

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF FLORIDA

**If You Received a Text Message from Nastygol.com USA, Inc.,  
You May Be Entitled to a Payment from a Class Action Settlement**

*A federal 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 Nastygol.com USA, Inc. (“Nastygol”) sent text messages to cellular telephone numbers without prior express written consent of the recipients as defined by the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Nastygol 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</b>	If you are a member of the Settlement Class, you must submit a 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 your voucher by email.
<b>EXCLUDE YOURSELF</b>	You may request to be excluded from the Settlement and, if you do, you will receive no benefits from the Settlement.
<b>OBJECT</b>	Write to the Court if you do not like the Settlement.
<b>GO TO A HEARING</b>	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 Nastygol 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 below.

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION</b> .....	<b>PAGE 2</b>
1. Why is there a Notice?	
2. What is this litigation about?	
3. What is the Telephone Consumer Protection Act?	
4. Why is this a class action?	
5. Why is there a settlement?	
<b>WHO IS PART OF THE SETTLEMENT</b> .....	<b>PAGE 3</b>
6. Who is included in the Settlement?	
7. What if I am not sure whether I am included in the Settlement?	
<b>THE SETTLEMENT BENEFITS</b> .....	<b>PAGE 3</b>
8. What does the Settlement provide?	
9. How do I file a Claim?	
10. When will I receive my check or voucher?	
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT</b> .....	<b>PAGE 4</b>
11. How do I get out of the Settlement?	
12. If I do not exclude myself, can I sue Nastygol for the same thing later?	
13. What am I giving up to stay in the Settlement Class?	
14. If I exclude myself, can I still get a payment?	
<b>THE LAWYERS REPRESENTING YOU</b> .....	<b>PAGE 5</b>
15. Do I have a lawyer in the case?	
16. How will the lawyers be paid?	
<b>OBJECTING TO THE SETTLEMENT</b> .....	<b>PAGE 5</b>
17. How do I tell the Court I do not like the Settlement?	
18. What is the difference between objecting and asking to be excluded?	
<b>THE FINAL APPROVAL HEARING</b> .....	<b>PAGE 6</b>
19. When and where will the Court decide whether to approve the Settlement?	
20. Do I have to attend the hearing?	
21. May I speak at the hearing?	
<b>IF YOU DO NOTHING</b> .....	<b>PAGE 6</b>
22. What happens if I do nothing at all?	
<b>GETTING MORE INFORMATION</b> .....	<b>PAGE 6</b>
23. How do I get more information?	

### 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 *Defranks v. Nastygol.com USA, Inc.*, Case No. 1:19-cv-23028-DPG and about all of 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.

Judge Darrin P. Gayles of the United States District Court for the Southern District of Florida is overseeing this case. The people who sued, Amanda Defranks and Katherine Fowler, are called the "Plaintiffs." Nastygol is called the "Defendant."

#### 2. What is this litigation about?

The lawsuit alleges that Nastygol sent text messages to Plaintiffs' wireless telephone number without prior express written consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, and seeks actual and statutory damages under the TCPA on behalf of the named Plaintiffs and a class of all individuals in the United States.

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

**3. What is the Telephone Consumer Protection Act?**

The Telephone Consumer Protection Act (commonly referred to as the "TCPA") is a federal law that restricts telephone solicitations and the use of automated telephone equipment without prior express consent.

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

In a class action, one person called the "Class Representative" (in this case, Plaintiffs Amanda Defranks and Katherine Fowler) sue on behalf of themselves and other people with similar claims.

All of the people who have claims similar to the Plaintiffs' are Settlement Class Members, except for those who exclude themselves from the class, among others.

**5. Why is there a settlement?**

The Court has not found in favor of either Plaintiffs or Nastygal. 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. Nastygal denies all legal claims in this case. Plaintiffs and their lawyers think the proposed Settlement is best for everyone who is affected.

**WHO IS PART OF THE SETTLEMENT**

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

The Settlement includes all persons who received a text message on their cell phone from Nastygal. Specifically, the Settlement Class is defined as:

**All persons who (1) were sent a text message on their cellular telephone, (2) by or on behalf of Defendant, (3) between July 1, 2015 and June 7, 2020, (4) using an automatic telephone dialing system, (5) for the purpose of soliciting Defendant's goods and services, (6) without prior express written consent.**

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

Excluded from the Settlement Class are: (1) the district judge and magistrate judge presiding over this case, the judges of the U.S. Court of Appeals for the Eleventh Circuit, their spouses, and persons within the third degree of relationship to either of them; (2) individuals who are or were during the Class Period agents, directors, employees, officers, or servants of Nastygal or of any affiliate or parent of Nastygal; (3) Plaintiffs' counsel and their employees; and (4) all persons who file a timely and proper request to be excluded from the Settlement Class.

