

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EDUARDO TOMELO; JOSEPH MORDEN;  
PAMELA SLAUGHTER; and FRANK LOPEZ  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

CITIGROUP, INC.; and CITIMORTGAGE, INC.,

Defendants.

No. 1:13-cv-04046  
(Consolidated with 1:14-CV-01941)

Hon. Sara L. Ellis

DEMAND FOR JURY TRIAL

**CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs Eduardo Tomeo, Joseph Morden, Pamela Slaughter, and Frank Lopez (collectively, “Plaintiffs,” unless otherwise identified), individually and on behalf of all others similarly situated (the “Classes,” as defined below), complain and allege as follows based on personal knowledge as to themselves and on information and belief as to all other matters, against Defendants Citigroup, Inc., and CitiMortgage, Inc. (collectively, “Citi” or “Defendants”):

**I. NATURE OF THE ACTION**

1. Plaintiffs, individually and as class representatives for all others similarly situated, bring this action against Defendants for Defendants’ negligent and/or knowing and willful violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

2. Through the TCPA, Congress recognized that auto-dialed and pre-recorded commercial telephone communications encroach significantly on individual privacy and impose unwarranted costs on individuals.

3. By subjecting Plaintiffs to unauthorized, auto-dialed calls over a sustained period of time, and by refusing to cease those calls, despite Plaintiffs' continual requests, Citi has abused Plaintiffs' privacy rights and has violated the TCPA.

4. With respect to Plaintiff Tomeo, a non-accountholder, Citi's TCPA violations stem from Citi's internal corporate policy according to which only accountholders may modify or remove communication information, including telephone numbers, associated with accounts. After Citi erroneously calls a cellular telephone number belonging to a non-accountholder, such as Tomeo, it refuses to correct its records, ensuring that it will call the same non-accountholder's cellular telephone time and again. Plaintiff Tomeo seeks to represent a class of non-accountholders who are situated similarly (the "Non-Accountholder Class").

5. With respect to Plaintiff Morden, a Citi accountholder, Citi called and texted him on his cellular phone on several occasions commencing February 2013, and continuing through the present, using automatic dialing systems in violation of the TCPA. Morden did not provide Citi with prior express written consent to be contacted on his cellular telephone.

6. With respect to Plaintiff Slaughter, a Citi accountholder, Citi called her several times a day over a significant period of time commencing in 2009 and continuing for approximately sixteen months, using automatic dialing systems in violation of the TCPA. On many occasions when Citi called, Slaughter requested that it stop contacting her on her cellular telephone, but Citi refused to honor her express revocation of consent.

7. With respect to Plaintiff Lopez, a Citi accountholder, Citi called him on his cellular telephone commencing in early 2010 and continuing to the present, using automatic dialing systems and pre-recorded messages in violation of the TCPA. Lopez repeatedly requested that Citi stop calling him, but Citi did not honor those requests.

8. Plaintiffs Morden, Slaughter, and Lopez seek to represent a class of Citi accountholders who are situated similarly to them (the "Accountholder Class").

9. Plaintiffs believe that certain of Citi's uniform practices and policies, as discussed below, are responsible for tens of thousands, or more, violations of the TCPA by Citi. Plaintiffs,

therefore, seek to represent two Classes of all similarly situated recipients of calls initiated by Citi or its agents in violation of the TCPA.

## **II. JURISDICTION AND VENUE**

10. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1337 because Plaintiffs' claims arise under federal statute.

11. This court also has original jurisdiction under both 28 U.S.C. § 1331 and 28 U.S.C. § 1332(d), because at least one member of each Class is of diverse citizenship from one defendant, there are more than 100 members of the Classes nationwide, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of costs and interest.

12. The Court has personal jurisdiction over both Defendants because each has purposefully availed itself of the privilege of conducting business activities in the State of Illinois, including by transacting with Illinois residents and establishing business locations in Illinois. Both Defendants maintain systematic and continuous business contacts with the State of Illinois and are registered to conduct business in this State.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because many of the acts and omissions alleged herein occurred within this District.

