

Medgebow v. Checkers Drive-In Restaurants, Inc.
United States District Court for the Southern District of Florida,
Case No. 9:19-cv-80090

If you received a text message from Checkers after an opt-out request, you may be entitled to a cash payment under a class action settlement.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- Plaintiff alleges that Checkers Drive-In Restaurants, Inc. (“Checkers”) sent text messages after receiving opt-out requests in violation of the Telephone Consumer Protection Act (“TCPA”). Checkers denies Plaintiff’s allegations and denies any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiff’s claims or Checkers’ defenses. By entering into the Settlement, Checkers has not conceded the truth or validity of any of the claims against it.
- Checkers has agreed to make cash payments to the Settlement Class Members (defined below) and pay for attorneys’ fees and expenses and the Service Award to Plaintiff (the “Settlement Fund”) to fully settle and release claims of persons to whom Checkers sent text messages (the “Settlement Class Members”).
- The Settlement Fund shall be used to pay all amounts related to the Settlement, including payment of **up to \$450** to Settlement Class Members who submit a valid and timely claim form (“Claim Form”), attorneys’ fees and reasonable expenses approved by the Court, and a Service Award for Plaintiff approved by the Court.
- Your rights and options, and the deadlines to exercise them, are explained in this Notice. **Your legal rights are affected whether you act or don’t act. Read this Notice carefully.** Note, for capitalized terms not defined herein, please reference the full Settlement Agreement.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

YOUR RIGHTS AND OPTIONS	
SUBMIT A CLAIM FORM	If you submit a timely and approved Claim Form by August 13, 2019, you will receive a payment and will give up your rights to pursue or continue to pursue a Released Claim, as defined in the Settlement Agreement, against Checkers and/or any other Released Parties. Claim Forms may be submitted by mail to Medgebow v. Checkers Claims Administrator, P.O. Box 404000, Louisville, KY 40233-4000, or online at www.CDIRSettlement.com .
EXCLUDE YOURSELF OR “OPT OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue or continue to pursue a Released Claim against Checkers and/or other Released Parties on your own. The deadline for excluding yourself is August 13, 2019.
OBJECT TO THE SETTLEMENT	You may write to the Court about why you believe the Settlement is unfair in any respect. The deadline for objecting is August 13, 2019. Even if you object, to obtain a benefit from this Settlement, you must still submit a Claim Form. If you submit only an objection, you will not receive any benefit from the Settlement, and you will give up your rights to pursue or continue to pursue a Released Claim against Checkers and/or any other Released Parties.
DO NOTHING	<u>If you do nothing, you will not receive any monetary award and you will give up your rights</u> to pursue or continue to pursue a Released Claim against Checkers and/or any other Released Parties.
GO TO THE FINAL APPROVAL HEARING	You may ask to speak in Court about the fairness of the Settlement, if you object to the Settlement. To speak at the Final Approval Hearing, you must comply with the requirements set forth in Question 21 below no later than August 13, 2019.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the class action lawsuit styled *Medgebow v. Checkers Drive-In Restaurants, Inc, LLC*, Case No. 9:19-cv-80090 (S.D. Fla.). Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the Settlement and your rights under it.

2. What does it mean if I received a postcard or e-mail about this Settlement?

If you received a postcard or e-mail describing this Settlement, it is because Checkers' records indicate that you are a member of the Settlement Class in this action. You are a member of the Settlement Class because Checkers sent one or more text messages to your cellular telephone number(s) after you texted Checkers to stop sending you text messages.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff alleges that Checkers violated the TCPA by sending text messages to persons after they had expressly revoked their consent. Checkers denies these allegations and denies any wrongdoing. The Court has conditionally certified a class action for settlement purposes only. The Honorable Beth Bloom is the judge in charge of the lawsuit.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Checkers. Instead, both sides agreed to this Settlement. That way, they avoid the risk and cost of a trial, and the Settlement Class Members will receive compensation. Plaintiff and Class Counsel think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am part of the Settlement Class?

The Court has certified this case as a class action for settlement purposes only. The Settlement Class is defined as:

All persons in the United States (i) identified in the Settlement Class List (ii) who between January 28, 2018 and May 28, 2019 (the "Class Period"), attempted to unsubscribe from receiving text messages from Checkers' short code 88001, by texting "stop," "cancel," "unsubscribe," "end," "quit," "optout," "opt out," "remove," "cancelar," "arret," or "arrette" and were subsequently sent text message advertisements or promotions from Checkers to their cellular telephone and did not re-subscribe to receive text messages. Persons meeting this definition are referenced herein collectively as the "Settlement Class," and individually as "Settlement Class Members."

Notwithstanding the foregoing, the Settlement Class specifically excludes persons in the following categories: (A) individuals who are or were during the Class Period officers or directors of Checkers or any of its respective affiliates; (B) the district judge and magistrate judge presiding over this case, the judges of the United States Court of Appeals for the Eleventh Circuit, their spouses, and persons within the third degree of relationship to any of them; and (C) all persons who file a timely and proper request to be excluded from the Settlement Class in accordance with Section III(D) of this Agreement.

If you are still not sure whether you are included in the Settlement Class, you can visit other sections of the Settlement Website, www.CDIRSettlement.com, you may write to the Claims Administrator at Medgebow v. Checkers Claims Administrator, P.O. Box 404000, Louisville, KY 40233-4000, or you may call the Toll-Free Settlement Hotline, 877-236-9485, for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed lawyers from the law firms of Edwards Pottinger, LLC and Eggatz | Pascucci as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment from the Settlement Fund of up to \$1,038,690 to them for attorneys' fees, plus reasonable expenses not to exceed \$15,000. Class Counsel also will ask the Court to approve payment of up to \$5,000.00 to Plaintiff for his service as Class Representative. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. Checkers has agreed to make available \$3,462,300 to cover: (1) payments to Settlement Class Members who submit timely and valid claim forms; (2) an award of attorneys' fees and expenses to Class Counsel; (3) a Service Award to Plaintiff; and (4) the costs of notice and administration of the Settlement.

Payments. All Settlement Class Members are eligible to submit a Claim Form and receive a payment. To submit a Claim Form, follow the procedures described under Question 11 below.

9. How much will my payment be?

If you submit a valid and timely claim, you will receive up to \$450.

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class and will be bound by the Release of claims in the Settlement. This means that if the Settlement is approved, you cannot pursue or continue to pursue any Released Claim against Checkers or any other Released Parties, whether on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release Checkers and any other Released Parties, as defined in the Settlement Agreement, from any and all Released Claims, including those that were asserted in the litigation and all claims that relate to or arise from Checkers sending text messages after revocation of consent.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free, or you can, at your own expense, talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

To receive a payment, you must submit a Claim Form by the deadline of August 13, 2019. You may get a Claim Form on the Settlement Website, www.CDIRSettlement.com, or by calling the Toll-Free Settlement Hotline, 877-236-9485. **Read the instructions carefully. To be valid, the Claim Form MUST be filled out completely and accurately, signed by you, and submitted on a timely basis.**

You may submit a Claim Form by mail or online:

A Claim Form may be submitted by mail to the Claims Administrator at: Medgebow v. Checkers Claims Administrator, P.O. Box 404000, Louisville, KY 40233-4000. The Claim Form must be postmarked by August 13, 2019; or

A Claim Form may be submitted online on the Settlement Website at: www.CDIRSettlement.com.

The Claim Form must be submitted online by August 13, 2019.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When will I receive a Claim Settlement Payment?

The Court will hold a hearing to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Settlement Class Members will be informed of the progress of the Settlement through information posted on the Settlement Website at www.CDIRSettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How can I get out of the Settlement?

If you want to keep your rights to pursue or continue to pursue any Released Claim against Checkers and/or any Released Parties, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the Settlement, you must send an exclusion request to the Claims Administrator. To be valid, you must mail a written notice of exclusion to the Claims Administrator, so that it is postmarked no later than August 13, 2019 (the "Opt-Out Deadline"), and shall clearly state the following in the written notice of exclusion: (a) identify the case name; (b) identify the name, address, and telephone number of the Settlement Class Member; (c) identify the cellular telephone number(s) where the person received a text message from Checkers relating to the Litigation; (d) be personally signed by the Settlement Class Member requesting exclusion; and (e) contain a statement that indicates a desire to be excluded from the Settlement Class in the Litigation, such as "I hereby request that I be excluded from the proposed Settlement Class in *Medgebow v. Checkers Drive-In Restaurants, Inc.*, Case No. 9:19-cv-80090." No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than August 13, 2019 to Medgebow v. Checkers Claims Administrator, P.O. Box 404000, Louisville, KY 40233-4000.

14. If I do not exclude myself, can I sue Checkers for the same thing?

No. If you do not exclude yourself, you give up any rights to pursue (or continue to pursue) any Released Claims against Checkers and/or any Released Parties.

15. If I exclude myself, can I get a benefit from this Settlement?

No. If you ask to be excluded, you will not be able to submit a Claim Form for a Settlement payment, and you cannot object to the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the Settlement is fair?

If you are in the Settlement Class, you can object to the Settlement or any part of the Settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of any attorneys' fees and expenses and/or Service Award.

To be valid, the written objection must include: (a) the case name and number; (b) the name, address, and telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel with counsel's contract information; (c) the cellular telephone number(s) where he/she received a text message from Checkers relating to the Litigation; (d) a description of the specific factual and legal basis for each objection raised; (e) a list of any other objections filed in any court for the past five (5) years; (f) if he or she is represented by counsel, a list of objections filed by that counsel in any court for the past (5) years; (g) 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; and (h) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

Any objection must be personally signed by the Settlement Class Member. Class or group objections shall be prohibited.

Any Settlement Class Member who fails to object to the Settlement in the manner described above shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

To be considered, you must file your objections with the Court. Your objections must also be mailed to the addresses below and postmarked no later than August 13, 2019.

For Plaintiff:

Seth M. Lehrman, Esq.
EDWARDS POTTINGER, LLC
425 North Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301

Joshua H. Eggnatz, Esq.
Michael J. Pascucci, Esq.
EGGNATZ | PASCUCCI
7450 Griffin Rd., Suite 230
Davie, FL 33314

For Checkers:

David S. Almeida, Esq.
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
333 West Wacker Drive, Suite 1900
Chicago, Illinois 60606

Even if you timely and properly object, to obtain a benefit from this Settlement, you must submit a Claim Form. If you object, but fail to submit a Claim Form, you will not receive any monetary award.

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you oppose something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary award and you will give up your rights to pursue or continue to pursue Released Claims against Checkers and/or any other Released Parties. For information relating to what rights you are giving up, see Question 10.

THE FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at September 17, 2019 at 9:30 a.m. in Courtroom 10-2 in the United States District Court for the Southern District of Florida, The Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court will also consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional mailed notice, so please check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include the case name and number; your name, address, telephone number, and signature, and, if represented by counsel, their contact information; the cellular telephone number(s) where you received a text message from Checkers relating to the Litigation; and copies of any papers, exhibits, or other evidence (including a list of any witnesses intended to be called to testify) that you will present to the Court in connection with the Final Approval Hearing. The document must be filed with the Court no later than August 13, 2019. You cannot speak at the hearing if you exclude yourself from the Settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice is only a summary of the proposed Settlement. You can get a complete copy of the Settlement Agreement by visiting the Settlement Website, www.CDIRSettlement.com, or you can write to the address below or call the Toll-Free Settlement Hotline, 877-236-9485.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, CHECKERS, OR CHECKERS' COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.