

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Jordan Schwyhart, *on behalf of*)
himself and others similarly situated,)

Plaintiff,)

Case No. 2:15-cv-01175-JEO

v.)

Amsher Collection Services, Inc.,)

Defendant.)

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff’s Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement of the above-captioned matter between Plaintiff, Jordan Schwyhart (“Plaintiff”), and Defendant, AmSher Collection Services, Inc. (“AmSher” or “Defendant”), as set forth in the Class Action Settlement Agreement between Plaintiff and Defendant (the “Settlement Agreement”), and the Court being fully advised in the premises, the Court hereby finds and orders as follows:

1. Unless defined herein, all defined terms in this Order have the respective meanings ascribed to the same terms in the Settlement Agreement.

2. The Court has conducted a preliminary evaluation of the Settlement Agreement. Based on this preliminary evaluation, the Court finds the Settlement Agreement meets all applicable requirements of Fed. R. Civ. P. 23 for settlement

purposes only, including that the Injunctive Settlement Class and the Damages Settlement Subclass are sufficiently numerous, there are questions of law and fact common to members of the Injunctive Settlement Class and Damages Settlement Subclass that predominate over any individual issues, the representative parties fairly and adequately protect the interests of the class and subclass, and class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds: (i) there is good cause to believe the settlement is fair, reasonable, and adequate, (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants notice of its material terms to the Injunctive Settlement Class and the Damages Settlement Subclass for their consideration and reaction. Therefore, the Court grants preliminary approval of the settlement.

4. Pursuant to Fed. R. Civ. P. 23(b)(2), and for settlement purposes only, the Court certifies the following Injunctive Settlement Class, consisting of individuals who, between July 13, 2011, through and including the date of this order (*i.e.* the Class Period), were called by AmSher on their cellular telephones, or any other service for which the individual was charged, with equipment alleged to be an automatic telephone dialing system, or allegedly with an artificial or pre-

recorded, where it is alleged there was no prior express consent to make the call. Excluded from the Injunctive Settlement Class are (1) the Judge presiding over this action (or the Judge or Magistrate Judge presiding over the action through which this matter is presented for settlement), and members of their families, (2) AmSher, AmSher's subsidiaries, parent companies, successors, predecessors, and any entity in which AmSher or its parents have a controlling interest and its current or former officers, directors, and employees, (3) persons who properly execute and submit a timely request for exclusion from the Injunctive Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons.

5. Pursuant to Fed. R. Civ. P. 23(b)(3), and for settlement purposes only, the Court certifies the following Damages Settlement Subclass, consisting of Persons on the Damages Class List who, between May 1, 2015 and July 31, 2015, received a telephone call from AmSher to a cellular telephone, or any other service for which the called party was charged, made with equipment alleged to be an automatic telephone dialing system, or allegedly with an artificial or pre-recorded voice, where it is alleged there was no prior express consent to make the call. Excluded from the Damages Settlement Subclass are (1) the Judge presiding over this action (or the Judge or Magistrate Judge presiding over the action through which this matter is presented for settlement), and members of their families, (2) AmSher, AmSher's subsidiaries, parent companies, successors, predecessors, and

any entity in which AmSher or its parents have a controlling interest and its current or former officers, directors, and employees, (3) persons who properly execute and submit a timely request for exclusion from the Damages Settlement Subclass, and (4) the legal representatives, successors or assigns of any such excluded persons.

6. For settlement purposes only, the Court hereby appoints Plaintiff, Jordan Schwyhart, as Class Representative for the Injunctive Settlement Class and for the Damages Settlement Subclass.

7. For settlement purposes only, the Court hereby appoints the following attorneys as Class Counsel and finds that they are competent and capable of exercising the responsibilities of Class Counsel:

Michael L. Greenwald, Esq.
Gina D. Greenwald, Esq.
Greenwald Davidson Radbil PLLC
5550 Glades Rd, Ste. 500
Boca Raton, FL 33431

Aaron D. Radbil, Esq.
Greenwald Davidson Radbil PLLC
106 East Sixth Street, Suite 913
Austin, Texas 78701

8. On March 15, 2017 at 9:00 a.m., or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement, and to determine whether: (a) final approval of the Settlement Agreement should be granted, and (b)

Class Counsel's application for attorney's fees and expenses, and an incentive award to the Class Representative, should be granted. No later than February 15, 2017, Plaintiff must file his papers in support of Class Counsel's application for attorneys' fees and expenses, and no later than February 15, 2017, Plaintiff must file his papers in support of final approval of the Settlement Agreement and in response to any objections.

9. Pursuant to the Settlement Agreement, KCC Class Action Services LLC ("KCC"), is hereby appointed as Settlement Administrator and must perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

10. The Court approves the proposed plan for giving Notice to the Injunctive Settlement Class and Damages Settlement Subclass, which includes direct Notice via U.S. Mail to the Class List, the implementation of online and publication media campaigns, and the creation of the Settlement Website, as fully described in the Settlement Agreement. The plan for giving Notice, in form, method, and content, fully complies with the requirements of due process and is due and sufficient notice to all persons entitled thereto. The Court hereby directs the Parties and Settlement Administrator to provide Notice no later than December 5, 2016.

11. All persons who meet the definition of the Injunctive Settlement Class or the Damages Settlement Subclass and who wish to exclude themselves must submit their request for exclusion in writing no later than the Objection/Exclusion deadline of January 17, 2017. To be valid, any request for exclusion must (i) be in writing; (ii) identify the case name *Jordan Schwyhart v. AmSher Collection Services, Inc.*, United States District Court for the Northern District of Alabama, Case No. 2:15-cv-01175-JEO; (iii) state the name of the Person in the Injunctive Settlement Class or Damages Settlement Subclass seeking exclusion; (iv) be physically signed by the Person(s) seeking exclusion; and (v) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for exclusion must also contain a statement to the effect that “I/We hereby request to be excluded from the Injunctive Settlement Class, the Damages Settlement Subclass, or both, in *Jordan Schwyhart v. AmSher Collection Services, Inc.*, United States District Court for the Northern District of Alabama, Case No. 2:15-cv-01175-JEO.” A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, will be invalid and the Persons serving such a request will be deemed to remain Injunctive Settlement Class Members and/or Damages Settlement Subclass Members and will be bound by this Settlement Agreement, if approved. Any Person who elects to request

exclusion will not (i) be bound by any orders or Final Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No Person may request to be excluded from either the Injunctive Settlement Class, the Damages Settlement Subclass or both through “mass” or “class” opt-outs.

12. Any member of the Injunctive Settlement Class or Damages Settlement Subclass who intends to intervene and object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (i) the Injunctive Settlement Class Member’s or Damages Settlement Subclass Member’s full name and current address, (ii) the cellular telephone number the Injunctive Settlement Class Member or Damages Settlement Subclass Member believes received the telephone call(s) at issue, (iii) a statement that he or she believes himself or herself to be a member of either the Injunctive Settlement Class and/or Damages Settlement Subclass, (iv) the specific grounds for the objection, (v) all documents or writings that the Injunctive Settlement Class Member and/or Damages Settlement Subclass Member desires the Court to consider, (vi) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (vii) a statement indicating whether the objector

intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed and postmarked no later than the Objection/Exclusion Deadline.

13. Any Injunctive Settlement Class Member or Damages Settlement Subclass Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, will not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and will be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and will be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

14. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement Agreement and this Order, are not and will not in any event be described as, construed as, offered or received against the Released Parties as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Released Party of the truth of any fact alleged by Plaintiff; the validity of any claim that has been or could have been asserted in the Action or in any litigation;

the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the Released Parties. Defendant has denied and continues to deny the claims asserted by Plaintiff. Notwithstanding, nothing contained herein may be construed to prevent a Party from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement Agreement.

15. The certification of the Injunctive Settlement Class and the Damages Settlement Subclass is binding only with respect to the settlement of the Action. In the event the Settlement Agreement fails to become effective, is overturned on appeal, or does not become final for any reason, the Parties will be restored to their respective positions in the Action as of the date of the signing of the Settlement Agreement, and no reference to the Injunctive Settlement Class, the Damages Settlement Subclass, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto may be made for any purpose.

IT IS SO ORDERED.

ENTERED this 19th day of October, 2016.



JOHN E. OTT
Chief United States Magistrate Judge