## **III. PARTIES**

### **A. Plaintiffs**

14. Eduardo Tomeo is a natural person and a resident of Berwyn, Illinois. Tomeo is an individual person within the meaning of 47 U.S.C. § 153(39).

15. Joseph Morden is a natural person and a citizen of the State of Indiana. Morden is an individual person within the meaning of 47 U.S.C. § 153(39).

16. Pamela Slaughter is a natural person and a citizen of the State of Oregon. Slaughter is an individual person within the meaning of 47 U.S.C. § 153(39).

17. Frank Lopez is a natural person and a citizen of the State of Washington. Lopez is an individual person within the meaning of 47 U.S.C. 153(39).

**B. Defendants**

18. Citigroup, Inc. is a Delaware corporation with its principal place of business in New York, New York. Citigroup, Inc. is a multinational financial services corporation and, with over 16,000 offices worldwide and nearly 300,000 employees, is one of the largest financial institutions in the world. Citigroup, Inc. and/or its subsidiaries contract with third party agents to operate call centers relating to its various consumer-oriented lines of business. Citigroup, Inc. owns several consumer banking businesses offering a variety of accounts and retail products, including mortgages, deposit accounts, credit accounts, and personal loan accounts, servicing more than 100 million consumers globally.

19. CitiMortgage, Inc. is a New York corporation with its principal place of business in Missouri. CitiMortgage, Inc. is the mortgage lending and servicing unit of Citigroup and is a wholly-owned indirect subsidiary of Citigroup, Inc. CitiMortgage, Inc. operates call centers and it and/or its affiliates or subsidiaries contract with third party agents to operate additional call centers.

**IV. FACTUAL ALLEGATIONS**

**A. The TCPA**

20. Automatic telephone dialing systems, or auto-dialers (or “ATDS”), are responsible for countless annoying, intrusive, and frequently costly telephone calls transmitted each day to consumers that have never conducted business with the caller, no longer conduct business with the caller, or have not agreed to receive calls to particular telephone lines, including cellular telephone lines, from the caller. Depending on the frequency with which a consumer receives them and the manner in which the offending dialer accommodates the consumer’s request to stop calling, these calls can be minor inconveniences or substantial irritations, approaching harassment.

21. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

22. By enacting the TCPA, Congress recognized the violation of consumer privacy interests that occurs each time a caller uses an auto-dialer to contact a consumer with whom it has no existing business relationship, or from whom the caller has not secured adequate consent to transmit calls. Periodically since 1991, the Federal Communications Commission (“FCC”), which is charged with developing regulations implementing the TCPA, has issued rules expanding the scope of consumer protections offered by the statute in order to reflect and counteract the increasing aggressiveness and persistence with which marketers, scam artists, collection agencies, and others have employed auto-dialing technology.

23. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” *See* 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

24. As of October 16, 2013, the TCPA requires callers using auto-dialers or artificial or prerecorded voice messages to obtain prior express *written* consent for commercial calls to cellular telephone lines, including SMS or text messaging calls. Prior express written consent is also required, as of October 16, 2013, for calls made to residential telephone lines using an artificial or prerecorded voice message.

25. Furthermore, as of October 16, 2013, the TCPA no longer exempts calls made to residential telephone lines belonging to consumers with an established business relationship with the caller. The TCPA has never exempted such calls to cellular telephone lines.

26. The statutory language of the TCPA refers to the consent or non-consent of the “called party.” The judicial interpretation of this phrase has established that only the actual recipient of calls, and not persons intended by the caller to receive calls, can provide consent to receive calls under the TCPA. Thus, if a caller’s records are out of date, inaccurate, or otherwise

fail to lead to contact with the intended recipient of the call, and the person that receives the call has not provided consent to receive such a call, the caller is in violation of the TCPA.

27. Through the TCPA, Congress and the FCC have imposed a simple requirement upon persons making commercial telephone communications: call the telephone number *without auto-dialing equipment* and *without artificial or prerecorded voice messages*, unless and until the consent of the call recipient to receive auto-dialed or artificial and prerecorded voice calls is secured.

**B. Plaintiff Tomeo**

28. At all times relevant to this action, Plaintiff Tomeo was not a Citi accountholder, nor did he have any business relationship with Citi of any sort.

29. At all times relevant to this action, Tomeo did not provide Citi with prior express consent to allow Citi to contact him by any means, including by telephone or cellular telephone.

30. Tomeo has never co-signed, sponsored, or otherwise agreed to support a Citi loan to any third party, including family members, nor did Tomeo ever authorize or approve any third party's use of his cellular telephone number on any application submitted to Citi on his or such third party's behalf.

31. Tomeo has had the same cellular phone number [xxx-xxx-7778] for more than twelve years. He maintains this account and is responsible for paying the monthly bill.

32. On April 18, 2013, Citi called Tomeo's cellular phone. When Tomeo answered the call, a brief delay of no more than two seconds elapsed before a Citi representative responded. For that reason, Tomeo alleges that Citi contacted him on his cellular phone using a predictive dialer or other auto-dialing equipment.

33. During the first April 18, 2013 call, the Citi representative asked to speak with Tomeo's mother. Tomeo informed the Citi representative that Citi had the wrong number but provided his mother's contact information as a courtesy to Citi.

34. During that same telephone call, Tomeo asked how he could help the Citi representative, but was told that Citi only wanted to speak with his mother and not him, because Tomeo was not listed on his mother's account.

35. Tomeo then instructed Citi to stop calling him and to remove his number from its database. The Citi representative refused to correct Citi's records with respect to Tomeo's contact information and thus declined Tomeo's request for Citi to remove Tomeo's phone number from its database, citing a corporate policy whereby only authorized Citi customers can update account details, including contact information.

36. Over the following week, Citi called Tomeo on his cellular phone on approximately seventeen separate occasions, up to five times per day starting at 8:00 a.m. and as late as 8:00 p.m. Tomeo answered and spoke to a Citi representative on approximately fifteen of these occasions. These calls occurred on at least the following dates: April 18, 2013; April 19, 2013; April 20, 2013; April 21, 2013; April 22, 2013; April 24, 2013; April 25, 2013; and April 26, 2013.

37. On each call answered by Plaintiff Tomeo, a brief delay of no more than two seconds elapsed before a Citi representative responded. On information and belief, on the calls Plaintiff Tomeo did not answer, an identical delay would have elapsed had the calls been answered.

38. Although Tomeo asked Citi to remove him from its database each time Citi called him, Citi repeatedly refused to update its records because of the policy described above.

39. On one occasion, Tomeo asked to speak with a supervisor, to whom he complained and again requested that Citi stop calling him. Tomeo received the same response from the supervisor regarding the policy according to which Citi would not update its records without a formal request from the accountholder.

40. On information and belief, Tomeo alleges that every call transmitted by Citi to Tomeo, as described hereinabove, was made by, on behalf of, and/or for the benefit of CitiMortgage, Inc. and Citigroup, Inc., in an attempt to inquire about, service, review, or offer

additional, promotional, or other commercial services to Tomeo's mother in connection with a CitiMortgage account held by Tomeo's mother.

**C. Plaintiff Morden**

41. In the mid-2000s Plaintiff Morden experienced financial hardship and fell behind on his monthly mortgage payments to CitiMortgage. On December 12, 2007, Morden filed a Chapter 13 bankruptcy petition in the Southern District of Indiana in an attempt to save his home, Case No. 07-12317-JKC-13. Morden successfully completed the reorganization plan and received a discharge on February 5, 2013. The bankruptcy was officially closed on May 13, 2013.

42. Beginning on or about February 1, 2013, Citi began calling Morden on his cellular phone using automated dialing systems. The dates on which Morden received these calls include, but are not limited to, the following: February 1, 2013, April 8, 2013, April 18, 2013, July 31, 2013, August 12, 2013, August 23, 2013, August 29, 2013, September 9, 2013, September 11, 2013, September 13, 2013, September 16, 2013, September 17, 2013, September 18, 2013, September 19, 2013, September 20, 2013, and September 23, 2013.

