

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ANGELA KEITH,  
on behalf of herself and others similarly situated,

Plaintiff,

v.

HY CITE ENTERPRISES, LLC,

Defendant.

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OPINION and ORDER

24-cv-729-jdp

Plaintiff Angela Keith alleges that defendant Hy Cite Enterprises, LLC violated the Telephone Consumer Protection Act (TCPA) by making a pre-recorded call to her cellphone asking her to make payments on an account that did not belong to her. Keith says that Hy Cite Enterprises placed the same type of call to almost 18,000 other individuals who were designated in Hy Cite Enterprises records as a potential “wrong number,” meaning that the call recipient did not have an account with Hy Cite Enterprises. Now before the court is Keith’s unopposed motion for class certification, preliminary approval of the parties’ settlement agreement, and approval of the proposed notice to the class. Dkt. 25. The court will grant the motion and set this case for a fairness hearing.

**A. Class certification**

Under Rule 23, a class may be certified if it meets the following requirements: (1) the scope of the class and the class claims are clearly defined, Fed. R. Civ. P. 23(c)(1)(B); (2) the class is sufficiently numerous, Fed. R. Civ. P. 23(a); (3) the class includes common questions of law or fact, and is adequately represented by named plaintiffs who have claims typical of the class, *id.*; (4) class counsel is adequate, Fed. R. Civ. P. 23(g)(1); and (5) the class meets the requirements of at least one of the types of class actions listed in Rule 23(b). The parties in

this case rely on Rule 23(b)(3), which applies when the common questions of law or fact predominate over individual ones and a class action is superior to other methods of adjudicating the case.

The court concludes that the parties have satisfied each of the relevant Rule 23 requirements for certification.

**Class definition.** The parties propose the following class: “All persons throughout the United States (1) to whom Hy Cite Enterprises, LLC placed a call, (2) directed to a telephone number assigned to a cellular telephone service, but not assigned to a Hy Cite Enterprises, LLC customer or accountholder, (3) in connection with which Hy Cite Enterprises, LLC used an artificial or prerecorded voice, (4) from October 22, 2020, through September 10, 2025.” This definition uses clear, objective criteria and allows the parties to identify who the class members are.

**Numerosity.** The parties represent that there are 17,902 members in the class. That is plainly numerous enough to make joinder impractical. *See Mulvania v. Sheriff of Rock Island Cty.*, 850 F.3d 849, 859 (7th Cir. 2017) (“[A] forty–member class is often regarded as sufficient to meet the numerosity requirement.”).

**Commonality, typicality, adequacy of the named plaintiff, predominance.** These factors all focus on the same general question: are the class claims similar enough to each other that it makes sense to resolve them collectively? *See Scott v. Dart*, 99 F.4th 1076, 1088 (7th Cir. 2024); *Santiago v. City of Chicago*, 19 F.4th 1010, 1016–17 (7th Cir. 2021); *Lacy v. Cook Cty., Illinois*, 897 F.3d 847, 866 (7th Cir. 2018); *CE Design Ltd. v. King Architectural Metals, Inc.*, 637 F.3d 721, 724–25 (7th Cir. 2011). The parties agree for the purpose of the proposed settlement that Hy Cite Enterprises made unauthorized, pre-recorded calls to each of the class

members, who were not Hy Cite customers. They do not identify any significant differences or conflicts among the class members. This is enough to support a finding for the purpose of class certification that there are common questions, Keith's claims are typical of the class, Keith is an adequate class representative, and common questions predominate over individual questions.

**Adequacy of counsel.** Class counsel have significant experience litigating and obtaining settlements for similar class actions. *See* Fed. R. Civ. P. 23(g)(1); *Jewell v. HSN, Inc.*, No. 19-cv-247-jdp, 2020 WL 4904427 (W.D. Wis. Aug. 19, 2020) (approving Greenwald Davidson Radbil PLLC as class counsel in another TCPA class action). The court will approve Greenwald Davidson Radbil PLLC as class counsel.

**Superiority.** A class action is superior to other methods of adjudicating the case because the large size of the class and the small amount of damages for each class member make individual lawsuits impractical. *See* Fed. R. Civ. P. 23(b)(3); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 664 (7th Cir. 2015).

The court will certify the class. Plaintiff's earlier motion for class certification, Dkt. 15, will be denied as moot.

## **B. Preliminary approval**

A court may grant preliminary approval of a settlement if the court "will likely be able to" find that the settlement is "fair, reasonable, and adequate" after a hearing. Fed. R. Civ. P. 23(e)(1)(B) and (e)(2). The court must consider several factors, including the adequacy of relief to the class, the relative fairness of the settlement for each class member, and the reasonableness of the attorney fees. *Id.*

The settlement agreement provides that Hy Cite Enterprises will pay a total of \$4,750,000, to be divided as follows:

- Settlement notice and administrative expenses, estimated to be \$115,987;
- class counsel's costs, subject to court approval but not more than \$15,000;
- class counsel's fees, no more than 36 percent of the total settlement (after administrative expenses are subtracted), which would amount to approximately \$1.67 million;
- an incentive award to Keith, subject to court approval, but not more than \$15,000; and
- the remainder for the class (approximately \$2.94 million).

To receive a share of the settlement, class members will have to submit a claim certifying that they received one or more prerecorded voice messages from Hy Cite Enterprises during the class period, and that they do not have an account with Hy Cite Enterprises. Dkt. 27, § 11.4. Every class member who submits a valid claim will receive the same, pro rata share of the settlement. *Id.* Each class member's share will be determined by the number of class members who submit a valid claim: if a class member does not submit a valid claim, that class member's share will be redistributed among the rest of the class. *Id.* If a class member does not cash his or her check within 120 days, the check becomes void. The settlement administrator will redistribute any remaining funds if there are enough uncashed checks to send at least \$25 to each class member who has submitted a claim; otherwise, the remaining funds will be paid out as a *cy pres* award to the National Consumer Law Center.

The settlement appears to be fair, reasonable, and adequate. If the maximum expenses and fees are requested and all members of the class file a claim, this would result in each class

member receiving about \$165. That's lower than the \$500 recovery available under the statute for each unauthorized call, *see* 47 U.S.C. § 227(b)(3), but it is higher than most similar TCPA class action settlements. *See Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932 (N.D. Ill. Oct. 28, 2019) (noting that the typical recovery in these cases is less than \$100 per claimant). And the parties represent that the actual recovery for class members who file claims is likely to be between \$650 and \$1000, which is more than the usual statutory damages per call and significantly more than most TCPA settlement classes. *See Stark v. Blue Cross & Blue Shield of N. Carolina*, No. 1:23-CV-22, 2025 WL 524781 (M.D.N.C. Feb. 18, 2025) (\$600 per claiming class member is well above the norm); *Johnson v. Comodo Grp., Inc.*, No. CV 16-4469, 2026 WL 296417 (D.N.J. Feb. 4, 2026) (\$596.17 per claiming class member is "far above the average recovery" for TCPA settlements). The settlement was reached relatively early in the proceedings, was the result of arms-length negotiations between experienced counsel, and the parties relied on an experienced class-action mediator. All these factors suggest that the settlement amount is fair, reasonable, and adequate.

It also appears that the settlement agreement treats class members equitably in comparison to each other. However, the parties' motion for final approval should address why a *pro rata* distribution of the settlement fund is a fair distribution method, as opposed to alternative methods such as basing each class member's award on the number of calls the member received.

