

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

TOMER DARVISH

Plaintiff

-VS-

AEGIS FINANCIAL LLC

Defendant

2023CH000015
CASE NUMBER

FILED

23 Nov 28 PM 05: 40



CLERK OF THE

18TH JUDICIAL CIRCUIT

DUPAGE COUNTY, ILLINOIS

ORDER

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION

SETTLEMENT AND CERTIFYING THE SETTLEMENT CLASS

Plaintiff Tomer Darvish and Defendant Aegis Financial LLC (“Aegis Financial”) have agreed to settle this Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release. The Parties reached the Settlement through arm’s-length negotiations with the help of experienced mediator, Hon. Wayne R. Andersen (Ret.). 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, and release their claims against Defendant.

The Settlement has been filed with the Court, and Plaintiff and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement. 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 matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of 735 ILCS 5/2-801 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 735 ILCS 5/2-803 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, 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:

I. THE CLASS, REPRESENTATIVE PLAINTIFF, AND CLASS COUNSEL

1. For purposes of settlement only, the Court has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.
2. Pursuant to 735 ILCS 5/2-801, and for the purposes of settlement only, the Settlement Class is preliminarily certified, consisting of the following:

All persons in the United States who were called and received an automated or prerecorded voice message from or on behalf of Defendant on their mobile phone or residential landline between February 4, 2018, and May 15, 2023.

Excluded from the Settlement Class are: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any of the foregoing person(s) in (1)-(3); (5) any Settlement Class Member who has timely opted out of this proceeding; and (6) Plaintiff's Counsel, their employees, and their immediate family.

3. Pursuant to 735 ILCS 5/2-801, and for settlement purposes only, Plaintiff is hereby appointed the Class Representative and the following counsel are hereby appointed Class Counsel:

SHAMIS & GENTILE, P.A.

Andrew J. Shamis, Esq.

14 NE 1st Avenue, Suite 705

Miami, Florida 33132

EDELSBERG LAW, P.A.

Scott Edelsberg, Esq.

Chris Gold, Esq.

20900 NE 30th Ave., Suite 417

Aventura, FL 33180

4. The Court preliminarily finds that the proposed Settlement Class meets all the applicable requirements of 735 ILCS 5/2-801, and hereby certifies the Settlement Class for settlement purposes only. The Court hereby preliminarily finds, in the specific context of the Class Settlement, that:

- a. Numerosity: The Settlement Class satisfies the numerosity requirement of 735 ILCS 5/2-801(1). Joinder of these widely dispersed, numerous Settlement Class Members into one suit would be impracticable.
- b. Commonality: The Settlement Class satisfies the commonality and predominance requirement of 735 ILCS 5/2-801(2). The claims in this case present questions of law and fact common to the Settlement Class that predominate over any questions affecting only individual members.
- c. Adequacy: The Class Representative Plaintiff and Class Counsel satisfy the adequacy of representation requirement of 735 ILCS 5/2-801(3). The Class Representative Plaintiff's interests do not conflict with, and are co-extensive with, those of absent Settlement Class Members. The Plaintiff will fairly and adequately represent the interests of the Settlement Class, and Class Counsel is qualified, experienced, and well-equipped to conduct this litigation, such that the Settlement Class Members will receive proper, efficient, and appropriate protection of their interests in the representation of their claims.
- d. The Controversy is Fairly and Efficiently Adjudicated as a Class Action: Finally, a class action is the most appropriate method for the fair and efficient adjudication of the controversy present in this action, satisfying the requirement of 735 ILCS 5/2-801(4). Class certification promotes efficiency, the interests of judicial economy, and uniformity of judgment because, among other reasons, the many members of the Settlement Class will not be forced to separately pursue the relatively small claims alleged in this action and seek relief in various courts. Thus, the class action mechanism is the most fair and efficient method to resolve this dispute.

5. The Class Representative Plaintiff is Tomer Darvish. Based upon the Court's familiarity with the claims and parties, the Court's finding that the Plaintiff is a member of the Settlement Class and will fairly and adequately represent the interests of the Settlement Class, and that Class Counsel is qualified, experienced, and well-equipped to conduct this litigation, the Court preliminarily finds that the Plaintiff and Class Counsel are appropriate representatives on behalf of the Settlement Class.

6. If the Settlement Agreement is terminated or is not consummated for any reasons whatsoever, the certification of the Settlement Class shall be void, and Plaintiff and Defendant shall be deemed to have reserved all of their rights set forth in the Settlement Agreement, including but not limited to the issues related to all claims, defenses, and issues under 735 ILCS 5/2-801.

II. THE SETTLEMENT CAP

7. Pursuant to the Settlement Agreement, Defendant shall make available up to Two Million One Hundred Eight Thousand Nine Hundred and Sixty-Two Dollars and Zero Cents (\$2,108,962.00) to cover the Claim Settlement Payments, Attorneys' Fees, service awards, and all Notice and Administration Costs in settlement in full of this Action.

