

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

THERESA LOMAS,

Plaintiffs,

v.

Case No. 6:22-CV-00679-PGB-DCI
LEAD CASE

HEALTH INSURANCE ASSOCIATES
LLC,

Defendants.

ROBIN TAYLOR,

Plaintiffs,

v.

Case No. 6:22-CV-01564-PGB-DAB

HEALTH INSURANCE ASSOCIATES
LLC,

Defendants.

**DECLARATION OF AVI R. KAUFMAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Avi R. Kaufman declares as follows:

1. I am the attorney designated as Class Counsel for Plaintiffs under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Health Insurance Associates LLC.¹ I submit this declaration in support of Plaintiffs’

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. The Parties' proposed Settlement is exceedingly fair and well within the range of preliminary approval for several reasons. First, it provides immediate monetary and remedial relief, including preventing further unsolicited telemarketing calls, for Settlement Class Members where their recovery, if any, would otherwise be uncertain given Defendant's consistent denials of all liability and its vigorous defense of the litigation. Second, the Settlement was reached only after significant discovery into the issues in the case, including the manner of Defendant's calls, the number of calls, the recipients of calls, and the strength of the Defendant's defenses. Third, prior to reaching the Settlement, the parties engaged in extensive arm's-length negotiations, including a full-day mediation before mediator Daniel Methe, with Matrix Mediation. Fourth, the Settlement was not conditioned on any amount of attorneys' fees for Class Counsel or service award for Plaintiff, underscoring the fairness of the process.

3. On April 7, 2022, Plaintiff Lomas filed the Complaint against Defendant in this action asserting claims under the TCPA's prerecorded voice call provision (ECF 1). On May 23, 2022, Defendant answered the Complaint denying all liability (ECF 13). The parties then participated in a Rule 26 conference and prepared a joint scheduling report and discovery plan (ECF 18).

4. On August 30, 2022, Plaintiff Taylor filed her Complaint against Defendant asserting claims under the TCPA's prerecorded voice call provision and National Do Not Call Registry provisions (Case No. 6:22-cv-01564, ECF 1). On October 12, 2022, Defendant answered the Complaint denying all liability (Case No. 6:22-cv-01564, ECF 10). After the parties met and conferred, on November 21, 2022, Defendant filed an unopposed motion to consolidate the Taylor and Lomas cases. The cases were consolidated the next day.

5. On February 6, 2023, the Parties engaged in a full-day, mediation with Daniel Methe of Matrix Mediation. The Parties engaged in further negotiations ultimately reaching an agreement in principle as to a class wide resolution, culminating in the Settlement Agreement. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation through trial and appeals. Class Counsel have considered the strength of Defendant's defenses. Class Counsel have also considered the delays, uncertain outcomes, and risks of litigation generally, especially in complex actions such as this one.

6. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the litigation against Defendant through trial and potential appeals. Plaintiffs' counsel has considered the strength of Defendant's defenses, Defendant's consistent denials of liability, difficulties in obtaining class certification and proving vicarious liability, the uncertain outcome and risk of the litigation especially in complex actions such as

this one, the inherent delays in such litigation, and, in particular, the risk that a change in the law, including a ruling by this Court concerning the constitutionality of the TCPA, could nullify Plaintiffs' claims. Plaintiffs' counsel believes that the proposed Settlement confers substantial and immediate benefits upon the Class whereas continued and protracted litigation, even if successful, might ultimately deliver none. Based on their evaluation of all these factors, Plaintiffs and Plaintiffs' counsel have determined that the Settlement is in the best interests of Plaintiffs and the Class.

7. The Notice Plan is designed to provide the Class with important information regarding the Settlement and their rights thereunder, including a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or "opt-out" of the Settlement; a date by which Settlement Class Members may object to the Settlement; the process for submission of and a date by which a valid and timely Claim Form must be submitted; Class Counsel's fee application and/or the request for a service award; the date of the Final Approval Hearing; and information regarding the Class Settlement Website where Settlement Class Members may access the Agreement and other important documents. The Notice Plan here is straightforward, easy to understand for Settlement Class Members, and designed to inform members of their rights under the Agreement. The Notice Plan is therefore consistent with or exceeds other court-approved notice programs, is the best notice practicable under the circumstances of this case, and has been designed to satisfy the requirements of due

process, including its desire to actually inform requirement. The anticipated Settlement Administration Expenses are approximately \$110,000. Those costs are reasonable in light of the costs for, among other things, emailed and mailed notice, claim verification, and distribution of settlement funds to more than 50,000 Settlement Class Members. Through the provision of (1) the Summary Notice, both directly by mail and email, if such information is available, and (2) Notice, which can be accessed on the Class Settlement Website, the Notice Plan is designed to reach a high percentage of Class Members and exceeds the requirements of Constitutional Due Process.