The parties chose Kroll Settlement Administration, LLC as their settlement administrator. Dkt. 27, ¶ 2.2. Plaintiff filed a declaration from Kroll along with its previous motion to certify the class establishing its qualifications to serve as administrator. Dkt. 21. And a number of cases suggest that Kroll has significant experience and is routinely approved by

courts to administer class action settlements. *Reed v. ALN Med. Mgmt. LLC*, No. 4:25CV3067, 2025 WL 3496751, at \*4 (D. Neb. Dec. 5, 2025); *Carbone v. Ltd. Run Games, Inc.*, No. 24-CV-08861 (NJC) (JMW), 2025 WL 3481450, at \*14 (E.D.N.Y. Aug. 21, 2025); *Tate v. EyeMed Vision Care, LLC*, No. 1:21-CV-36, 2025 WL 2119389, at \*5 (S.D. Ohio July 29, 2025); *Smith v. Apria Healthcare LLC*, No. 1:23-CV-01003-JPH-KMB, 2025 WL 1588950, at \*9 (S.D. Ind. June 5, 2025).

The court has also reviewed the proposed notices to the class, Dkt. 27, at 22–31. These comply with the requirements of Federal Rule of Civil Procedure 23, with two problems. First, in the explanation about the fairness hearing, the notice says that the hearing will take place virtually, but the court’s general practice is to hold fairness hearings in person. The parties should change this language and explain that the fairness hearing will take place at the federal courthouse in Madison, Wisconsin. Second, the parties have proposed giving class members 75 days from the date of preliminary approval to opt out of the class, file an objection, or file a claim. That’s not enough time if notices aren’t sent out for 30 days. The court will give class members 75 days from the date notices are sent out to opt out, file an objection, or file a claim.

The following issues are not a barrier to preliminary approval, but they will need to be addressed in the motion for final approval.

First, class counsel says that they will seek court approval of costs up to \$15,000 and fees up to 36% of the settlement fund. That’s a higher fee percentage than this court usually awards, so class counsel should take care to justify that amount in its motion for fees. Further, this court requires a lodestar cross check when reviewing class counsel’s requested fees, even when the requested percentage of recovery does not seem obviously unreasonable. *See Americana Art China Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir.

2014) (holding that courts have discretion to apply either percentage-of-recovery method or lodestar method). This cross check means that counsel's motion for attorney fees must comply with the court's procedures for fee petitions. Those procedures may be found on page 39 of the court's standard attachments, which were provided with the preliminary pretrial conference order, Dkt. 10. Among other things, the procedures require counsel to include billing records showing that their fees are reasonable. Class counsel should comply with these procedures in any motion for final approval, for both their attorney fees and legal expenses.

Second, plaintiffs say that Keith will petition the court for a service award of up to \$15,000. That's a higher service award than this court usually approves. Keith's motion should include a declaration from class counsel or Keith herself explaining in reasonable detail the contributions that Keith made to the case to justify the proposed service award.

One final point. The parties are reminded that they are responsible for notifying the relevant state and federal officials under 28 U.S.C. § 1715. The court expects the parties to comply with those requirements so that there are no delays if and when the court gives final approval of the settlement.

## ORDER

IT IS ORDERED that:

1. The following class is certified under Federal Rule of Civil Procedure 23: "All persons throughout the United States (1) to whom Hy Cite Enterprises, LLC placed a call, (2) directed to a telephone number assigned to a cellular telephone service, but not assigned to a Hy Cite Enterprises, LLC customer or accountholder, (3) in connection with which Hy Cite Enterprises, LLC used an artificial or prerecorded voice, (4) from October 22, 2020, through September 10, 2025."
2. The court approves James Davidson and Michael Greenwald of Greenwald Davidson Radbil, PLLC as class counsel.

3. Plaintiff's motion for preliminary approval of the settlement, Dkt. 25, is GRANTED.
4. Plaintiff's previous motion for class certification, Dkt. 15, is DENIED as moot.
5. The class administrator may have until April 24, 2026, to send out the class notices, giving members 75 days to opt out of the class, file an objection, or file a claim.
6. The parties may have until August 25, 2026, to file a motion for final approval, a motion for fees and costs, and a motion for approval of the service award.
7. The court will hold an in-person fairness hearing on October 6, 2026, at 12:30 p.m.

Entered March 24, 2026.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge