

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

CASE NO. 2023CH000015

TOMER DARVISH, individually and on behalf  
of all others similarly situated,

**CLASS ACTION**

*Plaintiff,*

v.

AEGIS FINANCIAL, LLC,

*Defendant.*

\_\_\_\_\_/

**SETTLEMENT AGREEMENT AND RELEASE**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and between the following parties: Plaintiff Tomer Darvish (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class (defined below), on the one hand, and Defendant Aegis Financial LLC (“Defendant”), on the other hand, as of the date executed below. Plaintiff and Defendant will sometimes be referred to together as the “Parties,” or, individually, as a “Party.” This Agreement is entered into by the Parties to fully and finally resolve and dismiss all of Plaintiff’s claims and the claims of the proposed Settlement Class against Defendant on the terms set forth herein.

### RECITALS

WHEREAS, Plaintiff filed a Class Action Complaint (the “Complaint”) individually and on behalf of a putative class in the lawsuit styled *Darvish v. Aegis Financial, LLC*, Case No. 2023CH000015, in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois (the “Action”), which asserts claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

WHEREAS, Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act (the “TCPA”), including because Plaintiff and members of the putative class allegedly received, during the Class Period, as defined herein, automated or prerecorded messages from Defendant to their mobile or residential landline telephone numbers without prior express written consent, which allegedly harmed Plaintiff and the class (the “Allegations”);

WHEREAS, with the assistance of mediator Hon. Wayne R. Andersen (Ret.), the Parties and their counsel engaged in an intensive, full day arm’s-length mediation in an attempt to resolve

the Action with a view toward achieving substantial benefits for the Settlement Class as a whole, while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate practice;

WHEREAS, the Parties ultimately reached an agreement in principle to resolve the Action;

WHEREAS, for settlement purposes only, Plaintiff will request that the Court certify the Settlement Class and appoint Plaintiff as Class Representative and Plaintiff's lawyers—Scott A. Edelsberg and Chris Gold of Edelsberg Law, P.A.; and Andrew J. Shamis of Shamis & Gentile P.A — as Class Counsel in this case;

WHEREAS, based on their investigation and discovery in the Action and the experience of Class Counsel, Plaintiff and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to, and in the best interest of, the Settlement Class;

WHEREAS, Plaintiff, individually and as the representative of the Settlement Class, and Defendant desire to resolve the dispute between them;

WHEREAS, Plaintiff, individually and as the representative of the Settlement Class, and Defendant will execute this Agreement solely to compromise and avoid protracted, complicated, and expensive litigation;

WHEREAS, Defendant denies any and all liability or wrongdoing to the Class Representative and to the Settlement Class, including based on the Allegations or anything asserted in the Action. Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, has taken into account the uncertainty and risks inherent in this Action, and has determined that it is desirable that the Action and the Allegations be fully, completely, and finally settled in the manner and on the terms set forth herein;

WHEREAS, Plaintiff and Class Counsel have examined the benefits obtained under the terms of this Settlement Agreement, have considered the risks associated with the continued

prosecution of the Litigation and the likelihood of success on the merits of the Action and believe that, after considering all of the facts and circumstances, the proposed settlement set forth in this Settlement Agreement offers significant benefits to Settlement Class Members and is fair, reasonable, adequate and in the best interests of the Settlement Class Members; and

WHEREAS, this Settlement Agreement is the result of significant arms' length settlement negotiations that have taken place between the Parties, including with the assistance of a neutral and experienced mediator who is a retired federal judge.

### **AGREEMENT**

NOW, THEREFORE, in consideration for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Action and the Allegations shall be settled, compromised, and/or dismissed on the merits and with prejudice on the terms and conditions in this Agreement, and without costs (except as provided herein), subject to Court approval of this Agreement after a hearing and upon finding that the Settlement is a fair, reasonable, and adequate settlement. The recitals set forth above are expressly incorporated herein and made a part of the Agreement hereof as though fully set forth. The Parties hereby stipulate and agree as follows:

#### **I. DEFINITIONS**

In addition to the terms defined above and at other places in this Agreement, the following defined terms have the meaning set forth below:

A. "Administrator" means Epiq which, subject to Court approval, shall be responsible for administrative tasks, which may include, without limitation: (a) arranging for distribution of the Class Notice and Claim Form to Settlement Class Members; (b) making any electronic mailings to Settlement Class Members required under this Agreement; (c) responding to and/or forwarding written inquiries from Settlement Class Members to Class Counsel or their designee;

(d) establishing and maintaining the Settlement Website; (e) receiving and processing Settlement Claims Forms and distributing payments to Settlement Class Members; and (f) otherwise assisting with implementing and administering this Agreement, subject in all cases to approval by Class Counsel and Counsel for Defendant. Class Counsel and Counsel for Defendant may, by agreement, substitute a different entity as Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different entity as Administrator on a showing of good cause.

B. “Agreement” means this Settlement Agreement and Release and all attachments and exhibits hereto.

C. “Attorneys’ Fees and Expenses” means the total recovery that may be awarded to Class Counsel to compensate them (and all other attorneys for Plaintiff and/or the Settlement Class, whether or not disclosed) for all attorneys’ fees, costs, and adequately supported expenses of any kind (including, but not limited to, mediation fees, travel, filing fees, court reporter, and videographer expenses, expert fees and costs, and document review and production costs) incurred by Plaintiff or Class Counsel in connection with the Action, and which shall not exceed six hundred ninety five thousand nine hundred and fifty seven dollars and no cents (\$695,957.00), an amount up to which Defendant agrees it will not oppose.

D. “Claim” means a written request for a Claim Settlement Payment submitted by a Settlement Class Member to the Administrator.

E. “Claim Deadline” means the last date by which a Claim submitted to the Administrator by a Settlement Class Member for a Claim Settlement Payment must be postmarked, which shall occur no later than fifteen (15) days after the Final Approval Hearing set by the Court.

All Claims postmarked on or before the Claim Deadline shall be timely, and all Claims postmarked after the Claim Deadline shall be untimely and barred from entitlement to any Claim Settlement Payment.

F. “Claim Form” means the form similar in material respects to the form attached as **Exhibit 1** to this Agreement and/or as ultimately approved by the Court.

G. “Claim Settlement Check” means the check containing the Claim Settlement Payment for each Settlement Class Member who submits a valid and timely Claim.

H. “Claim Settlement Payment” means a payment to be made to each Settlement Class Member who submits a properly completed and timely Claim Form to the Administrator, and who qualifies for such relief under this Agreement.

I. “Class Counsel” means: (a) Scott A. Edelsberg & Chris Gold, Edelsberg Law, P.A., 20900 N.E. 30th Avenue #417, Aventura, FL 33180; (b) Andrew J. Shamis, Shamis & Gentile, P.A., 14 NE 1<sup>st</sup> Ave, Suite 705, Miami, FL 33132; and (c) Manuel S. Hiraldo, Hiraldo, P.A., 401 East Las Olas Boulevard Suite 1400, Fort Lauderdale, FL 33301 and anyone else working for, with or at the direction of Class Counsel whether or not disclosed.

J. “Class Notice” means the program of notice described in this Agreement to be provided to Settlement Class Members, which will notify Settlement Class Members about the details of the Settlement, and which shall be approved by the Court in the Preliminary Approval Order.

K. “Class Notice Date” means the latest date on which Class Notice can be disseminated, which shall be set by the Court in the Preliminary Approval Order as approximately sixty (60) days prior to the Final Approval Hearing.

L. “Class Period” means the time period from February 4, 2018, through May 15, 2023.

M. “Class Representative” shall mean the named plaintiff in the Action, Plaintiff Tomer Darvish.

N. “Confidential Information” means proprietary or commercially sensitive information or personal information subject to state and federal privacy laws that the Parties agree to protect in this Agreement from disclosure and dissemination to the public or any third-party or entity other than the Administrator.

O. “Counsel for Defendant” means: Livia M. Kiser and Michael D. Roth, King & Spalding LLP, 633 West Fifth Street, Suite 1600, Los Angeles, California 90071.

P. “Court” means the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

Q. “Days” means calendar days, except that, when computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time under this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

R. “Effective Date” means the day which the Court’s Final Approval Order becomes in all respects Final.

S. “Final Approval Hearing” means a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy, and reasonableness of this Agreement and associated

settlement in accordance with class action procedures and requirements; and (ii) entering the Final Approval Order.

T. “Final” or “Finally Approved” or “Final Approval” when referring to this Agreement, a judgment or order means that: (1) the judgment is a final appealable judgment, and (2) either (a) no appeal has been taken from the judgment relating to the merits of the Settlement (as opposed to any appeals relating solely to the Attorneys’ Fees and Expenses award, which will not affect finality as defined herein) as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment relating to the merits of the settlement having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for *writ of certiorari*, the appeal is voluntarily withdrawn, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Approval Order and judgment in all material respects.

