

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRACE MURRAY, GRACE ENGEN, JEANNE
TIPPET, STEPHEN BAUER, ROBIN
TUBESING, NIKOLE SIMECEK, MICHELLE
MCOSKER, JACQUELINE GROFF, and
HEATHER HALL, on behalf of themselves and
others similarly situated,

Case No. 19-cv-12608-WGY

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

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

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INTRODUCTION

Plaintiffs Grace Murray, Amanda Engen, Jeanne Tippet, Stephen Bauer, Robin Tubesing, Nikole Simecek, Michelle McOsker, Jacqueline Groff, and Heather Hall (“Plaintiffs”), on behalf of themselves and others similarly situated, along with Defendant Grocery Delivery E-Services USA, Inc., d/b/a HelloFresh (“Defendant” or “HelloFresh” and with Plaintiffs referred to as “the Parties”), have reached a settlement of this matter.¹ The Settlement includes the establishment of a fourteen million dollar (\$14,000,000) Settlement Fund to be distributed to Settlement Class Members who file a valid claim after payment of Notice and Administration Costs (if approved), Settlement Class Counsel fees (if any), and an incentive award to the Plaintiffs (if any).² There is no reverter to the Defendant of any portion of the Settlement Fund. Notice will be effectuated through emails and postcards directed to Settlement Class Members identified in records obtained in discovery and will use the same records that HelloFresh relied upon when contacting Settlement Class Members when they were HelloFresh customers. Furthermore, a website will be established through which Claim Forms may be obtained or directly submitted.

The Settlement was only reached after months of settlement discussions and a formal mediation with Hon. George H. King (Ret.) of JAMS. While that mediation session did not result in a settlement, one was finalized in the following week. The Settlement was also reached by counsel with a keen understanding of the merits of the claims and extensive experience in actions brought under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. The relief provided meets the applicable standards of fairness when taking into consideration the nature of

¹ The Defendant does not oppose this motion insofar as it supports the settlement. The Defendant does not concede or admit Plaintiffs’ assertions.

² All capitalized terms not defined herein have the meanings set forth in the Parties’ Class Action Settlement Agreement (“Settlement” or “Agreement”), attached as Exhibit 1.

Plaintiffs' claims and the risks inherent in class litigation. Particularly relevant in this case, in addition to providing monetary relief to the class, the Defendant has ceased engaging in all outbound calling efforts.

Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2) provisionally certify the proposed Settlement Class; (3) appoint Plaintiffs' attorneys as Settlement Class Counsel; (4) appoint Plaintiffs as representatives of the Settlement Class; (5) approve the proposed Notice Plan, Notice, and Claim Form; and (6) schedule the Final Approval Hearing and related dates as proposed.

BACKGROUND

I. TCPA Background

In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy [.]” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227). The widespread public outrage about the proliferation of intrusive, nuisance telemarketing practices instigated the passage of the TCPA. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

1. Automatic Telephone Dialing System

The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a . . . cellular telephone service” *See* 47 U.S.C. § 227(b)(1)(A).

2. The National Do Not Call Registry

The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2). A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.* The TCPA and implementing regulations prohibit the initiation of telephone solicitations to residential telephone subscribers to the Registry and provides a private right of action against any entity that makes those calls, or “on whose behalf” such calls are promoted. 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

3. The TCPA’s Requirement that Companies Have Adequate Telemarketing Policies

Section 227(c) of the TCPA requires the FCC to “initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” 47 U.S.C. § 227(c)(1). These procedures are codified at 47 CFR 64.1200(d)(1)-(7). Specifically, § 64.1200(d) requires a company to keep a written policy, available upon demand, for maintaining a do-not-call list, train personnel engaged in telemarketing on the existence and use of its internal do-not-call list, and record and honor “do not call” requests for no less than five years from the time the request is made. 47 CFR § 64.1200(d)(1, 2, 3, 6). These policies and procedures prohibit a company from making telemarketing calls unless they have implemented these policies and procedures. 47 CFR 64.1200(d).

II. The Litigations against Hello Fresh Alleging TCPA Violations

On December 30, 2019, Grace Murray filed a putative class action complaint which alleged that HelloFresh violated the TCPA by, *inter alia*, placing unsolicited telemarketing calls

to Plaintiff and members of the putative class on residential and cellular telephone numbers that were listed on the National Do Not Call Registry. Ms. Murray sought to represent a putative class of similarly situated individuals.

On September 5, 2019, Amanda Engen filed a putative class action complaint in the United States District Court for the District of Minnesota against HelloFresh captioned *Amanda Engen v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433. The Complaint alleged that HelloFresh violated the TCPA by, *inter alia*, placing unsolicited telemarketing calls to Ms. Engen and members of the putative class on residential and cellular telephone numbers using an automated telephone dialing system and without adequate policies and procedures in place to make outbound telemarketing calls. Ms. Engen sought to represent a putative class of similarly situated individuals.

On July 9, 2020, plaintiffs Jeanne Tippett and Stephen Bauer filed a putative class action complaint in the United States District Court for the Southern District of New York against HelloFresh captioned *Jeanne Tippet, et. al. v Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433. The Complaint alleged that HelloFresh violated the TCPA by, *inter alia*, placing unsolicited telemarketing calls to Plaintiffs and members of the putative class on cellular telephone numbers using an automated telephone dialing system. Ms. Tippet and Mr. Bauer also sought to represent a putative class of similarly situated individuals.

Plaintiffs Robin Tubesing, Nikole Simecek, Michelle McOsker, Jacqueline Groff, and Heather Hall are also named class representatives on the consolidated amended complaint filed against HelloFresh in this Court in connection with this settlement.

Defendant Grocery Delivery E-Services USA, Inc., d/b/a HelloFresh is a subscription-based meal-kit delivery service based in New York, New York. HelloFresh provides “an

automatic, recurring weekly subscription” for meal kit delivery. *See* Declaration of Anthony I. Paronich attached as Exhibit 2 (“Paronich Decl.”) at ¶ 9. In 2015, HelloFresh started a “win back” telephone campaign targeting plaintiffs and other consumers who had deactivated, rather than paused, their HelloFresh accounts in the previous two years. HelloFresh ran the campaign for approximately five years and contracted with five vendors to make its calls: The Office Gurus, Ltd. (“TOG”), Akorbi BPO, LLC, Innovative Vision Marketing, Inc., Talk2Rep, Inc. d/b/a Outplex, and RSVP (Media Response) Ltd. *Id.* at ¶ 10. During the campaign, these vendors placed millions of calls to consumers, and the plaintiffs have alleged that the calls were without consent. *Id.* at ¶ 11.

In federal courts in the District of Massachusetts and the District of Minnesota, the parties engaged in legal briefing and oral argument on HelloFresh’s motions to compel plaintiffs to arbitrate their claims, which both courts denied. Dkt 33; *Engen v. Grocery Delivery E-Services USA Inc. doing business as HelloFresh*, 19-cv-02433 (D. Minn.), Dkt. 44. HelloFresh appealed the decisions to the First and Eighth Circuits. Dkt 34; *Engen v. Grocery Delivery E-Services USA Inc. doing business as HelloFresh*, 19-cv-02433 (D. Minn.), Dkt. 48. HelloFresh then sought a stay in the Massachusetts and Minnesota court actions pending the appeals. Dkt. 36; *Engen v. Grocery Delivery E-Services USA Inc. doing business as HelloFresh*, 19-cv-02433 (D. Minn.), Dkt. 51. Plaintiffs briefed both motions to oppose the stay. *Engen v. Grocery Delivery E-Services USA Inc. doing business as HelloFresh*, 19-cv-02433 (D. Minn.), Dkt. 56. The Massachusetts court denied the request (Dkt. 42), setting a scheduling order with a trial date of April 5, 2021. Counsel continued to prepare for trial in the District of Massachusetts. Plaintiffs were also researching and writing opposition briefs to HelloFresh’s appeals when both appeal calendars were stayed, pending the JAMS mediation.

Plaintiffs served extensive discovery requests on HelloFresh and a subpoena on the third-party vendor HelloFresh identified in its initial disclosures. Paronich Decl. at ¶ 12. Plaintiffs also engaged in discovery through the New York Better Business Bureau where HelloFresh is headquartered in the United States. *Id.* at ¶ 13. Plaintiffs retained third-party digital forensics experts, Vestige Ltd., to analyze relevant browser and website histories to evaluate the purchase process and Defendant's disclosures. *Id.* at ¶ 14. Through first-party and third-party discovery, the parties exchanged over 20,000 pages of documents. *Id.* at ¶ 15. Plaintiffs analyzed the document productions and hired an outside expert, Aaron Woolfson, to assist in evaluating the dialing system used by Hello Fresh and to identify putative class members in the calling data produced. *Id.* at ¶ 16. During discovery, the parties' counsel engaged in several settlement discussions, which were not successful. *Id.* at ¶ 17. After Plaintiffs discovered that HelloFresh hired additional third-party vendors to make its marketing calls, Plaintiffs filed a successful motion to compel Hello Fresh to identify those vendors. Order at Dkt. 55. Plaintiffs then served third-party subpoenas on those vendors. Paronich Decl. at ¶ 18. At this point, the parties' mediated the cases with the Hon. George H. King of JAMS in October 2020. *Id.* at ¶ 19. That mediation did not result in a settlement, but in further negotiations in the week following resulted in a settlement that formed the basis for the agreement presented to this Court for approval.

THE PROPOSED SETTLEMENT

Pursuant to the Settlement Agreement, Plaintiff seeks certification of the following Settlement Class for settlement purposes only:

All persons in the United States from September 5, 2015, to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the

calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with Hello Fresh's Internal Do-Not-Call List.

(Agreement ¶ 1.33). The proposed Settlement encompasses 4,831,281 individuals. The proposed Settlement establishes a non-reversionary \$14,000,000.00 Settlement Fund, which will exclusively be used to pay: (1) cash awards to Settlement Class Members; (2) Settlement Administration Expenses; (3) attorney's fees in addition to out of pocket expenses, subject to Court approval; and (4) a court-approved incentive award from \$2,000 to \$10,000 from the Settlement Fund to compensate the Class Representatives.³

Each Settlement Class Member who submits a valid claim shall be entitled to receive an equal *pro rata* amount of the Settlement Fund after all settlement administrative expenses, expected to be approximately \$30-50.00.⁴ In addition, since soon after the filing of the *Engen* matter, HelloFresh ceased its outbound calling activity.

I. Opt-Out and Objection Procedures

Persons in the Settlement Class will have the opportunity to exclude themselves from the Settlement or object to its approval. (Agreement ¶ 6). The procedures and deadlines for filing requests for exclusion and objections will be conspicuously listed in the E-Mail Notice, Postcard Notice, Long-Form Notice and on the Settlement Website and also informs Settlement Class

³ An incentive award of \$10,000 will compensate Grace Murray and Amanda Engen, the first two Class Representatives to file lawsuits as named plaintiffs, for their extensive involvement in assisting counsel with working up the background of the case against HelloFresh and providing detailed documents and information. An incentive award of \$5,000 will compensate Jeanne Tippet and Stephen Bauer, who were the third and fourth Class Representatives to file a lawsuit as named plaintiffs, for providing detailed documents and information to further the case against HelloFresh. An incentive award of \$2,000 will compensate Robin Tubesing, Nikole Simecek, Michelle McOsker, Jacqueline Groff, and Heather Hall for agreeing to serve as Class Representatives from different states around the country, providing detailed documents and information, and participating as named plaintiffs in the Consolidated Amended Complaint.

⁴ This assumes that 3-5% of consumers given notice will submit a claim which is consistent with the typical response rate seen in TCPA class settlements of this size.

Members that they will be bound by the release contained in the Settlement unless they timely exercise their opt-out right. (Agreement ¶ 6.2.3).

II. Release

The release is appropriately tailored to this case involving alleged violations like those alleged in the Consolidated Amended Complaint and is limited to those Settlement Class Members identified in the Class, which is compiled of data exchanged in discovery. In exchange for settlement benefits, the Settlement Class Members who do not timely opt out of the Settlement will release Defendant from any and all claims against the Defendant. (Agreement ¶ 2.2).

III. Attorneys' Fees, Costs, and Expenses Award

If the Settlement receives preliminary approval, Plaintiff's Counsel will apply to the Court for an award of attorneys' fees in the amount of up to one-third of the total amount of the Settlement Fund in addition to out of pocket expenses of up to \$40,000. An award of attorneys' fees and costs will compensate Plaintiffs' Counsel for the work already performed in relation to the settled claims, as well as the remaining work to be performed in documenting the Settlement, securing Court approval of the Settlement, making sure the Settlement is fairly implemented, and dismissing the action.

IV. Remaining Funds

Any amount remaining in the Settlement Fund after paying all approved Claim Forms, Notice and Administration Expenses, and any Fees, Costs, and Expenses Award and Service Award will be distributed to a Court-approved *cy pres* recipient. The Parties propose National Consumer Law Center as an appropriate recipient. (Agreement. ¶ 3.5).

THE FORM AND METHOD OF NOTICE

Notice and Administration Expenses will be exclusively paid from the Settlement Fund. The Parties have agreed upon, and propose that the Court approve, the nationally recognized class action administration firm Kurtzman Carson Consultants to be the Settlement Administrator, to implement the Class Notice, and to administer the Settlement, subject to review by counsel and the Court. (Agreement. ¶ 1.32). Kurtzman Carson Consultants estimates the costs to administer the Settlement will be approximately \$500,000.

Federal Rule of Civil Procedure 23(e)(1) “provides that, in the event of a class settlement, ‘[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.’” *Hill v. State St. Corp.*, No.1:09-cv-12146-GAO, 2014 U.S. Dist. LEXIS 179702, *36 (D. Mass. 2014) (quoting Fed. R. Civ. P. 23(e)(1)). “Federal Rule of Civil Procedure 23(c)(2)(B) provides that notice of the pendency of a class action certified under Rule 23(b)(3) must be ‘the best notice that is practicable under the circumstances.’” *Hill*, 2014 U.S. Dist. LEXIS 179702 at *36. “At a minimum, notice must inform class members of ‘(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).’” *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 336 (D. Mass. 2015) (quoting Fed. R. Civ. P. 23(c)(2)). Second, Rule 23(e) requires notification to all members of the class of the terms of any proposed settlement.

Here, the proposed notices, including the Email Notice, the Postcard Notice, and the Long-Form Notice on the Settlement Website, provide detailed information about the Settlement, including: (1) a comprehensive summary of its terms; (2) Class Counsel’s intent to request

attorneys' fees, reimbursement of costs and expenses, and an incentive award for the Plaintiff; and (3) detailed information about the Released Claims. (*See* Agreement, ¶ 4.4, Exhibits 2-4). In addition, the notices provide information about the Final Approval Hearing date, the right of Settlement Class Members to seek exclusion from the Settlement Class or to object to the proposed Settlement (as well as the deadlines and procedure for doing so), and the procedure to receive additional information. *Id.* In short, the notices are intended to fully inform Settlement Class Members of the lawsuit, the proposed Settlement, and the information they need to make informed decisions about their rights.

When possible, individual notice should be attempted to all class members who can be identified through reasonable efforts. *See In re Asacol Antitrust Litig.*, No. 1:15-cv-12730 (DJC), 2017 U.S. Dist. LEXIS 221904, *11 (D. Mass. 2017). Here, individual notice will be sent to each Settlement Class Member, all of whom are comprised from HelloFresh's business records. An Email Notice will be sent to each Settlement Class Member for whom an email address was included in the Class List. Postcard Notice will be mailed to any Settlement Class Members for whom an email address cannot be identified or does not reach the consumer. Prior to mailing, the Settlement Administrator will attempt to update the last known address of the Class Members through the National Change of Address database. Each notice will also direct Class Members to a Long-Form Notice which will be available via a case-dedicated website and will allow interested Settlement Class Members to complete and submit Claim Forms online. Settlement Class Members will also be able to request paper copies of claim forms if they prefer to file in that fashion. Accordingly, the proposed form and manner of notice are reasonable and adequate, in accord with due process and Rule 23, and should be approved.

