

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

N.P. and P.S. individually and
on behalf of all others similarly situated,

Plaintiff,

v.

STANDARD INNOVATION CORP., d/b/a
WE-VIBE, a Canadian corporation,

Defendant.

Case. No. 1:16-cv-8655

Hon. Virginia M. Kendall

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement of the above-captioned matter (the "Action") between Plaintiffs N.P. and P.S.¹ (collectively "Plaintiffs") and Defendant Standard Innovation Corp., d/b/a We-Vibe ("Defendant") (Plaintiffs and Defendant are collectively referred to as the "Parties"), as set forth in the Class Action Settlement Agreement between Plaintiffs and Defendant (the "Settlement Agreement"), and the Court having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

1. Unless defined herein, all defined terms in this Order shall have the respective meanings ascribed to the same terms in the Settlement Agreement.

2. The Court has conducted a preliminary evaluation of the settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that the Settlement Agreement meets all applicable requirements of Fed. R. Civ. P. 23 for settlement purposes only including that the Purchaser Class and the App

¹ Due to the sensitive subject matter of this case, the Plaintiffs' names have been withheld.

Class are each sufficiently numerous, that there are questions of law and fact common to members of the Purchaser Class and the App Class that predominate, that the claims of Plaintiffs P.S. and N.P. are typical of the claims of the Purchaser Class and the App Class, respectively, that Plaintiffs P.S. and N.P. and their counsel adequately represent the interests of the Purchaser Class and the App Class, respectively, and that a class action is a superior method of adjudicating this Action. The Court further finds that: (i) there is good cause to believe that the settlement is fair, reasonable, and adequate, (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case and was reached with the assistance of the Honorable Morton Denlow (ret.) of JAMS, and (iii) the Settlement Agreement warrants Notice of its material terms to the Purchaser Class and the App Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the Settlement Agreement.

3. Pursuant to Fed. R. Civ. P. 23(b)(3), and for settlement purposes only, the Court certifies the proposed Purchaser Class, consisting of: all individuals in the United States who purchased a Bluetooth-enabled We-Vibe Brand Product before September 26, 2016. As provided in the Settlement Agreement, "We-Vibe Brand Product" means the "We-Vibe[®] Classic; We-Vibe[®] 4 Plus; We-Vibe[®] 4 Plus App Only; Rave by We-Vibe[™] and Nova by We-Vibe[™]". Excluded from the Purchaser Class are the following: any judge or magistrate presiding over the Action and the immediate family members of any such Person(s); the Defendant and any respective parent, subsidiary, affiliate, successor, predecessor or any entity in which the Defendant or its parents have a controlling interest, as well as its current or former officers, directors, agents, attorneys, servants, or employees; the Settlement Administrator; the Mediator; Persons who properly execute and file a timely request for exclusion from the Purchaser Class;

and the legal representatives, successors, or assigns of any such excluded Persons.

4. Pursuant to Fed. R. Civ. P. 23(b)(3), and for settlement purposes only, the Court certifies the proposed App Class, consisting of: all individuals in the United States who downloaded the We-Connect application and used it to control a We-Vibe Brand Product before September 26, 2016. As provided in the Settlement Agreement, “We-Vibe Brand Product” means the “We-Vibe® Classic; We-Vibe® 4 Plus; We-Vibe® 4 Plus App Only; Rave by We-Vibe™ and Nova by We-Vibe™. Excluded from the App Class are the following: any judge or magistrate presiding over the Action and the immediate family members of any such Person(s); the Defendant and any respective parent, subsidiary, affiliate, successor, predecessor or any entity in which the Defendant or its parents have a controlling interest, as well as its current or former officers, directors, agents, attorneys, servants, or employees; the Settlement Administrator; the Mediator; Persons who properly execute and file a timely request for exclusion from the App Class; and the legal representatives, successors, or assigns of any such excluded Persons.

5. For settlement purposes only, the Court hereby approves the appointment of Plaintiffs N.P. and P.S. as Class Representatives of the App Class and Purchaser Class, respectively.

6. For settlement purposes only, the Court hereby approves the appointment of the following attorneys as Class Counsel and finds that they are competent and capable of exercising the responsibilities of Class Counsel:

Jay Edelson
EDELSON PC
350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654

Eve-Lynn J. Rapp

EDELSON PC
123 Townsend, Suite 100
San Francisco, California 94107

7. On August 6, 2017 at 9:00 a.m., or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement, and to determine whether: (i) final approval of the Settlement Agreement should be granted and (ii) Class Counsel's application for attorney's fees and expenses and an incentive award to the Class Representatives should be granted. No later than June 15, 2017, Plaintiffs must file their papers in support of Class Counsel's application for attorneys' fees and expenses. No later than July 24, 2017 Plaintiffs must file their papers in support of final approval of the Settlement Agreement and in response to any objections.

