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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEREMY BAUMAN, individually and on
behalf of all persons similarly situated,

Plaintiff,

vs.

DAVID SAXE, et al.,

Defendants.

BJIAN RAZILOU, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

DAVID SAXE, et al,

Defendants.

Case No. 2:14-cv-01125-RFB-PAL

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

In consolidation with
Case No. 2:14-cv-01160-RFB-PAL

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I. INTRODUCTION

Plaintiffs Jeremy Bauman and Bijan Razilou respectfully move the Court for an order granting this Unopposed Motion for Preliminary Approval of Class Action Settlement.¹ Plaintiffs do so individually and as representatives of their class. The proposed class action settlement (“Settlement”) resolves the claims of all members of the class certified by the Court in its Opinion & Order, ECF No. 193, filed on January 10, 2019.

The Settlement is the culmination of more than five years of hard-fought litigation. After extensive discovery, including two hearings before the Hon. Jacqueline Scott Corley to enforce a subpoena in the Northern District of California, the parties attempted in 2015 to settle the case at a full day of mediation before the Hon. William C. Pate (ret.) of JAMS in San Diego. This mediation was unsuccessful. The lawsuit continued with further discovery, consequential disputes related to discovery which required substantial briefing and hearings before the Hon. Peggy A. Leen in this District, several hotly contested motions for dismissal and summary adjudication of Plaintiffs’ claims, and considerable class certification briefing prefacing hours of oral arguments at two hearings before the Court. In this context, Plaintiffs and the Saxe Defendants² this year reached agreement of material Settlement terms in the twelfth hour of mediation before the Hon. Diane M. Welsh (ret.) of JAMS in Philadelphia. Attached as Exhibit 1 to this motion is the Settlement Agreement and Release of Claims (the “Agreement” or “Agr.”), which sets forth the Settlement terms in full.³

The Settlement resolves the current action, which arises from allegations that defendants are liable for telemarketing text messages sent to class members, including Plaintiffs, after they acquired tickets to attend performances at the V Theater or Saxe Theater in Las Vegas. Plaintiffs contend that the sending of each text message was a violation of the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and related Nevada statutes, which

¹ Plaintiffs are informed and believe that no other party opposes this motion.

² The Saxe Defendants are V Theater Group, LLC; Saxe Theater, LLC; David Saxe Productions, Inc.; David Saxe Productions, LLC; Saxe Management, LLC, and David Saxe.

³ Unless otherwise specified, terms used in this motion are intended to have the same meanings as in the Agreement.

1 together permit remedies of a minimum of \$500 in statutory damages per violation, injunctive
2 relief, attorney fees, and costs. Based on the latest review of transmission records, there are
3 approximately 108,798 class members. In consideration for the release and dismissal with
4 prejudice of all claims in this action, the Agreement provides class members with substantive
5 and substantial benefits:

- 6 • **Up to \$21,757,424 in Ticket Compensation.** Without having to make a claim,
7 class members will be given two tickets to their choice of shows that are
8 produced or otherwise put on by a Saxe Defendant or its successor at the
9 V Theater or Saxe Theater. Tickets to shows at the these theaters currently range
10 from \$35.00 to \$99.99; thus, the total Ticket Compensation to be sent to the
11 108,798 class members has a retail value of \$7,615,860 to \$21,757,424.
- 12 • **At least \$4,000,000 of insurance with Injunctive Relief.** An injunction will bar
13 Saxe Defendants from sending automated text messages without obtaining a
14 written opinion from an attorney that the texting complies with the TCPA. The
15 injunction also will require that the attorney has \$4 million in legal malpractice
16 insurance. A malpractice claim of a Saxe Defendant related to such a memo
17 would be a potential \$4 million asset which from which consumers might recover
18 damages if a Saxe Defendant violates the TCPA in the future.
- 19 • **An \$800,000 Cash Fund.** The proposed Settlement provides \$800,000 to pay for
20 Settlement Administration with the remainder available to reimburse Class
21 Counsel for the attorneys' fees and costs advanced by them over the past five
22 years of litigating this action. Pursuant to the Agreement, Class Counsel will
23 apply for awards of attorneys' fees, costs and Service Awards in a subsequent
24 motion if the Court preliminarily approves the Settlement.

25 This Settlement compares favorably with other TCPA settlements. *See, e.g., Friedman v.*
26 *LAC Basketball Club*, No. 13-818 (C.D. Cal. July 8, 2014) (final approval of TCPA settlement
27 providing class members with either (i) two tickets to one Los Angeles Clippers' home game or
28

(ii) one free ticket and a \$20 voucher for use at the Team LA Store in the Staples center); *Kazemi v. Payless Shoesource, Inc.*, No. 09-5142 (N.D. Cal. 2012) (\$25 merchandise certificate per claimant). *And see Couser v. Comenity Bank*, No. 12-2484, ECF/CM Doc. No. 91 (S.D. Cal. May 27, 2015) (approximately \$13.75 per claimant); *In re Capital One TCPA Litigation*, No. 12-10064, ECF/CM Doc. No. 329 (N.D. Ill. February 12, 2015) (at least \$34.60 per claimant); *Rose v. Bank of America Corp.*, No. 11-2390, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (average of \$20 to \$40 per claimant); *id.* (referencing *Arthur v. Sallie Mae TCPA settlement*, in which each claimant received approximately \$20 to \$40); *Malta v. Fed. Home Loan Mortgage Corp.*, No. 10-CV-1290 BEN NLS, 2013 WL 444619, at *7 (S.D. Cal. Feb. 5, 2013) (approximately \$2 per claimant if all eligible claimants filed claims).

Although there are ample reasons for optimism that Plaintiffs can prevail on the merits of their claims on behalf of the class previously certified by the Court, Class Counsel has determined that the proposed Settlement provides significant benefits to the class members and is in the best interests of the class. Class Counsel also believes that the Settlement is appropriate given the sharply contested issues involved; the risks and costs of further litigation; and the inherent uncertainty of collecting on a judgment against Defendants even if Plaintiffs prevail. Defendants vigorously deny all material allegations of the claims against them and contend that they possess meritorious defenses; nevertheless, they have agreed to settle this action on the terms set forth in the Agreement.

Accordingly, Plaintiffs move the Court for an order provisionally amending the certified class definition for settlement purposes; granting preliminary approval of the Settlement pursuant to the terms of the Agreement; and setting a fairness hearing to consider objections, if any, to the settlement prior to granting an order approving the Settlement and entering final judgment.

II. PROCEDURAL HISTORY

Plaintiffs allege that Defendants sent uninvited text messages to cellular phone numbers using an automatic telephone dialing system without the recipient's prior express consent. (*See generally*, ECF No. 174 ("Compl.")). Plaintiff Bauman initiated this action by filing a complaint

1 against the Saxe Defendants in state court on June 12, 2014. (ECF No. 1). The Saxe Defendants
 2 removed the case to federal court on July 9, 2014. *Id.* The Saxe Defendants filed an Answer on
 3 August 5, 2014. (ECF No. 11). On August 25, 2014, the Court consolidated the complaint of
 4 Plaintiff Bauman with the subsequently filed complaint of Plaintiff Razilou. (ECF No. 17.)
 5 Plaintiffs subsequently filed motions to strike affirmative defenses alleged in an answer filed by
 6 the Saxe Defendants. (ECF Nos. 18, 19). These motions were mooted when the Saxe Defendants
 7 filed amended answers. (ECF Nos. 37, 38). Magistrate Judge Leen issued a discovery order
 8 bifurcating discovery into class discovery and merits discovery, with class discovery to end upon
 9 the filing of a Motion to Certify Class. (ECF Nos. 34, 35). Plaintiffs subsequently served two
 10 sets of interrogatories and requests for production on each of the Saxe Defendants and responded
 11 to interrogatories and requests for production served by defendants. (Declaration of Albert H.
 12 Kirby (“Decl. Kirby”) at ¶ 3). Plaintiffs also served Twilio, Inc., then a third-party, with a
 13 subpoena for production of documents. (*See* ECF No. 100 at ¶ 6, Ex. 5). Plaintiffs applied to the
 14 Northern District of California to compel Twilio to comply with the subpoena, obtaining
 15 productions after hearings before the Honorable Jacqueline Scott Corley, Magistrate Judge. (*See*
 16 *Bauman v. V Theater Group, LLC*, Case No. 3:2:15-mc-80102-JSC (N.D.Cal.); *and* ECF No.
 17 100 at ¶ 14 & Ex. 13). Plaintiffs then took depositions of two key witnesses of the Saxe
 18 Defendants on June 4-5, 2015. (*See* ECF Nos. 109-3, 109-4.) The Saxe Defendants and Plaintiffs
 19 followed these first depositions with a full day of mediation before Judge Pate (ret.) of JAMS on
 20 June 25, 2015. (Decl. Kirby at ¶ 4).

21 The mediation with Judge Pate (ret.) was unsuccessful. Plaintiffs then filed motions for
 22 leave to file amended complaints naming additional defendants, including Twilio, based upon
 23 information obtained through written discovery and depositions. (*See* ECF Nos. 59, 60). After
 24 the Court granted these motions, Plaintiffs filed amended complaints on August 28, 2015 and
 25 September 1, 2015. (ECF Nos. 63, 64). Meanwhile, Defendants also took the depositions of the
 26 named Plaintiffs. (*See* ECF Nos. 106-3, 106-4).

27 On October 15, 2015, Twilio filed a motion to dismiss. (ECF No. 81). On October 30,
 28

2015, the Saxe Defendants filed a motion to compel discovery and a motion for a protective order. (ECF Nos. 89, 90). On November 20, 2015, the Saxe Defendants then filed a motion to stay proceedings and a motion for partial summary judgment on Plaintiffs' claims under state law. (ECF Nos. 104, 105). On November 30, 2015, Plaintiffs filed a Motion to Certify Class. (ECF No. 108).

In a minute order issued in a hearing on December 8, 2015 and with a subsequent order on January 27, 2016, Magistrate Judge Leen granted in part and denied in part the Saxe Defendants' discovery motions and denied the motion to stay. (ECF Nos. 127, 147). On September 6, 2016, the Court held a hearing and, among other things, granted Defendant Twilio's Motion to Dismiss without prejudice and took Plaintiffs' Motion to Certify Class under submission. (ECF No. 171). On September 19, 2016, the Court denied Plaintiff's Motion to Certify Class without prejudice, and granted leave to refile the motion within seven days after the deadline for filing an amended complaint, to allow for possible amendment of the motion based on any new allegations in the amended complaint. (ECF No. 173).

On September 20, 2016, Plaintiffs filed their Consolidated Second Amended Class Action Complaints, which contain the claims currently at issue. (ECF No. 174). On September 27, 2016, Plaintiffs refiled their Motion to Certify Class. (ECF No. 175). Defendant Twilio filed another motion to dismiss on October 5, 2016. (ECF No. 177). Defendant Twilio filed a Motion for Sanctions on November 16, 2016. (ECF No. 183). After a hearing, the Court issued a minute order granting Plaintiffs' class certification motion, denied Twilio's motion for sanctions, and stated that a written order would follow. (ECF No. 190). On January 10, 2019, the Court issued the written order. (ECF No. 193).

In its order, the Court certified a class with four subclasses. (ECF No. 193 at 13:25-14:13). The Court the overarching class is,

All past, present, and future customers of a Saxe Defendant who reside in the United States or its territories and whose cellular telephone numbers were sent a text message by Defendant which promoted a product, good or service of a Saxe Defendant.
(ECF No. 193 at 4:18-23). The Court then certified four subclasses with definitions reflecting

different affirmative defense arguments on consent that defendants may under the TCPA. (ECF No. 193 at 5:25-7:28).

On February 19, 2019, the Court issued an order denying Twilio's motion to dismiss Plaintiffs' TCPA claims but granting dismissal of their state law claims. (ECF No. 199). On February 22, 2019, the Court issued an order staying the case to permit another mediation. (ECF No. 202). On May 15, 2019, the Parties participated in an approximately 12-hour mediation in Philadelphia, Pennsylvania before the Hon. Diane M. Welsh (ret.), at which they achieved agreements concerning the material terms of the proposed Settlement that are now formally set forth in the Agreement. (ECF No. 205).

