

# **EXHIBIT 1**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between Plaintiff Marcia Kimble (“Kimble” or “Plaintiff”), on behalf of herself and a putative class of persons (identified and defined below as the “Settlement Class”), and Defendant First American Home Warranty Corporation (“First American”) and Defendant FiveStrata (“FiveStrata”)<sup>1</sup>, subject to court approval. First American and FiveStrata are collectively referred to as “Defendants.” Plaintiff and Defendants are collectively referred to as the “Parties.”

WHEREAS Plaintiff has filed a class action under the Telephone Consumer Protection Act (“TCPA”) against Defendants, alleging Defendants placed calls (or had calls placed on their behalf) to Plaintiff and the members of the Settlement Class, and this case is currently pending in the United States District Court for the Eastern District of Michigan, Case No. 2:23-cv-10037-DML-EAS (the “Lawsuit”);

WHEREAS, on September 21, 2023, the Parties conducted an all-day mediation before Retired Judge Gerald E. Rosen and agreed to a settlement at the mediation on terms recommended by the mediator;

WHEREAS, Defendants deny and continue to deny liability for any claims under the TCPA asserted by Plaintiff, deny Plaintiff and/or the Settlement Class are entitled to any damages, and maintain that they have meritorious defenses to the claims alleged in the Lawsuit;

WHEREAS, while denying all liability and without admitting or conceding fault or liability or the validity of Plaintiff’s claims, or that Plaintiff or any individual in the Settlement Class is

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<sup>1</sup> NewStrata, Inc. d/b/a FiveStrata assumed substantially all liabilities and purchased substantially all assets of FiveStrata LLC pursuant to an asset purchase agreement. . Accordingly, NewStrata, Inc. d/b/a FiveStrata is the successor in interest to FiveStrata, LLC to the extent specified in that certain asset purchase agreement.

entitled to any relief as a result of Defendants' conduct, Defendants have agreed to settle the claims that are the subject of the Lawsuit as set forth in this Agreement;

WHEREAS, the Settlement Class likely includes approximately 21,953 people;

WHEREFORE, the Parties stipulate and agree that the claims of Plaintiff and the Settlement Class should be and are hereby compromised and settled, subject to approval by the District Court, upon the following terms and conditions:

1. Recitals. The above-described recitals are incorporated into this Agreement.
2. For Settlement Only. This Agreement is entered into for purposes of resolving the disputes between Defendants, and between Defendants and Plaintiff and the Settlement Class, concerning the claims asserted in the Lawsuit. Assertions, statements, and representations herein are for settlement purposes only. The Parties desire and intend to seek the trial court's approval of the settlement and a final judgment approving the settlement between the Parties concerning the claims of Plaintiff and the Settlement Class Members as set forth in this Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the settlement, to secure the district court's approval of the settlement, and to oppose any interventions and objections to the settlement. If the trial court does not finally approve the Agreement the Parties expressly agree that this Agreement is a nullity as described in Section 20.
3. Certification of the Settlement Class. For settlement purposes only, the Parties hereby stipulate to seek certification of the following settlement class defined as follows: 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 ("Settlement Class"). The class members bound by the class definition are those included on the data produced by FiveStrata. "Settlement Class Member" means any person

included in the Settlement Class who does not timely and properly opt out of this settlement. Defendants will not oppose the certification of the Settlement Class for settlement purposes only and reserve all of their defenses and objections to certification of the proposed class in the event the Parties' settlement is not approved.

4. Representation of the Settlement Class. Plaintiff will request to be appointed as the "Class Representative." Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. will request to be appointed as "Settlement Class Counsel." Defendants will not oppose these requests.

