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10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF ARIZONA

12 **Ricci Saliba**, individually and on behalf of
 13 all others similarly situated,
 14 Plaintiff,
 15 v.
 16 **KS StateBank Corporation**,
 17 Defendant.

Case No. 2:20-cv-00503-JAT

**Plaintiff’s Unopposed Motion for
 Preliminary Approval of Class Action
 Settlement**

18 Plaintiff Ricci Saliba (“Plaintiff”) and Defendant KS StateBank Corporation
 19 (“Defendant”) (collectively the “Parties”) have reached a class action settlement of this
 20 matter. The Settlement Agreement (“Settlement Agreement,” “Agreement,” or “Agr.”)
 21 includes the establishment of a \$775,000.00 Settlement Fund to be distributed on a pro rata
 22 basis to Settlement Class Members after payment of notice, administration costs, Class
 23 Counsel fees, and a Service Payment to the Plaintiff/Class Representative.¹ There is *no*
 24 *reverter* to the Defendant of any portion of the Settlement Fund. Class Members stand to
 25 receive meaningful cash payments of approximately \$198 per text message (to be reduced
 26
 27

28 ¹ The Agreement is attached as **Exhibit A**. All capitalized terms used herein have the same definitions as those defined in the Agreement.

1 by costs, Service Payment, and Class Counsel fees) received by each Class Member.

2 The Parties' proposed Settlement is exceedingly fair and well within the range of
 3 Preliminary Approval for several reasons. *See* Declaration of Michael Eisenband at ¶ 2,
 4 attached hereto as **Exhibit B**. First, it provides relief for Settlement Class Members where
 5 their recovery, if any, would otherwise be uncertain, especially given Defendant's alleged
 6 defenses and ability and willingness to continue its vigorous defense of the case. Second,
 7 the Settlement was reached only after first engaging in substantial discovery, significant
 8 motion practice, arm's-length negotiations, and a private mediation session. Third, the
 9 Settlement was not conditioned on any amount of attorneys' fees for Class Counsel or
 10 Service Awards for Plaintiff and does not contain a clear sailing provision, all of which
 11 speak to the fundamental fairness of the process. Eisenband Decl. at ¶ 3.

12 For all of these reasons, and as further described below, Plaintiff respectfully requests
 13 that the Court preliminarily approve the Settlement.

14 **I. BACKGROUND**

15 The Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and its
 16 implementing regulations were enacted by Congress and the Federal Communications
 17 Commission to "offer consumers greater protection from intrusive telemarketing calls..."²
 18 Defendant's former employee, Roy Meshel, caused approximately 3,900 text messages to
 19 be sent to Plaintiff and hundreds of other individuals. Plaintiff alleged that Mr. Meshel's
 20 text message campaigns violated the TCPA because the text messages were sent without
 21 his first obtaining recipients' express written consent. Plaintiff also alleged that Defendant
 22 was vicariously liable for Mr. Meshel's alleged violations of the TCPA because he was
 23 Defendant's employee at the time he sent the text messages. Defendant denies any
 24 wrongdoing and has articulated various challenges to class certification and the merits of
 25 Plaintiff's claim.

26 **II. SUMMARY OF THE SETTLEMENT TERMS**

27 _____
 28 ² Federal Communications Commission, Small Entity Compliance Guide for the TCPA
 (dated May 13, 2013), https://apps.fcc.gov/edocs_public/attachmatch/DA-13-1086A1.pdf.

1 The following is a summary of the material terms of the Settlement.

2 **a. The Settlement Class**

3 The proposed Settlement establishes a Settlement Class as follows:

4 **All persons, and their respective marital communities, within the United**
5 **States who, (1) within the four years prior to the filing of Plaintiff’s**
6 **Complaint in the Lawsuit, (2) received a text message from Roy Meshel**
7 **while he was employed by Defendant, (3) advertising and/or promoting**
8 **one or more of Defendant’s mortgage loan products and/or mortgage**
9 **loan rates, (4) using the texting software provided by Skipio LLC, (5) to**
10 **said person’s cellular telephone number, (6) where the person’s**
11 **telephone number was not obtained by Defendant from a non-party lead**
12 **generator, and was instead obtained by Mr. Meshel.**

13 Agr. ¶ 34.

14 The following are excluded from the Settlement Class: (a) any trial or magistrate
15 judge presiding over the Action; (b) Defendant, as well as any parent, subsidiary, affiliate
16 or control person of Defendant, and the officers, directors, agents, servants or employees of
17 Defendant; (c) any of the Released Parties; (d) the immediate family of any such Released
18 Parties; (e) any Settlement Class Member who has timely and properly opted out of this
19 Settlement; and (f) Plaintiff’s Counsel and their employees. Defendant conditionally agrees
20 and consents to certification of the Settlement Class for purposes of this Settlement only.

21 Agr. ¶ 35.

22 **b. Settlement Consideration**

23 Pursuant to the Settlement, Defendant has agreed to create a common fund of
24 \$775,000.00, available for the benefit of Settlement Class Members (“Settlement Fund”).

25 Agr. ¶ 37.

26 **c. The Notice Program**

27 Pending this Court’s approval, Epiq Class Action & Claims Solutions, Inc. (“Epiq”) will
28 serve as the Administrator and will be responsible for administering the Notice Program.

29 Agr. ¶ 2. The Notice Program consists of four different components: (1) Mailed Notice; (2)
30 Long-Form Notice; (3) a Settlement Website; and (4) a toll-free number. Agr. ¶ 16; Agr. §

1 VI. The forms of the proposed notices agreed upon by Class Counsel and Defendant, subject
2 to this Court's approval and/or modification, are attached to the Settlement Agreement as
3 Exhibits A-1 and A-2.

4 The proposed Notice Program is designed to provide the Settlement Class with
5 important information regarding the Settlement and their rights thereunder, including a
6 description of the material terms of the Settlement; a date by which Settlement Class
7 members may exclude themselves from or "opt-out" of the Settlement Class; a date by
8 which Settlement Class Members may object to the Settlement, Class Counsel's fee
9 application and/or the request for a Service Awards; the date of the Final Approval Hearing;
10 information regarding the Settlement Website where Settlement Class members may access
11 the Agreement; and other important documents regarding this Settlement.

12 Pursuant to the Parties' Settlement Agreement, the Parties, within ten (10) days of
13 the entry of this Court's order, shall provide Epiq with Settlement Class Data, which shall
14 be treated as Confidential Information, as those terms are defined in the Parties' Settlement
15 Agreement, so that Epiq can carry out its duties as identified herein and pursuant to the
16 Parties' Settlement.

17 i. Mail Notice

18 The Administrator shall review the Class Settlement Data, utilize methods
19 commonly used in the class administration industry to verify and/or update mailing
20 addresses (e.g., reverse telephone number look ups, verification through the National
21 Change of Address Database or other reliable sources like LexisNexis and TransUnion),
22 and shall, to the extent reasonably possible, mail the Mailed Notice to all Settlement Class
23 Members. The Mailed Notice program shall be completed no later than 90 days before the
24 Final Approval Hearing. The Administrator shall provide Class Counsel and Defendant a
25 sworn declaration that confirms that the Mailed Notice program was completed in a timely
26 manner and in accordance with the Settlement Agreement and the Preliminary Approval
27 Order. Agr. ¶44.

28 ii. Long-Form Notice

1 The Mail Notice will contain the address for the Settlement Website,
2 www.SalibaTCPASettlement.com. Agr. ¶45. On the website, Settlement Class members
3 will find important documents and court filings, including the Long-Form Notice, which
4 will contain more detail than the Mail Notice. A copy of the Long Form Notice is attached
5 to the Settlement Agreement as Exhibit A-2. Further, the Administrator shall send Long
6 Form Notice to all Settlement Class members who contact the Administrator by telephone
7 or email and request a copy. Agr. ¶45.

8 **iii. Settlement Website & Toll-Free Telephone Number**

9 The Administrator will establish a Settlement Website as a means for Settlement
10 Class members to obtain notice of, and information about, the Settlement. Agr. ¶45. The
11 Settlement Website will include hyperlinks to the Settlement, the Long-Form Notice, the
12 Preliminary Approval Order, and other such documents as Class Counsel and counsel for
13 Defendant agree to post or that the Court orders be posted on the Settlement Website. *Id.*
14 These documents will remain on the Settlement Website until at least 60 days following the
15 deadline for submitting objections and opt-out requests. Agr. ¶ 46.

16 The Administrator will also establish and maintain an automated toll-free telephone line
17 for Settlement Class members to call with Settlement-related inquiries. Agr. ¶47.

18 **d. No Claims Process**

19 Any Settlement Class member who does not timely and validly request to opt-out
20 shall remain in the Settlement Class, be bound by the terms of the Settlement Agreement,
21 automatically be mailed a Settlement Fund Payment, and release their claims against
22 Defendant.

23 **e. Allocation of the Settlement Fund Payments**

24 Each Settlement Class member who does not opt out of the Settlement shall
25 automatically be mailed a Settlement Fund Payment payable by check. Agr. ¶ 61. The
26 amount of each Settlement Fund Payment shall be determined by the following formula: (1)
27 Net Settlement Fund divided by total number of Messages = Settlement Fund Payment Per
28 Message; and, (2) Settlement Fund Payment Per Message multiplied by the number of

1 Messages each Settlement Class Member received = Settlement Fund Payment to Class
2 Member. *Id.* To prevent theft and fraud by third parties, the outside of the envelope or
3 package containing the Settlement Fund Payment checks shall not contain any language
4 describing its purpose, mentioning the class action settlement, or encouraging it to be
5 opened. *Id.*

6 **f. Settlement Administrator**

7 As discussed supra, pending this Court's approval, Epiq shall serve as the
8 Administrator. Agr. ¶¶ 2; 39. Along with administering the Notice Program, the
9 Administrator's responsibilities may include (but are not necessarily limited to):

- 10 i. arranging for distribution of the Class Notice to Settlement Class Members;
11 ii. making any mailings to Settlement Class Members required under the Agreement;
12 iii. forwarding written inquiries from Settlement Class Members to Class Counsel or
13 their designee;
14 iv. establishing the Settlement Website;
15 v. distributing payments to Settlement Class Members; and
16 vi. otherwise assisting with implementing and administering this Agreement, subject in
17 all cases to approval by Class Counsel and Counsel for the Defendant.

18 Agr. ¶ 2.

19 Class Counsel and Defendant may, by agreement, substitute a different organization
20 as Settlement Administrator, subject to approval by the Court if the Court has previously
21 approved the Settlement preliminarily or finally. *Id.* In the absence of agreement, either
22 Class Counsel or Defendant may move the Court to substitute a different organization as
23 the Settlement Administrator upon a showing that the responsibilities of the Settlement
24 Administrator have not been adequately executed by the incumbent. *Id.*

25 **g. Opt-Out and Objection Procedures**

26 Settlement Class members who do not wish to participate in the Settlement may opt-
27 out of the Settlement by sending a written request to the Settlement Administrator at the
28 address designated in the Notice. Agr. ¶50. Settlement Class members who timely opt-out
of the Settlement will preserve their rights to individually pursue any claims they may have
against Defendant, subject to any defenses that Defendant may have against those claims.

