

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Colin Lateano,)	
)	
Plaintiff,)	
)	Case No. 23 CV 2757
v.)	
)	Judge Joan B. Gottschall
Chicago Cubs Baseball Club, LLC,)	
)	
Defendant.)	

ORDER

The court has before it plaintiff’s amended motion for preliminary approval of the parties’ class action settlement agreement; the accompanying appendices; and the parties’ supplement filed February 12, 2024. By order dated January 10, 2024 (“January 10 Order”), this court denied plaintiff’s first motion for preliminary approval without prejudice. ECF No. 42 at 5. The January 10 Order directed the parties to address four issues with the then-proposed settlement agreement. *See id.* at 2–4.

The parties renew their motion for preliminary approval and submit an amended proposed settlement agreement. Am. Settlement Agmt., ECF No. 43-1 App. A. The court finds that the issues raised in the January 10 Order have been addressed as follows:

- Instead of sending postcards, the parties have agreed to send potential class members notice of the proposed settlement by regular mail at a modest \$2,000 increase in administration costs. Am. Mot. Prelim. Approval 2 & 25 n.7; *see also* Jan. 10 Order at 3–4.
- The parties have clarified that “class members who do not elect a preferred payment method will receive a default payment by check (if a mailing address is available) or by [electronic funds transfer] (if only email is available).” Am. Mot. Prelim. Approval 2 (citing Am. Settlement Agmt. ¶ 62); *see also* Jan. 10 Order at 4.
- The requirement that an objection be personally signed by the putative class member has been removed. Under the amended settlement agreement an objection may also be signed by an attorney. Am. Mot. Prelim. Approval 9 (citations omitted); Am. Settlement Agmt. ¶ 59; *see also* Jan. 10 Order at 4–5.
- Although the parties maintain that distributing the settlement fund on a *pro rata* basis is appropriate, they ask the court to decide their motion based on a per-violation distribution method. Suppl. To Am. Mot. Prelim. Approval 1 (Feb. 12, 2024), ECF No. 45; *see also* Am. Settlement Agmt. ¶ 52.

Regarding the distribution method, the January 10 Order stated that “before the court can perform a preliminary approval analysis, it needs to know (1) how many text messages each putative class member received; and (2) whether each class member received roughly the same number of messages and, if not, how the number of messages varied.” Order at 2. The parties have provided the needed information. The mean, median, and mode number of text messages each class member received is five. Am. Mot. Prelim. Approval 1; Keough Decl. ¶ 12 (Jan. 31, 2024), ECF No. 43-2.

Although one percent of the class members received more than nine text messages, and at least one class member received 29 text messages, most class members received five text messages. Am. Mot. Prelim. Approval 5 n.3; Keough Decl. ¶ 13. The parties estimate that each class member who received five text messages will receive approximately \$300 from the settlement fund, \$300 being 12% of the maximum available statutory damages (\$2500). Am. Mot. Prelim. Approval 6–7. Class members who received more than five text messages will receive a proportionately higher monetary reward.

At the preliminary approval stage, the court asks whether the proposed settlement is “within the range of possible approval.” *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 588 (N.D. Ill. 2016) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n. 3 (7th Cir.1982)); *see also* Jan. 10 Order at 1–2 (setting forth standard governing a motion for preliminary approval of a class settlement). The parties have collected at least half a dozen Telephone Consumer Protection Act cases approving a settlement under which each class member recovered less than 12% of the maximum statutory damages available. *See, e.g., Wright v. Nationstar Mortg. LLC*, 2016 WL 4505169, at *7–8 (N.D. Ill. Aug. 29, 2016); *see also* Am. Mot. Prelim. Approval 18–19 (collecting additional cases). In their amended motion for preliminary approval, the parties do not disagree that statutory damages of up to \$500 per “violation” are available to potential class members under 47 U.S.C. § 227(c)(5). They also do not dispute that each text message sent to a class member in violation of the statute counts as a

separate violation.¹ Jan. 10 Order at 2 (citing *Martin v. PPP, Inc.*, 719 F.Supp.2d 967, 974–75 (N.D. Ill. 2010); other citation omitted). Since the per-violation proposed distribution method is proportionate to the per-violation statutory damages available to members of the proposed class, the proposed settlement agreement falls within the range of possible approval.²

Accordingly, plaintiff’s amended motion for preliminary approval of the proposed settlement agreement, as supplemented, is granted. Counsel are instructed to confer and send a message to Chambers_Gottschall@ilnd.uscourts.gov proposing three dates for a fairness hearing.

Dated: February 14, 2024

/s/ Joan B. Gottschall
United States District Judge

¹ In their amended motion for preliminary approval, the parties note that \$500 per violation in statutory damages is not mandatory, as it is for a claim under a related provision, 47 U.S.C. § 227(b)(3). However, the parties do not quarrel with the proposition that the amount of statutory damages to which each class member is potentially entitled depends on how many text messages defendant sent to the class member. *See* Am. Mot. Prelim. Approval 24.

² Because the question is not before it, the court intimates no view on whether the *pro rata* method of distribution formerly proposed by the parties falls within the range of possible approval.