

**IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA**

**BEVERLY DESHAY, individually and on
behalf of all those similarly situated,**

Plaintiff,

Case No.: 2022CA000457

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

/

**PLAINTIFF’S MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM**

Plaintiff, Beverly DeShay (“Plaintiff” or “DeShay”), on behalf of herself and all others similarly situated (“Plaintiff”), respectfully moves this Court to grant final approval of the proposed class action Settlement Agreement¹, a copy of which is attached as Exhibit 1. Defendant does not oppose the relief sought herein.

I. INTRODUCTION

Representative Plaintiff Beverly DeShay and Defendant Keller Williams Realty, Inc. reached a class action Settlement Agreement resulting in \$40,000,000 of monetary relief to the Class.

Keller Williams has also agreed to change its business practices that resulted in this Litigation and the Related Litigation. Specifically, Defendant has agreed to (1) create a task force to enhance realtor compliance with telemarketing laws, including the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and the corresponding National Do Not Call Registry requirements (“DNC”), 47 C.F.R. § 64.1200(c)(2); (2) make the existing TCPA/DNC resource page on Defendant’s online platform for realtors, KW Connect, more visible to KWRI’s franchisees and their real estate agents; and (3) provide training and other materials to KWRI’s

¹ All capitalized terms used herein have the same definitions as those defined in that Agreement.

franchisees about TCPA/DNC compliance that they can use to educate their real estate agents. This meaningful remedial relief itself is valued at \$7,826,785 to the Class and society over the next five years. *See Economic Assessment of Remedial Relief in Class Action Settlement Agreement*, prepared by Jon Haghayeghi, Ph.D., attached as Exhibit 2, (“Haghayeghi Report”).

The total economic value of the relief provided by the Settlement is therefore \$47,826,785. This is an extraordinary result in hard-fought litigation spanning multiple years, across multiple jurisdictions, and involving, among other things, a novel theory of realty brokerage vicarious liability developed by Class Counsel that has been rejected by multiple courts across the country, which, absent the Settlement, would have been further tested at class certification, summary judgment, trial, and on appeal, and which, even if successful, given Defendant’s financial condition and the risk posed by a bet-the-company antitrust case against Defendant claiming billions of dollars in damages from antitrust violations in which the court has already certified a class, denied summary judgment, and set a trial in 2023.

For these, and the other reasons set forth in this memorandum and in the papers submitted in support of approval of the Settlement, Plaintiff and Class Counsel respectfully request that the Court: (1) grant Final Approval to the Settlement, including find that the Notice Plan and notice documents meet all applicable requirements; (2) maintain the certification of the Class, the appointment of Representative Plaintiff as Class representative, and the appointment Avi R. Kaufman of Kaufman P.A. and Stefan Coleman of Coleman PLLC, as Class Counsel; (3) approve the award of Class Counsel fees; (4) approve the payment to the Settlement Administrator; and (5) enter Judgment dismissing the action with prejudice.²

II. BACKGROUND

a. The Case Was Hard-Fought and Heavily Litigated

The resolution here arose out of this Litigation and the Related Litigation, which are all substantively similar class action lawsuits against Defendant alleging Defendant is vicariously

² A proposed order will be submitted closer in time to the final approval hearing scheduled for March 31, 2023.

liable for TCPA violative calls made by affiliated realtors in which Class Counsel is counsel for the plaintiffs, including: (1) *Wright v. Keller Williams Realty, Inc.*, Case No. 1:18-cv-775, now pending in United States District Court for the Western District of Texas; (2) *Samataro v. Keller Williams Realty, Inc.*, Case No. 1:21-cv-76, now pending in United States District Court for the Western District of Texas; (3) *Hayhurst v. Keller Williams Realty, Inc.*, Case No. 1:19-cv-657, now pending in United States District Court for the Middle District of North Carolina; (4) *St. John v. Keller Williams Realty, Inc.*, Case No. 6:19-cv-1347, now pending in United States District Court for the Middle District of Florida; (5) *Asher v. Keller Williams Realty, Inc.*, Case No. 1:20-cv-835, previously pending in United States District Court for the Western District of Texas; and (6) *MacDonald v. Keller Williams Realty, Inc.*, Case No. 2:20-cv-00138, previously pending in United States District Court for the District of Arizona.

This class action Settlement was reached as a direct result of more than four years of active litigation across various jurisdictions involving extensive motion practice, discovery, expert work, and ultimately settlement efforts. Declaration of Avi Kaufman, attached as Exhibit 3; Declaration of Stefan Coleman, attached as Exhibit 4. Indeed, Class Counsel fully briefed 23 substantive, adversarial motions, including 8 motions to dismiss, 4 motions to compel, 2 motions for class certification, 1 motion for summary judgment, and 1 *Daubert* motion. *Id.*

Like motion practice, discovery was fulsome, involving multiple waves of written discovery between the Parties, multiple waves of third party subpoenas, expert discovery relating to multiple expert reports relating to multiple different disciplines, and depositions. Kaufman Decl. at ¶ 5. Plaintiff issued 44 subpoenas to different realtors affiliated with Defendant, 28 subpoenas to companies providing dialing platforms to realtors, companies providing leads to realtors, and/or telephone carriers, responded to 6 sets of discovery requests on behalf of plaintiffs, and served 5 sets of discovery to Keller Williams.

Plaintiff also pursued a third party enforcement action in the Central District of Illinois in order to depose a Keller Williams realtor with unique knowledge concerning Defendant's realtors' lead generation and calling practices. *Id.* at ¶ 6. In sum, there were 14 depositions taken across the

Related Litigation. *Id.* Class Counsel took 10 depositions and prepared witnesses and defended 4 depositions. *Id.*

As a result of Class Counsel's robust discovery efforts, hundreds of thousands of pages of documents were produced by Defendant and subpoenaed third parties and reviewed by Class Counsel. Class Counsel also conducted significant research and investigation outside of that which was produced by Defendant and subpoenaed third parties, resulting in the discovery of tens of thousands of additional pages of documents and hundreds of hours of videos concerning Defendant's courses for realtors. *Id.* at ¶ 7.

Plaintiff also engaged 2 experts in different disciplines and served 3 expert reports. *Id.* at ¶ 8. Plaintiff also reviewed and analyzed Defendant's 3 expert reports. *Id.*

And just as the Parties invested in motion practice and discovery, they also expended significant effort trying to resolve the case. *Id.* at ¶ 9. In an effort to facilitate a resolution of the Litigation and Related Litigation and mediate settlement discussions, the Settling Parties participated in lengthy, arms' length negotiations, including three separate days of mediation with mediator Bruce A. Friedman, Esquire of JAMS in Los Angeles, California. The Parties then engaged in months and months of additional, adversarial negotiations with Mr. Friedman's assistance finally culminating in the Settlement Agreement. *Id.*

And since that time, Class Counsel have continued to act diligently on behalf of the Class in implementing the Notice Plan.

b. The Case Involves Significant Ongoing Risk Due to the Class's Novel Theory of Realty Brokerage Vicarious Liability and the Ever-Changing TCPA and Consumer Law Landscape

This case involves significant ongoing risk at class certification, summary judgment, trial, and on appeal due to (1) the Class's novel liability theory and (2) changes in TCPA and consumer class action law that materialized and would continue to materialize during its pendency. In fact, two class certification motions remain fully briefed and undecided in the Related Litigation, and

Keller Williams has two pending summary judgment motions addressing the novel vicarious liability theory.

Notably, at the time of filing the first of the Related Litigation cases, no court had certified a class on a similar theory of realty brokerage vicarious liability for TCPA violative calls made by affiliated realtors or found the theory otherwise viable in any legal context. Indeed, Class Counsel are at the forefront of this novel theory and are not aware of a single such case being filed in any court before Class Counsel began pursuing it with the first of the many Related Litigation case filings against Defendant in May 2018—nearly 5 years ago. *See, e.g., Wright v. Keller Williams Realty, Inc.*, No. 2:18-cv-635 (W.D. Wash.) (filed May 2, 2018); *Wright v. La Rosa Realty, LLC*, No. 6:18-cv-734 (M.D. Fla.) (filed May 11, 2018); *Gonzalez v. Related ISG Realty, LLC*, No. 1:18-cv-23238 (S.D. Fla.) (filed Aug. 9, 2018); *Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla.); *Valdes v. Century 21 Real Estate, LLC*, No. 2:19-05411 (D.N.J.) (filed Feb. 11, 2019); *St John v. Keller Williams Realty*, No. 6:19-cv-1347-Orl-40DCI (M.D. Fla.) (filed July 22, 2019); *Declements v. My Home Group Real Estate LLC*, No. 2:20-cv-362 (D. Ariz.) (filed Feb. 19, 2020).

Since then, courts across the country have repeatedly disagreed about the viability of Class Counsel’s vicarious liability theory seeking to hold brokerages liable for the acts of affiliated realtors. *Compare Valdes v. Century 21 Real Estate, LLC*, 2019 U.S. Dist. LEXIS 182616 (D.N.J. Oct. 21, 2019) (denying brokerage’s motion to dismiss); *Hayhurst v. Keller Williams Realty, Inc.*, 2020 U.S. Dist. LEXIS 128877 (M.D.N.C. July 22, 2020) (same); *St John v. Keller Williams Realty*, 2020 U.S. Dist. LEXIS 257506 (M.D. Fla. Feb. 4, 2020) (Byron, J.) (same); *Bumpus v. Realty Brokerage Grp. LLC*, 2022 U.S. Dist. LEXIS 52650 (N.D. Cal. Mar. 23, 2022) (granting class certification); *with Rahimian v. Adriano*, 2022 U.S. Dist. LEXIS 46437 (D. Nev. Mar. 16, 2022) (granting brokerage’s motion to dismiss); *Dave v. Century 21 Real Estate, LLC*, 2021 U.S. Dist. LEXIS 225282 (D.S.C. Sep. 15, 2021) (same); *Valdes v. Nationwide Real Estate Execs.*, 2021 U.S. Dist. LEXIS 100931 (C.D. Cal. Apr. 22, 2021) (same); *Macdonald v. Keller Williams Realty, Inc.*, (D. Ariz. Jan. 28, 2021) (same); *DeClements v. RE/MAX LLC*, 2020 U.S. Dist. LEXIS 253299 (D. Colo. Oct. 13, 2020) (same); *Declements v. Americana Holdings LLC*, 2020 U.S. Dist.

LEXIS 130213 (D. Ariz. July 23, 2020) (granting brokerage owner/operator's motion to dismiss).

In fact, courts have disagreed about the viability of this theory at every stage of litigation, including at the class certification stage. *Compare Chinitz v. NRT W., Inc.*, 2019 U.S. Dist. LEXIS 148699 (N.D. Cal. Aug. 30, 2019) (first of its kind decision rejecting the same vicarious liability theory and denying class certification against a national brokerage in a case) *with Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla. Sept. 29, 2021) (granting class certification) *and Bumpus v. Realogy Brokerage Grp. LLC*, 2022 U.S. Dist. LEXIS 52650 (N.D. Cal. Mar. 23, 2022) (granting class certification).

Therefore, there is significant ongoing risk involved in continuing to pursue the Class's novel vicarious liability theory. And that risk is imminent, given the pendency of class certification in two of the Related Litigation and Keller Williams's two pending summary judgment motions challenging the vicarious liability theory, which, even with favorable decisions for the plaintiffs, would continue through trial and appeal.

Relatedly, there is considerable ongoing risk that the ever-changing TCPA and consumer law landscape could ultimately undermine the Class's claims in part or in whole – just as it in fact did over the course of the Related Litigation.

For example, the most severe threat to the viability of plaintiffs' claims posed by a potential change in the law prior to settlement of this case and the Related Litigation was a potential ruling by the Supreme Court that the unconstitutionality of a single provision of the TCPA rendered the entire law unconstitutional and irreparable, which would defeated all of plaintiffs' and the Class's claims. *See Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 2367 (2020) (Gorsuch, J., dissenting and opposing severance of the unconstitutional provision of the TCPA and instead concluding that the TCPA is wholly unenforceable).

And while the risks from changes in TCPA and consumer class action law have already been borne, absent the Settlement, the sheer volume of actual and potential changes to the law are proof that going forward the Class faces the ongoing risk of changes in the law based on further legislation, agency action, and court rulings.

There is therefore significant ongoing risk in going forward with the Class's claims based on the novel brokerage vicarious liability theory in the case and the likelihood of further unfavorable changes in TCPA and consumer class action law.

c. Risks of Litigation Going Forward Including KW's Financial Capacity and Ongoing Antitrust Action

Prior to reaching the settlement, Class Counsel reviewed Defendant's confidential financial information (as Defendant is a privately held company) and was provided an opportunity to ask questions regarding that information. Kaufman Decl. at ¶ 12. Class Counsel's analysis of this financial information confirmed that if the Litigation and Related Litigation were to proceed and ultimately be successful, Defendant would not be in a position to satisfy a judgment and would be forced into bankruptcy. *Id.* There is no doubt that even if successful through post judgment appeals, absent a settlement at a fraction of their maximum potential damages, the Class would receive nothing. *Id.*

In fact, this risk to the Class of non-recovery if the Litigation and Related Litigation go forward is exacerbated by the risk posed by another class action pending against Defendant alleging antitrust violations in which the court has already (1) certified multiple classes, (2) denied Defendant's motion for leave to appeal the class certification order, (3) denied Defendant's summary judgment motion, (4) denied Defendant's motion for leave to appeal the denial of the summary judgment motion, and (4) set the case for a class trial in 2023. *See, e.g., Burnett v. Nat'l Ass'n of Realtors*, No. 4:19-cv-00332-SRB, 2022 U.S. Dist. LEXIS 226614 (W.D. Mo. Dec. 16, 2022) (denying summary judgment motion); *Burnett v. Nat'l Ass'n of Realtors*, No. 19-CV-00332-SRB, 2022 U.S. Dist. LEXIS 73682 (W.D. Mo. Apr. 22, 2022) (granting class certification). The *Burnett* action involves damages in the billions of dollars, and if ultimately successful for the plaintiffs there, will bankrupt Defendant and preclude any recovery for the Class here under the TCPA.

d. The Settlement Provides Meaningful and Immediate Monetary and Remedial Relief to the Class and Society

The Settlement provides monetary relief to approximately 2 million Class Members of \$20 per claim.

The Settlement also provides valuable remedial relief consisting of Defendant's agreement to (1) create a task force to enhance realtor compliance with telemarketing laws, including the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, and the corresponding National Do Not Call Registry requirements ("DNC"), 47 C.F.R. § 64.1200(c)(2); (2) make the existing TCPA/DNC resource page on Defendant's online platform for realtors, KW Connect, more visible to KWRI's franchisees and their real estate agents; and (3) provide training and other materials to KWRI's franchisees about TCPA/DNC compliance that they can use to educate their real estate agents. Kaufman Decl. ¶ 2.

To assign a dollar value to the Settlement's remedial relief, an economist, Dr. Haghayeghi, was engaged to perform an economic assessment. As part of that assessment, Dr. Haghayeghi determined the anticipated effect of Defendant's business practice changes on realtor telemarketing conduct and the corresponding consumer willingness to pay for such changes, concluding that over the next five years the remedial relief has a mean present discounted value of \$7,826,785. Haghayeghi Report at 11. Similar consumer willingness to pay analyses have been accepted by courts for valuing remedial relief in TCPA class settlements, including in cases involving a substantively similar theory of realty brokerage vicarious liability for realtor conduct. *See, e.g., Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla.), October 25, 2022 Transcript of final approval hearing, attached hereto as Exhibit 5 (granting final approval of settlement with realty brokerage and valuing the settlement based on Dr. Haghayeghi's analysis); *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 TCPA class settlement aided by Dr. Haghayeghi's valuation of the remedial relief); *De Los Santos v. Milward Brown, Inc.*, Case No. 9:13-cv-80670, ECF 82-3 and 84 (S.D. Fla., Sep. 11, 2015) (granting final approval to TCPA class settlement

aided by Dr. Haghayeghi's late colleague Dr. J. Herbert Burkman's valuation of the remedial relief).

The total economic value of the Settlement's relief is therefore \$47,826,785 to the Class and society. Ultimately, the Settlement confers substantial and immediate benefits upon the Class and others whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Plaintiff's novel vicarious liability theory, the ever changing TCPA and consumer class action law landscape, and the uncertainties of contested litigation, including at class certification, summary judgment, trial and on appeal. *See* Kaufman Decl. ¶ 14.

III. IMPLEMENTATION OF THE PROPOSED SETTLEMENT

The Court entered the Preliminary Approval Order on December 7, 2022. Both before and after that date, the Parties have worked diligently with the Settlement Administrator to effectuate the terms of the Settlement Agreement. Declaration of Scott M. Fenwick, Settlement Administrator, attached as Exhibit 6. The Parties agree that notice was sufficiently provided to the Class.

Specifically, on December 9, 2022, 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 ¶ 5.

On December 1, 2022, Kroll received a data file from Class Counsel containing exactly two million telephone numbers of potential Class Members. Kroll undertook steps to identify individuals using the telephone numbers provided and compile the eventual Class List for the mailing of Summary Notices. First, Kroll ran all two million telephone numbers through a reverse telephone search to locate associated names and mailing addresses. After reviewing and processing the results from the reverse lookup, Kroll identified 1,925,872 unique records. Additionally, in an effort to ensure that Summary Notices 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 with address changes received from the NCOA. *Id.* at ¶ 4.

On December 13, 2022, Kroll created a dedicated website entitled www.RealtyTCPA.com (the “Settlement Website”). The Settlement Website “went live” on January 6, 2023, and contains, among other things, information about the Settlement, key dates, Court documents, a “frequently asked questions” section, and contact information. The Settlement Website also allows Class Members an opportunity to file a Claim Form online. *Id.* at ¶ 8. Also on December 13, 2022, Kroll established a toll-free number for Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response (“IVR”) system and a post office box in order to receive requests for exclusion, Claim Forms, objections, and correspondence from Class Members. *Id.* at ¶¶ 6-7.

On January 6, 2023, Kroll caused 1,925,872 Summary Notices to be mailed via First Class Mail. *Id.* at ¶ 9. 12. As of January 31, 2023, 115,918 Summary Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 113,392 undeliverable records through an advanced address search. The remaining 2,526 undeliverable Summary Notices received to date were received after the most recent advanced address search was run and will be included in the next advanced address search. The advanced address search produced 83,437 updated addresses. Kroll will re-mail Summary Notices to the 83,437 updated addresses obtained from the advanced address search on February 7, 2023. Kroll will continue to perform an advanced address search on undeliverable Summary Notices as they are received. *Id.* at ¶ 12.

Publication Notice commenced on January 6, 2023, and is delivering impressions at the expected pace in order to be substantially completed by February 4, 2023. Over 148 million online display, search and social media impressions are expected to be delivered across multiple exchanges, including across the social media platforms Facebook and Instagram. Kroll utilized Google Search advertising to target people searching for information on topics including the Settlement and other related terms. The Publication Notice is expected to reach an estimated 70% of the targeted Class Members an average of two times. *Id.* at ¶ 10.

In response to these robust notice efforts, as of January 31, 2023, Kroll has received 1,409 Claim Forms received through the mail and 54,826 Claim Forms filed electronically through the

Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms. *Id.* at ¶ 13. The deadline for Class Members to file claims in this matter is March 7, 2023. As of January 31, 2023, Kroll has received 16 timely exclusion requests and no objections to the Settlement. *Id.* at ¶ 14.

IV. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

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

The notice requirements of Rule 1.220 are designed to provide sufficient due process to class members by sufficiently informing them of the pendency of the Litigation and providing an opportunity to be heard or opt out, and must be the “best notice practicable” under the circumstances. *Nelson v. Wakulla County*, 985 So. 2d 564, 576 (Fla. 1st DCA 2008). To satisfy such requirement, individual notice should be provided to Class Members who can be identified through reasonable effort. *See Cordell v. World Ins. Co.*, 355 So. 2d 479, 481 (Fla. 1st DCA 1978) (*citing Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974)).

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).³ 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

³ “Because Florida’s class action rule is based on Federal Rule of Civil Procedure 23, Florida courts may generally look to federal cases as persuasive authority in their interpretation of rule 1.220.” *InPhyNet Contracting Servs. v. Matthews*, 196 So. 3d 449, 457 (Fla. Dist. Ct. App. 2016).

Members of their options for remaining part of the Class, for objecting to the Settlement or 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 Class Members. Specifically, the direct mailed notice reached more than 90% of the identifiable members of the Class, and the reach was further enhanced by the Settlement website, and the Settlement hotline. Settlement Administrator Decl. at ¶¶ 9, 11-12. This exceeds the requirements of Constitutional Due Process. Therefore, the Court should approve the Notice Plan and the form and content of the notice documents.

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

Before granting final approval of a proposed settlement, the court must find that the terms of the settlement are fair, reasonable, and adequate. *See Ramos v. Phillip Morris Cos.*, 743 So. 2d 24, 31 (Fla. 3d DCA 1999) (citations omitted). Courts consider several factors in making such determination, including: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Grosso v. Fid. Nat'l Title Ins. Co.*, 983 So. 2d 1165, 1173-74 (Fla. 3d DCA 2008); *Griffith v. Quality Distribution*, 307 So. 3d 791, 796 (Fla. 2d DCA 2018). Analysis of these factors shows the Settlement is eminently fair, reasonable, and adequate.

i. Complexity and duration of the litigation

As described above and in greater detail in the Class Counsel declarations, the Class's claims are complex and have been extensively litigated over the course of nearly 5 years in multiple jurisdictions across the country. Kaufman Decl. ¶¶ 2-9, 31-43. Indeed, Class Counsel have spent 3,900 hours pursuing this Litigation and the Related Litigation. *Id.*

Recovery by any means other than this Settlement, if at all, would require additional years

of litigation, including trial and appellate practice. This factor therefore supports approving the Settlement. *See, e.g., Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (“demand for time on the existing judicial system must be evaluated in determining . . . reasonableness”).

ii. Reaction of the class to the settlement

Class Counsel and the Plaintiff strongly endorse the Settlement given the significant ongoing risk associated with going forward with the Class’s claims. Kaufman Decl. ¶ 14. 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); *Cook v. Gov’t Emples. Ins. Co.*, No. 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956, at *25 (M.D. Fla. June 22, 2020) (“Class Counsel are experienced and well-regarded class action litigators, and this Court is inclined to give weight to their opinions.”).

