

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Vikram Bhatia, D.D.S., et al., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

3M Company,

Defendant.

Case No. 0:16-cv-01304-DWF-DTS

**PLAINTIFFS' REPLY
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Plaintiffs, on behalf of a Class of dentists and dental practices, respectfully submit this reply memorandum in support of their Motion for Final Approval of the proposed Settlement pursuant to the terms and conditions of the Stipulation of Settlement (the "Settlement" or "Settlement Agreement"), which was preliminarily approved by this Court on April 10, 2019 (the "Preliminary Approval Order"). (Doc. No. 136).

The Claims Administrator, consistent with paragraphs 6 and 7 of the Preliminary Approval Order, provided Notice of the settlement to all potential class members. Supplemental Declaration of Orran L. Brown, Jr. In Support of Final Settlement Approval ("Brown Decl."), at ¶8. Additionally, the Claims Administrator engaged in an extensive reminder campaign to ensure that all potential class members were advised of their rights under the Settlement. *Id.*, at ¶¶ 10-11. As part of that campaign, the Claims Administrator made over 7,000 calls directly to potential Class members. *Id.*, at Table 1, ¶10. In addition, the Claims Administrator sent over 1,600 emails to potential class

members who requested additional information. *Id.* On July 19, 2019, the Claims Administrator sent 6,872 reminder postcards to potential class members who had not yet filed a claim. *Id.* at ¶11.

On July 31, 2019, Plaintiffs filed their Motion for Final Approval of Class Action Settlement and Motion for Approval of Class Counsel's Fees, Litigation Expenses and Class Representative Service Awards and related material. (Doc Nos. 140-151). Those documents were placed on the Settlement Website on August 2, 2019. Brown Decl., at ¶6. As established in the Preliminary Approval Order, the deadline for a class member to exclude itself from the class was August 14, 2019. (Doc. 136, ¶9). Only two dental practices—owned by the same dentist—timely excluded themselves from the class. Brown Decl., at ¶16.

The Preliminary Approval Order also set August 14, 2019, as the deadline for objections to the settlement. (Doc. 136, ¶13). To date, no objections have been filed. Brown Decl., at ¶17. In this case, the complete absence of objections substantially supports that the Settlement is an excellent result for the class, and therefore the Court should find that the Settlement is fair, reasonable, and adequate and grant final approval. *See, e.g., Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1064 (D. Minn. 2010).

With respect to late-filed claims, the Claims Administrator has received 15 claims after the August 8, 2019, deadline. Brown. Decl., at ¶15. The power to allow late-filed claims lies in the Court's equitable powers. *Tate v. Rest. Techs., Inc.*, No. CIV. 09-2076 MJD/JJG, 2011 WL 3609417, at *5 (D. Minn. July 25, 2011), *report and recommendation adopted*, No. CIV. 09-2076 MJD/JJG, 2011 WL 3607062 (D. Minn. Aug. 12, 2011).

Allowing these late filed claims will not prejudice any parties nor will it cause any delay. *See Clark v. Runyon*, 165 F. Supp. 2d 920, 922 (D. Minn. 2001). Accordingly, Plaintiffs' Co-Lead counsel ask that this Court accept these claims as timely filed.

For the reasons stated above and in the Motion for Final Approval, the Court should grant final approval to the Settlement, including: approval of the method of allocation and distribution; certify the Settlement Class, confirm the appointments of Class Counsel; affirm the appointment of the Class Representatives; approve the attorneys' fees, litigation expenses and class service awards sought by Plaintiffs; and accept the late filed claims.

Dated: August 28, 2019

Respectfully submitted,

/s/ Daniel C. Hedlund

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Plaintiffs' Interim Co-Lead Counsel

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**RULE 7.1(f) COMPLIANCE
CERTIFICATE**

The undersigned hereby certifies that, pursuant to Local Rule 7.1(f), Plaintiffs' Reply Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement, contains 557 words, as determined through the word count feature of the Microsoft Office Word 2016 word processing software used to prepare the memorandum. The word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The memorandum was prepared in 13-point font in accordance with the type size limitation of Local Rule 7.1(h). I further certify that the opening memorandum contained 4,374 words, for a total of 4,931 words combined.

Dated: August 28, 2019

/s/ Daniel C. Hedlund

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**SUPPLEMENTAL DECLARATION OF ORRAN L. BROWN, JR.
IN SUPPORT OF FINAL SETTLEMENT APPROVAL**

I, ORRAN L. BROWN, JR., hereby declare and state as follows:

I. INTRODUCTION

1. ***Personal Information.*** My name is Orran L. Brown, Jr. I am a partner with BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231 (“BrownGreer”).

2. ***The Capacity and Basis of this Declaration.*** I am over the age of 21. Unless otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge, information received from the parties in this proceeding (the “Parties”), and information provided by my colleagues at BrownGreer.

II. BACKGROUND AND EXPERIENCE

3. ***Prior Declarations & Court Filings.*** On July 31, 2019, as part of their Motion for Final Approval of Class Action Settlement, Plaintiffs filed my Declaration in Support of Final Settlement Approval (Doc. No. 143) that described (1) BrownGreer’s compliance with the terms of the Preliminary Approval Order; (2) BrownGreer’s execution

of its role as the Claims Administrator; and (3) relevant program data offered to the Court for final approval consideration (the “July Declaration”).

4. ***The Purpose of this Declaration.*** I submit this Declaration to supplement the July Declaration and provide the Court with updated program data to consider for final settlement approval.

III. CONTINUING OPERATION OF SETTLEMENT CLASS MEMBER RESOURCES

5. ***Settlement Post Office Box.*** I reported in the July Declaration that BrownGreer established a dedicated Post Office Box (the “P.O. Box”) for the Settlement Program on April 11, 2019, that serves as a location for the United States Postal Service (“USPS”) to return undeliverable program mail to BrownGreer and for Settlement Class Members to submit exclusion requests and other Settlement Program correspondence. Through August 27, 2019, we have received and processed 554 total pieces of mail at the Settlement Program’s P.O. Box, which is an increase of 158 since the July Declaration.

6. ***Settlement Website.*** As explained in the July Declaration, BrownGreer developed and launched the Settlement Website, www.DentalCrownSettlement.com, on May 10, 2019, which allows Settlement Class Members to view, download, and print Settlement documents and file claims for Settlement benefits quickly and easily online. We added Plaintiffs’ Motion for Final Approval of Class Action Settlement and related materials to the Settlement Website on August 2, 2019. Since preparing the July Declaration, the Settlement Website has been visited 1,988 times, for a total of 5,488 visits over the Settlement Website’s lifetime.

7. ***Toll-Free Number.*** The toll-free telephone number, 1-888-529-3798 (the “Toll-Free Number”), that we opened to the public on May 10, 2019 and described in the July Declaration continues to be available to Settlement Class Members twenty-four hours per day

with live agents available during normal business hours. The Toll-Free Number has received 211 calls since the preparation of the July Declaration, with 587 total calls received over the course of the entire Settlement Program.

IV. DIRECT NOTICE

8. *Direct Notice Certification.* As explained more fully in the July Declaration, BrownGreer carried out the Class Notice plan as directed in Paragraphs 6 and 7 of the Court's Preliminary Approval Order.

9. *Direct Notice Reach.* As of August 27, 2019, the direct Notice campaign has reached 6,871 (98.2%) potential Settlement Class Members.¹

V. REMINDER CAMPAIGN

10. *Reminder Calling Campaign.* We commenced a Party-approved live agent calling campaign on July 18, 2019 to known potential Settlement Class Members who had not yet filed a claim to (1) remind them of the August 8, 2019 claim filing deadline; (2) provide support in filing claims as needed; (3) explain the settlement benefits available to eligible Settlement Class Members (including noting that the fixed amount of \$250 per debond could increase, depending on the total number of claims made); and (4) offer to email them their unique Notice ID and direct links to the Class Notice and Settlement Website. We made 7,842 calls to 6,685 unique potential Settlement Class Members and sent 1,616 emails as part of this campaign. Table 1 shows the results of these efforts:

¹ For the purposes of this Declaration, a potential Settlement Class Member is considered "reached" by direct Notice if the Class Notice most recently mailed to that potential Settlement Class Member has not been returned by the USPS as undeliverable. These figures may continue to change slightly as more notices return.

