

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between plaintiffs John Karpilovsky and Jimmie Criollo, Jr. (together, “Plaintiffs”), for themselves and the Settlement Class Members (as defined below), on the one hand, and, on the other hand, All Web Leads, Inc. (“AWL”). Plaintiffs and AWL are referred to collectively in this Settlement Agreement as the “Parties.”

**I. RECITALS**

1.1 On February 21, 2017, plaintiff William Sullivan filed a class action complaint in the Northern District of Illinois against AWL captioned *Sullivan v. All Web Leads, Inc.*, No. 1:17-cv-01307 (N.D. Ill.) (the “Action”). The complaint alleged that AWL violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”) by initiating phone calls using an automatic telephone dialing system and/or an artificial or prerecorded voice to call cellular and residential telephones without prior express consent.

1.2 On July 25, 2017, after William Sullivan withdrew, plaintiffs John Karpilovsky and Jimmie Criollo, Jr. filed an amended class action complaint in the Action (Dkt. 44).

1.3 The Action has been actively litigated. Plaintiffs’ claims survived AWL’s motion to dismiss, and the parties engaged in contested discovery and expert discovery, taking multiple depositions, and litigated class certification and expert challenges.

1.4 On June 25, 2018, the Court denied AWL’s challenge to one of Plaintiffs’ experts and granted Plaintiffs’ motion for class certification. Dkt. 103. After sending Class Notice on about October 2, 2018, the parties resumed settlement talks and, after two in-person mediation sessions before the Hon. Wayne Andersen (ret.) and multiple emails and telephone calls, they reached this Settlement Agreement.

1.5 AWL denies all allegations of wrongdoing alleged in the Action. AWL specifically denies that it used automated dialers or prerecorded voice messages to call Plaintiffs or potential class members without their prior express written consent; that it violated the TCPA; and that Plaintiffs and potential class members are entitled to any relief. AWL further contends that the allegations contained in the operative complaint are not amenable to class certification. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, AWL has agreed to settle claims alleged in the operative complaint on the terms set forth in this Agreement, subject to Court approval.

1.6 This Settlement Agreement resulted from good faith, arms'-length settlement negotiations over several months, including two in-person mediation sessions before the Honorable Wayne Andersen (ret.) of JAMS. Plaintiffs and AWL submitted detailed mediation submissions to Judge Andersen setting forth their respective views as to the strengths of their cases, and AWL submitted financial information as part of its mediation submissions. Additionally, Plaintiffs have reviewed data and documents produced by AWL, including detailed financial information.

1.7 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 in this or any other litigation except to enforce the terms of the Settlement Agreement and it 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 their existing disputes and claims as set forth herein.

1.8 The Settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the Released Claims, as defined in Section 2.26 herein, upon and subject to the terms and conditions hereof.

## II. DEFINITIONS

2.1 The “Action” means the class action filed by Plaintiffs in the Northern District of Illinois against AWL captioned *Karpilovsky, et al. v. All Web Leads, Inc.*, No. 1:17-cv-01307 (N.D. Ill.).

2.2 “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement Agreement and Release between Plaintiffs, the Settlement Class Members, and AWL.

2.3 “CAFA Notice” refers to the notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) to be provided by the Claims Administrator pursuant to Section 8.4 of this Agreement.

2.4 “Cash Award” means a payment from the Settlement Fund to an eligible Settlement Class Member.

2.5 “Claims Administration” means the activities of the Claims Administrator consistent with the terms of this Settlement.

2.6 “Claims Administrator” means Postlethwaite & Netterville, subject to approval by all Parties and the Court.

2.7 “Claims Deadline” means the date thirty (30) days before the Final Approval Hearing.

2.8 “Class Counsel” means the following law firms and the attorneys associated with those law firms:

- a. Lieff Cabraser Heimann & Bernstein, LLP; and
- b. Kozonis & Klinger, Ltd.

**2.9** “Class Notice” means the notice that was provided to the Settlement Class by the Claims Administrator on or about October 2, 2018, and any additional notice that might be ordered by the Court.

**2.10** “Class Period” means from February 21, 2013, through the date of Preliminary Approval.

**2.11** “Class Representatives” means John Karpilovsky and Jimmie Criollo, Jr.

**2.12** “Court” means the United States District Court for the Northern District of Illinois.

**2.13** “Cy Pres Distribution” means monies that may be distributed in connection with the Settlement pursuant to Section 7.4(f).

**2.14** “Effective Date” means the date when the judgment (as described in Section 12.1 below) has become final.

**2.15** “Final Approval Hearing” and “Fairness Hearing” mean the hearing held by the Court to determine whether to finally approve the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate.

