

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARK PREMAN, on behalf of himself
and all others similarly situated,

CASE NO.: 6:16-cv-443-ORL-41-GJK

Plaintiff,

v.

POLLO OPERATIONS, INC.,

Defendant,

_____ /

REVISED STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (“**Settlement**”) is entered into between Mark Preman (“**Plaintiff**”), on behalf of himself and a settlement class of similarly-situated persons, Pollo Operations, Inc. (“**Defendant**” or “**Pollo Operations**”), and non-party Heartland Commerce Inc. (“**Interested Non-Party**”). The parties to this Settlement are collectively referred to as the “Parties.” This Settlement is entered into as of the date it is signed by the last of the Parties to sign it.

WHEREAS, Plaintiff and Defendant are parties to a civil action entitled *Mark Preman v. Pollo Operations, Inc.*, Case No. 6:16-CV-443-ORL-41-GJK, pending in the United States District Court for the Middle District of Florida (“**the Litigation**”); and

WHEREAS, in the Litigation, Plaintiff asserts on behalf of himself and a putative class that Defendant violated the federal Telephone Consumer Protection Act (“**TCPA**”), 47 U.S.C. § 227, and FCC regulations by sending text messages to cellular telephone numbers through the use of automatic telephone dialing systems (“**ATDS**”) without valid consent; and

WHEREAS, the Defendant denies all liability for the claims made in the Litigation; and

WHEREAS, the Defendant and Interested Non-Party accept joint responsibility for the settlement, have determined a method to fund the settlement, and, as a matter of procedure, the Interested Non-Party has agreed to pay the settlement without any admission of liability in order to resolve all issues relating to the delivery of such text messages, including issues relating to other participants in the process of delivering the alleged text messages that were sent on behalf of Defendant to Plaintiff and the settlement class; and

WHEREAS, the Defendant and the Interested Non-Party provided a list of all unique cellular telephone numbers to which text messages were sent during the class period by the Interested Non-Party pursuant to its contract with Defendant; and

WHEREAS, Defendant and the Interested Non-Party have presented authentic business records to Plaintiff demonstrating that each cellular telephone number that received a text message during the class period is associated with an individual who provided valid consent; and

WHEREAS, Plaintiff's Counsel have investigated the relevant facts and researched the law relating to the Litigation and concluded that, in their view, Defendant sent text messages to the telephone numbers identified in the spreadsheet marked as Appendix A¹, which had been reassigned to new owners after the original or prior owners of the telephone numbers consented to receive such text messages from Pollo Operations, and the new owners did not consent to receive such text messages (the "**Recycled Numbers**"); and

WHEREAS, Plaintiff Preman agrees that he has standing to represent the putative settlement class because he suffered financial injury as a result of receiving the text messages; and

¹ The Parties have filed Appendix A with the Court under seal and will provide it directly to the Settlement Administrator in order to preserve the privacy of the Settlement Class.

WHEREAS, the Parties have agreed on a method to identify the settlement class by reviewing the Interested Non-Party's business records; and

WHEREAS, that method includes a review of the cellular telephone numbers to which text messages were sent by the Interested Non-Party on behalf of Pollo Operations during the class period, and in the ordinary course of business to the Interested Non-Party by the Interested Non-Party's vendors, which in the view of the Parties, the mediator, and outside experts, allows for the reliable identification of the settlement class; and

WHEREAS, Plaintiff and his Counsel are unaware of any allegedly unlawful text messages sent by Defendant apart from those sent to the settlement class; and

WHEREAS, without admitting or conceding any wrongdoing or liability, and solely to avoid the inconvenience and expense of further litigation, and without admitting that there exist any unlawful text messages to any of the cellular telephone numbers that have been identified and exchanged between the Parties and submitted to the Court as Appendix A, Defendant and the Interested Non-Party have agreed to enter into this Settlement to resolve all claims, demands, and liabilities between themselves, Plaintiff and the settlement class, including all claims that have been asserted, or could have been asserted, in the Litigation, subject to the terms set forth herein; and

