

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS**  
COUNTY DEPARTMENT, CHANCERY DIVISION

STACEY BENBOW; TERESA HERBERT;  
DENNIS PHILIP; DAWAUN LUCAS; DAVID  
DOMINGUEZ HOOPER; METE TASIN; and  
REEJAUNTE SMITH, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

SMILEDIRECTCLUB, LLC; and  
SMILEDIRECTCLUB, INC.,

Defendant.

Case No. 2020CH07269

Calendar: 2

Hon. Raymond W. Mitchell

**ORDER GRANTING PRELIMINARY  
APPROVAL OF STIPULATION AND  
SETTLEMENT AGREEMENT,  
CONDITIONAL CLASS  
CERTIFICATION, NOTICE TO  
SETTLEMENT CLASS MEMBERS  
AND ENTRY OF SCHEDULING  
ORDER**

## INTRODUCTION

Pending is the Unopposed Motion for Preliminary Approval of Stipulation and Agreement of Settlement, Conditional Class Certification, Notice to Class Members and Entry of Scheduling Order (the "Motion") of plaintiffs Stacey Benbow, Teresa Herbert, Dennis Philip, Dawaun Lucas, David Dominguez Hooper, Mete Tasin, and Reejaunte Smith. For the reasons stated herein, the Court grants Plaintiffs' Motion, conditionally certifies the class for settlement purposes only, preliminarily approves the Stipulation of Settlement, and enters the schedule set forth below for notice to Settlement Class Members, exclusion and opt-out deadlines, and for a final approval hearing.

**WHEREAS**, on January 27, 2021, the parties filed a Stipulation and Agreement of Settlement (the "Settlement" or "Settlement Agreement"), which, together with the exhibits thereto, sets forth the terms and conditions for the Settlement and release of certain claims against SmileDirectClub, LLC and SmileDirectClub, Inc. ("Defendants"). The Settlement Agreement was entered into only after extensive arm's-length negotiation by experienced counsel and in mediation under the guidance of the Honorable Wayne R. Andersen (Ret.), JAMS;

**WHEREAS**, the Court having considered the Settlement Agreement (which defines the capitalized terms used herein) and all of the files, records, and proceedings herein, and it appearing to the Court that upon preliminary examination that the Settlement appears fair, reasonable and adequate, and that a hearing should and will be held after Class Notice to the Settlement Class to confirm that the Settlement is fair, reasonable, and adequate, and to determine whether a Judgment approving the Settlement and an Order dismissing the Action based upon the Settlement be entered;

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

**I. THE CLASS, REPRESENTATIVE PLAINTIFFS, 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:

“Settlement Class” means all persons in the United States who received one or more text messages that may include advertising or telemarketing under the TCPA, from Defendants between July 7, 2016 and the date of the Court’s order granting preliminary approval of the Settlement. The following are excluded from the Settlement Class: (1) any trial judge and other judicial officers that may preside over the Action; (2) the Mediator; (3) the Released Parties; (4) Plaintiffs’ Counsel; (5) any Settlement Class Member who has timely submitted a Request for Exclusion by the Opt-Out Deadline; and (6) any person or entity who has previously given a valid release of the claims asserted in the Action.

3. Pursuant to 735 ILCS 5/2-801, and for settlement purposes only, Plaintiffs Stacey Benbow, Teresa Herbert, Dennis Philip, Dawaun Lucas, David Dominguez Hooper, Mete Tasin, and Reejaunte Smith are hereby appointed Representative Plaintiffs (“Plaintiffs” or “Representative Plaintiffs”) and the following counsel are hereby appointed Class Counsel:

Hedin Hall LLP  
1395 Brickell Avenue, Suite 1140  
Miami, Florida 33131

Bursor & Fisher, P.A.  
888 Seventh Avenue  
New York, NY 10019

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 Representative Plaintiffs and Class Counsel satisfy the adequacy of representation requirement of 735 ILCS 5/2-801(3). The Representative Plaintiffs' interests do not conflict with, and are co-extensive with, those of absent Settlement Class Members. The Representative Plaintiffs 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 Settlement Class Members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim with such representation.

(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 presented 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 around the country. Thus, the class action mechanism is the most fair and efficient method to resolve this dispute.

5. The Representative Plaintiffs are Stacey Benbow, Teresa Herbert, Dennis Philip, Dawaun Lucas, David Dominguez Hooper, Mete Tasin, and Reejaunte Smith. Based upon the Court's familiarity with the claims and parties, the Court's finding that the Representative Plaintiffs are members of the Settlement Class and will fairly and adequately represent the interests of the Settlement Class, and that Class Counsel at Hedin Hall LLP and Bursor & Fisher, P.A. is qualified, experienced, and well-equipped to conduct this litigation, the Court preliminarily finds that the Representative Plaintiffs 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 reason whatsoever, the certification of the Settlement Class shall be void, and Plaintiffs and Defendants shall be deemed to have reserved all of their rights as 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 timeline set forth in the Settlement Agreement, SmileDirectClub, LLC, on behalf of Defendants, shall deposit into an escrow bank account to be created and administered by the Settlement Administrator under the terms of this Agreement (the “Escrow Account”), and pursuant to the timetable and other terms set forth herein, money sufficient to pay all the Aggregate Fees, Costs, and Expenses and Total Class Member Benefits Payout, but only up to, and in no event greater than, the amount of the Settlement Cap, (i.e., Eleven Million Five-Hundred Thousand Dollars and 00/100 (\$11,500,000.00)), which is the maximum amount of money that Defendants can be obligated to pay for benefit of the Settlement Class, inclusive of all Settlement Shares to Settlement Class Members, all Settlement Administration Costs, any Fee Award and Service Awards, and any other costs, expenses, and fees associated with the Settlement pursuant to the terms set forth in this Agreement. Defendants do not need to create a separate, segregated fund for the Settlement Cap, and shall not be obligated to pay any monies into the Escrow Account until such times and pursuant to the deadlines as set forth in the Agreement. Any monies from the Settlement Cap not paid in Aggregate Fees, Costs, and Expenses and Total Class Member Benefits Payout shall be retained by Defendants and shall not otherwise be considered “Residual Funds” under 735 ILCS 5/2-807. Any uncashed Benefit Checks shall be considered “Residual Funds” under 735 ILCS 5/2-807 and shall be distributed pursuant to Section 6.3.4 of the Settlement Agreement.

8. The Settlement Cap will constitute Defendants’ exclusive and maximum payment obligation under the Settlement Agreement and will be used to pay: (a) Settlement Shares paid to Settlement Class Members, as prescribed by the Settlement Agreement; (b) any Fee Award to

Class Counsel, as awarded by the Court; and (c) any Service Awards to the Class Representatives, as awarded by the Court; (d) Settlement Administration Costs, including costs of notice.

9. If the Settlement Agreement is not approved or for any reason the Effective Date does not occur, no further payments or distributions of any kind shall be made, other than payments to the Settlement Administrator for services rendered and costs incurred.

### **III. NOTICE TO SETTLEMENT CLASS MEMBERS**

10. The Court has considered the proposed Exhibits B and C attached to the Settlement Agreement and finds that the form, content, and manner of notice proposed by the parties and approved herein meet the requirements of due process and applicable law, are the best notice practicable under the circumstance, constitute sufficient notice to all persons and entities entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notices in all respects, including the proposed forms of notice and the notice provisions of the Settlement Agreement, and orders that notice be given in substantial conformity therewith. The costs of disseminating the Class Notice shall be paid from the Settlement Cap in accordance with the Settlement Agreement.

11. All costs of providing the Class Notice as provided herein, including the costs of identifying address information for Settlement Class Members and the costs of printing, web hosting and/or disseminating the Class Notice, shall be paid for out of the Settlement Cap, subject to the terms hereof. In the event that the Settlement Agreement is terminated pursuant to its terms, Defendants shall bear any costs of providing Class Notice already incurred.

12. The Court hereby approves the form, content and requirements of the Class Notices annexed to the Settlement Agreement as Exhibits B and C and the procedure for notice set forth under Section 5 in the Settlement Agreement.

13. The Court hereby finds that compliance with the procedures in Section 5.5 of the Settlement Agreement is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of

the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the United States Constitution, and any other applicable law, rule and/or regulation.

**IV. CONFIDENTIALITY**

14. Any information received by the Settlement Administrator in connection with the Settlement Class that pertains to a particular Settlement Class Member, or information submitted in conjunction with a Request for Exclusion (other than the identity of the entity or individual requesting exclusion), shall not be disclosed to any other person or entity other than Class Counsel, Defendants' Counsel, and the Court, or as otherwise provided in the Settlement Agreement.

**V. REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS AND OBJECTIONS TO THE SETTLEMENT**

15. Settlement Class Members who wish to be excluded from Settlement Class shall mail a written Request for Exclusion to the Settlement Administrator, so that it is postmarked no later than forty-five (45) days after the Notice Date (the "Opt-Out Deadline"), and shall clearly state the following: the name, address, and telephone number of the individual or entity that allegedly received a text message sent by Defendants during the Settlement Class Period, and must clearly state that the Person wishes to be excluded from the Litigation and this Settlement and the Settlement Agreement, and provide all such information as may be required by the Settlement Agreement or requested by the Settlement Administrator.

16. Any objection any Settlement Class Member wishes to make to the Settlement must be in writing and mailed to Class Counsel, Defense Counsel, and the Clerk of the Court at the addresses set forth in the Class Notice, postmarked no later than forty-five (45) days after the Notice Date (the "Objection Deadline"), shall contain a caption or title that identifies it as "Objection to Class Settlement in *Benbow, et al. v. SmileDirect Club, LLC, et al.*, No. 2020CH07269" and also shall contain the following information: (i) the objector's name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for

the objector or any other person otherwise assisting the objector or who otherwise stands to potentially benefit financially with respect to such objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for his or her standing as a Settlement Class Member, including the date(s) and telephone number(s) at which he or she received one or more text message(s) covered by this Settlement; and (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and/or the objector's attorney or any other person assisting with such objection (if applicable) has objected to a proposed class action settlement in the past five (5) years.

**VI. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

17. The Court appoints Kurtzman Carson Consultants, LLC as the Settlement Administrator. Responsibilities of the Settlement Administrator shall include, but not be limited to, the following: (a) completing Class Notice, as provided in Section 5 of the Settlement Agreement; (b) obtaining complete address information for Settlement Class Members (where possible) and new addresses for returned e-mails and mail; (c) establishing and maintaining a Settlement Website, from which Settlement Class Members can access copies of the Complaint, the Settlement Agreement, the Short Form Notice, the Long Form Notice, Class Counsel's Fee and Cost Application and an application for Services Awards, this Preliminary Approval Order and other important documents and information about the Settlement; (d) establishing and maintaining a toll-free telephone number and fielding telephone inquiries about the Settlement; (e) reviewing, processing and approving Claims; (f) acting as a liaison between Settlement Class Members and the Parties; (g) directing the mailing of Benefit Checks to Settlement Class Members and overseeing and facilitating the depositing of electronic payments into the PayPal or Venmo accounts of Settlement Class Members; (h) providing copies of any requests for exclusion that are received to Defendants' and Class Counsel as they are received; (i) preparing and providing a declaration to Defendants' counsel and Class Counsel, no later than seven (7) calendar days prior to the Final Approval Hearing, that will attest to the compliance with the provisions of the Settlement Agreement related to Class Notice and list each Settlement Class



Member who timely and validly opted out of the Settlement; and (j) performing any other tasks reasonably required to effectuate the Settlement.

**VII. FINAL APPROVAL HEARING AND SCHEDULE**

18. A hearing (the “Final Approval Hearing”) is hereby scheduled to be held before the Court no earlier than ninety (90) days from the date of entry of the Preliminary Approval Order.

19. The Final Approval Hearing is hereby scheduled to be held before the Court for the following purposes:

(a) to determine whether the applicable prerequisites for settlement of a class action under 735 ILCS 5/2-801 are met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether any objections to the Settlement should be overruled;

(d) to determine whether the Attorneys’ Fees and Costs requested by Class Counsel and Incentive Awards to the Representative Plaintiffs should be approved, and whether a Judgment finally approving the Settlement should be entered;

(e) to consider the payments required from the Settlement Cap pursuant to the Settlement Agreement; and

(f) to rule upon such other matters as the Court may deem appropriate.

20. Class Counsel shall file a motion for final approval of the Settlement, and respond to any objections to the Settlement, no later than ten days (10) before the Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Judgment approving the Settlement Agreement and an Order dismissing the Action in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members.

21. No later than seven (7) calendar days prior to the Final Approval Hearing, the Settlement Administrator will file with the Court and serve both Class Counsel and Defendant's Counsel a declaration stating that the Class Notice required by the Settlement Agreement has been completed in accordance with the terms of this Preliminary Approval Order.

22. On or before twenty-one (21) days prior to the Opt-Out Deadline and Objection Deadline, Class Counsel shall file and serve (i) a Fee and Cost Application; and (ii) any application for a Service Awards to the Representative Plaintiffs. For clarity, the deadlines the parties shall adhere to are as follows:

Class Notice Mailed (and emailed where email addresses are available) by: March 6, 2021 (the "Notice Date") (*within 30 days after entry of Preliminary Approval Order*)

Class Counsels' Fee and Cost Application by: March 30, 2021 (*no later than 21 days prior to the Opt-Out Deadline and Objection Deadline*)

Objection/Opt-Out Deadline: April 20, 2021 (*45 days from the Notice Date*)

Claims Deadline: June 14, 2021 (*100 days from the Notice Date*)

Final Approval Submissions: April 23, 2021 (*10 days prior to Final Approval Hearing*)

Final Approval Hearing: May 5, 2021 at 1:00pm (at least 90 days after the Preliminary Approval Date) (R)

23. Pending final determination of whether the Settlement should be approved, no Settlement Class Member (either directly, in a representative capacity, or in any other capacity), and anyone who acts or purports to act on their behalf, shall institute, commence or prosecute any action that asserts Released Claims against the Defendant or other Released Parties. Further, this case shall remain stayed, except insofar as actions are required to effectuate the Settlement.

24. If a Settlement Class Member wants to appear at the Final Approval Hearing and be heard with respect to objecting to the Settlement, that person or entity must file with the Court and serve on Class Counsel and Defendant's Counsel a written notice of the intention to appear at the Final Approval Hearing and object. Such written statement and notice must be submitted to the Court either by mailing them to the Clerk of Court, or by filing them in person at the

courthouse, and post marked no later than forty-five (45) days after the Notice Date. Settlement Class Members who fail to file timely written objections in the manner specified above by the Objection Date shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. If a Settlement Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified in the objection, and true and correct copies of all supporting evidence must be appended to, or served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at the Final Approval Hearing. If a Settlement Class Member hires an attorney to represent him or her, at the Settlement Class Member's own expense, that attorney must file a notice of appearance with the clerk of the Court on or before the Objection Deadline.

#### **VIII. OTHER PROVISIONS**


25. If the Settlement does not become effective, the order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated, voided and treated as if never filed, and the parties will retain and reserve all positions with respect to the litigation, and the litigation shall proceed as if no settlement had been reached.

26. The Court finds that Defendants have made no admissions of liability or wrongdoing of any kind associated with the alleged claims in the operative Complaint. Defendants have made no admission of liability or wrongdoing regarding each and every material factual allegation and all claims asserted against it in the Action. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein will constitute an admission by Defendants that the Action is properly brought on a class or representative basis, or that class(es) may be certified, other than for settlement purposes. The Court further finds that the Settlement of the Action, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in

furtherance of the Settlement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any allegations in the Action; (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

27. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement.

DATED: Feb. 4, 2021

  
Hon. Raymond W. Mitchell  
Circuit Judge #1992

Judge Raymond W. Mitchell

FEB 04 2021

IRIS Y. MARTINEZ  
Circuit Court - 1992