**2.16** “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing.

**2.17** “Final Distribution Date” means the earlier of (i) the date as of which all the checks for Cash Awards have been cashed, or (ii) 210 calendar days after the date on which the last check for a Cash Award was issued.

**2.18** “Final Funding Date” means the date, no later than January 7, 2025, on which AWL makes its final payment into the Settlement Fund.

**2.19** “Initial Funding Date” means ten (10) business days after the Effective Date.

**2.20** “Motion for Preliminary Approval” means the motion that Plaintiffs shall submit to the Court requesting the relief set forth in Sections 6.1.

**2.21** “Notice” means the notices to be provided to Settlement Class Members as set forth in Section VIII including, without limitation, email notice and, if necessary, mail notice and any additional notice that might be ordered by the Court.

**2.22** “Notice Database” means the database containing Settlement Class Members’ information the Parties have provided pursuant to Section 7.2.

**2.23** “Objection Deadline” means sixty (60) calendar days after the Settlement Notice Date.

**2.24** “Opt-Out Deadline” means sixty (60) calendar days after the Settlement Notice Date.

**2.25** “Preliminary Approval Order” means the Order the Court enters in connection with the Motion for Preliminary Approval.

**2.26** “Released Claims” means the claims released in Section XIII.

**2.27** “Released Parties” means All Web Leads, Inc., and each of its past, present, and future parents, subsidiaries, affiliated companies, corporations, AWL customers who called or received calls from any Settlement Class Member, AWL customers who received from AWL lead data concerning any Settlement Class Member, and independent contractor agents, 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 each of their respective executors, successors, assigns, and legal representatives. Notwithstanding

anything in this Agreement to the contrary, any AWL customer that AWL discloses pursuant to Section 4.2 of this Agreement shall not be a Released Party and shall not be released by this Agreement.

**2.28** “Request for Exclusion” means the written submission submitted by a Settlement Class Member to opt out of the Settlement consistent with the terms of this Agreement and subject to the Opt-Out Deadline.

**2.29** “Settlement Class” means the Plaintiffs and all persons listed in Exhibit 1.

**2.30** “Settlement Class Members” means the Plaintiffs and those additional persons who are members of the Settlement Class, as that term is defined above, and who do not submit a timely and valid Request for Exclusion from the Settlement Class.

**2.31** “Settlement Administration Costs” means all costs incurred or to be incurred by the Claims Administrator in conducting the Claims Administration.

**2.32** “Settlement Fund” means the \$6,500,000.00 non-reversionary sum that AWL shall pay to settle this Action and obtain a release of all Released Claims in favor of the Released Parties, to be paid according to the schedule, and allocated in the amounts, set forth in Section 4.3.

**2.33** “Settlement Notice Date” means thirty (30) calendar days after the Preliminary Approval Order is issued.

**2.34** “Settlement Website” means the website operated by the Claims Administrator as described in Sections 7.1, 7.3, and 8.3.

**2.35** “TCPA” means the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, and any regulations or rulings promulgated under it.

**III. ALL PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT**

**3.1 AWL's Position on the Conditional Certification of Settlement Class.** AWL disputes that any class, including the class defined by Plaintiffs in the First Amended Class Action Complaint, would be manageable or capable of certification under Federal Rule of Procedure 23, and further denies that a litigation class properly could be certified on the claims asserted in this Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, AWL does not oppose the certification of the Settlement Class solely for the purpose of this Settlement or the method by which Notice is provided to the Settlement Class. Preliminary certification of the Settlement Class shall not be deemed, and shall not be, a concession that certification of a litigation class is appropriate, nor would AWL be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class shall be void, and no doctrine of waiver, estoppel, or preclusion shall be asserted in any litigated certification proceedings in this Action or any other judicial proceeding. No agreements made by or entered into by AWL in connection with the Settlement Agreement, including the use of the method to provide Notice to the Settlement Class, may be used by Plaintiffs, any Settlement Class Member, or any other person to establish any of the elements of class certification in any litigated proceedings, to establish the elements of any claim, or to attempt to refute any defense or position of AWL, whether in this Action or in any other judicial proceeding.

**3.2 Plaintiffs' Belief in the Merits of Case.** Plaintiffs believe that the claims asserted in this Action have merit and that the evidence developed to date supports those claims. This Settlement shall in no event be construed or deemed to be evidence of an admission or concession on the part of Plaintiffs that there is any infirmity in the claims asserted by Plaintiffs, or that there

is any merit whatsoever to any of the contentions and defenses that AWL has asserted.

**3.3 Plaintiffs Recognize the Benefits of Settlement.** Plaintiffs recognize and acknowledge, however, the expense and amount of time that would be required to continue to pursue this Action against AWL, as well as the uncertainty, risk, and difficulties of proof inherent in prosecuting such claims on behalf of the Settlement Class. Plaintiffs have concluded that it is desirable that this Action and any Released Claims be fully and finally settled and released as set forth in this Settlement Agreement. Plaintiffs and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class and that it is in the best interests of the Settlement Class to settle as described herein.

**IV. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

**4.1 Injunctive Relief and Practice Changes.** AWL shall ensure that the changes it made to obtain prior express written consent after the filing of this Action shall remain implemented for the duration of this Agreement unless the Court orders otherwise for good cause, such as a change in the law..

**4.2 Settlement Disclosures.** Unless the parties agree or the Court orders otherwise, AWL shall respond to the discovery requests attached hereto as Exhibits 2 and 3 by no later than 45 days from entry of the Preliminary Approval Order. Plaintiffs acknowledge and agree that any responses to the discovery requests in Exhibits 2 and 3 provided prior to the entry of a Final Approval Order are being provided pursuant to Federal Rule of Evidence 408, and may not be used for any purpose other than settlement. After the Final Approval Order is entered, Plaintiffs may use the responses to the discovery requests in Exhibit 3 for any purpose whatsoever so long as it is not inconsistent with the terms of this Settlement Agreement. Additionally, by no later than 30 days after the Final Approval Order is entered, AWL shall respond to the discovery requests attached hereto as Exhibit 4. No person or entity may use AWL's responses to the discovery

requests for any purpose other than to pursue TCPA claims against the entities that AWL identifies in response to the discovery requests it receives pursuant to this section.

**4.3 Settlement Fund.** Subject to the terms of Section 7.4 below, AWL shall pay a non-reversionary sum in the amount of \$6,500,000 into the Settlement Fund. AWL shall begin paying this amount to the Claims Administrator on the Initial Funding Date, according to the following schedule: AWL shall pay into the common fund:

- a. \$1,500,000, less any amounts paid to the Claims Administrator pursuant to section 7.3 below, on the Initial Funding Date;
- b. \$2,000,000 by no later than January 7, 2021;
- c. \$1,000,000 by no later than January 9, 2023; and
- d. \$2,000,000 by no later than January 7, 2025.

The Claims Administrator shall provide all necessary identification numbers and forms required by AWL to facilitate such payment, including a W-9. AWL has no obligation under this Settlement Agreement to pay any amounts in excess of \$6,500,000. AWL also shall have no responsibility or obligation to make any of the payments described in Sections 4.4, 5.1, and 5.2 below.

**4.4 Payment of Cash Awards to the Settlement Class.** Cash Awards shall be distributed equally on a pro rata basis to all Settlement Class Members who submit a valid and timely claim. However, as set forth below in Section 7.4, a Settlement Class Member may receive additional pro rata distributions arising from checks that were not cashed within 180 days of issuance.

**4.5 Evidence of Limited Fund.** AWL shall provide to Class Counsel under the protective order issued in the Action, and to the Court under seal, sufficient, reasonably-accessible, financial information to establish the appropriateness of a limited fund class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure. Specifically, AWL shall provide to Class

Counsel under the protective order in the Action, and to the Court under seal, sufficient, reasonably-accessible financial information to establish that the total of the aggregated claims and the fund available for satisfying them, set definitely at their maximums, demonstrate the inadequacy of the fund to pay all claims; and that the whole of the inadequate fund is to be devoted to the overwhelming claims. The Settlement shall not in any way prohibit or restrict AWL to continue paying operating expenses and/or its obligations to its lender group.

V. ATTORNEYS' FEES, EXPENSES AND PAYMENT TO CLASS REPRESENTATIVES

5.1. Attorneys' Fees and Expenses. Class Counsel shall move the Court for an award of attorneys' fees and expenses to be paid from the Settlement Fund. Class Counsel shall be entitled to payment of the full amount of their expenses and to their first pro rata payment of the fees and expenses awarded by the Court out of the Settlement Fund within five (5) business days after the Initial Funding Date. Thereafter they shall be entitled to a pro rata payment of the fees awarded by the Court within five (5) days of each subsequent payment by AWL into the Settlement Fund.

5.2. Payment to Class Representatives. Class Representatives shall ask the Court to award them incentive payments of \$10,000 each for serving as the Class Representatives, for the time and effort they have personally invested in the Action. Within five (5) business days after the Initial Funding Date, and after receiving W-9 forms from the Class Representatives, the Claims Administrator shall pay to Class Counsel the amount of incentive payments awarded by the Court and Class Counsel shall disburse such funds to the Class Representatives.