WHEREAS, by separate agreement, The Angeion Group shall serve as the Settlement Administrator ("**Settlement Administrator**"); and

WHEREAS, Plaintiff and his Counsel have concluded that the terms and conditions provided in this Settlement are fair, reasonable, adequate, and in the best interests of the settlement class as a means of resolving this Litigation, after considering: (1) the benefits that the settlement class will receive under this settlement; (2) that Defendant has demonstrated it will

vigorously oppose the claims asserted in the Litigation if the settlement is not approved; (3) that Defendant will vigorously oppose any motion seeking to certify a class, and if Defendant fails to prevail on the motion, that Defendant will seek to appeal an order certifying the class; (4) the attendant risks, costs, uncertainties, and delays of litigation; (5) the risks, costs, uncertainties, and delays of prosecuting the Litigation going forward; and (6) that discovery would involve the entire text messaging supply chain, including not only Defendant and the Interested Non-Party, but also other companies and various carriers, at a great cost along with the attendant challenges regarding recovery of deleted or stored information; and

WHEREAS, the settlement reduced to writing in this Settlement was negotiated among the Parties in good faith and at arm's length with the assistance of a respected and experienced mediator appointed by the Court; and

WHEREAS, this Settlement is not intended to supersede or change or supplement any separate written agreement between Defendant and the Interested Non-Party except to the specific extent set forth in this Settlement.

TERMS

NOW, THEREFORE, in mutual consideration of the promises and covenants that hereafter follow, and to completely and finally resolve any and all disputes between them, the Parties, subject to the Court's approval, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The above-described recitals are incorporated herein and made a part hereof.
2. **Settlement.** This Settlement is entered into in order to resolve all disputes between Plaintiff, the Released Parties, as described herein, and the settlement class with releases flowing to the entire supply chain involved in providing text messages to Defendant's customers.

The assertions, statements, agreements and representations made herein are for purposes of settlement only and the Parties expressly agree that, if the settlement is not finally approved, this Settlement is null and void and may not be used by any of the Parties for any reason, except that in the event the settlement is not finally approved by the Court, the Interested Non-Party will pay the expenses of class notice and administration incurred. However, this Settlement does not supersede, amend, or alter any separate written agreement between Pollo Operations and the Interested Non-Party except as specifically set forth herein.

3. **The Settlement Class.** For purposes of settlement, the Parties agree that the Settlement Class shall be defined as:

All persons who received text messages on behalf of Pollo Operations from March 1, 2012 to March 15, 2017 to telephone numbers that had been reassigned to them after the original or prior owners of the telephone numbers consented to receive such text messages from Pollo Operations, who did not consent to receive such text messages, and who can be identified through the reverse telephone number look-up process utilized by the Settlement Administrator (“**Settlement Class**”). Excluded from the Settlement Class are: (a) Defendant and its present and former officers, directors, employees, shareholders, insurers, and their successors, heirs, assigns, and legal representatives; and (b) the Court and members of the Court’s staff.

Each person included in the above-defined Settlement Class is herein referred to as a “**Settlement Class Member.**”

4. **The Settlement Administrator.** The Angeion Group shall serve as the Settlement Administrator. The Settlement Administrator will administer the Settlement Class notice, assist the Settlement Class in completing claim forms, verify any and all claims, receive the claim forms electronically via the settlement website and by U.S. mail, track and provide notice to the Parties for any individual or entity opting out of the Settlement Class, and provide to Counsel for the Parties a list of accepted and rejected claims and the total to be paid to each claimant. Upon request, the Settlement Administrator will provide copies of all claim forms to

Counsel for the Parties. The decisions of the Settlement Administrator with respect to claims shall be final and binding. All fees and costs of the Settlement Administrator, including the costs associated with paying third parties to provide notice to the Settlement Class Members, shall be paid out of the Settlement Fund.

5. A method for identifying the Settlement Class Members has been agreed upon by the Parties.

A. The list of Recycled Numbers shall consist of such telephone numbers exchanged between the Parties and submitted to the Court under seal as Appendix A to which Defendant sent text messages and which had been reassigned to new owners after the original or prior owners of the telephone numbers consented to receive such text messages from Pollo Operations, and the new owners did not consent to receive such text messages. The creation of this list occurred based on certain objective criteria.

B. The Parties agree that the identification of the Settlement Class Members raises technical challenges. The Recycled Numbers that will be provided to the Settlement Administrator, and that have been currently filed with the Court, represent the best and preferred method of identifying the Settlement Class Members after carefully considering alternatives and appropriate expert input. The Recycled Numbers were identified from business records in the Interested Non-Party's possession. Specifically, the Interested Non-Party, using its proprietary software, ran a search on its internal system for: (i) each cellular telephone number that received a text message during the class period; and (ii) for which a subsequent text message was sent and a response stating that the number was an "Invalid, Blocked, or Deactivated" number was received by the Interested Non-Party; and (iii) after receiving this notification, a subsequent text message was sent by the Interested Non-Party and ultimately delivered to the cellular phone

number. The search generated more than 40,000 cellular phone numbers that fit this criteria. The Parties and their experts agree that this was the best method to objectively ascertain the list of Recycled Numbers from the database of cellular phone numbers that ever received a text message from the Interested Non-Party during the class period. The Parties further agree that the claims made procedure identified in Paragraph 9 below is a necessary and appropriate means for the Settlement Administrator to confirm membership in the Settlement Class and to avoid fraudulent claims. The Interested Non-Party will provide the list of Recycled Numbers, the same list filed with the Court, to the Settlement Administrator along with the Plaintiff's and Defendant's counsel, contemporaneously with the execution of this Settlement. The Plaintiff's and Defendant's counsel have consented to the use of the list of Recycled Numbers for purposes of identifying the Settlement Class Members. The list of Recycled Numbers will be used to identify the Settlement Class Members by the Settlement Administrator through the means set forth in Paragraphs 6 and 8 below. Excluded from the Settlement Class are: (a) Defendant and its present and former officers, directors, employees, shareholders, insurers, and their successors, heirs, assigns, and legal representatives; and (b) the Court and members of the Court's staff. The Parties further agree that Plaintiff may be appointed as the Class Representative and that John Yanchunis Sr. and Jonathan B. Cohen of Morgan & Morgan Complex Litigation Group, may be appointed as Class Counsel.

6. **Preliminary Approval and Class Notice.** Plaintiff will file an agreed motion for entry of an order preliminarily approving this settlement. Plaintiff will request that the Court enter an "Order Preliminarily Approving Class Action Settlement and Providing for Class Notice" in the form attached to Plaintiff's Memorandum in Support of Unopposed Motion for Preliminary Approval ("Plaintiff's Memorandum") as Exhibit A-2 (the "**Preliminary Approval**

Order”). Additionally, Plaintiff will request that the Court approve a “Notice of Class Action Settlement with Attached Claim Form” in the form attached to Plaintiff’s Memorandum as Exhibit A-3 (the “**Notice**”), that the Court appoint a Class Administrator whose function, *inter alia*, will be to send the Notice to the Settlement Class, and will request that the Court permit the Settlement Administrator to send that Notice in an appropriate form to the Settlement Class Members by postcard via U.S. Postal Service, after performing a reverse telephone number look-up to secure addresses for the Settlement Class Members, as set forth in Appendix A. A website will be established for the Settlement Class Members to access the settlement documents without charge, including the entire class notice and the claim form.

7. **The Settlement Fund.** The Defendant and the Interested Non-Party have agreed to make Nine Hundred Seventy-Five Thousand and No/100 Dollars (\$975,000.00) available to settle this case on a common virtual fund basis (the “**Settlement Fund**”). As a procedural matter, the Interested Non-Party will fund the settlement. The Interested Non-Party is not required to place all or any portion of the Settlement Fund into a separate bank account, and any payments will be made to the Settlement Class Members pursuant to the procedure set forth below. Any portion of the Settlement Fund that is not paid to claiming Settlement Class Members, to the Settlement Class Representative, to Class Counsel, or to the Settlement Administrator for its services shall revert to and be retained by the Interested Non-Party. Defendant shall not be required to pay the settlement amount. In the event that the settlement is not funded, Defendant shall not be released and Plaintiff will be entitled to reinstate the Litigation or pursue such other relief as he deems appropriate.

8. **Notice.** Notice of the settlement will be mailed to the Settlement Class Members at the addresses that are identified as being affiliated with each of the Recycled Numbers. The

Settlement Administrator will identify the Settlement Class Members by performing a reverse telephone number look-up to secure addresses for the Settlement Class Members. The Parties will request that the Court approve the Notice in the form attached to Plaintiff's Memorandum as Exhibit A-3 by mail as agreed, via U.S. Postal Service in an appropriate form. The Settlement Administrator may engage in reasonable additional due diligence in determining the Settlement Class Members who own the Recycled Numbers in the event the initial reverse telephone number look-up is unsuccessful. The Notice shall be sent within 7 days of preliminary approval (the "Notice Date").

9. **Payments to Settlement Class Members.** The Settlement Class Members will have 60 days from the Notice Date to submit claims. Claims may be submitted electronically via the Settlement website or by United States mail. Each Settlement Class Member who submits a timely and valid claim form will be paid \$50.00 regardless of the number of text messages received, subject only to a *pro rata* reduction in the event that the claims and other payments approved herein otherwise would exceed the total Settlement Fund. If more than one Settlement Class Member is validated for a single telephone number, the total amount payable for such telephone number shall still not exceed \$50.00. If more than one Settlement Class Member is validated by the Settlement Administrator for a single telephone number identified as a Recycled Number, the total amount payable to all claimants which is attributed to such telephone number shall not exceed \$50.00. The claim form shall require Settlement Class Members to submit the complete cellular telephone number assigned to them during the class period, and those digits must match a cellular telephone number identified by the Settlement Administrator as a Recycled Number for the claim to be considered. The claim form shall have a unique identifying number that will allow the Settlement Administrator to prevent and limit fraud and the Settlement

Administrator shall have the reasonable discretion to use such other anti-fraud methods that it deems necessary. Further, each Settlement Class Member shall also provide his or her full legal name on the claim form, and the name submitted on the claim form cannot match the name of the original or prior owner of the telephone number who consented to receive text messages from Pollo Operations, in the reasonable judgment of the Settlement Administrator. Further, each Settlement Class Member submitting a claim shall be required to identify the date he or she obtained ownership of the Recycled Number. The Settlement Administrator shall confirm that the change of ownership occurred after the date of initial consent using the records provided by the Interested Non-Party and is not authorized to conduct an independent investigation. To the extent that the information provided by an individual Settlement Class Member demonstrates that such Settlement Class Member was in fact the original or prior owner of the telephone number who consented to receive text messages from Pollo Operations, such claim shall be disallowed, as he or she will not fall within the scope of the Settlement Class described herein. Any Settlement Class Member who does not submit a claim form by the claims due date, as shown by postmark or other identifiable date of transmission, shall receive no monetary payment from the Settlement Fund. All Settlement Class Members will be informed that checks written from the Settlement Fund must be cashed within 180 days of issuance or else the check will be void and they will have no further right or entitlement to any payment under the terms of this settlement. The Notice shall be the exclusive method of notifying Settlement Class Members.

10. **Final Approval.** The preliminary approval order will set a date for a final fairness hearing. At the final fairness hearing, Plaintiff and Defendant will request that the Court enter the “Final Judgment and Order of Dismissal with Prejudice” in the form attached to Plaintiff’s Memorandum as Exhibit A-1 (the “**Final Judgment**”). The fact that the Court may require non-

substantive changes to the Final Approval Order will not invalidate this Settlement or the settlement. If the Court does not enter a Final Judgment substantially in the form of Exhibit A-1 or a modified version thereof which is acceptable to all Parties, then this Settlement shall be null and void.

