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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIKE CORTES, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NATIONAL CREDIT ADJUSTERS,
L.L.C.,

Defendant.

No. 2:16-cv-00823-MCE-EFB

ORDER

Plaintiff Mike Cortes (“Plaintiff”) brought a class action lawsuit against Defendant National Credit Adjusters, L.L.C. (“Defendant”) for violations of the Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. (“FDCPA”), and California’s Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788 et seq. (“Rosenthal Act”). On December 7, 2020, this Court granted final approval of the parties’ class action settlement, which established a \$1,800,000 non-reversionary settlement fund for the payment of individual class member awards, attorneys’ fees and costs, administration costs, and a service award to the class representative. See ECF No. 69. Those funds have since been distributed but there remains \$48,689.41 in unclaimed funds. See Boub Decl., ECF No. 72-1 ¶¶ 4–9. Presently before the Court is Plaintiff’s Motion for Cy Pres Distribution of Residual

1 Settlement Funds, which seeks approval for the distribution of \$48,689.41 in residual
2 settlement funds to the parties' proposed cy pres recipient, Consumer Reports. ECF
3 No. 72 ("Pl.'s Mot."). In response, Defendant filed a Statement of Non-Opposition. ECF
4 No. 74. For the reasons set forth below, Plaintiff's Motion is GRANTED.¹

5 "The cy pres doctrine allows a court to distribute unclaimed or non-distributable
6 portions of a class action settlement fund to the 'next best' class of beneficiaries."
7 Nachshin v. AOL, LLC, 663 F.3d 1034, 1036 (9th Cir. 2011) (citing Six (6) Mexican
8 Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1307–08 (9th Cir. 1990)). "Cy pres
9 distributions must account for the nature of the plaintiffs' lawsuit, the objectives of the
10 underlying statutes, and the interests of the silent class members, including their
11 geographic diversity." Id. "Where, as here, the original settlement did not provide for the
12 cy pres designee, nothing appears to prevent the plaintiff[] moving for such a designee in
13 a separate motion." Four in One Co., Inc. v. SK Foods, L.P., No. 2:08-cv-3017 KJM JDP
14 (consolidated cases), 2021 WL 4480737, at *2 (E.D. Cal. Sept. 30, 2021).

15 The Court finds Consumer Reports to be an appropriate cy pres beneficiary.
16 Regarding the nature of the lawsuit, Plaintiff alleges that Defendant made numerous
17 calls to his cell phone using an autodialer and/or artificial or prerecorded voice and that
18 these calls were attempts to collect a consumer debt that Plaintiff purportedly owed.
19 First Am. Compl., ECF No. 48 ¶¶ 1, 15. Plaintiff claims that he had no contact with
20 Defendant prior to these phone calls, he did not consent to receive such phone calls,
21 and that he never provided his phone number to Defendant. Id. ¶ 13. In selecting
22 Consumer Reports as the cy pres beneficiary, Plaintiff cites its work "to protect
23 consumers against invasions of their privacy and peace by phone and other
24 telecommunications," and asserts that "Consumer Reports has worked to ensure
25 compliance with the [TCPA] since its enactment in 1991." See Taylor Decl., ECF
26 No. 72-2 ¶¶ 7–9 (declaration from Consumer Reports' Vice President and Chief Social


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28 ¹ Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Local Rule 230(g).

1 Impact Officer) (“[Consumer Reports] seeks to preserve consent and protect consumers
2 from harassment, manipulation, and fraud on phones . . .”). For example, Consumer
3 Reports’ “campaign to End Robocalls—including advocacy, analysis, and a million
4 signatures across multiple petitions—prompted the FCC [Federal Communications
5 Commission] to rule that phone companies should provide free tools to stop robocalls
6 before they reach consumers.” Id. ¶ 8 (stating that Consumer Reports also “submitted
7 comments to the FCC on robocall-mitigation technologies and consent requirements,
8 testified before Congress, and challenged the TCPA loophole allowing robocalls by debt
9 collectors.”). Not only is Consumer Reports’ advocacy related to Plaintiff’s lawsuit, but it
10 demonstrates “a clear connection between the aims of the statutes at issue in this
11 litigation, including the TCPA, FDCPA, and the Rosenthal Act” and shows that
12 Consumer Reports, a nationwide organization, represents the interests of the silent class
13 members. Pl.’s Mot., at 5–6.

14 Accordingly, Plaintiff’s Motion for Cy Pres Distribution of Residual Settlement
15 Funds, ECF No. 72, is GRANTED. The Court approves Consumer Reports as the cy
16 pres recipient of the \$48,689.42 in residual settlement funds.

17 IT IS SO ORDERED.

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19 Dated: October 6, 2022

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22 MORRISON C. ENGLAND, JR.
23 SENIOR UNITED STATES DISTRICT JUDGE
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