

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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	:	Case No.: 4:14-cv-00159-ERW
JOHN PRATER, on behalf of himself and others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
MEDICREDIT, INC. and THE OUTSOURCE GROUP, INC.,	:	
	:	
Defendants.	:	
	:	
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FINAL ORDER AND JUDGMENT

On January 28, 2014, John Prater (“Plaintiff”) filed a class action complaint (hereinafter referred to as the “Lawsuit”) against Mediacredit, Inc. and The Outsource Group, Inc. (collectively, “Defendants”) in the United States District Court for the Eastern District of Missouri, Case No. 4:14-cv-00159, asserting class claims under the Telephone Consumer Protection Act (hereinafter referred to as the “TCPA”), 47 U.S.C. § 227, *et seq.*

Defendants and Intervenor ClearLight Partners LLC (“Intervenor”) have denied any and all liability alleged in the Lawsuit.

On July 1, 2015, after extensive arms-length negotiations, Plaintiff, Defendants and Intervenor (hereinafter jointly referred to as the “Parties”) entered into a Class Action Settlement Agreement (hereinafter referred to as the “Settlement Agreement”), which is subject to review under Fed. R. Civ. P. 23.

On July 1, 2015, the Parties filed the Settlement Agreement, along with Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Motion").

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715, Defendants served written notice of the proposed class settlement on the United States Attorney General and the Attorneys General of all 50 states.

On July 13, 2015, upon consideration of Plaintiff's Preliminary Approval Motion and the record, the Court entered an Order of Preliminary Approval of Class Action Settlement (hereinafter referred to as the "Preliminary Approval Order"). Pursuant to the Preliminary Approval Order, the Court, among other things, (i) preliminarily certified (for settlement purposes only) a class of plaintiffs (hereinafter referred to as the "Class Members") with respect to the claims asserted in the Lawsuit; (ii) preliminarily approved the proposed settlement; (iii) appointed John Prater as the Class Representative; (iv) appointed Michael L. Greenwald, James L. Davidson, and Aaron D. Radbil of Greenwald Davidson Radbil PLLC as Class Counsel; and, (v) set the date and time of the Settlement Approval Hearing.

On November 13, 2015, the Plaintiff filed his Unopposed Motion for Final Approval of Class Action Settlement (the "Final Approval Motion").

On December 7, 2015, a Final Approval Hearing was held pursuant to Fed. R. Civ. P. 23 to determine whether the Settlement Class satisfies the applicable prerequisites for class action treatment and whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court.

Plaintiff now requests final certification of the settlement class under Fed. R. Civ. P. 23 (b)(3) and final approval of the proposed class action settlement.

The Court has read and considered the Settlement Agreement, Motion for Final Approval, and record. All capitalized terms used herein have the meanings defined herein and in the Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

2. **CLASS MEMBERS** – Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is hereby certified, for settlement purposes only, as a class action on behalf of the following Class Members with respect to the claims asserted in the Lawsuit:

All persons and entities throughout the United States (1) to whom Medicredit, Inc. and/or The Outsource Group, Inc. made or caused to be made one or more telephone calls, (2) directed to a number assigned at the time of the call(s) to a cellular telephone service (whether the number was assigned to the person receiving the call or not), (3) by using an automatic telephone dialing system and/or an artificial or prerecorded voice, (4) from January 28, 2010 to July 13, 2015 and (5) for whom Medicredit, Inc., The Outsource Group, Inc. and/or the Released Parties did not have a valid consent for such call or calls at the time thereof.

3. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT** – Pursuant to Fed. R. Civ. P. 23, the Court certifies Plaintiff John Prater as the Class Representative and Michael L. Greenwald, James L. Davidson, and Aaron D. Radbil of Greenwald Davidson Radbil PLLC as Class Counsel.

4. **NOTICES AND CLAIM FORMS** – Pursuant to the Court's Preliminary Approval Order, the approved class action notices were mailed. The form and method for notifying the Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and constituted the best notice practicable under the circumstances. The Court finds that the notice was clearly designed to advise Class Members of their rights.

5. **FINAL CLASS CERTIFICATION** – The Court finds that the Settlement Class satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

- A. The Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- B. There are questions of law and fact common to the Class Members, which predominate over any individual questions;
- C. The claims of the Plaintiff are typical of the claims of the Class Members;
- D. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members; and
- E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

See St. Louis Heart Center, Inc. v. Vein Centers for Excellence, Inc., No. 4:12 CV 174 CDP, 2013 WL 6498245 (E.D. Mo. Dec. 11, 2013).

6. The Court finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the benefits to the Class Members; the strengths and weaknesses of the Plaintiff's case, including the defenses asserted by Defendants; the complexity, expense, and probable duration of further litigation; the risk and delay inherent in possible appeals; and the risk of collecting any judgment obtained on behalf of the class. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 931 (8th Cir. 2005) (setting forth factors to determine whether settlement is fair, reasonable, and adequate).

7. **SETTLEMENT TERMS** – The Settlement Agreement, which is attached hereto as **Exhibit A**, is deemed incorporated herein, and the proposed settlement are finally approved and must be consummated in accordance with the terms and provisions thereof, except as amended by any order issued by this Court. The material terms of the Settlement Agreement include, but are not limited to, the following:

A. **Settlement Fund** – Defendants will establish a \$6,750,000 Settlement Fund (the “Fund”).

B. **Deductions** - The following are to be deducted from the Fund before any other distributions are made:

a. The costs and expenses for the administration of the settlement and class notice, including expenses necessary to identify class members;

b. Plaintiff’s attorneys’ fees, in the amount of one-third of the fund, and the reimbursement of Class Counsel’s litigation costs and expenses, in the amount of \$24,312.56; and

c. The Incentive Payment to John Prater. John Prater will receive the sum of \$20,000 as acknowledgment of his role in prosecuting this case on behalf of the Class Members.

C. **Settlement Payment to Class Members** - Each Class Member who has submitted a valid and timely claim form with a postmark date no later than 75 days after the Court’s entry of the Order of Preliminary Approval of Class Action Settlement will receive the amounts specified in the Settlement Agreement. Each settlement check will be void one-hundred eighty (180) days after issuance.

8. **OBJECTIONS AND EXCLUSIONS** – The Class Members were given an opportunity to object to the settlement. One Class Member objected to the settlement. The

Court has considered the paper filing of Melanie Laffy. The Court concludes the document, for reasons stated in the record, does not comply with the Court's instructions for properly filing an objection. To the extent she intended to file an objection, it is overruled and denied. Forty-One Class Members made a valid and timely request for exclusion and are excluded from the class and settlement and are not bound by this order. The identities of such persons are: Clay Blankenship, Samuel Callantine, Gustavus Clark, Albert Coates, Rusty Craft, Connie Doane, Kevin Englund, Robert Fondren, Maurice Futch, Lisa Gagliano, Ashley Geiger, Vanessa Gonzalez, Sandra Haynes, Ronald Henderson, Latoya Hughes, Pamela Kelley, Edward Kelly, Ashley Key, Louise Locke, R. Marhanka, Neville McNab, Amanda Mincey, David Mitchell, Gloria Munoz, Valentina Nuanes, David Oliver, Esteban Ortiz, Venecia Paz, Michael Pontello, Sheena Raffin, Bertha Ramirez, Alonzo Raya, Seth Shich, Joe Smith, Kay Sprouse, Carol Stakem, Marlene Thomas, Demetria Tibbs, Jayne N. Underwood, Michael White, and Rhonda D. Wilson.

9. This Order is binding on all Class Members, except those identified above who validly and timely excluded themselves from the class.

10. **RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT** – The Class Representative, Class Members, and their successors and assigns are permanently barred from pursuing, either individually or as a class, or in any other capacity, any of the Released Claims against any of the Released Parties, as set forth in the Settlement Agreement. Pursuant to the release contained in the Settlement Agreement, the Released Claims are compromised, settled, released, and discharged, by virtue of these proceedings and this order.

11. **INJUNCTION** – This Final Order and Judgment bars and permanently enjoins Plaintiff and all members of the Settlement Class who have not been properly excluded from the

Settlement Class from (a) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant or class member in any other lawsuit, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action and/or the facts and circumstances giving rise to the Litigation and/or the Released Claims, (b) filing, commencing or prosecuting a lawsuit, arbitration or other proceeding as a class action on behalf of any members of the Settlement Class who have not timely excluded themselves (including by seeking to amend a pending Complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action and/or the fact and circumstances giving rise to this Litigation and/or the Released Claims and (c) attempting to effect Opt Outs of a class of individuals in any lawsuit or arbitration proceeding based on, relating to or arising out of the claims and causes of action and/or the facts and circumstances giving rise to this Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency.

12. The Lawsuit is hereby dismissed with prejudice in all respects.

13. This Order is not, and shall not be construed as, an admission by Defendants of any liability or wrongdoing in this or in any other proceeding.

14. The Court hereby retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this order, including the award of attorneys' fees, costs, disbursements, and expenses to Class Counsel. In that regard, the Court is satisfied, based on the record made, that the attorney fees are in all respects reasonable under all facts and circumstances of this case.

15. Class Counsel's request for an award of attorneys' fees of one-third of the Settlement Fund, or \$2,250,000.00, is approved.

16. Class Counsel's request for reimbursement of reasonable litigation costs and expenses in the amount of \$24,312.56 is approved.

17. Plaintiff's request for an incentive award of \$20,000 is approved.

IT IS SO ORDERED.

Dated: December 7th, 2015.



The Honorable E. Richard Webber
Senior United States District Court Judge