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10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

17 CAVALRY PORTFOLIO SERVICES, LLC,
 18

19 Defendant.

NO. 13-CV-00307-JAH (WVG)

20 **PLAINTIFFS' MOTION FOR FINAL**
 21 **APPROVAL OF CLASS ACTION**
 22 **SETTLEMENT**

Complaint Filed: February 7, 2013

23 DEMAND FOR JURY TRIAL

24 Honorable John A. Houston

25 DATE: September 28, 2020

26 TIME: 2:30 p.m.

27 COURTROOM: 13B

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

3 Plaintiff,

4 v.

5 CAVALRY PORTFOLIO SERVICES, LLC,
6

7 Defendant.
8

NO. 3:16-cv-00211-JAH-WVG

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1 **I. INTRODUCTION**

2 Plaintiffs Cory Horton and Kevin Krejci move for final approval of their
3 settlement with Cavalry Portfolio Services, LLC in this class action brought under
4 the Telephone Consumer Protection Act. Cavalry has agreed to relieve up to \$18
5 million in debt for Settlement Class Members who filed claims for debt relief,
6 and to pay \$6,150,000 to establish a non-reversionary Settlement Fund that will
7 be distributed to Settlement Class Members who filed claims for cash.

8 The notice plan approved by the Court has been implemented by the
9 parties and the Court-approved Settlement Administrator, JND. The postcard
10 and email notices were successfully delivered to approximately 93% of
11 Settlement Class Members. The reaction of the Settlement Class has been very
12 positive. There are no objections to the settlement. There are only 9 opt outs. To
13 date, 73,271 unique claims have been filed, representing 7% of Settlement Class
14 Members. While the distribution of the Settlement Fund will not be finalized
15 until the Court rules on the motion for attorneys' fees, it currently appears that
16 Settlement Class Members who filed claims for debt relief, if allowed, will
17 receive debt relief of \$599 each, and those who filed claims for cash, if allowed
18 and depending on their responses to proposed deficiency notices, will receive an
19 estimated payment of between \$46 and \$61 each.

20 All of the factors that courts consider support granting final approval of
21 the settlement. The relief provided by the settlement is significant, particularly
22 given the risk and expense of continued litigation. The settlement ensures that
23 class members are rewarded without delay and eliminates the risk of loss at trial
24 or on appeal. Having litigated through summary judgment, the parties are fully
25 apprised of the strengths and weaknesses of the claims and defenses. Class
26 Counsel have successfully litigated many TCPA cases and fully support the
27 settlement. And that no Settlement Class Members objected further supports
28 final approval of the settlement.

1 Plaintiffs request that the Court certify the Settlement Class for settlement
2 purposes and approve the settlement as fair, reasonable and adequate.

3 II. BACKGROUND

4 A. The litigation and settlement.

5 Plaintiffs described the protracted, hard-fought litigation that led to the
6 class settlement in their motion for an award of attorneys' fees. In the more
7 than seven years following the filing of the initial complaint, Plaintiffs
8 propounded discovery on Cavalry, Navy Federal Credit union, and TracFone
9 Wireless, pored through thousands of pages of documents, worked with experts
10 to analyze calling data, took and defended fact and expert depositions, moved
11 for class certification, and successfully defended and won summary judgment on
12 Cavalry's debt collection counterclaim. See ECF No. 297 at 11-12. It was only
13 after the parties had filed cross-motions for summary judgment that they
14 negotiated the settlement valued at more than \$24 million. *Id.* Settlement Class
15 Members with Open Accounts who submit approved for debt relief will receive
16 their *pro rata* share of \$18,000,000 in debt relief, up to \$599 each. *Id.* at 13.
17 Settlement Class Members with Closed or Open Accounts who submit approved
18 claims for cash will receive cash awards from the Cash Fund on a *pro rata* basis
19 after payment of administrative costs, incentive awards, attorneys' fees, and
20 litigation costs approved by the Court. *Id.*

21 B. Preliminary approval.

22 Plaintiffs filed their unopposed motion for preliminary approval of the
23 proposed Settlement on February 21, 2020. ECF No. 289. The Court granted
24 preliminary approval of the proposed Settlement on April 14, 2020. ECF No. 292.

25 C. Notice and claims.

26 JND implemented the notice plan outlined in the Settlement Agreement
27 and approved by the Court. The postcard and email notices successfully reached
28 approximately 93% of the Settlement Class. ECF No. 298 ¶ 19. The deadline for

1 Settlement Class Members to submit or file a claim form was July 29, 2020. JND
2 received 65,738 unique claims for cash and 7,533 unique claims for debt relief.
3 Supplemental Declaration of Jennifer M. Keough Regarding Notice
4 Administration (“Supp. Keough Decl.”) ¶ 4.