**THE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARILY APPROVED
AS FAIR, REASONABLE AND ADEQUATE**

The First Circuit Court has long recognized that there is an overriding public interest in favor of settling class actions, *Lazar v. Pierce*, 757 F.2d 435, 439 (1st Cir. 1985); see *In re Lupron Mktg. and Sales Practices Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) (“the law favors class action settlements”).

In addition, “[t]here is usually an initial 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.” H. Newberg, A. Conte, *Newberg on Class Actions* (4th ed. 2002), §11.41. This is especially true when those negotiations involved a mediator. See *Lapan v. Dick’s Sporting Goods, Inc.*, No. 1:13-cv-11390-R, 2015 U.S. Dist. LEXIS 169508, at *3 (D. Mass. Dec. 11, 2015) (“The assistance of an experienced mediator...reinforces that the Settlement Agreement is non-collusive.”).

A district court “can approve a class action settlement if it is fair, adequate and reasonable.” *City Pshp. Co. v. Atlantic Acquisition*, 100 F.3d 1041, 1043 (1st Cir. 1996), quoting *Durrett v. Housing Auth. of City of Providence*, 896 F.2d 600, 604 (1st Cir. 1990). At the preliminary approval stage, this Court need only be satisfied that there is “probable cause” to believe that the settlement is fair and reasonable. *Id.*

The question for this Court is whether the settlement falls well within the range of possible approval and is sufficiently fair, reasonable and adequate to warrant dissemination of notice apprising class members of the proposed settlement and to establish procedures for a final settlement hearing under Rule 23(e). In determining whether class action settlements should be approved, “[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the

settlement. [Citation omitted] . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Under the Settlement Agreement, it is anticipated that Authorized Claimants will each receive \$30-50, assuming this Court grants the requested administration expenses, attorneys’ fees and costs, and service awards. The Parties have designed a simple claim process in an order to maximize the number of Settlement Class Members who submit claims. The Settlement was achieved only after utilizing the efforts of an experienced and sophisticated mediator in Hon. George King (Ret.) of JAMS who has helped resolve numerous TCPA class actions.

The value of the Settlement is squarely in line with other TCPA settlements. For example, in *Vasco v. Power Home Remodeling Group LLC*, No. 15-cv-4623, 2016 U.S. Dist. LEXIS 141044 (E.D. Pa. Oct. 12, 2016), the Court approved a TCPA class action settlement that provided for payments of \$27 per claimant. There, the court found that “[t]his amount is consistent with other class action settlements under the Act.” *Id.* at *23.⁵

Similarly, in *Gehrich*, 316 F.R.D. 215, another court approved a TCPA class action settlement. There, the court found that “[t]he actual recovery per claimant is approximately \$52.50.” *Id.* at 23. Although “that recovery is well below the \$500 statutory recovery available for each call,” the court found that “the recovery falls well within the range of recoveries in other recent TCPA class actions.” *Id.* As the court in *Gehrich* held, “[t]he essential point here is that the court should not ‘reject[]’ a settlement ‘solely because it does not provide a complete victory to plaintiffs,’ for ‘the essence of settlement is compromise.’” *Id.*

⁵ See also *Kolinek v. Walgreen Co.*, No. 13-cv-4806, 2015 WL 7450759, at *7 (N.D. Ill. Nov. 23, 2015) (\$30); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (\$34.60); *Rose v. Bank of Am. Corp.*, No. 11-cv-02390-EJD, 2014 U.S. Dist. LEXIS 121641, at *30 (N.D. Cal. Aug. 29, 2014) (\$20 to \$40)).

I. The Settlement Resulted from Arm’s Length Negotiations and is Not the Product of Collusion.

The requirement that a settlement be fair is designed to protect against collusion among the parties. This matter only reached resolution after months of negotiations and an all-day mediation, which occurred following months of discovery and with the assistance of Hon. George H. King (Ret.) a former Judge for the United States District Court for the Central District of California. As such, the settlement resulted from arm’s length negotiations. *See City P’ship Co. v. Atlantic Acquisition Ltd. P’ship*, 100 F.3d 1041, 1043 (1st Cir. 1996) (sufficient discovery and bargaining at arm's length creates a presumption in favor of settlement approval). The experience of counsel as longstanding class-action attorneys, the involvement of skilled mediators and the fair result reached are illustrative of the arm’s-length negotiations that led to the Settlement Agreement.

II. The Factual Record Was Well Developed Through Independent Investigation

Prior to the settlement discussions, the parties engaged in extensive discovery, with settlement discussions only occurring after the parties had engaged in discovery, hired experts, briefed critical legal issues on compelling arbitration, begun trial preparation, and appeals briefing was underway. Through this discovery, Plaintiff was able to assess the strengths and weaknesses of the case. By the time the Settlement was reached, Plaintiff and Settlement Class Counsel, who are experienced in bringing TCPA class actions, had “a clear view of the strengths and weaknesses” of their case. *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985). In sum, through their own investigation, Plaintiff and his counsel are in a strong position to make an informed decision on the merits of recommending the settlement, as they had a “full understanding of the legal and factual issues surrounding [the] case.” *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). This strongly supports settlement approval.

III. The Settlement Was Negotiated by Experienced Counsel

Counsel for the Plaintiff are experienced in class action litigation. As a result of the evaluation of counsel, the Settlement was reached as a means of fully resolving the cases without the burden or risks attendant with further litigation.

IV. Continued Litigation Came with Significant Risks

The expense, complexity and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. If approved, the Settlement would bring a sure end to what would be contentious and costly litigation with substantial risk.

First, shortly after this case was filed, the Supreme Court assessed the constitutionality of the TCPA in *Barr v. Am. Ass'n of Political Consultants (AAPC)*, 140 S. Ct. 2335, 207 L. Ed. 2d 784 (2020) (July 6, 2020). At issue in that case was a 2015 congressional amendment to the TCPA's general robocall restriction to permit robocalls made to collect debts owed to or guaranteed by the federal government. In *Barr*, the Supreme Court struck that down as an unconstitutional content-based restriction on speech and severed it from the rest of the statute. *Id.* However, defendants in TCPA cases have argued that the Supreme Court's fractured decision in *Barr* amounts to an adjudication that the entirety of § 227(b)(1)(A)(iii) was unconstitutional from the moment Congress enacted the offending government-debt exception to the moment the Supreme Court severed that exception to preserve the rest of the law. Indeed, at least two federal courts has adopted this interpretation. *See Lidenbaum v. Realgy, LLC*, No. 1:19 CV 2862, 2020 U.S. Dist. LEXIS 201572 (N.D. Ohio Oct. 29, 2020); *Creasy v. Charter Communs., Inc.*, No. 20-1199, 2020 U.S. Dist. LEXIS 177798, at *2 (E.D. La. Sep. 28, 2020).

Another substantial risk in this case focuses on the question of whether the dialing system used by Hello Fresh was an "Automatic Telephone Dialing System" under the TCPA. This question is set to be answered by *Duguid v. Facebook, Inc.*, 926 F.3d 1146 (9th Cir. 2019) was

also accepted by the Supreme Court for the 2021 term. The dialing system allegedly used by HelloFresh is less likely to be found to be an ATDS in the 3rd, 7th and 11th Circuit due to recent developments in those Circuits. Specifically, those decisions are *Gadelhak v. AT&T Servs.*, 950 F.3d 458 (7th Cir. 2020); *Dominguez v. Yahoo, Inc.*, 894 F.3d 116 (3rd Cir. 2018), and *Glasser v. Hilton Grand Vacations Company, LLC*, 2020 WL 415811 (11th Cir. Jan. 27, 2020). These cases should be considered a significant risk if the case here were litigated to judgment, because there was a likelihood that, given the split in authority, Supreme Court review could result in a less favorable ATDS interpretation. Notably, Justice Amy Coney Barrett wrote the decision for the Seventh Circuit in *Gadelhak*.

Class certification is also far from automatic in TCPA cases. *Compare Tomeo v. CitiGroup, Inc.*, No. 13 C 4046, 2018 WL 4627386, at *1 (N.D. Ill. Sept. 27, 2018) (denying class certification in TCPA case after nearly five years of hard-fought discovery and litigation). In addition, at least some courts view awards of aggregate, statutory damages with skepticism and reduce such awards — even after a plaintiff has prevailed on the merits — on due process grounds. *See, e.g., Aliano v. Joe Caputo & Sons – Algonquin, Inc.*, No. 09-910, 2011 WL 1706061, at *4 (N.D. Ill. May 5, 2011) (“[T]he Court cannot fathom how the minimum statutory damages award for willful FACTA violations in this case — between \$100 and \$1,000 per violation — would not violate Defendant’s due process rights Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature.”). Moreover, the narrative of the Defendant’s telemarketing compliance efforts could present a case for reduction of any damages awarded after trial and some courts have applied this principle in the TCPA context. For example, in *Golan v. Veritas Entm’t, LLC*, the court reduced the damages awarded in that TCPA class action lawsuit to \$10 a call. *Golan v. Veritas Entm’t, LLC*, No.

4:14CV00069 ERW, 2017 U.S. Dist. LEXIS 144501, at *6-9 (E.D. Mo. Sep. 7, 2017).

Finally, HelloFresh continued to argue that Plaintiffs were subject to arbitration clauses and a class action waiver and, therefore, were not entitled to litigate this matter in federal court. Although Plaintiffs defeated HelloFresh's motion to compel arbitration in both this Court and the District of Minnesota, HelloFresh appealed both decisions. The District of Minnesota ordered a stay of the action pending appeal. *Engen v. Grocery Delivery E-Services USA Inc. doing business as HelloFresh*, 19-cv-02433 (D. Minn.), Order dated 6/10/20 at *4; Dkt. 60.)

By reaching this Settlement, the parties will avoid protracted litigation and will establish a means for prompt resolution of Settlement Class Members' claims against Defendant. These avenues of relief provide a benefit to Settlement Class Members. In addition, the Defendant has ceased their outbound calling efforts. Given the alternative of long and complex litigation before this Court, the risks involved in such litigation, the Defendant's financial position, and the possibility of further appellate litigation, the availability of prompt relief under the Settlement is highly beneficial to the Class.

THE COURT SHOULD CERTIFY A SETTLEMENT CLASS.

The Supreme Court has made clear that even when the Court determines that a settlement is fair under the strictures of Fed. R. Civ. P. 23(e), it still must consider whether a class can be preliminarily certified under Rules 23(a) and (b). *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 619-21 (1997); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 858 (1999).

I. Rule 23(a)'s Requirements Are Satisfied

1. Numerosity

Rule 23(a)(1) requires that "the class [be] so numerous the joinder of all members is impracticable." Fed. R. Civ. P. 23(a); *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 258

(D. Mass. 2005). The issue is not the numerical size of the class but, as explicitly stated in Rule 23(a)(1), that joinder is impracticable. *Hatisberry v. Lee*, 311 U.S. 32, 41 (1941). The proposed settlement class encompasses 4,831,281 individuals. This number of class members demonstrates that joinder is simply a logistical impossibility. *See, e.g., Gorsev v. I.M. Simon & Co.*, 121 F.R.D. 135, 138 (D. Mass. 1988) (800 to 900 member class made joinder impracticable).

2. Commonality

Rule 23(a)(2) commonality exists “if there are questions of law or fact common to the class.” *Swack*, 230 F.R.D. at 259. This requirement is construed permissively and is often easily met. *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 63 (D. Mass. 1997) (describing the commonality requirement as a “low hurdle”). As other courts in this District have held, the commonality requirement is met where the “questions that go to the heart of the elements of the cause of action” will “each be answered either ‘yes’ or ‘no’ for the entire class” and “the answers will not vary by individual class member.” *Garcia v. E.J. Amusements of N.H., Inc.*, 98 F. Supp. 3d 277, 285 (D. Mass. 2015) (Saris, J.) quoting *Donovan v. Philip Morris USA, Inc.*, 2012 U.S. Dist. LEXIS 37974 at *21 (D. Mass. Mar. 21, 2012). Here, Plaintiff contends that the common questions are dispositive, apply equally to all class members, and can be resolved using common proof and uniform legal analysis. They include: 1) Is the dialing system utilized an “automatic telephone dialing system” as that term is defined in the TCPA? 2) Did HelloFresh have the recipient’s “prior express consent” signed in writing? 3) Did HelloFresh appropriately screen class members on the Do Not Call Registry? 4) Are class members entitled to statutory damages? 5) Is HelloFresh vicariously liable for the telemarketing activity of its third-party vendors? Plaintiff alleges that these legal and factual questions are shared by all class members.

3. Typicality

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class ...”. The requirement is satisfied if the “class representative[s] ... ‘possess the same interest and suffer the same injury’ as the class members.” *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). As long as the named representative’s claim arises from the same event, practice, or course of conduct that forms the basis of the class claims, and is based upon the same legal theory, varying factual differences between the claims or defenses of the class and the class representative will not render the named representative’s claims atypical. *Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 325 (D. Mass. 1997). Here, Plaintiffs contend that they and all Settlement Class Members received telemarketing calls promoting the same services and by similar dialing systems based on a single campaign to “win back” customers from HelloFresh. All putative class members’ claims flow from the same conduct and as such, typicality is satisfied.

4. Adequacy of Representation

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The First Circuit employs a two-part test in analyzing adequacy: (1) the class representatives’ interests must not conflict with the interests of the class; and (2) class counsel is experienced, qualified and able to vigorously conduct the proposed litigation. *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985). Both requirements are met. First, Plaintiffs’ counsel are experienced class action lawyers whose combined experience in TCPA class actions, and current diligence and commitment to this litigation, will more than adequately protect the interests of the class. See Exhibit 2-4, Declarations of Counsel. Second, there is no conflict or antagonism whatsoever between the Plaintiffs and the Settlement Class Members. All

share a united interest in putting an end to Defendant's allegedly illegal telemarketing practices, and all seek redress for the harm they suffered because of the practices.

II. Rule 23(b)(3) Is Satisfied

1. Common Issues Predominate

As the Supreme Court has held, while Rule 23(b)(3) requires a showing that *questions* common to the class predominate, it does not require proof that those questions will be answered, on the merits, *in favor of* the class. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 133 S. Ct. 1184, 1191 (2013). “[T]he office of a Rule 23(b)(3) certification ruling is not to adjudicate the case; rather, it is to select the ‘metho[d]’ best suited to adjudication of the controversy ‘fairly and efficiently.’” *Id.* TCPA claims, by their nature, involve large numbers of plaintiffs who received identical telemarketing contacts, a small number of defendants, and a common course of conduct that affected each plaintiff in the same way. Furthermore, as discussed above in connection with the commonality requirement under Rule 23(a)(2), the Plaintiffs contend they have identified at least five common issues that arise from Defendant's common course of conduct and are suitable for class adjudication.

Predominance exists here. As discussed above, virtually all issues of law and fact are identical among the class members. Under these circumstances, the requirements of Rule 23(b)(3) are present. Courts have routinely found predominance of common questions where the claims relate to a common course of conduct. *See, e.g., Waste Mgt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000) (predominance requirement satisfied by “sufficient constellation of common issues [that] bind class members together” and “cannot be reduced to a mechanical, single-issue test”); *Duhaime*, 177 F.R.D. 54, 64 (D. Mass. 1997) (requirement is “readily met in cases alleging consumer ... fraud” where claim alleges single course of conduct, quoting *Amchem*, 521 U.S. at 625).

2. A Class Action Is the Superior Method Of Adjudicating This Matter

The second prong of the analysis under Rule 23(b)(3) requires a finding that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). The TCPA, its allocation of statutory damages in an amount not to exceed \$1,500 and its lack of a mechanism to award attorneys’ fees, effectively means that it is not economically viable for class members to pursue claims against the defendants on an individual basis. Unsurprisingly, courts routinely find class actions to be the superior method of adjudicating claims in the TCPA context. Indeed, the Massachusetts Court of Appeals has stated “the majority of courts to have discussed the issue under various cognate class action provisions and hold that the class action mechanism is a superior avenue for adjudication of claims under 47 U.S.C. § 227.” *Hazel’s Cup & Saucer, LLC v. Around The Globe Travel, Inc.*, 2014 WL 4106870, 3 (Mass. App. Ct. August 22, 2014). A single litigation is superior to a series of other litigations or to individuals potentially foregoing their claims.

CONCLUSION AND SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the Court must set a final approval hearing date, dates for mailing and publication of the Notice and deadlines for filing claims, objecting to the Settlement, opting out of the Settlement Class, and filing papers in support of the Settlement. The parties have proposed a Schedule of Events in their Proposed Preliminary Approval Order, attached as Exhibit 5.

Dated: November 22, 2020

Plaintiffs by their attorneys,

/s/ Anthony I. Paronich

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send notification to all attorneys of record.

/s/ Anthony I. Paronich

Anthony I. Paronich

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRACE MURRAY, on behalf of herself and
others similarly situated,

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

Case No. 19-cv-12608-WGY

SETTLEMENT AGREEMENT AND RELEASE

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PREAMBLE

It is hereby stipulated and agreed by and among the undersigned Parties (defined below), subject to the approval of the Court, that the settlement of this Action (defined below) shall be effectuated pursuant to the terms and conditions set forth in this Settlement Agreement and Release (the “Agreement” or “Settlement Agreement”).

RECITALS

The following recitals are incorporated by reference and are considered part of the Settlement Agreement:

A. On December 30, 2019, plaintiff Grace Murray filed a putative class action complaint (the “Complaint”) in the United States District Court for the District of Massachusetts against Grocery Delivery E-Services USA Inc. d/b/a HelloFresh (“HelloFresh” or “Defendant,” and together with Plaintiff, the “Parties”) captioned *Grace Murray v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 19-cv-12608-WGY (the “Action”). The Complaint alleged that HelloFresh violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by, *inter alia*, placing unsolicited telemarketing calls to Plaintiff and members of the putative class on residential and cellular telephone numbers that were listed on the National Do Not Call Registry.

B. On September 5, 2019, plaintiff Amanda Engen filed a putative class action complaint (the “Complaint”) in the United States District Court for the District of Minnesota against HelloFresh captioned *Amanda Engen v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433. The Complaint alleged that HelloFresh violated the TCPA by, *inter alia*, placing unsolicited telemarketing calls to Ms. Engen and members of the putative class

on residential and cellular telephone numbers using an automated telephone dialing system and without adequate policies and procedures in place to make outbound telemarketing calls.

C. On July 9, 2020, plaintiffs Jeanne Tippett and Stephen Bauer filed a putative class action complaint in the United States District Court for the Southern District of New York against HelloFresh captioned *Jeanne Tippett, et. al. v Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433. The Complaint alleged that HelloFresh violated the TCPA by, *inter alia*, placing unsolicited telemarketing calls to Plaintiff and members of the putative class on cellular telephone numbers using an automated telephone dialing system.

D. HelloFresh disputes Plaintiff's allegations in the Complaints and maintains that it complied with the TCPA and all applicable laws. The Parties are entering into this Agreement to avoid the risk and expense of further litigation, to resolve all disputes that have arisen between them, and to settle any and all claims that do or may exist in the past, present, or future.

E. This Settlement Agreement is the result of good faith, arm's-length settlement negotiations that took place only after the Parties engaged in discovery. The Parties have exchanged information through discovery, have participated in mediation under the guidance of mediator Hon. George H. King (Ret.) from JAMS, and have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions.

F. The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This Settlement Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

G. The Parties hereby stipulate and agree that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, the Action shall be fully and finally settled and the Action dismissed with prejudice under the following terms and conditions.

AGREEMENT

1. DEFINITIONS

In addition to the definitions included above, and in the Distribution Plan (Section 3) of the Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are in bold-face font and listed in alphabetical order:

1.1 Actions. Collectively refers to *Grace Murray v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 19-cv-12608-WGY (D. Mass.), *Jeanne Tippet, et. al. v Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433 (S.D.N.Y.), *Amanda Engen v. Grocery Delivery E-Services USA Inc. d/b/a Hello Fresh*, Case No. 0:19-cv-02433 (D. Minn.).

1.2 Agreement or Settlement Agreement. This document, including all exhibits.

1.3 Authorized Claimant. A Claimant who submits a timely and valid Claim Form according to the terms of this Settlement Agreement and does not validly request exclusion from the Settlement Class.

1.4 Claim. A request by a Settlement Class Member for payment pursuant to this Agreement.

1.5 Claimant. A Settlement Class Member who has submitted a Claim Form with the claims process described in Section 3.

1.6 Claim Form. The document Settlement Class Members submit to request payment pursuant to this Agreement. The Claim Forms submitted to the Court for approval must be substantially in the form of those attached as Exhibit 5.

1.7 Class List. The database that HelloFresh's Counsel provides, subject to approval from Settlement Class Counsel, to the Settlement Administrator, which includes, among other things, the phone number, email addresses, if any, and postal addresses, if any, of Settlement Class Members.

1.8 Class Period. From September 5, 2015 through December 31, 2019.

1.9 Court. United States District Court, District of Massachusetts

1.10 Cy Pres Recipients. National Consumer Law Center.

1.11 Distribution Plan. The plan, set forth in Section 3, for distributing the Settlement Fund.

1.12 HelloFresh's Counsel. Sheppard, Mullin, Richter & Hampton LLP.

1.13 Effective Date. The first date after which the following events and conditions have occurred: (a) the Court has entered a Final Judgment; and (b) the Final Judgment has become final in that the time for appeal or writ has expired or, if any appeal and/or petition for review is taken and the settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, this Agreement will be terminated and cancelled and the Parties will be returned to their positions *status quo ante* with respect to the Action as if this Agreement had not been entered into.

1.14 Email Notice. The summary notice of the settlement that is emailed to Settlement Class Members pursuant to Section 4, providing a link to the Claim Form, a link to the Settlement

Website, and contact information for the Settlement Administrator. The Email Notice submitted to the Court for approval must be substantially in the form attached as Exhibit 3.

1.15 Fees, Costs, and Expenses Award. The amount of attorneys' fees and reimbursement of costs and expenses awarded to Settlement Class Counsel by the Court from the Settlement Fund.

1.16 Fairness Hearing or Final Approval Hearing. The hearing held by the Court to consider evidence and argument for the purpose of determining whether to enter the Final Approval Order and Final Judgment, and evaluating the Fees, Costs and Expenses Award and request for an award of Service Payment to Plaintiffs.

1.17 Final Approval Order. The order finally certifying the Settlement Class, and approving the settlement as fair, reasonable, and adequate, substantially in the form attached as Exhibit 7.

1.18 Final Judgment. The final judgment and order of dismissal with prejudice to be entered by the Court substantially in the form attached as Exhibit 8.

1.19 Individual Allocated Payment Amount. Defined by mathematical formula in the Distribution Plan. The checks sent to Authorized Claimants shall be in that Authorized Claimant's Individual Allocated Payment Amount.

1.20 Initial Payments. The sum of the following amounts: Service Payment, and any Fees, Costs, and Expenses Award, and any fees and costs of the Settlement Administrator due to be paid from the Settlement Fund pursuant to Section 2.1.

1.21 Long-Form Notice. The long-form version of the notice of the settlement that is to be provided on the Settlement Website. The Long-Form Notice submitted to the Court for approval must be substantially in the form attached as Exhibit 2.

1.22 Opt-Out Form. The document Settlement Class Members submit to request to be excluded from this Agreement. The Opt-Out Form submitted to the Court for approval must be substantially in the form attached as Exhibit 6.

1.23 NDNCR. National Do Not Call Registry.

1.24 Net Settlement Fund. The Settlement Fund, reduced by the Initial Payments.

1.25 Plaintiffs. Grace Murray, Amanda Engen, Stephen Bauer, Jeanne Tippett, Robin Tubesing, Nikole Simecek, Michelle McOsker, Jacqueline Groff, and Heather Hall.

1.26 Postcard Notice. The summary notice of the settlement that is mailed to Settlement Class Members pursuant to Section 4, providing the URL of the Settlement Website and contact information for the Settlement Administrator. The Postcard Notice submitted to the Court for approval must be substantially in the form attached as Exhibit 4.

1.27 Preliminary Approval Order. The Order of Preliminary Approval of Settlement to be entered by the Court substantially in the form attached as Exhibit 1.

1.28 Pro Rata Multiplier. Defined by mathematical formula in the Distribution Plan.

1.29 Released Claims. 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 the Final Approval Order, that arise out of or relate in any way to the Released Parties' use of any telephone, any telephone or dialing equipment, any dialing systems or tools, an "automatic telephone dialing

system,” or an “artificial or prerecorded voice” to contact or attempt to contact Members of the Settlement Class. This release expressly includes, but is not limited to, all claims under the Telephone Consumer Protection Act and corollary or similar state laws or enactment of any other statutory or common law claim arising. The Released Claims include any and all claims that were brought or could have been brought in the Action.

1.30 Released Parties. HelloFresh and each of its respective past, present, and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and those working on behalf of each of them including but not limited to the vendors used to make the calls, and each of their respective executors, successors, assigns, and legal representatives. The release of any third parties is limited to any actions taken on behalf of HelloFresh.

1.31 Releasing Parties. Plaintiffs and all other Settlement Class Members, and their respective assigns, heirs, executors, administrators, successors, and agents, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

1.32 Response Deadline. The date by which a Settlement Class Member must submit a Claim Form, object to this Agreement, or submit a request for exclusion to the Settlement Administrator. The Response Deadline shall be ninety (90) days after entry of the Preliminary Approval Order.

1.33 Service Payment. One-time payment to the Plaintiffs as set forth in Section 2.1.3.

1.34 Settlement Administrator. Subject to Court approval, Kurtzman Carson Consultants, LLC.

1.35 Settlement Class or Class. All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones via a dialing platform; (b) placed at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) placed one or more calls after registering the landline, wireless, cell, or mobile telephone number on HelloFresh's Internal Do-Not-Call List. Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

1.36 Settlement Class Counsel. Paronich Law, P.C.; Turke & Strauss LLP; Robins Kaplan LLP.

1.37 Settlement Class Member(s) or Class Member(s). All persons or entities who fall within the Settlement Class.

1.38 Settlement Fund. HelloFresh agrees to pay fourteen million dollars (\$14,000,000) to create a non-reversionary, capped Settlement Fund. HelloFresh shall owe no interest on the Settlement Fund. The Settlement Fund shall represent the maximum payment to be paid by HelloFresh and will be used to pay all approved claims, costs of administration, and permitted fees, costs and/or service awards. In no event will HelloFresh be required to pay more than the capped Settlement Fund.

1.39 Settlement Website. A website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with notice of the proposed settlement. This website will allow Settlement Class Members to submit Claims and opt-out of the Agreement.

1.40 Unknown Claims. Claims that the Releasing Parties do not know or suspect to exist in their favor at the time of their granting a release, which if known by them might have affected their settlement of the Action. With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that each Releasing Party shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542 or any federal, state, or foreign law, rule, regulation, or common-law doctrine that is similar, comparable, equivalent, or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the Final Judgment acknowledges, that he/she/it is aware that he/she/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but it is his/her/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not

concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

2. SETTLEMENT CONSIDERATION (BENEFITS AND RELEASE OF CLAIMS)

2.1 Settlement Fund.

2.1.1 Payment of the Settlement Fund. On or before fourteen (14) calendar days after entry of the Preliminary Approval Order, HelloFresh shall pay the amount estimated by the Settlement Administrator to cover the cost of providing notice to the Settlement Class and administering the Claims process. On or before twenty-one (21) calendar days after the Effective Date, HelloFresh shall provide the remainder of the Settlement Fund to the Settlement Administrator that was not already provided to the Settlement Administrator pursuant to the preceding sentence. HelloFresh shall not have the obligation to segregate the funds comprising the Settlement Fund from its other assets, and if HelloFresh retains and/or exercises authority or control over the funds comprising the Settlement Fund after entry of the Preliminary Approval Order, it shall do so in conformity with its obligations under this Agreement, applicable state and federal law, and Court order(s).

2.1.2 Settlement Class Member Benefits. Settlement Class Members shall be eligible to receive monetary benefits from the Net Settlement Fund in accordance with the Distribution Plan.

2.1.3 Service Payment. Plaintiffs may apply to the Court for an award of Service Payment, and HelloFresh reserves the right to respond to such request as it deems appropriate. The Settlement Administrator shall pay any Service Payment awarded by the Court from the Settlement Fund. The finality or effectiveness of the settlement will not be dependent on the Court awarding Plaintiff any particular amount on their Service Payment.

2.1.4 Settlement Class Counsel's Fees, Costs, and Expenses. Settlement Class Counsel may make a reasonable request for fees, costs, and expenses to the Court. HelloFresh reserves the right to respond to such fee request as it deems appropriate. Any attorneys' fees, costs, and expenses awarded by the Court shall be paid by the Settlement Administrator from the Settlement Fund. The finality or effectiveness of the settlement will not be dependent on the Court awarding Settlement Class Counsel any particular amount on their Fees, Costs, and Expenses Award.

2.1.5 Settlement Administrator and Notice and Administrative Costs. Notice and Administrative Costs shall be paid from the Settlement Fund, or in the event such costs and expenses are incurred but the Effective Date does not occur, shall be paid by HelloFresh.

2.2 Releases.

2.2.1 Release of Settlement Class Claims. The Parties intend that this Agreement will fully and finally dispose of the Action and any and all Released Claims against the Released Parties. As of the Effective Date, each Releasing Party will be deemed to have completely released and forever discharged the Released Parties, and each of them, from and for any and all Released Claims.

3. DISTRIBUTION PLAN

3.1 Initial Payments. Except as otherwise provided, on or before thirty (30) calendar days after the Effective Date, the Settlement Administrator shall deduct all Initial Payments from the Settlement Fund and deliver them to the appropriate individuals or entities entitled to them, in accordance with the terms of the Agreement and the Court's Final Approval Order and Final Judgment.

3.1.1 Additional Instructions Regarding Service Payment. Class Counsel shall provide the Settlement Administrator his relevant Form W-9 and instructions for payment.

The Settlement Administrator shall have no obligation to forward to any of the plaintiffs the Service Payment until it receives the Form W-9 and payment instructions.

3.1.2 Additional Instructions Regarding Fees, Costs, and Expenses Award.

Settlement Class Counsel shall provide the Settlement Administrator the relevant Form W-9 and any instructions for payment. The Settlement Administrator shall have no obligation to pay forward the Fees, Costs, and Expenses Award until it receives the Form W-9 (or Form W-9s, if applicable) and payment instructions.

3.1.3 Additional Instructions for Individual Allocated Payment Amounts.

Settlement Class Members will be asked to provide either a taxpayer identification or a social security number if they are receiving \$600 or more in an Individual Allocated Payment Amount due to Internal Revenue Service reporting requirements. The Settlement Administrator will issue a written notice to Settlement Class Members who will receive a payment of \$600 or more as Individual Allocated Payment Amounts, once the allocation of Individual Allocated Payment Amounts is determined following Final Approval. If no taxpayer identification or social security number is timely provided, payment of the Individual Allocated Payment Amount may be subject to backup withholding as required by Internal Revenue Service regulations.

3.2 Authorized Claimant Settlement Award Calculations. The awards to Authorized Claimants shall be calculated and apportioned as follows:

3.2.1 A Settlement Class Member is eligible to claim a pro rata share of the Net Settlement Fund provided they become an Authorized Claimant by submitting a timely and valid Claim Form and their telephone number is on the Class List.

3.2.2 The Settlement Administrator shall calculate the total number of Authorized Claimants. The Net Settlement Fund shall be divided by the Total Number of Authorized Claimants. The resulting figure is the “Pro Rata Multiplier.”

3.2.3 For each Authorized Claimant, the “Individual Allocated Payment Amount” shall be the number obtained by multiplying the number of Authorized Claimants on the Class List by the Pro Rata Multiplier.

3.3 Distribution of Authorized Claimant Awards. The Claim Form shall allow Settlement Class Members to elect between receiving an award by check or electronically (including by Automated Clearing House (“ACH,” a/k/a direct deposit)), PayPal, and any other electronic payment format recommended by the Settlement Administrator and agreed upon by the Parties). For those Authorized Claimants who requested an award by check, their Individual Allocated Payment Amounts shall be mailed as a check by the Settlement Administrator within forty-five (45) calendar days following the Effective Date. To those Authorized Claimants who requested the award to be transmitted by electronic means, a transfer reflecting their Individual Allocated Payment Amounts shall be transmitted to the Authorized Claimant between forty-five (45) and fifty (50) calendar days after the Effective Date.

3.4 Address Verification / Returned Checks. Prior to mailing checks under this settlement, the Settlement Administrator shall attempt to update the last known addresses of Authorized Claimants through the National Change of Address database. No skip-tracing shall be done as to any checks that are returned by the postal service with no forwarding address. Authorized Claimants’ checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days.

3.5 Uncashed Settlement Checks. Any checks issued under this settlement shall be negotiable for at least ninety (90) calendar days. Individual checks that have not been negotiated within ninety (90) calendar days after issuance, if any, shall be void, and the underlying funds shall be paid by the Settlement Administrator to the Cy Pres Recipients.

3.6 Failed Electronic Transmission of Funds. Settlement Class Members who elect that their Individual Allocated Payment Amount be transmitted to themselves via electronic means, but fail to provide sufficient or correct information to permit such transfer, shall, after a reasonable attempt to resolve any such payment issues, relinquish their right to payment pursuant to the Agreement. Funds that were unable to be transferred to the Authorized Claimants electronically shall be paid to Authorized Claimants, where possible, by check, and otherwise (after any Second Eligible Payment) by the Settlement Administrator to the Cy Pres Recipients.

3.7 Second Eligible Payment. Prior to the Cy Pres payment, Settlement Class Members who received an eligible payment pursuant to the Agreement will receive a second pro rata payment to the extent such a payment is economically feasible (the “Second Eligible Payment”).

3.8 Cy Pres Distribution. Any remaining funds will be paid to the Cy Pres Recipients under this Agreement within thirty (30) days following the Second Eligible Payment.

3.9 No Claims Related to Distribution Calculations. No person or entity shall have any claim against HelloFresh, HelloFresh’s Counsel, Plaintiffs, the Settlement Class Members, Settlement Class Counsel, or any Settlement Administrator based on distributions and payments made in accordance with this Agreement.

4. CLASS NOTIFICATION PROCEDURES

4.1 CAFA Notice. Within ten (10) calendar days after this Agreement is filed with the Court, HelloFresh, through the Settlement Administrator, shall serve upon relevant government

officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715. The Settlement Administrator shall thereafter complete a declaration attesting to the completion of notice pursuant to 28 U.S.C. § 1715 such that it can be filed with the Court in advance of the hearing on Plaintiff's motion for entry of the Preliminary Approval Order.

4.2 Class List. Unless otherwise ordered by the Court, within ten (10) calendar days after entry of the Preliminary Approval Order, HelloFresh shall provide the Settlement Administrator the Class List.

4.3 Settlement Website. Unless otherwise ordered by the Court, within thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will activate the Settlement Website. The Settlement Website shall be designed and constructed to accept electronic Claim Form and Opt-Out Form submission. To help protect against fraudulent submissions, the Settlement Administrator may use CAPTCHA or similar technology for each electronic form submission. Additionally, the Settlement Administrator shall post on the Settlement Website: (a) the operative Complaint, (b) the Agreement, (c) the Preliminary Approval Order, (d) the Long-Form Notice, (e) a downloadable (i.e., PDF) Claim Form, and (f) within three (3) Court days after it is filed, Settlement Class Counsel's motion for a Fees, Costs, and Expenses Award. The Settlement Website will be active until the last date Authorized Claimants have to negotiate any checks sent pursuant to Section 3.

4.4 Notice to Class Members.

4.4.1 Email Notice. Unless otherwise ordered by the Court, on or before thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall send Email Notice (attached hereto as Exhibit 3) to those Settlement Class Members for whom an email address was provided in the Class List.

4.4.2 Postcard Notice. Unless otherwise ordered by the Court, on or before thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall begin sending Postcard Notice (attached hereto as Exhibit 4) to Settlement Class Members for whom an email address was either not provided in the Class List, or for whom an the e-mail was not delivered. Prior to mailing the Postcard Notice under this settlement, the Settlement Administrator shall attempt to update the last known addresses of the Class Members through the National Change of Address database.

4.5 Inquiries from Settlement Class Members. The Settlement Administrator will establish an email account and P.O. Box to which Class Members may submit questions regarding the settlement. The Settlement Administrator will monitor the email account and P.O. Box and respond promptly to inquiries received from Class Members. Additionally, no later than thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number that Settlement Class Members can call and listen to a set of Frequently Asked Questions and corresponding answers.

5. CLAIMS SUBMISSION AND VALIDATION PROCESS

5.1 Claim Process for Settlement Class Members. To be eligible to receive an award under this Agreement, subject to the Claims review process, Settlement Class Members must accurately and timely complete and submit a Claim Form and deliver that form to the Settlement Administrator. Only one Claim Form may be submitted per Settlement Class Member.

5.2 Claim Form Submission Deadline. Claim Forms must be submitted by the Response Deadline. If submitted electronically (through the Settlement Website or by email), Claim Forms must be received on or before the Response Deadline by 11:59 p.m. PST. If submitted by postal mail, the date of the postmark on the envelope containing the Claim Form shall be the exclusive means used to determine whether Claim Form has been timely submitted.

In the event a postmark is illegible, the date of mailing shall be deemed to be three (3) days prior to the date that the Settlement Administrator received a copy of the Claim Form.

5.3 Claims Review Process.

5.3.1 Review of Claims. The Settlement Administrator shall review all submitted Claim Forms within a reasonable time for completeness, validity, accuracy, and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any Claim. In addition, the Settlement Administrator may verify that: (1) the information set forth in a submitted Claim Form is accurate; and (2) the Claimant is a Settlement Class Member. To be considered an “Authorized Claimant,” a Claimant must submit a valid, complete, and timely Claim Form. Claim Forms that do not meet the submission requirements shall be rejected. The Class List provided by HelloFresh will be entitled to a rebuttable presumption of accuracy.

5.3.2 Deficient Claims. Prior to rejection of a Claim Form, the Settlement Administrator shall communicate with the Claimant in an effort to remedy curable deficiencies in the Claim Form submitted, except in instances where (i) the Claim is untimely, or (ii) the Claimant does not appear on the Class List.

5.3.3 Manner of Communicating Deficiency. If the Claim Form at issue was submitted electronically, the Class Member shall be notified by email to the original email address used. If the Claim Form at issue was submitted by mail, the Class Member shall be notified by the email address on the Claim Form, unless the Class Member did not provide one, in which case mail to the original postal address shall be used.

5.4 Claims Accounting. No later than fourteen (14) calendar days before the filing date for Plaintiff’s motion in support of the Final Approval Order and Final Judgment, the

Settlement Administrator will serve upon Settlement Class Counsel and HelloFresh's Counsel a report indicating, among other things, the number of timely and valid Claim Forms that were submitted.

6. OBJECTIONS AND REQUESTS FOR EXCLUSION

6.1 Objections. Any Settlement Class Member who has not submitted a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the Fees, Costs, and Expenses Award, or the Service Payment must comply with the following requirements. Objections may be submitted to the Settlement Administrator by email, or to either the Settlement Administrator or the Court by postal mail. If an objection is submitted by postal mail, the Settlement Class Member must pay for postage.

6.1.1 Content of Objections. All objections and supporting papers must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the objecting Settlement Class Member; (d) include the full name, address, telephone number, and email address of the objector's counsel, and the state bar(s) to which counsel is admitted (if the objector is represented by counsel); and (e) provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits.

6.1.2 Deadline for Objections. Objections must be submitted by the Response Deadline. If submitted by email, objections must be received on before the Response Deadline by 11:59 p.m. PST. If submitted by postal mail, objections must be postmarked by the Response Deadline. The date of the postmark on the envelope containing the written statement objecting to

the Settlement shall be the exclusive means used to determine whether an objection has been timely submitted. In the event a postmark is illegible, the date of mailing shall be deemed to be three (3) days prior to the date that the Settlement Administrator received a copy of the objection.

6.1.3 Failure to Object. Settlement Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be forever barred from making any objection to the Agreement and the proposed settlement by appearing at the Final Approval Hearing, appeal, collateral attack, or otherwise.

6.1.4 Attendance at Final Approval Hearing. Any Class Member who timely submits a written objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through personal counsel. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Final Approval Hearing must include on a timely and valid objection a statement substantially similar to “Notice of Intention to Appear.” Only Settlement Class Members who submit timely objections including Notices of Intention to Appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his or her personal attorney’s fees and costs.

6.2 Requests for Exclusion. This Settlement Agreement will not bind Settlement Class Members who timely and validly request to be excluded (also known as opting-out) of the settlement. Individual requests for exclusion may be submitted to the Settlement Administrator electronically (through the Settlement Website) or by postal mail, but if submitted by postal mail, each Settlement Class Member must pay for postage. No mass opt-outs are allowed.

6.2.1 Contents of a Request for Exclusion. All requests for exclusion must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and

the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the Settlement Class Member seeking exclusion; (d) contain a statement that the requestor does not wish to participate in the settlement; and (e) be signed personally by the Settlement Class Member. The Settlement Website shall contain a copy of an Opt-Out Form, substantially in the form attached as Exhibit 6, that Settlement Class Members may (but are not required to) use to request exclusion from the settlement.

6.2.2 Deadline to Request Exclusion. To be excluded from the settlement, the request for exclusion must be submitted by the Response Deadline. If submitted electronically (through the Settlement Website), the request for exclusion must be received no later than 11:59 p.m. PST on or before the Response Deadline. If submitted by postal mail, the request for exclusion must be date-and-time-stamped, or postmarked, no later than the Response Deadline. In the event a postmark is illegible, the date of mailing shall be deemed to be three (3) days prior to the date that the Settlement Administrator received a copy of the request for exclusion.

6.2.3 Effect of Requesting Exclusion. Any person or entity who falls within the definition of the Settlement Class and who validly and timely requests exclusion from the Settlement Class shall not be a Settlement Class Member; shall not be bound by the Settlement Agreement; shall not be bound by any judgment entered in the Action; shall not be eligible to make a Claim for any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an objection to the settlement. However, if a Settlement Class Member submits a Claim Form and request for exclusion, the request for exclusion shall be invalid and the Settlement Class Member shall remain a member of the Settlement Class.

6.2.4 Exclusion List. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide Settlement Class Counsel and HelloFresh's Counsel with a list of all persons and entities who have timely and validly excluded themselves from the settlement. The exclusion list shall be filed with the Court as part of Plaintiff's motion for entry of the Final Approval Order and Final Judgment.

7. COURT APPROVAL PROCEDURES

7.1 Provisional Class Certification and Preliminary Approval Order.

7.1.1 Settlement Class. For settlement purposes only, the Parties agree that Plaintiff will move for certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3) within twenty-eight (28) calendar days following the execution of this Agreement. HelloFresh agrees not to contest certification of the Settlement Class but specifically disputes that a class would otherwise be manageable in this action and denies that a litigation class properly could be certified on the claims asserted in the Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose and hereby agrees to certification of the Settlement Class for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3).

7.1.2 Certification of the Settlement Class for settlement purposes will not be deemed a concession that certification of any litigation class in the Action is, or was, appropriate, nor will HelloFresh be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Effective Date does not arise. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Class

or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action, or any other judicial proceeding.

7.1.3 Preliminary Settlement Approval. Contemporaneously with his motion for provisional certification of the Settlement Class, Plaintiff shall move the Court for a Preliminary Approval Order substantially in the form attached as Exhibit 1 and setting the Final Approval Hearing at least one hundred and thirty-five (135) calendar days after entry of the Preliminary Approval Order.

7.1.4 HelloFresh's Brief. HelloFresh shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Preliminary Approval Order.

7.2 Final Approval Hearing and Final Judgment.

7.2.1 Settlement Class Counsel's Motion for Fees, Costs, and Expenses Award and Service Payment. At least twenty-one (21) calendar days before the Response Deadline, Settlement Class Counsel shall file with the Court: (a) their motion in support of a Fees, Costs, and Expenses Award; and (b) any applications by the plaintiffs for award of a Service Payment.

7.2.2 Declarations In Support of Final Approval. No later than twenty-one (21) calendar days before the Final Approval Hearing, the Settlement Administrator will provide to Settlement Class Counsel a sworn declaration verifying that notice was provided to Class Members. In addition, the Settlement Administrator's declaration shall include information regarding the persons who have requested exclusion from the Settlement Class and any objections sent to the Settlement Administrator.

7.2.3 Motion for Final Settlement Approval. At least fourteen (14) calendar days before the Final Approval Hearing, Plaintiff will request that the Court enter the Final Approval Order and Final Judgment substantially in the forms attached as Exhibits 7 and 8.

7.2.4 HelloFresh's Brief. HelloFresh shall be permitted, but not required, to file its own brief or statement of non-opposition in support of the Final Approval Order and Final Judgment.

7.3 Modifications Suggested by the Court. If the Court suggests any modifications to the Agreement or conditions entry of the Preliminary Approval Order, Final Approval Order, or Final Judgment on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, HelloFresh shall not be obligated to make any additions or modifications to the Agreement that would affect the benefits provided to Settlement Class Members, or the cost to or burden on HelloFresh, or the scope of any of the releases contemplated in this Agreement. If the Court orders or proposes such additions or modifications, HelloFresh shall have the right to terminate the Settlement Agreement within fourteen (14) calendar days from the date of the Court's order or proposal. If HelloFresh elects to terminate the Settlement Agreement pursuant to this section, the Agreement will be deemed null and void *ab initio* and the provisions of Sections 8.2 - 8.4 will apply.

8. CONTINGENCIES; TERMINATION

8.1 Hello-Fresh's Right to Terminate Settlement. If the number of Settlement Class Members who request exclusion exceeds one percent (1%) of Settlement Class Members, then HelloFresh may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided a minimum of twenty-one (21) calendar days after the Response

Deadline. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio* and Sections 8.2 - 8.4 below will apply.

8.2 Decertification of the Settlement Class If Settlement Not Approved. If the Court does not enter the Final Judgment without material modification, or if the Final Judgment is reversed in whole or in part on appeal, or if the Effective Date does not occur, certification of the Settlement Class will be vacated, and the Parties will be returned to their positions *status quo ante* with respect to the Action as if this Agreement had not been entered into. In the event that Final Judgment or Effective Date is not achieved, (a) any court orders preliminarily or finally approving the certification of any class contemplated by the Agreement and any other orders entered pursuant to the Agreement shall be null, void, and vacated and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support of or in opposition to a class certification motion; and (b) this Agreement will become null and void, and the fact of this Agreement, that HelloFresh did not oppose the certification of any class under the Agreement, or that the Court approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including but not limited to in any contested proceeding relating to the certification of any class or relating to enforcement of arbitration agreements and class-action waivers. Additionally, this Agreement, any negotiations or proceedings related to it, the implementation of it, and any papers submitted in support of the motions for approval of it cannot be construed as, or deemed to be, evidence of any admission or concession by any of the Parties regarding liability, damages, or the appropriateness of class treatment, and are not to be offered or received in evidence in any action or proceeding for any purpose whatsoever.

8.3 Contingencies. This Agreement shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, if: (a) there is no Effective Date; (b) the Court

fails to enter a Preliminary Approval Order substantially in the form attached as Exhibit 1; (c) the Court fails to enter Final Approval Order or the Final Judgment substantially in the form of those attached as Exhibits 7 and 8; or (d) HelloFresh elects to terminate pursuant to Section 8.1 above.

8.4 Effect of Termination. In the event that this Agreement is voided, terminated, or cancelled, or fails to become effective for any reason whatsoever, then the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and they shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders had never been executed or entered. Without limiting the foregoing of the other agreements between the Parties in this Agreement, but rather for the sake of clarity, the Parties expressly agree that this Agreement, the settlement and mediation discussions leading to this Agreement, and any proceeding related to this Agreement shall not be construed as a waiver by either party of any claim, defense, or argument.

