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Attys Snag \$1M In Fees After \$3.5M TCPA Deal With Checkers

By **Nathan Hale**

Law360 (September 18, 2019, 8:06 PM EDT) -- A Florida federal judge on Wednesday awarded class counsel more than \$1 million in attorney fees for their work securing a \$3.5 million settlement for a nationwide class of consumers who alleged fast-food restaurant chain Checkers kept sending advertising texts after they attempted to unsubscribe.

U.S. District Judge Beth Bloom also granted final approval of the settlement, a \$5,000 service award to class representative Joel Medgebow and \$3,708 in legal costs to class counsel in her 10-page order, issued after she held a final fairness hearing Tuesday in Miami.

In the deal, approximately 7,700 customers of Checkers Drive-In Restaurants Inc. could get up to \$450 each to settle their Telephone Consumer Protection Act claims, according to court records. In exchange, the company is released from any possible claims by class members arising from or related to the case. Checkers made no admission of liability.

The \$1,038,555.55 in attorneys' fees requested by class counsel Seth Lehrman of Edwards Pottinger LLC and Joshua H. Eggnatz and Michael J. Pascucci of Eggnatz Pascucci PA represents 30 percent of the settlement fund, from which it will be paid, according to the order.

The judge deemed that to be a reasonable amount under the "percentage-of-the-fund and benefit approach" and said the court had received no objections to the request from settlement class members.

"Full opportunity has been given to the settlement class members to exclude themselves from the settlement, object to the terms of the settlement or to class counsel's request for attorneys' fees, costs, and expenses and for payments to the class representatives, and otherwise participate in the final approval hearing," the order said.

Florida resident Medgebow filed his putative class action against Checkers in January, alleging the restaurant chain violated the TCPA by sending him spam text messaging even after he attempted to unsubscribe from the texts. According to his complaint, Medgebow got more than 20 texts in December 2018 and January 2019.

Although Medgebow initially consented to the texts, he "clearly revoked his consent" to them on Dec. 5, 2018, by using the opt-out instructions in the texts. Yet he still got the restaurant's texts, he alleged.

The class includes individuals who attempted to stop receiving Checkers' texts by sending certain words including "stop," "cancel," "unsubscribe," "end," "quit," "opt out" or "remove" between Jan. 28, 2018 and May 28, 2019, when the court gave **preliminary approval** of the deal, but were still messaged by the company, according to Wednesday's order.

"We are pleased with the court's ruling," class counsel Eggnatz told Law360. "The settlement brings significant monetary relief to class members and a change of business practices without years of protracted litigation."

Counsel for Checkers did not immediately respond to a request for comment late Wednesday.

Medgebow is represented by Seth Michael Lehrman of Edwards Pottinger LLC and Joshua Harris Eggnatz and Michael J. Pascucci of Eggnatz Pascucci PA.

Checkers is represented by David S. Almeida of Benesch Friedlander Coplan & Aronoff and Anthony Strasius of Wilson Elser Moskowitz Edelman & Dicker LLP.

The case is Medgebow v. Checkers Drive-In Restaurants Inc., case number 9:19-cv-80090, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Hailey Konnath. Editing by John Campbell.

Update: This story has been updated to include comment from class counsel.

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