to wireless telephone numbers." 47
18 C.F.R. § 64.1200(e).
19

20 75. Any "person who has received more than one telephone call within
21 any 12-month period by or on behalf of the same entity in violation of the
22 regulations prescribed under this subsection may" may bring a private action based
23 on a violation of said regulations, which were promulgated to protect telephone
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1 subscribers' privacy rights to avoid receiving telephone solicitations to which they
2 object. 47 U.S.C. § 227(c).

3 76. Defendant's realtors initiated telephone solicitations to telephone
4 subscribers such as Plaintiff and the Do Not Call Registry Class members who
5 registered their respective telephone numbers on the DNC.
6

7 77. These solicitation telephone calls were made *en masse* without the
8 prior express written consent of Plaintiff and the other members of the Do Not Call
9 Registry Class.
10

11 78. Defendant's realtors made these calls, negligently or willfully and
12 knowingly.
13

14 79. Defendant are vicariously liable for their realtors calls because they
15 directed and/or ratified the realtors' actions.
16

17 80. Defendant have, therefore, violated 47 U.S.C. § 227(c)(5). As a result
18 of Defendant's conduct, Plaintiff and the other members of the Do Not Call
19 Registry Class are each entitled to a minimum of \$500 in damages, and up to
20 \$1,500 in damages, for each violation.
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THIRD CAUSE OF ACTION

**Telephone Consumer Protection Act
(Violations of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the Internal Do Not Call Class)**

81. Plaintiff repeats and realleges paragraphs 1 through 65 of this Complaint and incorporates them by reference.

82. Under 47 C.F.R. § 64.1200(d): No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the

1 date of such request. If such requests are recorded or maintained by a
 2 party other than the person or entity on whose behalf the
 3 telemarketing call is made, the person or entity on whose behalf the
 4 telemarketing call is made will be liable for any failures to honor the
 5 do-not-call request. A person or entity making a call for telemarketing
 6 purposes must obtain a consumer's prior express permission to share
 7 or forward the consumer's request not to be called to a party other than
 8 the person or entity on whose behalf a telemarketing call is made or
 9 an affiliated entity.

10 (4) Identification of sellers and telemarketers. A person or entity
 11 making a call for telemarketing purposes must provide the called party
 12 with the name of the individual caller, the name of the person or entity
 13 on whose behalf the call is being made, and a telephone number or
 14 address at which the person or entity may be contacted. The telephone
 15 number provided may not be a 900 number or any other number for
 16 which charges exceed local or long distance transmission charges.

17 (5) Affiliated persons or entities. In the absence of a specific request
 18 by the subscriber to the contrary, a residential subscriber's do-not-call
 19 request shall apply to the particular business entity making the call (or
 20 on whose behalf a call is made), and will not apply to affiliated
 21 entities unless the consumer reasonably would expect them to be
 22 included given the identification of the caller and the product being
 23 advertised.

24 (6) Maintenance of do-not-call lists. A person or entity making calls
 25 for telemarketing purposes must maintain a record of a consumer's
 26 request not to receive further telemarketing calls. A do-not-call
 27 request must be honored for 5 years from the time the request is made.

28 47 C.F.R. § 64.1200(d).

83. The TCPA provides that any “person who has received more than one
 telephone call within any 12-month period by or on behalf of the same entity in
 violation of the regulations prescribed under this subsection may” bring a private

1 action based on a violation of said regulations, which were promulgated to protect
2 telephone subscribers' privacy rights to avoid receiving telephone solicitations to
3 which they object. 47 U.S.C. § 227(c)(5).
4

5 84. Defendant's realtors initiated telephone solicitations to Plaintiff and
6 members of the Internal DNC Class notwithstanding Defendant and their realtors'
7 failure to implement internal procedures for maintaining a list of persons who
8 request not to be called and/or by implementing procedures that do not meet the
9 minimum standards for initiating telemarketing calls.
10

11 85. Defendant are vicariously liable for their realtors calls because they
12 directed and/or ratified the realtors' actions.
13

14 86. Defendant have, therefore, violated 47 U.S.C. § 227(c)(5). As a result
15 of
16 Defendant's conduct, Plaintiff and the other members of the Stop Class are each
17 entitled to up to \$1,500 for each violation.
18

19 PRAYER FOR RELIEF

20
21 **WHEREFORE**, Plaintiff Valdes, individually and on behalf of the Classes,
22 prays for the following relief:

- 23 a. An order certifying the Classes as defined above; appointing Plaintiff as
24 the representative of the Classes; and appointing his attorneys as Class
25 Counsel;
26

- 1 b. An award of actual and/or statutory damages for the benefit of Plaintiff
2 and the Classes, and costs;
3
4 c. An order declaring that Defendant's actions, as set out above, violate the
5 TCPA;
6
7 d. An injunction requiring the Defendant to cause realtors to cease all
8 unsolicited calling activity, to implement sufficient TCPA related
9 policies and procedures, and to otherwise protect the interests of the
10 Classes; and
11
12 e. Such further and other relief as the Court deems just and proper.

13 **JURY TRIAL DEMAND**

14 Plaintiff requests a jury trial.

15 Respectfully Submitted,

16
17 **JORGE VALDES**, individually and on
18 behalf of those similarly situated individuals

19 Dated: August 8, 2019

20 By: /s/ Rachel E. Kaufman
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12 **Admitted Pro Hac Vice*

13 *Attorneys for Plaintiff and the putative*
14 *Classes*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Rachel E. Kaufman