

ENTERED

February 29, 2024

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE BURNETT, <i>individually and on</i>	§	
<i>behalf of all others similarly situated,</i>	§	Civil Action No.: 4:21-cv-03176
	§	
<i>Plaintiff,</i>	§	
v.	§	Hon. Keith P. Ellison
	§	
	§	
CALLCORE MEDIA, INC.,	§	
	§	
<i>Defendant.</i>	§	

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASSES, DIRECTING CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING

Upon review and consideration of the Unopposed Motion for Preliminary Approval of Class Action Settlement filed by Plaintiff Candice Burnett, (the “Representative Plaintiff”), the Settlement Agreement entered between Representative Plaintiff and Defendant CallCore Media, Inc. (“Defendant” or “CallCore”) (Representative Plaintiff and Defendant are collectively referred to as the “Parties) that is attached as Exhibit 1, to the Motion for Preliminary Approval (the “Agreement”), and all corresponding exhibits, the Court hereby orders as follows:

1. Settlement

The Parties have negotiated a proposed settlement of the Representative Plaintiff’s claims in this action, individually, and on behalf of two classes of persons to whom calls were placed by or on behalf of Defendant whose information was obtained by CallCore through a lead generation company called PHBC Marketing. These persons are described below as members of the Settlement Classes. The Parties entered into the Agreement, after an all-day mediation session by Judge Jeffrey Kaplan (Ret.) to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the claims set forth in the Agreement. The Court has reviewed the Agreement, and

the proceedings to date in this matter. The terms and conditions in the Agreement are incorporated herein as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. Preliminary Approval

The Agreement entered into, by and among the Parties, was negotiated at arm's length and a settlement was achieved after an all-day mediation session with Judge Jeffrey Kaplan (Ret.). The Agreement is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

3. Settlement Class Relief

Defendant, consistent with the terms of the Agreement, shall make available a settlement fund totaling \$2,000,000.00 to pay class members' claims, Class Counsel's (defined below) attorneys' fees and litigation expenses, settlement administration and a representative service award. Each class member who submits a valid claim shall receive a *pro rata* cash payment (by check or electronically) of the gross fund, less attorneys' fees and litigation expenses, settlement administration and a representative service award. Class Counsel estimates that each class member who submits a valid claim will receive at least \$120, based on historical claims rates. In accordance with the terms of the Agreement, the members of the Settlement Classes in exchange agree to release Defendant from all claims related to or arising from the calls made to them that are the subject of this litigation (*See* Agreement, Section 15).

4. Preliminary Certification of Settlement Classes

For settlement purposes only, the Court certifies the following classes:

TCPA Class: The persons to whom calls were placed by or on behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

Texas Class: The persons with Texas addresses and/or Texas area codes to whom calls were placed by or behalf of CallCore, whose information was obtained from PHBC and the calls were transferred to CallCore.

These persons are referred to as members of the “Settlement Classes.” The class members bound by the class definitions are those persons with phone numbers included on the spreadsheet data produced by Defendant.

The Court makes the following determinations as to certification of the Settlement Classes:

a. The Court preliminarily certifies the Settlement Class for purposes of settlement, under Federal Rule of Civil Procedure 23;

b. The Settlement Classes are so numerous that joinder of all members is impracticable, as the number of settlement class members is 67,113 in the TCPA Class and over 5,000 for the Texas Class;

c. There are questions of law or fact common to the members of the Settlement Classes, namely, whether the prerecorded voice calls placed to the members of the Settlement Classes violate the Telephone Consumer Protection Act ("TCPA") and/or Section 302 of the Texas Business and Commerce Code ("Texas Solicitation Act") and such common questions predominate over any questions affecting only individual members;

d. The Representative Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Classes;

e. The Representative Plaintiff’s counsel is capable of fairly and adequately protecting the interests of the members of the Settlement Classes; and,

f. The class action is an appropriate method for the fair and efficient adjudication of this controversy.

5. Designation of Class Representative

The Representative Plaintiff, Candice Burnett, is designated as the representative of the Settlement Classes for the purpose of seeking approval of and administering the Agreement.

