

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
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KARL ADAMS, III and SHIANNA
NOTSCHER, individually, and on behalf of all
others similarly situated,

Plaintiffs,

vs.

MARKETSTAR CORPORATION, a
corporation; and CREATE MARKETING AND
SOLUTIONS INC., a corporation,

Defendants

No. 2:14-cv-02509-TLN-DB

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 Plaintiffs Karl Adams, III, and Shianna Notscher’s (“Plaintiffs”) filed a Motion for
2 Preliminary Approval of Class Action Settlement with this Court on January 12, 2017. The
3 Court, having considered the papers submitted in support of the application of the parties,
4 **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval of the Settlement and the Settlement Class
6 based upon the terms set forth in the Stipulation of Settlement between Plaintiffs and Defendants
7 MarketStar Corporation and Create Marketing and Solutions, Inc. (“Settlement”) attached to the
8 Declaration of John Glugoski in Support of Plaintiffs’ Motion for Preliminary Approval of Class
9 Action Settlement as **Exhibit 1**. The Court preliminarily finds that the terms of the Settlement
10 appear to be within the range of possible approval, pursuant to Federal Rule of Civil Procedure
11 23 and applicable law.

12 2. The Court finds on a preliminary basis that: (1) the settlement amount is fair and
13 reasonable to the Settlement Class Members when balanced against the probable outcome of
14 further litigation relating to class certification, liability and damages issues, and potential
15 appeals; (2) significant informal discovery, investigation, research, and litigation have been
16 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
17 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks that
18 would be presented by the further prosecution of the litigation; and (4) the proposed Settlement
19 has been reached as the result of intensive, serious, and non-collusive negotiations between the
20 Parties. Accordingly, the Court preliminarily finds that the Stipulation of Settlement was entered
21 into in good faith.

22 3. A final fairness hearing on the question of whether the proposed Settlement,
23 attorneys’ fees and costs to Class Counsel, and the Class Representatives Enhancement Awards,
24 should be finally approved as fair, reasonable and adequate as to the members of the Class is
25 hereby set in accordance with the Implementation Schedule set forth below.

26 4. The Court approves, as to form and content, the Notice of Class and Collective
27 Action Settlement and Final Hearing (“Notice”) and Claim Form, attached to the Stipulation of
28 Settlement as **Exhibits A and B** respectively. This Court approves the procedure for Class

1 Members to participate in, to opt out of, and to object to, the Settlement as set forth in the
2 Settlement and in the Notice.

3 5. The Court directs the mailing of the Notice, and Claim Forms by first class mail
4 to the Class Members in accordance with the Implementation Schedule set forth below. This
5 Court finds the dates selected for the mailing and distribution of the Notice and the Claim Form
6 as set forth in the Implementation Schedule meet the requirements of due process and provide the
7 best notice practicable under the circumstances and shall constitute due and sufficient notice to
8 all persons entitled thereto.

9 6. It is hereby ordered that the following Class is confirmed certified for settlement
10 purposes only: “All persons currently or formerly employed by defendant MarketStar
11 Corporation or Create Marketing and Sales Solutions Inc. in the State of California, as Product
12 Specialists, Brand Advocates, Market Sell-Through Managers, Market Managers, Territory
13 Managers, Territory Representatives, Field Sales Advocates, Field Sales Representatives, Field
14 Marketing Managers, Specialists, Trainers and any other field positions, which either or both
15 Defendants classified as exempt, whose job responsibilities included making store visits and/or
16 interacting with store personnel, whether to assist in sales, promote brand awareness or train
17 store personnel or other field employees, during the period from August 15, 2010 through April
18 22, 2016.”

19 7. The Court confirms Plaintiffs Karl Adams, III and Shianna Notscher as class
20 representatives and Righetti Glugoski, P.C. and Rastegar Law Group, APC as Class Counsel for
21 settlement purposes only.

22 8. The Court confirms CPT Group, Inc. as the Claims Administrator with reasonable
23 administration costs estimated not to exceed \$15,000.00.

