

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

MARISSA PORTER individually and on
behalf of all others similarly situated

Plaintiff,

v.

BIG SANDY FURNITURE, INC.,

Defendant.

Case No. 2025-024608-CA-01

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

Plaintiff Marissa Porter, on behalf of herself and all others similarly situated, respectfully request that the Court grant Preliminary Approval¹ of the proposed class action settlement described in detail in the Settlement Agreement, attached hereto as *Exhibit A*.

I. CONCISE STATEMENT OF THE PRECISE RELIEF REQUESTED

Plaintiff files this Motion requesting for this Court to preliminarily approve a class action settlement, certify a settlement class, and direct that Notice as proposed be sent to the Settlement Class. Plaintiff respectfully requests that the Court enter an order of Preliminary Approval including, in substantially the same form, as the content of the proposed Preliminary Approval Order attached hereto as *Exhibit 6* to the Settlement Agreement.

Plaintiff’s complaint alleges putative class claims that Defendant Big Sandy Furniture, Inc. has violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. § 501.059, by sending text message

¹ All capitalized terms herein shall have the same meaning as those defined in the Settlement Agreement.

communications without obtaining prior express consent from Plaintiff and the Class. Defendant denies the allegations in the Complaint, but given the risks, uncertainties, and burdens of litigation, has agreed to settle the litigation according to the terms of the Settlement Agreement. As detailed below, the parties have reached a proposed class settlement, where Defendant has agreed to establish a fund of \$14,000,000 for the benefit of the Settlement Class members (the Gross Settlement Fund). Through the Settlement Agreement, each Class Member may select to receive up to either \$100.00 in cash or \$250.00 in a voucher which can be utilized to buy any products sold by Defendant.

The Parties have agreed to a direct Notice Program designed to afford Settlement Class members due process and advise them of the rights under the Settlement.

As explained below, the Settlement meets all requirements for Preliminary Approval. Therefore, Plaintiff respectfully requests that the Court preliminarily approve this Settlement; approve and appoint Analytics Consulting LLC as the Settlement Administrator; appoint Plaintiff the Class Representative for the Settlement Class; appoint the firms and attorneys listed in the Settlement Agreement as Class Counsel; order that the proposed Notice be disseminated in the forms presented with this Motion; and schedule a Final Approval Hearing.

II. STATEMENT OF THE BASIS FOR THE REQUEST

Following weeks of negotiations and the assistance of a private mediator (after a full day of mediation), the Parties reached a Settlement Agreement, wherein Defendant agrees to provide to members of a Settlement Class who submit a valid and timely claim a cash payment or voucher which may be used to purchase any products sold by Defendant. Moreover, the Parties have agreed to a Notice plan including direct, individual Notice to all members of the proposed Settlement Class. Thus, the terms of the Settlement are fair and reasonable, and the form of Notice comports

with due process requirements. Therefore, Plaintiff respectfully requests that this Court preliminarily approve the Settlement and direct Notice to be issued, thereby allowing Settlement Class members to evaluate the terms of the Settlement and request exclusion or submit to the Court any reason why any contend the Settlement is not fair or reasonable. The Court should also set the Final Approval Hearing date and time.

III. MEMORANDUM OF LEGAL AUTHORITY

a. Terms of the Settlement

The Settlement requires Defendant to pay \$14,000,000 into a Settlement Fund (the Settlement Fund) pursuant to the terms of the Settlement Agreement for the purpose of payment to all Settlement Class Members who submit a valid claim. Each Settlement Class Member can choose between a cash payment (up to \$100.00) or a voucher (up to \$250.00). Any costs related to Class Notice and Administration will be paid from the Settlement Fund and any attorneys' fees, costs or service award that this Court approves will also be paid from the Settlement Fund. *See, generally*, Exhibit A. Defendant is not required to make available any amounts other than the Settlement Fund.

b. Certification of the Settlement Class for Settlement Purposes is Warranted

In deciding whether to grant Preliminary Approval, some courts have also made a preliminary inquiry into whether the requirements of Rule 23 for certification of a class for settlement purposes are satisfied. *See, e.g., Legg v. E-Z Rent a Car, Inc.*, 2015 U.S. Dist. LEXIS 178022, at *3-4 (M.D. Fla. May 28, 2015) (Byron, J.) (addressing Rule 23 factors in preliminary approval Order).² Each of those requirements are satisfied here for settlement purposes, for the Settlement Class, defined as:

² Florida Rule of Civil Procedure is patterned after Rule 23 of the Federal Rules of Civil Procedure;

All persons within the United States who received a telemarketing text message from Defendant, or Acima relating to Defendant, between May 15, 2020 and May 15, 2024, for which they did not provide prior express written consent, excluding those who: (1) purchased, rented, or leased goods from Defendant less than 18 months before receiving the last text message; (2) inquired about or applied for Defendant's goods or services less than 3 months before receiving the last text message; or (3) had an ongoing financial relationship with Defendant at the time they received the text messages.

