

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**SEAN HARTRANFT, on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

**TVI, INC., d/b/a SAVERS, INC., and
APOGEE RETAIL, LLC,**

Defendants.

Case No.: SACV 15-01081-CJC-DFM

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT [Dkt. 99]**

1 Plaintiff has filed a Motion for Preliminary Approval of Class Action Settlement
2 (“Motion”). Having reviewed the Motion and supporting materials, the Court determines
3 and orders as follows:
4

5 A. Counsel have advised the Court that the Parties have agreed, subject to final
6 approval by this Court following notice to the proposed Settlement Class and a hearing,
7 to settle this Action on the terms and conditions set forth in the Settlement Agreement
8 and Release (the “Agreement”).

9 B. The Court has reviewed the Agreement, as well as the files, records, and
10 proceedings to date in this matter. The terms of the Agreement are hereby incorporated
11 as though fully set forth in this Order. Capitalized terms shall have the meanings
12 attributed to them in the Agreement.

13 C. Based upon preliminary examination, it appears to the Court that the
14 Agreement is sufficiently fair, reasonable, and adequate to warrant notice to the proposed
15 Settlement Class; that the Settlement Class should be certified for settlement purposes;
16 and that the Court should hold a hearing after notice to the Settlement Class to determine
17 whether to enter a Final Approval Order in this action, based upon that Agreement.
18

19 Based upon the foregoing, the Court finds and concludes as follows:
20

21 1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including
22 all exhibits thereto, is preliminarily approved as fair, reasonable and adequate. The Court
23 finds that (a) the Agreement resulted from extensive arm’s-length negotiations with
24 participation of an experienced mediator, and (b) the Agreement is sufficient to warrant
25 notice thereof to members of the Settlement Class and the Final Approval Hearing
26 described below.
27
28

1 2. ***Class Certification for Settlement Purposes Only.***

2 (a) Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court, for
3 settlement purposes only, conditionally certifies the following Settlement Class:

4 All persons and entities to which, between and including July 1, 2011,
5 to September 30, 2015, Apogee Retail, LLC made or attempted to
6 make one or more telephone calls to their cellular telephones
7 regarding donation solicitation on behalf of Epilepsy Foundation of
8 America.

9 The Settlement Class does not include any persons who timely and validly request
10 exclusion from the Settlement Class. Defendants and any of their affiliates or
11 subsidiaries, and any entities in which any of such companies have a controlling
12 interest, the judges presiding in the Action, and Class Counsel are also excluded
13 from the Settlement Class.

14 (b) In connection with the certification, the Court makes the following
15 preliminary findings:

- 16 (1) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(1) because
17 the Settlement Class appears to be so numerous that joinder of
18 all members is impracticable;
- 19 (2) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(2) because
20 there appear to be questions of law or fact common to the
21 Settlement Class;
- 22 (3) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(3) because
23 the claims of the Plaintiff named in the caption appear to be
24 typical of the claims being resolved through the proposed
25 settlement;
- 26 (4) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(4) because
27 the Plaintiff appears to be capable of fairly and adequately
28 protecting the interests of the above-described Settlement Class
in connection with the proposed settlement and because counsel

1 representing the Settlement Class are qualified, competent, and
2 capable of prosecuting this action on behalf of the Settlement
3 Class.

4 (5) The Settlement Class satisfies the requirements of Fed. R. Civ.
5 P. 23(b)(3) because, for purposes of settlement approval and
6 administration, common questions of law and fact appear to
7 predominate over questions affecting only individual
8 Settlement Class Members and because settlement with the
9 above-described Settlement Class appears to be superior to
10 other available methods for the fair and efficient resolution of
11 the claims of the Settlement Class. The Settlement Class
12 appears to be sufficiently cohesive to warrant settlement by
13 representation.

14 (c) In making the foregoing findings, the Court has exercised its
15 discretion in conditionally certifying a settlement class.

16
17 3. ***Class Representative.*** For settlement purposes only, the Court hereby
18 appoints Plaintiff Sean Hartranft as Class Representative pursuant to Rule 23 of the
19 Federal Rules of Civil Procedure, and finds that, for settlement purposes only, Mr.
20 Hartranft has and will fairly and adequately protect the interests of the Settlement Class.

