

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RACHEL BULETTE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WESTERN DENTAL SERVICES INC., et.
al,

Defendants.

) Case Number: 3:19-cv-00612-MMC

) **ORDER GRANTING FINAL APPROVAL**
) **OF CLASS ACTION SETTLEMENT;**
) **FINAL JUDGMENT**

In connection with granting preliminary approval of the parties' class-wide Settlement of this Litigation, the Court scheduled a Final Fairness Hearing for July 17, 2020.¹ Also pursuant to the Court's Preliminary Approval Order, Plaintiff Rachel Bulette timely moved for Final Approval of the Class-Action Settlement and moved for attorneys' fees and expenses and a service award to Class Representative, both of which came for hearing in Courtroom 7 of the

¹ As used herein, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.

1 above-captioned Court on July 17, 2020. Having read all of the papers filed in connection
2 therewith, as well as all of the evidence and argument submitted with respect to the proposed
3 Settlement, the Court finds that the proposed Settlement is fair, reasonable, and adequate. The
4 Court therefore FINDS AS FOLLOWS:

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6 1. The Court has personal jurisdiction over all Settlement Class Members, and the
7 Court has subject-matter jurisdiction to approve the Agreement, including all exhibits thereto.

8 2. Pursuant to Fed. R. Civ. P. 23, and for purposes of this settlement only:

9 a. The Settlement Class consists of all regular users or subscribers to numbers
10 assigned to wireless carriers to which a text message was attempted using
11 RevSpring's TalkSoft platform, after RevSpring received a text message
12 containing the word "stop" from such number in response to a Western Dental text
13 message, within four years of February 4, 2019. Excluded from the Settlement
14 Class are: (1) the Judge presiding over this action and members of the Judge's
15 family; (2) the Defendants, Defendants' respective subsidiaries, parent companies,
16 successors, predecessors, and any entity in which the Defendants or their parents
17 have a controlling interest and its current or former officers and directors; (3)
18 persons who properly execute and file a timely request for exclusion from the
19 class; and (4) the legal representatives, successors or assigns of any such excluded
20 person(s).

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23 b. The Class is ascertainable and so numerous that joinder of all members is
24 impracticable. The Class consists of over 275,000 class members and the Class
25 Members have been determined by objective means from Defendants' records.

26 c. There are questions of law or fact common to the Settlement Class, centered
27 around Defendants' autodialed text messages to class members' cellular telephone
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1 number after RevSpring received a text message containing the word “stop” from
2 such number in response to a Western Dental text message.

- 3 d. The claims of the proposed class representative are typical of the claims of the
4 Class. The proposed class representative and each member of the proposed Class
5 are alleged to have suffered the same injury caused by the same course of conduct.
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7 e. Plaintiff has fairly and adequately represented and protected the interests of the
8 Class. Plaintiff is a member of the proposed Class. Neither Plaintiff nor her
9 counsel have any conflicts of interest with the other class members, and Class
10 Counsel have demonstrated that they have adequately represented the Class.
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12 f. The questions of law or fact common to the members of the Class predominate
13 over any questions affecting only individual members.
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15 g. A class action is superior to other available methods for the fair and efficient
16 adjudication of the controversy as the Settlement substantially benefits both the
17 litigants and the Court, and there are few manageability issues as settlement is
18 proposed rather than a further trial.

19 3. Pursuant to Fed. R. Civ. P. 23(e), the Settlement Agreement is, for the reasons
20 stated on the record at the Final Fairness Hearing, in all respects fair, reasonable, and adequate,
21 and is in the best interests of all Class Members, taking into account the following factors: (1) the
22 strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
23 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount
24 offered in settlement; (5) the extent of discovery completed and the stage of the proceedings;
25 (6) the experience and view of counsel; and (7) the reaction of the class members of the proposed
26 settlement. Additionally, for the reasons stated on the record at the hearing, the Settlement
27 Agreement is not the product of collusion.
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1 4. The plan for distribution of the Settlement Fund is fair and equitable. The
2 Settlement Administrator shall perform the distribution to Settlement Class Members following
3 the process set forth in the Settlement Agreement without further order of this Court.

4 5. The Court finds that the notice given class members (i) constituted the best notice
5 practicable under the circumstances, (ii) was reasonably calculated, under the circumstances, to
6 apprise Class members of the settlement, the effect of the settlement (including the releases
7 therein), and their right to object to the terms of the settlement and appear at the Final Approval
8 Hearing, (iii) constituted due and sufficient notice of the settlement to all reasonably identifiable
9 persons entitled to receive such notice, and (iv) satisfied the requirements of due process, Federal
10 Rule of Civil Procedure 23(e)(1), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and
11 all applicable laws and rules.
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13 6. The Court finds that the settlement notice has been given to the appropriate State
14 and Federal officials in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715. None
15 of those officials filed a response to the settlement notice.
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17 7. There are no objections.

18 8. There were 24 class members who submitted valid opt out requests. Those
19 individuals are not bound by this judgment or the Release in the Settlement Agreement. A list of
20 the individuals who submitted valid opt outs is attached to this order as Exhibit A.
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22 9. The Court has held a hearing to consider the fairness, reasonableness and adequacy
23 of the proposed settlement.

24 10. Having considered the motion for a service award and the additional information
25 provided by Class Counsel at the hearing, the Court finds a class representative service award in
26 the amount of \$5000 payable to Plaintiff is approved as fair and reasonable, in light of the results
27 that were obtained under the Settlement Agreement, the risks that she incurred in prosecuting the
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1 Action, and the assistance she provided to Class Counsel throughout the case. Accordingly, the
 2 Court approves that amount as the Service Award and directs that it be paid pursuant to the terms
 3 of the Settlement Agreement.

4 11. Under the Settlement Agreement, Class Counsel is permitted to seek Court
 5 approval of attorneys' fees and documented and reasonable expenses and costs. Having
 6 considered Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and
 7 considering the percentage of the fund, the quality of representation provided and the results
 8 obtained, as well as a number of other factors, the Court awards Class Counsel attorneys' fees of
 9 \$2,425,000 and costs and expenses of \$12,919.49, representing fair and reasonable compensation
 10 and reimbursement for Class Counsel's efforts in investigating, litigating and settling this action.

11 12. All payments of attorneys' fees and reimbursement of expenses to Class Counsel
 12 in this Action shall be made from the Settlement Fund, and the Released Parties shall have no
 13 liability or responsibility for the payment of Class Counsel's attorneys' fees or expenses except as
 14 provided in the Settlement Agreement.

15 13. Accordingly, the Court hereby finally APPROVES the proposed settlement as
 16 reflected in the Settlement Agreement, the respective terms of which, including but not limited to
 17 the releases, are hereby incorporated by reference as though fully set forth herein.

18 14. The Court having granted final approval to the Settlement Agreement, it is hereby
 19 **ORDERED, ADJUDGED and DECREED** as follows:

20 1. Immediately upon entry of this Final Judgment by the Clerk, this action shall be
 21 closed according to the Court's standard practices.

22 2. The Settlement Agreement is approved as fair, reasonable, and adequate as to, and
 23 in the best interests of, Settlement Class Members; the Parties and their counsel are directed to
 24 implement and consummate the Agreement according to its terms and provisions; and the
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1 Agreement is declared to be binding on, and have preclusive effect on all pending and future
2 lawsuits or other proceedings maintained by or on behalf of Representative Plaintiff and the
3 Releasing Parties.

4 3. The Parties are hereby directed to take all actions required under the terms and
5 provisions of the Settlement Agreement.


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7 4. To the extent permitted by law and without affecting the other provisions of this
8 Final Judgment, this Final Judgment is intended by the Parties and the Court to be *res judicata*,
9 and to prohibit and preclude any prior, concurrent or subsequent litigation brought individually,
10 or in the name of, and/or otherwise on behalf of the Settlement Class Members with respect to
11 any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts,
12 liabilities, agreements, costs, expenses or losses that arise from the text messages sent, or
13 attempted to be sent, by or on behalf of Defendants within four years preceding February 4, 2019.
14 Plaintiff and Class Members, and their successors and assigns are permanently barred from
15 pursuing, either individually or as a class, or in any other capacity, any of the Released Claims
16 against any of the Released Parties, as set forth in the Settlement Agreement. Pursuant to the
17 release contained in the Settlement Agreement, the Released Claims are compromised, settled,
18 released, and discharged, by virtue of these proceedings and this order.
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21 5. All persons who are Settlement Class Members are bound by this Final Judgment
22 and are enjoined from instituting, maintaining, prosecuting, or enforcing, either directly or
23 indirectly, any claims released by the Settlement Agreement.

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25 6. The Court shall retain continuing jurisdiction over this action as to the following
26 matters: (i) enforcement of the terms of the Settlement Agreement; (ii) issues relating to
27 settlement administration; and (iii) enforcement of this Judgment, the Final Approval Order, and
28 any order relating to attorneys' fees or class representative award.

1 7. This Action (including all individual claims and Settlement Class Member claims
2 asserted therein) is hereby dismissed on the merits and with prejudice, without fees or costs to any
3 Party, except as provided in the Settlement Agreement. No just reason exists for delay in entering
4 this Final Judgment.
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6 **IT IS SO ORDERED**, this 17th day of July 2020.
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10 HONORABLE MAXINE M. CHESNEY
11 UNITED STATES DISTRICT JUDGE
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