1 The Settlement Agreement details the requirements to properly opt-out of the Settlement
 2 Class, and the Settlement Website will include an optional, pre-approved form they may
 3 use. The pre-approved opt-out form is attached to the Settlement Agreement as Exhibit 3.
 4 A Settlement Class member must opt-out of the Settlement Class by the Opt-Out Period,
 5 which is 60 days from mailing of the Notice (and no later than 30 before the Final Approval
 6 Hearing). Agr. ¶ 18. The Settlement Administrator will communicate any opt-out requests
 7 to Class Counsel and Defendant’s Counsel, who will in turn report them to the Court as part
 8 of the Final Approval Hearing and those names will be referenced in an exhibit to the Final
 9 Approval Order. Agr. ¶ 50.

10 Settlement Class Members who wish to file an objection to the Settlement must do
 11 so no later than 60 days from the mailing of the Notice (which shall be at least 30 days
 12 before the Final Approval Hearing). *Id.* at ¶¶ 18; 53. Pending Court approval, for an
 13 objection to be considered by the Court, it must include the following:

- 14 i. the name of the Action;
- 15 ii. the objector’s full name, address, current telephone number, and
 16 telephone number to which any Messages may have been sent;
- 17 iii. an explanation of the basis upon which the objector claims to be a
 Settlement Class Member;
- 18 iv. all grounds for the objection, accompanied by any legal support for the
 objection known to the objector or his counsel;
- 19 v. the number of times in which the objector has objected to a class action
 20 settlement within the five years preceding the date that the objector
 files the objection, and the name, court, and case number of each case
 in which the objector has made such an objection,
- 21 vi. the identity of all counsel who represent the objector or may appear at
 the Final Approval Hearing on the objector’s behalf;
- 22 vii. any and all agreements that relate to the objection or the process of
 23 objecting—whether written or oral—between objector or objector’s
 counsel and any other person or entity;
- 24 viii. a statement confirming whether the objector intends to personally
 appear and/or testify at the Final Approval Hearing; and
- 25 ix. the objector’s signature (an attorney’s signature is not sufficient).

26 *Id.* at ¶54.

27 **h. Release of Claims**

28 In exchange for the Settlement consideration, Plaintiff and all Settlement Class

1 Members, have agreed to the Release as defined in the Agreement. Agr. ¶¶ 65-69. The
 2 Release is expressly limited to claims concerning the allegations and contentions made in
 3 this lawsuit, i.e. claims under the TCPA for text messages that were directed to Settlement
 4 Class Members by Defendant's former employee Roy Meshel, or by or on behalf of
 5 Defendant. *Id.* The full text of the Release is as follows:

6 1. Upon the Effective Date of the Settlement, and with the exception of the contractual
 7 rights and obligations independently created by this Agreement, the Releasing
 8 Parties shall automatically be deemed to have fully and irrevocably released and
 9 forever discharged the Released Parties from the following (collectively, the
 10 "Released Claims"): any and all claims under the Telephone Consumer Protection
 11 Act, 47 U.S.C. §§ 227, et seq. (the "TCPA") that arise out of or relate to any text
 12 messages directed to or received by any Settlement Class Members by Defendant's
 13 former employee Roy Meshel, or by or on behalf of Defendant.

14 Agr. ¶ 65.

15 **i. Class Counsel Fees and Expenses and Plaintiff's Service Award**

16 Prior to the Final Approval Hearing, Class Counsel shall request from the Court a
 17 reasonable amount for attorneys' fees and shall request from the Court a reimbursement of
 18 Class Counsel's costs and expenses. Agr. ¶ 69. Any award of attorneys' fees, costs, and
 19 expenses to Class Counsel shall be payable solely out of the Settlement Fund. *Id.* at ¶ 71.
 20 The Parties agree that the Court's failure to approve, in whole or in part, any award for
 21 attorneys' fees shall not prevent the Settlement from becoming effective, nor shall it be
 22 grounds for termination. *Id.*

23 Class Counsel shall also request that the Court to approve a reasonable Incentive
 24 Award/Service Award to Plaintiff. Agr. ¶ 71. The Service Award is to be paid from the
 25 Settlement Fund. *Id.* The Service Award shall be paid to the Settlement Class Representative
 26 in addition to the Class Representative's Settlement Fund Payment. *Id.*

27 The Court should consider whether to grant or deny these awards separate and apart
 28 from its consideration of the fairness and reasonableness of the Settlement.

III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

1 A class action may not be dismissed, compromised, or settled without the approval
2 of the Court. Fed. R. Civ. Proc. 23(e). The decision to approve or reject a proposed
3 settlement “is committed to the sound discretion of the trial judge[.]” See *Hanlon v. Chrysler*
4 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). This discretion is to be exercised “in light of
5 the strong judicial policy that favors settlements, particularly where complex class action
6 litigation is concerned,” which minimizes substantial litigation expenses for both sides and
7 conserves judicial resources. See *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238
8 (9th Cir. 1998) (quotations omitted).

9 To make the preliminary fairness determination, courts may consider several relevant
10 factors, including “the strength of the plaintiffs’ case; the risk, expense, complexity, and
11 likely duration of further litigation; the risk of maintaining class action status through trial;
12 the amount offered in settlement; the extent of discovery completed and the stage of the
13 proceedings; [and] the experience and views of counsel ...” *Hanlon*, 150 F.3d at 1026.

14 In addition, Rule 23(e)(2) requires the parties to provide courts with sufficient
15 information to determine that it will likely be able to approve the settlement as fair,
16 reasonable, and adequate. The considerations are whether (a) the class representatives and
17 class counsel have adequately represented the class; (b) the proposal was negotiated at arm’s
18 length; (c) the relief provided by the settlement is adequate, taking into account: (i) the costs,
19 risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
20 distributing relief including the method of processing class-member claims, if required; (iii)
21 the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv)
22 any agreement required to be identified under Rule 23(e)(3) made in connection with the
23 proposed settlement; and (d) the proposal treats class members equitably relative to each
24 other.

25 Under both standards, which include overlapping factors, the proposed Settlement is
26 fair, reasonable, and adequate, and should be preliminarily approved.

27 **a. The Settlement was Reached as the Result of Arm’s Length Negotiations with An**
28 **Experienced Mediator**

1 The Parties have actively litigated the action and Plaintiff’s Motion for Class
2 Certification, [DE 36], was fully briefed and pending at the time the Settlement was reached.
3 At all times, the Parties’ interactions were adversarial. The proposed Settlement is the result
4 of negotiations which started in mid- January, 2021 and concluded on January 26, 2021 with
5 an experienced mediator. Eisenband Decl., ¶ 4. The time and effort spent on settlement
6 negotiations, as well as the time spent in mediation with Jill Sperber, Esq., support
7 preliminary approval of the proposed Settlement and strongly indicate there was no
8 collusion. Eisenband Decl., ¶ 4. *See National Rural Telecommunications Cooperative v.*
9 *DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (settlements that follow sufficient
10 discovery and genuine arms-length negotiation are presumed fair); *Rodriguez v. W.*
11 *Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product
12 of an arm’s length, non-collusive, negotiated resolution.”).

13 The Ninth Circuit has identified “red flags” that may suggest that plaintiffs’ counsel
14 allowed pursuit of their own self-interest to infect settlement negotiations, including when
15 counsel receive a disproportionate portion of the settlement, the parties agree to a “clear
16 sailing” arrangement providing for the payment of attorneys’ fees separate and apart from
17 class funds, or the parties agree that any fees not awarded will revert to a defendant rather
18 than be added to the class fund. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d
19 935, 947 (9th Cir. 2011). None is present in this settlement. Because Class Counsel will be
20 paid from the same Settlement Fund as Settlement Class Members, they were incentivized
21 to negotiate the largest fund possible. There is no clear sailing provision, and the Settlement
22 is not contingent on any amount of attorneys’ fees. The Court will, of course, have ultimate
23 discretion over the amount of the attorneys’ fee award after reviewing Class Counsel’s
24 forthcoming motion in the event Preliminary Approval is granted.

25 **b. The Relief Provided by the Settlement is Fair and Reasonable Considering that**
26 **Liability is Highly Contested**

27 Defendant has vigorously contested the claims asserted by Plaintiff. While both sides
28 strongly believe in the merits of their respective cases, there are risks to both in continuing

1 the Action. For example, whether Plaintiff would have prevailed on her motion for class
2 certification. [DE 35]. In opposing Plaintiff's class certification motion, and generally,
3 Defendant argued that its former employee, Mr. Meshel, was acting outside the scope of his
4 employment in sending the text messages at issue. *See* Defendant's Response in Opposition
5 to Plaintiff's Motion for Class Certification ("Opposition to Class Certification"), [DE 45],
6 at pgs. 5-7. Defendant also argued that the text messages were not marketing on behalf of
7 Defendant because the messages were only sent to benefit Mr. Meshel. *Id.* at pgs. 15-17.
8 Plaintiff replied, [DE 47], to Defendant's Opposition and continues to believe that her
9 Motion for Class Certification would have been granted, but Class Counsel acknowledge
10 that the risks posed by Defendant's arguments justify the settlement.

11 Moreover, even if Plaintiff were to prevail at class certification, risks to the class
12 remain. *See West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970)
13 ("[i]t is known from past experience that no matter how confident one may be of the
14 outcome of litigation, such confidence is often misplaced"), *aff'd*, 440 F.2d 1079 (2d Cir.
15 1971); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversing
16 \$87 million judgment after trial). Securing a \$775,000.00 (which equals payments of
17 approximately \$198 per text message before subtraction of costs, fees, and any Service
18 Award) settlement now with certainty of payment will provide relief to Settlement Class
19 Members. Plaintiff and her counsel carefully balanced the risks of continuing to engage in
20 protracted and contentious litigation against the benefits to the Settlement Class, including
21 the amount of the Settlement Fund and the deterrent effects it would have. *See* Eisenband
22 Decl., ¶ 5. Thus, the Settlement presents a fair and reasonable alternative to continued
23 litigation.

24 **c. The \$775,000.00 Fund Provides a Fair and Substantial Class Benefit**

25 As set forth above, Defendant has agreed to provide a \$775,000.00 Settlement Fund,
26 which will be used to pay all claiming Settlement Class Members and all settlement costs.
27 Class Counsel estimate that the individual Settlement Class Members award will be
28 approximately \$198 per text message received by each Settlement Class Member, before

1 reduction of attorneys' fees and costs, Service Award, and notice and administration costs.
2 See Eisenband Decl., ¶ 6. Although this amount is less than the TCPA's statutory damages
3 of \$500, it is well-settled that a proposed settlement need not provide class members with
4 the type of recovery they could obtain following a total win at trial. See *National Rural Tele.*
5 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a
6 proposed settlement may be acceptable even though it amounts to only a fraction of the
7 potential recovery"); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9,
8 2008) (court-approved settlement amount that was just over 9% of the maximum potential
9 recovery).

10 Here, the settlement award that each Settlement Class Member will likely receive is
11 fair, appropriate, and reasonable in light of the risk, expense, and uncertainty of continued
12 litigation within the TCPA's changing landscape. This is clearly explained to Settlement
13 Class Members in the Notice so they understand what they are giving up by participating in
14 the settlement. Indeed, the estimated award of \$198 per text message received—with most
15 individuals receiving payments for multiple text messages—is generally exceeds payments
16 in other TCPA settlements approved across the country. *Steinfeld v. Discover Fin. Servs.*,
17 No. C 12-01118, [DE 96] at ¶ 6 (N.D. Cal. Mar. 10, 2014) (claimants received \$46.98);
18 *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, Dkt. No.
19 137 (S.D. Cal. Sept. 28, 2012) (claimants received \$40); *Kramer v. Autobytel, Inc., et al.*,
20 No. 10-cv-2722, Dkt. 148 (N.D. Cal. 2012) (cash payment of \$100 to each class member);
21 *Estrada v. iYogi, Inc.*, No. 2:13-01989 WBS CKD, 2015 WL 5895942, at *7 (E.D. Cal.
22 Oct. 6, 2015) (granting preliminary approval to TCPA settlement where class members
23 estimated to receive \$40); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358, at *10 (N.D. Cal.,
24 2014) (claimants estimated to receive \$20 to \$40); *In re Capital One Tel. Consumer Prot.*
25 *Act Litig. (In re Capital One)*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (each claimant
26 received \$34.60); *Arthur v. Sallie Mae, Inc.*, 10-cv-0198-JLR (W.D. Wash.) (Class
27 members were to receive between \$20 and \$40 dollars per claim); *Fox v. Asset Acceptance,*
28 *LLC*, No. 2:14-cv-00734-GW-FFM (C.D. Cal. June 20, 2016) (estimating recovery between

1 \$11.79 and \$28.22 per person at time of fairness hearing, from the cash component of the
2 settlement); *Sherman v. Kaiser Foundation Health Plan, Inc.*, 13-cv-00981-JAH-JMS (S.D.
3 Cal.) (individual recovery of \$39.68 per claimant).

4 **d. Experienced Counsel Determined that the Settlement is Appropriate and**
5 **Fair to the Class**

6 The opinion of experienced counsel supporting the settlement is entitled to
7 considerable weight. *See e.g., Kirkorian v. Borelli*, 695 F. Supp. 446 (N.D. Cal.1988)
8 (opinion of experienced counsel carries significant weight in terms of the reasonableness of
9 the settlement); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). Based on
10 these standards, Plaintiff's counsel respectfully submit that, for the reasons detailed herein,
11 the Court should preliminarily approve the proposed Settlement as fair, reasonable and
12 adequate. Eisenband Decl., ¶ 7. The Parties are represented by counsel experienced in
13 complex class action litigation. Class Counsel have extensive experience in class actions,
14 as well as expertise in class actions relating to consumer protection and the TCPA.
15 Eisenband Decl., ¶ 8 and Composite Exhibit 1 to Eisenband Decl. Similarly, counsel for
16 Defendant have extensive experience based upon a long track record in complex and class
17 actions. Defense counsel has vigorously defended their clients throughout this case
18 including through motion practice. Class Counsel believe that the proposed Settlement is
19 fair, reasonable, adequate, and in the best interests of the Class Members. *See Eisenband*
20 *Decl.*, ¶ 9.

21 **e. The Settlement will be Fairly Distributed**

22 Any Settlement Class member who does not timely and validly request to opt-out
23 shall be bound by the terms of this Agreement and shall automatically be mailed a
24 Settlement Fund Payment. If any Settlement Class Members fail to timely opt-out, they
25 will remain in the Settlement Class and their claims will be released. Each Settlement Class
26 member who does not opt out of the Settlement shall automatically be mailed a Settlement
27 Fund Payment payable by check. The amount of each Settlement Fund Payment shall be
28 determined by the following formula: (1) Net Settlement Fund divided by total number of

1 Messages = Settlement Fund Payment Per Message and (2) Settlement Fund Payment Per
2 Message multiplied by the number of Messages each Settlement Class Member received =
3 Settlement Fund Payment to Class Member. Settlement Class Members will receive
4 payment for each text message that they received.

5 Plaintiff will seek Court approval of a reasonable Incentive Award. The Ninth Circuit
6 has explained that service awards that are “intended to compensate class representatives for
7 work undertaken on behalf of a class ‘are fairly typical in class action cases.’” *In re Online*
8 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (quoting *Rodriguez*, 563
9 F.3d at 958-59). The factors courts consider include the class representative’s actions to
10 protect the interests of the class, the degree to which the class has benefitted from those
11 actions, the time and effort the class representative expended in pursuing the litigation, and
12 any risk the class representative assumed. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.
13 2003). Plaintiff devoted significant time assisting Class Counsel in this case, including
14 assisting with development of the case, discovery, deposition and making herself available
15 for mediation.

16 **f. The Court Should Conditionally Certify the Class for Purposes of**
17 **Settlement**

18 Courts acknowledge the propriety of class certification for purposes of class action
19 settlements. *See In re Wireless Facilities*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (“Parties
20 may settle a class action before class certification and stipulate that a defined class be
21 conditionally certified for settlement purposes”). It is well established that trial courts
22 should use a lower standard for determining the propriety of certifying a settlement class,
23 as opposed to a litigation class. The reason for this is that no trial is anticipated in a
24 settlement class, so the case management issues inherent in determining if the class should
25 be certified need not be confronted. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620
26 (1997); *Jabbari v. Farmer*, 965 F.3d 1001, 1005–06 (9th Cir. 2020) (“Settlement may
27 obviate the need to litigate individualized issues that would make a trial unmanageable,
28 making common questions more important in the relative analysis.”) (citations and
quotations omitted); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir.

1 2019) (Rule 23 “factors must be considered in light of the reason for which certification is
 2 sought—litigation or settlement—which ‘is relevant to a class certification.’ . . . [I]n
 3 deciding whether to certify a settlement-only class, ‘a district court need not inquire whether
 4 the case, if tried, would present intractable management problems.”).

5 However, like any other class certification decision, certification of a class for
 6 settlement purposes requires a determination that the requirements of Rule 23 are met. *Id.*
 7 Certification of a settlement class is appropriate here because the action meets the
 8 requirements of Rule 23(a) and Rule 23(b)(3). *See Caldera*, 320 F.R.D. at 517-520;
 9 *Makaron*, 324 F.R.D. at 232-235; *Stemple v. QC Holdings, Inc.*, 2014 U.S. Dist. LEXIS
 10 125313, *26 (S.D. Cal. Sept. 5, 2014).

11 Of course, Defendant has vigorously denied that that certification would be
 12 appropriate for litigation or that is liable for Mr. Meshel’s conduct. But the class-wide
 13 settlement here resolves the significant obstacles to certifying a class on the merits. Thus,
 14 in agreeing to conditionally certify the class for settlement purposes, Defendant has
 15 expressly preserved all defenses in the event the settlement is not approved. Agr. 34-36.

16 **i. The Proposed Settlement Class is Numerous**

17 Class certification under Rule 23(a)(1) is appropriate where a class contains
 18 so many members that joinder of all would be impracticable. “Impracticability does not
 19 mean ‘impossibility,’ but only the difficulty or inconvenience of joining all members of the
 20 class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964)
 21 (citation omitted). The Settlement Class here consists of hundreds of individuals, which
 22 more than satisfies the numerosity prerequisite under Fed. R. Civ. P. 23(a)(1). *See also*,
 23 *Abdeljalil v. GE Capital Corp.*, 306 F.R.D. 303, 308 (S.D. Cal. Mar. 26, 2015).

24 **ii. The Class-wide Settlement Resolves Common Questions**

25 The commonality requirement is met if there are questions of law and fact common
 26 to the class. *Hanlon*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent
 27 legal factual predicates is sufficient, as is a common core of salient facts coupled with
 28 disparate legal remedies within the class.”). The claims being released under the class-wide

1 settlement all stem from the same basic factual circumstances—text messages sent by
2 Defendant’s former employee Mr. Meshel which relate to mortgage loan products and/or
3 mortgage loan rates. *See Abdeljalil*, 306 F.R.D. at 309 (finding commonality where plaintiff
4 alleged “defendant called third parties on their cellular telephone number via an ATDS
5 and/or prerecorded voice without prior express consent after defendant was on notice that it
6 was calling a third party”); *see also, Caldera*, 320 F.R.D. at 517 (listing common issues in
7 TCPA action).

8 The settlement also resolves in one fell swoop a number of questions of law that
9 Plaintiff contends are common to all members of the Class, including whether: (1) Mr.
10 Meshel; (2) acting within the scope of his employment with Defendant; (3) made marketing
11 telephone calls; (4) to Plaintiff and the Settlement Class Members “cellular” telephone
12 numbers; (5) using an automatic telephone dialing system; (6) without the called party’s
13 prior express written consent. The named Plaintiff here seeks the same remedies, including
14 statutory damages. Thus, the commonality requirement is satisfied.

15 **iii. In the Context of this Class-wide Settlement, Plaintiff’s Claims are**
16 **Typical**

17 The typicality requirement is met if the claims of the named representatives are
18 typical of those of the class, though “they need not be substantially identical.” *Hanlon*, 150
19 F.3d at 1020. Under the settlement here, Plaintiff’s claims are typical of the potential claims
20 of the whole Settlement Class because the releases arise from the same factual basis – the
21 allegation that Defendant used an automatic telephone dialing system to send non-
22 emergency marketing calls to members of the Settlement Class without first obtaining
23 proper consent – and are based on the same legal theory as applies to the Class as a whole:
24 that the calls violated the TCPA. *See Wehne v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D.
25 Cal. 1987). Thus, the typicality requirement for certifying a settlement class is satisfied. *See*
26 *Malta v. Fed. Home Loan Mortg. Corp.*, 2013 U.S. Dist. LEXIS 15731, *7 (S.D. Cal. Feb.
27 5, 2013) (“Plaintiffs’ claims arise from the same factual basis as that of the class: calls made
28 to Plaintiffs using auto-dialing equipment. . . . In addition, plaintiffs’ claims are based on the

1 same legal theory as that applicable to the class.”); *Stern*, 2014 U.S. Dist. LEXIS 17949 at
 2 *12; *Abdeljalil*, 306 F.R.D. at 309.

3 **iv. Adequacy Requirement is Satisfied**

4 Rule 23(a)(4) is satisfied if “the representative parties will fairly and adequately
 5 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Court must measure the
 6 adequacy of representation by two standards: “(1) Do the representative plaintiffs and their
 7 counsel have any conflicts of interest with other class members, and (2) will the
 8 representative plaintiffs and their counsel prosecute the action vigorously on behalf of the
 9 class?” *In re Wireless Facilities*, 253 F.R.D. at 611 (quoting *Staton v. Boeing Co.*, 327 F.3d
 10 938, 958 (9th Cir. 2003)). Plaintiff should be appointed Settlement Class Representative.
 11 Plaintiff has been diligent in prosecuting her claims and the putative class claims. Plaintiff
 12 assisted her counsel in the initial factual investigation, provided details concerning the text
 13 messages from Defendant and served and responded to written discovery. Plaintiff was also
 14 deposed by Defendant and agreed with the material terms of the Settlement Agreement.
 15 Also, Plaintiff’s attorneys have extensive experience prosecuting class actions seeking to
 16 protect privacy and consumer rights, including TCPA actions. Plaintiff’s counsel are
 17 qualified and able to conduct this litigation as Class Counsel, and there are no known
 18 conflicts of interest. Eisenband Decl., ¶ 10.

