

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| 1. ROBERT H. BRAVER, for himself and all individuals similarly situated, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 5:17-cv-00383-F |
| |) | |
| 1. NORTHSTAR ALARM SERVICES, LLC, a Utah Limited Liability Company, |) | |
| 2. YODEL TECHNOLOGIES, LLC, and |) | |
| 3. DOES 2-10, UNKNOWN INDIVIDUALS, |) | |
| |) | |
| Defendants. |) | |

MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

I. Introduction

Braver and Yodel Technologies, LLC (“Yodel”) (collectively the “Parties”) reached an agreement to resolve the class’s claims against Yodel (the “Agreement”)¹ (*ECF No. 277-1*) after three years of hard fought litigation, where Plaintiff obtained both class certification and summary judgment for the class, where there were proceedings before the Tenth Circuit and the Federal Communications Commission, and where Yodel filed bankruptcy. Subsequently Braver entered into a class wide settlement with Northstar for \$1,850,000, which this Court granted final approval on November 3, 2020. *ECF No. 273*.

At the same time, Braver pursued Yodel in the bankruptcy proceedings, including hiring counsel in Tampa Florida. As a result of these efforts, Yodel agreed to a class

¹ Defendant Northstar Alarm Services, LLC (“Northstar”) is not a party to the Agreement. The claims asserted against Northstar were resolved by a separate agreement. *ECF No. 273*.

settlement for \$1.75 million and substantial injunctive relief.

On February 5, 2021, the Court preliminarily approved the Agreement. *ECF No. 278*. In doing so, the Court preliminarily found the settlement was sufficiently fair, reasonable, and adequate to merit notice be sent to the class. *Id.* at p. 2.

Per the Court-approved notice plan, direct notice was mailed to the class members' last known addresses, plus additional addresses obtained through a search of public records where mail was returned as undeliverable. *ECF No. 277-1* at pp. 19-20; Kurtzman Carson Consultants (KCC) Decl. at ¶ 9. Not a single class member objected to the settlement. *Id.* at ¶ 15. Only eight (8) people have opted out in response to the notice of settlement— less than .01% of the class. *Id.* at ¶ 14. Plaintiff respectfully submits that the lack of opposition to the settlement underscores the value of the Settlement for the class. *Lipuma v. American Express Co.*, 406 F.Supp.2d 1298, 1324 (S.D. Fla. 2005)(“low percentage of objections points to the reasonableness of a proposed settlement and supports its approval.”)² Finally, no governmental entity objected to the settlement after receiving the required CAFA notice. *KCC Decl.* at ¶¶ 2-4. Thus, there is no opposition to this settlement.

Under the Agreement, each class member who submitted a valid claim form will receive a *pro rata* share of the \$1.75 million dollar settlement fund in the amount of approximately \$142.45³ assuming the Court grants the pending motion for attorneys' fees,

² For a class this size, the Court could expect about ten objections (extrapolating the median 3 objectors per median class size of 22,496). *See Eisenberg & Miller, The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1546 (2004).

³ If the Court allows the twenty-four late claims, the class members will receive \$141.96. *KCC Decl.* at ¶ 16.

costs, and incentive award. *KCC Decl.* at ¶ 16; *ECF No. 279*. This is a great result, especially considering Yodel's financial condition. *See infra*. In addition, the Agreement provides substantial injunctive relief that benefits the class by enjoining Yodel from initiating any telephone call to any telephone line that delivers a prerecorded message and/or using soundboard technology to deliver a prerecorded message where the principal purpose of the telephone call is advertising or marketing NorthStar's products or services, unless the called party has provided prior express written consent to receive such calls.

Plaintiff therefore respectfully moves the Court to finally approve the settlement and enter the final approval order and judgment attached hereto as Exhibits 1 and 2.

II. Nature of the Case

The Telephone Consumer Protection Act ("TCPA") and Federal Communications Commission (FCC) regulations prohibit telemarketing robocalls without the prior express written consent of the called party. 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(3). Like other consumer protection statutes, Congress set up the TCPA so that its provisions could be enforced through a private right of action providing for the recovery of statutory damages, thus reducing the cost and scope of a regulatory enforcement mechanism. § 227(b)(3)(B) (providing recovery of \$500 for each violation).

Plaintiff filed this action after receiving telemarketing robocalls advertising NorthStar's home security services, and he sought to represent a class of similarly situated individuals who received the same calls. Plaintiff alleged that Yodel was directly liable for the calls, having physically placed the calls via its automated soundboard system, and NorthStar was vicariously liable for the calls because it hired Yodel to place the calls.

Class action litigation even for typical TCPA claims is difficult for a number of reasons. First, the law on the merits, which is often informed by opinions and orders of the FCC,⁴ is in a perpetual state of flux due to frequent FCC orders and clarifications of its regulations. Indeed, during the course of these proceedings, both Yodel and NorthStar filed petitions with the FCC asking it to rule that the technology used to place the calls at issue is not regulated by the TCPA. *ECF Nos. 105, 198*.

Second, the technological focus of the TCPA's provisions often necessitate expert analysis of dialing systems and volumes of computer data, as Plaintiff procured in this case, to both establish the elements of their case and identify class members. *See Warnick v. DISH Network LLC*, 301 F.R.D. 551, 558 (D. Colo. 2014) (referring to “enormous burden . . . to produce and allow plaintiff’s counsel and his experts to search through 600+ million calls and account records to try and find potential class members.”)

Third, defendants in TCPA class actions are often successful in convincing the court that individual issues should preclude class certification. *See e.g., id.* Although the defendants’ repeated attempts to do so in this case rightly failed (*ECF No. 57 – Opposition to Class Certification; ECF No. 71 – Supplemental opposition to Class Certification; ECF No. 86 – Order Denying Petition for Permission to Appeal; ECF No. 170 – Motion for Reconsideration of Class Certification*), the risk the Court would accept these arguments was substantial.

⁴ Congress vested the FCC with authority to prescribe regulations implementing the TCPA’s requirements. 47 U.S.C. § 227(b)(2).

The unique facts of this case presented additional challenges. The defendants' use of soundboard technology, rather than traditional unattended prerecorded messages, raised a novel question. The Court's decision on summary judgment holding soundboard technology to be covered by TCPA is, to Plaintiff's knowledge, the first of its kind. Other courts have followed. *See Bakov v. Consol. World Travel, Inc.*, 2019 U.S. Dist. LEXIS 211399, 8-14 (N.D. Ill. December 9, 2019).

The deteriorated financial condition of both defendants posed a final hurdle to resolution and a bankruptcy filing by Yodel. Merits of the due process argument aside, Yodel's financial condition placed a serious practical hurdle in the path to resolution of this matter – one that required a structured settlement with monthly payments by Yodel to clear. In light of all these difficulties, the Settlement obtained is an excellent result for the class.

III. Settlement and Administration

The following summarizes the terms of the Settlement Agreement, which is attached hereto as Exhibit 3, and proceedings to date in the administration of the Settlement

A. Class Definition.

The Class is the same class that the Court certified in its October 15, 2018 order:

Class:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding Northstar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 20 or 50 to the call, and that resulted in the normal clearing disposition.

Subclass:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding Northstar's home security systems that lasted more than 30

seconds, that was handled by an agent who applied status code 50 to the call, and that resulted in the normal clearing disposition.

Excluded from the class are:

Any persons whose contact information is associated with either an IP address or website URL in the Red Dot Data marketing list.

Agreement at § 2.7. There are currently 239,461 members of the class.⁵ *KCC Decl.* at ¶¶5, 6, 14.

B. Structure of the Settlement Fund.

The Settlement requires Yodel to pay one million seven hundred fifty thousand dollars (\$1,750,000) into the Fund according to the following schedule: Five Hundred Fifty Thousand dollars (\$550,000) by November 30, 2020; and One Hundred Thousand dollars (\$100,000) each by December 30, 2020, January 30, 2021, February 28, 2021, March 30, 2021, April 30, 2021, May 30, 2021, June 30, 2021, July 30, 2021, August 30, 2021, September 30, 2021, October 30, 2021, and November 30, 2021. *Agreement* at § 2.38. Yodel has timely made its payments to date. *KCC Decl.* at ¶ 18.

The Settlement further requires structured disbursements from the Settlement Fund according to the following schedule:

⁵ Plaintiff's litigation expert's analysis of the call data and lead data produced by Yodel indicated that the Class was comprised of 239,630 persons, based on a count of the unique lead id numbers in the records meeting the class criteria. *ECF No. 42-2* at p.11, ¶ 32. In preparing the notice of class certification, the class administrator found that there were only 239,501 unique persons identified in the data, by count of name and address rather than lead id. *KCC Decl.* at ¶5. After the notice of certification was sent, 32 people validly opted out of the class. *Id.* at ¶ 6. And 8 more people validly opted out in response to the notice of settlement. *Id.* at ¶ 14. Accordingly, there are 239,461 people currently in the class.

a. Once the account contains funds sufficient to pay (1) Notice and Administration Costs and (2) Settlement Awards for all Approved Claims, the Claims Administrator shall within thirty (30) days pay Notice and Administration costs and send Settlement Awards to all class members who submitted an Approved Claim,

b. Thereafter, once the account contains funds sufficient to pay Class Counsel any court approved expenses, the Claims Administrator shall within thirty (30) days pay Class Counsel their court approved expenses;

c. Thereafter, once the account contains funds sufficient to pay Braver any court approved incentive award, the Claims Administrator shall within thirty (30) days pay Braver that court approved incentive award;

d. Thereafter, the Claims Administrator shall pay Class Counsel any court approved attorneys' fees on a monthly basis until the Total Payment has been received;

e. Thereafter, the Claims Administrator shall make any Second Distribution (see below)

f. Thereafter, the Claims Administrator shall make any court approved *cy pres* payment (see below)

Agreement at § 2.33. Thus, payments will be distributed to the claiming class members as soon as there are sufficient funds to pay those claims and the costs of notice and administration. Class Members will not need to wait until the end of the payment schedule before receiving monetary relief.

The Agreement also calls for a Second Distribution to the claimants in the event that uncashed checks (or unaccepted electronic payments) leave money in the Settlement Fund,

sufficient to pay at least ten dollars (\$10) to each claimant who was not a person who failed to cash his or her initial Settlement Award check or who did receive his or her initial Settlement Award via secure electronic payment. *Agreement* at § 13.2

Finally, if any monies remain in the settlement fund after any second distribution, those remaining funds will be paid to a *cy pres* as approved by the Court, instead of reverting back to Yodel. *Agreement* at § 13.3. The Parties have agreed that these funds shall be paid to the National Consumer Law Center as *cy pres* with the funds earmarked to safeguard the protections provided by the TCPA.

