

**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

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

Pending before the Court is the Unopposed Motion for Judgment and Order Granting Final Approval of the Class Action (the "Motion") of the plaintiffs Stacey Benbow, Teresa Herbert, Dennis Philip, Dawaun Lucas, David Dominguez Hooper, Mete Tasin, and Reejaunte Smith ("Representative Plaintiffs").

WHEREAS, on January 27, 2021, the Representative Plaintiffs and defendants SmileDirectClub, LLC, and SmileDirectClub, Inc. ("Defendants") 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;

WHEREAS, to the extent not otherwise defined herein, all capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement;

WHEREAS, the Settlement Agreement was entered into after extensive arm's-length negotiation by experienced counsel and in mediation under the guidance of the Honorable Wayne R. Andersen (Ret.), JAMS;

WHEREAS, on February 4, 2021, the Court issued the Preliminary Approval Order, in which the Court found that the Settlement proposed fair, reasonable, and adequate in all respects, granted preliminary approval to the Settlement, directed the Settlement Administrator to effectuate

the Notice Plan by disseminating the Class Notice to Settlement Class Members and making available copies of the Long Form Notice, the Settlement Agreement, and other Settlement-related documents on the Settlement Website, appointed Plaintiffs as the Representative Plaintiffs, the Representative Plaintiffs' counsel as Class Counsel, and KCC, LLC as the Settlement Administrator; and scheduled a Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable and adequate;

WHEREAS on May 19, 2021, the Court held a hearing to determine whether the proposed Settlement Agreement executed by the Parties should be approved as Final by this Court, and Class Counsel and counsel for Defendants appeared at the hearing;

WHEREAS, the Court having considered the Settlement Agreement and all of the files, records, and proceedings herein, and having reviewed the pleadings and evidence filed in support of the request for final approval of the Settlement and conducted the hearing, the Court finds, and **IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

I. THE CLASS, REPRESENTATIVE PLAINTIFFS, AND CLASS COUNSEL

1. This Final Approval Order and Judgment incorporates the Settlement Agreement and all Exhibits thereto.

2. The Court finds that it has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.

3. Based upon the record before the Court, including all submissions in support of the Settlement Agreement, objections and responses thereto, as well as the Settlement Agreement, and pursuant to 735 ILCS 5/2-801, the Settlement Class is 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.

4. Pursuant to 735 ILCS 5/2-801, 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

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

6. 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 is qualified, experienced, and well-equipped to conduct this litigation, the Court finds that the Representative Plaintiffs and Class Counsel are appropriate representatives on behalf of the Settlement Class.

7. The Settlement Agreement was reached after extensive arm's-length negotiation by experienced counsel and in mediation under the guidance of the Honorable Wayne R. Andersen (Ret.), JAMS, consistent with and in compliance with all applicable requirements of Illinois State law, the United States Constitution (including the Due Process Clause), the Illinois State Constitution, and any other applicable law, and in the best interests of Plaintiffs, Defendants and the Settlement Class Members.

8. The Settlement is fair, reasonable, adequate and satisfies the requirements under Illinois State law, the United States Constitution (including the Due Process Clause), the Illinois State Constitution, and any other applicable law. Therefore, each Settlement Class Member will be bound by the Settlement Agreement, including the Release and the covenant not to sue set forth in Section 7 of the Settlement Agreement.

9. The Class Notice and the notice methodology implemented pursuant to the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was

concise, clear and in plain, easily understood language and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the claims, issues and defenses of the Settlement Class, the definition of the Settlement Class certified, their right to be excluded from the Settlement Class, their right to object to the proposed Settlement, their right to appear at the Final Approval Hearing, through counsel if desired, and the binding effect of a judgment on Settlement Class Members; (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of Illinois law, the United States Constitution (including the Due Process Clause), the Illinois State Constitution, and any other applicable law.

10. The Court finds that those individuals identified in **Exhibit A** have excluded themselves from the Settlement, are not bound by the Settlement Agreement, and are therefore excluded from the Settlement Class.

11. The terms of the Settlement Agreement and this Final Approval Order and Judgment are binding on the Representative Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns.

12. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have *res judicata*, collateral estoppel and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interests, or expenses which are based on or in any way related to any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses which were asserted in the Action.

13. The Representative Plaintiffs, Defendants, and their respective counsel are ordered to implement and to consummate the Settlement Agreement according to its terms and provisions.

14. All claims against Defendants asserted in this Action are hereby dismissed on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement

Agreement and set forth herein and any other order issued by the Court awarding a Fee Award and Service Awards.

15. The releases set forth in Section 7 of the Settlement Agreement are incorporated by reference and provides, inter alia, that for and in consideration of the Settlement Shares, the Released Claims, Section 11.1, and the mutual promises contained in the Settlement Agreement, Representative Plaintiffs and the Settlement Class Members, on behalf of themselves and their respective assigns, heirs, executors, administrators, successors, and agents, and representatives, fully and finally release, as of the date the Final Approval Order and Judgment becomes Final, Defendants, their counsel, and the other Released Parties from any and all claims, liabilities, demands, causes of action, or lawsuits of the Releasing Parties, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in the Action or the California Cases relating in any way to text messages or telephone calls by, from, and/or on behalf of Defendants, including but not limited to claims for any alleged TCPA violation or any other telephone or telemarketing-related federal, state or local law, regulation or ordinance, and claims that in any way relate to automated text messages or telephone calls (*e.g.*, those made using an ATDS and/or artificial or prerecorded voice, those made in alleged violation of the National Do Not Call Registry or similar state law registries, and/or those that constituted a purported invasion of privacy).

16. 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

17. 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.

18. The Settlement Cap constitutes 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 and pursuant to the timetable set forth in the Settlement Agreement; (b) the Fee Award to Class Counsel, as set forth herein and pursuant to the timetable set forth in the Settlement Agreement; and (c) Service Awards to the Class Representatives, as set forth herein and pursuant to the timetable set forth in the Settlement Agreement; (d) Settlement Administration Costs, including costs of notice, pursuant to the timetable set forth in the Settlement Agreement.

19. Distribution of the Settlement Cap to the Settlement Class shall be made by the Settlement Administrator and shall commence only after the Effective Date, pursuant to the terms

of the Settlement Agreement. The Settlement Administrator shall pay the Aggregate Fees, Costs, and Expenses from the Settlement Cap prior to any distribution of Settlement Shares to the Settlement Class, as set forth herein and pursuant to the terms of the Settlement 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.

20. The Court hereby approves the Representative Plaintiffs' application for Service Awards. The Court finds that the Representative Plaintiffs have devoted substantial time, effort, and risk in undertaking their responsibilities as representatives of the Settlement Class. The Settlement Administrator shall pay each of the Representative Plaintiffs the amount of \$2,500.00 as a reasonable Service Award, in the manner specified in the Settlement Agreement. The Service Awards to the Representative Plaintiffs shall be paid out of the Settlement Cap within the time period and manner set forth in the Settlement Agreement.

21. The Court hereby approves Class Counsel's Fee and Cost Application. The Court finds that Class Counsel incurred substantial time and advanced significant expenses in prosecuting this litigation on behalf of the Settlement Class. The Court has concluded that: (a) Class Counsel achieved a favorable result for the Settlement Class by obtaining the Defendants' agreement to make significant funds available to Settlement Class Members; (b) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, litigation, and settlement negotiations; (c) Class Counsel prosecuted the Settlement Class's claims on a purely contingent basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses; (d) Class Counsel employed their knowledge of and experience with class action litigation to achieve a valuable settlement for the Settlement Class, in spite of the Defendants' potentially meritorious legal defenses and its highly experienced and capable counsel; (e) the Class Notice informed Settlement

Class Members of the amount and nature of Class Counsel's fee and cost request under the Settlement Agreement, and Class Counsel filed with the Court and posted on the Settlement Website their Fee and Cost Application in time for Settlement Class Members to make a meaningful decision whether to object to the Class Counsel's fee request. The Settlement Administrator shall pay Class Counsel the amount of \$3,765,000.00 as a reasonable Fee Award, inclusive of the award of reasonable costs incurred in litigating this Action, in the manner specified in the Settlement Agreement, of which, pursuant to Class Counsel's unopposed request, \$50,000.00 shall be paid to each of the following two *cy pres* recipients (\$100,000.00 in total): Chicago Legal Clinic and Chicago Volunteer Legal Services. The Fee Award to Class Counsel shall be paid out of the Settlement Cap within the time period and manner set forth in the Settlement Agreement.

22. If 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. RESPONSIBILITIES OF SETTLEMENT ADMINISTRATOR

23. The Court appoints Kurtzman Carson Consultants, LLC as the Settlement Administrator. The responsibilities of the Settlement Administrator in effectuating the remainder of the Settlement shall include, but not be limited to, the following: (a) obtaining complete address information for Settlement Class Members (where possible) and new addresses for returned e-mails and mail; (b) 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, the Preliminary Approval Order, this Final Approval Order and other important documents and information about the Settlement; (c) establishing and maintaining a toll-free telephone number and fielding telephone inquiries about the Settlement; (d) reviewing, processing and approving Claims; (e) acting as a liaison between Settlement Class Members and the Parties;

(f) directing the mailing of Benefit Checks to Settlement Class Members and overseeing and facilitating the depositing of electronic payments to the PayPal or Venmo accounts of Settlement Class Members; (g) disbursing the Fee Award to Class Counsel and the Service Awards to Class Representatives; and (h) performing any other tasks reasonably required to effectuate the Settlement.

V. OTHER PROVISIONS

24. 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.

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. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over the Action, the Parties, and the administration and enforcement of the Settlement Agreement. Any disputes or controversies arising with respect to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights, as set forth above and in the Settlement Agreement.

28. The Court finds that there is no just reason to delay, and therefore directs the Clerk of Court to enter this Final Approval Order and Judgment as the judgment of the Court forthwith.

DATED:

May 20, 2021

 #1992

Hon. Raymond W. Mitchell
Circuit Court Judge

Judge Raymond W. Mitchell

MAY 20 2021

IRIS Y. MARTINEZ
Circuit Court - 1992