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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

EDDIE WAYNE HUTCHISON,)	
an individual, on behalf of himself)	Case No.
and all others similarly situated)	2:07-cv-07464-GW-CT
)	
Plaintiff,)	
)	
vs.)	
)	
R.M. GALICIA, INC., a California)	
Corporation, doing business as)	
PROGRESSIVE MANAGEMENT)	
SYSTEMS; and JOHN and JANE DOES)	
1 through 10 inclusive,)	
)	
Defendants.)	
)	

FINAL ORDER AND JUDGMENT

On November 14, 2007, plaintiff, Eddie Wayne Hutchison (hereinafter referred to as "Plaintiff" or "Class Representative"), filed the above-captioned class action lawsuit (hereinafter referred to as "Lawsuit") against defendant, R.M. Galicia, Inc., d/b/a Progressive Management Systems (hereinafter referred to as "PMS"), asserting class claims under the Fair Debt Collection Practices Act (hereinafter referred to as the "FDCPA"), 15 U.S.C. § 1692, *et seq.*; the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, *et seq.*;

1 and, the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*
2 *seq.* PMS denied any and all liability alleged in the Lawsuit.

3
4 On May 29, 2008, Plaintiff and PMS (hereinafter jointly referred to as the
5 “Parties”) entered into their original Class Action Settlement Agreement.

6 On December 10, 2008, the Parties filed their original Class Action
7 Settlement Agreement.

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9 On December 18, 2008, PMS provided notice of the proposed class
10 settlement to the various federal and state officials per the Class Action Fairness
11 Act of 2005 (hereinafter referred to as “CAFA”), Pub. L. No. 109-2, 119 Stat. 4.
12

13 On March 13, 2009, based upon requests from various state officials
14 responding to CAFA notices, the Parties filed an addendum to the original
15 settlement agreement.
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17 On April 6, 2009, the Court held a hearing regarding the proposed class
18 settlement and directed the Parties to submit a revised Class Action Settlement
19 Agreement, incorporating the proposed changes set forth in the addendum, so
20 that there would be one document explaining the settlement terms.
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22 On April 13, 2009, the Parties filed the first revised Class Action
23 Settlement Agreement, incorporating the addendum.
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1 On April 16, 2009, the Court held a second hearing regarding the
2 proposed class settlement. The Court voiced some concerns regarding
3 ambiguity in the settlement documents and suggested the Parties submit another
4 revised agreement.
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6 On May 12, 2009, the Parties filed their second revised Class Action
7 Settlement Agreement (hereinafter referred to as the “Agreement”), along with a
8 Revised Joint Motion for Preliminary Approval of Class Action Settlement
9 Agreement (hereinafter referred to as the “Preliminary Approval Motion”).
10

11 On May 22, 2009, upon consideration of the Parties’ Preliminary
12 Approval Motion and the record, the Court entered an Order of Preliminary
13 Approval of Class Action Settlement (hereinafter referred to as the “Preliminary
14 Approval Order”). Pursuant to the Preliminary Approval Order, the Court,
15 among other things, (i) preliminarily certified (for settlement purposes only) a
16 class of plaintiffs (hereinafter referred to as the “National Class Members”) with
17 respect to the claims asserted in the Lawsuit; (ii) preliminarily approved the
18 proposed settlement and Stipulation and [Proposed] Order for Injunction
19 (hereinafter referred to as the “Stipulated Injunction”); (iii) preliminarily
20 appointed Plaintiff as the Class Representative; (iv) preliminarily appointed
21 SHEWRY & VAN DYKE, LLP as Class Counsel; (v) ordered counsel for PMS
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1 to reissue CAFA notices, along with the Agreement; and, (vi) set the date and
2 time for the Fairness Hearing.

3
4 On July 2, 2009, the Parties filed their Joint Motion for Final Approval of
5 Class Action Settlement Agreement (hereinafter referred to as the “Final
6 Approval Motion”).

7
8 On July 9, 2009, a Fairness Hearing was held pursuant to Fed. R. Civ. P.
9 23 to determine whether the Lawsuit satisfies the applicable prerequisites for
10 class action treatment and whether the proposed settlement is fundamentally
11 fair, reasonable, adequate, and in the best interests of the National Class
12 Members and should be approved by the Court.

13
14 The Parties now request final certification of the settlement class under
15 Fed. R. Civ. P. 23(b)(2) and final approval of the proposed class action
16 settlement.

17
18 The Court has read and considered the Agreement, the Final Approval
19 Motion, and the record. All capitalized terms used herein have the meanings
20 defined herein and/or in the Agreement.

21
22 NOW, THEREFORE, IT IS HEREBY ORDERED:

23
24 1. The Court has jurisdiction over the subject matter of the lawsuit and
25 over all settling parties hereto.

1 2. CLASS MEMBERS – Pursuant to Fed. R. Civ. P. 23(b)(2), the
2 Lawsuit is hereby finally certified as a class action on behalf of the following
3
4 National Class Members:

5 All persons residing in the United States who received a telephone
6 call or message from PMS in connection with the collection of a
7 consumer debt incurred primarily for personal, family, or
8 household purposes between November 14, 2003 and May 22, 2009
9 *i.e.*, the day the Order of Preliminary Approval of Class Action
10 Settlement was entered, wherein PMS failed to disclose (a) the call
11 was from a debt collector, (b) the purpose of the call, (c) its
12 identity, and/or (d) the names or registered aliases of the callers, as
13 required by the FDCPA, or some similar state law.

14 3. CLASS REPRESENTATIVE AND CLASS COUNSEL
15 APPOINTMENT – Pursuant to Fed. R. Civ. P. 23, the Court finally certifies
16 Plaintiff as the Class Representative and SHEWRY & VAN DYKE, LLP as
17 Class Counsel.

18 4. FINAL CLASS CERTIFICATION – The Court finds that the
19 Lawsuit satisfies the applicable prerequisites for class action treatment under
20 Fed. R. Civ. P. 23, namely:

- 21 A. The National Class Members are so numerous that joinder of all of
22 them in the Lawsuit is impracticable;
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24 B. There are questions of law and fact common to the National Class
25 Members, which predominate over any individual questions;
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C. Plaintiff’s claims are typical of the claims of the National Class Members;

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

E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy.

5. The Court finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the settling class members, especially in light of the benefits to the settling class members; the strength of the Plaintiff’s case; the complexity, expense, and probable duration of further litigation; the risk and delay inherent in possible appeals; the risk of collecting any judgment obtained on behalf of the national class; and the limited amount of any potential total recovery for the class.

6. STIPULATED INJUNCTION – The Court finally approves and hereby enters the Stipulated Injunction. Pursuant to the Stipulated Injunction, PMS is be ordered to use its Best Efforts to ensure that in all telephone communications to a debtor subject to the FDCPA it (a) identifies itself by

1 stating the name of the business; (b) identifies itself as a “debt collector” and/or
2 “bill collector”; and, (c) states that the purpose of the communication is to
3 collect a debt. The Parties will submit a joint motion to the Court to extinguish
4 the Stipulated Injunction 12 months after the entry date. Although its
5 conferencing and reporting obligations will terminate after 1 year, PMS will
6 thereafter continue to use its best efforts to stay in compliance with the
7 appropriate state and federal regulations.
8

9
10 7. SETTLEMENT TERMS – The Agreement, which is attached
11 hereto as Exhibit A and shall be deemed incorporated herein, and the proposed
12 settlement are finally approved and shall be consummated in accordance with
13 the terms and provisions thereof, except as amended by any order issued by this
14 court. The material terms of the agreement include, but are not limited to, the
15 following:
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- 17 A. PMS must comply with the aforementioned Stipulated Injunction;
- 18 B. PMS must pay Plaintiff \$1,500 for his services as the Class
19 Representative and for his individual settlement; and
- 20 C. PMS must pay Class Counsel a total of \$15,000 in attorneys’ fees,
21 costs, and expenses.
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1 8. OBJECTIONS AND EXCLUSIONS – Pursuant to CAFA, PMS
2 notified the appropriate federal and state officials of the proposed settlement
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4 twice, with the last notice including the latest iteration of the Agreement that the
5 Court hereby approves. The Parties adequately addressed the minor concerns
6 raised by a few attorney generals after the first CAFA notice was issued, and
7
8 those attorney generals subsequently approved the settlement hereby entered by
9 the Court. Pursuant to Fed. R. Civ. P. 23(b)(2), the National Class Members
10 were not permitted to exclude themselves from the settlement, and so no
11
12 opportunity for exclusion was provided to the National Class Members.

13 9. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT – The
14 National Class Members, and their successors and assigns fully, finally, and
15
16 forever settle, release, and discharge the “Released Parties” (as defined in the
17 Agreement) from the “Released Claims” (as defined in the Agreement), and are
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19 forever barred and enjoined from asserting any of the Released Claims in any
20 court or forum whatsoever, except the National Class Members will have the
21 right to file only a separate individual action against any of the Released Parties
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23 for only Money Damages, injunctive relief, and related attorneys’ fees. In other
24 words, the National Class Members are only releasing their right to pursue the
25 Released Claims in a class action against the Released Parties. Neither the
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1 Agreement, nor the settlement this Court approves, settle or release any of the
2 National Class Members' individual claims for money damages, injunctive
3 relief, or their right to attorneys' fees.
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5 10. Plaintiff fully, finally, and forever settles, releases, and discharges
6 the Released Parties from any and all claims that he may have against the
7 Released Parties, including, but not limited to, the Released Claims and any
8 other claims that were asserted in the Lawsuit. This release includes the release
9 of any claims asserted in the Lawsuit for Money Damages, injunctive relief, and
10 attorneys' fees.
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13 11. The Lawsuit is hereby dismissed with prejudice in all respects.

14 12. This order is not, and shall not be construed as, an admission by
15 PMS of any liability or wrongdoing in this or in any other proceeding.
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1 13. The Court hereby retains continuing and exclusive jurisdiction over
2 the Parties and all matters relating to the Lawsuit and/or Agreement, including
3 the administration, interpretation, construction, effectuation, enforcement, and
4 consummation of the settlement and this order.
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6 ORDER

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8 IT IS SO ORDERED.

9 DATED: July 9, 2009

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11 _____
12 THE HONORABLE GEORGE H. WU
13 UNITED STATES DISTRICT COURT JUDGE
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