11. **Service Award, Attorneys' Fees, Costs and Expenses.** For representing the Settlement Class, Plaintiff shall be paid a service award from the Settlement Fund of Five Thousand and No/100 Dollars (\$5,000.00), subject to the Court's approval. In addition, Class Counsel shall be paid 25% of the Settlement Fund, which amounts to Two Hundred Forty-Three Thousand Seven Hundred Fifty and No/100 Dollars (\$243,750.00) as attorneys' fees subject to the Court's approval. Class Counsel shall also be reimbursed for their actual costs and expenses incurred in connection with prosecuting this action from the Settlement Fund subject to the Court's approval. Any such costs and expenses shall not exceed a total of \$5,000.00 and must be supported by authentic business records maintained in the ordinary course. Defendant will not object to a request for these amounts, nor will Defendant appeal any award of these amounts. The awarded amounts will be set forth in the Final Approval Order and shall be paid from the Settlement Fund in accordance with Paragraph 13 below. The settlement is valid and binding regardless of the service award, attorneys' fees and expenses ultimately awarded by the Court.

12. **Effective Date.** This Settlement shall not be effective until the Effective Date. "Effective Date" means the later of: (a) the date the Court enters the Final Judgment, substantially in the form of Exhibit A-1 to Plaintiff's Memorandum, or in a form agreed to by the Parties, dismissing with prejudice the claims of all Settlement Class Members (including Plaintiff) who do not properly exclude themselves as provided in this Notice; or (b) if any Settlement Class Member objected to the Settlement, the date on which the date for filing an

appeal has expired or, if there are appeals, the date on which the Settlement and judgment have been affirmed in all material respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

13. **Payment of Claims, Service Award, and Class Counsel Attorneys' Fees, Costs and Expenses.** No later than ten (10) days after the Effective Date, the Interested Non-Party shall pay to Class Counsel the attorneys' fees, costs and expenses, and service award approved by the Court in its Final Approval Order by wire transfer to Morgan & Morgan Complex Litigation Group. Within ten (10) days of the Effective Date, the Interested Non-Party, through the Settlement Administrator, shall create a non-interest bearing, demand deposit account (the "DDA"), at a bank or trust agreed upon by the Parties, to cover the presentments of settlement checks to Settlement Class Members. The amount deposited by the Interested Non-Party, and available to Settlement Class Members, shall not exceed the amount of the Settlement Fund minus the amount of the service award, attorneys' fees and costs, and the Settlement Administrator's costs, as those amounts shall not be paid from this deposited amount. This account will have an initial nominal deposit. The Settlement Administrator shall issue checks from the DDA in the appropriate amounts to the Settlement Class Members who submitted timely, valid claims. The Interested Non-Party shall cause its bank or trust to promptly make funds available, as necessary, in the DDA within twenty one (21) days after the Effective Date to cover the presentment of settlement checks. If payment by the Interested Non-Party is not timely made, the Interested Non-Party shall pay interest on the amount due at the Florida statutory interest rate of 4.75% per annum. Checks issued to the Settlement Class Members will be void 180 days after issuance. After such time, the Interested Non-Party may, upon its own initiative, close the subject account and take possession of any funds remaining.

14. **Releases.** Subject to and effective upon entry of the Final Approval Order, all Settlement Class Members, including Plaintiff, who do not opt out of the proposed Settlement Class (“**the Releasers**”) as required in the Notice, for and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, release and forever discharge Defendant and the Interested Non-Party and each of their current and former parents, predecessors in interest, assignors in interest including the Interested Non-Party’s assignor in interest, Epio Data, LLC, formerly known as Beanstalk Data, LLC, successors, subsidiaries, affiliates, controlled companies, and each of their officers, directors, shareholders, employees, assigns, agents, vendors, and attorneys (the “**Released Parties**”) from any and all claims, demands, debts, liabilities, actions, causes of action of every kind and nature, obligations, damages, losses, and costs, whether known or unknown, actual or potential, suspected or unsuspected, direct or indirect, contingent or fixed, that have been, could have been, or in the future might be asserted that arise out of or relate to Defendant’s or the Interested Non-Party’s transmission of text messages between March 1, 2012 and March 15, 2017 (the “**Released Claims**”). Further, as a material element of this settlement, all Settlement Class Members, including Plaintiff, for and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, release and forever discharge all other persons or entities and each of their current and former parents, subsidiaries, affiliates, controlled companies, officers, directors, shareholders, employees, predecessors, successors, assigns, agents, vendors, and attorneys from any and all claims, demands, debts, liabilities, actions, causes of action of every kind and nature, obligations, damages, losses, and costs, whether known or unknown, actual or potential, suspected or unsuspected, direct or indirect, contingent

or fixed, that have been, could have been, or in the future might be asserted that arise out of or relate to or are involved in the transmission of text messages to Recycled Numbers.

