

**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.

/

**ORDER GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT AND FINAL JUDGMENT¹**

The matter coming before the Court on Plaintiff and Class Counsel's request for final approval of the class action settlement, including approval of fees and expenses, due notice given, the parties appearing through counsel, and the Court fully advised in the premises, after conducting a Fairness Hearing on March 31, 2023, IT IS HEREBY ORDERED:

1. The Notice and the Notice Plan implemented pursuant to the Court's Preliminary Approval Order (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Florida Rules of Civil Procedure, Due Process, and the rules of the Court.

¹ This Order supersedes the Court's tentative Proposed Order dated March 27, 2023.

2. This Court has jurisdiction over the parties, the members of the Settlement Class, and the claims asserted as a result of the successful implementation of the Notice Plan.

3. The Court finds that the Settlement Agreement has been entered into in good faith following extensive arm's-length negotiations after sufficient development of the factual record.

4. Pursuant to Florida Rule of Civil Procedure 1.220, and for purposes of this settlement only:

a. The Settlement Class is defined as follows:

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 a 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).

b. The Class is so numerous that joinder of all members is impracticable. The Class consists of approximately two million class members and the Class Members have been

determined by objective means primarily from records obtained through discovery.

- c. There are questions of law or fact common to the Settlement Class, centered around Defendant's alleged vicarious liability for any violative conduct.
- d. The claims of the proposed class representative are typical of the claims of the Class. The proposed class representative and each member of the proposed Class are alleged to have suffered the same injury caused by the same course of conduct, and have the same interests in seeking redress.
- e. Plaintiff has fairly and adequately represented and protected the interests of the Class. Plaintiff is a member of the proposed Class. Neither Plaintiff nor Class Counsel have any conflicts of interest with the other class members, and Class Counsel have demonstrated that they have adequately represented the Class by zealously litigating its claims.
- f. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.
- g. A class action is superior to other available methods for the fair and efficient adjudication of the controversy as the Settlement substantially benefits both the litigants and the Court, and there are few manageability issues as settlement is proposed rather than a further trial.

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

6. After due consideration of the uncertainty about the likelihood of the Class's ultimate success on the merits; the range of the Class's possible recovery; the complexity, expense and duration of the litigation; the substance and amount of opposition to the settlement; and the state of proceedings at which the settlement was achieved; all written submissions, declarations,

and arguments of counsel; and after notice and hearing, this Court finds that the settlement is fair, adequate and reasonable.

7. This Court also finds that the financial settlement terms fall within the range of settlement terms that would be considered fair, adequate and reasonable, and the plan for distribution of the Settlement Fund is fair and equitable. Moreover, the settlement provides significant remedial benefits for the Settlement Class and society at large.

8. There is no valid objection to the Settlement. While a purported absent class member, Steven Helfand, filed a timely objection to the Settlement, it was resolved and withdrawn through a stipulation approved by the Court on March 24, 2023. Mr. Helfand's March 28, 2023 motion to withdraw from the stipulation is denied as the stipulation was voluntarily undertaken without fraud, misrepresentation, or mistake of fact. Similarly, because Mr. Helfand has no valid or timely objection, pursuant to the Court's Preliminary Approval Order, he is barred from intervening in this action or asserting an objection to the Settlement. And while it appears that Mr. Helfand may not even be an absent class member, even if evaluating the merits of Mr. Helfand's objections, they are due to be overruled.

9. Accordingly, pursuant to Rule 1.220 of the Florida Rules of Civil Procedure, the Court finds that the settlement of this action, as embodied in the terms of the Settlement Agreement, is hereby finally approved as a fair, reasonable, and adequate settlement of this Litigation and the Related Litigation in the best interests of the Settlement Class in light of the factual, legal, practical, and procedural considerations raised by these actions.

10. There are 51 opt-outs.²

11. The Settlement Sum shall be used to pay settlement administration costs, all claims

² A list of opt outs is included as an exhibit to this Order.

by Settlement Class members, and Class Counsel's fees and out-of-pocket expenses.

12. As agreed in the Settlement Agreement, each member of the Settlement Class who has submitted an Approved Claim shall be entitled to a Claim Settlement Payment of up to \$20.00 per valid Approved Claim as expressly provided in the Settlement Agreement. The Settlement Administrator shall perform the distribution to Settlement Class Members following the process set forth in the Settlement Agreement without further order of this Court.

13. The Court approves Class Counsel's application for attorney's fees in the total amount of \$10,000,000, inclusive of out-of-pocket costs of almost \$200,000. In consideration of Class Counsel's lodestar, contingency risks, and results obtained for the benefit of the class, the requested fee is fair, reasonable, and justified. In accordance with the Settlement Agreement, these amounts shall be paid from the Settlement Sum as expressly provided in the Settlement Agreement.

14. The Court adopts and incorporates all of the terms of the Settlement Agreement by reference here. The Parties to the Settlement Agreement and the Settlement Administrator shall carry out their respective obligations under that Agreement.

15. This action, including all claims against Defendant asserted in this Litigation, or which could have been asserted in this lawsuit, by or on behalf of Plaintiff and all Settlement Class members against Defendant, is hereby dismissed with prejudice and without taxable costs to any Party.

16. All claims or causes of action of any kind by any Settlement Class member brought in this Court or any other forum (other than those by persons who have opted out of this action) are barred pursuant to the releases set forth in the Settlement Agreement.

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

relating to attorneys' fees.

18. If (a) the Settlement Agreement is terminated pursuant to its terms, or (b) the Settlement Agreement or Final Approval Order do not for any reason become effective, or (c) the Settlement Agreement or Final Approval Order are reversed, vacated, or modified in any material or substantive respect, then any and all orders entered pursuant to the Settlement Agreement shall be deemed vacated. If the settlement does not become final in accordance with the terms of the Settlement Agreement, this Final Approval Order shall be void and shall be deemed vacated.

19. The Court finds that there is no just reason to delay the enforcement of this Final Approval Order.

DONE AND ORDERED in Indian River County, Florida, on

_____.

04/19/2023 11:44:23
2022 CA 000457

eSigned by JANET CARNEY CROOM (NOT) 04/19/2023 11:44:23 TC50Eh-X

Janet Carney Croom
CIRCUIT COURT JUDGE

cc: all counsel of record