21
22 4. ***Class Counsel.*** For settlement purposes only, the Court appoints Law
23 Offices of Douglas J. Champion, APC; Bisnar | Chase LLP; and the Law Offices of
24 Michael P. Sousa, APC as counsel for the Settlement Class (“Class Counsel”). For
25 purposes of these settlement approval proceedings, the Court finds that Class Counsel are
26 competent and capable of exercising their responsibilities as Class Counsel.

1 5. **Claims Administrator.** The Court appoints CPT Group, Inc. as the Claims
2 Administrator, which shall fulfill the Claims Administration functions, duties, and
3 responsibilities of the Claims Administrator as set forth in the Agreement and this Order.
4

5 6. **Final Approval Hearing.** A Final Approval Hearing shall be held before
6 this Court on October 21, 2019 at 1:30 p.m., to determine whether the Agreement is fair,
7 reasonable, and adequate and should be given final approval. Papers in support of final
8 approval of the Agreement and Class Counsel’s application for an award of attorneys’
9 fees and costs, and for an incentive award to the Class Representative (the “Fee, Expense,
10 and Incentive Payment Application”) shall be filed with the Court according to the
11 schedule set forth in Paragraphs 14 and 15, below. The Court may postpone, adjourn, or
12 continue the Final Approval Hearing without further notice to the Settlement Class. After
13 the Final Approval Hearing, the Court may enter a Final Approval Order in accordance
14 with the Agreement, which will adjudicate the rights of the Settlement Class Members
15 with respect to the claims being settled.
16

17 7. **Class Notice.** The Court approves the form and content of the notices
18 substantially in the forms attached as Exhibit C to the Agreement. The Parties shall
19 comply with the notice requirements of Section VIII of the Agreement. In compliance
20 with that Section, beginning thirty (30) days after entry of this Order, the Claims
21 Administrator shall cause notice to be delivered in the manner set forth in the Agreement,
22 shall implement the telephone procedure for providing notice, launch the Settlement
23 website and provide all notice and claims services as set forth in the Agreement.
24

25 8. **Filing of CAFA Notice.** In conjunction with the briefing on the Final
26 Approval Hearing, Defendants shall file or cause to be filed with the Court proof of
27 compliance with the notice provisions of the Class Action Fairness Act of 2005
28 (“CAFA”), 28 U.S.C. § 1715.

1 9. ***Findings Concerning Class Notice.*** The Court finds that the Class Notice
2 and the manner of its dissemination described in Paragraph 7 above and Section VIII of
3 the Agreement constitutes the best practicable notice under the circumstances and is
4 reasonably calculated, under all the circumstances, to apprise Settlement Class Members
5 of the pendency of this action, the terms of the Agreement, and their right to object to or
6 exclude themselves from the Settlement Class. The Court finds that the notice is
7 reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to
8 receive notice, and that it meets the requirements of due process, Rule 23 of the Federal
9 Rules of Civil Procedure, and any other applicable laws.

10
11 10. ***Exclusion from Settlement Class.*** Settlement Class Members who wish to
12 exclude themselves from the Settlement Class and follow the procedures set forth in this
13 Paragraph shall be excluded. Any potential member of the Settlement Class may mail a
14 written request for exclusion, in the form specified in the Class Notice, to the Claims
15 Administrator at the address set forth in the Class Notice. In the written request for
16 exclusion, Settlement Class Members must include their full name, address, telephone
17 number, signature, case name (to allow the Claims Administrator to ensure the exclusion
18 request is for this and not another case administered by the same Claims Administrator),
19 and a statement that they wish to be excluded from the Settlement Class for purposes of
20 this settlement. A request to be excluded that does not include all of this information, or
21 that is sent to an address other than that designated in the Notice, or that is not
22 postmarked within the time specified, shall be invalid, and the individual who submitted
23 such a request shall be a member of the Settlement Class and shall be bound as a
24 Settlement Class Member by this Agreement. All such written requests must be
25 postmarked no later than sixty (60) days after the date established by the Court for the
26 Claims Administrator to provide Class Notice. All persons who properly request
27 exclusion from the Settlement Class shall not be Settlement Class Members and shall
28 have no rights with respect to, nor be bound by, the Agreement, should it be finally

1 approved. The names of all such excluded individuals shall be attached as an exhibit to
2 any Final Approval Order.

