

1 KENNETH E. PAYSON (*Admitted Pro Hac Vice*)
 kennethpayson@dwt.com
 2 ASHLEY L. WATKINS (*Admitted Pro Hac Vice*)
 ashleywatkins@dwt.com
 3 DAVIS WRIGHT TREMAINE LLP
 1201 Third Avenue, Suite 2200
 4 Seattle, Washington 98101-3045
 Tel: (206) 622-3150
 5 Fax: (206) 757-7700

JS-6

6 SEAN M. SULLIVAN (State Bar No. 229104)
 seansullivan@dwt.com
 7 DAVIS WRIGHT TREMAINE LLP
 865 S. Figueroa Street, Suite 2400
 8 Los Angeles, California 90017-2566
 Tel: (213) 633-6800
 9 Fax: (213) 633-6899

10 Attorneys for Defendant and Counter-Plaintiff
 APRIA HEALTHCARE LLC f/k/a
 11 APRIA HEALTHCARE, INC.

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 CARRIE COUSER, on behalf of herself
 and all others similarly situated,

) Case No. **SACV13-00035-JVS (RNBx)**
 [Assigned to Hon. James V. Selna]

Plaintiff,

FINAL JUDGMENT

vs.

17 APRIA HEALTHCARE, INC. and DOES
 18 1 through 10, inclusive, and each of them,

Action filed: January 9, 2013

Defendant.

19 _____
 20 APRIA HEALTHCARE, INC.

Counter-Plaintiff

vs.

22 _____
 23 CARRIE COUSER, an individual, on
 24 behalf of all others similarly situated

Counter-Defendants

1 THIS MATTER came before the Court on Representative Plaintiff's Motion
2 for Final Approval of the Proposed Class Settlement. The Court has considered all
3 papers filed and proceedings in this matter and is fully informed regarding the facts
4 surrounding the proposed settlement. Based upon this information, the Court has
5 determined to approve the proposed settlement as fair, reasonable and adequate.
6 The Court hereby enters this Final Judgment, which constitutes a final adjudication
7 on the merits of all claims of the Settlement Class.

8 On October 27, 2014, this Court granted preliminary approval [Dkt. 45] to the
9 proposed settlement between Representative Plaintiff and Defendant Apria
10 Healthcare LLC (formerly known as Apria Healthcare, Inc.) ("Apria). The
11 proposed settlement resolves all of the Class's claims against Apria in exchange for
12 Apria's agreement to provide certain non-monetary relief, as well as Apria's
13 agreement to pay claims made by eligible Class Members as set forth in the
14 Settlement Agreement and Release of Claims ("Agreement") and debt forgiveness
15 as set forth in the Agreement. On March 9, 2015, this Court held a fairness hearing
16 to consider whether to grant final approval to the settlement and to consider Class
17 Counsel's application for an award of attorneys' fees and costs. The Court heard
18 argument from counsel. No one else elected to appear to voice their support for, or
19 objection to, the settlement and/or the Fee Application.

20 Having read, reviewed and considered the papers filed in support of and in
21 opposition to final approval of the settlement, including supporting declarations;
22 oral arguments of counsel; Class Counsel's Fee Application; the Agreement; and
23 the pleadings, it is hereby

24 ORDERED, ADJUDGED AND DECREED that:

25 1. The definitions and provisions of the Settlement Agreement and
26 Release of Claims (the "Agreement") are incorporated in this Final Judgment as
27 though fully set forth herein.

1 2. This Court has jurisdiction over the subject matter of the Agreement
2 with respect to and over all parties to the Agreement, including Representative
3 Plaintiff and all members of the Plaintiff Settlement Class.

4 3. The Court approves the settlement and finds the settlement is, in all
5 respects, fair, reasonable, and adequate to the Plaintiff Settlement Class, within the
6 authority of the parties, and the result of extensive arm's length negotiations with
7 the guidance of an experienced mediator.

8 4. This Court confirms the proposed Settlement Class satisfies the
9 requirements of Fed. R. Civ. P. 23, as found in the Court's Order Preliminarily
10 Approving Class Settlement, Conditionally Certifying Settlement Class, and
11 Approving Form and Manner of Notice ("Preliminary Approval Order").
12 Accordingly, this Court makes final the conditional certification set forth in the
13 Preliminary Approval Order.

14 5. No members of the Class have timely requested to be excluded from
15 the Class and the settlement. Accordingly, this Final Judgment shall bind all Class
16 Members.

17 6. The Court hereby grants final approval to the settlement and finds that
18 it is fair, reasonable, and adequate, and in the best interests of the Class as a whole.
19 No objections have been brought to the Court's attention, whether properly filed or
20 not.

21 7. Neither this Final Judgment nor the Agreement is an admission or
22 concession by Apria of the validity of any claims or of any liability or wrongdoing
23 or of any violation of law. This Final Judgment and the Agreement do not
24 constitute a concession and shall not be used as an admission or indication of any
25 wrongdoing, fault or omission by Apria or any other person in connection with any
26 transaction, event or occurrence, and neither this Final Judgment nor the Agreement
27 nor any related documents in this proceeding, nor any reports or accounts thereof,

1 shall be offered or received in evidence in any civil, criminal, or administrative
2 action or proceeding, other than such proceedings as may be necessary to
3 consummate or enforce this Final Judgment, the Agreement, and all releases given
4 thereunder, or to establish the affirmative defenses of *res judicata* or collateral
5 estoppel barring the pursuit of claims released in the Agreement.

6 8. This Court hereby dismisses with prejudice all claims of
7 Representative Plaintiff and members of the Settlement Class against Apria arising
8 from the placement of telephone calls to any type of telephone line for any purpose,
9 regardless of the theory of recovery or alleged wrongdoing as set forth in the
10 Agreement.

11 9. Representative Plaintiff, for herself and as the representative of the
12 Class, and on behalf of each Class Member who has not timely opted out and each
13 of their respective agents, successors, heirs, assigns, and any other person who can
14 claim by or through them in any manner, fully, finally, and forever irrevocably
15 release, relinquish, and forever discharge with prejudice all Released Claims against
16 the Released Parties.

17 10. By operation of this judgment, the Representative Plaintiff and Apria
18 expressly waive, and each Class Member is deemed to have waived, any and all
19 claims, rights, or benefits they may have under California Civil Code § 1542 and
20 any similar federal or state law, right, rule, or legal principle that may apply.

21 California Civil Code § 1542 provides as follows:

22 A general release does not extend to claims which the
23 creditor does not know or suspect to exist in his or her
24 favor at the time of executing the release, which if known
25 by him or her must have materially affected his or her
26 settlement with the debtor.

1 11. Apria completed the delivery of class notice according to the terms of
2 the Agreement. The Notice given by Apria to the Settlement Class, which set forth
3 the principal terms of the Agreement and other matters, was the best practicable
4 notice under the circumstances. The notice program prescribed by the Agreement
5 was reasonable and provided due and adequate notice of these proceedings and of
6 the matters set forth therein, including the terms of the Agreement, to all parties
7 entitled to such notice. The Notice given to members of the Class satisfied the
8 requirements of Federal Rule of Civil Procedure 23 and the requirements of
9 constitutional due process. The Notice was reasonably calculated under the
10 circumstances to apprise Class Members of the pendency of this Action, all material
11 elements of the settlement, and their opportunity to exclude themselves from, object
12 to, or comment on the settlement and appear at the final fairness hearing. The Court
13 has afforded a full opportunity to all Class Members to be heard. Accordingly, the
14 Court determines that all members of the Settlement Class, except those who timely
15 excluded themselves from the Class, are bound by this Final Judgment.

16 12. Apria served a notice of the proposed settlement upon the appropriate
17 state official of each State in which a Class member resides and upon the Attorney
18 General of the United States. The Court finds that more than ninety (90) days have
19 elapsed since Apria provided the required notice, as required by 28 U.S.C. §
20 1715(d).

21 13. Without affecting the finality of this judgment, the Court retains
22 continuing jurisdiction over (a) implementation of the Agreement, distribution of
23 the settlement payments, incentive fees, and attorneys' fees and costs contemplated
24 by the Agreement, and processing of the claims permitted by the Agreement, until
25 each and every act agreed to be performed pursuant to the Agreement has been
26 performed, and (b) all parties to this Action and members of the Plaintiff Settlement
27 Class for the purpose of enforcing and administering the Agreement.

1 14. As an incentive payment in compensation for the time, effort, and risk
2 she undertook as representative of the Settlement Class, the Court hereby awards
3 \$5,000 to Carrie Couser.

4 15. The Court hereby awards attorneys' fees and costs to compensate Class
5 Counsel for their time incurred and expenses advanced. The Court has concluded
6 that: (a) Class Counsel achieved a favorable result for the Class by obtaining
7 Apria's agreement to certain debt forgiveness, non-monetary relief, and by making
8 funds available to Class Members, subject to submission of valid claims by eligible
9 Class Members; (b) Class Counsel devoted substantial effort to pre-and post-filing
10 investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the Class's
11 claims on a contingent fee basis, investing significant time and accumulating costs
12 with no guarantee that they would receive compensation for their services or
13 recover their expenses; (d) Class Counsel employed their knowledge of and
14 experience with class action litigation in achieving a valuable settlement for the
15 Class, in spite of Apria's possible legal defenses and its experienced and capable
16 counsel; (e) Class Counsel have standard contingent fee agreements with
17 Representative Plaintiff, who has reviewed the Agreement and been informed of
18 Class Counsel's attorney fee and cost application and has approved; and (f) the
19 Notice informed Class Members of the amount and nature of Class Counsel's fee
20 and cost request under the Agreement, and Class Counsel filed and posted their Fee
21 Application in time for Class members to make a meaningful decision whether to
22 object to the Fee Application. For these reasons, the Court hereby approves Class
23 Counsel's Fee and Cost Application and awards to Class Counsel fees and costs in
24 the total aggregate amount of \$195,000. All such fees are in lieu of fees and costs
25 that Representative Plaintiff and/or the Class might otherwise have been entitled to
26 recover.
27

1 16. Apria shall pay the fee and cost awards to Class Counsel and the
2 incentive fees to Representative Plaintiff, as well as amounts due to eligible Class
3 Members who timely filed a claim under the Agreement, in accordance with and at
4 the times prescribed by the Agreement.

5 Dated this 13th day of March, 2015.

6
7 
8 THE HON. JAMES V. SELNA
9 UNITED STATES DISTRICT JUDGE

10 Presented by:

11
12 KAZEROUNI LAW GROUP, APC
13 *Attorneys for Plaintiff and Proposed*
14 *Classes*

15 By s/ Abbas Kazerounian
16 Abbas Kazerounian (SBN 249203)
17 245 Fischer Avenue, Suite D-1
18 Costa Mesa, CA 92626-4539
19 Telephone: (800) 400-6808
20 Fax: (800) 520-5523
21 Email: ak@kazlg.com

22 LAW OFFICES OF TODD M.
23 FRIEDMAN
24 *Attorneys for Plaintiff and Proposed*
25 *Classes*

26 By s/ Todd M. Friedman
27 Todd M. Friedman (SBN 216752)
Nicholas J. Bontrager (SBN 252114)
369 South Doheny Drive, Suite 415
Beverly Hills, CA 90211
Telephone: (877) 206-4741

1 Fax: (866) 633-0228
2 Email:
3 tdfriedman@attorneysforconsumers.com
4 nbotrager@attorneysforconsumers.com

4 HYDE & SWIGART
5 *Attorneys for Plaintiff and Proposed*
6 *Classes*

7 By s/ Joshua B. Swigart
8 Joshua B. Swigart (SBN 225557)
9 2221 Camino Del Rio South, Suite 101
10 San Diego, CA 92108
11 Telephone: (619) 233-7770
12 Fax: (619) 297-1022
13 Email: josh@westcoastlitigation.com

12 DAVIS WRIGHT TREMAINE LLP
13 *Attorneys for Apria Healthcare LLC*
14 *(formerly known as Apria Healthcare, Inc.),*
15 *Defendant*

15 By: s/ Sean M. Sullivan
16 Sean M. Sullivan (SBN 229104)
17 865 S. Figueroa Street, Suite 2400
18 Los Angeles, California 90017-2566
19 Telephone: (213) 633-6800
20 Fax: (213) 633-6899

20 Kenneth E. Payson (*Admitted Pro Hac*
21 *Vice*)
22 1201 Third Avenue, Suite 2200
23 Seattle, Washington 98101-3045
24 Telephone: (206) 622-3150
25 Fax: (206) 757-7700

25 Ashley L. Watkins (*Admitted Pro Hac*
26 *Vice*)
27 1300 SW Fifth Avenue, Suite 2400
Portland, Oregon, 97201-5610

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Telephone: (503) 241-2300
Fax: (503) 276-5793
E-mail: seansullivan@dwt.com
kenpayson@dwt.com
ashleywatkins@dwt.com