

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SUSAN DRAZEN, on behalf of herself and
others similarly situated
Plaintiffs,**)

vs.)

**GODADDY.COM, LLC,
Defendant.**)

CIVIL ACTION: 1:19-00563-KD-B

**JASON BENNETT, on behalf of himself and
others similarly situated
Plaintiffs,**)

vs.)

**GODADDY.COM, LLC,
Defendant.**)

CIVIL ACTION: 1:19-00563-KD-B

ORDER

This matter is before the Court on Plaintiff Susan Drazen’s second motion for preliminary approval of a proposed class action settlement and for certification of the settlement class. (Doc. 45).

I. Class Certification

Plaintiff’s revised settlement agreement comports with the Court’s previous order to remove John Herrick as a named representative. (Doc. 44 at 17). The Court hereby adopts and incorporates the analysis and findings detailed in its prior Order. (Doc. 44). Upon consideration and for the reasons set forth herein, and in the Court’s prior Order (Doc. 44), Plaintiff’s unopposed motion is **GRANTED**, the proposed class is certified for settlement only and the settlement agreement is **conditionally and preliminarily** approved.

II. Class Settlement

Plaintiffs Jason Bennett and Susan Drazen move for preliminary approval of the class action settlement agreement. (Doc. 45 at 1-2). A class action can be settled “only with the court’s approval.” Fed. R. Civ. P. 23(e). Final approval may be given only after class notice and a hearing. Id. However, the Court must first “make a preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class.” O’Connor v. Worthington PJ, Inc., 2017 WL 6762436, *3 (M.D. Fla. 2017) (citing Smith v. William Wrigley Jr. Co., 2010 WL 2401149 at *2 (S.D. Fla. 2010)). “Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient.” Id. (internal quotes omitted). “Preliminary approval is 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.” Id. (citing Fuentes Cordova v. R & A Oysters, Inc., 2016 WL 5219634, *1 (S.D. Ala. 2016)); Smith, 2010 WL 2401149 at *2 (same).

First, the Court is satisfied that the settlement is the result of the parties’ good faith negotiations. The settlement agreement was the result of an arms-length negotiation by both parties while represented by counsel and facilitated by the Honorable Wayne Anderson. (Doc. 20 at 12; Doc. 45-1 at 3). The settlement was also reached after discovery and after several months of negotiations. (Doc. 20 at 13).

Second, the Court is satisfied that there are no obvious deficiencies and the settlement falls within the range of reason. During settlement negotiations, GoDaddy agreed to make up to \$35,000,000 available: 1) to pay individuals who submit valid claim forms; 2) for attorney’s fees; 3) for a service award to the Class Representatives; 4) for costs and expenses of litigation. (See Doc. 45-1 at 47). Each Settlement Class Member who submits a valid claim is eligible to receive

either a \$35 cash award or a \$150 voucher that can be used for GoDaddy services or products. (Id.). The parties also agreed, based on how many valid claims are submitted, that it is possible each Settlement Class Member's Award will be reduced on a *pro rata* basis to cover settlement administration costs, attorneys' fees, a service award to the Class Representatives, and costs and expenses of litigation. (Id.). Accordingly, the Court finds the Settlement Agreement is preliminarily approved as fair, reasonable, and adequate.

A. Class Representative

For the reasons set forth in the Court's previous Order (Doc. 44 at 13-16), the unopposed motion to appoint Plaintiffs as class representatives is **GRANTED**. Accordingly, Plaintiffs Jason Bennett and Susan Drazen are **DESIGNATED** as the representatives of the settlement agreement as defined in Section II(B), for the purpose of the Settlement Agreement.

B. Class Counsel

"An order that certifies a class action...must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(B). See O'Connor, 2017 WL 6762436 at *3 (considering the experience of counsel in a class action settlement context). Rule 23(g)(1)(A) and (B) provides that in appointing class counsel, the Court:

(A) must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately re[represent the interests of the class.

Fed. R. Civ. P. 23(g)(1)(A)&(B). Upon consideration of the foregoing factors, and for the reasons set forth in the Court's prior Order (Doc. 44 at 15-16), the Court finds that Class Counsel JRC Legal, McGuire Law, P.C., Underwood and Riemer, PC, Bock, Hatch, Lewis & Oppenheim, LLC,

Mark K. Wasvary, P.C., Kent Law Offices, and McMorrow Law, P.C. are adequate counsel. Accordingly, the motion to appoint class counsel is **GRANTED**.

C. Settlement Administrator

The parties agreed to mutually select and supervise a Settlement Administrator to administer the Agreement. (Doc. 45-1 at 10). The parties agree the Settlement Administrator may later substitute a different entity, subject to Court approval, to administer the agreement. (Id.). Per the Settlement Agreement, the Settlement Administrator will send direct notice of the Settlement to Settlement Class Members; establish a website and maintain the Settlement website; receive and process claims; distribute settlement awards and costs; among other tasks. (Doc. 45-1 at 15-16). Upon consideration of the foregoing, the unopposed motion to mutually select and supervise the Settlement Administrator is **GRANTED**. Accordingly, the parties are authorized to select and retain a Settlement Administrator to fulfill the duties listed in the Settlement Agreement. (Doc. 45-1 at 15-16).

