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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situating,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921-SI

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED
SETTLEMENT AGREEMENT**

JOINT MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AGREEMENT

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LOCAL RULE 7-1 CERTIFICATION

In compliance with Local Rule 7-1(a), the Parties,¹ through their respective counsel, have conferred via mediation and through multi-day settlement discussions between July 2020 and February 2021. The Parties have agreed to jointly move for preliminary approval and will submit separate memoranda in support of this joint motion.

MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs and Class Representatives McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. (“Plaintiffs”), and Defendant Ruby Receptionists, Inc. (“Defendant” or “Ruby”) jointly move this Court as follows:

1. Class Counsel, on behalf of Plaintiffs and the proposed Settlement Class, and Defendant have agreed on a proposed compromise settlement of all claims of the proposed Settlement Class against Ruby, as more particularly set forth in and filed herewith, the terms, definitions, provisions, reservations, and conditions of the Settlement Agreement which are made part of this Motion. The Settlement Agreement is filed herewith as Exhibit 1.

2. The purpose and intent of all Parties to this proposed Settlement are: (a) to settle any and all claims of any type related to Ruby’s billing practices; (b) to terminate and extinguish any liability of Defendant for all Released Claims of the Settlement Class Members; and (c) to dismiss on the merits and with prejudice all claims of the proposed Settlement Class against Defendant.

3. The Parties now seek preliminary approval from this Court of the terms of the

¹ All capitalized words are defined in the proposed Class Action Settlement Agreement, dated February 17, 2021 (“Settlement Agreement” or “SA”), unless otherwise noted.

proposed Settlement Agreement, including:

- a. Preliminary approval of the proposed Settlement memorialized in the proposed Settlement Agreement as being fair, adequate, and reasonable, such that notice to the Class should be provided pursuant to the proposed Settlement Agreement;
- b. Certification of a redefined Settlement Class as defined in the proposed Settlement Agreement for settlement purposes only;
- c. Approval of a date for a Final Settlement Hearing;
- d. Approval of the Notice of Settlement to be emailed and/or mailed to proposed Settlement Class Members in a form substantially similar to the one attached to the proposed Settlement Agreement as Exhibit A;
- e. Approval of a schedule to distribute the Vouchers for services;
- f. Appointment of The Notice Company as the Administrator as jointly agreed to by the Settling Parties;
- g. Setting a specified date by which objections shall be heard and papers in support of such objections must be submitted to the Court;
- h. Setting specified dates by which Class Counsel shall file and serve all papers in support of the application for final approval of the proposed Settlement and by which the Parties shall file and serve all papers in response to any valid and timely objections and by which Class Counsel shall file their motion for attorneys' fees and expenses;
- i. Ordering that all proposed Settlement Class members will be bound by the Final Approval Order and Judgment;
- j. Ordering that persons in the Settlement Class wishing to exclude

themselves from the proposed Settlement will have until the date specified in the Preliminary Approval Order to submit to the Settlement Administrator a valid written request for exclusion or opt out;

k. Approving the proposed Settlement Agreement's procedure for persons in the proposed Settlement Class to object, including the right to object to attorneys' fees and costs, or opt out from the proposed Settlement;

l. Approving deadlines consisting with the proposed Settlement Agreement for mailing of Notice to the Settlement Class, opting out of or objecting to the proposed Settlement, and filing papers in connection with the Final Settlement Hearing; and

m. Appointment of Class Representatives as Representative Settlement Class Plaintiffs, and Class Counsel as Settlement Class Counsel for the Settlement Class.

A proposed preliminary approval order is filed herewith as Exhibit 2.

DATED this 19th day of February, 2021.

**STOLL STOLL BERNE LOKTING &
SHLACHTER P.C.**

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Attorneys for Defendant Ruby Receptionists, Inc.

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situating,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement”) is made and entered into as of the 17th day of February, 2021, by and among (1) McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., (the “The McKenzie Class Representatives”), on behalf of themselves and all others similarly situated, (2) Maiden Insurance, LLC (“Maiden”) on behalf of itself and all others similarly situated (together, the “Settlement Class” as defined below), and (3) Ruby Receptionists Inc. (“Ruby”).

1. RECITALS

1. On or about November 2, 2018, McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. filed an action in the United States District Court for the District of Oregon, captioned *McKenzie Law Firm v. Ruby Receptionists, Inc.*, No. 3:18-cv-01921 (SI) (the “Federal Action”).

2. On or about October 13, 2017, Shapiro Law Group, P.A., filed an action in the Circuit Court of Oregon, Multnomah County, captioned *Shapiro Law Group v. Ruby Receptionists, Inc.*, No. 17 CV 48545, and on June 20, 2019 Maiden was substituted as Plaintiff in that action, which became captioned *Maiden Insurance, LLC v. Ruby Receptionists, Inc.*, No. 17CV48545 (the “State Action”).
3. The Complaints in the Federal and State Actions both asserted that Ruby breached its contracts with its customers by miscalculating call length by rounding up the length of calls to the next highest thirty second interval and including time callers spent in a hold queue waiting for a receptionist to handle the call. The Complaints asserted causes of action for breach of contract, breach of the implied duty of good faith and fair dealing, restitution, unjust enrichment and assumpsit under Oregon Law.
4. On April 24, 2020, the Court in the Federal Action certified a Class of all persons or entities in the United States who obtained receptionist services from Ruby between November 2, 2012 and May 31, 2018 and appointed the undersigned counsel as Class Counsel.
5. On June 15, 2020, the Court in the State Action entered a stay of proceedings, pending the determination of the Claims in the Federal Action.
6. On August 3, 2020 the Court in the Federal Action appointed The Notice Company of Hingham, Massachusetts as Notice Administrator (the “Administrator”).
7. The undersigned Class Counsel are familiar with the claims being settled and the defenses in the Federal and State actions. Class counsel have had the opportunity

to conduct, and have conducted, extensive discovery and investigation relating to the events alleged in the Complaints.

8. The McKenzie Class Representatives, Maiden and their counsel believe that the Actions have merit. Ruby and its counsel believe that Ruby has valid defenses. The terms of this Agreement were reached after extensive, bona fide arm's-length negotiations among counsel for the parties, including extensive mediation before Hunter R. Hughes, III, Esq., with fees discussed only after material agreement was reached as to the benefits to be supplied to the Settlement Class (as defined below) in exchange for their Releases hereunder.
9. The parties and their counsel acknowledge the uncertain outcome and the risk of further litigation, as well as the difficulties, delays, and costs inherent in such litigation. The McKenzie Class Representatives, Maiden and Class Counsel have also taken into account the substantial benefits conferred on the McKenzie Class Representatives, Maiden and the Settlement Class (as defined below) by the settlement set forth in this Agreement. The McKenzie Class Representatives, Maiden and their counsel have therefore determined that the settlement set forth in this Agreement is fair, reasonable, and in the best interests of the McKenzie Class Representatives, Maiden and the Settlement Class.
10. The parties want to avoid the substantial expense, inconvenience, and distraction of continuing to litigate the Actions through trial and appeals.

NOW, THEREFORE, in consideration of the mutual covenants and other consideration described below, and subject to approval of the Federal Court, the parties, by and through their respective undersigned counsel agree as follows:

2. DEFINITIONS

The following terms shall have the following meanings when used herein (it being understood that other terms are defined elsewhere in this Agreement):

1. “Class Counsel” means Keith Dubanevich, Stoll Berne Lokting & Shlachter, P.C.; Laurence King, Kaplan Fox & Kilsheimer LLP; Robert I. Lax, Lax LLP; Jon M. Herskowitz, Baron & Herskowitz LLP; and Gregory J. Brod, Brod Law Firm, P.C.
2. “Court” means the United States District Court for the District of Oregon, unless otherwise specified.
3. “Effective Date” means the first date by which all the conditions and events specified in Section 13 have been met and have occurred.
4. “Fee Application” means the application to be filed by Class Counsel by which they will seek an award of attorneys’ fees and expenses.
5. “Final,” with respect to the Judgment, means that the Judgment shall have become non-appealable and shall not have been reversed, vacated, or modified. If the Judgment is set aside, modified in a form not mutually agreeable to the parties, vacated or reversed (and not fully reinstated on further appeal), then the Judgment is not Final, and the Effective Date cannot occur.
6. “Final Settlement Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Agreement should be finally approved as fair, reasonable, and adequate.
7. “Judgment” means the Judgment and Order of Dismissal of the Action provided for in Section 12.

8. “Person” means any individual, corporation, partnership, or other entity.
9. “Releasor” or “Releasors” means, without limitation, the McKenzie Class Representatives, Maiden and each and all of the Settlement Class Members who have not timely requested exclusion from the Settlement Class pursuant to Section 9.7.

3. THE SETTLEMENT CLASS

1. For purposes of this settlement and Agreement only, and for no other purpose, “Settlement Class” shall mean all persons or entities in the United States who obtained receptionist services from Ruby between October 13, 2011 and May 31, 2018.

2. Excluded from the Settlement Class are:

(a) Ruby, its affiliates, its Directors and Officers, the attorneys of any party, and the Court and its personnel.

(b) Persons who have timely and validly opted out of the Settlement Class pursuant to Section 9.7.

(c) Persons or entities who have previously opted out of the Federal Action in response to the Notice of Pendency previously provided pursuant to the Court’s August 3, 2020 Order Regarding Notice.

4. SETTLEMENT BENEFITS

1. Ruby agrees that in consideration of the Releases set forth in Section 5, Ruby will provide to each Releasor the benefits described in this Section 4.

2. Vouchers For Services Provided By Ruby and Its Affiliates

1. Commencing with the later of July 1, 2021 or the Settlement Effective Date, Ruby will distribute, through the Administrator, Vouchers for services to be provided by

Ruby and its affiliates in the total amount of \$8 Million and, with respect to individual Settlement Class Members, an amount not to exceed the amount allocated to each Settlement Class Member per the methodology outlined in Section 4.2.3 below.

2. Vouchers shall be redeemable only for self-service chat provided under the brand Pure Chat or Reception services provided by Ruby. Vouchers will not be redeemable for any other service.

3. Vouchers will be distributed to Settlement Class Members automatically via the Administrator, without need for filing a claim. The dollar value of an individual Voucher to be distributed to each Settlement Class Member shall be computed according to the following methodology:

- (a) An amount of each Settlement Class Members' pro rata share of \$8 Million in total available Vouchers shall be fixed by first determining the percentage of Ruby's total receptionist billings for the Settlement Class Period represented by the Settlement Class Member's billings for the period, less any amounts previously credited from the use of Ruby's money back guarantee policy.
- (b) A Settlement Class Member that either never paid for Ruby service or was refunded all monies paid for Ruby service shall have a pro rata share of zero dollars (\$0) and receive no Vouchers.
- (c) A Settlement Class Member whose pro rata share as determined according to Section 4.2.3(a) is greater than zero dollars (\$0) but less than \$49.00, shall be entitled to a Voucher in the amount of \$49.00.

- (d) A Settlement Class Member whose pro rata share as determined according to Section 4.2.3(a) is greater than \$49.00, shall be entitled to a Voucher, in an amount equal to their pro rata share of the difference between \$8 Million and the amount represented by the Vouchers described in Section 4.2.3(c); provided however that the total redeemable amount of all Vouchers to be allocated pursuant to Sections 4.2.3(b), (c), and (d) shall not exceed \$8 Million.
- (e) Any Settlement Class Member or transferee not then a current customer of Ruby who elects to redeem a Voucher for receptionist services that is for an amount less than the minimum monthly price of a published receptionist service package (as of the date of this Agreement, \$319.00 per month) must subscribe to, and pay the additional price for, at least the minimum published package at the time of redemption.

4. Vouchers shall be transferable by Settlement Class Members one time to any person or entity. The Settlement Administrator shall create a protocol to track the transfer of Vouchers in the avoidance of fraud, which shall be overseen by Class Counsel and Ruby.

5. Vouchers will be distributed to Settlement Class Members in a maximum of six quarterly allotments over a period beginning the later of July 1, 2021, or the Settlement Effective Date. Vouchers will be distributed according to the following schedule:

- (a) 1,000 Settlement Class Members will receive Vouchers in the first quarter after the Settlement Effective Date;

- (b) 3,400 Settlement Class Members will receive Vouchers in the second quarter after the Settlement Effective Date;
- (c) 3,400 Settlement Class Members will receive Vouchers in the third quarter after the Settlement Effective Date;
- (d) 3,400 Settlement Class Members will receive Vouchers in the fourth quarter after the Settlement Effective Date;
- (e) 3,400 Settlement Class Members will receive Vouchers in the fifth quarter after the Settlement Effective Date;
- (f) The remaining Settlement Class Members will receive Vouchers in the sixth quarter after the Settlement Effective Date;
- (g) Ruby may in its sole discretion decide to exceed the number of Settlement Class Members to which Vouchers are distributed per quarter stated in Sections 4.2.5(a)-(f).

6. Subject to the schedule provided in Section 4.2.5, Ruby shall have the right to determine in its sole discretion which Settlement Class Members shall receive Vouchers in each quarter, and in no event will Ruby be required to redeem Vouchers in an amount greater than \$1.33 million dollars in any one quarter or to redeem Vouchers from current receptionist service customers in an amount greater than \$575,000 in any one quarter.

7. To that end, and to facilitate Voucher redemption within Ruby's billing system, Ruby may work with the Administrator to develop a consolidated file of Vouchers by Ruby client identification numbers and a unique code number for each Voucher.

8. A Settlement Class Member that intends to activate service and redeem a Voucher in the first billing period after receipt must inform Ruby of this intent at the time of

signup. Ruby may in its sole discretion defer activation of service for a period not to exceed 90 days, provided however that Ruby will make good faith efforts to activate service as promptly as reasonably practicable given business considerations such as staffing capacity. This paragraph does not apply to active Ruby customers that will redeem Vouchers for ongoing service.

9. A Voucher will be valid for a period running from the date of its actual distribution to a Settlement Class Member until the latter of (a) one year, or (b) the minimum period of time necessary to utilize the full value of the Voucher.

10. Vouchers redeemed for receptionist services are redeemable only for monthly base minutes. It is expressly understood that Vouchers may not be redeemed for the cost of overage minutes or for applicable taxes, and Settlement Class Members shall be responsible for any charges for overage minutes beyond their monthly plan base allotment and for any applicable taxes.

11. A Voucher may be redeemed only for a single Ruby service and only for a continuous, uninterrupted period of service. A Voucher may not be applied to more than one Ruby service or to discontinuous periods of service. If a Voucher is redeemed for one period of Ruby service and then, for any reason including cancelation, not used in the immediately subsequent billing period, the Voucher will thereafter be unredeemable and without residual value. A Voucher must be redeemed for at least the minimum published service price or greater during the entirety of the redemption period.

12. Vouchers shall be useable subject to Ruby's terms of use and usual standards of service, and not in violation of such standard terms applicable to other Ruby customers. Settlement Class Members will still be required to pay for any amount exceeding the Voucher value in order to cover i) the minimum monthly service price outlined in Sections

4.2.3(e), ii) overages and iii) applicable taxes. The Settlement Administrator shall design a Voucher that will contain text advising recipients of restrictions and requirements on the use of Vouchers pursuant to this section.

13. Ruby may impose reasonable additional requirements for usage of Vouchers consistent with its standard business practices when applied to its customers generally. Such reasonable additional requirements may include without limitation: requiring a valid credit card number upon signup, requiring 30 days' notice before cancelation of service, and requiring customers to assume responsibility for monitoring usage of receptionist minutes to avoid incurring overage charges.

14. The Administrator will provide Ruby and Class Counsel with a summary report on the electronic delivery of Vouchers, including but not limited to send date, open date, soft bounces, and hard bounces, and any click throughs to imbedded links. The Administrator will provide Ruby with a summary report on the mail delivery of Vouchers including but not limited to send date and returned Vouchers.

15. Ruby retains the right to change prices of their services, provided however that in no event will Ruby charge Voucher holders prices higher than those published on Ruby's website or otherwise generally prevailing for Ruby customers.

16. Ruby may communicate directly with settlement class members concerning the Voucher process, the nature and use of Vouchers, and other topics related to the administration of this settlement. Where appropriate, Ruby may direct settlement class members to the Administrator or Class Counsel for answers to their questions. Ruby may also communicate with settlement class members concerning continued use of Ruby's products and services after their Vouchers have expired, consistent with the provisions of this Agreement. Ruby may not

communicate with settlement class members in such a way that would interfere with the administration of the Voucher process as described in this Agreement.

3. Commitment to Disclosure

1. From the Effective Date through a period running for no less than three years, Ruby will maintain specific measures to describe its billing practices to members of the Class and other Ruby customers according to the guidelines below.

2. As it has since at least August 2018, after the lawsuit was filed, in its form Terms and Conditions Ruby will describe its billing practices in a similar level of detail as the following:

Receptionist minutes are billed in 30-second increments and calls are rounded up to the nearest 30-second mark. As an example, if a call is ten seconds long, it will be billed as 30 seconds (or half a receptionist minute). For inbound calls, receptionist time is calculated starting from the time the receptionist receives the call and ending when a receptionist transfers the call through to someone, or to voice mail, or otherwise disconnects because the call is over. We include hold time and exclude the talk time once a call is transferred to you or your voicemail box.

As soon as commercially practicable after the Settlement Effective Date, the word “nearest” will be changed to “next.” Notwithstanding the foregoing, Ruby reserves the right to change its billing and pricing methodologies inclusive of how it calculates Receptionist Minutes, in which case it will make full disclosure of the new practices.

3. As it has since after the lawsuit was filed Ruby will continue to train its Customer Happiness staff to describe Receptionist Minutes in terms substantially consistent with

subsection 2 of this section, disclosing that receptionist minutes are calculated in a manner that rounds up all calls to the next highest 30-second interval and includes time callers are on hold.

4. Ruby marketing materials that discuss pricing will be substantially consistent with Ruby's form Terms and Conditions in describing how receptionist minutes are calculated and hold time is charged.

5. RELEASES

1. Upon the Effective Date, in exchange for the consideration specified herein and save and except for the rights, duties and obligations of this Agreement, the Releasors, on behalf of themselves and any and all of their respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts, trustors, trustees, beneficiaries, and all others who may take any interest in the matter herein, jointly and severally, fully and forever release, acquit and discharge all Ruby and all Ruby affiliated companies, and their respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts, trustors, trustees and beneficiaries and all others who may take any interest in the matter herein from all claims, causes of action, demands, losses or damages of any kind, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether now known or unknown, suspected or unsuspected, existing, claimed to exist or which can ever hereinafter exist, arising or which could be claimed to arise out of or in connection with, or related in any way to the claims relating to Ruby's billing practices, alleged or referred to in the Federal or State Complaints, including but not limited to claims sounding in

the contract or consumer protection laws of the United States or of any state or other jurisdiction in the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, fraudulent misrepresentation and false advertising law of the United States or any state or other jurisdiction in the United States, including but not limited to any claims relating to Ruby's billing practices (the "Released Claims"). The Release contained herein shall not constitute a release of or relieve the parties of any of their respective future obligations under this Agreement.