III. THE SETTLEMENT

A. Amendment of the Class Definition

The Court certified the current class definition and its subclasses in express anticipation of a trial on the merits where (a) Plaintiffs had to prove that Defendants sent text messages to cellphone numbers and (b) Defendants had to prove affirmative defenses with differing issues of consent. *See* ECF No. 193 at 4:10-7:28. The Settlement removes the need for a trial on these issues. Accordingly, the Agreement amends the certified class and subclass definitions by replacing them with the following definition of the Settlement Class:

All persons and entities to whom Defendants⁴ attempted transmission of one or more text messages, between and including April 1, 2013, to May 31, 2014, to a telephone number assigned to a cell phone at the time of transmission.

Agr. at § 1.16. The Settlement Class excludes Defendants and certain persons with connections to them. *Id.* The Settlement Class likewise excludes persons who validly request to be excluded. *Id.*

Of consequence, the definition of the Settlement Class also incorporates the following method to ascertain membership:

⁴ The term "Defendants" as used in the proposed Settlement Class definition and elsewhere in this motion refers only to the Saxe Defendants. The Agreement likewise defines "Defendants" to refer to the Saxe Defendants. *See Agr.* § 1.05. Removing potential ambiguity with these terms, Plaintiffs are asking the Court in a separate motion for entry of an order granting voluntary dismissal without prejudice of the claims against Twilio, who is the only current defendant who is not a Saxe Defendant.

To ascertain those telephone numbers associated with the Settlement Class (the “Class Cellphone Numbers”), Defendants’ counsel shall (a) assemble a list of telephone numbers found in the text message transmission records disclosed through the discovery process of the Action; (b) remove any phone numbers associated with those persons excluded from the definition of the Settlement Class above; and (c) remove any phone numbers that were not assigned to a cell phone at time of transmission, based on data contained in the Wireless Block Identifier and Wireless Ported Number files maintained by Interactive Marketing Solutions (www.ims-dm.com).

Id. Consistent with the definition of the currently certified class, this method helps identify persons “whose cellular telephone numbers were sent a text message by Defendant” for purposes of ascertaining membership in the Settlement Class. *Cf.* ECF No. 193 at 4:18-23.

As previously evidenced to the Court during class certification proceedings, potential members of the certified class can be identified by relevant transmission records that identified 120,363 telephone numbers to which text messages were attempted to be sent. *See, e.g.*, ECF No. 109 at ¶ 2 & Ex. 1. Applying the methodology set forth in the Agreement, *see supra*, Defendants’ counsel used these same transmission records to identify 108,798 Class Cellphone Numbers. *See* Declaration of James Harlan Corning (“Decl. Corning”) at ¶¶ 3-5.

B. Settlement Benefits

Under the Settlement, each class member will receive two tickets provided by Saxe Defendants to any show at the V Theater or Saxe Theater that they or their successor in interest produce or otherwise put on (“Ticket Compensation”). Agr. at §§ 1.21 & 2.01. Each class member benefits from a injunction which includes a \$4 million insurance coverage requirement if Saxe Defendants engage in further automated text messaging. *See* Agr. at § 2.02. Additionally, class members also benefit from \$800,000 (the “Cash Fund”) for reimbursements related to the services and expenditures on their behalf. *See* Agr. at §§ 1.02 & 2.04.

1. Up to \$21,757,424 in Ticket Compensation

Class members will not have to submit or otherwise make a claim form to obtain Ticket Compensation. Agr. at § 2.01. Rather, Ticket Compensation will be furnished to each class member through a Ticket Code, which will be included in each Email Notice and Postcard Notice sent by the Settlement Administrator together with instructions on how to contact Defendants to use the Ticket Code to confirm ticketed attendance at a Saxe show. *Id.* Defendants will make reasonable efforts to refer class

members to the Settlement Website for information about the Ticket Compensation Date if class members attempt to use the Ticket Codes prior to the Ticket Compensation Date. *Id.* Ticket Codes will be valid for a period of four years that begins on the Ticket Compensation Date (“Ticket Period”). *Id.* Ticket Codes will be freely transferrable, but they may not be sold. *Id.* In the event a Ticket Code is sold in violation of this provision, Defendants are entitled (but are under no obligation) to invalidate that Ticket Code, without providing further relief. *Id.*

There are 108,798 Class Cellphone Numbers which have been identified as belonging to class members. *See supra.* With each class member provided two tickets, a total of 217,456 Ticket Codes will be distributed. The current retail prices for Saxe shows range from about \$35 to \$99.99 apiece. *See Decl. Kirby ¶ 5.* Accordingly, the total Ticket Compensation to be sent to class members has a current value of \$7,615,860 to \$21,757,424.

2. Injunctive Relief with \$4,000,000 Insurance Coverage Requirement

All class members together with the general public will benefit from the injunctive relief. *See Agr. at § 2.02.* In substance, this injunction will obligate Defendants not to send automated text messages without first obtaining a written opinion from an attorney that the planned texting activity complies with the TCPA. *Id.* As part of retaining an attorney to provide this opinion, Defendants will have to obtain proof that the attorney is insured under a legal malpractice insurance policy with coverage limits of no less than \$4 million per occurrence. *Id.* This insurance coverage requirement provides a potential pecuniary asset from which class members and other consumers might recover monetary damages if a Saxe Defendant sends future automated text messages that violate the TCPA.

3. Cash Fund of \$800,000

Separate and apart from any benefits to the Class, the Settlement also establishes a “Cash Fund” of \$800,000 for the payment of the costs of Settlement Administration, attorneys’ fees and expenses to Class Counsel, and Service Awards to Plaintiffs. *Agr. at § 1.02.* Within 14 days after Preliminary Approval, Defendants will pay the Cash Fund to the Settlement Administrator to be held in a qualified settlement fund account. *Id.* To the extent the total amount of payments required to pay attorneys’ fees and expenses to Class Counsel, Service Awards, expenses of Settlement Administration, and Class

1 Notice and CAFA Notice exceed the Cash Fund, Defendants will be contributing only the amount
2 described above regardless of the final total amount of such payments. *Id.* Payment of attorneys' fees,
3 costs, and expenses is limited to the amount remaining in the Cash Fund after payment of Settlement
4 Administration expenses and Service Awards. Agr. at § 2.04.

5 **C. Additional Benefits to Class Members Not Expressly Enumerated in the**
6 **Settlement**

7 Class Members (and non-Class Members alike) also benefit from the Settlement because the
8 Settlement will serve as a deterrent to future violations of the TCPA. *See Lo v. Oxnard European*
9 *Motors, LLC*, 2012 WL 1932283, *2 (S.D. Cal. May 29, 2012); *Malta, supra*, 2013 WL 444619.

10 **D. Class Notice**

11 Within 30 calendar days of entry of the Preliminary Approval Order, the Settlement
12 Administrator will provide notice of the provisional class certification and proposed settlement to all
13 class members by email, or postcard if no working email address is available, and posting on the
14 Settlement Website. Agr. at § 3.03. Names, email addresses, and/or mailing addresses have been
15 obtained for all but 202 of the 108,798 Class Cellphone Numbers. *See* Decl. Corning at ¶ 6. The
16 Settlement Administrator should be able to find similar information for the remaining 202 numbers. *See*
17 Decl. Kirby at ¶ 6.

18 **1. Email Notice**

19 The Settlement Administrator will provide Class Notice by email to class members' email
20 addresses as they appear in Defendants' records. Agr. at § 3.03.01. *Id.* If an Email Notice sent to a class
21 member bounces back (as opposed to being returned as undeliverable), the Settlement Administrator will
22 make up to two additional email attempts on days and times chosen by the Settlement Administrator as
23 reasonably likely to achieve delivery. *Id.* If the Email Notice is bounced back on the third attempt, the
24 Email Notice will be treated as undeliverable, resulting in Postcard Notice (as described below). *Id.* The
25 Email Notice will direct class members to a Settlement Website (as described below), and will include
26 Ticket Codes and instructions on how to use them. *Id.*

27 **2. Postcard Notice**

28 For class members whose email notices are undeliverable, as described above, and for Class

Members for whom Defendants have no email address, the Settlement Administrator will provide notice by a postcard sent via United States mail. Agr. at § 3.03.02. The Settlement Administrator will re-mail one time any postcard notice returned by the USPS with updated address information. *Id.* The Parties will not be obliged to direct the Settlement Administrator to take any further steps with respect to re-mailing returned Postcard Notices. *Id.* The Postcard Notice will direct recipients to a Settlement Website (as described below), and will include Ticket Codes and instructions on how to use them. *Id.*

3. Web Posting

The Settlement Administrator will post a copy of the Long-Form Notice on a Settlement Website it establishes. Agr. at § 3.03.03. The Internet address of the website will be included prominently on the Email Notice and Postcard Notice described above. *Id.* The Settlement Website will be active and accessible beginning on the date on which the transmittal of Class Notice commences through the Ticket Compensation Date. *Id.* For the full duration of the Ticket Period, the website address used for the Settlement Website will be repurposed as or redirected to an Instruction Website maintained by Defendants to provide information on how to use the Ticket Codes. *Id.*

E. Submission of Exclusion Requests or Objections

Plaintiffs request that the Preliminary Approval Order direct that class members be allowed 90 calendar days from the date of entry of the Preliminary Approval Order (“Objection/Exclusion Deadline”) to request exclusion from the Settlement Class or to submit objections to the proposed settlement. Agr. at § 3.04. The Class Notice will direct that exclusion requests, if any, be sent to the Settlement Administrator, which will provide periodic updates on exclusion requests to Plaintiffs and Defendants. *Id.* Any re-sending of Class Notice will not extend the time for a class member to request exclusion or submit objections. *Id.*

1. Objections

Any class member who intends to object to the Agreement must present the objection in writing on or before the Objection/Exclusion Deadline, which must be personally signed by the objector, and must include: (1) the objector’s name and address; (2) an explanation of the basis upon which the objector claims to be a class member, including the cell phone number to which Defendants sent him or

her a text message; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (5) a statement indicating whether the objector intends to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules). Agr. at § 3.04.01. If a class member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption. *Id.*

2. Exclusion Requests

class member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline to the Settlement Administrator providing his/her name and address, the cell phone number to which Defendants sent him or her a text message, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of the Settlement. Agr. at § 3.04.02. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, will be invalid, and the individual who submitted such a request will be a member of the Settlement Class and will be bound as a class member by the Agreement. Any member of the Settlement Class who validly elects to be excluded from the Agreement will not: (i) be bound by any orders granting preliminary or final approval to this settlement; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Agreement. *Id.* The request for exclusion must be personally signed by the individual requesting exclusion. *Id.* So-called “mass” or “class” opt-outs will not be allowed. *Id.*

F. Scope of Release

The scope of the release by all class members (other than those who elect not to participate in the Settlement), tracks the scope of the Plaintiffs' allegations in the Complaint. Agr. at § 1.11. The release effects a dismissal with prejudice of all claims against the Saxe Defendants and Twilio. *See id.*⁵ Class members who do not timely request exclusion from the Settlement will relinquish and discharge each and all of the Released Parties from each of the Released Claims. *See id.* at §§ 1.11, 1.12.

G. Named Plaintiffs' Application for Incentive Award

The proposed Settlement contemplates that Plaintiffs will apply for Service Awards and that their requests will not exceed \$15,000 as compensation for their service on behalf of their fellow class members. *Id.* at §§ 1.13, 2.04. Service awards are to be paid separate and apart from the award to the Class. *Id.* at § 1.02.

H. Class Counsels' Application for Attorneys' Fees and Expenses

The proposed Settlement contemplates that Plaintiffs will apply to the Court for an award of attorneys' fees, costs, and expenses. Agr. at § 2.04. The amount available to pay for attorneys' fees and costs is limited to the amount remaining in the Cash Fund after payment of Settlement Administration expenses and Service Awards. *Id.* Any attorneys' fees and costs will be paid separate and apart from the award to the Class. *Id.*

IV. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

In the Ninth Circuit, settlements of class action lawsuits are strongly favored. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Speed Shore Corp., v. Denda*, 605 F.2d 469, 473 (9th Cir. 1979) ("It is well recognized that settlement agreements are judicially favored as a matter of second public policy. Settlement agreements conserve judicial time and limit expensive litigation."). *And see Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989); *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). It is within the

⁵ In a separate motion, Plaintiffs are requesting a voluntary dismissal without prejudice of the claims against Defendant Twilio, Inc. to be entered when the Court grants the present motion for preliminary approval. This dismissal is intended to remove the possibility that Twilio might bring third-party claims against the Saxe Defendants which might prevent the class from obtaining the benefits of the Settlement set forth in the Agreement.