5.3. Settlement Independent of Award of Fees, Expenses, and Incentive Payments.

The payments of attorneys' fees, expenses, and incentive payments set forth in Sections 5.1 and 5.2 are subject to and dependent upon the Court's approval as fair, reasonable, adequate,

and in the best interests of Settlement Class Members. However, this Settlement is not dependent or conditioned upon the Court's approving Plaintiffs' requests for such payments or awarding the particular amounts sought by Plaintiffs. In the event the Court declines Plaintiffs' requests or awards less than the amounts sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties. In addition, no interest shall accrue on such amounts at any time.

**VI. PRELIMINARY APPROVAL**

**6.1. Order of Preliminary Approval.** As soon as practicable after the execution of this Agreement, Plaintiffs shall move the Court for entry of a Preliminary Approval Order. Pursuant to the Motion for Preliminary Approval, the Plaintiffs shall request that:

- a. the Court preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval;
- b. the Court permit AWL to file under seal, pursuant to Section 4.5, sufficient, reasonably-accessible, financial information to establish the appropriateness of a limited fund class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure;
- c. the Court approve the forms of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- d. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice, and the Opt-Out Deadline and the Objection Deadline;
- e. the Court's Preliminary Approval Order reflect that the Parties agree that the Settlement does not amount to an admission of liability and that nothing in the Settlement is admissible in this Action or any future lawsuit to suggest a litigated class would be appropriately certified or that the method of providing Notice to the Settlement Class is proper, or to prove any claim on the merits;
- f. the Court preliminarily enjoin any Class Member from bringing any new alleged class action or attempting to amend an existing action to assert any Released Claims; and
- g. the Court, subject to Court approval, appoint Postlethwaite & Netterville as the Claims Administrator.

**VII. ADMINISTRATION AND NOTIFICATION PROCESS**

7.1. Claims Administrator. The Claims Administrator shall be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, where feasible, updating the addresses currently collected for the Settlement Class Members, giving Notice, obtaining new addresses for returned mail, if any, setting up and maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Settlement, processing payments, acting as a liaison between Settlement Class Members and the Parties regarding payments to Settlement Class Members, directing the mailing of Cash Awards to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing and the administration of the Settlement. The Claims Administrator shall provide to counsel for all Parties monthly updates on the payments made, as well as other reports the Parties request. The performance of the Claims Administrator shall meet or exceed the standards in the claims administration industry and shall be subject to the review and approval of the Parties. In addition, the Parties shall have the right to review and approve all messaging for and in the Claims Administrator's communications with Settlement Class Members before such messaging and communications are used by the Claims Administrator, including recorded message scripting for inbound calls made to the Toll-Free Telephone Number, written communications, and the URL, domain name, and content of the Settlement Website.

7.2. Notice Database. The Claims Administrator shall maintain the list of existing Settlement Class Members for whom the notice provider's records reflect opened the previously provided Notice as of the date this Settlement Agreement was executed, and shall use this information to create the Notice Database. If any of the terms of this Settlement relating to the Claims Administrator's services would unreasonably hinder or delay such processes, the Claims Administrator shall so advise the Parties, and the Parties shall accommodate the Claims

Administrator to the extent they reasonable can to carry out the intent of this Settlement Agreement. Any personal information relating to members of the Settlement Class provided to the Claims Administrator or Class Counsel pursuant to this Settlement shall be provided solely for the purpose of providing notice to members of the Settlement Class and allowing them to recover under this Settlement, shall be kept in strict confidence, shall not be disclosed to any third party, and shall not be used for any other purpose. The Claims Administrator shall deliver the Notice Database, and all information derived from the Notice Database, to Class Counsel and AWL within thirty (30) days after the conclusion of the Claims Administration.

7.3. Payment of Notice and Claims Administration Costs. AWL shall pay the reasonable costs of notice and Claims Administration that are reasonably incurred prior to the funding of the Settlement Fund, and those payments shall be deducted from the first payment that AWL is obligated under Section 4.3 to pay into the Settlement Fund. Until the Settlement Fund is funded, the Claims Administrator shall bill AWL monthly for the reasonable costs of Claims Administration, including the reasonable costs required to update the addresses of the Settlement Class Members, email and, if necessary, print and mail Notice, establish the Settlement Website, prepare to issue checks to Settlement Class Members, and establish a toll-free telephone number, as well as any other initial administration costs reasonably related to the administration of the Settlement, all of which shall be deducted from the first payment that AWL is obligated under Section 4.3 to pay into the Settlement Fund. The Claims Administrator shall maintain detailed records of the amounts spent on the administration of the Settlement and shall provide those to the Parties monthly. At such time that AWL is required to make its first payment into the Settlement Fund, AWL shall only be required to pay into the settlement fund \$1,500,000 less all amounts previously paid to the Claims Administrator by AWL. After AWL has fully funded the Settlement

