

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

KEON JACKSON,

Plaintiff,

v.

Case No.: 4:24cv331-MW/MJF

ATHENA BITCOIN, INC.,

Defendant.

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**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

This Court has considered, without hearing, Plaintiff’s unopposed motion for preliminary approval of class settlement, ECF No. 140, with the additional benefit of Plaintiff’s supplemental brief in support thereof, ECF No. 142. For the reasons that follow, the motion is due to be granted.

I. Settlement Class Certification

This Court previously granted Plaintiff’s motion for class certification and certified both the Internal Do Not Call Class, “which includes all persons in the United States (1) to whom Athena delivered, or caused to be delivered, more than one text message promoting goods or services within any 12-month period, (2) more than 30 days after receiving a message consisting solely of the word ‘STOP’, (3) between August 20, 2020, to August 20, 2024, (4) excluding business numbers,” and the FTSA Stop Class, which includes “all Florida residents (1) with telephone

numbers having a Florida area code, (2) to whom Athena delivered, or caused to be delivered, one or more text messages promoting goods or services, (3) more than 15 days after receiving a message consisting solely of the word ‘STOP’, (4) between July 1, 2021, to August 20, 2024.” ECF No. 77 at 24–25.

This Court already found the Classes represented by Plaintiff comply with the requirements of Federal Rule of Civil Procedure 23 and certified both classes. *See* ECF No. 77. This Court finds no reason to reconsider that prior ruling here. Therefore, for the same reasons stated in its prior Order Granting Motion for Class Certification, *see id.*, this Court conditionally certifies both the Internal Do Not Call Class and the FTSA Stop Class as classes for the purposes of settlement.

II. Preliminary Approval of the Settlement

Rule 23(e)(1)(A) placed on the parties the burden of providing the District Court with “information sufficient to enable it to decide whether to give notice of the propose[d Settlement Agreement] to the class.” Fed. R. Civ. P. 23(e)(1)(A). If the parties show the district court “will likely be able to” both “approve the proposal under Rule 23(e)(2)” and “certify the class for purposes of judgment on the proposal,” the district court must then “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

This Court acknowledges that the bar for preliminary approval is lower than that for final approval and there is a “strong judicial policy favoring settlement,”

Bennett v. Behring Corp., 737 F.2d 982, 984 (11th Cir. 1984), particularly in the class action context, see *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). Preliminary approval is therefore “appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. June 15, 2010) (citation omitted). Therefore, at preliminary approval, district courts’ evaluations of a settlement proposal are often more limited and do not engage in a step-by-step analysis of Rule 23(e)(2)’s requirements. This Court will engage in such a step-by-step analysis here to ensure that this Court “will likely be able to . . . approve the proposal under Rule 23(e)(2)” at the Final Approval Hearing and to prepare the parties for issues that may arise at the Hearing.

Under Rule 23(e)(2), to approve this settlement, this Court must find it is “fair, reasonable, and adequate” based on the core concerns laid out in Federal Rule of Civil Procedure Rule 23(e)(2). They are, in short, whether (A) the class representatives and class counsel have adequately represented the class, (B) the proposal was negotiated at arm’s length, (C) the relief provided for the class is adequate, and (D) the proposal treats class members equitably relative to each other. See Fed. R. Civ. P. 23(e)(2)(A)–(D). These “four core concerns” are complemented by an understanding of several additional factors laid out by the Eleventh Circuit

called the *Bennett* factors. *In re Equifax*, 999 F.3d at 1273 (citing *Bennett*, 737 F.2d at 986). The *Bennett* factors are: (1) the likelihood of success at trial, (2) the range of possible recovery, (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable, (4) the complexity, expense and duration of litigation, (5) the substance and amount of opposition to the settlement, and (6) the stage of proceedings at which the settlement was achieved. *Id.*

Courts take different approaches to analyzing Rule 23(e)(2) and the *Bennett* factors. This Court will follow the approach articulated by Judge Jordan in *Ponzio v. Pinon*, 87 F.4th 487, 495 (11th Cir. 2023), which suggested *Bennett* factors (1), (2), (4), and (6) can inform Rule 23(e)(2)(C)'s concern of whether "the relief provided for the class is adequate," and *Bennett* factors (3) and (5) can inform Rule 23(e)(2)(D)'s concern of whether "the proposal treats class members equitably relative to each other." *Id.* So, this Court will analyze each of Rule 23(e)(2)'s factors below and, when applicable, include the relevant *Bennett* factors in that analysis.

First, under Rule 23(e)(2)(A), this Court finds, for purposes of preliminary approval, that the class representatives and class counsel have adequately represented the class. This Court previously found both class counsel and Plaintiff had adequately represented the class, ECF No. 77 at 12–13, and reaffirms that finding here. Class counsel zealously advocated for the classes from the case's inception to its proposed settlement. This includes discovery, class certification,

summary judgment, motions in limine, and trial preparation on behalf of both classes. It also obtained partial summary judgment as to liability in favor of the FTSA class.

Plaintiff “provided necessary information and communicated throughout the litigation with Class Counsel, was subject to extensive discovery, appeared at mediation, provided input into settlement negotiations, and spent numerous hours preparing to testify at trial.” ECF No. 142 at 12 (citing ECF No. 142-1 ¶ 9). Based upon the record before this Court, he has no conflict with the proposed classes and his claims are typical of and not antagonistic to the members of each absent class. Accordingly, for purposes of preliminary approval only, this Court finds the class representative and class counsel have adequately represented each class.

Second, under Rule 23(e)(2)(B), this Court finds, for purposes of preliminary approval, that the parties’ proposal was negotiated at arm’s length. This case proceeded for over a year, with significant motion practice between the two parties, and settled mere weeks before trial. *See* ECF No. 142 at 13. Therefore, each side was well-informed of the other’s position when negotiating. When a case proceeds adversarially, as here, it “counsels against a finding of collusion.” *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014). Nothing in the record suggests fraud or collusion. Accordingly, for purposes of preliminary

approval only, this Court finds the proposed settlement was negotiated at arm's length as to each class.

Third, under Rule 23(e)(2)(C), this Court finds, for purposes of preliminary approval, that the relief provided to the class is adequate. This Court must “tak[e] into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” This inquiry is complemented by *Bennett* factors (1), (2), (4), and (6), that is, (1) the likelihood of success at trial¹; (2) the range of possible recovery; (4) the complexity, expense and duration of litigation; and (6) the stage of proceedings at which the settlement was achieved. *See Ponzio*, 87 F.4th at 495.

This Court begins with subpart (i), the costs, risks, and delay of trial and appeal. The parties reached this settlement mere weeks before trial, giving them plenty of time to understand the case and their respective positions. Without a settlement, TCPA liability would be determined by the jury and treble damages would be determined by this Court following the jury trial. *See* ECF No. 136 at 3. Plaintiff also claims several purportedly determinative legal issues stand to “handicap or wipe

¹ This Court notes that *Bennett* factor (1), the likelihood of success of trial, is “by far the most important” *Bennett* factor “in evaluating a class action settlement.” *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1323 (S.D. Fla. 2007) (citation omitted).

out” each class’s claims before trial. ECF No. 142 at 17. They include a recent ruling from Judge Winsor finding TCPA actions like Plaintiff’s apply only to “telephone calls,” not text messages, and recent disharmony between Florida state and federal courts as to whether FTSA damages are available per violation or per plaintiff. ECF No. 142 at 17–18. Without delving into the merits of these legal disputes, the mere fact that the parties would otherwise intend to litigate them before or at trial further supports settlement at this juncture. Additionally, the parties report that “any outcome in trial . . . would certainly be appealed,” which would drive up costs, delay recovery, and add further uncertainty to the classes’ recoveries. ECF No. 142 at 18.

Crucial to this Court’s analysis is that Defendant “might not be financially positioned to absorb a massive judgment in favor of the classes.” ECF No. 140 at 27. Plaintiff reports that Defendant is “facing numerous additional class actions and state attorney general actions.” ECF No. 142 at 18–19. Allowing the parties to settle now avoids the apparently substantial risk that, even if the classes were successful through trial and appeal, Defendant would be unable to pay any judgment.

Finally, as to the range of possible recovery, damages under the TCPA and FTSA are set by statute. If the classes were successful at trial and appeal, each class stands to recover several millions of dollars each, and more if trebled.² However,

² Specifically, according to Plaintiff’s motion for class certification, the IDNC Class received 15,793 text messages in violation of the TCPA and the FTSA class received 4,512 text messages in violation of the FTSA. ECF No. 41 at 7. Statutory damages are \$500 for each violation

given the uncertainty of proceeding, as discussed above, the settlement here of \$4.5 million dollars, less attorney's fees and expenses, is substantial. Indeed, Plaintiff reports that, to his knowledge, the proposed settlement here represents the third highest per-class member recovery in a TCPA class action settlement in history. ECF No. 142 at 8.

Next, under subpart (ii), this Court considers the effectiveness of any proposed method of distributing relief to each class, including the method of processing class-member claims. The parties intend to implement a third-party class administrator, Kroll Settlement Administration LLC, with extensive experience in TCPA class action settlements. ECF No. 140-2 ¶¶ 2–3. The parties have already given notice at the class certification stage, and at this stage will only need to re-notice those same members of settlement. ECF No. 142 at 19. Notice will be provided via SMS and mail. ECF No. 140 at 16. Kroll will maintain a website and toll-free phone number. *Id.* Members of each class will have a clear opportunity to opt out and the process for doing so will be explained to them. *Id.* at 18.

Next, under subpart (iii), this Court considers the terms of any proposed award of attorney's fees, including timing of payment. Class Counsel intends to seek “33%

and can be trebled upon a finding of knowing and willful conduct. Therefore, by this Court's calculation, were the classes successful at trial and received an award of \$500 per text message, the IDNC Class would recover approximately \$7.9 million dollars before trebling and the FTSA class would recover approximately \$2.3 million dollars before trebling.

of the Settlement Fund plus costs and expenses not expected to exceed \$30,000.” ECF No. 140 at 15. This one-third fee is reasonable and “well within the range of a customary fee.” *Lunsford v. Woodforest Nat’l Bank*, 2014 WL 12740375, at *15 (N.D. Ga. May 19, 2014) (collecting cases finding one-third reasonable for attorney’s fees).

Finally, under subpart (iv), Plaintiff reports that the only agreement required to be identified under Rule 23(e)(3) is the parties’ Settlement Agreement. This Court has reviewed the Settlement Agreement and discusses the portions relevant to preliminary approval throughout this Order. In sum, each of the four subparts to Rule 23(e)(2)(C) weigh in favor of a preliminary finding that the relief provided for each class is adequate.

Fourth, under Rule 23(e)(2)(D), this Court finds, for purposes of preliminary approval, that the proposal treats class members equitably relative to each other. This Court’s analysis is complemented by *Bennett* factors (3) and (5), that is, (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (5) the substance and amount of opposition to the settlement. *See Ponzio*, 87 F.4th at 494–95.

The Settlement Fund and its procedure for distribution does not differentiate between class members, both within each class and with respect to the other. Class members are entitled to recover on a per violation, not per capita, basis, ECF No.

140 at 7, and any funds that remain after initial distribution to the class members will be distributed back to qualifying class members, ECF No. 142 at 30.

While proceeding to trial could result in millions of dollars in statutory damages for each class, plus a potential additional award for knowing and willful conduct, such a recovery is highly uncertain given the risks of continuing to litigate the case as discussed above. A settlement of \$4.5 million (less attorney's fees and other expenses) is well within the reasonable range of recovery. Again, Plaintiff represents it is third highest per-class member recovery in a TCPA class action settlement in history. ECF No. 142 at 8.

