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**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD PSYCHOLOGY, P.A.,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

SINGLECARE SERVICES, LLC,
a Delaware limited liability company,

Defendant.

Case No. CACE-18-022689

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING A CLASS AND GRANTING OTHER RELIEF**

Plaintiff in this class action, without opposition from Defendant, seeks from the Court an Order preliminarily approving class action settlement, conditionally certifying a class for settlement purposes, appointing Plaintiff as the class representative, appointing Avi R. Kaufman as counsel for the class, directing the issuance of class notice, and scheduling a fairness hearing. Having read the papers in support of the request for an Order conditionally certifying a class for settlement purposes, reviewed the procedural history and the record, and heard argument of counsel, the Court makes the following findings and issues the following relief:

BACKGROUND

On February 2, 2018, Plaintiff initiated the legal process ultimately resulting in the filing of the Complaint against Defendant SingleCare Services, LLC (“SingleCare”) on September 25, 2018. The Complaint asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, and its implementing regulations, 47 CFR 64.1200, arising from Plaintiff’s receipt of certain fax messages. The Complaint seeks monetary, declaratory and injunctive relief on behalf of

Plaintiff, individually, and a putative class of other individuals and entities that received the same or substantively similar faxes as Plaintiff received between September 25, 2014 and the present. In the Complaint, Plaintiff seeks to certify this class pursuant to Florida Rule of Civil Procedure 1.220(a), (b)(2), and (b)(3).

On November 26, 2018, SingleCare filed an Answer and Affirmative Defenses to the Complaint, denying all material allegations and asserting affirmative defenses of prior express consent, lack of standing, lack of statutory standing, laches, violation of the Fifth and Fourteenth Amendments, violation of the First Amendment, de minimis harm, and lack of vicarious liability. Ultimately, Defendant contests liability and damages for the claims asserted in the Complaint.

In the interim, the parties began exploring resolution of Plaintiff's claims on a class-wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties and the burden of protracted litigation, and to put to rest any and all claims or causes of actions that have been, or could have been, asserted against SingleCare arising out of the unsolicited transmission of fax advertisements to Plaintiff and others (the "Fax Transmissions").

In furtherance of these settlement discussions, the parties took a number of steps.

First, Plaintiff conducted informal discovery, Defendant voluntarily produced to Plaintiff information relating to the Fax Transmissions. Defendant also agreed to and did answer specific questions posed by Plaintiff directed at the integral issues in this case.

Second, the parties jointly retained a mediator, Jeffrey Grubman, to mediate their settlement discussions.

Third, the parties conducted a mediation session on April 30, 2018 to explore settlement. The parties prepared extensive mediation statements before the mediation setting forth their respective positions. At mediation, the parties exchanged offers and counteroffers and negotiated

the points of each vigorously, but did not reach an agreement to settle the action. After mediation, the parties continued to discuss the facts and legal merit of their respective positions, and continued to exchange counteroffers. The mediation and post-mediation negotiations resulted in a settlement now presently before this Court for consideration.

In the Settlement Agreement, the parties agreed to a settlement of this action that would involve the certification, for settlement purposes only, of a class of persons, subject to the approval and determination of the Court as to the fairness, reasonableness and adequacy of the settlement, which, if approved, will result in final certification of the Settlement Class and dismissal of the action with prejudice.

FINDINGS

Upon reviewing the Settlement Agreement¹ and the Complaint in this matter, and the matter having come before the Court, based on the foregoing, the Court's proceedings and the respective applications of the parties, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Jurisdiction. This Court has personal jurisdiction over the parties and has subject matter jurisdiction over this action, including jurisdiction to preliminarily approve the proposed settlement and conditionally certify a class for settlement purposes.

Class Representatives and Class Counsel. Plaintiff Broward Psychology, P.A. is designated as representative of the Settlement Class, as defined below, for settlement purposes only. Avi R. Kaufman of the law firm of Kaufman P.A. is hereby designated as Class Counsel for the Settlement Class, for settlement purposes only.

¹ Unless otherwise noted, all capitalized terms used here have the same definition as that provided in the Settlement Agreement.

Class Findings. For purposes of the settlement of this action, the Court preliminarily finds that the requirements of Florida Rule of Civil Procedure 1.220 have been met as follows:

Numerosity. The Settlement Class (as defined below) consists of approximately 9,738 entities and individuals who received a Fax Transmission. The Settlement Class is ascertainable on the basis of the records of SingleCare and other objective criteria, and members of the Settlement Class are so numerous that separate joinder of each member is impracticable. *See* Fla. R. Civ. P. 1.220(a)(1).

Commonality. The “commonality” requirement is satisfied when the claim or defense of the representative party raises questions of fact or law common to the questions of fact or law raised by the claim or defense of each member of the class. *See* Fla. R. Civ. P. 1.220(a)(2). In the instant case, Plaintiff has alleged questions of fact and law common to the Class, including:

- a. How Defendant gathered, compiled, or obtained the fax numbers of Plaintiff and the class;
- b. How Defendant transmitted the faxes to Plaintiff and the class;
- c. Whether Defendant’s faxes advertised the commercial availability or quality of property, goods, or services;
- d. Whether Defendant sent the fax advertisements without first obtaining Plaintiff and the class’s prior express permission or invitation to do so;
- e. Whether Defendant’s fax advertisements included the required opt out notice;
- f. Whether Defendant is vicariously liable for any faxes sent by third parties; and

g. Whether Defendant's conduct was willful such that Plaintiff and the class are entitled to treble damages.

Typicality. "Typicality" requires that the claim or defense of the representative party be typical of the claim or defense of each member of the class. *See* Fla. R. Civ. P. 1.220(a)(3). In the instant case, this is satisfied by the very nature of the Telephone Consumer Protection Act violation alleged. Considering the allegations of the Complaint, the Court preliminarily finds that, for purposes of this settlement only, these common questions of fact and law predominate over questions of fact and law affecting only individual members of the Settlement Class.

Adequacy. "Adequacy" requires that the representative party show he or she can fairly and adequately protect and represent the interests of each member of the class. *See* Fla. R. Civ. P. 1.220 (a)(4). Considering the allegations set forth in Plaintiff's Complaint and for purposes of this settlement only, the Court preliminarily finds that the claims of the representative Plaintiff are typical of the claims of the Settlement Class, and that the representative Plaintiff fairly and adequately protects the interests of the Settlement Class, in that: (1) the interests of the named Plaintiff and the nature of her alleged claims are consistent with those of all members of the Settlement Class; (2) there appear to be no conflicts between or among the named Plaintiff and members of the Settlement Class; (3) the named Plaintiff has been and appears to be capable of continuing to be an active participant in both the prosecution of and the negotiations to settle this action; and (4) the named Plaintiff and members of the Settlement Class are represented by qualified, reputable counsel who is experienced in preparing and prosecuting large, complex class actions.

Superiority. The Court preliminarily finds that, for purposes of this settlement only, a resolution of the action in the manner proposed by the Settlement Agreement is superior to other available methods for a fair and efficient adjudication of this action. The proposed resolution of this action involves both monetary and equitable relief for members of the Settlement Class.

Manageability. The Court notes that because this action is being settled, rather than litigated, the Court need not consider the manageability issues that might otherwise be presented by litigation of a nationwide class action involving these issues. *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997).

In making these preliminary findings, the Court has considered, among other factors: (1) the interests of members of the Settlement Class in individually controlling the prosecution or defense of separate actions; (2) the impracticability or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning these claims already commenced; and (4) the desirability of concentrating the litigation of the claims in a particular forum.

Preliminary Class Certification for Settlement Purposes. Based on the foregoing findings, and for settlement purposes only, the Court defines the Settlement Class to consist of:

All persons who (i) on or after four years prior to the day the complaint is filed through the date of preliminary approval (ii) received a telephone facsimile message of material advertising the commercial availability or quality of any property, goods or services by or on behalf of SingleCare.

The Court finds that, for the sole purpose of settlement, and without an adjudication of the merits, the Settlement Class is sufficiently well-defined and cohesive, and the proposed settlement, on the record thus far produced, seems adequate, to warrant sending notice of the action and the proposed settlement to the Settlement Class.

Findings Regarding Proposed Settlement. The Court finds that: (a) the proposed settlement resulted from extensive arms-length negotiations and was concluded only after counsel for Plaintiff had engaged in extensive due diligence; and (b) the proposed settlement evidenced by the Settlement Agreement is sufficient to warrant (i) preliminary certification of the Settlement Class for settlement purposes, (ii) notice thereof to the members of the Settlement Class, and (iii) a full hearing on the fairness of the settlement.

Fairness Hearing. A hearing (the "Fairness Hearing") will be held on June 4, 2019 at 10:15 AM, in Courtroom 15135 in the Broward County Courthouse, 201 Southeast 6th Street, Fort Lauderdale, Florida 33130, before Circuit Court Judge John B. Bowman, to determine: (a) whether the action should be finally certified as a class action for settlement purposes; (b) whether the settlement of the class action should be approved as fair, reasonable and adequate; (c) whether the class action should be dismissed with prejudice pursuant to the terms of the parties' settlement; (d) whether members of the Settlement Class should be bound by the Release set forth in the parties' Settlement Agreement; (e) whether members of the Settlement Class should be subject to a permanent injunction that, inter alia, bars members of the Settlement Class from filing, commencing, prosecuting, intervening in, participating in (as Settlement Class Members or otherwise), or receiving any benefits from, any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on, or relating to, the claims (and the facts and circumstances related thereto) in this action and/or the released conduct as set forth in the parties' Settlement Agreement; (f) whether Plaintiff's application for an incentive fee award should be approved; and (g) whether the application of Plaintiff's counsel for an award of attorney's fees and expenses should be approved. The parties' submissions in support of the settlement, a motion

seeking an incentive award for the Class Representative and a motion seeking attorneys' fees and expenses shall be filed with the Court at least 42 days prior to the Fairness Hearing.

Notice by Fax. Within 35 calendar days of the date of this Order, fax notice (the "Fax Notice") shall be faxed to the fax numbers the Fax Transmissions were made to. Within seven days of initiating the Fax Notice, a second attempt shall be initiated to any numbers for which the initial transmissions were unsuccessful. The Court finds that the Fax Notice is reasonably calculated under the circumstances to inform the Settlement Class of this settlement because the Settlement Class is well defined and its members' fax numbers are in the possession of SingleCare.

Proof of Faxing. At or before the Fairness Hearing, the parties or the Settlement Administrator shall file with the Court a proof of faxing of the Fax Notice.

Other Forms of Notice. As soon as practicable following Preliminary Approval, but prior to the commencement of the Fax Notice, the Settlement Website should be established as a means for members of the Settlement Class to obtain notice of and information about Settlement, through and including access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, and such other documents as Class Counsel and SingleCare agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.SCStcpasettlement.com or such other URL as Class Counsel and SingleCare agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the SingleCare logo or SingleCare trademarks. Ownership of the Settlement Website URL shall be transferred to SingleCare within 10 days of the date on which operation of the Settlement Website ceases.

Findings Concerning Notice. Having considered, among other factors, (a) the cost of giving notice by various methods , (b) the resources of the parties, (c) the stake of each member of the Settlement Class, and (d) the likelihood that members of the Settlement Class might desire to exclude themselves from the Settlement Class or appear individually, the Court finds that notice given in the form and manner provided in the Settlement Agreement and above is the best practicable notice and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class: (1) of the pendency of this action; (2) of their right to exclude themselves from the proposed settlement; (3) that any judgment, whether favorable or not, will include all members of the Settlement Class who do not request exclusion; and (4) that any members of the Settlement Class who does not request exclusion may object to the settlement and, if it, he, or she desires, enter an appearance either personally or through counsel.

Retention of Settlement Administrator. The Court authorizes Defendant to retain Angeion Group to help implement the terms of the proposed settlement and authorizes such administrator to fax the Fax Notice and carry out such other responsibilities as are provided for in the Settlement Agreement.

Exclusion from Class. Members of the Settlement Class who wish to opt out of and be excluded from the Settlement must submit a written opt out, meeting all of the requirements detailed below, from the Settlement to the Settlement Administrator bearing a postmark from a date within the Claims Deadline. The Opt Out deadline shall be 35 days after the Fax Notice is initiated. In addition, the Opt Out must:

- a. state the member's full name (or, if a business, business name), email address, address, telephone number and fax number at which the SingleCare Fax(es) are (were) received,

b. state that the member requests exclusion from, or “opts out” of, the Settlement

c. be dated; and

d. be signed by the member under penalty of perjury.

Opt Outs must be made individually and cannot be made on behalf of other members of the Settlement Class. If a member of the Settlement Class submits a deficient Opt Out, the Settlement Administrator shall notify the member of the deficiency within seven (7) business days of receipt. The member shall have until the later of the end of the Opt Out or Objection Period, or seven (7) business days from receiving notice from the Settlement Administrator of the deficiency, to cure said deficiencies, at which point his or her Opt Out will be rejected if not received. Members of the Settlement Class submitting untimely or deficient Opt Outs shall be bound by the Agreement and its releases. If a member of the Settlement Class submits both a valid Claim Form and an Opt Out, the Claim Form will control regardless of the date on either document or the date the documents are submitted online or postmarked.

Objections. Members of the Settlement Class who wish to object to the Settlement and/or to Class Counsel’s application for attorneys’ fees and costs and/or a Service Award to the Class Representative must mail objections to the Clerk of the Court, Class Counsel, and SingleCare’s counsel (at the addresses provided below), bearing a postmark from a date within the Opt Out or Objection Period. The Objection deadline shall be 35 days after the Fax Notice is initiated. In addition, for an Objection to be considered by the Court, the Objection must bear a postmark from a date within the Claims Deadline and must also set forth:

a. the name of the Action;

- b. the objector's full name (or, if a business, business name), address, telephone number and fax number at which the SingleCare Fax(es) are (were) received;
- c. an explanation of the basis upon which the objector claims to be a member of the Settlement Class;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. 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 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;
- f. the identity of all counsel who represent the objector (including name, bar number, address and telephone number), 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;
- g. a copy of any orders related to or ruling upon counsel's or the firm's prior objections 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;
- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. a statement confirming that the objector intends to personally appear and/or testify at the Final Approval Hearing;
- k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- l. the objector's signature (an attorney's signature is not sufficient) under penalty of perjury.

The right to object to the Settlement must be exercised individually by an individual member of the Settlement Class, not as a member of a group or subclass. Any member of the Settlement Class who fails to file and serve timely written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement and from filing any appeal from any Final Approval Order issued by the Court. Class Members who timely and validly Opt Out and request exclusion from the Settlement shall have no right to object and shall be foreclosed from making any objection to the Settlement.

Any objection that the member of the Settlement Class wishes the Court to consider shall be provided to each of the following:

Clerk of the Court
Broward County Courthouse
201 Southeast 6th Street, Fort Lauderdale, Florida 33130
Re: Case No. CACE-18-022689

-and-

Avi R. Kaufman
KAUFMAN P.A.
400 NW 26th Street
Miami, FL 33127
Email: kaufman@kaufmanpa.com

Counsel for the Settlement Class

-and-

David Almeida
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
333 West Wacker Drive, Suite 1900
Chicago, Illinois 60606
Email: dalmeida@beneschlaw.com

Counsel for Defendant SingleCare Services, LLC

Submission of Claim for Benefits. Members of the Settlement Class who qualify for and wish to submit a claim for any benefit under the settlement as to which a claim is required shall do so in accordance with the requirements and procedures of the Settlement Agreement. All members of the Settlement Class who qualify for any benefit under the settlement as to which a claim is required but fail to submit a claim in accordance with the requirements and procedures of the Settlement Agreement shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, and the releases contained therein. The deadline for Members of the Settlement Class to submit a claim shall be 14 days after the Final Approval Hearing.

Service of Papers. Class Counsel and counsel for Defendant shall serve on each other and on all other parties who have filed notices of appearance, at or before the Fairness Hearing, any further documents in support of the proposed settlement, including responses to any papers filed by members of the Settlement Class. Class Counsel and counsel for Defendant shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their possession, and Class Counsel or the Settlement Administrator shall file such objections and a list reflecting such requests for exclusion with the Court on or before the date of the Fairness Hearing.

Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if any of the conditions for termination outlined in the Settlement Agreement occur.

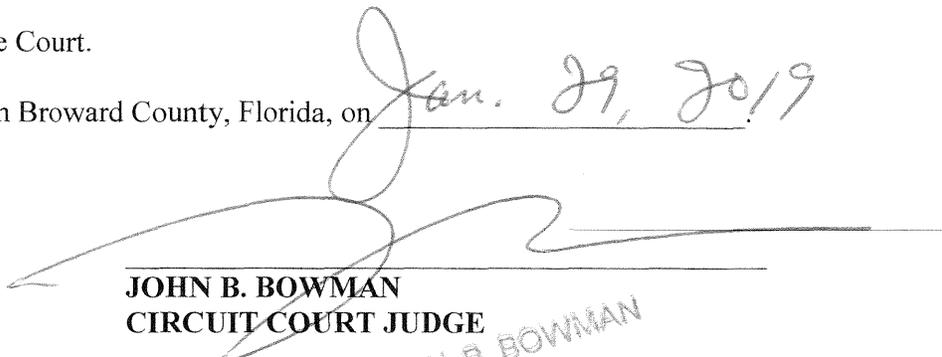
Use of Order. This Order shall be of no force or effect if the settlement does not become final and shall not be construed or used as an admission, concession or declaration by or against Defendant of any fault, wrongdoing, breach or liability or by or against Plaintiff or any member of the Settlement Class that their claims lack merit or that the relief requested in the Complaint is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims it or they may have.

Continuance of Hearing. The Court reserves the right to continue the Fairness Hearing without further written notice to the Settlement Class, but will notify counsel for the parties and objectors who have made a timely appearance in these proceedings pursuant to the terms of this Order. Unless the Court specifically orders otherwise, any such continuance shall not be interpreted to expand the faxing or notice requirements set forth in this Order or to extend the filing or service deadlines set forth in this Order.

Stay of Litigation Proceedings. All discovery and other pretrial deadlines are stayed and suspended until further order of the Court.

DONE AND ORDERED in Broward County, Florida, on

Jan. 29, 2019



**JOHN B. BOWMAN
CIRCUIT COURT JUDGE**

JOHN B. BOWMAN
JAN 29 2019
A TRUE COPY

cc: all counsel of record