DENTAL CROWN SETTLEMENT REMINDER CALLING CAMPAIGN RESULTS			
Row	Category	Count	% Total Reminder Calls
A.	Reached Potential Class Members	5,554	83.1%
	1. Left Voicemail	2,011	30.1%
	2. Requested Additional Information by Email	1,562	23.4%
	3. Undecided on Submitting a Claim/Class Membership Status	1,240	18.6%
	4. Does Not Plan to Submit Claim	338	5.1%
	(a) Would Not Provide a Reason	314	4.7%
	(b) Dentist Sold/No Longer with Practice	12	0.2%
	(c) Dentist Retired/Passed Away	9	0.1%
	(d) Did Not Seat Many Crowns with the Product	3	<.1%
	5. Claim Submitted	292	4.4%
	6. Indicated Intent to Submit a Claim	70	1.0%
	7. Not a Class Member	38	0.6%
	(a) Did Not Use Lava Ultimate Restorative Blocks for Crowns	31	0.5%
	(b) Did Not Have Any Debonds	7	0.1%
	8. Submitted a Request for Exclusion	3	<.1%
B.	Did Not Reach Potential Class Members	1,131	16.9%
	1. Hang Up	626	9.4%
	2. Phone Number No Longer In Service	296	4.4%
	3. Busy/No Answer/Wrong Number/No Voicemail Option	209	3.1%
	Total	6,685	100%

11. *Reminder Postcard Campaign.* To supplement the reminder calling campaign, on July 19, 2019, we mailed postcards (the “Reminder Postcard”) shown as Exhibit 5 to the July Declaration to 6,872 potential Settlement Class Members who had not yet filed a claim as of that date. The Reminder Postcards included important settlement information, prominently displayed a reminder about the filing deadline, and informed potential Settlement Class Members that the fixed amount per debond could be more than \$250, depending on the total number of claims made. The postcards also contained the potential Settlement Class Members’ unique notice IDs and two-dimensional barcodes, or “QR codes,” that when scanned with a mobile device, would

automatically direct the individual to the Settlement Website to facilitate claim submission. To date, the USPS has returned 164 of these Reminder Postcards as undeliverable.

VI. CLAIM ACTIVITY

12. *Claim Submissions.* Since the preparation of the July Declaration, we have received 212 additional claims for a total of 464 claims filed in the Program to date. Table 2 provides a summary of claims received:

Table 2 Summary of Claims Received (As of 8/27/19)				
Row	Claim Type	Timely Claims	Untimely Claims²	Total Claims
1.	Documented Amount	30	1	31
2.	Fixed Amount	394	14	408
3.	Documented and Fixed Amount	25	0	25
4.	Total	449	15	464

13. *Potential Claim Values.* The 464 claims we have received to date purportedly relate to 43,354 repaired debonds and request settlement benefits totaling \$15,868,332.96. Table 3 provides a breakdown of debonds claimed and benefits requested by claim type.

Table 3 Debonds Claimed and Benefits Requested (As of 8/27/19)			
Row	Claim Type	Debonds Claimed	Benefits Requested
1.	Documented Amount	3,424	\$5,885,832.96
2.	Fixed Amount	39,930	\$9,982,500.00
3.	Total	43,354	\$15,868,332.96

14. *Claim Reviews & Deficiency Curing.* We are coordinating with the Parties to establish deficiency criteria and will evaluate all claims individually and comparatively in

² Table 2 reports a claim as “untimely” if it was: (1) filed online after 5:00 AM ET on August 9, 2019; (2) submitted in hard copy and postmarked on August 9, 2019 or later; or (3) submitted in hard copy with a missing or illegible postmark and received by BrownGreer on August 19, 2019 or later.

consultation with the SCRC to establish final claim values and potential settlement award amounts for eligible claimants. In accordance with Paragraph 16(e) of the Stipulation of Settlement, those claimants whose claims are found to be deficient in whole or in part will be issued a notice identifying the deficiency and will be afforded 20 days to cure the deficiency. Following the conclusion of the deficiency curing process, we will coordinate with the SCRC to finalize settlement award amounts and thereafter will, should the Court grant final settlement approval and the matter progress to a concrete Effective Date, issue payments to eligible Settlement Class Members.

15. *Late Claims.* As detailed in Table 2 above, we have received 15 untimely claims to date. These claims purportedly relate to 523 repaired debonds and request settlement benefits totaling \$138,175.60.