U. “Final Approval Order” means the order and judgment to be entered by the Court, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the Illinois Rules of Civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, including granting Final Approval to the Settlement and ruling on Class Counsel’s application for attorneys’ fees and expenses and the Service Award for the Class Representative. If the Court enters separate orders addressing the matters constituting the matters set forth in this paragraph, then the Final Approval Order collectively includes all such orders. The Final Approval Order will address all of the foregoing and will include provisions similar in material respects to the form identified in **Exhibit 2**.



V. “Long-Form Notice” means the notice that is made available on the Settlement Website and upon request from the Administrator, in substantially the form attached as **Exhibit 3** to this Agreement.

W. “Notice” means the e-mail individual notice that will be mailed and e-mailed by the Administrator to Settlement Class Members, in substantially the form attached as **Exhibit 4** to this Agreement.

X. “Notice and Administrative Costs” means the reasonable costs and expenses authorized by the Court and approved by Class Counsel and Counsel for Defendant of disseminating the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with determining mail and/or e-mail addresses for Settlement Class Members, assisting Settlement Class Members, processing claims, escrowing funds, and issuing and mailing Settlement Payments.

Y. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement to be able to object to the Settlement. The Objection Deadline shall be no later than thirty (30) days prior to the Final Approval Hearing.

Z. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be submitted in writing to Class Counsel (or the Administrator) for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be no later than thirty (30) days prior to the Final Approval Hearing.

AA. “Preliminary Approval Order” means an order to be entered by the Court certifying the Settlement Class and granting preliminary approval to the Settlement. The Preliminary

Approval Order will include provisions similar in material respects to the form identified in **Exhibit 5**.

BB. “Released Claims” means any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys’ fees, costs, liens, judgments, and demands of any kind whatsoever that each member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, that were or could have been asserted in the Complaint, the Action, or that relate to or arise from the Allegations, including, but not limited to, any and all claims under the TCPA or any related or similar state or federal law analogue, or that otherwise arise out of or relate to any calls and/or prerecorded message(s) sent to any Settlement Class Member during the Class Period.

CC. “Released Parties” means Defendant and each of Defendant’s affiliates and related entities, and their respective agents, employees, subsidiaries, predecessors, successors, parents, co-venturers, divisions, joint ventures and assigns, as well as each of those entities’ or persons’ past or present owners, investors, directors, officers, employees, partners, managers, members, principals, agents, distributors, suppliers, underwriters, insurers, co-insurers, re-insurers, indemnitors, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, personal or legal representatives, consultants, vendors, contractors, volunteers, performers, co-marketers, licensors, concessionaires, franchisors, and assigns.

DD. “Releasing Persons” means the Class Representative, the Settlement Class, and each Settlement Class Member, each on behalf of themselves as well as their heirs, agents, privies, attorneys, insurance carriers, executors, administrators, and successors and assigns.

EE. “Request for Exclusion” means a written request from a Settlement Class Member that seeks to exclude that Settlement Class Member from the Settlement Class.

FF. “Service Award” means an approved payment to the Class Representative which shall not exceed twenty-five hundred dollars and no cents (\$2,500.00).

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

HH. “Settlement Cap” means the total maximum amount that Defendant has agreed to make available, as described in Section II.B, to cover all of the following: (1) the Claim Settlement Payments, (2) Attorneys’ Fees and Expenses, (3) Notice and Administration Costs up to \$100,000.00, and (4) the Service Award.

II. “Settlement Class” means all members of the class of persons in this Action that will be certified by the Court for settlement purposes as follows:

**All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline during the Class Period.**

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any of the foregoing person(s) in (1)-(3); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

JJ. “Settlement Class Claimant” means any Settlement Class Member who submits a Claim in accordance with this Agreement.

KK. “Settlement Class Data” means data relating to approximately 55,449 persons who, according to Defendant’s records, may be Settlement Class Members. The Settlement Class Data shall be treated as Confidential Information.

LL. “Settlement Class Member(s)” means any member of the Settlement Class.

MM. “Settlement Class Payment List” means the list of all Settlement Class Members who filed a Claim; whether the Claim was rejected or accepted, and, if rejected, the reason it was rejected; the address to which the Claim Settlement Check shall be sent; and the total amount of Claim Settlement Payments to be made.

NN. “Settlement Website” means the website prepared and maintained by the Administrator in connection with the process of providing Class Notice to Settlement Class Members.

## **II. SETTLEMENT TERMS**

### **A. Certification of Settlement Class and Conditional Nature of Agreement**

Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Defendant shall not oppose Plaintiff proposing and recommending to the Court that a settlement class be certified for the purposes of Settlement only, which Settlement Class shall be comprised of persons who, according to Defendant’s records, may be Settlement Class Members. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of the Settlement, that the Action shall proceed as a class action for Settlement purposes only; provided, however, that if a Final Approval Order is not issued, or the Settlement does not become “Final” for any reason, then Defendant shall retain all rights to object to maintaining this Action as a class action.

- (1) Promptly after execution of this Settlement Agreement, Plaintiff shall present this Settlement Agreement to the Court, along with a motion requesting the Court issue a Preliminary Approval Order, which Defendant agrees it will not oppose.
- (2) If this Settlement Agreement is preliminarily approved by the Court, Plaintiff shall present a motion requesting that the Court issue a Final Approval Order directing the entry of judgment. Except as provided below, if this Agreement, for any reason, does not receive Final Approval, if the Final Approval Order does not become Final, or if the Agreement is otherwise terminated, it shall be null and void, it shall be of no force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the negotiation, terms, and entry of the Agreement shall remain inadmissible under the Illinois Rules of Civil Procedure, Illinois Rules of Evidence, and any applicable state or federal law or rule of civil procedure or evidence.
- (3) Defendant denies all claims, liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief that were or could have been sought in the Action, as well as all class action allegations and other allegations asserted in the Action.
- (4) Defendant has agreed to resolve this Action through this Agreement, but if the Court does not enter the Preliminary Approval Order, the Final Approval Order, deems this Agreement void or Final Approval does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves all of these rights and agree not to take a position to the contrary.

**B. Settlement Class Relief**

In consideration for the Releases set forth in this Agreement, Defendant shall provide the following consideration:

**1. Claim Settlement Payments to Settlement Class**

Defendant shall make available the sum of \$2,108,962.00 (the "Settlement Cap") for:

(1) the Claim Settlement Payments, (2) Attorneys' Fees and Expenses, (3) Notice and Administration Costs of up to \$100,000.00, and (4) the Service Award.

(a) Settlement Class Members must submit a timely, valid, and verified Claim Form by the Claim Deadline in the manner required by this Agreement, to receive a Claim Settlement Payment from the Settlement Cap.

(b) Defendant, within twenty-one (21) days after the Effective Date, from the Settlement Cap shall fund all amounts required by the Administrator for distribution of any Claim Settlement Payments to Settlement Class Members who submit timely and valid Claim Forms net of all of the following: (1) Attorneys' Fees and Expenses, (2) Notice and Administration Costs of up to \$100,000.00, and (3) the Service Award.

(c) Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator in an amount not to exceed thirty-eight dollars and no cents (\$38.00), or if necessary, their *pro rata* share of the Settlement Cap of some amount less than \$38.00 after payment of: (1) Attorneys' Fees and Expenses, (2) Notice and Administration Costs of up to \$100,000.00, and (3) the Service Award from the Settlement Cap.

(d) Within sixty (60) days after the Effective Date, the Administrator shall send, by first-class mail, a Claim Settlement Check to each Settlement Class Member who submitted a timely, valid, correct, and verified Claim Form. Checks will be valid for one hundred and eighty (180) days from the date on the check.

(e) Defendant need not segregate funds or otherwise create special accounts to hold funds comprising the Settlement Cap and will not relinquish control of any money until payments are due as set forth in this Agreement.

## **2. Defendant's Total Payments**

Except as provided in this Section and any Service Award that the Court awards to Plaintiff, Defendant shall have no obligation to make any other or further payments to Plaintiff, Class Counsel, the Settlement Administrator, or any Settlement Class Member.

(a) For avoidance of doubt, in no case shall Defendant's financial responsibility under this Agreement exceed the total amount of the Settlement Cap, and all amounts Defendant has agreed to pay in connection with the Settlement shall be paid from the Settlement Cap, including without limitation: (1) payments to Settlement Class Members of up to \$38.00 per Claim (each Settlement Class Member being entitled to submit a single Claim only in order to receive a single Claim Settlement Payment); (2) Defendant's contribution of up to \$100,000.00 for Notice and Administration Costs; and (3) an award by the court of Attorneys' Fees

and Expenses (which in no case will exceed \$695,957.00) and any Service Award the Court may approve (which in no case will exceed \$2,500.00).

