

**IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**CHANEL KERSWILL, individually and
on behalf of all those similarly situated,**

Plaintiff,

Case No.:

v.

**MODERN BROKERS OF AMERICA
LLC,**

Defendant.

/

CLASS ACTION COMPLAINT

Plaintiff, Chanel Kerswill, appearing both individually and on behalf of all others similarly situated, by and through her attorneys, brings this class action against Defendant, Modern Brokers of America LLC, based upon personal knowledge as to her own acts and experiences and, as to all other matters, based upon information and belief, including the investigation conducted by her counsel, and alleges as follows:

NATURE OF THE ACTION

1. This is a class action under the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. § 501.059, as amended by Senate Bill No. 1120.¹
2. Defendant Modern Brokers of America sells gathers consumer leads via cold calling for other businesses throughout the U.S.²

¹ The amendment to the FTSA became effective on July 1, 2021.

² <https://www.modernbrokersofamerica.net/>

3. Defendant Modern Brokers of America gathers consumer leads for various products and services including, but not limited to, solar products.³

4. Defendant Modern Brokers of America places outbound telemarketing cold calls to consumers across the US, to generate leads of consumers interested in purchasing solar products.

5. Defendant Modern Brokers of America also places automated cold calls using automatic dialing systems.

6. Defendant Modern Brokers of America also knowingly places multiple calls to consumer phone numbers that are registered on the national DNC list regardless of whether they have consent to place such calls or not.

7. By doing so, Defendant Modern Brokers of America has violated the provisions of the Florida Telephone Solicitations Act, Fla. Sta § 501.059. Defendant has caused Plaintiff and Class Members to suffer injuries as a result of placing unwanted telephonic sales calls to their phones.

8. Through this action, Plaintiff seeks injunctive relief to halt Defendant's unlawful telemarketing calls. Plaintiff additionally seeks damages as authorized by the FTSA on behalf of herself and the Class Members, and any other available legal or equitable remedies resulting from the actions of Defendant described herein.

THE PARTIES

9. Plaintiff Chanel Kerswill ("Plaintiff" or "Kerswill") is a citizen and resident of Lakeland, Polk County, Florida.

10. Defendant Modern Brokers of America LLC ("Defendant" or "Modern Brokers of America") is a limited liability company registered in Delaware with an office in Miami, Florida.

³ <https://www.modernbrokersofamerica.net/>

11. Defendant Modern Brokers of America gathers and sells contact information or leads of interested consumers to various businesses they work with. Modern Brokers of America conducts business throughout the US, including this Circuit where it has an office, and other parts of Florida.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000, exclusive of interest, costs, and attorneys' fees.

13. Defendant is subject to personal jurisdiction in Florida because Defendant conducts business in Florida, including this District, and made or caused to be made telephonic sales calls to Florida residents' phone numbers without the requisite prior express written consent in violation of the FTSA. Plaintiff and Class Members received such calls from the Defendant while residing in and being physically present in Florida.

14. Venue for this action is proper in this Court because Defendant resides in this Circuit.

STATEMENT OF FACTS

15. Plaintiff Kerswill registered her cell phone number on the DNC on February 1, 2016.

16. Plaintiff Kerswill uses her cell phone for personal use only. It is not used as a business number.

17. In July and August 2021, Plaintiff Kerswill received multiple unwanted telephonic sales calls from Defendant Modern Brokers of America to her cell phone, soliciting solar installation for her home.

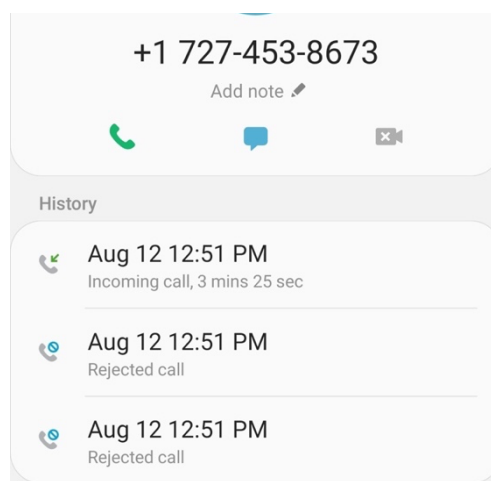
18. Plaintiff Kerswill kept receiving calls from Defendant Modern Brokers of America despite conveying her disinterest in their products and instructing the Defendant's agents not to call her at least 4 times.

19. On August 12, 2021, at 12:51 PM, Plaintiff Kerswill received yet another phone call from Defendant Modern Brokers of America to her cell phone. The call was placed using the phone number, 727-453-8673, a Florida area code.

20. Plaintiff Kerswill answered the call and spoke to an agent named Logan, who was soliciting solar home installation to her and identified his company as Defendant Modern Brokers of America.

