

1 **BURSOR & FISHER, P.A.**

2 L. Timothy Fisher (State Bar No. 191626)
3 Yeremey O. Krivoshey (State Bar No.295032)
4 1990 North California Blvd., Suite 940
5 Walnut Creek, CA 94596
6 Telephone: (925) 300-4455
7 Email: ltfisher@bursor.com
8 ykrivoshey@bursor.com

6 **BURSOR & FISHER, P.A.**

7 Scott A. Bursor (State Bar No. 276006)
8 2665 S. Bayshore Dr., Suite 220
9 Miami, FL 33133-5402
10 Telephone: (305) 330-5512
11 Facsimile: (305) 676-9006
12 E-Mail: scott@bursor.com

10 *Attorneys for Plaintiff*

11
12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 MIKE CORTES, on Behalf of Himself and all
15 Others Similarly Situated,

16 Plaintiff,

17 v.

18 NATIONAL CREDIT ADJUSTERS, L.L.C.,

19 Defendant.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Honorable Morrison C. England, Jr.

[PROPOSED] ORDER

The Court has considered the motion of Plaintiff Mike Cortes for preliminary approval of class action settlement in the above-entitled action pursuant to Federal Rule of Civil Procedure 23(e). The Court has reviewed all materials submitted in support of the motion. After careful consideration, the Court rules as follows:

1. Terms and phrases in this order shall have the same meaning as ascribed to them in the Class Action Settlement Agreement and Release (“Agreement”).

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Agreement and having heard the Parties and being fully advised in the premises, hereby preliminarily approves the Agreement in its entirety subject to the Final Approval Hearing referred to in Paragraph 15 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this Action and over all Parties to the Action, including the Settlement Class.

4. The Court takes note of its prior certification order of August 3, 2018, in which this Court certified a class of:

All persons within the United States who: (a) are current or former subscribers of the Call Management applications; (b) and received one or more calls; (c) on his or her cellular telephone line; (d) made by or on behalf of Defendant; (e) for whom Defendant had no record of prior express written consent; (f) and such phone call was made with the use of an artificial or prerecorded voice or with the use of an automatic telephone dialing system as defined under the TCPA; (g) at any point that begins April 21, 2012 until August 2, 2017.

In doing so, this Court considered the allegations, information, arguments, and authorities provided by the Plaintiff, found that the requirements of numerosity, commonality, typicality, and adequacy had been established for the class, that the class was ascertainable, and that questions of law and fact common to all Class Members predominated over questions affecting only individual members. These Class Members are referred herein collectively as the “Certified Class.”

1 5. Plaintiff now also seek the certification of an additional class for settlement
2 purposes, the “2016 California Class,” consisting of all persons (a) in California; (b) called by or
3 on behalf of Defendant; (c) between January 1, 2016 through December 31, 2016; (d) regarding a
4 purported debt owed; (e) using an artificial or prerecorded voice or an automatic telephone dialing
5 system as defined under the TPCA. The Court find that the requirements of numerosity,
6 commonality, typicality, and adequacy have been established for the 2016 California Class, that the
7 class is ascertainable, and that questions of law and fact common to all class members predominate
8 over questions affecting only individual members.

9 6. To the extent they do not request exclusion, the members of the Certified Class and
10 the 2016 California Class are now referred to as Settlement Class Members by the Agreement and
11 herein. The class certified on August 3, 2018, as well as the 2016 California Class, are part of the
12 Settlement Class.

13 7. The Court finds that, subject to the Final Approval Hearing, the Agreement is fair,
14 reasonable, adequate, and in the best interests of the Settlement Class as to their claims against
15 Defendant. The Court further finds that the Agreement substantially fulfills the purposes and
16 objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also
17 finds that the Agreement (i) is the result of arms’ length negotiations involving experienced
18 counsel with the assistance of Martin Quinn, Esq. of JAMS; (ii) is sufficient to warrant notice of
19 the settlement and the Final Approval Hearing to the Settlement Class; (iii) meets all other
20 applicable requirements of law, including the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
21 1715; and (iv) is not a finding or admission of liability by Defendant.

22 8. R/G2 Claims Administration, LLC is hereby appointed as Claims Administrator and
23 shall be required to perform all the duties of the Claims Administrator as set forth in the Agreement
24 and this order.

25 9. The Court approves, as to form, method, and content, the Long-form Notice and
26 Postcard Notice to be provided to the Settlement Class as set forth in the Agreement and Exhibits B
27 and C to the Declaration of William W. Wickersham in Support of Plaintiff’s Motion for
28

1 Preliminary Approval. The Court finds that such notice complies with the requirements of Fed. R.
2 Civ. P. 23 and due process and constitutes the best notice practicable under the circumstances. The
3 Court further finds that the notice is reasonably calculated to, under all circumstances, apprise
4 Settlement Class Members of the terms of the Agreement, and the right of members to object to the
5 Settlement or to exclude themselves from the Settlement Class. The Parties, by agreement, may
6 revise the Notices in ways that are not material, or in ways that are appropriate to update those
7 documents for purposes of accuracy or formatting.

8 10. Notice shall be provided as follows: The Claims Administrator shall within
9 fourteen (14) days following the entry of this order activate the Settlement Website, which will
10 provide information about the Settlement, and post the settlement documents and case-related
11 documents such as this order and the Agreement, Notice, and Postcard Notice.

12 11. Within fourteen (14) days following the entry of this order, the Claims
13 Administrator shall provide direct notice to Settlement Class Members as set forth in the
14 Agreement. The Claims Administrator has also complied with the requirements of 28 U.S.C. §
15 1715 by serving notice of the proposed Settlement upon the appropriate government officials
16 within ten (10) days after the Settlement Agreement was filed with the Court.

17 12. Settlement Class Members who wish to exclude themselves from the Settlement
18 Class may submit a request for exclusion by sending a written request to the Settlement
19 Administrator postmarked on or before the Opt-Out Deadline, which will be the same date as the
20 Claims Deadline. A request for exclusion must be signed by the Settlement Class Member, and
21 must include the Settlement Class Member's name, address, and the telephone number that
22 allegedly received a call from or on behalf of Defendant during the Class Period, and must clearly
23 state that the Person wishes to be excluded from the Action and Agreement. A request for
24 exclusion that does not include all of this information, or that is sent to an address other than that
25 designated in the Notice, or that is not postmarked within the time specified, shall be invalid.

26 13. Any Settlement Class Member who submits a valid and timely request for exclusion
27 (i) shall not be bound by the terms of the Agreement or by the Final Approval Order and Judgment;

1 (ii) shall be deemed to have waived any rights or benefits under the Agreement; and (iii) may not
2 file an objection to the Settlement. However, any Settlement Class Member who fails to submit a
3 valid and timely request for exclusion shall be bound by all terms of the Agreement, the Court's
4 order granting class certification for settlement purposes, and the Final Approval Order and
5 Judgment, regardless of whether he or she has requested exclusion from the Settlement Class.

6 14. Any Class Member who has not timely filed a request for exclusion may object to
7 the fairness, reasonableness, or adequacy of the Agreement, to the Final Approval Order and
8 Judgment being entered as to Defendant in accordance with the terms of the Agreement, to the
9 attorneys' fees, cost and expense reimbursement sought by Class Counsel, or to the award sought
10 by the Class Representative as set forth in the Notice and Agreement. At least 21 days prior to the
11 Opt-Out Deadline, papers supporting the Fee Award shall be filed with the Court and posted to the
12 Settlement Website. Settlement Class Members may object on their own, or may do so through
13 separate counsel at their own expense.

14 15. To object, a Settlement Class Member must sign and file or mail to Class Action
15 Clerk, United States District Court, 501 "I" Street, Room 4-200, Sacramento, CA 95814, a written
16 objection no later than the Opt-Out Deadline. By the same date (based on postmark), a Settlement
17 Class Member must also serve a copy on Class Counsel and the Claims Administrator at the
18 addresses set forth in the Notice. To be valid, the objection must include: (i) the objector's name,
19 address, and telephone number; (ii) the name, address, and telephone number of any attorney for
20 the objector with respect to the objection; (iii) the factual basis and legal grounds for the
21 objection, including any documents sufficient to establish the basis for his or her standing as a
22 Settlement Class Member, including the date(s) and phone number(s) at which he or she received
23 calls covered by this Settlement; and (iv) identification of the case name, case number, and court
24 for any prior class action lawsuit in which the objector and the objector's attorney (if applicable)
25 has objected to a proposed class action settlement. If, in addition to submitting a written objection
26 to the Settlement, the objector wishes to appear and be heard at the Final Approval Hearing, the
27 objector must file and serve upon Class Counsel and the Claims Administrator by the Opt-Out
28

1 Deadline a notice of intention to appear with the Court and list the name, address, and telephone
2 number of the person and attorney, if any, who will appear.