6. Designation of Class Counsel

The Court finds that the Representative Plaintiff's counsel are qualified to serve as Class Counsel in this case. Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. are designated as Class Counsel for the Settlement Classes for the sole purpose of the Settlement.

7. Final Approval Hearing

A hearing regarding final approval of the Settlement ("Final Approval Hearing") will be held at 10:00 a.m. on June 25, 2024, in the United States District Court for the Southern District of Texas before the Honorable Keith P. Ellison, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiff's and the members of the Settlement Classes against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the members of the Settlement Classes should be bound by the terms of the Agreement; and (iii) whether the application of Class Counsel for an award of attorneys' fees and expenses, and for a proposed service award to the Representative Plaintiff, should be approved and in what amount.

8. Class Notice

The Court approves the Class Notice and Claim Form and directs the Administrator (defined below) to send out the Class Notice and Claim Form within 21 days of the entry of this Order. The settlement website detailed in the Agreement shall also be fully operable as of the date the Administrator sends out the Class Notice and Claim Form. The Class Notice and Claim Form shall be sent to the last known mailing address for each member of the Settlement Classes. If the

Class Notice and Claim Form are returned as undeliverable, the Administrator shall run the address against the National Change of Address Database and send another Class Notice and Claim Form to the newly obtained address, if any. If the Administrator has received a valid e-mail address, then the Administrator shall also send the Class Notice and Claim Form to the class member's e-mail address.

Claim forms may be sent via mail or e-mail to the Administrator. In addition, the settlement website shall have an option for a member of the Settlement Classes to upload their claim form on the settlement website and to also submit a claim directly through the settlement website.

9. Administrator

The Court approves and authorizes the retention of Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail and e-mail the Class Notice and the Claim Form; (b) establish the settlement website; (c) receive and process Claim Forms; (d) respond to class members' questions and inquiries; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. Claims, Exclusions and Objections

Members of the Settlement Classes shall have 90 days from the date the Administrator sends the Class Notice and Claim Form to submit their respective Claim Forms. If a Claim Form is mailed, said Claim Form must be postmarked within 90 days of the date the Administrator sends the Class Notice and Claim Form. If a Claim Form is submitted through the settlement website, then said Claim Form shall be uploaded or submitted through the settlement website within 90 days of the Administrator sending the Class Notice and Claim Form.

Any Class Member who wishes to be excluded from the Settlement Class(es) must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than May 21, 2024.

Any member of the Settlement Classes may object to this Settlement and ask the Court to deny approval. Any written objection and supporting papers must be filed with the Clerk of the Court no later than May 21, 2024 (“Objection Deadline”), and must include the person's name, street address, all attorneys who assisted in the preparation and filing of the objection, a list of all other class actions in which that person or counsel have filed objections to settlements, and a statement of the reasons why the Court should find that the settlement is not in the best interests of the Settlement Classes. The objector may also appear in person or through his or her attorney at the Final Approval Hearing. Copies of any objection must also be served on Class Counsel and Counsel for Defendant as required by the Federal Rules of Civil Procedure.

11. Attorneys’ Fees and Expenses, and Case Contribution Awards

Class Counsel shall not seek an award of attorneys’ fees in a total amount that exceeds \$666,666.67 for their attorneys’ fees and reasonable litigation expenses. Class Counsel and the Representative Plaintiff agree not to seek a service award that exceeds \$12,000.00 to the Representative Plaintiff for her work and assistance in this action.

12. Service of Papers

Class Counsel and the Defendant’s Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final Approval Hearing unless such documents already appear on the Court’s docket.

13. Termination of Settlement

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, the Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement, shall be without prejudice to the rights and contentions of the Parties and any members of the Settlement Classes and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

14. Stay

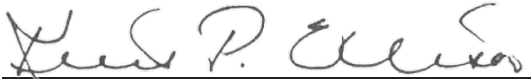
All proceedings in this action are stayed, except as necessary to effectuate the terms of the Agreement.

15. Necessary Steps

The Court hereby preliminarily approves the Agreement entered into between the Parties. The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the terms of the Agreement.

IT IS SO ORDERED.

SIGNED at Houston, Texas on February 29, 2024.



Hon. Keith P. Ellison
United States District Court Judge