

SETTLEMENT AGREEMENT

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Settlement Agreement (“Agreement”) is entered into on the date of execution between Kevin P. Etzkorn (“Plaintiff”), on behalf of himself and a class of similarly-situated persons (identified and defined below as the “Settlement Class”), and 3 Day Blinds LLC (“Defendant”). The parties to this Agreement are collectively referred to as the “Parties”.

WHEREAS, on behalf of himself and a putative class of similarly-situated persons, Plaintiff filed a civil action against Defendant in the Circuit Court of St. Louis County, Missouri, styled *Kevin P. Etzkorn v. 3 Day Blinds LLC*, Case Number 17SL-CC04032, and later removed by Defendant to The United States District Court for the Eastern District of Missouri as Case Number 4:17-cv-02836-JAR (the “Lawsuit” or the “Action”);

WHEREAS, Plaintiff’s Class Action Petition alleges that Defendant violated the Telephone Consumer Protection Act (the “TCPA”), 47 U.S.C. § 227, et seq., and FCC regulations by transmitting text message advertisements using an automatic telephone dialing system, as defined by the TCPA, without the recipients’ prior express written consent;

WHEREAS, Defendant denied and continues to deny the allegations and all allegations of wrongdoing, and contends that, Defendant did not violate the TCPA or FCC regulations, under the TCPA it is not liable to the Plaintiff or the Settlement Class, that the equipment used to send the text messages does not qualify as an automatic telephone dialing system under the TCPA, and further contends that the allegations contained in Plaintiff’s Class Action Petition are not amenable to class certification;

WHEREAS, Defendant denied and continues to deny all liability, fault, or damages, and without admitting or conceding fault or liability or the validity of Plaintiff’s claims, point of law, or point of fact, or that Plaintiff or any putative or proposed Class Member is entitled to any relief as a result of Defendant’s conduct, given the risks, uncertainties, and expense of continued litigation, Defendant has agreed to fully and finally settle all disputes regarding the transmission of text messages advertising Defendant and/or its merchandise to the Settlement Class (the “Settlement”), subject to Court approval;

WHEREAS, the Settlement Class includes approximately 120,000 persons that received text message advertisements from Defendant in 2017;

WHEREAS, Plaintiff and Class Counsel (identified below) have concluded that the terms and conditions of the Agreement provided herein are fair, reasonable, and adequate, and in the best interests of the Settlement Class as a means of resolving all disputes between and among the Parties in light of the risks of litigation.

WHEREFORE, the Parties stipulate and agree that the claims of the Settlement Class should be and are hereby compromised and settled, subject to the Court’s approval, upon the following terms and conditions:

1. Recitals. The above described recitals are incorporated herein and made a part hereof.

2. For Settlement Only. This Agreement is entered into for purposes of resolving all disputes between Defendant and all members of the Settlement Class. Assertions, statements, and representations herein are for settlement purposes only. If the Court does not finally approve this Agreement, then the Parties expressly agree that this Agreement is null and void *ab initio* and may not be used by any Party for any reason.

3. Certification of the Settlement Class.

3.1 Defendant disputes that a class could be certified on the claims asserted in this Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose the certification, with respect to the Settlement set forth in this Agreement only, of the Settlement Class. Preliminary certification of the Settlement Class will not be deemed a concession or admission that certification of a class is appropriate, nor would Defendant be precluded from challenging class certification in further proceedings in this Lawsuit or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is terminated for any reason whatsoever or is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Lawsuit. No agreements made by or entered into by Defendant in connection with the Settlement Agreement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Lawsuit or any other judicial proceeding. Furthermore, any evidence relating to this Agreement, other than that obtained through ordinary discovery procedures or from third party sources by the litigants which is offered in support of the Settlement shall be deemed privileged and protected to the fullest extent by the law pertaining to statements made in mediation and offers of compromise.

3.2 The “Settlement Class” shall be defined as follows:

All persons in the United States who, at any time beginning on and including October 27, 2013, to the date of preliminary approval, received at least one text message advertisement on their cellular phone from, on behalf of, or promoting 3 Day Blinds LLC or its merchandise, and did not provide 3 Day Blinds their consent to receive such messages. Excluded from the Settlement Class are Plaintiff’s Counsel, Defendant, officers and directors of Defendant, the immediate family members of such persons, and the members of the Missouri federal judiciary. A “Settlement Class Member” shall be defined as a member of the “Settlement Class” who is the primary user of the cellular phone number that received the text message. Only one individual per cellular phone number shall be eligible to participate as a Settlement Class Member. “Merchandise” is defined to mean any objects, wares, goods, commodities, intangibles, real estate, or services.

4. Representation of the Settlement Class. Plaintiff will ask that he be appointed as the Class Representative, and that attorney Dennis “Neil” Smith, Jr., of The Smith Law Firm, LLC, be appointed as Class Counsel. Defendant agrees that it will not oppose these requests.

5. Preliminary Approval. Plaintiff will move the Court for the entry of an order preliminarily approving this Settlement within ten (10) days of the execution of this Agreement. A proposed “Order Preliminarily Approving Settlement, Certifying Settlement Class, and Authorizing Notice to the Settlement Class” (the “Preliminary Approval Order”) is attached as Exhibit 1.

6. Confirmatory Discovery. Prior to the signing of this document 3DB will provide to Plaintiff’s counsel data, verified by oath, accurately reflecting phone numbers that qualify as belonging to a Settlement Class Member, records that phone numbers received a text message during the Class Period, the date(s) such phone numbers were sent text messages, information as to the substance of the text messages, the number of text messages received by each phone number, and any name, address, and email address associated with each phone number, if available.

7. The Settlement Fund. Defendant has agreed to make a total non-reversionary fund of a sum certain in the amount of six hundred and seventy-five thousand dollars (\$675,000 USD) (the “Settlement Fund”) available to settle this case. Under no circumstance shall Defendant be obligated to pay more than the Settlement Fund. The Settlement Fund will be distributed on a “claims-made” basis. Each Settlement Class Member will be entitled to make only one claim regardless of the number of text messages received by the Settlement Class Member on his or her cellular phone from, on behalf of, or promoting Defendant or its merchandise during the Class Period. Any portion of the Settlement Fund that is not paid on account of approved claims of Settlement Class Members, for settlement administration, to the Class Representative, or to Class Counsel shall be paid, with the approval of the Court, to a charitable organization that is mutually agreed upon by the Parties. If the Parties cannot agree on a charitable organization, the Court will select one. Any checks issued to any Settlement Class Member that remain uncashed for a period of 180 days from the date of issuance, shall be paid, with approval of the Court, to the approved charitable organization. Defendant shall not be responsible for any payments or obligations other than those specified in this Agreement.

8. Change in Conduct. Without admitting any wrongdoing or violation of law, and specifically denying same, Defendant has agreed to that it will comply with the TCPA and associated federal regulations when sending advertisements via text message.

9. Mailing of Class Notice.

9.1 Settlement Notice. As used herein, “Settlement Notice” shall be defined as the first mailing of notice to Settlement Class Members. Within twenty-eight (28) days following preliminary approval of the settlement by the Court, Settlement Notice will be issued to the Settlement Class Members whose cellular telephone numbers appear on the records produced by Defendant under paragraph 6 of this Agreement (the “Text Logs”). The Parties will request that the Court approve as Settlement Notice a postcard “Notice of Class Action and Proposed Settlement” in the form attached hereto as Exhibit 2, and seek approval to send it by

U.S. mail. The Claims Administrator, as defined herein, will issue the Settlement Notice by U.S. mail. The postcard Settlement Notice will refer the recipient to a settlement website.

9.2 The Claims Administrator will conduct a reasonable search to locate an updated address, according to best practices, for any Settlement Class Member whose Settlement Notice is returned as undeliverable. The Claims Administrator will update addresses based on any forwarding information received from the United States Post Office; and the Claims Administrator will update addresses based on any requests received from persons in the Settlement Class, within the notice period. In addition, the Claims Administrator will grant Settlement Class Members a reasonable opportunity to cure any deficient claim forms, not to exceed 15 days from the date the notice to cure was sent. The reasonable opportunity to cure does not vary the terms of this Agreement.

10. Claims.

10.1 Settlement Class Members must timely submit a fully completed and executed claim form to receive a share of the Settlement Fund. After payments for settlement administration, to Class Counsel and to the Class Representative, or any other payment required by this Agreement, each member of the Settlement Class who submits a timely and valid claim form shall be paid an equal amount from the funds remaining in the Settlement Fund on a pro-rata basis, up to a maximum of \$500 in value. Timely and valid claims will be paid by check or electronic payment if appropriate. Claim forms will be due within 60 days after the Settlement Notice is first sent. Any member of the Settlement Class who does not submit a claim form by the date set by the Court, as evidenced by postmark or other identifiable date of transmission, shall receive no compensation from the Settlement Fund.

10.2 Claim Form Content. To submit a qualifying claim, a Settlement Class Member must complete a claim form on a website created by the administrator, or mail a claim form to the administrator that includes the following information:

- a. Name;
- b. Current address;
- c. Current contact phone number and email address;
- d. The phone number that received the text message(s);
- e. Certification that the claimant was the primary user of the phone number that received the text message; and
- f. Certification that the claimant actually received a text message from, on behalf of, or promoting 3DB, or its merchandise, at any time beginning on and including October 27, 2013, up to the date of preliminary approval.

11. Incentive Award and Attorneys' Fees. After concluding negotiations on the other elements of the Agreement, the Parties subsequently agreed that, subject to Court approval, Defendant shall not oppose a request for payment of \$10,000 from the Settlement Fund, as an incentive award to Plaintiff for his service as a class representative. Defendant agrees that it shall not oppose a request by Class Counsel for an award of \$225,000 of the total Settlement Fund for representing the Settlement Class. Defendant agrees that it shall not oppose a request by Class Counsel for an award for reasonable, documented out-of-pocket litigation expenses

from the Settlement Fund, not to exceed \$7,000. Defendant will not oppose these requests and awards, and agrees not to appeal the award of the same. The fees, litigation expenses, and award will be set forth in an order of the Court and paid from the Settlement Fund. In the event that the Court declines the attorney fee request, expense request, or representative award, or if the Court awards less than the amounts sought, the Settlement will continue to be effective and enforceable.

12. Final Approval. The preliminary approval order will set a date for a final fairness hearing, at which Plaintiff and Defendant will request that the Court enter a Final Approval Order and Judgment. The fact that the Court may require non-substantive changes in the Final Approval Order and Judgment will not invalidate this Agreement or the settlement.

13. Effective Date. The “Effective Date” of this Agreement shall be the date five (5) calendar days after the date on which both the following are true: (a) the Court has signed the Final Approval Order dismissing with prejudice the claims of all Settlement Class Members (including Plaintiff) except those who properly excluded themselves from the Settlement Class as provided in the Settlement Notice, and (b) the time for filing an appeal has expired or, if appeals are filed, the date on which the Final Approval Order has been affirmed in all material respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review. Plaintiff and Defendant shall vigorously defend any appeal from the Final Approval Order and shall themselves satisfy, any attorney’s fees, costs, and expenses arising from or necessitated by the defense of any such appeal.

14. Claims Administrator. The term “Claims Administrator,” as used in this Settlement Agreement, refers to the third-party claims administrator that will be paid from the Settlement Fund for administration of the Settlement. Defendant may select an experienced Claims Administrator and obtain a bid for services, subject to the approval of Class Counsel, and said approval shall not be unreasonably withheld. The Claims Administrator shall be responsible for all matters relating to the administration of the Settlement, as set forth herein. This includes giving notice to Settlement Class Members, setting up and maintaining a settlement website and toll-free telephone number, fielding inquiries about the Settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting claims, directing the distribution of cash awards to Settlement Class Members, sending CAFA notice required by 28 USC § 1715(b), and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator shall provide a list of accepted and rejected claims to counsel for the Parties. The Claims Administrator will provide a list of accepted and rejected claims to counsel for the Parties. The Claims Administrator will provide periodic updates on the claims status to counsel for the Parties. The decision of the Claims Administrator as to the validity of a claim is final and binding. Upon request, the Claims Administrator will provide copies of all claim forms to counsel for the Parties.

14.1 Settlement Website. The Claims Administrator will establish a settlement website through which claims may be submitted. The settlement website will contain links to this Agreement (and exhibits), the preliminary approval order, long-form class notice and downloadable claim form for anyone wanting to print a hard copy and mail in the claim form.

14.2 Toll-Free Telephone Number. The Claims Administrator will set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number will be maintained until the Final Approval Hearing. After that time, and until 180 days after the Effective Date, a recording will advise any caller to the toll free telephone number that the Claims Deadline has passed and that details regarding the Settlement may be reviewed on the Settlement Website.

15. Payment of Notice and Claims Administration Costs. Defendant will cause to be paid the reasonable costs of notice and settlement administration, from the Settlement Fund, upon invoices by the Claims Administrator on a schedule to be agreed upon by the Claims Administrator and Defendant. The Claims Administrator will maintain detailed records of the amounts spent on the administration of the Settlement and will provide that information to Defendant and Class Counsel monthly.