43. Further, Citi called Morden using an automatic dialing system on his cellular phone and left prerecorded messages in his voice mail. The dates on which Morden received these prerecorded messages include, but are not limited to, the following: July 31, 2013, August 12, 2013, August 23, 2013, August 29, 2013, September 9, 2013, September 11, 2013, September 13, 2013, September 16, 2013, September 17, 2013, September 18, 2013, September 19, 2013, September 20, 2013, and September 23, 2013.

44. Further, Citi sent text messages to Plaintiff's cellular telephone using an automatic dialing system. The dates on which Morden received these texts include, but are not limited to, the following: April 3, 2013, May 3, 2013, May 19, 2013, May 27, 2013, June 3, 2013, June 11, 2013, July 3, 2013, July 11, 2013, August 11, 2013, September 11, 2013, September 19, 2013, and October 21, 2013.

45. Some of the calls made to Morden by Citi were made while Morden's bankruptcy was open, thus violating the automatic stay imposed by the bankruptcy court.

46. Some or all of the above calls were made using an Avaya predictive dialer, or similar equipment, that has the capacity to dial numbers without human intervention. Such equipment also has the capacity to store and produce telephone numbers using a random or sequential number generator, and dial those numbers.

47. On information and belief, Morden alleges that most or all of Citi's calls to him and the Accountholder Class were made for purposes of collecting allegedly overdue mortgage debts.

48. On information and belief, Morden alleges that Citi also had other motives for the calls, such as soliciting Morden to refinance his mortgage, to enter into a loan modification, or to purchase additional products or services.

49. On information and belief, Morden alleges that Citi knew about the TCPA's restrictions against using automated equipment to call cell phones without consent.

**D. Plaintiff Slaughter**

50. In 2009, Plaintiff Slaughter owned two properties; both properties had mortgages with Citi.

51. In 2009, Slaughter experienced financial hardship and fell behind on both of her monthly mortgage payments to Citi.

52. Slaughter began receiving approximately 5-10 calls per day from Citi's collections department.

53. Citi called Slaughter using an automatic dialing system and left prerecorded messages on her cellular telephone's voice mail.

54. Slaughter repeatedly asked Citi representatives to stop calling her and to contact her only in writing. Citi failed to honor these requests.

55. Citi informed Slaughter she could not opt out of receiving the telephone calls verbally.

56. Citi informed Slaughter that she had to register on the national do-not-call list in order to have Citi cease calling her.

57. At the suggestion of Citi, Slaughter registered on the national do-not-call list on or about November 30, 2009.

58. The calls from Citi continued for approximately one year after Slaughter registered on the national do-not-call list.

59. On information and belief, Slaughter alleges that most or all of Citi's calls to her and the Accountholder Class were made for purposes of collecting allegedly overdue mortgage debts.

60. On information and belief, Slaughter alleges that Citi knew about the TCPA's restrictions against contacting persons who have requested to be placed on Citi's internal do-not-call list.

**E. Plaintiff Lopez**

61. In 2009, Plaintiff Lopez began receiving solicitation calls on his cellular telephone from Citi placed by an autodialing system and using pre-recorded messages soliciting him to modify his mortgage, even though he was not then delinquent on his mortgage.

62. Lopez asked Citi on many occasions to stop contacting him, but Citi agents told him that it was not possible to stop the telephone calls, though on other occasions Citi agents told Lopez that they would place him on Citi's internal do-not-call list.

63. Ultimately, Citi and Lopez entered into a loan modification arrangement that Citi subsequently refused to honor.

64. As a result, in 2010 Lopez filed for reorganization under Chapter 13 of the bankruptcy code.

**V. CLASS ACTION ALLEGATIONS**

65. Tomeo, Morden, Slaughter, and Lopez bring this action individually and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of two classes ("Classes") defined as follows:

**Class I: Non-Accountholder Class**

All persons or entities in the United States who, at any time in the period that begins four years before the date the initial complaint was filed to the date of trial, received on their cellular telephones any non-emergency call, including, without limitation, voice calls and short message service (SMS) calls, from any device capable of automated or predictive dialing or which used artificial or prerecorded voice messages, transmitted by Citi and/or affiliates, subsidiaries, or agents of Citi, and who were not accountholders with respect to the account that was the subject of the call, if any, at the time the call was received.