1 broad discretion of the trial court to approve a class action settlement. *See Officers for Justice v.*
 2 *Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). However, this discretion is exercised “in light
 3 of the strong judicial policy that favors settlements, particularly where complex class action litigation is
 4 concerned,” which minimizes substantial litigation expenses for both sides and conserves judicial
 5 resources. *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations
 6 omitted).

7 Approval of a class action settlement takes place in two stages: preliminary approval and
 8 final approval. *West v. Circle K Stores, Inc.*, No. 04-0438, 2006 WL 1652598, at *2 (E.D. Cal.
 9 June 13, 2006). At the preliminary approval stage, the Court “must make a preliminary
 10 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
 11 direct the preparation of the notice of the certification, proposed settlement, and date of the final
 12 fairness hearing.” *See In Re M.L. Stern Overtime Litigation*, No. 07-CV-0118-BTM (JMA),
 13 2009 WL 995864 at *3 (S.D. Cal. April 13, 2009) (*quoting* Manual on Complex Litigation
 14 Fourth § 21.632 (2004)). During the preliminary process, the courts simply determine “whether
 15 there is any reason to notify the class members of the proposed class settlement and to proceed
 16 with the fairness hearing.” *Gatreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). A
 17 court’s review is limited to a determination that “the agreement is not the product of fraud or
 18 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as
 19 a whole, is fair, reasonable, and adequate to all concerned.” *Officers for Justice*, 688 F.2d at
 20 625. The opinion of experienced counsel supporting the Settlement is entitled to considerable
 21 weight. *See, e.g., Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) (opinion of
 22 experienced counsel carries significant weight in the court’s determination of the reasonableness
 23 of the settlement); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)
 24 (recommendations of plaintiffs’ counsel should be given a presumption of reasonableness). If
 25 there are no obvious deficiencies, and the settlement falls into the range of possible approval, it
 26 should be preliminarily approved. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1057 (9th Cir.
 27 2008); *Alaniz v. California Processing, Inc.*, 73 F.R.D. 269, 273 (C.D. Cal. 1976).

1 As set forth below, the proposed Settlement satisfies these standards for preliminary approval.

2 **A. The Proposed Settlement is Reasonable and Adequate**

3 In marking a determination of whether a class settlement is adequate and reasonable,
4 courts balance the following factors: “the strength of the plaintiffs’ case; the risk, expense,
5 complexity, and likely duration of further litigation; the risk of maintaining class action status
6 through trial; the amount offered in settlement; the extent of discovery completed and the stage
7 of the proceedings; [and] the experience and views of counsel...” *Hanlon*, 150 F.3d at 1026.

8 **1. The Settlement is Fair because of the Risks, Expenses, and Delays of**
9 **further Litigation**

10 Although both sides strongly believe in the merits of their respective positions,
11 continuing this Action poses significant risks to both sides. These conclusions are evidenced by
12 the many vigorously contested motions filed in the Court’s docket, many of which present
13 questions of law that are subject to review on appeal if this case concludes after a trial or a
14 summary disposition. In addition to the general risks of litigating a complex class action through
15 trial, Defendants have raised a number of substantive defenses to liability including, for
16 purposes of example, the following: Defendants contend that they did not use an automated
17 system prohibited by the TCPA to send text messages; that they obtained prior written express
18 consent from the class members before sending them text messages; and that they had
19 insufficient control over the text messages to be held liable under the TCPA. *See, e.g.*, ECF
20 Nos. 130, 131 (Defs.’ Opps. to Motion to Certify). It is reasonable to conclude that this case
21 could take at least a couple of years more to reach a trial on the merits before the parties engage
22 in years more of appeals. There are many questions of law or fact that, if resolved in favor of the
23 defendants would cause the class to receive no remedy. Moreover, even if the class prevails on
24 all counts, then there is no assurance that the defendants will have the resources to satisfy any
25 judgment, let alone a judgment of greater value, entered against them years from now. The
26 Settlement balances the benefits to the class now versus the uncertain rewards of continuing
27 contentious litigation for years more.
28

2. The Settlement is Reasonable because of the Benefits to the Class

Considering the uncertainties inherent to continuing litigation, the benefits offered now to the class with the Settlement strike a reasonable balance between the statutory remedies authorized by the TCPA and related state law. The market value of up to \$199.98 for the two Ticket Codes to be distributed to each of the class members compares favorably with comparable TCPA settlements. *See, e.g., Friedman v. LAC Basketball Club*, No. 13-818 (C.D. Cal. July 8, 2014) (final approval of TCPA settlement providing class members with either (i) two tickets to one Los Angeles Clippers' home game or (ii) one free ticket and a \$20 voucher for use at the Team LA Store in the Staples center); *Kazemi v. Payless Shoesource, Inc.*, No. 09-5142 (N.D. Cal. 2012) (\$25 merchandise certificate per claimant). *And see Couser v. Comenity Bank*, No. 12-2484, ECF/CM Doc. No. 91 (S.D. Cal. May 27, 2015) (approximately \$13.75 per claimant); *In re Capital One TCPA Litigation*, No. 12-10064, ECF/CM Doc. No. 329 (N.D. Ill. February 12, 2015) (at least \$34.60 per claimant); *Rose*, 2014 WL 4273358, at *10 (average of \$20 to \$40 per claimant); *id.* (referencing *Arthur v. Sallie Mae* TCPA settlement, in which each claimant received approximately \$20 to \$40); *Malta*, 2013 WL 444619, at *7 (approximately \$2 per claimant if all eligible claimants filed claims).

The Ninth Circuit has expressly approved of settlements where class members receive a choice of products from a settling defendant in lieu of cash. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 951 (9th Cir. 2015) (Approving a “settlement give[ing] class members \$12 to spend on any item carried on the website of a giant, low-cost retailer.”). Here, class members get two tickets to see their choice of Saxe Shows.

While the Ticket Compensation alone substantiates the reasonableness of the Settlement in the context of analogous cases cited above, the Settlement goes further by providing an injunction which requires the Saxe Defendants to get an attorney with a \$4 million in legal malpractice insurance coverage to sign-off on any future automated texting program. In so doing, this \$4 million of insurance coverage puts at stake a large amount of money to ensure that the Saxe Defendants do not send automated text messages in violation of the TCPA.

The benefit that each member of the class will receive is fair, appropriate, and reasonable given

the purposes of the TCPA and in light of the anticipated risk, expense, and uncertainty of continued litigation. Among the purposes of the TCPA is to protect the privacy interests of cellular telephone subscribers by placing restrictions on unsolicited, automated telephone calls. *See* S. REP. NO. 102-178, at 6 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1973. Although the TCPA provides for statutory damages of \$500 for each violation, Defendants may contend that Due Process Clause precludes the award of anything more than a nominal amount. Further, it is well settled that a proposed settlement may be acceptable even though it amounts to less than the potential recovery that might be available to the class members at trial.⁶

Given the favorable terms of the Settlement and the manner in which these terms were negotiated, the proposed Settlement should be viewed, at least preliminarily, as a fair, reasonable, and adequate compromise of the issues in dispute.

B. The Proposed Settlement is Fair because it was the Product of Arm's-Length and Non-Collusive Negotiation

Generally, “[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm’s length by counsel for the class, is presented for Court approval.” Newberg § 11.41; *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (“considerable weight” given to settlement reached after hard-fought negotiations).

Here, the Settlement was reached only after two different mediations on two separate days before two different mediators, Judge Pate (ret.) and Judge Welsh (ret.) of JAMS. The last mediation involved extensive arm’s-length negotiations during a 12-hour day before the Judge Welsh (ret.). The mediation provided a constructive forum for discussing settlement of the Class claims, and the Parties were able to enter into an agreement in principle. The Parties subsequently engaged in further, extensive discussions that were necessary to determine the details surrounding the Settlement. The fact that

⁶ *See e.g., National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather, the percentage should be considered in light of strength of the claims”); *In re Omnivision Tech., Inc.*, 559 F. Supp.2d 1036, 1046 (N.D. Cal. Jan. 9, 2008) (court-approved settlement amount that was just over 9% of the maximum potential recovery, which the court found was a “substantial achievement on behalf of the class”); *In re Mego Fin'l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).

1 experienced JAMS mediators were involved in the settlement negotiations strongly evidences the
 2 non-collusiveness of the settlement. *See Thieriot v. Celtic Ins. Co.*, No. C-10-04462-LB, 2011 WL
 3 1522385, *5 (N.D. Cal. Apr. 21, 2011) (“[T]he settlement is the product of serious, non-collusive,
 4 arms’ length negotiations by experienced counsel with the assistance of an experienced mediator at
 5 JAMS . . . In sum, the court finds that viewed as a whole, the settlement is sufficiently “fair,
 6 adequate, and reasonable” such that approval of the settlement is warranted.”); *see also Adams v.*
 7 *Inter-Con Security Sys., Inc.*, No. C-06-5428 MHP, 2007 WL 3225466 (N.D. Cal. Oct. 30, 2007);
 8 *see also In re Austrian and German Holocaust Litig.*, 80 F. Supp. 2d 165, 173-74 (S.D.N.Y. 2000).
 9 *See also In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (Settlements
 10 that follow sufficient discovery and genuine arms-length negotiation are presumed fair.”); *National*
 11 *Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (same)
 12 (citing 5 Moore’s Federal Practice, § 23.85[2][e] (Matthew Bender 3d. ed.)). Accordingly, the Settlement
 13 is entitled to a presumption of fairness.

14 Moreover, the Settlement was achieved only after counsel proved their capabilities over
 15 the course of years of hard-fought litigation before the Court. *See supra*. The Court even
 16 certified the competence of Plaintiffs’ counsel by implicitly confirming their adequacy as
 17 counsel for the certified class in granting Plaintiffs’ class certification motion. *See* ECF No. 193.
 18 Arm’s-length negotiations conducted by such demonstrably competent, informed counsel are prima-
 19 facie evidence of a settlement that is fair and reasonable. *See Hughes v. Microsoft Corp.*, No. C98-
 20 1646C, C93-0178C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (“A presumption of
 21 correctness is said to attach to a class settlement reached in arms-length negotiations between
 22 experienced capable counsel after meaningful discovery.”); *see also Pelletz v. Weyerhaeuser Co.*,
 23 255 F.R.D. 537, 542–43 (W.D. Wash. 2009) (approving settlement “reached after good faith, arms-
 24 length negotiations”); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D.
 25 553, 567 (W.D. Wash. 2004) (approving settlement “entered into in good faith, following arms-
 26 length and non-collusive negotiations”). Accordingly, the Settlement Agreement is entitled to a
 27 strong presumption of fairness.
 28

The Fifth Circuit aptly stated that a “just result is often no more than an arbitrary point between competing notions of reasonableness.” *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). Yet, here the result was far from arbitrary, as the parties reached this settlement through arm’s-length bargaining, two full days of mediation before two different retired judges, ample investigation and discovery, and extensive litigation over a span of years.

C. Provisional Amendment of the Class Definition is Appropriate

“[C]ourts retain discretion to revisit class certification throughout the legal proceedings, and may rescind, modify, or amend the class definition in light of subsequent developments in the litigation.” *Ms. L. v. U.S Immigration & Customs Enf’t (“ICE”)*, 330 F.R.D. 284, 287 (S.D. Cal. 2019), citing *Krueger v. Wyeth, Inc.*, 310 F.R.D. 468, 473-74 (S.D. Cal. 2015). And see *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 160 (1982) (“Even after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation.”).

The subclasses included in the current class definition contemplated management of a trial where various issues of consent would need to be litigated. Such manageability concerns are immaterial to the definition of the class for settlement purposes. See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems [...] for the proposal is that there be no trial.”). Therefore, given the benefits of enabling the Settlement by amending the class definition to conform to the Agreement, Plaintiffs respectfully ask the Court to do so.

D. The Class Notice is Adequate

Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the court must direct to class members the “best notice practicable” under the circumstances. Rule 23(c)(2)(B) does not require “actual notice” or that a notice be “actually received.” *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need only be given in a manner “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “Adequate

notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.⁷

Pursuant to Rule 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” The notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class; (iii) the class claims, issues, or defenses; (iv) that class members may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

Here, the Email Notice, Postcard Notice, and Web Posting described above meet all of the requirements. See Agr. at § 3.03. Further, under the Settlement, Defendants and their counsel agree to cooperate in good faith to ensure a fair administration of the settlement including, without limitation, by doing the following: provide contact information contained in their customer database of class members to the Settlement Administrator for purposes of providing Class Notice as set forth below; provide Ticket Codes for the Settlement Administrator to distribute; for full duration of the Ticket Period, maintain the means by which the Ticket Codes can be used consistent with instructions provided in the Class Notice as set forth below; and maintain an Instruction Website for the full duration of the Ticket Period. Agr. at § 2.03. Finally, those class members who wish to exclude themselves from the Settlement or object to it may do so. See Agr. at §§ 3.04.01, 3.04.02.

In short, the Notice program is designed to meaningfully reach the largest possible number of class members, identified through Defendants' records. Accordingly, the various forms of Notice here satisfy due process, serve as the best notice practicable under the circumstances, and constitute due and sufficient notice.

E. A Final Approval Hearing Should be Scheduled

The last step in the settlement approval process is the formal fairness hearing or final approval Hearing, at which time the Court may hear all evidence and arguments, for and against, to evaluate the

⁷ Class Notice will be paid out of the Cash Fund. See Agr. § 2.03.

proposed Settlement. Class Counsel request that the hearing be held approximately 120 days after the date of entry of the Preliminary Approval Order, to allow time for providing Class Notice and to accommodate a proposed 90-day Objection/Exclusion Deadline.

V. CONCLUSION

For the reasons stated above, the Court should grant preliminary approval of the Settlement pursuant to the terms of the Agreement; provisionally amend the current class definition to conform to the definition of the Settlement Class set forth in the Agreement; and set a fairness hearing to consider objections, if any, to the settlement; entering an order confirming the Settlement; and entering final judgment.

RESPECTFULLY SUBMITTED: October 7, 2019

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CERTIFICATE OF SERVICE

I certify that the foregoing document is filed or will be filed through the Court's ECF system and thereby will be sent electronically to the registered participants identified on the Notice of Electronic Filing on today's date.

DATED: October 7, 2019

/s/ Albert H. Kirby
Albert H. Kirby

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into as of the last date of any signature below (“Execution Date”) by and among:

- (a) Defendants V Theater Group, LLC; Saxe Theater, LLC; David Saxe Productions, Inc.; David Saxe Productions, LLC; Saxe Management, LLC, and David Saxe individually (collectively, “Defendants”), and
- (b) Plaintiffs, as defined below, individually and as representatives of the proposed Settlement Class, as defined below.

RECITALS

A. Plaintiffs Jeremy Bauman and Bijan Razilou each filed lawsuits against Defendants that have since been consolidated under the caption *Bauman v. David Saxe, et al.*, No. 2:14-cv-01125-RFB-BNW (D. Nev.) (the “Action”). Plaintiffs claim, among other things, that Defendants sent text messages to cell phones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) and state law.

B. Defendants deny the material allegations in the Action and deny all liability with respect to the facts and claims alleged in the Action. Nevertheless, without admitting or conceding liability, and while continuing to deny that the claims asserted in the Action would be appropriate for class treatment if prosecuted at trial, Defendants now desire to settle the Action on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation and to put to rest all claims that were, or could have been, brought in the Action or in similar litigation based on the facts alleged in the Action.

C. Class Counsel, as defined below, have analyzed and evaluated the merits of all Parties’ contentions and the impact of this Agreement on the members of the Settlement Class, as defined below. Based on that analysis and evaluation, and recognizing the risks of continued litigation and the likelihood that the Action, if not settled now, may be protracted and will further delay or else practicably deny any relief to the proposed classes, Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Action on the terms described herein is in the best interests of the Settlement Class.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties, for themselves and through their undersigned counsel, agree to the following settlement, subject to Court approval, under the following terms and conditions.

I. DEFINITIONS

In addition to the terms defined parenthetically herein, the following definitions apply to this Agreement:

1.01 “CAFA Notice” means notices to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

1.02 “Cash Fund” means the total amount of \$800,000.00 Defendants will make available for any and all payments under this Agreement, including but not limited to costs of Settlement Administration, attorneys’ fees and expenses to Class Counsel, and Service Awards to Plaintiffs. Within 14 days after Preliminary Approval, Defendants will pay the Cash Fund to the Settlement Administrator to be held in a qualified settlement fund account. To the extent the total amount of payments required to pay attorneys’ fees and expenses to Class Counsel, Service Awards, expenses of Settlement Administration, and Class Notice and CAFA Notice exceed the Cash Fund, Defendants will be contributing only the amount described above in this paragraph regardless of the final total amount of such payments. Defendant shall not be responsible for any payments or obligations other than those specified in this Agreement.

1.03 “Class Counsel” means Sound Justice Law Group, PLLC; Mazie Slater Katz & Freeman, LLC; Bailey Kennedy, LLP; Strategic Legal Practices, APC; and Marquis Aurbach Coffing. “Lead Class Counsel” means Albert H. Kirby of Sound Justice Law Group, PLLC and Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC.

1.04 “Class Notice” means the notice provided to the Settlement Class of the class action status and proposed settlement of the Action. The Class Notice will include a hearing date set by the Court to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment. The Class Notice will be in substantially the form as Exhibits A (“Long-Form Notice”), B (“Email Notice”), and C (“Postcard Notice”).

1.05 “Defendants” means Defendants V Theater Group, LLC; Saxe Theater, LLC; David Saxe Productions, Inc.; David Saxe Productions, LLC; Saxe Management, LLC, and David Saxe individually.

1.06 “Fairness Hearing” means the hearing to be set by the Court to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment.

1.07 “Final Approval” means that all of the following have occurred:

- (a) The Court has entered the Settlement Order and Final Judgment;
- (b) The Court has made its final award of attorneys’ fees and costs; and
- (c) Thirty-one (31) calendar days have passed after entry of the Settlement Order and Final Judgment by the Court without any appeals or requests for review of the Court’s Settlement Order and Final Judgment being filed, or, if appeals or requests for review have been taken, the time has passed for seeking further review after orders on appeal affirming the Settlement Order and Final Judgment, or review has been denied after exhaustion of all appellate remedies.

1.08 “Parties” means Plaintiffs and Defendants.

1.09 “Plaintiffs” means Jeremy Bauman and Bijan Razilou.

1.10 “Preliminary Approval” means the Court has entered an order substantially in the form of Exhibit D to this Agreement, preliminarily approving the terms and conditions of this Agreement, including the manner of providing Class Notice to the Settlement Class.

1.11 “Released Claims” means any and all claims, rights (including rights to restitution or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys’ fees, obligations, contracts, liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, and whether under federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes, or municipalities that arise out of or relate in any way to the sending of text messages (including but not limited to text messages sent using an “automatic telephone dialing system”) for any purpose (including but not limited to advertising, marketing, or informational purposes), that have been, or could have been, brought in the Action, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action. In addition, with respect to Plaintiffs only, “Released Claims” includes all claims arising out of any conduct or omissions occurring as of the Execution Date that might be attributable to Defendants.

1.12 “Released Parties” means Defendants and all other persons and entities who played any role in sending the text messages at issue, including any of their respective affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf.

1.13 “Service Awards” shall mean the payments of up to \$15,000 for each Plaintiff for their time and effort in connection with this Action to be paid from the Cash Fund subject to Court approval.

1.14 “Settlement Administration” means the process through the Settlement Administrator under the Court’s supervision, that includes, but is not limited to, disseminating Class Notice with Ticket Codes and CAFA notice; establishing and maintaining the Settlement Website; and distributing attorneys’ fees and costs, and the Service Awards. The cost for Settlement Administration will be paid from the Cash Fund.

1.15 “Settlement Administrator” means Angeion Group.

1.16 Except as otherwise provided in this Paragraph, “Settlement Class” means:

All persons and entities to whom Defendants attempted transmission of one or more text messages, between and including April 1, 2013, to May 31, 2014, to a telephone number assigned to a cell phone at the time of transmission.

The Settlement Class does *not* include Defendants, any entity that has a controlling interest in Defendants, and Defendants’ current or former directors, officers, counsel, and their immediate

families. The Settlement Class also does not include any persons who validly request exclusion from it.

To ascertain those telephone numbers associated with the Settlement Class (the “Class Cellphone Numbers”), Defendants’ counsel shall: (a) assemble a list of telephone numbers found in the text message transmission records disclosed through the discovery process of the Action; (b) remove any phone numbers associated with those persons excluded from the definition of the Settlement Class above; and (c) remove any phone numbers that were not assigned to a cell phone at time of transmission, based on data contained in the Wireless Block Identifier and Wireless Ported Number files maintained by Interactive Marketing Solutions (www.ims-dm.com). If requested by Class Counsel, Defendants’ counsel shall prepare a declaration attesting that this process was completed in accordance with this paragraph and supplying a list of those telephone numbers that qualify as Class Cellphone Numbers.

1.17 “Settlement Class Members” means persons and entities meeting the definition of the Settlement Class, as ascertained through the process of identifying the Class Cellphone Numbers described in the foregoing paragraph. The identity of Settlement Class Members shall be presumed to be the person whose email address or physical address is associated with a Class Cellphone Number in the customer database of Defendants.

1.18 “Settlement Order and Final Judgment” means an order and judgment substantially in the form of Exhibit E to this Agreement, entered by the Court approving this Agreement as final and binding on the Parties, Settlement Class Members, and Released Parties.

1.19 “Settlement Website” means the informational website the Settlement Administrator will establish to post the Long-Form Notice, this Agreement, key settlement-related documents and dates, and other pertinent information regarding this settlement.

1.20 “Ticket Codes” means the unique codes generated by Defendants and supplied to the Settlement Administrator. One Ticket Code shall be assigned by the Settlement Administrator to each Class Cellphone Number. Ticket Codes will not be valid until 14 days after Final Approval (“Ticket Compensation Date”).

1.21 “Ticket Compensation” means the two tickets provided by Defendants for each of the Settlement Class Members to any show at the V Theater or Saxe Theater that is produced or otherwise put on by a Saxe Defendant or their successor in interest (“Saxe Show”).

1.22 The plural of any defined term includes the singular and the singular of any defined term includes the plural, as the case may be.

II. GENERAL TERMS OF SETTLEMENT

2.01 Ticket Compensation. Settlement Class Members will not have to submit or otherwise make a claim form to obtain Ticket Compensation. Ticket Compensation will be furnished to each Settlement Class Member through a Ticket Code, which will be included in each Email Notice and Postcard Notice sent by the Settlement Administrator together with instructions on how to contact Defendants to use the Ticket Code to confirm ticketed attendance at a Saxe Show. Defendants will make reasonable efforts to refer Settlement Class Members to

the Settlement Website for information about Ticket Compensation Date if Settlement Class Members attempt to use the Ticket Codes prior to Ticket Compensation Date. Ticket Codes will be valid for a period of four years that begins on Ticket Compensation Date (“Ticket Period”). Ticket Codes will be freely transferrable, but they may not be sold. In the event a Ticket Code is sold in violation of this provision, Defendants are entitled (but are under no obligation) to invalidate that Ticket Code, without providing further relief.

2.02 Injunctive Relief. Without submitting a claim form, all Settlement Class Members will receive injunctive relief. In substance, this injunction shall obligate Defendants not to send automated text messages without first obtaining a written opinion from an attorney that the planned texting activity complies with the TCPA. As part of retaining an attorney to provide this opinion, Defendants will have to obtain proof that the attorney is insured under a legal malpractice insurance policy with coverage limits of no less than \$4 million per occurrence.

2.03 Settlement Administration. Settlement Administration shall be subject to review by Class Counsel (although Class Counsel shall not be entitled to obtain Ticket Codes or contact information for Settlement Class Members from the Settlement Administrator), and shall occur under the Court’s supervision. The costs of Settlement Administration (including, but not limited to, the costs of Class Notice, CAFA Notice, and making the payments and distributions required under this Agreement) will be paid from the Cash Fund. Defendants and their counsel agree to cooperate in good faith to ensure a fair administration of the settlement including, without limitation, by doing the following: provide contact information contained in their customer database of Settlement Class Members to the Settlement Administrator for purposes of providing Class Notice as set forth below; provide Ticket Codes for the Settlement Administrator to distribute; for full duration of the Ticket Period, maintain the means by which the Ticket Codes can be used consistent with instructions provided in the Class Notice as set forth below; and maintain an Instruction Website for the full duration of the Ticket Period as set forth below. Upon authorization by the Parties, which shall not be unreasonably withheld, the Settlement Administrator may deduct Settlement Administration expenses from the Cash Fund.

