

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

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

Plaintiffs,

v.

RUBY RECEPTIONISTS, INC.,

Defendant.

Case No. 3:18-cv-1921-SI

ORDER

Michael H. Simon, District Judge.

Plaintiffs and class representatives McKenzie Law Firm, P.A. and Oliver Law Offices, Inc. are former clients of Defendant Ruby Receptionists, Inc. (Ruby), a business that provides virtual receptionist services. In this certified class action, Plaintiffs allege breach of contract, breach of the duty of good faith and fair dealing, money had and received, and unjust enrichment, all based on Ruby’s allegedly misleading practices relating to the billing of what Ruby calls a “receptionist minute.” On February 19, 2021, the parties jointly moved for preliminary approval of their settlement agreement and preliminary certification of a settlement class under Rule 23 of the Federal Rules of Civil Procedure.

“Approval under [Rule] 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then,

after notice is given to class members, whether final approval is warranted.” *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1005 (E.D. Cal. 2019) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004)). Because “scrutinizing the agreement carefully at the initial stage and identifying any flaws . . . allows the parties to decide how to respond to those flaws . . . before they waste a great deal of time and money in the notice and opt-out process,” *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 137 (N.D. Cal. 2016), this Court reviews class action settlements carefully at the preliminary approval stage. *See In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 2019 WL 3410382, at *2 (D. Or. July 29, 2019).

To assist with the Court’s review of the parties’ Proposed Settlement Agreement, the Court will convene a hearing on the parties’ joint motion for preliminary approval. At this hearing, the parties should be prepared to answer the following questions:

1. How many Settlement Class Members who would be entitled to a voucher under the Proposed Settlement Agreement are no longer current Ruby customers?
2. How many Settlement Class Members would not be entitled to a voucher because they “either never paid for Ruby service or w[ere] refunded all monies paid for Ruby service”? ECF 269-1 at 7. How many Settlement Class Members would be entitled to the \$49.00 minimum voucher offered to Settlement Class Members whose pro rata share “is greater than zero dollars (\$0) but less than \$49.00”? *Id.*
3. What action, if any, must a Settlement Class Member who is a current Ruby customer take to redeem a voucher received under the Proposed Settlement Agreement?
4. Plaintiffs assert that the vouchers contemplated in the Proposed Settlement Agreement are “not ‘coupons’ within the meaning of [The Class Action Fairness Act] 28 U.S.C. § 1712” because the Proposed Settlement Agreement “do[es] not require Settlement Class Members to spend any money in order to utilize the [v]oucher.” ECF 273 at 38. The Proposed Settlement Agreement provides that some Settlement Class Members will receive a voucher worth no more than \$49.00. ECF 269-1 at 7. Under the terms of the Proposed Settlement Agreement, however, vouchers may be used only for Ruby’s Chat or Receptionist Services. *Id.* What is the cost of the least expensive Ruby Receptionist Service Plan? What is the cost of the least expensive

Ruby Chat Service Plan?¹ How would Settlement Class Members who are not current Ruby customers and who receive a voucher in an amount less than the amount of the least expensive Ruby Receptionist or Chat Service Plan use their voucher without “hand[ing] over more of their own money” first? *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 951 (9th Cir. 2015).

5. Plaintiffs imply that it is impossible to provide Settlement Class Members “with any meaningful amount of cash.” ECF 273 at 40. Why is it impossible to provide Settlement Class Members—particularly members who do not wish to use or no longer have a need for Ruby’s services—with meaningful amounts of cash, perhaps \$49.00? What benefit, if any, do Settlement Class Members who are not current customers receive if they do not wish to resume or no longer need Ruby’s services?
6. What purposes are served by the following conditions on Settlement Class Members’ vouchers: (a) the one-time transfer limit on vouchers; (b) the prohibition on using vouchers to pay for overage minutes; (c) Ruby’s right to determine which Settlement Class Members shall receive vouchers in each quarter; and (d) Ruby’s right to defer activation of service to Settlement Class Members who are not current Ruby customers and who seek to redeem a voucher in the first billing period after receipt.
7. The Ninth Circuit has instructed courts to look for “subtle signs of collusion” between class counsel and defendants when considering a proposed settlement agreement. *See Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048-49 (9th Cir. 2019). Signs of collusion, as relevant here, can include: “when counsel receive a disproportionate distribution of the settlement,” *id.*, and when “the agreement contains a ‘clear sailing’ provision for attorney’s fees separate and apart from class funds,” *In re Hyundai & Kia Fuel Economy Litigation*, 926 F.3d 539, 569 (9th Cir. 2019) (en banc). At the hearing, the parties should be prepared to address whether there are subtle signs of collusion as described by the Ninth Circuit.

The Courtroom Deputy will contact the parties to schedule a hearing on the joint motion for preliminary approval.

IT IS SO ORDERED.

DATED this 3rd day of March, 2021.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

¹ According to Ruby’s website, the least expensive Ruby Receptionist Service Plan appears to be \$319.00. *Plans and Pricing*, Ruby Receptionist and Live Chat Specialists, <https://www.ruby.com/plans-and-pricing> (last visited March 3, 2021). The least expensive Ruby Chat Service Plan appears to be \$129.00. *Id.*