5. Settlement Administrator. The Parties agree to request that the Court appoint Atticus Administration, LLC, (the "Settlement Administrator"), to serve as the Settlement Administrator. The Settlement Administrator shall have the following duties, as described more fully below:

- a. Issue the notice information to the Settlement Class as set forth in Section 6 below;
- b. Track and provide information on any returned notices as well as update addresses and remail any returned notices;
- c. Create and maintain a website with information regarding this Settlement;
- d. Prepare and issue notice of proposed settlement to the appropriate Federal officials and State officials as required by the Class Action Fairness Act;
- e. Process contact information forms received from Settlement Class members to insure those class members' contact information is accurate;
- f. Calculate, prepare, and distribute Settlement Class members' settlement payments;

- g. Distribute any incentive award and award of attorney's fees and costs to Settlement Class Counsel;
- h. Provide a declaration to submit to the Court in support of final approval of the settlement;
- i. Monitor whether settlement payment checks are cashed and within 180 days after the date settlement checks were issued, prepare a report in Excel format and provide it to counsel for the Parties, listing all settlement checks issued, the check number, the check date, the name and address of the payee and indicate whether the check was negotiated; and calculate, prepare and make any payments according to the escheatment requirements of the state in which the class members reside of any funds remaining in the Settlement Fund and from uncashed settlement checks.

Defendants and their counsel shall have no obligation to supervise or control the actions of the Settlement Administrator or to ensure that it complies with its obligations under this Agreement.

6. Notice Information: After entry of an agreed-upon protective order by the Court and upon agreement by the Settlement Administrator to be bound by the protective order, FiveStrata will provide the Settlement Administrator with the last known name, address and e-mail of each Settlement Class Member, to the extent FiveStrata can reasonably determine this information from its records. This information is referred to as the "Notice Information." FiveStrata will provide the Notice Information to the Settlement Administrator within a reasonable time after the Court enters an agreed-upon protective order and the Settlement Administrator agrees to be bound thereby.

7. Preliminary Approval. Plaintiff will file an unopposed motion with the District Court for preliminary approval of the Settlement on or before October 18, 2023. The motion for preliminary approval will seek an order that: (a) preliminarily approves the settlement of the Lawsuit; (b) certifies the Settlement Class as defined in Section 3 above; (c) approves and appoints Plaintiff as representative of the Settlement Class; (d) approves and appoints attorneys Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. as Settlement Class Counsel; (e) approves the forms prepared by the Parties for giving notice of the settlement to the members of the Settlement Class, copies of which are attached to this Agreement as **Exhibit 1**; (f) approves the methods agreed to by the Parties for giving notice of the settlement to the Settlement Class; and, (g) sets deadlines for: (1) providing notice to the Settlement Class; (2) members of the Settlement Class to submit requests for exclusion/opt-out and objections to the proposed settlement; and, (3) members of the Settlement Class to submit claims, substantially in the form attached hereto as **Exhibit 3** (the “Preliminary Approval Order”). The Parties will then seek final approval of the settlement and entry of a “Final Approval Order and Judgment” (as defined in section 14).

8. The Settlement Fund. In full settlement of the Lawsuit and any claims that were or could have been brought in the Lawsuit, Defendants will pay to the Settlement Administrator the total amount of \$700,000.00 (“Settlement Fund”) to settle this case on a common fund basis, which funds will be used to pay the claims of each member of the Settlement Class, the cost of settlement administration, including any amounts due to the Settlement Administrator, a class representative service award, and Class Counsel’s attorneys’ fees and litigation expenses. First American shall contribute \$450,000 to the Settlement Fund, and FiveStrata shall contribute \$250,000 to the Settlement Fund. No amount of the Settlement Fund will revert to Defendants.

The Settlement Fund shall be paid by the Defendants to the Settlement Administrator within five business days of the Effective Date, as set forth below. The Settlement Administrator shall provide Defendants' counsel at least 30 days before the Effective Date with a complete executed W-9 from the Settlement Administrator and written wire instructions to transfer the Settlement Fund to the account designated by the Settlement Administrator. The Settlement Administrator will administer the Settlement Fund. Once Defendants make the Settlement Fund payment to the Settlement Administrator in accordance with this Agreement, Defendants shall not have any further payment obligation to the Settlement Class.

