

FILED

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JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

MATTHEW GIANCRISTOFARO and)
WILLIAM POFFENBERGER, individually,)
and on behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
IMA PIZZA, LLC d/b/a &Pizza)
)
Defendant.)

Case Number 23SL-CC04108

Division 1

ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

This matter came before the Court pursuant to Missouri Supreme Court Rule 52.08 for preliminary approval of a proposed class action settlement.

Plaintiffs Matthew Giancristofaro and William Poffenberger (“Plaintiffs”) are represented by David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC. Jacob U. Ginsburg of Kimmel & Silverman, P.C. has filed a motion to represent the Plaintiffs *pro hac vice*. The Court grants that motion and Mr. Ginsburg may also represent Plaintiffs in this matter. Defendant Ima Pizza, LLC d/b/a &Pizza (“&Pizza”) is represented by Nicole Rivers of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

The Court has reviewed and considered the submissions in connection with the motion preliminary approval, the arguments of counsel, the Settlement Agreement, and the proposed notice, and, having considered all of the files, records, and pleadings in the case, and grants Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

IT IS HEREBY ORDERED, pursuant to Missouri Supreme Court Rule 52.08 of Missouri Rules of Civil Procedure that:

1. The agreements, terms, and conditions of the parties' settlement agreement are preliminarily approved pending a final hearing on the settlement as provided herein.

2. For purposes of settlement, the Court hereby certifies the following class, pursuant to Missouri Supreme Court Rule 52.08, as follows:

All persons identified by the records of Ima Pizza to whom Ima Pizza has sent text messages after the recipient requested to no longer receive text messages from Ima Pizza.

3. The foregoing is the "Settlement Class," and its members are "Settlement Class Members."

4. The Court finds, and the parties do not dispute, that there are a sufficient number of Class Members to satisfy the numerosity requirement of Missouri Supreme Court Rule 52.08.

5. The Court finds, and the parties do not dispute, that there are questions of law and fact common to all Class Members. Here, the common factual issue is whether Plaintiffs and the class members were sent marketing text messages from &Pizza after requesting to no longer receive such messages.

6. The Court finds, and the parties do not dispute, that Plaintiffs' claims are typical of the claims of the members of the Settlement Class. Plaintiffs are members of the Settlement Class and allege that the same conduct of &Pizza, namely sending post-opt-out marketing text messages to Plaintiffs and the putative class members violated the Telephone Consumer Protection Act.

7. The Court finds, and the parties do not dispute, that Plaintiffs' claims are not in conflict with, or antagonistic to, the claims of the Settlement Class Members as a whole. The claims of Plaintiffs and other members of the Settlement Class are based upon corresponding theories.

8. The Court finds, and the parties do not dispute, that Plaintiffs Matthew Giancristofaro and William Poffenberger are fair and adequate to serve as the Class

Representatives, and that Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. can fairly and adequately represent the interests of the Settlement Class Members. Christopher E. Roberts and David T. Butsch and Jacob U. Ginsburg of Kimmel & Silverman, P.C. are appointed as Class Counsel for the Settlement Class.

9. The Court finds, and the parties do not dispute, that questions of law and fact common to all members of the Settlement Class predominate over any questions affecting on individual members for settlement purposes. A class for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.

10. If for any reason the Agreement ultimately does not become effective, this Order certifying a class shall be vacated and the parties shall return to their respective positions in this lawsuit as those positions existed immediately before entering into the settlement. Nothing stated in the Settlement Agreement and in this Order shall be deemed an admission or waiver of any kind by any of the parties or used as evidence against, or over the objection of, any of the parties for any purpose in this action or in any other action or proceeding of any kind.

11. Having reviewed the proposed Notice of Proposed Class Action Settlement the Court hereby approves such Notice and directs that Atticus Administration LLC ("Settlement Administrator"), consistent with the terms of the Settlement Agreement, shall cause the class notice to be delivered to Settlement Class Members by First Class Mail, based on address information gathered from business records of Defendant, reverse address lookup and subsequent search of each name and address in the National Change of Address database. In addition, consistent with the terms of the Settlement Agreement, the class notice shall be sent to the e-mail addresses of the Settlement Class Members, to the extent &Pizza has e-mail addresses for said

persons. The Settlement Administrator shall also create a website that includes the notice and other court documents, and through which Settlement Class Members can submit claims. Settlement Class Members may also submit claims by mailing a claim form to the Settlement Administrator. The class notice must be sent to the Settlement Class Members within 21 days of this Order.

