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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) CONSOLIDATING
THE HORTON AND KREJCI
CASES; (2) CONDITIONALLY
CERTIFYING A SETTLEMENT
CLASS; (3) PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT; (4)
APPOINTING CLASS
COUNSEL; (5) APPOINTING
CLASS REPRESENTATIVES;
(6) APPROVING NOTICE PLAN;
AND (7) SCHEDULING FINAL
APPROVAL HEARING**

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
10 Upon review and consideration of Plaintiffs' Motion for Preliminary
11 Approval of Class Action Settlement, (doc. nos. 289, 74), including the Parties'
12 Settlement Agreement and Release (the "Settlement Agreement" or
13 "Agreement") and all exhibits thereto, and the arguments of counsel, it is
14
15 HEREBY ORDERED the motion is **GRANTED** as follows:

16 1. **Consolidation.** For settlement purposes, the Court consolidates
17 *Horton vs. Cavalry Portfolio Services, LLC*, Case No. 13CV0307-JAH-WVG and
18 *Krejci vs. Cavalry Portfolio Services, LLC*, Case No. 16-cv-00211-JAH-WVG.
19 Pursuant to Federal Rule of Civil Procedure 42(a), the actions (collectively, the
20 "Litigation") involve common questions of law and fact.
21

22
23 2. **Settlement Terms.** Unless otherwise defined herein, all capitalized
24 terms in this Order shall have the meanings ascribed to them in the Agreement.
25

26 3. **Jurisdiction.** The Court has jurisdiction over the subject matter of
27 the Litigation, the Parties, and all members of the Settlement Class.
28

1 4. **Scope of Settlement.** The Agreement resolves all Released Claims
2 against Defendant Cavalry Portfolio Services, LLC (“Cavalry”), as defined in
3 section 10 of the Settlement Agreement.
4

5 5. **Preliminary Approval of Proposed Settlement.** The Court has
6 conducted a preliminary evaluation of the Settlement as set forth in the
7 Agreement. Based on this preliminary evaluation, the Court finds that: (a) the
8 Settlement is fair, reasonable and adequate, and within the range of possible
9 approval; (b) the Settlement has been negotiated in good faith at arm's length
10 between experienced attorneys familiar with the legal and factual issues of this
11 case; (c) with respect to the forms of notice of the material terms of the
12 Settlement to persons in the Settlement Class for their consideration (Exs. A, B,
13 and C to the Agreement), that notice provides due and sufficient notice to the
14 Settlement Class and fully satisfies the requirements of due process and Federal
15 Rule of Civil Procedure 23; and (d) with respect to the proposed notice plan, the
16 notice program constitutes the best notice practicable under the circumstances.
17 Therefore, the Court grants preliminary approval of the Settlement.
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22 6. **Class Certification for Settlement Purposes Only.** Pursuant to
23 Rule 23 of the Federal Rules of Civil Procedure, the Court conditionally certifies
24 for purposes of this Settlement only, the following Settlement Class:
25

26 All persons who were called on cell phones by Cavalry between
27 February 8, 2009 and January 26, 2016 (“Settlement Class
28 Period”), using the Aspect Ensemble Pro system, or the Avaya

1 Proactive Contact 5.0 system, while attempting to collect debts on
2 1,035,232 Open and Closed Accounts (which will be contained in
3 an electronic file that will be identified in the Settlement
4 Agreement and filed under seal). Excluded from the Settlement
5 Class are (i) individuals who are or were during the Settlement
6 Class Period officers or directors of Cavalry or any of its
7 Affiliates; (ii) any justice, judge or magistrate judge of the United
8 States or any State, their spouses, and persons within the third
9 degree of relationship to either of them, or the spouses of such
10 persons; and (iii) all individuals who file a timely and proper
11 request to be excluded from the Settlement Class.