C. Individual Payments.

Class Members who submitted valid claim forms will receive a *pro rata* share of the settlement fund after deduction of (i) any award of attorneys' fees and expenses to Class Counsel approved by the Court; (ii) any incentive award to Class Plaintiff approved by the Court; and (iii) all Notice and Administration Costs. *Agreement* at § 6.1. Assuming the Court grants Plaintiff's Motion for Attorneys' Fees, Costs, and Incentive Award (*ECF No. 255*), each claimant will receive \$142.45.⁶

D. Additional Relief.

As noted above, Yodel agreed to the entry of an injunction in the Final Approval Order, permanently enjoining Yodel from initiating any telephone call to any telephone line that delivers a prerecorded message and/or using soundboard technology to deliver a

⁶ This figure is calculated as follows: \$1,750,000 (settlement fund) - 170,000.00 (settlement notice and administration) - \$583,333.33 (attorneys' fees) - \$12,287 (expenses) - \$10,000 (incentive award) = \$974379.67 / 6,8644 (claimants) = \$ 142.45 (payment). *KCC Decl.* ¶ 16 fn 2.

prerecorded message where the principal purpose of the telephone call is advertising or marketing products or services, unless the called party has provided prior express written consent to receive such calls. *Agreement* at § 6.3.

E. Release.

In exchange for the relief described above, the class members will release, as fully set forth in the Agreement, all claims that arise out of or relate in any way to the Released Parties' contact or attempt to contact Class Members by placing pre-recorded calls to the Class Members' phones, including, but not limited to, claims under or for a violation of the TCPA and any other statutory or common law claim arising under the TCPA as relative to pre-recorded or auto-dialed calls placed to telephones (collectively, the "Released Claims"). The Released Claims do not include claims asserted against Northstar and Northstar is not a Released Party. *Agreement* at §§ 2.27, 2.28, 18.1.

F. Compensation for the Class Representative

The Settlement provides that Plaintiff may seek an incentive award from the Court to be paid from the Settlement Fund, but the Settlement is not conditioned on the Court's approval of that request. *Agreement* at § 7.3. The notice of settlement advised the class that Plaintiff would seek an incentive award in the amount of \$10,000 and no class member has objected. *KCC Decl.* at ex. A. Following provision of notice, Plaintiff filed his formal request for an incentive award in the amount of \$10,000. *ECF No. 279*. Support for the requested incentive award is set forth in these prior filings and sufficient to satisfy the latest authority from the Tenth Circuit. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2018) ("The award should be proportional

to the contribution of the Plaintiff.”) Class Counsel wishes to reiterate their opinion, based on their substantial experience in class action litigation, that Mr. Braver’s efforts on behalf of the class were exceptional and commendable. *Catalano Decl.* at 3. The requested incentive award is well justified.

G. Payment of Attorneys’ Fees and Costs

The Settlement likewise provides that Plaintiff may move for an award of attorneys’ fees and costs to be paid from the Settlement Fund, but again does not condition the Settlement on the Court’s approval of that request. *Agreement* at § 7.3. Pursuant to the preliminary approval order, Class Counsel filed their motion for attorneys’ fees in the amount of \$583,333.33 and reasonable expenses in the amount of \$12,287. *ECF No. 279*. The notice of settlement advised the class of the exact amount Plaintiff would seek attorneys’ fees in the amount of \$583,333.33 (one third of the fund) plus reasonable expenses. *KCC Decl.* at ex. A. Not a single class member has objected.. The requested award is fully supported in Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive Award (*ECF No. 279*) and is discussed further below.

H. Cy Pres Distribution.

The Settlement also specifies what is to be done with residual monies that are left in the settlement fund as a result of uncashed checks or unaccepted electronic payments. *Agreement* at § 6.2. Rather than have that money return to Yodel, the agreement provides that first, there shall be a second distribution to all claimants who did not fail to accept their initial payment, provided there are sufficient funds for each such person to receive at least \$10.00 (*id.* at § 13.2); and second, any residual monies left over after a second distribution,

or because there were insufficient funds for a second distribution, shall be donated to a *cy pres* recipient, National Consumer Law Center. *Id.* at § 13.3.

I. Notice of Settlement and The Class's Response

Notice of the settlement was delivered to the class in accordance with the Court's preliminary approval order. *See ECF No. 278* at p. 4, ¶ 10. The Settlement Administrator, KCC, which also mailed the original notice of class certification to the class as well as the notice relating to the Northstar settlement, mailed the approved postcard notice of settlement to the class members' last known addresses on February 26, 2021. *KCC Decl.* at ¶ 8. For any notices returned as undeliverable, KCC utilized credit bureau and other public source databases to obtain updated addresses and promptly remailed the settlement notice to the new addresses it found. *Id.* at ¶ 9.

In accordance with the preliminary approval order, KCC also updated and maintained the class website at (<http://www.yodeltcpaclass.com>), which posted all relevant deadlines and information, allowed for the filing of claims online, and posted the full class notice, and copies of the Settlement Agreement, Preliminary Approval Order, and Plaintiff's Motion for Attorney's Fees, Costs, and Incentive Award. *Id.* at ¶ 10. KCC also maintained a toll free number that class members could call to obtain information about the settlement and file claims telephonically. *Id.* at ¶ 11.

The response from the class was positive. No class member has objected and only 8 class members have requested exclusion in response to the notice of settlement. *Id.* at ¶¶

4, 13, 14.⁷ To date, 6,864 valid claims have been filed. *Id.* at ¶ 13.⁸ The claim rate exceeds that obtained in the separate settlement with NorthStar and thus favors approval of the settlement here. *Id.*; *ECF No. 268* at ¶ 9; *see also Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (low claim rate “does not suggest unfairness.”) (citing *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 377-78, 1384 (S.D. Fla. 2007) (approving settlement where 118,663 out of approximately 10.3 million class members submitted claims, for a claim rate of approximately 1.2 percent). As the *Keil* court put it:

“even if 97 percent of the class did not exercise their right to share in the fund, their opportunity to do so was a benefit to them. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 480, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980) (‘Their right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.’). Further . . . they will benefit from the additional injunctive relief that the settlement provides. *See Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 (1st Cir. 2015) (‘The district court did not abuse its discretion in concluding that injunctive relief against continuation of the allegedly false advertising was a valuable contribution to this settlement agreement.’)”

Keil, 862 F.3d at 697.

In addition, the claim rate is well in line with other classwide TCPA settlements.

See Spillman v. RPM Pizza, LLC, 2013 U.S. Dist. LEXIS 72947 at *2, *9 (M.D. La. May

⁷ Prior to settlement, there were 32 requests for exclusion received in response to the certification notice. *KCC Decl.* at ¶ 14.

⁸ This includes 4,618 claimants that submitted valid claims in the NorthStar Settlement, who, per the Settlement Agreement with Yodel and instructions in the Settlement Notice, did not need to submit additional claims in order to receive payment here, but they retained their right to exclude themselves or object to this Settlement if they chose to do so. This figure also includes 24 late-filed, but otherwise valid, claims that the parties have agreed to accept, subject to the Court’s approval. See below.

23, 2013) (finally approving TCPA Settlement and finding claim rate of “less than one percent” to be “consistent with other TCPA class action settlements”); *Lee v. Global Tel*Link Corp.*, 2018 U.S. Dist. LEXIS 163410, 21 (C.D. Cal. September 24, 2018) (finally approving TCPA class settlement with a claim rate of 1.8%); *Bayat v. Bank of the West*, 2015 U.S. Dist. LEXIS 50416, *15 (N.D. Cal. 2015) (granting final approval in TCPA action after noting 1.9% claim rate for monetary relief); *Arthur v. SLM Corp.*, No. C10-0198 JLR (W.D. Wash. Aug. 8, 2012), Docket No. 249 at 2-3 (claims rate of approximately 2%); *Kolnek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (final approval where claim rate was 2.5%).

The parties have agreed, subject to the Court’s approval, to accept valid, but late-filed claims, up to the date of final approval. *Catalano Decl.* at 5. Of the 6,864 claims filed as of the date of this filing, 24 are late filed. *KCC Decl.* at ¶¶ 12-13. Excluding the late-filed claims would raise the expected payment to each claimant only slightly -- \$141.98 rather than \$142.45--which are both in the range that the notice advised was likely.

IV. Final Approval is Warranted

There is a strong judicial and public policy favoring the voluntary conciliation and settlement of class action litigation. *See Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969) (“It is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies.”) The Court “must approve a settlement if it is fair, reasonable and adequate.” *Jones v. Nuclear Pharmacy, Inc.*, 741 F.3d 322, 324 (10th Cir. 1984). In assessing whether a settlement is fair, reasonable, and adequate, the Court must consider whether:

“(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.”

Fed. R. Civ. P. 23(e)(2). Prior to the current iteration of Rule 23(e), the Tenth Circuit set forth similar factors for the Court's consideration: “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.” *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002). All but the last of these factors is subsumed in Rule 23 - “the judgment of the parties that the settlement is fair and reasonable.” *Id.* Here, the proposed Settlement easily meets each factor.

a. The Class Was Adequately Represented

Both the class representative, Mr. Braver, and class counsel have adequately represented the class. Indeed, the Court already found this to be the case when it certified the class. *ECF No. 72* at pp. 15-16.

For his part, Mr. Braver has provided exemplary service to the class. Early in the case, he rejected a substantial offer for individual settlement that would have benefited him

financially, but left the class without representation. *ECF No. 263* (Braver Decl.) at p. 4. He read every significant pleading and motion filed in the case, regularly communicated with counsel, attended mediation and was directly involved in additional settlement negotiations for the class, produced written discovery without issue, performed well at his deposition, gave helpful testimony to the court in the class certification hearing, and attended other hearings even when his presence was not required. *Id.* at pp. 4-7. Mr. Braver's efforts on behalf of the class were adequate. *ECF No. 72* at p. 16 "Braver is a fair and adequate representative for the proposed class.")

Class Counsel have also adequately represented the class through years of hard fought litigation. As the Court has already found, Class Counsel "are experienced litigators in civil cases, including in class actions." *Id.* at p. 15. In this case, Class Counsel defeated numerous attempts by the defendants to kill the case and secured numerous rulings in favor of the class: they defeated a motion to dismiss (*ECF No. 24*); they worked with an expert witness to analyze millions of rows of data (*ECF No. 42-2*); they won a contested motion for class certification after evidentiary hearing (*ECF No. 72*); they defeated an attempt at interlocutory appeal of class certification (*ECF No. 86*); they defeated two motions to stay the case pending rulings from the FCC on each of the defendants' FCC petitions (*ECF No. 105, 198*); they filed oppositions to those petitions in the FCC proceedings and personally met with FCC staff to explain their opposition (*ECF No. 255-3*, p. 6 ¶ 19); they defeated a motion for summary judgment and secured a victory on their own motion for summary judgment on behalf of the class (*ECF No. 139*); they defeated motions to decertify the class and reconsider summary judgment (*ECF No. 199*); when Yodel raised its financial

condition as a defense and ultimately filed bankruptcy, they secured bankruptcy counsel, filed a claim, secured additional records documenting Yodel's finances, and acquired the bankruptcy court's approval of this settlement. (*Catalano Decl.* at ¶¶ 4, 11; *Sostrin Decl.* at ¶¶ 6-12) Class Counsel adequately represented the class.

b. The Settlement Was Negotiated at Arms Length

“Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair.” *In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008). In this case, Settlement was not reached until discovery was completed, a class was certified over Yodel's opposition, and the Court had entered summary judgment for the class on liability. The only remaining issues were the appropriate amount of damages and Yodel's bankruptcy- a serious hurdle to obtaining a benefit for the class. Moreover, settlement was only reached after multiple mediations and negotiations.

On December 12, 2019, the Parties conducted a full-day mediation, before James P. McCann in Tulsa, OK, which again did not result in a settlement. *Catalano Decl.* at 6. The mediation was highly adversarial, non-collusive, and conducted at arm's length. *Id.* at ¶ 7. Prior to the mediation, the Parties submitted detailed mediation briefs setting forth their respective views on the strengths of their cases. *Id.* at ¶ 8. And during mediation, the Parties set forth their relative views of the law and the facts and exchanged counterproposals on the relief to be provided to the class and other key aspects of the settlement. *Id.* at 9.

At no point during any negotiations did the parties' negotiate the amount of any attorneys fees or incentive payment that should be awarded, but instead agreed to leave that to the Court's discretion. *Id.* at 10.

After Yodel initiated the bankruptcy proceeding and produced further records demonstrating its financial condition in that proceeding, Plaintiff and Yodel engaged in extensive settlement negotiations to resolve the class's claims against Yodel. Those negotiations resulted in this agreement. *Id.* at 11.

Thus, the settlement was based upon the extensive information obtained in discovery, expert analysis, the assistance of a mediator, and an in depth inquiry and analysis of Yodel's finances.

c. The Relief Provided for the Class is Adequate

The relief provided to the class under the Settlement is also adequate. Analysis of this factor requires the court to consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2).

The Settlement provides for Yodel's payment of \$1,750,000 into a common fund for the benefit of the class, which amounts to approximately \$7.31 per class member. *Agreement* at § 6.1. In addition, the settlement provides for meaningful injunctive relief limiting NorthStar's use of soundboard technology, which will remain in place even if the

FCC at some point rules that the technology is not regulated by the TCPA. *Agreement* at § 6.3.

The per class member result exceeds many finally approved TCPA class settlements obtained against large corporations, and thus reflects a good result for the class even without the substantial injunctive relief and even if the realities of Yodel's financial condition were ignored. *See e.g., Amadeck v. Capital One Fin. Corp. (In re Capital One Tel. Consumer Prot. Act Litig.)*, 80 F. Supp. 3d 781, 787 (N.D. Ill. 2015) (finally approving settlement amounting to \$4.31 per class member); *Steinfeld v. Discover Fin. Servs.*, 2014 U.S. Dist. LEXIS 44855 at 4, 21 (N.D. Cal. Mar. 31, 2014) (finally approving settlement amounting to \$1.09 per class member); *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1046 (S.D. Cal. 2015) (finally approving settlement amounting to \$2.13 per class member); *Wright v. Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729, 7-9 (N.D. Ill. 2016) (finally approving settlement amounting to \$3.83 per class member); *Malta v. Fed. Home Loan Mortg. Corp.*, No. 10-cv-1290, 2013 U.S. Dist. LEXIS 15731, 5, 19 (S.D. Cal. Feb. 5, 2013) (approving settlement amounting to \$2.90 per class member; final approval granted at Dkt. No. 91).

The positive response from the class also supports the adequacy of the relief provided. Not a single class member objected to the settlement and only 8 class members chose to opt out of the settlement. The lack of opposition supports final approval. *See, e.g., Isby v. Bayh*, 75 F.3d 1191, 1200 (7th 1996) (affirming final approval of settlement where 13% of the class submitted written objections); *In re Southwest Airlines Voucher Litig.*,

2013 U.S. Dist. LEXIS 120735, 21 (N.D. Ill. Dec. 6, 2013) (the “low level of opposition” amounting to 0.01% of the class “supports the reasonableness of the settlement”).

1. The Costs, Risks, And Delay Of Trial And Appeal

In this case, Yodel’s practical ability to pay was the predominating factor in the amount of the settlement obtained. Extensive discovery and examination of Yodel’s financial condition established that Yodel was incapable of paying a multimillion dollar judgment. In situations such as these, courts have certified TCPA settlements providing far less relief to the class than the results obtained here. *See e.g., Kramer v. Autobytel*, No. 10-cv-02722, 2012 U.S. Dist. LEXIS 185800 (N.D. Cal. Jan. 27, 2012) (finally approving settlement amounting to just 26 cents per class member due to financial difficulties of the defendant; class size shown at Doc. 137).

The value of the recovery obtained for the class far outweighs the value of an uncollectable judgment, a likely prospect given the circumstances. Accordingly, the risk of proceeding in lieu of settlement strongly favor approval of the settlement.

2. The Settlement Provides for Effective Distribution of Relief

The Settlement also provides for an effective method of processing claims and distributing relief to the class. “A claims process should be as simple, straightforward, and nonburdensome as possible.” *In re Samsung Top-Load Washing Mach. Mktg.*, 2020 U.S. Dist. LEXIS 90759, 57 (W.D. Okla. May 22, 2020). The claims process in this case easily satisfies this standard. The class members could file a claim at the settlement website, over the phone, or by mail and the notice plainly explained how to do so. *KCC Decl.* at 8-11 and Exs. A-B . The claim form was also simple and straightforward - it did not require the

class members to submit any documentation whatsoever, but instead required them to submit only their signature, contact information, and either a claim id (on the notice) or telephone number in the class list. *ECF No. 252-1* at 37. The claims process was thus far simpler than others granted final approval in this district. *In re Samsung Top-Load Washing Mach. Mktg.*, 2020 U.S. Dist. LEXIS 90759 at 58-59 (requiring certain class members to submit photographs).

The settlement also provides for distribution of relief as efficiently as possible. When filing claims, class members had the option to select payment by either check or secure electronic payment. *KCC Decl.* at ¶¶ 8-11 and Exs. A-B. In addition, payments will be sent as soon as the settlement account contains sufficient funds to pay (1) Notice and Administration Costs and (2) Settlement Awards for all Approved Claims. *Agreement* at § 2.33. Class members need not wait until the account is fully funded to receive their payments.

3. The Proposed Fee Award, and timing of Payment, Support Approval

Class Counsel has requested attorneys' fees in an amount equal to one-third of the common fund - \$583,333.33, and have supported that request by separate filing. *ECF No. 279*. The requested fee of of third of the fund is the customary fee in common fund cases in the Tenth Circuit, and therefore supports a finding that the settlement is fair, reasonable, and adequate. *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Blanco v. Xtreme Drilling & Coil Servs.*, 2020 U.S. Dist. LEXIS 126155, *14 (D. Colo. July 17, 2020); *Basin Oil & Gas Lease Antitrust Litig.*, 2019 U.S. Dist. Lexis 75384, 9 (W.D. Okla. April 25, 2019). The fact that no class member has objected to the requested fee award strongly

supports the propriety of the requested fee. *See Cox v. Sprint Commc'ns Co. L.P.*, 2012 U.S. Dist. LEXIS 162576, 13 (D. Kan. Nov. 14, 2012) (“The absence of objections or disapproval by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”).

Moreover, as explained more fully in Plaintiff’s fee petition (*ECF No. 277*) the requested fee is well justified by Class Counsel’s experience, by the extensive and lengthy litigation history in this difficult case, by Class Counsel’s success on the merits, by the contingent nature of the fee and the substantial risk that Class Counsel took of obtaining no-recovery, and by awards in similar cases. *Id.* It is worth noting that Class Counsel is not seeking to monetize the value of the injunctive class relief in order to seek fees from that benefit to the class. *See Grant v. Capital Mgmt. Servs.*, No. 10-cv-2471, 2014 U.S. Dist. LEXIS 29836 at *10 (S.D. Cal. Mar. 5, 2014) (injunctive relief only – no monetary relief to the class).

Finally, the proposed timing of the fee award also supports final approval. Class Counsel negotiated the agreement such that their fees would be paid last. *Agreement* at § 2.33. Only if there is a second distribution of residual funds to the class members, or a *cy pres* award of residual funds, will any funds be disbursed after payment of attorneys’ fees to Class Counsel. *Ibid.*

4. There are No Rule 23(e)(3) Agreements

Rule 23(e)(3) requires settling parties to identify any agreements made in connection with the settlement, such as those made to resolve objector’s claims. There were no such agreements made in connection with this case, as indeed there were no

objectors to the settlement. *Catalano Decl.* at ¶ 12; *Sostrin Decl.* at ¶ 15; *KCC Decl.* at ¶ 15. This factor accordingly supports final approval as well.

d. The Settlement Treats Class Members Equitably Relative to Each Other

The Settlement also treats class members equitably relative to each other. Every valid claim filed entitles the claimant to receive the exact same *pro rata* share of the fund as every other claimant. And while Mr. Braver has sought an incentive award for his service of class representative, properly supported incentive awards do not render class settlements “inequitable” under this factor. *See O’Dowd v. Anthem, Inc.*, 2019 U.S. Dist. LEXIS 153610, 43 (D. Colo. September 9, 2019) (finding that settlement treated class members equitably relative to each other despite approval of incentive award); *Ferrell v. Buckingham Prop. Mgmt.*, 2020 U.S. Dist. LEXIS 9919, 69-71 (E.D. Cal. January 17, 2020) (discussing incentive award in the context of Rule 23(e)(2)(D)’s requirement for consideration of this factor).

e. The Parties Support the Settlement as Fair and Reasonable

Finally, both the class representative and class counsel believe that the settlement is fair, reasonable, and adequate. *See Catalano Decl.* at ¶ 13; *Sostrin Decl.* at ¶¶ 13-14; *ECF No. 279-3* (Braver Decl. at ¶¶ 3-4, (noting obligation in “obtaining a result that Defendants could actually pay with recovery to the class and not result in shutting the businesses down.”)) Yodel also supports Final Approval. It agreed to the terms of the settlement and approved the Final Approval Order and judgment attached hereto as Exhibits 1 and 2.

Class Counsel’s opinion on the Settlement is entitled to great weight, particularly because: (1) Class Counsel are competent and experienced in class action litigation,

particularly in similar TCPA class action cases (*Catalano Decl.* at ¶ 14; *Sostrin Decl.* at ¶¶ 3-5); (2) Class Counsel exhaustively litigated the claims through summary judgment and are well acquainted with the risks of proceeding without settlement; and (3) Class Counsel secured expert analysis of NorthStar's financial condition and ability to pay. *Marcus v. Kan. Dep't of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002) ("Counsel's judgment as to the fairness of the agreement is entitled to considerable weight."); *see also In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) (placing "significant weight on the unanimously strong endorsement of these settlements" by "well-respected attorneys").

V. The Presence of a Governmental Participant

No governmental entity is a party to this action. However, in compliance with the notice provision of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, within ten days after filing of the Settlement Agreement in this Court, notice of the Settlement was provided to the United States Attorney General, the Attorneys General in all fifty states, as well as the Attorneys General of the five recognized U.S. Territories. *See KCC Decl.* at ¶¶ 2-4.

"Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response to class action settlement, CAFA presumes that, once put on notice, either state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures." *Garner v. State Farm Auto Ins. Co.*, 2010 WL 1687832, *14 (N.D. Cal. April 22, 2010). No governmental entity objected to the Settlement, which further supports final approval of the settlement.

VI. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that the Court finally approve the Proposed Settlement and enter the Settlement Order and Judgment attached hereto as Exhibits 1 and 2.

Respectfully submitted,

By: /s/ Paul Catalano

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Luke Wallace, OBA #16070
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2021, I caused the foregoing document to be electronically transmitted to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to ECF registrants.

I hereby certify that on this 11th day of June, 2021, I served the attached document by email and USPS mail on the following, who are not registered participants of the ECF System:

Buddy D. Ford
Law Offices of Buddy D. Ford, P.A.
9301 W Hillsborough Av
Tampa, FL 33615-3008
buddy@tampaesq.com
Attorney for Defendant Yodel Technologies, LLC

/s/ Paul Catalano _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROBERT H. BRAVER, for himself and all)
individuals similarly situated,)

Plaintiff,)

v.)

Case No. 5:17-cv-00383-F

NORTHSTAR ALARM SERVICES, LLC, a)
Utah Limited Liability Company,)
YODEL TECHNOLOGIES, and)
DOES 2-10, UNKNOWN INDIVIDUALS,)

Defendants.)

[PROPOSED] FORM OF ORDER GRANTING FINAL APPROVAL

The Court having held a Final Approval Hearing on _____, 202_, notice of the hearing having been duly given in accordance with this Court's Order (1) Preliminarily Approving Class Action Settlement, (2) Approving Notice Plan and (3) Setting Final Approval Hearing (the "Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Settlement Agreement and Release dated XXXXXXXX XX, 2020, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (Doc. no. _____) are also incorporated by reference into this Final Approval Order.

2. This Court has jurisdiction over the subject matter of the Action and over the Parties, including all Class Members with respect to the Class certified in the Court's order of October 15, 2018, as follows:

Class:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding NorthStar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 20 or 50 to the call, and that resulted in the normal clearing disposition.

Subclass:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding NorthStar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 50 to the call, and that resulted in the normal clearing disposition.

Excluded from the class are:

Any persons whose contact information is associated with either an IP address or website URL in the Red Dot Data marketing list.

3. The Court hereby finds that the Agreement is the product of arm's length settlement negotiations between Plaintiff and Class Representative Robert Braver and Defendant Yodel Technologies, LLC ("Yodel").

4. The Court hereby finds and concludes that Settlement Notice was disseminated to persons in the Class in accordance with the terms of the Agreement and that the Settlement Notice and its dissemination were in compliance with this Court's Preliminary Approval Order.

5. The Court further finds and concludes that the Settlement Notice and claims submission procedures set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, provided the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort, and support the Court's exercise of jurisdiction over the Class as contemplated in the Agreement and this Final Approval Order.

6. There were no objections to the Agreement *or* [For the reasons stated on the record, as well as the reasons set forth in the Parties' respective pleadings, the Court overrules all objections to the Agreement.]

7. If Applicable [The Court finds that _____ is/are not class members and have no standing to object to the Settlement Agreement.]

8. The Court hereby finally approves the Agreement and finds that the terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure.

9. The Court hereby approves the plan of distribution for the Settlement Fund as set forth in the Agreement. The Claims Administrator is hereby ordered to comply with the terms of the Agreement with respect to distribution of Settlement Awards, the Second Distribution, and disposition of any Remaining Funds thereafter. Should any Remaining Funds be distributed, the Court hereby approves _____ as the *cy pres* recipient. The Court finds this organization is closely aligned with the Class' interests and/or underlying legal claims.

10. Pursuant to the Parties' Agreement, Yodel is hereby enjoined from initiating any telephone call to any telephone line that delivers a prerecorded message and/or using soundboard technology to deliver a prerecorded message where the principal purpose of the telephone call is advertising or marketing, unless the called party has provided prior express written consent to receive such calls.

11. This Court hereby dismisses the claims asserted against Yodel, with prejudice, without costs, except as expressly provided for in the Agreement. Claims asserted against defendant NorthStar Alarm Services, LLC ("NorthStar") are unaffected by this dismissal.

12. As of the Effective Date, Plaintiff and each and every one of the Class Members unconditionally, fully, and finally release and forever discharge the Released Parties from the Released Claims as set forth in the Agreement. In addition, any rights of Plaintiff and each and every one of the Settlement Class Members to the protections afforded under Section 1542 of the California Civil Code and/or any other similar, comparable, or equivalent laws with respect to the Released Claims will be terminated.

13. The Agreement (including any and all exhibits attached thereto) and any and all negotiations, documents, and discussions associated with it will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing by Yodel, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, the Preliminary Approval Order and/or this Final Approval Order.

14. If for any reason whatsoever this Settlement fails to become effective for any reason, the Parties and the Action will return to the status quo as it existed prior to the Agreement. No agreements, documents or statements made by or entered into by the Parties in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, Yodel, or any other person to establish liability, any defense, and/or any of the elements of class certification, whether in the Action or in any other proceeding.

15. In the event that the Settlement fails to become effective for any reason, monies remaining in the Settlement Fund shall be returned to Yodel, if at all, only in accordance with Section **19.2** of the Agreement.

16. In the event that any provision of the Agreement or this Final Approval Order is asserted by Yodel as a defense in whole or in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action or proceeding brought by a Class Member or any person actually or purportedly acting on behalf of any Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action or other proceeding, to the fullest extent they may effectively do so

under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Agreement, this Final Approval Order and this Court's authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

17. By incorporating the Agreement and its terms herein, the Court determines that this Final Approval Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

18. Class Counsel have moved pursuant to FED. R. CIV. P. 23(h) and 52(a) for an award of attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3) and 52(a) this Court makes the following findings of fact and conclusions of law:

- (a) that the Class Settlement confers substantial benefits on the Class Members;
- (b) that the value conferred on the Class is immediate and readily quantifiable (upon this Judgment becoming Final (as defined in the Agreement),
- (c) that Class Members who have submitted valid Claim Forms will receive cash payments that represent a significant portion of the damages that would be available to them were they to prevail in an individual action under the Telephone Consumer Protections Act ("TCPA") and which represent a reasonable payment considering Yodel's inability to satisfy a judgment for the full amount of damages available under the TCPA;

(d) that Class Counsel vigorously and effectively pursued the Class Members' claims before this Court in this complex case;

(e) that the Class Settlement was obtained as a direct result of Class Counsel's advocacy;

(f) that the Class Settlement was reached following extensive negotiation between Class Counsel and Counsel for Yodel, and was negotiated in good-faith and in the absence of collusion;

(g) that Class Members were advised in the Class Notice approved by the Court that Class Counsel intended to apply for an award of attorneys' fees in an amount of up to \$_____ and expenses in the amount of up to \$____ incurred in the prosecution of the Litigation, to be paid from the Settlement Fund;

(h) that _____ member(s) of the Class has (have) submitted written objection(s) to the award of attorneys' fees and expenses[, which are overruled];

(i) that counsel who recover a common benefit for persons other than himself or his client is entitled to a reasonable attorneys' fee from the Settlement Fund as a whole. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); and

(j) that Class Counsel are hereby awarded \$ _____ for attorney fees and \$ _____ for reimbursed expenses from the balance of the Settlement Fund, which the Court finds to be fair and reasonable, and which amount shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Agreement.

19. The Class Representative, as identified in the Preliminary Approval Order, is hereby compensated in the amount of \$ _____ for his efforts in

this case. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2018) (“courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case”).

20. In accordance with Federal Rule of Civil Procedure 54(b), the Court determines that there is no just reason for delay of entry of a final judgment as to the claims asserted against Yodel in this action and accordingly directs the Clerk of Court to enter the Final Judgment as to those claims only in the form attached hereto as Exhibit A.

**IT IS SO ORDERED,
ADJUDGED AND
DECREED.**

Dated: _____

Honorable Stephen P. Friot

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

| | | |
|---------------------------------------|---|--------------------------|
| ROBERT H. BRAVER, for himself and all |) | |
| individuals similarly situated, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 5:17-cv-00383-F |
| |) | |
| NORTHSTAR ALARM SERVICES, LLC, a |) | |
| Utah Limited Liability Company, |) | |
| YODEL TECHNOLOGIES, and |) | |
| DOES 2-10, UNKNOWN INDIVIDUALS, |) | |
| |) | |
| Defendants. |) | |

[PROPOSED] FORM OF JUDGMENT

The Court having held a Final Approval Hearing on _____, 20__, notice of the hearing having been duly given in accordance with this Court’s Order (1) Preliminarily Approving Class Action Settlement, (2) Approving Notice Plan and (3) Setting Final Approval Hearing (the “Preliminary Approval Order”), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Judgment as to claims asserted against defendant Yodel Technologies, LLC (“Yodel”) only, it is hereby ORDERED as follows:

1. The claims asserted against Yodel are hereby Dismissed with Prejudice. Any claims remaining against defendant NorthStar Alarm Services, LLC (“NorthStar”) are unaffected;

2. Plaintiff, Yodel, and the Claims Administrator are to effectuate the Settlement Agreement according to its terms;
3. Attorney fees and costs are awarded to Class Counsel in the amount of \$ [REDACTED] to be distributed by the Claims Administrator from the settlement fund.
4. An incentive award is awarded to named Plaintiff Robert Braver, in the amount of \$ [REDACTED] to be distributed by the Claims Administrator from the settlement fund.
5. Pursuant to the Parties' Agreement, Yodel is hereby enjoined from initiating any telephone call to any telephone line that delivers a prerecorded message and/or using soundboard technology to deliver a prerecorded message where the principal purpose of the telephone call is advertising or marketing, unless the called party has provided prior express written consent to receive such calls.
6. Based upon the Court's finding that there is no just reason for delay of enforcement or appeal of this Order and Final Judgment notwithstanding the claims remaining against defendant NorthStar, if any, and notwithstanding the Court's retention of jurisdiction to oversee implementation and enforcement of the Settlement Agreement, the Court directs the Clerk to enter final judgment as to claims asserted against defendant Yodel Technologies, LLC only pursuant to Rule 54(b).

Dated: [REDACTED]

Honorable Stephen P. Friot

United State District Judge

EXHIBIT 3

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into by and between Plaintiff Robert Braver (“Braver” or “Class Plaintiff”), on behalf of himself and the Class (as defined below), on the one hand, and Defendant Yodel Technologies, LLC (“Yodel”), on the other hand. The Class Plaintiff and Yodel shall sometimes be collectively referred to as the “Parties.”

Class Plaintiff and Yodel hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the District Court (as defined below) of a Final Approval Order (as defined below), the Released Claims (as defined below) shall be forever and fully settled, compromised and released upon the terms and conditions contained herein. Claims asserted against defendant NorthStar Alarm Services, LLC (“NorthStar”) are subject to a prior settlement agreement pending in the District Court (as defined below) and are not affected by this Agreement.

1. RECITALS

1.1 On April 5, 2017, Braver filed a Complaint against NorthStar and Yodel in the United States District Court for the Western District of Oklahoma in the case styled *Braver v. NorthStar Alarm Services, LLC, et al.*, Civ. No. 5:17-cv-00383-F (Dist. Ct. Doc. no. 1).

1.2 On June 8, 2017, Braver filed a First Amended Complaint, asserting in Count One that NorthStar violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b), by making prerecorded telemarketing calls to Braver and the putative class members without their prior express consent. *See* Dist. Ct. Doc. no. 7. One of the core allegations was that telemarketing calls using soundboard technology deliver prerecorded messages to residential telephone lines.

1.3 On February 20, 2018, pursuant to a stipulation filed by all parties (*see* Dist. Ct. Doc. no. 50), the District Court entered an Order deeming the Amended Complaint and

Defendants' respective Answers to the Amended Complaint to delete Count II. *See* Dist. Ct. Doc. no. 54.

1.4 On October 15, 2018, after a full day evidentiary hearing with experts, the District Court, over Defendants' objections, entered an order certifying the following class and subclass pursuant to Fed. R. Civ. P. 23, with respect to Count One of the First Amended Complaint:

Class:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding Northstar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 20 or 50 to the call, and that resulted in the normal clearing disposition.

Subclass:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding Northstar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 50 to the call, and that resulted in the normal clearing disposition.

Excluded from the class are:

Any persons whose contact information is associated with either an IP address or website URL in the Red Dot Data marketing list.

See Dist. Ct. Doc. no. 72, at 26-27.

1.5 On April 9, 2019, Kurtzman Carson Consultants ("KCC") disseminated notice of the District Court's class certification order to the class in accordance with the Federal Rules of Civil Procedure.

1.6 On July 16, 2019, the District Court entered an Order ruling upon the parties' cross-motions for summary judgment. Dist. Ct. Doc. no. 139. The District Court granted summary judgment in NorthStar and Yodel's favor on Count III of Plaintiff's Amended Complaint. *Id.* at 31. The District Court granted summary judgment in Plaintiff's and the class' favor on Count I, holding that Yodel was directly liable under the TCPA for the calls

it made to Plaintiff and the class, and that NorthStar was vicariously liable under the TCPA for those calls. *Id.*

1.7 On August 23, 2019, Yodel moved the District Court for a reduction of damages, arguing that the damages award contemplated by the TCPA would violate due process and be grossly excessive or arbitrary, in part because of Yodel's inability to pay a multi-million dollar judgment. Dist. Ct. Doc. no. 164.

1.8 On September 9, 2019, Yodel moved the District Court to decertify the class and reconsider its entry of summary judgment. Dist. Ct. Doc. no. 170.

1.9 On September 13, 2019, Yodel filed a Petition for Expedited Declaratory Ruling in the Federal Communications Commission (FCC), asking the FCC to rule that the soundboard technology it used to call the class members is not regulated by the TCPA. Dist. Ct. Doc. no. 175.

1.10 On November 13, 2019, the District Court conducted a scheduling conference on Yodel's motion to reduce damages, and set a discovery schedule for discovery concerning Yodel's practical ability to pay damages to the class. Dist. Ct. Doc. no. 201.

1.11 On December 23, 2019, Braver filed a motion to compel discovery from Yodel concerning its finances. Dist. Ct. Doc. no. 208.

1.12 On January 13, 2020, the District Court granted the motion to compel discovery from Yodel, in part. Dist. Ct. Doc. no. 223.

1.13 On January 23, 2020, Yodel filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida, 8:20-bk-00540 ("the Bankruptcy Court").

1.14 On June 9, 2020, the District Court preliminarily approved a classwide settlement agreement between Braver and NorthStar, which would resolve the class's claims against NorthStar, but leave any claims against Yodel unaffected. Dist. Ct. Doc. no.

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1.15 Between May 2020 and September 2020, the Parties conducted extension settlement negotiations to resolve the class's claims against Yodel.

1.16 To avoid the expense and uncertainty of continued proceedings necessary to bring this matter to a final judgment, and possible appeals, the Parties desire to resolve this action, each believing the resolution is in their own best interest. The Class Plaintiff and Class Counsel believe that the terms and conditions set forth in this Agreement confer substantial benefits upon the Class and that it is in the best interests of the Class to settle as described herein.

1.17 This Agreement resulted from and is the product of extensive litigation, discovery, motion practice, and good faith and arm's length settlement negotiations conducted over several years, including two private mediations, and numerous telephonic and in-person negotiations.

1.18 Subject to Preliminary Approval and Final Approval by the District Court as required by Rule 23 of the Federal Rules of Civil Procedure, and subject to the remaining provisions herein, the Parties desire a full, complete, and final settlement and resolution of the Released Claims (defined below) in exchange for Yodel's non-reversionary payment of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$1,750,000) according to the schedule below.

1.19 The Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement.

NOW THEREFORE, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the District Court of a final order approving the settlement and directing the implementation of the terms and conditions of the settlement as set forth in this Agreement, the Released Claims shall be settled and compromised upon the terms and conditions contained herein.

2. **DEFINITIONS**

The definitions contained herein shall apply only to this Agreement and the attached Exhibits, and shall not apply to any other agreement, including, without limitation, any other settlement agreement. Nor shall they be used as evidence, except with respect to this Agreement, of the meaning of any term. Furthermore, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form. As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

2.1 “Action” means the claims between the Parties pending in the case styled *Braver v. NorthStar Alarm Services, LLC, et al.*, Civ. No. 5:17-cv-00383-F03877 in the United States District Court for the Western District of Oklahoma.

2.2 “Agreement” means this Class Action Settlement Agreement and Release, including all Exhibits hereto.

2.3 “Approved Claim” means a Claim Form approved by the Claims Administrator and also includes Claim Forms submitted by NorthStar Claimants that were approved by the Claims Administrator in the NorthStar Settlement.

2.4 “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

2.5 “Claims Administrator” means KCC, subject to approval by the District Court. The Claims Administrator shall be responsible for providing the Settlement Notice as well as services related to administration of the Settlement.

2.6 “Claim Form” means the form Class Members must complete to be eligible to receive a Settlement Award, the proposed form of which is attached as Exhibit 1.

2.7 “Class” or “Settlement Class” means the class and subclass that that the District Court certified on October 15, 2018, and, should the District Court deem it to be necessary, that will be recertified for settlement purposes, defined as follows:

Class:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding NorthStar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 20 or 50 to the call, and that resulted in the normal clearing disposition.

Subclass:

All persons in the Red Dot Data marketing list for whom Yodel's records reflect a telephone call regarding NorthStar's home security systems that lasted more than 30 seconds, that was handled by an agent who applied status code 50 to the call, and that resulted in the normal clearing disposition.

Excluded from the class are:

Any persons whose contact information is associated with either an IP address or website URL in the Red Dot Data marketing list.

2.8 "Class Counsel" means Keogh Law, Ltd and Humphreys Wallace Humphreys, P.C.

2.9 "Class Member" means any person in the Class who has not properly opted out of or is otherwise excluded from the Class.

2.10 "Class Plaintiff" means Plaintiff Robert Braver.

2.11 "District Court" means the United States District Court for the Western District of Oklahoma.

2.12 "Cure Period" means fourteen (14) calendar days after Notice is given to Yodel pursuant to Section **21.10** below of a delinquency in any payment identified in Section **2.38** ("Total Payment") below.

2.13 "Cy Pres Distribution" means monies that may be distributed in connection with the Settlement pursuant to Section **13.3** of this Agreement. *Cy Pres* will only be distributed for uncashed or undeposited checks and only then if a second distribution to eligible Class Members is not feasible pursuant to Section **13.2** of this Agreement.

2.14 "Effective Date" means the fifth (5th) business day after the last of the following events takes place:

- (A) The Parties, Yodel's Counsel, and Class Counsel have executed this Agreement;

- (B) The District Court has entered, without substantially material change, the Final Approval Order; and
- (C) The final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period.

2.15 “Escrow Account” means a non-interest bearing checking account established at a federally insured financial institution by the Claims Administrator into which monies shall be deposited as set forth by this Agreement.

2.16 “Final Approval Hearing” means the hearing during which the District Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of fees and costs awarded to Class Counsel and the amount of the service award to Class Plaintiff.

2.17 “Final Approval Order” means the order the District Court enters upon finally approving the Settlement, the proposed form of which is attached as Exhibit 2. “Final Approval” occurs on the date that the District Court enters, without substantially material change, the Final Approval Order.

2.18 “Final Funding Date” means the date on which Yodel makes the last payment owed into the Escrow Account pursuant to section **10.1** of this agreement.

2.19 “Initial Funding Date” means November 30, 2020 - the date on which Yodel shall cause the initial payment of \$550,000 to be made to the Escrow Account pursuant to Section **10.1** of this Agreement.

2.20 “Judge” shall mean any judge of the United States District Court for the Western District of Oklahoma, including the Honorable Stephen P. Friot.

2.21 “Mail Notice” means the postcard notice that will be provided pursuant to Section **11.2(A)** of this Agreement to the Class Members, subject to approval by the District Court, substantially in the form attached as Exhibit 3.

2.22 “Notice and Administration Costs” means (1) all costs of printing and providing notice to persons in the Class; (2) all costs of administering the Settlement, including, but not limited to, the cost of processing claim forms, printing and mailing Settlement Awards and other payments, and the cost of maintaining a designated post office box and/or operating the Settlement Website; and (3) the fees, expenses, and all other costs of the Claims Administrator.

2.23 “Notice Deadline” shall have the meaning set forth in **Section 9.1(C)** of this Agreement.

2.24 “Opt-Out and Objection Deadline” shall have the meaning set forth in Sections **9.1(E)** and **14.1** of this Agreement.

2.25 “Parties” means Class Plaintiff and Yodel. Parties, as used in this Agreement, does not include defendant NorthStar.

2.26 “Preliminary Approval Order” means the order that the District Court enters upon preliminarily approving the Settlement, the proposed form of which is attached as Exhibit 4. “Preliminary Approval” occurs on the date that the District Court enters, without substantially material change, the Preliminary Approval Order attached as Exhibit 4.

2.27 “Released Claims” means all claims to be released as set forth in **Section 18** of this Agreement. Released claims does not include claims against NorthStar.