12. The Court finds and determines that notice by First Class Mail given to Settlement Class Members and also by e-mail to certain Settlement Class Members, in accordance with the Settlement Agreement herein constitutes the best notice practicable under the circumstances taking into account the nature of the claims and facts presented; that it constitutes due and sufficient notice of the proposed settlement and the matters set forth in said notice to all persons entitled to receive notice; and that it fully satisfies the requirements of due process and of Missouri Supreme Court Rule 52.08.

13. A hearing will be held via Webex in Division 1 of the Circuit Court of St. Louis County, Missouri, 105 S. Central Avenue, Clayton, Missouri 63105 on March 27, 2024 at 12:00 p.m., (“Final Approval Hearing”), to determine: (a) whether the settlement agreement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (b) whether a final judgment should be entered in favor of the claims of Plaintiff and the Class Members; and, (c) whether to approve, with or without modification, the requested incentive award and of attorney’s fees. Class members shall have until February 16, 2024, to object to the settlement or to exclude themselves from the settlement. The Webex link for the hearing is: <https://mocourts.webex.com/wbxmjs/joinservice/sites/mocourts/meeting/download/3357e8a103b5f0fad7860c97c9e4d959>

14. Within 60 days of the entry of this Order, Class Counsel shall cause an affidavit to be filed with the Court certifying that notice has been sent to the Settlement Class, as directed in

this Order.

15. Any Settlement Class Member who wishes to object to the settlement, or wishes to appear at the Final Approval Hearing and show cause, if any, why the same should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered must send their objections to the Settlement Administrator via mail or electronically by February 16, 2024. Any person who fails to object in the manner and by the date required shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding.

16. Any Settlement Class Member who wishes to exclude themselves from the settlement must send their request to be excluded from the settlement to the Settlement Administrator via mail or electronically by February 16, 2024.

17. Any Settlement Class Member who wishes to receive compensation from this claim must submit a claim to the Settlement Administrator by mail, through the settlement or electronically by March 18, 2024. The Settlement Administrator has the authority to determine if a claim is valid.

18. From the date of entry of this Order until the Court holds the Final Settlement Hearing all Class Members (except those who have served a timely exclusion from the settlement) shall be barred from asserting against any claims that are being released in accordance with the Settlement Agreement if the Court approves the settlement.

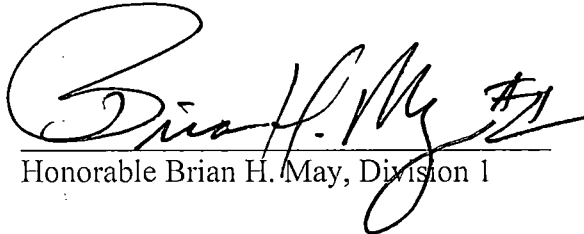
19. Upon the entry of judgment after the Final Approval Hearing, Plaintiffs and all Settlement Class Members (except those who have served a timely exclusion from the settlement) shall be forever barred from asserting against any claims that are being released in accordance with the Settlement Agreement.

20. Following the entry of final judgment after the Final Settlement Hearing, and upon the date that the settlement becomes Final and Effective within the meaning of those terms in the Agreement, which will occur after the date upon which the judgment in this action becomes not subject to further appeal or review, only Settlement Class Members who have not requested exclusion, shall be entitled to a settlement payment as detailed in the settlement agreement.

21. The parties entered into the settlement solely for the purpose of compromising and settling disputed claims. &Pizza has at all times denied, and continue to deny, any allegation of wrongful act or omission alleged by Plaintiffs in this action and any liability of any sort to Plaintiffs or any of the Settlement Class Members.

22. The parties agree to take all reasonable steps necessary to complete this settlement.

So Ordered:

 Date: 11/28/23
Honorable Brian H. May, Division I