19 **v. Common Questions Predominate in the Context of this Class-wide**
 20 **Settlement**

21 Class certification under Rule 23(b)(3) is appropriate where “questions of law or fact
 22 common to class members predominate over any questions affecting only individual
 23 members.” Fed. R. Civ. P. 23(b)(3). The inquiry focuses on whether the class is “sufficiently
 24 cohesive to warrant adjudication by representation.” *Local Joint Exec. Bd. of*
 25 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir.
 26 2001). Central to this question is “the notion that the adjudication of common issues will
 27 help achieve judicial economy.” *Zincser v. Accufix Research Institute, Inc.*, 253 F.3d 1188,
 28 1189 (9th Cir. 2001) (citation omitted), *as amended*, 273 F. 3d 1266 (9th Cir. 2001).

1 In the settlement context, a court’s evaluation of Rule 23’s predominance and
2 manageability standards are relaxed. That is because class-wide settlement may “obviate[]
3 the need to litigate individualized issues that would make a trial unmanageable, making
4 common questions more important in the relative analysis.” *Jabbari v. Farmer*, 965 F.3d
5 1001, 1005–06 (9th Cir. 2020); *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at
6 558 (“[W]hether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is
7 informed by whether certification is for litigation or settlement. A class that is certifiable
8 for settlement may not be certifiable for litigation if the settlement obviates the need to
9 litigate individualized issues that would make a trial unmanageable.”); *McConville v.*
10 *Renzenberger, Inc.*, No. CV 17-2972 FMO (JCX), 2019 WL 9408103, at *3 (C.D. Cal. Dec.
11 2, 2019) (The “courts need not consider the Rule 23(b)(3) issues regarding manageability
12 of the class action, as settlement obviates the need for a manageable trial.”). “The main
13 concern in the predominance inquiry ... [is] the balance between individual and common
14 issues.” *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir.
15 2009). In the context of a settlement-only class, “a district court need not inquire whether
16 the case, if tried, would present intractable management problems . . . for the proposal is
17 that there be no trial.” *Amchem Prods.*, 521 U.S. at 620.

18 Here, the class-wide Settlement provides the required “cohesion” by resolving
19 common questions that Plaintiff would need to substantiate if forced to seek class
20 certification on the merits of her claims, such as: (1) whether Defendant violated the TCPA
21 by making calls using an automatic telephone dialing system, and (2) whether Defendant
22 obtained proper express written consent. *See Makaron*, 324 F.R.D at 234 (finding
23 predominance in light of plaintiffs’ claims they received autodialed or prerecorded calls,
24 and that defendant was vicariously liable for actions of its distributors); *Abdeljalil*, 306
25 F.R.D. 303, 310-12; *Malta*, 2013 U.S. Dist. LEXIS 15731 at *10 (“The central inquiry is
26 whether Wells Fargo violated the TCPA by making calls to the class members.”). The
27 Settlement’s common treatment of Settlement Class Members using a fair and neutral
28 formula avoids any individualized issues concerning highly contested issues like

1 arbitrability and consent. For purposes of this settlement, the predominance requirement is
2 satisfied.

3 **vi. Superiority Element is Satisfied**

4 Class certification is also “superior to other available methods for fair and efficient
5 adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Here, there are hundreds of class
6 members with modest individual claims, most of whom likely lack the resources necessary
7 to seek individual legal redress. *See Local Joint Exec. Bd. of Culinary/ Bartender Trust*
8 *Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving
9 “multiple claims for relatively small individual sums” are particularly well suited to class
10 treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
11 Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of
12 litigating on an individual basis, this factor weighs in favor of class certification.”). A
13 class-wide settlement that provides an automatic payment to those who do not opt-out is far
14 superior to taking the risk that class certification on the merits may not be granted or
15 pursuing individual claims.

16 **g. The Notice Plan Complies with Rule 23(e) and Due Process**

17 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all
18 class members who would be bound by” a proposed settlement, voluntary dismissal, or
19 compromise. Class members are entitled to the “best notice that is practicable under the
20 circumstances” of any proposed settlement before it is finally approved by the Court. Fed.
21 R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) provide that “notice may be by one or more of the
22 following: United States mail, electronic means, or other appropriate means.” To comply
23 with due process, notice must be “the best notice practicable under the circumstances,
24 including individual notice to all members who can be identified through reasonable effort.”
25 *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997). Notice must state in plain, easily
26 understood language: (i) the nature of the action; (ii) the definition of the class certified;
27 (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance
28 through an attorney if the member so desires; (v) that the court will exclude from the class

1 any member who requests exclusion; (vi) the time and manner for requesting exclusion; and
2 (vii) the binding effect of a class judgment on members. Fed. R. Civ. P. 23(c)(2)(B).

3 This Settlement provides for a Notice Plan that will include direct mail notice to
4 Settlement Class Members. Eisenband Decl., ¶11. In addition, the Settlement Administrator
5 will maintain a Settlement Website with a Long-Form Notice, detailed information about
6 the Settlement, and a toll-free number that anyone may call to obtain information. The
7 Notice Plan fulfills the requirements of adequate notice for due process purposes and should
8 be preliminarily approved. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th
9 Cir. Ariz. 1993); *Malta*, 2013 U.S. Dist LEXIS 15731 at *29-30; Rule 23(c)(2); Manual,
10 3d. 30.21.

11 All of the notices, attached as Exhibits 1 and 2 to the Settlement Agreement, are
12 drafted in plain English, so they will be easy to understand. They include key information
13 about the Settlement, including the deadline to file a claim, the deadline to request exclusion
14 or object to the Settlement, and the date of the Final Approval Hearing (and that the hearing
15 date may change without further notice). The notices disclose that, by participating in the
16 Settlement, Settlement Class Members give up the right to file their own lawsuit. They direct
17 Settlement Class Members to the Settlement Website for further information where copies
18 of the notices and the Settlement Agreement. The manner and content of the proposed
19 Notice Plan complies with Rule 23 and due process. Similar notice plans are commonly
20 used in class actions like this one and constitute the best notice practicable under the
21 circumstances. *See, e.g., Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 330 (C.D. Cal. 2016)
22 (approving a settlement notice program of emails and postcards to class members with
23 known addresses as well as publication in magazines and on the internet); *In re Cathode*
24 *Ray Tube (Crt) Antitrust Litig.*, No. C-07-05944 JST, 2015 WL 6871439, at *1-2 (N.D. Cal.
25 Nov. 9, 2015) (approving notice plan of mailing to class members identified by Defendant,
26 publication in two newspapers, and posting on the internet); *see also*, Newberg on Class
27 Actions § 8:29 (5th ed. June 2018) (“While notice by mail is generally preferred for class
28 members who have been identified, notice by publication has traditionally served an

1 important supplemental role.”).

2 **V. PROPOSED SCHEDULE OF EVENTS**

3 In connection with Preliminary Approval of the Settlement, the Court should also
4 set a date and time for the Final Approval Hearing. Other deadlines in the Settlement
5 approval process, including the deadlines for requesting exclusion from the Settlement
6 Class or objecting to the Settlement, will be determined based on the date of the Final
7 Approval Hearing or the date on which the Preliminary Approval Order is entered. Class
8 Counsel propose the following schedule:

9

<u>Event</u>	<u>Timeline</u>
Deadline for Completion of Notice	60 days after entry of the Preliminary Approval Order; no later than 90 days before the Final Approval Hearing
Deadline for filing Motion for Final Approval of the Settlement and Class Counsel’s Fee Application and expenses, and for the Service Awards	No later than 45 days before the Final Approval Hearing
Deadline for opting-out of the Settlement and for submission of Objections	60 days from mailing of the Notice; no later than 30 days before the Final Approval Hearing
Deadline for Responses to Objections	15 days before the Final Approval Hearing
Final Approval hearing	At least 120 days after Preliminary Approval

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21 **VI. CONCLUSION**

22 Based on the foregoing, Plaintiff and Class Counsel respectfully request that the
23 Court: (1) grant Preliminary Approval to the Settlement; (2) conditionally certify for
24 settlement purposes the proposed Settlement Class, pursuant to Rules 23(a), (b)(3), and (e)
25 of the Federal Rules of Civil Procedure; (3) approve the Notice program set forth in the
26 Agreement and approve the form and content of the Notices, attached to the Settlement
27 Agreement; (4) approve and order the opt-out and objection procedures set forth in the
28 Agreement; (5) appoint Plaintiff as Settlement Class Representatives; (6) appoint as Class

1 Counsel the law firms and attorneys listed in the Agreement; and (7) schedule a Final
2 Approval Hearing. A Proposed Preliminary Approval Order is attached hereto as **Exhibit**
3 **C.**

4
5 Dated: February 26, 2021

6 Respectfully submitted,

7
8 /s/ Ignacio J. Hiraldo, Esq.

9
10 **IJH LAW**

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Case Number 2:20-cv-00503-JAT

Ricci Saliba, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KS StateBank Corporation,

Defendant.

_____ /

CLASS-WIDE SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into between and among Plaintiff Ricci Saliba (“Plaintiff”), on behalf of herself and the Settlement Class, and Defendant KS StateBank Corporation a/k/a KS StateBank (“Defendant”):

WHEREAS, on March 10, 2020, Plaintiff filed in the United States District Court for the District of Arizona a Class Action Complaint on behalf of herself and a putative class in the lawsuit styled *Ricci Saliba v. KS StateBank Corporation.*, Case No. 2:20-cv-00503-JAT (the “Action”);

WHEREAS, Plaintiff alleges that she and members of the putative class received unsolicited automated text messages from Defendant without prior express consent or express written consent, which allegedly harmed her and the putative class (the “Allegations”);

WHEREAS, Plaintiff, through her Allegations in the Action, alleges that she and members of the putative class are entitled to declaratory and injunctive relief, statutory damages, attorneys’ fees and costs as a result;

WHEREAS, Defendant denies any and all alleged liability or wrongdoing to the Settlement Class Representative, to the Settlement Class, and any other individuals or putative class members described in Plaintiff’s pleadings in the Action.

WHEREAS, on January 26, 2021, the Parties attended private mediation with the assistance of mediator Jill R. Sperber, Esq., during which the Parties engaged in intensive negotiations to resolve the Action;

WHEREAS, the mediation resulted in an agreement in principle resolving all claims in the Action on a class-wide basis and that was memorialized in a Confidential Settlement Term Sheet and executed on that same date, which Term Sheet is superseded by this Agreement;

WHEREAS, pursuant to the parties’ agreement, Plaintiff will ask the Court to conditionally certify the Settlement Class (for settlement purposes only), appoint her as Settlement Class

Representative, and appoint her attorneys Hiraldo, P.A., Eisenband Law, PA, and IJH Law as Settlement Class Counsel in this case;

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 the Settlement Class and in the best interest of the Settlement Class;

WHEREAS, Plaintiff, on behalf of herself and as the putative representative of the Settlement Class, and Defendant desire to resolve the dispute between them while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice;

WHEREAS, notwithstanding their respective positions as to the Allegations in the Action, the Parties have concluded that further litigation would be protracted and expensive, have taken into account the uncertainty and risks inherent in this Lawsuit, and have determined that it is desirable that the Lawsuit and the Allegations be fully, completely, and finally settled in the manner and upon the terms set forth herein. They each execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation.

NOW, THEREFORE, in exchange for mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree that the Lawsuit shall be settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions in this Agreement (including but not limited to a full, fair and complete release of all the Released Parties from the Released Claims), and without costs (except as provided herein) subject to approval by the Court of this Agreement after a hearing and on finding that it is a fair, reasonable, and adequate settlement, as follows.

I. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. “Action” or “Lawsuit” mean the lawsuit *Ricci Saliba v. KS Statebank Corporation.*, Case No. 2:20-cv-00503-JAT in the United States District Court for the District of Arizona.
2. “Administrator” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”), which, subject to Court approval, shall be responsible for administrative tasks, which may include without limitation: (a) arranging for distribution of the Class Notice to Settlement Class Members; (b) making any mailings to Settlement Class Members required under the Agreement; (c) forwarding written inquiries from Settlement Class Members to Class Counsel or their designee; (d) establishing the Settlement Website, (e) distributing payments to Settlement Class Members; and (f) otherwise assisting with implementing and administering this Agreement, subject in all cases to approval by Class Counsel and Counsel for the Defendant. Class Counsel and Defendant may, by agreement, substitute a different organization as Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as the Administrator upon a showing that the responsibilities of the Administrator have not been adequately executed by the incumbent.
3. “Defendant” means KS StateBank Corporation, a Kansas corporation.
4. “Message(s)” refers to the automated marketing text messages that Plaintiff alleges in the Action were received by Plaintiff and putative class members by Defendant’s former employee, Roy Meshel, or by and on behalf of Defendant.

5. “Class Counsel” means:

Michael L. Eisenband
Eisenband Law PA
515 East Las Olas Boulevard Suite 120
Fort Lauderdale, FL 33012

Ignacio J. Hiraldo
IJH Law
1200 Brickell Avenue Suite 1950
Miami, FL 33131

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301

6. “Settlement Class Period” means the period from March 10, 2016 (four years prior to the filing of the original Complaint in the Action) through the date of Preliminary Approval.
7. “Settlement Class Representative” means Ricci Saliba.
8. “Court” means the United States District Court for the District of Arizona.
9. “Effective Date” means the fifth business day after which all of the following events have occurred:
- a. The Court has entered the Final Approval Order; and
 - b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available. If no member of the Settlement Class objects to the Settlement, and therefore nobody has standing to file an appeal, the Effective Date means the fifth business day after which the Court has entered

the Final Approval Order.

10. “Escrow Account” means the escrow account to be established by the Escrow Agent for purposes consistent with the terms and conditions of this Agreement.
11. “Escrow Agent” means Epiq. The Escrow Agent shall administer the Escrow Account.
12. “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of a Service Award to the Settlement Class Representative. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.
13. “Final Approval Order” means the order and final judgment that the Court enters upon Final Approval. If the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.
14. “Net Settlement Fund” means the Settlement Fund minus Settlement Costs.
15. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.
16. “Notice Program” means the methods provided for in this Agreement for distributing the Notice to the Settlement Class and consists of (a) Mailed Notice to the to the mailing address of Settlement Class members as last known to Defendant and then verified and/or updated by the Administrator; (b) Toll-free Telephone Number for answering questions; and (c) Settlement Website, which will include making the Long-Form Notice available for viewing and download. Forms of the proposed Mailed Notice and Long-Form Notice agreed upon by Class Counsel and Defendant, subject to Court approval and/or modification, are attached hereto as Exhibit 1 and Exhibit 2, respectively.

17. “Class Notice Date” means the day on which the Mailed Notice is first mailed.
18. “Opt-Out Period” means the period that begins on the Class Notice Date and that ends no later than 30 days prior to the Final Approval Hearing. The deadline for the Opt-Out Period will be calculated as 60 days from mailing of the Notice, and the precise date shall be specified in the Notice.
19. “Parties” means Plaintiff and Defendant.
20. “Plaintiff” means Ricci Saliba.
21. “Preliminary Approval” means the date on which the Court enters an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.
22. “Released Claims” means all claims to be released as specified in Section XII of this Agreement. The “Releases” mean all the releases contained in this Agreement.
23. “Released Parties” means Defendant KS StateBank Corp. a/k/a KS StateBank and all of its current and former employees, agents, representatives, vendors, contractors and subcontractors, consultants, third-party service providers, telephone messaging service providers, indemnitees, parent companies including Manhattan Banking Corporation, a Kansas corporation, subsidiaries, affiliates, divisions, owners, managers, directors, officers, shareholders, partners, insurers, predecessors, successors, assigns, wholesalers, resellers, distributors, retailers, attorneys, and all persons or entities involved in the generation, preparation, or distribution of the Messages, or on whose behalf they were sent. “Released Parties” also shall include any other persons or entities, not identified above, who, by the express terms of this Agreement, are intended to be released by the Releasing Parties.
24. “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely

and properly opt-out of the Settlement, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, and all those who claim through them or on their behalf.

25. “Settlement” means the settlement into which the Parties have entered to resolve the Action.
26. “Settlement Class Member” means any person included in the Settlement Class (as defined herein) who does not timely and properly opt-out of the Settlement.
27. “Settlement Class Data” means the relevant contact information for the individuals who, according to records compiled by the Parties in the Action, may be Settlement Class Members. The Settlement Class Data shall be treated as Confidential Information shall only be used for purposes of administering this Settlement, and will remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities or as required to carry out the Administrator’s duties pursuant to the Settlement, or by order of the Court. In the event this Agreement is rendered void for any reason, the Administrator, Plaintiff’s counsel, and Class Counsel shall not thereafter use this information for any purpose and shall destroy all copies or versions of it (including any in electronic form).
28. “Settlement Costs” mean all court-approved costs incurred by Plaintiff, the Settlement Class, and Class Counsel in connection with the Action, as well as all fees, costs, and expenses related to notice and settlement administration costs, including the costs associated with providing notice required by the Class Action Fairness Act codified at 28 U.S.C. Sec. 1332(d), expenses relating to the Escrow Account, expenses advanced by Class

Counsel, attorneys' fees awarded to Class Counsel, and any Service Award payable to the Settlement Class Representative.

29. "Settlement Fund" means the \$775,000.00 cash fund to be established pursuant to this Agreement.
30. "Settlement Fund Payment" means the cash dollar amount of the Settlement Fund that each Settlement Class Member will receive.
31. "Settlement Fund Payment Per Message" means the cash dollar amount of the Settlement Fund to be paid for each Message.
32. "Settlement Website" means the website that the Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for members of the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, and such other documents as Class Counsel and Defendant agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The Settlement Website will not be used to file or receive opt-out requests. The form of the website shall be subject to the approval of Class Counsel and counsel for Defendant. The URL of the Settlement Website shall be www.SalibaTCPASettlement.com or such other URL as Class Counsel and Defendant agree upon in writing.
33. "Confidential Information" means information, documents, or any other material that is:
 - (a) designated as "CONFIDENTIAL" pursuant to the Protective Order entered in the Action on July 13, 2020, [Dkt. 26] (the "Protective Order"), or
 - (b) identified as confidential

in this Agreement, in which case it shall be subject to the same protections afforded in the Protective Order even if not formally designated as “CONFIDENTIAL”.

II. Conditional Certification of the Settlement Class

34. For settlement purposes only, Plaintiff and Defendant agree to ask the Court to conditionally certify the following “Settlement Class” under Rules 23(a), (b)(3), and (e) of the Federal Rules of Civil Procedure:

All persons, and their respective marital communities, within the United States who, (1) within the four years prior to the filing of Plaintiff’s Complaint in the Lawsuit, (2) received a text message from Roy Meshel while he was employed by Defendant, (3) advertising and/or promoting one or more of Defendant’s mortgage loan products and/or mortgage loan rates, (4) using the texting software provided by Skipio LLC, (5) to said person’s cellular telephone number, (6) where the person’s telephone number was not obtained by Defendant from a non-party lead generator, and was instead obtained by Mr. Meshel.

35. The following are excluded from the Settlement Class: (a) any trial or magistrate judge presiding over the Action; (b) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, agents, servants or employees of Defendant; (c) any of the Released Parties; (d) the immediate family of any Released Parties; (e) any Settlement Class Member who has timely and properly opted out of this Settlement; and (f) Plaintiff’s Counsel and their employees. Defendant conditionally agrees and consents to certification of the Settlement Class for purposes of this Settlement only.
36. Defendant’s agreement to conditional class certification is contingent on (i) the Parties’ execution of this Agreement, (ii) the Court’s entry of the Final Approval Order, and (iii) the Final Approval Order becoming final. If for any reason the settlement is not granted preliminary and final approval, Defendant’s agreement to conditional certification of the Settlement Class is void *ab initio* and shall not be used for any purposes, including any

request for class certification in the Lawsuit or any other proceeding. The Parties further agree that conditional certification for purposes of the Settlement Agreement is not an admission that class action certification is proper under the standards applied to contested class certification motions and that this Agreement will not be admissible in this or any other proceeding as evidence that: (i) a class action can or should be certified in the Action; or (ii) Defendant is liable to Plaintiff or any Settlement Class Member, other than according to the Settlement Agreement's terms.

III. Settlement Consideration

37. Monetary Consideration: The maximum cash consideration to be provided pursuant to the Settlement shall be \$775,000.00. Payment of this monetary consideration shall be the sole responsibility of Defendant. All Settlement Costs shall be payable from the Settlement Fund. Class Counsel shall be responsible for supervising the Administrator and ensuring timely compliance with the Administrator's responsibilities and duties under this Settlement. Payments to the Administrator for costs and services rendered shall be made pursuant to a separate agreement with the Administrator.

IV. Settlement Approval

38. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement ("Preliminary Approval Order"). The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(a), (b)(3) and (e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures

for Settlement Class members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for Defendant, at which the Court will conduct an inquiry into the fairness of the Settlement in accordance with Federal Rule of Civil Procedure 23(e), determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and a Service Award to the Settlement Class Representative ("Final Approval Hearing").

V. NOTICE & SETTLEMENT ADMINISTRATION

39. The Parties have agreed to use Epiq as the Administrator, who 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, for the implementation and effectuation of the Class Notice Program, receiving and maintaining any correspondence regarding requests for exclusion and/or objections to the Settlement, administering Settlement Fund 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.
40. The Parties will coordinate with the Administrator to provide Notice to the Settlement Class, as provided in this Agreement. The Administrator shall administer the Settlement in accordance with the terms of this Agreement and shall treat 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.

41. The costs and fees charged by the Administrator for administration of the settlement (the “Administrative Costs”) shall be paid from the Settlement Fund with no additional sums due from Defendant. 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 provide Defendant’s counsel and Class Counsel with a preliminary invoice for start-up and initial Class Notice costs within 5 business days after entry of the Preliminary Approval Order. Thereafter, the Administrator shall provide Class Counsel and Defendant’s counsel with monthly invoices for joint approval of payment from the Settlement Fund. The Administrator will complete and provide to Defendant any W9 forms necessary.

VI. Notice to the Settlement Class

42. The Parties shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Any Notices provided under or as part of the Notice Program shall not bear or include Defendant’s logos or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant. 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 6 months following distribution of the Net Settlement Fund to Settlement Class Claimants, or such other date as Class Counsel and Defendant may agree upon in writing.
43. Within 10 days after entry of the Preliminary Approval Order, Defendant will provide the

Settlement Class Data which it possesses and controls in electronic format to the Administrator if they have not already done so.

44. Mailed Notice: The Administrator shall review the Class Settlement Data, utilize methods commonly used in the class administration industry to verify and/or update mailing addresses (e.g., reverse telephone number look ups, verification through the National Change of Address Database or other reliable sources like LexisNexis and TransUnion), and shall, to the extent reasonably possible, mail the Mailed Notice to all Settlement Class Members. The Mailed Notice program shall be completed no later than 90 days before the Final Approval Hearing. The Administrator shall provide Class Counsel and Defendant a sworn declaration that confirms that the Mailed Notice program was completed in a timely manner and in accordance with this Agreement and the Preliminary Approval Order.
45. Long-Form Notice: The Mailed Notice will contain the URL address for the Settlement Website, www.SalibaTCPASettlement.com. The Long-Form Notice shall be made available on the Settlement Website.
46. Settlement Website: By the Class Notice Date, the Administrator shall establish and maintain the Settlement Website, which, among other things (i) provides contact information for Class Counsel, and (ii) provides access to relevant documents concerning the Action. Such documents shall include this Agreement, the Long-Form Notice, the Preliminary Approval Order, the operative Complaint in the Action, and, when filed, the Final Approval Order. The Administrator shall maintain the Settlement Website until at least 60 days following the deadline for submitting objections and opt-out requests.
47. Toll-free Telephone Number: By the Class Notice Date, the Administrator shall establish and maintain a toll-free number that maintains an Interactive Voice Response (or similar)

system to answer questions about the Settlement. The Administrator shall maintain the IVR (or similar) system until at least 60 days following the deadline for submitting objections and opt-out requests.

48. CAFA Notice: The Administrator shall serve notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, within the timelines specified by 28 U.S.C. § 1715(b). Defendant will provide the Court with confirmation of service on or before the date of the Final Approval Hearing. The Administrator also shall provide Defendant with a timeline for information needed to complete the CAFA notices. The Claims Administrator shall file a declaration with the Court no later than 28 days before the Final Approval Hearing date, stating that the CAFA Notices have been served on the appropriate officials. No Party shall request that an order granting final approval of the Settlement be issued prior to the expiration of the time set forth in 28 U.S.C. § 1715(d).
49. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from or “opt-out” of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the URL address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.
50. The Notice shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any

time during the Opt-Out Period by mailing a written request to the Administrator. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement and shall automatically be mailed a Settlement Fund Payment. Opt-out requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the full name and address of the person in the Settlement Class requesting exclusion; (iii) include the mobile telephone number on which the person seeking exclusion received the call or calls associated with the request for exclusion, and (iv) include a statement similar to the following: “I request to be excluded from the settlement in the KS StateBank TCPA action, and to waive all rights to the benefits of the settlement.” No opt-out request will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other Settlement Class Member from the Settlement Class. An Opt-Out Form, attached as Exhibit 3, shall be made available on the Settlement Website as a valid, but optional, method of submitting an opt-out request.

51. Should any Party and/or Settlement Class Member dispute the timeliness or validity of an opt-out request, the amount of settlement compensation and/or any other issue arising out of the administration of Settlement, counsel for Plaintiff and counsel for Defendant shall negotiate in good faith regarding a resolution. If the Parties do not agree upon a solution, then it shall be submitted for resolution to the Court. Under no circumstances, however, shall Defendant be required to pay more than the Settlement Fund.
52. The Notice shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel’s application for attorneys’ fees, costs and expenses

and/or a Service Award to the Settlement Class Representative. Objections to the Settlement, to the application for fees, costs, expenses and/or for the Service Award must be in writing, filed with the Court, and mailed to the Administrator. For an objection to be valid, the objection must be filed with the Court and mailed to the Administrator no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope, mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, FedEx), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

53. For any objections to be valid and considered by the Court, it must include:
- a. the name of the Action;
 - b. the objector's full name, address, current telephone number, and telephone number to which any Messages may have been sent;
 - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
 - 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, and the name, court, and case number of each case in which the objector has made such an objection;
 - f. the identity of all counsel who represent the objector or may appear at the Final

Approval Hearing on the objector's behalf;

- g. 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;
- h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- i. the objector's signature (an attorney's signature is not sufficient).

54. Any Settlement Class Member who fails to comply with the foregoing requirements for submitting an objection shall waive and forfeit any and all rights to appear separately and/or to object, and shall be bound by all the terms of this Settlement, and by all proceedings, orders, and judgments in the Action.

55. Within the parameters set forth in this Agreement, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Defendant.

VII. Final Approval Order and Judgment

56. The Plaintiff's Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file their Motion for Final Approval of the Settlement, and their application for attorneys' fees, costs, and expenses and for a Service Award for the Settlement Class Representative, no later than 45 days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for a Service Award for the Settlement Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any

Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors submitted timely written objections that meet all the requirements listed in the preliminary approval order and notice.

57. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses, and a Service Award. Class Counsel shall prepare a Final Approval Order for submission to the Court. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Enter judgment dismissing the Action *with* prejudice, each party to bear her/its own attorneys' fees and costs, except as set forth in this Agreement and declaring that Plaintiff and all Settlement Class Members who have not opted out of the Settlement are bound by the release of claims described in the Class Notice;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, including during any appeal from the Final Approval Order;
- f. Release Defendant and the Released Parties from the Released Claims; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with

its terms.

VIII. Settlement Fund

58. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases and the dismissal of the Action with prejudice, Defendant shall deposit into the Escrow Account the total sum of \$775,000.00 within 7 calendar days following the entry of a Preliminary Approval Order by the Court. In no event shall Defendant be responsible for any claims, fees, or Settlement Costs exceeding \$775,000.00, which claims, fees, or Settlement Costs shall be paid from the Settlement Fund.
59. The Administrator shall establish the Escrow Account into which the Settlement Fund is deposited as a Qualified Settlement Fund (“QSF”) pursuant to Section 468B(g) of the Internal Revenue Code and regulations promulgated thereunder (e.g., United States Treasury Reg. § 1.468B-1) for the purpose of administering this Settlement and shall notify the Parties when the Settlement Account has been established. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendant or its counsel, or Plaintiff or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. Plaintiff and Class Counsel, and Defendant and its counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and Defendant and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

60. The Settlement Fund shall be used for the following purposes:
- a. Distribution of Settlement Fund Payments to Settlement Class Members;
 - b. Payment of any and all Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses;
 - c. Payment of any Court-ordered Service Award to the Settlement Class Representative;
 - d. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, subject to approval by Class Counsel and Defendant; and
 - e. Payment of Settlement Costs and any additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (e) of this paragraph, subject to approval of Class Counsel and Defendant.

IX. Calculation of Distributions from Settlement Fund

61. Each Settlement Class member who does not opt out of the Settlement shall automatically be mailed a Settlement Fund Payment payable by check. The amount of each Settlement Fund Payment shall be determined by the following formula: (1) Net Settlement Fund divided by total number of Messages = Settlement Fund Payment Per Message and (2) Settlement Fund Payment Per Message multiplied by the number of Messages each Settlement Class Member received = Settlement Fund Payment to Class Member. To prevent theft and fraud by third parties, the outside of the envelope or package containing the Settlement Fund Payment checks shall not contain any language describing its purpose, mentioning the class action settlement, or encouraging it to be opened.

X. Distribution of Settlement Fund

62. The Administrator shall distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:
- a. Any Service Award to the Settlement Class Representative;
 - b. Class Counsel will receive payment for its attorney's fees and costs, within five days after the date Final Approval is entered by the Court;
 - c. The Administrator shall receive payment for notice and administration costs within five days after the date Final Approval is entered by the Court;
 - d. Any remaining payment of Settlement Costs not enumerated in subparagraphs (a) through (c) of this paragraph;
 - e. No later than 45 days following the Effective Date, the Settlement Class Members shall be sent their Settlement Fund Payments.

XI. Automatic Entitlement to Settlement Fund Payments without Claims Process

63. Each member of the Settlement Class who does not timely opt-out from the Settlement shall be a Settlement Class Member and shall automatically be mailed a Settlement Fund Payment without any required claims process. Each Settlement Class Member shall receive a single Settlement Fund Payment relating to the total number of Messages that Settlement Class Member was sent, as specifically described herein.
64. Settlement Fund Payments shall be sent to Settlement Class Claimants by the Administrator via U.S. mail. Any Settlement Fund Payments that (i) remain uncashed after 180 days from issuance, or (ii) are returned as undeliverable, shall be redistributed on a pro-rata basis to Settlement Class Members who cashed their previously sent Settlement Fund Payments. If any amounts remain 180 days from issuance of this second distribution, the Parties shall seek Court approval of a cy pres award to a nonprofit charitable

organization. The Parties shall jointly select a cy pres recipient prior to moving for the Court's approval.

XII. Releases

65. Upon the Effective Date of the Settlement, and with the exception of the contractual rights and obligations independently created by this Agreement, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties from the following (collectively, the "Released Claims"): any and all claims under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, et seq. (the "TCPA") that arise out of or relate to any text messages directed to or received by any Settlement Class Members by Defendant's former employee Roy Meshel, or by or on behalf of Defendant.
66. The provisions of the Releases shall apply according to their terms, and the Parties acknowledge that the Settlement Class Representative and Settlement Class Members may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is the Parties' intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the Releases will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
67. Each Releasing Party waives any and all defenses, rights and benefits that may be derived from the provision of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.
68. The Parties and each Settlement Class Member agree that amounts to be paid under this

Agreement to each Settlement Class Member represent full satisfaction of that Settlement Class Member's Released Claims. No portion of such settlement represents the payment of punitive or exemplary damages. Nonetheless, in consideration for the satisfaction of each Settlement Class Member's claim for compensatory damages, all potential claims for punitive or exemplary damages arising from the Released Claims shall be released.

XIII. Payment of Attorneys' Fees, Costs, and Service Awards

69. Class Counsel shall request from the Court a reasonable amount for attorneys' fees and shall request from the Court a reimbursement of Class Counsel's costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. Other than the foregoing, Plaintiff and Class Counsel waive any other right to seek attorneys' fees in connection with the Action, including any rights under the TCPA or any other applicable law, rule, or regulation. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement from becoming effective, nor shall it be grounds for termination.
70. Defendant shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed.
71. Class Counsel shall request that the Court approve a reasonable Incentive Award/Service Award to Plaintiff. The Service Award is to be paid from the Settlement Fund. The Service Award shall be paid to the Settlement Class Representative in addition to the Class Representative's Settlement Fund Payment.
72. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

XIV. Termination of Settlement

73. This Settlement may be terminated by either Class Counsel or Defendant by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 30 days (or such longer time as may be agreed in writing between Class Counsel and Defendant) after any of the following occurrences:
- a. the Court fails to preliminarily approve the Settlement within 360 days after filing of the motion for preliminary approval, or fails to finally approve the Settlement within 360 days of Preliminary Approval by the Court;
 - b. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days of such reversal;
 - c. the Effective Date does not occur.

XV. Effect of a Termination

74. In the event of a termination, this Agreement shall be considered null and void; it shall be of no force or effect whatsoever; it shall be deemed part of a negotiation for settlement purposes only, and the negotiation, terms, and entry of the Agreement shall remain inadmissible under the Federal Rules of Civil Procedure, Federal Rule of Evidence 408, any agreement reached by the parties in connection with mediation efforts, and any applicable state law or rule of procedure or evidence; all of Plaintiff's, Class Counsel's, and Defendant's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to Defendant; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

75. In the event of a termination, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and already approved by Defendant, the Administrator and Escrow Agent shall return the balance of the Settlement Fund to Defendant within 5 business days of termination.
76. The Settlement shall become effective on the Effective Date unless earlier terminated.
77. In the event the Settlement is terminated, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XVI. No Admission of Liability

78. 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 this Lawsuit, as well as all class allegations asserted in this Lawsuit. Defendant has agreed to resolve this Lawsuit through this Agreement, but if this Agreement is deemed void or Final Approval does not occur, Defendant does not waive, but rather expressly reserve, all rights to challenge such claims and allegations in the Lawsuit on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether a class can be certified and to assert any and all defenses or privileges. The Settlement Class Representative and Class Counsel agree that Defendant retain and reserve all of these rights and agree not to take a position to the contrary.
79. Defendant continues to dispute their liability for the claims alleged in the Action, and maintains that it complied, at all times, with applicable laws and regulations. Defendant

does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Defendant have agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any claims that were asserted in the Action.

80. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims and conducted extensive discovery.
81. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.
82. Plaintiff represents and warrants that she has not solicited any potential plaintiffs or putative class members with respect to the claims raised in the Lawsuit.
83. Plaintiff's counsel represent and warrant that, to the fullest extent permitted by law, they:
(1) are not aware of any potential plaintiff who intends to make demands or sue Defendant based on the facts and claims raised in this Lawsuit; (2) do not presently represent any clients who have or contend to have any claims against Defendant other than Plaintiff; (3) do not presently have any intention of seeking to represent any clients who have or claim to have any claims against Defendant; and, (4) shall not actively advertise for or undertake to solicit any person, or assist any other licensed attorney, to sue Defendant based on the facts and claims raised in this Lawsuit.
84. The Parties understand and acknowledge that this Agreement constitutes a compromise

and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

85. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.
86. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.
87. Regardless of whether the Settlement receives Final Approval, Plaintiff and each Settlement Class Member acknowledge and agree that this Settlement shall not constitute a waiver of Defendant's rights, claims, and remedies against any third-party for indemnification or liability arising from Plaintiff's Allegations or claims in the Lawsuit, or the Settlement Fund to which Defendant will contribute for this Settlement, all of which are expressly reserved by Defendant.

XVII. Miscellaneous Provisions

88. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
89. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
90. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur.
91. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted. If those meet-and-confer efforts are unsuccessful, the dispute shall be submitted to the mediator, Jill Sperber, Esq., for resolution before addressing the matter to the Court. The costs and fees of such mediation shall be divided 50/50 between Plaintiff and Defendant.
92. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
93. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

94. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Arizona, without regard to the principles thereof regarding choice of law.
95. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.
96. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Administrator, and the Escrow Agent. As part of their respective agreements to render services in connection with this Settlement, the Administrator, and the Escrow Agent shall consent to the jurisdiction of the Court for this purpose.
97. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301
mhiraldo@hiral dolaw.com

All notices to Defendant, provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Devin Sreecharana
May, Potenza, Baran & Gillespie, P.C.
201 N. Central Ave., 22nd Floor
Phoenix, AZ 85004
devin@maypotenza.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any Party, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

98. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Defendant and, if the Settlement has been approved preliminarily by the Court, approved by the Court.
99. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
100. Authority. The signatories to this Agreement represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

101. Agreement Mutually Prepared. Neither Defendant nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
102. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.
103. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.
104. Return or Destruction of discovery materials. In addition to complying with their obligations under the Protective Order in the Action, Class Counsel will return or destroy all copies of remaining discovery materials obtained in this litigation from Defendant or

third parties within thirty (30) days after the Effective Date.

105. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.
106. No Other Actions or Claims. Plaintiff represents and warrants that, other than the Action, she has not initiated any pending legal or administrative action or claim against either Defendant or any Released Party, nor have any such other actions or claims been filed at any time after the Action was filed.

(signatures on following page)

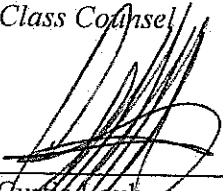
Dated: _____

Ricci Saliba
Plaintiff

Dated: _____

Manuel Hiraldo
Class Counsel

Dated: 2/26/21 _____



Curtis Loub
Vice President/General Counsel of Defendant

Dated: Feb 26, 2021	<u><i>Ricci Saliba</i></u> Ricci Saliba (Feb 26, 2021 12:37 MST) Ricci Saliba <i>Plaintiff</i>
Dated: Feb 26, 2021	<u><i>Manuel S. Hiraldo</i></u> Manuel Hiraldo <i>Class Counsel</i>
Dated: _____	_____ Curtis Loub <i>Vice President/General Counsel of Defendant</i>

Exhibit 1

FCPA- KS Statebank Settlement

[address]

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

Notice of Class Action Settlement

<<BARCODE>>

<<NAME1>>

<<NAME2>>

<<ADDRESS1>>

<<ADDRESS2>>

<<CITY, ST, ZIP>>

<<COUNTRY>>

|

If You Received Text Messages Sent by Roy Meshel on Behalf of KS Statebank Corporation, You are Entitled to Payment from a Class Action Settlement.

A settlement has been reached in a class action lawsuit concerning claims alleging that KS Statebank Corporation caused automated marketing text messages to be sent to wireless telephone numbers without the express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendant denies the allegations in the lawsuit, and the Court has not decided who is right. **THIS NOTICE IS JUST A SUMMARY. FOR MORE INFORMATION, PLEASE CALL [REDACTED] OR VISIT WWW.SALIBATCPASETTLEMENT.COM.**

Who's Included? You received this notice because Defendant's records show that you may be a Settlement Class Member. The Settlement includes any person who received a text message from Roy Meshel while he was employed by KS Statebank from March 16, 2016 (four years prior to the filing of the original Complaint in the Action) through the date of Preliminary Approval.

What Are the Settlement Terms? Defendants have agreed to pay \$775,000.00 to create a fund that will be used to pay class members, attorneys' fees, a Service Award to the Class Representative, and costs and expenses of the litigation. The cash payments from the Settlement Fund will be automatically distributed to Settlement Class Members who do not opt-out of the settlement. Each Class Member is entitled to a cash payment for each text message that was sent to that Class Member. Class Counsel anticipates that Settlement Fund Payments will be approximately \$198 per message, less attorneys' fees and costs, Plaintiff's incentive award, and the costs associated with notice and administration.

How Can I Get a Payment? Every Class Member *who does not request to opt-out* of the Settlement will automatically be sent a Settlement Payment via check. In other words, you do not have to do anything to receive a payment—you will automatically be sent a check unless you opt-out of the Settlement.

Your Other Options. If you do not want to be legally bound by the Settlement and do not want to receive an automatic settlement payment, you must exclude yourself, or opt-out, by [REDACTED]. The Settlement Website explains how to exclude yourself and contains a pre-approved, optional opt-out form you can use. If you do not exclude yourself, you will release any claims you may have (as more fully described in the Settlement Agreement, which is available at the Settlement Website) and automatically will be mailed a Settlement check. You also may object to the Settlement by [REDACTED]. The Long Form Notice available on the Settlement Website explains how to exclude yourself (opt-out) or object. The Court will hold a Final Approval Hearing on [REDACTED] to consider whether to approve the Settlement, a request for attorneys' fees to be paid from the Settlement Fund, and a Service Award to the Class Representative to be paid from the Settlement Fund. You are not required to, but you may appear at the hearing, either by yourself or through an attorney you hire.

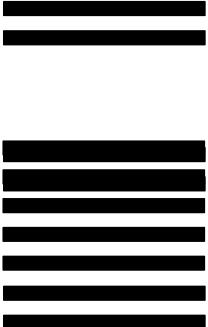
www.SalibaTCPASettlement.com 1-888-xxx-xxxx



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO 581 PORTLAND OR

POSTAGE WILL BE PAID BY ADDRESSEE



TCPA – KS STATEBANK SETTLEMENT

SETTLEMENT ADMINISTRATOR

[ADDRESS]



If You Received a Text Message(s) Sent by Roy Meshel Promoting KS Statebank’s Mortgage Loan Product or Interest Rates, You May Be Entitled to a Payment from a Class Action Settlement.

A federal court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit concerning claims alleging that KS Statebank Corporation caused automated marketing text messages to be sent to wireless telephone numbers without the express written consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendant denies the allegations in the lawsuit, and the Court has not decided who is right.
- The Settlement offers payments to all Settlement Class Members who do not opt-out of the Settlement.
- **Your legal rights are affected whether you act or do not act. Read this Notice carefully.**
- Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
NO CLAIM IS REQUIRED TO RECEIVE PAYMENT	If you are a member of the Settlement Class, you do not have to do anything to receive a Settlement Payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive your payment by check.
EXCLUDE YOURSELF	You may request to be excluded (or “opt-out”) from the Settlement and if you do, you will receive no benefits from the Settlement.
OBJECT	Write to the Court if you do not like the Settlement.
GO TO A HEARING	Ask to speak in court about the fairness of the Settlement.
DO NOTHING	You will automatically be mailed a Settlement Payment by check.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If the Court does, and after any appeals are resolved, settlement payments will be distributed automatically. Please be patient.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

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4. Why is this a class action?
5. Why is there a settlement?

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**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

BASIC INFORMATION

1. Why is there a Notice?

A court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit known as *Ricci Saliba v. KS Statebank Corporation* and about all of your options before the Court decides whether to give Final Approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The person who sued, Ricci Saliba, is called the “Plaintiff.” KS Statebank Corporation is called the “Defendant”.

2. What is this litigation about?

The lawsuit alleges that automated marketing text messages regarding Defendant’s mortgage loan products were sent to Plaintiff’s and the Settlement Class Members’ wireless telephone numbers without prior express written consent in violation of the Telephone Consumer Protection Act 47 U.S.C. § 227 (“TCPA”) and seeks actual and statutory damages under the TCPA on behalf of the named Plaintiff and a class of all individuals in the United States.

Defendant claims they complied with all applicable laws. They deny every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation. They also deny that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

Because the parties settled the case, the Court has not decided who is right.

The Plaintiff’s Complaint, Settlement Agreement, and other case-related documents are posted on the Settlement Website, www.SalibaTCPASettlement.com. The Settlement resolves the lawsuit.

3. What is the Telephone Consumer Protection Act?

The Telephone Consumer Protection Act (commonly referred to as the “TCPA”) is a federal law that restricts telephone solicitations and the use of automated telephone equipment.

4. Why is this a class action?

In a class action, one person called the “Class Representative” (in this case, Ricci Saliba) sues on behalf of herself and other people with similar claims.

All of the people who have claims similar to the Plaintiff’s claims are members of the Settlement Class, except for those who exclude themselves from the class.

5. Why is there a settlement?

The Court has not found in favor of either Plaintiff or Defendant. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members will receive the benefits described

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

in this Notice. Defendant denies all liability in this case. Plaintiff and her lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE SETTLEMENT

6. Who is included in the Settlement?

You received this email because Defendants' records show that you may be a Settlement Class Member. The Settlement includes any person who received a text message from Roy Meshel advertising Defendant's mortgage loan products from March 10, 2016 through the date of Preliminary Approval.

7. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class or have any other questions about the Settlement, visit the Settlement Website at www.SalibaTCPASettlement.com or call the toll-free number, 1-[number]. You also may send questions to the Settlement Administrator at xxxxxx.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Defendants have agreed to pay \$775,000.00 to create a cash Settlement Fund. The Settlement Fund will be used to pay all Settlement Costs, an attorneys' fee award, and a Service Award to the Class Representative. The remaining Net Settlement Fund shall be distributed as cash payments to Settlement Class Members who do not opt-out of the Settlement. The cash payments will be distributed on a per text message basis to Settlement Class Members. Class Counsel anticipates that Settlement Fund Payments will be approximately \$198 per text message, less attorneys' fees and costs, Plaintiff's Incentive Award, and the costs associated with notice and administration.

9. Do I need to file a Claim?

You do not have to file a claim to receive a Settlement Fund Payment. Unless you opt-out of the Settlement you will be automatically mailed a Settlement Fund Payment in the form of a check.

10. When will I receive my payment?

Payments to Settlement Class Members will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* "Final Approval Hearing" below). If there are appeals, resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How do I get out of the Settlement?

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class. To exclude yourself from the Settlement, you must send a timely letter by mail to:

KS Statebank TCPA Settlement Administrator
[address]

Opt-out requests must: (i) be signed by the person in the Settlement Class who is requesting exclusion; (ii) include the full name and address of the person in the Settlement Class requesting exclusion; (iii) include the mobile telephone number on which the person seeking exclusion received the call or calls associated with the request for exclusion, and (iv) include a statement similar to the following: “I request to be excluded from the settlement in the KS Statebank TCPA action, and to waive all rights to the benefits of the settlement.” No opt-out request will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other Settlement Class Member from the Settlement Class.

There is also an optional opt-out form you can use that is available on the Settlement Website.

Your exclusion request must be postmarked no later than **XX/XX/XXXX**. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may not request to exclude someone else from the Settlement Class.

12. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to pursue your own lawsuit.

13. What am I giving up to stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue or be part of any other lawsuit against Defendant about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you. Specifically, if you do not exclude yourself from this Settlement Class you are agreeing to the following release.

Upon the Effective Date of the Settlement, and with the exception of the contractual rights and obligations independently created by this Agreement, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant KS StateBank Corp. a/k/a KS StateBank and all of its current and former employees, agents, representatives, vendors, contractors and subcontractors, consultants, third-party service providers, telephone messaging service providers, indemnitees, parent companies including Manhattan Banking Corporation, a Kansas corporation, subsidiaries, affiliates, divisions, owners, managers, directors, officers, shareholders, partners, insurers, predecessors, successors, assigns, wholesalers, resellers, distributors, retailers, attorneys, and all persons or entities involved in the generation, preparation, or distribution of the Messages, or on whose behalf they were sent (collectively referred to as the “Released Parties”) from the following (collectively, the “Released Claims”): any and all claims under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, et seq. (the “TCPA”) that arise out of or relate to any text messages

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

directed to or received by any Settlement Class Members by Defendant's former employee Roy Meshel, or by or on behalf of Defendant.

The Settlement Agreement is available at www.SalibaTCPASettlement.com. The Settlement Agreement provides more detail regarding the Releases and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement Class listed in Question 15 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Claims or what they mean.

14. If I exclude myself, can I still get a payment?

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in the case?

The Court has appointed the following lawyers as "Class Counsel" to represent all members of the Settlement Class.

Manuel S. Hiraldo, Esq.
Hiraldo P.A.
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301

Michael L. Eisenband
Eisenband Law PA
515 East Las Olas Boulevard Suite 120
Fort Lauderdale, FL 33012

Ignacio J. Hiraldo
IJH Law
1200 Brickell Avenue Suite 1950
Miami, FL 33130

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

16. How will the lawyers be paid?

Class Counsel intend to request a reasonable amount for attorneys' fees plus reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request a reasonable Service Award be paid from the Settlement Fund to the Class Representative for his service as representative on behalf of the whole Settlement Class.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to any part of the Settlement. To object, you must timely submit a letter that includes the following:

- a. the name of the Action;
- b. the objector's full name, address, current telephone number, and telephone number to which any Messages may have been sent;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his 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, and the name, court, and case number of each case in which the objector has made such an objection;
- f. the identity of all counsel who represent the objector or may appear at the Final Approval Hearing on the objector's behalf;
- g. 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;
- h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- i. the objector's signature (an attorney's signature is not sufficient).

If you wish to object, you must file your objection with the Court (using the Court's electronic filing system or in any manner in which the Court accepts filings) and mail your objection to each of the following three (3) addresses, and your objection must be postmarked by XX/XX/XXXX.

Clerk of the Court	Class Counsel	Defendant's Counsel
United States District Court District of Arizona - Phoenix Division Sandra Day O'Connor U.S. Courthouse, Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003-2118	Manuel S. Hiraldo, Esq. Hiraldo P.A. 401 E. Las Olas Blvd., Ste. 1400 Fort Lauderdale, FL 33301	Devin Sreecharana, Esq. May Potenza Baran & Gillespie Chase Tower, 201 N. Central Ave., 22 nd Floor, Phoenix, AZ 85004-0608

THE FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses ("Final Approval Hearing").

The Court has scheduled a Final Approval Hearing on **XX/XX/XXXX at XX a.m.** at the Sandra Day O'Connor U.S. Courthouse, 401 West Washington Street, Phoenix, AZ 85003. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.SalibaTCPASettlement.com.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

SalibaTCPASettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses and for a Service Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

19. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have but you are welcome to attend the hearing or hire a lawyer to attend at your own expense.

20. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, your timely filed objection must include a statement of whether you intend to appear at the Final Approval Hearing (see Question 17 above).

You cannot speak at the hearing if you exclude yourself from the Settlement.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class member and do nothing, you will get benefits from the Settlement. In other words, if you do nothing, you will automatically be mailed a Settlement Fund Payment. Further, unless you exclude yourself, you will be bound by the judgment entered by the Court.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice summarizes the proposed Settlement. You may review the Settlement Agreement at www.SalibaTCPASettlement.com. You also may write with questions to the Settlement Administrator at KS Statebank TCPA Settlement Administrator, [address] or call the toll-free number, 1-888-xxx-xxxx.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT
www.SalibaTCPASettlement.com**

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Case Number 2:20-cv-00503-JAT**

Ricci Saliba, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KS Statebank Corporation,

Defendant.

_____ /

OPT OUT FORM

By submitting this Opt-Out Form, by mailing it via U.S. mail, I verify my desire to be excluded from the settlement in the case of *Ricci Saliba v. KS Statebank Corporation*, Case No. 2:20-cv-00503. I acknowledge and understand that by opting out of the settlement, I will not receive a monetary payment and that I cannot object to the settlement.

Full Name:

Home Address:

City:

State:

Zip Code:

Mobile Telephone Number that received the Text Message(s):

Signature: _____

Date: _____

EXHIBIT B

1 **EISENBAND LAW, P.A.**

2 Michael Eisenband, Esq.

3 (*pro hac vice*)

4 515 E. Las Olas Boulevard, Suite 120

5 Ft. Lauderdale, Florida 33301

6 Telephone: (954) 533-4092

7 (additional counsel on signature page)

8 *Attorney for Plaintiff*

9
10 UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

11
12 **Ricci Saliba**, individually and on behalf
13 of all others similarly situated,

14 Plaintiff,

15 v.

16
17 **KS Statebank Corporation**,

18 Defendant.
19
20

Case No. 2:20-cv-00503-JAT

**Declaration in Support of Unopposed
Motion for Preliminary Approval of
Class Settlement**

21 **I, MICHAEL EISENBAND, DECLARE:**

22 1. I am one of the attorneys requesting to be designated as Class Counsel for Plaintiffs
23 under the Settlement Agreement and Release (“Settlement” or “Agreement”) entered into with
24 Defendant.¹ I submit this declaration in support of Plaintiff’s and Class Counsel’s Unopposed
25 Motion for Preliminary Approval of Class Settlement. Except as otherwise noted, I have personal
26

27
28 ¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

1 knowledge of the facts set forth in this declaration and could testify competently to them if called
2 upon to do so.

3 2. The Parties' proposed Settlement is exceedingly fair and well within the range of
4 Preliminary Approval for several reasons.

5 3. The Settlement was not conditioned on any amount of attorneys' fees for Class
6 Counsel or Service Awards for Plaintiff and does not contain a clear sailing provision, which
7 speaks to the fundamental fairness of the process.

8 4. The proposed Settlement is the result of negotiations which started in mid-January,
9 2021 and concluded on January 26, 2021 with an experienced mediator. The time and effort spent
10 on settlement negotiations, as well as the time spent in mediation with Jill Sperber, Esq. support
11 preliminary approval of the proposed Settlement and strongly indicate there was no collusion.

12 5. In addition to the risk of a loss at trial, even a verdict for Plaintiff posed a
13 substantial risk that the judgment would never be paid. Securing a \$775,000.00 Settlement Fund
14 now with certainty of payment will provide relief to Settlement Class Members. Plaintiff and her
15 counsel carefully balanced the risks of continuing to engage in protracted and contentious
16 litigation against the benefits to the Settlement Class, including the amount of the Settlement Fund
17 and the deterrent effects it would have.

18 6. Defendants have agreed to provide a \$775,000 Settlement Fund, which will be used
19 to pay all Settlement Class Members and all settlement costs. Class Counsel estimate that the
20 individual Settlement Class Members award will be approximately \$198 per text message sent (to
21 be reduced by costs, Service Payment, and Class Counsel fees).

22 7. Based on these standards, Plaintiff's counsel respectfully submit that the Court
23 should preliminarily approve the proposed Settlement as fair, reasonable and adequate.

24 8. The Parties are represented by counsel experienced in complex class action
25 litigation. Class Counsel have extensive experience in class actions, as well as particular
26 expertise in class actions relating to consumer protection and specifically the TCPA. *See* Resumes
27 of Class Counsel, attached as Composite Exhibit 1.

28 9. Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate
and in the best interests of the Class Members.