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

The instant Motion is the first step of the required court approval process to which all proposed class action settlements are subject under Rule 1.220 Fla. R. Civ. P. The Court's scope of inquiry and determination at the preliminary approval stage is limited: "First, the Court must determine whether the proposed settlement terms fall within the range of reasonableness such preliminary approval is warranted." *Holt v. Hhh Motors*, 2015 Fla. Cir. LEXIS 48982, *2 (Fla. 4th Jud. Cir. April 15, 2015) (citing *Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995)); *see also Mase v. Archive Am.*, 2015 Fla. Cir. LEXIS 52906, *5 (Fla. 11th Jud. Cir. March 17, 2015) (Thornton, J.) (entering preliminary approval order where proposed settlement "falls within the range of possibly approvable settlements, appears to be fair, reasonable and adequate, and is

consequently, Florida courts consider case law interpreting Rule 23 as persuasive. *Broin v. Philip Morris Co.* 641 So.2d 888, n.1 (Fla. 3d DCA 1994).

therefore hereby preliminarily approved, subject to further consideration at the Fairness Hearing[.]”). After the Court grants preliminary approval, the parties then notify members of the settlement class of the existence and basic terms of the proposed class action settlement, and Class Members are given the opportunity to opt-out (exclude themselves) from or object to the settlement. Once the class notice process has been completed, the Court proceeds to the final approval stage, where the Court must evaluate whether final approval is warranted. *Holt*, 2015 Fla. Cir. LEXIS 48982 at *2.

As to Rule 1.220(a), for purposes of certifying the Settlement Class pursuant to the Settlement, there are approximately 40,000 Settlement Class members (numerosity), all of which have the same claim – that Defendant caused text messages to be transmitted in violation of the TCPA and FTSA (commonality), Plaintiff’s claims are the same as the rest of the Settlement Class members’ claims and Plaintiff is not subject to any unique affirmative defenses (typicality), and Plaintiff and Class Counsel have zealously litigated the claim, secured substantial relief, and have no interests antagonistic to the Settlement Class (adequacy). As to Rule 1.220(b)(3), pursuant to the terms of the Settlement, there are no individual issues precluding class treatment (predominance), and class treatment is the best method of adjudication, as seen in the fact that every Settlement Class member shall receive relief without the need for numerous (and duplicative) individual cases (superiority). *See Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 106-07 (Fla. 2011) (outlining requirements for class certification). Thus, certification of the Settlement Class is warranted.

c. The Proposed Notice is the Best Practicable Notice and Comports with Due Process Requirements

The notice requirements of Rule 1.220(c) are designed to provide sufficient due process to Class members by sufficiently informing them of the pendency of the Action and providing an

opportunity to be heard or opt-out and must be the “best notice that is practicable under the circumstances.” *Nelson v. Wakulla County*, 985 So. 2d 564, 576 (Fla. 1st DCA 2008). To satisfy such requirement, individual notice should be provided to class members who can be identified through reasonable effort. *See Cordell v. World Ins. Co.*, 355 So. 2d 479, 481 (Fla. 1st DCA 1978) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974)).

Here, the Parties agree to send direct, individual Notice to members of the Settlement Class via email or postcard. Individual, direct notice clearly comports with due process requirements. *See, e.g., Juris v. Inamed Corp.*, 685 F.3d 1294, 1320 (11th Cir. 2012). Moreover, the Notice provides a clear explanation of the terms of the Settlement, the amount sought in attorneys’ fees and service awards and informs class members of their right to object to seek exclusion and the method by which to do so. Notice also provides an opportunity to be heard at a Fairness Hearing to be scheduled after the Notice period and before final approval. *See, generally*, Agreement (and Notice exhibits attached thereto); *see also Nolan v. Integrated Real Estate Processing, LP*, 2009 U.S. Dist. LEXIS 136890, at *20-21 (M.D. Fla. Sep. 9, 2009) (setting forth what should be included in Notice of settlement).