9. ADDITIONAL PROVISIONS, REPRESENTATIONS, AND WARRANTIES

9.1 Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

9.2 No Admissions of Liability. This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Agreement may not be used by any third party against any Party. Pursuant to Federal Rule of Evidence 408, and any similar state rule, the entering into and carrying out of the Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an

admission or concession by any of the Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever.

9.3 Bar to Future Suits. Upon entry of the Final Judgment, Plaintiffs and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Judgment. It is further agreed that the settlement may be pleaded as a complete defense to any action instituted that is inconsistent with this Agreement.

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

9.5 Best Efforts. Plaintiff and HelloFresh agree that the terms of the Agreement reflect a good-faith settlement of disputed claims. They consider the settlement effected by this Agreement to be fair and reasonable and will use their best efforts to seek preliminary approval and, if granted, final approval of the Agreement by the Court, including in responding to any objectors, intervenors, or other persons or entities seeking to preclude entry of the Final Judgment and, if the settlement is granted final approval, to effectuate the settlement's terms. They each represent and warrant that they have not, nor will they (a) attempt to void this Agreement in any way, or (b) solicit, encourage, or assist in any fashion any effort by any person (natural or legal) to object to the settlement under this Agreement.

9.6 Additional Duties of the Settlement Administrator. In addition to its duties identified above, the Settlement Administrator shall comply with all tax reporting obligations such as issuing any necessary United States Internal Revenue Service 1099 Forms, including but not

limited to obtaining any necessary information from Settlement Class Counsel, Plaintiffs, and Authorized Claimants for tax reporting purposes. The Settlement Administrator shall ensure that the information that it receives from the Parties and Settlement Class Members is secured and managed in such a way as to protect the security and confidentiality of the information from third parties. The Settlement Administrator shall also perform any other duties necessary to administer the settlement and/or to which the Parties otherwise agree in writing.

9.7 Taxes. Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund. In no event shall HelloFresh or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Plaintiffs, Settlement Class Members, Settlement Class Counsel, or any other person or entity.

9.8 Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

9.9 Headings and Formatting of Definitions. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

9.10 Notices. Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and overnight mail as follows:

To Plaintiff:

Anthony Paronich
Paronich Law, P.C.
350 Lincoln Street, Suite 2400
Hingham, MA 02043
Telephone: (617) 485-0018
Fax: (508) 318-8100
Email: anthony@paronichlaw.com

To HelloFresh:

Shannon Z. Petersen
Sheppard, Mullin, Richter & Hampton
LLP.
12275 El Camino Real, Suite 200
San Diego, CA 92130
Telephone: 1.858.720.7483
Facsimile: 1.858.523.6731
Email:

9.11 Time Periods. The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Settlement Class Counsel and HelloFresh's Counsel.

9.12 Governing Law. This Agreement is intended to and shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law principles.

9.13 No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

9.14 Execution Date. This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

9.15 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the Parties. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument.

9.16 Signatures. Each person executing this Agreement warrants that such person has the full authority to do so. Signatures sent in pdf format by email will constitute sufficient execution of this Agreement.

9.17 Continuing Jurisdiction. The Court shall retain jurisdiction to enforce this Agreement's terms and the Final Judgment.

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IN WITNESS WHEREOF, the Parties hereby accept and agree to the Agreement, as reflected by their signatures below.

Dated: 11/4/2020 _____

Grace Murray
Grace Murray

Dated: 11/6/2020 _____

Jeanne Anderson Tippett
Jeanne Tippett

Dated: 11/5/2020 _____

[Signature]
Stephen Bauer

Dated: 11/4/2020 _____

Amanda Engen
Amanda Engen

Dated: 11/6/2020 _____

Robin Tubesing
Robin Tubesing

Dated: 11/6/2020 _____

NIKOLE SIMECEK
Nikole Simecek

Dated: 11/6/2020 _____

Michelle McOsker
Michelle McOsker

Dated: 11/5/20 _____


Jackqueline Groff
Jackqueline Groff

Dated: 11/6/2020 _____

[Signature]
Heather Hall

Dated: 11/22/2020

—

DocuSigned by:

105C0A28ECD245A...

Grocery Delivery E-Services USA Inc. d/b/a
HelloFresh

Its: CEO USA

EXHIBIT 1
[PROPOSED] PRELIMINARY APPROVAL ORDER

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<p>GRACE MURRAY, on behalf of herself and others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GROCERY DELIVERY E-SERVICES USA INC. DBA HELLO FRESH,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 19-cv-12608-WGY</p>
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[PROPOSED] PRELIMINARY APPROVAL ORDER

This Court has reviewed the motion for preliminary approval of class settlement filed in this Action, including the Settlement Agreement and Release (“Settlement Agreement”).¹ Based on this review and the findings below, the Court finds good cause to grant the motion.

FINDINGS:

1. The Court hereby preliminarily approves the Settlement Agreement and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing.

2. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Agreement and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Settlement Agreement.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

3. The Long-Form Notice, Email Notice, Postcard Notice, Claim Form, and Opt-Out Form (all attached to the Settlement Agreement), and their manner of transmission, comply with Rule 23 and due process because the notices and forms are reasonably calculated to adequately apprise class members of (i) the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement.

4. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable.

5. For settlement purposes only, Plaintiff's claims are typical of the Settlement Class' claims.

6. For settlement purposes only, there are questions of law and fact common to the Settlement Class which predominate over any questions affecting only individual Settlement Class Members.

7. For settlement purposes only, class certification is superior to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

8. **Settlement Approval.** The Settlement Agreement, including the Long-Form Notice, Email Notice, Postcard Notice, Claim Form, and Opt-Out Form attached to the Settlement Agreement as Exhibits 2-6 are preliminarily approved.

9. **Appointment of the Settlement Administrator and the Provision of Class Notice.** Kurtzman Carson Consultants, LLC is appointed as the Settlement Administrator. HelloFresh and the Settlement Administrator will notify Class Members of the settlement in the manner specified under Section 4 of the Settlement Agreement.

10. Claim for a Settlement Award. Class Members who want to receive an award under the Settlement Agreement must accurately complete and deliver a Claim Form to the Settlement Administrator no later than ninety (90) calendar days after the entry of this Order.

11. Objection to Settlement. Any Class Member who has not submitted a timely written exclusion request pursuant to paragraph 13 below and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the Fees, Costs, and Expenses Award, or the Service Payment must deliver written objections to the Settlement Administrator (by postal mail or email) or the Court no later than ninety (90) calendar days after the entry of this Order. Written objections must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the objecting Settlement Class Member; (d) include the full name, address, telephone number, and email address of the objector's counsel, and the state bar(s) to which counsel is admitted (if the objector is represented by counsel); and (e) provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection. Any Class Member who timely submits a written objection, as described in this paragraph, has the option to appear at the Final Approval Hearing, either in person or through personal counsel, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed settlement, the Service Payment, or to the Fees, Costs, and Expenses Award. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Final Approval Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." Only Settlement Class Members who submit timely objections including Notices of Intention to Appear may speak at the

Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his or her personal attorney's fees and costs. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits.

12. Failure to Object to Settlement. Settlement Class Members who fail to object to the Settlement Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the Final Approval Hearing.

13. Requesting Exclusion. Settlement Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. Individual requests for exclusion may be submitted to the Settlement Administrator electronically (through the Settlement Website) or by postal mail, but if submitted by postal mail, each Settlement Class Member must pay for postage. No mass opt-outs are allowed. All requests for exclusion must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the Settlement Class Member seeking exclusion; (d) contain a statement that the requestor does not wish to participate in the settlement; and (e) be signed personally by the Settlement Class Member. A request for exclusion must be submitted no later than ninety (90) calendar days after entry of this Order.

14. Provisional Certification. The Settlement Class is provisionally certified as: All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

15. Conditional Appointment of Class Representative and Class Counsel. Plaintiff is conditionally certified as the class representative to implement the Parties' settlement in accordance with the Settlement Agreement. The law firms of Paronich Law, P.C.; Turke & Strauss LLP; and Robins Kaplan LLP are conditionally appointed as Settlement Class Counsel. Plaintiff and Settlement Class Counsel must fairly and adequately protect the Settlement Class' interests.

16. Stay of Other Proceedings. The Court hereby orders that any actions or proceedings in any court in the United States involving any Released Claims asserted by any Releasing Parties, except any matters necessary to implement, advance, or further the approval of the Settlement Agreement are stayed pending the Final Approval Hearing and issuance of any Final Order and Judgment.

17. Termination. If the Settlement Agreement terminates for any reason, the following will occur: (a) class certification will be automatically vacated; (b) Plaintiff and Settlement Class Counsel will stop functioning as the class representative and class counsel, respectively, except to the extent previously appointed by the Court; and (c) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement, other than as to payments made to, or owed for work already incurred by, the Settlement Administrator. Neither the settlement nor this Order will waive or otherwise impact the Parties' rights or arguments.

18. No Admissions. Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

19. Stay of Dates and Deadlines. All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

20. Modifications. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Agreement. The Parties may further modify the Settlement Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided therein. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Settlement Class Members.

21. Final Approval Hearing. On _____(month) ____ (day), 2021, at _____, this Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. Plaintiff's motion in support of the Final Judgment shall be filed on or before fourteen (14) calendar days before the Final Approval Hearing. Any brief HelloFresh may choose to file shall be filed on or before seven (7) calendar days before the Final Approval Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the website posting, the Parties will not be required to provide any additional notice to Settlement Class Members.

22. Summary Timeline. The Agreement and this Order provide for the following timeline dates and deadlines related to the provision of notice and the Final Approval Hearing:

Last day for HelloFresh to provide the Settlement Administrator the Class List	On or before 10 calendar days after entry of this Order
Last day for the Settlement Administrator to publish the Settlement Website and begin operating a toll-free telephone line, email address, and P.O. Box to accept inquiries from Settlement Class Members	On or before 30 days after entry of this Order
Settlement Administrator commences Email Notice and Postcard Notice to Settlement Class Members	On or before 30 days after entry of this Order
Last day for Settlement Class Counsel to file motion in support of Fees, Costs, and Expenses Award and apply for Service Payment	On or before 69 days after entry of this Order
Last day for Settlement Class Members to file Claim Forms, object, or request exclusion from the Settlement Class	On or before 90 days after entry of this Order
Last day for Settlement Class Counsel to file motion in support of Final Approval	On or before 14 days before Final Approval Hearing
Last day for HelloFresh to file optional brief in support of Settlement	On or before 7 days before Final Approval Hearing

SO ORDERED this ____ day of _____, 2020.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT COURT

EXHIBIT 2
LONG-FORM NOTICE

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<p>GRACE MURRAY, on behalf of herself and others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GROCERY DELIVERY E-SERVICES USA INC. DBA HELLO FRESH,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">Case No. 19-cv-12608-WGY</p>
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NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All persons in the United States who were called by HelloFresh, directly or through a third party, between September 5, 2015 and December 31, 2019.

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

- A settlement (“Settlement”) has been proposed in the class action lawsuit referenced above pending in the United States District Court for the District of Massachusetts (“Action”). You may be a class member in the proposed Settlement and may be entitled to participate in the proposed Settlement.
- The United States District Court for the District of Massachusetts has ordered the issuance of this notice in this Action. HelloFresh denies it did anything wrong and has defended itself throughout the lawsuit. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.
- If the Court gives final approval to the Settlement, HelloFresh will create a fund of \$14,000,000. If you submit a valid Claim Form, you may be eligible to obtain a share from this fund in the amount of approximately \$30-50 depending on the number of claims that are submitted. The value of a Settlement Class Member’s individual award will depend upon the number of Settlement Class Members who file valid Claim Forms.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM FORM	This is the only way to get an award under the Settlement. Visit the Settlement website located at www.[xxxx].com to obtain a Claim Form.	Deadline: [Month] [Day], [Year]
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YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will not receive an award under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit regarding the allegations in the Action ever again.	Deadline: [Month] [Day], [Year]
OBJECT	You may write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved. Submitting an objection does not exclude you from the Settlement.	Deadline: [Month] [Day], [Year]
GO TO THE "FAIRNESS HEARING"	<p>The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and costs of the lawyers who brought the Action, and the Representative Plaintiff's request for service awards for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection you submitted to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a "Notice of Intention to Appear" to the Court and the parties' attorneys, indicating your intent to do so.</p>	<p>Hearing Date: [Month] [Day], [Year]</p> <p>Time: [XX:XX] [am/pm]</p>
DO NOTHING	You will not receive a Settlement award under the Settlement. You will also give up your right to object to the Settlement, and you will be not be able to be part of any other lawsuit about the legal claims in this case.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Settlement Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION ##

1. Why did I get this notice?

- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a Settlement?
- 5. How do I know if I am part of the Settlement?
- 6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENT..... ##

- 7. What relief does the Settlement provide to the Class Members?

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM ##

- 8. How can I get a Settlement award?
- 9. When will I get a Settlement award?

THE LAWYERS IN THIS CASE AND THE PLAINTIFF..... ##

- 10. Do I have a lawyer in this case?
- 11. How will the lawyers be paid?
- 12. Will the Plaintiff receive any compensation for their efforts in bringing this Action?

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS ##

- 13. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT..... ##

- 14. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT ##

- 15. How do I tell the Court that I disagree with the Settlement?
- 16. What is the difference between excluding myself and objecting to the Settlement?

FAIRNESS HEARING..... ##

- 17. What is the Fairness Hearing?
- 18. When and where is the Fairness Hearing?
- 19. May I speak at the hearing?

ADDITIONAL INFORMATION..... ##

- 20. How do I get more information?
- 21. What if my address or other information has changed or changes after I submit a Claim Form?

BACKGROUND INFORMATION

1. Why did I get this notice?

You received this Notice because a Settlement has been reached in this Action and you may be a class member. If you are a member of the Settlement Class, you may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. What is this lawsuit about?

Multiple individuals (the “Plaintiffs”) filed lawsuits against HelloFresh on behalf of themselves and all others similarly situated. The lawsuits allege that HelloFresh violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by, *inter alia*, placing unsolicited telemarketing calls to Plaintiff and members of the putative class on telephone numbers assigned to residential and cellular telephone services using an automated telephone dialing system, calling numbers on the National Do Not Call Registry (“NDNCR”) and calling numbers that had previously asked to no longer be called.

HelloFresh denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. HelloFresh further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Plaintiff’s claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. Why is this a class action?

In a class action lawsuit, one or more people sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Settlement Class Members. The company sued in this case, HelloFresh, is called the Defendant.

4. Why is there a Settlement?

The Plaintiffs have made claims against HelloFresh. HelloFresh denies that it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Plaintiffs or HelloFresh should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Settlement Class Members will receive relief now rather than years from now, if at all.

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

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

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

If you are still not sure whether you are included in the Settlement Class, you can write or call the Settlement Administrator for free help. The Settlement Administrator's contact information is below.

HELLOFRESH TCPA Settlement

c/o _____

[Address]

[City] [State], [Zip Code]

1-8XX-XXX-XXXX

Email: [xxxx]@[xxxx].com

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

HelloFresh has created a Settlement Fund of \$14,000,000 which will be used to pay the Claims of Settlement Class Members, Settlement Class Counsel's Fees, Costs, and Expenses Award (see Section 11 below), Plaintiffs' Service Payment (see Section 12 below), and compensation for the Settlement Administrator for providing notice to the Settlement Class and administering the Settlement.

If you are a Settlement Class Member, you are eligible to receive a pro rata share of the Settlement Fund by timely and validly submitting a Claim Form.

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM

8. How can I get a Settlement Award?

To qualify for a Settlement award, you must send in a Claim Form. A Claim Form is available by clicking [HERE](#) or on the Internet at the website [www.\[xxxx\].com](http://www.[xxxx].com). The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by [Month] [Day], [Year] or submit it online on or before 11:59 p.m. (Pacific) on [Month] [Day], [Year].

9. When will I get a Settlement award?

As described in Sections 17 and 18, the Court will hold a hearing on [Month] [Day], [Year] at [time] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at [www.\[xxxx\].com](http://www.[xxxx].com). *Please be patient.*

THE LAWYERS IN THIS CASE AND THE PLAINTIFF**10. Do I have a lawyer in this case?**

The Court has ordered that the law firms of Paronich Law, P.C.; Turke & Strauss LLP; and Robins Kaplan LLP ("Settlement Class Counsel") will represent the interests of all Settlement Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Settlement Class Counsel will petition the Court to receive a Fees, Costs, and Expenses Award up to \$XXX(total). The Court will make the final decision as to the amount to be paid to the attorneys for their fees and costs. You will not be required to separately pay any attorneys' fees or costs.

12. Will the Plaintiff receive any compensation for their efforts in bringing this Action?

The Plaintiffs will request a Service Payment of up to \$5,000 each for their services as class representative and his efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Plaintiffs.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS**13. What am I giving up to obtain relief under the Settlement?**

If the Court approves the proposed Settlement, you will be releasing your claims against HelloFresh and the other entities allegedly involved in the calls at issue unless you have excluded yourself from the Settlement. This generally means that you will not be able to file or pursue a lawsuit against HelloFresh or be part of any other lawsuit against HelloFresh asserting claims that were or could have been asserted in the Action. The Settlement Agreement, available on the Internet at the website [www.\[xxxx\].com](http://www.[xxxx].com) contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT**14. How do I exclude myself from the Settlement?**

You may exclude yourself from the Class and the Settlement. You can submit a request for exclusion to the Settlement Administrator electronically (through the Settlement Website) or by postal mail. If you want to be excluded, you must either complete the Opt-Out Form available

on the Settlement Website located at [www.\[xxxx\].com](http://www.[xxxx].com), or write the Settlement Administrator stating: **(a)** the name and case number of the action – “*Murray v. Hello Fresh*, D. Mass. Case No. 19-cv-12608-WGY”; **(b)** the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; **(c)** the address, telephone number, and email address (optional) of the Settlement Class Member seeking exclusion; **(d)** that the requestor does not wish to participate in the Settlement; and **(e)** be signed personally by you. If you are not using the Opt-Out Form on the Settlement Website, the request for exclusion must be sent to the Settlement Administrator at:

HELLOFRESH TCPA Settlement
c/o _____
[Address]
[City] [State], [Zip Code]
[www.\[xxxx\].com](http://www.[xxxx].com)

Your request for exclusion must be submitted electronically or be postmarked no later than [Month] [Day], [Year] at 11:59 pm (Pacific). If you submit your request for exclusion by postal mail, you are responsible for your postage.

If you validly and timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by the Settlement Agreement or the judgment entered in the Action, you will not be eligible to make a Claim for any benefit under the terms of the Settlement Agreement, you will not be entitled to submit an objection to the Settlement, and you will not be precluded from prosecuting any timely, individual claim against HelloFresh based on the conduct complained of in the Action.

HOW TO OBJECT TO THE SETTLEMENT

15. How do I tell the Court that I disagree with the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider the attorneys who initiated the Action’s request for a Fees, Costs, and Expenses Award, and a Service Payment to the Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must write to the Court and must: **(a)** clearly identify the case name and number – “*Murray v. Hello Fresh*, D. MA. Case No. 19-cv-12608-WGY”; **(b)** include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; **(c)** include the address, telephone number, and email address (optional) of the objecting Settlement Class Member; **(d)** include the full name, address, telephone number, and email address of the objector’s counsel, and the state bar(s) to which counsel is admitted (if the objector is represented by counsel); and **(e)** provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection. The objection will not be valid if it only objects to the lawsuit’s appropriateness or merits. Objections may be submitted to the Settlement Administrator electronically by email or by postal mail. The Settlement Administrator will then have the objections submitted to the Court. Or you may submit the objections directly to the

Court. If an objection is submitted by postal mail, the Settlement Class Member must pay for postage. The Settlement Administrator's contact information is below.

HELLOFRESH TCPA Settlement
c/o _____
[Address]
[City] [State], [Zip Code]
Email: [xxxx]@[xxxx].com

The mailing address to the Court is:

Clerk of the Court
United States District Court District of Massachusetts
1 Courthouse Way, Suite 2300
Boston, MA 02210

The objection must be submitted electronically or be postmarked no later than [Month] [Day], [Year] at 11:59 pm (Pacific).

You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

IF YOU DO NOT TIMELY MAKE AN OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you have the option to appear and request to be heard at the Fairness Hearing, either in person or through personal counsel. You are not required, however, to appear. However, if you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid objection a statement substantially similar to "Notice of Intention to Appear." Only those who submit timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If you make an objection through an attorney, you will be responsible for your attorney's fees and costs.

16. What is the difference between excluding myself and objecting to the Settlement?

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

FAIRNESS HEARING

17. What is the Fairness Hearing?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court

to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Fees, Costs, and Expenses Award to the attorneys who initiated the Action; and to consider the request for a Service Payment to the Plaintiff.

18. When and where is the Fairness Hearing?

On [Month] [Day], [Year] at [time], a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Judge William G. Young, United States District Court District of Massachusetts - on 1 Courthouse Way in Boston, Massachusetts 02210 [Month] [Day], [Year], at ____ am/pm. The hearing may be postponed to a different date or time or location without notice. Please check [www.\[xxxx\].com](http://www.[xxxx].com) for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement Website will be the only way you will be informed of the change.

19. May I speak at the hearing?

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to. As described above in Section 15, you may speak at the Fairness Hearing only if (a) you have timely submitted an objection, and (b) you have timely and validly provided a Notice of Intent to Appear. If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing.

ADDITIONAL INFORMATION

20. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, the application for a Fees, Costs, and Expenses Award, and the operative Complaint filed in the Action, please visit the Settlement Website located at: [www.\[xxxx\].com](http://www.[xxxx].com). Alternatively, you may contact the Settlement Administrator at the email address [\[xxxx\]@\[xxxx\].com](mailto:[xxxx]@[xxxx].com) or the U.S. postal (mailing) address: [Address] [City], [State], [Zip Code]. You may also obtain information by calling 1-8XX-XXX-XXXX.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit www.pacer.gov or the Clerk's office at United States District Court District of Massachusetts, 1 Courthouse Way in Boston, Massachusetts 02210. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. What if my address or other information has changed or changes after I submit a Claim Form?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

HELLOFRESH TCPA Settlement
c/o _____
[Address]
[City] [State], [Zip Code]
1-8XX-XXX-XXXX
Email: [xxxx]@[xxxx].com

* * * *

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

EXHIBIT 3
EMAIL NOTICE

To: [Settlement Class Member email address]
From: [xxxx]@[xxx].com
Re: LEGAL NOTICE OF SETTLEMENT OF CLASS ACTION

If you are a person in the United States who was called by HelloFresh, directly or through a third party, between September 5, 2015 and December 31, 2019, you may be entitled to payment.

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

Why did I get this notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the U.S. District Court for the District of Massachusetts titled *Grace Murray vs. Grocery Delivery E-Services USA, Inc.*, Case No. 19-12608 (“Action”). According to available records, you might be a “Settlement Class Member.” The purpose of this notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against HelloFresh by individuals alleging HelloFresh made unsolicited automated telemarketing calls, called numbers on the National Do Not Call Registry (“NDNCR”) and called numbers that had asked to no longer receive calls. HelloFresh denies wrongdoing and liability, and both sides disagree on how much, if anything, the Class could have recovered after trial. **The Court has not decided which side is right. But both sides have agreed to settle the Action and provide certain benefits to Settlement Class Members in order to avoid the costs of continued litigation.**

Am I a Settlement Class Member? You are a “Settlement Class Member” if you are an individual in the United States from September 5, 2015 to [DATE] to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh’s Internal Do-Not-Call List.

What relief does the Settlement provide? The Settlement provides \$14,000,000 to pay (1) claims of eligible Settlement Class Members; (2) a Fees, Costs, and Expenses Award to Settlement Class Counsel; (3) a Service Payment to Plaintiffs; and (4) costs of Settlement administration and notice. If you are a Settlement Class Member, you are eligible to receive a share of the Settlement.. It is presently estimated that Class Members who timely and validly file a claim may receive approximately \$30-50. This amount may change, as it depends on the number of timely and valid claims submitted by Settlement Class Members and the number of calls associated with those other Settlement Class Members’ claims. To receive a Settlement award, you must timely complete and submit a valid Claim Form. A Claim Form is available by clicking [HERE](#). The deadline to submit a Claim Form is [Month] [Day], [Year]. If you elect to complete a Claim Form, your class member identification number is: [SAMPLE12345].

What are my other options? If you don’t want to be legally bound by the Settlement, you must exclude yourself by [Month] [Day], [Year], or you won’t be able to sue HelloFresh or others involved with the calls at issue about the legal claims in the Action ever again. If you stay in the Settlement, you may object to it by [Month] [Day], [Year]. The detailed notice available at [www.\[xxxx\].com](#) describes the claims you will be releasing if you do not request exclusion and explains how to request exclusion or to object. The Court will hold a hearing on [Month] [Day],

[Year] at [time] to consider whether to approve the Settlement and a request by the lawyers representing all Class Members for up to \$_____ for a Fees, Costs, and Expenses Award, and for the Plaintiff's request for a \$_____ Service Payment. You may ask to appear at the hearing, but you don't have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related court documents, and Claim Forms, and to learn more about how to exercise your various options under the Settlement, visit [www.\[xxxx\].com](http://www.[xxxx].com) or call 1-888-xxx-xxxx. You may also write to the Settlement Administrator at the email address [\[xxxx\]@\[xxxx\].com](mailto:[xxxx]@[xxxx].com) or the postal address [Address] [City], [State] [Zip Code].

EXHIBIT 4
POSTCARD NOTICE

If you are a person in the United States who was called by HelloFresh, directly or through a third party, between September 5, 2015 and December 31, 2019, you may be entitled to payment.

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

Why did I get this notice? A settlement (“Settlement”) has been proposed in a class action lawsuit pending in the U.S. District Court for the District of Massachusetts titled *Grace Murray vs. Grocery Delivery E-Services USA, Inc.*, Case No. 19-12608 (“Action”). According to available records, you might be a “Settlement Class Member.” The purpose of this notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

What is the Action about? The Action was filed against HelloFresh by individuals alleging HelloFresh made unsolicited automated telemarketing calls, called numbers on the National Do Not Call Registry (“NDNCR”) and called numbers that had asked to no longer receive calls. HelloFresh denies wrongdoing and liability, and both sides disagree on how much, if anything, the Class could have recovered after trial. **The Court has not decided which side is right. But both sides have agreed to settle the Action and provide certain benefits to Settlement Class Members in order to avoid the costs of continued litigation.**

Am I a Settlement Class Member? You are a “Settlement Class Member” if you are an individual in the United States from September 5, 2015 to [DATE] to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh’s Internal Do-Not-Call List.

What relief does the Settlement provide? The Settlement provides \$14,000,000 to pay (1) claims of eligible Settlement Class Members; (2) a Fees, Costs, and Expenses Award to Settlement Class Counsel; (3) a Service Payment to Plaintiffs; and (4) costs of Settlement administration and notice. If you are a Settlement Class Member, you are eligible to receive a share of the Settlement. It is presently estimated that Class Members who timely and validly file a claim may receive approximately \$30-50. This amount may change, as it depends on the number of timely and valid claims submitted by Settlement Class Members and the number of calls associated with those other Settlement Class Members’ claims. To receive a Settlement award, you must timely complete and submit a valid Claim Form. A Claim Form is available by clicking [HERE](#). The deadline to submit a Claim Form is [Month] [Day], [Year]. If you elect to complete a Claim Form, your class member identification number is: [SAMPLE12345].

What are my other options? If you don’t want to be legally bound by the Settlement, you must exclude yourself by [Month] [Day], [Year], or you won’t be able to sue HelloFresh or others involved with the calls at issue about the legal claims in the Action ever again. If you stay in the Settlement, you may object to it by [Month] [Day], [Year]. The detailed notice available at [www.\[xxxx\].com](#) describes the claims you will be releasing if you do not request exclusion and explains how to request exclusion or to object. The Court will hold a hearing on [Month] [Day], [Year] at [time] to consider whether to approve the Settlement and a request by the lawyers representing all Class Members for up to \$_____ for a Fees, Costs, and Expenses Award, and for the Plaintiff’s request for a \$_____ Service Payment. You may ask to appear at the hearing, but you don’t have to.

More information? For complete information about the Settlement, to view the Settlement Agreement, related court documents, and Claim Forms, and to learn more about how to exercise your various options under the Settlement, visit [www.\[xxxx\].com](http://www.[xxxx].com) or call 1-888-xxx-xxxx. You may also write to the Settlement Administrator at the email address [\[xxxx\]@\[xxxx\].com](mailto:[xxxx]@[xxxx].com) or the postal address [Address] [City], [State] [Zip Code].

EXHIBIT 5
CLAIM FORMS

CLAIM FORM

Section I - Instructions

This Form must be received by the Settlement Administrator no later than [Month] [Day], [Year].

This Claim Form may be submitted in one of three ways:

- 1. Electronically through www.[xxx].com.
- 2. Via email to [xxx]@[xxx].com. Please fill out the enclosed pages, scan the document in its entirety, and include the form as an attachment.
- 3. Mail to: *HelloFresh TCPA Settlement*, c/o ____, [Address], [City] [State], [Zip Code].

To be effective as a Claim under the proposed settlement, this form must be completed, signed, and sent, as outlined above, **no later than [Month] [Day], [Year]**. If this Form is not postmarked or received by this date, you will remain a member of the Settlement Class but will not receive any payment from the Settlement.

Section II - Settlement Class Member Information

Claimant Name (Required):

Claimant Identification Number (Required):

* Your claimant identification number was on the notice of the Settlement you received by email or by postal mail. If you do not have your claimant identification number, call or email the Settlement Administrator for assistance at 1-8XX-XXX-XXXX or [xxx]@[xxx].com.

Current Contact Information

Street Address (Required):

City (Required): State (Required): Zip Code (Required)

Email (optional):

Preferred Phone Number:

Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your claim. Provision of your phone number is optional. By providing contact information, you agree that the Settlement Administrator may contact you about your claim.

Section III - Confirmation of Class Membership

Telephone Number(s) at which you received calls related to HelloFresh between September 5, 2015 and [DATE]:

Three sets of empty boxes for entering telephone numbers.

The telephone number identified above belonged to me between September 5, 2015 and [DATE]:

Yes _____ No _____

Section IV - Manner of Transmission of Funds

Payment will be by PayPal or direct deposit, unless you request otherwise. You acknowledge that if you do not choose direct deposit or PayPal, you may not receive payment as quickly. Also, the Settlement Administrator is not responsible for Settlement checks that do not arrive and will not reissue checks that are lost or stolen.

For PayPal

Please provide the email address associated with your PayPal account (if applicable):

Empty grid for entering email address.

For Direct Deposit:

Please provide your relevant routing and account number.

Routing (if applicable):

Empty grid for entering routing number.

Account (if applicable):

Empty grid for entering account number.

If you do not elect PayPal or Direct Deposit check below:

I wish to receive payment by check.

If you select check, the check will be provided to the “current” contact information you provided in Section 1.

Section V – Required Affirmations

IF SUBMITTED ELECTRONICALLY:

I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject

to audit, verification, and Court review. I am aware that I can obtain a copy of the full notice and Settlement Agreement at www.[xxxx].com or by writing the Settlement Administrator at the email address [xxxx]@[xxxx].com or the postal address [Address] [City], [State] [Zip Code]. Checking this box constitutes my electronic signature on the date of its submission.

IF SUBMITTED BY U.S. MAIL:

I agree that, by submitting this Claim Form, the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review. I am aware that I can obtain a copy of the full notice and Settlement Agreement at www.[xxxx].com or by writing the Settlement Administrator at the email address [xxxx]@[xxxx].com or the postal address [Address] [City], [State] [Zip Code].

Dated: _____

Signature: _____

SETTLEMENT ADMINISTRATOR ADDRESS (where to send the completed form if submitting by mail): HelloFresh TCPA Settlement, c/o _____, [Address], [City] [State], [Zip Code].

EXHIBIT 6
OPT-OUT FORM

OPT-OUT FORM

HelloFresh TCPA Settlement

Only use this Form if you want to request exclusion from (i.e., opt-out) of the proposed settlement class. For more information on the proposed settlement, please visit [www.\[xxx\].com](http://www.[xxx].com).

Section I - Instructions

This form must be received by the Settlement Administrator no later than **[Month] [Day], [Year]**.

This Opt-Out Form may be submitted in one of three ways:

- 1. Electronically through [www.\[xxx\].com](http://www.[xxx].com).
- 2. Via email to [\[xxx\]@\[xxx\].com](mailto:[xxx]@[xxx].com). Please fill out the enclosed pages, scan the document in its entirety, and include the Form as an attachment.
- 3. Mail to: *HelloFresh TCPA Settlement, c/o* ____, [Address], [City] [State], [Zip Code].

To be effective as an opt-out from the proposed settlement, this form must be completed, signed, and sent, as outlined above, **no later than [Month] [Day], [Year]**. If this form is not postmarked or received by this date, you will remain a member of the Settlement Class.

Opting out of the Settlement Class is not the same as objecting to the Settlement Agreement.

If you request exclusion from the Settlement Class prior to **[Month] [Day], [Year]**, you will not be bound by the terms of the Settlement Agreement and therefore cannot argue that the Settlement Agreement should not be approved. More information about objecting to the Settlement is available at [www.\[xxx\].com](http://www.[xxx].com).

Section II - Settlement Class Member Information

Claimant Name (Required):

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Claimant Identification Number (Required):

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

* Your claimant identification number was on the notice of the Settlement you received by email or by postal mail. If you do not have your claimant identification number, call or email the Settlement Administrator for assistance at 1-8XX-XXX-XXXX or [\[xxx\]@\[xxx\].com](mailto:[xxx]@[xxx].com).

Current Contact Information

Street Address (Required):

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City (Required):

State (Required): Zip Code (Required)

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EXHIBIT 7
[PROPOSED] FINAL APPROVAL ORDER

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRACE MURRAY, on behalf of herself and
others similarly situated,

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

Case No. 19-cv-12608-WGY

[PROPOSED] FINAL APPROVAL ORDER

On _____(month)__(day), 2021, this Court heard the motion for final approval of the class action settlement and for entry of judgment filed by Plaintiff.¹ This Court reviewed: (a) the motion and the supporting papers, including the Settlement Agreement and Release (“Settlement Agreement”); (b) any objections filed with or presented to the Court; (c) the Parties’ responses to any objections; and (d) counsel’s arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and therefore approves it. Among other matters considered, the Court took into account: (a) the complexity of Plaintiff’s theory of liability; (b) the arguments raised by HelloFresh in its pleadings that could potentially preclude or reduce the recovery by Settlement Class Members; (c) delays in any award to the Settlement Class that would

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

occur due to further litigation and appellate proceedings; (d) the amount of discovery that has occurred; (e) the relief provided to the Settlement Class; (f) the recommendation of the Settlement Agreement by counsel for the Parties; and (g) the low number of objectors to the Settlement Agreement, demonstrating that the Settlement Class has a positive reaction to the proposed settlement.

2. The Court also finds that extensive arm's-length negotiations have taken place, in good faith, between Settlement Class Counsel and HelloFresh's Counsel resulting in the Settlement Agreement. These negotiations were presided over by an experienced mediator.

3. The Settlement Agreement provides substantial value to the Settlement Class in the form of cash payments.

4. Notice was provided to Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

5. HelloFresh filed a copy of the notice it gave on [Month] [Date], [Year] pursuant to 28 U.S.C. § 1715(b), and the notice complies with the requirements of 28 U.S.C. § 1715(b).

6. Plaintiff and Settlement Class Counsel have fairly and adequately protected the Settlement Class' interests, and the Parties have adequately performed their obligations under the Settlement Agreement.

7. For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, this Court finds and determines that the proposed Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Federal Rule of Civil Procedure 23 (a) and (b)(3).

8. An award of \$ _____ for a Fees, Costs, and Expenses Award to Settlement Class Counsel is fair and reasonable in light of the nature of this case, Settlement Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Settlement Class.

9. A Service Payment to Plaintiff of \$ _____ is fair and reasonable in light of: (a) Plaintiff's risks (including financial, professional, and emotional) in commencing this Action; (b) the time and effort spent by Plaintiff in litigating this Action; and (c) Plaintiff's public interest service.

10. Reimbursement of \$ _____ to the Settlement Administrator is fair and reasonable to compensate it for the provision of notice to the Settlement Class and administering the Settlement.

IT IS ORDERED THAT:

11. **Class Members.** The Settlement Class is certified as:

All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request

for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

12. Binding Effect of Order. This Order applies to all claims or causes of action settled under the Settlement Agreement and binds all Settlement Class Members, including those who did not properly request exclusion under paragraph 13 of the Preliminary Approval Order. This Order does not bind persons who filed timely and valid requests for exclusion. Attached as Exhibit A is a list of persons who properly requested to be excluded from the settlement.

13. Release. Plaintiff and all Settlement Class Members who did not properly request exclusion are: (1) deemed to have released and discharged HelloFresh from all claims arising out of or asserted in the Action and all claims released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Sections 2.2.1 and 2.2.2 of the Settlement Agreement and are specifically incorporated herein by this reference.

14. Class Relief. HelloFresh is directed to provide the Settlement Fund to the Settlement Administrator according to the terms and timeline stated in the Settlement Agreement. The Settlement Administrator is further directed to issue payments to each Settlement Class Member who submitted a valid and timely Claim Form (i.e., each Authorized Claimant) according to the terms and timeline stated in the Settlement Agreement.

15. Fees, Costs, and Expenses Award. Settlement Class Counsel are awarded \$ _____ from the Settlement Fund in fees and costs. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.

16. Service Payment. Plaintiff is awarded \$_____ from the Settlement Fund as an individual settlement award. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.

17. Settlement Administrator Expenses. The Settlement Administrator is awarded \$_____ from the Settlement Fund.

18. Cy Pres Distribution. Pursuant to Paragraphs 3.5, 3.6, and 3.8 of the Settlement Agreement, any unpaid portion of the Settlement Fund shall be paid to_____.

19. Miscellaneous. No person or entity shall have any claim against HelloFresh, HelloFresh’s Counsel, Plaintiff, the Settlement Class Members, Settlement Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with the Agreement.

20. Court’s Jurisdiction. Pursuant to the Parties’ request, the Court will retain jurisdiction over this Action and the Parties for all purposes related to this settlement.

SO ORDERED this ____ day of _____, 2021.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT COURT

EXHIBIT 8
[PROPOSED] FINAL JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GRACE MURRAY, on behalf of herself and
others similarly situated,

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

Case No. 19-cv-12608-WGY

PROPOSED FINAL JUDGMENT

IT IS HEREBY ADJUDGED AND DECREED THAT:

This Final Judgment incorporates by reference the defined terms in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement Agreement are fully incorporated in this Final Judgment as if set forth fully herein.

1. The Court has jurisdiction over the subject matter of this Action and all parties to the Action, including all Settlement Class Members.

2. The Settlement of this Action on the terms set forth in the Settlement Agreement, along with the exhibits thereto, proposed by the Parties has been approved by this Court.

The Court granted final certification, for purposes of settlement only, of a Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), defined as: All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh’s Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

3. The list of persons excluded from the Settlement Class because they timely filed valid requests for exclusion is attached hereto as Exhibit 1. Persons who filed timely, completed requests for exclusion are not bound by this Final Judgment, the Final Approval Order, or any of the terms of the Settlement Agreement and may pursue their own individual remedies against HelloFresh. However, such persons or entities are not entitled to any rights or benefits provided to Settlement Class Members by the terms of the Settlement Agreement.

4. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Settlement Class Members who have not timely and validly filed requests for exclusion are thus Settlement Class Members who are bound by this Final Judgment, the Final Approval Order, and the terms of the Settlement Agreement.

5. Plaintiff and all Settlement Class Members who did not properly request exclusion are hereby: (1) deemed to have released and discharged HelloFresh from all claims arising out of or asserted in the Action and all claims released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims.

6. The full terms of the Settlement Class Members' release described in this paragraph are set forth in Section 2.2.1 of the Settlement Agreement, which provides: The Parties intend that this Agreement will fully and finally dispose of the Action and any and all Released Claims against the Released Parties. As of the Effective Date, each Releasing Party will be deemed to have

completely released and forever discharged the Released Parties, and each of them, from and for any and all Released Claims. The term “Effective Date” is defined as: The first date after which the following events and conditions have occurred: (a) the Court has entered a Final Judgment; and (b) the Final Judgment has become final in that the time for appeal or writ has expired or, if any appeal and/or petition for review is taken and the settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, this Agreement will be terminated and cancelled and the Parties will be returned to their positions *status quo ante* with respect to the Action as if this Agreement had not been entered into. The term “Released Claims” means: 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 the Final Approval Order, that arise out of or relate in any way to the Released Parties’ use of any telephone, or any telephone or dialing equipment, or an “automatic telephone dialing system,” or an “artificial or prerecorded voice” to contact or attempt to contact Members of the Settlement Class. This release expressly includes, but is not limited to, all claims under the Telephone Consumer Protection Act and corollary or similar state law or enactment of any other statutory or common law claim arising. The Released Claims include any and all claims that were brought or could have been brought in the Action. The term “Unknown Claims” means:

Claims that the Releasing Parties do not know or suspect to exist in their favor at the time of their granting a release, which if known by them might have affected their settlement of the Action. With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that each Releasing Party shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542 or any federal, state, or foreign law, rule, regulation, or common-law doctrine that is similar, comparable, equivalent, or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the Final Judgment acknowledges, that he/she/it is aware that he/she/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but it is his/her/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

7. The Settlement Agreement, this Final Judgment and the accompanying Final Approval Order, or the fact of the Settlement shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission by any plaintiff, defendant, Settlement Class Member, or Released Party of the

truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, defense, wrongdoing, any claim of injury or damages, or otherwise of such Party.

8. The Settlement Agreement, this Final Judgment and the accompanying Final Approval Order, or the fact of the Settlement shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission of any liability, fault, or wrongdoing, or in any way referred to for any other reason, by any plaintiff, defendant, Settlement Class Member, or Released Party or in any other civil, criminal, or administrative action or proceeding other than such civil proceedings as may be necessary to effectuate the provisions of the Settlement Agreement, this Final Judgment, and the accompanying Final Approval Order.

9. The Court hereby dismisses with prejudice the Action and all Released Claims against each and all Released Parties and without costs to any of the Parties as against the others.

10. Without affecting the finality of this Final Judgment, the Court reserves jurisdiction over the implementation, administration, and enforcement of this Final Judgment and the Agreement, and all matters ancillary thereto.

11. The Court, finding that no reason exists for delay, hereby directs the clerk to enter this Final Judgment forthwith.

SO ORDERED this ____ day of _____, 2021.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT COURT

EXHIBIT 2

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRACE MURRAY, GRACE ENGEN, JEANNE
TIPPET, STEPHEN BAUER, ROBIN
TUBESING, NIKOLE SIMECEK, MICHELLE
MCOSKER, JACQUELINE GROFF, and
HEATHER HALL, on behalf of themselves and
others similarly situated,

Case No. 19-cv-12608-WGY

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

**AFFIDAVIT OF ANTHONY PARONICH IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL OF A CLASS ACTION SETTLEMENT**

I, Anthony I. Paronich, declare under penalty of perjury:

1. I make this affidavit in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement to state my opinion that the settlement represents an excellent result for the Settlement Class and to advise the Court of my adequacy to be appointed as class counsel. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this affidavit on personal knowledge. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the TCPA.

Qualifications of Counsel

3. I am a 2010 graduate of Suffolk Law School. In 2010, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the Federal District Court for the District of Massachusetts. From time to time, I have appeared in other State and Federal District Courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

4. I was an associate at Broderick Law, P.C. in Boston, Massachusetts from 2010 through 2016.

5. I was a partner at Broderick & Paronich, P.C. in Boston, Massachusetts from 2016 through 2019.

6. In 2019, I started Paronich Law, P.C., focused on protecting consumers in class action lawsuits.

7. I have been appointed class counsel in more than 30 TCPA cases, including the following:

- i. Desai and Charvat v. ADT Security Services, Inc., USDC, N.D. Ill., 11-CV-1925, a TCPA class settlement of \$15,000,000 granted final approval on June 21, 2013.
- ii. Jay Clogg Realty Group, Inc. v. Burger King Corporation, USDC, D. Md., 13-cv-00662, a TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
- iii. Charvat v. AEP Energy, Inc., USDC, N.D. Ill., 1:14-cv-03121, a TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.
- iv. Bull v. US Coachways, Inc., USDC, N.D. Ill., 1:14-cv-05789, a TCPA class settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 and an assignment of rights against defendant's insurance carrier.
- v. Smith v. State Farm Mut. Auto. Ins. Co., et. al., USDC, N.D. Ill., 1:13-cv-02018, a

- TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- vi. Mey v. Frontier Communications Corporation, USDC, D. Conn., 3:13-cv-1191-MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.
 - vii. Heidarpour v. Central Payment Co., USDC, M.D. Ga., 15-cv-139, a TCPA class settlement of \$6,500,000 granted final approval on May 4, 2017.
 - viii. Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc., USDC, N.D. Ga., 1:15-CV-03562-AT, a TCPA class settlement of \$12,000,000 granted final approval on December 14, 2017.
 - ix. Abante Rooter and Plumbing, Inc. v. Pivotal Payments, Inc., USDC, N.D. Ca., 3:16-cv-05486-JCS, a TCPA class settlement of \$9,000,000 granted final approval on October 15, 2018.
 - x. In re Monitronics International, Inc., USDC, N.D.W. Va., 1:13-md-02493-JPB-JES, a TCPA class settlement of \$28,000,000 granted final approval on June 12, 2018.
 - xi. Thomas Krakauer v. Dish Network, L.L.C., USDC, M.D.N.C., 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of \$20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network’s violations were “willful or knowing”, for a revised damages award of \$61,339,200. (Dkt. No. 338). The Fourth Circuit Court of Appeals unanimously affirmed the judgment in May of 2019. *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643 (4th Cir. 2019). The United States Supreme Court rejected *certiorari* of this matter in December of 2019. *See DISH Network L.L.C. v. Krakauer*, 140 S. Ct. 676 (2019).
 - xii. Abante Rooter and Plumbing, Inc. v. Alarm.com Incorporated, et. al., USDC, ND. CA., 4:15-cv-06314-YGR, a TCPA class settlement of \$28,000,000 granted final approval on August 13, 2019.
 - xiii. Charvat v. Carnival Corporation & PLC, et. al., USDC, ND. Ill., 1:13-cv-00042, a TCPA class settlement of \$12,500,000 granted final approval in April of 2020.
 - xiv. Loftus v. Sunrun, Inc., USDC, N.D. Ca., 3:19-cv-1608, a TCPA class settlement of \$5,500,000 granted preliminary approval on September 25, 2020.

Background of the Litigation and Discovery

9. Defendant Grocery Delivery E-Services USA, Inc., d/b/a HelloFresh is a subscription-based meal-kit delivery service based in New York, New York. HelloFresh

provides “an automatic, recurring weekly subscription” for meal kit delivery.

10. In 2015, HelloFresh started a “win back” telephone campaign targeting plaintiffs and other consumers who had deactivated, rather than paused, their HelloFresh accounts in the previous two years. HelloFresh ran the campaign for approximately five years and contracted with five vendors to make its calls: The Office Gurus, Ltd. (“TOG”), Akorbi BPO, LLC, Innovative Vision Marketing, Inc., Talk2Rep, Inc. d/b/a Outplex, and RSVP (Media Response) Ltd.

11. During the campaign, these vendors placed millions of calls to consumers, and the plaintiffs have alleged that the calls were without consent.

12. Plaintiffs served extensive discovery requests on HelloFresh and a subpoena on the third-party vendor HelloFresh identified in its initial disclosures.

13. Plaintiffs also engaged in discovery through the New York Better Business Bureau where HelloFresh is headquartered in the United States.

14. Plaintiffs retained third-party digital forensics experts, Vestige Ltd., to analyze relevant browser and website histories to evaluate the purchase process and Defendant’s disclosures.

15. Through first-party and third-party discovery, the parties exchanged over 20,000 pages of documents.

16. Plaintiffs analyzed the document productions and hired an outside expert, Aaron Woolfson, to assist in evaluating the dialing system used by Hello Fresh and to identify putative class members in the calling data produced.

17. During discovery, the parties’ counsel engaged in several settlement discussions, which were not successful.

18. After Plaintiffs discovered that HelloFresh hired additional third-party vendors to make its marketing calls, Plaintiffs filed a successful motion to compel Hello Fresh to identify those vendors. Plaintiffs then served third-party subpoenas on those vendors.

19. At this point, the parties' mediated the cases with the Hon. George H. King of JAMS in October 2020.

Recommendation of Counsel

20. In light of the risks inherent in class action litigation, as well as my experience litigating dozens of TCPA action settlements, it is my opinion that the pending settlement is an excellent result for consumers and members of the class. The settlement is well within the range of other TCPA settlements on a dollars-per-class-member basis.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT EXECUTED THIS THIS 4th DAY OF NOVEMBER, 2020 IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Anthony I. Paronich
Anthony I. Paronich

EXHIBIT 3

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

GRACE MURRAY, AMANDA ENGEN, :
STEPHEN BAUER, JEANNE TIPPETT, :
ROBIN TUBESING, NIKOLE SIMECEK, :
MICHELLE MCOSKER, JACQUELINE : Case No. 1:19-cv-12608-WGY
GROFF, and HEATHER HALL, on behalf of :
themselves and others similarly situated, :

Plaintiffs, :

v. :

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH

Defendant.

**AFFIDAVIT OF STACEY P. SLAUGHTER IN SUPPORT OF PLAINTIFFS’ MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Stacey P. Slaughter, declare as follows:

1. I make this affidavit in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement to state my opinion that the settlement represents an excellent result for the Settlement Class and to advise the Court of my adequacy to be appointed as class counsel. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called on to do so.

2. I am a partner in the law firm Robins Kaplan LLP, counsel for Plaintiffs in this matter. I am admitted to practice before this Court and am a member in good standing of the bars in the States of Minnesota and the State of New York. I have 20 years of experience in complex commercial, consumer, financial, and antitrust litigation.

3. Robins Kaplan is a national law firm dedicated to trial work, with national recognition for its plaintiff-side litigation.

4. I have had leadership roles in numerous complex and class action litigation cases, including the following:

- *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.), played a key leadership role representing investors in a class action, antitrust suit against private equity firms for a conspiracy to suppress the buyout price for public companies, which settled for \$590.5 million.
- *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720 (E.D.N.Y.), litigated on behalf of class plaintiffs, who paid excessive interchange fees to Visa and MasterCard in violation of antitrust laws.
- *In re LIBOR-Based Financial Instruments Antitrust Litigation*, MDL No. 2262 (S.D.N.Y.), represent direct action plaintiffs in antitrust action concerning the fixing of the BBA LIBOR benchmark.
- *In re ICE Libor Antitrust Litigation*, 19-cv-439 (S.D.N.Y.), serves as co-lead counsel for class plaintiffs in consolidated antitrust action concerning the fixing of ICE LIBOR benchmark.
- *The Federal Home Loan Bank of Pittsburgh v. JP Morgan Chase & Co, et al.*, No. GD-09-016892 (Allegheny Ct., Penn.), represented an institutional investor to recover approximately \$30 million for toxic, residential mortgage-backed securities.
- *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices & Products Liability Litig.*, MDL No. 2777 (N.D. CA.), served on Plaintiffs' Steering Committee, to help secure a settlement in a multidistrict class action against an automotive manufacturer and parts suppliers - totaling \$307.5 million in cash payments to class members, plus emissions modifications and extended vehicle warranties - by alleging unfair, unlawful, and fraudulent marketing and sales of Ecodiesel vehicles.
- *In re Equifax Inc., Consumer Data Security Breach Litig.*, MDL No. 2800 (N.D. GA.), appointed to Plaintiffs' Steering Committee on behalf of a financial institution class in an action against a major credit reporting agency stemming from data breach.
- *In re Cattle Antitrust Litigation*, MDL No. 1222 (D. Minn.), appointed as lead liaison counsel on behalf of class plaintiffs in antitrust action concerning the fixing of fed cattle prices.

5. In light of the risks inherent in class action litigation, as well as my experience litigating class action cases, it is my opinion that the pending settlement is an excellent result for consumers and members of the class. The settlement is well within the range of other TCPA settlements on a dollars-per-class-member basis.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED at Minneapolis, Minnesota, this 6th day of November, 2020.

/s/ Stacey P. Slaughter, Admitted Pro Hac Vice
Stacey P. Slaughter, Admitted Pro Hac Vice

EXHIBIT 4

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

GRACE MURRAY, AMANDA ENGEN, :
STEPHEN BAUER, JEANNE TIPPETT, : Case No. 1:19-cv-12608-WGY
ROBIN TUBESING, NIKOLE SIMECEK, :
MICHELLE MCOSKER, JACQUELINE :
GROFF, and HEATHER HALL, on behalf of :
themselves and others similarly situated, :
:
Plaintiffs, :
:
v. :

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH

Defendant.

**AFFIDAVIT OF SAMUEL J. STRAUSS IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Samuel J. Strauss, declare as follows:

1. I make this affidavit in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement to state my opinion that the settlement represents an excellent result for the Settlement Class and to advise the Court of my adequacy to be appointed as class counsel. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called on to do so.

2. I am a member of the law firm of Turke & Strauss LLP, counsel for Plaintiffs in this matter. I am admitted to practice before this Court and am a member in good standing of the bars of the states of Washington and Wisconsin. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly under the Telephone Consumer Protection Act.

3. Turke & Strauss is a law firm in Madison, Wisconsin that focuses on complex civil and commercial litigation with an emphasis on consumer protection, employment, wage and hour, business, real estate, and debtor-creditor matters.

4. I graduated from the University of Washington School of Law with honors in 2013. As a founding member of Turke & Strauss, I concentrate my practice in complex litigation with an emphasis on consumer and employment issues.

5. I have represented plaintiffs in numerous consumer class actions, including the following:

- *Jones, et al. v. Monsanto Company*—Filed on behalf of individuals who purchased mislabeled RoundUp® products. The case settled on a class-wide basis in 2020 for \$39,550,000, and final approval is pending in the United States District Court for the Western District of Missouri.
- *Hudock, et al. v. LG Electronics U.S.A., Inc., et al.*—Turke & Strauss represents two certified classes of consumers who paid a premium when purchasing televisions due to mislabeled product information. The case is currently on appeal to the United States Court of Appeals for the Eight Circuit.
- *Evans v. American Power & Gas, LLC, et al.*— Filed on behalf of consumers who received automated solicitation telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide basis for \$6,000,000, and final approval was granted in May 2019.
- *Fowler, et al. v. Wells Fargo Bank, N.A.*—Filed on behalf of consumers who were overcharged fees on FHA mortgages. The case settled on a class-wide basis in for \$30,000,000 in 2018, and final approval was granted in January 2019.
- *Ott, et al. v. Mortgage Investors Corporation*—Filed on behalf of consumers who received automated solicitation telephone calls on their cellular and residential telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide basis for \$7,483,600, and final approval

was granted in January 2016.

- *Booth, et al. v. AppStack, et al.*—Filed on behalf of consumers who received automated, prerecorded solicitation telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide basis in 2016, and final approval was granted in January 2017.
- *Melito, et al. v. American Eagle Outfitters, Inc., et al.*—Filed on behalf of consumers who received spam text messages on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide basis in 2016 for \$14.5 million. The case is currently on appeal with the United States Court of Appeals for the Second Circuit.
- *Dibb, et al. v. AllianceOne Receivables Management, Inc.*—Filed on behalf of Washington consumers who received unfair and deceptive debt collection notices that included threats of criminal prosecution. The case is settled on a class-wide basis, and final approval was granted in July 2017.
- *Bee, Denning, Inc., et al. v. Capital Alliance Group, et al.*—Filed on behalf of consumers who received junk faxes and automated, prerecorded solicitation telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* The case settled on a class-wide basis in 2016, and final approval was granted in November 2016.
- *Rinky Dink, et al. v. World Business Lenders, LLC*—Filed on behalf of consumers who received automated, prerecorded solicitation telephone calls on their cellular telephones and Washington landlines without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Washington Automatic Dialing and Announcing Device statute, RCW 80.36.400, and the Washington Consumer Protection Act, RCW 19.86 *et seq.* The case settled on a class-wide basis in 2015, and final approval was granted in May 2016.
- *Rinky Dink, et al. v. Electronic Merchant Systems, Inc., et al.*—Filed on behalf of consumers who received automated, prerecorded solicitation telephone calls on their cellular telephones and Washington landlines without their prior

express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Washington Automatic Dialing and Announcing Device statute, RCW 80.36.400, and the Washington Consumer Protection Act, RCW 19.86 *et seq.* The case settled on a class-wide basis in 2015, and final approval was granted in April 2016.

- *Newell v. Home Care of Washington, Inc., et al.*—Filed on behalf of more than 400 in-home health care workers who alleged violations of state wage and hour laws. The case settled on a class-wide basis, and final approval was granted in January 2015.

6. In light of the risks inherent in class action litigation, as well as my experience litigating dozens of TCPA action settlements, it is my opinion that the pending settlement is an excellent result for consumers and members of the class. The settlement is well within the range of other TCPA settlements on a dollars-per-class-member basis.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED at Madison, Wisconsin, this 22nd day of November, 2020.

/s/ Samuel J. Strauss, Admitted Pro Hac Vice
Samuel J. Strauss, *Admitted Pro Hac Vice*

EXHIBIT 5

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<p>GRACE MURRAY, on behalf of herself and others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GROCERY DELIVERY E-SERVICES USA INC. DBA HELLO FRESH,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 19-cv-12608-WGY</p>
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[PROPOSED] PRELIMINARY APPROVAL ORDER

This Court has reviewed the motion for preliminary approval of class settlement filed in this Action, including the Settlement Agreement and Release (“Settlement Agreement”).¹ Based on this review and the findings below, the Court finds good cause to grant the motion.

FINDINGS:

1. The Court hereby preliminarily approves the Settlement Agreement and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing.

2. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Agreement and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Settlement Agreement.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

3. The Long-Form Notice, Email Notice, Postcard Notice, Claim Form, and Opt-Out Form (all attached to the Settlement Agreement), and their manner of transmission, comply with Rule 23 and due process because the notices and forms are reasonably calculated to adequately apprise class members of (i) the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement.

4. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable.

5. For settlement purposes only, Plaintiff's claims are typical of the Settlement Class' claims.

6. For settlement purposes only, there are questions of law and fact common to the Settlement Class which predominate over any questions affecting only individual Settlement Class Members.

7. For settlement purposes only, class certification is superior to other available methods for the fair and efficient adjudication of the controversy.

IT IS ORDERED THAT:

8. **Settlement Approval.** The Settlement Agreement, including the Long-Form Notice, Email Notice, Postcard Notice, Claim Form, and Opt-Out Form attached to the Settlement Agreement as Exhibits 2-6 are preliminarily approved.

9. **Appointment of the Settlement Administrator and the Provision of Class Notice.** Kurtzman Carson Consultants, LLC is appointed as the Settlement Administrator. HelloFresh and the Settlement Administrator will notify Class Members of the settlement in the manner specified under Section 4 of the Settlement Agreement.

10. Claim for a Settlement Award. Class Members who want to receive an award under the Settlement Agreement must accurately complete and deliver a Claim Form to the Settlement Administrator no later than ninety (90) calendar days after the entry of this Order.

11. Objection to Settlement. Any Class Member who has not submitted a timely written exclusion request pursuant to paragraph 13 below and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the Fees, Costs, and Expenses Award, or the Service Payment must deliver written objections to the Settlement Administrator (by postal mail or email) or the Court no later than ninety (90) calendar days after the entry of this Order. Written objections must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the objecting Settlement Class Member; (d) include the full name, address, telephone number, and email address of the objector's counsel, and the state bar(s) to which counsel is admitted (if the objector is represented by counsel); and (e) provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection. Any Class Member who timely submits a written objection, as described in this paragraph, has the option to appear at the Final Approval Hearing, either in person or through personal counsel, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed settlement, the Service Payment, or to the Fees, Costs, and Expenses Award. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Final Approval Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." Only Settlement Class Members who submit timely objections including Notices of Intention to Appear may speak at the

Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his or her personal attorney's fees and costs. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits.

12. Failure to Object to Settlement. Settlement Class Members who fail to object to the Settlement Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the Final Approval Hearing.

13. Requesting Exclusion. Settlement Class Members may elect not to be part of the Class and not to be bound by this Settlement Agreement. Individual requests for exclusion may be submitted to the Settlement Administrator electronically (through the Settlement Website) or by postal mail, but if submitted by postal mail, each Settlement Class Member must pay for postage. No mass opt-outs are allowed. All requests for exclusion must be in writing and must: (a) clearly identify the case name and number; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number, and email address (optional) of the Settlement Class Member seeking exclusion; (d) contain a statement that the requestor does not wish to participate in the settlement; and (e) be signed personally by the Settlement Class Member. A request for exclusion must be submitted no later than ninety (90) calendar days after entry of this Order.

14. Provisional Certification. The Settlement Class is provisionally certified as:

All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

15. Conditional Appointment of Class Representative and Class Counsel. Plaintiff is conditionally certified as the class representative to implement the Parties' settlement in accordance with the Settlement Agreement. The law firms of Paronich Law, P.C.; Turke & Strauss LLP; and Robins Kaplan LLP are conditionally appointed as Settlement Class Counsel. Plaintiff and Settlement Class Counsel must fairly and adequately protect the Settlement Class' interests.

16. Stay of Other Proceedings. The Court hereby orders that any actions or proceedings in any court in the United States involving any Released Claims asserted by any Releasing Parties, except any matters necessary to implement, advance, or further the approval of the Settlement Agreement are stayed pending the Final Approval Hearing and issuance of any Final Order and Judgment.

17. Termination. If the Settlement Agreement terminates for any reason, the following will occur: (a) class certification will be automatically vacated; (b) Plaintiff and Settlement Class Counsel will stop functioning as the class representative and class counsel, respectively, except to the extent previously appointed by the Court; and (c) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement, other than as to payments made to, or owed for work already incurred by, the Settlement Administrator. Neither the settlement nor this Order will waive or otherwise impact the Parties' rights or arguments.

18. No Admissions. Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

19. Stay of Dates and Deadlines. All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

20. Modifications. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Agreement. The Parties may further modify the Settlement Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided therein. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Settlement Class Members.

21. Final Approval Hearing. On _____ (month) ____ (day), 2021, at _____, this Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. Plaintiff's motion in support of the Final Judgment shall be filed on or before fourteen (14) calendar days before the Final Approval Hearing. Any brief HelloFresh may choose to file shall be filed on or before seven (7) calendar days before the Final Approval Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the website posting, the Parties will not be required to provide any additional notice to Settlement Class Members.

22. Summary Timeline. The Agreement and this Order provide for the following timeline dates and deadlines related to the provision of notice and the Final Approval Hearing:

Last day for HelloFresh to provide the Settlement Administrator the Class List	On or before 10 calendar days after entry of this Order
Last day for the Settlement Administrator to publish the Settlement Website and begin operating a toll-free telephone line, email address, and P.O. Box to accept inquiries from Settlement Class Members	On or before 30 days after entry of this Order
Settlement Administrator commences Email Notice and Postcard Notice to Settlement Class Members	On or before 30 days after entry of this Order
Last day for Settlement Class Counsel to file motion in support of Fees, Costs, and Expenses Award and apply for Service Payment	On or before 69 days after entry of this Order
Last day for Settlement Class Members to file Claim Forms, object, or request exclusion from the Settlement Class	On or before 90 days after entry of this Order
Last day for Settlement Class Counsel to file motion in support of Final Approval	On or before 14 days before Final Approval Hearing
Last day for HelloFresh to file optional brief in support of Settlement	On or before 7 days before Final Approval Hearing

SO ORDERED this ____ day of _____, 2020.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT COURT