

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STEWART ABRAMSON, individually and  
on behalf of a class of all persons and entities  
similarly situated,

Plaintiff,

V.

ALPHA GAS AND ELECTRIC, LLC

Defendant.

Case No. 7:15-CV-05299-KMK

## **CLASS ACTION SETTLEMENT AGREEMENT**

This class action settlement agreement (“Agreement” or “Settlement Agreement”) is entered into as of September 30, 2016, by and among Stewart Abramson (“Plaintiff”), individually and on behalf of the class of persons he seeks to represent (the “Settlement Class” defined below), and Alpha Gas and Electric, LLC (“Alpha”) (Plaintiff and Alpha are collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions of the Agreement, and subject to the final approval of the Court.

## RECITALS

A. On July 8, 2015, Plaintiff filed a putative class action complaint against Alpha, in the United States District Court for the Southern District of New York, captioned *Abramson v. Alpha Gas and Electric LLC*, No. 7:15-cv-05299 (the “Action”), alleging, that Alpha made telemarketing calls to cellular telephone numbers in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

B. On August 9, 2016, the Parties participated in a full-day mediation with a Court appointed mediator (the “Mediator”) through the Southern District of New York mediation program to mediate this dispute. The Parties reached an agreement on the material terms of a class settlement.

C. Alpha at all times has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it violated the TCPA, or committed any other wrongful act or violation of law.

D. Plaintiff believes that the claims asserted in the Action have merit. Nonetheless, Plaintiff and his counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Action against Alpha through dispositive motions, class certification, trial, and any subsequent appeals. Plaintiff and Plaintiff’s counsel also have taken into account the uncertainty, difficulties, and delays inherent in litigation, especially in complex actions, as well as Alpha’s inability to pay a class judgment, if it were ever obtained. Therefore, Plaintiff and Plaintiff’s counsel believe that it is desirable that the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, which they have confirmed by consulting with their own experts and by performing confirmatory discovery, Plaintiff and Plaintiff’s counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate for the Settlement Class, and that it is in the best interests of the Settlement Class to settle the Released Claims pursuant to the terms and provisions of this Agreement.

E. The Parties agree that the Action was resolved in good faith, following arm’s-length bargaining presided over by the Mediator.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their undersigned respective counsel, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Alpha Counsel” means:**

Gerald P. Gross  
LAW OFFICES OF GERALD P. GROSS, P.C.  
366 Pearsall Ave #5  
Cedarhurst, NY 11516

Lewis S. Wiener  
SUTHERLAND ASBILL & BRENNAN, LLP  
700 6th St NW #700,  
Washington, DC 20001

**1.2 “Class Counsel” means:**

Edward Broderick  
Anthony Paronich  
BRODERICK & PARONICH, P.C.  
99 High St., Suite 304  
Boston, Massachusetts 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, Massachusetts 01760

1.3 **“Class Representative”** means Stewart Abramson.

1.4 **“Court”** means the United States District Court for the Southern District of New York.

1.5 **“Effective Date”** means the date one (1) business day after which all of the conditions precedent specified in Paragraph 9.1 have been satisfied.

1.6 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

1.7 **“Final”** means one (1) business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Approval Order and Judgment; or (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of final dismissal or completion – in a manner that finally affirms and leaves in place the Final Approval Order and Judgment.

1.8 **“Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Court enter the Final Approval Order and Judgment, approve the Settlement Agreement, and approve the Fee Award and the incentive award to the Class Representative.

1.9 **“Final Approval Order and Judgment”** means a document substantially in the form of Exhibit 1 or in such form as may be ordered by the Court, to be entered by the Court following the Final Approval Hearing.

1.10 **“Mediator”** means the mediator chosen by the Court through the Southern District of New York mediation program to mediate the dispute between the parties.

1.11 **“Notice”** means the notice of this Settlement Agreement and Final Approval Hearing, which is to be provided to the Settlement Class in accordance with this Agreement and

substantially in the form of Exhibits 2 and 3 hereto, or in such form as may be ordered by the Court.

1.12 **“Claim Form”** means the claim form that is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibits 4 and 5 hereto or in such form as may be ordered by the Court.

1.13 **“Notice Plan”** means the plan, as set forth in Paragraph 4.2 and as executed and administered by the Settlement Administrator, for disseminating notice to members of the Settlement Class of the Settlement Agreement and of the Final Approval Hearing.

1.14 **“Objection/Exclusion Deadline”** means the date by which (1) a written objection to this Settlement Agreement, or (2) a request for exclusion, must be postmarked, which shall be no later than fifty-one (51) calendar days after entry of the Preliminary Approval Order, or such other date as may be ordered by the Court, which deadline shall be posted to the Settlement Website listed in Paragraph 4.2(c).

1.15 **“Preliminary Approval Order”** means the document substantially in the form of Exhibit 6 or such other order as may be entered by the Court for purposes of preliminarily approving the Settlement Agreement, certifying the Settlement Class solely for settlement purposes, and approving the form of the Notice and the Notice Plan.

1.16 **“Released Claims”** As of the Effective Date, The Releasing Parties, as herein defined, do hereby release and forever discharge the Released Parties, as herein defined of and from all claims, demands, causes of actions, suits, damages, fees (including attorney’s fees), and expenses arising out of or relating to the use (or alleged use) of an automatic telephone dialing system or prerecorded voice, or calling persons who are on the Do Not Call list or otherwise did not consent to such calls, or otherwise arising under the TCPA or similar federal, state or local

laws governing such matters, including without limitation the claims alleged in the Action, including calls placed to cell phones without the recipients' consent.

1.17 **"Released Parties"** means Alpha Gas and Electric, LLC and all of its predecessors, successors, subsidiaries, and all of their present, former or subsequent respective officers, directors, members, principals, insurers, insureds, representatives, employees, shareholders, agents, attorneys, and assigns or anyone working on their behalf.

1.18 **"Releasing Parties"** means: (a) Plaintiff; (b) Settlement Class Members who do not otherwise timely opt out of the Settlement Class (whether or not such members submit claims) and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

1.19 **"Settlement"** means the settlement contemplated by this Agreement.

1.20 **"Settlement Administration Expenses"** means the expenses incurred by the Settlement Administrator in providing Notice, and mailing checks for Settlement Class Members. Settlement Administration Expenses shall be paid from the Settlement Fund.

1.21 **"Settlement Administrator"** means Kurtzman Carson Consultants LLC ("KCC").

1.22 **"Class List"** means and includes each and every individual and entity whose phone number(s) are listed in the calling records produced by Alpha on or about April 6, 2016 to plaintiff's expert Jeffrey Hansen, of Hansen Legal Technologies.

