

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by Plaintiff Mike Cortes (“Plaintiff”), individually and on behalf of the class of persons he seeks to represent, and by Defendant National Credit Adjusters, LLC (“NCA”). Plaintiff and NCA are referred to collectively in this Agreement as the “Parties.”

RECITALS

1.01. On April 20, 2016, Plaintiff Mike Cortes filed a Complaint in the United States District Court for the Eastern District of California (the "Court") entitled *Mike Cortes, on Behalf of Himself and all Others Similarly Situated v. National Credit Adjustors, LLC*, Case No. 2:16-cv-00823-MCE-EFB (the “Action”). The Complaint in the Action alleges that NCA violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA") by using an automatic telephone dialing system or an artificial or prerecorded voice to call cellular phones without the prior express consent of Plaintiff and the putative class members. The Complaint in the Action further alleges that NCA violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”) and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, *et seq.* (“RFDCPA”).

1.02. On June 8, 2016, at Plaintiff’s request, the Clerk of the Court entered NCA’s default.

1.03. On August 2, 2017, on Plaintiff’s unopposed Motion to Certify Class and Motion for Default Judgment, the Court granted Plaintiff’s motion for class certification and for default judgment on the TCPA claim only, appointed Plaintiff Cortes as a class representative, and appointed Bursor & Fisher, P.A. as class counsel. See ECF No. 10. The Court held the issue of damages in abeyance until after discovery had been conducted.

1.04 On August 3, 2018, the Court granted Plaintiff’s unopposed Motion for Approval of Notice Plan, Setting Aside Default Judgment for Duration of Notice Period, and Modification of Class Definition. ECF No. 20.

1.05. Pursuant to the Court’s August 3, 2018 Order, the following class (the “Certified Class”) has been certified:

All persons within the United States who (a) are current or former subscribers

of the Call Management¹ applications: (b) and received one or more calls; (c) on his or her cellular telephone line; (d) made by or on behalf of Defendant National Credit Adjustors, LLC (NCA); (e) for whom NCA 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.

1.06. As discussed in Plaintiff's Motion for Approval of Notice Plan, Setting Aside Default Judgment for Duration of Notice Period, Plaintiff's investigation in discovery shows that there are 3,932 members of the Certified Class. See ECF No. 15-1, at 4-5; *id.*, at Ex. 1 (Matt Rateliff Declaration).

1.07. The Court's August 3, 2018 Order required that Plaintiff "shall cause a copy of the Post-Card notice to be sent by regular mail to all Class Members for whom CEG has identified mailing addresses," and (2) "cause a copy of the long-form class notice to be posted on a dedicated website together with links to certain case documents." Pursuant to the Court's Order, the Post-Card and website notice were effected on August 10, 2018, and class members had until October 9, 2018 to request to be excluded. No class members requested to be excluded.

1.08. On September 4, 2018, NCA filed a Motion to Set Aside Default, which was fully briefed on September 27, 2018.

Defendant's motion was initially taken under submission and then subsequently set for hearing on February 7, 2019.

1.09. On November 20, 2018, Plaintiff filed a Motion for Damages and Costs, which was fully briefed on January 3, 2019 and taken under submission.

1.10. On January 18, 2019, the Parties participated in a full day mediation session with Martin Quinn, Esq., of JAMS on January 18, 2019, and, over the course of the next few weeks, ultimately executed a binding Term Sheet setting out the material terms of a class action settlement on February 5, 2019. The Parties then engaged in months of negotiations concerning execution of a full-length settlement agreement. In August 2019, it became apparent that a settlement term providing for debt waiver could not be satisfied given the accounts balances of the Certified Class. Accordingly, the Parties negotiated over the course of the next several months on the terms of an

¹ The Call Management applications are PrivacyStar, Metro Block-It, Metro Name-ID, CallWatch, and Call Detector cellphone applications.

additional proposed class to satisfy this settlement term, culminating in the execution of the present class action settlement agreement.

1.11. On February 20, 2020, Plaintiff filed an Amended Class Action Complaint. The Amended Class Action Complaint added the following proposed class, called the “2016 California Class”: “All persons (a) in California; (b) called by or on behalf of Defendant; (c) between January 1, 2016 through December 31, 2016; (d) regarding a purported debt owed; (e) using an artificial or prerecorded voice or an automatic telephone dialing system as defined under the TPCA.” The Parties’ investigation shows that there are 1,222 members of the 2016 California Class.

