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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TERRY FABRICANT, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

AMERISAVE MORTGAGE  
CORPORATION, et al.,

Defendants.

Case No. CV 19-04659-AB (ASx)

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff Terry Fabricant’s (“Plaintiff”) Motion for Preliminary Approval of a Class Action Settlement and Certification of a Settlement Class (“Motion,” Dkt. No. 18). The Court will resolve the Motion without a hearing and therefore **VACATES** the May 22, 2020 hearing. Having considered the Motion, Plaintiff’s Supplemental Brief, and the proposed settlement, the Court **GRANTS** Plaintiff’s Motion as follows:

1. The Court has reviewed the terms of the Parties’ Agreement and preliminarily finds that the Agreement appears sufficiently fair, reasonable, and adequate to warrant dissemination of class notice of the proposed settlement and scheduling a formal fairness hearing. The Court finds that the Agreement contains no

1 obvious deficiencies and that the Parties entered into the settlement in good faith,  
2 following arm's length negotiations between their respective counsel overseen by a  
3 neutral mediator. The Court adopts the definitions set forth in the Agreement and all  
4 defined words or phrases used in this Order shall have the same meaning as in the  
5 Agreement. The Court finds that it will likely be able to approve the proposal under  
6 Rule 23(e)(2). The Court certifies the following class for settlement purposes only  
7 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

8 *“All persons or entities within the United States who received on their*  
9 *cellular telephones communications placed by AMERISAVE using its CCT dialer*  
10 *and/or that were placed to a number on the National Do Not Call list or*  
11 *AMERISAVE’s Internal Do Not Call list between April 1, 2018 and December 31,*  
12 *2019.* Excluded from the Settlement Class is Defendant and its subsidiaries and  
13 affiliates, employees, officers, directors, agents and representatives and its family  
14 members; Class Counsel; all judicial officers who have presided over the Lawsuit; and  
15 all persons who timely elect to become Opt-Outs from the Settlement Class in  
16 accordance with this Order.

17 2. The Court finds that, for the purpose of settlement only, the  
18 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the class.  
19 Joinder of all class members in a single proceeding would be impracticable, if not  
20 impossible, because of their numbers and dispersion. Common issues exist among  
21 class members and predominate over questions affecting individual class members.  
22 Plaintiff’s claims are typical of those of the Settlement Class. Plaintiff and his  
23 counsel will fairly and adequately protect the interests of the Settlement Class.  
24 Plaintiff has no interest antagonistic to those of the Settlement Class and has retained  
25 counsel experienced and competent to prosecute this matter on behalf of the class.  
26 Finally, a class settlement is superior to other available methods for a fair resolution  
27 of the controversy.

28 3. For purposes of settlement, the Court appoints Named Plaintiff Terry  
Fabricant to serve as class representative. Further, pursuant to Rule 23(g)(1) of the

1 Federal Rules of Civil Procedure, the Court appoints Todd M. Friedman and Adrian  
2 R. Bacon of The Law Office of Todd M. Friedman, P.C. to serve as Class Counsel.

3 4. The Court makes a preliminary finding that pursuant to Rule 23(e)(2),  
4 the settlement is fair, reasonable, and adequate after considering all requirements of  
5 the Rule.

6 5. Plaintiff and Class Counsel have adequately represented the Class by  
7 conducting sufficient levels of discovery and investigation prior to negotiating a fair  
8 and adequate settlement for Class Members. Further, neither Plaintiff nor Class  
9 Counsel have any known conflicts of interest with absent Class Members.

10 6. The proposed relief was negotiated at arm's length and in good faith at  
11 private mediation with the oversight of the Honorable George H. King.

12 7. The relief provided to Class Members is adequate, in light of the  
13 numerous costs and risks cited by Plaintiff in the moving papers, delay of trials and  
14 appeals. Such risks include risks to the merits of the case, such as whether the dialing  
15 system is an "automatic telephone dialing system," ("ATDS") as defined by 47  
16 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A), whether Defendant  
17 possesses prior express consent and/or an established business relationship sufficient  
18 to have legally placed calls to Plaintiff or any Class Members, challenges as to the  
19 constitutionality of the TCPA, which are currently before the U.S. Supreme Court,  
20 risks to class certification, including whether there are individualized issues of  
21 consent, and due process challenges as to the aggregation of penalties in this Action.  
22 Due to these risks, the Court finds that the relief achieved for Class Members is fair,  
adequate and reasonable.

23 8. The proposed method of distributing relief to the Class and processing  
24 claims for Class Members is likewise fair, adequate and reasonable. Class Members  
25 will be sent payment by check and/or online direct deposit and can opt in to receive  
26 settlement benefits via either online submission or by mail-in form. The Court finds  
27 these methods of distribution and claim processing to be reasonable.  
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1           9.     The proposed terms of the attorneys' fees and costs sought by Class  
2 Counsel are within the range of reasonableness, as Class Counsel propose that they  
3 will seek 20% of the Common Fund at Final Approval. This amount is preliminarily  
4 fair and reasonable in light of the Ninth Circuit benchmark for common fund  
5 settlements being 25%. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,  
6 949 (9th Cir. 2015).

