

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH	:	
NELUMS, on behalf of themselves and	:	NO. 4:21-cv-00245-RSB-CLR
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AMERICA'S LIFT CHAIRS, LLC	:	
	:	
Defendant.	:	

**PLAINTIFFS AND CLASS COUNSEL’S MOTION FOR FINAL
APPROVAL AND INCORPORATED MEMORANDUM IN SUPPORT**

I. INTRODUCTION

Representative Plaintiffs Crystal Chapman and Joseph Nelums along with the Defendant America’s Lift Chairs, LLC have reached a class action settlement agreement (“Settlement Agreement” or “Agreement”)¹ resulting in a \$1,700,000 Settlement for the benefit of the Class. Defendant has also agreed to institute enhanced policies and procedures to ensure compliance with the TCPA, including, but not limited to, enhanced policies and procedures to ensure Defendant obtains adequate and proper consent and ensuring that pre-recorded telemarketing calls are

¹ The Settlement Agreement can be found at ECF 75 and the Amended Exhibits can be found at ECF 76-1-2, and -3. All capitalized terms used herein have the same definitions as those defined in the Agreement.

not made on their behalf. This is an excellent result.

If approved, the Settlement will bring an end to what has otherwise been, and likely would continue to be, hard-fought litigation centered on unsettled factual and legal questions.

On June 6, 2023, the Court preliminarily approved the settlement. ECF 80. Accordingly, Plaintiffs and Class Counsel hereby move for final approval of the settlement for the reasons set forth in this memorandum and in the papers previously submitted in support of approval. Specifically, Plaintiffs and Class Counsel respectfully request that the Court: (1) grant Final Approval to the settlement; (2) certify for settlement purposes the Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint Plaintiffs as class representatives; (4) appoint Avi R. Kaufman of Kaufman P.A. and Anthony I. Paronich of Paronich Law, P.C. as Class Counsel; and (5) enter Judgment dismissing the action with prejudice.²

II. BACKGROUND

On August 31, 2021, Plaintiff Crystal Chapman filed the complaint against Defendant in this action asserting that America's Lift Chairs violated the TCPA, 47 U.S.C. § 227, *et seq.* by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. On November 26, 2021, Defendant answered the complaint. ECF 13. On March 8, 2022, the Plaintiff filed an amended

² A proposed order is attached as Exhibit 1.

complaint alleging that she had been contacted again since the filing of the complaint. On March 22, 2022, Defendant answered the complaint. ECF 31. On January 24, 2023, Joseph Nelums amended the complaint to add his claims as well. ECF 73.

Since the inception of the case, the case has involved extensive discovery leading up to class certification. Plaintiffs' counsel have doggedly pursued discovery, including through extensive meet and confers, by raising issues with the Court (*see* ECF 29), and by opposing Defendant's efforts to stay and bifurcate the case (*see* ECF 32 and 56). Counsel's efforts resulted in thousands of pages of documents exchanged in discovery as well as several subpoenas sent to America's Lift Chairs' lead provider, Prospects DM. Declaration of Anthony Paronich, attached as Exhibit 2, at ¶ 4. After several months of discovery, America's Lift Chairs filed a motion to bifurcate discovery in order to focus on their affirmative defense of consent. ECF 55. After briefing on that motion, this Court denied that request. ECF 64. Discovery continued, and Mr. Nelums filed a related action against America's Lift Chairs in Ohio. *See Nelums v. America's Lift Chairs, LLC*, Civil Action No. 22-cv-739 (N.D. Oh.). During discovery, the Plaintiff also worked with their expert witness relating to the calling and purported consent data produced in connection with the litigation.

At the culmination of the written discovery period, on December 7, 2022, the Parties attended a full day mediation with Hon. Steven Gold (Ret.) of JAMS, which, after continued negotiations, resulted in the Settlement.

The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Paronich Decl. ¶ 7. Class Counsel have considered the strength of Defendant's defenses. Class Counsel have also considered the delays, uncertain outcomes, and risks of litigation generally, especially in complex actions such as this one. Class Counsel believe that the proposed Settlement confers substantial and immediate benefits upon the Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. *Id.* Based on their evaluation of all these factors, Representative Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Representative Plaintiffs and the Class. *Id.*

III. IMPLEMENTATION OF THE PROPOSED SETTLEMENT

The Court entered its Order Granting Preliminary Approval of the Settlement on June 6, 2023. ECF 80. Both before and after that date, the Parties have worked diligently with each other and Kroll Settlement Administration LLC, the Claims Administrator, to effectuate the terms of the Settlement Agreement. Declaration of Scott M. Fenwick, Settlement Administrator, attached as Exhibit 3.

Specifically, on February 3, 2023, in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), the Settlement Administrator sent the CAFA Notice to the United States Attorney General and all State Attorneys General. Settlement Administrator Decl. at ¶ 4.

Defendant provided Kroll with an electronic data file containing 32,193 records that included first and last names, physical addresses, email addresses, and

telephone numbers. Kroll undertook steps using the telephone numbers provided to confirm the identity of individuals and retrieve updated contact information, including names, physical addresses and email addresses. Kroll performed advanced searches utilizing three (3) data vendors to obtain this information and successfully updated 30,241 records. Kroll then compiled all of the updated information and the 1,952 remaining records from the original data into one list. Kroll then identified and removed 117 duplicate records based on first name, last name, and physical address, resulting in the final Class list of 32,076 records, of which 29,500 records had an email address. *Id.* at ¶ 5.

On July 6, 2023, the toll-free settlement information hotline went live. *See id.* at ¶ 6. Since that time, the toll-free settlement information hotline has received 85 calls. *Id.*

On July 6, 2023, the Class Settlement Website went live. *Id.* at ¶ 8.

On July 6, 2023, Kroll initiated the email and mail notice program. *Id.* at ¶¶ 10. Individual notice was successfully sent by email to 27,800 Class Members and by mail to 30,727 of the 32,076 unique Class Member phone numbers, accounting for more than 95% of the Class. *Id.* at ¶¶ 10-13.

In response to these robust notice efforts, 876 Class Members have submitted claims, no Class Members have opted out, and no Class Members have filed or otherwise submitted objections regarding the Settlement. *Id.* at ¶ 14. Since the claim filing deadline has not yet passed, it is expected that additional claims will be filed by members of the Class. *Id.* at ¶ 13.

IV. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Court approval is required for settlement of a class action. Fed. R. Civ. P. 23(e). The federal courts have long recognized a strong policy and presumption in favor of class settlements. The Rule 23(e) analysis should be “informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement.” *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. Unit B 1982). In evaluating a proposed class settlement, the Court “will not substitute its business judgment for that of the parties; ‘the only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.’” *Rankin v. Rots*, No. 02-CV-71045, 2006 U.S. Dist. LEXIS 45706, at *9 (E.D. Mich. June 28, 2006). Class settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. Therefore, “federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). The settlement here is more than sufficient under Rule 23(e) and final approval is clearly warranted.

1. Notice was the Best Practicable and was Reasonably Calculated to Inform the Settlement Class of its Rights

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).” Manual for Compl. Lit. § 21.312 (internal quotation marks omitted). The best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the

action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). To satisfy this standard, “[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt-out of the action.” *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (internal quotation marks omitted); *see also* Manual for Compl. Lit. § 21.312 (listing relevant information).

The Notice Plan satisfies these criteria. As recited in the Settlement Agreement and above, the Notice Plan informed Class Members of the substantive terms of the settlement. It also advised Class Members of their options for remaining part of the Class, for objecting to the settlement, Class Counsel’s attorneys’ fee application, or for opting-out of the settlement, and how to obtain additional information about the settlement. The Notice Plan was designed to directly reach a high percentage of Settlement Class Members. Specifically, the individual notice portion of the Notice Plan reached more than 95% of the members of the Settlement Class, and the reach was further enhanced by the class settlement website, and the hotline. Settlement Administrator Declaration at ¶ 13.

Such a percentage far exceeds established due process requirements for class notice. *See* Federal Judicial Center, Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide (2010), available at <https://goo.gl/KTo1gB> (instructing that notice should have an effective “reach” to its target audience of 70-95%) (last visited June 7, 2023); *see also* *Swift v. Direct Buy, Inc.*, No. 2:11-cv-401-

TLS, 2013 WL 5770633, at *3 (N.D. Ind. Oct. 24, 2013) (“The Federal Judicial Center’s checklist on class notice instructs that class notice should strive to reach between 70% and 95% of the class.”). Therefore, the Court should approve the Notice Plan and the form and content of the Notices.

To date, 876 Class Members have submitted claims, resulting in a claims rate that exceeds the claims rate in many other consumer cases that have been approved by other courts in this Circuit and others. *See, e.g., Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 625-26 (11th Cir. 2015) (approving settlement with claims rate of less than 1%); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 941, 944-45 (9th Cir. 2015) (approving settlement with claims rate of less than 4%); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377-78 (S.D. Fla. 2007) (approving settlement with claims rate of approximately 1.1%). *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (noting that claims rates in consumer class action settlements “rarely” exceed 7%, “even with the most extensive notice campaigns”).

Indeed, as explained by Judge Goodman in *Braynen v. Nationstar Mortg., LLC*, No. 14-CV-20726-GOODMAN, 2015 U.S. Dist. LEXIS 151744, at *48-50 (S.D. Fla. Nov. 9, 2015), “Courts in this Circuit have approved claims-made class settlements where the claims rate was low, including approving single-digit claims rates. . . . In addition, courts often grant final approval of class action settlements before the final claims deadline. . . . The question for the Court at the Final Fairness Hearing stage is whether the settlement provided to the class is ‘fair, reasonable, and adequate,’ not whether the class decides to actually take advantage of the opportunity provided.”

(internal citations omitted).

2. The Settlement Should Be Approved as Fair, Reasonable, and Adequate

In deciding whether to approve the settlement, the Court will analyze whether it is “fair, adequate, reasonable, and not the product of collusion.” *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). A settlement is fair, reasonable, and adequate when “the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.” *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 WL 22037741, at *2 (D.D.C. June 16, 2003) (quoting Manual for Complex Litigation (Third) § 30.42 (1995)). Importantly, the Court is “not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial.” *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted).

The Eleventh Circuit has identified six factors to be considered in analyzing the fairness, reasonableness, and adequacy of a class settlement under Rule 23(e):

- (1) the existence of fraud or collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the probability of the plaintiffs’ success on the merits;

(5) the range of possible recovery; and

(6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. The analysis of these factors set forth below shows this settlement to be eminently fair, reasonable, and adequate.

i. There Was No Fraud or Collusion

The contested nature of the proceedings in this action demonstrates the absence of fraud or collusion behind the settlement. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 n.3 (S.D. Fla. 2001). “Where the parties have negotiated at arm’s length, the Court should find that the settlement is not the product of collusion.” *Hanley v. Tampa Bay Sports & Entm’t Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *10 (M.D. Fla. Apr. 23, 2020) (internal citation omitted).

With the benefit of discovery, the Parties engaged in intensive arm’s-length negotiations with the assistance of Hon. Steven Gold to resolve the case with a view toward achieving substantial benefits for the Settlement Class as a whole, while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice. *See Paronich Decl.* ¶ 6. Plaintiffs and the Class were represented by experienced counsel throughout the negotiations and benefited from mediating with a retired magistrate judge mediator. “The assistance of an experienced mediator in the settlement process confirms that [a] settlement is non-collusive.” *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007).

ii. The Settlement Will Avert Years of Complex Expensive Litigation

The claims and defenses are complex; recovery by any means other than settlement would require additional years of litigation. *See United States v. Glens Falls Newspapers, Inc.*, 160 F. 3d 853, 856 (2d Cir. 1998) (“a principal function of a trial judge is to foster an atmosphere of open discussion among the parties’ attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial”).

In contrast, the settlement provides immediate and substantial monetary benefits and remedial relief to the Class. As stated in *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993):

The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, “[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.”

Id. at 560 (alterations in original). Particularly because the “demand for time on the existing judicial system must be evaluated in determining the reasonableness of the settlement,” *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (citation omitted), there can be no doubt about the adequacy of the present settlement.

iii. The Factual Record Is Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment

Courts also consider “the degree of case development that class counsel have accomplished prior to settlement” to ensure that “counsel had an adequate appreciation of the merits of the case before negotiating.” *In re General Motors*

Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 813 (3d Cir. 1995). At the same time, “[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations.” *Ressler*, 822 F. Supp. at 1555.

Class Counsel negotiated the settlement with the benefit of extensive discovery, including analysis of thousands of pages of documents exchanged in discovery as well as several subpoenas sent to America’s Lift Chairs’ lead provider, Prospects DM. Paronich Decl. ¶ 4.

Additionally, Plaintiffs worked with their expert witness relating to the calling and purported consent data produced in connection with the litigation. This analysis was utilized at and following the mediation to assist in negotiations. *Id.* at ¶ 5. Plaintiffs also spent considerable time researching and navigating Defendant’s defenses.

As such, Class Counsel’s analysis and understanding of the legal obstacles positioned them to evaluate the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, as well as the range and amount of damages that were potentially recoverable if the litigation proceeded to judgment on a class-wide basis, particularly in light of Defendant’s financial condition. *Id.* ¶¶ 6-7.

iv. Plaintiffs and the Class Still Faced Significant Obstacles to Prevailing

The “likelihood and extent of any recovery from the defendants absent . . . settlement” is another important factor in assessing the reasonableness of a settlement. *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 314 (N.D. Ga. 1993). Class Counsel believe that Plaintiffs had a strong case against Defendant. Even so, Class

Counsel recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendant through trial and potential appeals and are mindful that Defendant advanced significant defenses that would have had to have been overcome in the absence of the Settlement, including at class certification and, in particular, that the case could be litigated to judgment only for the class to recover nothing as a result of Defendant's inability to pay. Paronich Decl. ¶¶ 8. Class certification and class wide success on the merits are from automatic in TCPA cases. *Compare Tomeo v. CitiGroup, Inc.*, No. 13 C 4046, 2018 WL 4627386, at *1 (N.D. Ill. Sept. 27, 2018) (denying class certification in TCPA case after nearly five years of hard-fought discovery and litigation), *Jamison v. First Credit Servs.*, 290 F.R.D. 92, 107 (N.D. Ill. 2013) (finding issues of consent to predominate in TCPA action), and *Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, 527 (E.D. Wis. 2014) (same) with *Saf-T-Gard Int'l v. Vanguard Energy Servs.*, No. 12-3671, 2012 WL 6106714 (N.D. Ill. Dec. 6, 2012) (certifying a class in a TCPA action and finding no evidence supported the view that issues of consent would be individualized) and *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 253 (N.D. Ill. 2014) (same).

Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the settlement providing immediate cash benefit of \$1,700,000 to settlement Class Members and meaningful

remedial relief represents a fair compromise. *See, e.g., Haynes v. Shoney's*, No. 89-30093-RV, 1993 U.S. Dist. LEXIS 749, at *16-17 (N.D. Fla. Jan. 25, 1993) (“The risks for all parties should this case go to trial would be substantial. It is possible that trial on the merits would result in ... no relief for the class members. ... Based on ... the factual and legal obstacles facing both sides should this matter continue to trial, I am convinced that the settlement ... is a fair and reasonable compromise.”); *Morales v. Stevco, Inc.*, No. 1:09-cv-00704 AWI JLT, 2011 U.S. Dist. LEXIS 130604, at *27 (E.D. Cal. Nov. 10, 2011) (immediate recovery for the class is “preferable to lengthy and expensive litigation with uncertain results”) (internal citation omitted).

v. The Benefits Provided by the Settlement Are Fair, Reasonable, and Adequate Compared to the Range of Possible Recovery

In determining whether a settlement is fair given the potential range of recovery, the Court should be guided by “the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.” *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.” *Id.*

As discussed above, Class Counsel was well-positioned to evaluate the strengths and weaknesses of Plaintiffs’ claims and the appropriate basis upon which

to settle them, particularly in light of the risk of change in law as well as Defendant's financial condition. Paronich Decl. ¶¶ 4-9. Pursuant to the TCPA, each injured Class Member could have received \$500 for each violation upon a successful verdict at trial, but such a result was uncertain and may have required years of litigation, and, even then, may have resulted in no recovery at all given potential changes in governing TCPA law and Defendant's financial condition.

Interpretations of the TCPA are ever-evolving and notoriously unpredictable, further injecting uncertainty into the outcome. And even had Plaintiffs succeeded on the merits and prevailed on appeal, a reduction in statutory damages was possible. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (vacating "the district court's denial of the defendant's post-trial motion challenging the constitutionality of the statutory damages award to permit reassessment of that question guided by the applicable factors.").

Given the significant litigation risks the class faced, the settlement represents a successful result. Rather than facing years of costly and uncertain litigation, the settlement makes available an immediate cash benefit of \$1,700,000 to settlement Class Members and provides meaningful remedial relief with an estimated value of over \$900,000, making the settlement's total estimated value to the settlement Class and society approximately \$2,600,000. *See* ECF 81-2, Kaufman Decl. ¶¶ 2-3.

To estimate the dollar value of the injunctive relief provided to the Class and society, Plaintiffs have relied on a willingness to pay analysis developed by economists specifically for valuing injunctive relief in TCPA cases, which implies a

mean value of \$.2265 per call for each call prevented by the injunctive relief. *See, e.g., Economic Assessment of the Value of Remedial Relief in Connection with Class Action Settlement Agreement (ECF 217-1) in Wright v. eXp Realty, LLC*, No. 6:18-CV-01851-PGB-EJK (M.D. Fla.). In this case, based on the Defendant's calling agent having made more than 3,000 unsolicited telemarketing calls per day in the two months preceding this filing of this action, assuming that the volume of calling would have remained the same (as opposed to increasing, as it had done in the year prior to the filing of this action), the injunctive relief is anticipated to prevent more than one million calls per year, which equates to a present value of more than \$900,000 for the next four years. Similar analyses have been accepted by courts for valuing injunctions and remedial relief in TCPA settlements. *See id.; Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022) (Schlesinger, J.) (granting final approval to a TCPA class settlement aided by Dr. Haghayeghi's valuation of the remedial relief).

The monetary relief alone is significant. Paronich Decl. ¶ 9. The per claiming settlement Class Member recovery is expected to be approximately \$25. *Id.* This amount is in line with or greater than per claim payouts in the majority of TCPA class action settlements, including in cases involving direct liability against companies larger than Defendant. *See, e.g., Rose v. Bank of Am. Corp.*, 2014 WL 4273358 at *10 (N.D. Cal. Aug. 29, 2014) (direct liability; \$20-\$40 per claimant); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (direct liability; \$30 per claimant); *Markos v. Wells Fargo Bank, N.A.*, 2017 WL 416425, at *4 (N.D.

Ga. Jan. 30, 2017) (direct liability; \$24 per claimant; deemed an “excellent result”); *Goldschmidt v. Rack Room Shoes*, No. 18-21220-CIV, ECF 86 (S.D. Fla. Jan. 16, 2020) (direct liability; \$10 voucher and \$5 in cash, less attorneys’ fees, costs, notice and administration costs, and service award, per claimant); *Halperin v. You Fit Health Clubs, LLC*, No. 18-61722, ECF 44 (S.D. Fla. Nov. 1, 2019) (direct liability; less than \$9 per claimant).

vi. The Opinions of Class Counsel, the Plaintiffs, and Absent Settlement Class Members Favor Approval

The settlement provides an extremely fair and reasonable recovery for the Class given the combined litigation risks, including the strength of Defendant’s defenses, including to its vicarious liability, the challenges the challenging and unpredictable path of litigation, Defendant’s financial condition, and the ever-changing TCPA law landscape. Class Counsel strongly endorse the settlement given the significant risks in proceeding with litigating this case. Paronich Decl. ¶ 10. The Court should give “great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.” *Warren v. Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988); *see also Domestic Air*, 148 F.R.D. at 312-13 (“In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties’ experienced counsel. [T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.”) (citations omitted).

To date, there have been no objections or opt outs to the settlement. Administrator Decl. ¶ 16. As other courts in this Circuit have counseled, this “is

strong evidence of a settlement’s fairness and reasonableness.” *E.g., Association for Disabled Americans v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002) (“small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement’s fairness and reasonableness”).

3. The Court Should Certify the Class

This Court provisionally certified the Class for settlement purposes only. ECF 80. For all the reasons set forth in Plaintiffs’ preliminary approval briefing (ECF 74), incorporated by reference herein, and the Preliminary Approval Order, the Court should finally certify the Class as it continues to meet all the requirements of Rule 23(a) and at least one of the requirements of Rule 23(b).

Based on the foregoing, the Settlement Agreement is fair, reasonable, and adequate.

V. CONCLUSION

Plaintiffs and Class Counsel respectfully request that this Court: (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint Plaintiffs as class representatives; (4) appoint Avi R. Kaufman of Kaufman P.A. and Anthony I. Paronich of Paronich Law, P.C. as Class Counsel; and (5) enter Judgment dismissing the action with prejudice.

DATED August 23, 2023

Respectfully submitted,

/s/ Anthony I. Paronich

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*Attorneys for Representative Plaintiff and
the Class*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 22, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Anthony I. Paronich

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH	:	
NELUMS, on behalf of themselves and	:	NO. 4:21-cv-00245-RSB-CLR
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AMERICA'S LIFT CHAIRS, LLC	:	
	:	
Defendant.	:	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

This Court has reviewed the motion for final approval of class settlement filed in this Litigation, including the Class Action Settlement Agreement (“Settlement Agreement”).¹ Having read all of the papers filed in connection therewith, as well as all of the evidence and argument submitted with respect to the proposed Settlement, the Court finds that the proposed Settlement is fair, reasonable, and adequate. The Court therefore FINDS AS FOLLOWS:

1. The Court has personal jurisdiction over all Class Members, and the Court has subject-matter jurisdiction to approve the Agreement, including all exhibits thereto.
2. The Notice and the Notice Plan implemented pursuant to the

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the litigation, their right to object to or exclude themselves from the proposed settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

3. Pursuant to Fed. R. Civ. P. 23, and for purposes of this settlement only:

a. The Class consists of all users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC from August 31, 2017 through the date of this Order. Excluded from the Class are (1) the Judges and Magistrate Judges presiding over the action and members of their immediate families; (2) the Defendant, its parent companies, successors, predecessors, and any entities in which the Defendant or its parents have a controlling interest, and Defendant's current and former officers, directors, agents, trustees, representatives, employees, principals, partners, joint ventures, and entities controlled by Defendant; (3) persons who properly execute and timely file a request for exclusion from the Class; and (4) the legal representatives, successors, or assigns of any such excluded

person(s).

b. The Class is ascertainable and so numerous that joinder of all members is impracticable. The Class consists of thousands of class members and the Class Members have been determined by objective means from Defendant's records.

c. There are questions of law or fact common to the Class which predominate over any questions affecting only individual Class Members.

d. The claims of the proposed class representatives are typical of the claims of the Class. The proposed class representatives and each member of the proposed Class are alleged to have suffered the same injury caused by the same course of conduct.

e. Plaintiffs have fairly and adequately represented and protected the interests of the Class. Plaintiffs are members of the proposed Class. Neither Plaintiffs nor Class Counsel have any conflicts of interest with the other class members, and Class Counsel have demonstrated that they have adequately represented the Class.

f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy as the settlement substantially benefits both the litigants and the Court, and there are few manageability issues as settlement is proposed rather than a further trial.