Fund, AWL shall have no further obligation to pay any amount under this Settlement Agreement. After AWL makes its first payment into the Settlement Fund, and thereafter until and unless AWL fails to make a payment required by section 4.3, Settlement Administration Costs shall be paid out of the Settlement Fund and AWL shall not be responsible for any additional charges of the Claims Administrator. At the conclusion of the Claims Administration, the Claims Administer shall provide an accounting to the Parties of the Settlement Administration Costs and how the amounts in the Settlement Fund were distributed.

7.4. Distribution of the Settlement Fund. The Claims Administrator shall distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

a. first, no later than five (5) business days after the Initial Funding Date, and thereafter no later than five (5) business days after each payment by AWL into the Settlement Fund, the Claims Administrator shall pay to Class Counsel their full expenses and the pro rata share of attorneys' fees ordered by the Court as set forth in Section 5.1;

b. next, no later than five (5) business days after the Initial Funding Date, the Claims Administrator shall pay to the Class Representatives any incentive award ordered by the Court, as described in Section 5.2;

c. next, no later than fifteen (15) calendar days after the Initial Funding Date, the Claims Administrator shall be paid for any unreimbursed Settlement Administration Costs;

d. next, starting no later than thirty (30) days after the Final Approval Order, the Claims Administrator shall pay on a rolling basis the Cash Awards to Settlement Class Members who made a valid and timely claim, pursuant to Section IX;

e. next, if checks that remain uncashed after one hundred eighty (180) calendar days after the date of issuance yield an amount that, after Settlement Administration Costs, would allow additional pro rata distributions to participating Settlement Class Members equal to or greater than \$2.00 per participating Settlement Class Member, the Claims Administrator shall distribute any such funds on a pro rata basis to Settlement Class Members who cashed settlements checks;

f. finally, if additional pro rata distributions are not made, or if checks remain uncashed 180 days after the additional distribution, the final uncashed amounts shall be paid to Doctors Without Borders, St. Jude Children's Research Hospital, and/or another mutually agreeable non-profit organization approved by the Court in which the Parties represent that they do not have any financial interest or otherwise have a relationship that could create any conflict of interest.

g. The Claims Administrator shall have sole responsibility with respect to the tax treatment or escheatment of any Settlement Fund amounts and AWL shall have no responsibility or obligation with respect to the tax treatment or escheatment of any Settlement Fund amounts.

7.5 Settlement Independent of Cy Pres Distribution. The Cy Pres Distribution set forth in Section 7.4(f) is subject to and dependent upon the Court's approval of it as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Settlement is not dependent or conditioned upon the Court's approving the Cy Pres Distribution. In the event the Court determines that the proposed recipient is not or is no longer an appropriate recipient, the Settlement shall continue to be effective and enforceable by the Parties, and the Parties shall negotiate in good faith to determine a mutually agreeable replacement procedure to distribute such monies, subject to Court approval.

## VIII. NOTICES

8.1. Timing of Notice. Notice shall be provided to all persons in the Settlement Class within thirty (30) calendar days following entry of the Preliminary Approval Order as described herein.

8.2. Settlement Notice. The Claims Administrator shall send the Notice via email to the email addresses in the Notice Database and re-send the Notice in accordance with the procedures outlined below.

a. Address Confirmation. For any email Notice for which the Claims Administrator receives a “bounce back” or other automated notification that the email was not delivered, the Claims Administrator shall use best efforts to determine the last known address of the Settlement Class member, as set forth in AWL’s records, and subject to confirmation or updating as follows: (i) the Claims Administrator shall check each address against the United States Post Office National Change of Address Database, (ii) for each mailing returned as undeliverable and with no forwarding address provided, the Claims Administrator shall conduct a skip trace search, utilizing a third-party vendor database such as LexisNexis, using the corresponding telephone number in AWL’s records, and, provided a reasonable match is found showing a new address, update the address accordingly, (iii) the Claims Administrator shall update addresses based on any forwarding information received from the United States Post Office, and (iv) the Claims Administrator shall update addresses based on verified requests received from persons in the Settlement Class. The Claims Administrator shall promptly re-mail the Notices to the updated addresses provided under scenarios ii, iii, and iv above.

b. Costs Considered Settlement Administration Costs. All costs of address confirmation and data trace searches shall be considered Settlement Administration Costs and deducted from the Settlement Fund.

8.3. Toll-Free Telephone Number. Within ten (10) business days of the issuance of the Preliminary Approval Order, the Claims Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number shall be maintained on a 24-hour basis, through an interactive voice response system, until thirty (30) calendar days after the Opt-Out Deadline. After that time, and until the Claims Administration is concluded, a recording shall advise any caller to the toll-free telephone number that the Opt-Out Deadline has passed and the details regarding the Settlement may be reviewed on the Settlement Website and the caller shall be able to leave a message to address any specific requests (e.g., the re-issuance of a check).

8.4. CAFA Notice. The Claims Administrator shall be responsible for serving the required CAFA Notice following review and approval of the CAFA Notice by the Parties within ten (10) calendar days after the filing of the Preliminary Approval Motion.

**IX. PAYMENT PROCESS**

9.1. Conditions for Claiming Cash Award for Settlement Class Members. A Settlement Class Member seeking a Cash Award must submit by the Claims Deadline a valid and timely online claim form, or paper claim form, or IVR claim form through the settlement hotline, which shall contain the Settlement Class Member's (1) name; (2) current address; and (3) phone number on which the Settlement Class Member received a call giving rise to the Action. If a Settlement Class Member fails to fully complete a Claim Form, the Claim Form shall be invalid and such Settlement Class Member shall not receive a Cash Award.

9.2. Mailing of Cash Awards to Settlement Class Members. Cash Awards shall be sent to all Settlement Class Members who complete a valid and timely claim form, pursuant to this Agreement including Section 9.1, by the Claims Administrator via U.S. mail to the mailing address provided on the by the Settlement Class Member on the claim form, starting no later than thirty

(30) calendar days after the Final Approval Order and continuing on a rolling basis through the Final Funding Date. If any settlement checks are returned, the Claims Administrator shall attempt to obtain a new mailing address for that Settlement Class Member by renewing the steps described in Section 8.2(a). If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator shall advise Class Counsel and counsel for AWL of the names of the Settlement Class Members whose checks are returned by the postal service as soon as practicable. Each settlement check shall be negotiable for one hundred eighty (180) calendar days after it is issued. Upon request by a Settlement Class Member, the Claims Administrator may re-issue settlement checks to the original payee, provided that the original check is cancelled and the re-issued check shall not be negotiable beyond that date that is one hundred eighty (180) calendar days after the date of issuance of the original check to such Settlement Class Member.

**X. OPT-OUTS AND OBJECTIONS**

**10.1. Opting Out of the Settlement.** Any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class must advise the Claims Administrator by providing a written Request for Exclusion, and such Request for Exclusion must be postmarked no later than the Opt-Out Deadline. The Claims Administrator shall provide the Parties with copies of each Request for Exclusion it receives, and shall provide a list of each Settlement Class Member who timely and validly opted out of the Settlement in its declaration filed with the Court, as required by Section 11.1. Settlement Class Members who do not properly and timely submit a Request for Exclusion shall be bound by this Agreement and the judgment, including the releases and covenants in Section XIII below.

a. In the Request for Exclusion, the Settlement Class Member must state his or her full name, address, and must state that he or she wishes to be excluded from the Settlement.

b. Any member of the Settlement Class who submits a valid and timely Request for Exclusion shall not be a Settlement Class Member, shall not receive any compensation under this Agreement, and shall not be bound by the terms of this Agreement.

10.2. Opt-Out Communications. Class Counsel agree not to represent, encourage, or solicit in any way whatsoever, any person seeking exclusion as a Settlement Class Member or any other person seeking to litigate with the Released Parties over any of the Released Claims in this matter. However, notwithstanding the above, nothing in this settlement shall limit or abridge any communication, information, or advice of any kind that Class Counsel may give to Settlement Class Members who contact them.

10.3. Objections. Any Settlement Class Member who intends to object to the fairness of this Settlement must file a written objection (“Objection”) with the Court by no later than the Objection Deadline.

a. In the Objection, the Settlement Class Member must state his or her full name, address, and each telephone number that the Settlement Class Member alleges received a call giving rise to the Action; must state that the objection is made on the individual’s behalf only; must identify any lawyer who was consulted as to such objection or this case; must state the reasons for his or her Objection; and must state whether he or she intends to appear at the Final Approval Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must be attached to the Objection.

b. The Parties shall have the right to depose any objector to assess whether the objector has standing or motives that are inconsistent with the interests of the Class.

c. The right to object to this Settlement must be exercised individually by an individual Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity.