7           10.    Finally, the proposed settlement provides for equal relief amongst all  
8 Class Members, and thus puts them on equal footing. Thus, the proposal treats Class  
9 Members equitably relative to each other.

10          11.    For these reasons, and for the reasons set forth in Plaintiff's papers, the  
11 Court finds that the requirements of Rule 23(e) are satisfied and preliminarily  
12 approves the terms of the proposed settlement.

13          12.    Pursuant to Rule 23(c)(2)(B) and Rule 23(e) of the Federal Rules of  
14 Civil Procedure, the Court orders that the Settlement Class be given notice of the  
15 pendency of this action and the Parties' proposed settlement. The Court finds that the  
16 Class Notice dissemination procedure set forth in Section 9 of the Agreement (i) is  
17 the best practicable notice; (ii) is reasonably calculated, under the circumstances, to  
18 apprise Settlement Class Members of the pendency of the Lawsuit and of their right  
19 to object or to exclude themselves from the proposed settlement; (iii) is reasonable  
20 and constitutes due, adequate and sufficient notice to all persons entitled to receive  
21 notice; and (iv) meets all applicable requirements as set forth by law. Thus, the Court  
22 adopts and incorporates the Class Notice dissemination procedures set forth in  
23 Section 9 of the Agreement into this Order.

24          13.    The Court approves the Class Notice, Long Form Class Notice,  
25 Publication Notice, and Opt-Out Form, which are attached as Exhibits to the  
26 Agreement, with the dates to be filled in on those exhibits consistent with the dates  
27 set forth in this Order. The Court also approves the creation of a Settlement Website,  
28 [www.amerisavesettlement.com](http://www.amerisavesettlement.com), by the Settlement Administrator.

1           14. The Court appoints P&N Consulting as Settlement Administrator to  
2 disseminate notice to the Settlement Class and administer the settlement. The Court  
3 orders P&N Consultants to: (i) create the Settlement Website; (ii) complete  
4 dissemination of the Class Notice to the Settlement Class by 45 days after  
5 preliminary approval; (iii) file proof of the dissemination of the Class Notice to the  
6 Settlement Class at least fourteen (14) days before the Final Approval Hearing; (iv)  
7 establish a post office box in P&N's name to be used for receiving opt-out requests,  
8 objections, notices of intention to appear, and any other communications from  
9 Settlement Class Members; (v) promptly furnish Class Counsel, Defense Counsel,  
10 and Defendant with copies of any and all opt-out requests, objections, notices of  
11 intention to appear, or other communications from Settlement Class Members that  
12 come into its possession; and (vi) provide the Opt-Out List to Class Counsel and  
13 Defense Counsel no later than seven (7) days after the opt-out period and file a  
14 declaration with the Court at least fourteen (14) days before the Final Approval  
15 Hearing attesting to the completeness and accuracy thereof.

16           15. The Court orders the Settlement Administrator to provide a list of  
17 objectors to Class Counsel and Defense Counsel no later than seven (7) days after the  
18 completion of the one hundred and thirty (130) day period in which Settlement Class  
19 Members may object to the settlement, and then file a declaration with the Court at  
20 least fourteen (14) days before the Final Approval Hearing attesting to the  
21 completeness and accuracy thereof and attaching a copy of all objections received.

22           16. The Court sets a Final Approval Hearing on **November 20, 2020, at**  
23 **10:00 a.m.** to consider the fairness, reasonableness, and adequacy of the proposed  
24 settlement and Agreement and determine whether it should finally be approved by the  
25 Court. At that time, the Court will hear any applications for attorneys' fees,  
26 expenses, and/or incentive awards.

27           17. The Court sets **August 31, 2020** as the deadline for filing the final  
28 approval motion and the application for the Attorneys' Fee Award.

1           18. The Court sets **September 30, 2020** as the deadline by which Settlement  
2 Class Members must submit any: (i) request for exclusion from the Settlement Class;  
3 or (ii) objection to the Agreement, the proposed settlement, or to the Attorneys' Fee  
4 Award. The procedures and requirements for opting out of the Settlement Class or  
5 objecting to the Agreement, the proposed settlement, or to the Attorneys' Fee Award  
6 are set forth below.

7           19. The Court sets **October 16, 2020** as the deadline for filing any reply  
8 memorandum in further support of final approval of the proposed settlement or the  
9 Attorneys' Fee Award application.