Each member of the Settlement Class who submits a valid claim shall be entitled to a *pro rata* cash payment from the Settlement Fund, net after accounting for the following amounts awarded by the Court: the cost of settlement administration, including the Settlement Administrator, a class representative service award, and Class Counsel's attorneys' fees and litigation expenses. Payments shall be made by check or electronic payment from the Settlement Administrator to each Settlement Class Member who submits a valid claim.

All Class Members will be informed that settlement checks must be cashed within 180 days of issuance and that Class Members who fail to timely cash their checks will have no further right or entitlement to any payment under the terms of the Settlement but will be bound by the terms of the Settlement, including the Releases contained herein.

The amount of all checks uncashed within 180 days of distribution by the settlement administrator shall be distributed by the Settlement Administrator in accordance with the escheatment requirements of the state in which the Settlement Class Member is located.

9. Notice to Settlement Class. In the event the District Court enters the Preliminary Approval Order as described in Section 6, notice of the settlement will be mailed by the Settlement

Administrator to the individuals in the Settlement Class within fourteen days after entry of the Preliminary Approval Order. The Settlement Administrator will send the class notice by first class U.S. mail to persons in the Settlement Class at such persons' last known address, as listed in the Notice Information, and will also send the notice by e-mail to all members of the Settlement Class for whom FiveStrata has an e-mail address. Prior to mailing the notice, the Settlement Administrator will update the address information provided by FiveStrata through the National Change of Address (“NCOA”) database maintained by the U.S. Postal Service. Any mailed notice returned to the Settlement Administrator with a new forwarding address will be re-mailed one time to the individual at the new forwarding address. The mail notice to the Settlement Class will contain a summary description of the Agreement, include a claim form, identify the Settlement Administrator, and direct recipients to the website, from which information about the settlement can also be obtained and through which claim forms may be uploaded (in addition to being mailed). The Settlement Administrator will provide a declaration or affidavit to file with the trial court, as part of the final approval papers, stating that these notice procedures were followed.

The Settlement Administrator shall set up a dedicated website to advise persons of the settlement and through which members of the Settlement Class may submit claims. Members of the Settlement Class will also have the option to mail in claim forms. The content and format of the website will be agreed upon by the Parties, and the website will be operational on the date the notice is mailed to the Settlement Class. Individuals in the Settlement Class shall be able to opt-out and exclude themselves from the settlement or object to the settlement within sixty days after the notice is first mailed to exclude themselves from or object to the settlement.

The parties agree that Notice will be substantially similar to that attached as Exhibit 1.



10. Objections and Opt Outs. Any class member may object to this Settlement and ask the Court to deny approval. Any written objection and supporting papers must be filed with the Clerk of the Court on or before the date specified in the Preliminary Approval Order and must include the person's name, street address, all attorneys who assisted in the preparation and filing of the objection, a list of all other class actions in which that person or counsel have filed objections to settlements, and a statement of the reasons why the Court should find that the settlement is not in the best interests of the Settlement Class. The objector may also appear in person or through his or her attorney at the Final Approval Hearing. Copies of any objection must also be served on Class Counsel and Counsel for Defendants as required by the Federal Rules of Civil Procedure.

11. CAFA Notice: Within ten (10) days of filing this Settlement Agreement with the Clerk of the Court as part of the Motion for Preliminary Approval, the Settlement Administrator will cause the notice of proposed settlement required by the Class Action Fairness Act, 28 U.S.C. § 1715(b), to be issued to the appropriate Federal officials and appropriate State officials as provided for in that statute. Pursuant to 28 U.S.C. § 1715(d), the Parties will seek to schedule the Final Approval Hearing so that the Final Approval and Judgment is entered more than 90 days after this notice of proposed settlement is provided.

12. Claims Process: Any member of the Settlement Class who wishes to receive a cash payment shall submit a valid claim form within 90 days of the Settlement Administrator sending out notice. The claim form shall be signed physically or digitally by the member of the Settlement Class to receive relief. The parties agree that all members of the Settlement Class who wish to exclude themselves or object to the settlement shall also do so within 90 days and must advise the Settlement Administrator of their exclusion or objection to the settlement.

The parties agree that the Claim Form will be substantially similar to that attached to this Agreement as **Exhibit 2**.

13. Incentive Award and Attorneys' Fees. Class Counsel will apply for an award of up to 33 1/3% of the settlement fund for their attorneys' fees and reasonable litigation expenses. Class Counsel will also request an incentive award for Plaintiff of up to \$6,000.00. The incentive award and attorney fee award will be set forth in the Final Approval Order and Judgment and is within the Court's discretion to award.

14. Final Approval. The preliminary approval order described in Section 6 will set a date for a Final Approval Hearing, at which the Parties will request that the District Court enter a Final Approval Order and Judgment, consistent with this Agreement and the Parties' efforts to consummate the settlement. With the exception of their portion of the up-front costs required by the Settlement Administrator, Defendants shall not be obligated to pay any sum pursuant to this Agreement except after a Final Approval Order and Judgment is entered, as described in Section 13.

15. Effective Date. If there are no objections to the settlement, the "Effective Date" of this Agreement shall be the fourteen calendar days after the trial court has signed the Final Approval Order and Judgment as applied to Plaintiff and the Settlement Class Members. If there are objections to the settlement, the Effective Date shall be fourteen days after all of the following conditions have occurred and been satisfied:

(a) The trial court has entered: (i) a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23; and (ii) a final judgment granting the relief and releases described in this Agreement, including that in Sections 7 and 14; and

(b) The time for appeal or to seek permission to appeal from the trial court's approval of this Agreement and entry of final judgment described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Agreement and any final judgment have been affirmed by the court of last resort to which such appeal can be taken, and such affirmance has become no longer subject to further appeal or review.

16. Payments. Within fourteen days after the Effective Date, the Settlement Administrator shall distribute the Settlement Class Member payments described in Section 8, and the attorney's fees and incentive award described in Section 8, consistent with the Final Approval Order and Judgment.

17. Right to Rescind. First American and FiveStrata shall have the right to rescind this Agreement in the event that more than 10% of the Settlement Class submit a timely and valid request to be excluded from the Class. Defendants may exercise their right to rescind by filing a Notice of Exercise of Right to Rescind with the Clerk of the Court at any time before the entry of the Final Approval Order by the Court.

18. FiveStrata and First American Releases as to each other: FiveStrata, and its parents, subsidiaries, owners, members, current and former related entities, or persons with control over FiveStrata, along with its and their successors, predecessors, heirs or assigns, officers, directors, agents acting on behalf of First American or FiveStrata, servants, employees, and insurers ("FiveStrata Releasing Parties"), release from any and all liability for any and all claims, causes of action, demands, judgments, costs, attorney's fees and expenses, whether in law or in equity, whether known or unknown, which FiveStrata Releasing Parties has or had against First American, and its and their parents, subsidiaries, owners, insurers, current and former related entities, or persons with control over First American, along with its and their successors, predecessors, heirs

or assigns, officers, directors, agents acting on behalf of First American or FiveStrata, servants, employees (“First American Released Parties”). This release expressly excludes any and all claims, causes of action, demands, judgments, costs, indemnification claims, attorney’s fees and expenses, whether in law or in equity, whether known or unknown, relating to any Telephone Consumer Protection Act or related state or federal privacy claims that the FiveStrata Releasing Parties may have against the First American Home Warranty Released Parties other than those asserted in the Lawsuit.

First American Home Warranty, and its parents, subsidiaries, owners, members, current and former related entities, or persons with control over First American Home Warranty, along with its and their successors, predecessors, heirs or assigns, officers, directors, agents acting on behalf of First American or FiveStrata, servants, employees, and insurers (“First American Home Warranty Releasing Parties”), release from any and all liability for any and all claims, causes of action, demands, judgments, costs, attorney’s fees and expenses, whether in law or in equity, whether known or unknown, which First American Home Warranty Releasing Parties have or had against FiveStrata, and its and their parents, subsidiaries, owners, insurers, current and former related entities, or persons with control over FiveStrata, along with its and their successors, predecessors, heirs or assigns, officers, directors, agents acting on behalf of First American or FiveStrata, servants, employees (“FiveStrata Released Parties”). This release expressly excludes and all claims, causes of action, demands, judgments, costs, indemnification claims, attorney’s fees and expenses, whether in law or in equity, whether known or unknown, relating to any Telephone Consumer Protection Act or related state or federal privacy claims that First American Home Warranty Releasing Parties may have against FiveStrata Released Parties other than those asserted in the Lawsuit.

19. Settlement Class Members' Release. Upon the Effective Date, the FiveStrata Released Parties and First American Released Parties shall be released and forever discharged by the Class Representative, the Settlement Class, and each Settlement Class Member from all Released Claims. "Released Claims" means any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys' fees, costs, liens, judgments, and demands of any kind whatsoever that each member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, that were asserted in the Complaint, the Action, or that arise out of or relate to any communication, sent to, received by, or otherwise transmitted between Class Members by or on behalf of FiveStrata Released Parties and First American Released Parties.

20. Effect of Trial Court's Denial of Preliminary or Final Approval. This Agreement is null and void if the District Court does not preliminarily approve the settlement in substantially the same form as set forth in this Agreement, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth in this Agreement. In such event, and upon the District Court entering an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved in substantially the same form as set forth in this Agreement, then: (a) this Agreement is terminated and is of no force and effect, and no party shall be bound by any of its terms, except that the Settlement Administrator's expenses shall be split equally among Plaintiff, First American, and FiveStrata; (b) to the extent applicable, any preliminary order approving the settlement, certifying the

Settlement Class, approving the notice or notice procedure, and providing notice to the Settlement Class shall be vacated; (c) the Agreement and all of its provisions and all negotiations, statements, and proceedings shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Agreement was fully executed; and, (e) neither the settlement nor any of its provisions or the fact that this Agreement has been made shall be admissible in this Lawsuit, or discoverable or admissible in any other action for any purpose whatsoever.

21. Requests by Individuals in Settlement Class. Requests for exclusion, objections to the settlement, and all other notices regarding the settlement, to the extent received by either Party, shall be sent to the Settlement Administrator.

22. No Admission of Liability. This Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendants of any fact, commission of any wrong, or liability of any kind. Defendants deny any liability in connection with any claims and intends merely to avoid further litigation.

23. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

24. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

25. Warranties. The Parties further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the

claims released in this Agreement, and that they have received 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 Party represents such party has not assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action asserted in the Lawsuit. Each of the Parties executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party for which he or she is signing.

26. Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

27. Further Cooperation. The Parties agree to execute such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Agreement, and shall in good faith undertake all reasonable acts to effectuate the provisions of this Agreement.

28. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Michigan, without regard to its conflict of laws or choice of law provisions. All suits to enforce this Agreement shall be brought in the United States District Court for the Eastern District of Michigan.

29. Mutual Interpretation. The Parties agree and stipulate that the settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. The Agreement has been drafted jointly by Class Counsel and Defendants’ counsel. Accordingly, this Agreement is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties.

This Agreement was prepared after an agreement in principle to resolve the case was reached after a mediation with Retired Judge Gerald E. Rosen and on the terms recommended by Judge Rosen.

30. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and such counterparts together shall constitute one instrument. Electronically scanned signatures are acceptable for the execution of this Agreement.