1.23 **"Settlement Class"** means any and all individuals and entities who at any time subscribed to, used, regularly placed or received calls on or from or owned any of the phone numbers that are listed and/or contained in the Class List who, from July 8, 2011 through the

date of class certification, the Released Parties called using an automated telephone dialing system, or prerecorded voice, or who were listed on the Do Not Call list or otherwise did not consent to the receipt of such calls, or who otherwise have claims against the Released Parties arising under the TCPA or similar federal, state or local laws governing such matters, including without limitation the claims alleged in the Action, including calls placed to cell phones without the recipients' consent.

1.24 **“Settlement Class Member”** means any individual or entity who is included within the definition of the Settlement Class and who has not submitted a valid request for exclusion.

1.25 **“Settlement Class Recovery”** means the amount of the Settlement Fund available for distribution to the Settlement Class Member claimants, after payment of Settlement Administration Expenses, the Fee Award to Class Counsel, and any approved incentive award to the Class Representative.

1.26 **“Settlement Fund”** means the One Million and One Hundred Thousand Dollars (\$1,100,000) that Alpha has agreed to pay pursuant to the terms of this Settlement Agreement, including but not limited to Paragraph 2.1 below.

1.27 **“Settlement Website”** means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement and the Notice.

## **2. SETTLEMENT RELIEF**

2.1 **Settlement Fund.** Alpha agrees to provide a Settlement Fund in the amount of One Million and One Hundred Thousand Dollars (\$1,100,000) for the purpose of making payments with respect to all Settlement Class Members under this Agreement, all Settlement

Administration Expenses, any incentive award to the Class Representative, and any Fee Award to Class Counsel. Alpha will fund the Settlement Fund as follows: (a) within fourteen (14) days following entry of the Preliminary Approval Order, Alpha will transfer \$150,000 to the Settlement Administrator (via wire instructions provided by the Settlement Administrator to Alpha); (b) within fifteen (15) business days following the Effective Date, or by May 1, 2017, whichever is later, Alpha will transfer the remaining amount to the Settlement Administrator. The Settlement Administrator will hold those amounts in escrow until such time as the Settlement Administrator is authorized in writing by Alpha Counsel and Class Counsel to use or pay those funds, including for any authorized up-front notice costs and other costs of administration, pursuant to the Settlement Agreement, the Preliminary Approval Order, or the Final Approval Order and Judgment or as otherwise ordered by the Court.

2.2 **Remedial Measures.** As a result of this settlement, Alpha has retained counsel to advise it regarding its future telemarketing compliance with all the TCPA and related laws.

2.3 **Monetary Payments**

(a) As soon as practicable but no later than sixty (60) days after the Effective Date or by May 1, 2017, whichever is later, or such other date as the Court may order, the Settlement Administrator shall pay from the Settlement Fund (after the payment of attorney's fees and expenses, costs of administration and such other expenditures as may be authorized by the Court ("Net Settlement Proceeds")) all Settlement Class Members who filed a valid claim, which shall be mailed to those Settlement Class Members via first-class mail. Settlement Class Members shall be paid a pro rata share of the Net Settlement Proceeds.



(b) All payments issued to Settlement 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 ninety (90) days after the date of issuance.

(c) To the extent that any checks to Settlement Class Members expire and become null and void, the Settlement Administrator shall distribute the leftover funds associated with those checks to Settlement Class Members who cashed their check from the previous round of distribution on a *pro rata* basis, if doing so is administratively feasible (*i.e.*, those Settlement Class Members each would receive a check for more than \$10.00, after the costs of administration). Any remaining funds, including to the extent a second distribution is not administratively feasible, shall be distributed as a *cy pres* award to such organization(s) as the Court may elect in its sole discretion.

### **3. RELEASES**

3.1 The Parties intend that this Settlement Agreement will fully and finally dispose of the Action, which shall be dismissed with prejudice, along with any and all Released Claims against the Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order and Judgment to have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

### **4. NOTICE TO THE CLASS**

4.1 Upon entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice to be disseminated to putative Settlement Class Members. Such Notice shall comport with Rule 23 of the Federal Rules of Civil Procedure, and be effectuated pursuant to the

Notice Plan, the costs of which shall be deemed part of the Settlement Administration Expenses, and which shall be paid from the Settlement Fund.

4.2 The Notice Plan, which was developed in consultation with the Settlement Administrator, includes:

(a) *Direct Notice.* Subject to the approval of the Court, within 30 days after entry of the Preliminary Approval Order, the Settlement Administrator shall send direct notice to the names and addresses associated with the cellular telephone numbers in the Settlement Class, substantially in the form provided in Exhibit 3 and 4 or such other form as may be ordered by the Court, via the U.S. Postal Service.

(b) *Online Media Notice.* The Settlement Administrator will implement an on-line media campaign as designed by the Settlement Administrator, the content of which will be agreed upon by Class Counsel and Alpha Counsel and which content shall be approved by the Court. . The online media campaign will be designed to target the states in which Alpha directed its telemarketing and will commence no later than thirty (30) days after entry of the Preliminary Approval Order.

(c) *Settlement Website.* Within thirty (30) days after entry of the Preliminary Approval Order, Notice shall also be provided on a website, which shall be administered by the Settlement Administrator and shall include the ability to file Claim Forms online. The Notice on the Settlement Website shall be substantially in the form of Exhibit 2 hereto, or in such form as may be ordered by the Court.

.

4.3 Any member of the Settlement Class who intends to object to this Agreement must send to the Court a written statement that includes: his or her full name; address; telephone

number or numbers that he or she maintains were called; all grounds in detail for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; a statement of the identity (including name, address, phone number and email) of any lawyer who was consulted or assisted with respect to any objection, and a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel. Any member of the Settlement Class who fails to timely file a written objection in accordance with the terms of this paragraph and as detailed in the Notice, and at the same time provide a copy of the filed objection to the Settlement Administrator, shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding. To be timely, the objection must be filed and sent to the Settlement Administrator on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.

4.4 Any member of the Settlement Class may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his or her full name, address, and telephone numbers. Further, the written request for exclusion must include a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement, and the personal signature of the member of the Settlement Class

submitting the request. A request to be excluded that does not include all of the foregoing 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 any Person serving such a request shall be a Settlement Class Member and shall be bound as a Settlement Class Member by the Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. So-called “mass” or “class” opt-outs shall not be allowed.