8. The Released Claims are narrowly defined to the subject matter of this action and release only claims that were brought in the Litigation, arise from the telemarketing conduct alleged in the Complaint, or relate to the manner and making, or attempted making, of telemarketing calls to Settlement Class Members by or on behalf of Defendant within the four years before filing. Moreover, Leads Mogul LLC and any related entities that are not Released Parties as defined in the Settlement Agreement are not released by this settlement and class members expressly may continue their claims against Leads Mogul LLC.

9. Each of the relevant factors weighs heavily in favor of preliminary approval of this Settlement. The Settlement was the result of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any segments of the class.

10. Here, the Settlement was negotiated with the assistance of David Methe during a full day mediation.

11. Moreover, Plaintiff had the benefit of significant discovery prior to finalizing the Settlement, including Defendant's written discovery responses, tens of thousands of pages of electronic documents produced by Defendant and Defendant's call vendor Leads Mogul all relating to the critical merits issues in the case, including the manner of the subject calls, the number of calls, the recipients of calls, and the strength of the Defendant's defenses. Class Counsel's understanding of the key issues driving the litigation, including the likelihood of class certification, the strength of Defendant's defenses, and the ever-shifting TCPA law landscape prepared them for well-informed settlement negotiations. The Settlement here is the result of extensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this case.

12. Class Counsel has extensive experience and expertise prosecuting complex class actions, and is particularly experienced in the litigation, certification, and settlement of nationwide TCPA class action cases.

13. Since 2008, the attorneys of Kaufman P.A. have worked on consumer class action cases. To date, not including this Settlement, Class Counsel have recovered over \$100 million through class action settlements for the benefit of consumers, including more than \$70 million in TCPA cases. Kaufman P.A.'s attorneys have also successfully recovered millions of dollars in settlements and

judgments for plaintiffs in breach of contract actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

14. I have a degree in government from Harvard University and a JD from Georgetown University Law Center, and have been practicing law for over ten years. For more than five years after graduation, I was a litigation associate at the law firm of Carlton Fields in its national class action and commercial litigation practice groups. During that time, I represented plaintiffs and defendants in various types of individual and class litigation, including securities and TCPA class actions. In 2016, I joined the law firm of Kopelowitz Ostrow Ferguson Weiselberg Gilbert as a partner to work exclusively on consumer class actions. From 2016 until January 2018, when I departed KOFWG to start my own law firm, I represented plaintiffs in class actions arising from products defects, illegal payday loans, false advertising, and TCPA violations, including as lead counsel in a TCPA class action against CITGO Petroleum Corp. that settled for \$8.3 million in 2017.

15. I am a member of the Florida bar, and am admitted to practice in all federal district courts in Florida and in the Eleventh Circuit. I am also admitted to practice in the Third Circuit, Eastern District of Wisconsin, Eastern District of Michigan, Northern District of Illinois, District of Colorado, Western District of Arkansas, and the Central District of Illinois.

16. Rachel E. Kaufman, Esq. has degrees in communications and philosophy from Northwestern University and a JD from Boston University School of Law. Prior to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its

commercial litigation practice and Epstein, Becker & Green in its class action, commercial litigation, and healthcare practices. Rachel is a member of the California, Florida, and Washington, D.C. bars. Rachel is also admitted to practice in all federal district courts in California, the Southern and Middle Districts of Florida, the Eleventh Circuit and the Ninth Circuit.

17. Since starting Kaufman P.A., I have focused almost exclusively on TCPA class actions, litigating in various jurisdictions across the country. Among other cases, our firm has been appointed class counsel in the following TCPA cases:

- *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida Telephone Consumer Protection Act class action resulting in a \$925,110 class wide settlement.
- *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- *Halperin v. YouFit Health Clubs, LLC* (S.D. Fla. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.4 million class wide settlement.
- *Armstrong v. Codefied Inc.* (E.D. Cal. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$2.2 million class wide settlement.
- *Itayim v. CYS Group, Inc.* (S.D. Fla. 2020), a Florida Telephone Consumer Protection Act class action resulting in a \$492,250 class wide settlement.
- *Bulette v. Western Dental, et al.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action resulting in a \$9.7 million class wide settlement.

- *Donde v. Freedom Franchise Systems, LLC, et al.* (S.D. Fla. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$948,475.50 class wide settlement.
- *Izor v. Abacus Data Systems, Inc.* (N.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.95 million class wide settlement.
- *Fitzhenry v. Independent Home Products, LLC* (D.S.C. 2020), a nationwide Telephone Consumer Protection Act class action making \$5.16 million available to the settlement class.
- *Judson v. Goldco Direct LLC* (C.D. Cal. 2020), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Hicks v. Houston Baptist University* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$375,000 class wide settlement.
- *Lalli v. First Team Real Estate* (C.D. Cal. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$478,500 class wide settlement.
- *Fitzhenry, et al. v. Safe Streets USA LLC, et al.* (E.D.N.C. 2021), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1.5 million class wide settlement.
- *Beiswinger v. West Shore Home LLC* (M.D. Fla. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,347,500 class wide settlement.
- *Bumpus, et al. v. Realogy Brokerage Group LLC* (N.D. Cal. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action.
- *Wright, et al. v. eXp Realty, LLC* (M.D. Fla. 2022), appointed class counsel in a contested nationwide Telephone Consumer Protection Act class action, ultimately resulting in a \$26.91 million class wide settlement.

- *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.* (D. Mass. 2022), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$738,375 class wide settlement.
- *Miller v. Bath Saver, Inc., et al.* (M.D. Penn. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$1,950,000 class wide settlement.
- *Taylor v. Cardinal Financial Company, LP* (M.D. Fla. 2023), a nationwide Telephone Consumer Protection Act class action settlement resulting in a \$7,200,000 class wide settlement. (Final approval hearing scheduled for June 2023).

18. Class Counsel zealously represented Plaintiffs and the Class Members' interests throughout the litigation and will continue to do so.

19. The monetary relief on a per Settlement Class Member basis and the injunctive relief agreed to by Defendant place the Settlement well within the range of possible approval. Defendant will pay \$990,000 into a common settlement fund to resolve this matter. This amount is significant and exceeds the range of similar settlements. Given the anticipated Class Member participation rate, the per Settlement Class Member recovery is expected to be approximately \$100.

20. Ultimately, any settlement requires the parties to balance the merits of the claims and defenses asserted against the risks of continued litigation and attendant delay. Plaintiffs and Class Counsel believe that the claims asserted are meritorious and that Plaintiffs would prevail if this matter proceeded to trial. Defendant denies any liability and is willing to continue to defend vigorously. The Parties recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendant

through trial and potentially appeals. Plaintiffs' counsel also has taken into account the strength of Defendant's defenses, Defendant's ability to satisfy a judgment, difficulties in obtaining class certification and proving vicarious liability, the uncertain outcome and risk of litigation especially in complex actions such as this one, the inherent delays in such litigation, and, in particular, the risk that a change in TCPA law, including a ruling by this Court that the TCPA was unconstitutional, could itself defeat Plaintiffs' claims in whole or in part. Class Counsel believes that the proposed Settlement confers substantial and immediate monetary and non-monetary benefits upon the Settlement Class. Based on their evaluation of all these factors, Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of Plaintiffs and the Class, who otherwise may have received nothing.

21. Certification is appropriate under Rule 23(a) and (b)(3). The proposed settlement class encompasses more than 50,000 persons identifiable from the call logs produced by Defendant and its vendor in discovery, and joinder of all Class Members is impracticable. The commonality requirement is readily satisfied. There are multiple questions of law and fact that are common to the Class that would generate common answers. These questions are directly guided by Plaintiffs' claims, Defendant's defenses, and are subject to class wide resolution based on common evidence, including whether the calls to Plaintiffs and other consumers were made for telemarketing purposes; whether the calls were made to Plaintiffs and other consumers without their prior express consent; whether Defendant can be vicariously liable for the calls; and whether Defendant's conduct constitutes a

violation of the TCPA.

22. Plaintiffs have no antagonistic or conflicting interest with the members of the proposed class. To the contrary, Plaintiffs demonstrated their commitment to the class by actively participating in the litigation.

23. The Class readily satisfies the Rule 23(b)(3) predominance requirement because the questions common to all Class Members – including the key issues of whether Defendant is vicariously liable for the calls and whether Defendant had sufficient prior consent to make calls – focus on Defendant’s conduct and can be resolved based on common evidence, including Defendant’s records and Defendant’s employees’ testimony. Relatedly, the Class satisfies Rule 23(b)(3)’s superiority requirement because “the desirability of adjudicating these claims consistently, and the probability that individual members would not have a great interest in controlling the prosecution of these claims, all indicate that a class action would be the superior method of adjudicating” Plaintiffs’ “claims under the TCPA.”

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: March 16, 2023

/s/ Avi R. Kaufman
Avi R. Kaufman