**10.4. Fairness Hearing.** Any Settlement Class Member who has timely filed an Objection may appear at the Final Approval Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement.

a. In addition to the foregoing, if a Settlement Class Member or his/her attorney requests permission to speak at the Final Approval Hearing, the written Objection filed must contain a detailed statement of the specific legal and factual basis for each and every objection and a detailed description of any and all evidence the Settlement Class Member may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the Settlement Class Member may introduce at the Final Approval Hearing.

**10.5.** Any Settlement Class Member who does not file a timely Objection in accordance with this Section waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to this Settlement. Settlement Class Members who object to this Settlement shall remain Settlement Class Members, and have voluntarily waived their rights to pursue an independent remedy against AWL and, if the Settlement is approved, shall have their claims released and shall be forever bound by the Court's Final Approval Order. To the extent any Settlement Class Member objects to the Settlement, and such objection is overruled in

whole or in part, such Settlement Class Member shall have his/her claim against AWL released and shall be forever bound by the final approval of the Settlement.

**XI. FINAL APPROVAL AND JUDGMENT ORDER**

11.1. If the Court issues the Preliminary Approval Order, no later than fourteen (14) calendar days prior to the Final Approval Hearing, the Claims Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

11.2. Assuming all other conditions precedent to the Settlement have been satisfied, no later than fourteen (14) calendar days prior to the Final Approval Hearing:

a. All Parties shall request, individually or collectively, that the Court enter the Final Approval Order, with Class Counsel filing a memorandum of points and authorities in support of the motion;

b. Class Counsel and/or AWL may file a memorandum addressing any Objections submitted to the Settlement; and

c. Class Counsel shall file with the Court a list of the persons who properly and timely excluded themselves from the Settlement Class.

11.3. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the Settlement should be finally approved as fair, reasonable, and adequate, whether any Objections to the Settlement should be overruled, whether the fee award and incentive payments to the Class Representatives should be approved, and whether a judgment finally approving the Settlement should be entered.

11.4. This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that grants final approval of this Agreement and enters a final judgment and:

a. finds that the Notice provided satisfies the requirements of due process and Federal Rules of Civil Procedure Rule 23(e)(1);

b. finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;

c. finds that the Settlement Agreement is fair, reasonable, and adequate with respect to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in Sections 13.1 and 13.2, and the covenant not to sue in Section 13.3, and that this Settlement Agreement should be and is approved;

d. dismisses on the merits and with prejudice all claims of the Settlement Class Members and all current and former plaintiffs asserted in the Action, and dismisses on the merits and with prejudice this Action;

e. permanently enjoins each and every Settlement Class Member and all current and former plaintiffs in this Action from bringing, joining, or continuing to prosecute any of the Released Claims against any of the Released Parties; and

f. retains continuing jurisdiction for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement.

## **XII. FINAL JUDGMENT**

12.1. The judgment entered at the Final Approval Hearing shall be deemed final and shall have an Effective Date on the later of:

a. Thirty (30) calendar days after entry of the judgment giving final approval to the Settlement if no document is filed within that time seeking appeal, review, or rehearing of the judgment; or

b. If any such document is filed, then five (5) business days after the date upon which all appeals periods have run and/or other proceedings resulting from such document have

been finally terminated in such a manner as to permit the judgment to take effect in substantially the form described in Section 11.4.

### **XIII. RELEASE OF CLAIMS**

**13.1. Released Claims.** Plaintiffs and each Settlement Class Member, as well as each of their respective assigns, heirs, executors, administrators, successors, representatives, agents, partners, attorneys, predecessors-in-interest, and any (past or present) authorized users of their cellular or residential telephones, hereby release, resolve, relinquish, and discharge each and every one of the Released Parties from each of the Released Claims (as defined below). The Plaintiffs and the Settlement Class Members further agree that they shall not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or related in any way to the Released Claims. The release does not apply to members of the Settlement Class who opt out of the Settlement by submitting a valid and timely Request for Exclusion. "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), 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 this Action or the facts that give rise to this Action, including but not limited to claims that could have been asserted in the Action. This Release shall be interpreted to the fullest extent of *res judicata* principles.

13.2. Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiffs and Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement and the releases contained therein become effective. This Section constitutes a waiver, including without limitation as to any other applicable law, of Section 1542 of the California Civil Code to the extent such section applies to any Settlement Class Member, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and the Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and similar federal and state statutes, case law, rules, or regulations relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

13.3. Covenant Not To Sue. Plaintiffs agree and covenant, and each Settlement Class Member shall 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 to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

13.4. Representations of Class Counsel. Consistent with the terms of the Agreed Confidentiality Order, Plaintiffs shall return to AWL and/or destroy all confidential documents and data AWL and/or the Released Parties produced to Plaintiffs.

**XIV. TERMINATION OF AGREEMENT**

14.1. Either Plaintiffs or AWL May Terminate the Agreement. Plaintiffs and AWL shall each have the right to unilaterally terminate this Agreement by providing written notice of his, her, their, or its election to do so (“Termination Notice”) to all other Parties hereto within ten (10) business days of any of the following occurrences:

- a. the Court denies approval of the Settlement Agreement; or
- b. an appellate court reverses, denies approval, or disapproves the Final Approval Order or the Settlement Agreement and the Settlement Agreement is not fully reinstated on remand.

14.2. Revert to Status Quo If Plaintiffs or AWL Terminates. If either Plaintiffs or AWL terminate this Agreement as provided in Section 14.1, the Agreement shall be of no force and effect and the Parties’ rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement shall be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to AWL if AWL terminates the Agreement. If Plaintiffs or Class Counsel terminate this Agreement, they shall reimburse AWL for any payments made to the Claims Administrator for services rendered to the date of termination. If the Settlement Agreement is not approved by the Court, any Party has the option to terminate the Settlement Agreement as provided in Section 14.1 and revert to the status quo ante prior to the Settlement.

**XV. NO ADMISSION OF LIABILITY**

15.1. AWL denies any liability or wrongdoing of any kind associated with the alleged claims in the First Amended Class Action Complaint. AWL has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by AWL that the Action is properly brought on a class or representative basis, or that any class may, can, or should be certified, other than for settlement purposes. To this end, the Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of AWL or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of AWL in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification; and (iv) are not and shall not be deemed to be a waiver of AWL's right to seek to enforce any arbitration provision in other cases or against Settlement Class Members who opt out of the Settlement.

15.2. Pursuant to Federal Rule of Evidence Rule 408 and any similar provisions under the laws of any state, neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement.

**XVI. MISCELLANEOUS**

16.1. Entire Agreement. This Agreement, including the exhibits hereto, constitutes the entire agreement between the Parties. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and inducements contained in this Agreement.

16.2. Governing Law. Unless expressly set forth herein to the contrary, this Agreement shall be governed by the laws of the state of Illinois, exclusive of its choice of law principles.

16.3. Future Changes in Laws or Regulations. To the extent Congress, the FCC, or any other relevant regulatory authority promulgates different requirements under the TCPA or any other law or regulation that might govern any conduct affected by the Settlement, the Settlement shall remain in full force and effect.

16.4. Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiffs and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

16.5. No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

16.6. Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement and agree to use their best efforts to promptly file a Motion for Preliminary Approval with the Court and to take any other actions required to effectuate this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court or by a mediator upon agreement of the Parties.

16.7. Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument.

16.8. Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

16.9. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

16.10. No Oral Modifications. This Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by all of the duly authorized agents of AWL and Plaintiffs, and approved by the Court.

16.11. Notices. Unless otherwise stated herein, any notice to the Parties required or provided for under this Agreement shall be in writing and may be sent by electronic mail, fax, or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Gary Klinger  
Kozonis & Klinger, Ltd.  
4849 N. Milwaukee Ave. #300  
Chicago, IL 60630

Daniel M. Hutchinson  
Lief Cabraser Heimann & Bernstein, LLP  
275 Battery St., 29th Floor  
San Francisco, CA 94111

If to Counsel for AWL:

Ari N. Rothman  
Venable LLP  
600 Massachusetts Ave., N.W.  
Washington, D.C. 20001

DocuSign Envelope ID: A549CEA4-B471-434E-8370-2147C88390C5

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of April \_\_, 2019.

DATED: April 4/2019, 2019

Plaintiff Jimmie Criollo, Jr.

DocuSigned by:  
Jimmie Criollo, Jr  
3331C88D0974DA...

DATED: April 4/2019, 2019

Plaintiff John Karpilovsky

DocuSigned by:  
John Karpilovsky  
100A80EA3865406...

DATED: April 4, 2019

Lieff Cabraser Heimann & Bernstein, LLP

Daniel Hutchison  
Name: Daniel Hutchison

DATED: April 4, 2019

Kozonis & Klinger, Ltd.

G. M. Klinger  
Name: Gary M. Klinger

DATED: April 4, 2019

All Web Leads, Inc.

William R. Daniel  
Name: William R. Daniel  
Title: President and CEO

DATED: April 4, 2019

Venable LLP

Ari N. Rothman  
Name: Ari N. Rothman

## **Exhibit 1**

**List of persons within the United States who received one or more non-emergency telephone calls from All Web Leads, Inc., or any party acting on its behalf**

(file to be submitted manually to the Court)