## **5. SETTLEMENT ADMINISTRATION**

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator, including an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records will be provided to Class Counsel and Alpha Counsel and to the Court along with the petition for final approval. Without limiting the foregoing, the Settlement Administrator shall receive objections and exclusion forms and in such event shall promptly provide to Class Counsel and Alpha Counsel copies thereof;

5.2 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

## **6. TERMINATION OF SETTLEMENT**

*Termination Notice.* To the extent that Paragraphs 9.1-9.3 below are not substantially fulfilled or Alpha elects to exercise its rights under Paragraph 10 below,, Alpha, or the Class Representative on behalf of the Settlement Class, shall have the right to request the termination of this Agreement by filing written request to do so (“Termination Notice”) with the Court and serving that Termination Notice on all other Parties hereto within twenty (20) business days of any Parties’ actual notice of any of the following events: (i) the Court’s refusal to enter a Preliminary Approval Order; (ii) the Court’s refusal to enter a Final Approval Order and Judgment or any appellate Court refuses to uphold the Final Approval Order and Judgment in any respect; or if more than fifty (50) Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from the Settlement Class. Upon effective termination, the balance of the Common Fund not expended on notice and administration shall be returned to the Defendant.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER AND JUDGMENT.**

7.1 Promptly following execution of this Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of the Preliminary Approval Order, which shall, among other things, preliminarily approve this Settlement Agreement (subject to the Final Approval Hearing), certify the Settlement Class for settlement purposes only, appoint Plaintiff’s counsel as Class Counsel and Plaintiff as the Class

Representative, shall set a Final Approval Hearing date, which shall be scheduled no earlier than one hundred (100) days after entry of the Preliminary Approval Order, or such other time as the Court shall set. and approve the Notice for dissemination in accordance with the Notice Plan. Such Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Final Approval Order and Judgment set forth in Paragraph 7.2 below.

7.2 Class Counsel shall submit to the Court the Final Approval Order and Judgment as referenced in paragraph 7.1, above, which shall (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits hereto;

(b) grant final approval of the Settlement Agreement and likewise approve the proposed Settlement as fair, reasonable and adequate as to, and in the best interests of Settlement Class Members; direct the Parties and their counsel to implement 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 Plaintiff and the Releasing Parties;

(c) 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 to apprise members of the Settlement Class of the pendency of the Action, 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 entities and individuals 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;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including, without limitation, all individual claims, Settlement Class Member claims and Released Claims asserted therein against the Released Parties) on the merits and with prejudice, without fees or costs to any Party except as provided in the Settlement Agreement;

(f) approve and incorporate the releases set forth herein, make those releases effective as of the date of entry of the Final Approval Order and Judgment, and forever discharge the Released Parties from the Released Claims as set forth herein; and

(g) without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Approval Order and Judgment, and for any other necessary purpose; and

(h) incorporate any other provisions, as the Court deems necessary and just.

7.3 The Settlement Administrator, with approval by the Parties, shall be responsible for compliance with the applicable provisions of the Class Action Fairness Act (“CAFA”), including the notice requirements in 28 U.S.C. § 1715.

**8. CLASS COUNSEL’S FEE AWARD; INCENTIVE AWARD.**

8.1 Subject to the Court’s approval, Alpha has agreed that the Settlement Fund can be used to pay the Fee Award to Class Counsel. Class Counsel shall apply, subject to the approval of the Court, for a fee award of up to one-third of the Common Fund of \$1,100,000, plus out-of-pocket costs incurred by Class Counsel in this litigation. Nothing in this Agreement requires Alpha or its counsel to take any position with respect to this paragraph.

8.2 In lieu of any payments to which he may be entitled as a Settlement Class Member under the Settlement Agreement, and in recognition of his efforts on behalf of the Settlement Class, the Class Representative shall be awarded an incentive award in the amount to be determined and approved by the Court in its sole discretion. Class Counsel intends to request that the Class Representative be awarded ten thousand dollars (\$10,000.00). Nothing in this Agreement requires Alpha or its counsel to take any position with respect to this paragraph and Alpha objects to an award to Plaintiff of more than \$5,000.00.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

9.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events has occurred and shall be the date upon which the last (in time) of the following events occurs:

(a) This Agreement has been signed by Plaintiff, Alpha, Class Counsel and Alpha Counsel;

(b) The Court has entered the Preliminary Approval Order;

(c) The Court has entered the Final Approval Order and Judgment, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Approval Order and Judgment, or a final approval



order and judgment substantially consistent with this Agreement (the “Alternative Final Approval Order and Judgment”); and

(d) The Final Approval Order and Judgment has become Final, as defined in Section 1.7 herein.

9.2 If any one or all of the conditions specified in Paragraph 9.1 is not met, or Alpha in its sole and absolute discretion elects to set aside or rescind this Settlement Agreement pursuant to Paragraph 10, herein, or in the event that this Agreement is not approved by the Court, then this Settlement Agreement shall be canceled and terminated and be deemed null and void unless Plaintiff’s counsel and Alpha mutually agree in writing to proceed with this Agreement or such mutually agreeable alternative agreement as approved by the Court.

9.3 If this Agreement is terminated or fails to become Effective, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

## **10. RIGHT TO SET ASIDE SETTLEMENT AGREEMENT**

10.1 Alpha, in its sole and absolute discretion, shall have the right, but not the obligation, to set aside or rescind this Settlement Agreement, if more than 50 members of the Settlement Class submit non-duplicative, timely and valid requests for exclusion from the Settlement Class. Alpha must timely exercise its right to rescind this Settlement Agreement by filing a Termination Notice as provided in Paragraph 6 herein.

## **11. MISCELLANEOUS PROVISIONS**

11.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise reasonable efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Alpha agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order and Judgment, and to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

11.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand.

11.3 The Parties have relied upon the advice and representation of their respective counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

11.4 The Settlement and this Agreement represent a negotiated compromise, and regardless whether the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of the validity of any Released Claims, the truth of any fact alleged by the Class Representative, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of either the Settlement Fund or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(c) is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission, concession, or evidence that any of Plaintiff or the Settlement Class's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

11.5 Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and "including" has the inclusive meaning of "including without limitation." The words "hereof", "herein", "hereby", "hereunder", and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the person or persons may require.

11.6 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.

11.7 Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees.

11.8 Each counsel or other Party executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto hereby warrants and represents that such Party has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

11.9 This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or scanned and e-mailed signatures shall be treated as original signatures and shall be binding.

