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11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 JORDAN BEAL, individually and on )  
 14 behalf of all others similarly situated, )

15 Plaintiff, )

16 vs. )

17 HOMEXPRESS MORTGAGE CORP. )  
 18 and DOES 1 through 10, inclusive, and )  
 19 each of them, )

20 Defendants. )

Case No. '20CV2516 JLS AHG

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF:**

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(c)]

**DEMAND FOR JURY TRIAL**

1 Plaintiff JORDAN BEAL (“Plaintiff”), individually and on behalf of all  
2 others similarly situated, alleges the following upon information and belief based  
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of Defendant, in negligently, knowingly,  
8 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of  
9 the Telephone Consumer Protection Act, *47 U.S.C. § 227, et seq.* (“TCPA”).

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,  
12 a resident of California, seeks relief on behalf of a Class, which will result in at  
13 least one class member belonging to a different state than that of Defendant, a  
14 Delaware corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call  
15 in violation of the TCPA, which, when aggregated among a proposed class in the  
16 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
17 Therefore, both diversity jurisdiction and the damages threshold under the Class  
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.  
19 Jurisdiction is also proper under *28 U.S.C. § 1331* because Plaintiff’s claims arise  
20 under a law of the United States, the TCPA.

21 3. Venue is proper in the United States District Court for the Southern  
22 District of California pursuant to *28 U.S.C. § 1391(b)* because Defendant does  
23 business within this District and a substantial part of the events or omissions giving  
24 rise to Plaintiff’s claims occurred within this District.

25 **PARTIES**

26 4. Plaintiff, JORDAN BEAL (“Plaintiff”), is a natural person residing in  
27 Solana Beach, California, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

28 5. Defendant, HOMEXRESS MORTGAGE CORP. (“Defendant”), is a

1 mortgage lending company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

2 6. The above-named Defendant, and its subsidiaries and agents, are  
3 collectively referred to as “Defendants.” The true names and capacities of the  
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
6 names. Each of the Defendants designated herein as a DOE is legally responsible  
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
8 Complaint to reflect the true names and capacities of the DOE Defendants when  
9 such identities become known.

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

16 **FACTUAL ALLEGATIONS**

17 8. Beginning during or about October of 2020, Plaintiff received text  
18 messages from Defendant on Plaintiff’s cellular telephone number ending in -0980,  
19 in an attempt to solicit Plaintiff to purchase Defendant’s products and services.

20 9. During this time, Defendant began to use Plaintiff’s cellular telephone  
21 for the purpose of sending Plaintiff spam advertisements and/or promotional offers,  
22 via text messages, including text messages sent to and received by Plaintiff on or  
23 during or about October of 2020 from Defendant’s phone number, (909) 710-6233.

24 10. During or about October of 2020, Plaintiff received text messages  
25 from Defendant, including, but not limited to, a message that read: “NonQM✓-Got  
26 Fall Out? This is Ira with HomeXpress Mortgage Corp, As NonQM✓ lenders  
27 disappear, HomeXpress stays strong and continuously expanding  
28 products.✓Jumbo loans now up to \$3M✓LTV up to 85%✓DTI 50% Max✓Gift

1 funds OK. We'll help you score for your Borrower! Call or Text me now!"

2 11. This text message placed to Plaintiff's cellular telephone was placed  
3 via Defendant's *SMS Blasting Platform*, i.e., an "automatic telephone dialing  
4 system," ("ATDS") as defined by 47 U.S.C. § 227(a)(1) as prohibited by 47 U.S.C.  
5 § 227(b)(1)(A).

6 12. The telephone number that Defendant, or its agent, called was  
7 assigned to a cellular telephone service for which Plaintiff incurs a charge for  
8 incoming calls pursuant to 47 U.S.C. § 227(b)(1).

9 13. Defendant's text messages constituted calls that were not for  
10 emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

11 14. During all relevant times, Defendant did not possess Plaintiff's "prior  
12 express consent" to receive text messages using an automatic telephone dialing  
13 system on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

14 15. Further, Plaintiff's cellular telephone number ending in -0980 has  
15 been on the National Do-Not-Call Registry since 2003.

16 16. Defendant placed multiple calls soliciting its business to Plaintiff on  
17 his cellular telephone ending in -0980 during or about October of 2020.

18 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
19 64.1200(c)(2) as they were attempts to promote or sell Defendant's products and  
20 services.

21 18. Plaintiff received numerous solicitation calls from Defendant within a  
22 12-month period.

23 19. Defendant continued to call Plaintiff in an attempt to solicit its  
24 services and in violation of the National Do-Not-Call provisions of the TCPA.

25 20. Upon information and belief, and based on Plaintiff's experiences of  
26 being called by Defendant after being on the National Do-Not-Call list for several  
27 years prior to Defendant's initial text message, and at all relevant times, Defendant  
28 failed to establish and implement reasonable practices and procedures to effectively

1 prevent telephone solicitations in violation of the regulations prescribed under 47  
2 U.S.C. § 227(c)(5).

3 **CLASS ALLEGATIONS**

4 21. Plaintiff brings this action individually and on behalf of all others  
5 similarly situated, as a member the two proposed classes (hereafter, jointly, “The  
6 Classes”).

7 22. The class concerning the ATDS claim for no prior express consent  
8 (hereafter “The ATDS Class”) is defined as follows:

9 All persons within the United States who received any  
10 solicitation/telemarketing calls from Defendant to said  
11 person’s cellular telephone made through the use of any  
12 automatic telephone dialing system or an artificial or  
13 prerecorded voice and such person had not previously  
14 consented to receiving such calls, or who had revoked  
15 such consent, within the four years prior to the filing of  
16 this Complaint through the date of class certification.

17 23. The class concerning the National Do-Not-Call violations (hereafter  
18 “The DNC Class”) is defined as follows:

19 All persons within the United States registered on the  
20 National Do-Not-Call Registry for at least 30 days, who  
21 had not granted Defendant prior express consent nor had  
22 a prior established business relationship, who received  
23 more than one call made by or on behalf of Defendant  
24 that promoted Defendant’s products or services, within  
25 any twelve-month period, within four years prior to the  
26 filing of this Complaint through the date of class  
27 certification.

28 24. Plaintiff represents, and is a member of, The ATDS Class, consisting  
of all persons within the United States who received any solicitation/telemarketing  
calls from Defendant to said person’s cellular telephone made through the use of

1 any automatic telephone dialing system or an artificial or prerecorded voice and  
2 such person had not previously consented to receiving such calls, or who had  
3 revoked such consent, within the four years prior to the filing of this Complaint  
4 through the date of class certification.

5 25. Plaintiff represents, and is a member of, The DNC Class, consisting  
6 of all persons within the United States registered on the National Do-Not-Call  
7 Registry for at least 30 days, who had not granted Defendant prior express consent  
8 nor had a prior established business relationship, who received more than one call  
9 made by or on behalf of Defendant that promoted Defendant's products or services,  
10 within any twelve-month period, within four years prior to the filing of this  
11 Complaint through the date of class certification.

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

16 27. The Classes are so numerous that the individual joinder of all of its  
17 members is impractical. While the exact number and identities of The Classes'  
18 members are unknown to Plaintiff at this time and can only be ascertained through  
19 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
20 The Classes include thousands of members. Plaintiff alleges that The Classes'  
21 members may be ascertained by the records maintained by Defendant.

22 28. Plaintiff and members of The ATDS Class were harmed by the acts of  
23 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
24 and The ATDS Class members via their cellular telephones thereby causing  
25 Plaintiff and The ATDS Class members to incur certain charges or reduced  
26 telephone time for which Plaintiff and The ATDS Class members had previously  
27 paid by having to retrieve or administer messages left by Defendant during those  
28 illegal calls, and invading the privacy of said Plaintiff and The ATDS Class

1 members.

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

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

20 30. As a person that received telemarketing/solicitation calls from  
21 Defendant using an automatic telephone dialing system or an artificial or  
22 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
23 claims that are typical of The ATDS Class.