2.04 Payment of Attorneys’ Fees, Costs and Expenses, and Service Awards. No later than 21 calendar days prior to the Objection and Exclusion deadline, or as otherwise permitted by the Court, Class Counsel will apply to the Court for an award of attorneys’ fees and costs, and for Service Awards. The amounts sought as Service Awards will not exceed \$15,000 for each Plaintiff. The amount available to pay for attorneys’ fees and costs is limited to—and Class Counsel shall not seek or be entitled to any amount greater than—the amount remaining in the Cash Fund after payment of Settlement Administration expenses and Service Awards.

III. SETTLEMENT APPROVAL AND CLASS NOTICE

3.01 Preliminary Approval. Within 30 calendar days of the Execution Date of this Agreement, Plaintiffs will move for an order in the form of Exhibit D (“Preliminary Approval Order”), which, among other things, provisionally certifies the Settlement Class for settlement purposes only; appoints Plaintiffs as representatives of the Settlement Class; appoints Class Counsel as counsel for the Settlement Class; grants the Court’s Preliminary Approval of this Agreement; approves Class Notice to the Settlement Class of the class action status and proposed settlement of the Action; approves the forms of Class Notice, which will be substantially in the

form of Exhibits A –C; and sets a Fairness Hearing to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment.

3.02 Limited Effect of Settlement Class. The certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification in Exhibit D shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them, and Defendants shall be free to assert any defenses available to them, including, but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

3.03 Class Notice. The Parties will request that the Preliminary Approval Order direct that, within 30 calendar days of entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice of the provisional class certification and proposed settlement to all Settlement Class Members by email, postcard, and posting on the Settlement Website as set forth below.

3.03.01 Email Notice. The Settlement Administrator will provide Class Notice substantially in the form of Exhibit B by email to Settlement Class Members' email addresses as they appear in Defendants' records. If an Email Notice sent to a Settlement Class Member bounces back (as opposed to being returned as undeliverable), the Settlement Administrator will make up to two additional email attempts on days and times chosen by the Settlement Administrator as reasonably likely to achieve delivery. If the Email Notice is bounced back on the third attempt, the Email Notice will be treated as undeliverable, resulting in Postcard Notice under Paragraph 3.03.02 below. The Email Notice will direct recipients to the website referred to in Paragraph 3.03.03 below. The Email Notice shall include Ticket Codes and instructions on how to use them, as detailed in Paragraphs 1.20 and 2.01 above.

3.03.02 Postcard Notice. For Settlement Class Members whose email notices are undeliverable under Paragraph 3.03.01, and for Class Members for whom Defendants have no email address, the Settlement Administrator will provide notice by a postcard sent via United States mail substantially in the form of Exhibit C. The Settlement Administrator shall re-mail one time any postcard notice returned by the USPS with updated address information. The Parties shall not be obliged to direct the Settlement Administrator to take any further steps with respect to re-mailing returned Postcard Notices. The Postcard Notice will direct recipients to the website referred to in Paragraph 3.03.03 below. The Postcard Class Notice shall include Ticket Codes and instructions on how to use them, as detailed in Paragraphs 1.20 and 2.01 above.

3.03.03 Web Posting. The Settlement Administrator shall post a copy of the Long-Form Notice in the form of Exhibit A on a Settlement Website it establishes. The Internet address of the website shall be included prominently on the Email Notice and Postcard Notice described in Paragraphs 3.03.01 and .02 above. The Settlement Website shall be active and accessible beginning on the date on which the transmittal of Class Notice commences through the Ticket Compensation Date. For the full duration of the Ticket Period, the website address used for the

Settlement Website shall be repurposed as or redirected to an Instruction Website maintained by Defendants to provide information on how to use the Ticket Codes.

3.04 Submission of Exclusion Requests or Objections. Plaintiffs will request that the Preliminary Approval Order direct that Settlement Class Members be allowed 90 calendar days from the date of entry of the Preliminary Approval Order (“Objection/Exclusion Deadline”) to request exclusion from the Settlement Class or to submit objections to the proposed settlement. The Class Notice described in Paragraphs 3.03.01-.03 above shall direct that exclusion requests, if any, be sent to the Settlement Administrator, which will provide periodic updates on exclusion requests to Plaintiffs and Defendants. Any re-sending of Class Notice shall not extend the time for a Settlement Class Member to request exclusion or submit objections.

3.04.01 Objections. Any Settlement Class Member who intends to object to this Agreement must present the objection in writing on or before the Objection/Exclusion Deadline, which must be personally signed by the objector, and must include: (1) the objector’s name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including the cell phone number to which Defendants sent him or her a text message; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (5) a statement indicating whether the objector intends to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption.

3.04.02 Exclusion Requests. A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline to the Settlement Administrator providing his/her name and address, the cell phone number to which Defendants sent him or her a text message, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid, and the individual who submitted such a request shall be a member of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders granting preliminary or final approval to this settlement; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the individual requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed.

3.05 Entry of Settlement Order and Final Judgment. Plaintiffs will request that the Court (a) grant Final Approval and (b) enter judgment in accordance with this Agreement, in the

form of Exhibit E, approving the Agreement as fair, reasonable, and adequate, and binding on all Settlement Class Members who have not excluded themselves, ordering that attorneys' fees and costs, and Service Awards be paid in the amount approved by the Court, approving the form and manner of sending Class Notice, dismissing the Action with prejudice, and barring Settlement Class Members from bringing claims within the scope of the Released Claims.

IV. DISTRIBUTION OF PAYMENTS

4.01 Responsibility for Distributions. The Settlement Administrator will be responsible for making all distributions required under this Agreement. The Settlement Administrator will have the authority to make all decisions reasonably necessary for the orderly implementation and administration of this Agreement and the distribution of all payments prescribed in this Agreement. The Settlement Administrator shall have no liability for any computation or Settlement Administration decision made in good faith and not inconsistent with the express terms of this Agreement.

4.02 Distribution of Attorneys' Fees and Costs, and Service Awards. Within 14 days after Final Approval, the Settlement Administrator will distribute the approved attorneys' fees and costs, and Service Awards in the amounts approved by the Court as Lead Class Counsel may jointly direct. Defendants shall have no responsibility or liability for any failure of Class Counsel or any of them to deliver any share of fees, costs, expenses, or Service Awards to any of them, or any counsel not included in the definition of Class Counsel, but claiming some right to fees, costs, and/or expenses, as a result of resolution of the Action, or any payment to Plaintiffs. Defendants' obligations with respect to any fees, costs, expenses, or payments to any of Class Counsel (or to any counsel not included in the definition of Class Counsel but claiming some right to fees, costs, and/or expenses, as a result of resolution of the Action) or Plaintiffs shall be fully and forever discharged upon the Settlement Administrator's distribution described in this paragraph. Other than Defendants' obligation to cause the Settlement Administrator to pay the attorneys' fees and costs, and Service Awards in an amount approved by the Court, Defendants shall have no further obligations to Class Counsel, any other counsel claiming some right to fees, costs, and/or expenses, or to Plaintiffs.

V. RELEASES

5.01 Sole and Exclusive Remedy. This settlement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. Each Settlement Class Member (including anyone claiming by or through him or her) shall be barred from initiating, asserting, or prosecuting the Released Claims.

5.02 Class Release to Defendants and the Released Parties. Effective upon Final Approval, Plaintiffs, for themselves and on behalf of each Settlement Class Member who has not timely opted out and each of their respective agents, successors, heirs, assigns, and any other person who can claim by or through the Plaintiffs or the Settlement Class Members in any manner, shall have fully, finally and forever irrevocably released, relinquished, and forever discharged with prejudice all Released Claims against the Released Parties.

5.03 Individual Releases by Plaintiffs. Effective upon Final Approval, the Plaintiffs, for themselves and on behalf of their respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, shall have fully, finally and forever irrevocably released, relinquished and forever discharged with prejudice all Released Claims as set forth in Paragraph 1.11 above.

5.04 Effect of Releases. With respect to any and all Released Claims, the Parties stipulate and agree that upon Final Approval, the Plaintiffs shall expressly waive, and each Settlement Class Member and each Settlement Class Members' respective agents, successors, heirs, assigns, and any other person who can claim by or through the Plaintiffs or the Settlement Class Members in any manner, shall be deemed to have waived, and by operation of the judgment of the Court shall have expressly waived, any and all claims, rights, or benefits they may have under California Civil Code § 1542 and any similar federal or state law, right, rule, or legal principle that may be applicable. The Parties agree and acknowledge that this waiver is an essential term of this Agreement. California Civil Code § 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

VI. MISCELLANEOUS PROVISIONS

6.01 Settlement Purpose of Agreement. This Agreement is governed by the terms of Federal Rule of Evidence 408 and is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in the Action or any other action, nor as an admission by any of Defendants, Plaintiffs, Settlement Class Members, or Class Counsel of the validity of any fact or defense asserted against them in the Action or any other action. If the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit E, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect. This includes that the certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification in Exhibit D shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Agreement. Upon nullification of this

Agreement, Plaintiffs shall be free to pursue any claims available to them, and Defendant shall be free to assert any defenses available to it, including, but not limited to, denying the suitability of this case for class treatment or seeking to require individual arbitration of the claims asserted in the Action. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims or defenses. In the event the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit E, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, the Parties will negotiate in good faith to address the issues raised by said events, including seeking mediation with the Honorable Diane M. Welsh (ret.).

6.02 Cooperation. The Parties and their counsel will cooperate in good faith fully in the process of seeking settlement approval and providing the Parties and the Settlement Class their benefits set forth in this Agreement. Class Counsel warrant and agree they will take all reasonable steps necessary to obtain and implement Final Approval of this Agreement.

6.03 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of Nevada, without regard to its rules regarding conflict of laws.

6.04 Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, whether oral or in writing, express or implied, and may not be contradicted by evidence of any prior or contemporaneous agreement. Any modification of the Agreement that may adversely affect Settlement Class Members' substantive rights must be in writing and signed by Plaintiffs and Defendants; any other modification of the Agreement must be in writing and signed by Class Counsel and Defendants' counsel.

6.05 Construction of Agreement. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for all Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against any Party.

6.06 Public Statements. Except as may be agreed by the Parties, no party will make public statements about the settlement (including specifically the amount of the settlement), except to the extent contained in materials available to the public in the court's files.

6.07 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

6.08 Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

6.09 Effectiveness of Agreement; Counterparts. This Agreement shall become effective upon its execution by all of the persons for whom signature spaces have been provided below. The Parties and their counsel may execute this Agreement in counterparts (any one or all of which may be facsimile or PDF/electronic copies), and execution in counterparts shall have the same force and effect as if all signatories had signed the same document.

6.10 Use and Retention of Information. Any documentation provided by Defendants pursuant their obligations under this Agreement that contains the names, addresses, email addresses, or phone numbers of Defendants' customers, may be used only for purposes of implementing this Agreement. All such information shall be returned to Defendants' counsel or certified as destroyed within 30 calendar days after Final Approval.

6.11 Continuing Jurisdiction. The Court shall retain exclusive and continuing jurisdiction over this Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Agreement.

6.12 Authority. Each individual signing this Agreement represents and warrants that he or she has the authority to sign on behalf of the person or entity for which that individual signs.

6.13 Assignment; Third Party Beneficiaries. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Settlement Class Member without the express written consent of the other Parties. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties, Settlement Class Members, and Released Parties and shall not be construed to confer any right or to afford any remedy to any other person.


6.14 Rules of Professional Conduct. Nothing in this Agreement shall be construed or otherwise used to require any attorney to violate any rule of professional conduct or ethics which governs their membership with any state or federal court bar.

6.15 Calculation of Time. All time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holiday; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

Dated: September 6, 2019

By 

Jeremy Bauman

Individually and on behalf of the proposed
Settlement Class

Dated: _____, 2019

By _____

Bijan Razilou

Individually and on behalf of the proposed
Settlement Class

Dated: _____, 2019

V Theater Group, LLC

Name: _____

Title: _____

Dated: _____, 2019

Saxe Theater, LLC

Name: _____

Title: _____

Dated: _____, 2019

David Saxe Productions, Inc.