11.10 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

11.11 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

**For Plaintiff and the Settlement Class:**

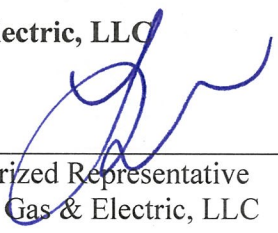
\_\_\_\_\_  
Stewart Abramson  
Class Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Matthew McCue  
Law Office of Matthew P. McCue, PC  
1 South Ave, Third Floor  
Natick, MA 01760

Date: \_\_\_\_\_

**For Alpha Gas & Electric, LLC**

  
\_\_\_\_\_  
Authorized Representative  
Alpha Gas & Electric, LLC

Date: 9/30/2016

LEWIS S. WIENER ITS ATTORNEY-IN-FACT  
\_\_\_\_\_  
Printed Name and Title

  
\_\_\_\_\_  
Lewis S. Wiener  
SUTHERLAND ASBILL & BRENNAN, LLC

Date: 9/30/2016

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

**For Plaintiff and the Settlement Class:**

Stewart Abramson (w/ M/M)  
Stewart Abramson  
Class Representative

Date: 9/30/16

Matthew McCue  
Matthew McCue  
Law Office of Matthew P. McCue, PC  
1 South Ave, Third Floor  
Natick, MA 01760

Date: 9/30/16

**For Alpha Gas & Electric, LLC**

\_\_\_\_\_  
Authorized Representative  
Alpha Gas & Electric, LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Lewis S. Wiener  
SUTHERLAND ASBILL & BRENNAN, LLC

Date: \_\_\_\_\_

## **Tab 1**

This matter having come before the Court on Plaintiff’s motion for final approval (the “Motion for Final Approval”) of a proposed class action settlement (the “Settlement”) of the above-captioned action (the “Action”) between Stewart Abramson (“Plaintiff”), individually and on behalf of the class of persons he seeks to represent (the “Settlement Class” defined below), and Alpha Gas and Electric, LLC (“Alpha”) (Plaintiff and Alpha are collectively referred to as the “Parties”) pursuant to the Parties’ class action settlement agreement entered into on September 30, 2016 (the “Agreement” or the “Settlement Agreement”), and having duly considered all papers filed and arguments presented, the Court hereby finds and orders as follows:

- 37629215.1



Preliminary Approval Order dated [REDACTED], 2016, and notice was given to all members of the Settlement Class under the terms of the Preliminary Approval Order.

4. The Court has read and considered the papers filed in support of the Motion for Final Approval, including the Settlement Agreement and the exhibits thereto, memoranda and arguments submitted on behalf of the Plaintiff, Settlement Class Members, and Alpha, and supporting declarations. The Court has also read and considered any written objections filed by Settlement Class Members. [Alternatively: “The Court has not received any objections from any person regarding the Settlement Agreement.”] The Court held a hearing on [REDACTED], 2017, at which time the parties [and objecting Settlement Class Members] were afforded the opportunity to be heard in support of or in opposition to the Settlement Agreement. Furthermore, the Court finds that notice under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, was effectuated on [REDACTED], 2016, and that ninety (90) days has passed without comment or objection from any governmental entity.

5. Based on the papers filed with the Court and the presentations made to the Court at the hearing, the Court now gives final approval to the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class. This finding is supported by, among other things, the complex legal and factual posture of the Action, the fact that the Settlement Agreement is the result of arms’ length negotiations presided over by a neutral mediator, and the settlement benefits being made available to Settlement Class Members.

6. Under Federal Rule of Civil Procedure 23(c), the Court certifies, for settlement purposes only, the *“Settlement Class” means any and all individuals and entities who at any time subscribed to, used, regularly placed or received calls on or from or owned any of the*

*phone numbers that are listed and/or contained in the Class List who, from July 8, 2011 through the date of class certification, the Released Parties called using an automated telephone dialing system. or prerecorded voice, or who were listed on the Do Not Call list or otherwise did not consent to the receipt of such calls, or who otherwise have claims against the Released Parties arising under the TCPA or similar federal, state or local laws governing such matters, including without limitation the claims alleged in the Action, including calls placed to cell phones without the recipients' consent.*

7. Under Federal Rule of Civil Procedure 23, Stewart Abramson is hereby appointed as Class Representative and the following are hereby appointed as Class Counsel:

Anthony Paronich  
BRODERICK & PARONICH, P.C.  
99 High St., Suite 304  
Boston, Massachusetts 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, Massachusetts 01760

8. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of the Class Representative, identified above, are typical of the claims of the Settlement Class; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law or fact common to the members of the Settlement Class predominate over the questions affecting only individual members, and (f) certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. The Court further finds that: (g) the members of the Settlement Class have a limited interest in

individually prosecuting the claims at issue; (h) the Court is satisfied with the Parties' representations that they are unaware of any other litigation commenced regarding the claims at issue by members of the Settlement Class; (i) it is desirable to concentrate the claims in this forum; and (j) it is unlikely that there will be difficulties encountered in administering this Settlement.

9. The Court has determined that the notice given to the Settlement Class, in accordance with the Notice Plan in the Settlement Agreement and the Preliminary Approval Order, fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law.

10. The Court finds that Settlement Administrator properly and timely notified the appropriate state and federal officials of the Settlement Agreement under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. All individuals and/or entities who made timely and valid requests for exclusion are excluded from the Settlement Class and are not bound by this Final Approval Order and Judgment.

12. The Court orders the parties to the Settlement Agreement to perform their obligations thereunder. The Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

13. The Court dismisses the Action with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement).

14. On and after the Effective Date, the Releasing Parties, and each of them, are

forever barred and permanently enjoined from directly, indirectly, representatively, or in any other capacity filing, commencing, prosecuting, continuing, or litigating any other proceeding against any of the Released Parties in any jurisdiction based on or relating in any way to the Released Claims, and the Releasing Parties, and each of them, are forever barred and permanently enjoined from filing, commencing, or prosecuting any lawsuit individually or as a class action against any of the Released Parties (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) based on or relating in any way to the Released Claims.

15. The Court further adjudges that upon the Effective Date, the above-described releases and the Settlement Agreement will be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of the Releasing Parties, and each of them.

16. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court retains jurisdiction over: (a) implementation and enforcement of the Settlement Agreement until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the Parties hereto pursuant to the Settlement Agreement have been performed; (b) any other action necessary to conclude the Settlement and to administer, effectuate, interpret and monitor compliance with the provisions of the Settlement Agreement; and (c) all parties to the Action and Settlement Class Members for the purpose of implementing and enforcing the Settlement Agreement, including the bar order set forth in paragraph 14 above.

