

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH	:	
NELUMS, on behalf of themselves and	:	NO. 4:21-cv-00245-RSB-CLR
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AMERICA'S LIFT CHAIRS, LLC	:	
	:	
Defendant.	:	
	:	

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This Court has reviewed the motion for preliminary approval of class settlement filed in this Litigation, including the Class Action Settlement Agreement (“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 Settlement Agreement and hereby finds that the

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

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.

3. The Notice, Summary Notice and Claim 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 Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable.

5. For settlement purposes only, Representative Plaintiffs' claims are typical of the Settlement Class Member 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 Notice, Summary Notice and Claim Form attached to the Settlement Agreement as Exhibits A-C are preliminarily approved.

9. Appointment of the Settlement Administrator and the Provision of Class Notice. Kroll Settlement Administration LLC is appointed as the Settlement Administrator. The Settlement Administrator will notify Class Members of the settlement in the manner specified in the Settlement Agreement. The Court further finds that the Notice Plan described in the Settlement Agreement is the best practicable under the circumstances. The Notice Plan is reasonably calculated under the circumstances to inform the Class of the pendency of the Litigation, certification of a Class, the terms of the Settlement, Class Counsel's fee application, the claim process, and their rights to opt-out of the Settlement Class or object to the Settlement. The Notice and Notice Plan constitute sufficient notice to all persons entitled to notice. The Notices and Notice Plan satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of due process.

10. Claim for a Settlement Award. Class Members who want to receive an award under the Settlement Agreement must accurately complete and submit a Claim Form to the Settlement Administrator 60 days after the Notice Date.

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 must submit written objections to the Court postmarked not less than the Opt-Out Deadline. Any objection regarding or related to the Settlement Agreement shall contain a caption or title that identifies it as

“Objection to Class Settlement in “*Chapman v. America’s Lift Chair, LLC*, No. 21-cv-245” and also shall contain the following information: (i) the objector’s name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for his or her standing as a Class Member, including the phone number(s) at which he or she received call(s) or text(s) covered by this Settlement; and (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement. If an objecting party chooses to appear at the hearing, no later than the Opt-Out Deadline, a notice of intention to appear, either in person or through an attorney, must be filed with the Court and list the name, address, and telephone number of the person and attorney, if any, who will appear. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney’s fees and costs.

12. Failure to Object to 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. 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 by postal mail. No mass opt-outs are allowed. All requests for exclusion must be in writing, must be signed by the Class Member, and must include the Class Member's name, address, and the telephone number that allegedly received a call made by or on behalf of Defendant during the Settlement Class Period, and must clearly state that the Person wishes to be excluded from the Litigation and the Agreement. A request for exclusion must be submitted no later than the Opt-Out Deadline.

14. Provisional Certification. The Class is provisionally certified as a class of all users or subscribers to telephone numbers that received a pre-recorded telemarketing call by Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC and/or that were on the national Do Not Call Registry and received a telemarketing call from Prospects DM, Inc. and any related entities on behalf of America's Lift Chairs, LLC from August 31, 2017 through the date of this Order. Excluded from the Class are (1) the Judges and Magistrate Judges presiding over the action and members of their immediate families; (2) the Defendant, its parent companies, successors, predecessors, and any entities in which the Defendant or its parents have a controlling interest, and Defendant's current and former officers, directors, agents, trustees, representatives, employees, principals, partners, joint ventures, and entities controlled by Defendant; (3) persons who

properly execute and timely file a 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. Plaintiffs are conditionally certified as the class representatives to implement the Parties' settlement in accordance with the Settlement Agreement. The law firms of Kaufman P.A. and Paronich Law, P.C. are conditionally appointed as Class Counsel. Plaintiffs and Class Counsel must fairly and adequately protect the Class's 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) Plaintiffs and 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 Litigation will revert to its previous status in all respects as it existed immediately before the Parties gave notice of their settlement, 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. Neither the Settlement terms nor any publicly

disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, any Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

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. Pending final determination of whether the Settlement should be approved, Representative Plaintiffs, all persons in the Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

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 Class Members.

21. Final Approval Hearing. On _____ (month) ____ (day), 2023, at _____, this Court will hold a Final Approval Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. Plaintiffs' and Class Counsel's motion for attorneys' fees and expenses for Class Counsel shall be filed __ calendar days before the Final Approval Hearing. Plaintiff's motion in support of the Final Judgment shall be filed _____ calendar days before the Final Approval Hearing. Any brief Defendant may choose to file shall be filed on or before ____ calendar days before the Final Approval Hearing. This Court may order the Final Approval Hearing to be postponed, adjourned, continued, or set for remote appearances. If that occurs, the updated hearing date or location shall be posted on the Class 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. This Order provides for the following timeline dates and deadlines related to the provision of notice and the Final Approval Hearing:

<u>Event</u>	<u>Date</u>
Notice Date	30 days after Preliminary Approval
Deadline for filing papers in support of Class Counsel's application for an award of attorneys' fees and expenses	35 days prior to Opt-Out Deadline
Claims Deadline	60 days after the Notice Date

Opt-Out Deadline	60 days after the Notice Date
Deadline for filing Motion for Final Approval	15 days prior to the Final Approval Hearing
Responses to Objections	7 days prior to the Final Approval Hearing
Final Approval Hearing	90 days after entry of Preliminary Approval

SO ORDERED this ____ day of _____, 2023.

R. STAN BAKER
UNITED STATES DISTRICT JUDGE