16. Payments. On the Effective Date, Defendant shall pay the attorneys' fees, litigation expenses, and incentive award approved by the Court in the Final Approval Order and Judgment, from the Settlement Fund by certified check or wire transfer to "The Smith Law Firm, LLC, Trust Account". Upon such transfer, Defendant's obligations for attorney's fees, litigation expenses and incentive award shall be fully and finally discharged and released. Within 45 days after expiration of the claims period, the Claims Administrator shall inform Defendant of the number of valid and approved claims submitted and the total amount necessary to fund the payment of the valid and approved claims. Within 14 days after receiving that information, Defendant shall pay to the Claims Administrator monies sufficient to pay the approved claims. Payment of checks for valid and approved claims shall be made by the Effective Date. Checks issued to the Settlement Class members by the Claims Administrator will be void 180 days after issuance and shall state that fact on their face.

17. Opting Out of the Settlement. Any Settlement Class Members who wish to exclude themselves from the Settlement Class must submit a written Request for Exclusion to the Claims Administrator, postmarked no later than 14 days prior to the date of the Final Approval Hearing. To be valid, a Request for Exclusion must state the Settlement Class Member's full name, address, cellular telephone number(s) on which he or she received a text message from, on behalf of, or promoting Defendant or its merchandise during the Class Period, and a telephone number at which he or she currently can be reached. Further, the Request for Exclusion must clearly state that the Settlement Class Member wishes to be excluded from the Settlement. Only Settlement Class Members who timely submit a valid Request for Exclusion, as determined by the Claims Administrator, will be excluded from the Settlement Class and will not be bound by the terms of this Agreement. Settlement Class Members may opt out individually. Group opt outs are not valid and will not be considered valid. Settlement Class Members who do not timely submit a valid Request for Exclusion will be bound by this Agreement and any Court Judgment.

18. Objections. Any Settlement Class Member who wishes to object to the Settlement must file a written Objection with the Court no later than 14 days prior to the date of the Final Approval Hearing. The Settlement Class Member must also serve a copy of the Objection via first-class U.S. mail on Class Counsel and Defendant's Counsel. The Objection

must include: (1) the name, address, telephone number, and email address of the Settlement Class Member who is objecting and, if represented by counsel, of his/her counsel; (2) proof of receipt of a text message from, on behalf of, or promoting Defendant or its merchandise during the Class Period without consent; (3) proof that he or she was the primary user of the cell phone number that received a text message from Defendant during the Class Period, (4) the reasons for his or her Objection; and (5) a statement about whether he or she intends to appear at the Final Approval Hearing, and identifying counsel, if any, representing the objecting Settlement Class Member. The Parties will have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector was a party in the Action, including the right to take the objector's deposition. Such discovery will be conducted on an expedited basis, and the objecting Settlement Class Member is required to respond and must appear for a deposition within 14 days, if a deposition is noticed. Settlement Class Members who fail to timely file and serve written Objections, or fail to respond to discovery or make themselves available for deposition, shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to this Settlement.

19. Releases.

19.1 Upon the Effective Date, Plaintiff and each Settlement Class Member who does not timely opt out of the Settlement Class, shall be deemed to have and, by operation of the Judgment shall have fully, finally, and forever released, relinquished and discharged Defendant, Bitesize, and Handstack P.B.C., and the respective past or present directors, officer, employees, principals, agents, attorneys, insurers, predecessors, heirs, successors, parents, subsidiaries, divisions and related or affiliated entities, subsidiary companies, of Defendant, Bitesize, and of Handstack P.B.C., as well as any vendors or other parties involved in the texts at issue, from any and all claims, demands, debts, liabilities, actions, causes of action of every kind and nature, obligations, damages, losses, and costs, whether known or unknown, actual or potential, suspected or unsuspected, direct or indirect, contingent or fixed, that have been, could have been, or in the future might be asserted that arise out of or relate to text message advertisements sent by, on behalf of, or promoting Defendant, or its merchandise, between October 27, 2013, and the date of preliminary approval, that are reflected on the Text Logs (the "Released Claims"). "Released Claims" does not include any failure by any Party hereto to fully comply with the terms of this Settlement Agreement.

19.2 Upon the Effective Date, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged Plaintiff and Class Counsel, and their respective past or present directors, officers, employees, principals, agents, attorneys, insurers, predecessors, heirs, successors, parents, subsidiaries, divisions and related or affiliated entities, from all claims based upon or arising out of the institutions, prosecution, assertion, settlement or resolution of the Lawsuit, and all Released Claims, except for enforcement of this Agreement.

19.3 With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Defendant expressly shall have, and each of the other Settlement Class Members who do not timely opt out shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by the California Civil Code § 1542, 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.

Defendant, Plaintiff, and Settlement Class Members, and any individual class member, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Defendant and Plaintiff expressly shall have, and each Settlement Class Member who does not timely opt out shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge, and Settlement Class Members who do not timely opt out shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver, including without limitation, the release of unknown claims, is a material element of the Settlement Agreement of which the releases in this Settlement Agreement are a part.

20. Preservation of Rights. Notwithstanding any provision in this Agreement, Defendant preserves any claim it may have against any vendor or any third-party including but not limited to Bitesize, Handstack, P.B.C. (“Handstack”) and any owner, successor or related entity, pertaining to the text messages which are the subject of the Lawsuit.

21. Class Enjoined. On the Effective Date, all members of the Settlement Class Members who did not exclude themselves as required by the notice (and any person or entity claiming by or through him, her, or it, as heir, administrator, devisee, predecessor, successor, attorney, representative of any kind, shareholder, partner, director or owner of any kind, affiliate, subrogee, assignee, or insurer) will be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against Defendant about the Released Claims; and all persons and entities shall be forever barred and permanently enjoined from filing, commencing, or prosecuting any other lawsuit as a class action against Defendant (including by seeking to amend a pending petition to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who have not timely excluded themselves from the Settlement Class if such other lawsuit is based on or arises from the Released Claims.

22. CAFA Notice. Defendant, with the assistance of the Class Administrator, will be responsible for serving the Class Action Fairness Act (“CAFA”) notice required by 28 U.S.C. § 1715 within ten days of the filing of the Preliminary Approval Motion. The cost of this notice shall be included in the class administration costs.

23. Right to Terminate the Agreement.

- 23.1 Either Side May Terminate the Agreement. Plaintiff and Defendant will each have the right to unilaterally terminate this Agreement by providing written notice of his or its election to do so (“Termination Notice”) to all other Parties hereto within twenty (20) calendar days of any of the following occurrences:
- (a) The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
 - (b) An appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
 - (c) Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in any material respect, unless such modification or amendment is accepted in writing by all Parties.

24. No Admission of Liability.

24.1. Defendant denies any liability or wrongdoing of any kind associated with the alleged claims in the consolidated amended complaint, whether related to its conduct or the conduct of third parties on its behalf. Defendant has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action, for any purpose. Nothing herein will constitute an admission by Defendant that the Action is properly brought on a class or representative basis, or that classes may be certified in that Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the allegations in the Action; (ii) are not and will not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal, for any purpose; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

24.2. Pursuant to Federal Rules of Evidence Rule 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 will be admissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement. Notwithstanding the foregoing, any of the released persons may file the Agreement or any judgment or order of the Court related hereto, in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *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.

24.3. This paragraph, including all sub-paragraphs, shall remain in force in the event that the Settlement is not approved by the Court or terminated.

25. Cooperation. Plaintiff and Defendant and their counsel agree to cooperate fully with one another to effect the consummation of this Agreement and to achieve the Settlement provided for herein.

26. Agreement Contingent Upon Entry of Final Approval. This Agreement is contingent upon the court's entry of an order containing a judgment giving final approval to the terms of this Agreement. If the Court refuses to grant final approval of the terms of the settlement set forth herein, or if the Court's Final Approval Order and Judgment is reversed or substantially modified on appeal, then this Agreement shall be null and void, and no stipulation, representation, or assertion of fact made in this Agreement may be used against any Party for any purpose. No Party to this Agreement, absent any substantive change by the Court, shall appeal any part of the approval of this Settlement Agreement by the Court.

27. Notices. Requests for exclusion, objections to the Agreement or settlement, and notices to Plaintiff and the Settlement Class shall be sent to:

Neil Smith
The Smith Law Firm, LLC
231 South Bemiston Avenue, Suite 800
Clayton, MO 63105

Requests for exclusion and objections to the Agreement shall be copied to, and notices to Defendant shall be sent to its counsel addressed as follows:

Glennon P. Fogarty
Matthew D. Knepper
Husch Blackwell LLP
190 Carondelet Plaza #600
St. Louis, MO 63105

29. Stay of Proceedings and Court Submission of Settlement. The Parties agree to stay the proceedings in the Lawsuit and not to initiate or pursue any proceedings other than those related to the approval of the Settlement itself. The Parties also agree to use their best efforts to prevent, stay, seek dismissal of, or oppose entry of any interim or final relief in favor of any member of the Class in any other litigation against any of the Parties to this Settlement. Class Counsel and Defendant's counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval. If the Court declines to grant preliminary approval of the Settlement and to order notice of hearing with respect to the proposed Settlement Class, or if the Court declines to grant final approval to the foregoing after such notice and hearing, this Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Agreement and Settlement will not be approved, and in such instance the Agreement shall then be null and void.

30. Integration Clause. This Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Agreement shall not be orally modified in any respect and can be modified only by written agreement of the Parties supported by adequate consideration as confirmed in writing.

31. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

32. Binding and Benefitting Others. This Agreement and the Settlement shall be binding upon and inure to the benefit of the Parties, and to their respective present, former, or future agents, representatives, employees, directors, officers, shareholders, attorneys, parents, subsidiaries, and affiliates.

33. Warranties. The Parties each further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the claims released in this Agreement, and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party/Parties for which he or she is signing. This Agreement is, and shall be, binding upon, and inure to the benefit of, the Parties and their respective agents, executors, administrators, heirs, successors, and assigns, including, without limitation, any corporation or other entity with which any Party hereto may merge or otherwise consolidate. The released persons who are not Parties hereto shall be third party beneficiaries under this Agreement entitled to enforce the Agreement in accordance with its terms.

34. Governing Law and Forum. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Missouri, without regard to its conflict of laws or choice of law provisions. Each of the Parties to the Agreement (a) irrevocably submits to the personal jurisdiction or venue selection of this Court, the United States District Court for the Eastern District of Missouri, as well as to the jurisdiction of all courts to which an appeal may be taken, in any suit, action or proceeding arising out of or relating to the Agreement and/or the Settlement; (b) agrees that all claims in respect of such suit, action or proceeding shall be brought, heard and determined exclusively in this Court (provided that, in the event that subject matter jurisdiction is unavailable in this Court, all such claims shall be brought, heard and determined exclusively in any other state or federal court sitting in St. Louis County, Missouri); (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court; (d) agrees not to bring any action or proceeding arising out of or relating to the Agreement and/or the Settlement in any other court; and (e) EXPRESSLY WAIVES, AND AGREES NOT TO PLEAD OR TO MAKE ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING IS SUBJECT (IN WHOLE OR

IN PART) TO A JURY TRIAL. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding brought in accordance with this paragraph.

35. Mutual Interpretation. The Parties agree and stipulate that the Settlement was negotiated on an arm's-length basis between parties of equal bargaining power. The Agreement has been drafted jointly by Class Counsel and Defendant's counsel. Accordingly, this Agreement is not one of adhesion, is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties. The Settlement Class acknowledges, but does not concede to or agree with, statements by Defendant regarding the merits of the claims or class certification and Defendant acknowledges, but does not concede to or agree with, the Settlement Class' statements regarding the merits of the claims or class certification.

36. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Electronically scanned signatures are acceptable for the execution of this Agreement.

37. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within 20 days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

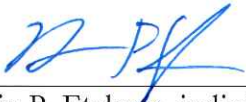
38. Continuing Jurisdiction. Without affecting the finality of the final judgment, the Court shall retain continuing jurisdiction over the Litigation and the Parties, including all members of the Settlement Class, the administration and enforcement of this Agreement and the Settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Agreement, the order preliminarily approving the Settlement, and the Final Approval Order and Judgment, and hearing and determining an application by Class Counsel for an award of fees and expenses. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Agreement shall be presented by motion to the Court.

39. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by such other Party. No waiver, express or implied, by any Party of any breach or default in the performance by the other Party of its obligations under this Agreement shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Agreement.

[The remainder of this page was intentionally left blank. The next pages are the signature page and Exhibits.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date(s) set forth below.

Dated: 6/29/18



Kevin P. Etkorn, individually and on behalf of the
Settlement Class

Dated: _____

3 Day Blinds LLC

By: _____
[signature]

[printed name]

[title]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date(s) set forth below.

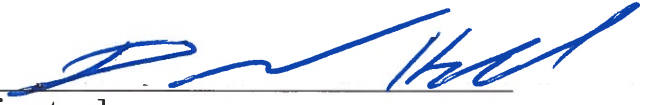
Dated: _____

Kevin P. Etzkorn, individually and on behalf of the Settlement Class

Dated: 6/12/18

3 Day Blinds LLC

By:



[signature]

David Hall

[printed name]

CEO

[title]

Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a final approval order should be entered in this Lawsuit:

IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the action and over all settling parties hereto.

2. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §1715, Defendant 3DB or the Claims Administrator serve written Notice of the proposed class settlement on the United States Attorney General and/or the Attorneys Generals of states, as required by law.

3. **CLASS MEMBERS** – Pursuant to Fed. R. Civ. P. 23(b)(3), this action is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (referred to as the “Class Members”) with respect to the claims asserted in this action:

All persons in the United States who, at any time beginning on and including October 27, 2013, to the date of preliminary approval, received at least one text message advertisement on their cellular phone from, on behalf of, or promoting 3 Day Blinds LLC or its merchandise, and did not provide 3 Day Blinds their consent to receive such messages. Excluded from the Settlement Class are Plaintiff’s Counsel, Defendant, officers and directors of Defendant, the immediate family members of such persons, and the members of the Missouri federal judiciary. A “Settlement Class Member” shall be defined as a member of the “Settlement Class” who is the primary user of the cellular phone number that received the text message. Only one individual per cellular phone number shall be eligible to participate as a Settlement Class Member. “Merchandise” is defined to mean any objects, wares, goods, commodities, intangibles, real estate, or services.

4. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT** - Pursuant to Fed. R. Civ. P. 23, the Court preliminarily appoints Kevin P. Etkorn as the Class Representative and Neil Smith of The Smith Law Firm,

LLC as Class Counsel.

5. **PRELIMINARY CLASS CERTIFICATION** - The Court preliminarily finds that this action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

A. The Class Members are so numerous and geographically dispersed that joinder of all of them is impracticable;

B. There are questions of law and fact common to the Class Members, which predominate over any individual questions;

C. The claims of the Plaintiff are typical of the claims of the Class Members;

D. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members: and

E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy. See *St. Louis Heart Center, Inc. v. Vein Centers for Excellence, Inc.*, No. 4:12-CV-174-CDP, 2013 WL 6498245 (E.D. Mo. Dec. 11, 2013).

6. The Court preliminarily finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the benefits to the Class Members; the strengths and weaknesses of the Plaintiff's case, including the defenses asserted by Defendant; the complexity, expense, and probable duration of further litigation; the risk and delay inherent in possible appeals; and the risk of collecting any judgment obtained on behalf of the class.

See In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 931 (8th Cir. 2005) (setting forth factors to determine whether settlement is fair, reasonable, and adequate).

7. **ADMINISTRATION** – A third party class administrator acceptable to the parties, will administer the settlement and notification to Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Class Members who can be identified through reasonable efforts. All costs of administration will be paid out of the Settlement Fund. Upon recommendation of the parties, the Court hereby appoints the following class administrator: KCC Class Action Services, LLC.

8. **WRITTEN NOTICE** - The Court approves the form and substance of the notices, attached to the Motion for Preliminary Approval. The proposed form and method for notifying the Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Class Members of their rights. In accordance with the Settlement Agreement, the class administrator will cause the notice to be mailed to the Class Members as expeditiously as possible, but in no event later than Twenty Eight (28) days after the Court's entry of this order, i.e., no later than _____, **2018**. The class administrator will confirm, and if necessary, update the addresses for the Class Members through standard methodology that the class administrator uses to update addresses.

9. **EXCLUSIONS** - Any Class Member who desires to be excluded from the

class must send a written request for exclusion to the class administrator with a postmark date no later than Fourteen (14) days prior to the Final Approval Hearing. To be effective, the written request for exclusion must state the Class Member's full name, address, telephone number on which he or she received a text message from, on behalf of, or promoting Defendant or its merchandise during the class Period, and telephone number on which he or she can currently be reached, and email address (if available), along with a statement that the Class Member wishes to be excluded. Any Class Member who submits a valid and timely request for exclusion shall not be bound by the terms of the Settlement Agreement.

10. **OBJECTIONS** - Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court no later than Fourteen (14) days prior to the Final Approval Hearing. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, Attn: Neil Smith, The Smith Law Firm, LLC, 231 South Bemiston Ave., Suite 800, Clayton, MO 63105, and Counsel for Defendants, Attn: Glennon P. Fogarty, Matthew D. Knepper, Husch Blackwell LLP, 190 Carondelet Plaza, #600, St. Louis, MO 63105.

11. To be effective, a notice of intent to object to the proposed settlement must:

- A. Contain a heading which includes the name of the case and case number;
- B. Provide the name, address, telephone number, and signature of the Class Member filing the objection;
- C. Provide evidence demonstrating that the Class Member is a member of the Class;

D. Be filed with the Clerk of the Court no later than 14 days prior to the Final Approval Hearing;

E. Be sent to Class Counsel and Defendant at the addresses designated in the Notice by first-class mail, postmarked no later than 14 days prior to the Final Approval Hearing;

F. Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Missouri.