17. The Court approves payment of attorneys' fees, costs, and expenses to Class Counsel in the amount of \$                     . This amount shall be paid from the Settlement Fund in

accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs, and expenses and in response to the filed objections thereto, finds the award of attorneys' fees, costs, and expenses appropriate and reasonable and the Court notes that the class notice specifically and clearly advised the Settlement Class that Class Counsel would seek the award.

18. The Court approves the incentive fee payment of \$ [REDACTED] for Stewart Abramson and specifically finds such amount to be reasonable in light of the service performed by Plaintiff for the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

19. Neither this Final Approval Order and Judgment, the Preliminary Approval Order nor the Settlement Agreement shall be construed or used as an admission or concession by or against either Alpha or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Final Approval Order and Judgment, (and its preceding Preliminary Approval Order), shall not be deemed a finding of the validity or invalidity of any claims in the Action or a determination of any wrongdoing by Alpha or any of the Released Parties. The final and or earlier preliminary approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or Alpha.

20. Any objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no just reason exists for delay in entering this Final Approval Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Final

Approval Order and Judgment.

DATED: \_\_\_\_\_, 2017

\_\_\_\_\_  
United States District Court Judge

## **Tab 2**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STEWART ABRAMSON, individually and	)	
on behalf of a class of all persons and entities	)	
similarly situated,	)	
	)	Case No. 7:15-CV-05299-KMK
Plaintiff,	)	
	)	
v.	)	
	)	
ALPHA GAS AND ELECTRIC, LLC	)	
	)	
Defendant.	)	
	)	

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

**THIS NOTICE CONCERNS SETTLEMENT OF A LAWSUIT THAT  
MAY ENTITLE YOU TO RECEIVE A PAYMENT**

This is a Notice of a proposed Settlement in a class action lawsuit *Abramson v. Alpha Gas and Electric, LLC*, United States District Court for the Southern District of New York, No. 15-CV-05299-KMK (the “Action”). The settlement would resolve any and all claims against defendant Alpha Gas and Electric, LLC and all of its predecessors, successors, subsidiaries, and all of their present, former or subsequent respective officers, directors, members, principals, insurers, insureds, representatives, employees, shareholders, agents, attorneys, and assigns or anyone working on their behalf (collectively hereinafter, “Alpha”) arising from any and all telemarketing calls made by it to cellular telephone numbers in alleged violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

**WHAT IS THE LAWSUIT ABOUT?**

The lawsuit alleges that telemarketing calls made by Alpha to consumers’ cellular telephone numbers violated the TCPA. Alpha has asserted, as a defense in the Action, that it should not be held liable for the calls at issue. This settlement does not resolve that disputed issue, or the disputed question of whether the calls violated the TCPA. The Court has preliminarily certified this matter as a class action for settlement. You are a member of the Settlement Class if you are included in the following:

*All individuals and entities who at any time subscribed to, used, regularly placed or received calls on or from or owned any of the phone numbers that are listed and/or contained in the Class List who, from July 8, 2011 through the date of class certification, the Released Parties called using an automated telephone dialing system, or prerecorded voice, or who were listed on the Do Not Call list or otherwise did not consent to the receipt of such calls, or who otherwise have claims against the Released Parties arising under the TCPA or*



*similar federal, state or local laws governing such matters, including without limitation the claims alleged in the Action, including calls placed to cell phones without the recipients' consent.*

### **WHAT IS A CLASS ACTION?**

In a class action, one or more individuals or entities, called “class representatives” (in this case, Stewart Abramson), sue on behalf of other individuals or entities who have similar claims. All of those individuals and/or entities together are a “class” or “class members.” The settlement in this Lawsuit, if approved by the Court, resolves the alleged claims of all members of the settlement class against Alpha, including without limitation, those claims arising from any and all telemarketing calls made by Alpha to cellular telephone numbers in alleged violation of the TCPA, except for those individuals or entities who exclude themselves from the settlement class.

### **WHY IS THERE A SETTLEMENT?**

The Court did not decide in favor of the Plaintiff or Alpha. Instead, both sides have agreed to a settlement. This avoids the cost, risk, and delay of trial. Under the settlement, members of the settlement class will have the opportunity to obtain a payment from Alpha in exchange for giving up certain legal rights. The Class Representative, Stewart Abramson, (the “Class Representative”), and the lawyers who brought the lawsuit (“Class Counsel”) think the Settlement is best for all members of the settlement class.

### **WHAT DOES THE SETTLEMENT PROVIDE?**

Alpha has agreed to pay \$1,100,000 to create a Settlement Fund, (the “Settlement Fund”). Class Counsel (listed below) will ask the Court to award them up to one third of that amount in attorneys’ fees in addition to their out-of-pocket expenses, to compensate them for the substantial time and resources they devoted to this case. The Class Representative also will apply to the Court for payment of \$10,000 in recognition of his service to the Settlement Class. Any amounts awarded to Class Counsel and the Class Representative will be paid from the Settlement Fund. The Settlement Fund also will cover costs associated with notice and administration of the Settlement. These costs include the cost of mailing this Notice and publishing notice of the Settlement, as well as the costs of administering the Settlement Fund. After attorneys’ fees and costs, the Class Representative service payment, and the expenses of notice and administration are deducted from the Settlement Fund, the balance will be divided and distributed to Settlement Class Members who submit valid claims.

In addition to payments from the Settlement Fund, and as a result of this settlement, Alpha has retained counsel to advise it regarding its future telemarketing compliance with all the TCPA and related laws.

### **HOW MUCH WILL I BE PAID?**

If the Court approves the Settlement, every Settlement Class Member who submits a valid claim will be entitled to an equal payment from the Settlement Fund. That is, the amount of the Settlement Fund available for distribution will be divided equally – sometimes referred to as “pro rata” – among all Settlement Class Members who submit valid claims. The exact amount received by each consumer will depend on the number of claims filed.

### **YOUR OPTIONS**

Your choices are to:

1. **File a Claim and Receive a Payment.** If you are a member of the Settlement Class whose number is within the records obtained in the case and you submit a valid claim, and the Settlement is finally approved by the Court, you will be bound by all of the terms of the Settlement, including the releases of any and all claims as described herein, and you will receive a payment from the Settlement Fund. A claim form may be downloaded from **[WEBSITE]**, or by calling **[INSERT]** and requesting that a claim form be mailed to you.
2. **Exclude yourself.** You may “opt out” and exclude yourself from the Settlement. If you opt out, you will not be eligible to receive any payment, and you will not release any claims you may have – you will be free to pursue whatever legal rights you may have at your own risk and expense. To exclude yourself from the Settlement, you must mail a request for exclusion to the Settlement Administrator (address below) received by **[INSERT DATE]** that includes your full name, address, telephone number or numbers, a statement that you wish to be excluded from the Settlement, and your personal signature. The Settlement Administrator will promptly provide a copy of your request for exclusion to all Parties and Alpha Counsel.
3. **Object to the Settlement.** You may object to the Settlement by submitting a written objection in *Abramson v. Alpha Gas and Electric, LLC*, United States District Court for the Southern District of New York, No. 15-CV-05299-KMK to the Clerk of Court, U.S. District Court, Southern District of New York, 300 Quarropas St, White Plains, NY 10601; and (2) Class Counsel; (3) Alpha Counsel; and (4) the Settlement Administrator, received by **[INSERT DATE]**. Any objection to the Settlement must include your full name; address; telephone numbers that you maintain were called; all grounds in detail for your objection, with factual and legal support for each stated ground; the identity of any witnesses you may call to testify; copies of any exhibits that you intend to introduce into evidence at the Final Approval Hearing ); and a statement of whether you intend to appear at the Final Approval Hearing with or without counsel. Attendance at the Hearing is not necessary; however, persons wishing to be heard orally (either personally or through counsel) in opposition to the approval of the Settlement are required to file a timely objection as set forth above.

#### **WHEN WILL I BE PAID?**

If the Court approves the Settlement, you will be paid within 60 days after the court order becomes final, or by May 1, 2017, whichever is later. If there is an appeal of the Settlement, payment may be delayed. The Settlement Administrator will provide information about the timing of payment at **[WEBSITE]**.

#### **WHO REPRESENTS THE SETTLEMENT CLASS?**

The attorneys who have been appointed by the Court to represent the Settlement Class are:

Anthony I. Paronich  
Broderick & Paronich, P.C.  
99 High St., Suite 304  
Boston, MA 02110

Matthew P. McCue  
The Law Office of Matthew P. McCue  
1 South Ave, Third Floor  
Natick, MA 01760

**WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?**

If the Court gives final approval to the Settlement, Members of the Settlement Class will be deemed to have released their rights to sue or continue a lawsuit against Alpha and the other Released Parties related to telemarketing calls that violate the TCPA and any other similar federal, state or local law. Giving up your legal claims is called a release and the claims you would be releasing are called Released Claims. The Released Claims (and all other defined terms herein) are more fully explained in the Settlement Agreement, available at [WEBSITE] and [OTHER]. If you filed your own lawsuit for the violations alleged in this case you could, if you win, recover up to a maximum of \$1,500 per call plus an order prohibiting future calls. However, if you exclude yourself, the lawyers in this case would not represent you in such a case, and Alpha would vigorously assert all available defenses (including that it should not be held vicariously liable for calls made by Alpha), and you could lose and receive nothing or an amount substantially less than \$1,500. This settlement permits class members the opportunity to obtain a smaller amount of money, risk-free.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a Final Approval Hearing (the "Hearing") at [TIME] on [DATE]. The hearing will be held at the United States District Court for the Southern District of New York, 300 Quarropas St, White Plains, NY 10601. At the Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will hear objections to the Settlement, if any. At the Hearing, the Court will also decide how much to pay Class Counsel. After the Hearing, the Court will decide whether to approve the Settlement. The Hearing may be continued at any time by the Court without further notice to you. If the Court does not approve the Settlement, or if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, you will not be paid at this time and the case will continue. The parties may negotiate a different settlement or the case may go to trial.

**DO NOT ADDRESS QUESTIONS ABOUT THE SETTLEMENT OR THE LAWSUIT TO THE CLERK OF THE COURT OR TO THE JUDGE. PLEASE DIRECT QUESTIONS TO:**

**SETTLEMENT ADMINISTRATOR – [INSERT]**

**Toll-Free 1-\_\_\_\_\_**

DATED: \_\_\_\_\_, 2016

## **Tab 3**

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit *Abramson v. Alpha Gas and Electric, LLC*, United States District Court for the Southern District of New York, No. 15-CV-05299-KMK (the “Action”). The lawsuit alleges that telemarketing calls made by Alpha to cellular telephone numbers violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”). Alpha denies that it violated any laws, that it did anything wrong. Plaintiff and Alpha have agreed to the Settlement to avoid the burden, expense, risk and uncertainty of continuing the Lawsuit.

**Who is included?** You were identified as someone who may have received one or more of these phone calls since July 8, 2011. **How much money can I get?** If the Court approves the Settlement, every Settlement Class Member who submits a valid Claim Form will be entitled to an equal payment from the \$1,100,000 Settlement Fund. Your actual payment amount will depend on how many Settlement Class Members submit valid Claim Forms. The Settlement Fund will be divided and distributed equally—sometimes referred to as “pro rata”—to all Settlement Class Members who submit a valid Claim Form after attorneys’ fees, costs and expenses, an award for the Class Representative, and notice and administration costs have been deducted.

**How can I get a payment?** You must complete the attached Claim Form by no later than [DATE]. Claim Forms may also be completed online at [insert

website address] or obtained by calling the Settlement Administrator at XXX-XXX-XXXX.

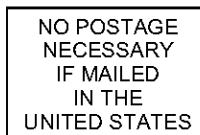
**What are my options?** If you are a Settlement Class Member and you submit a Claim Form or do nothing, and the Court approves Settlement, you will be bound by all of the Settlement terms, including the releases of claims against Alpha and the other Released Parties. You may “opt out” (exclude yourself) from the Settlement. If you opt out, you will not receive a payment, and you will not release any claims. You will be free to pursue whatever legal rights you may have at your own risk and expense. To exclude yourself from the Settlement, you must mail a request for exclusion to the Settlement Administrator, , **P.O. Box xxxx, City ST xxxx-xxxx]** which must be received by **[INSERT DATE]** that includes your full name, address, telephone number or numbers, a statement that you wish to be excluded from the Settlement, and your personal signature. The Settlement Administrator will then promptly notify all Parties and Alpha Counsel of your request to opt out. Unless you exclude yourself from this Settlement, you give up your right to sue or continue a lawsuit against Alpha and the other Released Parties. You may object to the Settlement by submitting a written objection in *Abramson v. Alpha Gas and Electric, LLC*, United States District Court for the Southern District of New York, No. 15-CV-05299-KMK to the Clerk of Court, U.S. District Court, Southern District of New York, 300 Quarropas St, White Plains, NY 10601 by **[INSERT DATE]**; and the (2) the Settlement

Administrator, (3) Class Counsel, and (4) Alpha Counsel. Any objection must include your full name; address; telephone numbers that you maintain were called; all grounds for your objection, with factual and legal support for each stated ground; the identity of any witnesses you may call to testify; copies of any exhibits that you intend to introduce into evidence; identification of any lawyer you consulted with as to this settlement and a statement of whether you intend to appear at the Final Approval Hearing with or without counsel. Attendance at the hearing is not necessary. If you want to be heard orally (either personally or through counsel) in opposition to the Settlement you must file a timely objection as set forth above.

**When will the Settlement be finally approved?** The Court will hold a Final Approval Hearing (the “Hearing”) at **TIME** on **DATE** at the U.S. District Court, Southern District of New York, 300 Quarropas St, White Plains, NY 10601. At the Hearing, the Court will consider whether to approve: the proposed Settlement as fair, reasonable, and adequate; Class Counsel’s request of up to one-third of the Settlement Fund in fees in addition to their costs and expenses; and a \$10,000 payment to the Class Representative. The Court will also hear objections to the Settlement. If approval is denied, reversed on appeal, or does not become final, the case will continue and claims will not be paid.

**Want more information?** The Settlement Agreement and other relevant documents are available at

[website]. Any undefined terms used in this notice have the meanings given to them in the Settlement Agreement. Pleadings and documents filed in Court may be reviewed or copied in the office of the Clerk. Please do not call the Judge or the Clerk of the Court. They cannot give you advice on your options.



FIRST-CLASS MAIL PERMIT NO. 1810 PROVIDENCE RI

TBD

SETTLEMENT ADMINISTRATOR

PO BOX 43067

PROVIDENCE RI 02940-5143

**PLACEHOLDER BRM PANEL: DO NOT USE.**  
**THIS SECTION IS FOR**  
**DEMONSTRATION ONLY**





**Tab 4**

Complete the steps below to Submit a Claim under the Settlement described in the Notice. *You must complete and return this Claim Form before [DATE] to be eligible to receive a payment under the Settlement. Your response will be checked against records produced in the case.*

1. **Identify yourself [Prepopulated by Settlement Administrator]:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_

Telephone number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

2. **Verify that you are a member of the Settlement Class described in the Notice:**

By checking this box, I am confirming that:

I am confirming that the above information is accurate.

3. **Sign the Claim Form and Transmit It to the Settlement Administrator.**

After you complete this Claim Form, sign it below and submit it by United States Mail to the Settlement Administrator, received no later than [DATE], at the following address:

SETTLEMENT ADMINISTRATOR  
P.O. BOX #####, #####, ## #####-####

**NOTE: Only one claim is permitted per telephone number.**

**I certify that the statements herein are true to the best of my knowledge, and that I am not submitting multiple claim forms in this settlement, except as disclosed herein.**

**Date:** \_\_\_\_\_

**Tab 5**

Complete the Steps Below to Submit a Claim Under the Settlement Described in the Notice. **You must complete and return this Claim Form (or complete the on-line claim form at [insert website]) before the deadline to be eligible to receive a payment under the Settlement.**

1. **Identify yourself:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone number for which claim is submitted: \_\_\_\_\_

2. **Verify that you are a member of the Settlement Class described in the Notice (your information will be compared to the Class List):**

By checking this box, I am confirming that, between July 8, 2011 and [DATE]

☐

I received a telemarketing call made by Alpha Energy that I believe to have violated the TCPA.

3. **Sign the Claim Form and Transmit It to the Settlement Administrator.**

After you complete this Claim Form, sign it below and return it by one of the following methods:

A. By e-mail to the Settlement Administrator at [EMAIL] no later than midnight, U.S. Eastern Standard Time, on [DATE]. If you use e-mail, you must send the Claim Form in a format that includes a legible signature.

B. By United States Mail to the Settlement Administrator, postmarked no later than [DATE], at the following address:

[to be inserted]

**NOTE: Only one claim is permitted per telephone number.**

**I certify that the foregoing statements are true to the best of my knowledge.** I understand that the Settlement Administrator has the right to verify my responses and dispute any claims that are based on inaccurate responses.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Tab 6**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STEWART ABRAMSON, individually and  
on behalf of a class of all persons and entities  
similarly situated,

Plaintiff,

V.

ALPHA GAS AND ELECTRIC, LLC

Defendant.

Case No. 7:15-CV-05299-KMK

**PRELIMINARY APPROVAL ORDER**

WHEREAS, this Action is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*,

WHEREAS, Stewart Abramson, Plaintiff herein, has filed a Motion for Preliminary Approval of a Class Wide Settlement (the “Motion”);

WHEREAS, the Motion attaches and incorporates a class action settlement agreement entered into by the Parties (as defined below) as of September 30, 2016 (the “Settlement Agreement”),<sup>1</sup> that, together with the exhibits thereto, sets forth the terms and conditions for the settlement of claims, on a class wide basis, against Alpha Gas and Electric, LLC (“Alpha”) (Plaintiff and Alpha are collectively referred to as the “Parties”) as more fully set forth below; and

WHEREAS, the Court having carefully considered the Motion and the Settlement Agreement, and all of the files, records, and proceedings herein, and the Court determining upon preliminary examination that the Settlement Agreement appears to be fair, reasonable and

<sup>1</sup> Unless otherwise defined herein, all capitalized names have the definitions set forth in the Settlement Agreement.

adequate, and that the proposed plan of notice to the Settlement Class is the best notice practicable under the circumstances and consistent with requirements of due process and Federal Rule of Civil Procedure 23, and that a hearing should and will be held after notice to the Settlement Class to confirm that the Settlement Agreement is fair, reasonable, and adequate, and to determine whether this Court should enter a judgment approving the Settlement and an order of dismissal of this action based upon the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. For purposes of settlement only, the Court has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.

#### **Certification of Settlement Class**

2. Under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for purposes of settlement only, a “Settlement Class” is preliminarily certified, consisting of the following class:

*All individuals and entities in the United States who, from July 8, 2011 through the date of the approval of the proposed settlement, who subscribed to, used, regularly placed or received calls on or from or who owned any of the phone numbers found and or contained on the Class List and who received phone calls from any of the Released Parties using an automated telephone dialing system. or prerecorded voice, or who were listed on the Do Not Call list or otherwise did not consent to the receipt of such calls, or who otherwise have claims against the Released Parties arising under the TCPA or similar federal, state or local laws governing such matters, including without limitation the claims alleged in the Action, including calls placed to cell phones without the recipients’ consent.*

3. All individuals and entities who are members of the Settlement Class who have not submitted a timely request for exclusion are referred to collectively “Settlement Class Members” or individually as a “Settlement Class Member.”