2. The Releasors acknowledge that the consideration exchanged in this Agreement is intended to and will release and discharge any claim and/or cause of action by them, or any of them, as described in Section 5.1 above, with regard to any unknown or future damage, loss or injury, and that they, and each of them, do hereby waive any rights under California Civil Code Section 1542 (or similar law of any other state or jurisdiction), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT, AND REASONABLY COULD NOT HAVE KNOWN, TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. The Releasors acknowledge, warrant, and represent that they are familiar with Section 1542 of the California Civil Code (or similar law of any other state or jurisdiction) and that the effect and import of that provision has been fully explained to them by their respective counsel.

4. The Releasors acknowledge that there is a risk that subsequent to the execution of this Agreement, one or more of the Releasors will incur or suffer losses, damages, or injuries related to the subject matter of this Agreement, which are unknown and unanticipated at the time

this Agreement is signed. The Releasors, and each of them, hereby assume the above-mentioned risks and understand that this Agreement shall apply to all unknown or unanticipated claims, losses, damages or injuries relating to the subject matter of this Agreement, as well as those known and anticipated, and upon advice of legal counsel, the Releasors, and each of them, do hereby waive any and all rights under the aforesaid Section 1542. The Releasors acknowledge that they fully understand that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever release all claims, obligations and matters released herein, known or unknown, suspected or unsuspected, which do exist, may exist in the future or heretofore have existed between the Releasors and Ruby, and that in furtherance of such intention, the releases given herein shall be and remain in effect as full and complete releases of the matters released herein, notwithstanding the discovery or existence of any such additional or different facts.

5. The parties to this Agreement each represent to the other that they have received independent legal advice from attorneys of their own choosing with respect to the advisability of making the settlement provided for in this Agreement, and with respect to the advisability of executing this Agreement, that they have read this Agreement in its entirety and fully understand its contents, and that each is executing this Agreement as a free and voluntary act.

6. The covenant not to sue and the releases in this Agreement shall extend and inure to the benefit of all Ruby affiliated companies, including but not limited to Ruby Receptionists, Inc. and its respective successors-in-interest, affiliates, assigns, heirs, insurers, executors, officers, directors, agents, employees, attorneys, parent companies, subsidiaries, administrators, principals, shareholders, representatives, partners, joint venturers, predecessors-in-interest, trusts,

trustors, trustees and beneficiaries and all others who may take any interest in the matter herein (collectively, the “Released Parties”).

7. Each of the Releasors represents and warrants to each Released Party that the Releasor has not heretofore assigned, hypothecated, or otherwise transferred, or attempted to assign, hypothecate or transfer, any claim or claims against the Released Parties and that there is no other person or legal entity that has not executed this Agreement as a Releasing Party that has any interest in any such claim or claims against the Released Parties. Each Releasor hereby agrees to indemnify and hold harmless all Released Parties from any and all liabilities, claims, demands, obligations, damages, costs, expenses and attorneys’ fees arising from or related to any claim which, if true, would constitute a breach of this representation and warranty including, but not limited to, all claims resulting from anyone asserting such interest, assignment, hypothecation or transfer.

6. ATTORNEYS’ FEES AND EXPENSES

1. The amount of attorneys’ fees and expenses shall be determined by the Court. In the Fee Application, Plaintiffs and Class Counsel agree to seek or accept no more than \$4,000,000 from Ruby for attorneys’ fees and expenses combined, notwithstanding any greater award by the Court. Ruby agrees not to oppose an application for an award of attorneys’ fees and expenses combined up to that amount. Plaintiffs and Class Counsel further agree that an award by the Court of the combined total of less than \$4,000,000 will have no effect on the settlement or this Agreement. The Court’s or an appellate court’s failure to approve, in whole or in part, any award of attorneys’ fees and expenses to Class Counsel shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Settlement Agreement, as such matters are not the subject of any agreement among the Parties other than as

set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorney fees, litigation costs and expenses to Class Counsel in the amount sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

2. Ruby shall pay the amount awarded to Class Counsel by the Court up to \$4,000,000.00 into an interest-bearing escrow account titled for the benefit of each of the law firm's awarded fees and expenses by the Court within 14 days of the entry of the Court's Judgment and Order of Dismissal of the Action provided for in Section 12, or any separate Order awarding reasonable attorneys' fees and expenses to Class Counsel, whichever comes later. It is specifically agreed that when paid into escrow, title in these funds shall pass to Class Counsel, and Ruby's interest in the funds will be purely contingent on the Effective Date failing to come to pass.

3. The awarded fees and expenses in escrow, together with any accrued interest, shall be released to Class Counsel five (5) calendar days of the Effective Date of this Settlement, or the following business day should that day fall on a weekend or holiday.

4. Ruby will pay (upon request, by wire transfer) the fees and expenses provided for in Sections 6.1 and 6.2 to the escrow account of Stoll Stoll Berne Lokting & Shlachter, P.C., which shall be responsible for distributing it amongst Class Counsel as agreed upon by Class Counsel.

5. Class Counsel will request permission from the Court to compensate the Class Representatives and Maiden participation fees of \$1,000.00 each (\$3,000.00 total) to partially compensate them for the services they have undertaken for the benefit of the Class during these lawsuits. Any such amounts awarded by the Court shall be paid exclusively out of counsel fees awarded by the Court, for which Ruby shall have no liability.

7. DISMISSAL OF THE STATE ACTION

1. Maiden will participate in, be bound by, and will not object to or opt out of the settlement set forth in this Agreement, and upon the Settlement Effective Date Class Counsel shall take all necessary steps to cause the dismissal of the State Action, with prejudice, and without costs to any party.

2. Pending the Effective Date, Class Counsel and counsel for Ruby will jointly request continuation or reinstatement of the Stay presently entered in the State action, should that become necessary to preserve the status quo while effecting this Settlement.

8. PRELIMINARY SETTLEMENT APPROVAL ORDER

Promptly after execution of this Agreement, Class Counsel shall submit this Agreement to the Court and shall apply for entry of a Preliminary Settlement Approval Order, which among other things, shall:

- (a) conditionally certify the Settlement Class as defined in Section 3.1, for the purpose of effecting the Settlement only;
- (b) preliminarily approve the settlement set forth in this Agreement;
- (c) designate The McKenzie Class Representatives as the representatives of the Settlement Class;
- (d) designate Class Counsel as counsel for the Settlement Class;
- (e) designate the Administrator and instruct the Administrator to perform the necessary functions in accordance with the Agreement, the Preliminary Approval Order, and the Final Approval Order;
- (f) preliminarily approve the Settlement set forth in this Agreement;

(g) approve the Notice of Class Action Settlement (the “Notice”) and order that it be disseminated as provided for in Section 9.1;

(h) find that the distribution of the Notice as provided for in Section 9, constitutes the best notice practicable under the circumstances and complies fully with the requirements of federal law and any other applicable law;

(i) provide that Settlement Class Members shall have the right to “opt out” of this Agreement as provided for in Section 9.7, but that this opt out right must be exercised individually and in writing, and not on a representative, derivative, class-wide, or subclass-wide basis, and that Settlement Class Members who opt out shall not have standing to intervene in this proceeding or object to the proposed Settlement;

(j) provide that any Settlement Class Member who does not opt out may, as provided for in Section 9.8, object to the proposed settlement, the proposed Judgment, and/or any application for attorneys’ fees;

(k) schedule the Final Settlement Hearing to be held by the Court to consider and determine (i) whether the Settlement set forth in this Agreement should be approved finally as fair, reasonable and adequate, (ii) whether the proposed Judgment approving the Settlement should be entered; and (iii) whether the application of Class Counsel for attorneys’ fees and reimbursement of expenses should be approved;

(l) provide that the Final Settlement Hearing may from time to time, without further notice to the Settlement Class, be continued or adjourned by order of the Court; and

(m) provide that, pending final determination of whether the Settlement set forth in this Agreement is approved, no member of the Settlement Class, whether directly, representatively, derivatively, or in any other capacity, shall commence, prosecute, or participate

in (actively or inactively) any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties.

9. NOTICE OF SETTLEMENT, OPT-OUTS AND OBJECTIONS

1. As soon as possible, and not later than 30 days after the Court's entry of the Preliminary Approval Order, the Administrator shall send by first class United States Mail as well as by email where an email address for a Class Member is available to Ruby, the Notice of Settlement to the members of the Settlement Class. The Notice of Settlement shall be substantially in the form of Exhibit A to this Agreement, subject to approval by the Court. The Administrator will forward all Notices of Settlement that are returned by the U.S. Postal Service with a forwarding address.

2. The Administrator shall establish a Settlement Website that enables Settlement Class Members to read the Notice of Settlement; relevant pleadings such as the operative complaints, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Application; relevant orders of the Court; and any other information the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, as well as review, complete, and submit a Request for Exclusion online. The Settlement Website will be on the pre-existing informational website located at Rubyreceptionistslitigation.com. The Settlement Website shall be operational from no later than ten business days after the date of entry of the Preliminary Settlement Approval Order.

3. The Parties agree that the Notice of Settlement, and Settlement Website will provide information sufficient to inform Settlement Class Members of: (1) the essential terms of this Settlement Agreement; (2) appropriate means for obtaining additional information regarding the Settlement Agreement and the State and Federal Actions; and (3) appropriate information

about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so. The Notice of Settlement will also include: (1) contact information for class counsel to answer questions; (2) the address for a website, maintained by the claims administrator, that has links to the notice, motions for approval and for attorneys' fees and any other important documents in the case; (3) instructions on how to access the case docket via PACER or in person at any of the court's locations; and (4) a statement that the date of the final approval hearing and clearly state that the date may change without further notice to the class. Class members should be advised to check the settlement website or the Court's PACER site to confirm that the date has not been changed. A draft of the Notice of Settlement is attached as Exhibit A. The Parties also agree that the dissemination of the Notice of Settlement in the manner specified in this section satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

4. The Administrator shall send appropriate notices to governmental agencies as required by the Class Action Fairness Act.

5. Within 45 days after the Court's entry of the Preliminary Approval Order, the Administrator will file with the Court a declaration of compliance with this plan of notice.