(b) Class Counsel will apply to the Court for the total amount of Attorneys' Fees and Expenses and Service Award concurrently with the submission of their motion in support of the Final Approval Order. In no event will Defendant pay the Attorneys' Fees and Expenses or Service Award approved by the Court (1) prior to the Effective Date and/or (2) prior to the date that the order(s) awarding the Attorneys' Fees and Expenses and/or Service Award become(s) Final, whichever is later.

(c) The Attorneys' Fees and Expenses and Service Award will be paid from the Settlement Cap pursuant to this Agreement. Within thirty (30) days after the Effective Date, provided that the order(s) awarding the Attorneys' Fees and Expenses and Service Award have become Final, and provided Class Counsel has provided Defendant with the requisite W-9s and completed wire transfer forms, Defendant shall pay from the Settlement Cap, by wire transfer to the trust account of ("Class Counsel Payee"), the Attorneys' Fees and Expenses and Service Award.

(d) Any order or proceedings relating to the Attorneys' Fees and Expenses and/or Service Award, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or effect or delay the Effective Date of this Settlement Agreement as it relates to benefits due and owing to the Settlement Class Members, provided that the Settlement Agreement is otherwise in all respects Final, except as otherwise set forth herein.

(e) Class Counsel agree that upon payment by Defendant of the Attorneys' Fees and Expenses and Service Award as approved by the Court pursuant to wire transfer information provided by Class Counsel, Defendant's obligations to Class Counsel and Plaintiff for Attorneys' Fees and Expenses and the Service Award shall be fully satisfied and discharged.

(f) Pursuant to 735 ILCS 5/2-807, the Parties expressly agree that any amount of the Settlement Cap not used to provide relief for the Settlement Class of up to \$38.00 per Claim, Attorneys' Fees and Expenses, any Service Award, and Notice and Administrative Costs of up to \$100,000.00 shall remain with/revert to Defendant so that there are no (\$0) "residual funds" under the statute.

### **C. Settlement Approval**

Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement, which Defendant agrees it will not oppose. The motion shall seek entry of a Preliminary Approval Order,

which shall be in a form agreed upon by Class Counsel and Defendant, which, among other things, will:

- (1) Preliminarily approve this Settlement.
- (2) Provisionally certify the Settlement Class for settlement purposes.
- (3) Appoint Class Counsel as counsel for the provisionally certified Settlement Class.
- (4) Preliminarily find that the proposed Settlement is fair, reasonable, and adequate and order that Class Notice be provided to the Settlement Class as set forth in Paragraph III.B below (or as otherwise determined by the Court), which Class Notice will: (i) describe the essential terms of the Settlement; (ii) disclose Class Counsel's intention to file an application with the Court requesting a Service Award to Plaintiff, as the class representative; (iii) provide information regarding Class Counsel's intention to file an application with the court requesting an award of Attorneys' Fees and Expenses; (iv) identify the time and place of the Final Approval Hearing; (v) set forth the procedures for objecting to the Settlement; (vi) set forth the procedures for opting out of the Settlement; (vii) identify the expected amount of the Claim Settlement Payment; and (viii) prominently display the contact information for Class Counsel.
- (5) Schedule the Final Approval Hearing.
- (6) Appoint the Settlement Administrator.
- (7) Approve the Class Notice and direct the Settlement Administrator to disseminate the Class Notice in accordance with the terms of this Agreement.
- (8) Find that the Class Notice: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all individuals entitled to receive notice; and (iv) meets all requirements of applicable law.
- (9) Require the Settlement Administrator to file proof of compliance with the notice provisions of this Agreement no later than seven (7) calendar days before the Final Approval Hearing Date.
- (10) Require any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion to the Settlement Administrator, postmarked no later than the



Opt-Out Deadline in compliance with the provisions of this Agreement and as set forth in the Class Notice.

- (11) Order that any member of the Settlement Class who does not timely and validly Opt Out of the Settlement Class will be bound by all proceedings, orders and judgments in the Action.
- (12) Require any Settlement Class Member who does not Opt Out and who wishes to object to the fairness, reasonableness or adequacy of the Settlement or the requested Attorneys' Fees and Expenses or Service Award Payment to submit an appropriate, timely Objection to the Settlement Administrator, postmarked no later than the Objection Deadline in compliance with the provisions of this Agreement and as set forth in the Class Notice.
- (13) Order that any responses to any Objection shall be included in the Motion for Final Approval.
- (14) Direct the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications, and providing that only the Settlement Administrator, Class Counsel, Defendant's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Agreement.
- (15) Directing that Class Counsel shall file any applications for Attorneys' Fees and Expenses and a Service Award at least thirty-five (35) days prior to the Opt-Out Deadline and Objection Deadline.
- (16) Order the Settlement Administrator to provide the Opt-Out List to Class Counsel and Defendant's Counsel within fifteen (15) days after the Opt-Out Deadline and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) calendar days before the Final Approval Hearing Date.
- (17) Preliminarily enjoin all members of the Settlement Class, unless and until they have timely and properly excluded themselves from the Settlement Class under Paragraph 3(d) below, from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or arbitration or administrative, regulatory, or other proceeding in any jurisdiction based on, relating to or arising out of the Released Claims; (ii) filing, commencing, prosecuting, or participating in a lawsuit or arbitration or administrative, regulatory, or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the Released

Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or arbitration or administrative, regulatory, or other proceeding based on, relating to or arising out of the Released Claims. This Settlement Agreement is not intended to prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency.

**D. Service Award and Attorneys' Fees and Expenses**

**1. Service Award**

Class Counsel will request, and Defendant will not oppose, a Service Award not to exceed Two Thousand and Five Hundred Dollars and Zero Cents (\$2,500.00) for Plaintiff, to be paid by Defendant from the Settlement Cap. If the Court awards the Service Award, and provided that Class Counsel has provided Defendant with the requisite W-9s and completed wire transfer forms, within thirty (30) days of the Effective Date, Defendant will pay the Service Award to Class Counsel by wire transfer to the trust account of Class Counsel.

**2. Attorneys' Fees and Expenses**

Class Counsel will request, and Defendant will not oppose, an award of Attorneys' Fees and Expenses of approximately 33% of the Settlement Cap (of \$2,108,962.00), in an amount not to exceed \$695,957.00, to be paid by Defendant from the Settlement Cap. Class Counsel shall be responsible for allocating and shall allocate among Class Counsel any Attorneys' Fees and Expenses, and Defendant shall have no responsibility, role, or liability in connection with such allocation. Class Counsel agrees not to seek, and Defendant agrees not to oppose, a request for Attorneys' Fees and Expenses of up to \$695,957.00, recognizing that the Court in its discretion may award a lesser amount, and this will not prevent the Settlement from becoming Final. Provided that Class Counsel has provided Defendant with requisite W-9s and completed wire transfer forms, within thirty (30) days of the Effective Date, Defendant will pay Attorneys' Fees and Expenses to Class Counsel by wire transfer to the trust account of Class Counsel.

### **3. Finality of Service Award and Attorneys' Fees and Expenses**

In no event will Defendant pay (a) the Service Award, or (b) Attorneys' Fees and Expenses, approved by the Court prior to the date that the order(s) awarding the Service Award and/or Attorneys' Fees and Expenses become Final. Any order or proceeding relating to the Service Award and/or Attorneys' Fees and Expenses award, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel the Settlement or effect or delay the Effective Date of the Settlement as it relates to benefits conferred to Settlement Class Members, provided that the Settlement is otherwise in all respects Final.

### **4. Defendant's Total Obligations for Attorneys' Fees and Expenses**

Class Counsel agree that upon payment by Defendant of the Attorneys' Fees and Expenses award as approved by the Court, pursuant to wire transfer information provided by Class Counsel, Defendants' obligations to Class Counsel and the class representatives for Attorneys' Fees and Expenses shall be fully satisfied and discharged.

## **III. CLAIMS ADMINISTRATION**

### **A. Administrator**

The Parties have agreed on Epiq as the Administrator. The Administrator shall administer the Settlement in accordance with the terms of this Agreement, in a cost-effective and timely manner, and shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as Confidential Information except as provided for in this Agreement or by court order.

- (1) The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.
- (2) The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Settlement.

- (3) Without limiting any of its other obligations as stated herein, the Administrator shall be responsible for, among other things and if and as necessary, for the implementation and effectuation of Class Notice, processing Claim Forms, receiving and maintaining on behalf of the Court any correspondence regarding requests for exclusion and/or objections to the Settlement, administering Claim Settlement Payments, and providing all other related support, reporting, and administration as further stated in this Agreement. The Parties may direct the Administrator to assist with various additional administrative tasks in implementing the Settlement as the Parties agree is appropriate.
- (4) The Parties agree that the Settlement Administrator may communicate with the Settlement Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with the Notice or other terms of this Agreement.
- (5) The Parties will coordinate with the Administrator to provide and mail/email Notice to the Settlement Class, as provided in this Agreement.
- (6) Notice and Administrative Costs of no more than \$100,000.00 will be paid by Defendant from the Settlement Cap, with the remainder (if any) to be paid by Class Counsel.
- (7) The Administrator will invoice Defendant directly for start-up and initial Class Notice costs at any time after entry of the Preliminary Approval Order and will bill Defendant monthly for incurred fees and expenses thereafter up to \$100,000.00; thereafter, the Administrator will invoice Class Counsel.
- (8) The Administrator will complete and provide to Defendant any W-9 forms necessary for Defendant to pay for the Notice and Administrative Costs.
- (9) Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiff, any Settlement Class Member, Class Counsel, or the Administrator.

**B. Notice**

**1. Notice to the Settlement Class**

Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Any Notices provided under or as part of the Notice program shall not bear or include the Defendant's logo or trademarks or the return address of Defendant, or

otherwise be styled to appear to originate from Defendant. At Defendant's request, ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days of the date upon which operation of the Settlement Website ceases, which shall be three months following distribution of all Claim Settlement Payments to Settlement Class Claimants who submit valid Claims, or such other date as Class Counsel and Defendant may agree upon in writing.

## **2. Settlement Class Data**

Within fifteen (15) days after entry of the Preliminary Approval Order, Defendant—if it has not already done so—will provide to the Administrator the Settlement Class Data in electronic format. Using the Settlement Class Data, the Administrator will determine the email, if any, associated with each of the telephone numbers of the Settlement Class Members.

## **3. Short-Form Notice**

The Administrator shall send one copy of the Notice by e-mail to those Settlement Class Members for whom Defendant has e-mail addresses. The Administrator shall also send one copy of the Notice by postcard with detachable form *via* U.S. Mail with prepaid postage.

## **4. Long-Form Notice**

E-Mail Notice will contain the address for the Settlement Website, [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com). On the website, Settlement Class Members will find important documents and court filings, including the Long-Form Notice, which will contain more detail than the email Notice. The Long Form Notice also will be sent to all Settlement Class Members who contact the Administrator by telephone or email and request a copy.

## **5. Settlement Website**

By the Class Notice Date, the Administrator shall establish and maintain the Settlement Website, which, among other things: (i) enables Settlement Class Members to access and download the Claim Form, (ii) provides contact information for Class Counsel, and (iii) provides

access to relevant documents concerning the Action. Such documents shall include this Agreement and Class Notice including the Long-Form Notice; the Preliminary Approval Order; the Complaint; and, when filed, the Final Approval Order. The Class Notice shall include the address (URL) of [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com) for the Settlement Website. The Administrator shall maintain the Settlement Website until at least sixty (60) days following the Claim Deadline.

## **6. IVR**

By the Class Notice Date, the Administrator shall establish and maintain a toll-free number that maintains an IVR (or similar) system to answer questions about the Settlement. The Administrator shall maintain the IVR (or similar) system until at least sixty (60) days following the Claim Deadline.

## **C. Claim Filing, Review, and Approval Process**

### **1. Claim Form**

To submit a Claim, Settlement Class Members must correctly provide the information and documentation required by the Claim Form. The Claim Form shall require any Settlement Class Member who submits a Claim to provide the following documentation and information: (a) Settlement Class Claimant's name, current address, telephone number, and e-mail address (if any); and (b) Settlement Class Claimant's telephone number that the Settlement Class Claimant contends received a prerecorded message from Defendant. To be a valid claim, each Settlement Class Claimant shall also check a box confirming that they received, from the Defendant during the Class Period, an automated or prerecorded message on their mobile phone or residential landline, and upon receipt of an otherwise valid Claim Form, the Administrator shall then confirm that a prerecorded message was sent to the Settlement Class Claimant's telephone number. Each Settlement Class Member may submit up to one (1) Claim Form.

## **2. Claim Filing Process**

Settlement Class Members shall be permitted to make a Claim for a Claim Settlement Payment by uploading a Claim Form onto the Settlement Website on a date no later than the Claim Deadline. Any Settlement Class Member who does not submit an accurate and fully completed Claim Form by the Claim Deadline shall be deemed to have waived any Claim and any such Claim will be rejected. Only one Claim Form may be submitted per telephone number and/or per Settlement Class Member, regardless of how many prerecorded messages or other telecommunications a Settlement Class Member contends he/she received.

## **3. Invalid Claims**

Any Settlement Class Member who fails to submit a timely, accurate, and fully completed and correct, valid Claim Form shall not be entitled to receive a Settlement Claim Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

## **4. Claim Review Process**

The Administrator shall confirm that each Claim Form submitted is in the form required; that each Claim Form includes the required confirmations, information, and documentation; that each Claim Form was submitted in a timely fashion; and that the Settlement Class Claimant is a member of the Settlement Class. Any Settlement Class Claimant's failure to provide any of the required confirmations or information shall result in the Claim being deemed invalid, and Defendant shall not have any further obligation to process or make any Claim Settlement Payment on such invalid Claim. Defendant shall have the right to audit all Claims to confirm that Claims are valid. The Administrator shall not receive any incentive for approving or denying Claims.

## **D. Opt-Out Rights**

### **1. Opt-Out (Request for Exclusion) Requirements**

A Settlement Class Member who wishes to opt-out of the Settlement Class must do so in writing. To opt-out, a Settlement Class Member must complete and send to Class Counsel (or the Administrator), at the address listed in the Class Notice, a Request for Exclusion that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice (or as the Court otherwise requires).

(a) The Request for Exclusion must: (i) identify the case name; (ii) identify the name, address, and telephone number of the Settlement Class Member; (iii) identify the mobile telephone number at which the person received, from the Defendant during the Class Period, an automated or prerecorded voice message on their mobile phone or residential landline; (iv) be personally signed by the Settlement Class Member requesting exclusion; and (v) contain a statement that indicates a desire to be excluded from the Settlement Class in the Action, such as: “I hereby request that I be excluded from the proposed Settlement Class.”

(b) Any Settlement Class Member who does not opt-out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class, and shall be bound by all subsequent proceedings, orders, and judgments, including the Final Approval Order.

(c) A Settlement Class Member who desires to opt-out must take timely affirmative written action in accordance with this Section, even if the Settlement Class Member desiring to opt-out (i) files or has filed a separate action against any of the Released Parties, or (ii) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

(d) Defendant has the right to terminate this Agreement, declare it null and void, and have no further obligations under the Settlement to Plaintiff or to the Settlement Class Members if the total number of timely and valid requests for exclusion exceeds five (5) percent of the total number of Settlement Class Members.

### **2. Opt-Outs Not Bound**

Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or



be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement.

### **3. List of Requests for Exclusion**

At least fifteen (15) days before the Final Approval Hearing, the Administrator shall provide Class Counsel and Counsel for Defendant with a list of all timely Requests for Exclusion along with copies of such Requests for Exclusion. The Administrator shall then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) calendar days before the Final Approval Hearing Date.

### **4. All Settlement Class Members Bound by Settlement**

Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms.

### **E. Objections**

Any Settlement Class Member who does not opt-out of the Settlement may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement.

#### **1. Process**

Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Court and mailed (with the requisite postmark) to Class Counsel and Counsel for Defendant, no later than the Objection Deadline.

#### **2. Requirements**

The requirements to assert a valid written objection shall be set forth in the Class Notice. To be valid, the written objection must include:

- (a) the name of the Action;
- (b) the objector's full name, address, and telephone number, the mobile or residential landline telephone number at which you received an automated or pre-recorded voice message from Defendant during the Class Period and, if represented by counsel, the name, bar number, address, and telephone number of your counsel;
- (c) a signed statement stating, under penalty of perjury, that you received one or more automated or pre-recorded voice message from Defendant during the Class Period and are a member of the Settlement Class;
- (d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- (e) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling on the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- (f) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- (g) a copy of any orders related to or ruling on counsel's or the counsel's law firm's prior objections made by individuals or organizations represented by the objector's counsel and/or counsel's law firm that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- (h) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- (i) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- (j) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- (k) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- (l) the objector's signature (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

### **3. Appearance**

Subject to approval by the Court, any Settlement Class Member who files and serves a written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to attempt to show cause why the Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”); and (b) serves the Notice of Intention to Appear on Class Counsel and Counsel for Defendant by the Objection Deadline.

The Notice of Intention to Appear must include: (a) the case name and number; (b) the Settlement Class Member’s name, address, telephone number, and signature, and, if represented by counsel, their contact information; (c) the telephone number where he or she received a text message from Defendant; and (d) copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Class Notice and this Agreement shall not be entitled to appear at the Final Approval Hearing and raise any objections, subject to the discretion of the Court.

#### **4. Discovery From Settlement Class Members Who Object to The Settlement**

The Parties shall have the right to take discovery from any person who claims to be a Settlement Class Member who objects to the Settlement without further leave of court. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery from the Settlement Class Member's counsel without further leave of court.

##### **F. Non-Approval of Agreement**

Except for the Attorneys' Fees and Expenses and Service Award, this Settlement Agreement and Settlement is conditioned on Final Approval without material modification by the Court. If the Agreement is not so approved, the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as if no settlement or this Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other or any member of the Settlement Class. Except for the Attorneys' Fees and Expenses and Service Award, if the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive, evidentiary, procedural, or rights of any kind that they may have as to each other or any member of the Settlement Class.

##### **G. Retention of Records**

The Administrator shall retain all records relating to payment of claims under this Agreement for a period of five (5) years from the Effective Date. Those records shall be maintained in accordance with this Agreement as Confidential Information.

#### **IV. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION**

##### **A. Exclusive Remedy; Permanent Injunction**

Upon issuance of the Final Approval Order: (i) the Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s); (iii) Settlement Class Members who have not opted out shall be permanently barred and enjoined from asserting any Released Claims in any action or from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and (iv) Settlement Class Members who have not opted out shall be permanently barred and precluded from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto.

##### **B. Dismissal of Claims**

The Parties agree that the Action shall be dismissed with prejudice in accordance with the Final Approval Order and judgment shall be entered.

##### **C. Continuing Jurisdiction of Court**

The Court shall retain exclusive and continuing jurisdiction over this Action, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

## **V. RELEASES**

### **A. The Released Claims**

Upon the Effective Date of this Agreement, the Released Parties shall be released and forever discharged by the Class Representative, the Settlement Class, and each Settlement Class Member (on behalf of themselves as well as their heirs, agents, privies, attorneys, insurance carriers, executors, administrators, and successors and assigns, collectively, the “Releasing Persons”) from all Released Claims. The Settlement Class and each Settlement Class Member covenant and agree that they shall not hereafter seek to establish liability against any of the Released Parties based, in whole or in part, on any of the Released Claims.

- (1) Subject to Court approval, all Settlement Class Members shall be bound by this Agreement and the release set forth in this Paragraph and this Agreement, and all of their Released Claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement.
- (2) Without in any way limiting the scope of the release contained in this Paragraph, the release covers any and all claims for attorneys’ fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or the Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement, the administration of the Settlement and the Released Claims as well as any and all claims related to the Service Award payment and the Attorneys’ Fees and Expenses payment.

## **VI. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542.**

The Class Representatives, the Settlement Class, and each Settlement Class Member expressly waive and relinquish any and all rights and benefits, conferred by Section 1542 of the California Civil Code, or by any other statutes, common law principles, laws, or rules of similar effect to 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.

The Class Representative, the Settlement Class, and each Settlement Class Member acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representative, the Settlement Class, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order, shall have, nevertheless, fully, finally, and forever waived, settled, and released any and all Released Claims, regardless of such subsequent discovery of additional or different facts.

Upon the Effective Date of this Agreement, the Released Parties shall be released and forever discharged by the Plaintiff for any and all claims that he may have against any of the Released Parties.

Upon issuance of the Final Approval Order, the Class Representative, and all Settlement Class Members shall be permanently barred and enjoined from: (a) asserting any Released Claims in any action or proceeding or from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action or proceeding based on any of the Released Claims; and (b) organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action or proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action or proceeding) based on any of the Released Claims. Nothing in this Agreement shall preclude any action to enforce the terms of the Agreement.

**VII. ENTRY OF JUDGMENT.**

Upon entry of the Final Approval Order, this Lawsuit shall be dismissed in its entirety, with prejudice. The Final Approval Order shall constitute the Court's final judgment in this action.

The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

**VIII. COVENANTS, REPRESENTATIONS, AND WARRANTIES**

Plaintiff, Class Counsel, and the Settlement Class Members covenant and agree: (a) not to assert any of the Released Claims in any action or proceeding and not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action or proceeding based on any of the Released Claims against any of the Released Parties; (b) not to organize or solicit the participation of Settlement Class Members in a separate class for purposes of pursuing any action or proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action or proceeding) based on or relating to any of the Released Claims or the facts and circumstances relating thereto against the Released Parties; and (c) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Released Parties.

Plaintiff represents and warrants that: (a) he is the sole and exclusive owner of his own Released Claims; (b) that he has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties; (c) that he will not assign or otherwise transfer any interest in any of the Released Claims; and (d) that he has no surviving claim or cause of action against any of the Released Parties that is not being released by this Agreement.

Class Counsel represent and warrant that: (a) they know of no other persons with claims against Defendant who are not included in the Settlement Class and whose claims will not be released upon the Effective Date of this Agreement; (b) they will keep confidential and not publicly disclose, disseminate, or use any of the information in the Settlement Class Data; and (c) they will not advertise for or solicit individuals to bring any additional lawsuits or claims against the Released Parties.



## **IX. MISCELLANEOUS PROVISIONS**

### **A. Receipt of Advice of Counsel**

The Parties acknowledge, agree, and specifically warrant that he, she, or it has fully read this Agreement and the Release, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

### **B. Cooperation to Facilitate this Settlement**

The Parties agree that they shall work together in good faith to facilitate this Agreement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

### **C. Representation by Counsel**

The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

### **D. No Admission of Liability**

Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representative, on behalf of himself or the Settlement Class, against Defendant. Defendant expressly denies and disclaim any liability or wrongdoing.

### **E. Non-Admissibility of Agreement**

The existence, contents, and terms of Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible as evidence for any purpose in any proceeding, except solely for purposes of enforcement of the Agreement's terms; however, this

Agreement may be used by either Party and pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to any of the Released Claims, and may be filed, offered, and received into evidence, and otherwise used for such defense.

**F. Contractual Agreement**

The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

**G. Change of Time Periods**

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Counsel for Defendant, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to Court approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

**H. Integration**

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

**I. Drafting**

The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Agreement is a collaborative effort of the Parties and their respective attorneys.

**J. Costs**

Except as otherwise provided herein, each Party shall bear its own legal fees and other costs incurred in connection with the Released Claims, including the preparation and performance of this Agreement.

**K. Modification or Amendment**

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

**L. No Waiver**

The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

**M. Severability**

The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be severable and shall not limit or affect the validity, legality, or enforceability of any other

provision hereunder; provided, however, that the terms of this Section shall not apply should any court or tribunal find any material part, term, or provision of the release of the claims alleged in this Action to be illegal or invalid in any manner, including the scope of the Release, the Settlement Cap or any payment terms hereunder, but not including any reduction in the amount of the Attorneys' Fees and Expenses and/or Service Award by the Court.

**N. No Violation of Law or Agreement**

The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not, conflict with, violate, result in a breach of, or cause a default under, (a) any applicable provision of any federal, state, or local law or regulation, (b) any provision of any order, arbitration award, judgment, or decree, or (c) any provision of any agreement or instrument applicable to the Parties.

**O. Successors**

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties hereto.

**P. Choice of Law**

All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Illinois, without reference to its conflict of law provisions. The adequacy of the settlement, any determination regarding Class Counsel's fees and expenses, and any Service Award shall be governed by Illinois law.

**Q. Fair and Reasonable**

The Parties and their counsel believe that this Agreement is a fair and reasonable compromise of the disputed claims, it is in the best interests of the Parties, and have arrived at this Agreement as a result of extensive arms-length negotiations.

**R.     Headings**

All headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

**S.     Exhibits**

The Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

**T.     No Assignment**

Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party. Any Party that breaches the representations and warranties set forth in this Section shall indemnify and hold harmless each other Party, its parents, subsidiaries, and affiliates, and their respective owners, agents, attorneys, successors, heirs, assigns, administrators, officers, directors, employees, and all other persons acting in concert with them from any and every claim or demand of every kind or character arising out of a breach by any such breaching Party of its representations and warranties in this Section.

