

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER JAMES WALKER, KIM
STERLING, ERNIE FISHER, *on behalf of*
themselves and all others similarly situated,

2:20-CV-01975-CCW

Plaintiff,

v.

HIGHMARK BCBSD HEALTH OPTIONS,
INC., COTIVITI, INC.,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION TO CERTIFY THE CLASS FOR
SETTLEMENT PURPOSES AND FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, the Parties in the above-captioned litigation have advised the Court that they have settled the litigation, the terms of which have been memorialized in a proposed settlement agreement (“Settlement Agreement”);

WHEREAS, Plaintiffs have applied to this Court through an unopposed motion for an order (1) certifying a proposed Settlement Class for settlement purposes, (2) granting preliminary approval of the Settlement Agreement resolving all claims in the above-captioned matter, (3) directing notice to the Settlement Class, and (4) setting a fairness hearing; and

WHEREAS, the Court has read and considered Plaintiffs’ unopposed Motion to Certify the Settlement Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement (“Motion”), the points and authorities and exhibits submitted therewith, the Settlement Agreement, and all of the supporting documents, and good cause appearing:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. Plaintiff's Motion is GRANTED. It appears to this Court on a preliminary basis that the Settlement Agreement satisfies the elements of Fed. R. Civ. P. 23 and is fair, adequate, and reasonable.

3. The proposed Settlement Class is hereby preliminarily certified pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for purposes of settlement. The Settlement Class is defined as:

A. During the Class Period, all persons within the United States who are subscribers or primary users of a cellular telephone number to which Defendant Highmark BCBSD Health Options Inc. placed (or had placed on its behalf by Defendant Cotiviti, Inc.) a telephone call using a pre-recorded or artificial voice,

1) when such a call to that telephone number had previously resulted in (a) a "WRONG_NUMBER" disposition or (b) a "MSG_DECLINED" disposition without a subsequent disposition of "CORRECT_PERSON" or "MSG_HUMAN" and

2) when at least one subsequent call to that telephone number had the disposition "WRONG_NUMBER", "MSG_MACHINE", "CORRECT_PERSON", "MSG_HUMAN", "HANGUP", "NO_CONTINUE", or "MSG_DECLINED".

B. Excluding those persons who *only* received calls as part of a COVID Campaign, as well as Defendants and any entities in which Defendants have a controlling interest; Defendants' agents and employees; any Judge and Magistrate Judge to whom this action is assigned and any member of their staffs and immediate families.

4. The Court finds that Plaintiffs Christopher James Walker, Ernie Fisher, and Kim Sterling will fairly and adequately protect the interests of the Settlement Class. As a result, the Court appoints and designates the aforementioned Plaintiffs as representative of the Settlement Class.

5. The Court finds that attorney Jeremy M. Glapion of Glapion Law Firm is experienced and competent counsel who will continue to fairly and adequately protect the interests of the Settlement Class. As a result, the Court appoints and designates attorney Mr. Glapion as Class Counsel for the Settlement Class.

6. The Court finds that the Claim Form (Exhibit A to the Settlement Agreement), Class Notice documents (Exhibit B to the Settlement Agreement), and related Notice Plan (outlined in Section VII of the Settlement Agreement) meet the requirements for due process, the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, and ensure Notice is well calculated to reach representative class members. The Notice, Notice Plan, and aforementioned documents are hereby approved.

7. As soon as practicable, but no later than **January 10, 2023** (the “Notice Deadline”), the Settlement Administrator shall,

- (a) Cause Class Notice to be disseminated to Settlement Class Members;
- (b) Cause the claims form to be sent to identified members of the Settlement Class;
- (c) Cause the Class Notice to be published on, and make the following documents filed in the Action available for download on, the Settlement Website, located at <https://www.hhotcpasettlement.com>
 - (i) the operative class action complaint;
 - (ii) Plaintiffs’ motion to certify class for settlement purposes and for preliminary approval of class action settlement, and supporting documents; and

(iii) the Court's preliminary approval orders, as well as any supporting memorandum.

8. On **April 17, 2023**, Plaintiffs shall file a declaration from Claims Administrator that summarizes the work the administrator performed, proof of notice, and the list of exclusions (if any). The list of exclusions may be filed under seal.

9. On **January 24, 2023**, Plaintiffs shall move for reasonable attorneys' fees and costs, as well as any service awards, if requested.

10. On **March 10, 2023**, any Settlement Class Member may object to the Settlement Agreement by filing written objections with the Clerk of the Court ("Objection Deadline") in accordance with Section 9.02 of the Settlement Agreement. Only such objecting Settlement Class Members shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Fairness Hearing.

11. On **March 24, 2023**, fourteen (14) days after the Objection Deadline defined above, the parties may respond to any timely-filed objections.

12. Class Members may submit claims by **March 27, 2023**.

13. A hearing (the "Fairness Hearing") will be held before this Court on **May 2, 2023** at **1:00 P.M. EST** via telephonic conference, to determine whether the Settlement Agreement shall be granted final approval, and to address any related matters. **On or before April 17, 2023, Plaintiffs shall file their Motion for Final Approval of the settlement as to the Settlement Class.**

13. The Fairness Hearing may, from time to time and without further notice to the Settlement Class members (except those who have filed timely objections or entered appearances), be continued or adjourned by order of the Court.

14. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement Agreement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

IT IS SO ORDERED.

DATED this 13th day of December, 2022.

BY THE COURT:

/s/ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
United States District Judge

cc (via ECF email notification):

All Counsel of Record