21. Plaintiff told the agent that she's not interested in their services, and she has already instructed other agents from Defendant Modern Brokers of America to stop calling her phone number at least 4 times. She also informed the Defendant's agent that her cell phone number was on the DNC, and she should not have received those calls in the first place.

22. Plaintiff's cell phone's call logs show that she received three calls from the same phone number, 727-453-8673, simultaneously at 12:51 PM:



23. The fact that Defendant was able to call the Plaintiff's cell phone 3 times, simultaneously, from the same phone number, clearly shows that the Defendant uses an automatic

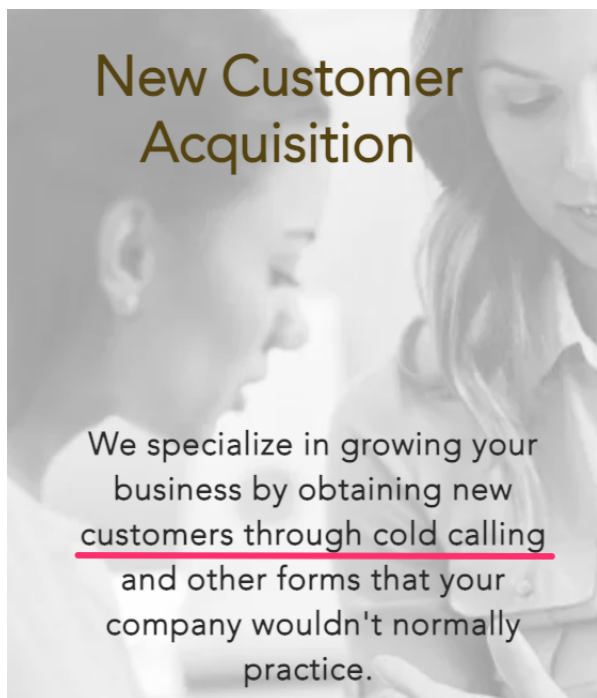
dialing system or device to place such calls, otherwise it would not be possible to place multiple calls from any phone number to the same phone number simultaneously.

24. Plaintiff Kerswill received multiple unsolicited telemarketing calls from Defendant Modern Brokers of America within a 12-month period, to her cell phone which was registered on the DNC, without having given her consent to receive any calls from the Defendant.

25. The unauthorized telephonic sales calls that Plaintiff received from and/or on behalf of the Defendant, as alleged herein, have harmed the Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of her phone, in addition to wear and tear of the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

Modern Brokers of America Places Unsolicited Telemarketing Calls

26. Defendant Modern Brokers of America's website states that they obtain "new customers through cold calling" for other businesses:



27. Defendant Modern Brokers of America’s employees have posted reviews online about their experience of working at Modern Brokers of America. It is clear from these reviews that the Defendant places outbound telephonic sales calls to consumers, often without obtaining their prior express written consent to place such calls.⁵

28. Defendant Modern Brokers of America employees place outbound calls to numerous such consumers who have never given their consent to be called by the Defendant, including many phone numbers which are on the National Do Not Call Registry, like Plaintiff Kerswill’s cell phone number. Multiple employees have mentioned this in their reviews. For instance:

⁴ <https://www.modernbrokersofamerica.net/>

⁵ <https://www.indeed.com/cmp/Modern-Brokers-of-America/reviews>

most people quit after 2 weeks

Sales Associate (Former Employee) - Houston, TX - July 1, 2021

VERY competitive, young individuals that spend their days cold calling until they get appointments to client's homes. Most appointments are far so if you're not busy calling clients all day with your personal cellphone then you spend a lot of time driving to them wasting your gas.

6

Would not recommend unless you want to be apart of a slimy company

Solar Sales Representative (Former Employee) - Tampa, FL - September 3, 2021



Indeed Featured review

The most useful review selected by Indeed

Horribly managed and cares nothing about the clients or employees. Not worth the pay benefits. They fake most of their legal documents and load their pockets at the expense of screwing over clients. They make it sound like you are going to get your own office and have warm leads in the interview until you realize they lie to you and its too late because you already started. Highest turnover rate I've ever seen. Stay away for your own good.

✓ Pros

High Commissions

✗ Cons

Horribly ran scam of a job

7

29. Neither the Plaintiff nor any other members of the proposed classes ever provided Defendant and/or their agents with prior express written consent to receive the telephone calls at issue.

30. Defendant does not have any record of express written consent to place telemarketing calls, or calls featuring an artificial or prerecorded voice, to Plaintiff or to members of the proposed classes.

⁶ <https://www.indeed.com/cmp/Modern-Brokers-of-America/reviews>

⁷ *Id.*

31. In response to these calls, Plaintiff files this lawsuit seeking injunctive relief requiring the Defendant to cease violating the Florida Telephone Solicitation Act, as well as an award of statutory damages to the members of the Classes and costs.