8. As described herein, the Settlement Cap shall be used to provide the exclusive recovery and relief for the Class and all Notice and Administrative Costs. Pursuant to 735 ILCS 5/2-807, any part of the Settlement Cap that is not used to provide relief for the Settlement Class, class counsel's fees, Plaintiff's service award, and Notice and Administrative Costs of up to \$100,000.00 shall remain with/revert to Defendant so that there are no (\$0) "residual funds" under the statute.

9. From the Settlement Cap, Defendant, within twenty-one (21) days after the Effective Date, shall fund all amounts required by the Administrator for distribution of any Claim Settlement Payments to Settlement Class Members who submit timely and valid Claim Forms.

10. Class Counsel fees and the Service Award will be paid by Defendant from the Settlement Cap.

11. Any checks that remain uncashed after 180 days from the date on the check shall revert to the Defendant.

III. NOTICE TO SETTLEMENT CLASS MEMBERS

12. The Court approves the form and content of the Class notices, substantially in the forms attached to the Settlement, as well as the Claim Form attached thereto. 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 inform the Settlement Class of the pendency of

the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's attorney's fees application and the request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Notice program satisfy all applicable requirements of law, including, but not limited to, 735 ILCS 5/2-803 and the Constitutional requirement of Due Process.

13. Epiq shall serve as the Administrator.

14. The Administrator shall implement the Notice program, as set forth below and in the Settlement, using the Class notices substantially in the forms attached 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, Notice, Short-Form Notice, and Long-Form Notice, as set forth in the Settlement and below.

Notice and Short-Form Notice

19. The Administrator shall send one copy of the Notice by e-mail to those Settlement Class Members for whom Defendant has e-mail addresses. The Administrator shall also send one copy of the Short-Form Notice by postcard with detachable form *via* U.S. Mail with prepaid postage.

Settlement Website

24. The 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 the Settlement Agreement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendant agree to include. These documents shall remain on the Settlement Website until at least sixty (60) days following the Claim Deadline.

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

IV. FINAL APPROVAL HEARING, OPT-OUTS, AND OBJECTIONS

26. A Final Approval Hearing shall be held via video conference before this Court on May 2, 2024, at 9:00 a.m. to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order, and whether Class Counsel's Fee Application and request for a Service Award for the Class Representative should be granted.

27. 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 30 days before the Final Approval Hearing ("Opt-Out Deadline"), and mailed to the addresses indicated in the Long Form Notice.

28. Any Settlement Class Member may object to the Settlement, Class Counsel's Fee Application, or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendant's 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 30 days before the Final Approval Hearing, 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, the cell phone number or residential number at which the objector received a pre-recorded call and/or message from Defendant and if represented by counsel, the name, bar number, address, and telephone number of the objector's counsel;
- c. a signed statement stating, under penalty of perjury, that the objector received one or more pre-recorded calls and/or messages from Defendant and is a member of the Settlement Class;
- 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 the objector's counsel and/or counsel's law firm 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 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).

V. 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 February 27, 2024, which is 65 days before 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 April 17, 2024, which is 15 days before the Final Approval Hearing.

VI. EFFECT OF FAILURE TO APPROVE SETTLEMENT

31. If 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 in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against Defendant 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 notices, court filings, orders and public statements, may be used as evidence against any party to this action. 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.

VIII. 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>Date.</u>	<u>Timeline</u>
Class Notice	January 3, 2024.	120 days before the Final Approval Hearing
Deadline for filing.	February 27, 2024.	65 days before the Final Approval Hearing
Motion for Final Approval of the Settlement and Class Counsel's Fee Application and expenses, and for a Service Award		
Deadline for opting-out of the Settlement and for submission of Objections	April 2, 2024.	30 days before the Final Approval Hearing
Last day Class Claimants may submit a Claim Form	April 2, 2024	30 days before the Final Approval Hearing
Deadline for Responses to Objections.	April 17, 2024.	15 days before the Final Approval Hearing
Deadline for submission of an updated notice report from Epiq with list of opt-outs and/or objections	April 17, 2024.	15 days before the Final Approval Hearing
Final Approval Hearing.	May 2, 2024	

Submitted by: ANDREW SHAMIS
 Attorney Firm: SHAMIS AND GENTILE PA
 DuPage Attorney Number: 375454
 Attorney for:

Entered: File Date: 11/28/2023
 JUDGE ANNE THERIEAU HAYES

Address: 14 NE 1ST AVE, SUITE 705
City/State/Zip: MIAMI, FL, 33132
Phone number: 305-479-2299
Email : ashamis@shamisgentile.com

Validation ID : DP-11282023-0540-55856

Date: 11/28/2023