6. Within 50 days after entry of the Preliminary Approval Order, Class Counsel shall file the Motion for Final Approval and their Fee Application. Both shall be posted on the Settlement Website.

7. Settlement Class Members shall have the right to be excluded from, or "opt out" of, the Settlement Class and this Agreement electronically or by sending a written request for exclusion to the Administrator. The written request for exclusion must be postmarked not later than 85 days after the entry of the Preliminary Approval Order (if by mail) or received by that

date (in the case of electronically submitted exclusions) and must set forth: 1) the Class Member's name (individual or entity's name); 2) if an entity, then include the representative's full name and title; 3) mailing address; and 4) a statement that the class member wants to be excluded from the settlement in *McKenzie v. Ruby Receptionists*, Case No. 3:18-cv-01921.

8. Any Settlement Class Member who does not opt out may object to the proposed settlement or fee request by filing with the Court and mailing to Class Counsel and to counsel for Ruby by first-class mail postmarked not later than 85 days after entry of the Preliminary Approval Order, a written statement of objection which must set forth: (a) an identification of the action, *e.g.*, *McKenzie v. Ruby*; (b) the Settlement Class Member's full name or entity name, address; and (c) the specific reasons for the objection, and any evidence or legal authority the Settlement Class Member believes supports the objection. Any Settlement Class Member who has filed and served a written statement of objection may also enter an appearance at the Final Settlement Hearing either personally or through counsel of their choice, with the expense of such counsel to be borne by the objecting Settlement Class Member. Settlement Class Members and their counsel who intend to appear at the Final Settlement Hearing must file with the Court a written notice of appearance, which must be postmarked not later than 85 days after entry of the Preliminary Approval Order.

9. Within 95 days of the entry of the Preliminary Approval Order, the Administrator must provide to counsel a list of all exclusions, any objections received by the Administrator, and a declaration summarizing those exclusions and objections, and Ruby's counsel must file those materials with the Court within ten days after receipt.

10. Within 105 days after entry of the Preliminary Approval Order, Class Counsel shall file their reply, if any, in support of their Motion for Final Approval and Fee Application.

11. Within 21 days of the final distribution of vouchers as described in Section 4.2, the Parties shall file a Post-Distribution Accounting and cause it to be posted on the Settlement Website. The Post-Distribution Accounting shall include the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the number and percentage of objections, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any, the average and median recovery per claimant, the number of class members availing themselves of the vouchers and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests, and the benefit of the relief discussed in Section 3 to the class.

10. ADMINISTRATION OF SETTLEMENT

Ruby will bear the expense of the Administration of the Settlement, including the provision of Notice, receipt of any opt-outs, and distribution of settlement benefits made available under the Settlement, in an amount no greater than \$100,000. Any expense of administration above \$100,000 shall be borne by the class or by Class Counsel. Ruby shall not be responsible for any expense (including attorneys' fees) that may be incurred by, on behalf of, or at least at the direction of the Settlement Class Representatives, the Settlement Class Members or Class Counsel in (a) responding to inquiries about the Settlement Agreement, the Settlement, or the Federal or State Actions; (b) defending the Settlement Agreement or the Settlement against any challenge to it; or (c) defending against any challenge to any order or judgment entered pursuant to the Settlement Agreement, unless otherwise specifically agreed.

11. CANCELLATION OR TERMINATION

1. In the event that this Agreement is not approved by the Court substantially in the form submitted (or in a modified form mutually acceptable to the parties), or this Agreement is terminated or fails to become effective or Final in accordance with its terms, the Settlement Class Plaintiffs, the Settlement Class and Ruby shall be restored to their respective positions in the Action as of the date hereof. In such event, the terms and provisions of this Agreement shall have no further force and effect and shall not be used in this Action or in any other proceeding or for any purpose, and the parties will jointly make an application requesting that any Judgment entered by the Court in accordance with the terms of the Agreement shall be treated as vacated, nunc pro tunc, and any funds paid into escrow to benefit Class Counsel for court awarded attorneys' fees and expenses, along with any accrued interest thereon, shall revert back to Ruby.

2. By entering into this Agreement, Ruby is not consenting or agreeing to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. The parties agree that if this Agreement is not approved by the Court substantially in the form submitted (or in a modified form mutually acceptable to the parties), or if this Agreement is terminated or fails to become effective or Final in accordance with its terms, the Action shall proceed as if no party had ever agreed to such settlement, without prejudice to the right of any party to take any and all action of any kind in the Action.

12. JUDGMENT AND ORDER OF DISMISSAL

The undersigned counsel shall submit to the Court a proposed Judgment and Order of Dismissal, substantially in the form annexed hereto as Exhibit B, which shall, among other things:

(a) find that the prerequisites set forth in federal law for the maintenance of the Action as a class action for settlement purposes have been met, and that the preliminary order certifying the Action as a class action shall become final;

(b) find that the Notice (and, if required, the Summary Notice), complies with the requirements of Federal Rule of Civil Procedure 23;

(c) approve the settlement as set forth in this Agreement as fair, reasonable and adequate in all respects pursuant to federal law and all other applicable laws, and order the parties to consummate the settlement in accordance with the terms of this Agreement;

(d) decree that neither the Judgment nor this Agreement shall constitute an admission by Ruby of any liability or wrongdoing whatsoever;

(e) dismiss this Action with prejudice and without costs, except as provided in Sections 6 and 10;

(f) decree that all Releasors shall, as of the entry of the Judgment, conclusively be deemed to have released and forever discharged the Released Parties from all Released Claims, and forever enjoin and bar all Releasors, whether acting directly, representatively, derivatively or in any other capacity, from commencing, prosecuting, or participating in (actively or inactively) any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties;

(g) award reasonable attorneys' fees and expenses to Class Counsel, as determined by the Court, in accordance with Section 6; and

(h) without affecting the finality of the Judgment, reserve exclusive and continuing jurisdiction over this Action, the Settlement Class Representatives, the Settlement Class Members, Ruby, and their respective counsel for the purpose of, among other things,

supervising the implementation, enforcement, construction and interpretation of this Agreement and the Judgment.

13. CONDITIONS OF SETTLEMENT

The effectiveness of this Settlement shall be conditioned on the occurrence of all of the following events:

(a) all persons named at the end of this Agreement shall have executed it along with their respective counsel;

(b) the Court shall have entered the Judgment, substantially in the form annexed hereto as Exhibit B (or in a modified form mutually acceptable to the parties), and shall not have granted a fee application that would cause the total award for attorneys' fees and costs to exceed \$4,000,000.00; and

(c) the Judgment shall have become "Final" as defined in Section 2.5 of this Agreement.

14. AUTHORITY TO EXECUTE

Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

15. GOVERNING LAW

This Agreement shall be subject to, governed by, interpreted, and enforced in accordance with the internal laws (including with regard to conflicts of law provisions) of the State of Oregon.

16. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Executed counterparts shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

17. BINDING EFFECT OF SETTLEMENT

This Agreement shall be binding upon and inure to the benefit of the settling parties (including all Settlement Class Members who do not opt out of the settlement described in this Agreement), their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest and shareholders and any trustee or other officer appointed in the event of a bankruptcy.

18. ENTIRE AGREEMENT

This Agreement and any exhibits attached to it constitute the entire agreement between the parties hereto and supersede any prior agreements or understandings whether oral, written, express or implied between the parties with respect to the settlement. This Agreement shall not be amended, altered, or modified except by an instrument in writing signed by all parties, or their successors in interest. The parties recognize that the text was subject to negotiation and drafted by neither party.

19. NO ADMISSIONS

1. Entering into or carrying out this Agreement, and any negotiations or proceedings related thereto, shall not be construed or deemed to be evidence of an admission or concession by any party with respect to the merits of its position; and specifically shall not give rise to any presumption or inference of an admission or concession by Ruby of any fault, wrongdoing or liability whatsoever, which Ruby expressly denies. Entering into or carrying out this Agreement, and the negotiations or other proceedings related thereto, shall not be offered or received in evidence in this or any civil, criminal, administrative or other action or proceeding, before any

tribunal, for any purpose whatsoever other than to effectuate the provisions of this Agreement, to defend against the assertion of the Released Claims, or as otherwise required by law.

2. Except as otherwise expressly provided herein, neither this Agreement, nor any document referred to herein, nor any action taken to carry out this Agreement, shall be construed as giving rise to any waiver, or presumption or inference of admission or concession, by Ruby, the Settlement Class Representatives or the Settlement Class with respect to any rights or privileges any party may have under or with respect to any contracts or agreements between Ruby and its customers, including but not limited to any rights or privileges with respect to any provision concerning dispute resolution.

20. REPRESENTATIONS AS TO FINANCIAL CONDITIONS OF RUBY

It is expressly agreed and understood that Ruby has made certain representations about its financial condition to the Mediator in connection with the mediation of this case, and has produced for review certain financial information, all of which Class Counsel have relied upon as material factors for entering into this Settlement Agreement. Ruby represents and warrants that those representations and information were, in all material respects accurate, and will provide to the Court a declaration affirming the accuracy of the financial documentation provided during the Parties' mediation with Hunter R. Hughes, III, Esq., as part of its submissions in support of this agreement.

21. MISCELLANEOUS PROVISIONS

1. The parties acknowledge that violation of this Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If either party fails to perform its obligations hereunder, the other party shall be entitled to specific

performance, including through mandatory preliminary and final injunctive relief, in addition to such other remedies as are provided herein or as may otherwise be available by law.

2. Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by facsimile, by e-mail, or by overnight mail, to the undersigned counsel for the parties at their respective addresses.

3. The waiver by one party of any breach of this Agreement by another party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims.

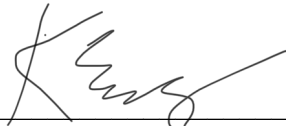
5. The section titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions. This Agreement shall be construed without regard to its drafter, and shall be construed as though the parties participated equally in the drafting of this Agreement.

6. The parties and their counsel shall use their best efforts and cooperate in obtaining final court approval and implementation of this Agreement.

7. If the date for performance of any action required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the time period specified by or under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

RUBY RECEPTIONISTS, INC., and its Counsel:



Kate Winkler, CEO
RUBY RECEPTIONISTS, INC.
805 SW Broadway #900
Portland, OR 97205



Renee E. Rothauge
PERKINS COIE LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Telephone: (503) 727-2000
Facsimile: (503) 727-2222

PLAINTIFFS AND THE CLASS, by Settlement
Class Representatives and Class Counsel:

Alistair McKenzie
MCKENZIE LAW FIRM, P.A.
905 E Hatton St
Pensacola, FL 32503-3931
Telephone: (800)343-3067
Facsimile: (850) 202-2012


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RUBY RECEPTIONISTS, INC., and its Counsel:

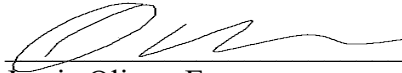
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Class Representatives and Class Counsel:



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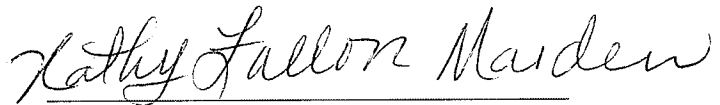
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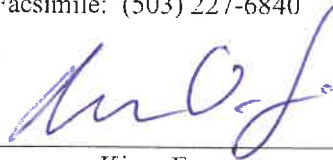
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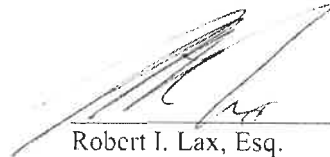
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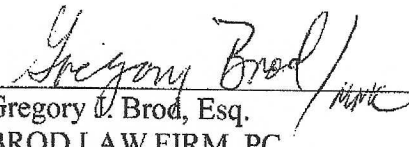
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EXHIBIT A

THE FOLLOWING IS NOT AN EXPRESSION OF THE COURT'S VIEWS ON THE MERITS OF ANY CLAIM OR DEFENSE RAISED BY THE PARTIES.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

1. Why Did I Get This Notice?

Because you may be a Settlement Class Member who is eligible to receive benefits under the Settlement. Ruby Receptionists' records indicate that you are a current or former customer of Ruby in the United States who was identified by Ruby as someone who used Ruby's services between October 13, 2011 and May 31, 2018.

Judge Michael H. Simon of the United States District Court for the District of Oregon (the "Court") is overseeing this class action. The lawsuit is known as *McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., on behalf of themselves and all others similarly situated, v. Ruby Receptionists, Inc.*, Civil Action No. 3:18-cv-01921-SI.

The Court has preliminarily approved the Settlement on behalf of the Class. The Court has not entered judgment on the merits and has not determined that there is any merit to Plaintiffs' claims or that Ruby engaged in any wrongdoing. The Court still has to decide whether to grant final approval of the Settlement. If the Court grants final approval of the Settlement, and after any objections and appeals are resolved, the benefits provided under the Settlement will be distributed.

Plaintiffs Ruby, and their respective counsel, have concluded that the Settlement is fair and in the best interests of the Settlement Class Members considering the risks and uncertainties to each side of continued litigation. Because this Settlement will affect your legal rights, the Court ordered that this Notice be sent to you. This Notice will provide you with a brief description of the Action, summarize the terms of the Settlement, and inform you of your legal rights.

2. What Is The Lawsuit About?

This lawsuit seeks to recover damages on behalf of those persons or entities in the United States who obtained receptionist services from Defendant Ruby between October 13, 2011 and May 31, 2018, pursuant to its form Service Agreements. The Plaintiffs' allege that Ruby breached its contracts by: 1) rounding up its billable receptionist time, 2) charging for time callers were placed on a preliminary hold until a receptionist could handle calls, 3) failing to make available all receptionists' minutes contracted for and 4) neglecting to disclose these practices.

The lawsuit alleges that class members have suffered damages as a result of Ruby's call calculation practices because (1) class members have been overcharged for overage receptionist time due to Ruby's practice of rounding up call time as well as the inclusion of hold queue time within overage receptionist time, (2) class members have been prematurely charged for overage receptionist time that they would not have otherwise incurred because those overage calls would have been included within their monthly allotment, but for Ruby's call calculation and billing methods, and (3) class members have been denied the full value of the allotment of receptionist time they contracted and paid for, but which was never made available to them due to Ruby's call calculation and billing methods.

You can read the Plaintiffs' Class Action Complaint at www.RubyReceptionistsLitigation.com.

The Court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Federal Rule of Civil Procedure Rule 23, which governs class actions in federal courts. Specifically, the Court found that:

- There are over 18,000 customers who received receptionist services from Ruby;
- There are legal questions and facts that are common to each of them;
- McKenzie Law Firm, P.A. and Oliver Law Offices, Inc.'s claims are typical of the claims of the rest of the Class;
- McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. and the lawyers representing the Class will fairly and adequately represent the Class' interests;
- The common legal questions and facts are more important than questions that affect only individuals; and
- This class action will be more efficient than having many individual lawsuits.

More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order Certifying the Class, which is available at www.RubyReceptionistsLitigation.com.

3. What Position Does Ruby Take?

Ruby denies that it did anything wrong and Ruby says that its contracts and policies are clear, that customers were informed of them, that contracts provide up to a certain number of minutes per month without rollover, that those minutes are calculated in rounded up 30-second increments and that minutes include queue hold time. Accordingly, Ruby does not believe that its customers have suffered damages as a result of the way it calculates customer calls. Ruby's Answer to the Complaint is also at the website.

4. Why Is There a Settlement?

Plaintiffs and Ruby have determined that it is in their mutual best interest to settle this Action due to the uncertainties of trial, benefits of settlement, associated costs of continued litigation, likely appeals, and inconvenience and interference with personal matters and business operations. The Settlement was reached through lengthy negotiations between the parties before a neutral, independent, third-party mediator, Mr. Hunter Hughes, III.

The Court did not decide in favor of Plaintiffs or Ruby. After a thorough investigation into the facts of this lawsuit, Plaintiffs and Ruby agreed to the Settlement. The Class Claims against Ruby were settled because Class Counsel and Plaintiffs, acting as the Class Representatives, believe that the amount of the Settlement is fair and reasonable in light of the strength and weaknesses of the lawsuit and other factors.

5. How Do I Know If I Am Part of the Settlement?

If you received receptionist services from Ruby at any time between October 13, 2011 and May 31, 2018, and have not previously opted out, you are in the class, even if you are no longer a Ruby customer.

If you are still not sure whether you are included, you can get free help at **www.RubyReceptionistLitigation.com**, or by calling or writing to the lawyers in this case, at the phone number or address listed in Section 9.

6. What Does the Settlement Provide and What Can I Get from It?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at **www.RubyReceptionistLitigation.com**, by contacting class counsel at the contact information contained in Section 9 of this Notice, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at **https://ecf.cand.uscourts.gov**, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Oregon, Mark O. Hatfield United States District Courthouse 1000 Southwest Third Avenue, Portland, Oregon, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

In exchange for a release of all claims in the lawsuit against Ruby, Ruby has agreed to distribute, to all class members who paid for receptionist services at any time between October 13, 2011 and May 31, 2018, vouchers redeemable for either receptionist services base minutes or Ruby's Pure Chat product. The value of the voucher distributed to each class member will be determined by that class member's billings from Ruby during the relevant time period, as a percentage of Ruby's total billings during that time, exclusive of amounts exercised for money back guarantees. At a minimum, each qualifying class member will receive a voucher worth no less than \$49.00. The vouchers will be distributed and become redeemable over a period of time not to exceed eighteen months from the date the Court's approval of the settlement becomes final and class members will have up to one year to redeem once the voucher is issued. The redeemable value of the vouchers to be distributed may equal, but is not to exceed, \$8 million. In addition, Ruby will continue to describe its billing practices in written and oral communications making clear that receptionist minutes are billed in 30-intervals rounded up to the next thirty-second mark, and that Ruby includes time callers are on hold when calculating receptionist minutes.

You will be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax withholdings, if any, on your individual settlement benefit. If you do not timely submit a valid request for exclusion by <<**DATE**>>, you will receive your individual settlement benefit after the Court approves the Settlement.

Class Counsel also plan to apply to the Court for their reasonable attorney fees and costs. The Court will determine the actual amount. Defendants have agreed not to oppose Class Counsel's application for an amount of attorney fees and costs up to \$4,000,000. Ruby will pay the court-ordered amount of Plaintiff's attorney fees (up to \$4,000,000). Class Counsel's fee application will be available on the settlement website at **www.RubyReceptionistLitigation.com**

on or about <<**DATE**>>. Finally, Ruby will pay Settlement Administrator's administration and notice expenses, including the cost of preparing and mailing this Notice, up to an amount of \$100,000.

As noted, details of the benefits of the settlement and the administration of the voucher process may be found at the website identified above, by accessing the Court's docket, by contacting Class Counsel, or by visiting the Court Clerk's office.

7. How Can I Get Payment?

If you take no further action as a Settlement Class Member, you will be represented by Class Counsel, and will have the right to obtain your individual settlement benefit if the Settlement is approved by the Court and the Effective Date occurs.¹ Your individual settlement benefit will be sent to the same address to which the Settlement Administrator sent you this Notice, unless you tell the Settlement Administrator that you have a different address.

If you move or change your address, you must send notice of your change of address to the Settlement Administrator so that your individual settlement benefit can be sent to your new address.

You will be bound by the terms of the Settlement, which will result in a release of your claims as described below under **Released Claims**.

8. When Would I Get My Payment?

The Court will hold the Final Approval Hearing on or about <<**DATE**>> at <<**TIME**>> in the United States District Court for the District of Oregon, Mark O. Hatfield United States Courthouse, Room 1527, 1000 Southwest Third Avenue, Portland, Oregon 97204-2944 (or by videoconference if circumstances warrant), to decide whether to approve the Settlement. The benefits described in Section 6 under ***What Does the Settlement Provide and What Can I Get from It*** will begin being issued in accordance with the terms of the Settlement Agreement.

¹ "Effective Date" means the date on which the judgment becomes final, unless there are no objections to the settlement, in which case the Effective Date will be the date of entry of judgment.

9. Who Are The Attorneys Representing the Plaintiffs and Settlement Class?

Attorneys for Plaintiffs and the Class (“Class Counsel”)

Keith S. Dubanevich, Esq.
Cody Berne, Esq.
Stoll Stoll Berne Lokting &
Shlachter PC
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kdubanevich@stollberne.com
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Laurence D. King, Esq.
Mario M. Choi, Esq.
Kaplan Fox & Kilsheimer LLP
1999 Harrison Street, Ste. 1560
Oakland, CA 94612
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mchoi@kaplanfox.com

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Gregory J. Brod, Esq.
Brod Law Firm, PC
96 Jessie Street
San Francisco, CA 94105
Telephone: (415) 397-1130
gregb@brodfirm.com

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE CLERK’S
OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.
IF YOU ELECT TO REMAIN A SETTLEMENT CLASS MEMBER, YOU SHOULD
NOT CONTACT COUNSEL FOR DEFENDANTS**

10. Do I Need to Hire an Attorney?

You do not need to hire your own attorney for this Settlement. You are already represented by Class Counsel (see Section 9). However, you may hire your own attorney at your own expense if you choose to do so. You will be responsible for any attorneys’ fees and costs charged by your own attorney.

11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class, and you will be bound by the terms of the Settlement, including the Released Claims described below. That means that you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court’s orders will apply to you and legally bind you.

Released Claims

Upon the Effective Date, unless you submit a valid and timely request for exclusion, you shall be deemed to have fully and finally released all claims, causes of action, demands, losses or damages of any kind, whether based on contract, tort, statutory or other legal or equitable theory of recovery,

whether now known or unknown, suspected or unsuspected, existing, claimed to exist or which can ever hereinafter exist, arising or which could be claimed to arise out of or in connection with, or related in any way to the claims relating to Ruby's billing practices, alleged or referred to in the Federal or State Complaints, including but not limited to claims sounding in the contract or consumer protection laws of the United States or of any state or other jurisdiction in the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, fraudulent misrepresentation and false advertising law of the United States or any state or other jurisdiction in the United States, including but not limited to any claims relating to Ruby's billing practices.

12. How Do I Exclude Myself from the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself (generally called "opting out") by submitting a written opt-out request to the Settlement Administrator. Your request for exclusion must either be made at the settlement website at **www.RubyReceptionistLitigation.com**, or it must (a) be in writing; (b) state your name, address and telephone number; (c) state your Ruby Customer ID Number (if known); (d) request exclusion from the Settlement Class saying words to the effect of "I wish to opt-out of the Settlement Class in: *McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., on behalf of themselves and all others similarly situated, v. Ruby Receptionists, Inc.*, Civil Action No. 3:18-cv-01921-SI"; (e) be signed and dated by you, with a return mailing address, and returned via United States first class mail post-marked no later than <<**DATE**>> to the Settlement Administrator identified below. A Request for Exclusion form that, when completed, meets these requirements is provided with this Class Notice.

You must sign the request for exclusion personally and may not have someone sign for you, nor may you submit a request for exclusion on behalf of a group.

Ruby Class Action Settlement Administrator
c/o The Notice Company
PO Box 455 Hingham, MA 02043
(781) 740-1900

If you submit a timely request for exclusion, then upon its receipt you shall no longer be a member of the Settlement Class, you shall be barred from participating in any portion of the Settlement, you may not object to the Settlement, and you shall receive no benefits from the Settlement. If you wish, you may pursue any claims you may have against Ruby. If you do not submit a complete and timely written request for exclusion, you will be included in the Settlement Class, and be bound by the terms of the Settlement (including the Released Claims described in Section 11 above), whether or not you filed an objection to the Settlement.

The Court will hold the Final Approval Hearing at the U.S. District Court for the United States District Court for the District of Oregon, Mark O. Hatfield United States Courthouse, Room 1527, 1000 Southwest Third Avenue, Portland, Oregon 97204-2944 on <<**DATE AND TIME**>> or such other, later date as the Court may authorize (or by videoconference if circumstances warrant), to determine whether the Settlement is fair, reasonable, and adequate; and if there are objections, the Court will consider them. The Court will also be asked to approve requests including, but not

limited to, Class Counsel's request for attorney fees and litigation costs and the Settlement Administration Costs.

The hearing may be continued without further notice to Settlement Class Members. It is not necessary for you to appear at this hearing. To get the most current information concerning the date and time of the Final Approval Hearing, you should check the Settlement Website at **www.RubyReceptionistLitigation.com**, or the U.S. Court's Public Access website at PACER.gov.

13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

If you do not submit a timely and valid request for exclusion but wish to object to this Settlement, you can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*McKenzie Law Firm v. Ruby Receptionists, Inc.*, Case Number 3:18-cv-01921 (SI)), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the District of Oregon, Mark O. Hatfield United States District Courthouse, 1000 Southwest Third Avenue, Portland, Oregon 97204-2944, or by filing them in person at the United States District Court for the District of Oregon, and (c) be filed or postmarked on or before .

Do not submit both an objection and request for exclusion. If you submit both, the request for exclusion will be controlling, and you will be excluded from the Settlement Class.

You may also attend the Final Approval Hearing and have your objections heard. At the hearing, you or your lawyer may present objections to the Settlement and any other remarks about the Settlement, even if you have not provided advance notice of intent to do so. If you send a written objection, however, the Court will consider it regardless of whether you appear at the Final Approval Hearing.

If you object to the Settlement, you will still remain a Member of the Settlement Class, and if the Court approves the Settlement, you will be bound by all the terms of the Settlement including the Released Claims against the Released Parties.

If you do not object to the Settlement before or at the Final Approval Hearing, you waive your right to later object to the Settlement, whether by appeal or otherwise. Do not submit an objection

if you decided to exercise your right to opt-out of the Settlement as described above, because you are not permitted to do so.

If the court approves the Settlement despite any objections, you will receive your individual settlement benefit and will be bound by the terms of the Settlement (including the Released Claims described in Section 11 above).

14. How Do I Get Additional Information?

Additional information about the Settlement is available at the settlement website here: **www.RubyReceptionistLitigation.com**. Important information about the Settlement will be posted at the website, including the Class Action Settlement Agreement and General Release, the Preliminary Approval Order issued by the Court, Frequently Asked Questions and Answers, and Class Counsel's fee application, which will be available on or about <<**DATE**>>

If you move or change your address, and you want to continue to receive information and/or your individual settlement benefit at your new address, you must send notice of your change of address to the Settlement Administrator.

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Class Action Settlement Agreement, which is available at the settlement website. You may also contact the Ruby Class Action Settlement Administrator c/o The Notice Company at PO Box 455 Hingham, MA 02043, Phone Number (781) 740-1900, and/or Class Counsel listed in Section 9.

15. Important Deadlines

The deadline to submit a Request for Exclusion from Participating in Settlement is <<**DATE**>>. The Final Approval Hearing, during which any objections will be heard, is scheduled for <<**DATE AND TIME**>>.

The date of the Final Approval Hearing may change without further notice to the class. You should check the Settlement Website at **www.RubyReceptionistLitigation.com** or the Court's PACER site (*see* instructions in Section 6, above) to confirm that the date of the Final Approval Hearing has not changed.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

REQUEST FOR EXCLUSION FORM

McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., on behalf of themselves and all others similarly situated, v. Ruby Receptionists, Inc.

United States District Court for the District of Oregon, Case No. 3:18-cv-01921-SI

**This is NOT a Claim Form. This EXCLUDES you from this Class Action.
DO NOT use or submit this form if you wish to remain a Class Member in this Class Action.**

Name of Class Member: _____

Address: _____

Telephone: _____ Ruby Customer ID No.: _____

I wish to opt out of the Settlement Class in *McKenzie Law Firm, P.A. and Oliver Law Offices, Inc., on behalf of themselves and all others similarly situated, v. Ruby Receptionists, Inc., Civil Action No. 3:18-cv-01921-SI*. By opting out, I understand that I will not be awarded any damages from this lawsuit but that I am preserving any rights I would otherwise have to sue Ruby for damages.

Signature of Class Member

Date Signed

Printed Name of Class Member

To effectively opt out, this form must be completed, signed, and sent by United States first-class mail to the Settlement Administrator at the address below (or completed online at www.RubyReceptionistLitigation.com) by NO LATER THAN [DATE]

**Ruby Class Action Settlement Administrator
c/o The Notice Company
PO Box 455 Hingham, MA 02043**

Please do not contact Ruby, or the United States District Court for the District of Oregon about this lawsuit; they will not be able to answer your questions. You can contact Class Counsel with any questions:

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Cody Berne, Esq.
Stoll Stoll Berne Lokting &
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EXHIBIT B

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

McKENZIE LAW FIRM, P.A., and OLIVER
LAW OFFICES, INC. on Behalf of
Themselves and All Others Similarly
Situating,

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-01921

**[Proposed] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT**

JUDGMENT AND ORDER OF DISMISSAL

This matter came before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement. The Court previously granted preliminary approval of the Settlement Agreement on _____, 2021 and certified a settlement class defined as all persons or entities in the United States who obtained receptionist services from Ruby between October 13, 2011 and May 31, 2018.

