

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

MICHELLE JAMES, et al.,

Plaintiffs,

v.

CASE NO. 8:15-cv-2424-T-23JSS

JPMORGAN CHASE BANK, N.A.,

Defendant.

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**ORDER**

Alleging that without consent JPMorgan Chase Bank auto-dialed the plaintiffs' cellular phones, the plaintiffs sue (Doc. 1) Chase for violating the TCPA. Under Rule 23, Federal Rules of Civil Procedure, the plaintiffs move (Doc. 51) unopposed both for certification of a "settlement-only class" and for preliminary approval of the settlement's fairness.

**1. Class Certification**

The plaintiffs propose a class of:

All persons in the United States who received calls from Chase between January 1, 2014 and March 22, 2016 that (a) were directed to a phone number assigned to a cellular telephone service, (b) were wrong number calls – in that the subscriber or customary user of the phone number called was different from the party that Chase was trying to reach, (c) were placed using an automatic telephone dialing system, and (d) were directed to a phone number associated with a Chase deposit account according to Chase's records.

(Doc. 51-2 at 2)

The class meets the requirements of Rule 23(a). First, the class comprises more than 675,000 people whom Chase auto-dialed. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (stating that a class with more than forty members generally meets Rule 23(a)(1)'s numerosity requirement). Second, a common question of fact, whether Chase auto-dialed each person's phone, unites the class. Third, the class representatives' claims appear typical. Fourth, the class representatives fairly and adequately protect the class's interest.

Also, the class satisfies Rule 23(b)(3)'s predominance requirement. Class-wide proof can answer the predominant questions (whether Chase auto-dialed each person and whether each call violates the TCPA). The determination whether the TCPA's "emergency-call" exception or the purported one-call "safe harbor" relieve Chase of liability might require individualized proof, but a small number of individualized questions fails to destroy predominance. *See Kerr v. City of West Palm Beach*, 875 F.2d 1546, 1557–58 (11th Cir. 1989).

This class action, which resolves the controversy more fairly and efficiently than a series of individual actions, satisfies Rule 23(b)(3)'s superiority requirement. Because the TCPA permits a maximum award of \$500 absent a willful violation, each class member lacks a strong financial interest in controlling the prosecution of his action. Also, the availability of a small compensation discourages a class member from suing individually. Because the parties propose a "settlement-only" class, this order need not determine whether a trial presents "intractable management

problems.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Accordingly the plaintiffs’ motion (Doc. 51) to certify the class is **GRANTED**.

This order appoints as class representatives Michelle James and Nichole Seniuk and as class counsel Michael L. Greenwald, James L. Davidson, and Aaron D. Radbil of Greenwald Davidson Radbil PLLC, each of whom has significant experience litigating TCPA class actions.

## **2. Preliminary Approval of the Settlement’s Fairness**

The plaintiffs move (Doc. 51 at 14) for preliminary approval of the settlement’s fairness. *See Leverso v. SouthTrust Bank of Alabama, Nat. Assoc.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994) (articulating six factors to determine a settlement’s fairness and reasonableness). No indication appears that the settlement resulted from collusion. Rather, the parties settled with the assistance of court-appointed mediator Robert M. Daisley. Also, the complexity, cost, and length of the class action counsel in favor of approving this settlement.

The plaintiffs, who engaged in significant written discovery with Chase and who interviewed Chase employees to gather information about Chase’s alleged TCPA violations, discovered sufficient facts to make an informed decision about whether to settle and for what amount. (*See* Doc. 51 at 17) Discovery revealed that Chase might succeed on several defenses, including the TCPA’s “emergency-call” exception and the one-call “safe harbor.” (Doc. 51 at 18)

The settlement creates a non-reversionary \$3.75 million fund. Assuming every class member submits a claim and deducting an attorney's fee and administrative costs, each person would receive between \$3 and \$5. Although small, that recovery aligns with the settlement in similar TCPA class actions. *See, e.g., Couser v. Comenity Bank*, 125 F.Supp.3d 1034 (S.D. Cal. 2015) (Anello, J.) (approving settlement of \$13.75 per class member). If five percent of class members submit a claim as typically occurs in a TCPA class action (Doc. 51 at 19), each person who submits a claim would receive approximately \$50. Discounting the statutory award by the probability that Chase successfully defends some class members' claims, a recovery of \$50 per person fairly resolves this action. *See In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F.Supp.3d 781, 789 (N.D. Ill. 2015) (Holderman, J.) (finding that \$34.60 per person falls "within the range of recoveries" in a TCPA class action).

Also, plaintiffs' counsel and the class representatives favor settlement. *See Leverso*, 18 F.3d at 1530 n.6 (permitting consideration of the class counsel and class representatives' opinions in determining whether a settlement fairly and reasonably resolves the class's claims).

Because the settlement appears fair and reasonable, the plaintiffs' motion (Doc. 51) for preliminary approval of the settlement is **GRANTED**.

### **3. Class Notice**

The plaintiffs move (Doc. 51 at 21) for the appointment of a third party, Kurtzman Carson Consultants, to notify class members about the action and to

administer the settlement. The motion is **GRANTED**, and Kurtzman Carson Consultants, P.O. Box 6191, Novato, California 94948, is appointed as the class-action administrator. The settlement fund will bear the reasonable costs of administration.

Also, the plaintiffs request (Doc. 51 at 21) approval of a notice program. The plaintiffs state that the administrator will use a “reverse look-up” to match each number dialed with a class member’s name and address, that the administrator will use the National Change of Address system to update each member’s address if possible, and that the administrator then will mail the proposed post-card notice (Doc. 51-1 at 40) to each class member. Also, the plaintiffs propose that the administrator advertise the class action in *People* and establish a phone hotline and website. (Doc. 51-1 at 51, 53–60) The proposed notices, which comply with Rule 23(c)(2)(B)’s “best notice . . . practicable under the circumstances” requirement and which state clearly the information required by Rule 23(c)(2)(B)(i)–(vii), are **APPROVED**. No later than **JANUARY 5, 2017**, the administrator must mail the post-card notice to each class member, must advertise in *People*, and must establish a website and phone hotline. Also, the proposed claim form (Doc. 51-1 at 30) is **APPROVED**.

#### **4. Opt-Out**

If approved, the settlement binds a class member who fails to opt out timely from the class even if the member sues Chase in an individual action. No later than

**MARCH 21, 2017**, a person who intends to opt out of the class action must submit to Kurtzman Carson a written request for exclusion. The request must include the class member's full name, address, phone number, a statement requesting exclusion from the class, and the class member's signature. The settlement fails to bind a person who opts out of the class.

#### **5. Intent to Object to the Settlement's Fairness**

No later than **March 21, 2017**, any class member who intends to object to the settlement's fairness must submit to this court a written objection. Also, the class member must submit a copy of the objection to counsel for the class and for the defendant. The address of the class's counsel is:

Attn. *James v. JPMorgan Chase Bank, N.A.* Settlement  
Greenwald Davidson Radbil PLLC  
5550 Glades Road, Suite 500  
Boca Raton, Florida 33431

The address of the defendant's counsel is:

Attn. Adam K. Levin  
Hogan Lovells US LLP  
555 13th Street NW  
Washington, D.C. 20004

A written objection must include:

- 1) This action's name and case number;
- 2) The name, address, phone number, and signature of the objecting class member;
- 3) Evidence sufficient to establish the objector's membership in the class;

- 4) If represented by counsel, the name, address, and phone number of the objector's counsel;
- 5) An explanation of the objection accompanied by the evidence necessary for the court to determine the objection's merit.

#### **6. Settlement Hearing**

At **9 a.m. on June 5, 2017**, in Courtroom 15A of the Sam M. Gibbons U.S. Courthouse, 801 N. Florida Avenue, Tampa, Florida 33602, a settlement hearing will determine finally whether the class satisfies the requirements of Rule 23 and whether the settlement fairly and reasonably resolves the class's claims. A class member who approves of the settlement need not attend the hearing, but an objector must attend.

#### **7. Other Written Submissions**

No later than **May 5, 2017**, the plaintiffs may submit (1) a brief not exceeding twenty-five pages to support final approval of the settlement (accompanied by affidavits, depositions, or other evidence to support the brief's facts), (2) a response (not exceeding twenty pages) to an objection, and (3) a petition for an attorney's fee and for costs.

### **CONCLUSION**

The plaintiffs' unopposed motion (Doc. 51) for class certification and for preliminary approval of the settlement's fairness is **GRANTED**. At **9 a.m. on June 5, 2017**, a settlement hearing will determine finally whether the class satisfies

the requirements of Rule 23 and whether the settlement fairly and reasonably resolves the class's claims.

The parties' motion (Doc. 50) for an extension of time to move for class certification is **DENIED AS MOOT**, and the parties' motion (Doc. 53) to remove the action from the December trial calendar is **GRANTED**. The action is removed from the trial calendar.

ORDERED in Tampa, Florida, on November 22, 2016.



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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE