

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BRANDI WESLEY, *on behalf of herself and others similarly situated,*

Plaintiff,

v.

SNAP FINANCE, LLC,

Defendant.

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Civil Action No. 2:20-cv-00148-RJS-JCB

District Judge Robert J. Shelby

Magistrate Judge Jared C. Bennett

SNAP FINANCE, LLC,

Third-Party Plaintiff,

v.

DERRICK DEON JACKSON, JR., a/k/a
DERRICK JOHNSON,

Third-Party Defendant.

This Court is advised that the parties to this action, Brandi Wesley (“Plaintiff”) and Snap Finance LLC (“Defendant”), through their respective counsel, have agreed, subject to this Court’s approval following notice to the settlement class members and a hearing, to settle the above-captioned lawsuit (“Lawsuit”) upon the terms and conditions set forth in the parties’ class action settlement agreement (“Agreement”), which Plaintiff filed with this Court:

Based on the Agreement and all of the files, records, and proceedings in this matter, and upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and a hearing should and will be held on **February 7, 2023**, after notice to the settlement class members, to confirm that the settlement is fair, reasonable, and adequate, and to determine whether

a final order and judgment should be entered in this Lawsuit:

IT IS HEREBY ORDERED:

This Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties.¹

In compliance with the Class Action Fairness Act of 2005,² Defendant will cause to be served written notice of the class settlement on the United States Attorney General and the Attorneys General of each state in which any settlement class member resides.

Having previously certified this case as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure,³ the Court affirms its prior certification and preliminarily certifies this case as a class action on behalf of the following settlement class:

All persons throughout the United States (1) to whom Snap Finance LLC placed, or caused to be placed, a call, (2) directed to a number assigned to a cellular telephone service, but not assigned to a current or former Snap Finance LLC accountholder, (3) in connection with which Snap Finance LLC used an artificial or prerecorded voice, (4) from September 1, 2019 through June 14, 2022.

The proposed settlement class only differs from the previously certified class in terms of its duration.⁴ The previously certified class ran through the date of certification, September 21, 2021.⁵ This extension of the period encompassing the class does not affect the Court's prior analysis under Rules 23(a) and 23(b)(3).⁶

Therefore, this Court preliminarily finds, now for settlement purposes, that this action satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

¹ See Dkt. 40, *Amended Complaint* ¶¶ 1–3, 6.

² 28 U.S.C. §§ 1332(d), 1453, 1711–1715.

³ Dkt. 92, *Memorandum Decision and Order Granting Class Certification* at 9–39.

⁴ See Dkt. 119, *Unopposed Motion for Preliminary Approval of Class Action Settlement* at 3.

⁵ See Dkt. 92 at 38.

⁶ See *id.* at 11–38.

A. The settlement class members are so numerous and geographically dispersed that joinder of all of them is impracticable;⁷

B. There are questions of law and fact common to the settlement class members, which predominate over any individual questions;⁸

C. Plaintiff's claims are typical of the claims of the settlement class members;⁹

D. Plaintiff and class counsel have fairly and adequately represented and protected the interests of all of the settlement class members; and¹⁰

E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.¹¹

This Court appoints Plaintiff as the representative for the settlement class, and appoints Aaron D. Radbil and Michael L. Greenwald, of Greenwald Davidson Radbil PLLC, as class counsel for the settlement class.

Furthermore, this Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Agreement,¹² is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the settlement class members, when considering, in their totality, the following factors: “(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility

⁷ See Fed. R. Civ. P. 23(a)(1).

⁸ See *id.* 23(a)(2), 23(b)(3).

⁹ See *id.* 23(a)(3).

¹⁰ See *id.* 23(a)(4).

¹¹ See *id.* 23(b)(3).

¹² Dkt. 120-1, *Settlement Agreement*.

of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.”¹³

This Court also considered the following factors in preliminarily finding that the settlement of this action, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the settlement class members:

- (A) whether Plaintiff and class counsel have adequately represented the class;
- (B) whether the proposal was negotiated at arm’s length;
- (C) whether the relief provided for the class is adequate, taking 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); and
- (D) whether the proposal treats class members equitably relative to each other.¹⁴

A third-party settlement administrator—KCC Class Action Services LLC—will administer the settlement and distribute notification to the settlement class members. The settlement administrator will be responsible for mailing the approved class action notices and settlement checks to the settlement class members. All reasonable costs of notice and administration will be paid from the \$5 million common settlement fund.

