

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-23006-Civ-COOKE/GOODMAN

JESSICA DIPUGLIA, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

US COACHWAYS, INC., a foreign
corporation,

Defendant.

**ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND CERTIFYING THE SETTLEMENT CLASS**

The Parties to the above-captioned action (“Action”) have agreed to settle the Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release (“Settlement”). The Parties reached the Settlement through arm’s-length negotiations with the help of experienced mediator, Steven Jaffe, Esquire. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class will fully, finally, and forever resolve, discharge, dismiss and release their claims with prejudice in exchange for US Coachways, Inc. (“Coachways”) making a total of \$600,000.00 available to Settlement Class Members who timely file a claim (“Cash Benefit”) and providing for \$2,000,000.00 in US Coachways Credits (“Coachways Credits”) to Settlement Class Members.¹

The Settlement has been filed with the Court, and Plaintiff and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement (“Motion”) (ECF No. 57). Upon considering the Motion, the Settlement and all exhibits thereto, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject

¹ Settlement Class Members who timely file a Claim will each receive a \$30.31 Cash Benefit payment. Settlement Class Members will each receive a \$101.03 voucher.

matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed Class Representative and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel, and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application") and request for a Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiff; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order, and whether to grant Class Counsel's Fee Application and request for a Service Award for Plaintiff; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be approved.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. As used in this Preliminary Approval Order, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.

2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. § 1332.

3. Venue is proper in this District.

Provisional Class Certification and Appointment of Class Representative and Class Counsel

4. It is well established that "[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a

court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.*; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. Pursuant to the Settlement, and for settlement purposes only, the Court finds the Federal Rule of Civil Procedure 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court therefore provisionally certifies the following Settlement Class.

All persons in the United States who had one or more Coachways Text Messages sent to their cellular telephone number between February 6, 2017 through and including August 7, 2017.

The following are excluded from the Settlement Class: (1) any judge or magistrate judge of the United States their spouses, and persons within the third degree of relationship to either of them; (2) Coachways, as well as any parent, subsidiary, affiliate or control person of Coachways, and the officers, directors, agents, servants or employees of Coachways; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any Settlement Class Member who has timely and properly opted out of this Settlement; and (6) Class Counsel and their employees.

6. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court finds as to the Settlement Class that:

- a. the Class is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the Class;
- c. the claims of the named Plaintiffs are typical of the claims of the Class;
- d. the named Plaintiffs will fairly and adequately protect the interests of the Class;
- e. questions of law and fact common to class members predominate over any questions affecting only individual Class members; and,
- f. a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

7. The Court appoints Plaintiff Jessica Dipuglia as Class Representative.

8. Subject to possible later additions in accord with the provisions of the Settlement, the Court appoints the following people and firms as Class Counsel:

Jeff M. Ostrow, Esq.
Scott Edelsberg, Esq.
KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT
One West Las Olas Blvd., Suite 500
Fort Lauderdale, FL 33301

Manuel S. Hiraldo, Esq.
HIRALDO P.A.
401 E. Las Olas Blvd., Ste. 1400
Fort Lauderdale, FL 33301

Andrew J. Shamis, Esq.
SHAMIS & GENTILE, P.A.
Florida Bar No. 101754
14 NE 1st Avenue, Suite 400
Miami, Florida 33132
(t) (305) 479-2299

Preliminary Approval of the Settlement

9. At the preliminary approval stage, the court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 *Newberg on Class Actions* § 11.26. "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." *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (internal quotation marks omitted).

10. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable and adequate. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Settlement, including the exhibits thereto, is within the range of reasonableness

and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

Approval of the Notice Program and the Claims Process

11. The Court approves the form and content of the Notice, substantially in the forms attached as Exhibits 1 and 2 to the Settlement, and the Claim Form attached thereto as Exhibit 3. *See* ECF No. 57-1. The Court further finds that the Notice program, described in the Settlement is the best practicable under the circumstances. The Notice program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's Fee Application and the request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiff. The Notice and Notice program constitute sufficient notice to all persons entitled to notice. The Notice and Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

12. The Court directs that: (a) Epiq Class Action & Claims Solutions, Inc. shall serve as the Settlement Administrator and the Escrow Agent; and (b) Hilsoft Notifications shall serve as the Notice Administrator.

13. The Settlement Administrator and Notice Administrator shall implement the Notice program, as set forth below and in the Settlement, using substantially the forms of Notice attached as Exhibits 1 and 2 to the Settlement and approved by this Preliminary Approval Order. Notice shall be provided to the members of the Settlement Class pursuant to the Notice program, as specified in the Settlement and approved by this Preliminary Approval Order. The Notice program shall include, to the extent necessary, Mailed Notice, and Long-Form Notice, as set forth in the Settlement and below.

Mailed Notice Program

19. The Notice Administrator shall administer the Mailed Notice Program as contemplated in the Settlement. The Mailed Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than forty-five (45) days before the Final Approval Hearing.

Settlement Website

24. The Settlement Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice program. The Settlement Website shall include an online portal to file Claim Forms, hyperlinks to the Settlement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Coachways agree to include. These documents shall remain on the Settlement Website at least until Final Approval.

25. The Notice Administrator is directed to perform all substantive responsibilities with respect to effectuating the Notice Program, as set forth in the Settlement.

Final Approval Hearing, Opt-Outs, and Objections

26. A Final Approval Hearing shall be held before this Court on **September 5, 2018 at 10:00 a.m.** to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order, and whether Class Counsel's attorneys' Fee Application and request for a Service Award for the Class Representative should be granted.

27. The Court directs that any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Settlement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out requests must be received by all those listed in the Long-Form Notice on or before the last day of the Opt-Out Period, which is sixty (60) days after the Deadline for Completion of the Mailed Notice Program ("Opt-Out Deadline"), and mailed to the addresses indicated in the Long Form Notice.

28. The Court further directs that any Settlement Class Member may object to the

Settlement, Class Counsel's Fee Application and/or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Coachways' Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than sixty (60) days after the Deadline for Completion of the Mailed Notice Program, as set forth in the Notice. To be valid, an objection must include the following information:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- 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 an 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 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 counsel's law firm's prior objections made by individuals or organizations represented by counsel 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 five (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 whether 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).

Further Papers in Support of Settlement and Attorney's Fee Application

29. Plaintiff and Class Counsel shall file their Motion for Final Approval of the Settlement, Fee Application and request for a Service Award for Plaintiff, no later than **July 23, 2018**, which is approximately forty-five (45) days prior to the Final Approval Hearing.

30. Plaintiff and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement, the Fee Application and/or request a Service Award for Plaintiff no later than **August 21, 2018**, which is fifty (15) days prior to the Final Approval Hearing.

Effect of Failure to Approve Settlement

31. In the event the Settlement is not finally approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) Nothing contained in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against Coachways or Plaintiff on any point of fact or law; and

(c) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

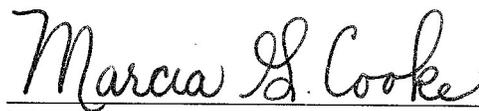
Stay/Bar of Other Proceedings

32. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

37. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

<u>Event</u>	<u>Timeline</u>
Notice Deadline	30 days after Preliminary Approval Order
Deadline for Completion of Notice Re-mailing Process	60 days after Preliminary Approval Order
Deadline for filing Motion for Final Approval of the Settlement and Class Counsel’s Fee Application and expenses, and for a Service Award	45 days before the Final Approval Hearing
Deadline for opting-out of the Settlement and for submission of Objections	60 days after Notice Deadline
Deadline for Responses to Objections	15 days before the Final Approval Hearing
Final Approval Hearing	September 5, 2018 at 10:00 a.m.

DONE and ORDERED in chambers, at Miami, Florida, this 30th day of April 2018.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Jonathan Goodman, U.S. Magistrate Judge
Counsel of record

