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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

**AMENDED CLASS ACTION
SETTLEMENT AGREEMENT**

JURY TRIAL DEMAND

Honorable Yvonne Gonzalez Rogers

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

28 This class action settlement agreement (“Agreement” or “Settlement Agreement”) is
29 entered as of March 16, 2023, between Daniel Berman, Stephanie Hernandez, and Erica Russell
30 (“Plaintiffs”), individually and on behalf of the Settlement Class defined below, and Freedom
31 Financial Network, LLC, Freedom Debt Relief, LLC (together “Freedom”), Fluent, Inc.

1 (“Fluent”), and Lead Science, LLC (“Lead Science”; with Freedom and Fluent, “Defendants”).
2 Plaintiffs and Defendants are collectively referred to as the “Parties.”

3 RECITALS

4 A. On February 19, 2018, Plaintiff Daniel Berman filed a class action complaint
5 against Freedom alleging Freedom was liable for telemarketing calls made by it or on its behalf
6 in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”). Dkt. 1.

7 B. Freedom moved to compel arbitration (Dkt. 16), which the Court denied. Dkt. 29.

8 C. Plaintiff filed a First Amended Complaint that added Fluent, Inc. and Lead
9 Science, LLC as defendants. Dkt. 30.

10 D. On June 28, 2018, Freedom answered the First Amended Complaint. Fluent and
11 Lead Science answered the First Amended Complaint on July 12, 2018 and July 16, 2018
12 respectively. The Court granted Plaintiffs leave to file a Second Amended Complaint on October
13 23, 2018. Dkt. 87.

14 E. The Parties engaged in class, merits, and expert discovery. Plaintiffs propounded
15 multiple sets of interrogatories and document requests and took eight depositions, including Fed.
16 R. Civ. P. 30(b)(6) depositions and depositions of Defendants’ managers and employees.
17 Defendants propounded written discovery to, and deposed, all three Plaintiffs. The Parties
18 retained multiple experts.

19 F. On November 13, 2018, Defendants filed a motion to dismiss, deny class
20 certification, and strike the class allegations. Dkt. 94. The Court denied the motion. Dkt. 147.

21 G. Plaintiff Berman filed his initial motion for class certification on February 8,
22 2019. Dkt. 139. Defendants filed a motion for summary judgment on March 5, 2019. Dkt. 156.
23 The Court denied Defendant’s summary judgment motion and denied Plaintiff’s class
24 certification motion without prejudice. Dkt. 198. The Court granted Plaintiffs leave to file a
25 Third Amended Complaint, adding Plaintiff Hernandez and Plaintiff Russell as named plaintiffs.

26 H. Defendants filed a second motion to compel arbitration, which the Court denied in
27 a decision that the Ninth Circuit affirmed. *See* Dkt. 286.

1 I. After the Ninth Circuit issued its mandate, the Parties stipulated to Plaintiffs filing
2 a Fourth Amended Complaint that narrowed the proposed class definitions and claims to reflect
3 changes that occurred in the law while the appeal was pending. Dkt. 292. Plaintiffs filed a
4 renewed class certification motion on July 1, 2022 (Dkt. 298).

5 J. On December 18, 2018, Plaintiff Berman and Defendants participated in a
6 settlement conference with the Hon. Magistrate Judge Thomas S. Hixson. The case did not settle.
7 On December 13, 2022, the Parties participated in a twelve-hour mediation with Robert Meyer of
8 JAMS Santa Monica. The case did not settle that day. However, the Parties continued to
9 negotiate with the assistance of Mr. Meyer.

10 K. Defendants have at all times denied and continue to deny any wrongdoing and
11 have denied and continue to deny that they violated the TCPA or are liable for others' purported
12 violations of the TCPA. Further, Defendants deny each and every allegation of wrongdoing,
13 liability, and damages that were or could have been asserted in this action and further deny that
14 the claims in this action would be appropriate for class treatment if this action were to proceed
15 through litigation and trial. Nonetheless, without admitting or conceding any wrongdoing,
16 liability, or damages, or the appropriateness of Plaintiffs' claims or any similar claims for class
17 treatment, Defendants consent to the Settlement herein solely to avoid the expense,
18 inconvenience, and inherent risk of further litigation as well as the further inconvenience to,
19 interference with, and disruption of their business operations. Nothing in this Settlement or
20 Settlement Agreement shall be construed as an admission or concession by any Defendant of the
21 truth of any allegations raised in this action or of any fault, wrongdoing, liability, or damages of
22 any kind. As set forth below, this Settlement Agreement, its terms, documents related to it, and
23 the negotiations or proceedings connected with it shall not be offered or received into evidence
24 in this or any other action or proceeding to establish any liability or admission by any Defendant.

25 L. Plaintiffs' counsel have conducted an extensive investigation of the facts and law
26 underlying the claims asserted in the litigation, including through formal discovery and
27 consultation with their own experts. Plaintiffs' theories and evidence have been tested by

1 Defendants' numerous motions, including motions to dismiss, to compel arbitration, and for
2 summary judgment. The Parties were preparing for a hearing on class certification when they
3 reached an agreement in principle to resolve the case. Based on their evaluation, in consideration
4 of all the circumstances and after serious arms' length settlement negotiations, Plaintiffs and
5 their counsel believe that the terms and conditions of this Agreement are fair, reasonable, and
6 adequate for the Settlement Class, and that it is in the best interests of the Settlement Class to
7 settle the Released Claims pursuant to the terms and provisions of this Agreement.

8 M. The Parties agree that the Settlement was reached in good faith, following arms'
9 length bargaining.

10 NOW, THEREFORE, the Parties, along with their counsel, in consideration of the
11 benefits flowing from the Settlement Agreement set forth in this Agreement, agree to the
12 Settlement, subject to Court approval, upon the following terms and conditions.

13 AGREEMENT

14 **1. DEFINITIONS**

15 1.1 **"Claim Form"** means the form that Settlement Class Members may fill out and
16 submit by U.S. Mail or online in substantially the form(s) as those attached hereto as Exhibit 1,
17 which includes (a) the Claim Form attached to the Postcard Notice, (b) a downloadable Claim
18 Form available on the Settlement Website, and (c) the electronically-fillable Claim Form
19 Settlement Class Members may submit through the Settlement Website.

20 1.2 **"Claim Period"** begins with the date Publication Notice is first made and Online
21 Media Notice begins, which shall also be the date the Postcard Notice and Email Notice is sent
22 and ends sixty days later.

23 1.3 **"Class Counsel"** means:

24 Beth E. Terrell
25 Jennifer Rust Murray
26 TERRELL MARSHALL LAW GROUP PLLC
27 936 N 34th Street, Suite 300
Seattle, WA 98103

1 Edward A. Broderick
2 BRODERICK LAW, P.C.
3 176 Federal Street, Fifth Floor
4 Boston, MA 02110

5 Matthew P. McCue
6 THE LAW OFFICE OF MATTHEW P. MCCUE
7 1 South Avenue, Suite 3
8 Natick, MA 01760

9 Anthony I. Paronich
10 PARONICH LAW, P.C.
11 350 Lincoln Street, Suite 2400
12 Hingham, MA 02043

13 1.4 **“Class Representatives”** means Daniel Berman, Stephanie Hernandez, and Erica
14 Russell.

15 1.5 **“Complaint”** means the Fourth Amended Complaint filed in this action on June
16 10, 2022, Dkt. 292.

17 1.6 **“Court”** means the United States District Court for the Northern District of
18 California.

19 1.7 **“Defendants’ Counsel”** means counsel for Defendants identified on the signature
20 lines below.

21 1.8 **“Effective Date”** means the date five business days following the later of the
22 following events: (A) if any Settlement Class Member objects to the Settlement: (i) the date upon
23 which the time expires for filing a notice of appeal of the Court’s Final Approval Order and
24 Judgment; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, and
25 the appellate court enters an order either dismissing the appeal(s) or affirming the Final Approval
26 Order and Judgment without material modification, the date upon which the time expires for
27 seeking review of that order; or (B) if no Settlement Class Member Object to the Settlement: the
date the Court enters the Final Approval Order and Judgment.

1.9 **“Email Notice”** means the notice that is to be emailed to the Settlement Class,
and whose name and email address can be located from records obtained during this litigation or

1 by the Settlement Administrator through a “reverse lookup” process, in substantially the form of
2 Exhibit 2 hereto, as provided in Section 4.2(b). Email Notice also will include a reminder notice
3 that will be sent no later than thirty days before the expiration of the Claim Period to the
4 Settlement Class for whom a valid email is available and who have not submitted a claim.

5 1.10 **“Fee Award”** means the total amount of attorneys’ fees and reimbursement of
6 expenses awarded by the Court to Class Counsel.

7 1.11 **“Final Approval Hearing”** means the hearing before the Court where the Parties
8 will request that the Court enter the Final Approval Order and Judgment, approve the Settlement
9 Agreement, and approve the Fee Award and the Service Awards to the Class Representatives.

10 1.12 **“Final Approval Order and Judgment”** means a document substantially in the
11 form of Exhibit 3, or in such form as may be ordered by the Court, to be entered by the Court
12 following the Final Approval Hearing.

13 1.13 **“Initial Notice Deposit”** means an initial payment of \$500,000 that Defendants
14 will pay to the Settlement Administrator within ten business (10) days after the Court enters an
15 order granting preliminary approval of the Settlement to cover expected initial notice and
16 administration expenses.

17 1.14 **“Long Form Notice”** means the notice of this Settlement Agreement and Final
18 Approval Hearing, which is to be provided to the Settlement Class in accordance with this
19 Agreement and substantially in the form of Exhibit 4, or in such form as may be ordered by the
20 Court.

21 1.15 **“Net Settlement Fund”** is equal to the Settlement Fund minus the total of the Fee
22 Award, any Service Awards, and all Settlement Administration Expenses.

23 1.16 **“Notice Deadline”** means the deadline for the Settlement Administrator to
24 commence notice by mailing the Postcard Notice, sending Email Notice, and beginning Online
25 Media Notice pursuant to the Notice Plan. The Notice Deadline will be no later than sixty days
26 following entry of the Preliminary Approval Order.

27

1 1.17 **“Notice Plan”** means the plan for disseminating notice to the Settlement Class of
2 the Settlement Agreement and of the Final Approval Hearing, as developed by the Settlement
3 Administrator and approved by the Parties and set forth in greater detail in Section 4 below.

4 1.18 **“Objection/Exclusion Deadline”** means the date by which (1) a written objection
5 to this Settlement Agreement, or (2) a written request for exclusion, must be postmarked. The
6 Objection/Exclusion Deadline is sixty days after the Online Media Notice begins and the
7 Postcard Notice and Email Notice are sent. The Objection/Exclusion deadline must be at least 35
8 days after Class Counsel file their petition for attorneys’ fees and costs.

9 1.19 **“Online Media Notice”** means the notice given by the placement of
10 advertisements on various Internet and social media sites as provided for in Section 4.2(d) below
11 and in substantially the form as that attached as Exhibit 5.

12 1.20 **“Postcard Notice”** means the notice with tear-off claim form that is to be mailed
13 to anyone in the Settlement Class whose name and address can be located and for whom an
14 email address was not located or whose email was returned undeliverable, in substantially the
15 form of Exhibit 1(a), or in such form as may be ordered by the Court.

16 1.21 **“Preliminary Approval Order”** means the document substantially in the form of
17 Exhibit 6 or such other order as may be entered by the Court for purposes of preliminarily
18 approving the Settlement Agreement and certifying the Settlement Class solely for settlement
19 purposes.

20 1.22 **“Release”** means the release and discharge, by Plaintiffs and all Settlement Class
21 Members (and their respective present, former, and future administrators, agents, assigns,
22 attorneys, executors, heirs, partners, predecessors in interest, and successors) of the Released
23 Parties, and shall include the agreement and commitment by Plaintiffs and Settlement Class
24 Members to not now or hereafter initiate, maintain, or assert against the Released Parties, or any
25 of them, any and all causes of action, claims, rights, demands, actions, claims for damages,
26 equitable, legal and/or administrative relief, interest, demands, or rights, including without
27 limitation claims for damages of any kind, including those in excess of actual damages, whether

1 based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any
2 other sources that have been, could have been, may be, or could be alleged or asserted now or in
3 the future by Plaintiffs or Settlement Class Members against the Released Parties, or any of
4 them, in this action or in any other court action or before any administrative body (including any
5 regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body arising
6 out of or related to the Released Claims.

7 1.23 **“Released Claims”** means any and all claims, causes of action, suits, obligations,
8 debts, rights, demands, liens, actions, agreements, promises, liabilities, damages, losses,
9 controversies, claims for damages, equitable, legal, and/or administrative relief, interest, costs,
10 expenses, and attorneys’ fees of any nature whatsoever, against any Released Party, whether
11 based on any federal law, state law, common law, territorial law, foreign law, contract, rule,
12 statute, regulation, or equity, whether known or unknown, suspected, or unsuspected, asserted or
13 unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or
14 compensatory, as of the Effective Date, that arise out of or relate to telemarketing calls and/or
15 text messages that one or more of Defendants placed between May 17, 2017 and April 17, 2018
16 using an artificial or prerecorded voice in order to sell Freedom’s products and services, or that
17 otherwise were raised or could have been raised by any Settlement Class Member against any
18 Released Party based on the allegations in the Complaint.

19 1.24 **“Released Parties”** means Defendants and each of their respective present,
20 former, and future parents, subsidiaries, divisions, partnerships, joint ventures, unincorporated
21 entities, affiliates, and any entities directly or indirectly under their respective control in the past
22 or present, and each of their respective assignors, predecessors, successors and assigns, officers,
23 directors, shareholders, employees, members, contractors, subcontractors, vendors,
24 administrators, agents, insurers, attorneys, accountants, and representatives, heirs, and the estates
25 of any and all of the foregoing.

26 1.25 **“Service Award”** means any amount the Court awards to Plaintiffs to recognize
27 their efforts and risks in prosecuting this litigation on behalf of the Settlement Class.

1 1.26 “**Settlement**” means the compromise and settlement described in this Agreement.

2 1.27 “**Settlement Administration Expenses**” means the expenses incurred by the
3 Settlement Administrator in providing notice pursuant to the Notice Plan approved by the Court,
4 processing claims, and mailing checks for Settlement Class Members. Settlement Administration
5 Expenses include but are not limited to the Initial Notice Deposit and shall be paid from the
6 Settlement Fund.

7 1.28 “**Settlement Administrator**” means A.B. Data, the independent company that
8 the parties have selected to notify the Settlement Class of the Settlement as described in Section
9 4 of this Agreement and administer the Settlement.

10 1.29 “**Settlement Class**” means every person in the United States (1) to whom
11 Defendants placed a call, (2) to a telephone number listed in LEADSCIENCE_677, (3) using an
12 artificial or prerecorded voice, (4) in order to sell Freedom Financial Network, LLC and
13 Freedom Debt Relief, LLC’s products, and (5) between May 17, 2017, and April 17, 2018.

14 1.30 “**Settlement Class Member**” means any person who is included within the
15 definition of the Settlement Class and who has not submitted a valid request for exclusion.

16 1.31 “**Settlement Class Recovery**” means the amount of the Settlement Fund
17 available for distribution to the Settlement Class Member claimants, after payment of Settlement
18 Administration Expenses, the Fee Award to Class Counsel (together with litigation expenses)
19 and any approved Service Award to the Class Representatives.

20 1.32 “**Settlement Fund**” means the amount of \$9,750,000 that Defendants have
21 agreed to pay pursuant to the terms of this Settlement Agreement, as set forth in Section 2.1.

22 1.33 “**Settlement Website**” means the website to be created by the Settlement
23 Administrator containing full details and information about the Settlement, including this
24 Agreement, the Complaint, the Answer, the Preliminary Approval Order, Class Counsel’s fee
25 petition, a printable Claim Form, and the Long Form Notice.

1 **2. SETTLEMENT RELIEF**

2 2.1 **Settlement Fund.** Defendants agree to pay into a Settlement Fund to be created
3 and maintained by the Settlement Administrator, the amount of \$9,750,000 in total and complete
4 satisfaction of all obligations under this Agreement. The Settlement Fund will be used to pay the
5 claims of all Settlement Class Members under this Agreement, Settlement Administration
6 Expenses, any Service Awards to the Class Representatives, and any Fee Award to Class
7 Counsel (including any litigation expenses awarded). In no event shall Defendants be obligated
8 to contribute any monies in excess of \$9,750,000.

9 2.2 **Funding of Settlement Fund.** Defendants will make payments to the Settlement
10 Fund as follows: within ten business days following entry of the Preliminary Approval Order,
11 Defendants will transfer an Initial Notice Deposit of \$500,000 to the Settlement Administrator
12 (via wire instructions to be provided by the Settlement Administrator to Defendants). The
13 Settlement Administrator will hold those amounts in escrow until such time as the Settlement
14 Administrator is authorized to pay those funds, including for any authorized up-front notice costs
15 and other costs of administration, pursuant to the Settlement Agreement, or as otherwise ordered
16 by the Court. Interest shall accrue to the benefit of the Settlement Class but in the event the
17 Settlement does not receive final approval, Defendants shall be entitled to return of the balance
18 of the Settlement Fund after payment of notice and administration expenses incurred to that
19 point.

20 Following this initial payment, Defendants shall pay the remainder of the \$9,750,000
21 total settlement payment to the Settlement Administrator (via the Settlement Administrator's
22 wire instructions), within fifteen (15) days after the Court issues its Final Approval Order and
23 Judgment, provided that if the Effective Date has not occurred by this date, then the remainder of
24 the \$9,750,000 total settlement payment to the Settlement Administrator shall be made within ten
25 (10) business days after the Effective Date.

1 **2.3 Distribution of the Settlement Fund.**

2 a. As soon as practicable, but no later than thirty days after the Effective
3 Date, the Settlement Administrator shall make the following payments:

4 (i) any Fee Award to Class Counsel and Service Awards to Class
5 Representatives, by any means agreed upon by Class Counsel;

6 (ii) any remaining Settlement Administration Expenses to the
7 Settlement Administrator, by any means requested by the
8 Settlement Administrator; and

9 (iii) individual payments to Settlement Class Members who submitted a
10 timely and valid Claim Form (“Individual Settlement Payments”),
11 by check to the Settlement Class member’s last known physical
12 address or by optional electronic payment.

13 b. The amount of the Individual Settlement Payments will depend upon the
14 number of Settlement Class Members who submit a valid and timely Claim Form and whether
15 the claimant has a claim under the TCPA’s National Do-Not-Call Regulations (“NDNC Claim”)
16 in addition to a claim that Defendants violated the TCPA’s prohibition of telemarketing calls
17 using an artificial or prerecorded voice without the recipient’s prior express written consent
18 (“Prerecord Claim”). For purposes of distributing the New Settlement Fund, a claimant who has
19 both an NDNC Claim and a Prerecord Claim will receive two points. A claimant who has a
20 Prerecord Claim only will receive one point. Claimants’ shares will be determined by the
21 following formula: Net Settlement Fund divided by the total number of points claimed through
22 submission of timely and valid Claim Forms times the individual’s total points. For example, if
23 the Net Settlement Fund is \$5,810,000 and 67,500 Settlement Class Members submit timely and
24 valid Claim Forms and 3,300 of the claimants have both an NDNC Claim and a Prerecord Claim,
25 each point will be worth approximately \$82.06 ($\$5,810,000/70,800$ ($67,500 + 3,300 = 70,800$) =
26 \$82.06). A Settlement Class Member who has a Prerecord Claim only and submits a timely and
27 valid Claim Form would receive \$82.06 and a Settlement Class Members who has a Prerecord

1 Claim and an NDNC Claim and submits a timely and valid Claim Form will receive \$164.12
2 (\$82.06 points x 2).

3 c. Settlement Class Members will be able to learn whether they are eligible
4 to receive multiple points by visiting the Settlement Website and entering either a unique claim
5 number assigned by the Settlement Administrator or the telephone number at which they
6 received the calls.

7 d. All payments issued to Settlement Class Members via check will state on
8 the face of the check that the check will become void unless cashed within 120 days after the
9 date of issuance. Payment by optional electronic payment will also have a 120-day period for
10 activation or acceptance.

11 e. To the extent any checks to Settlement Class Members remain uncashed
12 (or any electronic payments unaccepted) after the void date, if it is administratively feasible, the
13 Settlement Administrator shall distribute the funds associated with those checks to Settlement
14 Class Members who cashed their check from the first distribution using the same formula
15 described above: A person who has both an NDNC Claim and a Prerecord Claim will receive
16 two times the amount of the residual as a person who has a Prerecord Claim only. The Settlement
17 Administrator shall make this second distribution within thirty (30) days after the “stale date” of
18 the checks distributed through the first distribution. Settlement Class Members will have 120
19 days to cash any check received through the second distribution. Any remaining funds, including
20 to the extent a second distribution is not administratively feasible, shall be distributed as a *cy*
21 *pres* award to the Public Justice Foundation. The Settlement Administrator will contact the
22 Parties’ counsel within five days following the stale date of checks mailed through the second
23 distribution, or, alternatively if a second distribution is not administratively feasible, within five
24 days following the stale date of checks mailed through the first distribution, to inform them that
25 the distributions are complete. At that time, the Parties’ counsel will provide the Settlement
26 Administrator with instructions for sending any residual funds to the designated *cy pres*
27 recipient.

1 2.4 **Changes to Business Practices.** Fluent, its successors in interest, principals,
2 directors, and officers agree to the following injunctive relief individually and on behalf of
3 Fluent and any Fluent successor entity (all of which are collectively referred to as “Fluent” in
4 subsections 2.4.1 through 2.4.8 below):

5 **Record retention.**

6 2.4.1 Fluent will retain evidence of telemarketing consent, which may be
7 satisfied in a variety of ways, including, without limitation, data collected from server logs with
8 information sufficient to identify the date, time, and name of the person consenting.

9 2.4.2 Fluent will require all of Fluent’s affiliated companies to maintain and
10 provide Fluent, upon request, with evidence of telemarketing consent, which may be satisfied in
11 a variety of ways, including, without limitation, data collected from server logs with information
12 sufficient to identify the date, time, and name of the person consenting.

13 2.4.3 Fluent will require all of Fluent’s affiliated companies to maintain and
14 provide Fluent, upon request, with call records, which may be satisfied in a variety of ways,
15 including, without limitation, information sufficient to identify the date, time, and phone number
16 called and the receipt of the call.

17 **Consent authentication.**

18 2.4.4 Fluent will implement procedures designed to identify numbers associated
19 with invalid names or addresses and processes to ensure that they are not called, which may be
20 satisfied in a variety of ways, including, without limitation, retaining third-party vendors to
21 validate name and address authenticity.

22 **Bar on Prerecorded Calls.**

23 2.4.5 Fluent will not initiate, cause others to initiate, or assist others in initiating
24 any outbound telephone call that plays or delivers a prerecorded message.

25 **Notice and confirmatory opt in.**

26 2.4.6 Fluent shall ensure that those consumers who Fluent asserts has previously
27 consented to receive calls or texts selling Freedom’s services as it relates to this lawsuit will not

1 receive any further telemarketing text messages or prerecorded calls based on that consent.
2 Fluent may satisfy this condition in a variety of ways, including, without limitation, adding those
3 consumers to its internal do-not-sell database. For avoidance of doubt: nothing in this provision
4 shall bar contact with any consumer who subsequently provides valid consent to receive
5 telemarketing messages.

6 **Compliance.**

7 2.4.7 Fluent shall ensure that its consent language and process for obtaining
8 consent complies with the TCPA's requirement that consent be "clear and conspicuous." Fluent
9 may satisfy this condition in a variety of ways, including, without limitation, having the consent
10 language and process reviewed quarterly by internal or external counsel.

11 2.4.8 Fluent shall ensure that it is in full compliance with the injunctive
12 provisions of this settlement, including reviewing consent evidence and ensuring that its method
13 of obtaining consent is clear and conspicuous. Fluent may satisfy this condition in a variety of
14 ways, including, without limitation, having the consent language and process reviewed quarterly
15 by internal or external counsel.

16 **3. RELEASE OF CLAIMS**

17 3.1 Plaintiffs and each Settlement Class Member hereby fully, finally, and forever
18 Release, resolve, relinquish and discharge each of the Released Parties from the Released
19 Claims.

20 3.2 Upon the Effective Date, Plaintiffs and Settlement Class Members, shall be
21 deemed to have, and by operation of law and of the Final Approval Order have, fully, finally,
22 and forever released, relinquished, and discharged all Released Claims against the Released
23 Parties.

24 3.3 Plaintiffs and the Settlement Class expressly acknowledge that they are familiar
25 with principles of law such as California Civil Code section 1542, which provides as follows:
26
27

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
3 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
4 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 Except as otherwise provided in this Agreement, Plaintiffs and Settlement Class Members
9 knowingly and voluntarily waive and relinquish any rights that they have or may have under
10 California Civil Code section 1542, or any other similar provision of state or federal law, to the
11 fullest extent permitted by law, in connection with the releases provided in this Agreement.
12 Plaintiffs and Settlement Class Members expressly agree that, in connection with and as part of
13 the Released Claims, they knowingly and voluntarily waive, Release, and relinquish to the fullest
14 extent permitted by law any unknown claims that are substantially similar to or overlap with the
15 Released Claims. Plaintiffs and Settlement Class Members also agree and acknowledge that they
16 may discover claims presently unknown or unsuspected or facts in addition to or different from
17 those which they now know or believe to be true with respect to matters Released herein, and
18 that such claims, to the extent they are substantially similar to or overlap with the Released
19 Claims, are hereby Released, relinquished, and discharged.

17 **4. NOTICE TO THE SETTLEMENT CLASS**

18 4.1 As soon as practicable but no later than sixty days following entry of the
19 Preliminary Approval Order, the Settlement Administrator shall cause the Online Media Notice
20 and Email Notice to be made to the Settlement Class and, where email addresses are not
21 available, the Postcard Notice to be mailed to the Settlement Class. Such notice shall comport
22 with Rule 23 of the Federal Rules of Civil Procedure, and be effectuated pursuant to the Notice
23 Plan set forth in Section 4.2, the costs of which shall be deemed part of the Settlement
24 Administration Expenses, and which shall be paid from the Settlement Fund. The Parties
25 expressly agree that the initial out-of-pocket costs of the Publication Notice and Notice Postcard
26 shall be paid from the Initial Notice Deposit, and that once incurred such out-of-pocket costs
27

1 shall not be refundable in the event of termination of this Settlement or the failure of this
2 Settlement to become effective.

3 4.2 The Notice Plan, which was developed in consultation with the Settlement
4 Administrator, includes the following:

5 a. *Identifying the Settlement Class.* During the litigation, Plaintiffs obtained
6 from Defendants calling records identifying approximately 675,377 telephone numbers
7 associated with potential Settlement Class Members subject to the terms of the Protective Order
8 Governing Plaintiffs' Use of Contact Information Produced by Defendants, Dkt. 99, 106. The
9 Settlement Administrator may use contact information, including emails, contained within the
10 calling records and has or will use standard industry practices to locate contact information for
11 the Settlement Class Members whose information is not in the calling records, including, but not
12 limited to, reverse lookups. The Settlement Administrator may not use such contact information
13 for purposes other than providing notice to the Settlement Class.

14 b. *Emailed Notice.* As soon as practicable but no later than sixty days after
15 entry of the Preliminary Approval Order, the Settlement Administrator shall send the Email
16 Notice to anyone in the Settlement Class for whom an email address was located in the calling
17 records.

18 c. *Mailed Notice.* As soon as practicable but no later than sixty days after
19 entry of the Preliminary Approval Order, the Settlement Administrator shall send the Postcard
20 Notice via first class mail to anyone in the Settlement Class for whom a mailing address, but not
21 an email address, could be obtained. The Settlement Administrator also shall send a Postcard
22 Notice to anyone in the Settlement Class for whom a postal address can be located who was
23 initially sent an Email Notice and the Email Notice bounced back. Before sending the Postcard
24 Notice, the Settlement Administrator shall update the postal address using the National Change
25 of Address database. If a Postcard Notice is returned with a forwarding address, the Settlement
26 Administrator shall promptly re-mail the Postcard Notice to the updated address. If a Postcard
27

1 Notice is returned undeliverable, the Settlement Administrator shall perform one “skip trace” to
2 try to find a good address.

3 d. *Online Notice.* As soon as practicable but no later than sixty days after
4 entry of the Preliminary Approval Order, the Settlement Administrator will commence a media
5 campaign designed to supplement the direct notice campaign described above. The media
6 campaign will include the placement of targeted ads in selected publications and on widely used
7 Internet and social media sites.

8 e. *Settlement Website.* As soon as practicable but no later than sixty days
9 after entry of the Preliminary Approval Order, this Agreement, Plaintiffs’ Complaint,
10 Defendants’ Answer, and the Long Form Notice shall be made available on a website, which
11 shall be obtained, created, and administered by the Settlement Administrator (the “Settlement
12 Website”) and shall include the ability to submit a Claim Form online. The Long Form Notice on
13 the Settlement Website shall be substantially in the form attached hereto, or in such form as may
14 be ordered by the Court. The Email Notice, Postcard Notice, and Online Media Notice will refer
15 the Settlement Class to the Settlement Website.

16 f. *Email reminder.* The Settlement Administrator will send an email no later
17 than thirty days before the expiration of the Claim Period to all Settlement Class Members for
18 whom an email address is available and who have not submitted claims. The email will remind
19 Settlement Class Members to submit claims and the date to do so.

20 g. *Defendants’ right to review.* Defendants shall have the right to review and
21 approve the language of any form of notice, including without limitation any Email Notice,
22 Postcard Notice, all online forms of notice, any direct communications with class members, and
23 any information posted on the Settlement Website. Defendants shall further have the right to
24 review and approve the publications and Internet and social media websites the notices will run
25 on, including, without limitation, the name and internet address of the Settlement Website.
26 Defendants shall not unreasonably withhold approval of any aspect of the Notice Plan, including
27 the form and content of the various notices. If the parties cannot agree on any aspect of the

1 Notice Plan they will submit the dispute to the Court, which shall be the final arbiter on these
2 issues.

3 h. *Defendants not liable for others' acts.* Defendants, Defendants' Counsel,
4 and the Released Parties shall have no responsibility or liability for the acts or omissions of the
5 Settlement Administrator, Class Counsel, or their agents.

6 4.3 Any member of the Settlement Class may object to this Agreement. Consistent
7 with the Court's Procedural Guidance for Class Action Settlements and Federal Rule Civil
8 Procedure 23(e), any objection to the Settlement must be in writing. All written objections and
9 supporting papers must (a) clearly identify the case name and number (*Berman v. Freedom*
10 *Financial Network, LLC*, Case No. 18-cv-01060-YGR), (b) include the objector's name,
11 telephone number, address, and the telephone number on which the objector received the
12 telemarketing calls at issue in this case; (c) be submitted to the Court either by filing the
13 objection electronically or in person at any location of the United States District Court for the
14 Northern District of California or by mailing them to the Class Action Clerk, United States
15 District Court for the Northern District of California, Ronald V. Dellums Federal Building &
16 United States Courthouse, 1301 Clay Street, Oakland, CA 94612, and (d) be filed or postmarked
17 on or before the Notice Deadline. The objection also must state with specificity the grounds for
18 the objection and whether the objection applies only to the objector, to a specific subset of the
19 Settlement Class, or to the entire Settlement Class. Any payment or other consideration given to
20 an objector or objector's counsel for: (a) forgoing or withdrawing an objection, or (b) forgoing,
21 dismissing, or abandoning an appeal from a judgment approving a class settlement shall require
22 Court approval. An objector may appear through his or her own attorney, but is responsible for
23 hiring and paying that attorney.