1.12. Despite the Court’s certification orders and the classes identified in Plaintiff’s Amended Class Action Complaint, NCA denies that any facts exist supporting the class definitions set forth in Section 1.05 or 1.11, including NCA making such calls or operating such a dialing system, and thus denies any wrongdoing, liability or violations of the law, and does not agree that class certification is appropriate. Regardless, the above classes of individuals – the same 3,932 persons identified at class certification as being members of the Certified Class, and the 1,222 persons that the Parties have identified as members of the 2016 California Class – will be considered Settlement Class Members eligible to receive a payment from the Settlement Fund as defined below in Section 2.28.

1.13. Further NCA denies all other material allegations of the Complaint. NCA specifically denies that it called either Plaintiff or putative class members without their consent, that it violated the TCPA, FDCPA, or RFDCPA, or that Plaintiff and putative class members are entitled to any relief from NCA. NCA further contends that the Action would not be amenable to class certification if class certification were opposed by NCA. Nevertheless, taking into account the uncertainty and risks inherent in any litigation, NCA has concluded that further defense of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Agreement, subject to Court approval.

1.14. This Agreement resulted from good faith, arm’s length settlement negotiations over the course of more than a calendar year, including a full-day mediation session with Martin Quinn, Esq., of JAMS on January 18, 2019.

1.15. Based on their investigation and the negotiations described in this Agreement, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks,

uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by class members pursuant to this Agreement, that a settlement with NCA on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Class Members.

1.16. Assuming the Court grants the Motion for Final Approval of the Agreement, the Action will be dismissed with prejudice.

1.17. The Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

1.18. The settlement contemplated by this Agreement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

DEFINITIONS

2.01. "**Action**" means the Action captioned *Mike Cortes, on Behalf of Himself and all Others Similarly Situated v. National Credit Adjusters, LLC*, which was assigned Case No. 2:16-cv-00823-MCE-EFB.

2.02. "**Agreement**" means this Settlement Agreement and Release (including all exhibits and attachments hereto).

2.03. "**CAFA Notice**" means the notice required by 28 U.S.C. Section 1715(b).

2.04. "**Claims Administrator**" means R/G2 Claims Administration, LLC.

2.05. "**Class Counsel**" means Scott A. Bursor, L. Timothy Fisher, and Yeremey O. Krivoshey of Bursor & Fisher, P.A.

2.06. "**Class Period**" means April 21, 2012 until August 2, 2017 as to members of the Certified Class, and January 1, 2016 until December 31, 2016 as to members of the 2016 California Class.

2.07. "**Court**" means the United States District Court for the Eastern District of California, and the U.S. District Judge Morrison C. England, Jr. or any subsequent judge to whom the Action is assigned.

2.08. “**Class List**” refers to the following two class lists: (1) the list of those 3,932 individuals within the Certified Class whose identities and contact information have been ascertained, compiled, and updated at the direction of Class Counsel and through the combined efforts of First Orion Corp., Class Experts Group, and RG/2 Claims Administration, LLC, as described in the declarations of Matt Rateliff, Randall A. Snyder, Anya Verkhovskaya, and Tina Chiango on the record in the Action. See ECF No. 15-1, Ex. 1 (Declaration of Matt Rateliff); id., Ex. 2 (Declaration of Randall A. Snyder); id., Ex. 3 (Declaration of Anya Verkhovskaya); ECF No. 29-3 (Declaration of Tina Chiango), and (2) the list of those 1,222 individuals within the 2016 California Class whose identities and contact information have been ascertained, compiled, and updated at the direction of NCA’s counsel, and provided to Class Counsel on February 17, 2020.

2.09. “**Effective Date**” means the first business day after which all of the events and conditions specified in Section 14.01 have been met and have occurred.

2.10. “**Final Approval Hearing**” means the hearing held by the Court to determine whether to finally approve the settlement of this Action as set forth in this Agreement as fair, reasonable and adequate.

2.11. “**Final Approval Order**” means the Court's Order approving the Agreement as fair, reasonable and adequate and entering Final Judgment.

2.12. “**Final Judgment**” means the date when the Judgment has become final as provided in Section 12.11.

2.13. “**Funding Date**” means the date, which shall be the earliest date that is both after December 8, 2020 and ten (10) days after the Effective Date, on which NCA shall fund the Settlement Fund and perform the Debt Waiver described in Section 5.04.

2.14. “**NCA**” means National Credit Adjusters, LLC, including any of its divisions.

2.15. “**Notice**” means the notices to be provided as set forth in Section 8, including, without limitation, the Postcard Notice and the Website Notice to be posted on the Settlement Website, as described in Sections 8.01 through 8.05. The forms of the Postcard Notice and the Website Notice will comply with notice requirements of Rule 23 of the Federal Rules of Civil Procedure.

2.16. “**Objection Deadline**” means sixty (60) days from mailing of the Postcard Notice.

2.17. “**Opt-Out Deadline**” means sixty (60) days from mailing of the Postcard Notice.

2.18. “**Person**” shall mean, without limitation, any individual and his or her spouse, heirs, successors, representatives, and assigns.

2.19. **“Plaintiff” or “Class Representative”** means Mike Cortes.

2.20. **“Postcard Notice”** means the notice of settlement sent in a postcard format summarizing the terms of the settlement and advising Settlement Class Members of their options in excluding themselves or objecting to the settlement.

2.21. **“Preliminary Approval Order”** means the Court's Order entered in connection with the Preliminary Approval Hearing.

2.22. **“Released Claims”** means those claims released in Section 13.

2.23. **“Released Parties”** means National Credit Adjusters, LLC and its predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and any and all of its past, present, and future officers, directors, employees, stockholders, successors, attorneys, insurers, reinsurers, claim service manager, and subrogees of any of the foregoing.

2.24. **“Releasing Parties”** means Plaintiff, Settlement Class Members, and their respective present or past estates, heirs, assigns, successors, agents, attorneys, executors, and any other representatives of any of these Persons and entities.

2.25. **“Settlement Class”** means (1) the 3,932 individuals within the class certified in the Action (the “Certified Class”), to wit: 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 National Credit Adjusters, LLC (NCA); (e) for whom NCA 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; and (2) the 1,222 individuals within the “2016 California Class” specified in the Amended Class Action Complaint, to wit: All persons (a) in California; (b) called by or on behalf of Defendant; (c) between January 1, 2016 through December 31, 2016; (d) regarding a purported debt owed; (e) using an artificial or prerecorded voice or an automatic telephone dialing system as defined under the TPCA.

2.26. **“Settlement Class Member”** means a Person who falls within the definition of the Settlement Class and who does not request exclusion from the Settlement.

2.27. **“Settlement Costs”** means all costs and expenses incurred in the litigation by Plaintiff, including but not limited to Plaintiff's attorneys' fees, cost of suit, cost of litigation, cost

of notice and claims administration, and all other costs and expenses incurred in this Action by Plaintiff or on behalf of himself, and/or the Settlement Class.

2.28. **“Settlement Fund”** means the sum of one million and eight-hundred thousand dollars (\$1,800,000.00) that NCA agrees to pay to settle this Action in full. The Settlement Fund shall be used for Settlement Costs and all amounts to be paid to Settlement Class Members and Class Counsel under this Agreement, including any incentive award to the Class Representative, and any fee, expense, and costs award to Class Counsel. Under no circumstances shall NCA be required to pay any amount in excess of the \$1,800,000 Settlement Fund to resolve the Action. The Settlement Fund represents the total extent of NCA’s monetary obligations under this Agreement. NCA shall not, under any circumstances, be obligated to pay any other additional amounts in connection with this Agreement. The Settlement Fund shall be maintained in an interest-bearing account if possible, at a bank chosen by the Claims Administrator which is insured by the Federal Deposit Insurance Corporation and that has total assets of at least five-hundred million dollars (\$500,000,000) and a short-term deposit rating of at least P-1 (Moody’s) or A-1 (Standard & Poor’s).

2.29. **“Settlement Website”** means the Internet website operated by the Claims Administrator as described in Section 8.05.

2.30. **“Website Notice”** means the long-form of Notice describing the terms of this Agreement in a question and answer format, which will be made available on the Settlement Website as described in Section 8.04, informing the Settlement Class Members in detail of their rights and obligations related to this Settlement, and advising them how to exclude themselves from the settlement, or to object.

BOTH SIDES RECOMMEND APPROVAL OF THE SETTLEMENT

3.01. NCA’s Position on the Default Certification/Settlement Class. Despite the Court’s certification order, NCA disputes that a class is ascertainable, would be manageable or that common issues predominate over individual ones, and denies that a litigation class would be certified on the claims asserted in the Action if NCA opposed class certification. However, solely for purposes of avoiding the expense and inconvenience of further litigation, NCA agrees to the certification of the Class defined in Sections 2.25 for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3). NCA would not be precluded from seeking to challenge class certification in further proceedings in the Action or in any other action if the Settlement is not finalized or finally

approved. No agreements made by or entered into by NCA in connection with the Agreement may be used by Plaintiff, any Person in the Class or any other Person, to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding, or otherwise.

3.02. Plaintiff's Belief in the Merits of Case. Plaintiff believes that the claims asserted in the Action have merit and that the evidence developed to date supports those claims. This Settlement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions that NCA has asserted.

3.03. Plaintiff Recognizes the Benefits of Settlement. Plaintiff recognizes and acknowledges, however, the expense and amount of time which would be required to continue to pursue the Action against NCA, as well as the uncertainty, risk and difficulties of proof inherent in prosecuting such claims on behalf of the Class. Plaintiff has concluded that it is desirable that the Action and any Released Claims be fully and finally settled and released as set forth in this Agreement. Plaintiff and Class Counsel believe that this Agreement confers substantial benefits upon the Class and is in the best interests of individual Class Members.

CLASS COUNSEL AND CLASS REPRESENTATIVES

4.01. Class Representative and Class Counsel Appointment. Mike Cortes is the Class Representative for the Settlement Class, and the attorneys Scott A. Bursor, L. Timothy Fisher, and Yeremey O. Krivoshey of Bursor & Fisher, P.A. are Class Counsel.

SETTLEMENT CLASS TERMS AND RELIEF

5.01. Total Payment. NCA shall pay \$1,800,000.00 to settle the Action and obtain a full release from Settlement Class Members of all Released Claims. The Settlement Fund established by NCA will be used to pay any and all Settlement Costs and other relief. NCA shall not, under any circumstances, be obligated to pay any other amounts in connection with this Agreement.

5.02. Amount Paid to Settlement Class Members. Settlement Class Members will receive a cash payment, the amount of which is dependent upon the Settlement Costs, the service award to the Class Representative, and the number of Settlement Class Members who opt-out. Settlement Class Members shall be paid on a *pro rata* basis from the amount remaining in the Settlement Fund after payment of all Settlement Costs and the service award to the Class

Representative from the Settlement Fund such that the entirety of the Settlement Fund shall be exhausted.

5.03. Qualifying for Payment. Subject to Court approval, each Settlement Class Member who does not timely and validly request exclusion from the Settlement as required in this Agreement shall be eligible for a settlement payment without submitting a claim form.

5.04. Debt Waiver. Each Settlement Class Member who has an existing debtor account owned by NCA and/or its related or affiliated entities that has an outstanding balance will receive a credit on that account equal to the amount of the outstanding balance, such that the debt of each such Settlement Class Member will be waived (the “Debt Waiver”). NCA will be responsible for issuing 1099C forms for any Settlement Class Member who receives Debt Waiver. The Parties understand and agree that not all Settlement Class Members will be eligible for Debt Waiver – only those class members who have an existing debt account owned by NCA and/or its related or affiliated entities that has an outstanding balance are entitled to the Debt Waiver. Based on NCA’s records, 3,705 members (out of 3,932) of the Certified Class are eligible to receive the Debt Waiver for a total of \$3,530,375.64 in waived debt and all 1,222 members of the 2016 California Class are eligible to receive the Debt Waiver for a total of \$1,466,125.24 in waived debt, such that the total, aggregate amount of the Debt Waiver will be \$4,996,500.88.

NCA has produced documents sufficient to allow Class Counsel to confirm the number of Settlement Class Members who are eligible for Debt Waiver and the total amount of the Debt Waiver.

ATTORNEYS' FEES, COSTS, AND EXPENSES AND PAYMENT TO CLASS REPRESENTATIVES

6.01. Attorneys’ Fees, Costs and Expenses. Class Counsel shall move the Court for an award of attorneys’ fees, costs and expenses to be paid from the Settlement Fund. Payment of any award of attorneys’ fees, costs and expenses shall be made from the Settlement Fund, and not in addition thereto. Should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund to be distributed to Settlement Class Members. Upon appropriate Court order so providing, any attorneys’ fees, costs and expenses awarded to Class Counsel by the Court shall be paid by the Claims Administrator from the Settlement Fund no later than five (5) business days after the Funding Date.

