UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

ELAINE JOHNSON, on behalf of herself and others similarly situated,

Plaintiff,

v. Case No: 5:23-cv-522-GAP-PRL

UNITED HEALTHCARE SERVICES, INC.

Defendant

ORDER

Plaintiff Elaine Johnson ("Plaintiff") has filed an Unopposed Motion for Preliminary Approval of a Class Action Settlement of this case (Doc. 51). Upon consideration of that Motion and the attached Settlement Agreement (Doc. 51-1), it is **ORDERED** that

This Court has jurisdiction over the subject matter of this lawsuit and over all settling parties.

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, Defendant United HealthCare Services, Inc. ("Defendant") will serve written notice of the class settlement on the United States Attorney General and the Attorneys General of each state in which any settlement

class member resides.

This Court preliminarily certifies this case as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure ("Rule(s)"), on behalf of the following settlement class:

> All persons and entities throughout the United States (1) to whom United HealthCare Services, Inc. placed a call regarding the Optum® HouseCalls program relating to a UnitedHealthcare plan, (2) directed to a cellular telephone number customarily used by a person who is not and was not a UnitedHealthcare member or plan holder, (3) in connection with which United HealthCare Services, Inc. used an artificial or prerecorded voice, (4) from October 12, 2019 through February 10, 2025.

This Court appoints Plaintiff as the representative for the settlement class and Aaron D. Radbil of Greenwald Davidson Radbil PLLC ("GDR") as class counsel for the settlement class.

This Court preliminarily finds, for settlement purposes, that this action satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

A. The settlement class is so numerous that joinder of all members is impracticable:

Rule 23(a) requires that a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Beginning in October of 2019, Defendant delivered HouseCalls program-related prerecorded voice messages to approximately 218,628 cellular telephone numbers, each of which it marked as a

"wrong number." Against this backdrop, and given information the parties learned through discovery, they estimate that approximately 29,500 cellular telephone numbers will fall within the settlement class definition. Accordingly, joinder of all settlement class members is impracticable in this case.

B. Common questions exist as to each settlement class member:

Rule 23(a)(2) requires the existence of common questions of law or fact. *See* Fed. R. Civ. P. 23(a)(2). The burden "to satisfy this requirement [i]s a low hurdle." *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 21-11769, 2023 WL 5608014, at *16 (11th Cir. Aug. 30, 2023) (quoting *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009) (internal quotation marks omitted). "Not all factual or legal questions raised in the litigation need be common so long as at least one issue is common to all class members." *Fuller v. Becker & Poliakoff, P.A.*, 197 F.R.D. 697, 700 (M.D. Fla. 2000) (citing *Armstead v. Pingree*, 629 F. Supp. 273, 279 (M.D. Fla. 1986)). "A sufficient nexus is established if the claim or defenses of the class and the class representatives arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

Whether Defendant used a prerecorded voice in connection with the calls at issue is a question common to the proposed class. *See Knapper v. Cox Commc'ns, Inc.*, 329 F.R.D. 238, 242 (D. Ariz. 2019) ("Whether Defendant used [a] prerecorded

voice to allegedly call the putative class members would produce an answer that is central to the validity of each claim in one stroke." (citation and internal quotation marks omitted)). So is the question of whether each member of the proposed class suffered the same injury—the "receipt of at least one phone call by Defendant in violation" of the Telephone Consumer Protection Act ("TCPA"). *Id*. Consequently, multiple questions of law and fact are common to all members of the class. *See id.*

C. Plaintiff's claims are typical of the claims of the settlement class members:

"Class certification also requires that the claims of the named plaintiff be typical of the claims of the class." *Fuller*, 197 F.R.D. at 700 (citing Fed. R. Civ. P. 23(a)(3)). "Typicality is satisfied where the named plaintiff 'possess[es] the same interest and suffer[ed] the same injury as the [unnamed] class members.'" *Sos*, 2023 WL 5608014, at *17 (quoting *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1322 (11th Cir. 2008)). "This alignment of interests and injuries exists if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Id*. (quoting *Kornberg*, 741 F.2d at 1337) (internal quotation marks omitted).

