

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

## **If You Received a Text Message from SmileDirectClub, You May Be Entitled to a Payment from a Class Action Settlement**

*A Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.*

- A Settlement<sup>1</sup> has been reached in a class action lawsuit about whether SmileDirectClub, LLC sent marketing text messages to cellular telephone numbers without prior express written consent of the recipients as defined by the Florida Telephone Solicitation Act, Fla. Stat. § 501.059 (“FTSA”). SmileDirectClub denies the allegations and any wrongdoing. The Court has not decided who is right.
- The Settlement offers payments to Settlement Class Members who file valid Claims.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY MAY 10, 2023</b>	If you are a member of the Settlement Class, you must submit a timely, valid, and completed Claim Form to receive a payment. If the Court approves the Settlement and it becomes Final and effective, and you remain in the Settlement Class, you will receive your payment by check or electronic payment.
<b>EXCLUDE YOURSELF BY MARCH 16, 2023</b>	You may request to be excluded from the Settlement and, if you do, you will receive no benefits from the Settlement.
<b>OBJECT BY MARCH 16, 2023</b>	You may write to the Court if you do not like the Settlement.
<b>GO TO A HEARING ON JUNE 20, 2023</b>	You may ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	You will not receive a payment if you fail to timely submit a completed Claim Form, and you will give up your right to bring your own lawsuit against SmileDirectClub about the Claims in this case.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to those who submit qualifying Claim Forms. Please be patient.

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<sup>1</sup> Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website.

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

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## BASIC INFORMATION

### 1. Why is there a Notice?

A Court authorized this Notice because you have a right to know about a proposed Settlement of a class action lawsuit known as *Borges v. SmileDirectClub, LLC*, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, and about all your options before the Court decides whether to give Final Approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

A Judge of the Ninth Judicial Circuit in and for Orange County, Florida is overseeing this case. The person who sued, Alejandro Borges, is called the “Plaintiff” or “Class Representative.” SmileDirectClub, LLC is called the “Defendant” or “SmileDirectClub.”

### 2. What is this litigation about?

The lawsuit alleges that SmileDirectClub sent marketing text messages to Plaintiff’s wireless telephone number without prior express written consent in violation of the Florida Telephone Solicitation Act, Fla. Stat. § 501.059, and seeks statutory damages under the FTSA on behalf of the named Plaintiff and a class of similarly situated persons in the state of Florida.

Defendant denies each and every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation and that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through trial.

The Plaintiff’s Complaint, Settlement Agreement, and other case-related documents are posted on the Settlement Website, [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com). The Settlement resolves the lawsuit. The Court has not decided who is right.

### 3. What is the FTSA?

The Florida Telephone Solicitation Act (commonly referred to as the “FTSA”) is a Florida law that restricts telephone solicitations and the use of automated telephone equipment to make such solicitations without prior express written consent.

### 4. Why is this a class action?

In a class action, one person called the “Class Representative” (in this case, Plaintiff) sues on behalf of himself and other people with similar claims.

All of the people who have claims similar to the Plaintiff’s, as defined in the Settlement and detailed herein, are Settlement Class Members, except for those who exclude themselves from the class.

### 5. Why is there a settlement?

The Court has not found in favor of either Plaintiff or SmileDirectClub. Instead, both sides have agreed to a settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Claimants will receive the benefits described in this Notice. Defendant denies all legal claims in this case. Plaintiff and his lawyers think the proposed Settlement is best for everyone who is affected.

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

## WHO IS PART OF THE SETTLEMENT

### 6. Who is included in the Settlement?

The Settlement Class is defined as:

**(i) All persons in Florida who (ii) were sent a text message regarding Defendant's goods or services utilizing the same equipment used to send a text message to Plaintiff, (iii) between July 1, 2021 and December 30, 2022 and (iv) whose telephone numbers are identified on the Class List provided to the Class Administrator.**

Persons meeting this definition are referred to collectively as the "Settlement Class" and, individually, as "Settlement Class Members."

