

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

JESSE WATKINS, individually and on
behalf of those similarly situated,

Plaintiff,

v.

EYEBUYDIRECT, INC.,

Defendant.

CASE NO.: 2026-007410-CA-01

CLASS REPRESENTATION

_____ /

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into between and among the following parties, by and through their respective counsel: Plaintiff Jesse Watkins (“Plaintiff” or “Class Representative”), on behalf of himself and the Settlement Class, and Defendant EyeBuyDirect, Inc. (“Defendant”). Plaintiff and Defendant will sometimes be referred to together as the “Parties,” or, individually, as a “Party.”

WHEREAS, Plaintiff filed a Class Action Complaint (the “Action”) on behalf of himself and a putative class in the lawsuit styled *Watkins v. EyeBuyDirect, Inc.*, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, which asserts claims under the Telephone Consumer Protection Act (“TCPA”).¹

WHEREAS, Plaintiff alleges that he and members of the class received text messages from Defendant despite having previously made an opt out request, which allegedly harmed them and the class (the “Allegations”);

WHEREAS, Plaintiff alleges that, as a result of the Allegations, he and other similarly situated individuals are entitled to declaratory and injunctive relief, statutory damages, attorneys’ fees, and costs;

WHEREAS, the Parties, Plaintiff’s counsel and Defendant’s counsel, ultimately reached an agreement in principle to resolve the claims raised in the Action;

WHEREAS, for settlement purposes only, Plaintiff will request that the Court certify the Settlement Class and appoint him as Class Representative and his lawyers— Scott Edelsberg of Edelsberg Law, P.A., 20900 NE 30th Avenue, Suite 417 Aventura, Florida 33180; Christopher Berman of Shamis and Gentile, P.A. 14 NE 1st Avenue, Suite 705, Miami, Florida 33132; Michael Eisenband of Eisenband Law, P.A., 515 E Las Olas Boulevard, Suite 1301, Fort Lauderdale

¹ This Action was originally filed on April 10, 2025 in the United States District Court for the Western District of Texas, captioned *Watkins v. EyeBuyDirect, Inc.*, No. 1:25-cv-00538 (W.D. Tex.).

Florida 33301 and Manuel S. Hiraldo of Hiraldo, P.A., 246 Shore Court, Lauderdale-by-the-Sea, Florida 33308 —as Class Counsel.

WHEREAS, based on their investigation and discovery in the Action and the experience of Class Counsel, Plaintiff and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to, and in the best interest of, the Settlement Class;

WHEREAS, Plaintiff, on behalf of himself and as the representative of the Settlement Class, and Defendant desire to resolve the dispute between them;

WHEREAS, Plaintiff, on behalf of himself and as the representative of the Settlement Class, and Defendant will execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation; and

WHEREAS, Defendant denies any and all liability or wrongdoing to the Class Representative and to the Settlement Class. Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, has taken into account the uncertainty and risks inherent in this Action, and has determined that it is desirable that the Action and the Allegations be fully, completely, and finally settled in the manner and on the terms set forth herein.

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their counsel agree that the Action shall be settled, compromised, and/or dismissed on the merits and with prejudice on the terms and conditions in this Agreement, and without costs (except as provided herein), subject to Court approval of this Agreement after a hearing and on finding that it is a fair, reasonable, and adequate settlement.

I. DEFINITIONS

In addition to the terms defined above and at other places in this Agreement, the following defined terms have the meaning set forth below:

A. “Administrator” means RG/2 Claims Administration LLC which, subject to Court approval, shall be responsible for administrative tasks, which may include, without limitation: (a) arranging for distribution of the Class Notice and Claim Form to Settlement Class Members; (b) making any electronic and/or physical mailings to Settlement Class Members required under this Agreement, if any; (c) forwarding written inquiries from Settlement Class Members to Class Counsel or their designee and Defendant’s counsel; (d) establishing the Settlement Website; (e) receiving and processing Claims and distributing payments to Settlement Class Claimants; and (f) otherwise assisting with implementing and administering this Agreement as set forth herein, subject in all cases to approval by Class Counsel and Counsel for Defendant. Class Counsel and Counsel for Defendant may, by agreement, substitute a different entity as Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally.

B. “Agreement” or “Settlement” or “Settlement Agreement” means this Settlement Agreement and Release and all attachments and exhibits hereto.

C. “Attorneys’ Fees and Expenses” means the total recovery that may be awarded to Class Counsel to compensate them (and all other attorneys for Plaintiff or the Settlement Class) for all attorneys’ fees, costs and expenses of any kind incurred by Plaintiff or Class Counsel in connection with the Action.

D. “Claim” means a written or electronic request for a Claim Settlement Payment submitted by a Settlement Class Member to the Administrator.

E. “Claim Deadline” means the last date by which a Claim submitted to the Administrator by a Settlement Class Member for a Claim Settlement Payment must be postmarked or submitted through the Settlement Website, which shall occur no later than sixty (60) days after

the Class Notice is first emailed or postmarked. All Claims postmarked or submitted through the Settlement Website on or before the Claim Deadline shall be timely, and all Claims postmarked or submitted electronically after the Claim Deadline shall be untimely and barred from entitlement to any Claim Settlement Payment.

F. “Claim Form” means the form attached as **Exhibit 1** to this Agreement and/or as ultimately approved by the Court without material modification.

G. “Claim Settlement Check” means the check containing the Claim Settlement Payment for each Settlement Class Member who submits a valid and timely Claim.

H. “Claim Settlement Payment” means the payment to be made to Settlement Class Members who submit a valid, properly completed and timely Claim Form to the Administrator, and who qualify for such relief under this Agreement.

I. “Class Counsel” means: Scott Edelsberg of Edelsberg Law, P.A., 20900 NE 30th Avenue, Suite 417 Aventura, Florida 33180; Christopher Berman of Shamis and Gentile, P.A. 14 NE 1st Avenue, Suite 705, Miami, Florida 33132; Michael Eisenband of Eisenband Law, P.A., 515 E Las Olas Boulevard, Suite 1301, Fort Lauderdale Florida 33301 and Manuel S. Hiraldo of Hiraldo, P.A., 246 Shore Court, Lauderdale-by-the-Sea, Florida 33308.

J. “Class List” means data relating to approximately **2,514** persons who according to Defendant’s records are Settlement Class Members. The Class List shall be treated as Confidential Information and governed by an appropriate protective order. Defendant will provide the Class List to the Administrator no later than the later of thirty (30) days after this Agreement is signed by all Parties and the date a protective order is entered. The Class List will include the totality of the Settlement Class Members. Defendant shall identify on the Class List the (i) telephone number of the Settlement Class Members, (ii) the email address for the Settlement Class Members (if

available) and (iii) the mailing address for those Settlement Class Members for which it does not have an email address. Defendant shall not be required to conduct any research or investigation, but can rely exclusively on its internal records.

K. “Class Notice” or “Notice Program” or “Class Notice Program” means the program of notice described in this Agreement to be provided to Settlement Class Members, which will notify Settlement Class Members about the details of the Settlement.

L. “Class Notice Date” means the last date on which Class Notice can be disseminated, which shall be set by the Court in the Preliminary Approval Order as no later than 30 days after Preliminary Approval.

M. “Class Period” means the time period from October 1, 2024 through the date of preliminary approval.

N. “Confidential Information” means proprietary or commercially sensitive information or personal information and information subject to state and federal privacy laws that the Parties agree to protect in this Agreement from disclosure and dissemination to the public or any third-party or entity other than the Administrator.

O. “Counsel for Defendant” means: Jordan S. Kosches, Esq. of GrayRobinson, P.A., 333 S.E. 2nd Avenue, Suite 3200, Miami, Florida 33131 and Mark S. Eisen Esq., Benesch Friedlander Coplan & Aronoff LLP, 71 South Wacker Drive, Suite 1600, Chicago, Illinois 60606.

P. “Court” means the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

Q. “Days” means calendar days, except that, when computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time under this

Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

R. “Effective Date” means the day the Settlement becomes Final.

S. “Final” means the later of the date that (i) the time has run for any appeals from the Final Approval Order or (ii) any such appeals have been dismissed or resolved in favor of approving, or affirming the approval of, this Agreement.

T. “Final Approval Hearing” means a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy, and reasonableness of this Agreement and associated settlement in accordance with class action procedures and requirements; and (ii) entering the Final Approval Order.

U. “Final Approval Order” means the order and judgment to be entered by the Court, substantially in the form, and without material change to, the order attached hereto as **Exhibit 2**, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the Florida Rules of Civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, including granting final approval to the Settlement and ruling on Class Counsel’s application for Attorneys’ Fees and Expenses and the Service Award for the Class Representative. If the Court enters separate orders addressing the matters set forth in this paragraph, then the Final Approval Order includes all such orders.

V. “Long-Form Notice” means the notice that is made available on the Settlement Website and upon request from the Administrator, in substantially the form attached as **Exhibit 3** to this Agreement.

W. “Notice” means the email notice, the content of which is attached to this Agreement as **Exhibit 4 (“Email Notice”)**, which will be sent to Settlement Class Members on the Class List for which Defendant has an email address. It also includes the postcard notice which is attached to this Agreement as **Exhibit 4 (“Postcard Notice”)**, which will be sent to Settlement Class Members on the Class List for which Defendant does not have an email address, but has a physical address. The Administrator shall convert Exhibit 4 into both Email Notice and Postcard Notice.

X. “Notice and Administrative Costs” means the reasonable costs and expenses of disseminating the Class Notice in accordance with this Agreement and the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with determining mail addresses for Settlement Class Members, sending the Notice, implementing the Settlement Website, assisting Settlement Class Members, processing claims, escrowing funds, and issuing and mailing Settlement Payments. These costs shall be capped at \$50,000, after which point the Notice and Administration costs shall be borne by Class Counsel.

Y. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement to be able to object to the Settlement. The Objection Deadline shall be no later than forty-five (45) days after the Class Notice Date.

Z. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be submitted in writing to the Administrator for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be no later than forty-five (45) days after the Class Notice Date.

AA. “Preliminary Approval Order” means an order to be entered by the Court certifying the Settlement Class and granting preliminary approval to the Settlement, substantially in the form attached hereto as **Exhibit 5**, without material change.

BB. “Released Claims” as to Plaintiff and the Settlement Class, means any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys’ fees, costs, liens, judgments, and demands of any kind whatsoever that each Settlement Class Member may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, that were or could have been asserted in the Action (whether in state or federal court) which relate to text messages or phone calls or any other form of communication sent by, from, and/or on behalf of EyeBuyDirect, Inc. including but not limited to claims for any alleged TCPA violation or violation of any other telephone or telemarketing-related federal, state or local law, regulation or ordinance, and claims that in any way relate to text messages or phone calls (e.g., those made using automated dialing technology and/or artificial or prerecorded voice, those made in alleged violation of the National Do Not Call Registry or similar state law registries, or to those on an internal do-not-call list and/or those that purportedly invaded recipients’ privacy).

CC. “Released Parties” means Defendant and each of Defendant’s affiliates, agents, vendors, lead generators, service providers, suppliers, employees, subsidiaries, direct and indirect parents, predecessors, successors, parents, co-venturers, divisions, joint ventures and assigns, as well as each of those entities’ or persons’ past or present owners, investors, directors, officers,

employees, partners, managers, members, principals, and agents, including but not limited to underwriters, insurers, co-insurers, re-insurers, indemnitors, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, personal or legal representatives, consultants, vendors, contractors, volunteers, performers, co-marketers, licensors, and assigns.

DD. “Request for Exclusion” means a written request from a Settlement Class Member that seeks to exclude the Settlement Class Member from the Settlement Class.

EE. “Service Award” means any approved payment to the Class Representative.

FF. “Settlement Class” means all members of the class of persons in this Action that will be certified by the Court for settlement purposes as follows:

Settlement Class: All persons within the United States who, from October 1, 2024 through the date of preliminary approval, received two or more text messages within any 12-month period, regarding Defendant’s goods or services, to said person’s residential cellular telephone number, after communicating at any point to Defendant that they did not wish to receive text messages by replying to the messages with a “stop” or similar opt-out instruction, and who appear on the Class List.