Plaintiff and the members of the settlement class were similarly harmed by Defendant's alleged common practice of delivering prerecorded voice messages to persons who were not Defendant's members or plan holders. Plaintiff,

therefore, possesses the same interests, and seeks the same relief, as do the members of her proposed class. Correspondingly, Plaintiff's claims are typical of the claims of the class members.

D. Plaintiff and class counsel will fairly and adequately protect the interests of all of settlement class members:

"Federal Rule of Civil Procedure 23(a)(4) requires that the named plaintiffs provide fair and adequate protection for the interests of the class." *Fuller*, 197 F.R.D. at 700. "This 'adequacy of representation' analysis encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (citation and internal quotation marks omitted).

In response to questions from Defendant's counsel, Plaintiff explained her claims against Defendant, and her responsibilities as a class representative.

As well, Plaintiff retained GDR, a firm competent in class action litigation, including under the TCPA. The Court finds that GDR has and will continue to vigorously protect the interests of members of the proposed class. As such, Plaintiff and GDR will fairly and adequately protect the interests of the members of the class.

E. Questions common to settlement class members predominate over any questions affecting only individual members:

Rule 23(b)(3) requires "that questions of law or fact common to class members predominate over any questions affecting only individual members[.]" Fed. R. Civ. P. 23(b)(3). "The requirement that common questions of law or fact predominate means 'the issues in the class action that are subject to generalized proof . . . must predominate over those issues that are subject only to individualized proof.'" *Herman v. Seaworld Parks & Ent., Inc.*, 320 F.R.D. 271, 295 (M.D. Fla. 2017) (quoting *Kerr v. City of West Palm Beach*, 875 F.2d 1546, 1558 (11th Cir. 1989)).

"To state a claim under the TCPA for calls made to a cellular phone, a plaintiff must allege that: (1) a call was made to a cell or wireless phone, (2) by the use of any automatic dialing system or an artificial or prerecorded voice, and (3) without prior express consent of the called party." *Augustin v. Santander Consumer USA, Inc.*, 43 F. Supp. 3d 1251, 1253 (M.D. Fla. 2012); 47 U.S.C. § 227(b)(1)(A)(iii). The defendant "bears the burden of establishing prior consent." *Id*. Here, common issues regarding the use of prerecorded messages predominate over individualized factual questions regarding specific class members.

F. A class action is superior to other available methods for the fair and efficient adjudication of this matter:

Rule 23(b)(3) also requires that a district court determine that "a class action

is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In determining whether a class action is superior, a court may consider "the class members' interest in individually controlling the prosecution or defense of separate actions"; "the extent and nature of any litigation concerning the controversy already begun by or against class members"; "the desirability or undesirability of concentrating the litigation of the claims in the particular forum"; and "the likely difficulties in managing a class action." *Id*.

Litigating the TCPA claims in this case as part of a class action is superior to litigating them in successive individual lawsuits. In other cases involving similar facts, courts have found that a TCPA class action is superior to individual actions. *See, e.g.*, *Knapper*, 329 F.R.D. at 247 ("The Court is persuaded that putative class members who would ultimately become part of the class would have little incentive to prosecute their claims on their own. Should individual putative class members choose to file claims on their own, given the potential class size and the relatively small amount of statutory damages for each case, individual litigation would not promote efficiency or reduce litigation costs. . . . Therefore, the Court finds that a class action is a superior method to adjudicate this matter."); *Palm Beach Golf Ctr.-Boca, Inc. v. Sarris*, 311 F.R.D. 688, 699 (S.D. Fla. 2015) ("[T]he Court finds that a class action is superior to other methods for adjudicating the

putative class members' TCPA claims."); *James v. JPMorgan Chase Bank, N.A.*, No. 8:15-cv-2424-T-23JSS, 2016 WL 6908118, at *1 (M.D. Fla. Nov. 22, 2016) ("This class action, which resolves the controversy more fairly and efficiently than a series of individual actions, satisfies Rule 23(b)(3)'s superiority requirement. Because the TCPA permits a maximum award of $500 absent a willful violation, each class member lacks a strong financial interest in controlling the prosecution of his action."). Thus, a class action is the superior method for adjudicating all aspects of this controversy.

G. Additional findings and considerations

The Court also preliminarily finds that the settlement of this lawsuit, on the terms and conditions set forth in the Settlement Agreement (Doc. 51-1), is fundamentally fair, reasonable, adequate, and in the best interest of the settlement class members, when considering, in their totality, the following factors: (1) the non-existence of fraud or collusion behind the settlement; (2) "the complexity, expense, and likely duration of the litigation"; (3) "the stage of the proceedings and the amount of discovery completed"; (4) Plaintiff's probability of success on the merits; (5) "the range of possible recovery"; and (6) "the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement." *Leverso v. SouthTrust Bank of AL., N.A.*, 18 F.3d 1527, 1530–31 n.6 (11th Cir. 1994).

This Court has also considered:

(A) whether Plaintiff and class counsel have adequately represented the class;

(B) whether the proposed settlement was negotiated at arm's length;

(C) whether the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and any agreement required to be identified under Rule 23(e)(3); and

(D) whether the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

A third-party settlement administrator—Verita Global, LLC ("Verita")—will administer the settlement and distribute notice of the settlement to the settlement class members. Verita will be responsible for mailing the approved class action notices and settlement checks to the settlement class members. All reasonable costs of notice and administration will be paid from the $3,495,000 common fund.

This Court approves the form and substance of the proposed notice of the class action settlement, which includes the postcard notice, the detachable claim form, and the question-and-answer notice to appear on the dedicated settlement website.

The proposed notice and method for notifying the settlement class members of the settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. *See* Fed. R. Civ. P. 23(c)(2)(B); Manual for Complex Litigation (Fourth) § 21.312 (2024); *see also Bonoan v. Adobe, Inc.*, No. 3:19-cv-01068-RS, 2020 WL 6018934, at *2 (N.D. Cal. Oct. 9, 2020). This Court additionally finds that the proposed notice is clearly designed to advise the settlement class members of their rights.

In accordance with the Settlement Agreement, the settlement administrator will mail the notice to the settlement class members as expeditiously as possible, but in no event later than March 14, 2025.

Any settlement class member who desires to be excluded from the settlement must send a written request for exclusion to the settlement administrator with a postmark date no later than April 25, 2025. To be effective, the written request for exclusion must state the settlement class member's full

name, address, telephone number called by Defendant (to demonstrate membership in the settlement class), and a clear and unambiguous statement demonstrating a wish to be excluded from the settlement, such as "I request to be excluded from the settlement in the *Johnson v. United HealthCare Services, Inc.* action." A settlement class member who requests to be excluded from the settlement must sign the request personally, or, if any person signs on the settlement class member's behalf, that person must attach a copy of the power of attorney authorizing that signature. A settlement class member may exclude himself or herself on an individual basis only. "Mass" or "class" opt-outs, whether submitted by third parties on behalf of a "mass" or "class" of settlement class members or multiple settlement class members are not allowed and will not be permitted by the Court.

Any settlement class member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement. Any settlement class member who fails to submit a valid and timely request for exclusion will be considered a settlement class member and will be bound by the terms of the Settlement Agreement.

Any settlement class member who intends to object to the fairness of the proposed settlement must file a written objection with this Court no later than June 20, 2025. Further, any such settlement class member must, within the same

time period, provide a copy of the written objection to:

Aaron D. Radbil
Greenwald Davidson Radbil PLLC
5550 Glades Road
Suite 500
Boca Raton, FL 33431

Carolyn A. DeLone
Hogan Lovells US LLP
555 Thirteenth Street, NW Washington, D.C. 20004

United States District Court for the Middle District of Florida
207 Northwest Second Street
Ocala, Florida 34475

To be effective, a notice of intent to object to the settlement must include the settlement class member's:

a. Full name;

b. Address;

c. Telephone number to which Defendant placed a subject artificial or prerecorded voice call from October 12, 2019 through February 10, 2025, to demonstrate that the objector is a member of the settlement class;

d. A statement of the objection;

e. A description of the facts underlying the objection;

f. A description of the legal authorities that support each objection;

g. A statement noting whether the objector intends to appear at the fairness hearing;

h. A list of all witnesses that the objector intends to call by live testimony, deposition testimony, or affidavit or declaration testimony;

i. A list of exhibits that the objector intends to present at the fairness hearing; and

j. A signature from the settlement class member.

Any settlement class member who has timely filed an objection may appear at the final fairness hearing, in person or by counsel, to be heard to the extent allowed by this Court, applying applicable law, in opposition to the fairness, reasonableness, and adequacy of the proposed settlement, and on the application for an award of attorneys' fees, costs, and litigation expenses.

Any objection that includes a request for exclusion will be treated as an exclusion and not an objection. And any settlement class member who submits both an exclusion and an objection will be treated as having excluded himself or herself from the settlement and will have no standing to object.

If this Court grants final approval of the settlement, the settlement administrator will mail a settlement check to each settlement class member who submits a valid, timely claim.

This Court will conduct a final fairness hearing on July 10, 2025, at the United States District Court for the Middle District of Florida, 401 West Central Boulevard, Orlando, Florida 32801, to determine:

A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 23;

B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, in the best interest of the settlement class members, and should be approved by this Court;

C. Whether a final order and judgment, as provided under the Settlement Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the released claims against the released parties; and

D. To discuss and review other issues as this Court deems appropriate.

Attendance by settlement class members at the final fairness hearing is not necessary. Settlement class members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement class members wishing to be heard are, however, required to appear at the final fairness hearing. The final fairness hearing may be postponed, adjourned, transferred, or continued without further notice to the class members.

Memoranda in support of the proposed settlement must be filed with this Court no later than May 30, 2025. Opposition briefs to any of the foregoing must be filed no later than June 20, 2025. Reply memoranda in support of the foregoing must be filed with this Court no later than June 30, 2025.

Memoranda in support of any petitions for attorneys' fees and reimbursement of costs and litigation expenses by class counsel, or in support of an incentive award, must be filed with this Court no later than March 28, 2025.

Opposition briefs to any of the foregoing must be filed no later than April 15, 2025. Reply memoranda in support of the foregoing must be filed with this Court no later than May 9, 2025.

The Settlement Agreement and this Order will be null and void if any party terminates the Settlement Agreement per its terms. Certain events described in the Settlement Agreement, however, provide grounds for terminating the Agreement only after the parties have attempted and completed good faith negotiations to salvage the settlement but were unable to do so.

If the Settlement Agreement or this Order are voided, then the Agreement will be of no force and effect, and the parties' rights and defenses will be restored, without prejudice, to their respective positions as if the Agreement had never been executed and this Order never entered.

This Court retains continuing and exclusive jurisdiction over this action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

Finally, the Court sets the following schedule:

February 10, 2025: Order Preliminarily Approving the Settlement Entered

March 10, 2025: Defendant to Fund Settlement Fund

March 14, 2025: Notice Sent

March 28, 2025: Attorneys' Fees Petition Filed

April 15, 2025:	Opposition to Attorneys' Fees Petition
April 25, 2025:	Deadline to Submit Claims, Send Exclusion, or File Objection
May 9, 2025:	Reply in Support of Attorneys' Fees Petition
May 30, 2025:	Motion for Final Approval Filed
June 20, 2025:	Opposition to Motion for Final Approval Filed
June 25, 2025:	Class Administrator will provide a sworn declaration attesting to proper service of the Class Notice and Claim Forms, and state the number of claims, objections, and opt outs, if any
June 30, 2025:	Reply in Support of Motion for Final Approval
July 3, 2025:	Responses to any Objection to the Settlement
July 10, 2025:	Final Fairness Hearing

DONE and **ORDERED** in Chambers, Orlando, Florida on February 10, 2025.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party