

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

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

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made and entered into by and between Representative Plaintiffs Crystal Chapman and Joseph Nelums, on behalf of themselves and the Settlement Class and America’s Lift Chairs, LLC (“Defendant”) to settle and compromise this action and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

WHEREAS, *Chapman v. America’s Lift Chairs, LLC*, No. 21-cv-245, was filed August 31, 2021 and is currently pending before the Honorable R. Stan Baker of the U.S. District Court for the Southern District of Georgia, alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*

WHEREAS, *Nelums v. America's Lift Chairs, LLC*, No. 22-cv-739, was filed May 6, 2022 and was pending in the U.S. District Court for the Northern District of Ohio, alleging Defendant violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, *et seq.* Prior to this settlement agreement being filed, the *Chapman* action was amended to include Mr. Nelums's claim.

WHEREAS, Defendant denies each and every one of Representative Plaintiffs' allegations of unlawful conduct, damages, or other injuries and maintains that it complied with the TCPA and all applicable laws;

WHEREAS, based upon the investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, motions practice to date, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Representative Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement;

WHEREAS, in an effort to facilitate a resolution of the Litigation, the Settling Parties participated in lengthy, arms' length negotiations, including a day long mediation with Hon. Steven Gold (Ret.) of JAMS and follow up negotiations;

WHEREAS, the Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence except to enforce the terms of

the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement;

NOW THEREFORE, subject to the Final Approval Order of the Court as required herein and applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that all Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

1.1 As used herein, the following terms have the meanings set forth below.

1.1.1 “Agreement or Settlement Agreement” means this document, including all exhibits.

1.1.2 “Appeal” means a request for appellate review of any order or judgment of the Court entered in this Litigation, including but not limited to appeals as of right, discretionary appeals, interlocutory appeals, any order reinstating an appeal, and proceedings involving writs of certiorari and/or any proceedings thereon.

1.1.3 “Approved Claim” means a claim submitted by a Class Member that: (a) is received by the Settlement Administrator or postmarked on or before the Claims Deadline; (b) is fully and truthfully completed by a Class Member with all information requested in the Claim Form, and in accordance with the directions on

the Claim Form; (c) is signed by the Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Sum under the Agreement and the Final Approval Order and Judgment.

1.1.4 “CAFA Notice” means the notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Paragraph 6.4.

1.1.5 “Claims Deadline” means the date that is set by the Court and approximately sixty (60) days after the Notice Date.

1.1.6 “Claim Form” means the document to be submitted by Claimants seeking payment pursuant to this Settlement, attached as Exhibit A.

1.1.7 “Claim Settlement Payment” means the payment to be made to Class Members who submit Approved Claims.

1.1.8 “Claimant” means a Class Member who submits a Claim Form.

1.1.9 “Class” means 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 preliminary approval.

1.1.10 “Class Counsel” means Avi R. Kaufman of Kaufman P.A. and Anthony Paronich of Paronich Law, P.C.

1.1.11 “Class Member” means a person who falls within the definition of the Class and who does not opt out of the Settlement.

1.1.12 “Class Period” means from August 31, 2017 through the date of preliminary approval.

1.1.13 “Court” means the U.S. District Court for the Southern District of Georgia.

1.1.14 “Complaint” means the operative complaint in this Litigation at the time the Court enters the Preliminary Approval Order.

1.1.15 “Defendant” means America’s Lift Chairs, LLC.

1.1.16 “Defense Counsel” means Defendant’s counsel of record in the Litigation.

1.1.17 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final. If the settlement contained in this Settlement Agreement is not approved by the Court and does not result in Judgment, or if the 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 never become effective and 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.

1.1.18“Fee Award” means the amount of attorneys’ fees and reimbursement of expenses that may be awarded by the Court and that will be paid out of the Settlement Sum.

1.1.19“Final” means one business day following the later of the following events: (i) the expiration of the time to file a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to file an Appeal of any judgment entered pursuant to this Agreement has passed without any Appeal having been taken; and (iii) the resolution of any such Appeal in a manner that does not reverse or vacate the Judgment and in a manner that permits the consummation of the Settlement substantially in accordance with the terms and conditions of this Agreement. Any proceeding or order, or any Appeal pertaining solely to any request or order regarding the Fee Award will not in any way delay or preclude the Judgment from becoming Final.

1.1.20“Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and Class Members have been given reasonable notice and an opportunity to object or to exclude themselves from the

Settlement, at which the Court will determine whether to finally approve the Settlement and to enter Judgment.

1.1.21 “Final Approval Order” means an order, providing for, among other things, final approval of the Settlement.

1.1.22 “Judgment” means the judgment to be entered by the Court pursuant to this Settlement Agreement.

1.1.23 “Litigation” means *Chapman v. America’s Lift Chairs, LLC*, No. 21-cv-245, currently pending in the U.S. District Court for the Southern District of Georgia.

1.1.24 “Notice” means a document substantially in the form of Exhibit B hereto, and “Summary Notice” means a document substantially in the form of Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

1.1.25 “Notice Date” means the last date by which the Notice is first disseminated by mail and by email pursuant to the Notice Plan.

1.1.26 “Notice Plan” shall mean the proposed plan of disseminating to Class Members notice of the proposed Settlement and of the Final Approval Hearing, as approved by the Court.

1.1.27“Opt-Out Deadline” means the date set by the Court for Class Members to opt-out of or object to the Settlement that is approximately sixty (60) days after the Notice Date.

1.1.28“Parties” means, collectively, Representative Plaintiff and Defendant.

1.1.29“Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.1.30“Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Class according to the Notice Plan.

1.1.31“Released Claims” shall mean any and all claims, liabilities, demands, causes of action, or lawsuits, whether known or Unknown Claims, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law (such as any violations of the TCPA, the FCC’s related regulations—including internal Do Not Call requirements, or unfair or deceptive practices act), and whether brought in an individual, representative, or any other capacity, that were brought in the Litigation or that arise from or relate to consumer outreach or

consumer direct marketing activity by telephone done by Prospects DM, Inc. and any related entities for America's Lift Chairs, LLC from four years prior to the filing of the initial complaint through the date of the Judgment. However, Prospects DM, Inc. and any related entities are not released by this settlement and class members expressly may continue their claims against Prospects DM, Inc. and any related entities.

1.1.32 "Released Parties" means Defendant and any respective corporate parent, subsidiary, or affiliated entities, along with each of their current, former, and future owners, members, partners, officers, directors, shareholders, employees, assigns, successors, servants, insurers, representatives, and attorneys or agents, without limitation. Defendant's marketers, vendors, and third-party contractors are also Released Parties but only insofar as any Released Claim relates to actions taken on behalf of Defendant. However, Prospects DM, Inc. and any related entities are not released by this settlement and class members expressly may continue their claims against Prospects DM, Inc. and any related entities.

1.1.33 "Releasing Parties" means: (a) Representative Plaintiffs, their heirs, assigns, successors in interest, and personal representatives; (b) Class Members who do not timely opt out; (c) to the extent that a Class Member is not an individual, all of its present, former, and future predecessors, successors, assigns, parents, subsidiaries, joint ventures, and affiliates, and all employees, agents,

representatives, consultants, independent contractors, insurers, directors, officers, partners, principals, members, attorneys, accountants, financial advisors, investors, investment bankers, underwriters, shareholders, lenders, and auditors of any of the foregoing Persons; and (d) to the extent the Class Member is an individual, any present, former, and future spouses, as well as the present, former, and future heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors, predecessors, and assigns of each of them, and any other representatives of any of the foregoing Persons.

1.1.34 “Representative Plaintiffs” means Plaintiffs Crystal Chapman and Joseph Nelums.

1.1.35 “Settlement” means the settlement set forth in this Agreement.

1.1.36 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator administering this Settlement, including in providing notice, processing claims, administering the Settlement, and mailing checks for Approved Claims. Settlement Administration Expenses of up to \$75,000 shall be paid and deducted from the Settlement Sum. Any Settlement Administration Expenses over \$75,000 shall be borne by Representative Plaintiffs.

1.1.37 “Settlement Administrator” means Kroll.

1.1.38 “Settlement Sum” means \$1,700,000. The Settlement Sum represents the maximum possible payment by Defendant under this Agreement from

which payments for (a) all Approved Claims to Class Members, (b) up to \$75,000 of Settlement Administration Expenses, including CAFA Notice, and (c) any Fee Award, will be made.

1.1.39 “Settling Parties” means, collectively, Defendant, Representative Plaintiffs, and all Class Members.

1.1.40 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

2. DENIAL OF WRONGDOING AND LIABILITY

2.1 Defendant denies the material factual allegations and legal claims asserted by Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Further, Defendant maintains that it has strong, meritorious defenses to the claims alleged in the Litigation and that it was prepared to vigorously defend all aspects of the Litigation.

2.2 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 (collectively, the “Settlement Proceedings”) are not to 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; provided, however, that this Agreement and the Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3. THE BENEFITS OF SETTLEMENT

3.1 Class Counsel and Representative Plaintiffs recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendant through trial and appeals. Class Counsel also has taken into account the strength of Defendant's defenses, difficulties in proving vicarious liability, and the uncertain outcome and risks of litigation, especially in complex actions such as this one, and the inherent delays in such litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, Representative Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of Representative Plaintiffs and the Class.

4. SETTLEMENT TERMS

4.1 Defendant will fund the Settlement Sum as set forth in this paragraph. The Settlement Sum, less any payments made for counsel fees contemplated under Paragraph 5.4, will be paid to the Administrator as follows: \$75,000 for Settlement

Administration Expenses within 30 days after preliminary approval; 5 monthly payments of \$107,222.23 in 30 day increments thereafter; and any remaining amounts required for payment of Approved Claims to Class Members and any Fee Award within 30 days of Final Approval. Any part of the Settlement Sum that is not used to pay Settlement Administration Expenses, Approved Claims, or any approved Fee Award shall remain with the Defendant. Defendant shall have no responsibility to segregate or escrow any funds to account for the Settlement Sum and, in no event shall Defendant's total financial liability with respect to this Agreement, the Released Claims, and the Settlement exceed the Settlement Sum.

4.2 Payment to Class Members

4.2.1 Each Class Member shall be entitled to submit one claim per telephone number he or she used or subscribed to.

4.2.2 Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying claimed calls with information provided by the Parties. No fraudulent claim or other claim except a claim containing all required components—including the signature of a valid Class Member and a claim ID— shall be an Approved Claim.

4.2.3 Claim Settlement Payments will be made to Class Members who timely submit a valid Claim Form by the Claims Deadline.

4.2.4 Each Class Member who makes an Approved Claim shall be entitled to a Claim Settlement Payment in an amount not to exceed forty dollars and three cents \$40.03 less each Class Member's share of any Fee Award. In the event that the total amount of Claim Settlement Payments for Approved Claims would exceed the threshold at which there would be insufficient funds in the Settlement Sum to pay all Approved Claims, any Fee Award, and Settlement Administration Expenses, the amount on a per claim basis will also be reduced by each Class Member's share of Settlement Administration Expenses so that the Settlement Sum is exhausted but not exceeded.

4.2.5 Payments will be made directly to the Class Member by the Settlement Administrator.

4.3 Separate and apart from the Settlement Sum, subject to Court approval, Defendant shall pay each Representative Plaintiff \$5,000 in the interest of compromising Plaintiffs' individual claims not released in the Agreement against Defendant, as well as resolving all outstanding issues between the Parties through the Effective Date. In the event the Court approves the Settlement, but does not approve the separate payment to Representative Plaintiffs, the Settlement will nevertheless be binding on the Parties and the Class Members.

4.4 Without admission of guilt, and as further non-monetary relief to the class, Defendant agrees as a result of this Action, Defendant will institute enhanced

policies and procedures to ensure compliance with the TCPA, including, but not limited to, enhanced policies and procedures to ensure Defendant obtains adequate and proper consent and ensuring that pre-recorded telemarketing calls are not made on their behalf.

5. ATTORNEYS' FEES, EXPENSES, AND COSTS

5.1 Class Counsel shall apply to the Court for attorneys' fees of up to one-third of the Settlement Sum and documented and reasonable expenses and costs of up to \$25,000. Class Counsel's application for fees, expenses, and costs shall be filed no later than thirty-five (35) days prior to the Opt-Out Deadline. Any Fee Award approved by the Court shall be paid solely out of the Settlement Sum and shall not increase Defendant's total financial liability with respect to this Agreement or Settlement.

5.2 In the event the Court approves the Settlement, but declines to award a Fee Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties and the Class Members.

5.3 Defendant shall have no liability to Class Counsel or any other Person arising from any claim regarding the division of the Fee Award between and among Class Counsel or any other counsel who may claim entitlement to any portion of the Fee Award.

5.4 The Fee Award, if approved by the Court, shall be paid by wire transfer from the Settlement Administrator with fifteen (15) business days following the Effective Date, provided that the law firm or attorney being paid has executed and provided to Defendant a Form W-9.

5.5 The Court shall retain jurisdiction of any dispute regarding the Fee Award and any repayment of any amount of the Fee Award.

6. ADMINISTRATION AND NOTICE

6.1 Up to \$75,000 of the costs and expenses of administering the Settlement and providing reasonable Notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement Sum, including the cost of CAFA Notice.

6.2 Responsibilities of Settlement Administrator

6.2.1 The Settlement Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice.

6.3 Class Settlement Website

6.3.1 The Settlement Administrator will create and maintain the Class Settlement Website, to be activated within thirty (30) days of Preliminary Approval. The Settlement Administrator's responsibilities will also include securing an appropriate URL to be agreed upon by the Parties. The Class Settlement Website will contain information about the Settlement and case-related documents such as

the Settlement Agreement, the Long-Form Notice in the form attached hereto as Exhibit B, subject to Court modification and/or approval, the Claim Form, and the Preliminary Approval Order. Copies of the Summary Notice, Long-Form Notice, and Claim Form translated into Spanish will also be made available on the Settlement Website. Class Members shall have the option to file a claim electronically using the Class Settlement Website.

6.3.2 The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Settlement Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved in full, if the Settlement is terminated or otherwise not approved in full. The Settlement Administrator may destroy documents generated in the administration of the Settlement one year after the void date on settlement checks.

6.3.3 All costs and expenses related to the Class Settlement Website shall be paid out of the Settlement Sum.

6.4 CAFA Notice

6.4.1 The Parties agree that the Settlement Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

6.4.2 All costs and expenses related to the CAFA Notice shall be paid out of the Settlement Sum as a Settlement Administration Expense.

6.4.3 The Settlement Administrator will file a certification with the Court stating the date(s) on which the CAFA Notices were sent. Each Party will provide the other Parties with any substantive responses received in response to any CAFA Notice. Any fees and costs incurred by Class Counsel to respond to any substantive responses—or otherwise incurred to defend challenges to the Settlement Agreement—shall be paid exclusively from the Settlement Sum, subject to Court approval.

6.5 Notice Plan

6.5.1 The Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the U.S. Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.5.2 The Parties shall provide the telephone numbers, and all reasonably available demographic information including addresses and email addresses where available, for the Class Members to the Settlement Administrator within five (5) calendar days after the Court enters the Preliminary Approval Order or as soon as reasonably possible. This information and data shall remain confidential.

6.5.3 Subject to Court approval, within thirty (30) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via U.S. Postal Service with Postage Pre-Paid, to Class Members for whom the Parties identify addresses or for whom the Administrator can identify addresses. The Administrator shall use up to three data vendors to try to identify addresses if necessary.

6.5.4 Subject to Court approval, within thirty (30) days after the Court enters Preliminary Approval, the Settlement Administrator shall also send direct notice substantially in the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via email, to Class Members for whom the Parties identify email addresses. The Administrator shall use up to three data vendors to try to identify email addresses if necessary.

7. CLAIMS PROCESS

7.1 Submission of Claims. Class Members must timely submit, by mail or online, a valid Claim Form substantially in the form attached as Exhibit A, as modified and/or approved by the Court, by the Claims Deadline. All Claim Forms must be postmarked or submitted to the Settlement Administrator, either in hard copy form or electronically via the Settlement Website, by the Claims Deadline and contain a valid Claim ID. Regardless of the manner in which it is submitted, a valid

Claim Form means a Claim Form containing all required information, including a valid, unique claim identification number to be assigned by the Settlement Administrator, which is signed by a Class Member and is timely submitted. Any Claim Form which is not timely submitted shall be denied. In the event a Class Member submits a Claim Form by the Claims Deadline but the Claim Form is not complete, then the Settlement Administrator shall give such Class Member a reasonable opportunity to provide any requested missing information. For any Class Member who submits a Claim Form determined by the Settlement Administrator to be incomplete, the Settlement Administrator may mail a notice directly to such Class Member, notifying him or her of the missing information and providing him or her with an opportunity to cure (the “Cure Notice”). Class Members must cure incomplete claims on or before the Effective Date.

7.2 Claims Processing. The Settlement Administrator shall apply the terms of this Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form submitted that does not meet the requirements of this Agreement is not eligible to be an Approved Claim. The Settlement Administrator also shall employ reasonable procedures to screen claims for abuse, fraud, or duplication, and shall deny Claim Forms where there is evidence of abuse, fraud, or duplication. The Settlement Administrator’s decisions regarding the Claimant’s eligibility for a claims payment shall be final, assuming the Settlement Administrator applies

reasonable practices to assure that no invalid, incomplete, untimely or fraudulent claims are treated as Approved Claims. The Parties, the Released Parties, and their respective counsel shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.

7.3 Payment of Claims. Within sixty (60) days after the later of (i) the final determination by the Administrator of the number of Approved Claims, and (ii) the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Sum all Approved Claims by check made payable to the Class Member submitting each Approved Claim, and shall mail the checks via first-class mail.

7.4 All payments to Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance. To the extent that any checks to Class Members expire and become null and void, the Settlement Administrator shall distribute the funds associated with those checks on a per claim basis to Class Members who submitted an Approved Claim and who cashed their Settlement Claim Payments. In the event that the Settlement Administration Expenses associated with the redistribution together with the amount to be redistributed would exceed the funds in the Settlement Sum, the amount of the redistribution will be reduced by each Class Member's share of Settlement Administration Expenses associated with

the redistribution so that the Settlement Sum is exhausted but not exceeded. Any remaining monies after the redistribution shall be paid to Defendant.

7.5 No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any Claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

8. RELEASES

8.1 Upon entry of the Judgment, Representative Plaintiffs and each Class Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Released Parties from all Released Claims.

8.2 After entering into this Settlement Agreement, Representative Plaintiffs or Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Representative Plaintiff and Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or not concealed or hidden, without

regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3 Upon entry of the Final Approval Order, Representative Plaintiffs, and any Class Member who does not Opt Out as set forth in Paragraph 9.4 is hereby barred against continuing or bringing any action against any of the Released Parties for any of the Released Claims, regardless of whether such action was commenced prior to the Final Approval Order. Additionally, Representative Plaintiffs and Class Members agree and covenant, and each Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

9. APPROVAL PROCESS

9.1 Court Approval

9.1.1 Class Counsel shall submit the Agreement together with its Exhibits to the Court and request that the Court grant preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval (collectively, “Motion for Preliminary Approval”).

9.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that the Court allow for a period of no less than ninety (90) days between

entry of the Preliminary Approval Order and the Final Approval Hearing and that the Court schedule a Final Approval Hearing for a date no less than ninety (90) days from entry of the Preliminary Approval Order.

9.1.3 The date the Motion for Preliminary Approval is filed is the date by which the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.

9.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be responsible for asking the Court to grant final approval of the Settlement and to enter a Final Approval Order and Judgment, in accordance with the date set by the Court for the Final Approval Hearing.