Name: _____

Title: _____

AGREED TO AND ACCEPTED:

Dated: _____, 2019

By _____
Jeremy Bauman

Individually and on behalf of the proposed
Settlement Class

Dated: September 4th, 2019

By 
Bijan Razilou

Individually and on behalf of the proposed
Settlement Class

Dated: _____, 2019

V Theater Group, LLC

Name: _____

Title: _____

Dated: _____, 2019

Saxe Theater, LLC

Name: _____

Title: _____

Dated: _____, 2019

David Saxe Productions, Inc.

Name: _____

Title: _____

AGREED TO AND ACCEPTED:

Dated: _____, 2019

By _____

Jeremy Bauman

Individually and on behalf of the proposed
Settlement Class

Dated: _____, 2019

By _____

Bijan Razilou

Individually and on behalf of the proposed
Settlement Class

Dated: 9/5, 2019

V Theater Group, LLC

Name: David Saxe

Title: Manager

Dated: 9/5, 2019

Saxe Theater, LLC

Name: David Saxe

Title: Manager

Dated: 9/5, 2019


David Saxe Productions, Inc.

Name: David Saxe

Title: President


Dated: 9/5, 2019

David Saxe Productions, LLC



Name: David Saxe
Title: Manager

Dated: 9/5, 2019

Saxe Management, LLC


Name: David Saxe
Title: Manager

Dated: 9/5, 2019

By 
David Saxe, individually

APPROVED AS TO FORM:

Dated: _____, 2019

SOUND JUSTICE LAW GROUP, PLLC
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Albert H. Kirby
Class Counsel

Dated: _____, 2019

MAZIE SLATER KATZ & FREEMAN
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Matthew R. Mendelsohn
Class Counsel

Dated: _____, 2019

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendants

By _____
James Harlan Corning

Dated: _____, 2019

David Saxe Productions, LLC

Name: _____

Title: _____

Dated: _____, 2019

Saxe Management, LLC

Name: _____

Title: _____

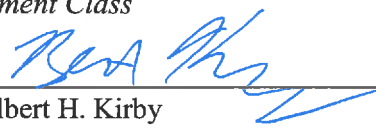
Dated: _____, 2019

By _____
David Saxe, individually

APPROVED AS TO FORM:

Dated: September 6, 2019

SOUND JUSTICE LAW GROUP, PLLC
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By 
Albert H. Kirby
Class Counsel

Dated: _____, 2019

MAZIE SLATER KATZ & FREEMAN
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Matthew R. Mendelsohn
Class Counsel

Dated: _____, 2019

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendants

By _____
James Harlan Corning

Dated: _____, 2019

David Saxe Productions, LLC

Name: _____

Title: _____

Dated: _____, 2019

Saxe Management, LLC

Name: _____

Title: _____

Dated: _____, 2019

By _____
David Saxe, individually

APPROVED AS TO FORM:

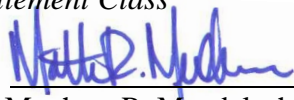
Dated: _____, 2019

SOUND JUSTICE LAW GROUP, PLLC
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Albert H. Kirby
Class Counsel

Dated: September 4, 2019

MAZIE SLATER KATZ & FREEMAN
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By  _____
Matthew R. Mendelsohn
Class Counsel

Dated: _____, 2019

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendants

By _____
James Harlan Corning

Dated: _____, 2019

David Saxe Productions, LLC

Name: _____

Title: _____

Dated: _____, 2019

Saxe Management, LLC

Name: _____

Title: _____

Dated: _____, 2019

By _____
David Saxe, individually

APPROVED AS TO FORM:

Dated: _____, 2019

SOUND JUSTICE LAW GROUP, PLLC
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Albert H. Kirby
Class Counsel

Dated: _____, 2019

MAZIE SLATER KATZ & FREEMAN
*Attorneys for Plaintiffs and the proposed
Settlement Class*

By _____
Matthew R. Mendelsohn
Class Counsel

Dated: September 4, 2019

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendants

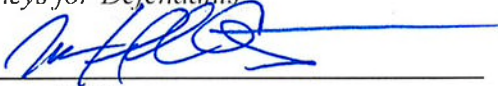
By 
James Harlan Corning

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

If you received a text message about a future Saxe Productions event without your consent you could be entitled to benefits under a class action settlement.

*The United States District Court for the District of Nevada authorized this Notice.
This is not a solicitation from a lawyer.*

- A proposed settlement of a class action lawsuit relates to allegations that V Theater Group, LLC, Saxe Theater, LLC, David Saxe Productions, Inc., David Saxe Productions, LLC, Saxe Management, LLC, and/or David Saxe (“Defendants”) sent text messages to cellular telephones in violation of state and federal law. The case is known as *Bauman v. V Theater Group, LLC, et al.*, No. 2:14-cv-01125-FRB-BNW (“Action”).
- Defendants deny all allegations of wrongdoing in the lawsuit. Defendants claim they have abided by all state and federal laws, and that the Action is not well grounded in law or fact. As part of the proposed settlement, Defendants do not admit to any wrongdoing, maintain their compliance with the law, and continue to deny the allegations against them.
- The proposed settlement provides for a Ticket Code to each class member in conjunction with notice of the settlement of this action, which can be used to obtain two tickets to a future theater event produced by Defendants.
- Defendants will also make certain changes to their practices and pay the costs to administer the settlement.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
EXCLUDE YOURSELF	Get no payment or Ticket Code under the settlement. If you were sent a Ticket Code, your Ticket Code will be invalidated. This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in the case.
OBJECT	Write to the Court about why you don’t like the settlement. You can do this only if you don’t exclude yourself.
GO TO THE HEARING	Ask to speak in Court about the fairness of the settlement. You can do this only if you don’t exclude yourself.
DO NOTHING	You will receive a Ticket Code. If the Court approves the settlement, you can use that code to obtain two tickets to a future theater event produced by the Defendants. You will be giving up your rights, however, to assert any claims about the legal claims in the case against Defendants or those who may have called on their behalf.

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

- This Notice explains these rights and options—**and the deadlines to exercise them.**
- The Court must decide whether to approve the settlement as part of the process described in this Notice. Ticket Codes will be activated and available for use only if the Court approves the settlement.

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QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

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Basic Information

1. Why did I get a Notice?

You received an email if your email address was provided to Defendants in connection with your cellular telephone number, and a text message was attempted to a potential class member at that telephone number. You received a postcard notice by direct mail if no valid email address was provided to Defendants or if attempts to provide email notice were returned as undeliverable. In either case, the email notice or postcard notice referred you to an informational web site which included this more detailed Notice.

The Court ordered that a Notice be sent to you because you have a right to know about a proposed settlement of the class action against Defendants and about your options, before the Court decides whether to approve the settlement. If the Court approves it, the Ticket Code you received with your notice will become active and you can use it to obtain tickets to a future theater event produced by Defendants.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. Please read this Notice carefully.

The United States District Court for the District of Nevada has jurisdiction over this proposed settlement. The persons who sued are called the Plaintiffs, and the companies he sued are called the Defendants.

2. What is the lawsuit about?

Defendants produce and deliver theater and entertainment events in the greater Las Vegas area. For a limited time, Defendants attempted to send or sent text messages to customers who voluntarily provided their cell phone number to inform them of future similar theater events.

Plaintiffs filed a proposed class action lawsuit, the Action, against Defendants.

In the Action, the Plaintiffs claimed, among other things, that Defendants sent text messages to cellular telephones in violation of state and federal law. Defendants deny all allegations of wrongdoing and believe their text messages complied with applicable law. Defendants have asserted many defenses they believe would be successful at trial. In agreeing to settle, Defendants maintain that they complied with the law and do not admit any wrongdoing. The settlement is not an admission of wrongdoing.

3. Why is this a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. In this case, the class representatives are Plaintiff Jeremy Bauman and Plaintiff Bijan Razilou. One court resolves the issues for all class members, except those who exclude themselves from the Class. Richard F. Boulware, United States District Court Judge for the District of Nevada, has jurisdiction over the case in which the parties have submitted this settlement for approval.

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the class members. The class representatives and their attorneys think the settlement is best for the class members.

Who Is in the Settlement?

To see if you are eligible to receive a Ticket Code and otherwise benefit from this settlement, you first have to determine whether you are a class member.

5. How do I know if I am part of the settlement?

Judge Boulware has preliminarily decided that everyone who fits this description is a class member:

All persons and entities to whom Defendants attempted transmission of one or more text messages, between and including April 1, 2013, to May 31, 2014, to a telephone number assigned to a cell phone at the time of transmission.

6. Who is not included in the Class?

The Class does *not* include Defendants, any entity that has a controlling interest in Defendants, and Defendants' current or former directors, officers, counsel, and their immediate families. The Class also does not include any persons who validly request exclusion from the Class.

7. I'm still not sure if I am included.

If you are still not sure whether you are included, you can visit the settlement website, www.theatertextsettlement.com, for more information.

The Settlement Benefits—What You Get

8. What does the settlement provide?

Settlement Class Members whose names and addresses were identified have been sent a Ticket Code with their direct mailed notice. Following final approval of the settlement, you can follow the instructions found at www.theatertextsettlement.com to use that ticket code to obtain up to two tickets for a future theater event produced by Defendants.

In addition, Defendants have agreed not to send automated text messages without first obtaining a written opinion from an attorney that the planned texting activity complies with the Telephone Consumer Protection Act, 47 U.S.C. § 227.

Defendants also agreed to pay the costs of settlement administration and reasonable attorneys' fees, costs, and a service award to Plaintiffs for serving as the class representatives.

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

9. What can I get from the settlement?

If you were identified as a potential class member, you were sent a Ticket Code with your direct mailed notice.

How You Use Your Ticket Code

10. When can I use my Ticket Code?

The Court will hold a hearing on _____, to decide whether to approve the settlement. If Judge Boulware approves the settlement after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Ticket Codes will become valid fourteen (14) days after all appeals have been completed (or once the period for filing appeals has expired). Further information will be posted online at www.theatertextsettlement.com.

11. What am I giving up if I remain in the Class?

Unless you exclude yourself, you stay in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues in this case. If the settlement is approved and becomes final and not subject to appeal, then you and all class members release all "Released Claims" against all "Released Parties."

"Released Claims" means any and all claims, rights (including rights to restitution or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys' fees, obligations, contracts, liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, and whether under federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes, or municipalities that arise out of or relate in any way to the sending of text messages (including but not limited to text messages sent using an "automatic telephone dialing system") for any purpose (including but not limited to advertising, marketing, or informational purposes), that have been, or could have been, brought in the Action, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action. In addition, with respect to Plaintiffs only, "Released Claims" includes all claims arising out of any conduct or omissions occurring as of the Execution Date that might be attributable to Defendants.

"Released Parties" means Defendants and all other persons and entities who played any role in sending the text messages at issue, including any of their respective affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf.

Additionally, with respect to any and all Released Claims, you and your respective agents, successors, heirs, assigns, and any other person who can claim by or through you in any manner,

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

shall be deemed to have waived, and by operation of the judgment of the Court shall have expressly waived, any and all claims, rights, or benefits they may have under California Civil Code § 1542 and any similar federal or state law, right, rule, or legal principle that may be applicable. California Civil Code § 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Excluding Yourself from the Settlement

If you don't want a Ticket Code from this settlement, and you want to keep any right you may have to sue or continue to sue Defendants or other Released Parties on your own about the Released Claims, then you must take steps to remove yourself from the Class. This is called excluding yourself and is sometimes referred to as "opting out" of the Class.

12. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a signed letter by mail stating that you "want to opt out of the Theater Text Settlement." Please be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than _____, to:

Theater Text Settlement
Settlement Administrator
P.O. Box _____,
CITY, ST ZIP

You can't exclude yourself on the phone or by fax or email.

13. What is the effect if I exclude myself from this settlement?

If you ask to be excluded, any Ticket Code you received from this settlement will be invalidated. Also you cannot object to the settlement. You will not be legally bound by anything that happens in the Action. You may be able to sue (or continue to sue) Defendants in the future about the legal issues in this case.

14. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up your right to sue Defendants and the other Released Parties for the claims that this settlement resolves. You must exclude yourself from *this* Class to pursue your own lawsuit. Remember, your exclusion request must be postmarked on or before _____.

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

15. If I exclude myself, can I get or use a Ticket Code from this settlement?

No. If you exclude yourself, any Ticket Code you already received will be invalidated. You may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendants and the other Released Parties.

The Lawyers Representing You

16. Do I have a lawyer in the case?

The Court appointed Sound Justice Law Group, PLLC; Mazie Slater Katz & Freeman, LLC; Bailey Kennedy, LLP; Strategic Legal Practices, APC; and Marquis Aurbach Coffing to represent the Class. These lawyers are called Class Counsel. The Lead Class Counsel are Albert H. Kirby of Sound Justice Law Group, PLLC and Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC. You will not be charged for these lawyers. The Court will determine the amount of Class Counsel's fees and costs, which Defendants will pay as part of the settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel will request from the Court an award of attorneys' fees and out-of-pocket litigation costs up to \$770,000, less any amounts that are needed to administer this settlement which will be paid to the Settlement Administrator. Class Counsel will also request a \$15,000 Service Award for Plaintiffs for serving as the class representatives. Defendants will pay Class Counsel's fees and costs, and the Service Award as awarded by the Court. You have the right to object to the requested fees and costs, and Service Award. Defendants will also pay the costs to administer the settlement from the Settlement Fund.

Class Counsel will file their papers in support of final approval of the settlement and their application for attorneys' fees and reimbursement of costs, and for the Service Award, by no later than _____ and _____, respectively. These papers will also be posted on the settlement website (www.theatertextsettlement.com).

Objecting to the Settlement

You can tell the Court that you don't agree with the settlement or some part of it.

18. How do I tell the Court if I don't like the settlement?

If you are a class member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a signed letter saying you object to the proposed settlement in *Bauman v. V Theater Group, LLC, et al.*, No. 2:14-cv-01125-RFB-BNW (D. Nev.). Be sure to include your name, address, telephone number, a statement indicating that you are a class member, your signature, and the reasons why you object to the settlement. Your objection and any supporting papers must be postmarked by and mailed to the Settlement Administrator at the following address no later than _____:

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

Theater Text Settlement
Settlement Administrator

P.O. Box _____,
CITY, ST ZIP

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Settlement Hearing

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Settlement Hearing at _____ on _____, at the United States District Court for the District of Nevada, _____, Las Vegas, Nevada _____. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Boulware will listen to people who have asked to speak at the hearing. The Court will also consider whether to approve the requested fees, costs, and Service Award. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Boulware may have. You are welcome to come at your own expense. If you send an objection, you don't have to come to Court and talk about it. As long as your written objection is postmarked by _____, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in "*Bauman v. V Theater Group, LLC, et al.*, No. 2:14-cv-01125-RFB-BNW (D. Nev.)." Be sure to include your name, address, telephone number, that you are a class member, a list of any documents you want the Court to consider, the names of any witnesses who you want to testify and your signature. Your Notice of Intention to Appear must be postmarked and sent to the address in Question [18], no later than _____. You cannot speak at the hearing if you exclude yourself.

If You Do Nothing

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

23. What happens if I do nothing at all?

If you do nothing, you will remain a member of the class and, fourteen days after Final Approval, you will be able to use your Ticket Code to obtain two tickets to a future theater event produced by Defendants. Unless you exclude yourself from the Class, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the legal issues resolved by this settlement, ever again.

Getting More Information

24. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details appear in the Settlement Agreement and Release of Claims (the "Agreement"). Copies of the Agreement and the pleadings and other documents relating to the case are on file at the United States District Court for the District of Nevada and may be examined and copied at any time during regular office hours at the Court. The Settlement Agreement is also available at the settlement website, www.theatertextsettlement.com.

25. How do I get more information?

You can visit the settlement website at www.theatertextsettlement.com, where you will find answers to common questions about the settlement, plus other information, including a copy of the Settlement Agreement. You may also write to: *Theater Text Settlement*, Settlement Administrator, P.O. Box ____, CITY, ST ZIP. **You should not direct questions to the Court.**

Dated: _____, 2019

By Order of the Court
CLERK OF THE COURT

QUESTIONS? VISIT WWW.THEATERTEXTSETTLEMENT.COM

EXHIBIT B

Email Notice – Settlement Agreement Ex. B

From: [Settlement Administrator email address]

To: [email address of class member that Defendants can reasonably locate in their records]

Subject: – IMPORTANT LEGAL NOTICE - Settlement of class action against Saxe Productions

This email notifies you of a proposed settlement of a class action against V Theater Group, LLC, Saxe Theater, LLC, David Saxe Productions, Inc., David Saxe Productions, LLC, Saxe Management, LLC, and David Saxe (“Defendants”) in the case of *Bauman v. V. Theater Group, et al.*, No. 2:14-cv-01125-FRB-BNW (United States District Court for the District of Nevada).

This notice may affect your legal rights. Please read it carefully. This is an official court notice from the United States District Court for the District of Nevada.

If you received a text message from Defendants on your cellular telephone without your consent you could be entitled to benefits under a class action settlement.

Defendants’ records show you may be a member of a proposed settlement class. Plaintiffs claim, among other things, that Defendants sent text messages cellular telephones in violation of federal law. Defendants deny any wrongdoing and believe their texting complied with applicable law. Defendants have asserted defenses they believe would be successful at trial. In agreeing to settle, Defendants maintain that they complied with the law and do not admit any wrongdoing.

Under the proposed settlement, members of the proposed settlement class will receive a Ticket Code with this notice. The Ticket Code will entitle to you up to two tickets for a future theater event produced by Defendants. Your unique Ticket Code is below. The Ticket Code will not become valid until fourteen days after Final Approval of the settlement, including exhaustion and expiration of all potential appeals. For details regarding these Ticket Codes and how to use them, please visit www.theatertextsettlement.com.

If you want to exclude yourself from this settlement, you must send a written request specifically stating that you request exclusion from the settlement to *Theater Text Settlement* Settlement Administrator, P.O. Box _____, CITY, STATE ZIP, postmarked **no later than [MONTH & DAY] 201_**.

If you remain in this class, you may object to the settlement by writing to the Settlement Administrator no later than _____, **201_**. Full details on how to object or exclude yourself can be found at www.theatertextsettlement.com.

The Court will hold a hearing on **[MONTH & DAY], 201_**, at **XX:XX**, to consider whether to approve the settlement. The Court will also consider whether to approve attorneys’ fees and costs as requested. You or your lawyer may ask to appear and speak at your own expense. A more detailed Notice is available at www.theatertextsettlement.com. The website also explains the settlement terms in more detail. You may also write to *Theater Text Settlement* Settlement Administrator, P.O. Box ____, CITY, STATE ZIP to request the more detailed Notice.

YOUR UNIQUE TICKET CODE: [INSERT UNIQUE TICKET CODE]

EXHIBIT C

If you received a text message about a future Saxe Productions event on your cell phone without consent you may be entitled to benefits under a class action settlement.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

This is an official court notice from the United States District Court for the District of Nevada, *Bauman v. V Theater Group, LLC, et al.*, No. 2:14-cv-01125-FRB-BNW

Theater Text Settlement
Settlement Administrator
P.O. Box _____
CITY, ST ZIP _____

«Barcode»
Postal Service: Please do not mark barcode

DSP – «ClaimID» «MailRec»

«First 1» «Last 1»
«CO»
«Addr2»
«Addr1»
«City», «ST» «Zip» «Country»

DSP

This notifies you of a proposed settlement of a class action against V Theater Group, LLC, Saxe Theater, LLC, David Saxe Productions, Inc., David Saxe Productions, LLC, Saxe Management, LLC, and David Saxe (“Defendants”).

Defendants’ records show you may be a member of a proposed settlement class. Plaintiffs claim, among other things, that Defendants sent text messages cellular telephones in violation of federal law. Defendants deny any wrongdoing and believe their calling complied with applicable law. Defendants have asserted defenses they believe would be successful at trial. In agreeing to settle, Defendants maintain that they complied with the law and do not admit any wrongdoing.

Under the proposed settlement, members of the proposed settlement Class will receive a Ticket Code with this notice (below) that can be redeemed for up to two tickets to a future theater event produced by Defendants. For details regarding those Ticket Codes, please visit www.theatertextsettlement.com.

If you want to exclude yourself from this settlement, you must send a written request specifically stating that you request exclusion from the settlement to *Theater Text Settlement* Settlement Administrator, P.O. Box _____, CITY, STATE ZIP, postmarked **no later than [MONTH & DAY] 201_**.

If you remain a class member, you may object to the settlement by writing to the Settlement Administrator no later than _____, 201_. Full details on how to object or exclude yourself can be found at www.theatertextsettlement.com.

The Court will hold a hearing on **[MONTH & DAY], 201_**, at **XX:XX**, to consider whether to approve the settlement. The Court will also consider whether to approve attorneys’ fees and costs as requested. You or your lawyer may ask to appear and speak at your own expense. A more detailed Notice is available at www.theatertextsettlement.com. The website also explains the Settlement terms in more detail. You may also write to *Theater Text Settlement* Settlement Administrator, P.O. Box ____, CITY, STATE ZIP to request the more detailed Notice.

YOUR UNIQUE TICKET CODE: [INSERT UNIQUE TICKET CODE]

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEREMY BAUMAN, individually and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

DAVID SAXE, et al.,

Defendants.

BIJAN RAZILOU, et al.,

Plaintiffs,

vs.

V THEATER GROUP, LLC, et al.,

Defendants.

Case No.: 2:14-cv-01125-RFB-BNW

**[PROPOSED] ORDER CONDITIONALLY
CERTIFYING A SETTLEMENT CLASS,
PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT, APPROVING
NOTICE PLAN, AND SCHEDULING
FINAL APPROVAL HEARING**

In consolidation with

Case No.: 2:14-cv-01160-RFB-BNW

Upon review and consideration of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, including the Parties' Settlement Agreement and Release of Claims (the "Settlement Agreement" or "Agreement") and all exhibits thereto, and the arguments of counsel, and having been fully advised in the premises, it is **HEREBY ORDERED, ADJUDGED** and **DECREED** as follows:

1. **Settlement Terms.** Unless otherwise defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Agreement.
2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, the Parties, and all members of the Settlement Class.
3. **Scope of Settlement.** The Agreement resolves all Released Claims against the Released Parties.

4. **Preliminary Approval of Proposed Settlement.** The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Settlement is fair, reasonable and adequate, and within the range of possible approval; (b) the Settlement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration (Exs. A, B, and C to the Agreement), that notice provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; and (d) with respect to the proposed notice plan, the notice program constitutes the best notice practicable under the circumstances. Therefore, the Court grants preliminary approval of the Settlement.

5. **Class Certification for Settlement Purposes Only.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court conditionally certifies for purposes of this Settlement only, the following Settlement Class:

All persons and entities to whom Defendants attempted transmission of one or more text messages, between and including April 1, 2013, to May 31, 2014, to a telephone number assigned to a cell phone at the time of transmission. Excluded from the Class are Defendants, any entity that has a controlling interest in Defendants, and Defendants' current or former directors, officers, counsel, and their immediate families, and all persons who validly exclude themselves or opt out of the Settlement Class.

6. The Court makes the following determinations as to certification of the Settlement Class:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the members of the Settlement Class;

c. The claims of the Plaintiffs are typical of the claims of the other members of the Settlement Class;

d. Plaintiffs are capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Settlement Agreement;

e. Common questions of law and fact predominate over questions affecting only individual members of the Settlement Class;

f. The Settlement Class is ascertainable; and

g. Resolution of the Released Claims in this Action by way of a nationwide settlement is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

7. Designation of Class Representatives. The Court appoints Plaintiffs Jeremy Bauman and Bijan Razilou as representatives of the Settlement Class (“Class Representatives”) for the sole purpose of seeking a settlement of the Action.

8. Designation of Class Counsel. The law firms of Sound Justice Law Group, PLLC; Mazie Slater Katz & Freeman, LLC; Bailey Kennedy, LLP; Strategic Legal Practices, APC; and Marquis Aurbach Coffing, are hereby designated as Class Counsel for the Settlement Class. Albert H. Kirby of Sound Justice Law Group, PLLC and Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC, are hereby designated as Lead Class Counsel for the Settlement Class.

9. Final Approval Hearing. A hearing regarding final approval of the Settlement will be held at a.m/p.m. on , to determine, among other things, whether to: (i) finally approve the Settlement as fair, reasonable, and adequate; (ii) dismiss the Released Claims in the Action with prejudice pursuant to the terms of the Settlement Agreement; (iii) bind

Settlement Class Members by the Releases set forth in the Settlement Agreement; (iv) permanently bar Settlement Class Members who have not opted out of the Settlement from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on the Released Claims; (v) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (vi) approve the plan of distribution of the Settlement Fund; (vii) finally certify the Settlement Class; and (viii) approve requested Attorneys' Fees and Expenses and the proposed Incentive Awards to Plaintiffs.