6.02. Incentive Award. The Class Representative shall be paid an incentive award for the time and effort he has personally invested in this Action, upon approval by the Court. NCA shall not object to such incentive payment to be paid to Plaintiff from the Settlement Fund provided it does not exceed \$2,000, subject to Court approval. Within five (5) business days after the Funding Date and after receipt of Plaintiff's completed W-9 forms, the Claims Administrator shall pay to Class Counsel the amount of incentive payment awarded by the Court, and Class Counsel shall disburse such funds to Plaintiff.

6.03. Settlement Independent of Award of Fees, Costs and Incentive Payments. The payments of attorneys' fees, costs, and expenses and the incentive payment set forth in Sections 6.01 and 6.02 are subject to and dependent upon the Court's approval of the Agreement as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Agreement is not dependent upon the Court's approving Plaintiff's requests for such payments or awarding the particular amounts sought by Plaintiff. In the event the Court declines Plaintiff's requests or awards less than the amounts sought for an incentive payment or attorneys' fees, costs and expenses, this Settlement shall continue to be effective and enforceable by the Parties.

PRELIMINARY APPROVAL

7.01. Order of Preliminary Approval. As soon as practicable after the execution of this Agreement, Plaintiff shall move the Court for entry of the Preliminary Approval Order. Pursuant to the motion for preliminary approval, the Plaintiff will request that:

- A. the Court preliminarily approve the settlement and this Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval;
- B. the Court approve the forms of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- C. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,
- D. the Court set the Objection Deadline and the Opt-Out Deadline.

NOTICES

8.01. Generally. The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from the class or object to the Settlement Agreement

or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, and (b) send copies of such papers via mail, hand, or overnight delivery service to Class Counsel and NCA's counsel.

8.02. Mailing of Postcard Notice. The Claims Administrator shall send the Postcard Notice to the Settlement Class via first class mail within fourteen (14) days after entry of the Preliminary Approval Order, or as soon as practicable thereafter. The Claims Administrator shall use the Class List to obtain each Settlement Class member's last known address and shall check each address provided in the Class List against the United States Post Office National Change of Address Database before the initial mailing. If and to the extent deemed necessary by the Claims Administrator, the last known address of Settlement Class Members will be subject to confirmation or updating as follows: (a) the Claims Administrator may conduct a reasonable search to locate an updated address for any Settlement Class member whose Postcard Notice is returned as undeliverable; (b) the Claims Administrator shall update addresses based on any forwarding information received from the United States Post Office; and (c) the Claims Administrator shall update addresses based on information it receives and through any requests received from Settlement Class members.

8.03. Re-Mailing of Returned Postcard Notices. Any Postcard Notices that are returned as non-deliverable with a forwarding address or with an updated address shall promptly be re-mailed by the Claims Administrator to such forwarding address.

8.04. Website Notice. The Claims Administrator shall post on the website a long form of the Notice in a Question and Answer format which sets forth the details of the settlement, and the rights of Settlement Class members to participate in the Settlement, to exclude themselves, or to object to the settlement.

8.05. Settlement Website. Within 14 days of the entry of the Preliminary Approval Order, the Claims Administrator shall maintain and administer a dedicated settlement website (www.NCASettlement.com or something substantially similar) containing class information and related documents. At a minimum, such documents shall include the Settlement Agreement and

Exhibits, if any, the Notice, a Question & Answer Form Notice, the Preliminary Approval Order, the operative Complaint, and when filed, the application for attorneys' fees, costs and expenses and the Final Approval Order.

8.06. CAFA Notice. The Claims Administrator shall be responsible for timely compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, by providing required notice to the United States Attorney General and the attorneys general of all states in which a member of the Settlement Class resides. The Claims Administrator shall provide proof of such compliance by filing a confirming declaration with the Court within 10 court days of completion.

ADMINISTRATION AND NOTIFICATION PROCESS

9.01. Third-Party Claims Administrator. The Claims Administrator shall be responsible for all matters relating to the administration of this settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned mail, setting up and maintaining the settlement website, fielding inquiries about the settlement, directing the mailing of settlement payments to Settlement Class Members, maintaining reasonably detailed records of exclusion requests and objections, and any other tasks reasonably required to effectuate the administration of this Agreement. The Claims Administrator will provide at a minimum bi-monthly status updates to counsel for all Parties and will respond to the Parties' questions about the status of the case or other related matters in a timely manner.

