

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

**JIM YOUNGMAN and ROBERT
ALLEN,**

Plaintiffs,

v.

Case No: 6:16-cv-1478-Orl-41GJK

**A&B INSURANCE AND FINANCIAL,
INC.,**

Defendant.

_____ /

ORDER

THIS CAUSE is before the Court on the Plaintiffs' Unopposed Second Renewed Motion for Preliminary Approval of Class Action Settlement ("Motion," Doc. 61). The Court has decided to grant the motion and now enters this Preliminary Approval Order:

WHEREAS, this Action is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*;

WHEREAS, Plaintiffs have filed an Unopposed Second Renewed Motion for Preliminary Approval of Class Action Settlement;

WHEREAS, the Motion attaches and incorporates a Second Amended Class Action Settlement Agreement¹ (the "Second Amended Class Action Settlement Agreement" or "Second Amended Agreement") that, together with the exhibits thereto, sets forth the terms and conditions for the settlement of claims, on a class-wide basis, against A&B Insurance and Financial, LLC²

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Second Amended Class Action Settlement Agreement.

² A&B Insurance & Financial, LLC was formerly known as A&B Insurance & Financial, Inc.

(“A&B Insurance”) (Plaintiffs and A&B Insurance are collectively referred to as the “Parties”) as more fully set forth below; and

WHEREAS, the Court having carefully considered the Motion and the Second Amended Class Action Settlement Agreement and all of the files, records, and proceedings herein; and the Court determining upon preliminary examination that the Second Amended Class Action Settlement Agreement appears to be fair, reasonable, and adequate and that the proposed plan of notice to the Settlement Class is the best notice practicable under the circumstances and consistent with requirements of due process and Federal Rule of Civil Procedure 23; and that a hearing should and will be held after notice to the Settlement Class to confirm that the Second Amended Class Action Settlement Agreement is fair, reasonable, and adequate and to determine whether this Court should enter a judgment approving the Second Amended Class Action Settlement Agreement and an order of dismissal of this action based upon the Second Amended Class Action Settlement Agreement;

It is **ORDERED** and **ADJUDGED** as follows:

1. For purposes of the settlement only, the Court has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.

Certification of Settlement Class

2. Under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for purposes of settlement only, a “Settlement Class” is preliminarily certified, consisting of the following class:

All individuals and entities within the United States to whom, between August 18, 2012, and April 26, 2017, on the telephone numbers identified in the class list dated November 6, 2017, provided by KCC to the Parties, Defendant, through a third party

call center, initiated either: (a) more than one telemarketing call within any twelve-month period to a telephone number registered on the Do Not Call Registry for at least 31 days; or (b) any telephone calls to a cellular telephone number using an automatic telephone dialing system or an artificial or prerecorded voice. Excluded from the Settlement Class are the Defendant and any entities in which the Defendant has a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

3. All individuals and entities in the Settlement Class who have not submitted a valid request for exclusion are referred to collectively as "Settlement Class Members" or individually as a "Settlement Class Member."
4. For purposes of settlement only, the Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been preliminarily satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class Members; (d) the Class Representatives will fairly and adequately represent the interests of the Settlement Class Members; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court further finds, for purposes of settlement only, that: (a) Settlement Class Members have a limited interest in individually prosecuting the claims at issue; (b) the Court is satisfied with Plaintiffs' counsel's representation that they are unaware of any other litigation commenced regarding the claims at issue by the Settlement

Class; (c) it is desirable to concentrate the claims in this forum; and (d) it is unlikely that there will be difficulties encountered in administering this Settlement.

5. Under Federal Rule of Civil Procedure 23, and for settlement purposes only, Plaintiffs Jim Youngman and Robert Allen are hereby appointed Class Representatives and the following are hereby appointed as Class Counsel:

Edward Broderick
Anthony Paronich
BRODERICK & PARONICH, P.C.
99 High St., Suite 304
Boston, Massachusetts 02110

Matthew P. McCue
THE LAW OFFICE OF MATTHEW P. MCCUE
1 South Avenue, Suite 3
Natick, Massachusetts 01760

Timothy Howard
HOWARD & ASSOCIATES, P.A.
2120 Killarney Way #125
Tallahassee, Florida 32309

Notice and Administration

6. The Court hereby approves of Kurtzman Carson Consultants to perform the functions and duties of the Settlement Administrator set forth in the Second Amended Class Action Settlement Agreement—including effectuating the Notice Plan—and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement.
7. The Court has carefully considered the Notice Plan set forth in the Second Amended Class Action Settlement Agreement. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and satisfies fully the requirements of Rule 23 of the Federal Rules of Civil Procedure, the

requirements of due process, and any other applicable law, such that the terms of the Second Amended Class Action Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

8. The Court hereby approves the Notice Plan and the form, content, and requirements of the Notice described in and attached as exhibits to the Second Amended Class Action Settlement Agreement. The Settlement Administrator shall cause the Notice Plan to be completed **on or before May 8, 2018**. Class Counsel shall, prior to the Final Approval Hearing, file with the Court a declaration executed by the Settlement Administrator attesting to the timely completion of the Notice Plan.
9. All costs of providing Notice to the Settlement Class, processing Claim Forms, and administering distributions from the Settlement Fund shall be paid out of the Settlement Fund, as provided by the Second Amended Class Action Settlement Agreement.