D. Class Notice

Before final approval of a class settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individualized notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notice must contain information in plain, easily understood language, and should include the nature of the action, the class definition(s), the claims, and the members’ rights. Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). The notice requirement has two primary components: content and manner of distribution. Adams v. Southern Farm Bureau Life Insurance Co., 493 F.3d 1276, 1286 (11th Cir. 2007) (citing Twigg v. Sears,

Roebuck & Co., 153 F.3d 1222, 1227 (11th Cir. 1998) (“we look solely to the language of the notices and the manner of distribution.”)).

In the unopposed motion, the parties state they have “agreed to a comprehensive Notice Plan” which “provides for a multi-part Notice Plan designed to reach as many potential Settlement Class Members as possible...estimate[ing] that the Notice Plan will achieve direct contact rate of 90% of potential Settlement Class Members.” (Doc. 20 at 32). Under the proposed Notice Plan, the Settlement Class Members will be provided notice by email and by postcard if email addresses are either unavailable or emails are undeliverable. (Doc. 45-1 at 19). In addition to direct notice, a Long Form Notice will be posted on the Settlement Website. (Id. at 20). The website will contain electronic versions of the claim form that can be submitted online or via regular mail, as well as the full Settlement Agreement, a detailed Long Form Notice, important court documents, and answers to frequently asked questions. (Id. at 8, 10, 50, 56).

Accordingly, the Court finds that the proposed Plan for distribution of notice is the best course of action under the circumstances, it is reasonably calculated to provide notice to all members who are identified by GoDaddy in the Cellular Number List as persons or entities to whom text messages were sent or to whom calls were made.

As to the form of the notice, it must “contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average class member.” Twigg, 153 F.3d at 1227 (internal quotes omitted). “Not only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action.” Id. (internal quotes omitted). Such information includes “the relief available, the steps

necessary to opt out, and the implications of remaining a member of the class.” Adams, 493 F.2d at 1286.

The Proposed Short Form Notice includes a detailed description of the proceedings in a manner that would be reasonably understood by the average person. (Doc. 45-1 at 47). It contains a summary of the class action settlement and directs the recipients to the website or to the Settlement Administrator’s address for the recipient to send its claim by the requisite date. (Id.). The notice contains a section captioned “What Are My Options” which gives information regarding how to be bound by the settlement as well as what the recipient can do to opt out of the settlement. (Id. at 48). It directs the recipient to the website for a more detailed explanation of how to be excluded from or object to the Settlement. (Id. at 48). Additionally, the notice informs the recipient of her right to appear at the hearing on attorney’s fees and tells the recipients she can call a number or visit the website for further information. (Id.).

The proposed long form notice, to be posted on the website, contains a lengthier description of the lawsuit, the settlement, the rights of the potential class members, etc. (Doc. 45-1 at 50-56). The long form notice warns the recipient to “Please read this notice carefully” as it “explains your rights and options and the deadlines to exercise them.” (Id. at 50). It discusses the various options—“Submit a Claim Form,” “Exclude Yourself,” “Object to the Settlement”—and again warns the recipients after informing them of their options “IF YOU DO NOT TIMELY MAKE YOUR OBJECTION YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.” (Id. at 53). The website also will contain the full Settlement Agreement, important court documents, and answers to frequently asked questions. (Id. at 8, 10, 50, 56).

Accordingly, the Court finds that the email notice, post card notice, and other forms of class notice are reasonable, adequate, and sufficient notice to the class members and meet the requirements of due process.

E. Establishment of Dates

On **December 14, 2020 at 2:00 p.m. CST**, a hearing regarding the final approval of the class action settlement shall be held in Courtroom 4B, United States Courthouse, 155 Saint Joseph Street, Mobile, Alabama 36602. Motions in support of final approval shall be submitted on or before **November 3, 2020**.

On or before **July 24, 2020**, any motion for approval of attorney's fees and motion for incentive award shall be filed and objections¹ shall be due by **July 31, 2020**. The motions shall be heard at the final hearing.

Within **fourteen (14)** days of this Order, GoDaddy shall provide the Settlement Administrator with the Contact Information Records and Cellular Number List for the entities or persons to which calls or text messages were sent.

Within **thirty (30)** days of this Order, the Settlement Administrator shall issue notice to the class members by email notice to the members identified by GoDaddy, as set forth in the Notice Plan (Doc. 45-1 at 15). For Settlement Class Members who do not have a valid email address in the Cellular Number List or for whom email notice is not deliverable, Postcard Notice shall be sent. (Id.). The form of notice shall be substantially the same for email and post card notification and shall be in the form as provided to the Court (Id. at 19-20).

