

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
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE: MIDLAND CREDIT
MANAGEMENT INC., TELEPHONE
CONSUMER PROTECTION ACT
LITIGATION**

MDL No. 2286
Member Cases: 10cv2261-MMA (MDD)
10cv2600-MMA (MDD)
11cv2368-MMA (MDD)
11cv2370-MMA (MDD)

**ORDER GRANTING JOINT
MOTION FOR APPROVAL OF CY
PRES BENEFICIARIES OF
RESIDUAL SETTLEMENT FUNDS**

[Doc. No. 610]

Plaintiffs Christopher Robinson, Eduardo Tovar, and Dave Scardina, on behalf of themselves and the Settlement Class as defined in the Amended Order Adopting Reports and Recommendations (Doc. No. 434) (“Plaintiffs”), and Defendants Midland Funding LLC, Midland Credit Management Inc., and Encore Capital Group (“Defendants”), jointly move the Court for approval of *cy pres* distribution of remaining settlement funds to certain beneficiaries. Doc. No. 610. For the reasons set forth below, the Court **GRANTS** the joint motion.

//
//

1 **BACKGROUND**

2 The individual plaintiffs in this action generally allege that Defendants violated the
3 rights of plaintiffs and other unnamed class members by illegally making debt collection
4 calls to them, through use of an automatic dialer or pre-recorded voice, on their cellular
5 telephones without first obtaining their prior express consent in violation of the
6 Telephone Consumer Protection Act, 27 U.S.C. § 447, *et seq.* (“TCPA”). All plaintiffs
7 within this Multi-District Litigation (“MDL”) allege violations of the TCPA by
8 Defendants in substantially the same manner.

9 A consolidated complaint was filed on July 11, 2012. The consolidated complaint
10 alleges that Defendants violated the TCPA by using a predictive dialer to call the
11 plaintiffs on their cell phones regarding debts. The parties ultimately entered into a
12 settlement agreement and on November 30, 2016, the Court granted final approval of the
13 class action settlement, as amended (“the Settlement”).¹ *See* Doc. Nos. 432, 434. For
14 purposes of settlement, the Court certified the following Settlement Class:

15 [A]ll persons in the United States who were called on a cellular telephone by
16 Defendants or their subsidiaries, affiliates or related companies (other than
17 calls made by Asset Acceptance LLC, Atlantic Credit & Finance, Inc. or
18 Propel Financial Services) in connection with the collection of an alleged debt
19 using a dialer or by artificial or prerecorded voice message without prior
express consent during the period from November 2, 2006 through August 31,
2014, inclusive.

20 Doc. No. 434 at 4.²

21 Further, as part of the Settlement, Defendants established a Settlement Fund of
22 approximately \$21.5 million, to be allocated as follows: (1) Net Settlement Amount -
23 \$15,000,000.00; (2) Attorneys’ Fees and Costs - \$2,400,000.00; (3) Cost of Notice and
24 _____

25
26 ¹ The Court amended the paragraph XII of the Final Order and Judgment to conform to Subsection IV of
the Court’s memorandum order. Doc. No. 434. The Court also made certain non-substantive formatting
changes. *Id.*

27 ² Excluded from the Settlement Class are the judges to whom this litigation is assigned, any member of
28 the judges’ staffs and immediate families, and any person who validly requests exclusion from the Class
Agreement § 2.10(b).

1 Claims Administration - \$4,003,975.17;³ (4) Incentive Awards - \$2,500.00 per
2 representative; and (5) Special Master Fees - \$31,905.00.⁴ The Net Settlement Amount
3 was comprised of a \$2,000,000.00 Cash Component and a \$13,000,000.00 Credit
4 Component. The Cash Component of the Settlement Fund was chiefly for those
5 Settlement Class Members who did not owe, or who disputed that they owed, Defendants
6 any money. Doc. No. 434 at 6. Each Settlement Class Member eligible to receive a
7 share of the Cash Component of the Settlement Fund was to receive a pro rata share.
8 Pursuant to the Settlement, any checks distributed from the Cash Component of the
9 Settlement Fund which remained uncashed 180 days after they were issued would be
10 distributed to one or more *cy pres* recipients, to be agreed upon by the parties, and upon
11 Court approval. *Id.*

