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16 *Attorneys for Plaintiffs*

17 UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

20 DANIEL BERMAN, STEPHANIE
21 HERNANDEZ, and ERICA RUSSELL,

22 Plaintiffs,

23 v.

24 FREEDOM FINANCIAL NETWORK, LLC,
25 FREEDOM DEBT RELIEF, LLC, FLUENT,
26 INC., and LEAD SCIENCE, LLC,

27 Defendants.

Case No. 4:18-cv-01060-YGR

**DECLARATION OF BETH E.
TERRELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

JURY TRIAL DEMAND

Honorable Yvonne Gonzalez Rogers

DATE: April 25, 2023

TIME: 2:00 p.m.

LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

1 I, Beth E. Terrell, declare as follows:

2 1. I am a member of the law firm of Terrell Marshall Law Group PLLC (Terrell
3 Marshall), counsel of record for plaintiffs in this matter. I am admitted to practice before this
4 Court and am a member in good standing of the bars of the states of Washington and California.
5 I respectfully submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of
6 Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set
7 forth in this declaration and could testify competently to them if called upon to do so.

8 2. I have attached as Exhibit 1 to this declaration a true and correct copy of the fully
9 executed Settlement Agreement that the parties reached in this matter.

10 **Our Work on the Case**

11 3. Plaintiff Dan Berman filed a class action complaint on February 19, 2018 alleging
12 that Freedom Financial Network, LLC and Freedom Deb Relief, LLC (together "Freedom") were
13 liable under the TCPA for calls made promoting their products: (1) to cell phones using an
14 automated telephone dialing system or an artificial or prerecorded voice, in violation of 47
15 U.S.C. § 227(b)(1)(A); and (2) to numbers on the National Do Not Call list, in violation of §
16 227(c)(5). Plaintiff amended his complaint to add Fluent, Inc. and Lead Science, LLC a few
17 months later and filed a second amended complaint that added calls Plaintiff Berman had
18 received from Defendants. *See* ECF Nos. 30, 66-3. Plaintiff Berman's Third Amended
19 Complaint added Erica Russell and Stephanie Hernandez as named Plaintiffs.

20 4. Plaintiffs filed a Fourth Amended Complaint after the United States Supreme
21 Court provided guidance in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021) on the type of
22 equipment that qualifies to be an automatic telephone dialing system (ATDS) under the TCPA. In
23 light of *Facebook*, Plaintiffs limited their claims under section 227(b)(1) of the TCPA to the
24 prerecorded voice calls that Plaintiffs received and to eliminate from their proposed class definitions
25 any reference to an ATDS or to automated text messages. *See* ECF No. 292 (Fourth Amended
26 Compl).

1 5. Plaintiffs served multiple sets of written discovery requests on Defendants and
2 took seven depositions of Defendants’ managers and employees. Defendants have deposed each
3 of the named Plaintiffs. Defendants have produced thousands of pages of documents.

4 6. Plaintiffs retained several consulting and testifying experts (1) to evaluate the
5 technology that Defendants used to generate leads and place telemarketing calls to consumers,
6 and (2) to process and analyze the calling records to identify potential TCPA violations.

7 7. Our firm also conducted our own research and analysis, scouring the Internet
8 Archives for screenshots of Fluent’s webpages and scrubbing the data to identify prerecorded
9 calls.

10 8. Defendants aggressively contested the scope of discovery, requiring multiple
11 discovery conferences with then Magistrate Judge Jacqueline Corley.

12 9. After over a year of discovery, Plaintiff Berman filed his motion for class
13 certification. The Court denied that motion because he is not subject to the affirmative defenses
14 of express consent and mandatory arbitration that Defendants assert against class members who
15 visited Fluent’s websites. Following the Court’s decision, Plaintiff Berman added two class
16 representatives, Plaintiffs Hernandez and Russell. Defendants promptly moved to compel
17 arbitration, arguing that Plaintiffs Russell and Hernandez agreed to arbitrate their claims when
18 they visited Fluent’s websites. The Court denied Defendants’ motion and denied Defendants’
19 motion for reconsideration. ECF Nos. 266, 280. The Ninth Circuit affirmed the Court’s decisions
20 in a published opinion. *See Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849 (9th Cir. 2022),

21 10. Before Defendants’ motion to compel arbitration of Plaintiff Russell and Plaintiff
22 Hernandez’s claims, Defendants had filed two other dispositive motions—a motion to dismiss
23 and a motion for summary judgment. Our co-counsel dedicated substantial hours briefing those
24 motions. After the Ninth Circuit decision affirming denial of Defendants’ motion to compel
25 arbitration, Lead Science separately filed a motion to dismiss, arguing that it was a common
26 carrier exempt from the TCPA. The lawyers at our firm briefed that motion, which the Court
27 ultimately denied.