3 16. All objections and any papers submitted in support of said objection, shall be
4 considered by the Court at the Final Approval Hearing only if, on or before the Opt-Out Deadline,
5 the Person making an objection submits copies of such papers to the Court by filing them in person
6 at any location of the United States District Court for the Eastern District of California, or mailing
7 the objection to the Class Action Clerk, United States District Court, 501 "I" Street, Room 4-200,
8 Sacramento, CA 95814. Settlement Class Members who fail to submit and serve timely written
9 objections in the manner specified above shall be deemed to have waived any objections and shall
10 be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement at the
11 Final Approval Hearing, or from seeking review of this Agreement by appeal or other means and
12 shall be deemed to have waived his, her, or its objections and be forever barred from making any
13 such objections in the Litigation or any other litigation or proceeding. By filing an objection,
14 objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but
15 not limited to subpoenas and discovery.

16 16. The Final Approval Hearing shall be held before this Court on _____ at 2:00
17 p.m. at 501 "I" Street, Sacramento, CA 95814, Courtroom 7, 14th Floor to consider: (i) whether
18 the proposed settlement of the Action on the terms and conditions provided for in the Agreement is
19 fair, reasonable and adequate and should be given final approval by the Court; (ii) whether the
20 Final Approval Order and Judgment should be entered; (iii) whether to award payment of
21 attorneys' fees, costs, and expenses to Class Counsel; and (iv) whether to award payment of the
22 requested incentive award.

23 17. The deadline for the Plaintiff to file and serve papers in support of his application
24 for final approval of the Stipulation of Settlement, as well as Class Counsel's motion for fees,
25 costs, and incentive awards, shall be at least 21 days before the Objection Deadline. The deadline
26 for the parties to file and serve any response to any timely objections shall be 14 days after the
27 Objection deadline.

1 18. In order to protect its jurisdiction to consider the fairness of this Agreement and to
2 enter a Final Approval Order and Judgment having binding effect on all Settlement Class
3 Members, the Court hereby enjoins all Settlement Class Members, and anyone who acts or purports
4 to act on their behalf, from pursuing all other proceedings in any state or federal court or any forum
5 that seeks to address any Released Party's or Settlement Class Member's rights or claims relating
6 to, or arising out of, any of the Released Claims.

7 19. Settlement Class Members shall be bound by all determinations and judgments in
8 the Action concerning the Action and/or Agreement, whether favorable or unfavorable.

9 20. In the event that the Agreement is terminated pursuant to the provisions of the
10 Agreement, then (i) the Agreement shall be null and void, and shall have no further force and effect
11 with respect to any Party in this Action, and shall not be used in this Action or in any other
12 proceeding for any purpose; (ii) all negotiations, proceedings, and statements made in connection
13 therewith shall be without prejudice to any person or Party hereto, shall not be deemed or
14 construed to be an admission by any Party of any act, matter, or proposition, and shall not be used
15 in any manner or for any purpose in any subsequent proceeding in this Action or in any other
16 litigation in any court or other proceeding; and (iii) other than as expressly preserved by the
17 Agreement in the event of its termination, the Agreement shall have no further force and effect
18 with respect to any Party and shall not be used in the Action or any other proceeding for any
19 purpose.

20 21. The Court reserves the right to adjourn the date of the Final Approval Hearing
21 without further notice to the members of the Settlement Class, and retains jurisdiction to consider
22 all further applications arising out of or connected with the proposed Settlement. The Court may
23 approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate,
24 without further notice to the Settlement Class. The Parties may, without further approval from the
25 Court, agree to and adopt such amendments, modifications, and expansions of the Agreement and
26 its implementing documents so long as they are consistent in all material respects with this order
27 and do not affect the rights of the Settlement Class.

22. The dates for each of the deadlines issued in this order are summarized below:

Event	Triggering Event	Date
Website Posted	Fourteen (14) days after entry of an order granting preliminary approval	
Dissemination of Notice	Fourteen (14) days after entry of an order granting preliminary approval	
Deadline for Class Representatives to file motion in support of final settlement approval	Twenty-one (21) days before claim, objection and opt-out deadline	
Deadline for Class Representatives to file fee and expense application(s)	Twenty-one (21) days before claim, objection and opt-out deadline	
Deadline for class members to request exclusion from class	Sixty (60) days after the dissemination of Notice	
Deadline for class members to submit an objection	Sixty (60) days after the dissemination of Notice	
Deadline for Parties to respond to objections	Fourteen (14) days after claim, objection and opt-out deadline	
Final settlement approval hearing	_____ at 2:00 p.m.	
Website taken down	Thirty (30) days after final resolution of appeals and distribution of Settlement Fund	

IT IS SO ORDERED.

Dated: _____

 Honorable Morrison C. England, Jr.
 United States District Judge