Moreover, to date, there have been no objections from Class Members or CAFA Notice recipients, and only 16 opt outs from the Settlement. Settlement Administrator Decl. ¶ 14.

It is settled that “[a] small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement’s fairness and reasonableness.” *Association for Disabled Americans v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002). “This lack of opposition to the Settlement Agreement is significant evidence that the settlement terms are fair, adequate, and reasonable.” *Cook*, 2020 U.S. Dist. LEXIS 111956, at *15, 25-26.

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

Where a settlement “occurred only after numerous contested issues of class certification, discovery, and summary judgment were extensively briefed and litigated” and “the Class Representatives evaluated voluminous discovery and data and conducted numerous depositions, such that they possessed sufficient information and knowledge with which to evaluate the merits and benefits of settlement compared to the risk of further litigation” this “factor favor[s] final approval.” *Cook*, 2020 U.S. Dist. LEXIS 111956, at *18-19. And that is the circumstance here.

Class Counsel negotiated the Settlement with the benefit of nearly 5 years of active and contentious litigation across the country, including extensive motion practice, written discovery, document review, depositions, and expert work. Kaufman Decl. ¶¶ 2-14. As such, Class Counsel were in an appropriate position to evaluate the strengths and weaknesses of the Class’s claims and Defendant’s defenses, as well as the range of potential recoveries if the action proceeded. *Id.* The factual record therefore supports approval of the Settlement.

iv. Risk of establishing liability, damages and maintaining a class action

Plaintiff and the Class still face significant obstacles to prevailing absent the Settlement. As explained in detail above, these risks include an adverse ruling on the Class’s novel theory of brokerage liability at class certification, summary judgment, trial, and appeal. Kaufman Decl. ¶¶ 10-14. Because “there is no direct guidance ... on the [agency] questions ... presented by this case—and “other courts can and have disagreed” about the liability theory, *see id.*—“the risk of no recovery because of adverse ruling on appeal,” or earlier on summary judgment or at trial, “is real and significant.” *Cook*, 2020 U.S. Dist. LEXIS 111956, at *21-22 (finding risk of no recovery as a result of the class’s novel liability theory supported settlement approval even after granting class certification and summary judgment in favor of the class); *see Haynes v. Shoney’s*, 1993 U.S. Dist. LEXIS 749, at *16-17 (N.D. Fla. Jan. 25, 1993) (“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.”). And the risk associated with this novel liability theory is compounded by the ongoing risk of further unfavorable changes to TCPA and consumer class action law as the case proceeds. Kaufman Decl. ¶ 11.

The significant ongoing risk to the Class’s claims absent the Settlement therefore supports approval of the Settlement.

v. Ability of the defendant to withstand a greater judgment

As explained above, based on Class Counsel’s analysis of Defendant’s confidential

financial information and assessment of the risk posed by the bet-the-company antitrust class action pending against Defendant which is set for trial in 2023, Class Counsel do not believe Defendant was in a position to withstand a greater judgment than the \$40 million in monetary relief and the additional value from the remedial relief created by this settlement. *Id.* at ¶ 14. Absent this settlement, the Class would have ultimately recovered nothing at trial (or earlier based on the likely outcome of the antitrust case, which if successful, will bankrupt Defendant). This factor therefore supports approving the settlement.

vi. The Benefits of the settlement in light of the best recovery and range of reasonableness in light of all the attendant risks

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.*; *see Cook*, 2020 U.S. Dist. LEXIS 111956, at *21 (citing *Bennett v. Behring Corp.*, 737 F.2d 982, 987 n.9 (11th Cir. 1984), in which the court “approved [a] settlement providing 5.6% of the potential recoverable damages”).

Here, the Settlement provides \$20 per Class Member and injunctive relief valued at over \$7 million to the Class and society over the next five years. Haghayeghi Report at 11.

Given the significant litigation risks the Class faced, the Settlement represents an extremely successful result. The monetary relief alone – \$40 million – is significant and exceeds the range of similar settlements. The amount apportioned by the Settlement to each Claimant (\$20) is within the range of per claim payouts in the majority of TCPA class action settlements, including in cases involving allegations of direct liability against companies as large or 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; \$9, less attorneys’ fees, costs, administration costs, and service award, per claimant). *See also Hamilton v. SunTrust Mortg. Inc.*, 2014 U.S. Dist. LEXIS 154762, at *20 (S.D. Fla. Oct. 24, 2014) (in claims-made settlements, the total value of the benefits made available by the settlement, and not the structure or claims rate, dictate the determination of “fairness, reasonableness, or adequacy”).

The benefits provided by the Settlement therefore support its final approval. “This conclusion is buttressed by the fact that Defendant[] agreed to change their business practice . . . moving forward.” *Cook*, 2020 U.S. Dist. LEXIS 111956, at *21. And this conclusion is not undermined by the Settlement’s structure, terms for awarding attorneys’ fees, or relative treatment of Class Members.

Although the claims rate currently is approximately 3%, “[t]he 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.” *Braynen v. Nationstar Mortg., LLC*, 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); *see Poertner v. Gillette Co.*, 618 F. App’x 624, 626 (11th Cir. 2015) (approving settlement class when less than 1% of class members filed claims); *Cook*, 2020 U.S. Dist. LEXIS 111956, at *13-14 (collecting cases approving claims made settlements with claims rates below 4%).

The determination that the claims-made structure does “not undermine the fairness or adequacy” of the Settlement is “further supported by the fact that Defendant... would not have settled the case on a direct pay model” *Compare Cook*, 2020 U.S. Dist. LEXIS 111956, at *23-24 with Kaufman Decl. ¶ 14.

Similarly, the terms of the proposed fee award do not undermine the Settlement’s fairness or adequacy. To the contrary, the Settlement is “not conditioned on an award of attorneys’ fees”. *Cook*, 2020 U.S. Dist. LEXIS 111956, at *24-25; Kaufman Decl. ¶ 20.

Finally, the Settlement treats Class members equitably. “Under the Settlement Agreement, Settlement Class Members are treated identically insofar as it relates to Notice, Claim Forms, damages, and all other material ways. Additionally, the scope of the release is identical as to all Class Members,” and it is narrowly tailored to the types of claims at issue in the case. *Cook*, 2020 U.S. Dist. LEXIS 111956, at *25; Kaufman Decl. ¶¶ 18-20.

The Settlement’s benefits, structure, terms for awarding Class Counsel’s attorneys’ fees, and treatment of Class Members relative to each other is fair, reasonable, and adequate.

3. The Court Should Certify the Settlement Class

Pursuant to this Court’s December 12, 2022 Order, this Court provisionally certified the Class for settlement purposes only. For all the reasons set forth in Plaintiff’s preliminary approval briefing and the Preliminary Approval Order, the Court should finally certify the Class as it continues to meet all the requirements of Rule 1.220(a). Namely, (1) there are approximately 2 million class members (numerosity), (2) Plaintiff has alleged questions of fact and law common to the Class, including whether Defendant is vicariously liable for calls and/or text messages made by or on behalf of Defendant or any Defendant affiliated franchisees, market centers, realtors, agents or vendors (commonality), (3) Plaintiff’s claims and interest in the settlement are the same as class members’ claims and Plaintiff is not subject to any unique affirmative defenses (typicality), and (4) Plaintiff and Class Counsel have zealously litigated the claim, secured full relief, and have no interests antagonistic to the class (adequacy). Kaufman Decl. ¶¶ 15-18. As to Rule 1.220(b)(3), pursuant to the terms of the Settlement, (1) there are no individual issues

precluding class treatment (predominance), and (2) class treatment is the best method of adjudication without the need for numerous (and duplicative) individual cases (superiority). A resolution of the action in the manner proposed by the Settlement Agreement is superior to other available methods for a fair and efficient adjudication of this action. Thus, certification of the Class is warranted for settlement purposes only.

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

V. CLASS COUNSEL’S REQUESTED FEES AND EXPENSES ARE FAIR, REASONABLE, AND JUSTIFIED, AND SHOULD BE APPROVED

Pursuant to the Agreement, as indicated in the notices to the Class, and consistent with Florida law, Class Counsel respectfully request an award of attorneys’ fees of \$10,000,000, inclusive of out of pocket costs of almost \$200,000. The requested attorneys’ fees portion equals approximately 20% of the Settlement’s total economic value and is Class Counsel’s lodestar with a 3.3 multiplier. Class Counsel have incurred expenses in the prosecution of this action in excess of \$180,000 for filing fees, process server fees, third party production costs, courtesy copy and mailing fees, depositions, expert fees, travel, and mediation fees. Kaufman Decl. ¶ 43; Coleman Decl. ¶ 17. These expenses were reasonable and necessary for prosecuting this action and are the types of expenses typically billed to clients in non-contingency matters. *Id.*

The fee award sought here, which includes significant out of pocket costs advanced by Class Counsel without any assurance of repayment, is reasonable under the guidance of the Supreme Court and the Florida Supreme Court for analysis of fee petitions in class actions where a common fund is obtained. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (The Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309 (Fla. 1995) (“We find that in all common-fund cases in which attorney fees have not been assessed by a trial court using the lodestar approach as of the date of this opinion and in which a multiplier is determined

to be appropriate, the maximum multiplier can be as much as 5.”). “A court must review the “contingency risk” factors and the “results obtained for the benefit of the class” as required by rule 4-1.5 of the Rules Regulating the Florida Bar to establish whether the multiplier is proper.” *Ramos v. Philip Morris Cos.*, 743 So. 2d 24, 32 (Fla. 3d DCA 1999) (Upholding award of attorneys’ fees and stating that a multiplier of 5 “was justified because this case was extraordinarily risky”). A review of these factors support the requested fee here.

1. The Case Required Substantial Time and Labor and as a Result Precluded Other Employment By Class Counsel

Plaintiff’s and the Class’s claims demanded considerable time and labor, precluding other employment by Class Counsel, and making the requested fee fair, reasonable, and justified. Kaufman Decl. ¶¶ 2-14, 30-43; Coleman Decl. ¶¶ 7-17. As detailed above and in Class Counsel’s declarations, this Settlement is the result of significant contentious litigation over nearly 5 years in multiple jurisdictions across the country. Pursuing these claims against Defendant required thousands of hours of attorney time, not to mention nearly \$200,000 in Class Counsel out of pocket costs. It was fiercely litigated and settled only after extensive motion practice, discovery, and other proceedings, including disclosure of multiple experts, moving for class certification in two jurisdictions, and defending against a motion for summary judgment and a motion to strike plaintiff’s expert.

Counsel’s requested fee is approximately 20% of the Settlement’s total economic value, and is well within the range of fees typically awarded in similar cases. Numerous decisions within and outside of Florida and the Eleventh Circuit have found that a fee of one-third of a settlement’s value is the benchmark fee percentage. *E.g., Belin v. Health Ins. Innovations, Inc.*, No. 19-cv-61430, 2022 U.S. Dist. LEXIS 70141 (S.D. Fla. Apr. 15, 2022) (collecting cases in this Circuit awarding one-third or more of the class settlement fund and awarding approximately \$9 million in attorneys’ fees constituting one third of the \$27.5 million settlement fund); *Hanley v. Tampa Bay Sports & Entm’t Ltd. Liab. Co.*, No. 8:19-CV-00550-CEH-CPT, 2020 U.S. Dist. LEXIS 89175, at *16 (M.D. Fla. Apr. 23, 2020) (collecting cases and stating that “district courts in the Eleventh

Circuit routinely approve fee awards of one-third of the common settlement fund” and approving fees of more than one third of TCPA settlement fund); *Wolff v. Cash 4 Titles*, No. 03-22778- CIV, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third.”) (citing Circuit case law and listing Southern and Middle District of Florida attorneys’ fee awards). Class Counsel’s fee request is significantly lower than this one-third benchmark.

Class Counsel’s fee request also falls specifically within the range of awards in TCPA cases within Florida and the Eleventh Circuit, including cases involving a substantively similar theory of realty brokerage liability for realtor conduct. *See, e.g., Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla.), October 25, 2022 Transcript of final approval hearing (in a settlement with a realty brokerage, awarding one-third of the settlement’s monetary value and approximately 20% of the settlement’s total economic value in attorneys’ fees); *Beiswinger*, ECF 36 (M.D. Fla. 2022) (granting fees equal to one-third of the settlement fund and less than one-third of the settlement’s value including remedial relief); *Hanley*, 2020 U.S. Dist. LEXIS 89175, at *16 (granting more than one-third in fees); *Gottlieb v. Citgo Petroleum Corp.*, No. 9:16-cv-81911, 2017 U.S. Dist. LEXIS 197382, at *7 (S.D. Fla. Nov. 29, 2017) (granting one third of the \$8,000,000 fund in fees which was less than one-third of the total settlement value when including other benefits); *ABC Bartending School of Miami, Inc., v. American Chemicals & Equipment, Inc.*, No. 15-CV-23142-KMV (S.D. Fla. April 11, 2017) (granting one-third in fees); *Guarisma v. ADCAHB Med. Coverages, Inc.*, Case No. 1:13-cv-21016 (S.D. Fla. June 24, 2015) (same).

Moreover, Class Counsel has been awarded attorneys’ fees as a percentage of the fund in TCPA class actions based on lodestar cross-checks using Mr. Kaufman’s hourly rate of \$800 and Ms. Kaufman’s and Mr. Coleman’s hourly rate of \$730. *See Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla. October 26, 2022); *Beiswinger v. West Shore Home LLC*, Case No. 3:20-cv-01286-HES-PDB, ECF 36 (M.D. Fla. May 26, 2022); *Judson v. Goldco Direct, LLC*, Case No. 2:19-cv-06798-PSG-PLA, ECF 59 (C.D. Cal. Jun. 11, 2021); *Izor v. Abacus Data Sys.*, No. 19-cv-01057-HSG, 2020 U.S. Dist. LEXIS 239999, at *26-27 (N.D. Cal. Dec. 21, 2020); *Bulette v.*

Western Dental Services Inc., No. 3:19-cv-00612-MMC, ECF 82 (N.D. Cal. Jul. 17, 2020). Courts have found similar rates reasonable in similar class action settlements involving similarly specialized and successful class counsel. *Junior v. Infinity Ins. Co.*, No. 6:18-cv-1598-WWB-EJK, 2021 U.S. Dist. LEXIS 58354, at *10 (M.D. Fla. Mar. 25, 2021) (approving fee award based, in part, on the reasonableness of the lodestar cross-check, where counsel’s hourly rates were \$850 and \$800), recommendation and order adopted and approved at ECF 72 (Apr. 29, 2021). *See also Sos v. State Farm Mut. Auto. Ins. Co.*, No. 6:17-cv-890-PGB-LRH, 2021 U.S. Dist. LEXIS 52898, at *18 (M.D. Fla. Mar. 19, 2021) (finding that: (1) “Commercial class action law is sufficiently specialized that it should be considered a national market”; and (2) “previously awarded hourly rates provide an acceptable guidepost for determining the fee customarily charged in the locality for similar legal services” (internal citation omitted)).

Based on the hourly rates of \$730 for Ms. Kaufman and Mr. Coleman and \$800 for Mr. Kaufman, the total lodestar amount for Class Counsel’s time expended to date in this action is \$2,953,960. Accordingly, the lodestar amount is a 3.3 times multiplier of the requested fee—a multiplier well within the range approved in similar cases. In fact, a multiplier of 2.5-5 times lodestar is typically awarded in class actions to compensate for contingency risk. *E.g., Ramos v. Philip Morris Cos.*, 743 So. 2d 24, 32 (Fla. 3d DCA 1999) (Upholding award of attorneys’ fees and stating that a multiplier of 5 “was justified because this case was extraordinarily risky”); *Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla. October 26, 2022) (awarding Class Counsel fees based on a lodestar cross-check applying a 3.95 multiplier); *In re Health Ins. Innovs. Sec. Litig.*, No. 8:17-cv-2186-TPB-SPF, 2021 U.S. Dist. LEXIS 61051, at *39-40 (M.D. Fla. Mar. 23, 2021); *Junior v. Infinity Ins. Co.*, No. 6:18-cv-1598-WWB-EJK, 2021 U.S. Dist. LEXIS 58354, at *11 (M.D. Fla. Mar. 25, 2021) (finding that a contingency multiplier of 3.85 is “justified because the legal theory behind this action was novel and Class Counsel was able to secure an exceptional result”).

2. Contingency Risk - The Issues in this Case Were Novel and Difficult, Making the Case Undesirable, Presenting Significant Risk, and Requiring the Skill of Talented and Experienced Attorneys

In any given case, class counsel's skill should be commensurate with the novelty and complexity of the issues, as well as opposing counsel's skill. Litigation of this case required counsel trained in class action law and procedure as well as the specialized issues presented here. Class Counsel are particularly experienced in the litigation, certification, and settlement of nationwide class action cases, and their participation added value to the representation of this Class. Kaufman Decl. ¶¶ 21-26; Coleman Decl. ¶¶ 2-3. To date, not including this Settlement, Class Counsel have recovered over \$100 million through class action settlements for the benefit of consumers, including more than \$60 million in TCPA cases. Kaufman Decl. ¶ 22.

Moreover, Plaintiff's theory of realty brokerage vicarious liability was novel and difficult, making the case undesirable and risky, and requiring the skill of highly talented attorneys. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) ("A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including ... thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'"); *see also Wright v. eXp Realty, LLC*, No. 6:18-cv-01851 (M.D. Fla.), October 25, 2022 Transcript of final approval hearing at pg. 5 (in granting final approval and granting attorneys' fees for the same Class Counsel as this action, also in a TCPA class action settlement involving a realty company, the court commended Class Counsel, stating "you-all have done a really commendable job in briefing all of these issues, including reminding me that this particular TCPA class action involved some pretty novel issues of standing and [realty brokerage] vicarious liability. It was hardly a slam dunk. The parties worked hard and had two different settlement conferences between very capable mediators during the course of this, copious amounts of discovery back and forth and litigation...").

As detailed above and in counsel's declarations, Class Counsel were at the forefront of

pursuing this theory and, over the course of nearly 5 years doing so, courts have continued to be divided regarding the theory's viability. In fact, in the first ruling on class certification in any such case, district court found that the theory of realty brokerage vicarious liability here could not be demonstrated on a class wide basis. *Chinitz*, 2019 U.S. Dist. LEXIS 148699.

The chances of success if litigation continued were much lower than 50/50. *Ramos v. Philip Morris Cos.*, 743 So. 2d 24, 33 (Fla. 3d DCA 1999); *see Baez v. LTD Fin. Servs., L.P.*, No. 6:15-cv-1043-Orl-40TBS, 2019 U.S. Dist. LEXIS 86949 at *6-7 (M.D. Fla. May 23, 2019) (“This class action involved a novel legal theory and was fiercely litigated by the parties. These factors militate in favor of a high-end fee. . . . Moreover, the amount involved, results obtained, and the experience, reputation, and ability of the attorneys weigh in favor of a high-range fee award.”); *see also Sos v. State Farm Mut. Auto. Ins. Co.*, No. 6:17-cv-890-PGB-LRH, 2021 U.S. Dist. LEXIS 52898, at *18 (M.D. Fla. Mar. 19, 2021) (awarding the highest available contingency fee multiplier under Florida state law: “The Court finds that Plaintiff's success was unlikely at the outset of this litigation. Plaintiff's theory . . . had never been tested in the courts, and the relevant statute appeared to favor insurers. . . . Moreover, advancing this theory—particularly through a class action—would require an enormous outlay of capital, would take several years, and would be a complex and hard-fought battle against a well-resourced opponent with a reputation for aggressive defense.”).

“The importance of ensuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see Berry v. Wells Fargo & Co.*, No. 3:17-cv-00304-JFA, 2020 U.S. Dist. LEXIS 143893, at *35 (D.S.C. July 29, 2020) (“class counsel undertook to prosecute this action without any assurance of payment for their services. Counsel's entitlement to payment was entirely dependent upon achieving a good result for Plaintiff and the class. Contingency fee arrangements are customary in class action cases and such arrangements are usually one-third or higher. Therefore, this factor supports the reasonableness of the requested fee award” (internal citation omitted)).

Because Class Counsel were working entirely on a contingency basis, only a successful result – at trial or by settlement – would result in any fees and recovery of expenses. Kaufman Decl. at ¶¶ 45-50. Nevertheless, Class Counsel spent 3,900 hours and nearly \$200,000 to zealously promote the Class’s interests. Kaufman Decl. at ¶¶ 31, 43.

3. Results Obtained for the Class

In determining whether a fee award is reasonable, courts must evaluate the results achieved, *i.e.*, the benefit to the class and society from the litigation. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). This factor addresses monetary relief as well as the value of any remedial relief. *See Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (the right to fees “must logically extend, not only to litigation that confers a monetary benefit on others, but also litigation ‘which corrects or prevents an abuse which would be prejudicial to the rights and interests’ of those others”); *Cook v. Gov’t Emples. Ins. Co.*, No. 6:17-cv-891-ORL-40KRS, 2020 U.S. Dist. LEXIS 111956, at *32 (M.D. Fla. June 22, 2020) (“This Court notes that the monetary value of all claims under the terms of the Settlement Agreement for Transfer Fees and prejudgment interest is approximately \$61.90 million, which includes approximately \$27.54 million in cash available for claimants, \$28.76 million in prospective relief from GEICO’s change in practice over a five-year period, and \$5.6 million in attorneys’ fees”).

Given the significant litigation risks the Class faced and would continue to face, the Settlement represents a successful result. Rather than facing further costly and uncertain pre-trial litigation (including contentious class certification proceedings and likely appellate proceedings no matter the outcome of such), trial, and appeals, the Settlement makes available an immediate cash benefit of \$40 million to the Class and provides meaningful remedial relief that will prevent future unsolicited telemarketing calls, with a mean total present, discounted economic value of \$47,826,785. Kaufman Decl. ¶¶ 47-50; Haghayeghi Report at 11. In addition to these economic benefits, Class Counsel also secured other “favorable terms” as part of the Settlement, including “robust notice, a simple and streamlined claims’ process, and narrowly tailored release” that support the conclusion that the requested fees are warranted. *See Cook*, 2020 U.S. Dist. LEXIS

111956, at *32-33.