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff's Counsel, their employees, and their immediate family.

### 7. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class or have any other questions about the Settlement, visit the Settlement Website at [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com) or call the toll-free number, 1-833-709-0095. You also may send questions to the Settlement Administrator at *Borges v. SmileDirectClub*, c/o Kroll Settlement Administration, P.O. Box 225391 New York, NY 10150-5391.

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

To fully settle and release claims of the Settlement Class Members, SmileDirectClub has agreed to make available a Settlement Cap up to \$2,950,000 to pay Settlement Class Members who submit a timely and valid Claim Form, Attorneys' Fees and Expenses awarded to Class Counsel for the Settlement Class, and a Service Award awarded to the named Plaintiff. SmileDirectClub has also agreed to separately pay for the Notice and Administrative Costs. Each Settlement Class Member who submits a timely, valid, correct, and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check by the Administrator up to \$140.47, less a pro rata share of Attorneys' Fees and Expenses and Service Award approved by the Court. Settlement Class Claimants will be sent their Claim Settlement Payments to the address or electronic payment method they submitted on their Claim Form within 60 Days following the Effective Date.

### 9. How do I file a Claim?

If you qualify for a payment, you must complete and submit a valid Claim Form. You may download or submit a Claim Form at the Settlement Website, [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com) or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately and submitted timely.

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

You must submit a Claim Form by U.S. mail or through the Settlement Website. If you send in a Claim Form by U.S. mail, it must be postmarked by **May 10, 2023**. Claim Forms submitted online must be submitted by **11:59 p.m. ET on May 10, 2023**.

Please read the Claim Form carefully and provide all the information required. Only one Claim Form may be submitted per Settlement Class Member.

#### 10. When will I receive my check?

Payments to Settlement Class Claimants will be made only after the Court grants Final Approval to the Settlement and after any appeals are resolved (*see* “Final Approval Hearing” below). If there are appeals, resolving them can take time. Please be patient.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement Class.

#### 11. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a timely letter by mail to:

Borges v. SmileDirectClub  
c/o Kroll Settlement Administration  
P.O. Box 225391  
New York, NY 10150-5391

To opt-out, a Settlement Class Member must complete and send to Class Counsel or the Administrator, at the address listed in the Class Notice, a Request for Exclusion that is postmarked no later than the March 16, 2023. The Request for Exclusion must: (a) identify the case name; (b) identify the name, address, and telephone number of the Settlement Class Member; (c) identify the telephone number that received the text message(s) at issue; (d) be personally signed by the Settlement Class Member requesting exclusion; and (e) contain a statement that indicates a desire to be excluded from the Settlement Class in the Action, such as: “I request that I be excluded from the proposed Settlement Class.”

You cannot ask to be excluded on the phone, by email, or at the Settlement Website. No mass or class opt outs are permitted.

#### 12. If I do not exclude myself, can I sue SmileDirectClub for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to pursue your own lawsuit.

#### 13. What am I giving up to stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue or be part of any other lawsuit against SmileDirectClub about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all the decisions and judgments by the Court will bind you.

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

The Settlement Agreement is available at [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com). The Settlement Agreement provides more detail regarding the Releases and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement Class listed in Question 15 at no charge to you, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Claims or what they mean.

**14. If I exclude myself, can I still get a payment?**

No. You will not get a payment from the Settlement Cap if you exclude yourself from the Settlement.

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in the case?**

The Court has appointed the following lawyers as “Class Counsel” to represent the Settlement Class.

Scott Edelsberg, Esq.  
Edelsberg Law, PA  
20900 NE 30th Ave, #417  
Aventura, FL 33180

Andrew J. Shamis, Esq.  
Shamis & Gentile, P.A.  
14 NE 1st Avenue, Suite 705  
Miami, FL 33132

Manuel S. Hiraldo, Esq.  
Hiraldo P.A.  
401 E. Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, Florida 33301

Jacob Phillips, Esq., and Ed Normand, Esq.  
Normand PLLC  
3165 McCrory Place, Ste. 175  
Orlando, Florida 32803

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**16. How will the lawyers be paid?**

Class Counsel intend to request up to 29.5% of the Settlement Cap for Attorneys’ Fees and Expenses, which will include reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation. The fees and expenses awarded by the Court will be paid out of the Settlement Cap. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request that Service Award of \$10,000.00 for Plaintiff be paid from the Settlement Cap for his service as Class Representative on behalf of the whole Settlement Class.

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[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

## OBJECTING TO THE SETTLEMENT

### 17. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to the Settlement. To object, you must timely submit a letter that includes the following:

1. The name of the Action;
2. Your full name, address, and telephone number;
3. An explanation of the basis on which you claim to be a Settlement Class Member, including the telephone number at which the message(s) at issue were received;
4. All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
5. The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such an objection, and a copy of any orders related to or ruling on your prior such objections that were issued by the trial and appellate courts in each listed case;
5. The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
6. A copy of any orders related to or ruling on objections made by individuals or organizations represented by your counsel or counsel's law firm that were issued by the trial and appellate courts in each listed case in which your counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
7. Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between you or your counsel and any other person or entity;
8. The identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
9. A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing;
10. A list of all persons who will be called to testify at the Final Approval Hearing, if any, in support of the objection; and
11. Your signature (an attorney's signature is not sufficient).

If you wish to object, you must file your objection with the Court (using the Court's electronic filing system or in any manner in which the Court accepts filings) and mail your objection to each of the following three (3) addresses, and your objection must be postmarked by March 16, 2023.

Clerk of the Court	Class Counsel	Defendants' Counsel
Ninth Judicial Circuit Orange County, Florida 425 N. Orange Ave. Orlando, FL 32801	Scott Edelsberg, Esq. Edelsberg Law, PA 20900 NE 30th Ave Suite 417 Aventura, FL 33180	Jordan S. Kosches GrayRobinson, P.A. 333 S.E. 2nd Ave., Suite 3200 Miami, Florida 33131

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**

No mass or class objections will be permitted. Subject to approval by the Court, any Settlement Class Member who files and serves a written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Court a Notice of Intention to Appear at the Final Approval Hearing by the Objection Deadline, meeting the requirements set forth in the Settlement; and (b) serves the Notice of Intention to Appear on Class Counsel and Counsel for Defendant by the Objection Deadline.

#### **18. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

### **THE FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement and any requests for Attorneys' Fees and Expenses and Service Award ("Final Approval Hearing").

#### **19. When and where will the Court decide whether to approve the Settlement?**

The Court has scheduled a Final Approval Hearing on **June 20, 2023, at 9:30 a.m.** via Webex videoconference. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website, [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for Attorneys' Fees and Expenses and for Service Award to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

#### **20. Do I have to attend the hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submit your written objection on time to the proper addresses and it complies with all the other requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it is not necessary.

#### **21. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, your timely filed objection must include a statement of whether you intend to appear at the Final Approval Hearing and you must meet the requirements set forth in the Settlement for a Notice of Intention to Appear (*see* Question 17 above).

You cannot speak at the hearing if you exclude yourself from the Settlement.



## **IF YOU DO NOTHING**

### **22. What happens if I do nothing at all?**

If you are a Settlement Class member and do nothing, meaning you do not file a timely Claim, you will not get benefits from the Settlement. Further, unless you exclude yourself, you will be bound by the judgment entered by the Court.

## **GETTING MORE INFORMATION**

### **23. How do I get more information?**

This Notice summarizes the proposed Settlement. You are urged to review more details in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com). You also may write with questions to the Settlement Administrator at *Borges v. SmileDirectClub* c/o Kroll Settlement Administration, P.O. Box 225391, New York, NY 10150-5391 or call the toll-free number, 1-833-709-0095.

**QUESTIONS? CALL 1-833-709-0095 OR VISIT  
[www.SDCFTSASettlement.com](http://www.SDCFTSASettlement.com)**