CLASS REPRESENTATION ALLEGATIONS

32. Plaintiff seeks to represent a class of similarly situated individuals pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3), consisting of:

Autodial Class: All persons in Florida who, (1) were sent a telephonic sales call by or on behalf of the Defendant soliciting goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff, (3) for whom the Defendant claims to have obtained prior express written consent in the same manner as they obtained the Plaintiff's consent to call her cell phone.

DNC Class: All persons in Florida, (1) whose telephone numbers appear on the then-current "no sales solicitation calls" list, and (2) who received unwanted telephonic sales call from the Defendant or their agent(s), (3) for whom the Defendant claims to have obtained prior express written consent in the same manner as they obtained the Plaintiff's consent to call her cell phone.

33. Defendant and its employees or agents are excluded from the Classes. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

34. Plaintiff brings all claims in this action individually and on behalf of Class Members against Defendant.

Numerosity

35. Members of the Class are so numerous that their individual joinder is impracticable.

36. On information and belief, Members of the Class number in the thousands.

37. The precise number of Class Members and their identities are unknown to Plaintiff at this time but may be determined through discovery.

38. Class Members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant.

Commonality

39. Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members.

40. Common legal and factual questions include, but are not limited to, whether Defendants have violated the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. §§ 501.059, and violated Plaintiff’s rights in violation of Florida law; and whether Class Members are entitled to actual and/or statutory damages for the aforementioned violations.

Typicality

41. The claims of the named Plaintiff are typical of the claims of the Classes because the named Plaintiff, like all other Class Members, received unsolicited telephone sales calls from the Defendant without giving them her consent to receive such calls.

Adequacy of Representation

42. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Class Members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously.

43. The interests of Class Members will be fairly and adequately protected by Plaintiff and her counsel.

Superiority

44. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class Members.

45. Many of the Class Members likely lack the ability and/or resources to undertake the burden and expense of individually prosecuting what may be a complex and extensive action to establish Defendant's liability.

46. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system. This strain on the parties and the judicial system would be heightened in this case, given the complex legal and factual issues at play.

47. Individualized litigation also presents a potential for inconsistent or contradictory judgments.

48. In 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 on the issue of Defendant's liability.

49. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Violation of the Florida Telephone Solicitation Act,
Fla. Stat. § 501.059
On Behalf of Plaintiff Kerswill and the Autodial Class

50. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

51. Plaintiff brings this claim individually and on behalf of the Autodial Class Members against Defendant.

52. It is a violation of the FTSA to "make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party." Fla. Stat. § 501.059(8)(a).

53. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

54. Defendant failed to secure prior express written consent from Plaintiff and the Autodial Class Members.

55. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Autodial Class Members without Plaintiff’s and the Class members’ prior express written consent.

56. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

57. As a result of Defendant’s conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

COUNT II
Violation of the Florida Telephone Solicitation Act,
Fla. Stat. § 501.059
On Behalf of Plaintiff Kerswill and the DNC Class

58. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

59. Plaintiff brings this claim individually and on behalf of the DNC Class Members against Defendant.

60. It is a violation of the FTSA to “make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department.” Fla. Stat. § 501.059(4)

61. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

62. In violation of the FTSA, Defendant made and/or caused to be made unsolicited telephone sales calls to Plaintiff Kerswill, and other members of the Florida DNC Class despite their telephone numbers appearing on the quarterly listing published by the department.

63. As a result of Defendant’s conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and DNC Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the Class members are also entitled to an injunction against future calls. *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Classes under Florida Rule of Civil Procedure 1.220 and naming Plaintiff as the representative of the Classes and Plaintiff's attorneys as Class Counsel to represent the Classes;
- (b) For an award of statutory damages for Plaintiff and each member of the Classes;
- (c) For an order declaring that the Defendant's conduct violates the statutes referenced herein;
- (d) For an order finding in favor of Plaintiff and the Classes on all Counts asserted herein;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Classes their fees and expenses and costs of suit.
- (i) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases, or other itemizations associated with the allegations herein, including all records, lists, electronic databases, or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: October 11, 2021,

Respectfully submitted,

By: /s/ Stefan Coleman

Stefan Coleman (FL Bar no. 30188)
law@stefancoleman.com
Law Offices of Stefan Coleman, P.A.
201 S. Biscayne Blvd, 28th Floor
Miami, FL 33131
Telephone: (877) 333-9427
Facsimile: (888) 498-8946

Avi R. Kaufman, Esq. (Florida Bar No. 84382)
KAUFMAN P.A
400 Northwest 26th Street
Miami, Florida 33127
kaufman@kaufmanpa.com
(305) 469-5881

Counsel for Plaintiff and all others similarly situated