And this conclusion is not changed by the claims-made structure of the settlement or the claims rate. The adequacy of a settlement's relief and class counsel's corresponding entitlement to fees should be evaluated based on the value of the benefits made available by the settlement, and not the amount actually claimed. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295–96 (11th Cir. 1999) (affirming fee award of one-third of total amount made available to class, and determining that attorney's fees may be determined based on the total benefits available, even where the actual payments to the class following a claims process are lower); *Holmes v. Wca Mgmt. Co., L.P.*, No. 6:20-cv-698, 2022 U.S. Dist. LEXIS 52756 at *5 (M.D. Fla. Jan. 12, 2022) (awarding one-third of the reversionary common fund in attorneys' fees without regard for the claims rate); *Saccoccio v. JP Morgan Chase Bank, NA*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) (“The attorneys’ fees in a class action can be determined based upon the total fund, not just the actual payout to the class.”); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007) (same); *see also Poertner v. Gillette Co.*, 618 F. App'x 624, 626 (11th Cir. 2015) (approving settlement class when less than 1% of class members filed claims); *Braynen v. Nationstar Mortg., LLC*, No. 14-CV-20726, 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).

In fact, the relief obtained for the Class is the best relief because it was the only real relief possible without significant additional risk. Defendant has demonstrated that it would not have settled the case using any other structure and would have instead moved forward with class certification proceedings, and if unsuccessful, tried the case, and, if again unsuccessful, filed a post-trial appeal. Kaufman Decl. ¶ 14; *cf. Cook*, 2020 U.S. Dist. LEXIS 111956, at *24 (finding

that a reversionary settlement provided the only and therefore best relief).

VI. CONCLUSION

Plaintiff and Class Counsel respectfully request that this Court: (1) grant Final Approval to the Settlement, including finding that the Notice Plan and notice documents meet all applicable requirements; (2) maintain the certification of the Class, appointment of Representative Plaintiff as Class representative, and appointment of Avi R. Kaufman of Kaufman P.A. and Stefan Coleman of Coleman PLLC, as Class Counsel; (3) grant Class Counsel's fee petition; (4) approve payment to the Settlement Administrator; and (5) enter Judgment.

Dated: January 31, 2023

Respectfully submitted,

By: /s/ Avi R. Kaufman
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Counsel for Plaintiff and all others similarly situated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2023 a copy of the foregoing has been served on all counsel of record through Florida's E-Filing Portal.

/s/ Avi R. Kaufman
Avi R. Kaufman

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”), is made and entered into by and between Representative Beverly Deshay, on behalf of herself and the Settlement Class, and Keller Williams Realty, Inc. (“Defendant”) to settle and compromise this action and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

WHEREAS, *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX is currently pending in the Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida, alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*;

WHEREAS, Defendant denies each and every one of Representative Plaintiff’s allegations of unlawful conduct, damages, or other injuries and maintains that it complied with the TCPA and all applicable laws;

WHEREAS, based upon the investigation, and evaluation of the facts and law relating to the matters alleged, plus the risks and uncertainties of the Litigation and Related Litigation and all factors bearing on the merits of settlement, Representative Plaintiff and Class Counsel have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement;

WHEREAS, in an effort to facilitate a resolution of the Litigation and Related Litigation and mediate settlement discussions, the Settling Parties participated in lengthy, arms’ length negotiations, including three mediations with mediator Bruce A. Friedman, Esquire of JAMS in Los Angeles, California;

WHEREAS, the Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is

inadmissible as evidence except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement;

NOW THEREFORE, subject to the Final Approval Order of the Court as required herein and applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that all Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

1.1 As used herein, the following terms have the meanings set forth below.

1.1.1 “Agreement” or “Settlement Agreement” means this document, including all exhibits.

1.1.2 “Appeal” means a request for appellate review of any order or judgment of the Court entered in this Litigation, including but not limited to appeals as of right, discretionary appeals, interlocutory appeals, any order reinstating an appeal, and proceedings involving writs of certiorari and/or any proceedings thereon.

1.1.3 “Approved Claim” means a claim submitted by a Class Member that: (a) is postmarked or received by the Settlement Administrator on or before the Claims Deadline; (b) is fully and truthfully completed by a Class Member with all information requested in the Claim Form, and in accordance with the directions on the Claim Form; (c) is signed by the Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Sum under the Agreement and the Final Approval Order and Judgment.

1.1.4 “CAFA Notice” means the notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Paragraph 6.4.

1.1.5 “Claims Deadline” means sixty (60) days after the Notice Date. If the Claims Deadline falls on a weekend or holiday, the Claims Deadline shall extend to the next business day following the weekend or holiday.

1.1.6 “Claim Form” means the document to be submitted by Claimants seeking payment pursuant to this Settlement, attached as Exhibit A.

1.1.7 “Claim Settlement Payment” means the payment to be made to Class Members who submit Approved Claims.

1.1.8 “Claimant” means a Class Member who submits a Claim Form.

1.1.9 “Class” means all Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors on a telephone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors. Excluded from the Class are: (1) the Judge presiding over this action and members of their families; (2) the Defendant, Defendant’s respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; (4) persons who received call, or to whom a call was placed, by or on behalf of Peter Hewitt or Kelly Houston and/or which contained a

pre-recorded voice identifying Peter Hewitt or Kelly Houston; and (5) the legal representatives, successors or assigns of any such excluded person(s).

1.1.10 “Class Counsel” means Avi R. Kaufman of Kaufman P.A. and Stefan Coleman of Coleman, PLLC.

1.1.11 “Class Member” means a person who falls within the definition of the Class and who does not opt out of the Settlement as set forth in Paragraph 9.4.

1.1.12 “Class Period” means from May 2, 2014 through the date the Court enters the Preliminary Approval Order.

1.1.13 “Court” means the Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida.

1.1.14 “Complaint” means the operative complaint in this Litigation at the time the Court enters the Preliminary Approval Order.

1.1.15 “Defendant” means Keller Williams Realty, Inc.

1.1.16 “Defense Counsel” means Hinshaw & Culbertson LLP.

1.1.17 “Direct Mail List” means a list of approximately 2,000,000 people allegedly in the Class with identified mailing addresses and associated telephone numbers that Class Counsel will provide to the Settlement Administrator.

1.1.18 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final. If the settlement contained in this Settlement Agreement is not approved by the Court and does not result in Judgment, or if the Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, this Agreement will never become Effective and will be terminated and cancelled and (1) the Parties will be returned to their positions status quo ante with respect to the Action as if this Agreement had not been entered into; and (2) the Representative Plaintiff will voluntarily dismiss the Litigation and only re-file it, if ever, in federal court.

1.1.19 “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses that may be awarded by the Court and that will be paid out of the Settlement Sum. The Fee Award shall not exceed \$10,000,000.

1.1.20 “Final” means one business day following the later of the following events: (i) the expiration of the time to file a motion to alter or amend a judgment has passed without any such motion having been filed; (ii) the expiration of the time in which to file an Appeal of any judgment entered pursuant to this Agreement has passed without any Appeal having been taken; and (iii) the resolution of any such Appeal in a manner that does not reverse or vacate the Judgment and in a manner that permits the consummation of the Settlement in accordance with the terms and conditions of this Agreement. Any proceeding or order, or any Appeal pertaining solely to any request or order regarding the Fee Award will not in any way delay or preclude the Judgment from becoming Final.

1.1.21 “Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and Class Members have been given reasonable notice and an opportunity to object or to exclude themselves from the Settlement, at which the Court will determine whether to finally approve the Settlement and to enter Judgment.

1.1.22 “Final Approval Order” means an order, providing for, among other things, final approval of the Settlement.

1.1.23 “Judgment” means the judgment to be entered by the Court pursuant to this Settlement Agreement.

1.1.24 “Litigation” means *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX, currently pending in the Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida.

1.1.25 “Notice” means a document substantially in the form of Exhibit B hereto, “Summary Notice” means a document substantially in the form of Exhibit C hereto, and “Publication Notice” means a document substantially in the form of Exhibit D hereto, to be

disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

1.1.26 “Notice Date” means the date on which Notice is first disseminated pursuant to the Notice Plan.

1.1.27 “Notice Plan” shall mean the proposed plan of disseminating to Class Members notice of the proposed Settlement and of the Final Approval Hearing, as approved by the Court.

1.1.28 “Opt-Out Deadline” means the date for Class Members to opt-out that is sixty (60) days after the Notice Date.

1.1.29 “Parties” means, collectively, Representative Plaintiff and Defendant.

1.1.30 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, affiliates and assignees.

1.1.31 “Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Class according to the Notice Plan.

1.1.32 “Related Litigation” means any other class action lawsuit against Defendant alleging Defendant violated the TCPA in which Class Counsel is counsel for the plaintiff(s), and any related miscellaneous actions, including (1) *Wright v. Keller Williams Realty, Inc.*, Case No. 1:18-cv-775, now pending in United States District Court for the Western District of Texas; (2) *Samataro v. Keller Williams Realty, Inc.*, Case No. 1:21-cv-76, now pending in United States District Court for the Western District of Texas; (3) *Hayhurst v. Keller Williams Realty, Inc.*, Case No. 1:19-cv-657, now pending in United States District Court for the Middle

District of North Carolina; (4) *St. John v. Keller Williams Realty, Inc.*, Case No. 6:19-cv-1347, now pending in United States District Court for the Middle District of Florida; (5) *Asher v. Keller Williams Realty, Inc.*, Case No. 1:20-cv-835, previously pending in United States District Court for the Western District of Texas; and (6) *MacDonald v. Keller Williams Realty, Inc.*, Case No. 2:20-cv-00138, previously pending in United States District Court for the District of Arizona.

1.1.33 “Released Claims” shall mean any and all claims, liabilities, demands, causes of action, or lawsuits, whether known or Unknown Claims, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law (such as any violations of the Telephone Consumer Protection Act, 47 USC § 227, the FCC’s related regulations—including internal Do Not Call requirements, or unfair or deceptive practices act), and whether brought in an individual, representative, or any other capacity, that were brought in the Litigation or Related Litigation or that arise from text messages or calls made, or attempted to be made, by or on behalf of Defendant, or any other Person affiliated with Defendant, including but not limited to Defendant-affiliated franchisees, market centers, realtors, agents or vendors, from May 2, 2014 through the date the Court enters the Preliminary Approval Order.

1.1.34 “Released Parties” means Defendant and any respective corporate parent, subsidiary, or affiliated entities, along with each of their current, former, and future owners, members, partners, officers, directors, shareholders, employees, agents, marketers, vendors, contractors, assigns, successors, servants, insurers, representatives, and attorneys, including specifically any franchisees, market centers, realtors, agents or vendors affiliated with Defendant.

1.1.35 “Releasing Parties” means: (a) Representative Plaintiff, her heirs, assigns, successors in interest, and personal representatives; (b) Class Members who do not timely opt out; (c) to the extent that a Class Member is not an individual, all of its present, former, and

future predecessors, successors, assigns, parents, subsidiaries, joint ventures, and affiliates, and all employees, agents, representatives, consultants, independent contractors, insurers, directors, officers, partners, principals, members, attorneys, accountants, financial advisors, investors, investment bankers, underwriters, shareholders, lenders, and auditors of any of the foregoing Persons; and (d) to the extent the Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors, predecessors, and assigns of each of them, and any other representatives of any of the foregoing Persons.

1.1.36 “Representative Plaintiff” means Plaintiff Beverly Deshay.

1.1.37 “Settlement” means the settlement set forth in this Agreement.

1.1.38 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator administering this Settlement, including in providing notice, processing claims, administering the Settlement, and mailing checks for Approved Claims. All Settlement Administration Expenses shall be paid exclusively from the Settlement Sum and all sums advanced by Defendant toward Settlement Administration Expenses before the Funding Date, if any, shall be deducted from the Settlement Sum.

1.1.39 “Settlement Administrator” means Kroll Settlement Administration.

1.1.40 “Settlement Sum” means \$40,000,000.00. The Settlement Sum represents the maximum possible payment by Defendant under this Agreement from which payments for all (a) Approved Claims to Class Members, (b) Settlement Administration Expenses, (c) CAFA Notice, and (d) any Fee Award will be made.

1.1.41 “Settling Parties” means, collectively, Defendant, Representative Plaintiff, and all Class Members.

1.1.42 “Unknown Claims.” Claims that the Releasing Parties do not know or suspect to exist in their favor at the time of their granting a release, which if known by them might have affected their settlement of the Action. With respect to any and all Released Claims

against any and all Released Parties, the Parties stipulate and agree that each Releasing Party shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542 or any federal, state, or foreign law, rule, regulation, or common-law doctrine that is similar, comparable, equivalent, or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the Final Judgment acknowledges, that he/she/it is aware that he/she/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but it is his/her/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

1.1.43 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

2. DENIAL OF WRONGDOING AND LIABILITY

2.1 Defendant denies the material factual allegations and legal claims asserted by Representative Plaintiff in the Litigation and the plaintiffs in the Related Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation and Related Litigation. Further, Defendant maintains that it has strong, meritorious defenses to the claims alleged in

the Litigation and Related Litigation and that it was prepared to continue to vigorously defend all aspects of the Litigation and Related Litigation.

2.2 This Agreement, any negotiations or proceedings related to it, the implementation of it, and any papers submitted in support of the motions for approval of it (collectively, the “Settlement Proceedings”) are not to be construed as or deemed to be evidence of any admission or concession by any of the Parties regarding liability, damages, or the appropriateness of class treatment, and are not to be offered or received in evidence in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement and the Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3. THE BENEFITS OF SETTLEMENT

3.1 Class Counsel and Representative Plaintiff recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation and Related Litigation against Defendant through trial and appeals. Class Counsel also has taken into account the strength of Defendant’s defenses, difficulties in proving vicarious liability, and the uncertain outcome and risks of litigation, especially in complex actions such as this one, and the inherent delays in such litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, Representative Plaintiff and Class Counsel have determined that the Settlement is in the best interests of Representative Plaintiff and the Class.

4. SETTLEMENT TERMS

4.1 The Settlement Sum will be used for the purpose of making all required payments under this Settlement, including payments associated with the CAFA Notice, Settlement Administration Expenses, for Approved Claims, and any approved Fee Award. Any part of the Settlement Sum that is not used to pay for CAFA Notice, Settlement Administration Expenses,

Approved Claims, or any approved Fee Award shall remain with the Defendant. Defendant shall have no responsibility to segregate or escrow any funds to account for the Settlement Sum and, in no event shall Defendant's total financial liability with respect to this Agreement, the Released Claims, and the Settlement exceed the Settlement Sum. All costs of CAFA Notice and Settlement Administration Expenses shall be paid by Defendant, and deducted from the Settlement Sum, as they become due and payable to the Settlement Administrator. Also from the Settlement Sum, within thirty (30) days after the later of (i) the final determination by the Administrator of the number of Approved Claims, and (ii) the Effective Date, the "Funding Date", Defendant shall fund all amounts required by the Settlement Administrator for payment of Approved Claims.

4.2 Payment to Class Members

4.2.1 Each Class Member shall be entitled to submit only one claim per telephone number he or she used or subscribed to and on which he or she received calls, artificial or prerecorded voice messages, or text messages as described in Paragraph 1.1.9.

4.2.2 Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying claimed calls with information provided by the Parties. Only a claim submitted by the Claims Deadline and containing all required components—including the signature of a valid Class Member—shall be an Approved Claim. All other claims, fraudulent or otherwise, shall be disallowed.

4.2.3 A Claim Settlement Payment will be made to each Class Member who submits a valid Approved Claim. To have a valid Approved Claim and be eligible to receive payment, those Class Members who are on the Direct Mail List must attest to: (i) having never provided their consent to be called with an artificial or prerecorded voice, text message, automatic telephone dialing system or while their phone number was on the National Do Not Call Registry or an internal do not call registry relating to Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors, and (ii) having received one or more

such automatic telephone dialing system calls and/or artificial or prerecorded voice calls and/or text messages from or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; (iii) on a telephone number the Class Member provides and that the Class Member attests to owning. To have a valid Approved Claim and be eligible to receive payment, those Class Members who are not on the Direct Mail List must attest to: (i) having never provided their consent to be called with an artificial or prerecorded voice, text message, automatic telephone dialing system or while their phone number was on the National Do Not Call Registry or an internal do not call registry relating to Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; and (ii) having received one or more such automatic telephone dialing system calls and/or artificial or prerecorded voice calls and/or text messages from or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; (iii) on a telephone number the Class Member provides and that the Class Member attests to owning; and (iv) for which proof of receiving such a call (*i.e.*, through phone records) or text (*i.e.* through a screenshot or phone records) is provided.

4.2.4 Each Class Member on the Direct Mail List or not on the Direct Mail List who submits an Approved Claim shall be entitled to a Claim Settlement Payment in an amount not to exceed, under any circumstances, Twenty Dollars (\$20) per Approved Claim, regardless of the number of calls, artificial or prerecorded voice messages, or text messages the Class Member received during the Class Period. In the event that the total amount of Claim Settlement Payments for Approved Claims would exceed the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will be reduced so that the Settlement Sum is exhausted but not exceeded.

4.2.5 Class Settlement Payments will be made directly to the Class Member by the Settlement Administrator.

4.3 Separate and apart from the Settlement Sum, subject to Court approval, Defendant shall pay to Representative Plaintiff \$5,000 in the interest of compromising Representative Plaintiff's individual claims not released in the Agreement against Defendant, as well as resolving all outstanding issues between the Parties through the Effective Date. In the event the Court approves the Settlement, but does not approve the separate payment to Representative Plaintiff, the Settlement will nevertheless be binding on the Parties and the Class Members.

4.4 Without admission of guilt, and as further non-monetary relief to the class, Defendant has also agreed to (1) create a TCPA task force to enhance compliance; (2) to make the existing TCPA/DNC resource page on KW Connect more visible to KWRI's franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI's franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

5. ATTORNEYS' FEES, EXPENSES, AND COSTS

5.1 Class Counsel shall apply to the Court for attorneys' fees and documented and reasonable expenses and costs arising from the Litigation and Related Litigation of up to \$10,000,000.00. Class Counsel's application for fees, expenses, and costs shall be filed no later than thirty-five (35) days prior to the Opt-Out Deadline. Any Fee Award approved by the Court shall be paid solely out of the Settlement Sum and shall not increase Defendant's total financial liability with respect to this Agreement or Settlement.

5.2 In the event the Court approves the Settlement, but declines to award a Fee Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties and the Class Members.

5.3 Defendant shall have no liability to Class Counsel or any other Person arising from any claim regarding the division of the Fee Award between and among Class Counsel or any other counsel who may claim entitlement to any portion of the Fee Award.

5.4 The Fee Award, if approved by the Court, shall be paid by wire transfer from Defendant on the following schedule: 60% of the Fee Award within fifteen (15) days following the Effective Date; 10% of the Fee Award within six months following the Effective Date; 10% of the Fee Award within one year following the Effective Date; 10% of the Fee Award within one year and six months following the Effective Date; and 10% of the Fee Award within two years following the Effective Date, provided that the law firm or attorney being paid has executed and provided to Defendant a Form W-9 and requested payee information. The Fee Award shall be paid from the Settlement Sum. Payment of the Fee Award is subject to a separate security agreement between Defendant and Class Counsel.

5.5 The Court shall retain jurisdiction of any dispute regarding the Fee Award and any repayment of any amount of the Fee Award.

6. ADMINISTRATION AND NOTICE

6.1 All costs and expenses of administering the Settlement and providing reasonable Notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement Sum, including the cost of CAFA Notice.

6.2 Responsibilities of Settlement Administrator

6.2.1 The Settlement Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice.

6.3 Class Settlement Website

6.3.1 The Settlement Administrator will create and maintain the Class Settlement Website, to be activated within thirty (30) days of Preliminary Approval. The Settlement Administrator's responsibilities will also include securing an appropriate URL to be agreed upon by the Parties. The Class Settlement Website will contain information about the Settlement and case-related documents such as the Settlement Agreement, the Notice in the form attached hereto as Exhibit B, subject to Court modification and/or approval, the Claim

Form, and the Preliminary Approval Order. Class Members shall have the option to file a claim electronically using the Class Settlement Website.

6.3.2 The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Settlement Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved in full if the Settlement is terminated or otherwise not approved in full. The Settlement Administrator may destroy documents generated in the administration of the Settlement one year after the void date on settlement checks.

6.3.3 All costs and expenses related to the Class Settlement Website shall be paid out of the Settlement Sum.

6.4 CAFA Notice

6.4.1 The Parties agree that the Settlement Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

6.4.2 All costs and expenses related to the CAFA Notice shall be paid out of the Settlement Sum as an Administration Expense.

6.4.3 The Settlement Administrator will file a certification with the Court stating the date(s) on which the CAFA Notices were sent. Each Party will provide the other Parties with any substantive responses received in response to any CAFA Notice. Any fees and costs incurred by Class Counsel to respond to any substantive responses—or otherwise incurred to defend challenges to the Settlement Agreement—shall be sought as part of the Fee Award, subject to Court approval.

6.5 Notice Plan

6.5.1 The Notice shall conform to all applicable requirements of any applicable rules or procedure and law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.5.2 Class Counsel shall provide the telephone numbers, and all reasonably available demographic information for the Class Members on the Direct Mail List to the Settlement Administrator within fifteen (15) calendar days after the Court enters the Preliminary Approval Order or as soon as reasonably possible.

6.5.3 Subject to Court approval, within thirty (30) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via U.S. Postal Service, to Class Members on the Direct Mail List, which shall constitute the sole and exclusive direct notice the Settlement Administrator shall send to Class Members on the Direct Mail List.

6.5.4 Subject to Court approval, within thirty (30) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall commence publication notice substantially in the form of the Publication Notice in Exhibit D, as modified and/or approved by the Court.

7. CLAIMS PROCESS

7.1 Submission of Claims. Class Members must timely submit, by mail or online, a valid Claim Form substantially in the form attached as Exhibit A. All Claim Forms must be postmarked or received by the Settlement Administrator by the Claims Deadline. Regardless of the manner in which it is submitted, a valid Claim Form means a Claim Form containing all required information, as described above in Paragraphs 4.2.1 through 4.2.5, which is signed by a Class Member and is timely submitted. Any Claim Form that does not contain all required information, as described above in Paragraphs 4.2.1 through 4.2.5; is not signed; and/or is not timely submitted shall be denied. In the event a Class Member submits a Claim Form by the

Claims Deadline but the Claim Form is not complete, then the Settlement Administrator shall give such Class Member a reasonable opportunity to provide any requested missing information. Notwithstanding Section 6.5.3 above, for any Class Member who submits a Claim Form determined by the Settlement Administrator to be incomplete, the Settlement Administrator may mail a notice directly to such Class Member, notifying him or her of the missing information and providing him or her with an opportunity to cure (the “Cure Notice”). The Class Member shall have until the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the Cure Notice to the Class Member regarding the deficiencies in the Claim Form, whichever is later, to cure the error(s) and/or omissions in the Claim Form.

7.2 Claims Processing. The Settlement Administrator shall apply the terms of this Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form submitted that does not meet the requirements of this Agreement is not eligible to be an Approved Claim. The Settlement Administrator also shall employ reasonable procedures to screen claims for abuse, fraud, or duplication, including but not limited to requiring a unique class member identifier in order to file a claim, requesting additional information from Claimants not on the Direct Mail List, including but not limited to proof of ownership of a telephone number and receipt of calls (*i.e.*, through phone records) or texts (*i.e.*, through a screenshot or phone records), and denying Claim Forms where there is evidence of abuse, fraud, or duplication. Only one claim per eligible phone number can be an Approved Claim; in the event that more than one claim per eligible phone number is submitted, the Settlement Administrator will have discretion to determine which, if any, is the Approved Claim. The Settlement Administrator’s decisions regarding the Claimant’s eligibility for a Class Settlement Payment shall be final, assuming the Settlement Administrator applies reasonable practices to assure that no invalid, incomplete, untimely or fraudulent claims are treated as Approved Claims. The Parties, the Released Parties, and their respective counsel shall have no

responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.

7.3 Payment of Claims. Within sixty (60) days after the later of (i) the final determination by the Administrator of the number of Approved Claims, and (ii) the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Sum all Approved Claims by check or electronic payment to the Class Member submitting each Approved Claim.

7.4 All payments to Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance. To the extent that any checks to Class Members expire and become null and void, the Settlement Administrator shall distribute the funds associated with those checks on a per claim basis to Class Members who submitted an Approved Claim and who cashed their Settlement Claim Payments unless (i) Administration Expenses associated with the redistribution would exceed the funds available for redistribution; and/or (ii) the net amount of the redistribution on a per Class Member basis would be less than \$0.50 per Class Member. The Administration Expenses associated with the redistribution shall be paid from the funds to be redistributed.

7.5 No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any Claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

8. RELEASES

8.1 Upon entry of the Judgment, Representative Plaintiff and each Class Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Released Parties from all Released Claims.

8.2 After entering into this Settlement Agreement, Representative Plaintiff or Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Representative Plaintiff and Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3 With respect to the Released Claims, all Class Members expressly waive and relinquish any rights or benefits available to them under California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal or state statute or rule of law of similar effect, this Settlement Agreement shall be given full force and effect according to each and all of its terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from, or are in any way connected with the Released Claims.

8.5 Upon entry of the Final Approval Order, Representative Plaintiff, and any Class Member who does not Opt Out as set forth in Paragraph 9.4 is hereby barred against continuing or bringing any action against any of the Released Parties for any of the Released Claims, regardless of whether such action was commenced prior to the Final Approval Order. Additionally, Representative Plaintiff and Class Members agree and covenant, and each Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties

with respect to any of the Released Claims, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

9. APPROVAL PROCESS

9.1 Court Approval

9.1.1 Class Counsel shall submit the Agreement together with its Exhibits to the Court and request that the Court grant preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval (collectively, “Motion for Preliminary Approval”).

9.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that the Court allow for a period of no less than ninety (90) days between entry of the Preliminary Approval Order and the Final Approval Hearing and that the Court schedule a Final Approval Hearing for a date no less than ninety (90) days from entry of the Preliminary Approval Order.

9.1.3 The date the Motion for Preliminary Approval is filed is the date by which the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.

9.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be responsible for asking the Court to grant final approval of the Settlement and to enter a Final Approval Order and Judgment, in accordance with the date set by the Court for the Final Approval Hearing.

9.1.5 If the Court does not enter a Preliminary Approval Order or a Final Approval Order and Judgment or if the Final Approval Order is reversed or vacated, by any court, this Agreement shall terminate and be of no force or effect, except as otherwise set forth in this Agreement, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval. Notwithstanding any provision of this Agreement, the Parties agree that any decision by any court as to any Fee Award to Class Counsel or any separate payment to the Representative Plaintiff, described in Paragraphs 4.3 and 5.1 above, including any decision by any court to award less than the amounts sought, shall not prevent

the Agreement from becoming effective, prevent Final Judgment from being entered, or provide any grounds for termination of the Agreement or the Settlement.

9.2 Procedures for Objecting to the Settlement

9.2.1 Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given final approval, subject to each of the sub-provisions contained in this paragraph. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing. This written objection must be sent via first class United States mail to the Settlement Administrator at the address set forth in the Notice and received no later than the Opt-Out Deadline. Class Members may object either on their own or through an attorney hired at their own expense.

9.2.2 Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX” and also shall contain the following information: (i) the objector’s name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for his or her standing as a Class Member, including the phone number(s) at which he or she received calls(s) or text(s) covered by this Settlement; and (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement. If an objecting party chooses to appear at the hearing, no later than the Opt-Out Deadline, a notice of intention to appear, either in person or through an attorney, must be filed with the Court and list the name, address, and telephone number of the person and attorney, if any, who will appear.

9.2.3 A Class Member who appears at the Final Approval Hearing, either personally or through counsel, may be permitted to argue only those matters that were set forth

in the timely and validly submitted written objection filed by such Class Member. No Class Member shall be permitted to raise matters at the Final Approval Hearing that the Class Member could have raised in his/her written objection, but failed to do so, and all objections to the Settlement Agreement that are not set forth in a timely and validly submitted written objection will be deemed waived.

9.2.4 If a Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at the Final Approval Hearing. Representative Plaintiff or Defendant or both may take discovery regarding any objector, their attorney (if applicable), and the basis of any objection, subject to Court approval.

9.2.5 Any Class Member who fails to comply with the applicable provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or she may have to object, appear, present witness testimony, and/or submit evidence, shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing, shall be precluded from seeking review of this Agreement by appeal or other means, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Litigation. By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.

9.3 Right to Respond to Objections

9.3.1 Class Counsel and the Parties shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The

Party so responding shall file a copy of the response with the Court, and shall serve a copy, by hand, overnight delivery, or email to the objector (or counsel for the objector).

9.4 Opt Outs

9.4.1 Any individual who falls within the definition of the Class who does not wish to participate in this Settlement must write to the Settlement Administrator stating an intention to be individually “excluded” from this Settlement. This written request for individual exclusion must be sent via first class United States mail to the Settlement Administrator at the address set forth in the Notice and received no later than the Opt-Out Deadline. An individual request for exclusion must be signed by the individual, and must include the individual’s name, address, and the telephone number that allegedly received a call made by or on behalf of Defendant during the Settlement Class Period, and must clearly state that the individual wishes to be excluded from the Litigation and the Agreement. A request for exclusion that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not received within the time specified, shall be invalid, and the individual serving such a request shall be a member of the Class and shall be bound as a Class Member by the Court’s Orders in this Litigation and by this Agreement, if approved. The request for individual exclusion must be personally signed by the individual. Requests for group, mass and/or class opt-outs or exclusions will be invalid and shall not be allowed.

9.4.2 Any individual who submits a request for exclusion may not file an objection to the Settlement. If an individual submits a written request for exclusion pursuant to Paragraph 9.4.1 above, he or she shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court.

9.4.3 After Notice is disseminated and at least fifteen (15) days prior to the Final Approval Hearing, the Parties shall request and seek to obtain from the Court a Final Approval Order and Judgment, which will (among other things):

- (i) find that the Court has personal jurisdiction over all Class Members and that the Court has subject-matter jurisdiction to approve the Agreement, including all exhibits hereto;
- (ii) approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have preclusive effect on all pending and future lawsuits or other proceedings maintained by or on behalf of Representative Plaintiff and the Releasing Parties;
- (iii) find that the Notice and the Notice Plan implemented pursuant to the 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 procedural and other requirements, and the rules of the Court;
- (iv) dismiss the Action (including all individual claims and Class Member claims asserted therein) on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement; incorporate the releases set forth above in Paragraph 8, make those releases effective as of the date of the Final Approval Order and Judgment; and
- (v) forever discharge the Released Parties as set forth herein; permanently bar and enjoin all Class Members from filing, commencing, continuing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction related to the Released Claims.

9.4.4. Notwithstanding anything else in this Agreement, in the event the total number of opt outs exceeds 20,000, Defendant shall have the right—at its sole discretion—to terminate this agreement and return the parties to the status quo pursuant to Paragraph 11.4 below, upon written notice given within seven business days of the Opt Out deadline.

10. TAXES

Class Members, Representative Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

10.1 Expenses Paid from Fund. Any expenses reasonably incurred by the Claims

Administrator in carrying out the duties, including fees of tax attorneys and accountants, will be paid from the Settlement Sum.

10.2 Responsibility for Taxes on Distribution. Any Person that receives a distribution from the Settlement Sum will be solely responsible for any taxes or tax-related expenses owed or incurred by reason of that distribution. Such taxes and tax-related expenses will not be paid from the Settlement Sum.

10.3 Payment Not Directed By or Incurred to Government: For purposes of assessing deductibility of any amounts to be paid by Defendant under the Settlement Agreement, it is expressly acknowledged by the Parties that such payments are not made or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law, as contemplated by 26 U.S.C. § 162(f)(1).

10.4 Defendant is Not Responsible. In no event will Defendant or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Sum to Representative Plaintiff, Class Members, Class Counsel or any other person or entity. The Class Members shall indemnify and hold Defendant and other Released Parties harmless—through the Settlement Sum— for all such taxes and tax-related expenses.

11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

11.1 The Effective Date of this Agreement shall be the date defined in Paragraph 1.1.18.

11.2 Performance of the obligations set forth in this Agreement is subject to all of the following material conditions:

- (A) execution of this Agreement by Defendant, Representative Plaintiff, and Class Counsel.
- (B) the granting of preliminary approval by the Court.
- (C) sending of the notices described herein.

- (D) the granting of final approval by the Court.
- (E) execution and entry of Judgment by the Court.
- (F) the occurrence of all other circumstances necessary for the Effective Date to arise.

11.3 The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings by third parties seeking review of any order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with Representative Plaintiff or any third party.

11.4 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation and Related Litigation as of June 30, 2022, and the Representative Plaintiff will voluntarily dismiss the Litigation and only re-file it, if ever, in federal court. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation, the Related Litigation, or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

11.5 The Parties agree to request a stay of the Related Litigation pending approval of the Settlement.

12. MISCELLANEOUS PROVISIONS

12.1 Termination of Agreement: The Parties shall each have the right to terminate this Settlement by providing written notice of their election to do so to the other Party within thirty (30) days of:

12.1.1 any court declining to enter or reversing entry of the Preliminary Approval Order or Final Approval Order;

12.1.2 any court refusing to approve this Agreement or any material part of it;

12.1.3 any court materially modifying the Agreement and/or Exhibits A, B, C, or D in any manner, including, without limitation, modification that increases the financial costs to Defendant to be determined in Defendant's sole discretion; that extends the Claims Deadline; that changes the claims administration process, including but not limited to, the Notice Plan, the Settlement Administrator's ability to minimize waste, fraud and abuse, and/or the proof required to substantiate a claim; and/or that changes the definition or scope of the Class.

12.2 Cooperation of the Parties: The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by putative or actual Class Members. Class Counsel recognize that they have an obligation to support the Settlement and to seek the Court's approval of its terms. Class Counsel will abide by all applicable and governing ethical rules, opinions, and obligations precluding their representation of opt-outs.

12.3 Resolution of Dispute without Admission: The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement covers claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

12.4 Use In Subsequent Proceedings: Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may

be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.5 Confidential Information: All agreements made and orders entered during the course of the Litigation and Related Litigation relating to the confidentiality of information will survive this Agreement.

12.6 Media and Contact of Class Members. Except as required by the Parties in accordance with applicable law, rule, or regulation (e.g., securities law, rules, or regulations), or any other exception expressly provided herein, to avoid contradictory, incomplete, or confusing information about the Settlement, the Parties agree that if they want to make any written press releases, disclosures on their websites, or statements to the media about or promotional materials that reference the existence or terms of the Settlement or the Litigation or Related Litigation before the conclusion of the Claim Period, such releases or statements must be approved by the Parties in advance and, where desired by the other Party, made jointly. Any party can respond to inquiries initiated by the media, and in doing so may decline to comment, but otherwise shall only refer to the Class Notice, a statement approved by the other Party, and/or defer to the court file in the Litigation or Related Litigation, but shall not provide any further comment. Nothing provided herein shall prevent Defendant from communicating with its clients, investors, insurers, regulators or lenders about the Settlement or the Litigation or Related Litigation without the prior approval of Class Counsel. Except as noted herein and by mutual agreement of the Parties, the Class Notice shall constitute the only communication with Class Members regarding the Settlement prior to the Final Fairness Hearing.

Notwithstanding, Class Counsel and Defense Counsel can answer any inquiries initiated by Class Members and Class Counsel may communicate freely with Plaintiff.

12.7 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

12.8 Modification: This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

12.9 Integration: This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

12.10 Class Counsel's Authority: Class Counsel, on behalf of the Class, are expressly authorized by Representative Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class.

12.11 Parties' Authority: Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

12.12 Counterparts: This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

12.13 No Prior Assignments: Representative Plaintiff and Class Counsel 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.

12.14 Binding on Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Class Members.

12.15 Interpretation: None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

12.16 Governing Law: This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida without giving effect to that state’s choice-of-law principles.

12.17 Headings: The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

12.18 No Waiver: The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of 11 / 30 / 2022 November ____, 2022.

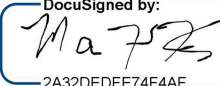

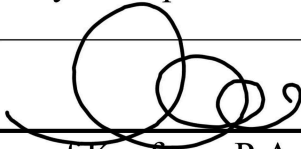
<p>Dated: 12/1/2022</p>	<p>DocuSigned by:  2A32DEDEF74E4AF on Behalf of Defendant Keller Williams Realty, Inc. Marc King</p>
<p>Dated: 11 / 30 / 2022</p>	<p> Beverly Deshay as Representative Plaintiff</p>
<p>Dated: November 30, 2022</p>	<p> Avi Kaufman of Kaufman P.A. as Class Counsel</p>

EXHIBIT A

CLAIM FORM

Section I - Instructions

This Form must be postmarked or received by the Settlement Administrator no later than [Month] [Day], [Year].

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

- 1. Electronically through www.[xxx].com.
2. Via email to [xxx]@[xxx].com. Please fill out the enclosed pages, scan the document in its entirety if necessary, and include the form as an attachment.
3. Mail to: Keller Williams Realty TCPA Settlement, c/o ____, [Address], [City] [State], [Zip Code].

To be effective as a Claim under the proposed settlement, this form must be completed, signed, and sent, as outlined above, no later than [Month] [Day], [Year]. If this 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

Claimant Name (Required):

Grid for Claimant Name input

Claimant Identification Number (Required):

Grid for Claimant Identification Number input

Current Contact Information

Street Address (Required):

Grid for Street Address input

City (Required): State (Required): Zip Code (Required)

Grid for City, State, and Zip Code input

Email (Optional):

Grid for Email input

Preferred Phone Number (Required):

Grid for Preferred Phone Number input

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.

Section III – Confirmation of Class Membership

Telephone Number(s) for which you were the regular user or subscriber between May 2, 2014 and **DATE** at which you (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents, or vendors and that appeared on the National Do Not Call Registry for at least 31 days and/or that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors using an artificial or prerecorded voice and/or a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors.

Please note that, as part of the claims process, you may be requested to provide a telephone bill establishing proof of your ownership of the telephone number(s) above during the relevant time period and/or showing proof of the receipt of the asserted call(s) or text messages.

Section IV – Required Affirmations

IF SUBMITTED ELECTRONICALLY:

I have never provided consent to Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors, to be called with an artificial or prerecorded voice, text message, automatic telephone dialing system, or while my phone number was on the National Do Not Call Registry. I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge under penalty of perjury. 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.\[xxxx\].com](http://www.[xxxx].com) or by writing the Settlement Administrator at the email address [\[xxxx\]@\[xxxx\].com](mailto:[xxxx]@[xxxx].com) or the postal address [Address], [City], [State] [Zip Code]. Checking this box constitutes my electronic signature on the date of its submission.

IF SUBMITTED BY U.S. MAIL:

I have never provided consent to Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors, to be called with an artificial or prerecorded voice, text message, automatic telephone dialing system, or while my phone number was on the National Do Not Call Registry. I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge under penalty of perjury. 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.\[xxxx\].com](http://www.[xxxx].com) or by writing the Settlement Administrator at the email address [\[xxxx\]@\[xxxx\].com](mailto:[xxxx]@[xxxx].com) or the postal address [Address], [City], [State] [Zip Code].

Dated: _____

Signature: _____

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

Keller Williams Realty TCPA Settlement, c/o _____, [Address], [City], [State] [Zip Code].

EXHIBIT B

Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida

Deshay v. Keller Williams Realty, Inc., No. 312022CA000457XXXXXX

If you were called or received a call from Keller Williams or any Keller Williams- affiliated franchisees, market centers, realtors, agents or vendors, you may be entitled to a payment from a class action settlement.

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

- A class action settlement agreement and release (the “Settlement”) has been proposed in the class action lawsuit referenced above pending in the Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida captioned *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX. You may be a class member in the proposed settlement and may be entitled to participate in the proposed Settlement.
- The Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida has ordered the issuance of this notice. Keller Williams Realty, Inc. (“Keller Williams”) denies it did anything wrong and has defended itself. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.
- The Settlement offers payments to class members who file valid 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	If you are a member of the Class, you must submit a completed Claim Form to receive a payment of up to \$20 per Approved Claim. 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 or electronic payment.
EXCLUDE YOURSELF	You may request to be excluded from the Settlement and if you do, you will receive no benefits from the Settlement.
OBJECT	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 Keller Williams 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.

WHAT THIS NOTICE CONTAINS

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- 1. Why is there a notice?
- 2. What is this litigation about?
- 3. What is the Telephone Consumer Protection Act?
- 4. Why is this a class action?
- 5. Why is there a settlement?

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

THE SETTLEMENT BENEFITS.....PAGE 4

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- 15. Do I have a lawyer in the case?
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- 21. Do I have to attend the hearing?
- 22. May I speak at the hearing?

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- 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.

2. What is this lawsuit about?

Plaintiff DeShay claims that Keller Williams-affiliated realtors violated the Federal Telephone Consumer Protection Act (TCPA) by making robocalls to cell phones and other telemarketing calls to number registered on the National Do Not Call Registry. DeShay also claims that Keller Williams is responsible for any illegal calls made by these realtors. Keller Williams denies these allegations.

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

In a class action, one or more people called “class representatives” (in this case, Beverly Deshay) 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, Keller Williams) 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 has decided that this lawsuit can be a class action because it meets the procedural requirements which govern class actions.

5. Why is there a settlement?

The Court has not found in favor of Plaintiff or Keller Williams. 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. Keller Williams denies all legal claims in this case, but is settling to avoid the uncertainties and costs attendant with litigation. Plaintiff and her 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 lawsuit.

6. Am I part of the class and included in the settlement?

The Settlement includes the following class: “All Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors on a telephone phone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or

vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors.”

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 Settlement Administrator at [###-#####]. 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?

Keller Williams has agreed to a Settlement Sum of \$40,000,000. The Settlement Sum will be used to pay all settlement costs, including settlement administration costs, any attorneys’ fees, costs, and expenses 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 Twenty Dollars (\$20) per Approved Claim. In the event that the total amount of Claim Settlement Payments for Approved Claims exceeds the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will be reduced. Only Approved Claims will be paid. Only one claim per Class Member per telephone number may be validated and deemed an Approved Claim. There may be tax consequences to the Class Member associated with this recovery.

Keller Williams has also agreed to (1) create a TCPA task force to enhance compliance; (2) make the existing TCPA/DNC resource page on KW Connect more visible to KWRI’s franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI’s franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

9. How do I file a claim?

If you qualify for a cash payment you must complete and submit a valid Claim Form. You can file your Claim Form online at www.xxxxx.com, send it by email to xxxx@xxxx.com, or send it by U.S. Mail to:

Keller Williams Realty Settlement Administrator
PO Box XXX, City, State XXXXX-XXXX

The deadline to submit a Claim Form is 11:59 p.m. EST on DATE.

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 Keller Williams 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 individually from the Settlement, you must send a timely letter by mail to:

Keller Williams Realty Settlement Administrator
PO Box XXX
City, State XXXXX-XXXX

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 Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors during the Class Period, and must clearly state that the individual 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 received no later than DATE.

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 Keller Williams 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 Keller Williams 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.xxxxx.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 Stefan Coleman 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 <http://www.classaction.ws/>.

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 attorneys’ fees in an amount not to exceed one-quarter 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 by sending a timely letter by mail to:

Keller Williams Realty Settlement Administrator
PO Box XXX
City, State XXXXX-XXXX

Your letter must include the following:

- 1) A caption or title that identifies it as “Objection to Class Settlement in *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX”;
- 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

Your objection must be received no later than DATE.

If you object you agree to submit yourself immediately to discovery and/or deposition by the parties.

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 **DATE at TIME**, in **ADDRESS**. 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.xxxxxTCPAsettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses. 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, call the Settlement Administrator at 1-___-___-___, write to the Settlement Administrator, [address], or call Class Counsel at 1-___-___-___. For a complete,

definitive statement of the Settlement terms, refer to the Settlement Agreement at www.xxxxxTCPAsettlement.com.

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

EXHIBIT C

Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida

Deshay v. Keller Williams Realty, Inc., No. 312022CA000457XXXXXX

If you were called or received a call or text message from Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors you may be entitled to a payment 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 Keller Williams Realty, Inc. (“Keller Williams”) violated a federal law called the Telephone Consumer Protection Act (“TCPA”). Keller Williams denies that it violated the law.

The lawsuit is called *Deshay v. Keller Williams Realty, Inc.*, No. 312022CA000457XXXXXX. This lawsuit is 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 valid 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: “All Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors on a telephone phone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors.”

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

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

What are the Settlement Terms? Keller Williams has agreed to a Settlement Sum of \$40,000,000. The Settlement Sum will be used to pay all settlement costs, including settlement administration costs, any attorneys' fees, costs, and expenses 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 Twenty Dollars (\$20) per Approved Claim. In the event that the total amount of Claim Settlement Payments for Approved Claims would exceed the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will be reduced. 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.

Keller Williams has also agreed to (1) create a TCPA task force to enhance compliance; (2) make the existing TCPA/DNC resource page on KW Connect more visible to KWRI's franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI's franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

How can I get a Payment? By completing the Claim Form **available** online at www.xxxxxTCPAsettlement.com and submitting it online at www.xxxxxTCPAsettlement.com, by email to xxxx@xxxx.com, or by U.S. mail to the Settlement Administrator at the address on the Claim Form.

The deadline to submit a Claim Form is 11:59 p.m. EST on DATE.

What are my Other Options? If you do not want to be legally bound by the Settlement, you must exclude yourself by **DATE** by sending the Settlement Administrator a letter that complies with the procedure set forth in the Settlement, 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 **DATE** by complying with the objection procedures detailed in the Settlement. The Court will hold a Final Approval Hearing on **DATE** 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.

www.xxxxxTCPAsettlement.com

(xxx) xxx-xxxx

EXHIBIT D

REALTOR TCPA SAMPLE CREATIVE

BANNER ADS

Did you receive Phone Calls or Texts from someone affiliated with Keller Williams?

You could get a benefit from a Settlement



GET MORE INFO

This banner ad features a woman with glasses looking at her smartphone. The text is overlaid on a dark background at the top, a yellow bar in the middle, and a white bar at the bottom. The background image has several 'iStock by Getty Images' watermarks.

Did you receive Phone Calls or Texts from someone affiliated with Keller Williams?

You could get a benefit from a Settlement



GET MORE INFO

This banner ad is identical to the one above, featuring a woman with glasses looking at her smartphone. The text is overlaid on a dark background at the top, a yellow bar in the middle, and a white bar at the bottom. The background image has several 'iStock by Getty Images' watermarks.

EXHIBIT 2

**IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA**

BEVERLY DESHAY, individually, and on
behalf of all others similarly situated,

Plaintiff,

Case No. 2022CA000457

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

**Economic Assessment of the Value of Remedial Relief
in Connection with Class Action Settlement Agreement**

January 30, 2023

Prepared by

Jon Haghayeghi, Ph.D.

J. Herbert Burkman & Associates
1215 5th St.
Juneau, AK 99824

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ECONOMIC ASSESSMENT OF THE VALUE OF REMEDIAL RELIEF

I. INTRODUCTION

This and related class action lawsuits allege that Keller Williams Realty, Inc. (“Defendant”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by promoting that non-employee real estate agents make unsolicited telemarketing calls, including prerecorded voice calls and calls to numbers on the National Do Not Call Registry. Subsequently, a class action settlement was reached on behalf of all persons in the United States, who from May 2, 2014 through December 12, 2022 (1) received two or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors on a telephone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) received one or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors.

As part of the Settlement, Defendant has agreed to remedial relief. Specifically, Keller Williams has agreed to (1) create a TCPA task force to enhance compliance with telemarketing laws; (2) make the existing TCPA/DNC resource page on Keller Williams’ online portal for agents, KW Connect, more visible to KWRI’s franchisees and their independent contractor real estate agents; and (3) provide additional materials to franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

The undersigned economist, Jon Haghayeghi, Ph.D., has been retained by class counsel to assess (the “Assessment”) the benefits accruing to class members and to society from the remedial relief that the Settlement Agreement provides. The Assessment includes reviewing, analyzing, and evaluating the economic impact of the Settlement Agreement, and identifying the net benefits conferred on members of the class. Additionally, the Assessment identifies other positive externalities inuring to the favor of non-party beneficiaries and related parties. The Assessment measures the aggregate economic value of the Settlement to class members and society against the backdrop of conventionally

accepted measurement methodologies extant within the discipline of economics and its sub-field, cost-benefit analysis.

It is noteworthy that the Assessment's quantitative analysis includes the monetized value of non-monetary remedial relief inherent in the Settlement Agreement. By agreeing to change its practices to avoid non-compliance with the TCPA, Defendant Keller Williams Realty, Inc. has set in motion a series of positive benefits that may be readily valued for a broad swath of society. In summary, the undersigned economist believes the Settlement Agreement has far-reaching societal effects that bestow positive economic externalities to parties beyond the scope of the Settlement Agreement.

II. QUALIFICATIONS

Dr. Haghayeghi joined J. Herbert Burkman & Associates economics consulting firm in 2009. He earned his bachelor's and master's degrees in Economics from Southern Methodist University, Dallas, Texas. In 2012, Dr. Haghayeghi represented the United States at the Institute for Studies on Economics and Employment, a conference hosted by Nobel Laureates in Economics in Iseo, Italy. He earned his Ph.D. in economics in 2017 from the Department of Economics, Claremont Graduate University, Claremont, California. Dr. Haghayeghi wrote his dissertation on weak-form efficiency in U.S. equity markets under the guidance of Dr. John Rutledge. Throughout his tenure in his doctoral program, he taught courses at California State Polytechnical University in the Department of Finance, Real Estate, and Law, Pomona, California.

Dr. Haghayeghi has taught at Loyola Marymount University, Department of Economics, Los Angeles, California. He has also taught valuation seminars in Las Vegas, San Diego, and Chicago in 2014, 2017, and 2021 respectively, to members of the American Rehabilitation Economics Association on calculating economic damages. Dr. Haghayeghi served as the Executive Director of the State of Alaska's Commercial Fisheries Entry Commission from 2019 to 2022, and currently serves as the Executive Director of the State of Alaska's Commission on Aging. Dr. Haghayeghi has produced several reports valuing remedial relief regarding violations of the Telephone Consumer Protection Act that have been accepted in both State and Federal Courts.

III. ECONOMICS OF THE SETTLEMENT AGREEMENT

A. Assessing the Economic Value of the Settlement Agreement

As noted in the introduction, the discipline of economics provides the theoretical framework and quantitative methods central to assessing the benefits accruing to all persons affected by the Settlement Agreement. With respect to the Settlement, review and analysis have identified the benefits inuring to the class and a broad spectrum of society.

1. *Economic Benefits*

The primary economic benefit to consumers is the value provided by a change in Keller Williams Realty, Inc.'s behavior and the resulting change in non-employee realtors' behavior. Making business changes to cease the calling conduct assures all current and future targeted consumers will not experience interference of their privacy from telemarketing calls by Keller Williams Realty, Inc. agents. In this matter, the Settlement Agreement assures privacy to the public from telephone calls on behalf of Keller Williams Realty, Inc.. At the same time, modified practices assure Keller Williams Realty, Inc. that in the future consumers may not challenge its telemarketing practices. The revision of practice has three broad categories of beneficiaries, including 1) targeted consumers, 2) Keller Williams Realty, Inc., and 3) society in general. The revisions to Keller Williams Realty's practices ensure privacy to consumers and relief of displeasure. It is understood that the pre-class action lawsuit status quo has been permanently altered. Future targeted consumers will never need to be concerned with the diminishment of privacy and pleasure at any time. Society is likely spared the need to relieve any future party that experiences damages.

2. *Determining Willingness-to-Pay*

To determine a reasonable aggregate value of the relief brought about by the Settlement Agreement, economists rely on the methods and procedures established in the discipline of economics and its sub-field, cost-benefit analysis (CBA). In assessing benefits, cost-benefit analysts routinely rely on consumers' *willingness-to-pay* to gain knowledge and/or remove an undesired feature impacting consumer satisfaction derived through a purchase. The willingness-to-pay methodology allows the direct assessment of a range of reasonable choices and economists identify value associated with each choice. In this assessment, both empirical data (subscription products available in the marketplace) and theoretical data are available on individual willingness-to-pay for telephone privacy.

3. Valuing Privacy and the Absence of Telemarketing Calls

As with all decisions to spend on goods and services, consumers seek to maximize their satisfaction, or utility, through their purchases. Relatedly, in their selection and purchase of any good or service, consumers exhibit a willingness-to-pay for the absence of an undesired feature. CBA allows economists to measure and then place a value on benefits that derive from how much consumers are willing-to-pay for the absence of an undesired feature, or in this case, the forbiddance of unsolicited telemarketing calls. With reference to the mentioned practices of Keller Williams Realty's agents, any phone call made *implies* displeasure and denial of privacy. What value does the absence of an undesired feature have for consumers and does a market exist for such a product?

4. Determining Value and Benefit

Value is most readily and routinely observed through the study of consumer behavior with respect to TCPA. Willingness-to-pay reveals a range of reasonable values representing the diversity of consumer preferences over varying periods of time.¹ Products used by millions of Americans which were designed to stop unwanted telemarketing/spam calls range in price from \$1.99 to \$3.99 per month. The Settlement Agreement, much like these products, assist in the removal of this specific undesired feature. The known market value of such products serves to assess the economic benefit bestowed on each class member and society as a result of the Settlement Agreement.²

In summary, it is the opinion of the undersigned economist, developed with a reasonable degree of economic certainty, that the estimates in this report are conservatively low. It should be noted, this analysis follows the broad assessment guidelines established by applicable economic theory and empirical analysis in determining the economic value. As reviewed above, the broad foundations of microeconomic theory and cost-benefit analysis are drawn upon to assess the reasonable value of the reformed and modified business practices and initiatives acknowledged in the parties' Settlement Agreement.

B. Correcting Market Externalities

Before briefly outlining this report's conclusions, it is useful to identify the manner in which economics provides the framework for valuation undertakings. By definition, economics is the study of how society values its resources. Economists widely agree that a society's resources—naturally

¹ Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007).

² With the range of prices presented in Appendix 1, Table 1, Table 1.A, Table 1.B, Table 1.C, and Table 2, Table 2.A, Table 2.B, and Table 2.C, the undersigned economist has relied on federal government-collected telephone number assignment data and peer-reviewed research on value of privacy to assess societal value of the remedial relief.

occurring, human, and capital—are valued by a combination of their usefulness, their abundance or scarcity and prevailing supply and demand conditions. Ultimately, the value of a resource is reflected in its price. Natural resources—the earth’s bounty of land, minerals, and water, to name a few naturally-occurring resources—are valued by the dollars spent to bring them to market, where supply conditions meet demand. Capital, often referred to as man-made means of production, is valued by its role in transforming natural resources into usable final goods and services. Finally, labor—the human resource—is valued by its ability to work with capital and natural resources in delivering a product with timely and efficient effort.

In assessing the value of a resource, economists rely on facts, assumptions, and forecasts. In those rare instances when the basic facts are known and generally agreed upon, economic assessment is often straightforward. When basic facts are subject to interpretation and conflict, analysis and review are critical. When forecasts become part of the equation, any number of conflicting interpretations may arise. Assessment proceeds with the recognition that underlying premises, assumptions, and expectations are often controversial. As a result, the undersigned economist is behooved to present associated benefits to society at several available price levels and over multiple time horizons.

1. Statutory Value of Privacy

In evaluating the reasonableness of those price levels, it is important to note the legislative history and statutory language of any public policy that may be relevant when considering the societal benefit resulting from the enactment of the public policy. With respect to the TCPA, Congress acknowledges prospective gains in societal benefit by prohibiting non-consensual telephone solicitations when it provided for the recovery of actual monetary loss or statutory damages in the amount of \$500 for each such violation, whichever is greater. In the case of willful violations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times \$500, or \$1,500.³ And certainly, there are members of the class who value such protection in the amount of \$500 dollars or more. Assuming that consumers outside the scope of the Settlement Agreement place the maximum statutory value on being protected from or for acquiescing to receipt of such non-consensual calls, the gains in societal benefit from the agreed-to remedial relief are substantial.

2. Basis for Assessed Value of Benefit to Society

³ 47 U.S.C. § 227

In this assessment, a more conservative, market-based approach is pursued utilizing common price points for products available to consumers. The value of such public good was recognized in the Federal Trade Commission’s contest aimed at promoting technologies to block and defeat the scourge of automated telemarketing systems in 2015, when Harvard University students won a grand prize, and soon the most widely adopted ad-blocking software.⁴ The recipients of this award developed the most widely adopted application for blocking unwanted telephone calls in the United States and retails for \$3.99 per month. With more than 12 million downloads and \$400 million in losses prevented,⁵ RoboKiller is the leading independent spam call and text blocker. Subscriptions to other products, such as Verizon Call Filter and Hiya App cost \$2.99 per month and are used by millions of customers in the United States. The prevalence of unwanted telemarketing calls has demonstrated there is a clear willingness-to-pay for services that eliminate undesired, unsolicited telemarketing calls.

3. Value of the Benefit to Society

a. Change in Keller Williams practices with non-employee real estate agents

Under the Settlement Agreement, Keller Williams has agreed to (1) create a TCPA task force to enhance compliance; (2) make the existing TCPA/DNC resource page on KW Connect more visible to KWRI’s franchisees and their independent contractor real estate agents; and (3) provide additional materials to franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents. These changes are expected to reduce the number of unsolicited calls that are transmitted annually by Keller Williams affiliated agents. In determining the economic value of the benefits to society, the undersigned economist recognizes the role the Settlement Agreement plays in deterring future TCPA violations.

b. Estimating Average Call Frequency and Volume

Essential to determining the economic benefits of the Settlement Agreement is understanding the call statistics during the class period. To develop this understanding, call logs during the class period were reviewed and standardized for purposes of forecasting averages into the future.

⁴ <https://www.ftc.gov/news-events/news/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks-illegal-robocalls>

⁵ <https://www.bloomberg.com/press-releases/2022-06-08/spam-text-messages-reach-11-9-billion-the-highest-level-to-date>

Call data indicates that approximately 20,000 Keller Williams realtors made approximately 85,000,000 telemarketing calls using to leads purchased from Mojo, Vulcan7, Landvoice, RedX, and Data Concierge Services over a 6.4 year period.⁶ This averages to 664 calls per realtor per year assuming that each of the realtors was engaged in telemarketing for the entirety of the 6.4 year period. However, prior research regarding realtor telemarketing in a similar context reveals that an average realtor that uses the Mojo and Vulcan7 dialers uses them for approximately 500 days. Assuming the average realtor engaged in telemarketing makes a similar proportion of calls to purchased leads, the average realtor would make approximately 3,104 total unsolicited telemarketing calls per year.

c. Estimating Employment and Utilization

With recognition that not all Keller Williams realtors are engaged in telemarketing, the undersigned economist must determine the proportion of Keller Williams realtors that were engaged in telemarketing to estimate of the number of agents engaged in telemarketing and associated total number of telemarketing calls expected per year.

During the class period, Keller Williams agent count grew from approximately 100,000 to 180,000 individuals.⁷ Based on available data, the weighted average number of realtors during the class period was approximately 140,000, of which, approximately 20,000 are known to have made made telemarketing calls, or 1.7% of realtors engaged in telemarketing. As Keller Williams has grown to 180,000 non-employee real estate agents, at a 1.7% rate, the proportional number of realtors is 3,106 agents, which would generate approximately 9.4 million unsolicited calls (per year), which would be approximately 47 million calls over a five-year period assuming no growth from Keller Williams' current size.

d. Estimating the Compliance Rate

It would be unfair to assume that the Settlement Agreement would result in 100% compliance from Keller Williams' non-employee realtors. It is understood that in accordance with the settlement agreement Keller Williams has already created a TCPA task force to enhance compliance with telemarketing laws; (2) made the existing TCPA/DNC resource page on

⁶ Plaintiff Danna St John's Motion for Class Certification, *St John v. Keller Williams Realty, Inc.*, No. 6:19-cv-01347-PGB-DCI, ECF 69 (M.D. Fla.).

⁷ <https://headquarters.kw.com/press/keller-williams-tops-100000-in-associate-count/>; <https://headquarters.kw.com/press/keller-williams-reports-ytd-22-results/>

Keller Williams' online portal for agents, KW Connect, more visible to KWRI's franchisees and their independent contractor real estate agents; and (3) provided additional materials to franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

The question then becomes, what percentage of Keller Williams realtors will cease telemarketing activities as a result of the Settlement Agreement? Keller Realty has in the past communicated to realtors that they should remain compliant with telemarketing laws, but at the same time, Keller Williams has also provided them training materials that encouraged violations of the TCPA and other telemarketing laws, and otherwise not enforced its own policies relating to telemarketing. As a result, it is likely that many Keller Williams realtors need to be told how to remain lawful with respect to the TCPA and other telemarketing laws and will have no intention of violating the law, particularly post-settlement, once they have been. How successful will the Settlement Agreement be in changing realtor behavior?

A 1,200-hour study conducted by the Department of Justice provides insight regarding the rate at which individuals, regardless of intent, demonstrate compliance in correcting known or unknown unlawful behavior.⁸ In this study, field researchers studied trends when verbal requests were made by police officers to citizens, which found that people are generally compliant when expressly requested to take particular corrective action to comply with the law. One of the three major categories in this study was asking "leaving a person alone or leaving the premises." The other two categories included "discontinuing illegal behavior" and "ceasing disorderly conduct." All three categories evaluated in this study are similar to the intrusive/illegal/unsolicited aspects of telemarketing that motivate the TCPA. Out of 1,627 encounters included in the study, 78% of citizens made choices in compliance with the requests for corrective action after already engaging in behavior that they knew or should have known was illegal. Consequently, it is reasonable to assume a significant number of calls will be avoided as a result of the changes to Keller Williams' business practices consisting of express requests to cease particular unlawful behavior and a mechanism for enforcing these requests. By applying this 78% compliance rate to the 47 million calls, the adjusted figure reduces to 36.7 million calls that will be prevented as a result of Keller Williams' changes in business practices.

d. Estimating Willingness-to-Pay to Avoid One Call

The average price of a product presented in section B.2. and Appendix 1 available to consumers seeking to prevent telemarketing calls was \$2.99 per

⁸ Author(s) S D Mastrofski; J B Snipes; A E Supina. "Compliance on Demand: The Public's Response to Specific Police Requests." *Office of Justice Programs*, <https://www.ojp.gov>

month. According to the January 2023 Nationwide Robocall Data – from robocall tracker Robocall Index, the number of robocalls received per person in the United States was 13.0 during the month of January.⁹ Therefore, for the various consumer products available, the implied price paid to avoid one call can be calculated as follows:

$$\text{Implied Price Per Call Avoided} = \frac{\$1.99}{13} = \$0.153 \text{ per call}$$

$$\text{Implied Price Per Call Avoided} = \frac{\$2.99}{13} = \$0.230 \text{ per call}$$

$$\text{Implied Price Per Call Avoided} = \frac{\$3.99}{13} = \$0.307 \text{ per call}$$

e. *Estimating the Value of the Benefit to Society*

Based on the calculations in the preceding sections, we can infer the value of the benefit to society using willingness to pay price points ranging from \$1.99 per month to \$3.99 per month.

- At a \$1.99 price point, the estimated benefit to society over the next five years is \$5,206,514.
- At a \$2.99 price point, the estimated benefit to society over the next five years is \$7,826,785.
- At a \$3.99 price point, the estimated benefit to society over the next five years is \$10,447,057.

Table 1 in Appendix 2 summarizes these values range from a minimum of \$0.55 to a maximum of \$98.33.¹⁰ Each value represents a willingness-to-pay for the benefit of not receiving unwanted cell phone calls. It is from values in this table that we derive our best estimate of the present value of the post-settlement remedial relief, using the most commonly observed willing-buyer-price-points. With the recognition that there are short-term and long-term benefits associated with remedial relief delivered by the Settlement Agreement, the undersigned economist has calculated annual values for for the next five years at three price levels referenced in Appendix 2. The central measure

⁹ “Youmail Robocall Index: January 2023 Nationwide Robocall Data.” *Robocall Index* | YouMail, <https://robocallindex.com/>.

¹⁰ The sources of all values are provided in Appendix 2.

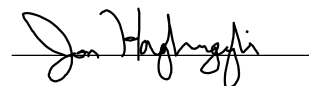
presented in the scenario analysis Table 1 shows a benefit of \$1,688,200 per year at a willingness-to-pay of \$2.99 per month (or \$.230 per call).

IV. CONCLUSION

By accounting for the anticipated compliance rate of Keller Williams realtors engaged in telemarketing based on the changes to Keller Williams' practices aimed at curbing telemarketing law violations, and the range of consumer willingness-to-pay price points to avoid a call, we are able to estimate on an annual basis the total value of the benefit to society resulting from the Settlement Agreement. As reviewed herein, it is my opinion—held with reasonable economic certainty—that the central measure of the economic value of the benefits bestowed on society is \$1,688,200 per year, and over a five-year period, the associated present value of future benefits to society is \$7,826,785.

In closing this report, the undersigned economist is available to respond to any question raised about the methods and procedures used in reaching the conclusions herein.

The above-cited appendices follow.

A handwritten signature in black ink, reading "Jon Haghayeghi", is written over a horizontal line.

Jon Haghayeghi, Ph.D.

APPENDIX 1

VALUING REMEDIAL RELIEF

TABLE 1

SUMMARY TABLE

PRESENT VALUE OF REMEDIAL RELIEF FOR INDIVIDUALS IMPACTED BY KELLER WILLIAMS, INC.
2023 TO 2027

BEVERLY DESHAY, individually, and on behalf of all others similarly situated

v.

KELLER WILLIAMS, INC.

CASE NO. 2022CA000457, IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA

Number of individuals benefitting from the absence of undesired phone calls		Aggregate Present Value of Injunctive Relief from Non-Consensual Telemarketing Calls with Market Based Market Based Willingness-to-Pay Methodology and Prices Ranging from \$23.88 to \$47.88 annually					
		\$23.88 / year \$1.99 / month (\$.153 / call)		\$35.88 / year \$2.99 /month (\$.230 / call)		\$47.88 / year \$3.99 / month (\$.307 / call)	
5 years (2023 to 2027), expected number of non consensual telemarketing calls avoided	36,700,000	\$5,206,514	[1]	\$7,826,785	[2]	\$10,447,057	[3]

[1] See Table 1.A., Column 7.

[2] See Table 1.B., Column 7.

[3] See Table 1.C., Column 7.

For a complete review of willingness-to-pay methodology, see Anthony E. Boardman, David H. Greenberg, Aidan R. Vining, and David L. Weimer, **Cost-Benefit Analysis, Concepts and Practice**, Prentice Hall, 4th Edition, Boston, 2011, pages 81-99.

TABLE 2.A

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 1: VALUE OF AVOIDING UNWANTED TELEMARKETER PHONE CALLS

BEVERLY DESHAY, individually, and on behalf of all others similarly situated
v.
KELLER WILLIAMS, INC.

CASE NO. 2022CA000457, IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA

COL 1 YEAR	COL 2 NUMBER OF CALLS	COL 3 VALUE OF BENEFIT OF AVOIDING CALL (\$1.99 per month)	COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR	COL 6 PRESENT VALUE OF EXPECTED BENEFIT	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT
	(#)	(#)	(\$)	(\$)	COL 5 / COL 6	(\$)
0 2023	7,340,000	[1]	0.153	[3]	1,123,020	1,123,020
1 2024	7,340,000		0.153		1,072,915	2,195,935
2 2025	7,340,000		0.153		1,036,102	3,232,037
3 2026	7,340,000		0.153		1,002,983	4,235,020
4 2027	7,340,000		0.153		971,494	5,206,514
Total	36,700,000		5,615,100		5,206,514	

[1] This model assumes that 7,340,000 calls will be made per year. The start date of this analysis is January of 2023.

[2] This model terminates in December of 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.153.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of January 25, 2023.

TABLE 2.B

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 2: VALUE OF AVOIDING UNWANTED TELEMARKETER PHONE CALLS

BEVERLY DESHAY, individually, and on behalf of all others similarly situated
v.
KELLER WILLIAMS, INC.

CASE NO. 2022CA000457, IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA

COL 1 YEAR	COL 2 NUMBER OF CALLS	COL 3 VALUE OF BENEFIT OF AVOIDING CALL (\$2.99 per month)	COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR	COL 6 PRESENT VALUE OF EXPECTED BENEFIT	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT	
	(#)	(#)	(\$)	(\$)	COL 5 / COL 6	(\$)	
0	2023	7,340,000	[1]	0.230	[3]	1,688,200	1,688,200
1	2024	7,340,000		0.230		1,688,200	3,301,079
2	2025	7,340,000		0.230		1,688,200	4,858,618
3	2026	7,340,000		0.230		1,688,200	6,366,370
4	2027	7,340,000		0.230		1,688,200	7,826,785
	Total	36,700,000				8,441,000	7,826,785

[1] This model assumes that 7,340,000 calls will be made per year. The start date of this analysis is January of 2023.

[2] This model terminates in December of 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.230.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of January 25, 2023.

TABLE 2.C

PRESENT VALUE OF REMEDIAL RELIEF

SCENARIO 3: VALUE OF AVOIDING UNWANTED TELEMARKETER PHONE CALLS

BEVERLY DESHAY, individually, and on behalf of all others similarly situated
 v.
 KELLER WILLIAMS, INC.

CASE NO. 2022CA000457, IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
 IN AND FOR INDIAN-RIVER COUNTY, FLORIDA

COL 1 YEAR	COL 2 NUMBER OF CALLS	COL 3 VALUE OF BENEFIT OF AVOIDING CALL (\$3.99 per month)	COL 4 EXPECTED VALUE OF BENEFIT TO CONSUMERS	COL 5 DISCOUNT FACTOR	COL 6 PRESENT VALUE OF EXPECTED BENEFIT	COL 7 CUMULATIVE PRESENT VALUE OF EXPECTED BENEFIT
	(#)	(#)	(\$)	(\$)	COL 5 / COL 6	(\$)
0 2023	7,340,000 [1]	0.307 [3]	2,253,380	1.000 [4]	2,253,380	2,253,380
1 2024	7,340,000	0.307	2,253,380	1.047	2,152,842	4,406,222
2 2025	7,340,000	0.307	2,253,380	1.084	2,078,976	6,485,199
3 2026	7,340,000	0.307	2,253,380	1.120	2,012,521	8,497,719
4 2027	7,340,000	0.307	2,253,380	1.156	1,949,337	10,447,057
Total	36,700,000		11,266,900		10,447,057	

[1] This model assumes that 7,340,000 calls will be made per year. The start date of this analysis is January of 2023.

[2] This model terminates in December of 2027, or after five years.

[3] This model assumes that the willingness-to-pay to avoid an undesired call is approximately \$.307.

[4] Factors in this column are based on yields on U.S. Treasury Securities as of January 25, 2023.

APPENDIX 2

SUPPORTING DOCUMENTS FOR VALUING WILLINGNESS-TO-PAY

TABLE 1

**VALUE OF PROTECTION FROM NON-CONSENSUAL SURVEY CALLS:
WILLING BUYER'S PRICE POINTS**

PRICE PER YEAR	SOURCE / SUPPORT
\$0.55	Varian et al.'s (2004) estimate ranged from \$60 million to \$3.6 billion a year. With 108.4 million households, this was equivalent to a range of \$0.55 to \$33.21 per household per year.
\$3.22	Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007). Available at SSRN: https://ssrn.com/abstract=1000533 or http://dx.doi.org/10.2139/ssrn.1000533
\$8.25	Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (June 2007). Available at SSRN: https://ssrn.com/abstract=1000533 or http://dx.doi.org/10.2139/ssrn.1000533
\$13.19	Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (September 2007). The perceived value of the “do not call” registry to range from \$13.19 to \$98.33 per household. The implied national gain in consumer welfare (relative to the state level registries) ranged from \$1.42 to \$11.62 billion.
\$23.88	Nomorobo app charges \$1.99 per month for Robocall Blocking. https://play.google.com/store/apps/details?id=com.nomorobo&hl=en
\$33.21	Varian et al.'s (2004) estimate ranged from \$60 million to \$3.6 billion a year. With 108.4 million households, this was equivalent to a range of \$0.55 to \$33.21 per household per year.
\$35.88	Hiya Charges Users \$2.99 per month to block calls via iOS app. https://blog.hiya.com/hiya-premium-providing-more-value-to-the-phone-experience/
\$35.88	Verizon charges \$2.99 per month for its Call Filter. https://www.verizon.com/solutions-and-services/call-filter/
\$47.88	Robokiller - Robocall Blocker charges \$3.99 per month to block spam calls. https://play.google.com/store/apps/details?id=com.robokiller.app&hl=en_US
\$98.33	Png, Ivan P. L., On the Value of Privacy from Telemarketing: Evidence from the 'Do Not Call' Registry (September 2007). The perceived value of the “do not call” registry to range from \$13.19 to \$98.33 per household. The implied national gain in consumer welfare (relative to the state level registries) ranged from \$1.42 to \$11.62 billion.
Measures of Central Tendency:	
	Mean: \$30.03 per year
	Median: \$28.55 per year

EXHIBIT 3

**IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA**

**BEVERLY DESHAY, individually and on
behalf of all those similarly situated,**

Plaintiff,

Case No.: 2022CA000457

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

/

**DECLARATION OF AVI R. KAUFMAN
IN SUPPORT OF PLAINTIFF’S MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Avi R. Kaufman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Keller Williams Realty, Inc.¹ I submit this declaration in support of Plaintiff’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.

2. Representative Plaintiff Beverly DeShay and Defendant Keller Williams Realty, Inc. reached a class action Settlement Agreement resulting in \$40,000,000 of monetary relief to the Class. The Settlement provides monetary relief to approximately 2 million Class Members of \$20 per claim. Keller Williams has also agreed to change its business practices that resulted in this Litigation and the Related Litigation. Specifically, Defendant has agreed to (1) create a task

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

force to enhance realtor compliance with telemarketing laws, including the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and the corresponding National Do Not Call Registry requirements (“DNC”), 47 C.F.R. § 64.1200(c)(2); (2) make the existing TCPA/DNC resource page on Defendant’s online platform for realtors, KW Connect, more visible to KWRI’s franchisees and their real estate agents; and (3) provide training and other materials to KWRI’s franchisees about TCPA/DNC compliance that they can use to educate their real estate agents. The Parties’ proposed Settlement is exceedingly fair and well within the range of final approval.

3. The resolution here arose out of this Litigation and the Related Litigation, which are all substantively similar class action lawsuits against Defendant alleging Defendant is vicariously liable for TCPA violative calls made by affiliated realtors in which Class Counsel is counsel for the plaintiffs, including: (1) *Wright v. Keller Williams Realty, Inc.*, Case No. 1:18-cv-775, now pending in United States District Court for the Western District of Texas; (2) *Samataro v. Keller Williams Realty, Inc.*, Case No. 1:21-cv-76, now pending in United States District Court for the Western District of Texas; (3) *Hayhurst v. Keller Williams Realty, Inc.*, Case No. 1:19-cv-657, now pending in United States District Court for the Middle District of North Carolina; (4) *St. John v. Keller Williams Realty, Inc.*, Case No. 6:19-cv-1347, now pending in United States District Court for the Middle District of Florida; (5) *Asher v. Keller Williams Realty, Inc.*, Case No. 1:20-cv-835, previously pending in United States District Court for the Western District of Texas; and (6) *MacDonald v. Keller Williams Realty, Inc.*, Case No. 2:20-cv-00138, previously pending in United States District Court for the District of Arizona.

4. This class action Settlement was reached as a direct result of more than four years of active litigation across various jurisdictions involving extensive motion practice, discovery, expert work, and ultimately settlement efforts. Indeed, Class Counsel fully briefed 23 substantive,

adversarial motions, including 8 motions to dismiss, 4 motions to compel, 2 motions for class certification, 1 motion for summary judgment, and 1 *Daubert* motion.

5. Like motion practice, discovery was fulsome, involving multiple waves of written discovery between the Parties, multiple waves of third party subpoenas, expert discovery relating to multiple expert reports relating to multiple different disciplines, and depositions. Plaintiff issued 44 subpoenas to different realtors affiliated with Defendant, 28 subpoenas to companies providing dialing platforms to realtors, companies providing leads to realtors, and/or telephone carriers, responded to 6 sets of discovery requests on behalf of plaintiffs, and served 5 sets of discovery to Keller Williams.

6. Plaintiff also pursued a third party enforcement action in the Central District of Illinois in order to depose a Keller Williams realtor with unique knowledge concerning Defendant's realtors' lead generation and calling practices. In sum, there were 14 depositions taken across the Related Litigation. Class Counsel took 10 depositions and prepared witnesses and defended 4 depositions.

7. As a result of Class Counsel's robust discovery efforts, hundreds of thousands of pages of documents were produced by Defendant and subpoenaed third parties and reviewed by Class Counsel. Class Counsel also conducted significant research and investigation outside of that which was produced by Defendant and subpoenaed third parties, resulting in the discovery of tens of thousands of additional pages of documents and hundreds of hours of videos concerning Defendant's courses for realtors.

8. Plaintiff also engaged 2 experts in different disciplines and served 3 expert reports. Plaintiff also reviewed and analyzed Defendant's 3 expert reports.

9. And just as the Parties invested in motion practice and discovery, they also expended significant effort trying to resolve the case. In an effort to facilitate a resolution of the Litigation and Related Litigation and mediate settlement discussions, the Settling Parties

participated in lengthy, arms' length negotiations, including three separate days of mediation with mediator Bruce A. Friedman, Esquire of JAMS in Los Angeles, California. The Parties then engaged in months and months of additional, adversarial negotiations with Mr. Friedman's assistance finally culminating in the Settlement Agreement.

10. This case involves significant ongoing risk at class certification, summary judgment, trial, and on appeal due to (1) the Class's novel liability theory and (2) changes in TCPA and consumer class action law that materialized and would continue to materialize during its pendency. In fact, two class certification motions remain fully briefed and undecided in the Related Litigation, and Keller Williams has two pending summary judgment motions addressing the novel vicarious liability theory. Notably, at the time of filing the first of the Related Litigation cases, no court had certified a class on a similar theory of realty brokerage vicarious liability for TCPA violative calls made by affiliated realtors or found the theory otherwise viable in any legal context. Indeed, Class Counsel are at the forefront of this novel theory and are not aware of a single such case being filed in any court before Class Counsel began pursuing it with the first of the many Related Litigation case filings against Defendant in May 2018—nearly 5 years ago. Courts have disagreed about the viability of this theory at every stage of litigation, including at the class certification stage. Therefore, there is significant ongoing risk involved in continuing to pursue the Class's novel vicarious liability theory. And that risk is imminent, given the pendency of class certification in two of the Related Litigation and Keller Williams's two pending summary judgment motions challenging the vicarious liability theory, which, even with favorable decisions for the plaintiffs, would continue through trial and appeal.

11. Relatedly, there is considerable ongoing risk that the ever-changing TCPA and consumer law landscape could ultimately undermine the Class's claims in part or in whole – just

as it in fact did over the course of the Related Litigation.

12. Prior to reaching the settlement, Class Counsel reviewed Defendant's confidential financial information (as Defendant is a privately held company) and was provided an opportunity to ask questions regarding that information. Class Counsel's analysis of this financial information confirmed that if the Litigation and Related Litigation were to proceed and ultimately be successful, Defendant would not be in a position to satisfy a judgment and would be forced into bankruptcy. There is no doubt that even if successful through post judgment appeals, absent a settlement at a fraction of their maximum potential damages, the Class would receive nothing.

13. In fact, this risk to the Class of non-recovery if the Litigation and Related Litigation go forward is exacerbated by the risk posed by another class action pending against Defendant alleging antitrust violations in which the court has already (1) certified multiple classes, (2) denied Defendant's motion for leave to appeal the class certification order, (3) denied Defendant's summary judgment motion, (4) denied Defendant's motion for leave to appeal the denial of the summary judgment motion, and (4) set the case for a class trial in 2023.

14. Ultimately, the Settlement confers substantial and immediate benefits upon the Class and others whereas continued and protracted litigation may have ultimately delivered none given the risks presented by Plaintiff's novel vicarious liability theory, the ever changing TCPA and consumer class action law landscape, and the uncertainties of contested litigation, including at class certification, summary judgment, trial and on appeal. Moreover, Defendant would not have settled the case on a direct pay model. Class Counsel and the Plaintiff strongly endorse the Settlement given the significant ongoing risk associated with going forward with the Class's claims. Class Counsel do not believe Defendant was in a position to withstand a greater judgment than the \$40 million in monetary relief and the additional value from the remedial relief created

by this settlement.

15. The Class consists of approximately two million members. The Class is ascertainable on the basis of the call records and other objective criteria, and members of the Class are so numerous that separate joinder of each member is impracticable. See Fla. R. Civ. P. 1.220(a)(1).

16. The commonality requirement is readily satisfied. There are multiple questions of law and fact that are common to the Class that would generate common answers. These questions are directly guided by Plaintiff's claims and Defendant's defenses, and are subject to class wide resolution based on common evidence.

17. Typicality is met because Plaintiff's claims and the class's claims arise from Defendant's course of conduct and are based on the same legal theories.

18. Plaintiff has no antagonistic or conflicting interest with the members of the proposed class. To the contrary, she demonstrated her commitment to the class by actively participating in the litigation, including by helping to investigate the potential claims, staying informed regarding the case, and participating in settlement.

19. The Settlement was the result of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any segments of the class.

20. Settlement here is the result of extensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this case. Moreover, the Settlement is not conditioned on an award of attorneys' fees.

21. Class Counsel have extensive experience and expertise prosecuting complex class actions, and are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

22. Since 2008, the attorneys of Kaufman P.A. have worked on consumer class action cases. To date, not including this Settlement, Class Counsel have recovered over \$100 million through class action settlements for the benefit of consumers, including more than \$60 million in TCPA cases. Kaufman P.A.'s attorneys have also successfully recovered millions of dollars in settlements and judgments for plaintiffs in breach of contract actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

23. I have a degree in government from Harvard University and a JD from Georgetown University Law Center, and have been practicing law for over ten years. For more than five years after graduation, I was a litigation associate at the law firm of Carlton Fields in its national class action and commercial litigation practice groups. During that time, I represented plaintiffs and defendants in various types of individual and class litigation, including securities and TCPA class actions. In 2016, I joined the law firm of Kopelowitz Ostrow Ferguson Weiselberg Gilbert as a partner to work exclusively on consumer class actions. From 2016 until January 2018, when I departed KOFWG to start my own law firm, I represented plaintiffs in class actions arising from products defects, illegal payday loans, false advertising, and TCPA violations, including as lead counsel in a TCPA class action against CITGO Petroleum Corp. that settled for \$8.3 million in 2017.

24. I am a member of the Florida bar, and am admitted to practice in all federal district courts in Florida and in the Eleventh Circuit. I am also admitted to practice in the Eastern District of Wisconsin, Eastern District of Michigan, Northern District of Illinois, District of Colorado,

Western District of Arkansas, Central District of Illinois, and the Third Circuit.

25. Rachel E. Kaufman, Esq. has degrees in communications and philosophy from Northwestern University and a JD from Boston University School of Law. Prior to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its commercial litigation practice and Epstein, Becker & Green in its class action, commercial litigation, and healthcare practices. Rachel is a member of the California, Florida, and Washington, D.C. bars. Rachel is also admitted to practice in all federal district courts in California, the Southern and Middle Districts of Florida, the Eleventh Circuit and the Ninth Circuit.

26. Since starting Kaufman P.A., I have focused almost exclusively on TCPA class actions, litigating in various jurisdictions across the country. Among other cases, our firm has been appointed class counsel in the following TCPA cases:

- *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida Telephone Consumer Protection Act class action resulting in a \$925,110 class wide settlement.
- *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.4 million class wide settlement.
- *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$2.2 million class wide settlement.
- *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone Consumer Protection Act class action resulting in a \$492,250 class wide settlement.
- *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$9.7 million class wide settlement.
- *Donde v. Freedom Franchise Systems, LLC et al.* (S.D. Fla. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$948,475.50 class wide settlement.

- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$5.16 million class wide settlement.
- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.5 million class wide settlement.
- *Beiswinger v. West Shore Home LLC* (M.D. Fla. 2022), a nationwide Telephone Consumer Protection Act class action resulting in a \$1,347,500 class wide settlement.
- *Bumpus, et al. v. Realty Brokerage Group LLC* (N.D. Cal. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million class wide settlement.
- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action resulting in a \$738,375 class wide settlement.
- *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2022), a nationwide Telephone Consumer Protection Act class action resulting in a \$1,950,000 class wide settlement. (Final Approval Hearing scheduled for February 2023).

27. Class Counsel have vigorously litigated this action and will continue to do so through completion.

28. Plaintiff's and the Class's claims demanded considerable time and labor, precluding other employment by Class Counsel, and making the requested fee fair, reasonable, and justified. Below, I set forth the nature of the work performed and time expended by Kaufman P.A. in the Litigation and Related Litigation to demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

29. I was involved in all major aspects of litigating this Litigation and the Related Litigation. Those efforts generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-filing investigation and discovery; (c) motion practice; (d) settlement; and (e) case and settlement management.

30. I am the attorney who oversaw the day-to-day activities in this Litigation and Related Litigation and have reviewed the firm's time records in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time entries, as well as the necessity for, and reasonableness of, the time and expenses committed to this Litigation and the Related Litigation. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Litigation and Related Litigation. In addition, I believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

31. In total, Kaufman P.A. devoted 2,606 hours to this litigation, as of January 30, 2023, and Coleman PLLC devoted 1,294 hours to this litigation, as of January 30, 2023.² A breakdown of the Kaufman P.A. hours devoted to this matter per attorney is provided below.

32. Class Counsel has been awarded attorneys' fees as a percentage of the fund in TCPA class actions based on lodestar cross-checks using Mr. Kaufman's hourly rate of \$800 and Ms. Kaufman's and Mr. Coleman's hourly rate of \$730.

33. Based on the hourly rates of \$730 for Ms. Kaufman and Mr. Coleman and \$800 for Mr. Kaufman, the total lodestar amount for Class Counsel's time expended to date in this action is \$2,953,960. Accordingly, the lodestar amount is a 3.3 times multiplier of the requested fee—a multiplier well within the range approved in similar cases.

34. Moreover, the estimated lodestar does not include additional time that will be expended by Kaufman P.A. Based on my experience in prior class-wide litigation, I

² Detailed billing records are available for the Court's in camera inspection on request.

conservatively anticipate that Kaufman P.A. will expend more than 50 additional hours, on top of the below-itemized time, in preparing for and attending the final fairness hearing, continuing to oversee the notice program, overseeing the claims process for the settlement, and responding to Class members' inquiries.

Pre-filing Investigation and Pleadings

35. Before filing the Litigation or Related Litigation, Kaufman P.A. conducted a thorough investigation into the facts of the cases, including by investigating plaintiffs' relationships and experiences with Defendant, if any, extensively investigating the callers, Defendant and its business practices, as well as researching the potential claims plaintiffs and the Class had against the Defendant. This phase also included reviewing plaintiffs' records related to the calls and evaluating necessary discovery to pursue the action. This phase also involved revising the Complaint and other initiating documents. After the initial pleading, this phase also involved revising the Amended Complaint, and in the Texas Related Litigation, preparing a consolidated complaint.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	63	\$50,400
Rachel E. Kaufman	\$730	20	\$14,600
	Total	83	\$65,000

Post-filing Investigation and Discovery

36. In this phase of litigation the work performed by Kaufman P.A. included, but was not limited to, communicating with plaintiffs regarding the progress of the case; revising plaintiffs' initial disclosures and 6 sets of discovery responses; reviewing and producing documents; and preparing plaintiffs for their depositions.

37. This category also includes the extensive time spent strategizing regarding discovery, including areas of inquiry and potential third parties involved with Defendant's telemarketing; preparing and revising 5 sets of discovery requests to Defendant; investigating

Defendant’s practices and procedures; preparing and revising subpoenas to 28 third party vendors, including platforms, carriers, and lead generators, and 44 realtors; strategizing, preparing for and taking 10 depositions, including of Defendant, lead generation and dialing platform vendors, and realtors; analyzing and reviewing Defendant’s discovery responses; analyzing and reviewing third party subpoena responses; reviewing and analyzing thousands of documents, excel spreadsheets, and videos produced by Defendant and found through internet research; and reviewing and analyzing thousands of pages of electronic documents produced by third parties, including telephone carriers, lead generation and dialing platform vendors, and realtors, including extensive analysis of call logs.

38. This phase also includes significant time spent meeting and conferring with third parties and Defendant regarding discovery requests, subpoenas and the associated documents sought by Class Counsel, including conferring with Defendant’s counsel and third parties’ counsel regarding ongoing disputes and resolutions throughout the course of discovery; conferring with counsel and third parties regarding, preparing, and revising third party lead generation and dialing platform vendor declarations; pursuing a third party subpoena enforcement action resulting in compliance with a subpoena for deposition; and conferring with Defendant’s counsel over the course of litigation prior to filing plaintiffs’ motions to compel realtor affiliation data and complete productions related to prior complaints and surveys regarding realtors’ business sources.

39. This category also includes analyzing the need for experts and areas of expertise; selecting and retaining plaintiffs’ experts; working with the experts to analyze the expansive electronic document production and reviewing plaintiffs’ experts’ reports and supplemental report; analyzing Defendant’s expert reports; preparing for and defending one of Plaintiff’s expert’s depositions.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
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Avi R. Kaufman	\$800	685	\$548,000
Rachel E. Kaufman	\$730	404	\$294,920
	Total	1,089	\$842,920

Law and Motion Practice

40. During this phase of the litigation, Kaufman P.A. took the lead on researching and drafting all briefing in the Litigation and Related Litigation. The motion practice was extensive and included multiple dispositive and functionally dispositive motions centering on complex and novel legal arguments. Kaufman P.A.’s work during this phase included, but was not limited to, analyzing Defendant’s pleadings; analyzing, researching, and fully briefing 23 substantive motions, including but not limited to responses to Defendant’s 8 motions to dismiss, various additional motions to stay and motions to strike class allegations, analyzing and briefing dispositive motions, including meeting and conferring and preparing and revising stipulated agreed material facts, and fully briefing 2 motions for class certification, including extensive research concerning vicarious liability and factual support in the record (supported by approximately 100 exhibits each), 4 motions to compel documents from Defendant, Defendant’s *Daubert* motion. This phase of litigation also included researching, preparing, and revising the motions for preliminary approval and for final approval, Class Counsel fees and expenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	579	\$463,200
Rachel E. Kaufman	\$730	545	\$397,850
	Total	1,124	\$861,050

Settlement

41. During this phase of the litigation, Kaufman P.A. was engaged in all aspects of settlement, including, but not limited to, engaging in negotiations with opposing counsel at various times over the course of litigation; drafting and revising mediation statements; preparing for and participating in three separate mediation sessions with Bruce Friedman; negotiating with opposing counsel with the assistance of the mediator over the course of the months following mediation sessions; participating in settlement calls with plaintiffs; and drafting and revising various iterations of the settlement agreement and associated documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	115	\$92,000
Rachel E. Kaufman	\$730	58	\$42,340
	Total	173	\$134,340

Case and Settlement Management

42. During this phase of the litigation, Kaufman P.A. was engaged in all aspects of case and settlement management, including strategizing and coordinating tasks with co-counsel; requesting and evaluating bids for settlement administration; analyzing data necessary to administrate the Settlement; revising the claim form and notices; coordinating with and overseeing the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website, reviewing claims, and addressing questions as they arose; and evaluating the notice program.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$800	86	\$68,800
Rachel E. Kaufman	\$730	51	\$37,230
	Total	137	\$106,030

Reasonable Expenses

43. The costs incurred by Kaufman P.A. for which reimbursement is sought as part of the \$10,000,000, total \$ 59,269.96, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Coleman PLLC incurred costs for which reimbursement is sought of \$127,905.80. Accordingly, in sum, Class Counsel incurred total costs for which reimbursement is sought of \$187,175.76 in pursuing this action. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Filing Fees	\$498
Courtesy Copies and Mailings	\$607.42
Process Servers	\$9,701.04
Experts	\$12,000
Travel	\$1,376.57
Deposition Fees	\$22,959.80
Mediation	\$12,127.13
Total	\$59,269.96

44. The expenses incurred in this Litigation are reflected in the books and records of my firm. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

45. Class Counsel spent 3,900 hours and nearly \$200,000 to zealously promote the Class's interests. Class Counsel represented Plaintiff and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out

of pocket expenses invested into this contentious case. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

46. The time and resources devoted to this Litigation and the Related Litigation readily justify the requested fee. Moreover, Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved and Defendant's vigorous defense of plaintiffs' and the Class's claims. Despite Class Counsel's effort in litigating, Class Counsel remain completely uncompensated for the time invested in the Litigation and Related Litigation, in addition to the expenses we advanced.

47. The Settlement provides an extremely fair and reasonable recovery for the Class given the combined litigation risks, including the strength of Defendant's defenses, the challenging and unpredictable path of litigation, Defendant's financial condition, and the changing TCPA law landscape.

48. The Settlement Agreement is subject to the approval and determination of the Court as to the fairness, reasonableness and adequacy of the settlement, which, if approved, will result in final certification of the Class and dismissal of the action with prejudice. It is my opinion that the settlement achieves a result which is fair, reasonable and adequate.

49. The Settlement is reasonable and fair because it provides an excellent monetary result for Class Members and meaningful remedial relief in return for a narrow release tailored to the conduct and claims presented in the action.

50. Ultimately, any settlement requires the parties to balance the merits of the claims and defenses asserted against the risks of continued litigation and attendant delay. By reaching this Settlement, the parties will avoid protracted litigation and will establish a means for prompt resolution of Class Members' claims against Defendant. Given the alternative of long and complex litigation before this Court, the risks involved in such litigation, and the continued risk of a change in TCPA law that could defeat Plaintiff's and the class's claims in part or in whole, the availability of prompt relief under the Settlement is highly beneficial.

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

Dated: January 31, 2023

/s/ Avi R. Kaufman

Avi R. Kaufman

EXHIBIT 4

**IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA**

**BEVERLY DESHAY, individually and on
behalf of all those similarly situated,**

Plaintiff,

Case No.: 2022CA000457

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

/

**DECLARATION OF STEFAN COLEMAN
IN SUPPORT OF PLAINTIFF’S MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Stefan Coleman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Keller Williams Realty, Inc.¹ I submit this declaration in support of Plaintiff’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.

2. Class Counsel have extensive experience and expertise prosecuting complex class actions, and are particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

3. I am a graduate of the University of Virginia and the University of Miami School of Law. I have practiced law for over thirteen years in which time I have participated in a number

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

of significant class actions on behalf of consumers. The following is a brief list of some of the class actions in which I have participated:

- *Pimental v. Google Inc.*, a Telephone Consumer Protection Act case that resulted in a \$6 million settlement for consumers who received a text message from Google's Slide app.
- *Woodman v. ADP Dealer Services, Inc., et al.*, a Telephone Consumer Protection Act case that resulted in a \$7.5 million settlement for consumers who received unsolicited text messages promoting car sales.
- *Lanza v. Palm Beach Holdings., et al.*, a Telephone Consumer Protection Act case that resulted in a \$6.5 million settlement for consumers who received unsolicited text messages.
- *Kolinek v Walgreen, Co.* a Telephone Consumer Protection Act case that resulted in an \$11 million settlement for consumers who received unsolicited calls to their cell phone.
- *Hopwood v. Nuance Communications., et al.*, a Telephone Consumer Protection Act case that resulted in a \$9.24 million settlement for consumers who received unsolicited calls.
- *Kran v. Hearst* a Telephone Consumer Protection Act case that resulted in a \$2.1 million settlement for consumers who received unsolicited calls.
- *Schlossberg v. Gannett Co., Inc.* a Telephone Consumer Protection Act case that resulted in a \$13.4 million settlement for consumers who received unsolicited calls.
- *Mendez v. Price Self Storage*, a Telephone Consumer Protection Act case that resulted in a \$450,000 settlement for consumers who received unwanted text messages.
- *Newby v. Rita's Water Ice Franchise.,* a Telephone Consumer Protection Act case that resulted in a \$3 million settlement for consumers who received unsolicited text messages.
- *Flanigan v. The Warranty Group, Inc. and American Protection Plans LLC d/b/a American Residential Warranty.,* a Telephone Consumer Protection Act case that resulted in a \$16 million settlement for consumers who received unsolicited calls.
- *Martin v. Global Marketing Research Services,* a Telephone Consumer Protection Act case that resulted in a \$10 million fund for consumers who received unsolicited calls.
- *Stone & Co. v. LKQ Corporation,* a Telephone Consumer Protection Act case that resulted in a \$3.26 million fund for consumers who received a fax from the defendant.

- *Dobkin v. NRG*, a Telephone Consumer Protection Act case that resulted in a \$7 million fund for consumers who received an unwanted calls from the defendant.
- *Gergetz v. Telenav*, a Telephone Consumer Protection Act case that resulted in a \$3.5 million fund for consumers who received a text message from the Defendant.
- *Bowman v. Art Van Furniture*, a Telephone Consumer Protection Act case that resulted in a \$5.87 million fund for consumers who received unwanted phone calls from the Defendant.

4. Class Counsel zealously represented Plaintiff and the Class Members' interests throughout the litigation and will continue to do so.

5. Below, I set forth the nature of the work I performed in the Litigation and Related Litigation to demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and should be approved by the Court.

6. I was involved in all major aspects of litigating this action and the Related Litigation. Those efforts generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-filing investigation and discovery; (c) law and motion practice; (d) settlement; and (e) case and settlement management.

7. I am the attorney who performed the activities categorized below and have reviewed my time records in connection with the preparation of this Declaration. The purpose of this review was to confirm the accuracy of the time entries, as well as the necessity for, and reasonableness of, the time and expenses committed to this Litigation. As a result of this review, I believe the time reflected herein and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would be typically charged to an hourly fee-paying client in the private legal market.

8. In total, I devoted 1,294 hours to this Litigation and the Related Litigation, as of

January 30, 2023. A breakdown of my lodestar is provided below. The total lodestar amount for my time is based on the hourly rate of \$730.

Pre-filing Investigation and Pleadings

9. Before filing the Litigation or Related Litigation, my firm conducted a months long investigation into the facts of the cases, including by investigating plaintiffs’ relationships and experiences with Defendant, if any, extensively investigating the callers and their relationship to Defendant, Defendant and its business practices, as well as researching the potential claims plaintiffs and the Class had against the Defendant. This phase also involved drafting the Complaint and other initiating documents. After the initial pleadings, this phase also involved revising the complaints, and in the Texas Related Litigation, preparing a consolidated complaint. This phase also included extensive communication with plaintiffs regarding development of the facts and pleadings, including by gathering and reviewing plaintiffs’ records and researching and reviewing extensive publicly available information concerning Defendant, its realtors, their affiliation and training, lead generation vendors, dialing platforms, and Defendant’s business practices.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	260	\$189,800

Post-filing Investigation and Discovery

10. In this phase of litigation the work performed by my firm included, but was not limited to, communicating with plaintiffs regarding the facts pertinent to their claims and the progress of the case; preparing plaintiffs’ initial disclosures and 6 sets of discovery responses, including working with plaintiffs to gather responsive documents, reviewing and producing documents; and preparing plaintiffs for their respective depositions.

11. This category also includes the extensive time spent strategizing regarding discovery, including areas of inquiry and potential third parties involved with Defendant’s telemarketing; revising 5 sets of discovery requests to Defendant; extensive investigation of Defendant’s practices and procedures; preparing and revising subpoenas to 28 third party vendors,

including platforms, carriers, and lead generators, and 44 realtors; strategizing and preparing for 10 depositions, including of Defendant, lead generation and dialing platform vendors, and realtors; analyzing and reviewing Defendant’s discovery responses; analyzing and reviewing third party subpoena responses and following up regarding the same; reviewing and analyzing hundreds of thousands of documents, excel spreadsheets, and hundreds of hours of videos produced by Defendant, third parties, and material discovered through internet research. This category also includes extensive analysis of training materials and call logs.

12. This phase also includes significant time spent strategizing regarding necessary evidence to support the claims; preparing for meet and confers with third parties and Defendant regarding discovery requests, subpoenas and the associated documents sought by Class Counsel, including conferring with Defendant’s counsel and Mojo’s and Vulcan7’s counsel regarding ongoing disputes and resolutions throughout the course of discovery; conferring regarding and revising third party lead generation and dialing platform vendor declarations.

13. This category also includes analyzing the need for experts and areas of expertise; selecting and retaining plaintiffs’ experts; working with the experts to analyze the expansive electronic document production and reviewing plaintiffs’ experts’ reports and supplemental report; analyzing Defendant’s expert reports.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	740	\$540,200

Law and Motion Practice

14. During this phase of the litigation, my firm reviewed and revised all briefing in the Litigation and Related Litigation, which included extensive motion practice and included multiple dispositive and functionally dispositive motions centering on complex and novel legal arguments. My work during this phase included, but was not limited to, analyzing Defendant’s pleadings; analyzing, researching, and assisting in the briefing of 23 substantive motions, including but not

limited to responses to Defendant’s 8 motions to dismiss, various additional motions to stay and motions to strike class allegations, analyzing and briefing dispositive motions, 2 motions for class certification, including extensive research concerning vicarious liability and factual support in the record (supported by approximately 100 exhibits each), 4 motions to compel documents from Defendant, Defendant’s *Daubert* motion. This phase of litigation also included revising the motions for preliminary approval and for final approval, Class Counsel fees and expenses.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	230	\$167,900

Settlement

15. During this phase of the litigation, my firm was engaged in coordinating mediations; strategizing regarding and participating in settlement negotiations, including, but not limited to, conferring with co-counsel regarding mediation and continuing settlement negotiations after mediation; participating in settlement calls with plaintiffs; and reviewing and revising various iterations of the settlement agreement and associated documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	24	\$17,520

Case and Settlement Management

16. During this phase of the litigation, my firm was engaged in overseeing case management issues; strategizing and coordinating tasks with co-counsel; requesting and evaluating bids for settlement administration; overseeing Settlement administration, including but not limited to communications with Class Members regarding the Settlement and settlement website, coordinating with and overseeing the settlement administrator regarding the implementation of the notice plan and claims process, including by reviewing and testing all aspects of the Settlement Website, reviewing claims, and addressing questions as they arose; and evaluating the notice program.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Stefan Coleman	\$730	40	\$29,200

Reasonable Expenses

17. The costs incurred by my firm for which reimbursement is sought as part of the \$10,000,000, total \$127,905.80, which were reasonable and necessary to the effective litigation of this case and are the types of expenses that would typically be billed to clients in non-contingency matters, and therefore should be approved. Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Filing and Pro Hac Vice Fees	\$1,800
Process Servers	\$335
Experts	\$92,405.80
Cost for production of subpoena responses	\$26,915
Mediation	\$6,450
Total	\$127,905.80

18. The expenses incurred in this Litigation and Related Litigation are reflected in the books and records of my firm. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

19. The time and resources devoted to this Litigation and the Related Litigation readily justify the requested fee. Moreover, Class Counsel represented plaintiffs and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out of pocket expenses invested into this contentious case. This risk of nonpayment

incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

20. Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved, changing TCPA legal landscape, and Defendant's vigorous defense of plaintiffs' and the Class's claims.

21. The Settlement provides an extremely fair and reasonable recovery for the Class given the combined litigation risks, including the strength of Defendant's defenses, the challenging and unpredictable path of litigation, Defendant's financial condition, and the changing TCPA law landscape.

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

Dated: January 31, 2023

/s/ Stefan Coleman
Stefan Coleman

EXHIBIT 5

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:18-cv-01851-PGB-EJK

BRUCE WRIGHT,
JORGE VALDEZ,
EDWIN DIAZ,

Plaintiffs,

Orlando, Florida
October 25, 2022
10:29 a.m. - 10:37 a.m.

v.

eXp REALTY, LLC,

Defendant.

_____ /

TELEPHONIC FINAL FAIRNESS HEARING
BEFORE THE HONORABLE PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Counsel for Plaintiffs:

Avi Robert Kaufman
Kaufman P.A.
400 NW 26th Street
Miami, Florida 33127

Stefan Coleman
Law Offices of Stefan Coleman, PLLC
66 West Flagler Street, Unit 900
Miami, Florida 33130

Counsel for Defendant:

Eric J. Troutman
Squire Patton Boggs (US) LLP
555 South Flower Street, 31st Floor
Los Angeles, California 90071

1 **APPEARANCES: (continuing)**

2 **Counsel for Defendant:**

3 Daniel L. Delnero
4 Squire Patton Boggs (US), LLP
5 One Atlantic Center
6 1201 West Peachtree Street, NW
7 Suite 3150
8 Atlanta, Georgia 30309

9
10 Jason Daniel Joffe
11 Squire Patton Boggs (US), LLP
12 200 South Biscayne Boulevard, Suite 4700
13 Miami, Florida 33131

14
15 **Court Reporter:** Nikki L. Peters, RMR, CRR, CRC
16 Federal Official Court Reporter
17 401 West Central Boulevard, Suite 4600
18 Orlando, Florida 32801
19 courttranscripts@outlook.com

20 Proceedings recorded by mechanical stenography.
21 Transcript produced by Computer-Aided Transcription.
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P R O C E E D I N G S

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THE COURTROOM DEPUTY: This is in the matter of Bruce Wright, Jorge Valdes, and Edwin Diaz v. eXp Realty, LLC. Case No. 6:18-cv-1851-Orl-PGB-EJK.

Will counsel, starting with the plaintiff, please enter your appearance.

MR. KAUFMAN: Good morning. On behalf of plaintiff in the class, this is Avi Kaufman, together with Stefan Coleman.

MR. TROUTMAN: Good morning. This is Eric Troutman on behalf of the defendant, eXp Realty.

THE COURT: All right. Do we have everybody?

MR. DELNERO: One more. This is Daniel Delnero on behalf of the defendant, eXp Realty.

MR. JOFFE: And -- and Jason Joffe on behalf of eXp Realty as well. Thank you, Your Honor. Good morning.

THE COURT: Very good. Thank you, Gentlemen. Good morning.

All right. I decided to do this by telephone to save you-all from driving up here for what will turn out to be a very short hearing. I wish I would have thought of it sooner. I hope nobody made travel arrangements by plane and had any adverse outcome from that.

What I have pending right now, gentlemen, as you-all know -- this is just for the record -- I have the unopposed

1 motion for final approval of class action settlement at Docket
2 Entry 223. There's a supplement to that at 226, the response
3 taking no position as to fees and expenses at Docket Entry 227,
4 and the motion for attorneys' fees and expenses at Docket Entry
5 217.

6 There's also a proposed order that's been submitted
7 by the parties, which I've reviewed and which looks fine to me.

8 I went back and re-familiarized myself with the case
9 beginning with, of course, the history of this case, dating
10 back to October 30th, 2018.

11 You-all had the class certification granted by me on
12 September 21st, 2021, see Docket Entry 174.

13 I approved the class settlement on April 8th, 2022,
14 Docket Entry 212.

15 We went back and forth on notice so that I could make
16 sure that in a claims-made settlement of this type that there
17 was as many opportunities as possible for class members to file
18 claims. And it's reported to me that here there were 9,132
19 claims, two objections -- pardon me, two opt-outs, no
20 objections.

21 I'll keep this fairly brief, but we all know the
22 rules in dealing with approval of class action settlements, the
23 likelihood of success on the trial, the range of possible
24 recovery, complexity, expense and duration of litigation, the
25 amount of opposition to settlement, and the stage of the

1 proceedings at which settlement was achieved, et cetera.

2 And you-all have done a really commendable job in
3 briefing all of these issues, including reminding me that this
4 particular TCPA class action involved some pretty novel issues
5 of standing and vicarious liability. It was hardly a slam
6 dunk. The parties worked hard and had two different settlement
7 conferences between very capable mediators during the course of
8 this, copious amounts of discovery back and forth and
9 litigation, and resulted in what can only be described, as
10 you-all put it in your motion, a meaningful monetary recovery
11 for the class members, meaning they are entitled to \$60 per
12 claim, and all they have to do is file it. And, of course, you
13 can't make them do that.

14 But there was a set-aside in this case of a
15 significant amount of money, the \$26,910,000 in monetary relief
16 to the class, another \$17,081,672 in relief consisting of the
17 compliance program and related activities, with a total value
18 of the settlement being \$43,991,672. That's a considerable
19 recovery on behalf of the class.

20 And the requested attorneys' fees are in the amount
21 of \$8,970,000, which is one third of the monetary relief and
22 20 percent of the total economic value, with expenses at
23 \$106,662.05. And I believe administrative costs are roughly
24 \$250,093.63.

25 I've reviewed all of the criteria that we look at in

1 assessing the fairness and appropriateness. This was clearly,
2 as I indicated, already an arms-length transaction negotiated
3 by the parties in good faith and an outstanding job, really,
4 all the way around, by all of you.

5 I'm going to approve the final class action
6 settlement and the award of attorneys' fees in the amount
7 requested by the plaintiffs, including the amount of expenses
8 requested by the plaintiffs and the administrative costs.

9 Has anything changed with the administrative costs
10 since the motion was filed? Is it still 250,093.63?

11 **MR. KAUFMAN:** Your Honor, this is Avi Kaufman. We
12 provided an updated figure in connection with the supplement
13 that was filed.

14 **THE COURT:** Okay.

15 **MR. KAUFMAN:** I'm looking for it right here.

16 I believe it was closer to \$275,000 through the cost
17 of completion.

18 **THE COURT:** All right.

19 **MR. KAUFMAN:** Here it is.

20 **THE COURT:** What might make it easiest --
21 Mr. Kaufman, what might make it easiest is take your proposed
22 order, if you would, insert the dollar amounts that I've been
23 discussing, you know, including the updated administrative
24 costs, and circulate it over to the defense. You can even just
25 communicate by email. I mean, you-all have a good working

1 relationship. Once you have a number determined, just email to
2 chambers, please, the proposed order, in Word format, with the
3 figures inserted after your colleagues obviously have a chance
4 to peruse it. And then I'll enter it.

5 So as soon as the order comes, I'll sign it, and we
6 can get the case wrapped up.

7 **MR. KAUFMAN:** Will do, Your Honor.

8 One administrative note is that although the
9 settlement resolves the plaintiff Edwin Diaz and the class that
10 he represented, the remaining plaintiffs, Bruce Wright and
11 Jorge Valdes, still have active claims. The parties have
12 reached a settlement in principle as to their claims, are in
13 the process of documenting it. So I would just ask that their
14 claims not be dismissed or that an administrative order closing
15 the case as to their claims with 30 days to dismiss be entered.

16 **THE COURT:** Absolutely. That'd be fine.

17 So I'll reserve jurisdiction over Mr. Wright and
18 Mr. Valdes' active claims until it's been resolved by you-all.

19 **MR. KAUFMAN:** Yes, sir.

20 **THE COURT:** Very good.

21 Anything else we can take up, gentlemen?

22 **MR. KAUFMAN:** Nothing additional from -- from the
23 plaintiff.

24 **MR. TROUTMAN:** And this is counsel Troutman. Nothing
25 from the defense, Your Honor?

1 **THE COURT:** All right. Thank you. And I appreciate
2 you being available on short notice by telephone just to -- no
3 point in driving all the way up from where you-all are just
4 to -- to do what we just did. But thank you, gentlemen.
5 Congratulations on a job well done.

6 **UNIDENTIFIED SPEAKER:** Thank you, Your Honor. We
7 appreciate the time.

8 **THE COURT:** Thank you. We'll be in recess.

9 (Proceedings adjourned at 10:37 a.m.)

10 **C E R T I F I C A T E**

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.

13
14 December 30, 2022

15 s\ Nikki L. Peters
16 Nikki L. Peters, RMR, CRR, CRC
17 Federal Official Court Reporter
18 United States District Court
19 Middle District of Florida
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EXHIBIT 6

**IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN-RIVER COUNTY, FLORIDA**

**BEVERLY DESHAY, individually and on
behalf of all those similarly situated,**

Plaintiff,

Case No. 2022CA000457

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

_____ /

**DECLARATION OF SCOTT M. FENWICK
OF KROLL SETTLEMENT ADMINISTRATION LLC
IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT**

I, Scott M. Fenwick, declare as follows:

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.

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.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement.

3. Kroll was appointed as the Settlement Administrator to provide notification and administration services in connection with a Class Action Settlement Agreement (the “Settlement Agreement”) entered into in connection with the above-captioned case, referred to herein as the “Settlement”. Kroll’s duties in connection with the Settlement have and will include: (a) receiving and analyzing the Class Member contact list (the “Class List”) from Class Counsel; (b) preparing and sending notices in connection with the Class Action Fairness Act; (c) establishing a toll-free number; (d) establishing a post office box for the receipt of mail; (e) creating a website with online claim filing capabilities; (f) preparing and sending the Summary Notice via First Class Mail; (g) initiating a media campaign; (h) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (i) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (j) receiving and processing Claim Forms; (k) receiving and processing opt outs; and (l) such other tasks as counsel for the Parties or the Court request Kroll perform.

4. On December 1, 2022, Kroll received one data file from Class Counsel. The data file contained exactly two million telephone numbers of potential Class Members. Kroll undertook steps to identify individuals using the telephone numbers provided and compile the eventual Class List for the mailing of Summary Notices. First, Kroll ran all two million telephone numbers through a reverse telephone search to locate associated names and mailing addresses. After reviewing and processing the results from the reverse lookup, Kroll identified 1,925,872 unique records. Additionally, in an effort to ensure that Summary Notices would be deliverable to Class Members, Kroll ran the 1,925,872 unique addresses provided in the Class List through the USPS’s National Change of Address (NCOA) database and updated the Class List with address changes received from the NCOA.

5. 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) (the “CAFA Notice”). At Defense Counsel’s direction, on December 9, 2022, Kroll sent the CAFA Notice, a true and correct copy of which is attached hereto as **Exhibit A**, via First-Class Certified Mail, to (i) the

Attorney General of the United States and (ii) 56 state 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 Settlement documents referenced in the CAFA Notice.

6. On December 13, 2022, Kroll established a toll-free number, 1-833-709-0651, for Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response (“IVR”) system. As of January 31, 2023, the IVR has received 3,085 calls.

7. On December 13, 2022, Kroll designated a post office box with the mailing address *DeShay v. Keller Williams Realty*, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324 in order to receive requests for exclusion, Claim Forms, objections, and correspondence from Class Members.

8. On December 16, 2023, Kroll created a dedicated website entitled www.RealtyTCPA.com (the “Class Settlement Website”). The Class Settlement Website “went live” on January 6, 2023, and contains, among other things, information about the Settlement, key dates, Court documents, a “frequently asked questions” section, and contact information. The Class Settlement Website also allows Class Members an opportunity to file a Claim Form online. As of January 31, 2023, the Settlement Website has received 274,108 pageviews.

9. On January 6, 2023, Kroll caused 1,925,872 Summary Notices to be mailed via First Class Mail. A true and correct copy the Summary Notice along with the Claim Form and long form Notice are attached hereto as **Exhibits C, D, and E**, respectively.

10. The required publication notice program using the Publication Notice commenced on January 6, 2023, and is delivering impressions at the expected pace in order to be substantially completed by February 4, 2023. Impressions were targeted to adults 35 years of age or older with a household income of \$60,000 or higher. Over 148 million online display, search and social media impressions are expected to be delivered across multiple exchanges, including across the social media platforms Facebook and Instagram. Kroll utilized Google search advertising to target people

searching for information on topics including TCPA lawsuit, Keller Williams class action, Keller Williams phone calls, stop unsolicited calls, and other related terms. The Publication Notice is expected to reach an estimated 70% of the targeted Class Members an average of two times. Attached hereto as **Exhibit F** are true and correct copies of the online ads.

11. As of January 31, 2023, 9,482 Summary Notices were returned by the USPS with a forwarding address. Summary Notices were automatically re-mailed to 9,478 updated addresses provided by the USPS. Four Summary Notices were returned to Kroll with a forwarding address for manual re-mailing, and these will be included in the next regularly scheduled mailing.

12. As of January 31, 2023, 115,918 Summary Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 113,392 undeliverable records through an advanced address search. The remaining 2,526 undeliverable Summary Notices received to date were received after the most recent advanced address search was run and will be included in the next advanced address search. The advanced address search produced 83,437 updated addresses. Kroll will re-mail Summary Notices to the 83,437 updated addresses obtained from the advanced address search on February 7, 2023. Kroll will continue to perform an advanced address search on undeliverable Summary Notices if and when they are received.

13. The last day to submit Claim Forms/opt-outs/objections is March 7, 2023. As of January 31, 2023, Kroll has received 1,409 Claim Forms through the mail and 54,826 Claim Forms filed electronically through the Class Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

14. As of January 31, 2023, Kroll has received sixteen (16) timely exclusion requests and no objections to the Settlement. A list of the exclusions is attached hereto as **Exhibit G**.

15. At Class Counsel's direction, Kroll will provide a supplemental declaration closer to the date of the Final Approval Hearing with updated claims data.

I declare under penalty of perjury under the laws of the State of Florida that the above is true and correct to the best of my knowledge and that this Declaration was executed on January 31, 2023, in Woodbury, Minnesota.


SCOTT M. FENWICK

Exhibit A

VIA US MAIL

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

Re: CAFA Notice for the Proposed Settlement in *Beverly DeShay v. Keller Williams Realty, Inc.*, Case No. 2022CA000457, pending in the Circuit Court of the Nineteenth Judicial Court in and for Indian-River County, Florida

Pursuant to Section 3 of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendant Keller Williams Realty, Inc. (“Defendant” or “Keller Williams Realty”) hereby notifies you of the proposed settlement of the above-captioned action (the “Action”) currently pending in the Circuit Court of the Nineteenth Judicial Court in and for Indian-River County, Florida (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:

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 Complaint is available at the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder as **Exhibit A**.

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

On December 1, 2022, Plaintiff filed a motion for preliminary approval of the class action, which was granted by Order dated December 7, 2022. The Court is presently scheduling the Fairness Hearing for this matter. The Order Preliminarily Approving Proposed Settlement, Conditionally Certifying a Class, Approving Class Notice, and Scheduling Settlement Hearing Preliminary Approval Order is available at the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder as **Exhibit B**.

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

A copy of the proposed Notice, Summary Notice, and Publication Notice of Settlement will be provided to Class Members, which will be available on the website created for the administration of this matter. These are available at the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder 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 at the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder 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.

Class Counsel and Keller Williams Realty have entered into a Fee Award Security Agreement relating to the payment of any fee awarded under the Settlement Agreement. The Fee Award Security Agreement is available at the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder as **Exhibit G**.

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 Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors on a telephone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors. Excluded from the Class are: (1) the Judge presiding over this action and members of their families; (2) the Defendant, Defendant's respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; (4) persons who received call, or to whom a call was placed, by or on behalf of Peter Hewitt or Kelly Houston and/or which contained a pre-recorded voice identifying Peter Hewitt or Kelly Houston; and (5) the legal representatives, successors or assigns of any such excluded person(s).

Keller Williams Realty currently does not know or have a means of reasonably determining how many Class Members reside in each state or the name of each such Class Member residing in each state during the Class Period.

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 located on the website, www.CAFANotice.com, under the DeShay v. Keller Williams Realty folder, please contact the undersigned listed below.

Respectfully submitted,

Frank Ballard
Senior Manager
Kroll Settlement Administration, LLC
Frank.Ballard@Kroll.com

Exhibit B

SERVICE LIST FOR CAFA NOTICE

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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P.O. Box 300152
Montgomery, AL 36130

Alaska Attorney General

Treg Taylor
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Anchorage, AK 99501

American Samoa Attorney General

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Pago Pago, AS 96799

Arizona Attorney General

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Ralph L. Carr Colorado Judicial Center
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Florida Attorney General

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The Capitol, PL-01
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Atlanta, GA 30334

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Indianapolis, IN 46204

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Tom Miller
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Des Moines, IA 50319

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Topeka, KS 66612

Kentucky Attorney General

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Frankfort, KY 40601

Louisiana Attorney General

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Maine Attorney General

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Lansing, MI 48909

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Suite 102, State Capital
St. Paul, MN 55155

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Lynn Fitch
Department of Justice
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Jefferson City, MO 65101

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Helena, MT 59620



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Albany, NY 12224

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Bismarck, ND 58505

Northern Mariana Islands Attorney General

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Dave Yost
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Columbus, OH 43215

Oklahoma Attorney General

John O'Connor
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Oklahoma City, OK 73105

Oregon Attorney General

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Oregon Department of Justice
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Salem, OR 97301

Pennsylvania Attorney General

Josh Shapiro
Pennsylvania Office of Attorney General
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Harrisburg, PA 17120

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Texas Attorney General

Ken Paxton
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St. Thomas, Virgin Islands 00802

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Salt Lake City, UT 84114

Vermont Attorney General

Susanne R. Young
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Montpelier, VT 05609

Virginia Attorney General

Jason Miyares
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Richmond, VA 23219

Washington Attorney General

Bob Ferguson
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Olympia, WA 98504

West Virginia Attorney General

Patrick Morrissey
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1900 Kanawha Blvd. E
Charleston, WV 25305

Wisconsin Attorney General

Josh Kaul
Wisconsin Department of Justice State Capitol
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P.O. Box 7857
Madison, WI 53707

Wyoming Attorney General

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

Exhibit C

DeShay v. Keller Williams
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

Circuit Court for the Nineteenth Judicial Circuit
in and for Indian-River County, Florida

*DeShay v. Keller Williams Realty, Inc.,
No. 2022CA000457*

If you were called or received a call or text message from Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors, you may be entitled to a payment from a class action settlement.

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

Class Member ID:

Call records indicate that you may be affected by a Settlement¹ of a class action lawsuit claiming that Defendant Keller Williams Realty, Inc. ("Keller Williams") violated a federal law called the Telephone Consumer Protection Act ("TCPA"). Keller Williams denies that it violated the law.

The lawsuit is called *DeShay v. Keller Williams Realty, Inc.*, No. 2022CA000457. This lawsuit is 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 valid Claim Forms. 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: "All Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors on a telephone phone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors."

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

What are the Settlement Terms? Keller Williams has agreed to a Settlement Sum of \$40,000,000. The Settlement Sum will be used to pay all settlement costs, including Settlement Administration Expenses, any attorneys' fees, costs, and expenses awarded to Class Counsel by the Court, and all Approved Claims.

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

www.RealtyTCPA.com

Members of the Class who submit Approved Claims shall receive an amount not to exceed Twenty Dollars (\$20) per Approved Claim. In the event that the total amount of Claim Settlement Payments for Approved Claims would exceed the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will be reduced. 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.

Keller Williams has also agreed to (1) create a TCPA task force to enhance compliance; (2) make the existing TCPA/DNC resource page on KW Connect more visible to KWRI's franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI's franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

How can I get a Payment? By completing and submitting the Claim Form available online at www.RealtyTCPA.com or by U.S. mail to the Settlement Administrator at the address on the Claim Form.

The deadline to submit a Claim Form is 11:59 p.m. ET on March 7, 2023.

What are my Other Options? If you do not want to be legally bound by the Settlement, you must exclude yourself by **March 7, 2023**, by sending the Settlement Administrator a letter that complies with the procedure set forth in the Settlement, 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 **March 7, 2023**, by complying with the objection procedures detailed in the Settlement. The Court will hold a Final Approval Hearing on **March 31, 2023**, 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.

1-833-709-0651

Exhibit D



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CLAIM FORM

Section I - Instructions

This Claim Form must be postmarked or received by the Settlement Administrator no later than March 7, 2023.

This Claim Form may be submitted the following ways:

- 1. Electronically at **www.RealtyTCPA.com**.
- 2. Mail this completed form to:

DeShay v. Keller Williams Realty
 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 March 7, 2023**. If this 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

Current Contact Information

Class Member ID (Required)

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.



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Page 1 of 2



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Section III – Confirmation of Class Membership

Telephone Number(s) for which you were the regular user or subscriber between **May 2, 2014** and **December 12, 2022** at which you (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents, or vendors and that appeared on the National Do Not Call Registry for at least 31 days and/or that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors using an artificial or prerecorded voice and/or a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors.

Telephone Number 1: _____ - _____ - _____

Telephone Number 2: _____ - _____ - _____

Telephone Number 3: _____ - _____ - _____

Please note that, as part of the claims process, you may be requested to provide a telephone bill establishing proof of your ownership of the telephone number(s) above during the relevant time period and/or showing proof of the receipt of the asserted call(s) or text messages.

Section IV – Required Affirmation

I have never provided consent to Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors, to be called with an artificial or prerecorded voice, text message, automatic telephone dialing system, or while my phone number was on the National Do Not Call Registry. I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge under penalty of perjury. 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.RealtyTCPA.com or by writing the Settlement Administrator at the postal address *DeShay v. Keller Williams*, 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): *DeShay v. Keller Williams Realty*, c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324



64073



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Page 2 of 2

Exhibit E

Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida

DeShay v. Keller Williams Realty, Inc., No. 2022CA000457

If you were called or received a call from Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors, you may be entitled to a payment from a class action settlement.

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

- A class action settlement agreement and release (the “Settlement”) has been proposed in the class action lawsuit referenced above pending in the Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida captioned *DeShay v. Keller Williams Realty, Inc.*, No. 2022CA000457. You may be a Class Member in the proposed settlement and may be entitled to participate in the proposed Settlement.
- The Circuit Court for the Nineteenth Judicial Circuit in and for Indian-River County, Florida has ordered the issuance of this notice. Keller Williams Realty, Inc. (“Keller Williams”) denies it did anything wrong and has defended itself. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.
- The Settlement offers payments to Class Members who file valid 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 MARCH 7, 2023	If you are a member of the Class, you must submit a completed Claim Form to receive a payment of up to \$20 per Approved Claim. 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 or electronic payment.
EXCLUDE YOURSELF BY MARCH 7, 2023	You may request to be excluded from the Settlement and if you do, you will receive no benefits from the Settlement.
OBJECT BY MARCH 7, 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 Keller Williams 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.

WHAT THIS NOTICE CONTAINS

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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.

2. What is the lawsuit about?

Plaintiff DeShay claims that Keller Williams-affiliated realtors violated the Federal Telephone Consumer Protection Act (TCPA) by making robocalls to cell phones and other telemarketing calls to numbers registered on the National Do Not Call Registry. DeShay also claims that Keller Williams is responsible for any illegal calls made by these realtors. Keller Williams denies these allegations.

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

In a class action, one or more people called “class representatives” (in this case, Beverly DeShay) 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, Keller Williams) 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 the lawsuit a class action?

The Court has decided that this lawsuit can be a class action because it meets the procedural requirements which govern class actions.

5. Why is there a settlement?

The Court has not found in favor of Plaintiff or Keller Williams. 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. Keller Williams denies all legal claims in this case but is settling to avoid the uncertainties and costs attendant with litigation. Plaintiff and her 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 lawsuit.

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

The Settlement includes the following class: “All Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors on a telephone phone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text

messages made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors.”

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

If you are still not sure whether you are included, you can call the Settlement Administrator toll-free at **1-833-709-0651**. 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?

Keller Williams has agreed to a Settlement Sum of \$40,000,000. The Settlement Sum will be used to pay all Settlement costs, including Settlement Administration Expenses, any attorneys’ fees, costs, and expenses 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 Twenty Dollars (\$20) per Approved Claim. In the event that the total amount of Claim Settlement Payments for Approved Claims exceeds the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will be reduced. Only Approved Claims will be paid. Only one claim per Class Member per telephone number may be validated and deemed an Approved Claim. There may be tax consequences to the Class Member associated with this recovery.

Keller Williams has also agreed to (1) create a TCPA task force to enhance compliance; (2) make the existing TCPA/DNC resource page on KW Connect more visible to KWRI’s franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI’s franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

9. How do I file a claim?

If you qualify for a cash payment you must complete and submit a valid Claim Form. You can file your Claim Form online at **www.RealtyTCPA.com** or send it by U.S. Mail to:

DeShay v. Keller Williams Realty
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

The deadline to submit a Claim Form is 11:59 p.m. ET on March 7, 2023.

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 Keller Williams 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 individually from the Settlement, you must send a timely letter by mail to:

DeShay v. Keller Williams Realty
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 Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents or vendors during the Class Period, and must clearly state that the individual 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 received no later than March 7, 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?

No. Unless you exclude yourself, you give up the right to sue Keller Williams 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 Keller Williams 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.RealtyTCPA.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 Stefan Coleman 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 <http://www.classaction.ws/>.

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 attorneys’ fees in an amount not to exceed one-quarter 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 so 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 by sending a timely letter by mail to:

DeShay v. Keller Williams Realty
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

Your letter must include the following:

- 1) A caption or title that identifies it as “Objection to Class Settlement in *DeShay v. Keller Williams Realty, Inc.*, No. 2022CA000457”;
- 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

Your objection must be received no later than March 7, 2023.

If you object you agree to submit yourself immediately to discovery and/or deposition by the parties.

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 **March 31, 2023, at 8:30 a.m. ET**, via Zoom before Circuit Court Judge Janet Carney Croom, using the following Zoom information:

<https://zoom.us/j/7450461040?pwd=Rk5GY05VZFBNVnA3d0phM2krVHpQQT09>

Phone: (646) 558-8656

Meeting ID: 745 046 1040

Passcode: 123456

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.RealtyTCPA.com** for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses. 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 contact the Settlement Administrator toll-free at **1-833-709-0651**, write to the Settlement Administrator at *DeShay v. Keller Williams Realty*, 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.RealtyTCPA.com**.

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

Exhibit F

Did you receive Phone Calls or Texts from someone affiliated with Keller Williams?

You could get a benefit from a Settlement



GET MORE INFO



Did you receive Phone Calls or Texts from someone affiliated with Keller Williams?

You could get a benefit from a Settlement




GET MORE INFO

SOCIAL MEDIA

 **Legal Notices**
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If you received phone calls or text messages from Keller Williams or any Keller Williams-affiliated franchisees, market centers, realtors, agents, or vendors, you may be entitled to a benefit from a class action settlement.

Keller Williams Realty Settlement




WWW.REALTYTCPA.COM
Keller Williams TCPA Settlement
Court Authorized Notice

[Learn more](#)

 **Legal Notices**
Sponsored

Keller Williams Realty Settlement



If you received phone calls or text messages from Keller Williams or... [More](#)

[Learn more](#)

Exhibit G

FIRST NAME	LAST NAME
1 DONALD	ALLISON
2 CHACE	ANDERSON
3 WILLIAM	BLAND
4 DEREK	BOWEN
5 RITA	DUNN
6 MARTHA	HAMM
7 JAMES	HAMM
8 A	JOHNS
9 JERRY	LIMBAUGH
10 GLORIA	LIPSON
11 NANCY	MARTIN
12 JOHN	PERRY
13 JABRIL	REDMOND
14 DAVID	TOM
15 REESE	TOOLE
16 DEBORA	VALENTINE