10           20. The Court orders that any Settlement Class Member who wishes to  
11 exclude him/herself from the Settlement Class may either submit an online Opt-Out  
12 Form electronically through the Settlement Website or print and mail the online form  
13 to the Settlement Administrator. Any Settlement Class Member who does not submit  
14 a timely written request for exclusion from the Settlement Class will be bound by all  
15 proceedings, orders, and judgments in the Lawsuit, even if such Settlement Class  
16 Member has previously initiated or subsequently initiates individual litigation or  
17 other proceedings encompassed by the Release.

18           21. The Court orders that any Settlement Class Member who becomes an  
19 Opt-Out may rejoin the Settlement Class by providing written notice to the  
20 Settlement Administrator no later than fourteen (14) days after the Final Approval  
21 Hearing.

22           22. The Court orders that any Settlement Class Member who does not  
23 exclude him/herself from the Settlement Class and who wishes to object to the  
24 fairness, reasonableness, or adequacy of the Agreement, the proposed settlement, or  
25 to the Attorneys' Fee Award must serve on the Settlement Administrator no later than  
26 **September 30, 2020** a statement of the objections signed by the Settlement Class  
27 Member. The objection shall be in writing, signed by the Settlement Class Member,  
28 and shall contain all of the following information: (i) the objector's full name,  
address, email, and mobile telephone number; (ii) a written statement of all grounds

1 for the objections accompanied by any legal support for such objections; (iii) copies  
2 of any papers, briefs, or other documents upon which the objection is based; (iv) a  
3 written statement as to whether the objector intends to appear at the Final Approval  
4 Hearing; (v) a declaration setting forth any other objections submitted by the  
5 objector, or the objector's counsel, to any class action settlement submitted in any  
6 court, whether state, federal or otherwise, in the United States in the previous five (5)  
7 years; and (vi) if the objector intends to appear at the Final Approval Hearing through  
8 counsel, the objection must also identify the attorney(s) representing the objector who  
9 will appear at the Final Approval Hearing. Any Settlement Class Member who does  
10 not submit a timely written objection in accordance with the procedures stated herein  
11 shall be foreclosed from seeking any adjudication or review of this settlement by  
12 appeal or otherwise.

13 23. The Court orders that any Settlement Class Member, who submits a  
14 written objection and who intends to make an appearance at the Final Approval  
15 Hearing, provide to the Settlement Administrator (who shall forward it to Class  
16 Counsel and Defense Counsel) and file with the Clerk of the Court the written  
17 objection as well as a notice of intention to appear at the Final Approval Hearing no  
18 later than thirty (30) days before the Final Approval Hearing.

19 24. The Court orders that any attorney hired by a Settlement Class Member  
20 will be at the Settlement Class Member's sole expense for the purpose of objecting to  
21 this Agreement, to the proposed settlement, or to the Attorneys' Fee Award and such  
22 attorney shall provide to the Settlement Administrator (who shall forward it to Class  
23 Counsel and Defense Counsel) and file with the Clerk of the Court the written  
24 objection by the deadline specified in paragraph 15 above as well as file a notice of  
25 intention to appear at the Final Approval Hearing no later than thirty (30) days before  
26 the Final Approval Hearing.

27 25. The Court orders that (i) the submission of an objection allows Class  
28 Counsel or Defendant's Counsel to notice the deposition of the objector consistent  
with the Federal Rules of Civil Procedure at an agreed-upon location and to seek any

1 documentary evidence or tangible items that are relevant to the objection; (ii) the  
2 failure by an objector to make himself or herself available for deposition or to comply  
3 with expedited discovery requests may result in the Court striking the objector's  
4 objection and denying that person the opportunity to make an objection or to be  
5 heard; and (iii) the Court may tax the costs of any such discovery to the objector or  
6 the objector's counsel should the Court determine that the objection is frivolous  
7 and/or made for an improper purpose.

8         26. The Court preliminarily enjoins all Settlement Class Members unless  
9 and until they have timely excluded themselves from the Settlement Class from: (i)  
10 filing, commencing, prosecuting, intervening in or participating as a plaintiff,  
11 claimant or class member in any other lawsuit or administrative, regulatory,  
12 arbitration or other proceeding against Defendant in any jurisdiction based on,  
13 relating to or arising out of the claims and causes of action or the facts and  
14 circumstances giving rise to the Lawsuit and/or the Released Claims; or (ii) filing,  
15 commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or  
16 other proceeding against Defendant as a class action on behalf of any Settlement  
17 Class Members who have not timely excluded themselves (including by seeking to  
18 amend a pending complaint to include class allegations or seeking class certification  
19 in a pending action), based on, relating to or arising out of the claims and causes of  
20 action or the facts and circumstances giving rise to the Lawsuit and/or the Released  
21 Claims.

22         The Pretrial Conference and Jury Trial dates are vacated.

23         **IT IS SO ORDERED.**

24         Dated: May 21, 2020



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25         HONORABLE ANDRÉ BIROTTE JR.  
26         UNITED STATES DISTRICT COURT JUDGE