IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ERIC LAGUARDIA, *et al.*,	:	
	:	
Plaintiffs,	:	**Case No. 2:20-cv-2311**
	:	
v.	:	**Chief Judge Sarah D. Morrison**
	:	
DESIGNER BRANDS INC., *et al.*,	:	**Magistrate Judge Elizabeth P. Deavers**
	:	
Defendants.		

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT
AND CERTIFYING THE SETTLEMENT CLASS

Plaintiffs Eric LaGuardia and Nicole Austin ("Plaintiffs") and Defendants Designer Brands Inc. and DSW Shoe Warehouse, Inc. ("Designer Brands and DSW" or "Defendants") (together, the "Parties") have agreed to settle this Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release ("Settlement Agreement"). The Parties reached the Settlement Agreement after extensive litigation, and through arm's-length negotiations with the help of experienced mediator, Robert A. Meyer. Under the Settlement Agreement, subject to Court approval, Plaintiffs and the proposed Settlement Class will fully, finally, and forever resolve, discharge, and release their claims.[1]

[1] Unless otherwise defined herein, all terms used in this Order that are defined terms in the Settlement Agreement have the same meaning as set forth in the Settlement Agreement.

The Settlement Agreement has been filed with the Court, and Plaintiffs and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement ("Motion"). (ECF No. 277.) Upon considering the Motion, the Settlement Agreement and all exhibits thereto, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class Representatives and Class Counsel; (4) the Settlement Agreement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel, and is not the result of collusion; (5) the Settlement Agreement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement Agreement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application") and request for a Service Award for Plaintiffs, and each individual's rights to opt-out of the Settlement Class or object to the Settlement Agreement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiffs; (7) good cause exists to schedule and conduct a Final Approval Hearing,

pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval of the Settlement Agreement and enter the Final Approval Order, and whether to grant Class Counsel's Fee Application and request for a Service Award for Plaintiffs; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement Agreement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. As used in this Preliminary Approval Order, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. §§ 1331, 1332.

3. Venue is proper in this District.

4. Settlement of class actions is generally favored and encouraged. *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). Fed. R. Civ. P. 23(e) provides three steps for approving a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 372 (S.D. Ohio 2006); *see also Amos v. PPG Indus.*, No. 2:05-cv-70, 2015 WL 4881459, at *1 (S.D. Ohio Aug. 13, 2015).

5. It is well established that a class may be certified solely for purposes of settlement if a settlement is reached before a litigated determination of the class certification issue and "[t]he Court has broad discretion in determining whether to certify a class." *See Damron v. Sims*, No. CIV.A 2:09-CV-50, 2010 WL 2663207, at *1 (S.D. Ohio Feb. 9, 2010) (citing *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir.1988); *see also Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.*; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

6. The Court finds, for settlement purposes, that the Federal Rule of Civil Procedure 23 factors are present, and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court therefore provisionally certifies the following Settlement Class.

> All persons in the United States who, between September 1, 2018, and September 1, 2024, 1) were sent a "marketing"* text message from Defendants, 2) thereafter responded with the word "stop" or the equivalent, and 3) thereafter received a marketing text message from Defendants.
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> * Marketing means offering or advertising the commercial availability or quality of any property, goods, products, or services.

7. Specifically, the Court finds, for settlement purposes and conditioned

on final certification of the proposed class and on the entry of the Final Approval Order, that the Settlement Class satisfies the following factors of Federal Rule of Civil Procedure 23:

(a) Numerosity: In the Action, approximately 63,274 individuals are members of the proposed Settlement Class. The proposed Settlement Class is thus so numerous that joinder of all members is impracticable.

(b) Commonality: "[C]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" and the plaintiffs' common contention "must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted). Here, the commonality requirement is satisfied. Multiple questions of law and fact relating to Defendants sending marketing text messages are common to the Plaintiffs and the Settlement Class. Defendants are alleged to have injured all members of the Settlement Class in the same way. Were this case to proceed to trial, resolution of Defendants' liability would generate common answers central to the viability of the claims of the entire Settlement Class.

(c) Typicality: The Plaintiffs' claims are typical of the Settlement Class because they concern the same alleged Defendants' practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied. *See Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th

Cir. 2007) ("A claim is typical if 'it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and if his or her claims are based on the same legal theory.'") (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1069, 1082 (6th Cir.1996)); s*ee also Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory"). "The requirement of typicality is not onerous. If there is a strong similarity of legal theories, the requirement is met, even if there are factual distinctions among named and absent class members." *Tomlison v. Kroger Co.*, No. C2-03-706, 2007 WL 1026349, at *4 (S.D. Ohio Mar. 30, 2007) (citing *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 884-85 (6th Cir.1997)); *see also Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they "possess the same interest and suffer the same injury as the class members"). Plaintiffs allege that Defendants sent them marketing text messages after Plaintiffs asked Defendants to stop. This is the same type of claim as each member of the Settlement Class.