12 7. The Court makes the following determinations as to certification of
13 the Settlement Class:

14 a. The Settlement Class is so numerous that joinder of all
15 members is impracticable;

16 b. There are questions of law or fact common to the members of
17 the Settlement Class;

18 c. The claims of the Plaintiffs are typical of the claims of the
19 other members of the Settlement Class;

20 d. Plaintiffs are capable of fairly and adequately protecting the
21 interests of the members of the Settlement Class, in connection with the
22 Settlement Agreement;

23 e. Common questions of law and fact predominate over
24 questions affecting only individual members of the Settlement Class;

25 f. The Settlement Class is ascertainable; and
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1 g. Resolution of the Released Claims in this Litigation by way of
2 a nationwide settlement is superior to other available methods for the fair and
3 efficient resolution of the claims of the Settlement Class.
4

5 8. **Designation of Class Representatives.** The Court appoints
6 Plaintiffs Cory Horton and Kevin Krejci as representatives of the Settlement
7 Class (“Class Representatives”) for the sole purpose of seeking a settlement of the
8 Litigation.
9

10 9. **Designation of Class Counsel.** The law firms of Terrell Marshall
11 Law Group PLLC, and Lemberg Law, LLC, are hereby designated as Class
12 Counsel for the Settlement Class.
13

14 10. **Final Approval Hearing.** A hearing regarding final approval of the
15 Settlement will be held at **2:30 p.m. on Monday, September 28, 2020**, to
16 determine, among other things, whether to: (i) finally approve the Settlement as
17 fair, reasonable, and adequate; (ii) dismiss the Released Claims in the Litigation
18 with prejudice pursuant to the terms of the Settlement Agreement; (iii) bind
19 Settlement Class Members by the Releases set forth in the Settlement Agreement;
20 (iv) permanently bar Settlement Class Members who have not opted out of the
21 Settlement from filing, commencing, prosecuting, intervening in, or participating
22 in (as class members or otherwise) any action in any jurisdiction based on the
23 Released Claims; (v) find that the Class Notice as given was the best notice
24 practicable under the circumstances, is due and sufficient notice to the Settlement
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1 Class, and fully satisfies the requirements of due process and Federal Rule of
2 Civil Procedure 23; (vi) approve the plan of distribution of the Debt Relief Fund
3 and the Cash Fund; (vii) finally certify the Settlement Class; and (viii) approve
4 requested Plaintiffs' Attorneys' Fees and Expenses and the proposed Incentive
5 Awards to Plaintiffs.
6

7 **11. Settlement Administrator.** JND Legal Administration is hereby
8 appointed as the Settlement Administrator and shall be required to perform all the
9 duties of the Settlement Administrator as set forth in the Agreement and this
10 Order.
11

12 **12. Class Notice.**

13 a. The Court approves the Class Notice in the Settlement
14 Agreement, including the Mail, Email, and Website Notices attached as Exhibits
15 A, B, and C to the Settlement Agreement and the manner of providing Mail and
16 Email Notice to Settlement Class Members described in Section 6 of the
17 Settlement Agreement. The Court finds that this is the best practicable notice
18 under the circumstances and is reasonably calculated, under all the circumstances,
19 to apprise the Settlement Class Members of the pendency of this Action, the
20 terms of the Settlement Agreement, and their right to object to the Settlement
21 Agreement or exclude themselves from the Settlement Class. The Court further
22 finds that the Mail, Email, and Website Notices are reasonable, constitute due,
23 adequate, and sufficient notice to all persons entitled to receive notice, and meet
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1 the requirements of due process. The Court hereby directs the Parties and the
2 Settlement Administrator to complete all aspects of the Notice Plan **no later than**
3 **May 28, 2020** (“Notice Deadline”).
4

5 b. The Settlement Administrator will file with the Court by no
6 later than **September 14, 2020**, which is fourteen (14) days prior to the Final
7 Approval Hearing, proof that notice was provided in accordance with the
8 Agreement and this Order.
9

