

**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,)	Case Number 23SL-CC04108
)	
v.)	Division 1
)	
IMA PIZZA, LLC d/b/a &Pizza)	
)	
Defendant.)	

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiffs Matthew Giancristofaro and William Poffenberger, pursuant to Missouri Supreme Court Rule 52.08 and submit their Motion for Preliminary Approval of Class Action Settlement states:

1. After engaging in class-wide discovery, mediation and extended negotiations, the parties have reached a settlement in this matter.

2. Plaintiffs Matthew Giancristofaro and William Poffenberger bring a class action claim against Defendant Ima Pizza, LLC d/b/a &Pizza under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* Specifically, Plaintiffs allege Defendants violated the internal-do-not-call protections of Section 227(c) and the TCPA’s corresponding regulations by continuing to send marketing text messages to Plaintiffs and the class members after Plaintiffs and the class members affirmatively opted out of receiving such messages. Defendant disputes these allegations.

3. Plaintiffs seeks certification of the following settlement class:

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.¹

4. The parties desire to settle the action based upon the terms and conditions set forth in the Settlement Agreement and Release executed by the parties which is attached as Exhibit 1 to Plaintiffs' Memorandum in Support of Preliminary Approval of Class Settlement.

5. Plaintiffs' counsel have reviewed and analyzed the legal and factual issues presented in this action, the risks and expense involved in pursuing the litigation to conclusion, the likelihood of recovering damages in excess of those obtained through this settlement, the protracted nature of the litigation and the likelihood, costs and possible outcome of one or more procedural and substantive appeals. Based on this review and analysis, after obtaining class-wide discovery, and after arms-length negotiations, including a mediation conducted by Retired Federal District Court Judge Herbert Hoffman and continued negotiations for multiple months after the mediation, the parties desire to resolve the claims asserted.

6. As more fully detailed in the Settlement Agreement (the parties have agreed to settle this action as follows:

The Relief: Defendant will make available up to \$750,000.00 to pay class members' claims, the cost of settlement administration, representative service awards and attorneys' fees and litigation expenses. Each class member who submits a valid claim will receive up to \$372.00 per post-opt-out text message sent to them by Defendant.

Payment to Class Representative: Plaintiff Giancristofaro will seek a payment of \$10,000 and Plaintiff Poffenberger will seek a payment of \$5,000.00 for serving as the Class

¹ The settlement class is defined by the parties' Settlement Agreement. The Settlement Agreement is attached as Exhibit 1 to Plaintiffs' Memorandum in Support of Preliminary Approval of Class Action Settlement.

Representatives in this matter.

Payment to Class Counsel: Class Counsel will seek up to \$240,000.00 in full satisfaction of all reasonable attorneys' fees and litigation expenses.

7. Plaintiffs Giancristofaro and Poffenberger seek to be appointed as the class representatives in this matter. Plaintiffs have been active in this litigation and have no interests antagonistic to the class members but seek to obtain relief from Defendant in this matter.

8. Christopher E. Roberts and David T. Butsch of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. seek to be appointed as class counsel in this matter. The firms have significant experience in class litigation and will protect the interests of the class. Also, class counsel have no known conflicts with the class. Plaintiffs are not related to class counsel and class counsel's interests are directly adverse to Defendant's interests.

8. The parties have agreed to retain Atticus Administration, LLC ("Atticus") as the settlement administrator. Atticus is a nationally recognized settlement administration service, with extensive experience in the administration of class action settlements.

9. The Parties request that the Court approve the form of class notice attached to the memorandum in support of this motion. The notice will be sent by U.S. mail to the last known address of those class members for whom the settlement administrator can obtain an address and also sent by e-mail to those class members for whom Defendant has e-mail addresses. Class members may view more details about the case, including the notice on a settlement website established by the settlement administrator. The settlement administrator will also provide automated telephone support to address class member inquiries.

10. The parties believe that the settlement of this action on the terms and conditions set forth in the Class Settlement Agreement is fair, reasonable and adequate, and is in the best interests

of the Class.

WHEREFORE, Plaintiffs Matthew Giancristofaro and William Poffenberger request that the Court grant their Motion for Preliminary Approval of Class Action Settlement, and enter an order which:

- a) Grants preliminary approval of the proposed settlement;
- b) Certifies the proposed settlement classes;
- c) Appoints Plaintiffs as the class representatives;
- d) Appoints David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC and Jacob U. Ginsburg of Kimmel & Silverman, P.C. as counsel to the settlement class;
- e) Approves Atticus Administration LLC as the settlement administrator;
- f) Directs the mailing of notice to occur within 21 days following preliminary approval of the proposed settlement, and further notice of the settlement via a settlement website;
- g) Schedules a date for hearing for final approval; and,
- h) Grants such further relief as the Court deems just and proper in the premises.

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Christopher E. Roberts