Thus, the Notice provided to the Settlement Class Members constitutes the best notice practicable and comports with due process requirements.

d. The Terms of the Settlement are Fair and Reasonable

Preliminary approval of a class action settlement “is not binding, and it is granted unless a proposed settlement is obviously deficient.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832, *6 (S.D. Fla. June 15, 2010). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason.” *Id.* at *7. These requirements are readily

satisfied here, as demonstrated above in the Agreement and in the exhibits hereto. *City of L.A. v. Bankrate, Inc.*, 2016 U.S. Dist. LEXIS 115071, *14-15 (S.D. Fla. Aug. 24, 2016) (granting preliminary approval of proposed class action settlement where “the proposed settlement was made after mediation was conducted,” “[t]he negotiations appear to have been made in good faith and there do not appear to be any obvious deficiencies,” and the settlement amount “appears to be within the range of reasonableness”); *Almanzar v. Select Portfolio Servicing, Inc.*, 2015 U.S. Dist. LEXIS 178149, *5-6 (S.D. Fla. Oct. 15, 2015) (granting preliminary approval, finding that proposed class action settlement was based on “informed, good-faith, arms-length negotiations between the Parties and their capable and experienced counsel,” and settlement was “within the range of reasonableness and possible judicial approval”).

As will be set forth in greater detail in the Motion for Final Approval – and as demonstrated by the terms of the Agreement – all nine factors suggested by the Second District Court of Appeals to evaluate the fairness, reasonableness and adequacy of a settlement favor approval here. *Griffith v. Quality Distribution*, 307 So. 3d 791 (Fla. 2d DCA 2018). The relevant factors include (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* *Griffith* notes that Florida courts have also applied the six factors described by the First District in *Nelson*, which similarly favor preliminary approval of the Settlement at hand.³ 985 So. 2d at 570. The Eleventh

³ (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point over or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to

Circuit has also identified factors used by Florida Courts to evaluate settlements, which again favor the settlement here. *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n. 6 (11th Cir. 1994).

Indeed, there was no fraud or collusion in the settlement, negotiations took place over many weeks and with the help of a neutral mediator—Steven Jaffe of Upchurch Watson. The Settlement Fund made available to the class here is more than reasonable, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement including, but not limited to, a motion for class certification, Defendant’s assertion of various legal challenges, a motion for summary judgment, trial as well as appellate review following a final judgment. Plaintiff and his counsel believe that the Settlement is an excellent and reasonable result for the Class in light of factors stated above, and anticipate that members of the Settlement Class will be satisfied with the result as well. In reality, the reaction of the Settlement Class can only be evaluated in considering Final Approval of the Settlement.

For all these reasons, Plaintiff respectfully submits that there are no obvious deficiencies to the Settlement precluding Preliminary Approval and that this Motion should be granted.

For the convenience of the Court, Plaintiff submits the following proposed schedule, which is also reflected in the Proposed Preliminary Approval Order submitted for the Court’s consideration:

the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *Griffith*, 307 So. 3d at 791 (citing *Nelson*, 985 So. 2d at 570).

PROPOSED SCHEDULE

<u>Event</u>	<u>Date</u>	<u>Timeline</u>
Deadline for Completion of Notice		30 days after entry of the Preliminary Approval Order
Deadline for opting-out of the Settlement and for submission of Objections		60 days after entry of the Preliminary Approval Order
Deadline for submitting claim form		15 days <i>after</i> the Final Approval Hearing
Deadline for filing Motion for Final Approval of Settlement and Class Counsel's Fee application and expenses, and for service award		45 days after entry of the Preliminary Approval Order
Deadline for Responses to Objections		75 days after entry of the Preliminary Approval Order
Final Approval Hearing		Approximately 100 days after entry of the Preliminary Approval Order

CONCLUSION

Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement, and enter an order of preliminary approval including, in substantially the same form, the content of the proposed order attached hereto as *Exhibit 6* to the Settlement Agreement.

Dated: March 6, 2026

Respectfully submitted,

HIRALDO P.A.

By: /s/ Manuel S. Hiraldo

Manuel S. Hiraldo

Florida Bar No. 030380

Email: mhiraldo@hirdolaw.com

401 E. Las Olas Boulevard, Suite 1400

Ft. Lauderdale, Florida 33301

Telephone: 954.400.4713

EISENBAND LAW, P.A.

Michael Eisenband, Esq.

Florida Bar: 94235

MEisenband@Eisenbandlaw.com

515 E Las Olas Blvd, Suite 120

Fort Lauderdale, FL 33301

Telephone: 954-533-4092

SHAMIS & GENTILE, P.A.

Christopher Berman

Florida Bar No. 1010654

cberman@shamisgentile.com

14 NE 1st Avenue, Suite 705

Miami, FL 33132

Telephone: 305-479-2299

EDELSBERG LAW P.A.

Scott Edelsberg, Esq.

Florida Bar No. 0100537

20900 NE 30th Ave., Suite 417

Aventura, Florida 33180

Telephone: 305-975-3320

Email: scott@edelsberglaw.com

Attorneys for Plaintiff and the class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th of March 2026, I electronically filed the foregoing with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

/s/ Manuel S. Hiraldo
Manuel S. Hiraldo, Esq.