Exclusion and "Opt-Outs"

10. Each and every individual or entity in the Settlement Class shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Second Amended Class Action Settlement Agreement, unless such individual or entity requests exclusion from the Settlement in a timely and proper manner, as hereinafter provided.
11. An individual or entity in the Settlement Class wishing to request exclusion (or "opt-out") from the Settlement shall send a written request for exclusion to the Settlement Administrator postmarked **no later than July 9, 2018**, at the address

specified in the Short and Long Form Notices. In the written request for exclusion, the individual or entity in the Settlement Class must state their full name, address, and the telephone number or numbers that they maintain were called. Further, the written request for exclusion must include a statement that the individual or entity in the Settlement Class submitting the request wishes to be excluded from the Settlement and the signature of the individual or entity in the Settlement Class submitting the request. The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. No individual or entity in the Settlement Class, or any person acting on behalf of or in concert or in participation with an individual or entity in the Settlement Class, may request exclusion of any other individual or entity in the Settlement Class from the Settlement. So called “mass” or “class” opt-outs shall not be allowed. Any individual or entity in the Settlement Class who validly requests exclusion shall relinquish their rights to benefits under the Settlement and will not release any claims against A&B Insurance or any of the other Released Parties.

12. Any individual or entity in the Settlement Class who does not properly exclude him/her/itself from the Settlement shall be bound by all terms of the Second Amended Class Action Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or other proceedings against A&B Insurance or any of the other Released Parties.

13. The Settlement Administrator will promptly provide all Parties with copies of any exclusion requests, and Plaintiff shall file a list of all individuals and entities who have validly opted-out of the Settlement with the Court prior to the Final Approval Hearing.

Objections

14. Any Settlement Class Member who wishes to object to approval of the proposed Settlement, to the award of attorneys' fees and expenses, or to the incentive awards to the Class Representatives must submit to the Settlement Administrator, and at the same time provide a copy to the Court, a written statement that includes: their full name, address, telephone number or numbers that they maintain were called, the Civil Action Number of this case, and include a statement of their specific objections as well as any documents that they would like the Court to consider. The Court will consider objections to the Settlement, to the award of attorneys' fees and expenses, or to the incentive awards to the Class Representatives only if the objection is sent to the Settlement Administrator and to the Court **on or before July 9, 2018**.

15. A Settlement Class Member who has timely submitted a written objection as set forth above may appear at the Final Approval Hearing in person or through counsel to be heard orally regarding their objection. It is not necessary, however, for a Settlement Class Member who has submitted a timely objection to appear at the Final Approval Hearing.

16. Any individual or entity in the Settlement Class who does not opt out or make an objection to the Settlement in the manner provided herein shall be deemed to have

waived any such objection by appeal, collateral attack, or otherwise and shall be bound by the Second Amended Class Action Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order and Judgment.

Final Approval Hearing

17. The Federal Rule of Civil Procedure 23(e) Final Approval Hearing is hereby scheduled to be held before the Court on **August 30, 2018, at 9:00 a.m.** in Courtroom 5B, George C. Young United States Courthouse Annex, 401 W. Central Boulevard, Orlando, Florida, before the Honorable Carlos E. Mendoza for the following purposes:

- a. to finally determine whether the applicable prerequisites for settlement class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are met;
- b. to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- c. to determine whether the judgment as provided under the Second Amended Class Action Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Second Amended Class Action Settlement Agreement;
- d. to consider the application for an award of attorneys' fees and expenses of Class Counsel;
- e. to consider the application for incentive awards to the Class Representatives;

- f. to consider the distribution of the settlement benefits under the terms of the Second Amended Class Action Settlement Agreement; and
 - g. to rule upon such other matters as the Court may deem appropriate.
18. On or before thirty days prior to the Final Approval Hearing, Class Counsel shall file and serve (i) a motion for final approval; and (ii) any application for incentive awards to the Class Representatives as well as any application for an award of attorney's fees and expenses.
19. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class, other than those who have submitted timely objections as set forth herein. At, or following, the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Second Amended Class Action Settlement Agreement that will adjudicate the rights of all class members.
20. The deadlines the parties shall adhere to are as follows:
- a. Class Notice Completed by: May 8, 2018**
 - b. Objection/Exclusion Deadline: July 9, 2018**
 - c. Claim Deadline: July 9, 2018**
 - d. Final Approval Submissions: July 31, 2018**
 - e. Final Approval Hearing: August 30, 2018**
21. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

Further Matters

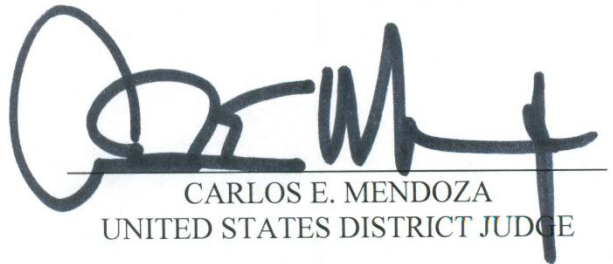
22. All discovery and other pretrial proceedings (including any pleading deadlines) in the Action as between the Plaintiffs and A&B Insurance are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Second Amended Class Action Settlement Agreement and this Order.

23. In the event that the Second Amended Class Action Settlement Agreement is terminated under the terms of the Second Amended Class Action Settlement Agreement, or for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (i) the Second Amended Class Action Settlement Agreement shall be null and void, including any provisions related to the award of attorneys' fees and expenses, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner of or any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Second Amended Class Action Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Second Amended Class Action Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) this Order shall be vacated and of no further force or effect whatsoever, as if it had never been

entered; and (iv) any party may elect to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

24. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement.

DONE and **ORDERED** in Orlando, Florida on April 17, 2018.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record