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## Papa John's Will Deliver \$16.5M To End TCPA Claims

By **Scott Flaherty**

Law360, New York (May 17, 2013, 6:59 PM ET) -- Papa John's International Inc. has agreed to pay \$16.5 million to resolve a nationwide class action alleging it advertised pizzas through unwanted text messages in violation of the Telephone Consumer Protection Act, according to a Friday filing in Seattle.

A class of consumers, led by named plaintiffs Maria Agne, Erin Chutich and Jerrod Chutich, urged a federal judge to grant preliminary approval of a settlement of allegations that Papa John's breached the TCPA when it directed marketing company OnTime4U Inc. to send customers undesired text messages that advertised the company's pizzas.

"The settlement is fair, adequate and reasonable and otherwise satisfies the requirements for preliminary approval," the motion said.

Of more than \$16.5 million, up to \$11 million would be made up of cash payments from Papa John's to members of the consumer class, comprised of anyone who received an unsolicited text message from OnTime4U advertising a Papa John's product. The settlement filing estimated the size of the class to be about 220,000.

Another \$2.86 million would go toward providing merchandise certificates that give class members a voucher for a free Papa John's pizza, and \$2.45 million would go toward attorneys' fees, according to the settlement filing.

Agne initially brought the suit as a putative class action against Papa John's in Washington state court. The case was later removed to federal court and the two Chutichs joined as named plaintiffs with the filing of a fifth amended complaint in July, according to the filing.

The suit alleges that Papa John's and certain franchisees sent text messages, through the marketing company OnTime4U, with promotional codes toward future purchases of its pizza. The consumers argue that Papa John's was liable for any alleged TCPA violations stemming from those messages because it encouraged the franchisees to contract with the marketer.

The consumers were granted class certification in November, when U.S. District Judge John C. Coughenour **ruled** that the proposed members had shown that they received substantially similar unwanted text messages advertising the pizza chain's products. In that class certification ruling, Judge Coughenour rejected Papa John's argument that it had no role in its franchisees' decisions to hire OnTime4U to send the text messages.

"Contrary to Papa John's position that it played no role in those decisions, Papa John's has produced documents that indicate that it did play some role in the franchisee-level

decisions to hire OnTime4U," the order said.

Under the proposed settlement, the consumer class will drop its claims against Papa John's and the company will continue to maintain that it was not liable for the alleged TCPA violations.

Representatives for Papa John's did not immediately respond to a request for comment, nor did an attorney for the class.

The class is represented by Albert H. Kirby of Kirby Law Group and by Donald W. Heyrich of Heyrich Kalish McGuigan PLLC.

Papa John's is represented by James Howard and Jessica M. Andrade of Dorsey & Whitney LLP as well as by Joseph P. Lawrence and Joan L. Roth of Lawrence & Versnel PLLC.

The case is Agne et al. v. Papa John's International Inc. et al., case number 2:10-cv-01139, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Linda Chiem. Editing by Eydie Cubarrubia.

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