31. Severability. Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall be binding and enforceable.

32. Dispute Resolution. Any dispute over the terms of the Settlement Agreement shall be mediated before Judge Rosen of JAMS in Detroit, Michigan and, if unsuccessful, binding arbitration before Judge Rosen and JAMS in Detroit, Michigan according to JAMS' Arbitration Rules. Judge Rosen's final award or determination may be confirmed and enforced by a court of competent jurisdiction. Any arbitration shall be conducted according to the JAMS Comprehensive Rules, except the Federal Rules of Evidence will apply during the arbitration proceeding.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date(s) set forth below.

**[Remainder of page intentionally left blank]**



Dated: Oct 18, 2023

Marcia Kimble  
Marcia Kimble

Dated: \_\_\_\_\_

First American Home Warranty Corporation

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

NewStrata, Inc. d/b/a FiveStrata as successor in interest to  
FiveStrata LLC pursuant to the asset purchase agreement

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marcia Kimble

Dated: 10/18/2023

First American Home Warranty Corporation

By:  \_\_\_\_\_  
15838C59DE0B4AD...

Printed Name: Matthew Wendl

Title: MattWendl

Dated: \_\_\_\_\_

NewStrata, Inc. d/b/a FiveStrata as successor in interest to  
FiveStrata LLC pursuant to the asset purchase agreement

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marcia Kimble

Dated: \_\_\_\_\_

First American Home Warranty Corporation

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Dated: 10/18/23

NewStrata, Inc. d/b/a FiveStrata as successor in interest to  
FiveStrata LLC pursuant to the asset purchase agreement

By:  \_\_\_\_\_

Printed Name: Matt Gardner

Title: CEO

**SETTLEMENT  
AGREEMENT  
EXHIBIT 1**

**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 [\[QR code to claim form/settlement site\]](#)**

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 THIS CASE AT ALL</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 <a href="http://www.FAFSSettlement.com">www.FAFSSettlement.com</a> no later than <b>[90 days after notice is mailed]</b> . Instructions for doing so are in paragraph 8 below.

	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.
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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 XXXXXX, 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  
1250 Northland Drive, Suite 240  
Mendota Heights, Minnesota 55120

**Your claim must be submitted at [www.FAFSSettlement.com](http://www.FAFSSettlement.com) by 90 days after notice is mailed or postmarked by 90 days after notice is mailed.**

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  
1250 Northland Drive, Suite 240  
Mendota Heights, Minnesota 55120



**To be effective, the request to exclude yourself to the settlement must be completed, signed and postmarked by [90 days from the date notice is mailed].**

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  
1250 Northland Drive, Suite 240  
Mendota Heights, Minnesota 55120

**To be effective, the request to object to the settlement must be completed, signed and postmarked by [90 days from the date notice is mailed].**

## **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**

**[90 days after notice is mailed]** is the deadline to 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 XXXXXXX, 2024 at XX:00 X.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: \_\_\_\_\_, 2023

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

**SETTLEMENT  
AGREEMENT  
EXHIBIT 2**

## CLAIM FORM

Please select whether you want to receive your payment as a check or as an electronic payment. Please note that if you select payment by check, the check will expire 180 days after the date of issuance to you and said amount will be provided in accordance to the state in which you are located in accordance with the escheatment laws of the state in which you are located.

All information provided is subject to verification by the Claims Administrator. The Parties have the right to seek discovery to further verify the accuracy of the information contained on this claim form, including requiring you to appear for an expedited deposition or in court, where you may be required to testify under oath.

This form must be postmarked or received by **90 days after mailing** or else your claim will not be considered timely. You can submit this electronically at **www.FAFSSettlement.com** or via mail by sending to **First American-Five Strata TCPA Settlement, c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164.**

### **Required Information**

I wish to receive: **Electronic Payment**  or **Check**

Name: [pre-populated from FiveStrata's records]

Current Address: [pre-populated from FiveStrata's records]

Phone number: [pre-populated from FiveStrata's records]

**I certify, under the penalty of perjury, that the above information is true and accurate.**

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

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

**SETTLEMENT  
AGREEMENT  
EXHIBIT 3**

EXHIBIT \_\_

**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

District Judge David M. Lawson

Plaintiff,

v.