4. Pursuant to Fed. R. Civ. P. 23(e), the Settlement Agreement is, in all respects, fair, reasonable, and adequate, and is in the best interests of all Class Members, taking into account the following factors: (1) the absence of fraud or

collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

5. The plan for distribution of the Settlement Sum is fair and equitable. The Settlement Administrator shall perform the distribution to Class Members following the process set forth in the Settlement Agreement without further order of this Court.

6. Class Members have been given due and adequate notice of the Settlement Agreement.

7. There are no objections.

8. There are no opt-outs.

9. The Court has held a hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement.

10. Under the Settlement Agreement, Class Counsel are permitted to seek Court approval of attorneys' fees and documented and reasonable expenses and costs. Having considered Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and considering the percentage of the fund, lodestar cross-check, the quality of representation provided and the results obtained, as well as a number of other factors, Class Counsel is awarded attorneys' fees of \$_____, and reimbursement of costs and expenses of \$_____, representing fair and

reasonable compensation and reimbursement for Class Counsel's efforts in investigating, litigating, and settling this action.

11. Under the Settlement Agreement, the Settlement Administrator shall be paid exclusively from the Settlement Sum.

12. All payments of attorneys' fees and reimbursement of expenses to Class Counsel, and notice expenses in this Action shall be made from the Settlement Sum, and the Released Parties shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or expenses, and notice expenses. The Released Parties' only and total liability is the Settlement Sum.

13. Accordingly, the Court hereby finally APPROVES the proposed settlement as reflected in the Settlement Agreement, the respective terms of which, including but not limited to the releases, are hereby incorporated by reference as though fully set forth herein.

14. The Court having granted final approval to the Settlement Agreement, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

a. Immediately upon entry of this Final Judgment by the Clerk, this action shall be closed according to the Court's standard practices.

b. The Settlement Agreement is approved as fair, reasonable, and adequate as to, and in the best interests of, Class Members; the Parties and their counsel are directed to implement and consummate the Agreement according to its terms and provisions; and the Agreement is declared to be binding on, and have preclusive effect on all pending and future lawsuits or other proceedings maintained

by or on behalf of Representative Plaintiffs and the Releasing Parties.

c. The Parties are hereby directed to implement and consummate the Agreement, including to take all actions required under the terms and provisions of the Settlement Agreement.

d. To the extent permitted by law and without affecting the other provisions of this Final Judgment, this Final Judgment is intended by the Parties and the Court to be *res judicata*, and to prohibit and preclude any prior, concurrent or subsequent litigation brought individually, or in the name of, and/or otherwise on behalf of the Class Members with respect to any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses or losses arising out of or relating to the claims released under the Settlement Agreement.

e. All persons who are Class Members are bound by this Final Judgment and are enjoined from instituting, maintaining, prosecuting, or enforcing, either directly or indirectly, any claims discharged by the Settlement Agreement.

f. The Court shall retain continuing jurisdiction over this action as to the following matters: (i) enforcement of the terms of the Settlement Agreement; (ii) issues relating to settlement administration; and (iii) enforcement of this Final Approval Order and Judgment, and any order relating to attorneys' fees.

g. This Action (including all individual claims and Class Member claims asserted therein) is hereby dismissed on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement. No just reason

exists for delay in entering this Final Judgment.

SO ORDERED this ____ day of _____, 2023.

R. STAN BAKER
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH	:	
NELUMS, on behalf of themselves and	:	NO. 4:21-cv-00245-RSB-CLR
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AMERICA'S LIFT CHAIRS, LLC	:	
	:	
Defendant.	:	

**DECLARATION OF ANTHONY I. PARONICH
IN SUPPORT OF PLAINTIFF AND CLASS COUNSEL’S
MOTION FOR FINAL APPROVAL**

Anthony I. Paronich declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiffs under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant America’s Lift Chairs, LLC.¹ I submit this declaration in support of Plaintiffs and Class Counsel’s Motion for Final Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

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

2. The Parties' proposed Settlement, resulting in a monetary benefit of \$1,700,000 for the Class, is exceedingly fair and achieved an excellent result.

3. On August 31, 2021, Plaintiff Crystal Chapman filed the complaint against Defendant in this action asserting that America's Lift Chairs violated the TCPA, 47 U.S.C. § 227, *et seq.* by making automated calls to cellular telephone numbers and numbers on the National Do Not Call Registry. On November 26, 2021, Defendant answered the complaint. ECF 13. On March 8, 2022, the Plaintiff filed an amended complaint alleging that she had been contacted again since the filing of the complaint. On March 22, 2022, Defendant answered the complaint. ECF 31. On January 24, 2023, Joseph Nelums amended the complaint to add his claims as well. ECF 73.

4. Since the inception of the case, the case has involved extensive discovery leading up to class certification. Moreover, since the inception of discovery, Plaintiffs' counsel have doggedly pursued discovery, including through extensive meet and confers, by raising issues with the Court (*see* ECF 29), and by opposing Defendant's efforts to stay and bifurcate the case (*see* ECF 32 and 56). Counsel's efforts resulted in thousands of pages of documents exchanged in discovery as well as several subpoenas sent to America's Lift Chairs' lead provider, Prospects DM.

5. After several months of discovery, America's Lift Chairs filed a motion to bifurcate discovery in order to focus on their affirmative defense of consent. ECF 55. After briefing on that motion, this Court denied that request. ECF

64. Discovery continued, and Mr. Nelums filed a related action against America's Lift Chairs in Ohio. *See Nelums v. America's Lift Chairs, LLC*, Civil Action No. 22-cv-739 (N.D. Oh.). During discovery, the Plaintiff also worked with their expert witness relating to the calling and purported consent data produced in connection with the litigation.

6. At the culmination of the written discovery period, on December 7, 2022, the Parties attended a full day mediation with Hon. Steven Gold (Ret.) of JAMS, which, after continued negotiations, resulted in the Settlement. With the benefit of discovery, the Parties engaged in intensive arm's-length negotiations with the assistance of Hon. Steven Gold to resolve the case with a view toward achieving substantial benefits for the Settlement Class as a whole, while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice.

7. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel have considered the strength of Defendant's defenses. Class Counsel have also considered the delays, uncertain outcomes, and risks of litigation generally, especially in complex actions such as this one. Class Counsel believe that the proposed Settlement confers substantial and immediate benefits upon the Class whereas continued and protracted litigation, even if successful, might ultimately deliver none given Defendant's financial condition. Based on their evaluation of all these factors, Representative Plaintiffs and Class

Counsel have determined that the Settlement is in the best interests of the Representative Plaintiffs and the Class.

8. Class Counsel believe that Plaintiffs had a strong case against Defendant. Even so, Class Counsel recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendant through trial and potential appeals and are mindful that Defendant advanced significant defenses that would have had to have been overcome in the absence of the Settlement, including at class certification and, in particular, that the case could be litigated to judgment only for the class to recover nothing as a result of Defendant's inability to pay. Class certification and class wide success on the merits are from automatic in TCPA cases.

9. Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the settlement providing immediate cash benefit of \$1,700,000 to settlement Class Members and meaningful remedial relief represents a fair compromise. The monetary relief alone is significant. The per claiming settlement Class Member recovery is expected to be approximately \$25.

10. The settlement provides an extremely fair and reasonable recovery for the Class given the combined litigation risks, including the strength of Defendant's defenses, including to its vicarious liability, the challenges the challenging and unpredictable path of litigation, Defendant's financial condition, and the ever-

changing TCPA law landscape. Class Counsel strongly endorse the settlement given the significant risks in proceeding with litigating this case.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: August 23, 2023

/s/ Anthony I. Paronich

Anthony I. Paronich

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH
NELUMS, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

AMERICA'S LIFT CHAIRS, LLC

Defendant.

) NO. 4:21-cv-00245-RSB-CLR

)

)

) CLASS ACTION

)

) **DECLARATION OF**

) **SCOTT M. FENWICK OF KROLL**

) **SETTLEMENT ADMINISTRATION LLC**

) **IN CONNECTION WITH FINAL**

) **APPROVAL OF SETTLEMENT**

)

) Date: September 7, 2023

) Time: 10:00 a.m.

) Dept: Courtroom One

)

) The Hon. R. STAN BAKER

)

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the Settlement Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of Settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Settlement Administrator to provide notification and claims administration services in connection with that certain Class Action Settlement Agreement (the “Settlement Agreement”) entered into in connection with the above-captioned case. Kroll’s duties in connection with the Settlement have and will include: (a) preparing and sending CAFA Notice in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class Member contact list (the “Class List”) from Defense Counsel; (c) creating a dedicated Class Settlement Website with online claim filing capabilities; (d) establishing a toll-free telephone number; (e) establishing a post office box for the receipt of mail; (f) preparing and sending the Summary Notice and Claim Form via first-class mail; (g) translating the Long-Form Notice, Summary Notice and Claim Form into Spanish for posting on the Class Settlement Website; (h) preparing and sending Summary Notice via email; (i) establishing an email address to receive

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

Claim Forms; (j) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (k) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (l) receiving and processing Claim Forms; (m) receiving and processing opt outs; and (n) such other tasks as counsel for the Parties or the Court request Kroll to perform.

NOTICE PLAN

The CAFA Notice Mailing

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed settlement pursuant to the Class Action Fairness Act 28 U.S.C. §1715(b). At Defense Counsel’s direction, on February 3, 2023, Kroll sent the CAFA Notice, a true and correct copy of which is attached hereto as **Exhibit A**, containing the documents required via first-class certified mail, to (a) the Attorney General of the United States and (b) fifty-six (56) state and territorial Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the Attorneys General to the website www.CAFANotice.com, a site that contains all the documents relating to the settlement referenced in the CAFA Notice.

Data and Case Setup

5. On January 27, 2023, Kroll received one (1) data file from the Defendant. The data file contained 32,193 records that included first and last names, physical addresses, email addresses, and telephone numbers. Kroll undertook steps using the telephone numbers provided to confirm the identity of individuals and retrieve updated contact information, including names, physical addresses and email addresses. Kroll performed advanced searches utilizing three (3) data vendors to obtain this information and successfully updated 30,241 records. Kroll then compiled all of the updated information and the 1,952 remaining records from the original data into one list. Kroll then identified and removed 117 duplicate records based on first name, last name, and physical address, resulting in the final Class list of 32,076 records, of which 29,500 records had an email address. Additionally, in an effort to ensure that the Summary Notice would be deliverable to Class Members, Kroll ran the Class List through the USPS’s National Change of

Address (“NCOA”) database and updated the Class List for 1,712 records with address changes received from the NCOA.

6. On February 9, 2023, Kroll established a toll-free number, 1-833-630-8585, for Class Members to call and obtain additional information regarding the settlement through an Interactive Voice Response (“IVR”) system. As of August 22, 2023, the IVR system has received eighty-five (85) calls.

7. On February 24, 2023, Kroll designated a post office box with the mailing address *Chapman v. America’s Lift Chairs*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive requests for exclusion, Claim Forms, and correspondence from Class Members.

8. On March 1, 2023, Kroll created a dedicated Class Settlement Website entitled www.LiftChairsTCPASettlement.com. The Class Settlement Website “went live” on July 6, 2023, and contains the Settlement Agreement, Long-Form Notice, Summary Notice, Claim Form, Preliminary Approval Order, and Spanish translations of the Long-Form Notice, Summary Notice, and Claim Form. The Class Settlement Website also allowed Class Members an opportunity to file a Claim Form online.

9. On June 15, 2023, Kroll established an email address, Claims@LiftChairsTCPASettlement.com, to receive Claim Forms from Class Members.

The Notice Plan

10. Pursuant to sections 6.5.3 and 6.5.4 of the Settlement Agreement and commencing on July 6, 2023, Kroll caused 32,076 Summary Notices to be mailed via first-class mail and 29,500 Summary Notices to be sent via email. A true and correct copy the postcard Summary Notice, email Summary Notice, Long-Form Notice, and Claim Form are attached hereto as **Exhibits C, D, E and F**, respectively.

NOTICE PLAN REACH

11. As of August 22, 2023, 217 Summary Notices were returned by the USPS with a forwarding address. Of these, 202 Summary Notices were automatically re-mailed to the updated

physical addresses provided by the USPS. Fifteen (15) Summary Notices were returned to Kroll with a forwarding address for manual re-mailing and were re-mailed.

12. As of August 22, 2023, 3,627 Summary Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 3,610 undeliverable records through an advanced address search. The advanced address search produced 2,363 updated addresses. Kroll has re-mailed Summary Notices to the 2,363 updated addresses obtained from the advanced address search. Of the 2,363 re-mailed Summary Notices, 188 have been returned as undeliverable a second time. Kroll continues to run traces on the remaining seventeen (17) undeliverable records and will continue to trace and re-mail any further undeliverable Summary Notices as they are received.

13. Based on the foregoing, Kroll has reason to believe that Summary Notice and Claim Forms likely reached 30,624 of the 32,076 persons to whom the Summary Notice and Claim Form was mailed, which equates to a reach rate of the direct mail notice of approximately 95.5%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches² over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.³ And the reach of the direct mail notice was enhanced by the direct email notice, which likely reached 27,700 of the 29,500 persons to whom the Summary Notice and Claim Form was emailed.

CLAIM ACTIVITY

14. As of August 22, 2023 Kroll has received 817 Claim Forms through the mail and sixty-two (62) Claim Forms filed electronically through the Class Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

² FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

³ Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

EXCLUSIONS AND OBJECTIONS

15. The Opt-Out Deadline and objection deadline is September 4, 2023.
16. To date, Kroll has received no timely exclusion requests or objections.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on August 22, 2023 in Inver Grove Heights, Minnesota.

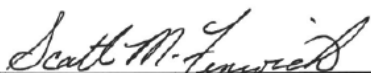

SCOTT M. FENWICK

Exhibit A



VIA US MAIL

TO: All “Appropriate” Federal and State Officials Per 28 U.S.C. § 1715
(see attached service list)

RE: CAFA Notice for the proposed Settlement in *Chapman v. America’s Lift Chair, LLC*, Case No. 21-cv-245, pending in the United States District Court for the Southern District of Georgia, Savannah Division

Pursuant to Section 3 of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, Defendant America’s Lift Chairs, LLC (“Defendant”) hereby notifies you of the proposed settlement of the above-captioned action (the “Action”) currently pending in the United States District Court for the Southern District of Georgia (the “Court”).

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below, and all exhibits are available for download at www.CAFANotice.com under the folder entitled *Chapman v. America’s Lift Chairs*:

1. 28 U.S.C. § 1715 (b)(1) - a copy of the complaint and any materials filed with the complaint and any amended complaints.

The Class Action Complaint, Amended Complaint, and Second Amended Complaint are available as **Exhibit A, A1, and A2**.

2. 28 U.S.C. § 1715 (b)(2) - notice of any scheduled judicial hearing in the class action.

On January 25, 2023, Plaintiff filed a motion for preliminary approval of the class action settlement, and the date of the preliminary approval hearing has not yet been set. The Court has not yet scheduled the Final Approval Hearing for this matter. The proposed Preliminary Approval Order is available as **Exhibit B**.

3. 28 U.S.C. § 1715(b)(3) - any proposed or final notification to class members.

Copies of the proposed long-form Notice, Summary Notice and Claim Form will be provided to Class Members and will be available on the Settlement Website created for the administration of this matter. These are available as **Exhibits C, D, and E**, respectively. The Notices describe, among other things, the claim submission process and the Class Members’ rights to object or exclude themselves from the Class.

4. 28 U.S.C. § 1715(b)(4) - any proposed or final class action settlement.
The Settlement Agreement is available as **Exhibit F**.
5. 28 U.S.C. § 1715(b)(5) - any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.
There are no other settlements or other agreements between Class Counsel and Defense Counsel beyond what is set forth in the Settlement Agreement.
6. 28 U.S.C. § 1715(b)(6) - any final judgment or notice of dismissal.
The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.
7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The definition of the Class in the proposed Settlement Agreement means all users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM, Inc. and any related entities on behalf of America’s Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc and any related entities on behalf of America’s Lift Chairs, LLC from August 31, 2017 through the date of preliminary approval, which has not yet been granted.

An estimated breakdown by state for known Class Members is available as **Exhibit G**.
8. 28 U.S.C. § 1715(b)(8) - any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).
There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Action, or the materials available for download at www.CAFANotice.com under the folder entitled *Chapman v. America’s Lift Chairs*, please contact the undersigned below.

Respectfully submitted,



Scott M. Fenwick
Senior Director
Scott.Fenwick@Kroll.com

Exhibit B

CAFA NOTICE SERVICE LIST

U.S. Attorney General

Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Alabama Attorney General

Steve Marshall
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Alaska Attorney General

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American Samoa Attorney General

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U.S. Virgin Islands Attorney General

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Utah Attorney General

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Montpelier, VT 05609

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Bob Ferguson
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Charleston, WV 25305

Wisconsin Attorney General

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Wisconsin Department of Justice State
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Madison, WI 53707

Wyoming Attorney General

Bridget Hill
State Capitol Bldg.
109 State Capitol
Cheyenne, WY 82002

Exhibit C

Case 4:21-cv-00245-RSB-CLR Document 84-3 Filed 08/22/23 Page 16 of 33
Chapman v. America's Lift Chairs
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

Electronic Service Requested

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT
OF GEORGIA

*Crystal Chapman v. America's Lift Chairs,
LLC, No 4:21-cv-245*

**If you received a telemarketing call
from America's Lift Chairs, you may be
entitled to a payment of up to \$40 from
a class action settlement.**

A court authorized this Notice.

*You are **not** being sued. This is **not** a
solicitation from a lawyer.*

Postal Service Please do not mark barcode

Class Member ID:

Case 4:21-cv-00245-RSB-CLR Document 84-9 Filed 08/22/23 Page 17 of 93

Call records indicate that you may be affected by a Settlement¹ of a class action lawsuit claiming that Defendant America's Lift Chairs, LLC ("America's Lift Chairs") violated a federal law called the Telephone Consumer Protection Act ("TCPA") when their telemarketing vendor, Prospects DM, sent pre-recorded calls on their behalf. America's Lift Chairs denies that it violated the law.

The lawsuit is called Crystal Chapman v. America's Lift Chairs, LLC, Case No. 4:21-cv-245. Judge R. Stan Baker decided that this Settlement should be a class action on behalf of a Class, or group of people that could include you, and a Settlement has been reached affecting this Class.

The Settlement offers payments to Class Members who file Approved Claims. Your legal rights are affected whether you act or do not act. Read this Notice carefully.

Who's Included? The Settlement includes the following Class that the Court certified: "All users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM on behalf of America's Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC from August 31, 2017 through June 6, 2023.

You are receiving this Notice because your name and phone number appeared in calling records obtained for this case.

What are the Settlement Terms? America's Lift Chairs has agreed to a Settlement Sum of \$1,700,000. The Settlement Sum will be used to pay all Settlement costs, including Settlement Administration Expenses, any attorneys' Fee Award awarded to Class Counsel by the Court, and all Approved Claims. Members of the Class who submit Approved Claims shall receive an amount not to exceed forty dollars and three cents (\$40.03), less each Class Member's share of any attorneys' Fee Award. In the event that claims exceed a certain threshold, the amount will also be reduced by each Class Member's share of Settlement Administration Expenses. Only Approved Claims will be paid. Only one claim per telephone number will be validated and deemed an Approved Claim.

America's Lift Chairs has also agreed to implement enhanced policies and procedures to ensure future compliance with the TCPA.

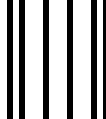
How can I get a Payment? By completing the Claim Form attached to this notice and submitting it by U.S. mail to the Settlement Administrator at the address on the Claim Form. You may also download or file a Claim Form online at www.LiftChairsTCPASettlement.com or by email to claims@LiftChairsTCPASettlement.com. If you send in a Claim Form by regular mail, it must be postmarked on or before **September 4, 2023**. The deadline to file a Claim Form online or by email is **11:59 p.m. ET on September 4, 2023**.

What are my Other Options? If you do not want to be legally bound by the Settlement, you must exclude yourself by **September 4, 2023** by sending the Settlement Administrator a letter that complies with the procedure set forth in the Settlement Agreement, available at the Settlement website. If you do not exclude yourself, you can share in the Settlement Sum by completing and submitting a Claim Form, and you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement website. Even though you submit a Claim Form, you may object to the Settlement by **September 4, 2023** by complying with the objection procedures detailed in the Settlement Agreement. The Court will hold a Final Approval Hearing on **September 7, 2023 at 10 a.m. ET** to consider whether to approve the Settlement and a request for attorneys' fees not to exceed one third of the Settlement Sum and reimbursement of expenses. If you properly object, you may appear at the hearing, either yourself or through an attorney hired by you, but you do not have to. For more information, call the Settlement Administrator or visit the Settlement website.

1

Capitalized terms herein have the same meanings as those defined in the Settlement Agreement.

www.LiftChairsTCPASettlement.com or call 1-833-630-8585



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 36777526 NEW YORK, NY



POSTAGE WILL BE PAID BY ADDRESSEE

CHAPMAN V. AMERICA'S LIFT CHAIRS
C/O KROLL SETTLEMENT ADMINISTRATION
P.O. BOX 5324
NEW YORK NY 10126-2876



Class Member ID: _____

Chapman v. America's Lift Chairs
CLAIM FORM

Claimant Name (Required): _____

Current Contact Information

Street Address (Required): _____

City (Required)

State (Required)

Zip Code (Required)

Email (Optional): _____@_____

Preferred Phone Number (Required): (_____) _____ - _____

Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your Claim. Provision of your email address is optional. By providing contact information, you agree that the Settlement Administrator may contact you about your Claim.

Telephone Number(s) for which you were the regular user or subscriber during April 7, 2017 through June 6, 2023 at which you received one or more calls promoting America's Lift Chairs:

(_____) _____ - _____ , (_____) _____ - _____

(_____) _____ - _____ , (_____) _____ - _____

I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review. I am aware that I can obtain a copy of the full notice and Settlement Agreement at www.LiftChairsTCPASettlement.com or by writing the Settlement Administrator at Chapman v. America's Lift Chairs, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324.

Signature: _____ Date: _____ / _____ / _____

Exhibit D

To: [Settlement Class Member email address]

From: Chapman v. America's Lift Chairs Settlement Administrator

Subject: Notice of Class Action Settlement Regarding Crystal Chapman v. America's Lift Chairs, LLC

Class Member ID: <<Refnum>>

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA

Crystal Chapman v. America's Lift Chairs, LLC, No 4:21-cv-245

**If you received a telemarketing call from America's Lift
Chairs, you may be entitled to a payment of up to \$40
from a class action settlement.**

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

Call records indicate that you may be affected by a Settlementⁱ of a class action lawsuit claiming that Defendant America's Lift Chairs, LLC ("America's Lift Chairs") violated a federal law called the Telephone Consumer Protection Act ("TCPA") when their telemarketing vendor Prospects DM sent pre-recorded calls on their behalf. America's Lift Chairs denies that it violated the law.