G. Contain a detailed statement of the specific legal and factual basis for each and every objection; and

H. Contain a list of any legal authority the objector will present at the settlement approval hearing.

12. Any Class Member who has timely filed an objection must appear at the settlement approval hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for an award of attorneys' fees and costs. The right to object to the proposed settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

13. The Court orders that any member of the Settlement Class who does not

submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders and judgments in this litigation, even if such member of the Settlement Class has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

14. **SETTLEMENT PAYMENTS** - The class administrator will mail a settlement check, or send by electronic transfer, to each Class Member who does not exclude himself or herself from the class. The settlement payments to the class members shall be sent via U.S. mail or electronic transfer no later than thirty (30) days after which both of the following occur: (a) the Court has signed the Final Approval Order dismissing with prejudice the claims of all Settlement Class Members (including Plaintiff) except those who properly excluded themselves from the Settlement Class as provided in the Settlement Notice, and (b) the time for filing an appeal has expired or, if appeals are filed, the date on which the Final Approval Order has been affirmed in all material respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subjected to further appeal or review.

15. **CLASS REPRESENTATIVE AWARD TO PLAINTIFF, ATTORNEY FEES AND LITIGATION COSTS** - Kevin P. Etkorn will petition the Court to receive the sum \$7,500 as acknowledgement of his role in prosecuting this case on behalf of the Class Members. Class Counsel will petition the Court for an award of \$185,000 in attorney fees and \$6,926 in litigation costs.

16. **FINAL APPROVAL** -The Court will conduct a hearing (hereinafter referred to as the "final approval hearing") on _____ at United States District Court for the Eastern District of Missouri, Thomas F. Eagleton U.S.

Courthouse, 111 South 10th Street, St. Louis, MO 63102, to review and rule upon the following issues:

A. Whether this action satisfies the applicable requirements for class action treatment for settlement purposes under Fed. R. Civ. P. 23;

B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;

C. Whether a final order approving the Settlement Agreement should be entered.

D. To discuss and review other issues as the Court deems appropriate.

17. Attendance at the Final Approval Hearing is not necessary. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Class Members wishing to be heard are, however, required to appear at the final approval hearing. The final approval hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

18. Submissions by the Parties, including memoranda in support of the proposed settlement, responses to any objections, petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel, shall be filed with the Court no later than Seven (7) days prior to the final approval hearing.

19. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

20. The Court sets the following schedule:

<u>Date</u>	<u>Event</u>
	Preliminary Approval Order Entered
	Notice Sent
	Deadline to Send Exclusion or File Objection
	Deadline to Submit Claim
	Motion for Final Approval and Attorney Fees Papers Filed
	Final Approval Hearing Held

IT IS SO ORDERED.

Dated: July __, 2018

The Honorable John A. Ross
United States District Court Judge

Post-Card Notice

Ex. 2

Back of Card

A settlement has been reached in a class action lawsuit claiming that 3 Day Blinds sent text message advertisements without obtaining the recipients' prior express written consent. The plaintiff in the lawsuit claims that the text messages violated the federal Telephone Consumer Protection Act. 3 Day Blinds vigorously denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

Am I a class member? Our records indicate you may be a Class Member. Class Members are people who were sent a text message advertisement from 3 Day Blinds from October 27, 2013, through _____ [date of preliminary approval].

What can I get? If the settlement is approved by the Court you will receive a cash payment. The amount of your cash payment depends on the number of people who submit claims, but is estimated to be \$45. This figure may increase or decrease.

How do I get paid? You must submit a timely and properly completed Claim Form no later than _____ [Claim Deadline]. You may submit one online at _____ [website] or request that a claim form be mailed to you by calling _____ [toll-free number].

What are my other options? You may exclude yourself from the settlement class by sending a letter to the Settlement Administrator no later than _____ [Exclusion Deadline]. If you exclude yourself, you cannot get an award, but you retain any claims you may have against 3 Day Blinds relating to the legal issues in the lawsuit. If you do not exclude yourself, you and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than _____ [Objection Deadline]. Specific instructions about how to object to, or exclude yourself from, the settlement are available at _____ [website]. If you do not exclude yourself, and the Court approves the settlement, you will be bound by all of the Court's orders and judgments; in addition, your claims relating to the text messages in this case against the Defendant and other entities involved in their transmission will be fully and finally resolved and released.

Who represents me? The Court has appointed The Smith Law Firm, LLC, to represent the Class. This law firm is considered the Class Counsel. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

When will the Court consider the proposed settlement? The Court will hold a Final Approval Hearing at _____ .m. on _____, 2018, in Courtroom _____, Thomas F. Eagleton Courthouse, 111 South 10th Street, St. Louis, MO 63102. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees of \$185,000 and litigation expenses of \$6,925 from the Settlement Fund; and decide whether to award the Class Representative \$7,500, from the settlement fund for his service in helping to bring and settle this case. The Court may award more or less than these amounts.

How do I get more information? For more information, including the full Notice, Claim Form and Settlement Agreement go to _____ [website] or contact the Settlement Administrator at 1-____-____-____ or at the address on the reverse side.