If any of the Releasors reside in California or are otherwise subject to California law, then such Releasors hereby waive all rights under Section 1542 of the Civil Code of California. That section reads as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.” Notwithstanding the provisions of Section 1542 or any similar law of any other state, and to provide a full and complete release of Released Parties, the Releasors expressly acknowledge that this Settlement is intended to include, without limitation, in addition to the Released Claims, all claims which the Releasors do not know or suspect to exist in their favor at the time of execution of this document, and agree that the settlement agreed upon completely extinguishes all such claims.

This release does not apply to actions brought by the government.

15. **Class Enjoined.** On the Effective Date, all Settlement Class Members who did not opt out as required by the Notice (and any person or entity claiming by or through him, her, or it, as heir, administrator, devisee, predecessor, successor, attorney, representative of any kind, shareholder, partner, director or owner of any kind, affiliate, subrogee, assignee, or insurer) will be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as Settlement Class Members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against the Released Parties about the Released Claims; and all persons and entities shall be forever barred and permanently enjoined from filing, commencing, or

prosecuting any other lawsuit, either individually, or as a class action, against 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) on behalf of Settlement Class Members who have not timely excluded themselves from the Settlement Class if such other lawsuit is based on or arises from the Released Claims.

This injunction does not apply to actions brought by the government.

16. **Cooperation.** The Parties agree to cooperate fully with one another to effect the consummation of this Settlement and to achieve the settlement provided for herein.

17. **Settlement Contingent Upon Entry of Final Approval.** This Settlement is contingent upon entry of an order that contains a judgment giving final approval to the terms of this Settlement. If the Court refuses to grant final approval of the terms of the settlement set forth herein in full, or if the Court's Final Approval Order is reversed or materially modified on appeal, then this Settlement shall be null and void and neither the fact that this Settlement was made nor any stipulation, representation, agreement or assertion made in this Settlement may be used against any Party.

18. **Notices.** Requests for exclusion and notices regarding rejected claims shall be sent to:

John Yanchunis
Morgan & Morgan Complex
Litigation Group
201 N. Franklin Street
7th Floor
Tampa, FL 33602
Counsel for Plaintiff

Jeffrey J. Mayer
Akerman LLP
71 South Wacker Drive
Suite 4600
Chicago, IL 60606
Counsel for Defendant

Angeion Group
1801 Market St.
Suite 660
Philadelphia, PA 19103

Objections to the Settlement shall be sent to:

John Yanchunis
Morgan & Morgan Complex
Litigation Group
201 N. Franklin Street
7th Floor
Tampa, FL 33602
Counsel for Plaintiff

Jeffrey J. Mayer
Akerman LLP
71 South Wacker Drive
Suite 4600
Chicago, IL 60606
Counsel for Defendant

Angeion Group
1801 Market St.
Suite 660
Philadelphia, PA 19103

Clerk of the Court
U.S. District Court
Middle District of Florida
George C. Young United
States Courthouse
401 West Central Blvd.
Orlando, FL 32801

19. **Court Submission.** Class Counsel will submit this Settlement, along with such other supporting papers and exhibits as may be appropriate, to the Court for preliminary approval of this Settlement.

20. **Integration Clause.** This Settlement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among all the Parties to this Settlement, which prior agreements may no longer be relied upon for any purpose. This Settlement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by acknowledged written consideration. However, this Settlement does not supersede, amend, or alter any separate written agreement between Pollo Operations and the Interested Non-Party except as specifically set forth herein.

21. **Binding and Benefiting Others.** This Settlement shall be binding upon and inure to the benefit or detriment of the Parties and the Settlement Class Members who do not timely and properly opt out, and to their respective agents, vendors, employees, representatives,

trustees, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, executors, assigns, and successors in interest.

22. **Representations and Warranties.** The Parties each further represent, warrant, and agree that, in executing this Settlement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Settlement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Settlement warrants that he or she has the authority to enter into this Settlement and to legally bind the party for which he or she is signing. Plaintiff represents that he is unaware of any additional text messages from Defendant, aside from those referred to in the Complaint, that were allegedly delivered without his consent.

23. **Governing Law.** The contractual terms of this Settlement shall be interpreted and enforced in accordance with the substantive law of the State of Florida, without regard to its conflict of laws and/or choice of law provisions.

24. **Mutual Interpretation.** The Parties agree and stipulate that this Settlement was negotiated on an arm's-length basis between Parties of equal bargaining power. Also, Class Counsel and counsel for Defendant have drafted the Settlement jointly. Accordingly, no ambiguity shall be construed in favor of or against any of the Parties. Plaintiff acknowledges, but does not concede or agree with Defendant's statements regarding the merits of the claims, and Defendant acknowledges, but does not concede to or agree with Plaintiff's statements regarding the merits of the claims.

25. **Counterparts.** This Settlement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the

same instrument. Facsimile and .pdf signatures shall bind the Parties to this Settlement as though they are original signatures.

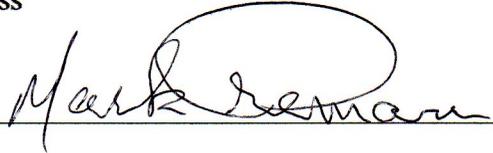
26. **Severability.** In the event any one or more of the provisions contained in this Settlement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Settlement. Notwithstanding the foregoing, the terms set forth in Paragraphs 14 and 15 relating to the Release and the Claims Enjoined are material and any determination of invalidity, in whole, or in part, shall give the Defendant the option to deem the Settlement invalid and the Parties may thereafter resume the litigation.

27. **Continuing Jurisdiction.** Without affecting the finality of the final judgment, the Court shall retain continuing jurisdiction over the Litigation and the Parties, including all Settlement Class Members, the administration and enforcement of this Settlement and the settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Settlement, the order preliminarily approving the settlement, the Final Approval Order and final judgment, hearing and determining an application by Class Counsel for an award of fees and expenses, and the distribution of settlement proceeds to the Settlement Class. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the Settlement shall be presented by motion to the Court. The Interested Non-Party shall not be joined as a party and will only be identified in the court papers necessary to effectuate the terms of this Settlement. However, if the Interested Non-Party fails to fulfill its obligations under this Settlement, then

Plaintiff, Defendant, or both, may seek to enforce this Settlement in Court, and the Interested Non-Party consents to such jurisdiction. The Interested Non-Party shall not be so joined, absent notice as set forth herein, and a reasonable period of not less than ten (10) business days to cure any alleged default or breach of this Settlement.

DATED: 11/14/17

MARK PREMAN, on behalf of himself and the Settlement
Class



DATED: _____

POLLO OPERATIONS, INC.

By: _____

Its: _____

DATED: _____

HEARTLAND COMMERCE INC.

By: _____

Its: _____

IN WITNESS WHEREOF, the Parties have caused this Settlement to be executed on the date set forth beside their respective signatures.

DATED: _____

MARK PREMAN, on behalf of himself and the Settlement Class

DATED: 11/14/17

POLLO OPERATIONS, INC.

By: 

Its: CFO

DATED: _____

HEARTLAND COMMERCE INC.

By: _____

Its: _____

IN WITNESS WHEREOF, the Parties have caused this Settlement to be executed on the date set forth beside their respective signatures.

DATED: _____

MARK PREMAN, on behalf of himself and the Settlement Class

DATED: _____

POLLO OPERATIONS, INC.

By: _____

Its: _____

DATED: NOV 15 2017

HEARTLAND COMMERCE INC.

By: David R. Green ^{w/exp per H} _{Ed} _____ AG

Its: Corporate Secretary _____