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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michael Reid, et al.,
Plaintiffs,
v.
I.C. System Incorporated,
Defendant.

No. CV-12-02661-PHX-ROS
ORDER

Before the Court is the Parties’ Joint Motion for Approval of Proposed Preliminary Schedule and Notice Documents, (Doc. 227), as supplemented, (Doc. 229).

BACKGROUND

Plaintiff initiated this action in December 2012, alleging he received automated calls on his cell phone from Defendant which continued after asking Defendant to stop, in violation of the Telephone Consumer Protection Act of 1990 (“TCPA”). (Doc. 1). Plaintiff sued individually and on behalf of a similarly situated class of plaintiffs. (*Id.*).

Plaintiff filed his first motion for preliminary approval of class action settlement in June 2015. (Doc. 145). The Court found the proposal met the threshold requirements of Rule 23(a) and (b)(3) if the Court assumed the class definition was limited to putative class members whose numbers were coded as “wrong” in Defendant’s records. (Doc. 147, at 6–8). Yet, the Court still found the recovery per class member too small. (*Id.* at 9-11). Defendant attempted to enforce the settlement agreement, but its motion was denied. (Docs. 150, 169). Plaintiff then moved to certify a class for further litigation.

1 (Doc. 175). Before the Court ruled on that motion, the Parties stipulated to stay litigation
2 while they negotiated a revised settlement. (Doc. 188).

3 Plaintiff then brought a second unopposed motion for preliminary approval of
4 class action settlement in January 2016. (Doc. 195). Although the second proposal
5 increased the recovery amount by \$350,000 and reduced the recovery-eligible class
6 members to about 66,619, the second proposal still raised serious concerns under Rule
7 23. (Doc. 200 at 1–2). The Court found the proposed class definition covered not only
8 those who received calls after numbers were coded as “wrong” in Defendant’s records,
9 but also all those who received even one call without giving prior consent. (*Id.* at 2).
10 The Court therefore denied Plaintiff’s request, noting Plaintiff’s proposal was troubling
11 both because approximately 93% of the proposed class had no legal claims after the
12 FCC’s safe harbor ruling, and because the named Plaintiff’s claim was not typical of the
13 vast majority of class members. (*Id.* at 2).

14 Plaintiff submitted a third unopposed motion for preliminary approval of a class
15 action settlement on August 29, 2016. (Docs. 215, 217). Under the proposed settlement,
16 Defendant would create an all-inclusive settlement fund of \$3,350,000, covering costs of
17 notice and administration, up to \$725,000 for attorney’s fees, up to \$100,000 for costs, up
18 to \$5,000 in an incentive for Mr. Reid, and cash payments to Settlement Class Members.
19 Plaintiff also defined the class as those persons called on a cell phone coded as a wrong
20 number in I.C. System’s business records.

21 Based on these figures and the defined class, the Court preliminarily certified the
22 lawsuit as a class action for settlement purposes, appointed Michael Reid as class
23 representative, and appointed class counsel. (Doc. 218). The Court directed the parties
24 to file a joint proposed schedule with one set of mutually agreed upon deadlines for each
25 event in the parties’ notice plan and an agreed-upon proposed informational statement to
26 be used on websites, ads, and press releases clearly stating (1) the class definition,
27 including whenever describing eligibility, and (2) the settlement amount. (*Id.*; Docs. 224,
28 226).

1 ANALYSIS

2 I. Proposed Notice Materials

3 Class notice must be “reasonably calculated, under all the circumstances, to
4 apprise interested parties of the pendency of the action and afford them an opportunity to
5 present their objections.” *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,
6 314 (1950). The Court must order the “best notice that is practicable under the
7 circumstances, including individual notice to all members who can be identified through
8 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notices to class members must clearly
9 and concisely state the following in plain, easily understood language: (i) the nature of
10 the action; (ii) the definition of the class certified; (iii) the class claims, issues, or
11 defenses; (iv) that a class member may enter an appearance through an attorney if the
12 member so desires; (v) that the court will exclude from the class any member who
13 requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the
14 binding effect of a class judgment on members under Rule 23(c)(3). Fed. R. Civ. P.
15 23(c)(2)(B).

16 The Parties’ Settlement Agreement proposes providing online notice through
17 banner ads on targeted websites, “keyword” searches, and social media ads, as well as
18 establishment of an informational website and a toll-free phone number. The Parties
19 have submitted their proposed banner ad, social media ad, and keyword search, (Doc.
20 229, Exhibit 1), long-form notice, (Doc. 229, Exhibit 2), and claim form, (Doc. 229,
21 Exhibit 3), for the Court’s review.