3
4 11. ***Right to Abrogate Agreement.*** In the event more than 100 Settlement Class
5 Members properly exclude themselves from the Settlement Class, Defendants shall have
6 the unilateral right to abrogate the Agreement by written notice of abrogation to Class
7 Counsel in accordance with the procedures set forth in the Agreement. If Defendants
8 exercise their right to abrogate the Agreement, then all aspects of the Agreement and the
9 settlement underlying it, including but not limited to the provisional certification of the
10 Settlement Class for settlement purposes only, shall be altogether null and void, and no
11 aspect of the Agreement, the settlement, or this Order shall serve as legal precedent or as
12 any basis for legal or factual argument in this or any other case.

13
14 12. ***Claims Procedures.*** The Court approves the claims procedures set forth in
15 the Agreement. The Court approves the form and content of the Claim Form
16 substantially in the form attached as Exhibit A to the Agreement. A properly executed
17 Claim Form must be submitted as required in the Class Notice over the Internet or
18 postmarked no later than ninety (90) days after the date on which Class Notice is first
19 transmitted. Such deadline may be further extended by Court Order. Each Claim Form
20 shall be deemed to have been submitted when submitted over the Internet or postmarked
21 (if properly addressed and mailed by first-class mail, postage prepaid), provided such
22 Claim Form is actually received no less than thirty (30) days prior to the date for
23 distributing Settlement Certificates, if the 90-day claims filing deadline is extended for
24 some reason. Any Claim Form submitted in any other manner shall be deemed to have
25 been submitted when it was actually received at the address designated on the Claim
26 Form.

1 13. ***Costs of Class Notice and Claims Processing.*** Defendants shall bear all
2 costs of notice to the Settlement Class of the pendency and settlement of the Action and
3 other Claims Administration costs as provided in the Agreement.
4

5 14. ***Objections and Appearances.***

6 (a) ***Written Objections.*** Any Settlement Class Member who has not
7 timely submitted a written request for exclusion from the Settlement Class, and thus is a
8 Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the
9 Settlement, the Agreement or the Fee, Expense, and Incentive Payment Application. Any
10 Settlement Class Member who wishes to object to the Settlement, Agreement or the Fee,
11 Expense, and Incentive Award Application must file with the Court and deliver to Class
12 Counsel and Defendants' counsel a written objection. The written objection, which the
13 objecting Settlement Class Member must personally sign, must state: (i) the objector's
14 full name, address, and current telephone number; (ii) an explanation of the reason why
15 the objector claims to be a Settlement Class Member, including the cellular telephone
16 number(s) Defendants allegedly called; (iii) all grounds for the objection, including any
17 documents, evidence and citations all reasons for the objection; (iv) the name and contact
18 information of any and all attorneys representing, advising, or in any way assisting the
19 objector in connection with the preparation or submission of the objection or who may
20 profit or otherwise benefit from the pursuit of the objection; and (v) whether the objector
21 intends to appear at the Final Approval Hearing on her or his own behalf or through
22 counsel. Any documents that the objector wants the Parties and the Court to consider
23 must also be attached to the written objection. The written objection and any supporting
24 papers must be filed with the Court and mailed to Class Counsel and Defendants' counsel
25 postmarked no later than sixty (60) days after the date on which Class Notice is first
26 transmitted. Any objection not timely made in this manner shall be waived and forever
27 barred.
28

1 (b) ***Appearance at Final Approval Hearing.*** Objectors who timely and
2 fully comply with the requirements above may appear at the Final Approval Hearing,
3 either in person or through an attorney hired at their own expense, to object to the
4 fairness, reasonableness, or adequacy of this settlement.

5 (c) ***Fees and Cost Application.*** Class Counsel shall file their Fee,
6 Expense, and Incentive Payment Application, together with all supporting
7 documentation, by no later than sixty (60) days from entry of this Order, sufficiently in
8 advance of the expiration of the objection period that any Settlement Class Member will
9 have sufficient information to decide whether to object and, if applicable, to make an
10 informed objection.

11 (d) ***Motion for Final Approval and Responses to Objections.*** Class
12 Counsel shall file with the Court their motion for final approval of the Settlement and any
13 responses to any filed objections to the Fee, Expense, and Incentive Payment
14 Application, together with all supporting documentation, no later than fourteen (14) days
15 before the Final Approval Hearing.

16
17 15. ***Dates of Performance.*** In summary, the dates of performance are as
18 follows:

19 (a) Defendants shall send the postcard Class Notice to potential
20 Settlement Class Members on or before thirty (30) days after entry of this Order;

21 (b) Class Counsel's Fee, Expense, and Incentive Payment Application,
22 and all supporting materials, shall be filed no later than sixty (60) days after entry of this
23 Order;

24 (c) Settlement Class Members who desire to be excluded shall mail
25 requests for exclusion postmarked no later than sixty (60) days after the date in
26 subsection (a) above;

1 (d) All objections to the Settlement, Agreement or the Fee, Expense, and
2 Incentive Payment Application shall be filed with the Court and mailed to the Parties'
3 counsel postmarked no later than the same date as in subsection (c) above;

4 (e) Settlement Class Members who desire to submit Claim Forms shall do
5 so online or, if by mail, postmarked, no later than ninety (90) days after the date in
6 subsection (a) above.

7 (f) Class Representative's final approval motion, any Parties' responses
8 to objections, and all supporting materials, shall be filed by at least fourteen (14) days
9 before the date in subsection (g) below;

10 (g) If objections are received by the Parties' counsel and/or filed with the
11 Court after the objection deadline, any Party may file a response at any time prior to the
12 Final Approval hearing; and

13 (h) The Final Approval Hearing shall be held on October 21, 2019, at
14 1:30 p.m.

15
16 16. ***Effect of Failure to Approve the Agreement.*** In the event the Court does
17 not finally approve the Agreement, or for any reason the Parties fail to obtain a Final
18 Approval Order as contemplated in the Agreement, or the Agreement is terminated
19 pursuant to its terms for any reason, then the following shall apply:

20 (a) All orders and findings entered in connection with the Agreement
21 shall become null and void and have no further force and effect, shall not be used or
22 referred to for any purposes whatsoever, and shall not be admissible or discoverable in
23 any other proceeding;

24 (b) The conditional certification of the Settlement Class pursuant to this
25 Order shall be vacated automatically, and the case shall return to its status as it existed
26 before entry of this Order;

27 (c) Nothing contained in this Order is, or may be construed as, any
28 admission or concession by or against Defendants or Class Representative on any point

1 of fact or law, including, but not limited to, factual or legal matters relating to any effort
2 to certify this case as a class action for purposes of considering settlement approval; and

3 (d) Nothing in this Order or pertaining to the Agreement shall be used as
4 evidence in any further proceeding in this case, including, but not limited to, motions or
5 proceedings pertaining to treatment of this case as a class action.
6

7 17. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable
8 steps in connection with approval and administration of the Settlement not materially
9 inconsistent with this Order or the Agreement, including, without further approval of the
10 Court, making minor changes to the content of the Class Notice that they jointly deem
11 reasonable or necessary.
12

13 18. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings
14 before the Court are stayed pending final approval of the settlement, except as may be
15 necessary to implement the settlement or comply with the terms of the Agreement.
16

17 19. ***Injunction Against Asserting Released Claims Pending Settlement***
18 ***Approval.*** Pending final determination of whether the settlement should be approved,
19 Class Representative, all Settlement Class Members, and any person or entity allegedly
20 acting on behalf of Settlement Class Members, either directly, representatively or in any
21 other capacity, are preliminarily enjoined from commencing or prosecuting against the
22 Released Parties any action or proceeding in any court or tribunal asserting any of the
23 Released Claims, provided, however, that this injunction shall not apply to individual
24 claims of any Settlement Class Members who timely exclude themselves in a manner that
25 complies with this Order. This injunction is necessary to protect and effectuate the
26 settlement, this Order, and the Court's flexibility and authority to effectuate this
27 settlement and to enter judgment when appropriate, and is ordered in aid of the Court's
28 jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

