

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

**RACHAEL ANNE ELROD, ANDREW)
KAUFMAN, SARAH MARTIN, and)
BROOKS BRASFIELD, on behalf of)
themselves and all others similarly situated.)**

Plaintiffs,

Y.

NO TAX 4 NASH, MICHELLE)
FOREMAN, KAREN MOORE, and JOHN)
DOES 1-10,)

Defendants.

No. 3:20-cv-00617

consolidated with No. 3:20-cv-00618

Judge Eli J. Richardson

Magistrate Judge Barbara D. Holmes

MICHELLE FOREMAN and KAREN MOORE,

Third-Party Plaintiffs,

v.

**BEST SELLERS, LLC, HEATHER
SELLERS, JOE GERGLEY, and
HYPERMETRICS, LLC,**

Third-Party Defendants.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is made and entered into, subject to final approval of the Court, among Class Representatives Rachael Ann Elrod, Andrew Kaufman, Sarah Martin and Brooks Brasfield, on behalf of themselves and the Class as defined below (“Plaintiffs”), defendants Michelle Foreman and Karen Moore (“Defendants”), and third-party defendants Best Sellers, LLC, Heather Sellers, Joe Gergley, and Hypermetrics, LLC (“Third-Party Defendants,” and

collectively with Defendants, “Respondents”). Plaintiffs and Respondents are referred to herein collectively as the “Parties.”

RECITALS

1. On July 17, 2020, Plaintiffs commenced this action alleging that defendant Michelle Foreman and others violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”) by allegedly placing politically oriented telephone calls (“robocalls”) to cellular phones through the use of an automatic telephone dialing system and/or artificial or prerecorded voice, without the prior express consent of the recipients of the calls. On March 22, 2021, Plaintiffs filed a Second Amended Complaint in this action adding defendant Karen Moore as a defendant.

2. On April 16, 2021, defendants Karen Moore and Michelle Foreman answered the Second Amended Complaint and asserted a third-party complaint against Third-Party Defendants alleging, among other things, that Third-Party Defendants actually placed the calls and had a duty to ensure that the calls were placed in a manner that did not violate that TCPA.

3. On April 19, 2021, the Court entered an order granting Plaintiffs’ unopposed motion for class certification, and certifying the following Class: “all individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237.”

4. On September 26, 2021, the Parties participated in a mediation with retired Judge Wayne Anderson to attempt to resolve all the disputes in the Lawsuit. The mediation was not successful.

5. Subsequently, Plaintiffs filed a motion in the Lawsuit to amend again their complaint to assert direct claims against Third-Party Defendants for alleged TCPA violations.

6. After continued settlement negotiations, on February 9, 2022, the Parties reached agreement as to the principal terms of a settlement, which they embodied in a Term Sheet that counsel for all Parties executed. The Parties have advised the Court of their settlement and, on February 10, 2022, the Court entered an order staying all deadlines in the Lawsuit through March 10, 2022, pending further order of the Court. This Settlement Agreement incorporates agreements contained in the Term Sheet and other issues not addressed in the Term Sheet or otherwise previously resolved.

7. Class Counsel has conducted an investigation relating to the claims brought against Respondents. Class Counsel has also analyzed the legal issues in the case. Class Counsel believes that although their claims have merit, they recognize and acknowledge the expense, time, risk and uncertainty with continuing to prosecute this case, and believe that this settlement at this time is desirable, fair, reasonable, adequate, and in the best interests of the Class and that this Settlement Agreement should be approved by the Court under Rule 23 of the Federal Rules of Civil Procedure.

8. Respondents are entering into this Settlement Agreement solely to avoid the costs and uncertainties of the Lawsuit. Respondents vigorously deny all claims asserted in the Lawsuit and deny all allegations of wrongdoing or liability. Respondents desire to settle the Lawsuit on the terms set forth herein and solely for the purpose of avoiding the associated burden, expense, risk and uncertainty. Respondents believe that this settlement is fair, reasonable, and adequate, and that the Settlement Agreement should be approved by the Court under Rule 23 of the Federal Rules of Civil Procedure.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their undersigned respective counsel, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement and as may be

ordered by the Court, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the action and the Released Claims shall be finally and fully compromised, settled, and released, and the action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Settlement Agreement.

DEFINITIONS

9. “Claim Deadline” shall mean sixty (60) days from the initial sending of Notice of Class Action Settlement by any means authorized by this Settlement Agreement.

10. “Claim Form” means the claim form pursuant to which Class Members may submit a request for a Settlement Award, a proposed form of which is attached as **Exhibit A** hereto.

11. “Class,” as set forth in the Court’s order of April 19, 2021 [Dkt. 48] is defined as: “All individuals who received, on July 16 or 17, 2020, one or more pre-recorded calls to their cellular telephones from the phone number 615-348-5237.”

12. “Class Counsel” means the law firms of Spragens Law PLC and Branstetter, Stranch and Jennings, PLLC.

13. “Class Member List” means all persons whose names and telephone numbers appear on the DCEC List, and whose telephone numbers were associated with cellular/mobile telephones in July 2020 as determined by the expert witness retained by Class Counsel.

14. “Class Member” means any person who is a member of the Class and who does not submit a timely request to be excluded from the Class, as provided by the Preliminary Approval Order, and who is not otherwise excluded by the Court from the Class.

15. “Class Representatives” mean Plaintiffs Rachael Ann Elrod, Andrew Kaufman, Sarah Martin and Brooks Brasfield.

16. “Court” means the United States District Court for the Middle District of Tennessee.

17. “*Cy Pres* Distribution” means monies that may be distributed from the Settlement Fund if any such monies remain in the Settlement Fund after payment of Settlement Costs pursuant to this Settlement Agreement.

18. “DCEC List” shall mean the list of registered Davidson County Voters obtained from the Davidson County Election Commission, which was used to identify potential recipients of the calls at issue in this action.

19. “Escrow Account” means the non-interest-bearing account to be established by the Notice and Settlement Administrator consistent with the terms and conditions described in this Agreement and which will hold the Settlement Fund.

20. “Effective Date” means the first day on which the Court has entered a final judgment approving this Settlement Agreement and either: (a) the time to appeal from the Court’s final judgment approving this Settlement Agreement has expired and no appeal has been taken; or (b) if a timely appeal of the Court’s final judgment approving this Settlement Agreement is taken, the date on which the final judgment is no longer subject to further direct appellate review if the final judgment has not been reversed in any way.

21. “Execution Date” means the first date on which this Settlement Agreement has been fully executed by the Parties and their respective Counsel.

22. “Final Approval Hearing” means the hearing that the Court will conduct to consider whether to grant final approval to this Settlement Agreement.

23. “Final Approval Order” means the proposed Final Approval Order, substantially in the form of **Exhibit E**.

24. “Lawsuit” means the consolidated actions appearing in the caption to this Settlement Agreement.

25. “Net Settlement Fund” means the monies remaining from the Settlement Fund after the payment from the Settlement Fund of Settlement Costs.

26. “Notice Administrator” means the entity chosen by Class Counsel, and approved by Respondents and the Court, to administer the notice and settlement distribution process involved in this settlement.

27. “Notice of Class Action Settlement” means the proposed notice to be sent to the members of the Class by direct mail, email, and/or text message, substantially in the form of **Exhibit B**. The proposed long form notice attached as **Exhibit C** will be posted to the settlement website to be established by the Notice Administrator and shall include a copy of the Claim Form and instructions for submitting a claim.

28. “Preliminary Approval Order” means the proposed Order Preliminarily Approving Class Action Settlement, Directing Notice, and Setting Date for Fairness Hearing, in the form of **Exhibit D**.

29. “Released Claims” means any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory as of the date of the Preliminary Approval Order that arise out of or are related in any way to the actual or alleged use by Respondents or their agents or affiliates, of an artificial or prerecorded voice and/or of

any automatic telephone dialing system (to the fullest extent that those terms are used, defined or interpreted by the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., relevant regulatory or administrative promulgations and case law) to make calls on July 16 or 17, 2020, including, but not limited to, claims under or for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, and any other state or federal statutory or common law claim arising from the use of automatic telephone dialing systems and/or an artificial or prerecorded voice.

30. “Respondents” mean Defendants Michelle Foreman and Karen Moore, and Third-Party Defendants Best Sellers, LLC, Heather Sellers, Joe Gergley, and Hypermetrics, LLC.

31. “Settlement Costs” means the following amounts: (i) any award of attorneys’ fees and costs to Class Counsel approved by the Court; (ii) any incentive award to Plaintiffs approved by the Court; (iii) all costs of printing and providing Notice to persons in the Class, including, but not limited to, costs for mail, e-mail, and text-messaging; (iv) all costs of administering the Settlement, including, but not limited to, the cost of printing and mailing Cash Award Payments, Claim Forms, and opt-out requests, the cost of maintaining a designated post office box for receiving Claim Forms and the costs of processing opt-out requests; and (v) the fees, expenses, and other costs of the Notice Administrator.

32. “Settlement Fund” means the sum of \$1,010,500 to be paid by Respondents or, in the case of Karen Moore, her insurers, as set forth below and held by the Notice Administrator in the Escrow Account under Paragraph 45 of this Settlement Agreement pending the instructions for distribution and payment in this Agreement and further Court order.

33. “Valid Claim” means a claim that is submitted by a Class Member through a properly completed Claim Form, which is: (a) a postmarked or submitted online on or before the

Claim Deadline; (b) sent to the address specified in the notice in claim form or submitted online; and (c) completed with the following information: (i) the Class Member's full name and mailing address; (ii) the cellular telephone number at which Respondents allegedly contacted the Class Member; and (iii) affirmation that the Class Member is a member of the Class, as defined by the Court.

PROCEDURE FOR APPROVAL OF SETTLEMENT AGREEMENT

Stipulation to Certification of the Class

34. The Class Representatives, Class Counsel, and Respondents stipulate that, for the purposes of settlement only, the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are satisfied and that the Court properly certified the Class.