10. **Settlement Administrator.** Angeion Group is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Agreement and this Order.

11. **Class Notice.**

a. The Court approves the Class Notice in the Settlement Agreement, including the Long Form Notice, Email Notice, and Postcard Notice attached as Exhibits A, B, and C to the Settlement Agreement and the manner of providing Email Notice and Postcard Notice to Settlement Class Members described in Section III of the Settlement Agreement. The Court finds that this is the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise the Settlement Class Members of the pendency of this Action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Settlement Class. The Court further finds that the Long Form Notice, Email Notice, and Postcard Notice are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet the requirements of due

process. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than , 2019 (“Notice Deadline”).

b. The Settlement Administrator will file with the Court by no later than , 2019, which is fourteen (14) days prior to the Final Approval Hearing, proof that notice was provided in accordance with the Agreement and this Order.

c. Defendants shall comply with the obligation to give notice under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the proposed settlement. No later than 10 calendar days before the Final Approval Hearing, counsel for Defendants shall file with the Court one or more declarations stating that Defendants have complied with its notice obligations under 28 U.S.C. § 1715.

12. **Exclusion from the Settlement Class.** Any potential Settlement Class Member who wishes to be excluded from the Class must send a written Request for Exclusion to the Settlement Administrator, by first-class mail, postage prepaid, to the address provided in the Mail Notice and Settlement Website. Any such Request for Exclusion must be postmarked no later than 90 days from the date of entry of the Preliminary Approval Order.

a. To be valid, the Request for Exclusion must: (a) identify the name and address of the potential Settlement Class Member requesting exclusion; (b) provide the cell phone number(s) to which Defendants sent him or her a text message; (c) be personally signed by the potential Settlement Class Member requesting exclusion; and (d) contain a statement that reasonably indicates a desire to be excluded from the Settlement. Mass or class opt-outs shall not be allowed.

b. Except for those potential members of the Settlement Class who timely and properly file a Request for Exclusion, all other potential members of the Settlement Class

will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief, including, but not limited to, the Releases in Section V of the Settlement Agreement.

13. **Objections and Appearances.** Any Settlement Class Member who has not filed a timely written Request for Exclusion and who complies with the requirements of this Paragraph may object to any aspect of the proposed Settlement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who wishes to object to the Settlement must do so in writing not later than 90 days from the date of entry of the Preliminary Approval Order, as specified in the Class Notice and this Preliminary Approval Order. The written objection must be postmarked and mailed to the Settlement Administrator at the address provided in the Class Notice.

14. A valid written objection must include: (a) the objector's name and address; (b) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including the cell phone number to which Defendants sent him or her a text message; (c) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (d) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (e) a statement indicating whether the objector intends to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received

any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption;

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

16. Subject to approval of the Court, any Settlement Class Member who files and serves a written objection in accordance with Section III of the Settlement Agreement and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member mails a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice Of Intention To Appear”) to the address identified in the Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing or raise any objections.

17. **Service of Papers.** The Parties shall serve on each other and on all other parties who have filed notices of appearance, at or before the Final Approval Hearing, any further documents in support of the proposed Settlement, including responses to any papers filed by

Settlement Class Members. The Parties shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their possession and shall file such objections or requests for exclusion with the Court on or before the date of the Final Approval Hearing.

18. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become Final, pursuant to the terms of the Settlement Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement for any reason. In such event, and except as provided therein, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and effect; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; neither the Settlement Agreement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

19. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become Final. This Order shall not be offered by any person as evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to enforce or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto), including the Releases, or this Order. Neither shall this Order be offered by any person or

received against any of the Released Parties as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties of:

- a. the truth of the facts alleged by any person or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of any of the Released Parties;
- b. any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Parties or any other wrongdoing by any of the Released Parties; or
- c. any liability, negligence, fault, or wrongdoing in any civil, criminal, or administrative action or proceeding by any of the Released Parties.

20. **Necessary Steps.** The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

21. **Schedule of Future Events.** Accordingly, the following are the deadlines by which certain events must occur:

_____, ____ [30 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
_____, ____ [39 days after the Notice Deadline]	Deadline for filing of Plaintiff's Motion for Attorneys' Fees and Costs and Service Award
_____, ____ [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out and Objection Deadline)

_____, ____ [14 days Prior to Final Approval Hearing]	Deadline to File Motion for Final Approval
_____, ____ [7 Days Prior to Filing Motion for Final Approval]	Deadline for Settlement Administrator to Provide Class Counsel with Proof of Class Notice, Identifying the Number of Requests for Exclusion, and Number of Objections Received
_____, ____ [7 Days Prior to Final Approval Hearing]	Defendants Shall File with the Court One or More Declarations Stating that Defendants have Complied with their Notice Obligations
_____, ____ at ____ [No earlier than 120 days after Notice Deadline]	Final Approval Hearing

DONE and ORDERED in Chambers in Las Vegas, Nevada, this _____ day of _____, _____.

Hon. Richard F. Boulware, U.S.D.J.

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEREMY BAUMAN, individually and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

DAVID SAXE, et al.,

Defendants.

BIJAN RAZILOU, et al.,

Plaintiffs,

vs.

V THEATER GROUP, LLC, et al.,

Defendants.

Case No.: 2:14-cv-01125-RFB-BNW

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND DISMISSING CLASS
PLAINTIFFS' CLAIMS**

In consolidation with

Case No.: 2:14-cv-01160-RFB-BNW

This Court, having held a Final Approval Hearing on _____, having provided notice of that hearing in accordance with the Preliminary Approval Order, and having considered all matters submitted to it in connection with the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiffs' Claims (the "Final Approval Order" or this "Order") and good cause appearing therefore,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Unless otherwise defined, all capitalized terms in this Final Approval Order shall have the same meaning as they do in the Settlement Agreement (Dkt. XXX).

2. The Court has jurisdiction over the subject matter of the Action and over the Parties, including all Settlement Class Members with respect to the Settlement Class certified for settlement purposes, as follows:

All persons and entities to whom Defendants attempted transmission of one or more text messages, between and including April 1, 2013, to May 31, 2014, to a telephone number assigned to a cell phone at the time of transmission. Excluded from the Class are Defendants, any entity that has a controlling interest in Defendants, and Defendants' current or former directors, officers, counsel, and their immediate families, and all persons who validly exclude themselves or opt out of the Settlement Class.

3. The Court finds that the Settlement Agreement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. Further, settlement occurred only after significant discovery, motion practice, and after the parties negotiated over a period of many months. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation with respect to numerous difficult questions of fact and law.

4. The Court finally certifies the Settlement Class for settlement purposes and finds, for settlement purposes, that the Action satisfies all the requirements of Rule 23 of the Federal Rules of Civil Procedure. Specifically: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f)

the Settlement Class is ascertainable; and (g) a class action settlement is superior to the other available methods for the fair and efficient adjudication of the controversy.

5. The Court finally appoints the law firms of Sound Justice Law Group, PLLC; Mazie Slater Katz & Freeman, LLC; Bailey Kennedy, LLP; Strategic Legal Practices, APC; and Marquis Aurbach Coffing, as Class Counsel for the Settlement Class; and Albert H. Kirby of Sound Justice Law Group, PLLC and Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC, as Lead Class Counsel for the Settlement Class.

6. The Court finally designates Plaintiffs Jeremy Bauman and Bijan Razilou as the Class Representatives.

7. The Court makes the following findings and conclusions regarding notice to the Settlement Class:

a. The Class Notice was disseminated to persons in the Settlement Class in accordance with the terms of the Settlement Agreement and the Class Notice and its dissemination were in compliance with the Court's Preliminary Approval Order;

b. The Class Notice: (i) constituted the best practicable notice under the circumstances to potential Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient individual notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

c. The Court finds that Defendants have complied with their notice obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the proposed Settlement.

8. The Court finally approves the Settlement Agreement as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e). The terms and provisions of the Settlement Agreement, including all exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

9. The Court approves the plan of distribution for the Cash Fund as set forth in the Settlement Agreement. The Settlement Administrator is ordered to comply with the terms of the Agreement with respect to distribution of Cash Fund.

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

11. 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 Settlement Class Members;

b. that the value conferred on the Settlement Class is immediate and readily quantifiable;

c. that fourteen days (14) after Final Approval of the Settlement, the Ticket Codes shall be activated and Settlement Class Members will be able to use the Ticket Codes to

obtain the Ticket Compensation, which represents a significant portion of the damages that would be available to them were they to prevail in an individual action under the TCPA;

d. that Class Counsel vigorously and effectively pursued the Settlement 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 Defendants, and was negotiated in good faith and in the absence of collusion; and

g. 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. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Blum v. Stenson*, 465 U.S. 866, 900 n.16 (1984).

12. Accordingly, Class Counsel are hereby awarded \$_____ for attorneys' fees and \$_____ in litigation expenses from the Cash Fund, which this Court finds to be fair and reasonable, and which amount shall be paid to Class Counsel from the Cash Fund in accordance with the terms of the Settlement Agreement. Class Counsel shall be responsible for allocating and shall allocate this award of attorneys' fees, costs, and expenses that are awarded amongst and between Class Counsel.

13. The Class Representatives, as identified in the Preliminary Approval Order, are hereby compensated in the amount of \$_____ each for their efforts in this case.

14. The terms of the Settlement Agreement and of this Final Approval Order, including all exhibits thereto, shall be forever binding in all pending and future lawsuits maintained by the Plaintiffs and all other Settlement Class Members, and anyone claiming through them such as heirs, administrators, successors, and assigns.

15. The Releases, which are set forth in Section V of the Settlement Agreement and which are also set forth below, are expressly incorporated herein in all respects and are effective as of the date of this Order; and the Released Parties are fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged by the Settlement Class (except those Class Members who sent valid Exclusion Request) from all Released Claims.

a. In connection with the Releases in section V of the Settlement Agreement, and without expanding their scope in any way, Plaintiffs and each Settlement Class Member shall be deemed, as of the date of Final Approval, to have waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which provides that:

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.

To the extent that anyone might argue that these principles of law are applicable -- notwithstanding that the Settling Parties have chosen California law to govern this Settlement Agreement -- Plaintiffs hereby agree, and each Settlement Class Member will be deemed to agree, that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Plaintiffs recognize, and each Settlement Class Member will be deemed to

recognize, that, even if they may later discover facts in addition to or different from those which they now know or believe to be true, they fully, finally, and forever settle and release any and all claims covered by these Releases upon entry of the Judgment. The Settling Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement. The California Civil Code Section 1542 release herein shall be expressly limited to claims arise out of or relate in any way to the sending of text messages (including but not limited to text messages sent using an “automatic telephone dialing system”) for any purpose (including but not limited to advertising, marketing, or informational purposes), that have been, or could have been, brought in the Action, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action.

b. The Settlement Agreement and the Releases therein do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements in Section III of this Settlement Agreement.

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

Upon entry of the Final Approval Order and the Judgment: (i) the Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions of the

Settlement Agreement; (ii) the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s) except as set forth in the Settlement Agreement; and (iii) Settlement Class Members who have not opted out shall be permanently barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on the Released Claims.

d. Upon Final Approval, each member of the Settlement Class, including the Plaintiffs, shall, by operation of the Judgment, be deemed to have fully, conclusively, irrevocably, forever and finally released, relinquished, and discharged the Released Parties from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, 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), common law or 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 Final Approval, that arise out of or relate in any way to the sending of text messages (including but not limited to text messages sent using an "automatic telephone dialing system") for any purpose (including but not limited to advertising, marketing, or informational purposes), that have been, or could have been, brought in the Action, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action.

e. Nothing in the Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth therein are not intended to include the release of any rights or

duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

16. The Court dismisses all Released Claims, with prejudice, without costs to any Party, except as expressly provided for in the Settlement Agreement.

17. This Order, the Judgment to be entered pursuant to this Order, and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Party to support a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

19. This Order and the Judgment to be entered pursuant to this Order shall be effective upon entry. In the event that this Order and/or the Judgment to be entered pursuant to this Order are reversed or vacated pursuant to a direct appeal in the Action or the Settlement Agreement is terminated pursuant to its terms, all orders entered and releases delivered in connection herewith shall be null and void.

DONE and ORDERED in Chambers in Las Vegas, Nevada, this _____ day of _____, _____.

Hon. Richard F. Boulware, U.S.D.J.