10 c. The Class Administrator shall comply with the obligation to
11 give notice under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection
12 with the proposed settlement. No later than fourteen (14) days prior to the Final
13 Approval Hearing, the Class Administrator shall file with the Court one or more
14 declarations stating that it has complied with its notice obligations under 28
15 U.S.C. § 1715.
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18 13. **Claim Submission.** To participate in the Settlement, Settlement
19 Class Members must submit a Claim Form no later than sixty (60) Days after the
20 Mail Notice Deadline. Claims may be submitted by U.S. mail or online through
21 the Settlement Website.
22

23 14. **Exclusion from the Settlement Class.** Any potential Settlement
24 Class Member who wishes to be excluded from the Class must send a written
25 Request for Exclusion to the Settlement Administrator, by first-class mail,
26 postage prepaid, to the address provided in the Mail Notice and Settlement
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1 Website. Any such Request for Exclusion must be postmarked no later than sixty
2 (60) Days after the Mail Notice Deadline.

3 a. To be valid, the Request for Exclusion must: (a) identify the
4 name and address of the potential Settlement Class Member requesting exclusion;
5 (b) provide the cell phone number(s) at which that potential Settlement Class
6 Member was called by Cavalry during the Settlement Class Period; (c) be
7 personally signed by the potential Settlement Class Member requesting exclusion;
8 and (d) contain a statement that reasonably indicates a desire to be excluded from
9 the Settlement.
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13 b. Except for those potential members of the Settlement Class
14 who timely and properly file a Request for Exclusion, all other potential members
15 of the Settlement Class will be deemed to be Settlement Class Members for all
16 purposes under the Agreement, and upon Final Approval, will be bound by its
17 terms, regardless of whether they receive any monetary relief or any other relief,
18 including, but not limited to, the Releases in Section 10 of the Settlement
19 Agreement.
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22 c. If more than 375 members of the Settlement Class properly
23 and timely opt out of the Settlement, then the Settlement may be deemed null and
24 void upon notice by Cavalry without penalty or sanction.
25

26 **15. Objections and Appearances.** Any Settlement Class Member who
27 has not filed a timely written Request for Exclusion and who complies with the
28

1 requirements of this Paragraph may object to any aspect of the proposed
2 Settlement either on his or her own or through an attorney hired at his or her
3 expense. Any Settlement Class Member who wishes to object to the Settlement
4 must do so in writing not later than sixty (60) Days after the Mail Notice
5 Deadline, as specified in the Class Notice and this Preliminary Approval Order.
6 The written objection must be filed with the Clerk of Court, and mailed (with the
7 requisite postmark) to Class Counsel and Defense Counsel, no later than sixty
8 (60) Days after the Mail Notice Deadline, at the following addresses:

11 Class Counsel:

12 Beth E. Terrell
13 Adrienne D. McEntee
14 Terrell Marshall Law Group PLLC
15 936 North 34th Street, Suite 300
16 Seattle, Washington 98103-8869

17 Sergei Lemberg
18 Stephen Taylor
19 Lemberg Law LLC
20 43 Danbury Road
21 Wilton, Connecticut 06897

22 Defense Counsel:

23 Tomio B. Narita
24 SIMMONDS & NARITA LLP
25 44 Montgomery Street, Suite 3010
26 San Francisco, California 94104-4816

27 16. A valid written objection must include: (a) the name, address, and
28 telephone number of the objecting Settlement Class Member and, if different, the

1 cellular telephone number at which the Settlement Class Member was called by
2 Cavalry during the Settlement Class Period; (b) if represented by counsel, the
3 name, address, and telephone number of his or her counsel; (c) the basis for the
4 objection; and (d) a statement of whether the Settlement Class Member objecting
5 intends to appear at the Final Approval Hearing, either with or without counsel;
6

7
8 17. Any Settlement Class Member who fails to object to the Settlement
9 in the manner described in the Class Notice and in this Order shall be deemed to
10 have waived any such objection, shall not be permitted to object to any terms or
11 approval of the Settlement at the Final Approval Hearing, and shall be foreclosed
12 from seeking any review of the Settlement or the terms of the Agreement by
13 appeal or other means;
14