9.1.5 If the Court does not enter a Preliminary Approval Order or a Final Approval Order and Judgment or if the Final Approval Order is reversed or vacated, by any court, this Agreement shall terminate and be of no force or effect, except as otherwise set forth in this Agreement, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval. Notwithstanding any provision of this Agreement, the Parties agree that any decision by any court as to any Fee Award to Class Counsel or any separate payment to the Representative Plaintiffs, described in Paragraphs 4.3 and 5.1 above, including any decision by any court to award less than the amounts sought, shall not prevent the

Agreement from becoming effective, prevent Final Judgment from being entered, or provide any grounds for termination of the Agreement or the Settlement.

9.2 Procedures for Objecting to the Settlement

9.2.1 Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given final approval, subject to each of the sub-provisions contained in this paragraph. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the Court or mailed to the Clerk's Office of the United States District Court for the Southern District of Georgia, 8 Southern Oaks Ct., Savannah, GA, by no later than the Opt-Out Deadline. Class Members may object either on their own or through an attorney hired at their own expense.

9.2.2 Any objection regarding or related to the 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.

9.2.3 A Class Member who appears at the Final Approval Hearing, either personally or through counsel, may be permitted to argue only those matters that were set forth in the timely and validly submitted written objection filed by such Class Member. No Class Member shall be permitted to raise matters at the Final Approval Hearing that the Class Member could have raised in his/her written objection, but failed to do so, and all objections to the Settlement Agreement that are not set forth in a timely and validly submitted written objection will be deemed waived.

9.2.4 If a Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at the Final Approval

Hearing. Representative Plaintiffs or Defendant or both may take discovery regarding any objector, their attorney (if applicable), and the basis of any objection, subject to Court approval.

9.2.5 Any Class Member who fails to comply with the applicable provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or she may have to object, appear, present witness testimony, and/or submit evidence, shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing, shall be precluded from seeking review of this Agreement by appeal or other means, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Litigation. By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.

9.3 Right to Respond to Objections

9.3.1 Class Counsel and the Parties shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by hand, overnight delivery, or email to the objector (or counsel for the objector).

9.4 Opt Outs

9.4.1 Any Class Member who does not wish to participate in this Settlement must write to the Settlement Administrator stating an intention to be “excluded” from this Settlement. This written request for exclusion must be sent via first class United States mail to the Settlement Administrator at the address set forth in the Notice and postmarked no later than the Opt-Out Deadline. A request for exclusion 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 that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person serving such a request shall be a member of the Class and shall be bound as a Class Member by the Court’s Orders in this Litigation and by this Agreement, if approved. The request for exclusion must be personally signed by the Class Member. So-called “mass” or “class” opt-outs shall not be allowed.

9.4.2 Any Person in the Class who submits a request for exclusion may not file an objection to the Settlement. If a Class Member submits a written request for exclusion pursuant to Paragraph 9.4.1 above, he or she shall be deemed to have

complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court.

9.4.3 After Notice is disseminated and at least fifteen (15) days prior to the Final Approval Hearing, the Parties shall request and seek to obtain from the Court a Final Approval Order and Judgment, which will (among other things):

- (i) find that the Court has personal jurisdiction over all Class Members and that the Court has subject-matter jurisdiction to approve the Agreement, including all exhibits hereto;
- (ii) approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have preclusive effect on all pending and future lawsuits or other proceedings maintained by or on behalf of Representative Plaintiff and the Releasing Parties;
- (iii) find that the Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Class of the

pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

- (iv) dismiss the Action (including all individual claims and Class Member claims asserted therein) on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement; incorporate the releases set forth above in Paragraph 8, make those releases effective as of the date of the Final Approval Order and Judgment; and
- (v) forever discharge the Released Parties as set forth herein; permanently bar and enjoin all Class Members from filing, commencing, continuing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction related to the Released Claims.

10. TAXES

10.1 Class Members, Representative Plaintiffs, and Class Counsel shall be

responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

10.2 Expenses Paid from Fund. Any expenses reasonably incurred by the Claims Administrator in carrying out the duties, including fees of tax attorneys and accountants, will be paid from the Settlement Sum, up to \$75,000.

10.3 Responsibility for Taxes on Distribution. Any Person that receives a distribution from the Settlement Sum will be solely responsible for any taxes or tax-related expenses owed or incurred by reason of that distribution. Such taxes and tax-related expenses will not be paid from the Settlement Sum.

10.4 Payment Not Directed By or Incurred to Government: For purposes of assessing deductibility of any amounts to be paid by Defendant under the Settlement Agreement, it is expressly acknowledged by the Parties that such payments are not made or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law, as contemplated by 26 U.S.C. § 162(f)(1).

10.5 Defendant is Not Responsible. In no event will Defendant 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 Sum to Representative Plaintiffs, Class Members, Class Counsel or any other person

or entity. The Class Members shall indemnify and hold Defendant and other Released Parties harmless—through the Settlement Sum— for all such taxes and tax-related expenses.

11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

11.1 The Effective Date of this Agreement shall be the date defined in Paragraph 1.1.17.

11.2 Performance of the obligations set forth in this Agreement is subject to all of the following material conditions:

- (A) execution of this Agreement by Defendant, Representative Plaintiffs, and Class Counsel.
- (B) the granting of preliminary approval by the Court.
- (C) sending of the notices described herein.
- (D) the granting of final approval by the Court.
- (E) execution and entry of Judgment by the Court.
- (F) the occurrence of all other circumstances necessary for the Effective Date to arise.

11.3 The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence

necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings by third parties seeking review of any order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with Representative Plaintiffs or any third party.

11.4 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of the date of signature of this Settlement Agreement. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

11.5 The Parties agree to request a stay of the Litigation pending approval of the Settlement.

12. MISCELLANEOUS PROVISIONS

12.1 Cooperation of the Parties: The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this

Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by putative or actual Class Members. Class Counsel recognize that they have an obligation to support the Settlement and to seek the Court's approval of its terms. Class Counsel will abide by all applicable and governing ethical rules, opinions, and obligations precluding their representation of opt-outs.

12.2 Resolution of Dispute without Admission: The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement covers claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

12.3 Use In Subsequent Proceedings: Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the

Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.4 Confidential Information: All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement. All class member identification information supplied to, or generated by, the Administrator in furtherance of this Agreement will be treated as confidential.

12.5 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

12.6 Modification: This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

12.7 Integration: This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and

memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

12.8 Class Counsel's Authority: Class Counsel, on behalf of the Class, are expressly authorized by Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class.

12.9 Parties' Authority: Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

12.10 Counterparts: This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

12.11 No Prior Assignments: Representative Plaintiffs and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

12.12 Binding on Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Class Members.

12.13 Interpretation: None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

12.14 Governing Law: This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Georgia without giving effect to that state's choice-of-law principles.

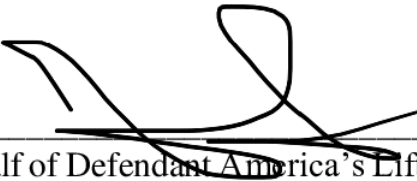


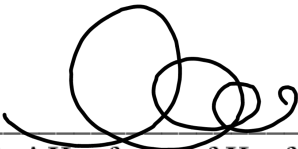

12.15 Headings: The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

12.16 No Waiver: The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

12.17 Publicity and Confidentiality. Neither the Parties nor their counsel will initiate any public statement intended to be disseminated through the press, internet, television, radio, or other media that includes an opinion or editorial comment about the effect of the Settlement or the merits of any Parties' positions in the Litigation. This provision does not apply to any communications between any Class Member and Class Counsel or any communications with the Court. Defendant shall be

permitted to respond to requests for comment—in its sole discretion—if any such requests are initiated.

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of January____, 2023.

<p>Dated:</p>	 <hr/> <p>on Behalf of Defendant America's Lift Chairs, LLC</p>
<p>Dated:</p>	 <hr/> <p>Crystal Chapman as Representative Plaintiff</p>
<p>Dated:</p> <p>01/23/2023</p>	 <hr/> <p>Joseph Nelums as Representative Plaintiff</p>
<p>Dated:</p> <p>1/24/2023</p>	 <hr/> <p>Avi Kaufman of Kaufman P.A. as Class Counsel</p>
<p>Dated:</p> <p>1/24/2023</p>	 <hr/> <p>Anthony Paronich of Paronich Law as Class Counsel</p>