**Class II: Accountholder Class**

All persons or entities in the United States who, at any time in the period that begins four years before the date the initial complaint was filed to the date of trial, received on their cellular telephones any non-emergency call, including, without limitation, voice calls and short message service (SMS) calls, from any device capable of automated or predictive dialing or which used artificial or prerecorded voice messages, transmitted by Citi and/or affiliates, subsidiaries, or agents of Citi, who were accountholders with respect to the account that was the subject of the call at the time the call was received, but who did not provide to Citi the cellular telephone number called by Citi and/or affiliates, subsidiaries, or agents of Citi in connection with the account that was the subject of the call, if any, or who had previously requested that such calls cease.

Excluded from the Classes are Citi and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Classes; all claims for wrongful death, survivorship, and/or personal injury by Class members; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class definitions based on information learned through discovery.

66. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

67. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Classes are so numerous that individual joinder of all the members is impracticable. On

information and belief, there are not less than tens of thousands of consumers who have been damaged by Citi's wrongful conduct as alleged herein. The precise number of Class members and their addresses is presently unknown to Plaintiffs, but may be ascertained from Citi's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

68. **Commonality and Predominance – Federal Rules of Civil Procedure 23(a)(2) and 23(b)(2)**. Numerous common questions of law and fact exist as to Plaintiffs and members of the Classes. Such questions common to the Classes include, but are not limited to:

a. As to Plaintiff Tomeo and the Non-Accountholder Class, whether Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf negligently violated 47 U.S.C. § 227(b)(1)(A) by making any call to cellular telephone lines, except for emergency purposes, using an ATDS or artificial or prerecorded voice without the prior express consent of the call recipient;

b. As to Plaintiff Tomeo and the Non-Accountholder Class, whether Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf knowingly and/or willfully violated 47 U.S.C. § 227(b)(1)(A) by making any call to cellular telephone lines, except for emergency purposes, using an ATDS or artificial or prerecorded voice without the prior express consent of the call recipient, thus entitling Plaintiff Tomeo and the Non-Accountholder Class to treble damages;

c. As to Plaintiffs Morden, Slaughter, and Lopez and the Accountholder Class, whether Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf negligently violated 47 U.S.C. § 227(b)(1)(A) by making any call, except for emergency purposes, to a cellular telephone number not provided to Citi by the accountholder in connection with the account that was the subject of the call, using an ATDS or artificial or prerecorded voice;

d. As to Plaintiffs Morden, Slaughter, and Lopez and the Accountholder Class, whether Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf knowingly and/or willfully violated 47 U.S.C. § 227(b)(1)(A) by making any call, except for emergency purposes, to a cellular telephone number not provided to Citi by the accountholder in connection with the account that was the subject of the call, using an ATDS or artificial or prerecorded voice, thus entitling Plaintiffs Morden, Slaughter, and Lopez and the Accountholder Class to treble damages;

e. Whether Defendants are liable for ATDS generated and/or automated or prerecorded calls made by Defendants' affiliates, agents, and/or other persons or entities acting on either Defendant's behalf;

f. Whether Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf should be enjoined from violating the TCPA in the future.

69. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of other members of the Classes because, among other things, all members of the Classes were comparably injured through the uniform misconduct described above.

70. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiffs intend to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

71. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Citi has acted or refused to act on grounds generally applicable to Plaintiffs and the Classes, thereby making appropriate final injunctive and declaratory relief, as described below.

72. **Predominance.** Defendant has engaged in a common course of conduct toward Plaintiffs and members of the Classes. The common issues arising from this conduct that affect

Plaintiffs and members of the Classes predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

73. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and each member of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Citi, so it would be impracticable for Class members to individually seek redress for Citi's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Negligent Violation of the Telephone Consumer Protection Act – Non-Accountholder Class**

74. Plaintiffs incorporate by reference all allegations of Paragraphs 1-73, above, as though fully set forth herein.

75. This Count is brought by Plaintiff Tomeo individually and on behalf of all other Non-Accountholder Class members.

76. Citi's foregoing acts and omissions constitute negligent violations of 47 U.S.C. § 227(b)(1)(A)(iii), which prohibits persons within the United States from making any call using any automated telephone dialing system to any telephone number assigned to a cellular telephone without the prior express consent of the call recipient.