FIRST AMERICAN HOME  
WARRANTY CORP. and  
FIVESTRATA LLC,

Defendants.

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**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING  
SETTLEMENT CLASS, DIRECTING CLASS NOTICE, AND  
SCHEDULING A FINAL APPROVAL HEARING**

Upon review and consideration of Motion for Preliminary Approval of Class Action Settlement of Plaintiff Marcia Kimble, (the “Representative Plaintiff”), with Defendants First American Home Warranty Corp. and FiveStrata, LLC (“Defendants”) (“Representative Plaintiff” and “Defendants” are collectively referred to as “Parties”), including the Parties’ executed Settlement Agreement attached as Exhibit 1, to the Motion for Preliminary Approval (the “Agreement”) and all corresponding exhibits, the Court hereby orders as follows:

## **1. Settlement**

The Parties have negotiated a proposed settlement of the Representative Plaintiff's claims in this action, individually, and on behalf of a class of persons whose numbers were on the National Do-Not-Call Registry who were called by FiveStrata, allegedly on behalf of First American. These persons are described below as the Settlement Class. The Parties entered into this Agreement, on the terms recommended by Judge Gerald E. Rosen (Ret.) to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the claims set forth in the Agreement. The Court has reviewed the Agreement, and the proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

## **2. Preliminary Approval**

The Agreement entered into, by and among the Parties, was negotiated at arm's length and a settlement was achieved on the terms recommended by Judge Gerald E. Rosen (Ret.). The Agreement is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

### **3. Settlement Class Relief**

Defendants, consistent with the terms of the Agreement, shall make a settlement fund of \$700,000.00 available to pay class members' claims, Class Counsel's (defined below) attorneys' fees and litigation expenses, settlement administration and a representative service award. Each class member who submits a valid claim shall receive a *pro rata* cash payment (by check or electronically) net of attorneys' fees and litigation expenses, settlement administration and a representative service award. Class Counsel estimates that each class member who submits a valid claim will receive over \$100, based on historical claims rates. In accordance with the terms of the Agreement, the members of the Settlement Class in exchange agree to release Defendants (independently and collectively) from claims concerning communications made to them and the Defendants agree to release certain claims against each other.

### **4. Preliminary Certification of Settlement Class**

For settlement purposes only, the Court certifies the following class:

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.

These persons are referred to as members of the "Settlement Class."

The Court makes the following determinations as to certification of the Settlement Class:



a. The Court preliminarily certifies the Settlement Class for purposes of settlement, under Federal Rule of Civil Procedure 23;

b. The Settlement Class is so numerous that joinder of all members is impracticable, as the number of settlement class members is 21,953;

c. There are questions of law or fact common to the members of the Settlement Class, namely, whether such calls placed to the members of the Settlement Class violate the Telephone Consumer Protection Act, and whether vicarious liability should be imposed against First American, and such common questions predominate over any questions affecting only individual members;

d. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class;

e. The Representative Plaintiff's counsel is capable of fairly and adequately protecting the interests of the members of the Settlement Class; and,

f. The class action is an appropriate method for the fair and efficient adjudication of this controversy.

## **5. Designation of Class Representative**

The Representative Plaintiff is designated as the representative of the Settlement Class for the purpose of seeking approval of and administering the Agreement.

**6. Designation of Class Counsel**

The Court finds that the Representative Plaintiff's counsel are qualified to serve as Class Counsel in this case. Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. are designated as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

**7. Final Approval Hearing**

A hearing regarding final approval of the Settlement ("Final Approval Hearing") will be held at :00 .m. on \_\_\_\_\_ 2024, in the United States District Court for the Eastern District of Michigan before the Honorable Judge David M. Lawson, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiff's and the Settlement Class member's claims against the Defendants in the Action as fair, reasonable, and adequate; (ii) whether the members of the Settlement Class Members should be bound by the terms of the Agreement; and (iii) whether the application of Class Counsel for an award of attorneys' fees and expenses, and for a proposed service award to the Representative Plaintiff, should be approved and in what amount.

## **8. Class Notice**

The Court approves the Class Notice and Claim Form (attached as Exhibits 1 and 2 to the Settlement Agreement) and directs the Administrator (defined below) to send out the Class Notice and Claim Form within 21 days of the entry of this Order. The settlement website detailed in the Agreement shall also be fully operable as of the date the Administrator sends out the Class Notice and Claim Form. The Class Notice and Claim Form shall be sent to the last known mailing address for each member of the Settlement Class. If the Class Notice and Claim Form are returned as undeliverable, the Administrator shall run the address against the National Change of Address Database and send another Class Notice and Claim Form to the newly obtained address, if any. If the Administrator has received a valid e-mail address from FiveStrata, then the Administrator shall also send the Class Notice and Claim Form to the class member's e-mail address.

Claim forms may be sent via mail or e-mail to the Administrator. In addition, the settlement website shall have an option for a member of the Settlement Class to upload their claim form on the settlement website and to also submit a claim directly through the settlement website.

## **9. Administrator**

The Court approves and authorizes the retention of Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes

and directs the Administrator to (a) mail the Class Notice and the Claim Form; (b); establish the settlement website; (c) receive and process Claim Forms; (d) respond to class members' questions and inquiries; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendants, all according to and as provided in the Agreement.

#### **10. Claims, Exclusions and Objections**

Members of the Settlement Class shall have 90 days from the date the Administrator sends the Class Notice and Claim Form to submit their respective Claim Forms. If a Claim Form is mailed, said Claim Form must be postmarked within 90 days of the date the Administrator sends the Class Notice and Claim Form. If a Claim Form is submitted through the settlement website, then said Claim Form shall be uploaded or submitted through the settlement website within 90 days of the Administrator sending the Class Notice and Claim Form.

Any Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than [REDACTED] (“Opt Out Deadline”), which is no less than thirty days before the Final Approval Hearing of [REDACTED], 2024.

Any member of the Settlement Class may object to this Settlement and ask the Court to deny approval. Any written objection and supporting papers must be

filed with the Clerk of the Court no later than \_\_\_\_\_ (“Objection Deadline”), which is no less than thirty days before the Final Approval Hearing of \_\_\_\_\_, 2024, and must include the person's name, street address, all attorneys who assisted in the preparation and filing of the objection, a list of all other class actions in which that person or counsel have filed objections to settlements, and a statement of the reasons why the Court should find that the settlement is not in the best interests of the Settlement Class. The objector may also appear in person or through his or her attorney at the Final Approval Hearing. Copies of any objection must also be served on Class Counsel and Counsel for Defendants as required by the Federal Rules of Civil Procedure.

#### **11. Attorneys’ Fees and Expenses, and Case Contribution Awards**

Class Counsel shall not seek an award of attorneys’ fees in a total amount that exceeds \$195,000.00. Class Counsel shall not seek reasonable litigation expenses in excess of \$18,000.00. Class Counsel and the Representative Plaintiff agree not to seek a service award that exceeds \$5,000.00 to the Representative Plaintiff for her work and assistance in this action.

#### **12. Service of Papers**

Class Counsel and the Defendants’ Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such

objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court's docket.

### **13. Termination of Settlement**

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, the Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement, shall be without prejudice to the rights and contentions of the Parties and any members of the Settlement Class and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

### **14. Stay**

All proceedings in this action are stayed, except as necessary to effectuate the terms of the Agreement.

**15. Necessary Steps**

The Court hereby preliminarily approves the Agreement entered into between the Parties. The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the terms of the Agreement.

So Ordered: \_\_\_\_\_  
                  Hon. David M. Lawson

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