22 The Court has reviewed these notices. Subject to the requirements below, the
23 Court has determined they or, when space-limited, the informational website linked to
24 them,¹ will sufficiently set forth the above mentioned information.

25 First, the Court approved a class defined as those persons called on a cell phone
26 number coded as a wrong number in I.C. System’s business records. After reviewing the

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28 ¹ The Parties have not submitted screenshots of this informational website for review, but state it will include the detailed notice submitted to the Court. (Doc. 229, Exhibit C, at 4).

1 proposed claim form, it is unclear how the Parties will identify class members who
2 received a wrong number call on a cell phone number, but have subsequently changed
3 their cell phone numbers. The Settlement Claim Form requests class members' "Contact
4 Information," including their "Cellular Telephone Number." This suggests the class
5 member should provide their *current* cell phone number for contact purposes. However,
6 if the class member received a wrong number call to a *prior* cellular phone number, the
7 Parties have not given the class member any place to provide the cellular phone number
8 which actually received the wrong number call, which could be used to search
9 Defendants' list of "Coded Calls" or "wrong" numbers.

10 Second, the Settlement Claim Form states that, to receive a "double pro rata share
11 of the settlement fund," a class member must attest they "received one or more
12 *autodialed, pre-recorded or artificial voice* telephone calls from or on behalf of I.C.
13 System, Inc. after [] inform[ing] I.C. System, Inc. either orally or in writing, that I.C.
14 System, Inc. had called the wrong number." This is expressly contrary to the class
15 definition preliminarily approved by the Court, which was: "All persons within the Class
16 Period who were called on a cellular telephone by I.C. System, using an Automatic
17 Telephone Dials System, *with or without a prerecorded or artificial voice message*,
18 whose cellular telephone number was associated with a cellular telephone number in I.C.
19 System's business records coded as a wrong number telephone call, regardless if there
20 was a call before or after the wrong number code was entered in I.C. System's business
21 records." Those persons eligible to receive a double pro rata share were defined as those
22 who "received at least one additional call after being coded as a wrong number" or after
23 "informing [I.C. System, Inc.] that [I.C. System, Inc.] had called the wrong number."
24 (Doc. 215-1, at 3; Doc. 218, at 4). There is no requirement a person requesting a double
25 pro rata share must receive an autodialed, pre-recorded or artificial voice telephone call.

26 Third, the Settlement Claim Form states that persons who sign the first line are
27 "requesting a pro rata share of the settlement," but does not explain who is entitled to a
28 pro rata share. The Court preliminarily approved the class based on the Parties'

1 definition of members eligible for a single pro rata share: those persons “called on a
2 cellular telephone by I.C. System, using an Automatic Telephone Dials System, with or
3 without a prerecorded or artificial voice message, whose cellular telephone number was
4 associated with a cellular telephone number in I.C. System’s business records coded as a
5 wrong number telephone call, regardless if there was a call before or after the wrong
6 number code was entered in I.C. System’s business records” but who were not otherwise
7 eligible for a double pro rata share by receiving an additional call after being coded as a
8 wrong number by I.C. System, Inc. or after informing I.C. System, Inc. that it had called
9 the wrong number. (Doc. 215-1, at 3–4; Doc. 218, at 4).

10 Finally, a person reading the Settlement Claim Form has no means of verifying a
11 wrong number call they previously received both (1) originated from I.C. Systems, and
12 (2) was coded as a wrong number in I.C. Systems’ internal business records, either before
13 or after the call. Thus, it would be impossible for a person to legally attest that they were
14 entitled to a single pro rata share. The claims form must be amended to permit persons to
15 submit a claim based on their *belief* that they may fall within the defined class, which
16 then allows the Parties to cross-check the person’s information against I.C. Systems’
17 business records.

18 The Settlement Claim Form must be amended as described above for consistency
19 with the Parties’ prior submissions and the Court’s preliminary approval order. To
20 prevent further needless delay, the Court has revised the notice, attached to this Order,
21 and the Parties are to use the revised Settlement Claim Form. Subject to the
22 abovementioned requirements, the notices are approved.

23 **II. Email Notice**

24 In addition, Plaintiff explains their vendor can search for email addresses
25 associated with the class list’s cell phone numbers, and requests permission to email the
26 long form notice to any email addresses identified in this search. (Doc. 229). Defendants
27 do not oppose Plaintiffs’ request, and Plaintiffs have submitted a supplemental report
28

1 with a revised bid for the approximately \$36,000 added cost, payable from the settlement
2 fund.

