

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GRACE MURRAY, on behalf of herself and
others similarly situated,

Plaintiff,

v.

GROCERY DELIVERY E-SERVICES USA
INC. DBA HELLO FRESH,

Defendant.

Case No. 19-cv-12608-WGY

[PROPOSED] FINAL APPROVAL ORDER

On _____(month)__(day), 2021, this Court heard the motion for final approval of the class action settlement and for entry of judgment filed by Plaintiff.¹ This Court reviewed: (a) the motion and the supporting papers, including the Settlement Agreement and Release (“Settlement Agreement”); (b) any objections filed with or presented to the Court; (c) the Parties’ responses to any objections; and (d) counsel’s arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and therefore approves it. Among other matters considered, the Court took into account: (a) the complexity of Plaintiff’s theory of liability; (b) the arguments raised by HelloFresh in its pleadings that could potentially preclude or reduce the recovery by Settlement Class Members; (c) delays in any award to the Settlement Class that would

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

occur due to further litigation and appellate proceedings; (d) the amount of discovery that has occurred; (e) the relief provided to the Settlement Class; (f) the recommendation of the Settlement Agreement by counsel for the Parties; and (g) the low number of objectors to the Settlement Agreement, demonstrating that the Settlement Class has a positive reaction to the proposed settlement.

2. The Court also finds that extensive arm's-length negotiations have taken place, in good faith, between Settlement Class Counsel and HelloFresh's Counsel resulting in the Settlement Agreement. These negotiations were presided over by an experienced mediator.

3. The Settlement Agreement provides substantial value to the Settlement Class in the form of cash payments.

4. Notice was provided to Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

5. HelloFresh filed a copy of the notice it gave on [Month] [Date], [Year] pursuant to 28 U.S.C. § 1715(b), and the notice complies with the requirements of 28 U.S.C. § 1715(b).

6. Plaintiff and Settlement Class Counsel have fairly and adequately protected the Settlement Class' interests, and the Parties have adequately performed their obligations under the Settlement Agreement.

7. For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, this Court finds and determines that the proposed Class, as defined below, meets all of the legal requirements for class certification, for settlement purposes only, under Federal Rule of Civil Procedure 23 (a) and (b)(3).

8. An award of \$ _____ for a Fees, Costs, and Expenses Award to Settlement Class Counsel is fair and reasonable in light of the nature of this case, Settlement Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Settlement Class.

9. A Service Payment to Plaintiff of \$ _____ is fair and reasonable in light of: (a) Plaintiff's risks (including financial, professional, and emotional) in commencing this Action; (b) the time and effort spent by Plaintiff in litigating this Action; and (c) Plaintiff's public interest service.

10. Reimbursement of \$ _____ to the Settlement Administrator is fair and reasonable to compensate it for the provision of notice to the Settlement Class and administering the Settlement.

IT IS ORDERED THAT:

11. **Class Members.** The Settlement Class is certified as:

All persons in the United States from September 5, 2015 to December 31, 2019 to whom HelloFresh, either directly or by a vendor of HelloFresh, (a) placed one or more calls on their cellphones placed via a dialing platform; (b) at least two telemarketing calls during any 12-month period where their phone numbers appeared on the NDNCR for at least 31 days before the calls; and/or (c) received one or more calls after registering the landline, wireless, cell, or mobile telephone number on which they received the calls with HelloFresh's Internal Do-Not-Call List.

Excluded from the Settlement Class are: (1) the Judge presiding over the Actions (or the Judge or Magistrate presiding over the action through which this matter is presented for settlement), and members of their families; (2) the Defendants, their parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest, and Defendant's current or former officers and directors; (3) persons who properly execute and file a timely request

for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

12. Binding Effect of Order. This Order applies to all claims or causes of action settled under the Settlement Agreement and binds all Settlement Class Members, including those who did not properly request exclusion under paragraph 13 of the Preliminary Approval Order. This Order does not bind persons who filed timely and valid requests for exclusion. Attached as Exhibit A is a list of persons who properly requested to be excluded from the settlement.

13. Release. Plaintiff and all Settlement Class Members who did not properly request exclusion are: (1) deemed to have released and discharged HelloFresh from all claims arising out of or asserted in the Action and all claims released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Sections 2.2.1 and 2.2.2 of the Settlement Agreement and are specifically incorporated herein by this reference.

14. Class Relief. HelloFresh is directed to provide the Settlement Fund to the Settlement Administrator according to the terms and timeline stated in the Settlement Agreement. The Settlement Administrator is further directed to issue payments to each Settlement Class Member who submitted a valid and timely Claim Form (i.e., each Authorized Claimant) according to the terms and timeline stated in the Settlement Agreement.

15. Fees, Costs, and Expenses Award. Settlement Class Counsel are awarded \$ _____ from the Settlement Fund in fees and costs. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.

16. Service Payment. Plaintiff is awarded \$_____ from the Settlement Fund as an individual settlement award. Payment shall be made pursuant to the manner and timeline stated in Section 3 of the Settlement Agreement.

17. Settlement Administrator Expenses. The Settlement Administrator is awarded \$_____ from the Settlement Fund.

18. Cy Pres Distribution. Pursuant to Paragraphs 3.5, 3.6, and 3.8 of the Settlement Agreement, any unpaid portion of the Settlement Fund shall be paid to_____.

19. Miscellaneous. No person or entity shall have any claim against HelloFresh, HelloFresh’s Counsel, Plaintiff, the Settlement Class Members, Settlement Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with the Agreement.

20. Court’s Jurisdiction. Pursuant to the Parties’ request, the Court will retain jurisdiction over this Action and the Parties for all purposes related to this settlement.

SO ORDERED this ____ day of _____, 2021.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT COURT