

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GRACE MURRAY, AMANDA ENGEN,  
STEPHEN BAUER, JEANNE TIPPETT,  
ROBIN TUBESING, NIKOLE SIMECEK,  
MICHELLE MCOSKER, JACQUELINE  
GROFF, and HEATHER HALL, on behalf  
of themselves and others similarly situated,

Plaintiffs,

Plaintiffs,

v.

GROCERY DELIVERY E-SERVICES  
USA INC. DBA HELLO FRESH,

Defendant.

Case No. 19-cv-12608-WGY

~~PROPOSED~~ FINAL APPROVAL ORDER

On May 11, June 9, July 8 and September 29, 2021, this Court heard the Motion for Final Approval of the Class Action Settlement and for Entry of Judgment filed by Plaintiffs, as well as the Status Report and Amendment No. 1 to the Settlement Agreement and Release.<sup>1</sup> This Court reviewed: (a) the motion and the supporting papers, including the Settlement Agreement and Release (“Settlement Agreement”); (b) the objections filed with or presented to the Court; (c) the responses to the objections; and (d) counsel’s arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

<sup>1</sup> Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

**FINDINGS:**

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and therefore approves it. Among other matters considered, the Court took into account: (a) the complexity of Plaintiffs' theory of liability; (b) the arguments raised by HelloFresh in its pleadings that could potentially preclude or reduce the recovery by Settlement Class Members; (c) delays in any award to the Settlement Class that would occur due to further litigation and appellate proceedings; (d) the amount of discovery that has occurred; (e) the relief provided to the Settlement Class; (f) the recommendation of the Settlement Agreement by counsel for the Parties; and (g) the low number of objectors to the Settlement Agreement, demonstrating that the Settlement Class has a positive reaction to the proposed settlement.

2. The Court also finds that extensive arm's-length negotiations have taken place, in good faith, between Settlement Class Counsel and HelloFresh's Counsel resulting in the Settlement Agreement. These negotiations were presided over by an experienced mediator.

3. The Settlement Agreement provides substantial value to the Settlement Class in the form of cash payments.

4. Notice was provided to Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed

settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

5. HelloFresh filed a copy of the notice it gave on November 25, 2020 pursuant to 28 U.S.C. § 1715(b), and the notice complies with the requirements of 28 U.S.C. § 1715(b).

6. Plaintiffs and Settlement Class Counsel have fairly and adequately protected the Settlement Class' interests, and the Parties have adequately performed their obligations under the Settlement Agreement.

7. For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, this Court finds and determines that the proposed Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Federal Rule of Civil Procedure 23 (a) and (b)(3).

**IT IS ORDERED THAT:**

8. **Class Members.** The Settlement Class is certified as:

All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

9. **Binding Effect of Order.** This Order applies to all claims or causes of action settled under the Settlement Agreement and binds all Settlement Class Members, including those

who did not properly request exclusion under paragraph 13 of the Preliminary Approval Order. This Order does not bind persons who filed timely and valid requests for exclusion. The list of persons excluded from the Settlement Class because they timely filed valid requests for exclusion has been included as an exhibit to the Declaration of Jay Geraci, employee of KCC Class Action Services, LLC submitted in connection with the Plaintiffs' Motion for Final Approval of the Settlement.

**10. Release.** Plaintiff and all Settlement Class Members who did not properly request exclusion are: (1) deemed to have released and discharged HelloFresh from all claims arising out of or asserted in the Action and all claims released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Sections 2.2.1 and 2.2.2 of the Settlement Agreement and are specifically incorporated herein by this reference. This includes, but is not limited to, the following relief provided by Amendment No. 1 to the Settlement Agreement and Release:

**2.2.2. Any Future Claims For Violation Of The TCPA Not Subject To Arbitration.** In the event that any of the Settlement Class Members have future claims for violation of the TCPA or any similar state law claims, they are not releasing such claims and HelloFresh agrees that if any such claims for violation of the TCPA are filed in a court of law within four years, or the applicable statute of limitations, whichever is longer, of the Effective Date, HelloFresh will not seek to compel arbitration of any such claims. However, if a Settlement Class Member desires to participate in an arbitration related to alleged claims for violation of the TCPA or any similar state law claims, this agreement will not prohibit them from doing so.

**11. Class Relief.** HelloFresh is directed to provide the Settlement Fund to the Settlement Administrator according to the terms and timeline stated in the Settlement Agreement. The Settlement Administrator is further directed to issue payments to each Settlement Class

Member who submitted a valid and timely Claim Form (i.e., each Authorized Claimant) according to the terms and timeline stated in the Settlement Agreement.

**12. Fees and Costs.** Settlement Class Counsel are awarded \$3,430,256.23 from the Settlement Fund in attorneys fees and costs. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.

**13. Service Payment.** The following service payments are awarded: \$10,000 to Grace Murray and Amanda Engen, \$5,000 to Jeanne Tippet and Stephen Bauer and \$2,000 to Robin Tubesing, Nikole Simecek, Michelle McOsker, Jacqueline Groff and Heather Hall from the Settlement Fund. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.


**14. Settlement Administrator Expenses.** The Settlement Administrator is awarded all reasonable expenses for administration of the settlement from the Settlement Fund, which was estimated to be \$450,000.

**15. Cy Pres Distribution.** Pursuant to Paragraphs 3.5, 3.6, and 3.8 of the Settlement Agreement, any unpaid portion of the Settlement Fund shall be paid to the National Consumer Law Center.

**16. Miscellaneous.** No person or entity shall have any claim against HelloFresh, HelloFresh's Counsel, Plaintiff, the Settlement Class Members, Settlement Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with the Agreement.

17. **Court's Jurisdiction.** The Court will retain jurisdiction over this Action and the Parties for all purposes related to this settlement. This includes, but is not limited to, any motions for discovery relating to the objectors.

SO ORDERED this 15<sup>th</sup> day of Oct., 2021.

  
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THE HONORABLE WILLIAM G. YOUNG  
UNITED STATES DISTRICT COURT