

**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.

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**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and that was memorialized in a Confidential Settlement Term Sheet and executed on that same date, which Term Sheet is superseded by this Agreement;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](http://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](http://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)

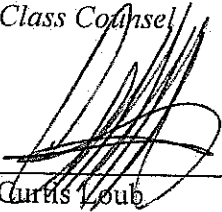
Dated: \_\_\_\_\_

\_\_\_\_\_  
Ricci Saliba  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Manuel Hiraldo  
*Class Counsel*

Dated: 2/26/21

  
\_\_\_\_\_  
Curtis Loub  
*Vice President/General Counsel of Defendant*

Dated: Feb 26, 2021

*Ricci Saliba*  
Ricci Saliba (Feb 26, 2021 12:37 MST)

Ricci Saliba  
*Plaintiff*

Dated: Feb 26, 2021

*Manuel S. Hiraldo*

Manuel Hiraldo  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Curtis Loub  
*Vice President/General Counsel of Defendant*