24 4.4 Any member of the Settlement Class may request to be excluded ("opt-out") from
25 the Settlement Class by sending, by First-Class Mail, a written request for exclusion to the
26 Settlement Administrator postmarked on or before the Objection/Exclusion Deadline. The
27 request for exclusion must include the name of this action, *Berman v. Freedom Financial*

1 *Network, LLC*, the Settlement Class member's full name, address, and telephone number where
2 he or she may be contacted, the telephone number(s) which he or she maintains was called, and a
3 statement that the member of the Settlement Class submitting the request wishes to be excluded
4 from the Settlement of this litigation, and personally signed by the member of the Settlement
5 Class submitting the request. A request to be excluded that does not include all of the foregoing
6 information, or that is not sent to the Settlement Administrator, or that is not postmarked within
7 the time specified, shall be considered deficient. If an exclusion request is deemed deficient in
8 that it lacks a signature or any of the information required by this paragraph, the Settlement
9 Administrator will provide the Settlement Class member with an opportunity to cure the
10 deficiency by sending an email or letter describing the deficiency and informing the Settlement
11 Class member that he or she has fifteen days to correct the issue. If the Settlement Class member
12 does not cure the deficiency within the specified time, that person shall be a Settlement Class
13 Member and shall be bound as a Settlement Class Member by the Agreement, if approved. If a
14 member of the Settlement Class submits both a Claim Form and a request for exclusion, the
15 former shall govern and any request for exclusion will be treated as having been withdrawn. The
16 Settlement Administrator will provide a list of those members of the Settlement Class who have
17 requested exclusion each week with its weekly reports, along with copies of each request
18 received, and a final list of everyone who has requested exclusion no later than forty-five
19 business days after the Objection/Exclusion Deadline. The Settlement Administrator will review
20 exclusion requests for deficiencies, and in consultation with Class Counsel, send deficiency
21 letters where appropriate and provide an opportunity for Settlement Class members to cure the
22 deficiency.

23 Any member of the Settlement Class who submits a timely and valid exclusion request
24 shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under
25 this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to
26 object to any aspect of this Agreement. So-called "mass" or "class" opt-outs shall not be
27 allowed.

1 **5. CLAIMS AND DEFICIENCY PROCESS**

2 5.1 A Settlement Class Member must submit a Claim Form in order to make a claim,
3 either by mail or online. To be valid, the Claim Form must contain the full name, mailing address
4 and email address of the Settlement Class Member, and the telephone number at which he or she
5 can be reached. The Claim Form must also include the telephone number(s) the Settlement Class
6 Member maintains received allegedly unlawful calls from Defendants. Claim Forms submitted
7 by mail must be post-marked by the last day of the Claim Period. Claim Forms submitted
8 through the Settlement Website must be submitted on or before the last day of the Claim Period.
9 The Settlement Class Member must sign the claim form, verifying that all information on the
10 form is accurate and that the Settlement Class Member received allegedly unlawful calls.

11 5.2 No later than twenty days after the close of the Claim Period, the Settlement
12 Administrator will complete a review of each claim that is submitted within the Claim Period. If
13 the claim is timely, sets forth the information required in Section 5.1, is signed (by written or
14 electronic signature), is not duplicative of a previously approved claim, and there are no indicia
15 that the claim was fraudulently submitted, then the Settlement Administrator will approve the
16 claim. If a claim is denied as deficient in that it lacks a signature or any of the information
17 required in Section 5.1 or due to indicia that the claim was fraudulently submitted, the Settlement
18 Administrator will within five days after completing the deficiency review provide the
19 Settlement Class Member with an opportunity to cure the deficiency by sending an email or
20 letter describing the deficiency and informing the Settlement Class Member that he or she has
21 fifteen days to correct the issue. If the Settlement Administrator determines a claim is deficient
22 due to fraud, the Settlement Class Member will be provided an opportunity to submit additional
23 proof that calls meeting the class definition were received, such as billing records or call
24 recordings. The Settlement Administrator will provide reports weekly to the Parties' counsel on
25 the number of claims that are received, the number that were denied, the number found to be
26 deficient, and the number that were approved as well as the number of requests for exclusion and
27 objections received, along with copies of both. If there are any disputes over the validity of a

1 claim, the Parties' counsel will attempt to resolve such disputes between themselves, and if not
2 successful, the disputes will be promptly presented to the Court for resolution.

3 5.3 Each Settlement Class Member will be entitled to submit only one claim.

4 Payments will be calculated by dividing the amount of the Net Settlement Fund by the total
5 number of timely and valid claims.

6 **6. SETTLEMENT ADMINISTRATION**

7 6.1 The Settlement Administrator retained by the Parties shall have the following
8 duties:

9 a. Identify physical and email addresses for Settlement Class members
10 through reverse lookups as set forth in Section 4.2(a) above;

11 b. Prepare the Email, Long Form, Postcard, and Online Media Notices, in
12 substantially the form as those attached to this Agreement as approved by the Court;

13 c. Design and implement the Notice Plan set forth in Section 4 such that it
14 complies with Fed. R. Civ. P. 23 and due process;

15 d. Create and maintain the Settlement Website;

16 e. Establish a dedicated toll-free number with interactive voice recognition
17 and available live operators;

18 f. Process, log, and review exclusion requests for deficiencies and address
19 deficiencies with those requesting exclusion and providing them with an opportunity to cure, as
20 provided for in Section 4.4;

21 g. Process, log, and review claims for deficiencies and/or fraud, and address
22 deficiencies with claimants providing them with an opportunity to cure, as provided for in Section
23 5.2;

24 h. Calculate Settlement Class Member awards and distribute awards to
25 Settlement Class Members who file valid claims, maintain a bank account to contain the
26 Settlement Fund, maintain all required records, make a second distribution as provided for in
27

1 Section 2.3(d), if necessary, and distribute any funds remaining from uncashed checks or
2 unaccepted electronic payments to the Public Justice Foundation;

3 i. Provide the Parties with weekly reports regarding the status of the Notice
4 Plan, and number of claims, exclusion requests, and objections received;

5 j. Maintain copies of exclusion requests and objections; and

6 k. Provide declarations to the Court in support of preliminary and final
7 settlement approval.

8 l. Provide information to counsel for the Parties for the final post distribution
9 accounting discussed in the Northern District of California Guidelines for Class Action
10 Settlements and Section 12 below.

11 6.2 The Settlement Administrator shall, under the supervision of the Court, administer
12 the relief provided by this Settlement Agreement by completing its duties in a reasonable, cost
13 effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed
14 records of its activities under this Agreement. The Settlement Administrator shall maintain all
15 such records as are required by applicable law and in accordance with its normal business
16 practices, including but not limited to a summary of work performed by the Settlement
17 Administrator, and an accounting of all amounts paid from the Settlement Fund to Settlement
18 Class Members. Such records will be provided to Class Counsel and Defendants' Counsel and to
19 the Court along with the motion for final approval.

20 6.3 In the exercise of its duties outlined in this Agreement, the Settlement
21 Administrator shall have the right to reasonably request additional information from the Parties
22 or any Settlement Class Member.

23 6.4 The Settlement Administrator, with approval by the Parties, shall be responsible
24 for compliance with the applicable provisions of the Class Action Fairness Act ("CAFA"),
25 including the notice requirements in 28 U.S.C. § 1715.

26 6.5 As soon as practicable after the conclusion of the Settlement Administrator's
27 obligations to provide notice and administer the claims process but no later than twenty days

1 after the deadline for Settlement Class Members to cure any deficient claims or exclusion
2 requests as set forth above, the Settlement Administrator shall provide Class Counsel and
3 Defendants' Counsel with an appropriate declaration outlining compliance with those
4 obligations. The declaration will include final tallies of valid claims, exclusion requests, and
5 objections as well as a statement of the total expenses incurred by the Settlement Administrator
6 as of that date.

7 6.6 During the period from the filing date of this Agreement to the date that the
8 Settlement Administrator issues its final declaration pursuant to Section 6.5, no Party or their
9 counsel shall knowingly contact any Settlement Class member unless (a) that Settlement Class
10 member reaches out to that Party or their counsel; (b) the communication is related to this
11 litigation, this Settlement, or the administration of this Settlement; or (c) that Settlement Class
12 member is otherwise represented by one of Class Counsel. This provision in no way prohibits
13 Class Counsel from responding to questions from Settlement Class members, who are Class
14 Counsel's clients, about the terms of this Settlement, the process of submitting a claim,
15 Settlement Class members' rights to opt out of or object to the Settlement, or anything else about
16 this action and the Settlement. It also does not prohibit Class Counsel from (a) contacting
17 Settlement Class members who have objected to the Settlement about those objections or (b)
18 contacting Settlement Class members who have opted out of the Settlement to ensure they
19 understand their rights.

20 **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER AND**
21 **JUDGMENT**

22 7.1 Within the time frame established by the Court, Plaintiffs shall submit this
23 Agreement together with its Exhibits to the Court and shall move the Court for entry of the
24 Preliminary Approval Order, which shall, among other things, preliminarily approve this
25 Settlement Agreement, certify the Settlement Class for settlement purposes only, appoint
26 Plaintiffs' counsel as Class Counsel and Plaintiffs as the Class Representatives, and set a date for
27 a Final Approval Hearing, which shall be scheduled no earlier than 205 days after entry of the

1 Preliminary Approval Order, in order to comply with the requirements of CAFA and to provide
2 sufficient time for the Settlement Administrator to execute the Notice Plan.

3 7.2 Defendants do not oppose the certification of the Settlement Class for settlement
4 purposes only. Certification of a Settlement Class shall not be deemed a concession that
5 certification of a class is otherwise appropriate. Defendants preserve their arguments that a
6 litigation class could not be properly certified pursuant to Federal Rule of Civil Procedure 23. If
7 this Agreement is not approved by the Court or is otherwise terminated or voided, the
8 certification of the Settlement Class shall be void and there will be no waiver, estoppel, or
9 preclusive effect given to this Agreement in any litigated proceedings.

10 7.3 Class Counsel shall submit to the Court evidence and legal argument to support
11 the Final Approval Order and Judgment, which shall (among other things):

12 a. find that the Court has personal jurisdiction over all Settlement Class
13 Members and that the Court has subject matter jurisdiction to approve the Agreement, including
14 all Exhibits hereto;

15 b. grant final approval of the Settlement Agreement and likewise approve the
16 Settlement as fair, reasonable and adequate as to, and in the best interests of the Settlement
17 Class; direct the Parties and their counsel to implement the Agreement according to its terms and
18 provisions; and declare the Agreement to be binding on, and have preclusive effect on, all
19 pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the
20 Releasing Parties;

21 c. find that the Notice Plan implemented pursuant to the Agreement:
22 (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is
23 reasonably calculated to apprise members of the Settlement Class of the pendency of this
24 litigation, their right to object to or exclude themselves from the proposed Settlement, and to
25 appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and
26 sufficient notice to all entities and individuals entitled to receive notice; and (4) meets all
27

1 applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the
2 United States Constitution, and the rules of the Court;

3 d. find that the Class Representatives and Class Counsel adequately
4 represented the Settlement Class for purposes of entering into and implementing the Agreement;

5 e. dismiss Defendants from the action (including, without limitation, all
6 individual claims, class claims, Plaintiff claims, Settlement Class Member claims, and Released
7 Claims asserted therein against the Released Parties) on the merits and with prejudice, without
8 fees or costs to either Defendants or Plaintiffs except as expressly provided in the Settlement
9 Agreement;

10 f. approve and incorporate the Releases set forth herein and forever
11 discharge the Released Parties from the Released Claims as set forth herein; and

12 g. without affecting the finality of the Final Approval Order and Judgment
13 for purposes of appeal, retain jurisdiction as to all matters relating to administration,
14 consummation, enforcement, and interpretation of the Settlement Agreement and the Final
15 Approval Order and Judgment, and for any other necessary purpose; and

16 h. set forth any other provisions, as the Court deems necessary and just.

17 **8. CLASS COUNSEL'S FEE AWARD AND PLAINTIFFS' SERVICE AWARDS**

18 8.1 Class Counsel shall apply to the Court for the Fee Award of up to one third of the
19 Settlement Fund of \$9,750,000, plus out-of-pocket costs and expenses incurred by Class Counsel
20 in this litigation, which are currently estimated to be approximately \$200,000. Nothing in this
21 Agreement requires Defendants or their counsel to take any position with respect to any motion
22 or request made as contemplated by this Section. If the Fee Award entered by the Court is less
23 than that sought by Class Counsel, the difference will become part of the Settlement Class
24 Recovery.

25 8.2 Class Counsel shall file their motion for attorneys' fees and litigation costs and
26 expenses thirty-five days before the Exclusion/Objection deadline. The Settlement Administrator
27

1 shall post Class Counsel's fee petition to the Settlement Website within twenty-four hours of
2 filing the fee petition with the Court.

3 8.3 The amount of the Fee Award approved by the Court shall be paid to Class
4 Counsel from the Settlement Fund, and subject to the terms of this Settlement, no later than thirty
5 days after the Effective Date.

6 8.4 Class Counsel shall apply to the Court for Service Awards for the Class
7 Representatives in an amount to be determined and approved by the Court in its sole discretion.
8 Class Counsel intends to request that Plaintiffs be awarded \$5,000 each. If the Service Awards
9 entered by the Court are less than those sought by Class Counsel, the difference will become part
10 of the Settlement Class Recovery.

11 8.5 The Service Awards, if approved by the Court, shall be paid by the Settlement
12 Administrator from the Settlement Fund, no later than thirty days after the Effective Date.

13 8.6 Defendants, Defendants' Counsel, and the Released Parties shall have no
14 responsibility for, and no liability with respect to, the allocation or payment of attorneys' fees,
15 litigation expenses, or Service Awards that the Court may award in this action or for any
16 allocation or payment of any portion of the Settlement Fund to any other person who may assert
17 some claim thereto.

18 **9. TAXES**

19 9.1 Settlement Class Members, Class Representatives, and Class Counsel shall be
20 responsible for paying any and all federal, state, and local taxes due on any payments made to
21 them pursuant to the Settlement Agreement.

22 9.2 Expenses Paid from Settlement Fund. Any Settlement Administrator Expenses
23 reasonably incurred by the Settlement Administrator in carrying out its duties, including fees of
24 tax attorneys and accountants, will be paid from the Settlement Fund.

25 9.3 Responsibility for Taxes on Distribution. Any Person that receives a distribution
26 from the Settlement Fund will be solely responsible for any taxes or tax-related expenses owed
27

1 or incurred by reason of that distribution. Such taxes and tax-related expenses will not be paid
2 from the Settlement Fund.

3 9.4 Payment Not Directed By or Incurred to Government: For purposes of assessing
4 deductibility of any amounts to be paid by Defendants under the Settlement Agreement, it is
5 expressly acknowledged by the Parties that such payments are not made or incurred (whether by
6 suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in
7 relation to the violation of any law or the investigation or inquiry by such government or entity
8 into the potential violation of any law, as contemplated by 26 U.S.C. § 162(f)(1).

9 9.5 Defendants are Not Responsible. In no event will Defendants or any of the other
10 Released Parties have any responsibility or liability for taxes or tax-related expenses arising in
11 connection with the payment or distribution of the Settlement Fund to Class Representatives,
12 Settlement Class Members, Class Counsel or any other person or entity.

13 **10. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,
14 CANCELLATION OR TERMINATION**

15 10.1 This Settlement Agreement shall not become effective unless and until each of the
16 following events has occurred:

- 17 a. This Agreement has been signed by Plaintiffs, Defendants, Class Counsel
18 and Defendants' counsel;
- 19 b. The Court has entered the Preliminary Approval Order; and
- 20 c. The Court has entered the Final Approval Order and Judgment, following
21 notice to the Settlement Class and a Final Approval Hearing, or a final approval order and
22 judgment substantially consistent with this Agreement; and
- 23 d. All appeals have been resolved or the time for filing any appeal has run.

24 10.2 If this Agreement is terminated or is not approved by the Court or an order
25 approving the Agreement is reversed on appeal, the Parties shall be restored to their respective
26 positions as of the date of the signing of this Agreement. In such event, any Final Approval
27 Order and Judgment or other order entered by the Court in accordance with the terms of this

1 Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the
2 *status quo ante* with respect to the litigation as if this Agreement had never been entered into. If
3 the termination or failure to become effective occurs before the Preliminary Approval Order is
4 entered, the Parties agree that Defendants shall have no obligation to make any payment to the
5 escrow account and that any sums on deposit in the escrow account shall be returned to
6 Defendants. If the termination or failure to be approved occurs after the Initial Notice Deposit
7 has been made to the Settlement Administrator and charges have been incurred, then any sums
8 not necessary for incurred expenses, or already expended upon notice at the time of the
9 termination or failure to be approved shall be returned to Defendants.

10 10.3 Defendants have the option to terminate this Settlement Agreement and thereby
11 render the Settlement Agreement null and void, if (a) the Court fails to give preliminary approval
12 to this Settlement Agreement or any aspect of the Settlement, or fails to give final approval to
13 this Settlement Agreement or any aspect of the Settlement; (b) the Court modifies the
14 Agreement, the proposed Preliminary Approval Order or proposed Final Approval Order in a
15 way that Defendants reasonably consider to be material; (c) if 5% or more of the Settlement
16 Class submits valid and timely opt-out forms under Section 4.4; or (d) upon such other grounds
17 as may be agreed to by the Parties or permitted by the Court. Defendants' option to terminate
18 shall be communicated in writing to Class Counsel.

19 **11. NO ADMISSION OF LIABILITY**

20 11.1 Defendants have denied and continue to deny any liability or wrongdoing of any
21 kind with respect to the claims that are or could have been alleged in the Complaint. Defendants
22 have denied and continue to deny that they violated the TCPA or are liable for others' purported
23 violations of the TCPA, or committed any other wrongful act or violation of law. It is
24 specifically understood and agreed that this Agreement does not constitute and is not to be
25 construed as an admission by Defendants of: (a) any fact or liability; (b) any violation of any
26 federal, state, local or common law, statute, policy or regulation, including but not limited to the
27 Telephone Consumer Protection Act and all other Released Claims; (c) the commission by

1 Defendants of any other actionable wrong; and (d) the appropriateness of class certification for
2 purposes other than settlement.

3 **12. POST-DISTRIBUTION ACCOUNTING**

4 12.1 Within twenty-one (21) days after the distribution of the settlement funds and
5 payment of attorneys' fees, the parties will file a Post-Distribution Accounting, summarized in
6 an easy-to-read chart that allows for quick comparison with other cases, which provides the
7 following information:

8 a. The total Settlement Fund, the total number of Settlement Class Members,
9 the total number of Settlement Class Members to whom notice was sent and not returned as
10 undeliverable, the number and percentage of Claim Forms submitted, the number and percentage
11 of opt-outs, the number and percentage of objections, the average and median recovery per
12 claimant, the largest and smallest amounts paid to Settlement Class Members, the method(s) of
13 notice and the method(s) of payment to Settlement Class Members, the number and value of
14 checks not cashed, the amounts distributed to each *cy pres* recipient, the administrative costs, the
15 attorneys' fees and costs, the attorneys' fees in terms of percentage of the Settlement Fund, and
16 the multiplier, if any.

17 b. The benefit that the injunctive relief described in Section 2.4 conferred on
18 the class.

19 **13. MISCELLANEOUS PROVISIONS**

20 13.1 The Parties: (a) acknowledge that it is their intent to consummate this Settlement
21 Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and
22 implement all terms and conditions of this Agreement. Class Counsel and Defendants' Counsel
23 agree to cooperate with one another in seeking Court approval of the Preliminary Approval
24 Order, the Settlement Agreement, and the Final Approval Order and Judgment, and to agree
25 upon and execute all such other documentation as may be reasonably required to obtain final
26 approval of the Agreement.

1 13.2 To the extent that either side desires to issue a press release, they may only do so
2 with the prior written approval of all other Parties. No press release or other public statements
3 shall include statements disparaging either side, or statements suggesting that Defendants have
4 been found to have violated any law, or that the settlement amounts to an admission of liability.

5 13.3 The Parties intend this Settlement Agreement to be a final and complete
6 resolution of the disputes of Plaintiffs and the Settlement Class with Defendants with respect to
7 the Released Claims and this litigation.

8 13.4 The Parties have relied upon the advice and representation of their respective
9 counsel concerning their respective legal liability for the claims hereby released. The Parties
10 have read and understand fully this Agreement and have been fully advised as to its legal effect
11 by their respective counsel and intend to be legally bound by the same.

12 13.5 The Settlement and this Agreement represent a negotiated compromise, and
13 regardless of whether the Effective Date occurs or the Settlement Agreement is terminated,
14 neither this Agreement nor the Settlement, nor any act performed or document executed pursuant
15 to or in furtherance of this Agreement or the Settlement:

16 a. is, may be deemed, or shall be used, offered or received against the
17 Released Parties, or each or any of them, as an admission, concession, or evidence of the validity
18 of any Released Claims, the truth of any fact alleged by a Class Representative, the deficiency of
19 any defense that has been or could have been asserted in the litigation, the violation of any law or
20 statute, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or
21 any of them;

22 b. is, may be deemed, or shall be construed against Plaintiffs and the
23 Settlement Class, or each or any of them, or against the Released Parties, or each or any of them,
24 as an admission, concession, or evidence that the consideration to be given hereunder represents
25 an amount equal to, less than or greater than that amount that could have or would have been
26 recovered after trial; and
27

1 c. is, may be deemed, or shall be construed against Plaintiffs and the
2 Settlement Class, or each or any of them, or against the Released Parties, or each or any of them,
3 as an admission, concession, or evidence that any of Plaintiffs' or the Settlement Class's claims
4 are with or without merit or that damages recoverable would have exceeded or would have been
5 less than any particular amount.

6 13.6 Unless the context of this Agreement requires otherwise, the plural includes the
7 singular, the singular includes the plural, and "including" has the inclusive meaning of
8 "including without limitation." The words "hereof", "herein", "hereby", "hereunder", and other
9 similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any
10 particular provision of this Agreement. All pronouns and any variations thereof will be deemed
11 to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the person or
12 persons may require.

13 13.7 The waiver by one Party of any breach of this Agreement by any other Party shall
14 not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

15 13.8 Except as otherwise provided herein, each Party shall bear its own costs and
16 attorneys' fees.

17 13.9 Each counsel or Party executing this Settlement Agreement, any of its Exhibits, or
18 any related settlement documents on behalf of any party hereto hereby warrants and represents
19 that such party has the full authority to do so and has the authority to take appropriate action
20 required or permitted to be taken pursuant to the Agreement to effectuate its terms.

21 13.10 Plaintiffs hereby warrant and represent that they have not assigned any claim,
22 right, or interest relating to the Released Claims to any other person or party and are fully
23 entitled to release same.

24 13.11 This Agreement may be executed by the Parties in one or more counterparts, each
25 of which shall be deemed an original but all of which together shall constitute one and the same
26 instrument. Facsimile signatures or scanned and e-mailed signatures shall be treated as original
27 signatures and shall be binding.

1 13.12 Neither this Settlement Agreement nor any of its provisions nor any of the
2 referenced documents (including but not limited to drafts of the Settlement Agreement, the
3 Preliminary Approval Order or the Final Judgment and Order), negotiations, or proceedings
4 relating in any way to the Settlement shall be construed as or deemed to be evidence of an
5 admission or concession by any person, including the Defendants; and shall not be offered or
6 received in evidence, or subject to discovery, in this or any other action except in proceedings
7 brought to enforce the terms of this Settlement Agreement or except as may be required
8 expressly by law or court order. The provisions of this Section shall be binding regardless of
9 whether this Settlement Agreement is approved by the Court, is terminated, or otherwise fails to
10 become effective or whether the Settlement is rendered void for any reason.

11 13.13 This Settlement Agreement shall be binding upon, and inure to the benefit of, the
12 successors and assigns of the Parties hereto and the Released Parties.

13 13.14 This Settlement Agreement is deemed to have been prepared by counsel for all
14 Parties, as a result of arms' length negotiations among the Parties. Whereas all Parties have
15 contributed substantially and materially to the preparation of this Agreement, it shall not be
16 construed more strictly against one party than another.

17 13.15 By signing below, Class Counsel hereby represent and warrant that they do not
18 represent any individuals other than the named Plaintiffs who currently intend to assert claims
19 against Defendants with respect to calls or texts placed on behalf of Freedom, and additionally
20 represent and warrant that they are not currently recruiting and have not recruited Plaintiffs to
21 assert claims against Defendants with respect to calls or texts placed on behalf of Freedom.

22 13.16 Class Counsel acknowledge and agree that they will continue to abide and be
23 bound by the terms of the Protective Order Concerning Plaintiffs' Use of Contact Information
24 Produced by Defendants. Dkt. 99, 106.

25 13.17 This Settlement Agreement shall be governed by and construed in accordance
26 with the laws of the State of California.

27

1 13.18 The Parties agree that the Court will retain jurisdiction over any disputes
2 regarding the interpretation or implementation of this Agreement and the Settlement
3 memorialized herein.

4 IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to
5 be executed.

6
7 **For Plaintiffs and the Settlement Class:**

8 DocuSigned by:
Daniel M Berman Date: 5/31/2023
C6DE6D6146174BC...

9 DocuSigned by:
Stephanie Hernandez Date: 31/05/2023
B45BA6DA4F9E4F0...

10 DocuSigned by:
Stephanie Hernandez Date: 6/1/2023
9CE2B8679EC64A6...

11 DocuSigned by:
Erica Russell Date: May 31, 2023
Beth Terrell
12 Beth E. Terrell
13 Terrell Marshall Law Group PLLC

14 Edward G. Broderick Date: May 31, 2023
15 Edward Broderick
16 Broderick Law. P.C.

17 Matthew P. McCue Date: May 31, 2023
18 Matthew P. McCue
19 The Law Office of Matthew P. McCue
by EAB w/ express w.r. & authorization

20 Anthony I. Paronich Date: May 31, 2023
21 Anthony I. Paronich
22 Paronich Law, P.C.

23 **For Defendants**

24 _____ Date: _____
25 Freedom Financial Network, LLC &
Freedom Debt Relief, LLC

26 _____ Date: _____
27 Fluent, Inc.

1 13.18 The Parties agree that the Court will retain jurisdiction over any disputes
2 regarding the interpretation or implementation of this Agreement and the Settlement
3 memorialized herein.

4 IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to
5 be executed.

6
7 ***For Plaintiffs and the Settlement Class:***

8 _____ Date: _____
9 *Daniel Berman*

10 _____ Date: _____
11 *Stephanie Hernandez*

12 _____ Date: _____
13 *Erica Russell*

14 _____ Date: _____
15 *Beth E. Terrell*
16 *Terrell Marshall Law Group PLLC*

17 _____ Date: _____
18 *Edward Broderick*
19 *Broderick Law. P.C.*

20 _____ Date: _____
21 *Matthew P. McCue*
22 *The Law Office of Matthew P. McCue*

23 _____ Date: _____
24 *Anthony I. Paronich*
25 *Paronich Law, P.C.*

26 ***For Defendants***

27  Date: 5/31/2023
28 _____

29 *Freedom Financial Network, LLC &*
30 *Freedom Debt Relief, LLC*

31 _____ Date: _____
32 *Fluent, Inc.*

1 13.18 The Parties agree that the Court will retain jurisdiction over any disputes
2 regarding the interpretation or implementation of this Agreement and the Settlement
3 memorialized herein.

4 IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to
5 be executed.

6
7 ***For Plaintiffs and the Settlement Class:***

8 _____ Date: _____
9 *Daniel Berman*

10 _____ Date: _____
11 *Stephanie Hernandez*

12 _____ Date: _____
13 *Erica Russell*

14 _____ Date: _____
15 *Beth E. Terrell*
16 *Terrell Marshall Law Group PLLC*

17 _____ Date: _____
18 *Edward Broderick*
19 *Broderick Law, P.C.*

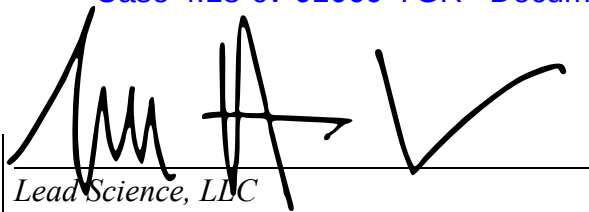
20 _____ Date: _____
21 *Matthew P. McCue*
22 *The Law Office of Matthew P. McCue*

23 _____ Date: _____
24 *Anthony I. Paronich*
25 *Paronich Law, P.C.*

26 ***For Defendants***

27 _____ Date: _____
28 *Freedom Financial Network, LLC &*
29 *Freedom Debt Relief, LLC*

30 *Daniel Berman* Date: May 31, 2023
31 _____
32 *Fluent, Inc.*



Lead Science, LLC

5/31/23

Date: _____

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Jay Ramsey
Sheppard, Mullin, Richter & Hampton LLP

Date: _____

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Lead Science, LLC

Jay Ramsey
Sheppard, Mullin, Richter & Hampton LLP

Date: _____

Date: 5/31/23

EXHIBIT 1

SETTLEMENT AGREEMENT – EXHIBIT 1(a)
(POSTCARD NOTICE)

A COURT AUTHORIZED THIS LEGAL NOTICE

If you received calls using a prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC’s products, between May 17, 2017 and April 17, 2018, you may be entitled to benefits under a class action settlement.

A settlement has been reached in a class action lawsuit, *Berman et al., v. Freedom Financial et al.* (U.S. District Court N.D. Cal.), where Plaintiffs allege that Defendants placed calls using a prerecorded voice to sell Freedom Financial Network’s or Freedom Debt Relief, LLC’s products. Defendants deny any wrongdoing.

Complete and return the enclosed claim form by _____ to receive a cash payment.

Settlement Administrator
P.O. Box XXXX
City, State Zip Code

First-Class
Mail
US Postage
Paid
Permit #__

«Barcode»

Postal Service: Please do not mark barcode

Claim ID #: «ClaimID»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

<Barcode>

Prerecorded Call Settlement Claim Form

Fill out each section of this form, sign where indicated, carefully tear at perforation, and mail. Forms must be postmarked by **Month XX, XXXX**. You may also complete your Claim Form online at www.XXXXXXXXXX.com.

Part I: Claimant Identification. Complete this section.

Name (First, Last): _____
Street Address: _____
City: _____ State: _____ ZIP Code: _____
Country (if not USA): _____
Contact Phone #: (_____) _____ - _____
Email Address: _____
Telephone #(s) at which calls were received: (____) ____ - ____; (____) ____ - ____; (____) ____ - ____.

Part II: Claim. Unique Identifier: «ClaimID»

I affirm I received a call that used an artificial or prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC’s products on a telephone number listed above.

Part III: Certification. I certify that that the foregoing information is true and correct.

Signature: _____ Date: ____ / ____ / ____
Print Name: _____

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**SETTLEMENT AGREEMENT – EXHIBIT 1(a)
(POSTCARD NOTICE)**

WHO IS A CLASS MEMBER?

You may be in the Settlement Class if, between May 17, 2017 and April 17, 2018, you received a call using an artificial or prerecorded voice that was selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC’s products. Defendants produced a list that includes Settlement Class telephone numbers. The list is labeled LEADSCIENCE_677. You can learn if your number is on this list by visiting www.XXXXXX and following the instructions.

SETTLEMENT TERMS: Plaintiffs alleged that Defendants violated the TCPA by (1) making artificial or prerecorded voice telemarketing calls selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC’s Freedom’s goods or services and (2) making calls and sent text messages to telephone numbers on the National Do-Not-Call Registry without the prior permission of the people contacted. Defendants will pay \$9,750,000 into a fund that will cover: (1) cash payments to eligible Settlement Class Members who submit claims; (2) attorneys’ fees to Class Counsel not to exceed \$3,250,000 (33.33%) plus litigation costs of approximately \$200,000, as approved by the Court; (3) court-approved service awards to Plaintiffs Berman, Hernandez, and Russell of \$5,000 each; and (4) the costs of administering the settlement. Under the TCPA, a person is entitled to receive \$500 for calls placed using an artificial or prerecorded voice without the person’s consent and up to \$500 for National Do-Not-Call violations. If the court finds Defendants acted willfully, any amount awarded could be tripled. Class Counsel estimate you will receive between \$60-\$170, which is less than the \$500 to \$1,500 per call you might receive if Plaintiffs had won at trial. The actual amount you receive under the Settlement depends on the number of Class Members that submit Claim Forms and whether you have a National Do-Not-Call claim in addition to a prerecorded call claim. If you have a National Do-Not-Call claim you are eligible for a double share of the Settlement.

YOUR RIGHTS AND OPTIONS: Submit a Claim Form. To receive a cash award, fill out the attached Claim Form, carefully tear off at the perforation, and drop it in the mail. You may also submit a Claim Form electronically on the Settlement Website: www.XXXXXXXXXX.com. You can submit only one claim. Your Claim Form must be postmarked or submitted electronically no later than **Month XX, XXXX**. **Opt Out.** You may exclude yourself from the Settlement and keep your right to sue Defendants on your own by sending a written request for exclusion to the Settlement Administrator postmarked by **Month XX, XXXX**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue Defendants regarding the settled claims. Visit the Settlement Website for more details. **Object.** If you do not opt out, you have the right to object to the proposed settlement. Objections must be filed with the Court, postmarked by **Month XX, XXXX**, provide the reasons for the objection, and specify if the objection applies only to the objector, to a specific subset of the class, or to the entire class. Visit the Website for more details. **Do Nothing.** If you do nothing, you will not receive any payment and will lose the right to sue Defendants about the Released Claims. You will be considered part of the Settlement Class, and you will be bound by the Court’s decisions. **Attend the Final Approval Hearing.** The Court has set a hearing to decide whether the settlement should be approved on **Month XX, XXXX** at **X:00 .m.** at the **United States District Court for the Northern District of California, Courtroom One 4th Floor, 1301 Clay Street, Oakland, CA 94612**. All persons who timely object to the settlement by **Month XX, XXXX** may ask to appear at the Final Approval Hearing.

You can find more details about the settlement on the website: www.XXXXXXXXXX.com or by calling Class Counsel at 1-617-738-7080. PLEASE DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

First-Class Mail
US Postage
Paid
Permit # __

Settlement Administrator
P.O. Box XXXX
City, State Zip Code

EXHIBIT 2

SETTLEMENT AGREEMENT EXHIBIT 2
EMAIL NOTICE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you received calls that used an artificial or prerecorded voice selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products, between May 17, 2017 and April 17, 2018, you could get a payment from a class action settlement.

[Click Here For A Downloadable Claim Form](#)

[Click Here To Access An Electronic Claim Form](#)

Why did I get this Notice? You received this notice because a proposed settlement of a class action lawsuit filed against Defendants has been reached in the United States District Court for the Northern District of California (*Daniel Berman et al., v. Freedom Financial Network, LLC et al.*, Case No. 4:18-cv-01060-YGR) (the "Settlement").

You may be entitled to compensation under the Settlement because Defendants' records show that, between May 17, 2017 and April 17, 2018, you may have received from Defendants a call that used a prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully.

What is this lawsuit about? Plaintiffs brought this lawsuit alleging that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (TCPA) by making or retaining others to make artificial or prerecorded voice telemarketing calls selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC's goods or services. Plaintiffs also alleged that Defendants made calls and sent text messages to telephone numbers on the National Do-Not-Call Registry without the prior permission of the people contacted. Under the TCPA, a person is entitled to receive \$500 for calls that were placed using an artificial or prerecorded voice without the person's consent and up to \$500 per call for National Do-Not-Call Registry violations. If the person proves the calls were placed willfully, the person is entitled to triple the amount awarded, up to \$1,500. Defendants deny they did anything wrong or violated any law. The Court did not decide in favor of the Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation.

What are the terms of the Settlement? Defendants will pay \$9,750,000 into a fund that will cover: (1) cash payments to eligible persons in the Settlement Class who submit claim forms; (2) attorneys' fees to Class Counsel, in an amount not to exceed one-third of the Settlement Fund or \$3,250,000 as approved by the Court; (3) Class Counsel's out-of-pocket expenses currently estimated to be approximately \$200,000, as approved by the Court; (4) court-approved Service Awards in the amount of \$5,000 each to Plaintiffs Daniel Berman, Stephanie Hernandez, and Erica Russell; and (5) the costs of administering the Settlement. Your share of the fund will depend on a number of factors, including the number of Settlement Class Members that submit claim forms. All Settlement Class Members have a prerecorded call claim. Some Settlement Class Members

also have a National Do-Not-Call claim. Claimants who have a National Do-Not-Call claim in addition to the prerecorded call claim will receive a double share. You can learn if you will receive a double share by visiting the Settlement Website, www.xxx.xxx.com and following the instructions. Class Counsel estimate Settlement Class Member will receive between \$60 and \$170. **This is just an estimate.** The actual amount you will receive could be substantially higher or lower than the estimate. Actual payments will be calculated based on the total number of claims submitted and the total number of claimants who have National Do-Not-Call claims. The claims you are releasing by participating in the Settlement are described in detail on the Settlement Website, www.xxx.xxx.com.

How do I know if I am part of the Settlement? You are in the “Settlement Class” if, between May 17, 2017 and April 17, 2018, you received a call that was placed using an artificial or prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC’s products. Defendants produced a list of telephone numbers that includes the Settlement Class’s telephone numbers. Defendants labeled this list LEADSCIENCE_677. You can learn if your number is on this list by visiting www.XXX.com and following the instructions.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Submit a claim form. To get a cash payment, you must submit a claim form. You may submit a claim form online by going to the Settlement Website at www.XXXXXXXXXXXXXX.com and following the instructions. You may also request a paper copy of the claim form by calling the Settlement Administrator toll-free at 1-800-329-4562 or downloading it from the Settlement Website. You must mail your paper claim form to P.O. Box 173036 Milwaukee, WI 53217. Your claim form must be postmarked or received through the Settlement Website at www.XXXXXXXXXXXXXX.com by **MONTH, DAY, YEAR**. **You may only submit one claim form.**

[Click Here For A Downloadable Claim Form](#)

[Click Here To Access An Electronic Claim Form](#)

Exclude yourself. To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from the *Daniel Berman et al., v. Freedom Financial Network, LLC et al.* settlement. You must sign the letter and include the following statement: “I request to be excluded from the Settlement in the Financial Freedom action.” Your request for exclusion must include your full name, address, and telephone number at which you may be contacted; the telephone number(s) which you contend was unlawfully called; and must be personally signed by you. You must mail your exclusion request postmarked no later than **MONTH, DAY, YEAR** to the following address:

Financial Freedom Settlement Administrator
PO Box 173036
Milwaukee, WI 53217

If you submit a valid exclusion request, you will not get a payment, and you cannot object to the

Settlement. You will not be legally bound by anything that happens in this lawsuit.

Object. If you remain a Settlement Class Member, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Berman v. Freedom Financial Network, LLC*, Case No. 18-cv-01060-YGR), (b) include your name, telephone number, address, and the telephone number on which you received the telemarketing calls at issue in this case; (c) be submitted to the Court either by filing the objection electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, and (d) be filed or postmarked on or before **MONTH, DAY, YEAR**.

Go to the Fairness Hearing. The Court will hold a hearing on **MONTH, DAY, YEAR at X:00 a.m./p.m.** to decide whether to approve the Settlement, including the amount of attorneys' fees and costs to be paid to Class Counsel and the amount of Service Awards to be paid to the Class Representatives. It is not necessary for you to appear at the hearing, but you may attend at your own expense. The hearing will be held at the U.S. District Court for the Northern District of California, located at 1301 Clay Street, Oakland, CA 94612, **in Courtroom One on the Fourth Floor.**

Note: The date and time of the fairness hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, www.XXX.com. You can also monitor case activity and for changes to the dates and time of the fairness hearing by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Do Nothing. If you do nothing, you will be legally bound by the settlement but you will not get a settlement payment.

Get more information. This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www.XXXXXX.com, by contacting class counsel at 1-617-738-7080, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612,

between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

The United States District Court for the Northern District of California has ordered this email notice to be sent. If you wish to UNSUBSCRIBE from future email messages from the Settlement Administrator with regard to this Settlement, please click on this [link](#).

[Click Here For A Downloadable Claim Form](#)

[Click Here To Access An Electronic Claim Form](#)

EXHIBIT 3

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Daniel Berman et al., v. Freedom Financial Network, LLC et al., Case No. 4:18-cv-01060-YGR

If you received calls that were sent using a prerecorded voice selling Freedom Financial Network LLC or Freedom Debt Relief, LLC's products, between May 17, 2017 and April 17, 2018, you may be entitled to benefits from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- Defendants have agreed to pay \$9,750,000 into a fund from which eligible persons who file claims will receive cash awards, estimated to be approximately \$60-\$170 per person after deducting settlement administration expenses, any court-awarded service awards, and court-awarded attorneys' fees and costs.
- The settlement resolves a lawsuit involving persons who, between May 17, 2017 and April 17, 2018, received a call using a prerecorded voice that had been placed to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products.
- Court-appointed lawyers for the class ("Class Counsel") will ask the Court for a payment of approximately \$3,250,000 from the fund as attorneys' fees, which is equal to one-third of the fund. In addition, Class Counsel will ask the Court to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement, which currently amount to approximately \$200,000.
- Defendants deny all allegations of wrongdoing in the lawsuit. As part of the proposed settlement, Defendants do not admit to any wrongdoing and continue to deny the allegations against it.
- The two sides disagree on whether Plaintiffs and the class could have won at trial.
- Your legal rights are affected whether you act, or don't act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM BY DATE	This is the only way to receive a payment.
EXCLUDE YOURSELF BY DATE	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims in this case.
OBJECT BY DATE	Write to the Court explaining why you don't like the settlement.
ATTEND A HEARING ON DATE	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

BASIC INFORMATION

1. What is this Notice and why should I read it?

The purpose of this Notice is to let you know that a proposed settlement has been reached in the class action lawsuit entitled *Daniel Berman et al., v. Freedom Financial Network, LLC et al., Case No. 4:18-cv-01060-YGR*, pending in the U.S. District Court for the Northern District of California. You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What is this lawsuit about?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

The class representatives brought this lawsuit alleging that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (TCPA) by making calls using an artificial or prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products. Plaintiffs also alleged that Defendants made calls and sent text messages to telephone numbers on the National Do-Not-Call Registry without the prior permission of the people contacted. Under the TCPA, a person is entitled to receive \$500 for calls that were placed using an artificial or prerecorded message without the person's consent and up to \$500 per call for National Do-Not-Call Registry violations. If the person proves the calls were placed or sent willfully, the person is entitled to triple the amount awarded up to \$1,500.

The Court has certified a class for settlement purposes only (the "Settlement Class"). U.S. District Court Judge Yvonne Gonzalez Rogers (the "Court") is in charge of this class action.

Defendants deny that they should be held liable for calls that were made.

THE SETTLEMENT

3. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The class representatives and their attorneys think the settlement is best for the Settlement Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am a part of the settlement?

You are in the "Settlement Class" if, between May 17, 2017 and April 17, 2018, you received a call that was placed using an artificial or prerecorded voice in order to sell Freedom Financial Network, LLC and Freedom Debt Relief, LLC's products.

QUESTIONS? CALL 1-800-329-4562 TOLL FREE OR VISIT WWW.XXX.COM
PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT
OR THE CLAIM PROCESS.

Defendants produced a list of telephone numbers that includes Settlement Class Members' telephone numbers. Defendants labeled this list LEADSCIENCE_677. You can learn if your number is on this list by visiting www.XXX.com and following the instructions.