The lawsuit is called *Crystal Chapman v. America's Lift Chairs, LLC*, Case. No 21-cv-245. Judge R. Stan Baker decided that this Settlement should be a class action on behalf of a Class, or group of people that could include you, and a Settlement has been reached affecting this Class.

The Settlement offers payments to Class Members who file Approved Claims. Your legal rights are affected whether you act or do not act. Read this Notice carefully.

Who's Included? The Settlement includes the following Class that the Court certified: "All users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM on behalf of America's Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC from August 31, 2017 through June 6, 2023."

You are receiving this Notice because your name and phone number appeared in calling records obtained for this case.

What are the Settlement Terms? America's Lift Chairs has agreed to a Settlement Sum of \$1,700,000. The Settlement Sum will be used to pay all Settlement costs, including

Settlement Administration Expenses, any attorneys' Fee Award awarded to Class Counsel by the Court, and all Approved Claims. Members of the Class who submit Approved Claims shall receive an amount not to exceed forty dollars and three cents (\$40.03), less each Class Member's share of any attorneys' Fee Award. In the event that claims exceed a certain threshold, the amount will also be reduced by each Class Member's share of Settlement Administration Expenses. Only Approved Claims will be paid. Only one claim per telephone number will be validated and deemed an Approved Claim.

America's Lift Chairs has also agreed to implement enhanced policies and procedures to ensure future compliance with the TCPA.

How can I get a Settlement Claim Payment? By completing a Claim Form and submitting it by U.S. mail to the Settlement Administrator at the address on the Claim Form. You may also download or file a Claim Form online at www.LiftChairsTCPASettlement.com or by email to claims@LiftChairsTCPASettlement.com. If you send in a Claim Form by regular mail, it must be postmarked on or before the Claims Deadline, **September 4, 2023**. The Claims Deadline to file a Claim Form online or by email is **11:59 p.m. ET on September 4, 2023**.

What are my Other Options? If you do not want to be legally bound by the Settlement, you must exclude yourself by the Opt-Out Deadline, **September 4, 2023** by sending the Settlement Administrator a written request for exclusion that complies with the procedure set forth in the Settlement Agreement, available at the Class [Settlement Website](#). If you do not exclude yourself, you can share in the Settlement Sum by completing and submitting a Claim Form, and you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Class Settlement Website. Even though you submit a Claim Form, you may object to the Settlement by the Objection Deadline, **September 4, 2023**, by complying with the objection procedures detailed in the Settlement Agreement. The Court will hold a Final Approval Hearing on **September 7, 2023, at 10 a.m. ET** to consider whether to approve the Settlement and a request for attorneys' fees not to exceed one third of the Settlement Sum and reimbursement of expenses. If you properly object, you may appear at the hearing, either yourself or through an attorney hired by you, but you do not have to. For more information, call the Settlement Administrator or visit the Class Settlement Website.

For more information, visit www.LiftChairsTCPASettlement.com or call **1-833-630-8585**

ⁱ Capitalized terms herein have the same meanings as those defined in the Settlement Agreement.

Exhibit E

If you received a telemarketing call from America's Lift Chairs, you may be entitled to a payment of up to \$40 from a class action settlement.

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

- Call records indicate that you may be affected by a Settlement¹ of a class action lawsuit claiming that Defendant America's Lift Chairs, LLC ("America's Lift Chairs") violated a federal law called the Telephone Consumer Protection Act ("TCPA") when their telemarketing vendor Prospects DM sent pre-recorded calls and/or made calls to individuals who were on the national Do Not Call Registry on their behalf. America's Lift Chairs denies that it violated the law.
- The lawsuit is called *Crystal Chapman v. America's Lift Chairs, LLC*, Case. No 4:21-cv-245. Judge R. Stan Baker decided that this Settlement should be a class action on behalf of a Class, or group of people that could include you, and a Settlement has been reached affecting this Class.
- The Settlement offers payments to Class Members who file Approved Claims.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM BY SEPTEMBER 4, 2023	If you are a member of the Class, you must submit a completed Claim Form to receive a payment of up to \$40.03 per claimant. If the Court approves the Settlement and it becomes Final and effective, and you remain in the Class, you will receive your payment by check.
EXCLUDE YOURSELF BY SEPTEMBER 4, 2023	You may request to be excluded from the Settlement and if you do, you will receive no benefits from the Settlement.
OBJECT BY SEPTEMBER 4, 2023	Write to the Court and appear at a hearing if you do not like the Settlement.
DO NOTHING	You will not receive a payment if you fail to timely submit a completed Claim Form, and you will give up your right to bring your own lawsuit against America's Lift Chairs about the claims in this case.

- 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 it does, and after any appeals are resolved, benefits will be distributed to those who submit qualifying Claim Forms. Please be patient.

¹ Capitalized terms herein have the same meanings as those defined in the Settlement Agreement.

WHAT THIS NOTICE CONTAINS

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- 2. What is this Litigation about?
- 3. What is a class action and who is involved?
- 4. Why is this lawsuit a class action?
- 5. Why is there a settlement?

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

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- 8. What does the Settlement provide?
- 9. How do I file a claim?
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- 21. Do I have to attend the hearing?
- 22. May I speak at the hearing?

IF YOU DO NOTHING PAGE 7

- 23. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE 7

- 24. How do I get more information?

BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit. You have legal rights and options that you may exercise before the Court decides whether to give final approval to the Settlement, as described below. Judge Stan Baker of the United States District Court for the Southern District of Georgia is overseeing this class action. The lawsuit is called *Chapman v. America's Lift Chairs, LLC*, Case. No 4:21-cv-245 (S.D. Ga.).

2. What is this lawsuit about?

Plaintiffs Chapman and Nelums claim that America's Lift Chairs violated the Federal TCPA when their telemarketer Prospects DM made telemarketing calls to cellular telephone numbers, including numbers on the National Do Not Call Registry. America's Lift Chairs denies these allegations.

3. What is a class action and who is involved?

In a class action, one or more people called "Representative Plaintiffs" (in this case, Crystal Chapman and Joseph Nelums) sue on behalf of a group of people who may have similar claims. The people together are a "class" or "class members." The individual who sues—and all the class members like them—is called the plaintiff. The company that they sue (in this case, America's Lift Chairs) is called the Defendant. In a class action, the Court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts.

5. Why is there a settlement?

The Court has not found in favor of Plaintiff or America's Lift Chairs. Instead, the Parties 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, Class Members will receive the benefits described in this Notice. America's Lift Chairs denies all legal claims in this case, but is settling to avoid the uncertainties and costs attendant with litigation. Plaintiffs and their lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE CLASS AND SETTLEMENT

You need to determine whether you are affected by this Litigation.

6. Am I part of the Class and included in the Settlement?

The Settlement includes the following class that the Court certified: "All users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM on behalf of America's Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC from August 31, 2017 through the date of preliminary approval."

You may be part of the Class if you received a telemarketing call from Prospects DM for America's Lift Chairs and:

- Your name and phone number appeared in calling records obtained for this case, in which case you may have received a Notice email or postcard from the Settlement Administrator.
- Even if you did not get an email or postcard, you may still be part of the class if your cell phone number appears in the calling records obtained for this case. If you would like to check your cell phone number against the calling records, please use the 'Contact' section on the Settlement website to contact the Settlement Administrator and provide your name, cell phone number, and a current email.

7. What if I'm still not sure if I am included?

If you are still not sure whether you are included, you can call the *Chapman v. America's Lift Chairs, LLC*, Case. No 4:21-cv-245 (S.D. Ga.) Settlement Administrator toll-free at **1-833-630-8585** to listen to an interactive script with Frequently Asked Questions about the case. Or you can get free help by calling the lawyers in this case at the phone number listed in question 24.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

America's Lift Chairs has agreed to a Settlement Sum of \$1,700,000. The Settlement Sum will be used to pay all Settlement costs, including Settlement Administration Expenses, any attorneys' Fee Award awarded to Class Counsel by the Court, and all Approved Claims. Members of the Class who submit Approved Claims shall receive an amount not to exceed forty dollars and three cents (\$40.03), less each Class Member's share of any attorneys' Fee Award. In the event that Approved Claims exceed a certain threshold the amount will also be reduced by each Class Member's share Settlement Administration Expenses. Only Approved Claims will be paid. Only one claim per Class Member per telephone number will be validated and deemed an Approved Claim. There may be tax consequences to the Class Member associated with this recovery.

America's Lift Chairs has also agreed to implement enhanced policies and procedures to ensure future compliance with the TCPA.

9. How do I file a Claim?

To qualify for a cash payment you must complete and submit a valid Claim Form. You can file your Claim Form online at www.LiftChairsTCPASettlement.com, send it by email to claims@LiftChairsTCPASettlement.com, or by U.S. Mail to the address below. The deadline to file a Claim online or by email is **11:59 p.m. ET on September 4, 2023**.

Claim Forms submitted by mail must be postmarked on or before **September 4, 2023** to:

Chapman v. America's Lift Chairs
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

No matter which method you choose to file your Claim Form, please read the Claim Form carefully and provide all the information required.

10. When will I receive my payment?

Payments to 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 SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue America’s Lift Chairs on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting-out” of the Class.

11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a timely letter by mail to:

Chapman v. America’s Lift Chairs
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

Your request to be excluded from the Settlement must be personally signed by you, be dated, include your full name (or, if a business, business name), address, and the telephone number that allegedly received calls from America’s Lift Chairs during the Class Period, and must clearly state that the Person wishes to be excluded from the Litigation and the Agreement. Absent excluding yourself or “opting-out” you are otherwise a member of the Class.

Your exclusion request must be postmarked no later than **September 4, 2023**. You cannot ask to be excluded on the phone, by email, or at the website. Opt outs must be made individually and cannot be made on behalf of other members of the Class.

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

No. Unless you exclude yourself, you give up the right to sue America’s Lift Chairs or any of the Released Parties for the claims that the Settlement resolves. You must exclude yourself from this Settlement to pursue your own lawsuit.

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

Unless you opt-out of the Settlement, you cannot sue or be part of any other lawsuit against America’s Lift Chairs or any of the Released Parties 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.

The Settlement Agreement is available at www.LiftChairsTCPASettlement.com. The Settlement Agreement provides more detail regarding the Release and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully.

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

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

THE LAWYERS AND THE PLAINTIFF REPRESENTING YOU

15. Do I have a lawyer in the case?

The Court has appointed Avi Kaufman and Anthony Paronich to represent the Class. They are called “Class Counsel.” They are experienced in handling similar class action cases. More information about these lawyers, their law firms, and their experience is available at <https://kaufmanpa.com/> and www.paronichlaw.com.

16. Should I get my own lawyer?

You are not required to hire your own lawyer because Class Counsel is working on your behalf. If you want to hire your own lawyer, you certainly can, but you will have to pay that lawyer yourself. If you do hire your own lawyer, they may enter an appearance for you and represent you individually in this case.

17. How will the lawyers be paid?

You do not have to pay Class Counsel, or anyone else, to participate. Instead, Class Counsel intend to request Fee Award in an amount not to exceed one-third of the Settlement Sum, plus reimbursement of out-of-pocket expenses incurred in the Litigation. The fees and expenses awarded by the Court will be paid out of the Settlement Sum. The Court will decide the amount of fees and expenses to award.

OBJECTING TO THE SETTLEMENT

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

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

- 1) A caption or title that identifies it as “Objection to Class Settlement in *Chapman v. America’s Lift Chairs, LLC* No. 4:21-cv-245 (S.D. Ga.)”;
- 2) Your name, address, and telephone number;
- 3) The name, address, and telephone number of any attorney for you with respect to the objection;
- 4) The factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for your standing as a Class Member, including the phone number(s) at which you received call(s) covered by this Settlement;
- 5) Identification of the case name, case number, and court for any prior class action lawsuit in which you and/or your attorney (if applicable) has objected to a proposed class action settlement; and
- 6) Submit yourself immediately to discovery and/or deposition by the parties.

If you wish to object, you must file your objection with the Court by (a) using the Court’s electronic filing system, (b) mailing it to the Clerk’s Office for the United States District Court for the Southern District of Georgia, 8 Southern Oaks Ct., Savannah, GA, or (c) filing it in person at that location. Your objection must be filed and/or postmarked by **September 4, 2023**.

19. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

THE FINAL APPROVAL HEARING

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

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

The Court has scheduled a Final Approval Hearing on **September 7, 2023 at 10 a.m. ET**, in **Courtroom 1, 8 Southern Oaks Court, Savannah, Georgia 31405**. The hearing may be moved to a different date or time, or may be set for remote appearances, without additional mailed notice, so it is a good idea to check **www.LiftChairsTCPASettlement.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 a Fee Award. 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.

21. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to attend the hearing at your own expense.

22. May I speak at the hearing?

If you attend the Final Approval Hearing, you may ask the Court for permission to speak if you have timely objected and you so choose. However, you cannot speak at the hearing if you exclude yourself from the Settlement.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you are a member of the Class and do nothing, meaning you do not file a timely Claim, you will not get benefits from the Settlement. Further, unless you exclude yourself, you will be bound by the judgment entered by the Court.

GETTING MORE INFORMATION

24. Where do I get more information?

For more information, you may call the Settlement Administrator toll-free at **1-833-630-8585**, write to the Settlement Administrator, *Chapman v. America's Lift Chairs*, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324, or call Class Counsel at (305) 469-5881. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at **www.LiftChairsTCPASettlement.com**

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**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**

Exhibit F



671580000000

CLAIM FORM

Section I - Instructions

This Claim Form must be postmarked or received by the Settlement Administrator no later than September 4, 2023.

This Claim Form may be submitted in one of three ways:

- 1. Electronically at www.LiftChairsTCPASettlement.com.
2. Via email to claims@LiftChairsTCPASettlement.com. Please fill out the enclosed pages, scan the document in its entirety if necessary, and include the form as an attachment.
3. Mail this completed form to:

Chapman v. America's Lift Chairs
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

To be effective as a claim under the proposed Settlement, this form must be completed, signed, and sent, as outlined above, no later than September 4, 2023. If this Claim Form is not postmarked or submitted by this date, you will remain a member of the Class but will not receive any payment from the Settlement.

Section II - Class Member Information

Class Member ID: 67158 _____

Claimant First Name (Required)

Claimant Last Name (Required)

Street Address 1 (Required)

Street Address 2

City (Required)

State (Required)

Zip (Required)

Email (Optional)

Preferred Phone Number (Required): (_____) _____ - _____

Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your claim. Provision of your email address is optional. By providing contact information, you agree that the Settlement Administrator may contact you about your Claim.



67158



CF



Page 1 of 2



671580000000

Section III – Confirmation of Class Membership

Telephone Number(s) for which you were the regular user or subscriber during August 31, 2017, through June 6, 2023, at which you received one or more calls promoting America’s Lift Chairs:

Telephone Number 1: (____) _____ - _____

Telephone Number 2: (____) _____ - _____

Telephone Number 3: (____) _____ - _____

Telephone Number 4: (____) _____ - _____

Section IV – Required Affirmations

I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review. I am aware that I can obtain a copy of the full notice and Settlement Agreement at www.LiftChairsTCPASettlement.com or by writing the Settlement Administrator at *Chapman v. America’s Lift Chairs*, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324.

Signature: _____ Date: ____/____/____

SETTLEMENT ADMINISTRATOR ADDRESS (where to send the completed form if submitting by mail):

Chapman v. America’s Lift Chairs
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324



67158



CF



Page 2 of 2