Finally, at this juncture, the parties agree to the settlement and submit their proposal jointly, and there is no other known opposition to the settlement. Therefore, for purposes of preliminary approval, this Court finds that the parties' proposal treats each class's members equitably relative to each other.

In sum, the record reflects that the proposal has satisfied the requirements for preliminary approval. The parties have provided information sufficient to determine that this Court will likely be able to approve the proposal under Rule 23(e)(2). Therefore, it is appropriate to effectuate notice to the Settlement Classes, as set forth below and in the Settlement, and schedule a Final Approval hearing to assist this Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

III. Approval of Notice and Notice Program and Direction to Effectuate Notice

This Court approves the form and content of the Class Notices in the forms attached to the Settlement, as well as the Claim Forms. This Court further finds that the Class Notice program described in the Settlement and the Kroll Declaration is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Classes of the pendency of the Action, certification of the Settlement Classes, the terms of the Settlement, Class Counsel's attorney's fees application and the request for Service Award for Plaintiff, and their rights to opt-out of each 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. By agreement of the Parties, Kroll Settlement Administration will serve as the Class Action Administrator. The Class Action Administrator must implement the Class Notice program, as set forth below and in the Settlement, using the Class Notices in the forms attached to the Settlement and approved by this Preliminary Approval Order. Notice must be provided to the members of the Settlement Classes pursuant to the Class Notice program, as specified in the Settlement and approved by this Preliminary Approval Order. The Class Notice program must include, to the extent

necessary, SMS Notice, Mail Notice, and Long-form Notice, as set forth in the Settlement and below.

SMS Notice

The Class Action Administrator must administer SMS Notice as set forth in the Settlement. SMS Notice must be completed no later than 21 days after the entry of this Order.

Mail Notice

The Class Action Administrator must administer Mail Notice as set forth in the Settlement. Mail Notice must be completed no later than 21 days after the entry of this Order.

Settlement Website

The Class Action Administrator must establish a Settlement Website as a means for members of the Settlement Classes to obtain notice of, and information about, the Settlement. The Settlement Website must be made available to the Settlement Classes on the date the Class Action Administrator sends the SMS and Mail Notices. The Settlement Website must include, among other things, copies of the Long-Form Notices and Claim Forms. The Settlement Website shall be accessible for one year after it is established.

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

IV. Final Approval Hearing, Opt-Outs, and Objections

A Final Approval Hearing will be held Monday, August 10, 2026, at 10:00 a.m. (ET), to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order, and to determine whether Class Counsel's Fee Application and request for a Service Award for the Class Representative should be granted. Any person within the Settlement Classes who wishes to be excluded from their Settlement Class may exercise their right to opt-out of that Settlement Class by following the opt-out procedures set forth in the Settlement and in the Notices at any time during the Opt-Out Period.

To be valid and timely, opt-out requests must be postmarked or submitted no later than 45 days after Court-approved notice is issued.

Any member of either Settlement Class may object to that Settlement, Class Counsel's Fee Application, or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendant's Counsel, at the addresses indicated in the Long-Form Notices. For an objection to be considered by this Court, the objection must be postmarked or submitted no later than 45 days after Court-approved notice is issued.

To be valid, an objection must include the following information: (a) the name of the Action; (b) the objector's full name, address, telephone number, and email address (if any); (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel; (d) 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; (e) 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 or Fee Application; (f) the number of times in which the objector's counsel and their law firm 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 counsel and their law firm has made such an objection, and 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 by 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; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of

the objection (if any); (h) the objector's signature (an attorney's signature is not sufficient).

V. Further Papers In Support Of Settlement and Fee Application

Plaintiff and Class Counsel must file their Motion for Final Approval of the Settlement, Fee Application, costs and request for a Service Award for Plaintiff, no later than 21 days after the entry of this Order. Plaintiff and Class Counsel must file their responses to timely filed objections to the Motion for Final Approval of the Settlement, the Fee Application, and the Class Representative's Service Award Petition no later than ninety (90) days after Preliminary Approval.

VI. Effect of Failure to Approve the Settlement or Termination

If the Settlement is not finally approved by this Court, or for any reason the Parties fail to obtain a Final Approval Order as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following conditions apply: (a) All orders and findings entered in connection with the Settlement will become null and void and have no further force and effect, cannot be used or referred to for any purpose whatsoever, and cannot 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 Defendants or Plaintiff on any point of fact or law; and (c) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement,

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, any failure of this Court to approve the Settlement and/or any objections or interventions may be used as evidence.

VII. Stay/Bar Of Other Proceedings

This Court will stay all proceedings in this Action until further Order, except as may be necessary to implement the terms of the Settlement. Also, Plaintiff, all persons in the Settlement Classes, 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 pending final determination of whether the Settlement should be approved. Accordingly, on consideration of the Motion, the Settlement, and all attached exhibits, as well as the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the motion for preliminary approval, ECF No. 140, is **GRANTED**.

Accordingly, it is **ORDERED**:

1. The proposed Settlement Classes meet the requirements of Federal Rule of Civil Procedure 23 and are certified as classes for settlement purposes only.

2. Plaintiff Keon Jackson is appointed as Class Representative for each Settlement Class; The HQ Firm, P.C., is appointed Class Counsel for each Settlement Class; and Kroll Settlement Administration will serve as the Class Action Administrator for each Settlement Class.

3. The Settlement is preliminarily approved as the result of informed, good faith, negotiations between the Parties and their capable and experienced counsel, not the result of collusion, and within the range of reasonableness.

4. 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 Classes of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's application for an award of attorney's fees and expenses and request for a Service Award for Plaintiff, and their rights to opt-out of the Settlement Classes or object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiff.

5. Good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist this Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order, and whether to grant Class Counsel's Fee Application and request for a Service Award for Plaintiff.

6. All proceedings in the Action are **STAYED** until further order of this Court, except as may be necessary to implement the terms of the Settlement. Also, pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Classes, 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.

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

<u>Event</u>	<u>Timeline</u>
Notice of court-approved settlement issued	Within 21 days of entry of Order preliminarily approving settlement
Deadline for motion for Final Approval of the Settlement, Class Counsel's Fee Petition and Class Representative's Service Award Petition	Within 21 days of entry of Order preliminarily approving settlement ³
Deadline for submitting and/or mailing of opt-outs	Postmarked or submitted within 45 days after court-approved notice is issued

³ Plaintiff originally proposed this occur “[n]o later than 30 days before the Final Approval Hearing.” ECF No. 140 at 30. Eleventh Circuit precedent requires this Court to “sequence filings such that class counsel file and serve their attorneys’-fee motion *before* any objection pertaining to fees is due.” *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020) (emphasis in original). Plaintiff’s supplemental briefing therefore agreed to “file a Motion for Attorneys’ Fees, Costs, and Service Award before class members’ objections and/or opt-outs are due.” ECF No. 142 at 34. Therefore, the deadline has been updated accordingly.

Deadline for submitting objections	Postmarked or submitted within 45 days after court-approved notice is issued
Deadline for Plaintiff and Class Counsel to file their response to timely filed objections to the Motion for Final Approval of the Settlement, Class Counsel’s Fee Petition, and Class Representative’s Service Award Petition	Within 90 days of entry of Order preliminarily approving settlement
Deadline for submitting and/or mailing of claim form	Postmarked or submitted within 90 days after court-approved notice is issued
Final Approval Hearing	Monday, August 10, 2026, at 10:00 a.m. (ET)

SO ORDERED on March 11, 2026.

s/Mark E. Walker
United States District Judge