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THE TCPA DANGER REMAINS: Keller Williams Realty Agrees to MASSIVE $40MM TCPA Settlement–But Will it Hold UP?

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For those looking for proof that the TCPA continues to wield its outsized influence among federal statutes–look no further than the latest mega-TCPA settlement hauled in by "Number 7" Avi Kaufman.

This deal–approved by a state court last week for preliminary approval–will see Keller Williams pay up to **$40MM to resolve TCPA claims** that its franchisee real estate agents illegally called and texted 2,000,000 people.

And for those looking for proof that the TCPA remains an abusive and ridiculous money-printing machine for Plaintiff's lawyers while doing little to nothing to hep consumers– recognize that **the lawyers will make about $10MM bucks** on this deal, whereas the consumers–the ones who received the calls–**will get about $14.00 each.**

Travesty! Ridiculous! Absurd!

Eh, tell it to Congress. They don't listen to me, apparently.

You can read the settlement here: 14-46-35-122

Few other interesting notes:

1. This appears to be the largest TCPA settlement in history to be sought in state court. There is likely a story behind that. But I don't know what it is. :);

2. KW agreed to a heap of non-monetary relief, including: to (1) create a TCPA task force to enhance compliance; (2) to make the existing TCPA/DNC resource page on KW Connect more visible to KWRI's franchisees and their independent contractor real estate agents; and (3) provide additional materials to KWRI's franchisees about TCPA/DNC compliance that they can use with their independent contractor real estate agents.

3. This settlement would DEFINITELY NOT pass muster under the First Circuit's recent ruling in Murrary v. Grocery Delivery E-Services USA, 2022 WL 17729630, No. 21-1931 (1st

Cir. Dec. 16, 2022). The class definition includes a garbled mess of folks with different and competing claims:*All Persons in the United States who, during the Class Period, (1) were called or received two or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors on a telephone number that (a) appeared on the National Do Not Call Registry for at least 31 days and/or (b) that appeared on any internal do not call list of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors; and/or (2) were called or received one or more calls and/or text messages made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors using (a) an artificial or prerecorded voice and/or (b) a cloud based dialing platform; and/or (3) were called or received one or more calls made using an automatic telephone dialing system made by or on behalf of Defendant or any Defendant-affiliated franchisees, market centers, realtors, agents or vendors.*

4. Under *Murray* a separate attorney would need to be assigned to represent each piece of the class as they tug and pull against each other. Seems unlikely that, for instance, those who received only prerecorded calls and those who received only ATDS calls should be receiving the same amount. Different counsel should–according to the *Murray* ruling–have bee appointed to represent these different classes. Not saying I agree with *Murray* btw. But if someone wanted to make an objection to this settlement on the grounds of *Murray,* well, there you go.

5. The KW case was NOT certified prior to this settlement being reached. The Coldwell Banker case–scheduled for trial sometime in April or May, 2023–was certified, meaning if that case were to settle it would almost certainly be larger than the $40MM KW just agreed to paid.

Hang in there TCPAWorld.

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