**U.     No Rescission on Grounds of Mistake**

The Parties acknowledge that they have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of the Agreement on the grounds of mistake. Moreover, the Parties understand, agree and expressly assume the risk that any fact not recited, contained, or embodied in the Agreement may turn out hereinafter to be other than,

different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

**V. Notification.**

Any notice to be given to Class Counsel or Plaintiff shall be sent by email and mail as follows:

Scott A. Edelsberg & Chris Gold  
Edelsberg Law, P.A.  
20900 N.E. 30th Avenue #417  
Aventura, FL 33180

-And -

Andrew J. Shamis  
Shamis & Gentile, P.A.  
14 NE 1st Ave, Suite 705  
Miami, FL 33132

-And -

Manuel S. Hiraldo  
Hiraldo, P.A.  
401 East Las Olas Boulevard Suite 1400  
Fort Lauderdale, FL 33301

Any notice to be given to Defendant's Counsel or Defendant under the terms of this Agreement shall be sent by email and mail as follows:

Aegis Financial LLC  
7105 W. 44<sup>th</sup> Avenue  
Denver, Colorado 80033  
Attn: President  
With a copy to: Legal Department

With a copy to:

Livia M. Kiser (lkiser@kslaw.com)  
Michael D. Roth (mroth@kslaw.com)  
King & Spalding LLP

633 West Fifth Street, Suite 1600  
Los Angeles, California 90071

**W. Confidentiality; Communications to Media and Public**

Class Counsel agree not to publicly identify this Settlement on their law firm websites or any other social media or public website, nor to discuss the Settlement publicly at any time.

The Parties agree that they shall not publish a press release or a release on the Internet concerning the Settlement.

The Parties also agree that the terms of this Settlement shall remain confidential and not be disclosed by any Party until the Agreement is filed in connection with the Preliminary Approval Application. The Parties further agree that before the entry of Final Approval of the Settlement, if any print or electronic media outlet contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed on by all Parties, no information will be provided in response to such inquiries.

For the avoidance of any doubt, nothing in this Agreement prevents the Parties from making any disclosures required to effectuate this Agreement or from making any disclosures required by law.

**X. Counterparts**

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall be deemed to be one and the same instrument. Delivery of an executed counterpart by PDF or other electronic delivery shall be equally effective as delivery of a manually executed counterpart.

**Y. Facsimile and Electronic Mail**

Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

**Z.     Warranty of Signature**

Each signer of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing and that this Agreement is binding on the principal represented by that signatory.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

*[Signature Page to Follow]*



Dated: May 22, 2023

By:   
tomer darvish (May 22, 2023 08:51 PDT)  
Plaintiff and Class Representative

Approved as to Form and Accepted  
and Agreed as to any Obligations of  
Counsel:

Dated: May 22, 2023

By: *Chris Gold*  
Counsel for Plaintiff and the Settlement Class

AEGIS FINANCIAL CONSULTING, LLC

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form and Accepted  
and Agreed as to any Obligations of  
Counsel:

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

By: \_\_\_\_\_  
Counsel for Defendant

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

By: \_\_\_\_\_  
Plaintiff and Class Representative

Approved as to Form and Accepted  
and Agreed as to any Obligations of  
Counsel:

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

By: \_\_\_\_\_  
Counsel for Plaintiff and the Settlement Class

Dated: May 22, 2023

AEGIS FINANCIAL CONSULTING LLC

By: 

Name: Darin W. Lucas

Title: President

Approved as to Form and Accepted  
and Agreed as to any Obligations of  
Counsel:

Dated: May 22, 2023

By: Livia Kiser  
Counsel for Defendant

# **EXHIBIT 1**

**Aegis Financial LLC Settlement****CLAIM FORM****Case No. 2023CH000015**

Return this Claim Form to: Claim Administrator, PO Box xxxx, xxxxxxxx, xx xxxxx- xxxx. Questions, visit **www.DarvishAutomatedCallSettlement.com** or call **1-xxx-xxx-xxxx**.

**DEADLINE: THIS CLAIM FORM MUST BE POSTMARKED BY [MONTH DAY, YEAR], BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.**

**YOU MUST SUBMIT THIS CLAIM FORM TO RECEIVE A SETTLEMENT PAYMENT.**

Please note that if you are a Class Member, the Class Member Verification section below requires you to state, under penalty of perjury, that all information contained therein is true and correct. This Claim Form may be researched and verified by the Claim Administrator.

**YOUR CONTACT INFORMATION**

**Name:** \_\_\_\_\_  
(First) (Middle) (Last)

**Current Address:** \_\_\_\_\_  
(City) (State) (ZIP Code)

**Your Telephone Number on the Date (between February 4, 2018 and May 15, 2023) that you Received a Call and either an Automated or Pre-recorded Message from Aegis Financial LLC:**

( ) -

**Email address:**

**Your Current Phone Number:** ( ) - or ☐ check if same as above (Please provide a phone number where you can be reached if further information is required.)

**Class Member Verification**

☐ I confirm that between February 4, 2018 and May 15, 2023, I received a telephone call and either an automated or prerecorded voice message from or on behalf of Defendant on my mobile phone or residential landline.

By submitting this claim form, I declare under penalty of perjury that I am a member of the Class (defined as “**All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline between February 4, 2018, and May 15, 2023.**”). I further declare under penalty of perjury that I was the subscriber of the phone which received the call from Defendant and that I am the current subscriber of the current telephone mentioned above, and that the information provided herein is true and correct.

\*\*\*\*\*

Additional information regarding the Settlement can be found at visit [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

If you have questions, you may call the Claim Administrator at 1-xxx-xxx-xxxx.

# **EXHIBIT 2**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

CASE NO. 2023CH000015

TOMER DARVISH, individually and on behalf  
of all others similarly situated,

**CLASS ACTION**

*Plaintiff,*

v.

AEGIS FINANCIAL, LLC,

*Defendant.*

\_\_\_\_\_ /

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

On \_\_\_\_\_, 2023, the Court granted preliminary approval to the proposed class action settlement set forth in the Settlement Agreement and Release between Plaintiff Tomer Darvish, individually and on behalf of all members of the Settlement Class, and Defendant Aegis Financial LLC (“Defendant”) (collectively, the “Parties”). The Court also provisionally certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on \_\_\_\_\_.

On \_\_\_\_\_, the Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Plaintiff’s Complaint on the merits and with prejudice in favor of Defendant and against all persons or entities who are Settlement Class Members herein who have not requested exclusion from the Settlement Class; and (3) whether and in what amount to award counsel for the Settlement Class as Attorneys’ Fees and Expenses and whether and in what amount to award a Service Award to Plaintiff.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**I. JURISDICTION OF THE COURT**

1. The Court has personal jurisdiction over the parties and the Settlement Class Members, venue is proper, and the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto, and to enter this Final Approval Order. Without in any way affecting the finality of this Final Approval Order, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Approval Order, and for any other necessary purpose.

2. The Settlement Agreement was negotiated with the assistance of a neutral mediator, the Honorable Wayne R. Andersen (Ret.) at arm's length by experienced counsel who were fully informed of the facts and circumstances of this litigation (the "Action") and of the strengths and weaknesses of their respective positions. The Settlement Agreement was reached after the Parties had engaged in mediation and extensive settlement discussions and after the exchange of information, including information about the size and scope of the Settlement Class. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation.

3. The Court finds that the prerequisites for a class action under 735 ILCS 5/2-801 have been satisfied for settlement purposes for each Settlement Class Member in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class he seeks to represent; (d) Plaintiff have and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact

common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f) the Settlement Class is ascertainable; and (g) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

## **II. CERTIFICATION OF SETTLEMENT CLASS**

4. Pursuant to 735 ILCS 5/2-801, this Court hereby finally certifies the Settlement Class, as identified in the Settlement Agreement: “All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline between April 4, 2018, and May 15, 2023.” Excluded from the Settlement Class are: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any of the foregoing person(s) in (1)-(3); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

## **III. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

5. The Court finally appoints Scott A. Edelsberg and Chris Gold of Edelsberg Law, P.A.; and Andrew J. Shamis of Shamis & Gentile, P.A. as Class Counsel for the Settlement Class.

6. The Court finally designates Plaintiff as the Class Representative.

## **IV. NOTICE AND CLAIMS PROCESS**

7. The Court makes the following findings on notice to the Settlement Class:

(a) The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement: (i) constituted the best practicable notice under the circumstances to Settlement Class Members; (ii) constituted notice that was reasonably calculated, under the



circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and (iv) complied fully with the requirements of 735 ILCS 5/2-803, the United States Constitution, the Rules of this Court, and any other applicable law.

(b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order: (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of 735 ILCS 5/2-803, the Rules of this Court, and any and all other applicable laws.

## **V. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

8. The Settlement Agreement is finally approved in all respects as fair, reasonable and adequate. The terms and provisions of the Settlement Agreement, including all Exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

## **VI. ADMINISTRATION OF THE SETTLEMENT**

9. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Administrator is directed to provide Claim Settlement Payments to those Settlement Class Members who submit valid, timely, and complete Claims.

10. The Court hereby approves Class Counsel's request for attorney fees, costs, and expenses, and awards Class Counsel \$695,957.00 as reasonable attorneys' fees and costs, inclusive of the award of reasonable costs incurred in this Action. The Court finds that the requested fees are reasonable under the percentage of the fund for the reasons set forth herein. The award of attorneys' fees and costs to Class Counsel shall be paid from the Settlement Cap within the time period and manner set forth in the Settlement Agreement.

11. The Court hereby awards Class Counsel for their time incurred and expenses advanced. The Court has concluded that: (a) Class Counsel achieved a favorable result for the Class by obtaining Defendant's agreement to make significant funds available to Settlement Class Members, subject to submission of valid claims by eligible Settlement Class Members; (b) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the Settlement Class's claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses; (d) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Settlement Class, in spite of Defendant's possible legal defenses and its experienced and capable counsel; (3) Class Counsel have standard contingent fee agreements with Plaintiff, who has reviewed the Settlement Agreement and been informed of Class Counsel's fee request and have approved; and (f) the Notice informed Settlement Class Members of the amount and nature of Class Counsel's fee and cost request under the Settlement Agreement, Class Counsel filed and posted their Petition in time for Settlement Class Members to make a meaningful decision whether to object to the Class Counsel's fee request, and \_\_\_\_ Settlement Class Member(s) objected.

12. The Court awards a Service Award in the amount of twenty-five hundred dollars \$2,500.00 to Plaintiff, payable pursuant to the terms of the Settlement Agreement.

13. Pursuant to 735 ILCS 5/2-807, the Court finds that any amount of the Settlement Cap not used to pay a Claim Settlement Payment, Class Counsel's fees and costs, the Service Award, or Notice and Administration Costs of up to \$100,000.00 shall remain with/revert to Defendant so that there are no (\$0) "residual funds" under the statute.

## **VII. RELEASE OF CLAIMS**

13. Upon entry of this Final Approval Order, all members of the Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Agreement shall, by operation of this Final Approval Order, have fully, finally and forever released, relinquished and discharged Defendant and the Released Parties from the Released Claims as set forth in the Settlement Agreement

14. Furthermore, all members of the Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Agreement are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action or that could have been brought in the Action and/or as a result of or in addition to those provided by the Settlement Agreement.

15. The terms of the Settlement Agreement and of this Final Approval Order, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect

in, all pending and future lawsuits maintained by Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

16. The Releases, which are set forth in the Settlement Agreement and which are also set forth below, are expressly incorporated herein in all respects and are effective as of the date of this Final Approval Order; and the Released Parties (as that term is defined below and in the Settlement Agreement) are forever released, relinquished, and discharged by the Releasing Persons (as that term is defined below and in the Settlement Agreement) from all Released Claims (as that term is defined below and in the Settlement Agreement).

(a) The Settlement Agreement and Releases do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements of the Settlement Agreement.

(b) The administration and consummation of the Settlement as embodied in the Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Releases. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

(c) The Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out), and the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

(d) The Releases shall not preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The

Releases set forth herein and in the Settlement Agreement are not intended to include the release of any rights or duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

17. Plaintiff and all Settlement Class Members who did not timely exclude themselves from the Settlement Class are, from this day forward, hereby permanently barred and enjoined from directly or indirectly: (i) asserting any Released Claims in any action or proceeding; (ii) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit based on or relating to any Released Claims or the facts and circumstances relating thereto; or (iii) organizing any Settlement Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to any of the Released Claims.

#### **VIII. NO ADMISSION OF LIABILITY**

18. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, nor this Final Approval Order, nor any of its terms and provisions, shall be:

(a) offered by any person or received against Defendant or any Released Party as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by Defendant of the truth of the facts alleged by any person, the validity of any claim that has been or could have been asserted in the Action or in any other litigation or judicial or administrative proceeding, the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing by Defendant or any Released Party;

(b) offered by any person or received against Defendant or any Released Party as evidence of a presumption, concession, or admission of any fault or violation of any law by Defendant or any Released Party; or

(c) offered by any person or received against Defendant or any Released Party as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing in any civil, criminal, or administrative action or proceeding.

## **IX. OTHER PROVISIONS**

19. This Final Approval Order and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Party (as that term is defined herein and the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. Without further order of the Court, the Settling Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

21. In the event that the Effective Date (as defined in the Settlement Agreement) does not occur, this Final Approval Order shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void. In the event that the Effective Date does not occur, the Settlement Agreement shall become null and void and be of no further force and effect, neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever, and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification, including the right to argue that no class should be certified for any purpose, and with respect to any claims or allegations in this Action.

23. This Action, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice against Plaintiff and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

**DONE and ORDERED** at DuPage County, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2023

---

CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

# **EXHIBIT 3**



## **If You Received a Call with an Automated or Pre-Recorded Message from Aegis Financial LLC, You May Be Entitled to a Payment from a Class Action Settlement**

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

- A Settlement<sup>1</sup> has been reached in a proposed class action lawsuit about whether Aegis Financial LLC (“Aegis Financial” or the “Defendant”) made telephone calls to mobile telephone numbers or residential landlines between February 4, 2018 and May 15, 2023, with automated or pre-recorded messages and without the prior express requisite consent of the recipients in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Defendant denies the allegations and any wrongdoing. The Court has not decided who is right.
- The Settlement offers payments to Settlement 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	
<b>SUBMIT A CLAIM FORM</b>	If you are a member of the Settlement Class, you must submit a completed Claim Form to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check.
<b>EXCLUDE YOURSELF</b>	You may request to be excluded from the Settlement and, if you do, you will receive no benefits from the Settlement.
<b>OBJECT</b>	Write to the Court if you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	You will not receive a payment if you fail to timely submit a completed Claim Form, and you will give up any right you may have to bring your own lawsuit against Aegis Financial 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.

---

<sup>1</sup> Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website below.

## WHAT THIS NOTICE CONTAINS

### **BASIC INFORMATION.....PAGE 3**

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?

### **WHO IS PART OF THE SETTLEMENT.....PAGE 4**

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**

8. What does the Settlement provide?
9. How do I file a Claim?
10. When will I receive my payment?

### **EXCLUDING YOURSELF FROM THE SETTLEMENT.....PAGE 5**

11. How do I get out of the Settlement?
12. If I do not exclude myself, can I sue Aegis Financial for the same thing later?
13. What am I giving up to stay in the Settlement Class?
14. If I exclude myself, can I still get a payment?

### **THE LAWYERS REPRESENTING YOU.....PAGE 6**

15. Do I have a lawyer in the case?
16. How will the lawyers be paid?

### **OBJECTING TO THE SETTLEMENT.....PAGE 6**

17. How do I tell the Court I do not like the Settlement?
18. What is the difference between objecting and asking to be excluded?

### **THE FINAL APPROVAL HEARING.....PAGE 7**

19. When and where will the Court decide whether to approve the Settlement?
20. Do I have to attend the hearing?
21. May I speak at the hearing?

### **IF YOU DO NOTHING.....PAGE 8**

22. What happens if I do nothing at all?

### **GETTING MORE INFORMATION.....PAGE 8**

23. How do I get more information?

## BASIC INFORMATION

### 1. Why is there a Notice?

A court authorized this Notice because you have a right to know about a proposed Settlement of a purported class action lawsuit known as *Tomer Darvish v. Aegis Financial LLC*, Case No. 2023CH000015, and about all of your options before the Court decides whether to give Final Approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge \_\_\_\_\_ of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, is overseeing this case. The person who sued, Tomer Darvish, is called the “Plaintiff.” Aegis Financial is called the “Defendant.”

### 2. What is this litigation about?

The lawsuit alleges that Defendant made telephone calls, including to Plaintiff, to mobile telephone numbers or residential landlines between February 4, 2018 and May 15, 2023, with automated or pre-recorded messages in violation of the TCPA. The lawsuit seeks actual and statutory damages under the TCPA on behalf of the named Plaintiff and a purported class of certain individuals in the United States.

Defendant denies each and every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation and that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

The Plaintiff’s Complaint, Settlement Agreement, and other case-related documents are posted on the Settlement Website, [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com). The Settlement resolves the lawsuit. The Court has not decided who is right.