(d) Adequacy: Adequacy under Rule 23(a)(4) relates to: (1) whether the proposed class representatives have interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. *See Taylor v. CSW Transp. Inc.*, 264 F.R.D. 281, 291 (N.D. Ohio 2007) (citation omitted). Here, Rule 23(a)(4) is satisfied because there are no conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have

retained competent counsel to represent them and the Settlement Class. Class Counsel regularly engage in consumer class litigation, complex litigation, and other litigation similar to this Action, and have dedicated substantial resources to the prosecution of the Action. Moreover, the Plaintiffs and Class Counsel have vigorously and competently represented the Settlement Class in the Action. *See Vassalle v. Midland Funding LLC*, 708 F.3d 747, 757 (6th Cir. 2013) (citations omitted).

(e) Predominance and Superiority: Rule 23(b)(3) is satisfied because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for the members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) requires that "a plaintiff . . . establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Randleman v. Fidelity Nat'l Title Ins. Co.*, 646 F.3d 347, 352-53 (6th Cir. 2011); *see also Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (explaining that Rule 23(b)(3) requires that "[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member's effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member."). Here, common questions regarding Defendants' liability under the Telephone Consumer Protection Act

("TCPA"), 47 U.S.C. § 227, are the central issues of the case and can be resolved for all members of the Settlement Class in a single adjudication. In a liability determination, the common issues would predominate over any issues that are unique to individual members of the Settlement Class. Moreover, each member of the Settlement Class has claims that arise from the same or similar alleged acts by Defendants and are based on the same legal theories.

8. The Court appoints Plaintiffs, Eric LaGuardia and Nicole Austin, as Class Representatives.

9. The Court appoints the following people and firms as Class Counsel: Andrew J. Shamis and Garrett O. Berg of Shamis and Gentile, P.A.; Jeffrey Wilens of Lakeshore Law Center; Alex M. Tomasevic of Nicholas & Tomasevic, LLP; and Jeffrey P. Spencer of The Spencer Law Firm.

10. Defendants challenge both the propriety of class certification and Plaintiffs' claims. Defendants reserve all of their defenses and objections against and rights to oppose any request for class certification in the event that the proposed Settlement Agreement does not become Final for any reason. Defendants also reserve their defenses to the merits of the claims asserted in the event the Settlement does not become Final for any reason.

11. At the preliminary approval stage, the Court's task is to evaluate whether the Settlement Agreement is within the "range of reasonableness." 4 *Newberg on Class Actions* § 11.26. "(1). Preliminary approval is appropriate where a settlement 'does not disclose grounds to doubt its fairness or other obvious

deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys, and (2) appears to fall within the range of possible approval.'" *Dallas v. Alcatel-Lucent USA, Inc.*, 2013 WL 2197624, at *8 (E.D. Mich. May 20, 2013) (citing *In re Inter–Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350 (N.D.Ohio 2001)); *see also, e.g.*, Rol*and v. Convergys Customer Mgmt. Grp. Inc.*, No. 1:15- CV-00325, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was "reached after good faith, arm's length negotiations, warranting a presumption in favor of approval"); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001) (absence of any evidence suggesting collusion or illegality "lends toward a determination that the agreed proposed settlement was fair, adequate and reasonable"). Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation,* Third, § 30.42 (West 1995) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (internal quotation marks omitted).

12. The Court preliminarily approves the Settlement Agreement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds that the Settlement Agreement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Settlement

Agreement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

13. The Court approves the form and content of the Class notices, specifically the Email Notice and Text Notice, substantially in the forms attached as **Exhibits 1, 2, and 3** to the Settlement Agreement, and the Claim Form attached thereto as **Exhibit 5** to the Settlement Agreement. The Court further finds that the Class Notice program described in the Settlement Agreement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement Agreement, Class Counsel's attorney's fees application and the request for Service Award for Plaintiffs, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

14. Kroll Settlement Administration shall serve as the Administrator.

15. The Administrator shall implement the Class Notice program, as set forth below and in the Settlement Agreement, using the Class notices substantially in the forms attached as **Exhibits 1**, **2** and **3** to the Settlement Agreement and approved by this Preliminary Approval Order. Notice shall be provided to the members of the Settlement Class pursuant to the Class Notice program, as specified in the Settlement Agreement and approved by this Preliminary Approval Order. The Class Notice program shall include, to the extent necessary, Email Notice, Text Message Notice, and Long-Form Notice, as set forth in the Settlement Agreement and below.

16. The Administrator shall administer the Email Notice as set forth in **Exhibit 1** to the Settlement Agreement. Email Notice shall be completed no later than 30 days after the entry of this order. A reminder email notice shall be sent 30 days thereafter. All applicable deadlines, including the Objection Deadline, Opt-Out Deadline, and Claims Deadline, shall be predicated upon the Email Notice that is sent no later than 30 days after the entry of this order, and not any reminder notice.

17. The Administrator shall administer the Text Message Notice as set forth in **Exhibit 2** to the Settlement Agreement. Text Message Notice shall be completed no later than 30 days after the entry of this order. A reminder text notice shall be sent 30 days thereafter. All applicable deadlines, including the Objection Deadline, Opt-Out Deadline, and Claims Deadline, shall be predicated upon the Text Notice that is sent no later than 30 days after the entry of this order, and not

any reminder notice.

18. The Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain information about the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than 1 day before commencement of the Class Notice program. The Settlement Website shall include an online portal to submit Claim Forms, hyperlinks to the Settlement Agreement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendants agree to include. These documents shall remain on the Settlement Website until at least sixty (60) days following the Claim Deadline.

19. The Administrator is directed to perform all substantive responsibilities with respect to effectuating the Class Notice program, as set forth in the Settlement Agreement.

20. A Final Approval Hearing shall be held before this Court on **July 31, 2025 at 11:00 a.m. in Courtroom 132** to determine whether to grant Final Approval to the Settlement Agreement and to enter a Final Approval Order, and whether Class Counsel's Fee Application and request for a Service Award for the Class Representative should be granted.

21. Any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Settlement Agreement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out

requests must be postmarked to all those listed in the Long-Form Notice on or before the last day of the Opt-out Period, which is 60 days after the Email Notice and Text Notice are sent ("Opt-Out Deadline"), and mailed to the addresses indicated in the Long Form Notice.

22. Any Settlement Class Member may object to the Settlement Agreement, Class Counsel's Fee Application, or the request for a Service Award for Plaintiffs. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Designer Brands and DSW's Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than 60 days after the Email Notice and Text Notice are sent, as set forth in the Settlement Agreement. To be valid, an objection must include the following information:

a. the name of the Action;

b. the objector's full name, address, and telephone number;

c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;

d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;

e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling upon the

objector's prior such objections that were issued by the trial and appellate courts in each listed case;

f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement or Fee Application;

g. a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections made by individuals or organizations represented that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;

k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and

l. the objector's signature (an attorney's signature is not sufficient).

23. Plaintiffs and Class Counsel shall file their Motion for Final Approval of the Settlement Agreement, Fee Application, and request for a Service Award for

Plaintiffs, no later than 30 days after the Opt-Out Deadline and Notice of Intent to Object Deadline.

24. Plaintiffs and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement Agreement, the Fee Application, and/or request a Service Award for Plaintiffs no later than 15 days before the Final Approval Hearing.

25. If the Settlement Agreement is not finally approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) Nothing in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against Designer Brands and DSW or Plaintiffs on any point of fact or law; and

(c) Neither the Settlement Agreement terms nor any publicly disseminated information regarding the Settlement Agreement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement Agreement, any failure of the Court

to approve the Settlement Agreement, and/or any objections or interventions may be used as evidence.

26. Parties are required to obtain Court approval before disposing of any residual funds remaining after all distributions have been made, including funds from expired or undeliverable checks to Settlement Class Members.

27. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement Agreement. Pending final determination of whether the Settlement Agreement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

28. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

Event	Date	Timeline
Deadline for Completion of Notice	**March 2, 2025**	30 days after entry of the Preliminary Approval Order
Deadline for filing Motion for Final Approval of the Settlement Agreement, Class Counsel's Fee Application and expenses, and for a Service Award	**June 2, 2025**	30 days after the Opt-Out Deadline and Notice of Intent to Object Deadline
Deadline for opting-out of the Settlement Class and for submission of Objections to Settlement	**On or before May 2, 2025**	60 days after Email Notice and Text Notice are sent

Agreement		
Deadline for Responses to Objections	**July 7, 2025**	15 days before the Final Approval Hearing
Final Approval Hearing	**July 31, 2025**	[No earlier than 150 days after preliminary Approval]
Last day Class Claimants may submit a Claim Form	**On or before June 30, 2025**	120 days after Email Notice and Text Notice are sent

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT