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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CORY HORTON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

Case No.: 13cv307-JAH-WVG

ORDER:

**(1) GRANTING
FINAL APPROVAL OF CLASS
ACTION
SETTLEMENT AND DISMISSING
CLASS PLAINTIFFS' CLAIMS
(Doc. No. 299)**

**(2) GRANTING MOTION FOR
ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARDS (Doc. No.
297).**

1 KEVIN KREJCI, on behalf of himself
2 and all others similarly situated,

Case No.: 16cv00211-JAH-WVG

3 Plaintiff,

4 v.

5 CAVALRY PORTFOLIO SERVICES,
6 LLC,

7 Defendant.
8

9 This matter came before the Court upon consideration of Plaintiffs' Motion
10 for Final Approval of Class Action Settlement and Class Counsel's Motion for an
11 Award of Fees, Costs, and Class Representative Incentive Awards. After
12 considering the motions and declarations and exhibits submitted with the motions,
13 the Court enters this Final Approval Order and Judgment (the "Final Approval
14 Order" or this "Order"), which constitutes a final adjudication on the merits of all
15 claims of the Settlement Class. Accordingly, IT IS HEREBY ORDERED that the
16 motions are **GRANTED**, the Settlement Agreement and Release ("Settlement
17 Agreement" or "Agreement") is finally approved, Class Counsel are awarded
18 \$2,000,000 in fees, \$85,349.64 in expenses, and Plaintiffs Cory Horton and Kevin
19 Krejci are awarded \$10,000 and \$10,000 respectively, for incentive awards
20 (\$20,000 total).

21 1. Unless otherwise defined, all capitalized terms in this Final Approval
22 Order shall have the same meaning as they do in the Settlement Agreement.

23 2. The Court has jurisdiction over the subject matter of the Litigation
24 and over the Parties, including all Settlement Class Members with respect to the
25 Settlement Class certified for settlement purposes, as follows:
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1 All persons who were called on cell phones by Cavalry
2 between February 8, 2009 and January 26, 2016
3 (“Settlement Class Period”), using the Aspect Ensemble
4 Pro system, or the Avaya Proactive Contact 5.0 system,
5 while attempting to collect debts on 1,035,232 Open and
6 Closed Accounts (which will be contained in an
7 electronic file that will be identified in the Settlement
8 Agreement and filed under seal). Excluded from the
9 Settlement Class are (i) individuals who are or were
10 during the Settlement Class Period officers or directors of
11 Cavalry or any of its Affiliates; (ii) any justice, judge or
12 magistrate judge of the United States or any State, their
13 spouses, and persons within the third degree of
14 relationship to either of them, or the spouses of such
15 persons; and (iii) all individuals who file a timely and
16 proper request to be excluded from the Settlement Class.

17 3. The Court finds that the Settlement Agreement was negotiated at
18 arm’s length by experienced counsel who were fully informed of the facts and
19 circumstances of the Litigation and of the strengths and weaknesses of their
20 respective positions. Further, settlement occurred only after the parties engaged
21 experienced mediators, the Honorable Leo Pappas (Ret.) and the Honorable
22 William V. Gallo, and negotiated over a period of many months. Counsel for the
23 Parties were therefore well positioned to evaluate the benefits of the Settlement
24 Agreement, taking into account the expense, risk, and uncertainty of protracted
25 litigation with respect to numerous difficult questions of fact and law.

26 4. The Court finally certifies the Settlement Class for settlement
27 purposes and finds, for settlement purposes, that the Litigation satisfies all the
28 requirements of Rule 23 of the Federal Rules of Civil Procedure. Specifically: (a)
the number of Settlement Class Members is so numerous that joinder of all
members thereof is impracticable; (b) there are questions of law and fact common
to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of

1 the Settlement Class they seek to represent; (d) Plaintiffs have and will continue
2 to fairly and adequately represent the interests of the Settlement Class for
3 purposes of entering into the Settlement Agreement; (e) the questions of law and
4 fact common to the Settlement Class Members predominate over any questions
5 affecting any individual Settlement Class Member; (f) the Settlement Class is
6 ascertainable; and (g) a class action settlement is superior to the other available
7 methods for the fair and efficient adjudication of the controversy.

8 5. The Court finally appoints the law firms of Terrell Marshall Law
9 Group PLLC and Lemberg Law, LLC as Class Counsel for the Settlement Class.

10 6. The Court finally designates Plaintiffs Cory Horton and Kevin Krejci
11 as the Class Representatives.

12 7. The Class Administrator executed the Notice Plan according to the
13 terms of the Settlement Agreement. The notices apprised Settlement Class
14 Members of the pendency of the Litigation; of all material elements of the
15 proposed Settlement, including but not limited to the relief afforded the
16 Settlement Class under the Settlement Agreement; of the res judicata effect on
17 Settlement Class Members and of their opportunity to object to, comment on, or
18 opt out of, the Settlement; of the identity of Class Counsel and Class Counsel's
19 contact information; and of the right to appear at the Final Approval Hearing. The
20 notice given to Settlement Class Members satisfied the requirements of
21 constitutional due process. The notices were reasonably calculated, under the
22 circumstances to apprise Settlement Class Members of the pendency of the
23 Litigation, their right to object or to exclude themselves from the proposed
24 Settlement, and their right to appear at the Final Approval Hearing.

25 8. Nine Settlement Class Members opted out of the Settlement Fund.

26 9. There were no objections.¹

27 _____
28 ¹ The Court received a letter, styled as a motion, to appear telephonically or by videoconference during the COVID-19 public emergency by class member David Turner, proceeding *pro se*. Mr. Turner attached an

1 10. The Court has afforded a full opportunity to all Settlement Class
2 Members to be heard. Accordingly, the Court determines that all Settlement Class
3 Members are bound by this Final Approval Order.

4 11. The Court finds that Defendant has complied with its notice
5 obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection
6 with the proposed Settlement.

7 12. The Court finally approves the Settlement Agreement as fair,
8 reasonable and adequate pursuant to Fed. R. Civ. P. 23(e). The terms and
9 provisions of the Settlement Agreement, including all exhibits thereto, have been
10 entered into in good faith and are hereby fully and finally approved as fair,
11 reasonable, and adequate as to, and in the best interests of, each of the Parties and
12 the Settlement Class Members.

13 13. The Court approves the plan of distribution for the Debt Relief Fund
14 and the Cash Fund as set forth in the Settlement Agreement and makes the
15 following determinations with respect to specific groups of claims:

16 a. The Court approves 22,459 claims in which claimants
17 provided telephone numbers that matched telephone numbers listed in the
18 Settlement Class Member files provided to JND;

19 b. The Court approves 2,093 claims submitted after the July 29,
20 2020, but on or before August 25, 2020, due to reported delays with the postal
21 service;

22 c. The Court approves 383 claims which were unsigned from
23 claimants JND verified to be valid Settlement Class Members;

24 d. The Court approves 36,085 claims JND matched to the
25 Settlement Class List based on a mailing address in the Class Lists or based on a
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27 additional page, however, it is unclear to the Court whether he is objecting to the proposed settlement. Mr.
28 Turner's letter shall be filed as part of the record in this case. Nonetheless, the deadline to file an objection to the
settlement was July 29, 2020, which Mr. Turner surpassed by nearly two months. To the extent his motion to
appear can be construed as an objection, the objection is untimely and will not otherwise be considered.

1 mailing address or email address obtained through advanced address search
2 strategies using contact information in the Class Lists, but which did not include
3 their current phone number, the phone number where they received calls, or the
4 phone number provided was not the phone number Cavalry alleges it called;

5 e. For the 16,867 claims which could not be matched to the
6 Settlement Class List through a mailing or email address, the Court orders
7 providing these claimants with notice of their claim form deficiency and an
8 opportunity to cure.