VII. OPT OUTS AND OBJECTIONS

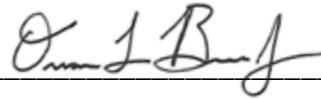
16. *New Opt Out Received.* We described in detail in the July Declaration two potential requests for exclusion we previously received. Since then, we have received opt out correspondence from Dr. Rachelle D. Hardy, the president and owner of two dental practices in Illinois: (1) Rachelle D. Hardy, DDS, P.C. d/b/a River Pointe Dental – Fox River Grove; and (2) River Pointe Dental of Huntley, LLC d/b/a River Pointe Dental – Huntley. Dr. Hardy's request for exclusion, which was postmarked August 9, 2019, appears as Exhibit A to this Declaration and seeks to exclude both of her dental practices from the settlement.

17. *No Objections Received.* To date, BrownGreer still has not received any objections to the Settlement.

VIII. CONCLUSION

18. *Settlement Success.* The foregoing establishes that the Settlement is being implemented fully, properly, and successfully as of the date of this Declaration.

I, Orran L. Brown, Jr., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge. Executed on this 27th day of August, 2019.

A handwritten signature in cursive script, appearing to read "Orran L. Brown, Jr.", is positioned above a horizontal line.

Orran L. Brown, Jr.

Exhibit A

River Pointe Dental Correspondence



August 8, 2019

Dental Crown Settlement Claims Administrator
P.O. Box 26207
Richmond, VA 23260

Re: Notice of exclusion from 3M Dental Crown Settlement

Attn: Claims Administrator,

May this serve as official notice on behalf of Rachelle D. Hardy, DDS, P.C. and River Pointe Dental of Huntley, LLC of my request for exclusion from the 3M Dental Crown Settlement known as Bhatia, et al. v. 3M Company, File No. 0:15-cv-01304-DWF-DTS as filed the United State District Court, District of Minnesota.

I, Dr. Rachelle D. Hardy serve as President & Owner of the following companies that purchased 3M Lava Ultimate Blocks which were placed with my patients. I serve as the primary dentist who placed and replaced these materials as they de-bond on behalf of my patients.

Rachelle D. Hardy, DDS, P.C. d/b/a River Pointe Dental – Fox River Grove

FEIN: REDACTED FOR PUBLIC FILING
ADDRESS: 912 West Northwest Highway, Suite 200
Fox River Grove, IL 60021
ATTN: Dr. Rachelle D. Hardy, President & Owner

River Pointe Dental of Huntley, LLC d/b/a River Pointe Dental – Huntley

FEIN: REDACTED FOR PUBLIC FILING
ADDRESS: 10711 Ruth Road, Suite A
Huntley, IL 60142
ATTN: Dr. Rachelle D. Hardy, President & Owner

Should you require additional information, please contact me directly at the addresses listed above or via email at: REDACTED FOR PUBLIC FILING or via phone to: REDACTED FOR PUBLIC FILING

Sincerely,

Dr. Rachelle D. Hardy
President & Owner Dr. Rachelle D. Hardy, DDS, PC
President & Owner River Pointe Dental of Huntley, LLC

RiverPointeDental

General & Cosmetic



Family Care

Fox River Grove

(847) 639-5300

Huntley

(847) 515-8600

Rachelle D. Hardy, DDS

General Dentist

RiverPointeDental.com

304-DWF-DTS Document 153 Filed 08/28/19

HAS AN APPOINTMENT ON

DATE: _____ AT _____ AM / PM

DATE: _____ AT _____ AM / PM

This time is reserved exclusively for you. 24-hour notice is

LOCATION: appreciated if you are unable to keep your appointment.

Fox River Grove

912 W. NW Hwy, Ste 200
Fox River Grove, IL 60021
(847) 639-5300

Huntley

10711 Ruth Rd., Ste A
Huntley, IL 60142
(847) 515-8600



RIVER POINTE DENTAL 01304-DWF-DTS
Rachelle D. Hardy, DDS, PC
912 West Northwest Highway, Suite 200
Fox River Grove, IL 60021
www.RiverPointeDental.com

CERTIFIED MAIL

Document 153 Filed 08/29/19 Page 12 of 12



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RECEIVED

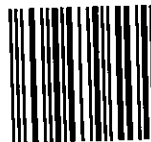
AUG 12 2019

Brown Greer
Richmond, Va

**Dental Crown Settlement
Claims Administrator
P.O. Box 26207
Richmond, VA 23260**



1000



23260

**U.S. POSTAGE PAID
FCM LETTER
BARRINGTON, IL
60010
AUG 09, 19
AMOUNT**

\$6.85

R2304E107103-17

RETURN RECEIPT

REQUESTED
23260-220737D