77. As a result of Citi's negligent violations of the TCPA, Plaintiff Tomeo and each of the other Non-Accountholder Class members is entitled to an award of \$500.00 in statutory damages for each call, including voice calls, short message service (SMS) calls, and facsimile calls, placed or transmitted to them by Citi or its agents in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

78. Plaintiff Tomeo, individually and on behalf of the other Non-Accountholder Class members, is also entitled to seek – and does seek – injunctive relief prohibiting Citi from engaging in such conduct violating the TCPA in the future.

79. Plaintiff Tomeo, individually and on behalf of the other Class members, also seeks an award of attorneys' fees and costs of suit.

## **COUNT II**

### **Knowing and/or Willful Violation of the Telephone Consumer Protection Act – Non-Accountholder Class**

80. Plaintiffs incorporate by reference all allegations of Paragraph 1-73, above, as though fully set forth herein.

81. This Count is brought by Plaintiff Tomeo individually and on behalf of all other Non-Accountholder Class members.

82. Citi's foregoing acts and omissions constitute knowing and/or willful violations of 47 U.S.C. § 227(b)(1)(A)(iii), which prohibits persons within the United States from making any call using any automated telephone dialing system to any telephone number assigned to a cellular telephone without the prior express consent of the call recipient.

83. As a result of Citi's knowing and/or willful violations of the TCPA, Plaintiff Tomeo and each of the other Non-Accountholder Class members is entitled to treble damages of up to \$1,500.00 for each call, including voice calls, short message service (SMS) calls, and facsimile calls, placed or transmitted to them by Citi or its agents in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

84. Plaintiff Tomeo, individually and on behalf of the other Non-Accountholder Class members, is also entitled to seek – and does seek – injunctive relief prohibiting such conduct violating the TCPA in the future.

85. Plaintiff Tomeo, individually and on behalf of the other Non-Accountholder Class members, also seeks an award of attorneys' fees and costs of suit.

### **COUNT III**

#### **Negligent Violation of the Telephone Consumer Protection Act – Accountholder Class**

86. Plaintiffs incorporate by reference all allegations of Paragraphs 1-73, above, as though fully set forth herein.

87. This Count is brought by Plaintiffs Morden, Slaughter and Lopez individually and on behalf of all other Accountholder Class members.

88. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf constitute numerous and multiple negligent violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiffs Morden, Lopez, and members of the Accountholder Class using an ATDS and/or artificial or prerecorded voice.

89. As a result of the negligent violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), of Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf, Plaintiffs Morden, Lopez, and members of the Accountholder Class presumptively are entitled to an award of \$500 in damages for each and every call to their cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

90. Plaintiffs Morden, Lopez and members of the Accountholder Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to any cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in the future.

**COUNT IV**

**Knowing and/or Willful Violation of the Telephone Consumer Protection Act –  
Accountholder Class**

91. Plaintiffs incorporate by reference all allegations of Paragraph 1-73, above, as though fully set forth herein.

92. This Count is brought by Plaintiffs Morden, Slaughter and Lopez individually and on behalf of all other Accountholder Class members.

93. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf constitute numerous and multiple knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiffs Morden, Slaughter, Lopez, and members of the Accountholder Class using an ATDS and/or artificial or prerecorded voice.

94. As a result of the knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), of Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf, Plaintiffs Morden, Slaughter, Lopez, and members of the Accountholder Class are entitled to treble damages of up to \$1,500 for each and every call to their cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

95. Plaintiffs Morden, Slaughter, Lopez, and members of the Accountholder Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on either Defendant's behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by making calls, except for emergency purposes, to any cellular telephone numbers using an ATDS and/or artificial or prerecorded voice in the future.