### 3. What is the Telephone Consumer Protection Act?

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

### 4. Why is this a class action?

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

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

### 5. Why is there a settlement?

The Court has not found in favor of either Plaintiff or Defendant. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members will receive the benefits described in this Notice. Defendant denies all of the legal claims asserted in this case. Plaintiff and Plaintiff’s lawyers think the proposed Settlement is best for everyone who is affected.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT  
[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

## WHO IS PART OF THE SETTLEMENT

### 6. Who is included in the Settlement?

The Settlement includes all persons who received a call and either an automated or pre-recorded message on their mobile phone or residential landline from Defendant between February 4, 2018 and May 15, 2023. Specifically, the Settlement Class is defined as:

**All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline between April 4, 2018, and May 15, 2023.**

Persons meeting this definition are referred to collectively as the “Settlement Class” and, individually, as “Settlement Class Members.”

Excluded from the Settlement Class are: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any of the foregoing person(s) in (1)-(3); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff’s Counsel, their employees, and their immediate family.

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

If you are not sure whether you are part of the Settlement Class or have any other questions about the Settlement, visit the Settlement Website at [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com) or call the toll-free number, 1-xxx-xxx-xxxx. You also may send questions to the Settlement Administrator at Aegis Financial Settlement Administrator, P.O. Box XXXX, XXXX, XX XXXX.

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

To fully settle and release claims of the Settlement Class Members, Defendant has agreed to make payments not exceeding the Settlement Cap, as defined herein, to the Settlement Class Members and pay for notice and administration costs of the Settlement, attorneys’ fees and expenses incurred by counsel for the Settlement Class, and a service award for Plaintiff. Defendant will make available up to \$2,108,962.00 (the “Settlement Cap”). Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator in an amount not to exceed thirty-eight dollars and no cents (\$38.00), or if necessary, their *pro rata* share of the Settlement Cap of some amount less than \$38.00 after payment of notice and administration costs, incentive award, and class counsel’s fees. Settlement Class Claimants will be sent their Claim Settlement Payments to the addresses they submit on their Claim Form within 60 days following the Effective Date.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT  
[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

#### **9. How do I file a Claim?**

If you qualify for a payment, you must complete and submit a valid Claim Form. You may download a Claim Form at the Settlement Website, [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com), or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately, signed under penalty of perjury, and submitted timely.

You must submit a Claim Form by U.S. mail or through the Settlement Website, and it must be postmarked by [DATE].

Please read the Claim Form carefully and provide all the information required. Only one Claim Form may be submitted per Settlement Class Member.

#### **10. When will I receive my payment?**

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

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendant 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 Settlement Class.

#### **11. How do I get out of the Settlement?**

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

Aegis Financial Settlement Administrator  
P.O. Box XXXX  
XXXX, XX XXXX

Your request to be excluded from the Settlement must be personally signed by you under penalty of perjury and contain a statement that indicates your desire to be “excluded from the Settlement Class” and that, absent of excluding yourself or “opting out,” you are “otherwise a member of the Settlement Class.”

Your exclusion request must be postmarked no later than [DATE]. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself.

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

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

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT  
[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

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

Unless you opt out of the Settlement, you cannot sue or be part of any other lawsuit against Defendant about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you.

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

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

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

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in the case?**

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

Scott Edelsberg, Esq.  
Chris Gold, Esq.  
Edelsberg Law, PA  
20900 NE 30th Ave., Suite 417  
Aventura, FL 33180

Andrew J. Shamis, Esq.  
Shamis & Gentile, P.A.  
14 NE 1st Avenue, Suite 705  
Miami, Florida 33132

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

### **16. How will the lawyers be paid?**

Class Counsel intend to request up to \$695,957.00 for attorneys’ fees and reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation, which Defendant agrees to not oppose. The fees and expenses awarded by the Court will be paid from the Settlement Cap. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request that a Service Award of \$2,500.00 be paid from the Settlement Cap to the Class Representative for his service as representative on behalf of the whole Settlement Class.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT  
[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

## OBJECTING TO THE SETTLEMENT

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

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

- 1) A heading that includes the case name and case number— *Tomer Darvish v. Aegis Financial, LLC*, Case No. 2023CH000015;
- 2) Your name, address, telephone number, the mobile telephone or residential landline phone number at which you received a pre-recorded call and/or automated message from Defendant and if represented by counsel, the name, bar number, address, and telephone number of your counsel;
- 3) A signed statement stating, under penalty of perjury, that you received one or more pre-recorded calls and/or automated messages from Defendant and are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement including your legal and factual basis for each objection;
- 5) The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such an objection, and a copy of any orders related to or ruling upon the prior such objections that were issued by the trial and appellate courts in each listed case;
- 6) The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Fee Application;
- 7) The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;
- 8) Any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector's counsel and any other person or entity;
- 9) A statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend;
- 10) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- 11) Your signature (an attorney's signature is not sufficient).

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

Clerk of the Court	Class Counsel	Defendant's Counsel
	Scott Edelsberg, Esq. Edelsberg Law, PA 20900 NE 30th Ave. Suite 417 Aventura, FL 33180	

#### 18. 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 fees and expenses ("Final Approval Hearing").

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

The Court has scheduled a Final Approval Hearing on **xxxxxxx at xxx a.m.** at the xxxxxxxxxxxxxxxx. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for attorneys' fees and expenses and for a Service Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

#### 20. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time to the proper addresses and it complies with all the other requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it is not necessary.

#### 21. May I speak at the hearing?

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

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



## **IF YOU DO NOTHING**

### **22. What happens if I do nothing at all?**

If you are a Settlement Class member 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**

### **23. How do I get more information?**

This Notice summarizes the proposed Settlement. You are urged to review more details in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com). You also may write with questions to the Settlement Administrator at Aegis Financial Settlement Administrator, P.O. Box XXXX, XXXX, XX XXXXX or call the toll-free number, 1-xxx-xxx-xxxx.

**QUESTIONS? CALL 1-xxx-xxx-xxxx OR VISIT  
[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

# **EXHIBIT 4**

**If You Received a Call and either an Automated or Prerecorded Message from Aegis Financial LLC between February 4, 2018 and May 15, 2023, You May Be Entitled to a Payment from a Class Action Settlement**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A settlement has been reached in a purported class action lawsuit alleging that Aegis Financial LLC (“Aegis Financial” or “Defendant”) made telephone calls between February 8, 2018 and May 15, 2023 and sent either automated or pre-recorded calls messages to mobile or residential landline telephone numbers without the requisite consent of the recipients in alleged violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendant denies the allegations and any wrongdoing. The Court has not decided who is right.

**Who’s Included?** The Settlement includes all persons who received a pre-recorded call and/or message on their cell phone or residential landline from Defendant. Specifically, the class is defined as “**All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline between April 4, 2018, and May 15, 2023.**” You received this email because records show that you may be a Settlement Class Member.

**What Are the Settlement Terms?** Defendant has agreed to pay settlement class members who submit a valid Claim Form and to pay for notice and administration costs of the Settlement, attorneys’ fees and expenses incurred by counsel for the Settlement Class, and a service award for Plaintiff. Defendant will make available up to \$2,108,962.00 (the “Settlement Cap”). Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator in an amount not to exceed thirty-eight dollars and no cents (\$38.00), or if necessary, their *pro rata* share of the Settlement Cap of some amount less than \$38.00 after payment of notice and administration costs, incentive award, and class counsel’s fees. Settlement Class Claimants will be sent their Claim Settlement Payments to the mailing address they submitted on their Claim Form within 60 days following the Effective Date.

**How Can I Get a Payment?** To get a payment, you must submit a properly completed Claim Form by the deadline stated below. You may download a Claim Form at the Settlement Website, [www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com), or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately, signed under penalty of perjury, and submitted timely. You may submit a Claim Form by U.S. mail or file a Claim Form online. If you send in a Claim Form by U.S. mail, it must be postmarked by **xxxxxxxxxx**. If you file a Claim Form online, then you must so file by **11:59 p.m. EST on xxxxxxxxxxxx**.

**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **xxxxxxxxxx**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by **xxxxxxxxxx**. The Long Form Notice available on the

Settlement Website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on **xxxxxxxxxx** to consider whether to approve the Settlement, a request for attorneys' fees and reimbursement of counsel's reasonable expenses of up to \$695,957.00, and a service award of \$2,500.00 to the Class Representative. You may appear at the hearing, either yourself or through an attorney you hire, but you don't have to. For more information, call or visit the Settlement Website.

**[www.DarvishAutomatedCallSettlement.com](http://www.DarvishAutomatedCallSettlement.com)**

**1- xxx-xxx-xxxx**