This Court approves the form and substance of the proposed notice of the class action

¹³ *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984).

¹⁴ Fed. R. Civ. P. 23(e)(2).

settlement, which includes the postcard notice, the detachable claim form, and the question-and-answer notice to appear on the dedicated settlement website.¹⁵ The proposed notice shall be updated to incorporate the dates set forth within this Order and the option for settlement class members to attend the final fairness hearing via zoom. The court will provide a zoom access link to be posted on the dedicated settlement website.

The proposed notice and method for notifying the settlement class members of the settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice.¹⁶ This Court additionally finds that the proposed notice is clearly designed to advise the settlement class members of their rights.

In accordance with the Agreement, the settlement administrator will mail the notice to the settlement class members as expeditiously as possible, but in no event later than 30 days after this Court's entry of this order, *i.e.*, **no later than October 28, 2022**.

Any settlement class member who desires to be excluded from the settlement must send a written request for exclusion to the settlement administrator with a postmark date no later than 75 days after this Court's entry of this order, *i.e.*, **no later than December 12, 2022**. To be effective,

¹⁵ See Dkt. 120-1 at 19–32.

¹⁶ See Dkt. 114, *Memorandum Decision and Order Approving Plaintiff's Rule 23(c)(2) Class Notice Program* (approving substantively similar class notice prior to the parties' settlement); *id.* at 12–15 (distinguishing previously proposed notice, for the purpose of informing potential class members of the action's pendency and their related rights, from notice for the purpose of informing potential class members of a settlement or judgment); Fed. R. Civ. P. 23(c)(2)(B); *see also, e.g., Bonoan v. Adobe, Inc.*, No. 3:19-CV-01068-RS, 2020 WL 6018934, at *2 (N.D. Cal. Oct. 9, 2020) (approving the form and substance of materially similar postcard notice, postcard claim form, and question-and-answer notice, and finding that the proposed form and method for notifying settlement class members of the settlement and its terms and conditions met the requirements of Rule 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to the notice); *Knapper v. Cox Commc'ns, Inc.*, No. 2:17-cv-00913-SPL, ECF No. 120 (D. Ariz. Jul. 12, 2019) (same); *Williams v. Bluestem Brands, Inc.*, No. 8:17-cv-1971-T-27AAS, 2019 WL 1450090, at *2 (M.D. Fla. Apr. 2, 2019) (same); *James v. JPMorgan Chase Bank, N.A.*, No. 8:15-cv-2424-T-23JSS, 2016 WL 6908118, at *2 (M.D. Fla. Nov. 22, 2016) (same).

the written request for exclusion must state the settlement class member's full name, address, telephone number called by Defendant, along with a statement that the settlement class member wishes to be excluded, and must be signed by the settlement class member. Any settlement class member who submits a valid and timely request for exclusion will not be bound by the terms of the Agreement. Any settlement class member who fails to submit a valid and timely request for exclusion will be considered a settlement class member and will be bound by the terms of the Agreement.

Any settlement class member who intends to object to the fairness of the proposed settlement must file a written objection with this Court within 75 days after this Court's entry of this order, *i.e.*, **no later than December 12, 2022**. Further, any such settlement class member must, within the same time period, provide a copy of the written objection to:

Aaron D. Radbil
Michael L. Greenwald
Greenwald Davidson Radbil PLLC
5550 Glades Road
Suite 500
Boca Raton, FL 33431

Jenny N. Perkins
Martin C. Bryce, Jr.
Ballard Spahr
1735 Market Street
51st Floor
Philadelphia, PA 19103

Melanie J. Vartabedian
Ballard Spahr LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111

United States District Court for the District of Utah
351 South West Temple Street
Salt Lake City, Utah 84101

To be effective, a notice of intent to object to the settlement must include the settlement class member's:

- a. Full name;
- b. Address;
- c. Telephone number called by Defendant, demonstrating membership in the settlement class;
- d. Statement that he or she is not a current or former accountholder with Defendant;
- e. Statement demonstrating membership in the settlement class;
- f. Identification of any documentation demonstrating membership in the settlement class or which he or she desires this Court to consider;
- g. A statement of the specific objection(s);
- h. A list of exhibits the settlement class member intends to present; and
- i. A statement noting whether he or she intends to appear at the fairness hearing.

Any settlement class member who has timely filed an objection may appear at the final fairness hearing, in person or by counsel, to be heard to the extent allowed by this Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for an award of attorneys' fees, costs, and litigation expenses. Any objection that includes a request for exclusion will be treated as an exclusion. And any settlement class member who submits both an exclusion and an objection will be treated as having excluded himself or herself from the settlement and will have no standing to object.

If this Court grants final approval of the settlement, the settlement administrator will mail a settlement check to each settlement class member who submits a valid, timely claim.

This Court will conduct a final fairness hearing via zoom on **February 7, 2023 at 1:30 pm**, to determine:

- A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 23;
- B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the settlement class members and should be approved by this Court;
- C. Whether a final order and judgment, as provided under the Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the released claims against the released parties; and
- D. To discuss and review other issues as this Court deems appropriate.

Attendance by settlement class members at the final fairness hearing is not necessary. Settlement class members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement class members wishing to be heard are, however, required to appear at the final fairness hearing. The final fairness hearing may be postponed, adjourned, transferred, or continued without further notice to the class members.

Memoranda in support of the proposed settlement must be filed with this Court no later than thirty days before the final fairness hearing *i.e.*, **no later January 8, 2023**. Opposition briefs to any of the foregoing must be filed no later than fourteen days before the final fairness hearing, *i.e.*, **no later than January 24, 2023**. Reply memoranda in support of the foregoing must be filed with this Court no later than seven days before the final fairness hearing, *i.e.*, **no later than January 31, 2023**.

Memoranda in support of any petitions for attorneys' fees and reimbursement of costs and

litigation expenses by class counsel, or in support of an incentive award, must be filed with this Court no later than thirty-five days before the deadline for settlement class members to object to, or exclude themselves from, the settlement (or forty days after this Court's entry of this Order), *i.e.*, **no later than November 7, 2022**. Opposition briefs to any of the foregoing must be filed no later than seventy-five days after entry of this Order, *i.e.*, **no later than December 12, 2022**. Reply memoranda in support of the foregoing must be filed with this Court no later than fourteen days after the deadline for settlement class members to object to, or exclude themselves from, the settlement, *i.e.*, **no later than December 26, 2022**.

The Agreement and this order will be null and void if any of the parties terminates the Agreement per its terms. Certain events described in the Agreement, however, provide grounds for terminating the Agreement only after the parties have attempted and completed good faith negotiations to salvage the settlement but were unable to do so.

If the Agreement or this order are voided, then the Agreement will be of no force and effect and the parties' rights and defenses will be restored, without prejudice, to their respective positions as if the Agreement had never been executed and this order never entered.

This Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Agreement.

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This Court sets the following schedule:

<u>Date</u>	<u>Event</u>
September 28, 2022	Preliminary Approval Order Entered
October 28, 2022	Notice Sent (thirty days after entry of Preliminary Approval Order)
November 7, 2022	Attorneys' Fees Petition Filed (forty days after entry of Preliminary Approval Order)
December 12, 2022	Opposition to Attorneys' Fees Petition (seventy-five days after entry of Preliminary Approval Order)
December 12, 2022	Deadline to Submit Claims, Send Exclusion, or File Objection (seventy-five days after entry of Preliminary Approval Order)
December 26, 2022	Reply in Support of Attorneys' Fees Petition (fourteen days after the deadline for settlement class members to submit claims, object to, or exclude themselves from, the settlement)
January 8, 2023	Motion for Final Approval Filed (thirty days before final fairness hearing)
January 24, 2023	Opposition to Motion for Final Approval Due (fourteen days before final fairness hearing)
January 31, 2023	Reply in support of Motion for Final Approval (seven days before final fairness hearing)
February 7, 2023 at 1:30 pm (via zoom)	Final Fairness Hearing Held

IT IS SO ORDERED.

DATED this 28th day of September, 2022.

BY THE COURT:



ROBERT J. SHELBY
United States Chief District Judge