

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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MARCIA KIMBLE, *individually, and on  
behalf of all others similarly situated,*

Case. No. 2:23-cv-10037-DML-EAS

Plaintiff,

v.

FIRST AMERICAN HOME WARRANTY  
CORP. and FIVESTRATA LLC,

Defendants.

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**NOTICE OF CLASS ACTION SETTLEMENT**

The United States District Court for the Eastern District of Michigan has authorized this Notice. This is **NOT** a solicitation from a lawyer. Please read this Notice carefully as it may affect your legal rights. **Do not be alarmed. You have not been sued; nor have you “filed” a lawsuit.**



This Notice is being sent to you because you may be among a group or “class” of persons who received calls from or on behalf of First American Home Warranty Corporation and/or FiveStrata, LLC (“First American” and “FiveStrata” are collectively referred to as “Defendants”), and your phone number was registered on the National Do-Not-Call Registry.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS CASE**

**These rights and options and the deadlines to exercise them are explained below.**

<b>IF YOU WANT TO PARTICIPATE FULLY IN THIS CASE</b>	If you want to be included in this case, <b><u>then you must submit a valid Claim Form, a copy of which is included with this Notice.</u></b> If you do not submit a Claim Form you will not receive any payment and will give up claims against Defendants regarding any communications with you.  The relief afforded to you is described in Section 7 below and in the Settlement Agreement is available on the Settlement Website, <a href="http://www.FAFSSettlement.com">www.FAFSSettlement.com</a> .
<b>IF YOU <u>DO NOT</u> WANT TO PARTICIPATE IN</b>	If you do not want to participate or be included in this case, then you must send written notice by mail that you wish to exclude yourself from the Settlement, postmarked or uploaded to

<p><b>THIS CASE AT ALL</b></p>	<p><a href="http://www.FAFSSettlement.com">www.FAFSSettlement.com</a> no later <b>April 30, 2024</b>. Instructions for doing so are in paragraph 8 below.</p> <p>If you choose not to participate in this case, you give up the possibility of getting money or benefits that may come from the settlement of this case. You keep any rights to sue Defendants about certain legal claims arising from communications directed to you, but the statute of limitations (the deadline for you to file your potential claims) continues to run.</p>
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**Your options are explained in this Notice.**

**1. WHAT IS THIS LAWSUIT ABOUT?**

Plaintiff Marcia Kimble (“Plaintiff”) filed a civil lawsuit against Defendants. Plaintiff filed the lawsuit on behalf of herself and as a class action on behalf of the group or “class” of persons who were called by or on behalf of Defendants, despite their phone numbers being registered on the National Do-Not-Call Registry. Plaintiff alleges Defendants violated the Telephone Consumer Protection Act (“TCPA”) by placing such calls. Defendants deny these allegations.

**2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?**

In a class action case, one or more persons sue on behalf of other people who have similar claims. The person who sues is called the named Plaintiff. The named Plaintiff represents all similarly situated people in the court. The named Plaintiff in this lawsuit is Marcia Kimble.

**3. WHY DID I RECEIVE THIS NOTICE?**

This Notice is being made available to you because FiveStrata’s records reflect that a phone call(s) was placed to you by or on behalf Defendants and your phone number was registered on the National Do-Not-Call Registry. If this is the case, you may be a member of the “class.”

Do not be alarmed. **You have not been sued; nor have you “filed” a lawsuit.** This Notice simply informs you of the named Plaintiff’s lawsuit and lets you know that you have been identified as a potential member of the Class and to advise you of your rights and options as a Class Member.

**4. HAS THE JUDGE DECIDED WHO IS RIGHT?**

No. By certifying the Class and issuing this Notice, the judge is not suggesting that the named Plaintiff or the Class would have won or lost the case.

**5. HOW DO I KNOW IF I AM A MEMBER OF THE CLASS?**

By Order dated January 19, 2024, the Court certified the following Class of persons in the Lawsuit, for settlement purposes:

The 21,953 persons identified by the records of FiveStrata whose numbers were registered on the National Do-Not-Call Registry and such persons were called by FiveStrata allegedly on behalf of First American.

If you are not sure whether you are a member of the Class, you should contact the lawyers representing the Class, who are listed in paragraph 6 below.

**6. WHO IS CLASS COUNSEL?**

The Court appointed the named Plaintiff’s attorneys in the Lawsuit as Counsel for the Class (“Class Counsel”). Class Counsel are Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. You are not required to hire your own lawyer because Class Counsel will be working on your behalf as a member of the Class. If you want to hire your own lawyer you are permitted to do so at your own expense.

**7. WHAT WILL I RECEIVE AS PART OF THE SETTLEMENT?**

Defendants will make available \$700,000.00 to pay all valid Class Members’ claims, the cost of Settlement administration, a representative service award for Plaintiff and Class Counsels’ attorneys’ fees and expenses.

Class Counsel estimate that each Class Member who submits a valid claim will receive approximately \$110. This amount may be more or less based on the number of valid claims, or the amounts awarded by the Court for the cost of Settlement administration, a representative Service Award or for Class Counsel’s attorneys’ fees and expenses.

**8. WHAT DO I NEED TO DO TO RECEIVE THE BENEFIT OF THE SETTLEMENT?**

If you wish to receive the Settlement benefits, you **must submit a valid Claim Form, a copy of which is included with this Notice, and which is also available at [www.FAFSSettlement.com](http://www.FAFSSettlement.com)**. You may submit a completed Claim Form at **[www.FAFSSettlement.com](http://www.FAFSSettlement.com)** or send to:

First American-FiveStrata TCPA Settlement  
c/o Atticus Administration, LLC  
PO Box 64053  
Saint Paul, MN 55164  
  
Toll Free: 1-800-489-3107  
Email: [FAFSSettlement@atticusadmin.com](mailto:FAFSSettlement@atticusadmin.com)

**Your claim must be submitted at [www.FAFSSettlement.com](http://www.FAFSSettlement.com) by April 30, 2024 or postmarked by April 30, 2024.**

Failing to make a claim will mean you will not receive compensation and will give up certain claims against Defendants regarding any communications with you. However, you have a choice. You also have the right to exclude yourself from the Lawsuit and the Class or object to the Settlement. You can also enter an appearance in the Lawsuit individually or through your own attorney, or you can seek to intervene as a party. Each of these choices has consequences that you should understand before making your decision.

**A. If you want to participate as a member of the Class.**

**You must submit a valid Claim Form to receive the financial benefit of this Settlement.** Your rights and claims against Defendants, if any, concerning the communications Defendants placed to you (or had communications placed on your behalf), will be determined in the Lawsuit.

If you do not exclude yourself from the Settlement:

1. The named Plaintiff and Class Counsel will represent you in the Lawsuit. By joining this case, you designate the named Plaintiff, to the fullest extent possible, to make decisions on your behalf concerning the case, the method and manner of conducting the case, the entering of an agreement with Class Counsel regarding payment of attorney's fees and litigation costs, the approval of settlements and all other matters pertaining to this case. These decisions and agreements made and entered into will be binding on you if you do not opt out of the case. You may be required to provide information and documents, appear for a deposition and/or testify in court. You will also be permitted to attend any hearings in this matter. You will also release certain claims against Defendants regarding communications placed to you by Defendants or those acting on their behalf as detailed more thoroughly in the Settlement Agreement available on the Settlement Website [www.FAFSSettlement.com](http://www.FAFSSettlement.com).
2. As a member of the Class, you will be entitled to share in any monetary recovery that the named Plaintiff obtains for the Class. You will also receive the benefit of any other relief that the Court may award the Class.
3. Your ability to recover from Defendants will depend on the results of the Lawsuit. It is important to understand that as a member of the Class in this case **you will be bound by any judgment entered by the Court, whether favorable or unfavorable.**

**B. If you want to exclude yourself from the Class or object to the Settlement.**

If you do not want to be a member of the Class and participate in this Lawsuit, you can ask the Court to exclude you from the Lawsuit and allow you to "opt out" by sending such correspondence in writing to:

First American-FiveStrata TCPA Settlement  
c/o Atticus Administration, LLC  
PO Box 64053  
Saint Paul, MN 55164

**To be effective, the request to exclude yourself to the Settlement must be completed, signed and postmarked by April 30, 2024.**

If you choose to be excluded from the Class:

1. Your claims against Defendants, if any, will not be decided in the Lawsuit and you will not share in any recovery that the named Plaintiff obtains for the Class.
2. You will not be bound by any determinations or any judgment that the Court makes or enters in the Lawsuit, whether favorable or unfavorable.
3. You will not be entitled to any further notice with regard to the Lawsuit.
4. You may pursue any claims you have against Defendants at your own expense and risk by filing your own separate lawsuit, should you choose to do so, and assuming you have a claim and the applicable statute of limitations to file a case has not run.
5. Be aware that any claims that you have or may have against Defendants are limited by the applicable statute of limitations and declining to participate in this case by opting out, or by proceeding separately, may result in some or all of your claims expiring as a matter of law.

Any Class Member who wishes to object to the Settlement or wishes to appear at the Final Approval Hearing and show cause, if any, why the same should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered thereon, must serve and file written objections. The objection must contain the objector's full name, telephone number, and current address; must declare that the objector is a member of the Class; and must provide a detailed statement of the objector's specific objections to any matter before the Court and the grounds of the objection. Said objections must be mailed to:

First American-FiveStrata TCPA Settlement  
c/o Atticus Administration, LLC  
PO Box 64053  
Saint Paul, MN 55164

**To be effective, the request to object to the Settlement must be completed, signed, and postmarked by April 30, 2024.**

#### **9. HOW WILL CLASS COUNSEL AND THE CLASS REPRESENTATIVE BE PAID?**

Class Counsel may seek an award of attorney's fees and expenses of up to 33 1/3% of the Settlement fund (\$233,333.33). The Court will determine the amount of fees and expenses that

should be awarded to class counsel. Plaintiff may seek an award of up to \$6,000.00 for her service as class representative.

#### **10. WHAT IF I HAVE QUESTIONS?**

**You should not contact the Clerk of The Court, Judge, or Defendants' Counsel with questions about this case.** Instead, if you have any questions about your claim or rights or would like more information, you should call Class Counsel Christopher E. Roberts of Butsch Roberts & Associates LLC at 314-863-5700 or Jacob U. Ginsburg of Kimmel & Silverman, P.C. at 267-468-5374. You can also speak with your own attorney.

You can review and obtain copies of the Lawsuit, The Court's Order granting Preliminary Approval of the Settlement and any other pleadings and filings in the Lawsuit directly from Class Counsel, by contacting Class Counsel at the number above. You can also review and obtain copies of these papers at your own expense at the Clerk of the Court for the United States District Court for the Eastern District of Michigan.

#### **11. IMPORTANT DEADLINE AND DATE TO REMEMBER**

**April 30, 2024** is the deadline to submit a claim, exclude yourself from the Settlement, object to the Settlement, for filing a Notice/Entry of Appearance in the Lawsuit, and for filing a motion to intervene in the Lawsuit.

**The Final Approval Hearing will take place on June 20, 2024 at 1:00 p.m. before Judge David M. Lawson of the United States District Court for the Eastern District of Michigan, 231 W. Lafayette Boulevard, Room 775, Detroit, Michigan 48226.**

Dated: January 26, 2024

**This Notice is being made available pursuant to Federal Rule of Civil Procedure 23 and by Order of the Court.**