9.02. Payment of Notice and Claims Administration Costs. All settlement administration costs, including the Claims Administrator fees, shall be taken directly from the Settlement Fund, once created. If this Agreement is terminated or fails to become effective, NCA shall be responsible for payment to the Claims Administrator of any claims administration costs necessarily incurred by the Claims Administrator, unless such termination or failure is the result of bad faith or improper conduct of Plaintiff or Class Counsel.

9.03. Distribution of the Settlement Fund. The Claims Administrator shall distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

A. no later than five (5) business days after the Funding Date, the Claims Administrator shall pay taxes and tax-related expenses, if any, or, at the Claims Administrator's discretion, it shall reserve an amount of the Settlement Fund sufficient to pay taxes and tax-related expenses as described in Section 16;

B. no later than five (5) business Days after the Funding Date, the Claims Administrator shall pay to the Class Representative any incentive award ordered by the Court, as described in Section 6.02;

C. no later than five (5) business Days after the Funding Date, the Claims Administrator shall pay to Class Counsel any award of attorneys' fees, costs, or expenses ordered by the Court, as described in Section 6.01;

D. no later than twenty (20) days after the Funding Date, the Claims Administrator shall be paid for any unreimbursed costs of administration;

E. no later than thirty (30) days after the Funding Date, the Claims Administrator shall pay the Settlement Class Members pursuant to Section 5.02; and

F. on the final distribution date, which is the earlier of (i) the date as of which all the checks for Settlement Awards have been cashed; or (ii) 120 days after the date on which the last check for a Settlement Award was issued, the Claims Administrator shall pay any amount remaining in the Settlement Fund account from uncashed settlement checks to a *cy pres* recipient mutually selected by the Parties and subject to Court approval.

OPT-OUTS AND OBJECTIONS

10.01. Opting Out of the Settlement. A member of the Settlement Class may request to be excluded from the Settlement by sending a complete written request to the Claims Administrator postmarked on or before the Opt-Out Deadline to be excluded from the Settlement Class. The complete written request shall include the member's name, his or her address, the name of the Action (i.e., *Cortes v. National Credit Adjusters*), a statement that he or she wishes to be excluded from the Settlement Class and the telephone number on which he or she received a call by or on behalf of NCA during the Class Period. A request to be excluded that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Persons serving such a request shall be deemed to remain members of the Settlement Class and shall be bound by this Settlement Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (1) be bound by any orders or the Final Judgment; (2) be entitled to relief under this Settlement Agreement; (3) gain any rights by virtue of this Settlement Agreement; nor (4) be entitled to object to any aspect of this Settlement Agreement. "Mass" or "class" requests for exclusion shall not be allowed.

10.02. Objections. Any Settlement Class Member who intends to object to the fairness of this settlement must file a written objection with the Court, and provide a copy of the objection to the Claims Administrator, Class Counsel and counsel for NCA no later than the Objection Deadline as set forth below:

A. In the written objection, the Settlement Class Member must state his or her full name, address, the reasons for his or her objection, and to ensure membership in the Settlement Class, the telephone number on which he or she received a call by or on behalf of NCA during the Class Period. Any supporting documents, evidence, and citations must also be attached to the Objection.

B. Any Settlement Class Member who objects may, but is not required to, appear at the Fairness Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement. A Settlement Class Member or his or her attorney intending to make an appearance at the Fairness Hearing must: (a) file a notice of appearance with the Court no later than ten (10) days prior to the Fairness Hearing, or as the Court may otherwise direct; and (b) serve a copy of such notice of appearance on all counsel for all Parties. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Fairness Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Fairness Hearing.

FINAL APPROVAL ORDER AND JUDGMENT

11.01. No later than fourteen (14) calendar days prior to the Final Approval Hearing, the Claims Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

11.02. If the Settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than fourteen (14) calendar days prior to Final Approval Hearing:

A. The Parties shall both request, individually or collectively, that the Court enter a Final Approval Order, with Class Counsel filing a memorandum of points and authorities in support of the motion; and,

B. Counsel for the Class and NCA may file a memorandum addressing any objections submitted to the Settlement.

11.03. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the Agreement should be finally approved as fair, reasonable, and adequate, whether any objections to the Agreement should be overruled, whether the fee award and incentive payments to the Class Representative should be approved, and whether a judgment finally approving the Agreement should be entered.

11.04. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

A. finds that the Notice provided satisfies the requirements of due process and Fed. R. Civ. P. 23(e)(1);

B. finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;

C. finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class Members, that each Settlement Class Member shall be bound by this Agreement, including the releases in 13.01 through 13.03, and that this Settlement Agreement should be and is approved;

D. dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against NCA in the Action;

E. permanently enjoins each and every Settlement Class Member from bringing, joining, prosecuting, or continuing to prosecute any Released Claims against NCA or the Released Parties; and,

F. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement.

FINAL JUDGMENT

12.01. The Judgment entered at the Final Approval Hearing approving the Settlement Agreement and determining the fee award and incentive award shall be deemed final one business

day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court's Final Judgment approving this Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award and/or incentive award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

RELEASE OF CLAIMS

13.01. Upon the Effective Date, and in consideration of the Settlement relief described herein, the Plaintiff, Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished and discharged all Released Claims (as defined below) against the Released Parties. The release does not apply to Persons who timely opt-out of the Settlement.

13.02. "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the TCPA, FDCPA and/or RFDCPA, and their application to the Released Parties' use of an "automatic telephone dialing system" or an "artificial or prerecorded voice" to contact or attempt to contact Settlement Class Members in connection with NCA's attempt to collect on alleged debts owed, relevant regulatory or administrative promulgations and case law, any applicable Federal Communications Commission regulations or orders, or other such claims that were brought or could have been brought in the

Action relating to telephone calls by the Released Parties, and any other federal or state statutory or common law claims arising from the use of automatic telephone dialing systems and/or an artificial or prerecorded voice to call cellular telephones. The Parties acknowledge and agree that the Release of Claims set forth herein does not release any claims held by the States or other governmental entities.

13.03. “Unknown Claims” means claims that could have been raised in the Action and that Plaintiff, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties, or might affect his, her or its decision to agree, to object or not to object to the Settlement. Upon the Effective Date, Plaintiff, the Settlement Class, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiff, the Settlement Class, and the Releasing Parties acknowledge, or are deemed to have acknowledged, that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

**CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION
OR TERMINATION OF AGREEMENT**

14.01. The Effective Date of this Settlement Agreement shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

- A. This Agreement has been signed by the Parties, Class Counsel and NCA’s Counsel;
- B. The Court has entered an order granting Preliminary Approval of the Agreement;
- C. The Court has entered an order finally approving the Settlement Agreement, following notice to the Settlement Class and a Final Fairness Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement; and
- D. The Final Judgment has become Final, as defined above, or in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) to which the Parties have consented, that Alternative Judgment has become final, and all deadlines to appeal that Final Judgment has expired.

14.02. If some or all of the conditions specified in Section 14.01 are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be cancelled and terminated subject to Section 14.03, unless Class Counsel and NCA’s Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court’s decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive award to the Class Representative, regardless of the amounts awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

14.03. Either Side May Terminate the Agreement. Plaintiff and NCA shall each have the right to unilaterally terminate this Agreement by providing written notice of his, their or its election

to do so ("Termination Notice") to all other Parties hereto within ten (10) calendar days of any of the following occurrences:

- A. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
- B. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- C. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a material way, unless such modification or amendment is accepted in writing by all Parties;
- D. the Effective Date does not occur; or
- E. any other ground for termination provided for elsewhere in this Agreement occurs.

14.04. Revert to Status Quo. If either Plaintiff or NCA terminates this Agreement as provided herein, the Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, any orders entered by the Court in connection with this Agreement shall be vacated, and this Agreement shall not be used for any purpose whatsoever against any of the Parties. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to NCA.

NO ADMISSION OF LIABILITY

15.01. NCA denies any liability or wrongdoing of any kind associated with the alleged claims in the operative complaint. Despite the entry of Default, NCA has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission by NCA of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by NCA that the Action is properly brought on a class or representative basis, or that a class would have been certified in this Action, other than for settlement purposes, if NCA opposed the motion for certification. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing

or liability on the part of NCA or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of NCA in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

15.02. Pursuant to Federal Rules of Evidence Rule 408 and any similar provisions under the laws of other states, neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Agreement.

TAXES

16.01. Qualified Settlement Fund. The Parties agree that the account into which the Settlement Fund may be deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1.