1 rights, and wage and hour cases. Terrell Marshall has been appointed lead or co-lead counsel
2 representing multi-state and nationwide classes in state and federal court in Washington and
3 throughout the United States. Since its founding in 2008, the attorneys at Terrell Marshall have
4 represented scores of classes, tried class actions in state and federal court, and obtained hundreds
5 of millions of dollars in monetary relief to workers, consumers, and other individuals.

6 16. The following are some examples of TCPA class actions that Terrell Marshall has
7 litigated to completion:

- 8 • *Abante Rooter & Plumbing, Inc., et al. v. Alarm.com Inc., et al.*—Filed in 2015 on
9 behalf of consumers who received solicitation calls on their cellular and
10 residential telephones without their prior express consent. The Northern District
11 of California granted final approval of the \$28 million settlement on August 15,
12 2019.
- 13 • *Borecki v. Raymours Furniture Co., Inc.*—Filed in 2017 on behalf of consumers
14 who received spam text messages on their cellular telephones without their prior
15 express consent. The Southern District of New York granted final approval of the
16 \$4.25 million settlement on September 10, 2019.
- 17 • *Snyder v. Ocwen Loan Servicing, LLC*—Filed in 2014 on behalf of consumers
18 who received automated collection calls on their cellular telephones without their
19 prior express consent. The Northern District of Illinois granted final approval of
20 the \$21.5 million settlement on May 14, 2019.
- 21 • *Melito, et al. v. American Eagle Outfitters, Inc., et al.*—Filed in 2014 on behalf of
22 consumers who received spam text messages on their cellular telephones without
23 their prior express consent. The Southern District of New York granted final
24 approval to the \$14.5 million settlement on September 11, 2017, which the
25 Second Circuit affirmed on April 30, 2019.
- 26 • *Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*— Filed in 2016 on
27 behalf of consumers that received automated solicitation telephone calls to their
28 cell phones without their prior express consent. The Northern District of
California granted final approval of the \$9 million settlement on October 15,
2018.
- *Charvat v. Plymouth Rock Energy*—Filed in 2015 on behalf of consumers who
received automated solicitation telephone calls on their cellular and residential
telephones without their prior express consent within the meaning of the
Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. and/or to telephone
numbers registered on the National-Do-Not-Call Registry. The case settled on a

1 class-wide basis in 2016, and final approval was granted in the United States
2 District Court for the Eastern District of New York on July 31, 2018.

- 3 • *In re Monitronics International, Inc. Telephone Consumer Protection Act*
4 *Litigation*—Filed in 2011 on behalf consumers who received automated,
5 prerecorded solicitation calls on their residential and telephones without their
6 prior express consent. Terrell Marshall served as co-lead counsel in the
7 multidistrict litigation. The Northern District of West Virginia granted final
8 approval of the \$28 million settlement on June 12, 2018.
- 9 • *Ashack v. Caliber Home Loans*—Filed in 2015 on behalf of consumers who
10 received automated, prerecorded collection telephone calls on their cellular
11 telephones without their prior express consent within the meaning of the
12 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. TMLG negotiated a
13 nationwide settlement in 2016 for \$2,895,000, and final approval was granted in
14 June 2017.
- 15 • *Davenport v. Discover Financial Services*—Filed on behalf of consumers who
16 received automated solicitation telephone calls on their cellular telephones
17 without their prior express consent within the meaning of the Telephone
18 Consumer Protection Act, 47 U.S.C. § 227 et seq. The case settled on a class-wide
19 basis for \$5,000,000 in 2016, and final approval was granted in December 2017.
- 20 • *Bee, Denning, Inc., et al. v. Capital Alliance Group*—TMLG represents two
21 certified classes of consumers who received junk faxes and automated,
22 prerecorded solicitation telephone calls on their cellular telephones without their
23 prior express consent within the meaning of the Telephone Consumer Protection
24 Act, 47 U.S.C. § 227 et seq. The case settled on a class-wide basis in 2016, and
25 final approval was granted in November 2016.
- 26 • *Lushe v. Verengo, Inc.*—Filed on behalf of consumers who received automated,
27 prerecorded solicitation telephone calls on their cellular and residential telephones
28 without their prior express consent, within the meaning of the Telephone
Consumer Protection Act, 47 U.S.C. § 227 et seq. The case settled on a class-wide
basis in 2015 for \$2,365,000, and final approval was granted in May 2016.
- *Rinky Dink v. World Business Lenders, LLC*—Filed on behalf of consumers who
received automated, prerecorded solicitation telephone calls on their cellular
telephones and Washington landlines without their prior express consent within
the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.,
the Washington Automatic Dialing and Announcing Device statute, RCW
80.36.400, and the Washington Consumer Protection Act, RCW 19.86 et seq.
The case settled on a class-wide basis in 2015 for \$1,000,000, and final approval
was granted in May 2016.

- 1 • *Rinky Dink v. Electronic Merchant Systems, Inc.*—Filed on behalf of consumers
2 who received automated, prerecorded solicitation telephone calls on their cellular
3 telephones and Washington landlines without their prior express consent within
4 the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*,
5 the Washington Automatic Dialing and Announcing Device statute, RCW
6 80.36.400, and the Washington Consumer Protection Act, RCW 19.86 *et seq.*
7 The case settled on a class-wide basis in 2015 for \$1,250,000, and final approval
8 was granted in April 2016.
- 9 • *Gehrich v. Chase Bank USA*—Filed on behalf of consumers who received
10 automated, prerecorded collection telephone calls on their cellular telephones
11 without their prior express consent within the meaning of the Telephone
12 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a
13 \$34,000,000 nationwide settlement; final approval was granted in March 2016.
- 14 • *Taylor v. Universal Auto Group I*—Filed on behalf of consumers who received
15 automated, prerecorded solicitation telephone calls on their cellular telephones
16 without their prior express consent within the meaning of the Telephone
17 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide
18 basis and final approval was granted in February 2016.
- 19 • *Ott v. Mortgage Investors Corporation*—Filed on behalf of consumers who
20 received automated solicitation telephone calls on their cellular and residential
21 telephones without their prior express consent within the meaning of the
22 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a
23 \$7,483,600 class-wide settlement and final approval was granted in January 2016.
- 24 • *In re Capital One Telephone Consumer Protection Act Litigation*—Filed in 2012
25 on behalf of consumers who received automated, prerecorded collection calls on
26 their cellular telephones without their prior express consent. Terrell Marshall
27 served as co-lead counsel in the multidistrict litigation. The Northern District of
28 Illinois granted final approval of the \$75 million settlement on February 23, 2015.
- *Wilkins v. HSBC Bank Nevada, N.A.*—Filed on behalf of individuals who alleged
that HSBC made prerecorded calls using an automatic dialing system. The case
settled on a class-wide basis in 2014 for \$39,975,000, and final approval was
granted in March 2015.
- *Chesbro v. Best Buy Stores, L.P.*—Filed on behalf of consumers who received
automated, prerecorded solicitation telephone calls on their residential telephones
without their prior express consent within the meaning of the Telephone
Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a \$4.5
million settlement, which was granted final approval in September 2014.
- *Rose v. Bank of America Corp.*—Filed on behalf of consumers who received
automated, prerecorded collection telephone calls on their cellular telephones
without their prior express consent within the meaning of the Telephone

1 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a nationwide
2 settlement of \$32,083,905, which was granted final approval in August 2014.

- 3 • *Steinfeld v. Discover Financial Services*—Filed on behalf of consumers who
4 received automated, prerecorded collection telephone calls on their cellular
5 telephones without their prior express consent within the meaning of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated
7 an \$8.7 million settlement, which was granted final approval in March 2014.
- 8 • *Hanley v. Fifth Third Bank*—Filed on behalf of consumers who received
9 automated, prerecorded collection telephone calls on their cellular telephones
10 without their prior express consent within the meaning of the Telephone
11 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a \$4.5
12 million settlement, which was granted final approval in December 2013.
- 13 • *Booth v. Appstack, Inc.*—Filed in 2013 on behalf of small businesses that received
14 prerecorded calls using an automatic dialing system on cellular telephone lines
15 without their prior consent. The court certified the class, denied a motion to
16 decertify, denied the defendants’ motion for summary judgment and granted
17 partial summary judgment for the class. The case settled on the eve of trial and the
18 court granted final approval of the \$975,000 settlement in 2017.
- 19 • *Joseph v. TrueBlue Inc.*—Filed on behalf of consumers who received spam text
20 messages on their cellular telephones without their prior express consent within
21 the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*
22 The case settled on a class-wide basis in 2016 for \$5,000,000, and final approval
23 was granted in March 2017.
- 24 • *Arthur v. Sallie Mae, Inc.*—Filed on behalf of consumers who received
25 automated, prerecorded collection telephone calls on their cellular telephones
26 without their prior express consent within the meaning of the Telephone
27 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMLG negotiated a \$24.15
28 million nationwide settlement, and final approval was granted in 2012.