5 Of these claims, JND received 2,093 after the July 29th deadline. Supp.
6 Keough Decl. ¶ 5. However, Plaintiffs’ counsel received several calls from
7 Settlement Class Members who received their postcards via U.S. Mail just days
8 before, or after, the deadline to submit a claim. Declaration of Adrienne D.
9 McEntee in Support of Final Approval (“McEntee Decl.”) ¶ 2. Similarly, JND has
10 noticed delays with the postal service. Supp. Keough Decl. ¶ 5. Some claim forms
11 were received more than two or three weeks after the postmark date. *Id.* Thus,
12 JND and Class Counsel recommend that 2,093 late claims received through
13 August 25, 2020 be approved. Supp. Keough Decl. ¶ 5; McEntee Decl. ¶ 2.

14 JND also received 383 claims from claimants JND verified to be valid
15 Settlement Class Members, which were unsigned. Supp. Keough Decl. ¶ 7.
16 Because JND has confirmed that these are valid Settlement Class Members, JND
17 and Class Counsel recommend that these claims be approved without the need
18 for any deficiency process. Supp. Keough Decl. ¶ 7; McEntee Decl. ¶ 3.

19 Next, the claim form asked Settlement Class Members to include the
20 cellular telephone number on which they received the calls and their current
21 phone number. ECF No. 298, Ex. B. However, 52,952 claimants did not list the
22 number Cavalry records show was called or their current phone number. Supp.
23 Keough Decl. ¶ 8. Given that the class period extends back to 2010, it is not
24 surprising that claimants may not recall the number to which they received calls.
25 McEntee Decl. ¶ 4. JND, however, was able to match 36,085 claimants with
26 information Cavalry provided to determine that all 36,085 of these claimants
27 were class members. Supp. Keough Decl. ¶ 8. As a result, JND and Class Counsel
28 recommend that these claims be approved. Supp. Keough Decl. ¶ 8; McEntee

1 Decl. ¶ 5. Cavalry, however, has indicated it would prefer that the Court deny
2 these claims, or at a minimum, require claimants to cure any deficiencies. *Id.*

3 For the 16,867 claims which could not be matched to the Settlement Class
4 List through a mailing or email address, 15,212 claimants selected a cash award
5 and 1,655 selected debt relief (or were deemed to have selected debt relief
6 because they did not make a choice or chose both a cash award and debt relief).
7 Supp. Keough Decl. ¶ 9. JND and Class Counsel recommend providing these
8 claimants with notice of their claim form deficiency and an opportunity to cure.
9 Supp. Keough Decl. ¶ 9; McEntee Decl. ¶ 6.

10 If the Court allows these claims, and awards the requested attorneys' fees,
11 costs, administration expenses, and incentive awards, a total of \$3,110,650 will
12 be distributed to claimants who opted for a cash award. McEntee Decl. ¶ 8. JND
13 has confirmed that, on completion of the deficiency process, each approved
14 claimant who requested cash will receive between \$46 and 61. Supp. Keough
15 Decl. ¶ 11. JND has also confirmed that each Settlement Class Member who filed
16 an approved form for debt relief will receive \$599 in debt relief. *Id.* ¶ 12.
17 Settlement Class Members receiving debt relief will benefit from a minimum of
18 \$3,520,323 in debt relief, and up to a maximum of \$4,511,668. *Id.*

19 In all, the settlement will afford Settlement Class Members total
20 settlement relief valued at between \$9,670,323 and \$10,661,668.

21 III. ISSUES TO BE DECIDED

22 Whether the settlement should be approved as fair, reasonable, and
23 adequate and whether the Settlement Class should be finally certified for
24 settlement purposes.

25 IV. ARGUMENT AND AUTHORITY

26 A. The settlement should be approved as fair, reasonable, and adequate.

27 Settlements are favored, particularly in the class action context. *In re*
28 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (“[T]here is a strong

1 judicial policy that favors settlements, particularly where complex class action
2 litigation is concerned.”). Courts recognize that a settlement approval hearing
3 should not “reach any ultimate conclusions on the contested issues of fact and
4 law which underlie the merits of the dispute, for it is the very uncertainty of
5 outcome in litigation and avoidance of wasteful and expensive litigation that
6 induce consensual settlements.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948,
7 964 (9th Cir. 2009).

8 Proposed class action settlements are not effective unless approved by
9 the Court. Fed. R. Civ. P. 23(e). When deciding whether to find a class settlement
10 to be fair, reasonable, and adequate, courts consider (1) the strength of the
11 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
12 litigation; (3) the risk of maintaining class action status throughout the trial; (4)
13 the amount offered in settlement; (5) the extent of discovery completed and the
14 stage of the proceedings; (6) the experience and views of counsel; (7) the
15 presence of a governmental participant; and (8) the reaction of the class
16 members of the proposed settlement. *In re Bluetooth Headset Prod. Liab. Litig.*,
17 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Village, L.L.C. v. Gen. Elec.*,
18 361 F.3d 566, 575 (9th Cir. 2004)).

19 In addition, under the recent amendments to Rule 23, courts consider
20 whether: (A) the class representatives and class counsel have adequately
21 represented the class; (B) the proposal was negotiated at arm’s length; (C) the
22 relief provided for the class is adequate, taking into account: (i) the costs, risks,
23 and delay of trial and appeal; (ii) the effectiveness of any proposed method of
24 distributing relief to the class, including the method of processing class-member
25 claims; (iii) the terms of any proposed award of attorney’s fees, including timing
26 of payment; and (iv) any agreement required to be identified under Rule
27 23(e)(3); and (D) the proposal treats class members equitably relative to each
28 other. Fed. R. Civ. P. 23(e)(2).

1 All of these factors support a finding that the settlement is fair,
2 reasonable, and adequate.

- 3 1. The relief provided by the settlement taking into account the
4 strength of Plaintiffs’ case and the risk, cost, and delay of trial
5 and appeal favors approval.

6 The settlement includes both cash and debt relief components. Cavalry
7 has agreed to forgive up to \$18 million of debt and pay \$6,150,000 million to
8 settle Plaintiffs’ and Settlement Class Members’ TCPA claims. Settlement Class
9 Members who submitted approved claims for debt relief will each receive \$599
10 in debt relief. After payment of Court-approved settlement administration
11 expenses, attorneys’ fees and expenses, and incentive awards to the Plaintiffs,
12 the remainder of the Settlement Fund will be distributed to the Settlement Class
13 Members who filed approved claims for cash. If the Court approves the
14 requested notice and administration costs of \$934,000, incentive awards of
15 \$10,000 to each of the two Class Representatives, requested attorneys’ fees of
16 \$2,000,000 and litigation expenses of \$85,350, a total of \$3,110,650 will be
17 distributed to Settlement Class Members who filed approved claims for cash.
18 Cash claimants will receive between \$46 and \$61 each. McEntee Decl. ¶¶ 9-10.

19 While Plaintiffs believe they have a strong case for liability, success is
20 never guaranteed. Cavalry moved for summary judgment based on the
21 argument that it cannot be held liable for the calls it made to Settlement Class
22 Members because, it contends, the systems used to make the calls are not
23 automatic telephone dialing systems (“ATDS”) under the TCPA, which defines an
24 ATDS as equipment which has the capacity “to store or produce telephone
25 numbers to be called, using a random or sequential number generator” and “to
26 dial such numbers.” 47 U.S.C. 227(a)(1). If the Court agreed with Cavalry,
27 Plaintiffs would lose on the merits.
28

1 At preliminary approval, Plaintiffs noted that the risk of losing on the
2 merits based on Cavalry's argument was palpable due to a split among circuit
3 courts regarding which equipment falls within, or outside of, the definition of
4 ATDS. ECF No. 289 at 25. That risk is even greater now, as the Supreme Court
5 recently granted certiorari in *Facebook Inc. v. Duguid*, No. 19-511, 2020 WL
6 3865252, to address whether the definition "encompasses any device that can
7 'store' and 'automatically dial' telephone numbers, even if the device does not
8 'us[e] a random or sequential number generator.'" *Facebook Inc. v. Duguid*, Pet.
9 for Writ of Cert., No. 19-511, 2019 WL 5390116, at *ii (U.S. filed Oct. 17, 2019)
10 (Question 2). Moreover, had the parties not reached settlement, Cavalry would
11 have moved to stay proceedings based on *Facebook*, which would have delayed
12 any relief to Settlement Class Members.

13 Even if the Supreme Court ultimately rules in favor of Plaintiffs'
14 interpretation of the statute, Plaintiffs must still prevail on class certification.
15 Cavalry has argued that class members are not entitled to recover because they
16 consented to be call on their cell phones by providing their numbers to Cavalry
17 or to the original creditor. See ECF No. 101. Consent is an affirmative defense for
18 which Cavalry bears the burden of proof. *Van Patten v. Vertical Fitness Grp., LLC*,
19 847 F.3d 1037, 1044 (9th Cir. 2017) ("We think it plain from the statutory
20 language that prior express consent is an affirmative defense, not an element of
21 a TCPA claim...."). Plaintiffs dispute that Cavalry could meet this burden. ECF No.
22 289 at 26. But Cavalry's argument created the risk that Plaintiffs' motion to
23 certify under Rule 23(b)(3) would not succeed. *Id.*

24 Moreover, Plaintiffs would still need to convince a jury at trial. And if
25 Plaintiffs prevailed at trial, they would need to maintain the judgment on appeal.
26 Clearing these hurdles would be time consuming and expensive. And since the
27 damages available under the TCPA in a class action with more than a million
28 class members are so significant—in this case potentially totaling more than

1 \$517,000,000 with possible trebling up to \$1.5 billion—even success for
2 Plaintiffs posed a substantial risk that the judgment would never be paid. *See,*
3 *e.g., Larson v. Harman-Mgmt. Corp.*, 2020 WL 3402406, at *5 (E.D. Cal. June 19,
4 2020) (“some courts have found TCPA recoveries in the billions of dollars to
5 violate the Due Process Clause, *see, e.g., Golan v. FreeEats.com, Inc.*, 930 F.3d
6 950, 962–63 (8th Cir. 2019), and there is a potential that even if such a large
7 recovery was found not to violate the Due Process Clause, that such an amount
8 might not be recoverable as it would likely bankrupt [defendant]”). When
9 combined with the usual risks and expense of litigation, and class litigation in
10 particular, a settlement that ensures settlement relief to class members now is
11 far preferable to the possibility of no recovery after the significant delay of
12 proceeding to trial and appeal. *See, e.g., Hartless v. Clorox Co.*, 273 F.R.D. 630,
13 640 (S.D. Cal. 2011), *aff’d in part*, 473 F. App’x 716 (9th Cir. 2012) (approving
14 settlement where “the risks, expenses, complexity and duration of further
15 litigation are significant”).

16 Settlement Class Members who opted for debt relief will each receive
17 \$599 in debt relief. Settlement Class Members who chose cash will each receive
18 between \$46 and \$61. In all, Settlement Class Members have claimed between
19 \$9,670,323 and \$10,661,668 of the \$24 million in settlement relief Cavalry made
20 available. The settlement therefore represents a significant cost to Cavalry in
21 addition to substantial relief for the Settlement Class. Courts routinely approve
22 settlements of TCPA claims when class members receive similar payments. *See*
23 *In re Monitronics Int’l, Inc., Tel. Consumer Prot. Act Litig.*, No. 1:13-md-02493-
24 JPB-JES (N.D.W.V. June 12, 2018), ECF No. 1214 (approving settlement where
25 class members received approximately \$38); *Lushe v. Verengo Inc.*, No. CV 13-
26 07632 ABR (C.D. Cal. May 2, 2016), ECF Nos. 135-1, 137 (approving settlement
27 where claimants received \$52); *In re Capital One TCPA Litig.*, 80 F. Supp. 3d 781,
28 789 (N.D. Ill. 2015) (granting final approval where class members were awarded

1 \$39.66); *Rose v. Bank of Am. Corp.*, No. 11 Civ. 02390, 12 Civ. 04009, 2014 WL
 2 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (discussing range of acceptable TCPA
 3 settlements and approving settlement that paid \$20 to \$40 per claimant);
 4 *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493–94 (N.D. Ill. 2015) (approving
 5 settlement where class members received payments of \$30); *Steinfeld v.*
 6 *Discover Fin. Servs.*, No. C 12-01118, 2014 WL 1309352, at *6 (N.D. Cal. Mar. 10,
 7 2014) (approving settlement with payments estimated to be between \$20 and
 8 \$40); *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-01156-LMM, 2017 WL
 9 416425, at *4 (N.D. Ga. Jan. 30, 2017) (approving settlement with payments of
 10 approximately \$24 per class member as an “excellent result”).

11 2. The extent of discovery, stage of proceedings, and
 12 recommendation of experienced counsel favor approval.

13 Because the settlement was negotiated years into the litigation, well after
 14 discovery had closed, the parties were armed with a thorough understanding of
 15 the strengths and weaknesses of their evidence, witnesses, and legal positions.
 16 Discovery was comprehensive and complete, and the Court was poised to rule
 17 on the parties’ cross-motions for summary judgment. The parties therefore had
 18 sufficient information to make an informed decision about the merits of the
 19 settlement. *See Selk v. Pioneers Mem’l Healthcare Dist.*, 159 F. Supp. 3d 1164,
 20 1177 (S.D. Cal. 2016) (“So long as the parties have ‘sufficient information to
 21 make an informed decision about settlement,’ this factor will weigh in favor of
 22 approval.”) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th
 23 Cir.1998)); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th
 24 Cir.2000) (explaining that a combination of investigation, discovery, and research
 25 conducted prior to settlement can provide sufficient information for class
 26 counsel to make an informed decision about settlement).

1 3. The Settlement Class’s response favors approval.

2 There are no objections to this settlement. Notice of the settlement was
3 distributed by mail and email to 1,034,078 potential Settlement Class Members
4 and not one objected. ECF No. 298 ¶ 9. A court may appropriately infer that a
5 class settlement is fair, reasonable, and adequate when few (or no) class
6 members object to it. *See Hartless*, 273 F.R.D. at 641 (“The absence of a large
7 number of objections to a proposed class action settlement raises a strong
8 presumption that the terms of the settlement are favorable to the class
9 members.”) (citation omitted).