The original "Complaint" in this matter proposed classes that covered a longer time period than the Settlement covers. The Settlement covers a shorter time period because that is the time period that Defendants' records show calls were placed selling Freedom Financial Network, LLC and Freedom Debt Relief, LLC's products.

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the settlement provide?

Defendants have agreed to pay \$9,750,000 to be divided among all Settlement Class Members who send in a valid Claim Form after any fees, costs, service awards, and settlement administration expenses have been deducted. Defendant Fluent, Inc. also has agreed to change its telemarketing practices. The Settlement Agreement describes these changes in detail. The changes include (a) a bar on prerecorded calls, (b) changes to Fluent's recordkeeping so that Fluent and its affiliated companies are required to maintain records of calls sufficient to identify the date, time, and name of the person consenting, (c) implementation of procedures designed to identify numbers associated with invalid names and processes to ensure that those numbers are not called, (d) a bar on placing any further telemarketing calls to consumers who Fluent has asserted previously consented to receive calls selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC's services, (e) revising Fluent's TCPA consent form to ensure that consent is "clear and conspicuous and the language complies with the TCPA, including without limitation having the consent language and process reviewed quarterly by internal and external counsel.

6. How much will my payment be?

Each Settlement Class Member is entitled to submit a Claim Form. Your share of the settlement will depend on the total number of timely and valid Claim Forms that Settlement Class Members submit and whether you have a National Do-Not-Call Registry claim in addition to a prerecorded call claim. Claimants who have a National Do-Not-Call claim in addition to the prerecorded call claim will receive a double share. You can learn if you will receive a double share by visiting the Settlement Website, www.xxx.xxxx.com and following the instructions. Class Counsel estimate you will receive approximately \$60-\$170 but this is only an estimate. The actual amount you will receive could be substantially higher or lower than the estimate. Actual payments will be calculated based on the total number of claims submitted and the total number of claimants who have National Do-Not-Call claims. The claims you are releasing by participating in the Settlement are described in detail on the Settlement Website, www.xxx.xxxx.com.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

7. How do I make a claim?

To qualify for payment, you must submit a Claim Form by **Month XX, XXXX**. You may submit a Claim Form online by going to the Settlement Website at www.XXX.com and following the instructions. If you received a postcard with an attached claim form, simply complete the Claim Form, tear it off at the perforated line, and mail. You also may download a paper Claim Form on the Settlement Website or call the Settlement Administrator at 1-800-329-4562 to request a paper Claim Form. Claim Forms sent by mail must be postmarked by **Month XX, XXXX** and mailed to:

QUESTIONS? CALL 1-800-329-4562 TOLL FREE OR VISIT WWW.XXX.COM
PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT
OR THE CLAIM PROCESS.

Freedom Financial TCPA Settlement
Settlement Administrator
P.O. Box. 173036
Milwaukee, WI 53217

8. When will I get my payment?

The Court will hold a hearing on **Month XX, XXXX** to decide whether to approve the settlement. If the settlement is approved, appeals may still follow. It is always uncertain whether these appeals can be resolved, and resolving them can take more than a year. Please be patient. The date and time of the hearing may change. Changes and updates will be posted on the Settlement Website at **www.XXX.com**.

9. What am I giving up to get a payment or stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. That means you can't sue, continue to sue, or be part of any other lawsuit against Defendants regarding the claims that are the subject of the settlement. If the settlement is approved and becomes final and not subject to appeal, then you and all Settlement Class Members release all "Released Claims" against all "Released Parties." It also means that all of the Court's orders will apply to you and legally bind you.

The Settlement Agreement (available at **www.XXX.com**) describes the claims you are releasing (the "Released Claims") and against whom you are releasing claims ("Released Parties") in detail, so read it carefully. To summarize, the Release includes claims that arise out of Defendants' improper use of an "artificial or prerecorded voice" to make calls selling Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products without the recipients' consent. Under the TCPA a person is entitled to receive \$500 for calls that were placed using a prerecorded message without the person's consent. If the person proves the calls were placed willfully, the person is entitled to triple the amount up to \$1,500. The Released Claims also include claims for relief under the TCPA's National Do-Not-Call regulations, which provide for up to \$500 per violation call (tripled for willfully-placed calls) if a person receives two or more calls within a twelve-month period to a telephone number had been on the National Do-Not-Call Registry for at least 31 days and the call recipient had not provided prior express written consent to receive the calls. The Released Claims also include claims for injunctive relief. In other words, if you participate in the Settlement, you will not be able to sue Defendants to change their practices. The Release applies to claims for injunctive relief against all Defendants even though Defendants Freedom Financial Network, LLC, Freedom Debt Relief, LLC, and Lead Science, LLC did not agree to practice changes as a result of the Settlement. Plaintiffs and Defendants believe this is fair because (1) this case alleges that Fluent, Inc. failed to obtain valid prior express written consent to place telemarketing calls selling Freedom Financial Network, LLC and Freedom Debt Relief, LLC's services; (2) Freedom Financial Network, LLC and Freedom Debt Relief, LLC no longer obtain telemarketing leads from Fluent, Inc.; and (3) Lead Science, LLC no longer places prerecorded calls in connection with any relationship it may have with Fluent, Inc.

The Settlement Agreement is between Plaintiffs and Defendants only. By participating in the settlement, you **are not releasing** any claims for damages you may have against anyone else.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement and you want to keep the right to sue or continue to sue Defendants, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself—or is sometimes referred to as "opting out" of the Settlement Class.

10. How do I exclude myself from the settlement?

QUESTIONS? CALL 1-800-329-4562 TOLL FREE OR VISIT **WWW.XXX.COM**
PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT
OR THE CLAIM PROCESS.

To exclude yourself from the settlement, you must send a letter saying that you want to be excluded from the *Daniel Berman et al., v. Freedom Financial Network, LLC et al.* settlement. You must sign the letter and include the following statement: "I request to be excluded from the settlement in the Freedom Financial action." You must also include your full name, address, telephone number where you may be contacted, the telephone numbers you maintain were called, and your signature. Your exclusion request must be postmarked no later than **Month XX, XXXX**, and must be mailed to:

Freedom Financial TCPA Settlement
Settlement Administrator
P.O. Box 173036
Milwaukee, WI 53217

You cannot exclude yourself on the phone or by fax or email. If you ask to be excluded, you will not get any payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

11. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this settlement resolves. If you already have a lawsuit that may relate to the claims being released as part of this class settlement, you should speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month XX, XXXX**.

12. If I exclude myself, can I get anything from this settlement?

No. If you exclude yourself, do not submit a claim to ask for a payment.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Broderick Law, P.C., The Law Office of Matthew P. McCue, Paronich Law, P.C., and Terrell Marshall Law Group PLLC to represent you and other Settlement Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$3,250,000 to them for attorneys' fees, which is one-third of the Settlement Fund, together with \$200,000 to cover out-of-pocket expenses. This payment would pay Class Counsel for their time investigating the facts, litigating the case, and negotiating the settlement. Class Counsel also will request the following service awards for the Plaintiffs: Daniel Berman: \$5,000, Stephanie Hernandez: \$5,000, Erica Russell: \$5,000. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

15. How do I object to the settlement?

If you remain a Settlement Class Member, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval,

QUESTIONS? CALL 1-800-329-4562 TOLL FREE OR VISIT WWW.XXX.COM
PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT
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no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Berman v. Freedom Financial Network, LLC*, Case No. 18-cv-01060-YGR), (b) include your name, telephone number, address, and the telephone number on which you received the telemarketing calls at issue in this case; (c) be submitted to the Court either by filing the objection electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the address below, and (d) be filed or postmarked on or before **MONTH, DAY, YEAR**.

Daniel Berman et al., v. Freedom Financial Network, LLC et al.

Case No. 4:18-cv-01060

Class Action Clerk

U.S. District Court for the Northern District of California

1301 Clay Street, Suite 400 S

Oakland, CA 94612

16. What's the difference between objecting and excluding myself from the settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court hold a hearing on the fairness of the settlement?

The Court will hold the final fairness hearing at **X:00 x.m.** on **Month XX, XXXX**, before the Honorable Yvonne Gonzales Rogers at the U.S. District Court for the Northern District of California, Courtroom One, 4th Floor, 1301 Clay Street, Oakland, CA 94612. The purpose of the hearing is for the Court to determine whether the settlement is fair, reasonable, adequate, and in the best interests of the class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the service award to the class representatives. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Note: The date and time of the fairness hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, www.XXX.com. You can also monitor case activity and for changes to the dates and time of the fairness hearing by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come to the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written

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objection was filed and mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

19. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you file an objection (*see* Question 15, above) and intend to appear at the hearing, you must state your intention to do so in your objection. You cannot speak at the hearing if you exclude yourself or if you fail to state your intention to do so in your objection.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the claims in this case.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may review the Settlement Agreement on the Settlement Website at www.XXX.com. You can also get a copy of the Settlement Agreement by contacting:

Edward A. Broderick
Broderick Law, P.C.
176 Federal Street, Fifth Floor
Boston, MA 02110
Tel: 617-738-7080
Fax: 617-830-0327
Email: ted@broderick-law.com

22. How do I get more information?

You can call 1-800-329-4562 toll free or write to Freedom Financial Settlement Administrator, P.O. Box 173036, Milwaukee, WI 53217; or visit the Settlement Website at www.XXX.com, where you will find answers to common questions about the settlement, a Claim Form, plus other information to help you determine whether you are a member of the Settlement Class. You can also call Class Counsel Edward A. Broderick at 617-738-7080.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

QUESTIONS? CALL 1-800-329-4562 TOLL FREE OR VISIT WWW.XXX.COM
PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT 4

SETTLEMENT AGREEMENT EXHIBIT 1(b)

Daniel Berman et al., v. Freedom Financial Network, LLC et al., Case No. 4:18-cv-01060-YGR

CLAIM FORM

To receive benefits from this Settlement, your Claim Form *must* be electronically submitted or postmarked on or before **MONTH DAY YEAR.**

You may submit your completed and signed Claim Form online at www.XXXXXXXXXX.com or by mail to the following address:

**Settlement Administrator
P.O. Box 173036
Milwaukee, WI 53217**

You must complete all sections and sign below in order to receive any benefits from this Settlement.

By submitting a claim, you are attesting that you received between May 17, 2017 and April 17, 2018, a call using an artificial or prerecorded voice in order to sell Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products. You may submit only one claim.

_____ MI _____
First Name Last Name

Business Name (If applicable)

Street Address

_____ - _____
City State ZIP ZIP4 (optional)

_____ ;
Email Address Contact Phone Number(s)

Telephone Number(s) at which calls were received:

- 1. () - ;
- 2. () - ;
- 3. () - .

Calls must have been received from Defendants, used an artificial or prerecorded voice, and promoted or could have resulted in the sale of Freedom Financial Network, LLC or Freedom Debt Relief, LLC's products.

Class Member ID from email or postcard notice (if you did not receive such a notice, leave this blank): _____

I declare that I have accurately filled out this form.

Signature: _____ Date: _____