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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Vanessa C Spencer,
Plaintiff,
v.
#1 A LifeSafer of Arizona LLC. et al.,
Defendants.

No. CV-18-02225-PHX-BSB
**ORDER OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

The Court has been advised that the parties to this action, Vanessa C. Spencer (“Plaintiff” or “Class Representative”), and #1 A LifeSafer of Arizona, LLC (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the Class Members and a hearing, to settle the above-captioned lawsuit (“Lawsuit”) upon the terms and conditions set forth in the Class Action Settlement Agreement (“Settlement Agreement”), which Plaintiff has filed with the Court. (Doc. 47, Ex. 1.) The Court incorporates into this Order the definitions in the Settlement Agreement (with capitalized terms as set forth in the Settlement Agreement).

The Court has considered the Settlement Agreement, Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 47), and the record and proceedings in this matter, and finds that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate. Therefore, after notice to the Class Members, the Court will set a final fairness hearing on **July 15, 2019 at 1:30 p.m.** to

1 confirm that the proposed settlement is fair, reasonable, and adequate, and to determine
2 whether a Final Order and Judgment should be entered in this Lawsuit.

3 Accordingly,

4 **IT IS ORDERED** that:

5 This Court has jurisdiction over the subject matter of the Lawsuit and over all
6 settling parties.

7 In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d),
8 1453, and 1711-1715, First Class, Inc.—the designated Class Administrator—will cause
9 to be served, on behalf of Defendant, written notice of the proposed class settlement on the
10 United States Attorney General and the Attorney General of the State of Arizona.

11 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Lawsuit is
12 hereby preliminarily certified as a class action on behalf of the following class of plaintiffs
13 (“Class Members”) with respect to the claims asserted in the Lawsuit:

14 All persons (1) to whom #1 A LifeSafer of Arizona, LLC provided an
15 ignition interlock device to be used for personal, family, or household
16 purposes, (2) with a program service agreement having an initial term greater
17 than four months, and (3) for which the program service agreement was in
force as of January 10, 2019 or was terminated on or after July 16, 2017.

18 Defendant represents that there are approximately 8,182 Class Members, including
19 Plaintiff. This preliminary certification is for settlement purposes only and shall not be
20 deemed to be an adjudication of any fact or issue.

21 Pursuant to Rule 23, the Court appoints Vanessa C. Spencer as the Class
22 Representative. The Court also appoints Jesse S. Johnson of Greenwald Davidson Radbil
23 PLLC as Class Counsel. *See Gonzalez v. Germaine Law Office PLC*, 2016 WL 3360700
24 (D. Ariz. June 1, 2016) (preliminarily approving class settlement under the Fair Debt
25 Collection Practices Act (“FDCPA”) and appointing Greenwald Davidson Radbil PLLC
26 class counsel); *see also Ryan v. DeVille Asset Mgmt., Ltd.*, 2016 WL 7165751 (D. Or. Dec.
27 7, 2016) (same); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal.

1 2016) (finally approving FDCPA class settlement and confirming appointment of
2 Greenwald Davidson Radbil PLLC as class counsel).

3 This Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites
4 for class action treatment under Rule 23, namely:

5 A. The Class Members are so numerous that joinder of all of them in the Lawsuit
6 is impracticable;

7 B. There are questions of law and fact common to the Class Members, which
8 predominate over any individual questions;

9 C. Plaintiff's claims are typical of the claims of the Class Members;

10 D. Plaintiff and Class Counsel have fairly and adequately represented and
11 protected the interests of all Class Members; and

12 E. Class treatment of these claims will be efficient and manageable, thereby
13 achieving an appreciable measure of judicial economy, and a class action is superior
14 to other available methods for a fair and efficient adjudication of this controversy.

15 *Schuchardt*, 314 F.R.D. at 679-80.

16 This Court preliminarily finds that the settlement of the Lawsuit, on the terms and
17 conditions set forth in the Settlement Agreement is in all respects fundamentally fair,
18 reasonable, adequate, and in the best interest of the Class Members, especially in light of
19 the benefits to the Class Members; the strengths and weaknesses of Plaintiff's case; the
20 anticipated complexity, duration and expense of additional litigation; the risk and delay
21 inherent in possible appeals; the limited amount of any potential total recovery for the Class
22 Members given the cap on statutory damages for claims brought pursuant to the CLA; and
23 the opinion of Class Counsel, who are highly experienced in consumer protection class
24 action litigation. *See Catala v. Resurgent Capital Servs. L.P.*, 2010 WL 2524158, at *2
25 (S.D. Cal. June 22, 2010) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
26 625 (9th Cir. 1982)).

27 A third-party class administrator acceptable to the parties will administer the
28 settlement and notification to Class Members. The class administrator will be responsible

1 for mailing the approved class action notice, processing claims, locating class members,
2 and mailing settlement checks to the Class Members. The costs of administration will be
3 paid by Defendant separate and apart from the Settlement Fund. Upon the recommendation
4 of the parties, this Court hereby appoints the following class administrator: First Class, Inc.

5 This Court approves the form and substance of the Direct Mail Notice, attached to
6 the Settlement Agreement as Exhibit C, as well as the long-form class notice, attached to
7 the Settlement Agreement as Exhibit D. The proposed form and method for notifying the
8 Class Members of the settlement and its terms and conditions meet the requirements of
9 Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the
10 circumstances, and constitute due and sufficient notice to all persons and entities entitled
11 to the notice. *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014) (“Under
12 the circumstances of this case, when all class members are known in advance, the Court
13 finds that the method of direct mail notice to each class member’s last known address—
14 and a second notice if the first was returned as undeliverable—was the best practicable
15 notice.”).

16 This Court finds that the proposed notice program is clearly designed to advise the
17 Class Members of their rights. In accordance with the Settlement Agreement, the class
18 administrator will mail the Direct Mail Notice to the Class Members as expeditiously as
19 possible, but in no event later than 21 days after the Court’s entry of this order, *i.e.*, **no**
20 **later than March 25, 2019**. The class administrator will confirm, and if necessary, update
21 the addresses for the Class Members through standard methodology that the class
22 administrator currently uses to update addresses.

23 Any Class Member who wishes to receive a pro-rata portion of the Settlement Fund
24 must send a valid, timely claim form to First Class, Inc. with a postmark date no later than
25 60 days after the Court’s entry of this order, *i.e.*, **no later than May 3, 2019**.

26 Any Class Member who desires to be excluded from the class must send a written
27 request for exclusion to First Class, Inc. with a postmark date no later than 60 days after
28 the Court’s entry of this order, *i.e.*, **no later than May 3, 2019**. To be effective, the written

1 request for exclusion must state the Class Member's full name, address, telephone number,
2 and email address (if available), along with a statement that the Class Member wishes to
3 be excluded. Any Class Member who submits a valid and timely request for exclusion will
4 not be bound by the terms of the Settlement Agreement.

5 Any Class Member who intends to object to the fairness of this settlement must file
6 a written objection with the Court within 60 days after the Court's entry of this order, *i.e.*,
7 **no later than May 3, 2019**. Further, any such Class Member must, within the same time
8 period, provide a copy of the written objection to Class Counsel, attention: Jesse S.
9 Johnson, Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton,
10 FL 33431; and counsel for Defendant, David E. Funkhouser III, Spencer Fane LLP, 2415
11 E. Camelback Road, Suite 600, Phoenix, Arizona 85016.

12 To be effective, a notice of intent to object to the Settlement must:

- 13 (a) Contain a heading which includes the name of the case and case number;
14 (b) Provide the name, address, telephone number, and email address (if
15 available) of the Class Member filing the objection;
16 (c) Be filed with the Clerk of the Court no later than 60 days after the Court
17 preliminarily approves the settlement;
18 (d) Be sent by first-class mail to Class Counsel and counsel for Defendant at the
19 addresses designated in the class notice, postmarked no later than 60 days after the
20 Court preliminarily approves the settlement;
21 (e) Contain the name, address, bar number, and telephone number of the
22 objecting Class Member's counsel, if represented by an attorney. If the Class
23 Member is represented by an attorney, he/she or it must comply with all applicable
24 laws and rules for filing pleadings and documents in the U.S. District Court for the
25 District of Arizona; and
26 (f) Contain a statement of the specific basis for each objection.

27 Any Class Member who has timely filed an objection may appear at the final
28 fairness hearing, in person or by counsel, to be heard to the extent allowed by the Court,

1 applying applicable law, in opposition to the fairness, reasonableness, and adequacy of the
2 Settlement, and on the application for an award of attorneys' fees, costs, and expenses.

3 Upon final approval from the Court, the class administrator will mail a settlement
4 check to each Class Member who submits a valid, timely claim form. Each participating
5 Class Member will receive a pro-rata portion of the \$36,819 Settlement Fund. Additionally,
6 Defendant will separately pay to the Class Representative the sum of \$1,000 in recognition
7 of her service to the Class Members.

8 The Court will conduct a fairness hearing on **July 15, 2019 at 1:30 p.m.** before
9 Magistrate Judge Bridget S. Bade, United States District Court for the District of Arizona,
10 401 West Washington Street, Phoenix, Arizona 85003, Courtroom 304, to review and rule
11 upon the following issues:

- 12 A. Whether this action satisfies the applicable prerequisites for class action
13 treatment for settlement purposes under Rule 23;
- 14 B. Whether the proposed settlement is fundamentally fair, reasonable, adequate,
15 and in the best interest of the Class Members and should be approved by the Court;
- 16 C. Whether a Final Order and Judgment, as provided under the Settlement
17 Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing
18 the Released Claims against the Released Parties; and
- 19 D. To discuss and review other issues as the Court deems appropriate.

20 Attendance by Class Members at the final fairness hearing is not necessary. Class
21 Members need not appear at the hearing or take any other action to indicate their approval
22 of the proposed class action settlement. Class Members wishing to be heard are, however,
23 required to appear at the final fairness hearing. The hearing, however, may be postponed,
24 adjourned, transferred, or continued without further notice to the Class Members.

25 Consistent with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir.
26 2010), submissions by the Parties—including memoranda in support of the proposed
27 settlement and petitions for attorneys' fees and reimbursement of costs and expenses by
28 Class Counsel—must be filed within 30 days after the deadline for dissemination of class

1 notice, *i.e.*, **no later than April 24, 2019**. Any opposition to any of the foregoing must be
2 filed with the Court no later than 14 days prior to the final fairness hearing, *i.e.*, **no later**
3 **than July 1, 2019**. Reply memoranda in support of the foregoing, including responses to
4 any objections, must be filed with the Court no later than 7 days prior to the final fairness
5 hearing, *i.e.*, **no later than July 8, 2019**.

6 The Settlement Agreement and this Order will be null and void if any of the
7 following occur:

- 8 A. Any specified material condition to the settlement set forth in the Settlement
9 Agreement is not satisfied and the satisfaction of such condition is not waived in
10 writing by the Parties;
- 11 B. The Court rejects any material component of the Settlement Agreement,
12 including any amendment thereto approved by the Parties;
- 13 C. The filing by one hundred (100) or more Class Members of valid and timely
14 requests for exclusion; or
- 15 D. The Court approves the Settlement Agreement, including any amendment
16 thereto approved by the Parties, but such approval is reversed on appeal and such
17 reversal becomes final by lapse of time or otherwise.

18 If the Settlement Agreement and/or this Order are voided, then the Settlement
19 Agreement will be of no force and effect, and the Parties’ rights and defenses will be
20 restored, without prejudice, to their respective positions as if the Settlement Agreement
21 had never been executed and this order never entered.

22 This Court has jurisdiction over the action to consider all further matters arising out
23 of or connected with the settlement, including the administration and enforcement of the
24 Settlement Agreement.

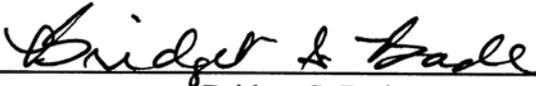
25 This Court sets the following schedule:

| <u>Date</u> | <u>Event</u> |
|---------------|------------------------------------|
| March 4, 2019 | Preliminary Approval Order Entered |

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| March 25, 2019 | Direct Mail Notice Sent (21 days after entry of Preliminary Approval Order) |
| April 24, 2019 | Filing of Plaintiff’s Motion for Final Approval and Attorneys’ Fees Petition (30 days after deadline for dissemination of class notice) |
| May 3, 2019 | Deadline to Submit Exclusion Request or File Objection (60 days after entry of Preliminary Approval Order) |
| July 1, 2019 | Filing of Opposition to Final Approval or Attorneys’ Fees Petition (14 days prior to final fairness hearing) |
| July 8, 2019 | Filing of Replies in support of Final Approval and Attorneys’ Fees Petition, and responses to any objections (7 days prior to final fairness hearing) |
| July 15, 2019 | Final Fairness Hearing Held |

Dated this 4th day of March, 2019.



 Bridget S. Bade
 United States Magistrate Judge