**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.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.com) or call the toll-free number, 1-866-726-4019. You also may send questions to the Settlement Administrator at Nastygal TCPA Settlement Administrator, P.O. Box 43523, Providence, RI 02940-3523.

**THE SETTLEMENT BENEFITS**

**8. What does the Settlement provide?**

To fully settle and release claims of the Settlement Class Members, Nastygal has agreed to make payments to the Settlement Class Members and pay for notice and administration costs of the Settlement, attorneys' fees and expenses incurred by counsel for the Settlement Class, and service awards for Plaintiffs (the "Settlement Fund"). Each Settlement

**QUESTIONS? CALL 1-866-726-4019 OR VISIT [www.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.com)**

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 in the amount of \$35.00 or a voucher for Nastygal.com in the amount of \$45.00. Class Claimants will be sent their Claim Settlement Payments to the address they submitted on their Claim Form or a voucher to a provided email address 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 a Claim Form at the Settlement Website, [www.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.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, signed under penalty of perjury, and submitted timely.

You must submit a Claim Form by U.S. mail or through the Settlement Website, and it must be postmarked by **September 18, 2020**.

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 or voucher?

Payments in the form of a check or voucher to Settlement Class Members 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 Nastygal 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:

Nastygal Settlement Administrator  
P.O. Box 43523  
Providence, RI 02940-3523

Your request to be excluded from the Settlement must be personally signed by you under penalty of perjury and contain a statement that indicates your desire to be “excluded from the Settlement Class” and that, absent of excluding yourself or “opting out,” you are “otherwise a member of the Settlement Class.”

Your exclusion request must be postmarked no later than **August 3, 2020**. You cannot ask to be excluded on the phone, by email, or at the Settlement Website.

You may opt out of the Settlement Class only for yourself.

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

No. Unless you exclude yourself, you give up the right to sue Nastygal 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 Nastygal about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions and judgments by the Court will bind you.

The Settlement Agreement is available at [www.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.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 Fund 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 all members of the Settlement Class.

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

Andrew J. Shamis, Esq.  
Shamis & Gentile, P.A.  
14 NE 1st Avenue, Suite 1205  
Miami, FL 33132

Abbas Kazerounian, Esq.  
Kazerouni Law Group, APC  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626

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 \$950,000 for attorneys’ fees plus 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 Fund. The Court will decide the amount of fees and expenses to award.

Class Counsel will also request that Service Awards of \$5,000.00 for each of the two Plaintiffs be paid from the Settlement Fund for their service as Class Representatives on behalf of the whole Settlement Class.

**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 any part of the Settlement. To object, you must timely submit a letter that includes the following:

- 1) A heading that includes the case name and case number—*DeFranks and Fowler v. NastyGal.com USA Inc.*, Case No.: 1:19-cv-23028-DPG;
- 2) Your name, address, telephone number, the cell phone number at which you received text messages from Nastygal and if represented by counsel, the name, bar number, address, and telephone number of your counsel;
- 3) A signed statement stating, under penalty of perjury, that you received one or more text messages from Nastygal and are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement including your legal and factual basis for each objection;
- 5) A statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend;
- 6) The number of times in which your counsel and/or counsel’s law firm 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 counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel’s or the firm’s prior objections that were issued by the trial and appellate courts in each listed case;
- 7) A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- 8) Any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between you or your counsel and any other person or entity.

If you wish to object, you must file your objection with the Court (using the Court’s electronic filing system or by mail to the Clerk of the Court) and mail your objection to each of the following three (3) addresses, and your objection must be postmarked by **August 3, 2020**.

Clerk of the Court	Class Counsel	Defendant's Counsel
United States District Court for the Southern District of Florida 400 N. Miami Ave Miami, FL 33128	Scott Edelsberg, Esq. Edelsberg Law, PA 20900 NE 30th Ave Suite 417 Aventura, FL 33180	Chad R. Fuller Troutman Sanders LLP 11682 El Camino Real, Suite 400 San Diego, CA 92130-2092

**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 fees and expenses (“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 **September 3, 2020 at 10:00 a.m.** at Room 11-1 at the Wilkie D. Ferguson, Jr. United States Courthouse. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.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 Awards to the Class Representatives. 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 submitted 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 (*see* Question 18 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.NastygalTCPAsettlement.com](http://www.NastygalTCPAsettlement.com). You also may write with questions to the Settlement Administrator at Nastygal Settlement Administrator, P.O. Box 43523, Providence, RI 02940-3523 or call the toll-free number, 1-866-726-4019.