16.02. Claims Administrator is “Administrator”. For the purpose of §1.468B of the Code and the Treasury regulations thereunder, RG/2 Claims Administration, LLC shall be designated as the “administrator” of the Settlement Fund. The Claims Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B 2(k)). Such returns on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Section 9.03.

16.03. Expenses Paid from Fund. Any expenses reasonably incurred by the Claims Administrator in carrying out the duties described in this Agreement shall be paid by the Claims Administrator from the Settlement Fund pursuant to its estimates and invoice for services rendered, in accordance with Section 9.03.

16.04. Responsibility for Taxes on Distribution. Any person or entity that receives a distribution from the Settlement Fund pursuant to Section 9.03 shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

MISCELLANEOUS

17.01. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement.

17.02. Governing Law. This Agreement shall be governed by the laws of the State of California.

17.03. Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiff and all Settlement Class Members for purposes of the administration and enforcement of this Agreement.

17.04. No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

17.05. Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court, or by a mediator upon agreement of the Parties.

17.06. Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

17.07. Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

17.08. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

17.09. No Oral Modifications. This Agreement may not be amended, modified, altered or otherwise changed in any manner, except by a writing signed by a duly authorized agent of NCA and Plaintiff, and approved by the Court.

17.10. Press Releases. The Parties and their counsel agree they will not issue any press releases concerning this Settlement Agreement or the resolution of the Action.

17.11. Advice of Counsel. The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

17.12. Effect of Agreement. Whether the Effective Date occurs or this Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

A. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or fee award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

B. is, may be deemed, or shall be used, offered or received against NCA as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

C. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by NCA, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

D. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Moreover, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral

estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

E. is, may be deemed, or shall be construed against Plaintiff, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

F. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

17.13. No Waiver. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

17.14. Force of Terms. The breach of one or more provisions of this Agreement by one party shall not be sufficient to void any other terms of this Agreement, which shall remain in force. However, the non-breaching party shall retain all of his, her or its rights under applicable law to obtain a remedy for such breach.

17.15. Exhibits. If there are any Exhibits attached to this Settlement Agreement, all of the Exhibits are material and integral parts hereof and are fully incorporated herein by reference. The Parties understand portions of those Exhibits may be modified as deemed necessary by the Parties and the Court, and so long as there is no material change in the terms, the Parties shall not refuse to accept such modifications.

17.16. Integration. This Agreement and any Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

17.17. Fees and Costs. Except as otherwise provided herein, each Party shall bear its own

attorneys' fees and costs incurred in any way related to the Action.

17.18. Warranty. Plaintiff represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other Person or party and that he is fully entitled to release the same. NCA warrants that the person signing this Agreement on its behalf has full authority to do so.

17.19. Notices. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and may be sent by electronic mail, fax or hand delivery, postage prepaid, as follows:

If to Class Counsel:

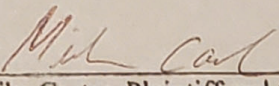
L. Timothy Fisher
Yeremey O. Krivoshey
BURSOR & FISHER, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Email: ltfisher@bursor.com
ykrivoshey@bursor.com

If to counsel for Defendant National Credit Adjusters, LLC:

James K. Schultz
Debbie Kirkpatrick
SESSIONS FISHMAN NATHAN & ISRAEL
1545 Hotel Circle, South 150
San Diego, CA 92108
Telephone: 619-758-1891
Email: jschultz@sessions.legal
dkirkpatrick@sessions.legal

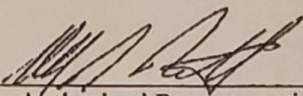
IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this 12th day of March, 2020.

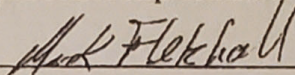
Plaintiff Mike Cortes



Mike Cortes, Plaintiff and Class
Representative

Defendant National Credit Adjusters, LLC

By: 

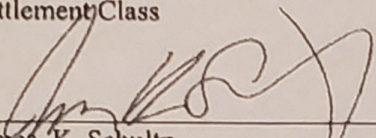
Its Authorized Representative
[Name] 

APPROVED AS TO FORM:



Yerey O. Krivoshey
BURSOR & FISHER, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455

Attorney for Plaintiff Mike Cortes and the
Settlement Class



James K. Schultz
SESSIONS FISHMAN NATHAN &
ISRAEL
1545 Hotel Circle, South 150
San Diego, CA 92108
Telephone: 619-758-1891

Attorney for Defendant National Credit
Adjusters, LLC