4. For purposes of settlement only, the Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been preliminarily satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) the claims of the class representative are typical of the claims of the Settlement Class Members; (d) the class representative will fairly and adequately represent the interests of the Settlement Class Members; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court further finds, for purposes of settlement only, that: (g) Settlement Class Members have a limited interest in individually prosecuting the claims at issue; (h) the Court is satisfied with Plaintiff's counsel's representation that they are unaware of any other litigation commenced regarding the claims at issue by members of the Settlement Class; (i) it is desirable to concentrate the claims in this forum; and (j) it is unlikely that there will be difficulties encountered in administering this Settlement.

5. Under Federal Rule of Civil Procedure 23, and for settlement purposes only, Plaintiff Stewart Abramson is hereby appointed Class Representative and the following are hereby appointed as "Class Counsel":

Anthony Paronich  
BRODERICK & PARONICH, P.C.  
99 High St., Suite 304  
Boston, Massachusetts 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, Massachusetts 01760



### **Notice and Administration**

6. The Court hereby approves of Kurtzman Carson Consultants to perform the functions and duties of the Settlement Administrator set forth in the Settlement Agreement – including effectuating the Notice Plan – and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement.

7. The Court has carefully considered the Notice Plan set forth in the Settlement Agreement. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process and any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court’s final judgment will be binding on all Settlement Class Members.

8. The Court hereby approves the Notice Plan and the form, content, and requirements of the Notice described in and attached as exhibits to the Settlement Agreement. The Settlement Administrator shall cause the Notice Plan to be completed on or before           , 2016. Class Counsel shall, prior to the Final Approval Hearing, file with the Court a declaration executed by the Settlement Administrator attesting to the timely completion of the Notice Plan.

9. All costs of providing Notice to the Settlement Class, processing Claim Forms, and administering distributions from the Settlement Fund shall be paid out of the Settlement Fund, as provided by the Settlement Agreement.

### **Exclusion and “Opt-Outs”**

10. Each and every member of the Settlement Class shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the

extent set forth in the Settlement Agreement, unless such persons request exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

11. A member of the Settlement Class wishing to request exclusion (or “opt-out”) from the Settlement shall mail the request in written form, by first class mail, postage prepaid, and received no later than           , 2017, by the Settlement Administrator at the address specified in the Notice. In the written request for exclusion, the member of the Settlement Class must state his or her full name, address, and telephone numbers. Further, the written request for exclusion must include a statement that the member of the Settlement Class submitting the request wishes to be excluded from the Settlement, and the personal signature of the member of the Settlement Class submitting the request. The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. No member of the Settlement Class, or any person acting on behalf of or in concert or in participation with a member of the Settlement Class, may request exclusion of any other member of the Settlement Class from the Settlement.

12. Members of the Settlement Class who timely request exclusion from the Settlement will relinquish their rights to benefits under the Settlement and will not release any claims against Alpha or any of the other Released Parties.

13. All Settlement Class Members who do not timely and validly request exclusion shall be so bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or other proceedings against Alpha or any of the other Released Parties.

14. The Settlement Administrator will upon receipt thereof promptly provide all

Parties and Alpha Counsel with copies of any exclusion requests, and Plaintiff shall file a list of all persons who have validly opted-out of the Settlement with the Court prior to the Final Approval Hearing.

### **Objections**

15. Any Settlement Class Member who does not file a timely request for exclusion, but who wishes to object to approval of the proposed Settlement, to the award of attorneys' fees and expenses, or to the compensation award to the Class Representative must submit to Class Counsel, Alpha Counsel and the Settlement Administrator a written statement that includes: his or her full name; address; telephone numbers that he or she maintains were called; all grounds in detail for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; the identity of any attorney consulted as to such objection; and a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel. Any objecting Settlement Class Member also must send a copy of the filing to the Settlement Administrator at the same time it is filed with the Court. The Court will consider objections to the Settlement, to the award of attorneys' fees and expenses, or to the compensation award to the Class Representative only if, on or before [REDACTED], 2017, such objections and any supporting papers are filed in writing with the Clerk of this Court and served on the Settlement Administrator.

16. A Settlement Class Member who has timely filed a written objection as set forth above may appear at the Final Approval Hearing in person or through counsel to be heard orally regarding their objection. It is not necessary, however, for a Settlement Class Member who has filed a timely objection to appear at the Final Approval Hearing. No Settlement Class Member

wishing to be heard orally in opposition to the approval of the Settlement and/or the request for attorneys' fees and expenses and/or the request for a compensation award to the Class Representative will be heard unless that person has filed a timely written objection as set forth above. No non-party, including members of the Settlement Class who have timely opted-out of the Settlement, will be heard at the Final Approval Hearing.

17. Any member of the Settlement Class who does not opt out or make an objection to the Settlement in the manner provided herein shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order and Judgment.

#### **Final Approval Hearing**

18. The Federal Rule of Civil Procedure 23(e) Final Approval Hearing is hereby scheduled to be held before the Court on                     , **2017 at                      am** for the following purposes:

- (a) to finally determine whether the applicable prerequisites for settlement class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are met;
- (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- (d) to consider the application for an award of attorneys' fees and expenses of Class Counsel;

(e) to consider the application for a compensation award to the Class Representative;

(f) to consider the distribution of the Settlement Benefits under the terms of the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

19. On or before fourteen (14) days prior to the Final Approval Hearing, Class Counsel shall file and serve (i) a motion for final approval; and (ii) any application for a compensation award to the Class Representative as well as any application for an award of Class Counsel's fees and expenses.

20. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At, or following, the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all class members.

21. For clarity, the deadlines the Parties shall adhere to are as follows:

**Class Notice Completed by:**                     , 2016 (30 days from Preliminary Approval)

**Objection/Exclusion Deadline:**                     , 2017 (60 days from Notice Deadline)

**Claim Deadline:**                     , 2017 (60 days from Notice Deadline)

**Final Approval Submissions:**                     , 2017 (14 days before Final Approval Hearing)

**Final Approval Hearing:**                     , 2017 at                      am

22. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

#### **Further Matters**

23. All discovery and other pretrial proceedings in the Action as between the Plaintiff and Alpha are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

24. In the event that the Settlement Agreement is terminated under the terms of the Settlement Agreement, or for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (i) the Settlement Agreement shall be null and void, including any provisions related to the award of Class Counsel's fees and expenses, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner of or any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery, subject to existing Confidentiality Agreements, of any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) this Order shall be vacated and of no further force or effect whatsoever, as if it had never been entered; and (iv) any party may elect to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

25. The Court retains jurisdiction to consider all further matters arising out of or connected with the settlement.

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
United States District Court