24 9. The Court further PRELIMINARILY APPROVES Class Counsel’s ability to
25 request attorneys’ fees of up to one-third of the Gross Settlement Amount (\$833.333.33), and
26 costs not to exceed \$40,000.00, in a separate fee motion seeking such awards to be filed pursuant
27 to the schedule set forth below.
28

1 10. The Court further ORDERS that Class Counsel shall file a motion for approval of
2 the Fee and Expense Award and the Service Payment, with the appropriate declarations and
3 supporting evidence, at least fourteen (14) days after Class Notice is mailed.

4 11. The Court further ORDERS that Class Counsel shall file a motion for Final
5 Approval of the Settlement, with the appropriate declarations and supporting evidence, including
6 a declaration setting forth the identity of any Settlement Class Members who request exclusion
7 from the Settlement, by **July 27, 2017**.

8 12. The Court further ORDERS that each Settlement Class Member shall be given a
9 full opportunity to object to the proposed Settlement and request for attorneys' fees and to
10 participate at a Final Approval Hearing which the Court sets to commence on **Thursday, August**
11 **24, 2017, at 2:00 p.m.** in Courtroom 2 of the United States District Court, Eastern District of
12 California. Any Settlement Class Member seeking to object to the proposed Settlement may file
13 such objection in writing with the Court and shall serve such objection on Class Counsel and
14 Defendants' Counsel or may appear at the Final Approval Hearing to make the objection.

15 13. Accordingly, GOOD CAUSE APPEARING, the Court orders the following
16 Implementation Schedule for further proceedings:
17

18 Deadline for MarketStar to provide class list to 19 Class Administrator	Ten (10) calendar days after Order Granting Preliminary Approval
20 Deadline for Class Administrator to mail 21 Notice of Settlement	Fourteen (14) calendar days after provision of class list to third party administrator
22 Deadline for Plaintiffs to file brief in support of 23 attorneys' fees application	Fourteen (14) calendar days after class notice is mailed to Class Members
24 Last day for Class Members to file any requests 25 for exclusions, objections or disputed claim 26 amounts	Sixty (60) calendar days from date notice is mailed to Class Members
27 Class Administrator to provide update to class	Seventy-four (74) calendar days from date

1	counsel regarding requests for exclusion,	notice is mailed to Class Members
2	objection, or disputed amounts	
3	Deadline for Plaintiffs to file motion for final	July 27, 2017
4	approval of class action settlement	
5	Deadline for Plaintiffs to file motions for	July 27, 2017
6	service awards	
7	Final Approval of Class Action Settlement	August 24, 2017 at 2:00 p.m.
8	Hearing and hearing on Plaintiffs' motion for	
9	fees, costs and service awards	
10	Deadline for Claims Administrator to mail the	No later than fifteen (15) business days after
11	Settlement Awards and the Service Payments,	the Court grants final approval of the
12	and to wire transfer the Attorneys' Fees and	settlement
13	Costs (if Settlement is Effective)	

14 14. The Court further ORDERS that, pending further order of this Court, all
15 proceedings in this Lawsuit, except those contemplated herein and in the Settlement, are stayed.

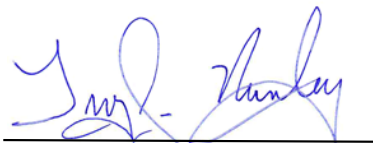
16 15. The Court further ORDERS that to facilitate administration of the Settlement
17 pending final approval, this Court hereby enjoins Plaintiffs and all Class Members from filing or
18 prosecuting any claims, suits or administrative proceedings regarding claims released by the
19 Settlement, unless and until such Class Members have filed valid Opt-Out Request with the
20 Claims Administrator and the time for filing claims with the Claims Administrator has elapsed.

21 16. If for any reason the Court does not execute and file a Final Approval Order and
22 Judgment, the proposed Settlement subject to this Order and all evidence and proceedings had in
23 connection with the Settlement shall be null and void.

24 17. The Court may, for good cause, extend any of the deadlines set forth in this Order
25 or adjourn or continue the final approval hearing without further notice to the Class.

26 IT IS SO ORDERED.

27 Dated: February 1, 2017

28 
Troy L. Nunley
United States District Judge