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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

11 Richard Winters, Jr., individually and) Case No.
12 on behalf of all others similarly situated,)

13 Plaintiff,

14 vs.

15 Quicken Loans Inc.,

16 Defendant.

) **CLASS ACTION**

) **COMPLAINT FOR VIOLATIONS**

) **OF:**

- 17) 1. NEGLIGENT VIOLATIONS
- 18) OF THE TELEPHONE
- 19) CONSUMER PROTECTION
- 20) ACT [47 U.S.C. §227(b)]
- 21) 2. WILLFUL VIOLATIONS
- 22) OF THE TELEPHONE
- 23) CONSUMER PROTECTION
- 24) ACT [47 U.S.C. §227(b)]

25) **DEMAND FOR JURY TRIAL**

26 Plaintiff RICHARD WINTERS, JR. (“Plaintiff”), individually and on
27 behalf of all others similarly situated, alleges the following upon information and
28 belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others
similarly situated seeking damages and any other available legal or equitable
remedies resulting from the illegal actions of QUICKEN LOANS INC

1 (“Defendant or QL”), in negligently, knowingly, and/or willfully contacting
2 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer
3 Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) thereby invading Plaintiff’s
4 privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
7 a resident of Arizona, seeks relief on behalf of a Class, which will result in at
8 least one class member belonging to a different state than that of Defendant, a
9 business incorporated in the State of Michigan. Plaintiff also seeks up to
10 \$1,500.00 in damages for each call in violation of the TCPA, which, when
11 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
12 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
13 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
14 present, and this Court has jurisdiction.

15 3. Jurisdiction is also proper because there exists a federal question
16 based on the fact Plaintiff’s claims arise from the Telephone Consumer Protection
17 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), a federal statute.

18 4. Venue is proper in the United States District Court for the District of
19 Arizona pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business
20 within the State of Arizona and Plaintiff resides within the County of Maricopa.

21 **PARTIES**

22 5. Plaintiff, RICHARD WINTERS, JR. (“Plaintiff”), is a natural person
23 residing in Mesa, Arizona and is a “person” as defined by 47 U.S.C. § 153 (39).

24 6. Defendant is a mortgage lending company, and is a “person” as
25 defined by 47 U.S.C. § 153 (39).

26 7. The above named Defendant, and its subsidiaries and agents, are
27 collectively referred to as “Defendant.”

28 8. Plaintiff is informed and believes that at all relevant times, each and

1 every Defendant was acting as an agent and/or employee of each of the other
2 Defendant and was acting within the course and scope of said agency and/or
3 employment with the full knowledge and consent of each of the other Defendant.
4 Plaintiff is informed and believes that each of the acts and/or omissions
5 complained of herein was made known to, and ratified by, each of the other
6 Defendant.

7 **FACTUAL ALLEGATIONS**

8 9. Beginning in or around October of 2018, Defendant contacted
9 Plaintiff, via calls and text messages, on his cellular telephone ending in -6678, in
10 an effort to sell or solicit its services.

11 10. On or about October of 2018, Plaintiff received telephone calls from
12 Defendant on his cellular telephone number ending in -6678. Concurrently,
13 Plaintiff received text messages from Defendant on his cellular telephone number
14 ending in -6678.

15 11. Beginning in or around October of 2018, Defendant contacted
16 Plaintiff via telephone calls to Plaintiff's cellular telephone number ending in -
17 6678, in an attempt to solicit Plaintiff to purchase Defendant's services.

18 12. Defendant used an "automatic telephone dialing system" as defined
19 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

20 13. Defendant contacted or attempted to contact Plaintiff from telephone
21 number (480) 337-7104, and (480) 305-9634, confirmed to be Defendant's
22 telephone numbers.

23 14. Defendant's calls constituted calls that were not for emergency
24 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

25 15. Defendant's calls were placed to telephone number assigned to a
26 cellular telephone service for which Plaintiff incurs a charge for incoming calls
27 pursuant to *47 U.S.C. § 227(b)(1)*.

28 16. Plaintiff was never a customer of Defendant and never provided his

1 cellular telephone number Defendant for any reason whatsoever.

2 17. In addition, on at least one occasion, Plaintiff answered the telephone
3 and told Defendant to stop calling him. Accordingly, Defendant never received
4 Plaintiff's "prior express consent" to receive calls using an automatic telephone
5 dialing system or an artificial or prerecorded voice on his cellular telephone
6 pursuant to *47 U.S.C. § 227(b)(1)(A)*.

7 18. Defendant placed multiple calls soliciting its business to Plaintiff on
8 his cellular telephone ending in -6678 between on or around October of 2018.

9 19. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
10 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

11 20. Plaintiff alleges upon information and belief, including without
12 limitation his experiences as recounted herein, especially his experience of being
13 called after expressly requesting that Defendant cease all calls to him, that
14 Defendant lacks reasonable policies and procedures to avoid the violations of the
15 Telephone Consumer Protection act herein described.

16 21. Concurrent with the telephone calls, Defendant began to use
17 Plaintiff's cellular telephone for the purpose of sending Plaintiff spam
18 advertisements and/or promotional offers, via text messages, including a text
19 message sent to and received by Plaintiff on or about October 4, 2018.

20 22. On or before October 5, 2018, Plaintiff started receiving text
21 messages from Defendant. The first text read:

22
23 Jeremy Streicher-Martinez Mortgage Banker Call or Text
24 (480) 305-9634 Email: [JeremyStreicher-](mailto:JeremyStreicher-Martinez@quickenloans.com)
25 [Martinez@quickenloans.com](mailto:JeremyStreicher-Martinez@quickenloans.com) Fax: (844) 429-7701
26 NMLS: [1052442](https://nmlsconsumerlookupportal.com/lookup/1052442)
27

28 23. These text messages placed to Plaintiff's cellular telephone were

1 placed via an “automatic telephone dialing system,” (“ATDS”) as defined by 47
2 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

3 24. The telephone number that Defendant, or their agent texted was
4 assigned to a cellular telephone service for which Plaintiff incurs a charge for
5 incoming texts pursuant to 47 U.S.C. § 227 (b)(1).

6 25. These text messages constituted texts that were not for emergency
7 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

8 26. Plaintiff was never a customer of Defendant and never provided his
9 cellular telephone number Defendant for any reason whatsoever. Accordingly,
10 Defendant and their agents never received Plaintiffs prior express consent to
11 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

12 27. These text messages by Defendant, or its agents, violated 47 U.S.C.
13 § 227(b)(1).

14 28. Plaintiff received multiple solicitation calls and solicitation texts
15 from Defendant within a 12-month period.

16 CLASS ALLEGATIONS

17 29. Plaintiff brings this action individually and on behalf of all others
18 similarly situated, as a member the three proposed classes (hereafter, jointly, “The
19 Classes”).

20 30. The class concerning the ATDS Call claim for no prior express
21 telephone call consent (hereafter “The ATDS Call Class”) is defined as follows:

22 All persons within the United States who received any
23 solicitation/telemarketing telephone calls from
24 Defendant to said person’s cellular telephone made
25 through the use of any automatic telephone dialing
26 system or an artificial or prerecorded voice and such
27 person had not previously consented to receiving such
28 calls within the four years prior to the filing of this
Complaint

1 31. The class concerning the ATDS Call claim for revocation of
2 telephone call consent, to the extent prior consent existed (hereafter “The ATDS
3 Call Revocation Class”) is defined as follows:

4
5 All persons within the United States who received any
6 solicitation/telemarketing telephone calls from
7 Defendant to said person’s cellular telephone made
8 through the use of any automatic telephone dialing
9 system or an artificial or prerecorded voice and such
10 person had revoked any prior express consent to receive
11 such calls prior to the calls within the four years prior to
12 the filing of this Complaint.