10 Settlement Class Members instead chose to participate in the settlement,
11 filing 73,271 unique claims. Supp. Keough Decl. ¶ 6. By contrast, only 9, or less
12 than .001% of identifiable Settlement Class Members, chose to opt out. ECF No.
13 298 ¶ 28. That 7% of Settlement Class Members chose to participate, a response
14 that exceeds typical claim rates in consumer class actions, supports approval.
15 *See, e.g., In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 944-45 (9th Cir.
16 2015) (affirming approval of settlement where 1,183,444 of 35 million class
17 members—less than 3.4%—filed claims); *Couser v. Comenity Bank*, 125 F. Supp.
18 3d 1034, 1044 (S.D. Cal. 2015) (noting that 7.7% is a “higher than average claims
19 rate” in TCPA class actions); *see also In re Anthem, Inc. Data Breach Litig.*, 327
20 F.R.D. 299, 320-21 (N.D. Cal. 2018) (finding that low rates of objections and opt-
21 outs are “indicia of the approval of the class” (citation omitted)).

22 4. The Rule 23(e)(2) considerations favor approval.

23 The considerations outlined in Rule 23(e)(2) also support final approval of
24 the settlement. The first consideration is the adequacy of Plaintiffs’ and their
25 counsel’s representation of the Settlement Class. In granting preliminary
26 approval of the settlement, the Court found that “Plaintiffs are capable of fairly
27 and adequately protecting the interests of the members of the Settlement
28 Class....” ECF No. 292 ¶ 7.d. Plaintiffs committed significant time to this case and

1 support the settlement. ECF Nos. 297-3, 297-2 ¶ 27 & 297-1 ¶ 20. Class Counsel,
2 who have a great deal of experience litigating and settling TCPA class action
3 cases, also wholeheartedly support the settlement. ECF Nos. 289-1 ¶ 16 & 289-3
4 ¶ 18. This consideration therefore supports approval.

5 The second consideration also supports approval because the settlement
6 was negotiated at arms' length. The Court is well aware of the hard-fought
7 nature of this litigation, which involved multiple disputed motions, and the
8 parties approached settlement discussions in the same way. None of the "red
9 flags" of potential collusion the Ninth Circuit has identified exist in this case. *See*
10 *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011)
11 (noting that plaintiffs' counsel may have allowed pursuit of their own self-
12 interest to infect settlement negotiations when they receive a disproportionate
13 portion of the settlement, the parties agree to a "clear sailing" arrangement
14 providing for the payment of attorneys' fees separate and apart from class
15 funds, or the parties agree that any fees not awarded will revert to defendants
16 rather than be added to the class fund).

17 The third consideration also supports settlement. As discussed above, the
18 \$24 million in settlement relief Cavalry made available is more than adequate to
19 warrant approval, particularly in light of the costs, risks and delay of trial and
20 appeal. The distribution plan ensures that Settlement Class Members will be
21 treated equitably relative to each other. Settlement Class Members were able to
22 submit one claim form each. Of the claims submitted, JND and Plaintiffs
23 recommend, following the proposed deficiency process, that the Court approve
24 up to 7,532 claims submitted for debt relief, and up to 65,723 claims for cash.

25 Plaintiffs addressed the reasonableness of the requested attorneys' fees
26 in the motion filed on June 29, 2020, which was 30 days before the deadline for
27 Settlement Class Members to opt out or object in compliance with *In re Mercury*
28 *Interactive Corp.*, 618 F.3d 988, 994 (9th Cir. 2010). ECF No. 297. The fee request

1 of \$2,000,000 is just 8% of the total value of the settlement (\$24,150,000), and
2 therefore substantially lower than the 25% benchmark for common fund cases
3 in the Ninth Circuit. *Patel v. Trans Union, LLC*, 2018 WL 1258194, at *6 (N.D. Cal.
4 Mar. 11, 2018) (“Ninth Circuit precedent requires courts to award class counsel
5 fees based on the total benefits being made available to class members rather
6 than the actual amount that is ultimately claimed”) (referencing *Williams v.*
7 *MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (“district court abused
8 its discretion in basing attorney fee award on actual distribution to class” instead
9 of amount being made available)). However, even if the rule were different, and
10 the fee was measured against benefits claimed rather than benefits made
11 available, Class Counsel’s fee request is still below the benchmark of 25%,¹
12 further demonstrating the reasonableness of the requested fees.

13 Finally, the fourth consideration—whether the proposed settlement treats
14 class members equitably relative to each other—also supports approval. The
15 method for distributing the Settlement Fund to Settlement Class Members is
16 simple, straightforward, and equitable. All Settlement Class Members had the
17 option to submit a claim for cash. After Court-approved deductions for
18 administrative costs, attorneys’ fees and costs, and incentive awards, the net
19 settlement fund will be divided equally among the approved claims for cash.
20 Those eligible Settlement Class Members with Open Accounts who opted for
21 debt relief in lieu of cash, or who failed to elect one over the other, will receive
22 debt relief. All recoveries for debt relief or for cash will be the same, \$599 in
23 debt relief, or between \$46 and \$61 in cash. This is a fair and equitable
24 distribution of the settlement proceeds.

25
26 ¹ The value of the settlement if *only* accounting for claimed benefits is
27 \$9,670,323 to \$10,661,668 (\$6,150,000 in cash plus \$3,520,323 to \$4,511,668 in
28 debt relief). Attorney’s fees of \$2 million is 19-21% of the claimed benefits to the
class.

1 **B. The Settlement Class should be finally certified for settlement purposes.**

2 The Court conditionally certified the Settlement Class for settlement
3 purposes when it granted preliminary approval of the settlement. The Court
4 concluded that the Settlement Class, comprised of persons associated with
5 1,035,232 accounts satisfies numerosity. ECF No. 292 ¶¶ 6, 7.a. Plaintiffs
6 identified questions such as whether Cavalry called cellular telephone numbers
7 while attempting to collect debts, and whether Cavalry used an ATDS, as those
8 which turn on common evidence, which satisfy the commonality requirement.
9 ECF Nos. 289 at 19 & 292 ¶ 7.b. The Court also concluded that Plaintiffs have
10 satisfied typicality; Plaintiffs' and Class Members' claims arise from the same
11 course of alleged conduct. ECF Nos. 289 at 19-20 & 292 ¶ 7.c. And the adequacy
12 requirement is satisfied because Plaintiffs have no conflicts with Settlement
13 Class Members, have demonstrated their commitment to the Settlement Class,
14 and have retained qualified counsel. ECF No. 289 ¶ 7.d. In addition, the Court
15 found that predominance was satisfied. *Id.* ¶ 7.e. The overarching question—
16 whether Cavalry used an ATDS to place collection calls to the cell phones of
17 Settlement Class Members—predominates over individualized issues, and
18 classwide resolution is the only practice method of addressing the alleged
19 telemarketing violations at issue. ECF No. 289 at 21. Thus, for the same reasons,
20 the Court should finally certify the Settlement Class for settlement purposes.

21 **C. The notice program complied with Rule 23 and due process.**

22 The settlement notice program approved by the Court and implemented
23 by JND satisfied the requirements of Rule 23 and due process. Rule 23 provides
24 that “[t]he court must direct notice in a reasonable manner to all class members
25 who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). When the class is
26 certified under Rule 23(b)(3), the notice must also be the “best notice
27 practicable under the circumstances, including individual notice to all members
28 who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). To

1 comply with constitutional due process standards, the notice must be
2 “reasonably calculated, under all the circumstances, to apprise interested parties
3 of the pendency of the action and afford them an opportunity to present their
4 objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
5 (1950).

6 The Court approved the postcard and email notice in granting preliminary
7 approval of the settlement. ECF No. 292 ¶ 12. The notice was “reasonably
8 calculated, under all the circumstances, to apprise the Settlement Class
9 Members of the pendency of this Action, the terms of the Settlement
10 Agreement, and their right to object to the Settlement Agreement or exclude
11 themselves from the Settlement Class.” *Id.* The Court further found that the
12 notice met the requirements of due process. *Id.*

13 On May 28, 2020, JND sent the Court-approved postcard notice by U.S.
14 mail to 1,034,078 potential Settlement Class Members and mailed the Court-
15 approved email Notice to 744,614 verified email addresses associated with
16 Settlement Class Members and. ECF No. 298 ¶¶ 9, 15. JND also sent a reminder
17 email notice to 627,267 potential Settlement Class Members who had not yet
18 filed a claim and did not unsubscribe to the initial email notice. *Id.* ¶ 17. In total,
19 1,574,997 postcard and email notices were successfully delivered, representing
20 over 93% of the Settlement Class Members. Supp. Keough Decl. ¶ 13.

21 JND established a settlement website with detailed information about the
22 settlement. ECF No. 298 ¶ 21. The website address was printed on all notices. *Id.*
23 Exs. B-D. Located at CPSTCPASettlement.com, the website had 449,435 hits as of
24 August 10, 2020. *Id.* ¶¶ 21-23. The website lists important dates and class
25 members’ rights and options, includes frequently asked questions and key
26 documents from the case like the settlement agreement and motion for
27 attorneys’ fees, and allowed class members to submit an online claim. *Id.* The
28 website (and notices) also provided a toll-free number that class members could

1 call to reach a 24-hour automated phone system with recorded answers to
2 frequently asked questions. *Id.* ¶ 25. The toll-free number had received more
3 than 9,000 calls as of August 10, 2020. *Id.* ¶ 26. Finally, JND maintained a
4 dedicated email address to receive and respond to Settlement Class Member
5 inquires, and as of August 10, 2020 had received 580 emails. *Id.* ¶ 24.

6 **V. CONCLUSION**

7 Plaintiffs respectfully request that the Court finally certify the Settlement
8 Class and approve the settlement as fair, reasonable and adequate.

9 RESPECTFULLY SUBMITTED AND DATED this 28th day of August, 2020.

10 TERRELL MARSHALL LAW GROUP PLLC

11
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25 *Attorneys for Kevin Krejci*

CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on August 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Tomio B. Narita, CSB #156576
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Jeffrey A. Topor, CSB #195545
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Attorneys for Defendant

DATED this 28th day of August, 2020.

TERRELL MARSHALL LAW GROUP PLLC

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9 [Additional Counsel Appear on Signature Page]

10 *Attorneys for Plaintiff Cory Horton*

11 UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

17 CAVALRY PORTFOLIO SERVICES, LLC,

18 Defendant.

NO. 13-CV-00307-JAH (WVG)

**DECLARATION OF ADRIENNE D.
McENTEE IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Complaint Filed: February 7, 2013

DEMAND FOR JURY TRIAL

Honorable John A. Houston

DATE: September 28, 2020
TIME: 2:30 p.m.
COURTROOM: 13B

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

NO. 3:16-cv-00211-JAH-WVG

3 Plaintiff,

4 v.

5 CAVALRY PORTFOLIO SERVICES, LLC,
6

7 Defendant.
8
9

10
11 I, Adrienne D. McEntee, hereby declare as follows:

12 1. I am a member of the law firm of Terrell Marshall Law Group PLLC,
13 counsel of record for Plaintiff Cory Horton and the Settlement Class. I am
14 admitted to practice before this Court and am a member in good standing of the
15 bar of the state of Washington. I respectfully submit this declaration in support
16 of Plaintiffs’ Motion for Final Approval of Class Action Settlement. Except as
17 otherwise noted, I have personal knowledge of the facts set forth in this
18 declaration and could testify competently to them if called upon to do so.

19 2. Our office received several calls from Settlement Class Members
20 who received their postcards via U.S. Mail just days before, or after, the July 29,
21 2020 deadline to submit a claim. Because of these delays, and those noted by
22 Settlement Administrator, JND, Class Counsel recommend that the Court
23 approve 2,093 late claims received through August 25, 2020.

24 3. Class Counsel join in JND’s recommendation that the Court approve
25 383 claims from claimants JND verified to be valid Settlement Class Members,
26 which were unsigned.

27 4. The claim form asked Settlement Class Members to include both
28 the cellular telephone number on which they received the calls and their current

1 phone number. JND has advised that 52,952 claimants did not list the number
2 Cavalry records show was called or their current phone number. Given that the
3 class period extends back to 2010, Class Counsel are not surprised that claimants
4 may not recall the number to which they received calls. JND, however, was able
5 to match 36,085 claimants with information Cavalry provided to determine that
6 all 36,085 of these claimants were class members. As a result, JND recommends
7 that these claims be approved.

8 5. Class Counsel join JND's recommendation that the Court allow the
9 claims of 36,085 claimants JND determined are class members. Class Counsel
10 discussed JND's recommendation with counsel for Cavalry, who would prefer
11 that the Court deny these claims, or at a minimum, require claimants to cure any
12 deficiencies.

13 6. Class Counsel also join JND's recommendation that the Court
14 authorize JND to provide the 16,867 claimants who could not be matched to the
15 Settlement Class List through a mailing or email address notice of the deficiency
16 and an opportunity to cure.

17 7. JND estimates the total cost to administer the settlement will be
18 \$934,000.

19 8. If the Court allows these claims, and awards the requested
20 attorneys' fees, costs, administration expenses, and incentive awards, a total of
21 \$3,110,650 will be distributed to claimants who opted for a cash award. Class
22 Counsel reached this number as follows:

23 \$6,150,00 cash - \$934,000 requested notice and administration
24 costs - \$20,000 requested incentive awards - \$2,000,000 requested
25 attorneys' fees - \$85,350 litigation expenses = \$3,110,650

26 9. If the Court allows the 50,511 claims JND and Class Counsel
27 recommend for approval, each cash claimant will receive approximately \$61.
28

1 10. If the Court directs the 15,212 claimants with deficiencies to cure
2 them, and all are cured, each of the 65,723 (50,511 + 15,212) cash claimants will
3 receive approximately \$46.

4 11. All claimants who receive debt relief will receive \$599 in debt relief.

5 I declare under penalty of perjury under the laws of the United States that
6 the foregoing is true and correct.

7 EXECUTED in Seattle, Washington, this this 28th day of August, 2020.

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/s/ Adrienne D. McEntee, Pro Hac Vice
Adrienne D. McEntee, *Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on August 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Tomio B. Narita, CSB #156576
Email: tnarita@snllp.com
Jeffrey A. Topor, CSB #195545
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SIMMONDS & NARITA LLP
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Facsimile: (415) 352-2625

Attorneys for Defendant

DATED this 28th day of August, 2020.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Adrienne D. McEntee, Pro Hac Vice
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Attorneys for Plaintiff Cory Horton

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

Case No.: 13-CV-00307-JAH (WVG)

**SUPPLEMENTAL DECLARATION
OF JENNIFER M. KEOUGH
REGARDING NOTICE
ADMINISTRATION**

Complaint Filed: February 7, 2013

Demand for Jury Trial

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

Case No.: 13-CV-00307-JAH (WVG)

3 Plaintiff,

4 v.

5 CAVALRY PORTFOLIO SERVICES,
6 LLC,

7 Defendant.

8
9 I, Jennifer M. Keough, declare and state as follows:

10 1. I am Chief Executive Officer of JND Class Action Administration
11 (“JND”). This Supplemental Declaration is based on my personal knowledge, as well as
12 upon information provided to me by experienced JND employees working under my
13 supervision and Counsel for the Plaintiffs and Defendants (“Counsel”), and if called
14 upon to do so, I could and would testify competently thereto. This Declaration is
15 submitted as a supplement to my Declaration Regarding Notice Administration, dated
16 August 10, 2020 (“Initial Notice Declaration”).
17

18 2. JND is serving as the Settlement Administrator¹ in the above-captioned
19 litigation (“Action”) for the purposes of administering the Settlement Agreement and
20
21

22 _____
23 ¹ Capitalized terms used and not otherwise defined herein shall have the meanings
24 given such terms in the Settlement Agreement.

1 Release (“Settlement Agreement”) preliminarily approved by the Court in its
2 Preliminary Approval Order (the “Order”), dated April 13, 2020.

3 3. As of the date of this Supplemental Declaration, JND has received a total of
4 77,693 claims. 4,304 claims were excluded as exact duplicates, and 118 were excluded
5 as duplicates where more than five Claim Forms were submitted from the same mailing
6 address, resulting in 73,271 unique claims. Of these, 39,823 claims were received online
7 and 33,448 were submitted by mail.

8
9 4. Of the unique claims, a total of 38,305 claims were for Open Accounts and,
10 of those, 30,772 claimants selected a cash award and 6,145 claimants selected debt relief.
11 1,388 claimants with Open Accounts selected both the cash award and debt relief or
12 selected neither and, accordingly, have all been deemed to have selected debt relief.
13 JND has received a total of 34,966 claims for Closed Accounts which are entitled to a
14 cash award. This brings the total claims for cash awards to 65,738 and total debt claims
15 to 7,533.

16
17 5. There were 2,093 claims submitted after the July 29, 2020 submission
18 deadline. Based on correspondence from many claimants with late claims, we
19 understand that there were delays in potential Settlement Class Members receiving the
20 Mail Notice, as a number of claimants stated that they received the Mail Notice either
21 close to or well after the claim filing deadline. In addition, there appear to have been
22
23

1 mailing delays when claimants mailed their Claim Forms to JND. Some Claim Forms
2 were received more than two or three weeks after the postmark date. In light of the
3 apparent recent delays in postal service caused by COVID-19, among other reasons,
4 JND recommends, and assumes for the purposes of the analysis below, that all claims
5 received by August 25, 2020 will be deemed timely filed.
6

7 6. Of the 73,271 unique claims received, 22,459 claims provided telephone
8 numbers that matched telephone numbers listed in the Settlement Class Member files
9 provided to JND (collectively, the “Class Lists”).

10 7. In addition, JND received 383 claims from claimants JND verified to be
11 valid Settlement Class Members, which were unsigned. Because JND has confirmed that
12 these are valid Settlement Class Members, JND recommends that these claims be
13 approved without the need for any deficiency process.
14

15 8. In addition, JND received 52,952 claims in which the claimants did not
16 include their current phone number, the phone number where they received calls, or the
17 phone number provided was not the phone number Cavalry alleges it called. Of these
18 claims, JND matched 36,085 to the Settlement Class List based on a mailing address in
19 the Class Lists or based on a mailing address or email address obtained through
20 advanced address search strategies using contact information in the Class Lists. JND
21 recommends that these 36,085 claims be approved.
22

1 debt relief. Settlement Class Members receiving debt relief will benefit from a minimum
2 of \$3,520,323 in debt relief, and up to a maximum of \$4,511,668.

3 13. As noted in my Initial Declaration, JND sent multiple notices to Settlement
4 Class Members. In total, 1,574,997 Postcard and Email Notices were successfully
5 delivered, representing over 93% of the Settlement Class Members.
6

7 ///

8 I declare under penalty of perjury under the laws of the United States of America
9 that the foregoing is true and correct.

10 Executed on August 27, 2020, in Seattle, Washington.

11 

12 _____
Jennifer M. Keough

13

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CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on August 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Defendant

DATED this 28th day of August, 2020.

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