17. Additional information about class actions litigated by Terrell Marshall is
available on our website www.terrellmarshall.com.

Qualifications of Terrell Marshall Attorneys

18. I am a founding member of Terrell Marshall. With over twenty years of
experience, I concentrate my practice in complex litigation, including the prosecution of
consumer protection, defective product, and wage and hour class actions. I have served as co-
lead counsel on multi-state, multi-district, and nationwide class actions, resulting in hundreds of
millions of dollars in settlements for consumers and workers. I have also represented individual

1 employees with wage and hour, workplace exposure, and discrimination claims. I have tried and
2 won cases in state and federal courts and argued before the Washington State Court of Appeals
3 and the Washington State Supreme Court as well as several federal circuit level courts. I have
4 served as the President of the Public Justice Foundation Board of Directors from July 2019 to
5 July 2020, served on the Equal Justice Works' Board of Counselors, and I am Chair of both the
6 Northwest Consumer Law Center and the Washington Employment Lawyers Association. A
7 member of the State Bar of California and the Washington State Bar Association, I Co-Chair
8 PLI's Consumer Financial Services Institute, and frequently present on a wide variety of topics,
9 including class actions, consumer protection, legal ethics, gender equity, and electronic
10 discovery.

11 19. **Jennifer Rust Murray** is a founding member of Terrell Marshall who practices
12 complex litigation, including the prosecution of consumer and wage and hour class actions. In
13 2005, Ms. Murray received her J.D. from the University of Washington School of Law where
14 she was a member of the Washington Law Review. Ms. Murray's law review article entitled
15 "Proving Cause in Fact under Washington's Consumer Protection Act: The Case for a
16 Rebuttable Presumption of Reliance" won the Carkeek prize for best submission by a student
17 author. Before law school, Ms. Murray earned a Ph.D. in Philosophy from Emory University.
18 Ms. Murray has been an active member of the Washington State Bar Association since her
19 admission to the bar in 2005. She was admitted to the Oregon State Bar in 2010. Ms. Murray
20 currently is vice-president of the board of Washington's Unemployment Law Project. She
21 regularly presents at legal conferences on consumer issues.

22 20. **Amanda M. Steiner** became a member of Terrell Marshall in 2015. She practices
23 complex litigation, including the prosecution of consumer, defective product, wage and hour, and
24 civil rights class actions. Ms. Steiner received her J.D. from the UC Berkeley School of Law in
25 1997. Admitted in Washington, California, New York, and Hawaii, she has authored briefs that
26 have resulted in numerous favorable decisions for plaintiffs in high-profile and complex
27 securities, antitrust, consumer and civil rights class action in federal and state courts throughout

1 the United States. Ms. Steiner was selected for inclusion in the annual Northern California
2 “Super Lawyers” list and was named to the Top 50 Women Lawyers of Northern California. She
3 is a Fellow of the American Bar Foundation.

4 **Attorneys’ Fees and Costs**

5 21. Class Counsel have received no payment for their fees or costs. Class Counsel
6 will file a motion with the Court requesting an award of up to one-third of the settlement fund, or
7 approximately \$3,250,000, to compensate them for the work performed in the case and the risk
8 they undertook in taking on the representation on a contingent basis.

9 22. Class Counsel have collectively dedicated over 3,733 hours to litigating this case
10 since its inception in 2018, for a lodestar of over \$2,415,379. When they file their motion for
11 attorneys’ fees, Class Counsel will provide the Court with their detailed contemporaneous time
12 records, hourly rates, and lodestar.

13 23. Class Counsel will also request reimbursement of approximately \$200,000 in out-
14 of-pocket costs incurred in prosecuting this case. Class Counsel will provide the Court with
15 detailed information about these costs in their motion for attorneys’ fees.

16 **Estimated Payments to Class Members**

17 24. With the assistance of their experts, Plaintiffs have identified approximately
18 675,377 Settlement Class Members from the calling data Plaintiffs obtained in discovery.

19 25. If the Court awards attorneys’ fees in the requested amount of \$3,250,000, awards
20 reimbursement of litigation costs in the amount of \$200,000, approves administrative expenses
21 of \$475,000, and approves service awards of \$5,000 to each Class Representative, the remainder
22 of the Settlement Fund –approximately \$5,860,325—will be distributed equally to Settlement
23 Class Members who file a simple claim form. The amount each claimant will receive depends
24 upon the number of claims submitted. For example, if 10% of the 675,377 Settlement Class
25 Members file claims, each will receive approximately \$87. Based on their experience with
26 claims rates in TCPA and other class settlements, Class Counsel estimate that the claims rate will
27 be between 10% and 15% and each claimant will receive between \$57 and \$87.