3 The Court approves Plaintiff’s proposal to contact potential class members via
4 email, as this is intended to provide “individual notice to all members who can be
5 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). And the long form
6 notice, already discussed above, provides appropriate content as required by Fed. R. Civ.
7 P. 23(c)(2)(B). That said, this Court previously preliminarily approved the settlement
8 because the estimated recovery amounts were “consistent with the range of settlements in
9 TCPA class actions.” (Doc. 218, at 10). Plaintiffs should be mindful of any expenditure
10 that might significantly deplete the estimated settlement amount such that the settlement
11 was inconsistent with the range of settlements in TCPA class actions. And as previously
12 mentioned, to the extent the Parties plan to seek court approval of their financial
13 requests—including this additional cost—the Parties must thoroughly brief each financial
14 request in their motion for final approval of class settlement. (Doc. 218, at 10, n. 4).

15 **III. Proposed Schedule**

16 The Parties’ proposed schedule includes an agreed-upon formula—based upon the
17 date of this Court’s order—for calculating various deadlines. Based on this formula, the
18 Court orders the Parties implement the following schedule:

19 Event	Date Certain	Formula For Days
20 Dahl Administration to 21 Publish Notice	November 27, 2017	Two weeks from Court’s Order
22 Deadline to Submit Claims	February 8, 2018	90 days from Court’s Order
23 Deadline to Submit Opt 24 Out/Objection	February 19, 2018	10 Days Following Deadline to Submit Claims
25 Deadline to Submit Motion 26 for Attorney’s Fees	January 19, 2018	30 Days Prior to Deadline to Object/Opt Out

1 **IV. Class Period**

2 The Parties request the class period, currently defined as “December 14, 2008, to
3 the date of the Final Approval Order,” be redefined as “December 14, 2008, to the date of
4 the Preliminary Approval Order.” (Doc. 229). The Court agrees with this proposal and
5 directs the Parties to update the definition accordingly, including by updating the long
6 form notice and all other notices to include a definition of “Class Period.”

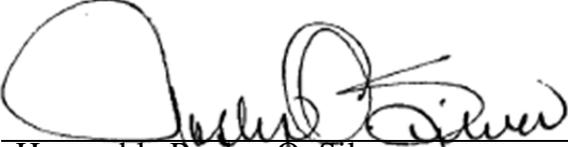
7 **V. Conclusion**

8 Accordingly,

9 **IT IS ORDERED** the Parties’ Joint Motion for Approval of Proposed Preliminary
10 Schedule and Notice Documents, (Doc. 227), as supplemented, (Doc. 229), is
11 **GRANTED**.

12 **IT IS FURTHER ORDERED** the Final Approval Hearing is set for March 27,
13 2018, at 1:00 P.M. in Courtroom 604 at the Sandra Day O’Connor U.S. Courthouse, 401
14 West Washington Street, Phoenix, Arizona.

15 Dated this 9th day of November, 2017.

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20 Honorable Roslyn O. Silver
21 Senior United States District Judge
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Settlement Claim Form

www.ReidTCPASettlement.com

Please read the information below. If you would like to participate in the settlement, please provide the information requested below. You may make claims for any relief to which you are entitled. To be valid, online claims must be completed, electronically signed, and submitted by **no later than ____ p.m. on _____, 2018.**

Contact Information

First Name: _____
Last Name: _____
Country: _____
Address: _____
City: _____
State: _____
Zip: _____
Current Cellular Telephone Number: _____
Cellular Telephone Number Which Received the Wrong Number Call(s): _____

(1) If you received a call on a cellular telephone from I.C. System, Inc. using an Automatic Telephone Dials System, with or without a prerecorded or artificial voice message, and your cellular telephone number was associated with a cellular telephone number in I.C. System, Inc.'s business records coded as a wrong number telephone call, regardless if there was a call before or after the wrong number code was entered in I.C. System, Inc.'s business records, you are entitled to a pro rata share of the settlement fund. If you believe the above may apply to you, please sign below to submit your claim requesting a pro rata share of the settlement fund.

Claimant Name: _____

By typing your name above and submitting your claim form, you are electronically signing your name and legally attesting to the above information.

(2) If you received additional calls from I.C. System, Inc. after requesting to not be called, please review and sign the affirmation below to request a double pro rata share of the settlement fund.

I received one or more telephone calls from or on behalf of I.C. System, Inc. after I informed I.C. System, Inc., either orally or in writing, that I.C. System, Inc. had called the wrong number.

I affirm that the above statements are true and correct to the best of my knowledge.

Claimant Name: _____

By typing your name above and submitting your claim form, you are electronically signing your name and legally attesting to the above information.