Preliminary Approval of the Settlement Agreement by the Court/CAFA Notice

35. Within fifteen (15) days from the Execution Date, the Class Representatives and Respondents shall move the Court to enter the Preliminary Approval Order. No later than ten (10) days after the filing of the motion to enter the Preliminary Approval Order, Respondents shall provide the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 *et seq.* ("CAFA Notice") and shall advise Class Counsel of the date the CAFA Notice is sent.

Notice to Class Members of Preliminary Approval

36. (a) Within thirty (30) days from entry of the Preliminary Approval Order, or within such other time as may be ordered by the Court, Class Counsel shall direct the Notice Administrator to send the Notice of Class Action Settlement to all persons on the Class Member List. The Initial Notice of Class Action Settlement shall be sent by email to all Class Members for whom an email address is provided on the Class Member List, and by text message to all Class Members for whom a cellular telephone number is provided on the Class Member List. In addition, on or before 30 days after entry of an Order approving this Plan, the Notice Administrator will set

up a Class Website containing details about the Class Action Settlement, and will publish Google Display Ads targeting Davidson County residents with a notice of pendency of class action lawsuit and a link to the Class Website with the same substance as the emails and text message notices. If any Notice of Class Action Settlement is deemed undeliverable then the Notice and Settlement Administrator must attempt to locate the correct email address or cellular telephone number through reasonable efforts and shall forward the Notice of Class Action Settlement to the email address or cellular telephone number obtained from the search.

37. All costs of providing notice administration shall be paid from the Settlement Fund.

Right of Members of the Class to Opt Out

38. Any member of the Class may exclude himself or herself from the Class by mailing to the Notice and Settlement Administrator a written request for exclusion that is postmarked no later than forty-five (45) days after the date that the Notice of Class Action Settlement has been first sent. Exclusion requests must: (a) be signed (if sent by mail or fax) or electronically signed (if submitted via the Settlement Website); (b) include the full name, address, and cellular telephone of the person(s) requesting exclusion; and (c) include the following statement: “I/we request to be excluded from the class settlement in *Elrod et al. v. NoTax4Nash et al.* Case No. 3:20-cv-00617, consolidated with 3:20-cv-00618.” No exclusion request will be valid unless all of the information described above is included. A request to be excluded that is sent by means other than that designated in the notice, or that is not timely received by the Notice Administrator, shall be invalid. No person in the Class, or any person acting on behalf of or in concert or participation with that person (unless that person is acting in a representative capacity or on behalf of a deceased or incapacitated Class Member), may exclude any other person in the Class from the Class. So called “mass” or “class” opt-outs shall not be allowed. Any member of the Class who elects to be excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief

under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. No later than ten (10) days after the date for a member of the Class to exclude himself or herself from the Class has expired, Class Counsel must file with the Court and serve on Respondents a list of those persons who have timely chosen to exclude themselves.

Right of Members of the Class to Object

39. Any member of the Class may object to the Settlement Agreement by filing with the Court and serving on Class Counsel and counsel for Respondents written objections postmarked no later than forty-five (45) days after the date that the Notice of Class Action Settlement has first been sent by any method. In order to be heard, the objection must also be mailed to Class Counsel, postmarked no later than the last day to file the objection. For an objection to be considered by the Court, the objection must set forth: (1) the name and case number of the action; (2) the objector's full name, address and cellular telephone number; (3) an explanation of the basis upon which the objector claims to be a Class Member; (4) all grounds for the objection in writing, accompanied by any legal support for the objection known to the objector or his or her counsel; (5) all exhibits he/she intends to introduce into evidence at the hearing on Final Approval, which shall be attached; (6) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection; (7) the identity of all counsel representing the objector who will appear at the Final Approval Hearing or who has a financial interest in the objection; (8) no later than three (3) business days before the Final Approval Hearing, a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (9) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (10) the objector's signature (an attorney's signature is not sufficient). Members of the Class who

wish to appear in person or by counsel at the Final Approval Hearing must file with the Court and serve on Class Counsel and counsel for Respondents at least fifteen (15) days before the Final Approval Hearing a notice of their intent to appear.

Right of Respondents to Withdraw from the Settlement Agreement Based on the Number of Class Members Who Opt Out

40. Any Respondent may withdraw its agreement to settle if the number of members of the Class opting out of the settlement reaches forty (40) . Any Respondent may exercise this right only by sending written notice to Class Counsel that they are withdrawing from their agreement to settle within twenty (20) days after the deadline for members of the Class to opt out of the Class. Any expenses incurred prior to the date of such written notice shall be borne by Respondents. If any Respondent exercises such right, this Settlement Agreement shall be void.

STAY/BAR OF OTHER PROCEEDINGS

41. All proceedings in the action will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the settlement or comply with the terms of the Settlement Agreement. Pending determination of whether the Settlement Agreement should be granted final approval, the parties in the Action agree not to pursue any claims or defenses otherwise available to them, and no person in the Class, either directly, on a representative basis, or in any other capacity, will commence or prosecute against any of the Released Parties any action or proceeding asserting any of the Released Claims. The proposed order submitted with a motion for preliminary approval will contain an injunction enjoining the commencement or prosecution of Released Claims by persons in the Class or persons purporting to act on their behalf pending final approval of the Agreement. The Settlement Agreement will be conditioned upon the entry of such an injunction. The parties shall provide notice of such injunction in any jurisdiction in which an action asserting claims subject to the injunction is pending.

Final Approval of the Settlement Agreement by the Court

42. On or before the date provided in the accompanying Preliminary Approval Order, Class Counsel shall file a motion for final approval of the Settlement, which shall be heard at a hearing date set by the Court, notice of which will be provided to the Class (the “Final Approval Hearing”), on a date that is no earlier than ninety (90) days after the CAFA Notice is sent. Class Counsel will also request that the Court approve the proposed Settlement Awards, Class Representative Fees, and applications for fees, expenses, and costs.

43. At the Final Approval Hearing, the Class Representatives and Respondents must jointly move the Court to enter the Final Approval Order.

BENEFIT TO CLASS MEMBERS

Cash Settlement Fund

44. Respondents or, in the case of Karen Moore, her insurers, will pay a total of \$1,010,050 into the Settlement Fund as follows: Karen Moore’s insurers shall contribute one million dollars (\$1,000,000) to the Gross Settlement Amount. Defendant Michelle Foreman shall contribute \$3,500 to the Gross Settlement Amount. Respondents Joe Gergley and Hypermetrics, LLC shall collectively contribute \$3,500 to the Gross Settlement Amount. Respondents Heather Sellers, LLC and Heather Sellers shall collectively contribute \$3,500 to the Gross Settlement Amount.

45. These payments into the Settlement Fund shall be made within fifteen (15) days after the entry of the Preliminary Approval Order. The Settlement Fund shall be held by the Notice Administrator in the Escrow Account for the benefit of the Class Members and to provide for the payments set forth in this Settlement Agreement, subject to Court approval. Notwithstanding the foregoing, if this Settlement fails to become final either because (a) the failure of the Court to enter

the Final Approval Order; (b) reversal of the Final Approval Order on final appeal or on remand; or (c) withdrawal from this Agreement by any Respondent as provided in Paragraph 40, then the Settlement Fund, less funds already expended, must be returned to the Respondents within ten (10) business days.

Settlement Awards

46. Each Class Member who submits a Valid Claim will be paid a Cash Award Payment, not to exceed \$3,000, which shall be calculated by dividing the amount remaining in the Settlement Fund (after deducting for all Settlement Costs) by the total number of Valid Claims. Class Members submitting Valid Claims will receive an equal share of the amount remaining in the Settlement Fund (after deducting Settlements Costs).

47. To make a claim for a settlement award, Class members must submit a Valid Claim. Only one Valid Claim will be honored per Class Member, regardless of the number of calls a Class Member received or claims to have received. Respondents shall have the right to review the submitted Claim Forms and to suggest denial of claims if Respondents have a good-faith belief that any claims are improper or fraudulent. Any suggestion of denial of claims will be provided to Class Counsel in writing. If the Parties cannot agree upon which claims should be denied, then the Parties shall submit the issue to the Court for determination at Final Approval.

48. No later than thirty (30) days from the Effective Date, the Claims Administrator shall mail, by first-class mail, a cash award payment in the form of a check or electronic payment to each Class Member who submits a Valid Claim. Checks will be valid for 180 days from the date on the check. Any checks uncashed after 180 days shall be distributed as part of the Cy Pres Distribution pursuant to the procedures below.

49. If there is any money remaining in the Settlement Fund after payment of the Settlement Costs and Cash Award Payments (including any checks uncashed after 180 days), such monies will be distributed to one or more nonprofit charitable organization agreed-upon by the parties, subject to approval by the Court. The *Cy Pres* Distribution shall be made 240 days after completion of the distribution of Cash Award Payments. Plaintiffs and Respondent Karen Moore shall attempt to agree upon the *Cy Pres* recipient and submit that recipient for the Court's approval together with their motion for preliminary approval. If Plaintiffs and Respondents cannot agree upon the *Cy Pres* recipient, then Plaintiffs and defendant Karen Moore shall each submit a proposal to the Court to allow the Court to approve the *Cy Pres* recipient(s). In no event shall any unclaimed amounts remaining in the Net Settlement Fund revert to Respondents.

RESPONDENTS ENJOINED FROM FUTURE VIOLATIONS

50. Respondents shall agree to refrain from engaging in future conduct which would violate the Telephone Consumer Protection Act.

RELEASES AND TERMINATION OF LAWSUIT

51. Upon the Effective Date of the Settlement, each Class Member (other than those who submit valid and timely opt-outs) will release and forever discharge Respondents, together with all of their current and former parents, subsidiaries, affiliates, officers, directors, stockholders, employees, administrators, assigns, agents, attorneys, and representatives for all causes of action relating in any way to the Released Claims, including all claims that were or could have been asserted in the Lawsuit.

52. Upon the Effective Date of the Settlement, Respondents release all claims of any kind or nature that have been or could have been asserted against the Class Representatives, any Class Member (other than those who submit valid and timely opt-outs), Class Counsel, or each

other relating in any way to the Released Claims of the Class Members (other than those who submit valid and timely opt-outs). Notwithstanding the foregoing, if any person who opts out of the Class files a separate lawsuit, each Respondent may pursue any claims against any other Respondent related to or arising out of the facts alleged in such person's lawsuit.

NO ADMISSION OF LIABILITY

53. Respondents are entering into this Settlement Agreement and agreeing to the form and content of the related documents solely to compromise and settle the claims brought in the Lawsuit and to avoid the expense and uncertainty of continued litigation in the Lawsuit. Neither this Settlement Agreement nor any of the related documents should be construed as an admission of liability or any type of wrongdoing or misconduct, and Respondents expressly deny any wrongdoing, misconduct, or liability in the Lawsuit.

ATTORNEYS' FEES AND EXPENSES, COSTS OF NOTICE AND ADMINISTRATION, AND CLASS REPRESENTATIVE FEE

Attorneys' Fees & Expenses

54. Respondents agree that they will not take any position on any request by Class Counsel to the Court to be paid attorneys' fees from the Settlement Fund of up to thirty-five percent (35%) of the Settlement Fund and reasonable litigation costs. Any fees, costs, or expenses approved by the Court must be awarded and payable out of the Settlement Fund alone, and shall be paid within fourteen (14) days of the Effective Date.

Class Representative Service Award

55. Respondents agree that they will not take any position on any request for the Class Representative to be paid a Class Representative service award from the Settlement Fund in any amount up to \$2500.00 per Class Representative. Any Class Representative service award must be

approved by the Court and must be awarded and payable out of the Settlement Fund alone, and shall be paid within fourteen (14) days of the Effective Date.

MISCELLANEOUS

Agreement to Effectuate This Settlement

56. The Class Representatives, Class Counsel, Respondents, and Respondents' counsel agree to undertake their best efforts to effectuate this Settlement Agreement, including: (i) all steps that may be appropriate or necessary to secure the Court's preliminary and final approvals and entry of the Preliminary Approval Order and the Final Approval Order and (ii) all steps that may be appropriate or necessary to oppose any challenges to or appeals from the Court's orders approving the Settlement Agreement.

Reservation of Rights If This Settlement Agreement Is Not Approved or Becomes Void

57. If this Settlement Agreement is not approved by the Court or if it becomes void, then: (i) the stipulation in Paragraph 34 of this Settlement Agreement shall become void and have no legal effect; (ii) no act, statement, or filing in furtherance of this Settlement Agreement may be used as an admission or to support or oppose the certification of any class in the Lawsuit; and (iii) all Parties to this Settlement Agreement shall be returned to the same position in the Lawsuit that they were in on the day before the Execution Date. In addition, should this Settlement Agreement not be approved, finalized, or not become effective for any reason, and regardless of fault, all monies paid by Respondents into the Settlement Fund that have not yet been spent or contractually obligated as payment for Notice, shall be refunded.

Integration Clause

58. This Settlement Agreement, and all exhibits to it, constitute the entire agreement between the Parties, and supersede any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter of

this Settlement Agreement. The Settlement Agreement is an integrated agreement, and no promise, inducement, or agreement separate from this Settlement Agreement has been made to the Parties. The terms of this Settlement Agreement, and all exhibits to it, are binding upon and inure to the benefit of each of the Parties and their respective successors, heirs, and assigns. This Settlement Agreement can be modified only in writing.

Execution in Counterparts

59. This Settlement Agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed to be an original.

No Construction Against the Drafter

60. Each party has participated in negotiating and drafting this agreement through counsel, so if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a party.

Choice of Law, Forum, and Stipulation to Jurisdiction

61. This Settlement Agreement, and all exhibits to it, shall be governed by the laws of the State of Tennessee, and the Parties to this Settlement Agreement stipulate that the Court has personal jurisdiction over them for purposes of administering, interpreting, and enforcing this Settlement Agreement. All proceedings relating to the administration, interpretation, and enforcement of this Settlement Agreement and related documents must be brought in the Court.


John T. Spragens
Spragens Law PLC
311 22nd Avenue North
Nashville, TN 37203
john@spragenslaw.com



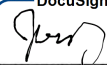
Joe P. Leniski, Jr.
Anthony A. Orlandi, Esq.
Branstetter, Stranch & Jennings, PLLC
The Freedom Center
223 Rosa Parks Avenue, Suite 200
Nashville, TN 37203
joeyl@bsjfirm.com
aorlandi@bsjfirm.com

Class Counsel




Defendant/Third-Party Plaintiff Karen Moore

Defendant/Third-Party Plaintiff Michelle Foreman

DocuSigned by:

A1C6D7F4CC8F4E4...

5/9/2022

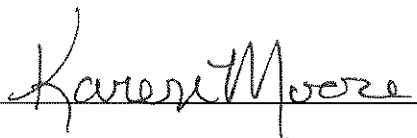
Third-Party Defendant Joe Gergley, individually and behalf of Third-Party Defendant Hypermetrics, LLC


Heather Sellers (May 9, 2022 14:49 CDT)

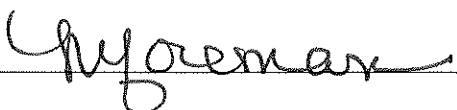
Third-Party Defendant Heather Sellers, individually and behalf of Third-Party Defendant Best Sellers, LLC

Joe P. Leniski, Jr.
Anthony A. Orlandi, Esq.
Branstetter, Stranch & Jennings, PLLC
The Freedom Center
223 Rosa Parks Avenue, Suite 200
Nashville, TN 37203
joeyl@bsjfirm.com
aorlandi@bsjfirm.com


Class Counsel



Defendant/Third-Party Plaintiff Karen Moore



Defendant/Third-Party Plaintiff Michelle Foreman

DocuSigned by:

5/9/2022
A1C8D7F4CC8F4E4...

Third-Party Defendant Joe Gergley, individually and behalf of Third-Party Defendant Hypermetrics, LLC

Third-Party Defendant Heather Sellers, individually and behalf of Third-Party Defendant Best Sellers, LLC

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**RACHAEL ANNE ELROD, ANDREW
KAUFMAN, and SARAH MARTIN, on
behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

**BROOKS BRASFIELD, on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

Case No. 3:20-cv-00617

**District Judge Eli J. Richardson
Magistrate Judge Barbara D. Holmes**

CLASS ACTION

JURY DEMAND

Consolidated with
Case No.: 3:20-cv-00618

**MICHELLE FOREMAN and KAREN
MOORE,**

Third-Party Plaintiffs,

v.

**BEST SELLERS, LLC, HEATHER
SELLERS, JOE GERGLEY, and
HYPERMETRICS, LLC,**

Third-Party Defendants.

**[PROPOSED] PRELIMINARY APPROVAL ORDER
GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

This matter came before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement. Plaintiffs, individually and on behalf of the proposed Class, and Defendants and Third-Party Defendants have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation on a class basis.

On July 17, 2020, Plaintiffs commenced this action alleging that defendant Michelle Foreman and others violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (the “TCPA”) by allegedly placing politically oriented telephone calls (“robocalls”) to cellular phones through the use of an automatic telephone dialing system and/or artificial or prerecorded voice, without the prior express consent of the recipients of the calls. On March 22, 2021, Plaintiffs filed a Second Amended Complaint in this action adding defendant Karen Moore as a defendant. On April 16, 2021, defendants Karen Moore and Michelle Foreman answered the Second Amended Complaint and asserted a third-party complaint against Third-Party Defendants alleging, among other things, that Third-Party Defendants actually placed the calls and had a duty to ensure that the calls were placed in a manner that did not violate that TCPA.

On April 19, 2021, the Court entered an order granting Plaintiffs' unopposed motion for class certification, and certifying the following Class: "All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237."

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Hon. Wayne Andersen (Ret.) of JAMS. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Motion for Preliminary Approval is granted as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Rule 23(b)(3) and (e), the Court provisionally certifies a Class in this matter defined as follows:

All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237

The Court provisionally finds, for settlement purposes only, that: (a) the Class is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact common to the Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Class as the Class Representatives have no interest antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Class;

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

(e) questions of law or fact common to Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. Class Representatives and Class Counsel.

On April 19, 2021, the Court certified a class consisting of “All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237,” and appointed Plaintiffs Brooks Brasfield, Rachael Ann Elrod, Andrew Kaufman, and Sarah Martin as Class Representatives and the law firms of Branstetter, Stranch & Jennings, PLLC, and Spragens Law PLC as Class Counsel. The Court incorporates and reaffirms that Order for purposes of certifying a approving the settlement

3. Preliminary Settlement Approval. Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Class and accordingly is preliminarily approved.

4. Jurisdiction. The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this court.

5. Final Approval Hearing. A Final Approval Hearing shall be held at ____ a.m./p.m. on _____, 2022 (which is at least 100 Days after Preliminary Approval), in the United States District Court for the Middle District of Tennessee, 719 Church Street, Nashville, Tennessee 37203, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes; (b) the Settlement should be finally approved as fair, reasonable, and adequate; (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Class Counsel for an award of attorneys’ fees, costs, and expenses (the “Fee Request”) should be approved; and (f) the motion of the Class Representative for a Service Award (the “Service Award Request”) should be approved.

Plaintiffs' Motion for Attorneys' Fees, Costs, and a Service Award shall be filed 14 Days prior to Class Members' Deadlines to object to or exclude themselves from the Settlement Agreement.

Plaintiff's Motion for Final Approval of the Settlement shall be filed with the Court at least 14 Days prior to the Final Approval Hearing.

By no later than 7 Days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections to the Settlement Agreement or objections to Plaintiffs' request for attorneys' fees, costs, and service awards. These responses may be incorporated into replies in support of Final Approval of the Settlement and the Service Award Request and Fee Request.

6. Administration. The Court appoints _____ as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. All costs and expenses associated with providing notice to Class Members including, but not limited to, the Settlement Administrator's fees, as well as the costs associated with administration of the Settlement, shall be deducted from the Settlement Fund.

7. Notice to the Class. The proposed Notice Program set forth in the Settlement Agreement, and the Short-Form Notice, Email Notice, Long-Form Notice, and Claim Form attached to the Settlement Agreement as Exhibits B, C, and E satisfy the requirements of Federal Rules of Civil procedure, provide the best notice practicable under the circumstances and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **30 days from the date of this Order** (the "Notice Deadline"), the Settlement Administrator shall complete the Notice Program in the manner set forth in Section IX of the Settlement Agreement.

