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.
____________________________________/

ORDER

In this TCPA class action, a November 22, 2016 order (Doc. 54) certifies a class and preliminarily approves a class-action settlement. The class includes:

> 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.

A third-party administrator's attempt to match each phone number with a name and address yielded 536,197 "complete" records, which contain both a name and an address. (Doc. 56-1 at 2) After excluding duplicate records, the administrator mailed a notice to the class, and 24,156 class members submitted a valid claim. (Doc. 56-1 at 2–4) Except the thirty-one prospective class members who requested exclusion from the class (Doc. 56-1 at 11), this settlement binds every class member.

The plaintiffs move (Docs. 56 and 57) for final approval of the class-action settlement and for an attorney's fee, an incentive award for each class representative, and expenses. At a June 5, 2017 fairness hearing, no class member objected to the settlement, the attorney's fee, the incentive awards, or the expenses.

1. Approval of the settlement

A class-action settlement warrants approval if fair, adequate, and reasonable. *Leverso v. SouthTrust Bank of AL., Nat. Assoc.*, 18 F.3d 1527, 1530 (11th Cir. 1994) (articulating the six factors that inform approval of the settlement). Also, the settlement must not result from collusion between the parties. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). First, as the November 22 order explains, the parties settled with the assistance of court-appointed mediator Robert Daisley. No indication of collusion appears. Second, the cost and complexity of trying this action counsel in favor of settlement. Third, the plaintiffs conducted written discovery and interviewed Chase employees to gather information about Chase's alleged TCPA violations, which discovery permitted an informed decision whether to settle. (Doc. 56 at 12) Fourth, Chase asserts several defenses (for example, a one-call "safe harbor" and an emergency-call exception under the TCPA) which might preclude or reduce recovery. Fifth, the amount of the settlement commends approval. Under the settlement, Chase established a $3.75 million fund for the 675,000-member class, and 24,156 class members submitted a valid claim. Each claimant will receive approximately $81, which equals or exceeds the recovery in a

typical TCPA class action. *See, e.g.*, *Hashw v. Dep't Stores Nat'l Bank*, 182 F.Supp.3d 935, 944 (D. Minn. 2016) (Kyle, J.) (approving a TCPA settlement that yielded $33.20 per claimant); *In re Capital One TCPA Litig.*, 80 F.Supp.3d 781, 790 (N.D. Ill. 2015) (Holderman, J.) (approving a TCPA settlement that yielded $34.60 per claimant). Sixth, the class counsel and the class representatives "firmly believe the settlement is fair, reasonable, and adequate." (Doc. 56 at 13) Also, no class member objects to the settlement, and only thirty-one prospective class members requested exclusion from the class. The absence of opposition to the settlement militates heavily toward approval.

In sum, a court-appointed mediator facilitated a settlement that equals or exceeds the typical recovery in a TCPA class action. No class member objects to the settlement, which eliminates the uncertainty inherent in a trial. Because the settlement fairly, reasonably, and adequately resolves the class claims, the motion (Doc. 56) for final approval of the class-action settlement is **GRANTED**.

2. Attorney's fee, incentive awards, and expenses

Rule 23(h)(1), Federal Rules of Civil Procedure, requires notice to the class of a class counsel's motion for an attorney's fee and for expenses. The class-action notice, which states that "Chase will pay . . . an award of attorneys' fees not to exceed 30 percent of the fund" and will pay "costs and expenses incurred by Class Counsel . . . not to exceed $15,000" (Doc. 56-1 at 7), satisfies Rule 23(h)(1).

The class counsel requests an award equal to 30% of the $3.75 million settlement fund. A fee between 20% and 25% of the settlement is presumably reasonable, but, if the fee exceeds 25%, the reasonableness of the fee depends on the application of the *Johnson* factors. *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242–43 (11th Cir. 2011) (citing *Johnson v. Ga. Highway Exp., Inc.*, 488 F.3d 714 (5th Cir. 1974)). In this action, the applicable *Johnson* factors counsel in favor of approving a 30% fee. Litigating a large class action consumes more time than an individual action and might preclude an attorney's accepting other cases during the pendency of the class-action litigation. Also, the class counsel accepted this action on contingency, and the added risk of a contingency-fee arrangement often warrants an added reward. Additionally, the class counsel's result ($81 per class member who submitted a claim) equals or exceeds the typical award in a TCPA class action. The success of class counsel in obtaining a favorable result for the class militates toward approving the requested attorney's fee. Finally, as the class counsel observes (Doc. 57-1), the class counsel's experience in litigating a TCPA class action favors approving a 30% attorney's fee. Because the requested attorney's fee appears reasonable in this circumstance, the request is **GRANTED**.

The two class representatives, Michelle James and Nichole Seniuk, request an "incentive award" of $5,000 each. As the class representatives correctly observe, a $5,000 fee "is in line with . . . incentive awards that courts have approved in comparable TCPA matters." (Doc. 57 at 17 (collecting decisions)) The class-action

notice informs the class that the representatives might receive a $5,000 award, and no class member objects. Because a $5,000 award reasonably compensates each class representative for participating in the litigation, the request is **GRANTED**.

Finally, the class counsel requests an award of expenses, which total $9,338.74. (Doc. 57 at 19) The expenses, which include mediation, *pro hac vice* admission fees, and travel expenses incurred "in connection with this matter," appear reasonable. The class-action notice informs the class that counsel might request as much as $15,000 for expenses, and no class member objects. The request for $9,338.74 in expenses is **GRANTED**.

CONCLUSION

Not the product of collusion between the parties, the class-action settlement fairly, reasonably, and adequately resolves the class claims. The motion (Doc. 56) for final approval of the class-action settlement is **GRANTED**, and the settlement is **APPROVED**. The motion (Doc. 57) for an attorney's fee equal to 30% of the $3.75 million settlement, for a $5,000 incentive award for each class representative, and for reasonable expenses attendant to the ligation is **GRANTED**. In accord with the parties' request (Doc. 56-2 at 6), the action is **DISMISSED WITH PREJUDICE**. The clerk is directed to close the case.

ORDERED in Tampa, Florida, on June 5, 2017.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE