

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL COALITION ON BLACK
CIVIC PARTICIPATION, et al.,

Plaintiffs,

-and-

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, ATTORNEY
GENERAL OF THE STATE OF NEW
YORK,

Plaintiff-Intervenor

v.

JACOB WOHL, et al.,

Defendants

Civil Action No: 1:20-cv-08668-VM-OTW

Consent Decree

WHEREAS, The New York State Office of the Attorney General (“OAG” or “Plaintiff-Intervenor”) intervened in this action on May 19, 2021, asserting claims under 42 U.S.C. § 1985(3), 52 U.S.C. § 10307(b), 52 U.S.C. § 10101(b), New York Civil Rights Law §§ 40-c, and 40-d, and New York Executive Law § 63(12). The OAG sought to require Message Communications, Inc. and its president Robert Mahanian (collectively, “Message Defendants”) to establish policies and procedures to ensure its broadcasting platform would not be used to transmit unlawful robocalls directed at voters, and that Message Defendants forfeit any payments received for allegedly illegal robocalls transmitted through its platform, in addition to other relief;

WHEREAS, Message Defendants denied the claims asserted against them by OAG, and continues to deny any wrongdoing in this matter;

WHEREAS, on November 22, 2021, Plaintiffs National Coalition on Black Civic Participation, Mary Winter, Gene Steinberg, Nancy Hart, Sarah Wolff, Karen Slaven, Kate Kennedy, Eda Daniel, and Andrea Sferes (the “Private Plaintiffs”), amended their complaint in this action to plead causes of action against the Message Defendants;

WHEREAS, Message Defendants denied the claims asserted against them by the Private Plaintiffs, and continues to deny any wrongdoing in this matter;

WHEREAS, Plaintiffs and Message Defendants (the “Parties”) share the mutual desire to settle this action and to avoid protracted, expensive, and unnecessary litigation in the future;

NOW, THEREFORE, subject to the approval of the Court, it is hereby stipulated and agreed by and between the undersigned, attorneys of record for the OAG, the Private Plaintiffs, and the Message Defendants in the above-entitled action (the “Action”), as follows:

IMPLEMENTATION

1. Within ninety (90) days of the entry date for this Consent Decree (the “Effective Date”), unless otherwise set forth herein, Message Defendants shall implement and comply with the following terms and conditions.

TERM AND SCOPE

2. The duration of the Consent Decree shall be six (6) years from the Effective Date.

3. Message Communications, Inc. (“Message”), Robert Mahanian, and any other successor company or entity controlled or operated by Message Defendants are bound by the terms of this Consent Decree. The Consent Decree shall extend to each of Message Defendants and their legal successors and assigns. Message Defendants shall be liable and accountable

under this Consent Decree for any employee, independent contractor, or agent who violates this Consent Decree.

DEFINITIONS

4. “Robocall” means pre-recorded phone call messages placed or otherwise transmitted by Message Communications.
5. “Court” means the United States District Court for the Southern District of New York presiding over *National Coalition of Black Civic Participation v. Wohl*, 20-cv-8668 (VM) (OTW).
6. “Plaintiffs” means Plaintiff-Intervenor, People the State of New York, by its Attorney General, Letitia James and Private Plaintiffs, National Coalition on Black Civic Participation, Mary Winter, Gene Steinberg, Nancy Hart, Sarah Wolff, Karen Slaven, Kate Kennedy, Eda Daniel, and Andrea Sferes.
7. “Private Plaintiffs” means National Coalition on Black Civic Participation, Mary Winter, Gene Steinberg, Nancy Hart, Sarah Wolff, Karen Slaven, Kate Kennedy, Eda Daniel, and Andrea Sferes.

COMPLIANCE WITH LAWS AND REGULATIONS

8. The Message Defendants shall not engage, or attempt to engage, in conduct in violation of any applicable state or federal laws.

GENERAL PROVISIONS

9. Neither this Consent Decree nor any payment or performance under this Consent Decree constitutes an admission by Message Defendants of any liability, violation of federal, state, or local law, or wrongdoing of any type. Message Defendants denied the claims asserted against them by Plaintiffs, and deny any wrongdoing in this matter.

10. The failure to enforce any alleged violation of any term of this Consent Decree by the Plaintiffs shall not constitute or be deemed or construed to constitute any waiver of such violation or any other violation. No amendment to, change of, or suspension or waiver of this Consent Decree shall be binding or of any force or effect unless and until signed by all Parties or their authorized counsel and “So Ordered” by the Court.

11. This Consent Decree sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, between the parties. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Consent Decree that are not fully expressed herein.

12. Nothing in this Consent Decree shall be construed as relieving Message Defendants of their obligations to comply with all New York State and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

13. Nothing in this Consent Decree shall be construed as precluding the OAG from investigating or prosecuting Message Defendants for any unlawful conduct unrelated to the conduct described in the Complaint in Intervention for this Action.

14. Nothing in this Consent Decree shall be construed as precluding the Private Plaintiffs from initiating any action in state or federal court against Message Defendants for any unlawful conduct unrelated to the conduct described in the Amended Complaint for this Action.

15. Nothing in this Consent Decree shall be construed as resolving claims against the remaining Defendants Jacob Wohl, Jack Burkman, J.M. Burkman & Associates, LLC, and Project 1599 in this Action.

Prohibited Robocalls

16. Message Defendants shall refrain from knowingly transmitting any Robocalls that would intimidate or deter voters from voting by any method in any election. Message Defendants shall refrain from knowingly transmitting any Robocalls containing any false or fraudulent information concerning voting, the right to vote, or the conduct of elections. Message Defendants shall adopt policies and procedures to prevent the transmission of calls described in this paragraph.

Appropriate Use Policy

17. Message Defendants shall adopt a written policy explicitly prohibiting Message customers from using Message services to violate any applicable election laws, civil rights statutes, consumer protection laws, to commit fraud, or to violate any other applicable law. Message Defendants shall provide this written policy to customers and make acceptance of this policy a condition for using Message's services.

18. Message Defendants shall provide a draft of this policy within ninety (90) days after the entry of this Consent Decree. Plaintiffs shall have thirty (30) days thereafter to approve, reject, or suggest amendments to the policy. Plaintiffs shall not withhold approval unreasonably.

Customer Certification

19. Within ninety (90) days after the entry date for this Consent Decree, Message Defendants shall require new customers to certify in writing that their use of Message's services will not violate any applicable election law, civil rights statute, consumer protection laws, anti-

fraud laws, or other applicable laws. This certification shall take the form of a checkbox or button prominently displayed in Message's web order form that must be checked or clicked before a customer may place any order.

20. Within ninety (90) days after the entry date for this Consent Decree, Message Defendants shall prohibit customers from sending any message to cellular phones unless the customer has certified in writing that the customer reasonably believes that it may do so without violating any applicable laws. This certification will take the form of a mandatory checkbox or button that will display for any order requesting calls to be made to cellular phones.

21. Within ninety (90) days after the entry date for this Consent Decree, Message Defendants shall prohibit customers from sending any message to numbers on the National Do Not Call Registry unless the customer has certified in writing that the customer reasonably believes that it may do so without violating any applicable laws. This certification will take the form of a mandatory checkbox or button that will display for any order requesting calls to be made to numbers on the National Do Not Call Registry.

Customer Screening

22. At the outset of a new customer relationship, Message Defendants shall conduct a basic internet search to determine whether the potential customer has a publicly reported history of fraud. Such a search will be in addition to the red flag screening Message Defendants already apply to new customers. Such a search will be unnecessary when Message Defendants reasonably believe the new customer to be a bona fide representative of a governmental entity, school, hospital, or religious organization meeting the criteria of Internal Revenue Code § 501(c)(3).

Screening of Election Robocalls

23. Within ninety (90) days after the entry date for this Consent Decree, Message Defendants shall include a mandatory checkbox or button for every new customer order asking whether the robocall message is election-related. If the customer indicates yes, signifying that the robocall message is election-related, Message Defendants shall listen to the message before it is broadcast. If, in Message Defendants' reasonable estimation, the election-related message includes voter intimidation, harassment, or misinformation concerning when, where, or how to vote, Message Defendants shall terminate the robocall before it is sent.

24. The paragraph above shall not apply to the voter protection robocalls described in paragraph 26, or to election-related calls sought to be placed by any customer Message Defendants reasonably believe to be a representative of a governmental entity, school, hospital, or religious organization meeting the criteria of Internal Revenue Code § 501(c)(3).

Client Termination

25. When Message Defendants receive a traceback from the U.S. Telecom Industry Traceback Group concerning any robocall, Message Defendants shall immediately terminate their relationship with the customer who placed the call. Message Defendants shall also terminate their relationship with any customer attempting to place an unlawful election-related robocall as described in paragraph 23.

Voter Protection Robocall

26. Message Defendants shall offer credits totaling 200,000 minutes billed in one minute increments to a non-partisan voter protection organization of Private Plaintiffs' choice to send out a non-partisan voter protection robocall. The call shall inform recipients of their rights

to vote or promote voter registration and the exercise of the franchise. These credits shall not expire during the duration of this Consent Decree.

Documentation

27. Message Defendants shall document compliance with Paragraphs 17, 18, 19, 20, 21, 23 and 25 of this Consent Decree and maintain such documentation throughout the duration of this Consent Decree. If a reasonable dispute concerning compliance with this Consent Decree shall arise, Message Defendants shall not unreasonably withhold such documents from Plaintiffs during the meet and confer procedure described in paragraph 35.

MONETARY PAYMENT

28. Message Defendants shall pay \$50,000.00 to the OAG in resolution of OAG's claims against them. The funds shall be paid directly to the OAG and will be distributed to the New York-based recipients of the August 2020 Robocall at issue in this litigation, in compliance with New York Executive Law § 63(16)(b). Such payment is not intended to and does not compensate the Private Plaintiffs for the causes of action they alleged in the Action.

29. The Settlement Funds shall be paid within thirty (30) calendar days after the entry of this Consent Decree.

30. Payments from Message Defendants to the OAG must be in the form of a wire transfer, certified check, bank check, money order, or attorney's check made payable to "The New York State Department of Law," and forwarded to the New York State Attorney General's Office to the attention of:

Conor Duffy
Assistant Attorney General
Civil Rights Bureau
28 Liberty Street
New York, NY 10005

31. The OAG has the sole discretion to determine which New York-based call recipients shall be eligible for payment and to determine the amount of such payments. In consideration for receiving any monetary payment pursuant to this agreement, each call recipient shall execute a written release of claims to Message Defendants. The release is attached as Appendix A to this Consent Decree.

Non-Dischargeable Judgment

32. In the event of bankruptcy, Message Defendants expressly agree not to seek to discharge or extinguish the amounts owed as part of this Settlement.

Unclaimed Funds

33. In the event that any settlement funds remain unclaimed by New York-based call recipients after one (1) year following payment, the OAG shall remit the remaining funds to the National Coalition on Black Civic Participation, as partial recovery for its alleged damages.

JURISDICTION AND ENFORCEMENT

34. The Parties consent to the jurisdiction of this Court over the Parties and subject matter of this civil action and stipulate that venue lies in the United States District Court for the Southern District of New York. The Court will retain jurisdiction to enforce any action seeking to enforce the terms of this Consent Decree, whether an action for specific performance, contempt, or any other relief.

35. The Parties agree that any dispute concerning compliance with this Consent Decree shall first require the disputing party to meet and confer in good faith to resolve the dispute. Should the Parties remain unable to resolve the dispute on their own, the disputing party may request a compliance hearing with the Court to resolve the dispute within thirty (30) days of the meet-and-confer.

36. Upon the entry of this Consent Decree, this Action shall be dismissed with prejudice as against Defendants Message Communications, Inc. and Robert Mahanian, except as provided in paragraphs 34–35.

IT IS SO ORDERED this 2nd day of June, 2022.

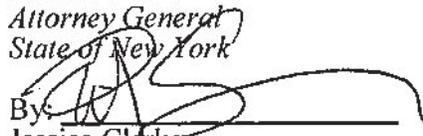


Victor Marrero
U.S.D.J.

By their signatures below, the parties consent to the entry of this Consent Decree.

For the Office of the Attorney General:

LETITIA JAMES
Attorney General
State of New York

By: 

Jessica Clarke,
Bureau Chief, Civil Rights Bureau
Conor Duffy,
Colleen K. Faherty,
Assistant Attorneys General
Rick Sawyer,
Special Counsel for Hate Crimes

28 Liberty St., 20th Floor
New York, NY 10005
(212) 416-8252
Jessica.Clarke@ag.ny.gov
Conor.Duffy@ag.ny.gov
Colleen.Faherty@ag.ny.gov
Richard.Sawyer@ag.ny.gov

For National Coalition on Black Civic Participation, Mary Winter, Gene Steinberg, Nancy Hart, Sarah Wolff, Karen Slaven, Kate Kennedy, Eda Daniel, and Andrea Sferes:



National Coalition on Black Civic Participation

Mary Winter

Karen Slaven

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Counsel:

David Brody
Marc Epstein
Lawyers' Committee for Civil Rights
1401 New York Avenue NW, Ste. 400
Washington, DC 20005

Franklin Monsour
Brittany Roehrs
Orrick Herrington & Sutcliffe LLP
51 West 52nd St.
New York, NY 10019-6142

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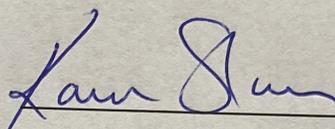
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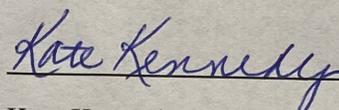
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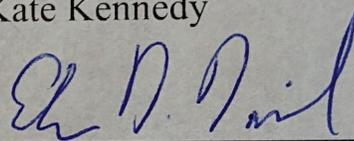
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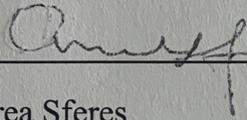
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Andrea Sferes

Counsel:

David Brody
Marc Epstein
Lawyers' Committee for Civil Rights
1401 New York Avenue NW, Ste. 400
Washington, DC 20005

Franklin Monsour
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Orrick Herrington & Sutcliffe LLP
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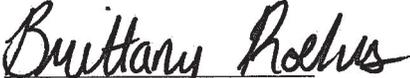
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Counsel:

David Brody
Marc Epstein
Lawyers' Committee for Civil Rights
1401 New York Avenue NW, Ste. 400
Washington, DC 20005



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Brittany Roehrs
Orrick Herrington & Sutcliffe LLP
51 West 52nd St.
New York, NY 10019-6142

For Robert Mahanian and Message Communications:

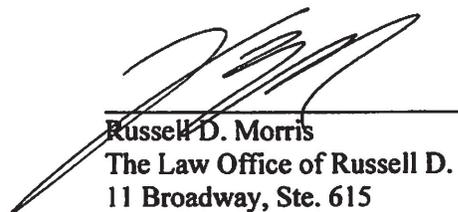


Robert Mahanian (individually and on behalf of Message Communications)

Counsel:



David Felsenthal
Felsenthal Law Firm
1100 Glendon Ave., Ste. 1500
Los Angeles, CA 90024



Russell D. Morris
The Law Office of Russell D. Morris
11 Broadway, Ste. 615
New York, NY 10004

Appendix A

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the parties’ agreement to the terms of the Consent Decree entered into in *National Coalition for Black Civic Participation v. Wohl*, 20-cv-8668-VM-OTW (S.D.N.Y.), as approved by the United States District Court for the Southern District of New York, and in consideration of \$ _____, I, _____, do hereby fully release and forever discharge Message Communications and Robert Mahanian (“Message Defendants”), along with their past and present insurers, attorneys, related companies, employees, successors, and assigns, from any and all civil rights and voting rights claims set forth, or which could have been set forth, in the Complaint in Intervention in this lawsuit that I may have had against Message Defendants for any alleged misconduct or nonfeasance. This release does not apply to any claims I have accrued against Jacob Wohl or Jack Burkman related to the conduct alleged in the Complaint in Intervention.

Executed this ____ day of _____, 2022

Signature

Printed Name