¹ Pursuant to the Settlement Agreement, GoDaddy.com, LLC will not oppose a request by Plaintiffs for a service award in the amount of five thousand dollars (\$5000.00) for each John Bennett, Susan Drazen, John Herrick, will not oppose an attorneys' fee award no more than 30% of the Total Settlement Amount -- plus reimbursement of reasonable, documented litigation costs and expenses -- and agree that the Court will determine the amount of fees and costs class counsel are entitled to recover. (Doc. 45-1 at 26, 50, 54).

Within **thirty (30)** days of this Order, the Settlement Administrator shall launch the Settlement Website. (Id. at 20).

By **August 31, 2020**, the members of the settlement class who wish to be excluded must request exclusion² from the settlement class. As provided in the Long-Form Notice available on the Settlement website, the class members must timely send a letter to the Settlement Administrator, which must include the full name, address, telephone number(s), GoDaddy account number(s), and be “personally signed...under penalty of perjury” with a “statement that indicates [a] desire to be ‘excluded from the Settlement Class.’” (Doc. 45-1 at 52).

Any request for exclusion which does not substantially comply with these requirements or which is untimely filed shall be ineffective. Two (2) weeks before the final hearing, the Settlement Administrator shall submit to the Court a list of the individual settlement class members that have timely requested exclusion.

By **August 31, 2020**, members of the Settlement Class who chose to object to any part or all of the Class Settlement Agreement must file their objection with the Court. Also, the class member must mail their objection to class counsel and counsel for GoDaddy postmarked no later than **August 31, 2020**. As provided in the Notice, the objection must be signed by the class member or their attorney and include the class members’ full name, current address, telephone number(s), and GoDaddy account number(s). (Doc. 45-1 at 52-53). Also,

if represented by counsel, the name, bar number, address, and telephone number of your counsel; (3) a signed statement, under penalty of perjury, that you received one or more phone calls or text messages from GoDaddy between November 4, 2014 to December 31, 2016, and that you are a member of the Settlement Class; (4) a statement of all your objections to the Settlement, including your legal and factual basis for each objection; (5) a statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel, and if with counsel, the name of

² In the Settlement Agreement, the parties agreed that class members shall have forty-five (45) days from the date the Notice is issued opt out of the Agreement. (Doc. 46 at 8). The Court anticipates that the first Notice shall issue at the latest on July 2, 2020.

your counsel who will attend; (6) the number of times in which you, your counsel, or your counsel's law firm have objected to a class action settlement within the five years preceding the date that you submit your objection, the caption of each case in which you, your counsel, or your counsel's law firm has made such objection, and a copy of any orders related to or ruling upon your, your counsel's, or your counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case; (7) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections, as well as any exhibits they intend to introduce at the Final Approval Hearing; and (8) any and all agreements related to the objection or the process of objections—whether written or verbal—between you or your counsel and any other person or entity.

(Id. at 53). If the class member wishes to speak at the final hearing, they must file a notice of appearance with the Court and mail it to class counsel and counsel for Defendants no later than **two (2) weeks** before the final hearing. The Court will not consider any objection that is not timely filed or that fails to substantially meet the requirements.

By **October 7, 2020**, members of the settlement class shall submit a valid Claim Form to the Settlement Administrator. (Doc. 46 at 9). It must be completed and signed, and either submitted online at the Settlement Website or by printing out the form and mailing the form postmarked on or before **October 7, 2020**.

F. Injunction

Unless and until the settlement is canceled and/or terminated, all proceedings in this Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement and this Order, are hereby **STAYED** and **SUSPENDED** until further order of this Court. In aid of the Court's jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all settlement class members who have not timely excluded themselves from the settlement class, shall be **PRELIMINARILY ENJOINED**, during the period from the entry of the preliminary approval order to the date of the final settlement hearing, from commencing or prosecuting any action asserting any of the claims and causes of action to be

released under the Settlement Agreement, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located.

If the settlement proposed in the Settlement Agreement and the final Judgment and Order contemplated by the Settlement Agreement do not receive full and final judicial approval in all material respects, or are reversed, vacated, or modified in any material respect, then the Settlement Agreement shall have no force or effect, the parties shall be restored to their respective prior positions, any certification of the settlement class and the Court's preliminary findings in connection therewith shall be vacated, the litigation shall proceed as though the Settlement Class had never been certified and all Defendants shall have the right to oppose the certification of any plaintiff class.

III. Conclusion

Based upon the foregoing, it is **ORDERED** that Plaintiff Susan Drazen's motion (Doc. 45) is **GRANTED** as detailed herein. The operative settlement agreement is Doc. 45-1.

DONE and ORDERED this the **9th** day of **June 2020**.

/s/Kristi K. DuBose
KRISTI K. DuBOSE
CHIEF UNITED STATES DISTRICT JUDGE