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

GG. “Settlement Class Claimant” means any Settlement Class Member who submits a valid and timely Claim in accordance with this Agreement.

HH. “Settlement Class Member(s)” means any member of the Settlement Class.

II. “Settlement Cap” means the total maximum amount that Defendant has agreed to make available, as described in Section II.B.1., to cover the Claim Settlement Payments, Notice and Administrative Costs (except as set forth in Section I.X and III.A) all Attorneys’ Fees and Expenses, and any Service Award in settlement in full of this Action. Defendant need not segregate funds or otherwise create special accounts to hold the Settlement Cap and will not relinquish control of any money until payments are due as set forth in the Settlement Agreement. The Parties agree that undistributed funds—that is, funds not used to pay the Claim Settlement Payments, Notice and Administrative Costs, Service Award, and Attorneys’ Fees and Expenses—and uncashed checks will remain with Defendant.

JJ. “Settlement Website” means the website prepared by the Administrator in connection with the process of providing Class Notice to Settlement Class Members.

II. SETTLEMENT TERMS

A. Certification of Settlement Class and Conditional Nature of Agreement

For settlement purposes only, Defendant conditionally agrees and consents to certification of the Settlement Class. Defendant’s conditional agreement is contingent on (i) the Parties’ execution of this Agreement, (ii) the Court’s entry of the Preliminary Approval Order, (iii) the Court’s entry of the Final Approval Order, and (iv) the Final Approval Order becoming Final. Except as provided below, if this Agreement, for any reason, does not receive final approval, if the Final Approval Order does not become Final, or if the Agreement is otherwise terminated, it shall be null and void, it shall be of no force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the negotiation, terms, and entry of the Agreement shall remain inadmissible under the Florida Rules of Civil Procedure, Florida Rules of Evidence, and any applicable federal or state law or rule of civil procedure or evidence.

Defendant denies all claims, liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief that were or could have been sought in the Action, as well as all class action allegations asserted in the Action. Defendant has agreed to resolve this Action through this Agreement, but if this Agreement is deemed void or if it does not become Final for any reason, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges.

The Class Representative and Class Counsel agree that Defendant retains and reserves all of these rights and agree not to take a position to the contrary. If, for any reason, the Settlement does not receive final, complete and non-appealable court approval, the case will be immediately voluntarily dismissed and refiled in the United States District Court for the Western District of Texas. Defendant and its counsel agree that any of Plaintiff's previous dismissals will not be challenged by Defendant as a dismissal with prejudice or which would preclude Plaintiff's case from being refiled in the United States District Court for Western District of Texas.

B. Settlement Class Relief

1. Claim Settlement Payments to Settlement Class

In consideration for the Releases set forth in this Agreement, Defendant shall provide the following relief:

Defendant shall make available up to **\$900,000** in cash (the "Settlement Cap") for payment of Claim Settlement Payments, Notice and Administrative Costs, Attorneys' Fees and Expenses and the Service Award. Defendant need not segregate funds or otherwise create special accounts to hold the Settlement Cap and will not relinquish control of any money until payments are due as

set forth in the Settlement Agreement. The Parties agree that undistributed funds—that is, funds not used to pay the Claim Settlement Payments, Notice and Administrative Costs, Service Award, and Attorneys’ Fees and Expenses—and uncashed checks will remain with Defendant.

Settlement Class Members must submit a timely, valid, and verified Claim Form, by the Claim Deadline in the manner required by this Agreement, to receive a Claim Settlement Payment from the Settlement Cap.

Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator.

Each Settlement Class Member who submits a timely and valid Claim shall be paid a Claim Settlement Check up to \$358.00, less a pro rata share of Notice and Administrative Costs, Attorneys’ Fees and Expenses and any Service Award. The timely and valid Claims shall be paid from the Settlement Cap. For example, if the total of Notice and Administrative Costs, Attorneys’ Fees and Expenses and Service Award approved by the Court constitutes 25% of the Settlement Cap, each Settlement Class Members’ claim payments will be reduced by 25%.

Within 60 days after the Effective Date, the Administrator shall send, by first-class mail, a Claim Settlement Check to each Settlement Class Member who submits a timely, valid, correct, and verified Claim Form. Checks will be valid for 60 days from the date on the check.

Except as provided in this Section and any Service Award, Defendant shall have no obligation to make any other or further payments to Plaintiff or to any Settlement Class Member.

2. Ongoing Compliance

Defendant also agrees to continue their ongoing commercially reasonable efforts to ensure compliance with the TCPA.

C. Settlement Approval

Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement. The motion shall seek entry of a Preliminary Approval Order, which shall be in the form agreed upon by Class Counsel and Defendant and attached to this Agreement as **Exhibit 6**. Class Counsel shall give Defendant a minimum of four days to review the motion before it is filed. Class Counsel shall also give Defendant a minimum of four days to review its motion for final approval before it is filed.

D. Service Award and Attorneys' Fees and Expenses

1. Service Award

Plaintiff may petition the court, subject to court approval, for a Service Award which will be paid from the Settlement Cap of no more than \$5,000.00. To the extent the Court (or any appellate court) does not approve a Service Award or does not award the entirety of the requested amount, the reduced amount shall remain with or revert to Defendant. The non-approval of the amount requested by Plaintiff shall not be a basis to terminate the Agreement, and Plaintiff shall not appeal any reduction of the requested Service Award. Defendant shall provide to the Administrator the amount necessary to satisfy any Service Award within 21 days of the Effective Date. The Administrator shall pay any Service Award to Plaintiff within 35 days of the Effective Date.

2. Attorneys' Fees and Expenses

Class Counsel will request an award of Attorneys' Fees and Expenses, subject to court approval, of no more than 33.3% of the Settlement Cap (\$299,700) to be paid from the Settlement Cap. To the extent the Court (or any appellate court) does not approve an attorneys' fee and expense award or does not award the entirety of the requested amount, the reduced amount shall remain with or revert to Defendant. The non-approval of the amount requested by Class Counsel

shall not be a basis to terminate the Agreement, and Class Counsel shall not appeal any reduction of the requested Attorneys' Fees and Expenses. Class Counsel shall be responsible for allocating and shall allocate among Class Counsel any Attorneys' Fees and Expenses, and Defendant shall have no responsibility, role, or liability in connection with such allocation. Defendant shall provide to the Administrator the amount necessary to satisfy any award of Attorneys' Fees and Expenses within 21 days of the Effective Date. The Administrator shall pay any award of Attorneys' Fees and Expenses to Class Counsel within 35 days of the Effective Date.

III. CLAIMS ADMINISTRATION

A. Administrator

The Parties have agreed on RG/2 Claims Administration LLC as the Administrator. The Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Administrator shall be responsible for, among other things and if and as necessary, the implementation and effectuation of the Class Notice, processing Claims, receiving and maintaining on behalf of the Court and the Parties any correspondence regarding Requests for Exclusion and/or objections to the Settlement, administering Claim Settlement Payments, and providing all other related support, reporting, and administration as further stated in this Agreement. The Parties may direct the Administrator to assist with various additional administrative tasks in implementing the Settlement as the Parties agree is appropriate.

No later than the later of thirty (30) days after this Agreement is signed by all Parties and the date a protective order is entered, Defendant shall provide the Class List to the Administrator, on the condition that the Administrator agrees to be bound by the protective order. The Administrator shall administer the Settlement in accordance with the terms of this Agreement and shall treat any and all documents, communications, and other information and

materials received in connection with the administration of the Settlement as Confidential Information except as provided for in this Agreement or by court order.

Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiff, any Settlement Class Member, Class Counsel, or the Administrator. The Administrator will invoice Defendant directly for start-up and initial Class Notice costs at any time after entry of the Preliminary Approval Order and will bill Defendant pursuant to its standard billing schedule for incurred fees and expenses thereafter, or as otherwise agreed upon between the Administrator and Defendant. The Administrator will complete and provide to Defendant any W9 forms and other forms and information necessary for Defendant to pay for the Notice and Administrative Costs.

The Parties agree that Notice and Administrative Costs shall be paid from the Settlement Cap up to \$50,000, after which point the remaining Notice and Administrative Costs shall be borne by Class Counsel.

B. Notice

1. Notice to the Settlement Class

The Class Notice shall consist solely of the notice detailed herein. Class Counsel and Defendant shall insert the correct dates and deadlines in the notice documents before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. The Class Notice shall not bear or include the Defendant's logo or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant. At Defendant's request, ownership of the Settlement Website URL shall be transferred to Defendant within 10 days of the date on which operation of the Settlement Website ceases, which shall be 14 days following distribution of the Claim Settlement Checks, or such other date as Class Counsel and Defendant may agree upon in writing.

2. Notice

The Administrator shall implement the Notice Program by the Class Notice Date as follows. The Administrator shall send Notice to Settlement Class Members for which Defendant maintains mail and/or email addresses, as reflected in the Class List. For those Settlement Class Members whose email address is available, one copy of the Email Notice shall be sent. The Email Notice shall be completed by the Class Notice Date.

If Defendant does not have an email address for a Settlement Class Member on the Class List, the Administrator shall send Notice to those Settlement Class Members by Postcard Notice by the Class Notice Date to the physical address that Defendant shall identify on the Class List in lieu of an email address, if Defendant has a physical address available. One copy of the Postcard Notice shall be provided. The Administrator shall review the Class List, utilize methods commonly used in the class administration industry to verify and/or update mailing addresses prior to sending the Notice. For any Postcard Notice returned as undeliverable, the Administrator shall use the National Change of Address database (the “NCOA”) in an attempt to obtain better addresses for such returned Notices, and should the NCOA show a more current address, the Administrator shall make one additional attempt to send the returned Postcard Notice to the more current address. Such additional mailing shall not extend the Claim Deadline.

The Administrator shall provide Class Counsel and Defendant a sworn declaration that confirms that the Notice Program was completed in a timely manner and in accordance with this Agreement and the Preliminary Approval Order.

3. Long-Form Notice

The Notice will contain the address for the Settlement Website, www.EBDTCPASettlement.com (or other website agreed upon by the Parties if this URL is not available). On the website, Settlement Class Members will find important documents and court

filings, including the Long-Form Notice, which will contain more detail than the Notice. The Long Form Notice will be sent to all Settlement Class Members who contact the Administrator in writing or by telephone and request a copy.

4. Settlement Website

By the Class Notice Date, the Administrator shall establish and maintain the Settlement Website, with content and a URL mutually agreed upon by the Parties, which, among other things: (i) enables Settlement Class Members to access and download the Claim Form, (ii) provides contact information for the Administrator and Class Counsel, (iii) provides access to relevant documents concerning the Action and (iv) allows for the electronic submission of Claim Forms as detailed in this Agreement. The documents on the Settlement Website shall include this Agreement and the Notice; the Complaint; the Long-Form Notice; the Preliminary Approval Order; Class Counsel's motion for Attorney's Fees and Expenses and motion for a Service Award; and, when available, the Final Approval Order. The Class Notice shall include the address (URL) of www.EBDTCPASettlement.com (or other website agreed upon by the Parties if this URL is not available) for the Settlement Website. The Settlement Website shall have a portal where Claim Forms can be submitted.

5. IVR

By the Class Notice Date, the Administrator shall establish and maintain a toll-free number that maintains an IVR (or similar) system to answer questions about the Settlement. The Administrator shall maintain the IVR (or similar) system until sixty (60) days following the Claim Deadline.

C. Claim Filing, Review, and Approval Process

1. Claim Form

To submit a Claim, Settlement Class Members must correctly provide the information and

documentation required by the Claim Form. The Claim Form shall require any Settlement Class Member who submits a Claim to provide the following documentation and information: (a) Settlement Class Member's name, current address, telephone number, and e-mail address (if any); (b) Settlement Class Member's telephone number that received the text messages at issue from Defendant; (c) an attestation that the phone number at issue was their number (as either a subscriber or customary user) during the Class Period; and (d) an attestation that the Settlement Class Member meets the Settlement Class definition. The Claim must be submitted upon penalty of perjury.

2. Claim Filing Process

Settlement Class Members shall be permitted to make a Claim for a Claim Settlement Payment by submitting a claim on a date no later than the Claim Deadline. Claim Forms can be submitted electronically or by mail to the address provided on the Claim Form. For electronic claim submissions, the Administrator will implement appropriate security mechanisms to ensure claims are being filed by those who appear on the Class List, including, but not limited to, providing the Claim ID No. on the Email Notice or Postcard Notice and a telephone number on the Class List to access and submit a Claim Form. Any Settlement Class Member who does not submit an accurate and fully completed Claim Form by the Claim Deadline shall be deemed to have waived any Claim and any such Claim will be rejected. Only one Claim Form may be submitted per Settlement Class Member and per telephone number on the Class List, regardless of how many text messages at issue were received by the Settlement Class Member. Claim Forms can be submitted via the Settlement Website or by mail to the Administrator.

3. Invalid Claims

Any Settlement Class Member who fails to submit a timely, accurate, and fully completed and correct, valid Claim Form shall not be entitled to receive a Settlement Claim Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final

Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

4. Claim Review Process

The Administrator shall confirm that each Claim Form submitted is in the form required; that each Claim Form includes the required affirmations, information, and documentation; that each Claim Form was submitted in a timely fashion; and that the Settlement Class Member is a member of the Settlement Class. Any Settlement Class Member's failure to provide any of the required affirmations or information shall result in the Claim being deemed invalid, and Defendant shall not have any further obligation to process or make any Claim Settlement Payment on such invalid Claim. The Administrator shall not receive any incentive for denying claims. A timely and valid claim will result in the Settlement Class Member being approved as a Settlement Class Claimant and entitled to a Claim Settlement Payment. The Parties' counsel will be permitted to review and audit the list of accepted and rejected claims, and the submitted Claim Forms, for the purposes of objection.

Each Settlement Class Member who submits a timely and valid Claim Form shall be paid a Claim Settlement Payment of no more than the amount equal to the Settlement Cap divided by the number of individuals on the Class List (\$358), less each Settlement Class Member's pro rata share of the Notice and Administration costs, Attorney's Fees and Expenses and Service Award, as explained herein. The timely and valid Claims shall be paid from the Settlement Cap.

D. Opt-Out Rights

1. Opt-Out Requirements

A Settlement Class Member who wishes to opt-out of the Settlement Class must do so in writing. To opt-out, a Settlement Class Member must complete and send to the Administrator, at

the address listed in the Class Notice, a Request for Exclusion that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice (or as the Court otherwise requires). The Request for Exclusion must: (a) identify the case name; (b) identify the name, address, and telephone number of the Settlement Class Member; (c) identify the telephone number at which the Settlement Class Member received the text messages at issue from or on behalf of Defendant; (d) be personally signed by the Settlement Class Member requesting exclusion; and (e) contain a statement that indicates a desire to be excluded from the Settlement Class in the Action, such as: “I hereby request that I be excluded from the proposed Settlement Class.”

Settlement Class Members cannot ask to be excluded on the phone, by email, or at the Settlement Website. Any Settlement Class Member who does not opt-out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class, and shall be bound by all subsequent proceedings, orders, and judgments, including the Final Approval Order, whether or not the Settlement Class Member files a timely and valid Claim. No mass or class opt-outs will be permitted.

A Settlement Class Member who desires to opt-out must take timely affirmative written action in accordance with this Section, even if the Settlement Class Member desiring to opt-out (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

2. Opt-Outs Not Bound

Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement.

3. List of Requests for Exclusion

At least fourteen (14) days after the Opt-Out Deadline, the Administrator shall provide Class Counsel and Counsel for Defendant with a list of all timely Requests for Exclusion along with copies of such Requests for Exclusion.

4. All Settlement Class Members Bound By Settlement

Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms, whether or not the Settlement Class Member files a Claim or a timely and valid Claim.

E. Objections

Any Settlement Class Member who does not opt-out of the Settlement may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement.

1. Process

Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Court and mailed (with the requisite postmark) to Class Counsel and Counsel for Defendant, using the addresses set forth in the Long-Form Notice, no later than the Objection Deadline.

2. Requirements

The requirements to assert a valid written objection shall be set forth in the Class Notice. To be valid, the written objection must include:

- a. the name of the Action;
- b. the objector's full name, address, and telephone number;

- c. an explanation of the basis on which the objector claims to be a Settlement Class Member, including the telephone number at which the text messages at issue were received;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or their counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling on the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. 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 to the Settlement and/or application for Attorneys' Fees and Expenses and/or Service Award;
- g. a copy of any orders related to or ruling on objections made by individuals or organizations represented by the objecting counsel or the objecting counsel's law firm(s) that were issued by the trial and appellate courts in each case in which the objector's counsel and/or counsel's law firm have represented individuals or organizations that objected to a class action settlement within the preceding five (5) years;
- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- l. the objector's signature (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means. No mass or class objections will be permitted.

3. Appearance

Subject to approval by the Court, any Settlement Class Member who files and serves a written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on Class Counsel and Counsel for Defendant by the Objection Deadline.

The Notice of Intention to Appear must include: (a) the case name and number; (b) the Settlement Class Member's name, address, telephone number, and signature, and, if represented by counsel, their contact information; (c) the telephone number where he or she received the text messages at issue from Defendant; and (d) copies of any papers, exhibits, or other evidence that

the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Class Notice and this Agreement shall not be entitled to appear at the Final Approval Hearing and raise any objections.

4. Discovery From Settlement Class Members Who Object To The Settlement

The Parties shall have the right to take discovery consistent with the Florida Rules of Civil Procedure from any person who claims to be a Settlement Class Member who objects to the Settlement without further leave of court. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery consistent with the Florida Rules of Civil Procedure from the Settlement Class Member's counsel without further leave of court.

F. Funding & Distribution of The Settlement Cap and Claim Settlement Payment

1. Settlement Cap

As described herein, the Settlement Cap shall be used to provide the exclusive recovery and relief for the Settlement Class, any Notice and Administrative Costs (except as set forth in Section I.X and III.A), any Attorneys' Fees and Expenses awarded by the Court and any Service Award awarded by the Court. The Settlement Cap shall be the sole and exclusive monetary contribution or consideration paid or made available by Defendant under this Settlement Agreement and Defendant shall not, under any circumstance, be obligated to pay any additional amounts beyond the Settlement Cap. Any part of the Settlement Cap that is not used for Claim Settlement Payments, Notice and Administrative Costs, Attorneys' Fees and Expenses and any Service Award shall remain with Defendant, including any uncashed checks.

The Parties agree the Claim Settlement Payments are not wages, each Settlement Class

Member will be solely responsible for correctly characterizing the Claim Settlement Payment for tax purposes, and for paying any taxes owed on this payment. The Parties also agree that the Service Award to Plaintiff is not wages and Plaintiff will be solely responsible for correctly characterizing the Service Award he actually receives for tax purposes and for paying any taxes owed on this payment.

2. Funding

From the Settlement Cap, Defendant, within 21 days after the Effective Date, shall fund (i) all amounts required by the Administrator for distribution of any Claim Settlement Payments to Settlement Class Claimants who submit timely and valid Claim Forms, (ii) any Attorneys' Fees and Expenses awarded by the Court and (iii) any Service Award awarded by the Court.

3. Distribution

The Administrator shall pay any Claim Settlement Payments to Settlement Class Claimants who submit timely and valid Claim Forms within 60 days after the Effective Date. The Attorneys' Fees and Expenses and Service Award awarded by the Court shall be paid by the Administrator within 35 days after the Effective Date.

G. Non-Approval of Agreement

This Agreement is conditioned on final approval without material modification by the Court. If the Agreement is not so approved or is vacated on appeal, the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as if no settlement or this Agreement had been negotiated or entered into, unless the defect is curable. The Parties agree to work in good faith for at least 14 days to remedy any defect and re-submit a proposed Settlement for preliminary or final approval, if such defect is curable. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other