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16 18. Subject to approval of the Court, any Class Member who files and
17 serves a written objection in accordance with Section 12 of the Settlement
18 Agreement and the Class Notice may appear, in person or by counsel, at the Final
19 Approval Hearing held by the Court, to show cause why the proposed Settlement
20 should not be approved as fair, adequate, and reasonable, but only if the objecting
21 Settlement Class Member: (a) files with the Clerk of the Court a notice of
22 intention to appear at the Final Approval Hearing by the Objection Deadline
23 (“Notice Of Intention To Appear”); and (b) serves the Notice of Intention to
24 Appear on all counsel designated in the Class Notice by the Objection Deadline.
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26 The Notice of Intention to Appear must include copies of any papers, exhibits, or
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1 other evidence that the objecting Settlement Class Member will present to the
2 Court in connection with the Final Approval Hearing. Any Settlement Class
3 Member who does not file a Notice of Intention to Appear in accordance with the
4 deadlines and other specifications set forth in the Agreement and Class Notice
5 shall not be entitled to appear at the Final Approval Hearing or raise any
6 objections.
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9 **19. Service of Papers.** Defense Counsel and Class Counsel shall serve
10 on each other and on all other parties who have filed notices of appearance, at or
11 before the Final Approval Hearing, any further documents in support of the
12 proposed Settlement, including responses to any papers filed by Settlement Class
13 Members. Defense Counsel and Class Counsel shall promptly furnish to each
14 other any and all objections or written requests for exclusion that may come into
15 their possession and shall file such objections or requests for exclusion with the
16 Court on or before the date of the Final Approval Hearing.
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19 **20. Termination of Settlement.** This Order shall become null and void,
20 and shall be without prejudice to the rights of the Parties, all of whom shall be
21 restored to their respective positions existing immediately before this Court
22 entered this Order, if (i) the proposed Settlement is not finally approved by the
23 Court, or does not become Final, pursuant to the terms of the Settlement
24 Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms
25 of the Settlement Agreement for any reason. In such event, and except as
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1 provided therein, the proposed Settlement and Settlement Agreement shall
 2 become null and void and be of no further force and effect; the preliminary
 3 certification of the Settlement Class for settlement purposes shall be
 4 automatically vacated; and the Parties shall retain, without prejudice, any and all
 5 objections, arguments, and defenses with respect to class certification.
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 8 **21. Necessary Steps.** The Court authorizes the Parties to take all
 9 necessary and appropriate steps to implement the Settlement Agreement.

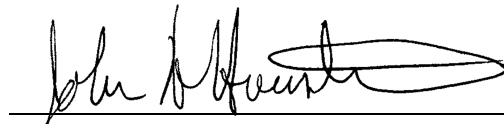
10 **22. Schedule of Future Events.** Accordingly, the following are the
 11 deadlines by which certain events must occur:
 12

13 14 15	May 28, 2020 [45 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
16 17 18	June 29, 2020 [30 days after the Notice Deadline]	Deadline for filing of Plaintiffs' Motion for Attorneys' Fees and Costs and Service Award
19 20 21	July 29, 2020 [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out and Objection Deadline)
22 23 24	July 29, 2020 [60 days after the Notice Deadline]	Deadline for Settlement Class Members to submit a claim form (Claim Period Deadline)
25 26 27	August 28, 2020 [90 days after the Notice deadline]	Deadline to file Motion for Final Approval

<p>1 August 10, 2020 2 [10 Days after the Claim Period 3 Deadline]</p>	<p>Deadline for Settlement Administrator to provide proof of class notice, identify the number of requests for exclusion objections, and claims received, and a declaration that it sent notice pursuant to the Class Action Fairness Act</p>
<p>5 Monday, September 28, 2020, 6 at 2:30 p.m. 7 [No earlier than 118 days after 8 Notice Deadline]</p>	<p>Final Approval Hearing</p>

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10 **IT IS SO ORDERED.**

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12 Date: April 13, 2020

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15 _____
16 JOHN A. HOUSTON
17 United States District Court
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