13 32. The class concerning the ATDS Text claim for no prior express text
14 message consent (hereafter “The ATDS Text Class”) is defined as follows:

15 All persons within the United States who received any
16 unsolicited text messages from Defendant which text
17 message was not made for emergency purposes or with
18 the recipient’s prior express consent within the four years
19 prior to the filing of this Complaint.

20 33. Plaintiff represents, and is a member of, The ATDS Call Class,
21 consisting of all persons within the United States who received any solicitation
22 telephone calls from Defendant to said person’s cellular telephone made through
23 the use of any automatic telephone dialing system or an artificial or prerecorded
24 voice and such person had not previously not provided their cellular telephone
25 number to Defendant within the four years prior to the filing of this Complaint.

26 34. Plaintiff represents, and is a member of, The ATDS Call Revocation
27 Class, consisting of all persons within the United States who received any
28 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
telephone made through the use of any automatic telephone dialing system or an

1 artificial or prerecorded voice and such person had revoked any prior express
2 consent to receive such calls prior to the calls within the four years prior to the
3 filing of this Complaint.

4 35. Plaintiff represents, and is a member of, The ATDS Text Class,
5 consisting of all persons within the United States who received any solicitation
6 telephone calls from Defendant to said person's cellular telephone made through
7 the use of any automatic telephone dialing system or an artificial or prerecorded
8 voice and such person had not previously not provided their cellular telephone
9 number to Defendant within the four years prior to the filing of this Complaint.

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

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

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

1 calls, and invading the privacy of said Plaintiff and ATDS Call Class and ATDS
2 Call Revocation Class members.

3 39. Plaintiff and members of the ATDS Text Class were harmed by the
4 acts of Defendant in at least the following ways: Defendant, either directly or
5 through their agents, illegally contacted Plaintiff and the ATDS Text Class
6 members via their cellular telephones by using marketing and text messages,
7 thereby causing Plaintiff and the ATDS Text Class members to incur certain
8 cellular telephone charges or reduce cellular telephone time for which Plaintiff
9 and the ATDS Text Class members previously paid, and invading the privacy of
10 said Plaintiff and the ATDS Text Class members. Plaintiff and the ATDS Text
11 Class members were damaged thereby.

12 40. Common questions of fact and law exist as to all members of The
13 ATDS Call Class which predominate over any questions affecting only individual
14 members of The ATDS Call Class. These common legal and factual questions,
15 which do not vary between ATDS Call Class members, and which may be
16 determined without reference to the individual circumstances of any ATDS Call
17 Class members, include, but are not limited to, the following:

- 18 a. Whether, within the four years prior to the filing of this
19 Complaint, Defendant made any telemarketing/solicitation call
20 (other than a call made for emergency purposes or made with the
21 prior express consent of the called party) to a ATDS Call Class
22 member using any automatic telephone dialing system or any
23 artificial or prerecorded voice to any telephone number assigned
24 to a cellular telephone service;
- 25 b. Whether Plaintiff and the ATDS Call Class members were
26 damaged thereby, and the extent of damages for such violation;
27 and
- 28 c. Whether Defendant should be enjoined from engaging in such

1 conduct in the future.

2 41. As a person that received numerous telemarketing/solicitation calls
3 from Defendant using an automatic telephone dialing system or an artificial or
4 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
5 claims that are typical of The ATDS Call Class.

6 42. Common questions of fact and law exist as to all members of The
7 ATDS Call Revocation Class which predominate over any questions affecting
8 only individual members of The ATDS Call Revocation Class. These common
9 legal and factual questions, which do not vary between ATDS Call Revocation
10 Class members, and which may be determined without reference to the individual
11 circumstances of any ATDS Call Revocation Class members, include, but are not
12 limited to, the following:

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

26 43. As a person that received numerous telemarketing/solicitation calls
27 from Defendant using an automatic telephone dialing system or an artificial or
28 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff

1 is asserting claims that are typical of The ATDS Call Revocation Class.