12 Now, Plaintiffs and Defendants jointly move for Court approval of *cy pres*
13 distribution of the remaining balance of the Settlement Fund, which amounts to
14 approximately \$284,719.98. Doc. No. 610 at 2. Specifically, the parties request that the
15 balance be divided equally and distributed to: (1) the University of Santa Clara Law
16 School’s Privacy Law Certificate and High Tech Law Institute; and (2) JumpStart
17 Coalition for Personal Financial Literacy. *Id.*

18 LEGAL STANDARD

19 “[T]he ‘*cy pres*’ doctrine allows a court to distribute unclaimed or non-
20 distributable portions of a class action settlement fund to the ‘next best’ class of
21 beneficiaries.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting
22 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011)). “[A] district court should
23 not approve a *cy pres* distribution unless it bears a substantial nexus to the interests of the
24 class members,” meaning that the distribution ““must account for the nature of the
25

26
27 ³ Defendants agreed to pay the claims administration fees separately and in addition to the Settlement
28 Fund.

⁴ See Transcript of Final Approval Hearing, Doc. No. 410 at 9:20-22.

1 plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent
2 class members.” *Id.* (quoting *Nachshin*, 663 F.3d at 1036); *see also Six (6) Mexican*
3 *Workers v. Arizn Citrus Growers*, 904 F.2d 1301, 1308 (9th Cir. 1990) (setting aside
4 district court’s *cy pres* application where distribution to the chosen recipient organization
5 would have “benefit[ed] a group far too remote from the plaintiff class”).

6 DISCUSSION

7 Here, “[t]he purpose of the TCPA is to ‘protect the privacy interests of residential
8 telephone subscribers by placing restrictions of unsolicited, automated telephone calls to
9 the home and to facilitate interstate commerce by restricting certain uses of facsimile
10 machines and automatic dialers.’” *Aboudi v. T-Mobile USA, Inc.*, No. 12CV2169 BTM
11 (NLS), 2015 WL 4923602, at *5 (S.D. Cal. Aug. 18, 2015) (quoting *Satterfield v. Simon*
12 *& Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009)). In enacting the TCPA, Congress
13 sought to protect people from unsolicited, automated phone calls because they cause a
14 nuisance and constitute invasions of privacy. *See Satterfield*, 569 F.3d at 954; *Cabiness*
15 *v. Educ. Fin. Sols., LLC*, No. 16-CV-01109-JST, 2016 WL 5791411, at *6 (N.D. Cal.
16 Sept. 1, 2016).

17 Keeping in mind the foregoing, the Court discusses each of the proffered *cy pres*
18 beneficiaries and their nexus to class interests and TCPA claims in turn below.

19 A. *The University of Santa Clara Law School’s Privacy Law Certificate and High* 20 *Tech Law Institute*

21 The Privacy Law Certificate program (“PLC”) at Santa Clara University School of
22 Law (“SCU”) is a program committed to teaching lawyers how to protect and enforce
23 privacy laws. *See* Doc. No. 610-3 (“Goldman Decl.”). The High Tech Law Institute
24 (“HTLI”) of SCU works closely with the PLC. *Id.* at ¶ 9. HTLI is SCU’s “umbrella
25 administrator of all its high tech initiatives,” including the High Tech Law Journal, which
26 regularly publishes papers on privacy matters and sponsors symposia on privacy matters.
27 *Id.* Additionally, HTLI includes the Privacy Law Students Organization, which provides
28 mentoring and events directed to privacy law students. *Id.* *Cy pres* funds, if approved,

1 “would be used to advance the privacy interests of residential and cellular telephone
2 subscribers, all consistent with the purpose of the [TCPA], and to promote and preserve
3 the privacy rights of American consumers and residents, among others.” Doc. No. 610 at
4 7. The funds would indirectly benefit class members by training privacy lawyers
5 employed in the private and public sectors, thereby adding to the expertise in this field.
6 *Id.* Specifically, “[t]he money would be used to support faculty, staff and students to
7 research and publish scholarly, practitioner-oriented, and consumer-oriented publications
8 that will improve the public’s understanding of their privacy rights, and to create a new
9 privacy-focused journal to expand the discourse about privacy issues.” *Id.* The money
10 “would also support privacy topic events to help educate practitioners and the public
11 about privacy issues.” *Id.*

12 Based on PLC’s and HTLI’s previous and current commitment to the issues of
13 consumer privacy rights, distribution to SCU’s PLC and HTLI would “account for the
14 nature of [P]laintiffs’ lawsuit, the objectives of the underlying statutes, and the interests
15 of the silent class members.” *See Lane*, 696 F.3d at 819 (quoting *Nachshin*, 663 F.3d at
16 1036); *see also Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 946 n.7 (N.D. Cal. 2013)
17 (approving *cy pres* distribution to HTLI of SCU). Further, despite that the PLC program
18 and HTLI are located at SCU, which is in Silicon Valley, they both clearly have
19 nationwide impact. *Cf. Nachshin*, 663 F.3d at 1040 (disapproving of *cy pres* distribution
20 in part because the settlement class was nationwide yet “two-thirds of the donations
21 [would] be made to local charities in Los Angeles”). Accordingly, distribution to SCU’s
22 PLC and HTLI is appropriate.

23 **B. Jump\$tart Coalition for Personal Financial Literacy**

24 Jump\$tart Coalition for Personal Financial Literacy (“Jump\$tart”) is a non-profit
25 organization that “operates an online clearinghouse of financial education resources,”
26 which is “free to both users and resource providers.” Doc. No. 610 at 8. According to
27 Laura Levine, the President and Chief Executive Officer of Jump\$tart, Jump\$tart “is the
28 publisher of the National Standards K-12 Personal Finance Education, made available to

1 all educators at no cost to them. The national standards have been the basis for many
2 state standards adopted by states with financial education requirements. Much of the
3 financial education curricula used today are aligned to these standards. The standards are
4 organized into six sections that address: Saving and Spending; Credit and Debt;
5 Employment and Income; Investing; Risk Management; and Financial Decision-
6 Making.” Doc. No. 610-2 (“Levine Decl.”), at ¶ 5. Specifically, the standard on credit
7 and debt addresses “consumer credit laws, including rights and responsibilities and debt
8 collection practices.” *Id.* Jump\$start also has a collaborative teacher training program and
9 hosts a National Educator Conference, which brings teachers from across the country
10 together to learn from experts, try new resources, and network with educators and the
11 financial literacy community. *Id.* at ¶ 7. If approved, *cy pres* funds would be used to
12 “further its efforts to educate and improve financial literacy of American youth, including
13 on the topic of credit and debt, which will benefit settlement Class Members by reducing
14 future debt collection calls.” Doc. No. 610 at 8 (internal citation omitted).

15 Distribution to Jump\$start bears a sufficiently “substantial nexus to the interests of
16 the class members,” particularly based on Jump\$start’s focus on issues related to the
17 TCPA, such as personal financial literacy regarding credit and debt. *See Lane*, 696 F.3d
18 at 821. Accordingly, Jump\$start is sufficiently “tethered to the nature of the lawsuit and
19 the interests of the silent class members,” such as their interest in consumer education
20 and financial literacy. *See Nachsin*, 663 F.3d at 1039; *see also Patel v. Trans Union,*
21 *LLC*, No. 14-cv-00522-LB, 2018 U.S. Dist. LEXIS 40282, at *13 (N.D. Cal. Mar. 11,
22 2018); *Blandina v. Midland Funding, LLC*, No. 13-1179, 2016 U.S. Dist. LEXIS 71477,
23 at *31 (E.D. Pa. June 1, 2016) (approving *cy pres* distribution to Jump\$start). Further,
24 Jump\$start’s work benefits consumers nationwide. Thus, the Court approves distribution
25 of *cy pres* funds to Jump\$start.

26 //

27 //

28 //

1 CONCLUSION

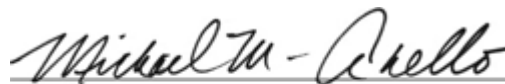
2 In sum, the Court **GRANTS** the parties' joint motion for approval of *cy pres*
3 distribution as set forth above, and further **ORDERS** that:

4 1. University of Santa Clara Law School's Privacy Law Certificate and High
5 Tech Law Institute, and Jump\$art Coalition for Personal Financial Literacy are
6 designated the *cy pres* beneficiaries of the remaining balance of the Cash Component of
7 the Settlement Fund and must share equally in the *cy pres* award; and

8 2. Kurtzman Carson Consultants, LLC, the claims administrator, must
9 promptly distribute the *cy pres* award to University of Santa Clara Law School's Privacy
10 Law Certificate and High Tech Law Institute, and Jump\$art Coalition for Personal
11 Financial Literacy in equal amounts.

12 **IT IS SO ORDERED.**

13 Dated: October 10, 2018



14 Hon. Michael M. Anello
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28