8. Findings and Conclusions Concerning Notice. The Court finds that the form, content, and method of giving notice to the Class as described in in this Order and in Paragraph 36 of the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Class; (b) are reasonably calculated to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and the Court concludes that the Notice Program meets all applicable requirements of law, including Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must mail a written notification of the intent to exclude himself or herself from the Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **45 Days after the Notice Deadline** (the “Opt-Out Period”). For a request for exclusion to be valid, the written notification must: (a) be signed (if sent by mail or fax) or electronically signed (if submitted via the Settlement Website); (b) include the full name, address, and cellular telephone of the person(s) requesting exclusion; and (c) include the following statement: “I/we request to be excluded from the class settlement in *Elrod et al. v. NoTax4Nash et al.* Case No. 3:20-cv-00617, consolidated with 3:20-cv-00618.” No exclusion request will be valid unless all of the information described above is included. A request to be excluded that is sent by means other than that designated in the notice, or that is not timely received by the Notice Administrator, shall be invalid. No person in the Class, or any person acting on behalf of or in concert or participation with that person (unless that person is acting in a representative capacity or on behalf of a deceased or incapacitated Class Member), may exclude any other person in the Class from the Class. So called “mass” or “class” opt-outs shall not be allowed. Any member of the Class who elects to be

excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Class, which Class Counsel must file with the Court and serve on Defendants and Third-Party Defendants no later than 10 days after the date for a member of the Class to exclude himself or herself from the Class has expired.

Any Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Class Member who has not submitted a timely, valid written notice of exclusion from the Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Class shall not be entitled to receive any benefits of the Settlement.

10. Objections and Appearances. A Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is postmarked and mailed to the Settlement Administrator by no later than **45 Days after the Notice Deadline** (the “Objection Deadline”). For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 39 of the Settlement Agreement, which is as follows:

- (1) the name and case number of the action;
- (2) the objector's full name, address and cellular telephone number;
- (3) an explanation of the basis upon which the objector claims to be a Class Member;
- (4) all grounds for the objection in writing, accompanied by any legal support for the objection known to the objector or his or her counsel;
- (5) all exhibits he/she intends to introduce into evidence at the hearing on Final Approval, which shall be attached;
- (6) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection;
- (7) the identity of all counsel representing the objector who will appear at the Final Approval Hearing or who has a financial interest in the objection;
- (8) no later than three (3) business days before the Final Approval Hearing, a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- (9) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (10) the objector's signature (an attorney's signature is not sufficient).

Any Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered.

Any Class Member, including a Class Member who submits a timely written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel

hired at the Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.

If Final Order and Judgment is entered, any Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

11. Claims Process and Distribution and Allocation Plan. The Settlement Administrator will assess and determine the validity of claims, subject to review by the Parties, and make pro rata Settlement payments to Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Paragraphs 46-49 of the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Order and Judgment is entered, all Class Members who qualify for a payment under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. Termination of Settlement. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no

further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. Use of Order. This Order shall be of no force or effect if Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Class Representative or any other Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

14. Stay of Proceedings. Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

15. Continuance of Hearing. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

16. Injunction. Pending final approval of the Settlement Agreement and pursuant to Rule 65(a), the Court hereby enjoins all Class Members and any person purporting to act on behalf of a Class Member from commencing or prosecuting any claims against any Defendant or Third-Party Defendant for violating the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (the "TCPA") or any other law by using an automatic telephone dialing system and/or artificial or prerecorded voice to make telephone calls. Class Counsel shall provide notice of such injunction in any jurisdiction in which an action asserting such claims is pending.

17. Summary of Deadlines. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Notice Completion Deadline: 30 Days after Preliminary Approval

Motion for Final Approval: 14 Days before Final Approval Hearing

Motion for Service Award, Attorneys' Fees and Costs: 14 Days before the deadline
for Class Members to Opt-Out or Object

Opt-Out Deadline: 45 Days after Notice Completion Deadline

Objection Deadline: 45 Days after Notice Completion Deadline

Replies in Support of Final Approval, Service Award and Fee Requests: 7 Days
before Final Approval Hearing

Claim Deadline: 60 Days after Notice Completion Deadline

Final Approval Hearing: _____ (at least 100 Days after Preliminary Approval)

IT IS SO ORDERED this _____ day of _____, 2022.

ELI J. RICHARDSON
UNITED STATES DISTRICT JUDGE

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**RACHAEL ANNE ELROD, ANDREW
KAUFMAN, and SARAH MARTIN, on
behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

**BROOKS BRASFIELD, on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

Case No. 3:20-cv-00617

**District Judge Eli J. Richardson
Magistrate Judge Barbara D. Holmes**

CLASS ACTION

JURY DEMAND

Consolidated with
Case No.: 3:20-cv-00618

**MICHELLE FOREMAN and KAREN
MOORE,**

Third-Party Plaintiffs,

v.

**BEST SELLERS, LLC, HEATHER
SELLERS, JOE GERGLEY, and
HYPERMETRICS, LLC,**

Third-Party Defendants.

[PROPOSED] FINAL APPROVAL ORDER

Before the Court is Plaintiffs’ unopposed motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiffs Rachael Anne Elrod, Andrew Kaufman, Sarah Martin, and Brooks Brasfield (“Plaintiffs” or “Class Representatives”), and defendants Michelle Foreman, Karen Moore (“Defendants”), and third-party defendants Best Sellers, LLC, Heather Sellers, Joe Gergley, and Hypermetrics, LLC (“Third-Party Defendants” and, collectively with Plaintiffs and Defendants, the “Parties”) as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing on _____, 2022, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT makes the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Class;

IT IS ON THIS _____ day of _____, 2022, **ORDERED** that:

1. The Settlement involves allegations in Plaintiffs' Second Amended Class Action Complaint (Doc. No. 42) that Defendants violated the Telephone Consumer Protections Act ("TCPA") by making auto-dialed and/or prerecorded calls to cellular telephones, and allegations by Defendants that Third-Party Defendants are liable for any violations of the TCPA proved by Plaintiffs.

2. The Settlement does not constitute an admission of liability by Defendants or Third-Party Defendants, and the Court expressly does not make any finding of liability or wrongdoing by Defendants or Third-Party Defendants.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On April 19, 2021, the Court certified a class consisting of "All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237," and appointed Plaintiffs as Class Representatives and the law firms of Branstetter, Stranch & Jennings, PLLC, and Spragens Law PLC as Class Counsel.

5. On _____ the Court entered an Order which among other things: (a) approved the Notice to the Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) preliminarily approved the Settlement; (c) set deadlines for opt-outs and objections; (d) approved and appointed the Claims Administrator; and (e) set the date for the Final Approval Hearing.

6. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to Rule 23(b)(3) and 23(e), the Court conditionally-certified the Class, defined identically to the Class certified on April 19, 2021, as follows:

All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237.

7. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties pursuant to Rule 23(e), grants final approval of the Settlement Agreement and defines the Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the requirements of Rule 23.

8. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. Email, and text message notice to all Class Members using information contained on the Davidson County Election Commission (“DCEC”) List;
- b. The creation of a non-reversionary \$1,010,500.00 Settlement Fund, from which Class members who submit Valid Claims will receive pro rata Cash Award Payments after deductions for Notice and Settlement Administration costs, Class Representative service awards, Plaintiffs’ attorneys’ fees, and reasonable litigation costs, all of which were subject to approval by the Court; and
- c. Injunctive relief to ensure that no Defendant or Third-Party Defendant will prospectively violate the TCPA.

9. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

10. Notice of the Final Approval Hearing, the proposed motion for attorneys’ fees,

costs, and expenses, and the proposed Service Award payment to Plaintiffs have been provided to Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

11. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in compliance with the requirements of Rule 23(c)(2).

12. As of the final date of the Opt-Out Period, _____ potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in Exhibit A to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

13. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and declarations filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

14. Pursuant to the Settlement Agreement, the Parties and the Notice and Settlement Administrator shall implement the Settlement in the manner and time frame as set forth therein.

15. Pursuant to the Settlement Agreement, Plaintiffs and the Class Members release claims against Defendants, Third-Party Defendants, and related persons/entities, and Defendants and Third-Party Defendants release claims against one another and related persons/entities, as defined in the Settlement Agreement, as follows:

- Each Class Member releases all claims of any kind or nature that have been or could have been asserted against Respondents, together with all of their current and former parents, subsidiaries, affiliates, officers, directors, stockholders, employees,

administrators, assigns, agents, attorneys, and representatives (the “Released Persons”) relating in any way to the Released Claims (as defined in Settlement Agreement ¶ 29), including all claims that were or could have been asserted in the Lawsuit.

- Defendants and Third-Party Defendants release all claims of any kind or nature that have been or could have been asserted against the Class Representatives, any Class Member, Class Counsel, or each other relating in any way to the Released Claims of the Class Members, including all claims that were or could have been asserted in the Lawsuit.

Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of those persons identified in Exhibit A to this Order who have timely and validly requested exclusion from the Class.

16. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiff and each Class Member, and each of their respective spouses and children with claims on behalf of the Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by

operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims.

17. The Court determines that this Final Approval Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

18. The Court approves Class Counsel's application for attorneys' fees and reimbursement of expenses incurred in the prosecution of the case in the amount of \$_____.

19. The Court approves Class Counsel's application for an incentive award for the Class Representative in the amount of \$_____.

20. The Court finds the fees and costs of the Settlement Administrator are reasonable.

21. [If applicable] The Court approves [INSERT] as the *cy pres* recipient pursuant to Settlement the Agreement.

22. The Settlement Agreement, including all of its terms and Exhibits, is fully and finally approved. The Court shall retain jurisdiction pending full implementation of the Settlement, and the Parties shall file, in due course, a joint notice informing the Court that the settlement has been finally implemented, at which point this case shall be closed.

23. In accordance with Rule 23, this Final Order and Judgment resolves all claims against all parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

Done and ordered this day of _____, 2022.

It is so **ORDERED**.

ELI J. RICHARDSON
UNITED STATES DISTRICT JUDGE