**VII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Classes, respectfully request that the Court enter relief and judgment in their favor, as follows:

A. Certification of the proposed Classes;

- B. Appointment of Plaintiff Tomeo as representative of the Non-Accountholder Class;
- C. Appointment of Plaintiffs Morden, Slaughter and Lopez as representatives of the Accountholder Class;
- D. Appointment of the undersigned counsel as counsel for the Classes;
- E. A declaration that Defendants and/or their affiliates, agents, and/or other related entities' actions complained of herein violate the TCPA;
- F. An order enjoining Defendants and/or their affiliates, agents, and/or other related entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- G. An award to Plaintiffs and the Classes of monetary damages, as allowed by law;
- H. An award to Plaintiffs and the Classes of attorneys' fees and costs, as allowed by law and/or equity;
- I. Leave to amend this Complaint to conform to the evidence presented at trial; and
- J. Orders granting such other and further relief as the Court deems necessary, just, and proper.

### **VIII. JURY DEMAND**

Plaintiffs, on their own behalf and that of the other Class members, demand a trial by jury pursuant to Fed. R. Civ. P. 38(b) on all claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 10th day of June, 2014.

GRANT & EISENHOFER P.A.

By: /s/ Adam J. Levitt

Adam J. Levitt  
GRANT & EISENHOFER P.A.  
30 North LaSalle Street, Suite 1200  
Chicago, Illinois 60602  
Telephone: (312) 214-0000  
Facsimile: (312) 214-0001  
alevitt@gelaw.com

Kyle J. McGee  
GRANT & EISENHOFER P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
Telephone: (302) 622-7000  
Facsimile: (302) 622-7100  
kmcgee@gelaw.com

Sergei Lemberg  
LEMBERG & ASSOCIATES  
1100 Summer Street, Third Floor  
Stamford, Connecticut 06905  
Telephone: (203) 653-2250  
Facsimile: (203) 653-3424  
slemberg@lemborglaw.com

*Counsel for Plaintiff Eduardo Tomeo and the  
Proposed Classes*

Beth E. Terrell, *Admitted Pro Hac Vice*  
Email: bterrell@tmdwlaw.com  
TERRELL MARSHALL DAUDT  
& WILLIE PLLC  
Mary B. Reiten, *Admitted Pro Hac Vice*  
Email: mreiten@tmdwlaw.com  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 350-3528

Alexander H. Burke  
Email: [aburke@burkelawllc.com](mailto:aburke@burkelawllc.com)  
BURKE LAW OFFICES, LLC  
155 North Michigan Avenue, Suite 9020  
Chicago, Illinois 60601  
Telephone: (312) 729-5288  
Facsimile: (312) 729-5289

Syed Ali Saeed  
Email: [ali@sllawfirm.com](mailto:ali@sllawfirm.com)  
SAEED & LITTLE, LLP  
1433 North Meridian Street, Suite 202  
Indianapolis, Indiana 46202  
Telephone: (317) 614-5741  
Facsimile: (888) 422-3151

*Attorneys for Plaintiffs Joseph Morden, Pamela Slaughter, and Frank Lopez and the Proposed Classes*

CERTIFICATE OF SERVICE

I, Adam J. Levitt, hereby certify that on June 10, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Alejandro Valle  
GONZALEZ SAGGIO & HARLAN LLP  
135 North Pennsylvania Street, Suite 1740  
Indianapolis, Indiana 46204  
Telephone: (317) 686-9800  
Facsimile: (317) 686-9821  
Email: Alejandro\_Valle@gshllp.com

Hans J. Germann  
Debra Bogo-Ernst  
Lucia Nale  
MAYER BROWN LLP  
71 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: (312) 782-0600  
Facsimile: (312) 701-7711  
Email: hgermann@mayerbrown.com  
Email: dernst@mayerbrown.com  
Email: lnale@mayerbrown.com

*Attorneys for Defendants*

DATED this 10th day of June, 2014.

GRANT & EISENHOFER P.A.

By: /s/ Adam J. Levitt  
Adam J. Levitt  
GRANT & EISENHOFER P.A.  
30 North LaSalle Street, Suite 1200  
Chicago, Illinois 60602  
Telephone: (312) 214-0000  
Facsimile: (312) 214-0001  
alevitt@gelaw.com