



1 In connection with preliminarily approving a class-wide Settlement reached in the within Action,  
2 the Court scheduled a Final Fairness Hearing for March 13, 2018.<sup>1</sup> The Court directed Plaintiff Paul  
3 Story to file a motion for final approval by January 26, 2018. The Court also directed Plaintiff to file a  
4 motion for approval of any Attorney’s Fees and Expenses, as well as any Service Award for the Class  
5 Representative, by January 26, 2018, to be heard at the same time as the motion for final approval.

6 Pursuant to the Court’s directive, Plaintiff timely filed a “Motion for Final Approval of Class-  
7 Action Settlement” and a “Motion for Attorneys’ Fees and Expenses and Service Award to Class  
8 Representative,” both of which came on for hearing in courtroom 6 of the above-captioned Court on  
9 March 13, 2018. Having read all of the papers filed in connection therewith, as well as all of the  
10 evidence and argument submitted with respect to the proposed Settlement, the Court finds that the  
11 proposed Settlement is fair, reasonable, and adequate. **IT THEREFORE IS ORDERED AS**  
12 **FOLLOWS:**

13 1. The Court has jurisdiction over the subject matter of the Action, all claims raised therein,  
14 the Parties, and the Class.

15 2. The Motion for Final Approval of Class-Action Settlement is granted; the Court certifies  
16 a Settlement Class consisting of all Class Members—defined as all persons throughout the United States  
17 who, during the Class Period, received at least one prerecorded- or artificial-voice telephone call on their  
18 respective cellular or landline telephones from Defendant, or from any person or entity acting on behalf  
19 of Defendant, made for a marketing or advertising purpose—who did not submit Requests for Exclusion  
20 pursuant to the procedure set forth in the Settlement Agreement; and, upon the Effective Date, all  
21 Settlement Class Members therefore shall have released the Released Parties from the Released Claims.  
22 For the purpose of settlement only, the Court finds that certification of the Settlement Class is  
23 appropriate because (a) the Settlement Class is ascertainable and sufficiently numerous; (b) there are  
24 questions of law and fact that are common to the Settlement Class, and those questions predominate  
25 over any questions affecting individual Settlement Class Members; (c) Plaintiff’s claims are typical of  
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27 <sup>1</sup> Unless otherwise noted, all capitalized terms used herein have the meanings set forth in the  
28 Settlement Agreement attached as Exhibit 1 to the “Declaration of David Zelenski in Support of  
Plaintiff’s Motion for Preliminary Approval of Class-Action Settlement.”

1 the claims of the Settlement Class; (d) Plaintiff and Class Counsel are adequate representatives of the  
2 Settlement Class; and (e) a class action is superior to other available methods for adjudicating the  
3 Action. Furthermore, the Court finds that (a) the terms of the Settlement Agreement are fair and  
4 reasonable to the Settlement Class when balanced against the probable outcome of further litigation  
5 relating to class certification, liability and damage issues, and potential appeals; (b) Class Counsel is  
6 experienced in class-action litigation, including litigation under the Telephone Consumer Protection Act  
7 (“TCPA”); (c) significant investigation was undertaken, and significant information was exchanged,  
8 enabling Plaintiff and Defendant to reasonably evaluate one another’s positions; (d) approving the  
9 Settlement Agreement will avoid the substantial costs, delay, and risks that would be presented by  
10 further litigation; and (e) the terms of the Settlement Agreement were the result of intensive, serious, and  
11 non-collusive negotiations between Plaintiff and Defendant, including two days of private mediation.  
12 The Court therefore appoints Glancy Prongay & Murray LLP and the Jaurigue Law Group as Class  
13 Counsel, and appoints Paul Story as the Class Representative.

14 3. The Settlement Class consists of all Class Members who did not submit Requests for  
15 Exclusion pursuant to the procedure set forth in the Settlement Agreement. The Court finds that there  
16 are a total of 35,335 Class Members. The Court further finds that, as of the date of this Final Order,  
17 with only one week left until the Claims Deadline of March 20, 2018, and based on the supplemental  
18 report that Plaintiff filed as required on March 6, 2018, approximately 7,647 valid Claim Forms have  
19 been submitted—a relatively large response for TCPA class actions. The Court further finds that only  
20 two Class Members attempted to exclude themselves from the Settlement Class but that neither of these  
21 individuals submitted a Request for Exclusion pursuant to the procedure set forth in the Settlement  
22 Agreement. Furthermore, the Court finds that only one Settlement Class Member submitted an  
23 objection to the Settlement Agreement. The Court has carefully considered that objection; finds that it is  
24 untimely and that it, in any event, is frivolous (since it does not challenge the fairness of the Settlement);  
25 and overrules it. These findings support final approval of the Settlement Agreement.

26 4. Under the terms of the Settlement Agreement, Defendant has agreed to pay  
27 \$3,750,000.00 as the Settlement Fund. The Settlement Fund is non-reversionary, meaning that no  
28 portion of it shall revert to Defendant. The Settlement Fund will be used to pay Settlement Class

1 Members' respective Individual Settlement Payments, the Service Award for the Class Representative,  
2 Class Counsel's Attorney's Fees and Expenses, and the Settlement Administration Expenses. The  
3 amounts of the Service Award, the Attorney's Fees and Expenses, and the Settlement Administration  
4 Expenses are discussed below. After deducting the Service Award, the Attorney's Fees and Expenses,  
5 and the Settlement Administration Expenses, \$2,641,063.40 of the Settlement Fund remains. Under the  
6 terms of the Settlement Agreement, this amount—the Net Settlement Fund—will be distributed *pro rata*  
7 to Settlement Class Members who submitted valid Claim Forms, with each such Settlement Class  
8 Member receiving up to \$500.00. In other words, each Authorized Claimant will receive an amount  
9 equal to the Net Settlement Fund divided by the total number of Authorized Claimants, up to a  
10 maximum of \$500.00. The Court finds that there are approximately 7,647 Authorized Claimants. Based  
11 on the \$2,641,063.40 Net Settlement Fund, and pursuant to the distribution methodology set forth in the  
12 Settlement Agreement, the Court finds that each Settlement Class Member likely will receive an  
13 Individual Settlement Payment of approximately \$345.37. This finding supports final approval of the  
14 Settlement Agreement.

15         5. Under the Settlement Agreement, all amounts remaining in the Net Settlement Fund after  
16 payment of all Individual Settlement Payments, plus any Individual Settlement Payments that are not  
17 redeemed within the time set forth in the Settlement Agreement, comprise the Residual Fund. The Court  
18 finds that, based on the number of Authorized Claimants, the Residual Fund will consist solely of  
19 Individual Settlement Payments that have not been redeemed within the time set forth in the Settlement  
20 Agreement. The Settlement Agreement contemplates that, instead of being returned to Defendant, the  
21 Residual Fund shall be paid to a *cy près* recipient. The Court also has been advised that the Parties have  
22 agreed on Public Counsel as the *cy près* recipient. The Court finds that this entity is involved in the area  
23 of consumer-protection law, which establishes a driving nexus between the entity and the Settlement  
24 Class. This finding supports final approval of the Settlement Agreement.

25         6. The Court finds that the Settlement Administrator delivered the Class Notice to the Class  
26 following the procedures set forth in the Settlement Agreement; that the Class Notice and the procedures  
27 followed by the Settlement Administrator constituted the best notice practicable under the  
28 circumstances; and that the Class Notice and the procedures contemplated by the Settlement Agreement

1 were in full compliance with the laws of the United States and the requirements of due process. These  
2 findings support final approval of the Settlement Agreement.

3 7. Under the Settlement Agreement, Plaintiff is permitted to seek up to \$5,000.00 from the  
4 Settlement Fund as a Service Award, in recognition of the time and effort that he expended in pursuing  
5 the Action and fulfilling his obligations as the Class Representative, and of the benefits conferred on all  
6 Class Members by the Settlement. Plaintiff has requested that amount. The Court finds that \$5,000.00  
7 is a fair and reasonable incentive award in light of the work that he provided in the Action, the results  
8 that were obtained under the Settlement Agreement, and the risks that he incurred in prosecuting the  
9 Action. The Court further finds that \$5,000.00 is a fair and reasonable incentive award because it  
10 comports with incentive awards made in other TCPA class-action settlements. Accordingly, the Court  
11 approves that amount as the Service Award and directs that it be paid pursuant to the terms of the  
12 Settlement Agreement.

13 8. Under the Settlement Agreement, Class Counsel is permitted to seek up to twenty-five  
14 percent of the Settlement Fund, *i.e.*, \$937,500.00, plus costs and expenses, as Attorney's Fees and  
15 Expenses. Class Counsel has requested \$937,500.00 in attorney's fees and \$24,436.60 in actual costs  
16 and expenses. The Court finds that these amounts are reasonable and supported by adequate  
17 documentation. Accordingly, the Court approves those amounts as Attorney's Fees and Expenses, and  
18 directs that they be paid pursuant to the terms of the Settlement Agreement.


19 9. Under the Settlement Agreement, the Settlement Administrator is to be paid its  
20 reasonably incurred fees and expenses from the Settlement Fund for the Settlement Administration  
21 Expenses. The Settlement Administrator has requested \$142,000.00 for its fees and expenses. The  
22 Court finds that this amount is reasonable. Accordingly, the Court approves up to that amount as the  
23 Settlement Administration Expenses and directs that it be paid pursuant to the terms of the Settlement  
24 Agreement.

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1           10.     The Individual Settlement Payments, the Service Award, the Attorney's Fees and  
2 Expenses, and the Settlement Administration Expenses shall be paid pursuant to the terms of the  
3 Settlement Agreement. Except as otherwise provided herein, the Parties shall bear their own costs and  
4 attorney's fees.

5           **IT IS SO ORDERED.**

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7 Dated: 3-13-2018

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10 Hon. John A. Mendez  
11 U.S. District Judge