2 44. Common questions of fact and law exist as to all members of The
3 ATDS Text Class which predominate over any questions affecting only
4 individual members of The ATDS Text Class. These common legal and factual
5 questions, which do not vary between ATDS Text Class members, and which
6 may be determined without reference to the individual circumstances of any
7 ATDS Text Class 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 or its agents sent any text messages to the
10 ATDS Text Class (other than a message made for emergency
11 purposes or made with the prior express consent of the called
12 party) to a ATDS Text Class member using any automatic dialing
13 system to any telephone number assigned to a cellular phone
14 service;
- 15 b. Whether Plaintiff and the ATDS Text Class members were
16 damaged thereby, and the extent of damages for such violation;
17 and
- 18 c. Whether Defendant and their agents should be enjoined from
19 engaging in such conduct in the future.

20 45. As a person that received at least one marketing and text message
21 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
22 typical of the ATDS Text Class.

23 46. Plaintiff will fairly and adequately protect the interests of the
24 members of The Classes. Plaintiff has retained attorneys experienced in the
25 prosecution of class actions.

26 47. A class action is superior to other available methods of fair and
27 efficient adjudication of this controversy, since individual litigation of the claims
28 of all Classes members is impracticable. Even if every Class member could

1 afford individual litigation, the court system could not. It would be unduly
2 burdensome to the courts in which individual litigation of numerous issues would
3 proceed. Individualized litigation would also present the potential for varying,
4 inconsistent, or contradictory judgments and would magnify the delay and
5 expense to all parties and to the court system resulting from multiple trials of the
6 same complex factual issues. By contrast, the conduct of this action as a class
7 action presents fewer management difficulties, conserves the resources of the
8 parties and of the court system, and protects the rights of each Class member.

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

14 49. Defendant has acted or refused to act in respects generally applicable
15 to The Classes, thereby making appropriate final and injunctive relief with regard
16 to the members of the Classes as a whole.

17 **FIRST CAUSE OF ACTION**

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

19 **47 U.S.C. §227(b).**

20 **On Behalf of the ATDS Class**

21 50. Plaintiff repeats and incorporates by reference into this cause of
22 action the allegations set forth in the paragraphs above.

23 51. The foregoing acts and omissions of Defendant constitutes numerous
24 and multiple negligent violations of the TCPA, including but not limited to each
25 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in
26 particular *47 U.S.C. § 227 (b)(1)(A)*.

27 52. As a result of Defendant's negligent violations of *47 U.S.C. §*
28 *227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in

1 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
2 227(b)(3)(B).

3 53. Plaintiff and the ATDS Class members are also entitled to and seek
4 injunctive relief prohibiting such conduct in the future.

5 **SECOND CAUSE OF ACTION**

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

7 **Act**

8 **47 U.S.C. §227(b)**

9 **On Behalf of the ATDS Class**

10 54. Plaintiff repeats and incorporates by reference into this cause of
11 action the allegations set forth in the paragraphs above.

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

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

20 57. Plaintiff and the Class members are also entitled to and seek
21 injunctive relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

24 **FIRST CAUSE OF ACTION**

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

26 **47 U.S.C. §227(b)**

- 27 • As a result of Defendant’s negligent violations of 47 U.S.C.
28 §227(b)(1), Plaintiff and the ATDS Class members are entitled to

1 and request \$500 in statutory damages, for each and every violation,
2 pursuant to 47 U.S.C. 227(b)(3)(B).

- 3 • Any and all other relief that the Court deems just and proper.

4 **SECOND CAUSE OF ACTION**

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

6 **Act**

7 **47 U.S.C. §227(b)**

- 8 • As a result of Defendant’s willful and/or knowing violations of 47
9 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are
10 entitled to and request treble damages, as provided by statute, up to
11 \$1,500, for each and every violation, pursuant to 47 U.S.C.
12 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- 13 • Any and all other relief that the Court deems just and proper.

14 **JURY DEMAND**

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

17
18 Respectfully Submitted this 15th Day of January, 2020.

19
20 **Kazerouni Law Group, APC**

21 By: /s/ Ryan L. McBride
22 Ryan L. McBride, Esq.

23 *Counsel for Plaintiff and the Proposed Class*
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