

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

MONTY J. BOOTH, ATTORNEY AT LAW,
P.S., a Washington corporation, RICARDO T.
MASCARENAS, a Washington resident, and
CHRISTOPHER GREGORY, a Washington
resident, individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

APPSTACK, INC., a Delaware corporation;
STEVE ESPINOSA, individually; and JOHN
ZDANOWSKI, individually,

Defendants.

NO. 2:13-cv-01533-JLR

~~PROPOSED~~ FINAL APPROVAL
ORDER AND FINAL JUDGMENT



WHEREAS, on August 29, 2016, the Court entered an order (“Preliminary Approval Order”) preliminarily approving the proposed Settlement Agreement and Release (“Agreement”) and directed that notice be given to the Settlement Class (Dkt. No. 153);

WHEREAS, pursuant to the notice requirements set forth in the Agreement and Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Agreement, of the right of members of the Settlement Class to opt-out, and of the right of members of the Settlement Class to object and be heard at a Final Approval Hearing to

1 determine whether the terms and conditions of the Agreement are fair, reasonable and adequate
2 for the release of the claims contemplated by the Agreement; and whether judgment should be
3 entered dismissing this Action with prejudice;

4 **WHEREAS**, a Final Approval Hearing was held on Wednesday, January 11, 2017 at
5 2:00 pm. Prior to the Final Approval Hearing, all memoranda and declarations in support of
6 the Agreement, which include proof of compliance with the provisions of the Agreement and
7 Preliminary Approval Order relating to notice, were filed with the Court as prescribed in the
8 Preliminary Approval Order. Settlement Class Members were therefore notified of their right
9 to appear at the Final Approval Hearing in support of or in opposition to the proposed
10 settlement, the award of attorneys' fees and costs to Class Counsel, and the payment of the
11 service awards to Class Representatives.

12 **NOW, THEREFORE**, the Court having heard the presentation of Class Counsel and
13 counsel for Appstack, Inc., Steve Espinosa, and John Zdanowski, having reviewed all of the
14 submissions presented with respect to the proposed Settlement, having determined that the
15 settlement is fair, adequate and reasonable, having considered Class Counsel's motion for
16 awards of attorneys' fees and costs and service (also called "incentive") awards for the Class
17 Representatives, and having reviewed the materials in support thereof, and good cause
18 appearing;

19 **THIS COURT FINDS AND CONCLUDES AS FOLLOWS:**

- 20 1. The capitalized terms used in this Final Approval Order and Judgment shall
21 have the same meaning as defined in the Agreement, except as may otherwise be ordered.
- 22 2. The Court has jurisdiction over the subject matter of this Action and over all
23 claims raised therein and all Parties thereto, including the Settlement Class.
- 24 3. The Court hereby approves the Agreement, including the plans for
25 implementation and distribution of the settlement relief, and finds that the Agreement is, in all
26 respects, fair, reasonable and adequate to the Settlement Class Members, within the authority of

1 the parties and the result of extensive arm's length negotiations. The Parties shall effectuate the
2 Agreement in accordance with its terms. The Agreement and every term and provision thereof
3 shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an
4 Order of this Court.

5 4. Only two Settlement Class members, Oscar Riestra and Trevelyan Fugere d/b/a
6 PDR Paintless Dent Removal, opted out of the Settlement Class. No Settlement Class members
7 filed objections.

8 5. The Settlement Class, which will be bound by this Final Approval Order and
9 Judgment, shall include members of the Settlement Class who did not submit timely and valid
10 requests to be excluded.

11 6. For purposes of the Agreement and this Final Approval Order and Judgment, the
12 Court hereby certifies the following Settlement Class:

13 All persons or entities in the United States who, on or after four
14 years before the filing of this action to July 21, 2016, received a
15 call to their cellular telephone line with a pre-recorded message,
made by or on behalf of Defendants.

16 The Settlement Class does not include any persons who validly request exclusion.

17 7. The Court finds that the plan for Settlement Notice, set forth in Article VII of
18 the Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice
19 practicable under the circumstances and provided due and sufficient notice to the Settlement
20 Class of the pendency of the Action, certification of the Settlement Class for settlement
21 purposes only, the existence and terms of the Agreement, and the Final Approval Hearing, and
22 satisfies the Federal Rules of Civil Procedure, the United States Constitution, the requirements
23 set forth in *In Re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010), and
24 any other applicable law.

25 8. The Agreement, is in all respects fair, reasonable, and adequate, is in the best
26 interests of the Settlement Class, and is therefore approved.

1 9. All persons who have not made their objections to the settlement in the manner
2 provided in the Agreement are deemed to have waived any objections by appeal, collateral
3 attack, or otherwise.

4 10. Within the time period set forth in Article VIII of the Agreement, settlement
5 payments shall be issued to each Settlement Class Member who submitted timely and valid
6 claim forms, under the terms and conditions of the Agreement.

7 11. Upon the Effective Date, members of the Settlement Class who did not validly
8 and timely opt-out shall have, by operation of this Final Approval Order and Judgment, forever
9 released, resolved, relinquished, and discharged the Released Parties from any claims that calls
10 placed on Defendants' behalf before the date the Final Approval Order is entered violated the
11 cell phone provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A).

12 12. This Final Approval Order and Judgment, the Agreement, the settlement which
13 it reflects, and any and all acts, statements, documents or proceedings relating to the settlement
14 are not, and shall not be construed as, or used as an admission by or against Defendants of any
15 fault, wrongdoing, or liability on their part or of the existence or amount of any damages.

16 13. The payments ordered herein shall be made in the manner and at the times set
17 forth in the Agreement. Any amounts remaining in the Settlement Fund after the deadline to
18 cash checks has expired shall be disbursed to the Legal Foundation of Washington.

19 14. The Court hereby grants Class Counsel's request for an award of reasonable
20 attorneys' fees in the amount of ~~\$473,750~~ ^{\$243,750.00} and litigation costs in the amount of \$133,003. The
21 Court further grants Class Counsel's application for an Incentive Award for Class
22 Representatives Ricardo T. Mascarenas and Christopher Gregory in the amount of \$2,500 each
23 (\$5,000 total).

24 15. The above-captioned Action is hereby dismissed in its entirety with prejudice.
25 Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear
26 their own costs and attorneys' fees. Without affecting the finality of the Judgment hereby

1 entered, the Court reserves jurisdiction over the implementation of the Agreement, including
2 enforcement and administration of the Agreement.

3 IT IS SO ORDERED.

4 Dated this 12th day of January, 2017.

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7 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I, Jennifer Rust Murray, hereby certify that on December 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Defendants

DATED this 28th day of December, 2016.

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