9 14. The Settlement Administrator is ordered to comply with the terms of
10 the Settlement Agreement with respect to distribution of Settlement Relief,
11 including a second payment from the Cash Fund, if feasible. Should any
12 unclaimed funds be distributed, the Court hereby approves The Jump\$tart
13 Coalition for Personal Financial Literacy as the recipient who shall receive those
14 unclaimed funds, after accounting for the costs of administering that distribution.
15 The Court finds this organization closely aligned itself with the Settlement
16 Class's interests.

17 15. By incorporating the Agreement and its terms herein, this Court
18 determines that this Final Approval Order complies in all respects with Federal
19 Rule of Civil Procedure 65(d)(1).

20 16. Class Counsel have moved for an award of attorneys' fees and
21 reimbursement of expenses. The Court makes the following findings of fact and
22 conclusions of law:

23 a. that the Settlement confers substantial benefits on the
24 Settlement Class Members;

25 b. that the value conferred on the Settlement Class is immediate
26 and readily quantifiable;

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1 c. that Settlement Class Members who have submitted approved
2 claims will receive debt relief or cash awards that represent a significant portion
3 of the damages that would be available to them were they to prevail in an
4 individual action under the TCPA;

5 d. that Class Counsel vigorously and effectively pursued the
6 Settlement Class Members' claims before this Court in this complex case;

7 e. that the Settlement was obtained as a direct result of Class
8 Counsel's advocacy;

9 f. that the Settlement was reached following extensive
10 negotiation between Class Counsel and Counsel for Cavalry, and was negotiated
11 in good faith and in the absence of collusion;

12 g. that counsel who recover a common benefit for persons other
13 than himself or his client is entitled to reasonable attorneys' fees from a common
14 fund. See, e.g., *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Blum v.*
15 *Stenson*, 465 U.S. 866, 900 n.16 (1984).

16 17. Accordingly, Class Counsel are hereby awarded \$2,000,000 for
17 attorneys' fees and \$85,349.64 in actual litigation costs from the Cash Fund,
18 which this Court finds to be fair and reasonable, and which amount shall be paid
19 to Class Counsel from the Cash Fund in accordance with the terms of the
20 Settlement Agreement. Class Counsel shall be responsible for allocating and shall
21 allocate this award of attorneys' fees, costs, and expenses that are awarded
22 amongst and between Class Counsel.

23 18. The Class Representatives, as identified in the Preliminary Approval
24 Order, are hereby compensated in the amount of \$10,000 for Cory Horton and
25 \$10,000 for Keven Krejci for their efforts in this case. The Court finds this
26 amount to be reasonable in light of the service performed by the Class
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1 Representatives. This amount shall be paid from the Cash Fund in accordance
2 with the terms of the Settlement Agreement.

3 19. The Final Approval Order, Judgment, and Settlement Agreement are
4 not admissions or concessions by Cavalry of the validity of any claims or of any
5 liability or wrongdoing or of any violation of law. The Final Approval Order,
6 Judgment, and Settlement Agreement shall not be offered or received in evidence
7 in any civil, criminal, or administrative action or proceeding, other than such
8 proceedings as may be necessary to consummate or enforce the Final Approval
9 Order, Judgment, and Settlement Agreement, and all releases given thereunder, or
10 to establish the affirmative defenses of res judicata or collateral estoppel barring
11 the pursuit of claims released in the Settlement Agreement.

12 20. Upon the Final Settlement Date, the Class Representatives and each
13 Settlement Class Member will be deemed to have completely released and forever
14 discharged the Released Parties from the Released Claims, as set forth in Section
15 10 of the Settlement Agreement and expressly incorporated herein.

16 21. The Court retains jurisdiction to consider all further matters arising
17 out of or connected with the settlement, including the implementation and
18 enforcement of the Settlement Agreement.

19 22. The Court finds that no justifiable reason exists for delaying entry of
20 this Final Approval Order and, good cause appearing, this Final Approval Order
21 and the separate Judgment shall be entered as final and appealable and the case

22 **DISMISSED WITH PREJUDICE.**

23 **IT IS SO ORDERED**

24 Date: October 13, 2020

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26 _____
27 JOHN A. HOUSTON
28 UNITED STATES DISTRICT JUDGE