

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DARYL TEBLUM, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

Case No.: 2:19-cv-403-MRM

PHYSICIAN COMPASSIONATE
CARE LLC,

Defendant.

_____ /

ORDER

Pending before the Court is Plaintiff's Renewed Consent Motion for Approval of Renewed Proposed Notice and Objection Procedure, filed on March 2, 2022.

(Doc. 79).¹ For the reasons below, the motion (Doc. 79) is **GRANTED**.

I. Background

On June 14, 2019, Plaintiff Daryl Teblum brought a class action suit under Federal Rule of Civil Procedure 23 on behalf of himself and all others similarly situated for alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.* (See Doc. 1). Defendant Physician Compassionate Care LLC, doing business as DocMJ, filed an Answer, denying all liability, on July 30, 2019,

¹ The parties consented to proceeding before a United States Magistrate Judge for all purposes. (See Docs. 64, 65).

(Doc. 18), and Defendant's Motion for Judgment on the Pleadings on September 17, 2019, (Doc. 24). With leave of the Court, (Doc. 37), Plaintiff filed a First Amended Complaint on March 26, 2020, (Doc. 38).

Plaintiff's First Amended Complaint alleges that Defendant caused an automated text message to be sent to Plaintiff's and other individuals' cellular telephones to promote Defendant's business, goods, and services. (*Id.* at 4-5). Plaintiff alleges that Defendant used an automated telephone dialing system ("ATDS") without express written consent and while Plaintiff was listed on the National Do Not Call Registry. (*Id.* at 6-8). Ultimately, Plaintiff alleges that Defendant's behavior violated the TCPA. (*Id.* at 12). Defendant filed a motion to dismiss the First Amended Complaint on April 9, 2020. (*See* Doc. 40).

On June 5, 2020, Plaintiff and proposed class counsel filed an unopposed motion for preliminary approval of their proposed Settlement Agreement, which, if approved, would resolve all claims against Defendant. (*See* Doc. 49). On February 4, 2021, the Court granted in part and denied in part Plaintiff's motion. (*See* Doc. 54; *see also* Doc. 53). Specifically, the Court granted the motion but required the parties to submit a revised short form notice that cured the deficiency identified. (Doc. 54 at 2; *see also* Doc. 53 at 15-16).

On February 8, 2021, the parties filed their revised short form notice, (*see* Doc. 55), and the Court approved the revised notice on February 11, 2021, (*see* Doc. 56).

On May 14, 2021, the parties filed a motion for final approval, requesting that the Court: (1) grant final approval of the settlement; (2) certify the settlement class

for settlement purposes; (3) appoint Plaintiff as class representative; (4) appoint Manuel S. Hiraldo of Hiraldo PA, Ignacio J. Hiraldo of IJH Law, and Michael Eisenband of Eisenband Law PA as class counsel; (5) deny Plaintiff's request for a Service Award without prejudice and retain jurisdiction to consider the request at a later date; (6) award class counsel attorney's fees; and (7) enter final judgment, dismissing the action with prejudice. (*See* Doc. 67 at 3).

The Court conducted an in-person fairness hearing on June 14, 2021. (*See* Doc. 70 at 1-47). As of the date of the fairness hearing, no class member had submitted a written objection, and none appeared at the hearing to address his or her objections to the settlement. (*See id.* at 3-4, 25).

Following the fairness hearing, the Court denied without prejudice the Unopposed Motion for Final Approval of Class Settlement and Application for Service Award and Attorneys' Fees (Doc. 67) because adequate notice had not been given to the class members. (*See* Doc. 74). As a result, the Court found that, if the parties wished to proceed under the terms of the settlement, additional notice was required. (*See id.*). The Court, therefore, directed the parties to file either: (1) a motion for the Court to approve subsequent notice; (2) a notice of their intent to revisit the terms of the agreement; or (3) a notice of their intent to litigate the merits of this case. (*Id.* at 15-18). In the event the parties were to ask the Court to approve a subsequent notice and objection procedure, the Court provided specifications for the procedure. (*See id.* at 16).

The motion *sub judice* followed, requesting that the Court approve the renewed proposal and objection procedure. (*See* Doc. 79).

II. Analysis

As an initial matter, because the Court has already preliminarily approved the terms of the settlement, the certification of the settlement class, and the appointment of class counsel and a class representative, (*see* Doc. 53 at 3-14; Doc. 54), the Court finds no reason to re-address those issues here.

Thus, the only issue relevant to the instant motion is whether to approve the class notice and the claims and objection procedure.

Fed. R. Civ. P. 23(e)(1) provides that, before the Court may approve a settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” To facilitate this requirement, Plaintiff again provides the three proposed notices to the Court. (*See* Docs. 79-3; Doc. 79-4; Doc. 79-5). Additionally, Plaintiff proposes that KCC Class Action Services LLC (“KCC”) continue to serve as the Notice Administrator, bearing any costs associated with the subsequent notice, claims, and objection procedure. (Doc. 79 at 3).

Upon review of the proposed notice program as well as the individual notices, the Court finds that the notice satisfies the requirements of Fed. R. Civ. P. 23(b)(3). More specifically, the notices contain the requisite information to inform the class members about the settlement without running the risk of confusing them. (*See* Docs. 79-3, 79-4, 79-5); *see also Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1239

(11th Cir. 2011) (alterations in original) (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977)). Indeed, the notices provide sufficient information to allow a class member to make a decision as to whether to (1) file a claim; (2) exclude himself or herself from the settlement; or (3) find more information to inform his or her decision. (See Docs. 79-3, 79-4, 79-5). To do so, the notices summarize the most pertinent details of the settlement and how to exclude oneself and point class members to where they may find more information. See *Faught*, 668 F.3d at 1239 (alterations in original); see also, e.g., (Doc. 79-4 at 9 (“This Notice summarizes the proposed Settlement. . . . For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [the settlement website.]”). Unlike previously, the more detailed information is now available on the settlement website. See *Case Documents*, Teblum v. Physician Compassionate Care LLC d/b/a DocMJ Settlement Administrator, <http://www.physiciancompassionatecaretcpasettlement.com/case-documents.aspx> (last visited 3/7/2022); *Frequently Asked Questions*, Teblum v. Physician Compassionate Care LLC d/b/a DocMJ Settlement Administrator, <http://www.physiciancompassionatecaretcpasettlement.com/frequently-asked-questions.aspx> (last visited 3/7/2022).

Additionally, the notices adequately explain the reason for the subsequent notice and inform class members who have already submitted claims that they need not re-submit the claim forms. (See Doc. 79-3 at 1; Doc. 79-4 at 3); *Frequently Asked Questions*, Teblum v. Physician Compassionate Care LLC d/b/a DocMJ Settlement

Administrator,

<http://www.physiciancompassionatecaretcpsettlement.com/frequently-asked-questions.aspx> (last visited 3/7/2022). As such, the Court finds that the notices, coupled with the settlement website, are reasonably calculated to inform the class members as to the reason for the subsequent notice and its effect on any pending claims. *See id.*

As to the manner in which the class members are to be informed, it appears that the parties intend for notice to be carried out in substantially the same way as the previous notice procedure. (*Compare* Doc. 79 at 6-7, *with* Doc. 49 at 4-6). The Court again finds it to be “reasonably calculated to apprise the members of the action and settlement,” how to file claims, and how to opt-out. (*See* Doc. 53 at 16; Doc. 54); *see also Parker v. Universal Pictures*, No. 6:16-cv-1193-Orl-41DCI, 2019 WL 1521708, at *11 (M.D. Fla. Feb. 28, 2019), *report and recommendation adopted*, No. 6:16-cv-1193-Orl-41DCI, 2019 WL 1518958 (M.D. Fla. Apr. 8, 2019). Thus, the Court approves the manner of the notice.

Additionally, the Court approves KCC’s continued service as the Notice Administrator.

Finally, upon review, the Court adopts the deadlines proposed in the motion, with the exception of the proposed timeline for a Fairness Hearing. (*See* Doc. 79 at 7-8). Rather, the Court finds good cause to set the second Fairness Hearing on August 12, 2022, to occur in-person, beginning at 10:30 AM. The Clerk of Court is

directed to notice the hearing. The Court adopts the remaining deadlines proposed in the motion.

CONCLUSION

Accordingly, the Court **ORDERS** that:

1. Plaintiff's Renewed Consent Motion for Approval of Renewed Proposed Notice and Objection Procedure (Doc. 79) is **GRANTED**.
2. The Notice Administrator is authorized to carry-out the notice procedure.
3. The second Fairness Hearing is set for August 12, 2022, to occur in-person, beginning at 10:30 AM.
4. The remaining deadlines proposed by Plaintiff concerning notice, opt-outs, objections, final approval, and claims (*see* Doc. 79 at 7-8) are adopted.
5. The Clerk of Court is directed to notice the in-person Fairness Hearing for August 12, 2022, at 10:30 AM.
6. **The parties are directed to post this Order on the settlement website.**

DONE and **ORDERED** in Fort Myers, Florida on March 7, 2022.



Mac R. McCoy
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties