

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

**RACHAEL ANNE ELROD, ANDREW
KAUFMAN, and SARAH MARTIN, on
behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

**BROOKS BRASFIELD, on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

**NO TAX 4 NASH, MICHELLE
FOREMAN, KAREN MOORE, and
JOHN DOES 1-10,**

Defendants.

Case No. 3:20-cv-00617

**District Judge Eli J. Richardson
Magistrate Judge Barbara D. Holmes**

CLASS ACTION

JURY DEMAND

Consolidated with
Case No.: 3:20-cv-00618

MICHELLE FOREMAN and KAREN MOORE,

Third-Party Plaintiffs,

v.

BEST SELLERS, LLC, HEATHER SELLERS, JOE GERGLEY, and HYPERMETRICS, LLC,

Third-Party Defendants.

**PRELIMINARY APPROVAL ORDER
GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement. Plaintiffs, individually and on behalf of the proposed Class, and Defendants and Third-Party Defendants have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation on a class basis.

On July 17, 2020, Plaintiffs commenced this action alleging that defendant Michelle Foreman and others violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (the "TCPA") by allegedly placing politically oriented telephone calls ("robocalls") to cellular phones through the use of an automatic telephone dialing system and/or artificial or prerecorded voice, without the prior express consent of the recipients of the calls. On March 22, 2021, Plaintiffs filed a Second Amended Complaint in this action adding defendant Karen Moore as a defendant. On April 16, 2021, defendants Karen Moore and Michelle Foreman answered the Second Amended Complaint and asserted a third-party complaint against Third-Party Defendants alleging, among other things, that Third-Party Defendants actually placed the calls and had a duty to ensure that the calls were placed in a manner that did not violate the TCPA.

On April 19, 2021, the Court entered an order granting Plaintiffs' unopposed motion for class certification, and certifying the following Class: "All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237."

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Hon. Wayne Andersen (Ret.) of JAMS. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Motion for Preliminary Approval is granted as set forth herein.¹

1. Class Certification for Settlement Purposes Only. For settlement purposes only and pursuant to Rule 23(b)(3) and (e), the Court provisionally certifies a Class in this matter defined as follows:

All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237

The Court provisionally finds, for settlement purposes only, that: (a) the Class is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact common to the Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Class as the Class Representatives have no interest antagonistic to or in conflict with the Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Class;

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

(e) questions of law or fact common to Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. Class Representatives and Class Counsel.

On April 19, 2021, the Court certified a class consisting of “All individuals who received, on July 16 or 17, 2020, one or more prerecorded calls to their cellular telephones from the number 615-348-5237,” and appointed Plaintiffs Brooks Brasfield, Rachael Ann Elrod, Andrew Kaufman, and Sarah Martin as Class Representatives and the law firms of Branstetter, Stranch & Jennings, PLLC, and Spragens Law PLC as Class Counsel. The Court incorporates and reaffirms that Order for purposes of certifying and approving the settlement

3. Preliminary Settlement Approval. Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Class and accordingly is preliminarily approved.

4. Jurisdiction. The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this court.

5. Final Approval Hearing. A Final Approval Hearing shall be held at 9:00 a.m. on September 15, 2022 (which is at least 100 Days after Preliminary Approval), in the United States District Court for the Middle District of Tennessee, 719 Church Street, Nashville, Tennessee 37203, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes; (b) the Settlement should be finally approved as fair, reasonable, and adequate; (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Class Counsel for an award of attorneys’ fees, costs, and expenses (the “Fee Request”) should be approved; and (f) the motion of the Class Representative for a Service Award (the “Service Award Request”) should be approved.

Plaintiffs' Motion for Attorneys' Fees, Costs, and a Service Award shall be filed 14 Days prior to Class Members' Deadlines to object to or exclude themselves from the Settlement Agreement.

Plaintiff's Motion for Final Approval of the Settlement shall be filed with the Court at least 14 Days prior to the Final Approval Hearing.

By no later than 7 Days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections to the Settlement Agreement or objections to Plaintiffs' request for attorneys' fees, costs, and service awards. These responses may be incorporated into replies in support of Final Approval of the Settlement and the Service Award Request and Fee Request.

6. **Administration**. The Court appoints CAC Services Group, LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. All costs and expenses associated with providing notice to Class Members including, but not limited to, the Settlement Administrator's fees, as well as the costs associated with administration of the Settlement, shall be deducted from the Settlement Fund.

7. **Notice to the Class**. The proposed Notice Program set forth in the Settlement Agreement, and the Short-Form Notice, Email Notice, Long-Form Notice, and Claim Form attached to the Settlement Agreement as Exhibits B, C, and E satisfy the requirements of Federal Rules of Civil procedure, provide the best notice practicable under the circumstances and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **30 days from the date of this Order** (the "Notice Deadline"), the Settlement Administrator shall complete the Notice Program in the manner set forth in Section IX of the Settlement Agreement.

8. Findings and Conclusions Concerning Notice. The Court finds that the form, content, and method of giving notice to the Class as described in in this Order and in Paragraph 36 of the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Class; (b) are reasonably calculated to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and the Court concludes that the Notice Program meets all applicable requirements of law, including Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must mail a written notification of the intent to exclude himself or herself from the Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **45 Days after the Notice Deadline** (the “Opt-Out Period”). For a request for exclusion to be valid, the written notification must: (a) be signed (if sent by mail or fax) or electronically signed (if submitted via the Settlement Website); (b) include the full name, address, and cellular telephone of the person(s) requesting exclusion; and (c) include the following statement: “I/we request to be excluded from the class settlement in *Elrod et al. v. NoTax4Nash et al.* Case No. 3:20-cv-00617, consolidated with 3:20-cv-00618.” No exclusion request will be valid unless all of the information described above is included. A request to be excluded that is sent by means other than that designated in the notice, or that is not timely received by the Notice Administrator, shall be invalid. No person in the Class, or any person acting on behalf of or in concert or participation with that person (unless that person is acting in a representative capacity or on behalf of a deceased or incapacitated Class Member), may exclude any other person in the Class from the Class. So called “mass” or “class” opt-outs shall not be allowed. Any member of the Class who elects to be

excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Class, which Class Counsel must file with the Court and serve on Defendants and Third-Party Defendants no later than 10 days after the date for a member of the Class to exclude himself or herself from the Class has expired.

Any Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Class Member who has not submitted a timely, valid written notice of exclusion from the Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Class shall not be entitled to receive any benefits of the Settlement.

10. Objections and Appearances. A Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is postmarked and mailed to the Settlement Administrator by no later than **45 Days after the Notice Deadline** (the “Objection Deadline”). For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 39 of the Settlement Agreement, which is as follows:

- (1) the name and case number of the action;
- (2) the objector's full name, address and cellular telephone number;
- (3) an explanation of the basis upon which the objector claims to be a Class Member;
- (4) all grounds for the objection in writing, accompanied by any legal support for the objection known to the objector or his or her counsel;
- (5) all exhibits he/she intends to introduce into evidence at the hearing on Final Approval, which shall be attached;
- (6) 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;
- (7) the identity of all counsel representing the objector who will appear at the Final Approval Hearing or who has a financial interest in the objection;
- (8) no later than three (3) business days before the Final Approval Hearing, a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- (9) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (10) the objector's signature (an attorney's signature is not sufficient).

Any Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered.

Any Class Member, including a Class Member who submits a timely written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel

hired at the Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.

If Final Order and Judgment is entered, any Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

11. Claims Process and Distribution and Allocation Plan. The Settlement Administrator will assess and determine the validity of claims, subject to review by the Parties, and make pro rata Settlement payments to Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Paragraphs 46-49 of the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Order and Judgment is entered, all Class Members who qualify for a payment under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. 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 as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no

further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. Use of Order. This Order shall be of no force or effect if Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Class Representative or any other Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

14. Stay of Proceedings. Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

15. Continuance of Hearing. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

16. Injunction. Pending final approval of the Settlement Agreement and pursuant to Rule 65(a), the Court hereby enjoins all Class Members and any person purporting to act on behalf of a Class Member from commencing or prosecuting any claims against any Defendant or Third-Party Defendant for violating the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (the "TCPA") or any other law by using an automatic telephone dialing system and/or artificial or prerecorded voice to make telephone calls. Class Counsel shall provide notice of such injunction in any jurisdiction in which an action asserting such claims is pending.

17. Summary of Deadlines. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Notice Completion Deadline: 30 Days after Preliminary Approval

Motion for Final Approval: 14 Days before Final Approval Hearing

Motion for Service Award, Attorneys' Fees and Costs: 14 Days before the deadline for Class Members to Opt-Out or Object

Opt-Out Deadline: 45 Days after Notice Completion Deadline

Objection Deadline: 45 Days after Notice Completion Deadline

Replies in Support of Final Approval, Service Award and Fee Requests: 7 Days before Final Approval Hearing

Claim Deadline: 60 Days after Notice Completion Deadline

Final Approval Hearing: 9:00 a.m. on September 15, 2022

IT IS SO ORDERED this 25 day of May, 2022.

Eli Richardson

ELI J. RICHARDSON
UNITED STATES DISTRICT JUDGE