8. The Claims Deadline shall be July 20, 2017.

9. Pursuant to the Settlement Agreement, Heffler Claims Group is hereby appointed as Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

10. The Court approves the proposed plan for giving Notice to the Purchaser Class and the App Class by (i) direct email Notice to valid email addresses, (ii) direct Notice through the We-Connect Application, (iii) a one-time half of a page summary publication notice in *People Magazine* and *Sports Illustrated*, (iv) internet banner advertisements on high quality websites such as Google, YouTube, Facebook, Instagram, Twitter, and Pinterest, and (v) the creation of the Settlement Website, as more fully described in the Settlement Agreement. The plan for giving Notice, in form, method, and content, fully complies with the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the

circumstances, and is due and sufficient notice to all persons entitled thereto. The Court hereby directs the Parties and Settlement Administrator to implement all aspects of the Notice plan no later than May 15, 2017.

11. All persons who meet the definition of the Purchaser Class and/or the App Class and who wish to exclude themselves from the Purchaser Class and/or the App Class, respectively, must submit their request for exclusion in writing no later than Objection/Exclusion Deadline of June 29, 2017. To be valid, any request for exclusion must be sent to the Settlement Administrator and postmarked on or before the Objection/Exclusion Deadline. The request for exclusion must be personally signed by the Purchaser Class Member or App Class Member seeking to be excluded from the Purchaser Class or the App Class, respectively, and include the individual's name and address, the name and number of the case (i.e., *N.P., et. al. v. Standard Innovation Corp., d/b/a We-Vibe*, No. 1:16-cv-8655 (N.D. Ill.)), and a statement that he or she wishes to be excluded from the Purchaser Class and/or the App Class. A request to be excluded that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Persons serving such a request shall be deemed to remain members of the Purchaser Class and/or App Class and shall be bound as Purchaser Class Members and/or App Class Members, respectively, by this Settlement Agreement, if approved. No class or mass opt outs shall be permitted.

12. Any member of the Purchaser Class and/or the App Class may comment in support of, or in opposition to, the settlement at his or her own expense; *provided, however*, that all comments and objections must (i) be filed with the Clerk of the Court or, if the Purchaser Class Member or App Class Member is represented by counsel, filed through the CM/ECF

system and (ii) be sent via mail, hand or overnight delivery service to Class Counsel and Defendant's counsel as described in the Notice, no later than the Objection/Exclusion Deadline. If the objector is a Purchaser Class Member, the objection must include (i) the Person's full name, current mailing address, current contact telephone number, current email address; (ii) a statement that he or she purchased a Bluetooth-enabled We-Vibe Product before September 26, 2016; (iii) the device serial number (located on the box and the device) or order number if purchased directly from Defendant, if available; (iv) the specific grounds for the objection; (v) all documents or writings that the Purchaser Class Member desires the Court to consider; (vi) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (vii) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). If the objector is an App Class Member, the objection must include (i) the Person's full name, current mailing address, current contact telephone number, current email address; (ii) a statement that he or she downloaded the We-Connect application and used it to control a Bluetooth-enabled We-Vibe Product before September 26, 2016; (iii) the specific grounds for the objection; (iv) all documents or writings that the Purchaser Class Member desires the Court to consider; (v) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (vi) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). If objecting as both a Purchaser Class Member and App Class

Member, the Person must include all information identified above.

13. Any Purchaser Class Member or App Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

14. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement Agreement and this Order, are not and shall not in any event be construed, deemed, used, offered or received as evidence of an admission, concession, or evidence of any kind by any Person or entity with respect to: (i) the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in the Action or in any other civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiffs. Notwithstanding, nothing contained herein shall be construed to prevent a Party from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement Agreement.

15. The certification of the Purchaser Class and the App Class shall be binding only with respect to the settlement of the Action. In the event that the Settlement Agreement fails to become effective, is overturned on appeal, or does not become final for any reason, the Parties

shall be restored to their respective positions in the Action as of the date of the signing of the Agreement, and no reference to the Purchaser Class, the App Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

16. All discovery and other litigation activity in this Action is stayed pending the Court's decision whether to grant Final Approval to the Settlement.

Date: 3/14/2017

A handwritten signature in black ink that reads "Virginia M. Kendall". The signature is written in a cursive style with a large, looping initial "V".

Virginia M. Kendall, U.S. District Court Judge