Due and adequate notice having been given to the Settlement Class Members, and the Court having considered the Settlement Agreement, all papers filed and proceedings had herein, and all oral and written comments received regarding the Settlement Agreement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Settlement Class Members.

3. On August 3, 2020, the Court appointed The Notice Company of Hingham, Massachusetts as Notice Administrator (“Administrator”). The Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement Agreement and shall comply with the terms of the Settlement Agreement. The Court orders the Defendant to pay the costs of administering the Settlement Agreement up to the cap agreed to in Section 10 of the Settlement Agreement.

4. The parties have satisfied the prerequisites set forth under federal law for maintenance of the Action as a class action for settlement purposes, and the preliminary order certifying the Action as a class action shall become final.

5. The Court finds that the distribution of notice of the Settlement Agreement has been completed in conformity with the Court’s preliminary approval order. The Court finds that the notice was the best practicable under the circumstances and provided the Settlement Class with due and adequate notice of the proceedings and the terms of the Settlement Agreement. The Court finds that the notice fully satisfied the requirements of due process and the notice requirements of FRCP 23(c)(2) and FRCP 23(e)(1). The Court also finds that all Settlement Class Members were given a full and fair opportunity to object to the proposed Settlement Agreement, Class Counsel’s application for an award of attorney fees and litigation costs, the payment of a Class Representative Service Award, the payment of the Administrator’s fees, and to participate in the Final Approval Hearing. All Settlement Class Members wishing to be heard regarding the Settlement Agreement have been heard.

6. The Court finds that ___ Settlement Class Members have objected to the Settlement Agreement, Class Counsel's application for an award of attorney fees and litigation costs, the payment of a Class Representative Service Award, or the payment of the Administrator's fees.

7. The Court finds that the reaction of the Class to the Settlement was favorable.

8. The Court hereby grants final approval of the terms set forth in the Settlement Agreement and finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable with respect to the Settlement Class Members and pursuant to federal law and all other applicable laws and directs the parties to effectuate the Settlement Agreement according to its terms.

9. The Court finds that the Settlement Agreement has been reached as a result of informed and non-collusive arms-length negotiations among experienced counsel for the Class and counsel for Defendant.

10. The Court finds that the Class Representatives and Class Counsel have adequately represented the Class.

11. The Court finds that the parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

12. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

13. The Court finds that all Settlement Class Members will be treated equitably relative to each other.

14. The Settlement Agreement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any liability or wrongdoing by Defendant. Neither this Order, the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement Agreement may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

15. The Court awards Class Counsels' attorney fees and costs in the amount of \$_____ and Class Representatives and Maiden participation fees in the amount of \$_____, as provided for in Section 6 of the Settlement Agreement.

16. The Court finds that each Settlement Class Member shall be bound by the Settlement Agreement, including the release and covenant not to sue in Section 5 of the Settlement Agreement.

17. The Court dismisses on the merits, with prejudice, and without costs, except as provided in Sections 6 and 10 of the Settlement Agreement, all claims of the Settlement Class Members asserted in this Action.

18. All Releasors shall, as of the entry of the Judgment, conclusively be deemed to have released and forever discharged the Released Parties from all Released Claims, and the Court forever enjoins and bars all Releasors, whether acting directly, representatively, derivatively or in any other capacity, from commencing, prosecuting, or participating in (actively or inactively) any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties.

19. Without affecting the finality of the Judgment, the Court hereby reserves exclusive and continuing jurisdiction over this Action, the Settlement Class Representatives, the

Settlement Class Members, Ruby, and their respective counsel for the purpose of, among other things, supervising the implementation, enforcement, construction and interpretation of the Agreement and this Judgment.

20. Notwithstanding the reservation of jurisdiction in Paragraph 19 of this Judgment, this is a final and appealable judgment that ends the litigation of all claims alleged in this action. The Clerk is directed to enter this Judgment on the civil docket forthwith.

DATED this __ day of _____, 2021

Michael H. Simon
United States District Court Judge

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MCKENZIE LAW FIRM, P.A. and
OLIVER LAW OFFICES, INC., on behalf
of themselves and all others similarly
situated,

Plaintiff,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

No. 3:18-cv-01921-SI

**ORDER OF PRELIMINARY
APPROVAL OF SETTLEMENT**

ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

This matter comes before the Court on the parties' joint motion for preliminary approval of the class settlement agreement pursuant to Federal Rule of Civil Procedure 23(e) (ECF 269). Having thoroughly considered the motion and the relevant record, the Court hereby GRANTS the motion for the reasons explained herein.

On February 17, 2021, named Plaintiffs McKenzie Law Firm P.A. and Oliver Law Offices, Inc. along with Maiden Insurance LLC ("Maiden"), executed a settlement agreement with Defendant Ruby Receptionists, Inc. (collectively, "the Parties"). For purposes of this order, all of the terms and definitions set forth in that settlement agreement shall apply herein. Having reviewed the settlement agreement and considered the parties' submission in support of preliminary approval of the settlement, the Court now FINDS and ORDERS as follows:

I. CERTIFICATION OF SETTLEMENT CLASS

A. The Expanded Settlement Class

1. The agreement settles all released claims, as defined therein, that have been or could have been brought in this putative class action. The agreement provides for a nationwide class settlement of the released claims concerning certain activities that are the subject of this lawsuit.

2. On or about January 6, 2020, the named plaintiffs moved for class certification. (ECF 107). The Court certified a class in the lawsuit on April 24, 2020, defining the class as follows:

All persons or entities in the United States who obtained receptionist services from Defendant Ruby Receptionists between November 2, 2012 and May 31, 2018, pursuant to its form Service Agreements.

(ECF 128).

3. The parties have jointly requested the Court expand this certified class for purposes of settlement. This proposed settlement class would include those who obtained

services from Ruby between October 13, 2011 and November 2, 2012. Accordingly, the settlement class is defined as follows:

All persons or entities in the United States who obtained receptionist services from Defendant Ruby between October 13, 2011 and May 31, 2018, pursuant to its form Service Agreements.

To be excluded from the Settlement Class are:

- (a) Ruby, its affiliates, its Directors and Officers, the attorneys of any party, and the Court and its personnel.
- (b) Persons who have timely and validly opted out of the Settlement Class pursuant to the terms of the settlement agreement.
- (c) Persons or entities who have previously opted out of this action in response to the Notice of Pendency previously provided pursuant to the Court's August 3, 2020 Order Regarding Notice.

4. The Court hereby finds that this change is reasonable, fair, and adequate to the needs of the parties and the settlement class. Specifically, the proposed settlement class would expand the available number of individuals who stand to benefit under the terms of the settlement agreement.

B. Findings Regarding the Settlement Class

The Court finds as follows:

1. Defendant has determined the size of the settlement class through their records and have identified 21,144 such settlement class members.

2. There are questions of law and fact common to all members of the settlement class because Plaintiffs' breach of contract claim turns on common questions like whether Ruby's call time calculation method breached its contracts and whether these breaches caused damages to class members.

3. The named Plaintiffs' claims and those of Maiden are typical of the settlement class. The named Plaintiffs and Maiden are members of the settlement class and allege that they have been harmed by the same conduct of Defendant as other members of the settlement class.

2- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

Their claims are not in conflict with or antagonistic to the claims of the settlement class as a whole. The named Plaintiffs' claims and those of Maiden and of other settlement class members are based upon corresponding theories.

4. The settlement class is ascertainable. The unnamed members of the settlement class have in common that they each were identified by Defendant's records as someone who met the expanded settlement class definition as set forth above.

5. The named Plaintiffs and Maiden can fairly, fully, and adequately protect the interests of the settlement class. Class counsel is experienced in prosecuting complex class-action litigation, and the named Plaintiffs and class counsel have no interest that conflicts with, or is adverse to, the interests of the settlement class. The Court had previously appointed these class counsel and these named Plaintiffs to represent the interests of the original class in its prior certification order.

6. Questions of law and fact common to all members of the settlement class predominate over any questions affecting only individual members for settlement purposes.

C. Certification of Settlement Class and Appointment of Class Counsel

1. For the reasons above, the Court hereby CERTIFIES the following settlement class for settlement purposes only:

All persons or entities in the United States who obtained receptionist services from Defendant Ruby between October 13, 2011 and May 31, 2018, pursuant to its form Service Agreements.

Excluded from the Settlement Class are:

- (a) Ruby, its affiliates, its Directors and Officers, the attorneys of any party, and the Court and its personnel.
- (b) Persons who have timely and validly opted out of the Settlement Class pursuant to the terms of the settlement agreement.
- (c) Persons or entities who have previously opted out of this action in response to the Notice of Pendency previously provided pursuant to the Court's August 3, 2020 Order Regarding Notice.

3- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

2. The Court hereby APPOINTS Keith Dubanevich, Stoll Stoll Berne Lokting & Schlachter, P.C.; Laurence King, Kaplan Fox & Kilsheimer LLP; Robert I. Lax, Lax LLP; Jon M. Herskowitz, Baron & Herskowitz LLP; and Gregory J. Brod, Brod Law Firm, P.C., as counsel for the settlement class (“Class Counsel”).

3. If for any reason the settlement agreement ultimately does not become effective, the parties may request that this order certifying a settlement class be vacated and that the parties be returned to their respective positions in this lawsuit as those positions existed immediately before the parties executed the settlement agreement. Nothing stated in the settlement agreement or in this order shall be deemed an admission or waiver of any kind by any of the parties or used as evidence against, or over the objection of, any of the parties for any purpose in this action or in any other action or proceeding of any kind.

II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

1. Defendant has at all times disputed, and continues to dispute, named Plaintiffs’ allegations in this lawsuit, deny any liability for any of the claims that have or could have been alleged by Plaintiffs or other members of the settlement class.

2. The settlement agreement requires Defendant to provide specified settlement vouchers to each participating settlement class member, as defined and set forth in the settlement agreement. Specifically, each settlement class member who has not timely opted out of the settlement shall be compensated via a settlement voucher, redeemable for Ruby’s Pure Chat service, or for Ruby’s virtual receptionist service. The amount of the voucher for each eligible class member will be determined by that class member’s billings from Ruby during the relevant time period, as a percentage of Ruby’s total billings during that time, exclusive of amounts exercised for money back guarantees. At a minimum, each qualifying class member will receive a voucher worth no less than \$49.00. The vouchers will be distributed and become redeemable over a period of time not to exceed eighteen months from the date the Court’s approval of the

4- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

settlement becomes final and class members will have up to one year to redeem them once the voucher is issued. The redeemable value of the vouchers to be distributed may equal, but is not to exceed, \$8 million. In addition, Ruby will continue to describe its billing practices in written and oral communications making clear that receptionist minutes are billed in 30-intervals rounded up to the next thirty-second mark, and that Ruby includes time callers are on hold when calculating receptionist minutes.

3. Defendant has already identified all settlement class members and, therefore, no settlement class member will be required to prove their eligibility to receive the benefits of the settlement agreement.

4. The Plaintiffs' damages expert has estimated damages totaling approximately \$18,700,000 for the previously certified class period. In the parties' proposed settlement, Ruby agrees to distribute to class members \$8 million in vouchers for Ruby services and to pay up to \$4 million in attorneys' fees and up to \$100,000 in settlement administration costs. Ruby also agrees to provisions requiring it to describe its receptionist minutes calculation policy as it began to describe that policy after the lawsuit was filed. The structure of the settlement is based on a proposal made to the two parties by the mediator, Mr. Hunter Hughes III of Atlanta, Georgia, who facilitated the parties' negotiations. In a declaration submitted by Mr. Hughes in support of this settlement, he states that he made his proposal taking into consideration the strengths and weaknesses of the case, the possible outcomes of a trial, and collectability of any judgment obtained. In addition, Mr. Hughes states that misalignment between a plaintiff's expectations about the amount of damages achievable at trial and what a defendant could reasonably afford to pay can present an obstacle to settlement. Mr. Hughes states that he received financial information from Ruby that informed his views and moved the plaintiffs' expectations about the size of a settlement Ruby could reasonably perform.

5- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

5. On a preliminary basis, therefore, taking into account (1) the defenses asserted by Defendant; (2) the risks to the settlement class members that Defendant would successfully defend against claims arising out of the facts and legal theories pleaded and asserted in this case, whether litigated by members of the settlement class themselves or on their behalf in a class action; and (3) the length of time that would be required for members of the settlement class, or any group of members of the settlement class, to obtain final judgment through one or more trials and appeals, the settlement appears fair, reasonable, and adequate. Moreover, the parties have reached the settlement after litigating the claims and defenses raised in this case, both formal and informal discovery conducted by the Plaintiffs, class counsel, and Defendant, and an arm's-length negotiation that included a full-day mediation session and subsequent negotiations. For all these reasons, the settlement falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

6. Accordingly, it is hereby ORDERED that the settlement agreement and corresponding settlement are hereby preliminarily approved.

III. APPROVAL OF THE CLASS NOTICE, PLANS FOR ITS DISTRIBUTION, AND RESPONSIBILITIES FOR THE SETTLEMENT ADMINISTRATOR AND THE PARTIES

1. As provided for in the settlement agreement, the parties have submitted (i) a form of class notice, including a request for exclusion form, and frequently asked questions and answers ("Notice"), to be mailed and emailed to settlement class members; (ii) a plan for distributing the notice; (iii) a plan for establishing a settlement website, which will include the notice and other information and documents that the parties jointly agree to post concerning the nature of the case and the status of the settlement, including a copy of class counsel's fee application, a complete copy of the settlement agreement, and relevant orders of the Court.

2. The proposed plan for distributing and publishing the notice and settlement website appears reasonably likely to notify members of the settlement class of the settlement.

6- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

The proposed plan for publishing the notice on the settlement website and for mailing the notice to settlement class members is fair and reasonable. The proposed plan satisfies the notice requirements of Federal Rule of Civil Procedure 23(e) and all applicable federal laws.

3. The notice and settlement website will fairly, accurately, and reasonably inform members of the settlement class of (1) appropriate information about the nature of this litigation and the essential terms of the settlement agreement; (2) appropriate information about how to obtain additional information regarding this matter and the settlement agreement; and (3) appropriate information about, and means for, objecting to or excluding themselves from the settlement, if they wish to do so. The notice and settlement website also fairly and adequately inform members of the settlement class that if they do not comply with the specified procedures and deadline for excluding themselves from the settlement, they will be bound by the settlement and lose any opportunity to bring any of the released claims against the released parties. The agreement settles all released claims, as defined therein, that have been or could have been brought in this class action.

4. The Court, having reviewed the proposed notice and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and Oregon laws and due process.

5. Accordingly, the Court hereby ORDERS that the proposed notice be APPROVED.

6. The Court appoints The Notice Company as the settlement administrator. The settlement administrator shall be subject to the jurisdiction of the Court with respect to the administration of the settlement agreement and shall comply with the terms of the settlement agreement. Promptly following the entry of this order, the parties and settlement administrator shall prepare final versions of the notice.

7- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

7. Further, it is ORDERED that the parties and settlement administrator shall follow the following timeline with respect to the plan of notice in preparation for the final approval hearing.

Settlement Administrator Sends Notice and Settlement Website goes live (“Settlement Notice Date”)	Within 30 Days Following Entry of Preliminary Approval Order
Parties file Declaration of Settlement Administrator of Compliance with Notice Requirement	Within 45 Days Following Entry of Preliminary Approval Order
Motion for Final Approval and Award of Attorneys’ Fees and Expenses and Service Awards to Plaintiffs	Within 50 Days Following Entry of Preliminary Approval Order
Last day for Settlement Class Members to Object to Settlement Agreement or Request Exclusion	Within 85 Days Following Entry of Preliminary Approval Order
Reply, if any, in Support of Motion for Award of Attorneys’ Fees and Expenses and Service Awards to Plaintiffs and in Support of Motion Final Approval	Within 105 Days Following Entry of Preliminary Approval Order
Last day for Ruby Counsel to file list of all exclusions, any objections received by the Administrator, and a declaration from the Claims Administrator summarizing those exclusions and objections	Within 105 Days Following Entry of Preliminary Approval Order
Final Approval Hearing	TBD ¹

8. The settlement administrator to be jointly selected by the parties, shall perform the following functions in accordance with the settlement agreement, this order, and subsequent orders that might be entered by the Court in this case:

¹ Pursuant to 28 U.S.C. § 1715(d), this date must be at least 90 days following the distribution of notice of the proposed settlement to the Attorney General of the United States and the appropriate state officials.

8- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

a. Establish, pursuant to the timeline set out above, a settlement website that enables settlement class members to: (a) read the notice, class counsel's fee application, settlement agreement, relevant pleadings related to the settlement, and relevant orders of the court; and (b) complete, review, and submit a request for exclusion online.

b. Send or cause to be sent, by United States first-class mail, pursuant to the timeline set out above, the class notice to every settlement class member. The settlement administrator will forward settlement notices that are returned by the U.S. Postal Service with a forwarding address.

c. Process requests for exclusion from the settlement.

d. Process objections to the settlement.

IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Final Approval Hearing

The Court hereby schedules for _____ at _____, a final approval hearing to be held at the Mark O. Hatfield United States Courthouse, Room 1527, 1000 Southwest Third Ave., Portland, Oregon 97204-2944 (or by videoconference if circumstances warrant), to determine whether the settlement should receive final approval. At that time, the Court will also consider any motion that might be made by class counsel for an award of attorneys' fees and reimbursement of litigation expenses, all in accordance with the terms of the settlement agreement.

B. Deadline for Members of the Settlement Class to Request Exclusion from the Settlement

The deadline for members of the settlement class to request exclusion from the settlement shall be _____. Members of the settlement class who wish to be excluded from the settlement must mail or submit online their requests for exclusion no later than that date. Any exclusion that is sent via United States first-class mail must be postmarked by that date.

9- ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT

C. Procedure for Objecting to Matters to Be Heard at the Final Approval Hearing

Any objections to certification of the settlement class, the designation of named Plaintiffs and Maiden as representatives of the settlement class, the appointment of settlement class counsel, the settlement, the settlement agreement, or the amount of fees and expenses that settlement class counsel might request at the final approval hearing, must be made in writing and submitted by . Any objection that is sent via United States first-class mail must be postmarked by that date.

Any member of the settlement class or his or her counsel may appear at the final approval hearing and present an objection to the certification of the settlement class, the designation of the settlement class representatives, the appointment of settlement class counsel, the settlement, the settlement agreement, or the amount of attorneys' fees and expenses requested, and/or present any other remarks, without submitting written objections or providing advance notice of an intent to appear or request to be heard at the final approval hearing. The Court will consider all written and oral objections submitted by any settlement class members.

V. ABSENCE OF ANY ADMISSION AND DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY

The parties entered into the settlement agreement solely for the purpose of compromising and settling disputed claims. Defendant has at all times denied, and continues to deny, any wrongful act or omission alleged by named Plaintiffs, and any liability of any sort to named Plaintiffs, Maiden or any member of the settlement class. Nothing contained in the settlement agreement, in the documents relating to the settlement agreement, or in this Order shall be construed, deemed, or offered as an admission by the parties, or by any member of the settlement class, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity.

VI. CONCLUSION

For the foregoing reasons, the parties' joint motion for preliminary approval of the class settlement agreement (ECF 269) is GRANTED.

IT IS SO ORDERED.

DATED this ____ day of _____ 2021.

Michael H. Simon
UNITED STATES DISTRICT JUDGE