2.28 “Released Parties” means and refers to Defendant Yodel and its past and present subsidiaries and parent companies, and each of the foregoing’s respective past and present officers, directors, attorneys, shareholders, predecessors, successors, trusts, trustees, partners, associates, principals, divisions, employees, members, heirs, estates, and assigns. Released Parties does not include NorthStar or any other seller or entity on whose behalf Yodel placed telemarketing calls.

2.29 “Releasing Parties” means the Class Plaintiff and Class Members, on behalf of themselves and their respective spouses, heirs, executors, administrators,

representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and any other person or entity claiming through them.

2.30 “Settlement” means the settlement into which the Parties have entered to resolve the Released Claims. The terms of the Settlement are set forth in this Agreement and the attached exhibits, which are incorporated by reference herein.

2.31 “Settlement Award” means a cash payment that may be available to eligible Class Members pursuant to Section 12 of this Agreement.

2.32 “Settlement Costs” means all costs incurred in the litigation by the Class and their attorneys, as well as all costs of administering the Settlement, and such costs shall include: (i) any award of attorneys’ fees and costs to Class Counsel approved by the District Court; (ii) any incentive award to Class Plaintiff approved by the District Court; and (iii) all Notice and Administration Costs.

2.33 “Settlement Fund” means the total amount of ONE MILLION SEVEN HUNDRED-FIFTY THOUSAND DOLLARS (\$1,750,000) to be paid by Yodel into the Escrow Account as set forth in this Agreement. The Claims Administrator shall make payments from the Settlement Fund according to the following schedule:

- a. Once the Escrow Account contains funds sufficient to pay (1) Notice and Administration Costs and (2) Settlement Awards for all Approved Claims, the Claims Administrator shall within thirty (30) days pay Notice and Administration costs and send Settlement Awards to all class members who submitted an Approved Claim, in accordance with section **13.1**;
- b. Thereafter, once the Escrow Account contains funds sufficient to pay Class Counsel any District Court approved costs, the Claims Administrator shall within thirty (30) days pay Class Counsel their District Court approved costs;
- c. Thereafter, once the Escrow Account contains funds sufficient to pay the Class Plaintiff any District Court approved incentive award, the Claims

Administrator shall within thirty (30) days pay Class Plaintiff that District Court approved incentive award;

- d. Thereafter, the Claims Administrator shall pay Class Counsel any District Court approved attorneys' fees on a monthly basis until the Total Payment has been received.
- e. Thereafter, the Claims Administrator shall make any Second Distribution if required by section **13.2**;
- f. Thereafter, the Claims Administrator shall make any *cy pres* payment required by section **13.3**.

2.34 "Settlement Notice" means any type of notice that may be utilized to notify persons in the Class of the Settlement, including one or more of the following methods: Mail Notice, Website Notice, and any different or additional notice that might be ordered by the District Court. A description of the contemplated Class Notice is provided in Section **11.2** of this Agreement.

2.35 "Settlement Termination Date" means the date, if any, that any Party exercises its right to terminate this Agreement pursuant to Section **19** of this Agreement.

2.36 "Settlement Website" means the website established by the Claims Administrator to aid in the administration of the settlement.

2.37 "TCPA" means the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any regulations or rulings promulgated or issued under it.

2.38 "Total Payment" means Yodel's payment of ONE MILLION SEVEN-HUNDRED FIFTY THOUSAND DOLLARS (\$1,750,000), which shall be made by Yodel into the Escrow Account according to the following schedule: Five Hundred Fifty Thousand dollars (\$550,000) by November 30, 2020; and One Hundred Thousand dollars (\$100,000) each by December 30, 2020, January 30, 2021, February 28, 2021, March 30, 2021, April 30, 2021, May 30, 2021, June 30, 2021, July 30, 2021, August 30, 2021, September 30, 2021, October 30, 2021, and November 30, 2021.

As set forth in this Agreement, the “Total Payment” shall be used for Settlement Costs and all amounts to be paid to Class Members under this Agreement.

2.39 “Website Notice” means the long form website notice provided on the Settlement Website pursuant to Section **11.2(B)** of this Agreement, substantially in the form attached hereto as Exhibit 5.

2.40 “Yodel’s Counsel” means Buddy D. Ford, P.A..

2.41 “NorthStar Claimant” means any Class Member who submitted an Approved Claim for payment from the settlement fund in the NorthStar Settlement and who did not request exclusion from or object to the NorthStar Settlement.

2.42 “NorthStar Settlement” means the settlement agreement between Plaintiff and NorthStar, which was preliminarily approved by the District Court.

3. THE PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT

3.1 Yodel denies all liability and disputes that any class, including the Settlement Class, is manageable or capable of certification under Federal Rule of Civil Procedure 23. However, solely for the purposes of avoiding the expense and inconvenience of further litigation, Yodel does not oppose the re-certification of the Settlement Class, if deemed necessary by the District Court, solely for the purpose of this Settlement, or the method by which notice is provided to the Settlement Class. Preliminary certification of the Class shall not be deemed, and shall not be, a concession that certification of a litigation class is or was appropriate, nor would Yodel be precluded from challenging class certification in further proceedings in the Action or in any other action if the Final Approval Order is not entered or, if it is, the Effective Date does not come to pass. No agreements made by or entered into by Yodel in connection with the Agreement, including the use of the method to provide notice to the Class, may be used by Class Plaintiff, any Class Member, or any other person to establish any of the elements of class certification in any litigated

proceedings, to establish the elements of any claim, or to attempt to refute any defense or position of Yodel, except in order to enforce this Agreement.

3.2 Class Plaintiff believes that the claims asserted in the Action have merit and that the evidence developed to date supports those claims. Class Plaintiff recognizes and acknowledges, however, the expense and amount of time that would be required to continue to pursue the Action against Yodel, including through any appeal, as well as the uncertainty, risk, and difficulties of proof inherent in prosecuting such claims and enforcing any judgment on behalf of the Settlement Class. Class Plaintiff has concluded that it is desirable that the Action and the Released Claims be fully and finally settled and released as set forth in this Agreement. Class Plaintiff and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class and that it is in the best interests of the Settlement Class to settle as described herein.

4. SETTLEMENT PURPOSES ONLY

4.1 General. This Agreement is made for the sole purpose of settlement of the Released Claims, on a Class-wide basis. Except as otherwise provided herein, Settlement is expressly conditioned upon the entry of a Preliminary Approval Order and a Final Approval Order by the District Court, as well as the Effective Date coming to pass.

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

5. JURISDICTION

The Parties agree that the District Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement, to approve awards of attorneys' fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement.

6. SETTLEMENT TERMS AND BENEFITS TO THE CLASS

6.1 Total Payment to Class. Yodel shall pay the total sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$1,750,000)** to settle the Released Claims with the Class and obtain a Release of all Released Claims in favor of all Released Parties. The Total Payment will be used to pay Approved Claims and any Settlement Costs. Class Members will be eligible for a cash payment, the amount of which is dependent upon the number of Approved Claims. In no event will Yodel's payment obligations exceed the Settlement Fund.

6.2 Amount Paid Per Class Member. The amount paid per Class Member shall be determined by dividing among the Class on a *pro rata* basis the amount remaining in the Settlement Fund after deducting the Settlement Costs from the Total Payment. Any residual Settlement Funds will be distributed to a *cy pres* beneficiary pursuant to section **13.3**.

6.3 Injunctive Relief. Yodel agrees to the entry of an injunction in the Final Approval Order, permanently enjoining Yodel from initiating any telephone call to any telephone line that delivers a prerecorded message and/or using soundboard technology to deliver a prerecorded message where the principal purpose of the telephone call is advertising or marketing, unless the called party has provided prior express written consent to receive such calls.

7. ATTORNEYS' FEES, COSTS, AND PAYMENT TO CLASS REPRESENTATIVES

7.1 Attorneys' Fees and Costs. Class Counsel shall move the District Court for an award of attorneys' fees and costs paid from the Settlement Fund. The amount of attorneys' fees and costs approved by the District Court shall be paid from the Settlement Fund and from no other source. After receipt of Class Counsel's completed W-9 forms, the Claims Administrator shall pay to Class Counsel the amount of attorneys' fees and costs awarded to Class Counsel by the District Court, only in accordance with the schedule set forth in section **2.33**. District Court approval of attorneys' fees and costs, or their amount, will not be a condition of Settlement. In addition, no interest will accrue on such amounts at any time.

7.2 Payment to Class Plaintiff. Class Plaintiff will also ask the District Court to award him incentive payments (in addition to any *pro rata* distribution he may receive under Section **6.2**) for the time and effort he has personally invested in this Action. After receipt of Class Plaintiff's completed W-9 forms, the Claims Administrator shall pay to Class Plaintiff the amount of any incentive payments awarded by the District Court only in accordance with the schedule set forth in section **2.33**. In addition, no interest will accrue on such amounts at any time. Any incentive payment shall come from the Settlement Fund and from no other source.

7.3 Settlement Independent of Award of Fees and Incentive Payments. The payment of attorneys' fees, costs and incentive payments set forth in Section **7.1** and **7.2** are subject to and dependent upon the District Court's approval. However, Settlement is not dependent upon the District Court's approving the requests for such payments or awarding the particular amounts sought. In the event the District Court declines the requests or awards less than the amounts sought in attorney's fees, costs and incentive payments, this Settlement shall continue to be effective and enforceable by the Parties.

8. CONDITIONS OF SETTLEMENT

8.1 Except as provided in section **8.2**, performance of the obligations set forth in this Agreement is subject to all of the following material conditions:

- (A) Execution of this Agreement by Yodel and Class Plaintiff;
- (B) Entry by the District Court of the Preliminary Approval Order.
- (C) Sending of the notices, described in Section 11 below.
- (D) Entry by the District Court of the Final Approval Order and passage of the Effective Date.

8.2 Subject to Section 19, Yodel's obligations to make the initial payment of \$550,000 into the Escrow Account no later than November 30, 2020, and to make each subsequent payment in accordance with the schedule set forth in Section 2.38, inure to Yodel immediately upon the execution of this Agreement by Yodel and Class Plaintiff and are not conditioned upon the District Court's entry of the Preliminary Approval Order, the sending of Notice, the District Court's entry of the Final Approval Order, or the passage of the Effective Date. In the event of termination in accordance with Section 19.1, funds paid into the Escrow Account will return to Yodel only as provided in Section 19.2.

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

9. PRELIMINARY APPROVAL OF THE SETTLEMENT

9.1 Preliminary Approval Motion. As soon as practical after the execution of this Agreement, the Parties shall move the District Court for entry of the Preliminary Approval Order substantially in the form attached as Exhibit 4. Pursuant to the motion for preliminary approval, the Parties will request that:

- (A) The District Court preliminarily approve this Agreement and the Settlement reflected herein as fair, adequate, and reasonable to the Class;
- (B) The District Court approve the form of Class Notice and find that the notice program constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23;
- (C) The District Court direct that notice be provided to the Class, in accordance with this Agreement, within twenty-one (21) days following entry of the Preliminary Approval Order (the “Notice Deadline”);
- (D) The District Court shall establish a procedure for any class members to opt-out or object to the Settlement;
- (E) The District Court shall set a deadline sixty (60) days after the Notice Deadline, after which no one shall be allowed to submit claims, object to the Settlement, or exclude himself or herself, or seek to intervene (the “Opt-Out and Objection Deadline”);
- (F) The District Court shall approve the claims process described herein for the Class;
- (G) The District Court shall, pending determination of whether the Settlement should be finally approved, bar and enjoin all persons in the Class, individually, and on a representative basis or other capacity, from commencing or prosecuting against any of the Released Parties in any action, arbitration, or proceeding in any court, arbitration forum, or tribunal asserting any of the Released Claims unless they timely opt-out, except, however, no Class Member is precluded from

communicating or cooperating with law enforcement or any government regulator, relating to any conduct, including any conduct addressed by the Agreement.

- (H) The District Court shall, pending final determination of whether the Settlement should be finally approved, stay all proceedings between the Parties except those related to effectuating the Settlement; and
- (I) The District Court shall schedule a hearing to consider Final Approval of the Settlement, which shall be scheduled no earlier than sixty (60) days after the Opt-Out and Objection Deadline.

9.2 Stay/Bar of Proceedings. All proceedings between the Parties in the Action will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted Final Approval, the Parties agree not to pursue any claims or defenses against each other that are otherwise available to them in the Action except as otherwise ordered by the District Court, and no person in the Class or person acting or purporting to act directly or derivatively on behalf of a person may commence or prosecute against any of the Released Parties any action or proceeding asserting any of the Released Claims, except as otherwise ordered by the District Court. The Preliminary Approval Order will contain an injunction enjoining the prosecution of the Released Claims by any person unless and until after such person is validly excluded from the Class or is not a Class Member. Proceedings against NorthStar are unaffected by this Agreement.

10. PAYMENTS INTO THE SETTLEMENT FUND AND BREACH

10.1 The Settlement Fund. As full and complete consideration for the Settlement as to the Class, Yodel will pay the Total Payment of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$1,750,000) into the Settlement Fund in accordance with the Total Payment schedule and Cure Period set forth at sections **2.38 and**

2.12, respectively, to fully and completely settle the Released Claims of Class Plaintiff and the Class Members. Under no circumstance will Yodel be required to pay any additional amount into the Settlement Fund or otherwise in connection with the Settlement. The Settlement Fund shall be used as described in Section **2.33**.

10.2 Breach and Opportunity to Cure. In the event Yodel fails to timely make any payment in accordance with Section **2.38**, it must cure such failure within the Cure Period. If Yodel fails to timely make any payment in accordance with Section **2.38** and does not cure, the entire Settlement Fund shall be immediately due and payable and no portion of the Settlement Fund shall revert to Yodel, unless the Settlement is not approved pursuant to Section **19.1(A)**. In addition, in the event of an action filed by Braver alleging that Yodel failed both to make a payment in accordance with Section **2.38** and cure such breach, the losing Party shall be liable for the prevailing Party's reasonable attorneys' fees and costs incurred.

11. ADMINISTRATION AND NOTIFICATION PROCESS

11.1 Claims Administrator. The Claims Administrator shall administer the Settlement. In order to disseminate the Settlement Notice, the Claims Administrator shall utilize the names and contact information that it used to send notice of the certification order, along with any updated contact information that the class members may have provided in response to that notice (the "Class List").

11.2 Settlement Notice Program For the Class. The Claims Administrator shall, by the Notice Deadline, provide:

- (A) **Mail Notice.** The Claims Administrator will provide individual notice via the Mail Notice to the mailing addresses of Class Members in the Class List. The Claims Administrator shall perform skip tracing for all returned direct mail; all costs of skip tracing will be considered Settlement Costs and paid from the Settlement Fund. The Mail Notice

shall contain a claim ID and shall direct recipients to the Settlement Website.

(B) **Settlement Website.** The Claims Administrator will establish and maintain the Settlement Website dedicated to the Settlement, on which will be posted the Website Notice, Claim Form, a copy of this Agreement, the Preliminary Approval Order, the operative Complaint, and any other materials the Parties agree to include. These documents shall be available on the Settlement Website beginning five (5) days following the entry of the Preliminary Approval Order and remain until all of the checks disbursed are void unless otherwise ordered by the District Court. The Settlement Website will also allow Class Members to update their contact information and to submit their claims electronically.

(C) **800 Number/IVR.** The Claims Administrator will establish and maintain an 800 number that will answer questions concerning this Agreement, allow Class Members to request a written claim form, and allow Class Members to submit their claims telephonically.

11.3 CAFA Notice. Yodel shall be responsible for serving the CAFA notice required by 28 U.S.C. § 1715 to the Attorney General of the United States and the appropriate state officials within ten (10) days of the filing of the Preliminary Approval Motion.

12. SETTLEMENT AWARDS & CLAIMS

12.1 Awards to Class Members. All Class Members who Submit an Approved Claim, and all NorthStar Claimants, will be entitled to a *pro rata* share of the Settlement Fund (*i.e.* a Settlement Award), which shall be paid by check or secure electronic payment, as set forth below.

12.2 Award Estimates. Class Counsel shall include in the Settlement Notice a good faith estimated range for Settlement Awards.

12.3. Claims Process. To obtain a Settlement Award, Class Members must either be a NorthStar Claimant, or must submit a valid and timely Claim Form containing (1) either a valid Claim ID or a telephone number on the Settlement Class List; (2) the Settlement Class Member's full name, mailing address, and e-mail address (if he or she has one); (3) for mailed Claim Forms, the Settlement Class Member's signature; (4) for Claim Forms submitted via the Settlement Website, the Settlement Class Member's electronic signature; and (5) for Claim Forms submitted telephonically via IVR at the 800 Number described in Section **11.2(C)**, the Settlement Class Member's digital signature (such as through a key press). Claim Forms shall be submitted to the Claims Administrator via the Settlement Website, by mail, or telephonically at the 800 Number described in Section **11.2(C)**. To be deemed timely, Claim Forms must be submitted via the Settlement Website or 800 Number, or postmarked no later than sixty (60) days after the Notice Deadline.

13. DISTRIBUTION OF SETTLEMENT AWARDS

13.1 Settlement Award Payments. Class Members who submit claims will have the option to select Settlement Awards by either check or secure electronic payment. If no option is selected or the secure electronic payment cannot be completed, the Settlement Award shall be paid by check. The Claims Administrator shall send each Class Member who submitted an Approved Claim their Settlement Award in accordance with the schedule set forth in section **2.33**. The Claims Administrator will perform skip tracing and re-mailing, as necessary; all costs of such work will be considered Settlement Costs. Checks will be valid for one-hundred twenty (120) days from the date on the check. The amounts of any checks that are returned as undeliverable or that remain uncashed more than one-hundred twenty (120) days after the date on the check may be eligible for the Second Distribution (as defined below).

13.2 Second Distribution. If, after (i) the expiration date of the checks distributed pursuant to Section **13.1** above, (ii) the Final Funding Date, and (iii) all other payments have been made in accordance with section **2.33**, there remains money in the Settlement Fund sufficient to pay at least ten dollars (\$10) to each Class Member who was not a person who failed to cash his or her initial Settlement Award check or who did receive his or her initial Settlement Award via secure electronic payment, such remaining monies will be distributed on a *pro rata* basis to those Class Members (the “Second Distribution”) via their previous selected method of receiving Settlement Awards. The Second Distribution shall be made within sixty (60) days of the Final Funding Date and shall be paid in the same manner as the original Settlement Award. Checks issued pursuant to the Second Distribution will be valid for one-hundred twenty (120) days from the date on the check.

13.3 Remaining Funds. Subject to the provisions in Section **2.33** herein, money in the Settlement Fund that has not been distributed following the expiration of checks issued pursuant to the Second Distribution as set forth in Section **13.2** above, including money not distributed because there is not enough money in the Settlement Fund to justify a Second Distribution (the “Remaining Funds”), shall be paid to the National Consumer Law Center as *cy pres* with the funds earmarked to safeguard the protections provided by the TCPA. .

14. OPT-OUTS AND OBJECTIONS

14.1 Opt-Out Requirements. Persons in the Class may request exclusion from the Settlement by sending a written request to the Claims Administrator at the address designated in the Class Notice no later than the Opt-Out and Objection Deadline. Exclusion requests must comply with the requirements set forth in the notice sent to Class Members. No request for exclusion will be valid unless the Class Member complies with the requirements in the notice. No person in the Class, or any person acting on behalf of

or in concert or participation with that person in the Class, may exclude any other person in the Class from the Class.

14.2 Retention of Exclusions. The Claims Administrator will retain a copy of all requests for exclusion and will, upon written request, provide copies of any such requests to counsel for the Parties. Class Counsel will keep any such opt-out information confidential and use it only for purposes of determining whether a person in the Class has properly opted out.

14.3 Right To Object. Any Class Member may appear at the Final Approval Hearing to object to the proposed Settlement, but only if the Class Member has first filed a written objection with the Clerk of District Court, in accordance with the requirements set forth below, by the Opt-Out and Objection Deadline. Any Class Member who does not provide a written objection in the manner described in this Section shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of any attorneys' fees and costs and/or incentive awards. Further, any Class Member who intends to appear at the Final Approval Hearing must file and serve on all Parties a Notice of Intention to Appear with the District Court.

14.4 Objection Requirements. To be heard at the Final Approval Hearing, the Class Member must make any objection in writing and file it with the District Court by the Opt-Out and Objection Deadline. The objection must also be mailed to each of the following, postmarked not later than the last day to file the objection: (i) Class Counsel – Keogh Law, Ltd., 55 W. Monroe, Ste. 3390, Chicago, Illinois 60603; and (ii) Yodel's Counsel Buddy D. Ford, P.A., 9301 W. Hillsborough Ave. Tampa, Florida 33615-3008. An objection must:

- (A) Attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Class Member, including providing the Claim ID, full name, address, the telephone

number called, and whether he or she intends to appear at the fairness hearing on his or her own behalf or through counsel;

- (B) Include a statement of such Class Member's specific objections; and
- (C) State the legal and factual grounds for objection and attach any documents supporting the objection.

14.5 Any Class Member who objects may, but does not need to, appear at the Fairness Hearing, either in person or through an attorney hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement. A Class Member or his or her attorney intending to make an appearance at the Fairness Hearing must: (i) file a notice of appearance with the District Court no later than twenty (20) days prior to the Fairness Hearing, or as the District Court may otherwise direct; and (ii) serve a copy of such notice of appearance on all counsel for all Parties. Any Class Member who fails to comply with the provisions of this Section **14** shall waive and forfeit any and all rights to appear separately and/or to object, and shall be bound by all the terms of this Settlement, and by all proceedings, orders, and judgments in the litigation.

15. FINAL APPROVAL AND JUDGMENT ORDER

15.1 Final Approval. Following completion of the Class Notice process and within thirty (30) days following expiration of the Opt-Out and Objection Period, the Parties shall request that the District Court enter the Final Approval Order in substantially the same form attached as Exhibit 2, which shall specifically include provisions that:

- (A) Finally approve the Settlement as fair, reasonable, and adequate to the Class;
- (B) Find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Class, and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23;

- (C) Find that the Class Members have been adequately represented by the Class Plaintiff and Class Counsel;
- (D) Approve the plan of distribution for the Settlement Fund and any interest accrued thereon;
- (E) Confirm continued certification of the Class;
- (F) Confirm that Class Plaintiff and the Class Members have released all Released Claims that are contemplated under this Agreement and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims that are contemplated under this Agreement against the Released Parties;
- (G) Dismiss on the merits and with prejudice all claims of the Class Members against Yodel only, without costs to any party, except as provided in this Agreement;
- (H) Retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement, as well as the adjudication of claims against Yodel;
- (I) Expressly determine that there is no just reason to delay the entry of a final judgment as to Yodel only in accordance with Fed. R. Civ. P. 54(b);
- (J) Direct entry of a final judgment as to Yodel only in accordance with Fed. R. Civ. P. 54(b); and
- (K) As part of that final judgment as to Yodel, permanently enjoin Yodel in a manner that substantially complies with Section 6.3 of this Agreement.

16. FINAL JUDGMENT AS TO YODEL ONLY

The Judgment entered at the Final Approval Hearing shall be deemed final as to Yodel only:

- (A) Thirty (30) days after entry of the Judgment approving the Settlement if no document is filed within the time seeking appeal, review, or rehearing of the judgment; or
- (B) If any such document is filed, then five (5) days after the date upon which all appellate and/or other proceedings resulting from such document have been finally terminated in such a manner as to permit the judgment to take effect in substantially the form described in Section 15.

17. DISMISSAL, NO ADMISSIONS, AND PUBLICITY LIMITATIONS

17.1 Dismissal. Upon entry of the Final Approval Order and Final Judgment as to Yodel, the claims of the Class Plaintiff and the Class Members against Yodel shall be dismissed with prejudice as to Yodel only. Claims against NorthStar are unaffected by this dismissal.

17.2 No Admission of Liability. Yodel does not admit that Plaintiff or the proposed Settlement Class were damaged in any way, and in fact expressly denies the same. Yodel does not admit any liability, wrongdoing, or fault, and this Settlement should not be construed in whole or in part as an admission on the part of Yodel of any liability, wrongdoing, or fault. Yodel agrees to seek approval of this Settlement to avoid the burden and expense of litigation only.

17.3 No Admission Under Federal Rule of Evidence 408. Pursuant to Federal Rule of Evidence 408 and any similar provisions under the laws of any state, neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as may be necessary to approve, interpret, or enforce this Agreement.

17.4 No Publicity Beyond Notice Procedures. Counsel and/or the Parties and their representatives will not directly or indirectly make statements of any kind to any third party, including via social media, news outlets, email lists, group chats, digital meeting

platforms, etc., with the exception of the Claims Administrator, regarding the Settlement prior to filing a motion for Final Approval with the District Court. The Parties may make public statements to the District Court as necessary to obtain Preliminary or Final Approval of the Settlement, and Class Counsel will not be prohibited from communicating with any person in the Settlement Class regarding the Action or the Settlement.

18. RELEASE OF CLAIMS

18.1 As of the Effective Date, Class Plaintiff and the Class Members provide the following releases:

(A) Class Plaintiff and each and all Class Members, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and other person claiming through any of them, will be deemed to have fully released and forever discharged the Released Parties from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, statutory or actual harm, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the Released Parties' contact or attempt to contact Class Members by placing pre-recorded calls to Class Plaintiff and the Class Members' phones, to the fullest extent that those terms are used, defined, or interpreted by the TCPA or any other similar statute, relevant regulatory or administrative promulgations, and case law, including, but not limited to, claims under or for a violation of the TCPA and any other statutory or common law claim arising under the TCPA as relative to pre-recorded or auto-dialed calls placed to telephones (collectively, the "Released Claims"). The Released Claims do not include

claims asserted against NorthStar; all claims against NorthStar being specifically preserved by both the class and Yodel.

(B) Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the Releases, become effective. This Section constitutes a waiver of, without limitation as to any other applicable law, including Section 1542 of the California Civil Code, which provides:

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

18.2 Class Plaintiff and the Class Members understand and acknowledge the significance of these waivers of California Civil Code Section 1542, similar laws in other states, and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, Class Plaintiff and the Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

18.3 Covenant Not to Sue. Class Plaintiff and Class Members agree and covenant, and each Class member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise assist

others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum. However, nothing in this Agreement is intended to or does preclude any Settlement Class Member from communicating or cooperating with law enforcement or any government regulator, relating to any conduct, including any conduct addressed by the Agreement.

19. TERMINATION OF AGREEMENT

19.1 Either Side May Terminate the Agreement. Class Plaintiff and Yodel shall each have the right to unilaterally terminate this Agreement by providing written notice of his, her, their, or its election to do so (“Termination Notice”) to all other Parties within ten (10) calendar days of any of the following occurrences:

- (A) The District Court’s refusal to grant preliminary or final approval of the Settlement;
- (B) The reversal or substantial modification of the District Court’s order granting preliminary or final approval; or
- (C) A material alteration by the District Court of any of the terms of the written settlement agreement.

19.2 Settlement Fund Return to Yodel. Except as otherwise provided herein, in the event that the Settlement is terminated pursuant to Section **19.1**, the money remaining in the Settlement Fund, less expenses and taxes incurred or due and owing and payable from the Settlement Fund in accordance with this Agreement, shall be returned to Yodel within fifteen (15) days of the event that causes the Agreement to not become effective. However, if Yodel failed to timely make any payment in accordance with Section **10.1**, and failed to cure that breach in accordance with Section **10.2**, then no moneys shall return to Yodel from the Settlement Fund.

20. TAXES

20.1 Qualified Settlement Fund. The Parties agree that the Escrow Account into which the Settlement Fund is deposited is intended to be and shall at all times constitute a

“Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of Section 11, including if necessary, the “relation back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Claims Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

20.2 Claims Administrator is “Administrator.” For the purpose of § 1.468B of the Code and the Treasury regulations thereunder, the Claims Administrator shall be designated as the “administrator” of the Settlement Fund. The Claims Administrator shall cause to be timely and properly filed all information and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

20.3 Taxes Paid By Administrator. All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Yodel or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, shall be paid by the Claims Administrator from the Settlement Fund.

20.4 Expenses Paid from Fund. Any expenses reasonably incurred by the Claims Administrator in carrying out the duties described in Section 11, including fees of tax attorneys and/or accountants, shall be paid by the Claims Administrator from the Settlement Fund.

20.5 Responsibility for Taxes on Distribution. Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

20.6 Yodel Is Not Responsible. In no event shall Yodel or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Class Plaintiff, Class Members, Class Counsel, or any other person or entity.

21. MISCELLANEOUS

21.1 This Agreement shall be governed by the laws of the State of Oklahoma.

21.2 Evidentiary Preclusion. In order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, the Released Parties may file the Agreement and/or the judgment in any action or proceeding that may be brought against them.

21.3 No Construction Against Drafter. This Agreement was drafted jointly by the Parties and in construing and interpreting this Agreement, no provision of the Agreement shall be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

21.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives and approved by the District Court. The provisions

of the Agreement may be waived only in a writing executed by the waiving party. The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver, by that party or by any other party, of any other prior or subsequent breach of this Agreement.

21.5 Authority. Each person executing this Agreement on behalf of any of the Parties represents that such person has the authority to execute this Agreement.

21.6 No Assignment. No Party to this Agreement has heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.

21.7 Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he or it has fully read this Agreement, including the Releases, and has received independent legal advice with respect to the advisability and legal effects of entering this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases. Each Party to this Agreement warrants that he or it is acting upon his or its independent judgment and upon the advice of his or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Agreement.

21.8 Agreement Binding on Successors in Interest. This Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

21.9 Execution in Counterparts. The Parties may execute this Agreement in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21.10 Notices. Unless stated otherwise herein, any notice required or provided for under this Agreement shall be in writing and may be sent by electronic mail, fax, regular mail or FedEx, postage prepaid, as follows:

As to Class Plaintiff and Class:

Timothy J. Sostrin
Keogh Law, LTD.
55 W. Monroe St., Ste. 3390
Chicago, IL 60603

As to Yodel:

Buddy D. Ford, Esquire
Buddy D. Ford, P.A.
9301 W. Hillsborough Ave.
Tampa, Florida 33615-3008

21.11 Future Changes in Laws or Regulations. To the extent Congress, the Federal Communications Commission, or any other relevant regulatory authority promulgates materially different requirements under the TCPA, those laws and regulatory provisions do not impact this Settlement Agreement.

21.12 Time Periods. The time periods and dates described herein are subject to District Court approval and may be modified upon order of the District Court or written stipulation of the Parties.

21.13 Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the District Court or a mediator upon agreement of the Parties.

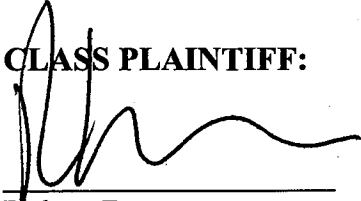
22. MODIFICATION OF AUTOMATIC STAY

Within five days of the execution of this Agreement, the Parties will jointly request the Bankruptcy Court to enter an order modifying the automatic stay in the Action, so that the District Court can enter all orders contemplated by this Agreement, including preliminary approval of the settlement, approval of settlement notice to the class, approval of any requested attorneys' fees, costs, and incentive awards, final approval of the settlement, and final judgment.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed
as follows:

CLASS PLAINTIFF:



Robert Braver

Dated: 12/16, 2020

Yodel Technologies, LLC

Dated: 11/24, 2020

By: 

Its: COO

**APPROVED AS TO FORM AND
CONTENT:**

CLASS COUNSEL

Keogh Law, Ltd.

Dated: 12/29, 2020




By: _____
Timothy J. Sostrin

Humphreys Wallace Humphreys, P.C.

Dated: 12/28, 2020

By:



~~Paul Catalano~~ Luke Wallace

YODEL'S COUNSEL

Dated: _____, 2020

By:

**APPROVED AS TO FORM AND
CONTENT:**

CLASS COUNSEL

Keogh Law, Ltd.

Dated: _____, 2020

By: _____
Timothy J. Sostrin

Humphreys Wallace Humphreys, P.C.

Dated: _____, 2020

By: _____
Paul Catalano

YODEL'S COUNSEL

Buddy O. Fowl, Esq.

Dated: 11/5, 2020

By: _____