24 31. Plaintiff and members of The DNC Class were harmed by the acts of  
25 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
26 and The DNC Class members via their telephones for solicitation purposes, thereby  
27 invading the privacy of said Plaintiff and The DNC Class members whose  
28 telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the



1 DNC Class members were damaged thereby.

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

- 8 a. Whether, within the four years prior to the filing of this  
9 Complaint, Defendant or its agents placed more than one  
10 solicitation call to the members of the DNC Class whose  
11 telephone numbers were on the National Do-Not-Call Registry  
12 and who had not granted prior express consent to Defendant and  
13 did not have an established business relationship with  
14 Defendant;
- 15 b. Whether Defendant obtained prior express written consent to  
16 place solicitation calls to Plaintiff or the DNC Class members'  
17 telephones;
- 18 c. Whether Plaintiff and the DNC Class members were damaged  
19 thereby, and the extent of damages for such violation; and
- 20 d. Whether Defendant should be enjoined from engaging in such  
21 conduct in the future.

22 33. As a person that received numerous solicitation calls from Defendant  
23 within a 12-month period, who had not granted Defendant prior express consent  
24 and did not have an established business relationship with Defendant, Plaintiff is  
25 asserting claims that are typical of the DNC Class.

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



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

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

17 37. Defendant has acted or refused to act in respects generally applicable  
18 to The Classes, thereby making appropriate final and injunctive relief with regard  
19 to the members of the Classes as a whole.

20 **FIRST CAUSE OF ACTION**

21 **Negligent Violations of the Telephone Consumer Protection Act**

22 **47 U.S.C. § 227(b)**

23 **On Behalf of the ATDS Class**

24 38. Plaintiff repeats and incorporates by reference into this cause of action  
25 the allegations set forth above at Paragraphs 1-37.

26 39. The foregoing acts and omissions of Defendant constitute numerous  
27 and multiple negligent violations of the TCPA, including but not limited to each  
28 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular

1 47 U.S.C. § 227 (b)(1)(A).

2 40. As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b),  
3 Plaintiff and the ATDS Class Members are entitled an award of \$500.00 in statutory  
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 41. Plaintiff and the ATDS Class members are also entitled to and seek  
6 injunctive relief prohibiting such conduct in the future.

7 **SECOND CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
9 **Act**

10 **47 U.S.C. § 227(b)**

11 **On Behalf of the ATDS Class**

12 42. Plaintiff repeats and incorporates by reference into this cause of action  
13 the allegations set forth above at Paragraphs 1-37.

14 43. The foregoing acts and omissions of Defendant constitute numerous  
15 and multiple knowing and/or willful violations of the TCPA, including but not  
16 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),  
17 and in particular 47 U.S.C. § 227 (b)(1)(A).

18 44. As a result of Defendant’s knowing and/or willful violations of 47  
19 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of  
20 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
21 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

22 45. Plaintiff and the Class members are also entitled to and seek injunctive  
23 relief prohibiting such conduct in the future.

24 **THIRD CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. § 227(c)**

27 **On Behalf of the DNC Class**

28 46. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-37.

2 47. The foregoing acts and omissions of Defendant constitute numerous  
3 and multiple negligent violations of the TCPA, including but not limited to each  
4 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
5 *47 U.S.C. § 227(c)(5)*.

6 48. As a result of Defendant’s negligent violations of *47 U.S.C. § 227(c)*,  
7 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
8 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

9 49. Plaintiff and the DNC Class members are also entitled to and seek  
10 injunctive relief prohibiting such conduct in the future.

11 **FOURTH CAUSE OF ACTION**

12 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

13 **Act**

14 **47 U.S.C. § 227(c)**

15 **On Behalf of the DNC Class**

16 50. Plaintiff repeats and incorporates by reference into this cause of action  
17 the allegations set forth above at Paragraphs 1-37.

18 51. The foregoing acts and omissions of Defendants constitute numerous  
19 and multiple knowing and/or willful violations of the TCPA, including but not  
20 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
21 in particular *47 U.S.C. § 227(c)(5)*.

22 52. As a result of Defendant’s knowing and/or willful violations of *47*  
23 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
24 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
25 *§ 227(c)(5)*.

26 53. Plaintiff and the DNC Class members are also entitled to and seek  
27 injunctive relief prohibiting such conduct in the future.

28 ///

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. § 227(b)**

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

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection**

**Act**

**47 U.S.C. § 227(b)**

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

**THIRD CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. § 227(c)**

- As a result of Defendant’s negligent violations of *47 U.S.C. § 227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

**FOURTH CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. § 227(c)**

- As a result of Defendant’s willful and/or knowing violations of 47 U.S.C. § 227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).
- Any and all other relief that the Court deems just and proper.

54. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 29th Day of December, 2020.

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

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