

THE LAW OFFICES OF TODD M. FRIEDMAN, PC
WOODLAND HILLS, CA 91367

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**UNITED STATE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

AMERISAVE MORTGAGE
CORPORATION, and DOES 1
through 10, inclusive, and each of
them,

Defendant..

Case No. 2:19-cv-04659-AB-AS

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Assigned to the Honorable Andre'
Birotte,

DATE: NOVEMBER 20, 2020
TIME: 10:00 A.M.
COURTROOM: 7D

1
2 Plaintiffs have filed a Motion for an Order Granting Final Approval of Class
3 Action Settlement, Conditionally Certifying Proposed Settlement Class, Approving
4 Motion for Attorneys’ Fees and Costs, and granting Incentive Award (“Motion”).
5 Having reviewed the Motion and supporting materials, the Court determines and
6 orders as follows:

7 On May 21, 2020 this Court entered an Order Granting Preliminary
8 Approval of Settlement, resulting in certification of the following provisional
9 Settlement Class:

10 *“All persons or entities within the United States who*
11 *received on their cellular telephones communications*
12 *placed by AMERISAVE using its CCT dialer and/or that*
13 *were placed to a number on the National Do Not Call list*
14 *or AMERISAVE’s Internal Do Not Call list between April*
15 *1, 2018 and December 31, 2019.”*

16 Membership in the Settlement Class consists exclusively of individuals provided
17 by Defendants to the Settlement Administrator, as set forth in the Agreement.
18 The Court further approved the form of, and directed the parties to provide, the
19 proposed Class Notice to the Class, which informed Settlement Class Members of:
20 (a) the proposed Settlement, and the Settlement’s key terms; (b) the date, time, and
21 location of the Final Approval Hearing; (c) the right of any Settlement Class
22 Member to object to the proposed Settlement, and an explanation of the procedures
23 to exercise that right; (d) the right of any Settlement Class Member to exclude
24 themselves from the proposed Settlement; and an explanation of the procedures to
25 exercise that right; and (e) an explanation of the procedures for Settlement Class
26 Members to participate in the proposed Settlement.

27 No objections have been made, timely or otherwise, pursuant to the Class
28 Notice sent to the Settlement Class members, nor did any objectors appear at the

1 time of the hearing.

2 This matter having come before the Court for hearing pursuant to the Order
3 of this Court dated May 21, 2020, for approval of the settlement set forth in the
4 Settlement Agreement and Release ("Settlement"), and due and adequate notice
5 having been given to the Settlement Class Members as required in said Order, and
6 the Court having considered all papers filed and proceedings had herein and
7 otherwise being fully informed of the promises and good cause appearing therefore,
8 it is ORDERED, ADJUDGED AND DECREED THAT:

- 9 1. This Court has jurisdiction over the subject matter of the Action and over all
10 of the parties to the Action.
- 11 2. The Court finds that the Settlement Class is properly certified as a class for
12 settlement purposes only.
- 13 3. The Class Notice provided to the Settlement Class conforms with the
14 requirements of Fed. Rule Civ. Proc. 23, the California and United States
15 Constitutions, and any other applicable law, and constitutes the best notice
16 practicable under the circumstances, by providing individual notice to all
17 Settlement Class Members who could be identified through reasonable effort,
18 and by providing due and adequate notice of the proceedings and of the
19 matters set forth therein to the other Settlement Class Members. The notice
20 fully satisfied the requirements of Due Process. No Settlement Class Members
21 have objected to the terms of the Settlement.
- 22 4. Only two Settlement Class Members have requested exclusion from the
23 Settlement.
- 24 5. The Court finds that Defendant properly and timely notified the appropriate
25 government officials of the Settlement Agreement, pursuant to the Class
26 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has
27 reviewed the substance of Defendant's notice, and finds that it complied with
28 all applicable requirements of CAFA. Further, more than ninety (90) days

1 have elapsed since Defendant provided notice pursuant to CAFA and the Final
2 Approval Hearing.

3 6. The Court finds the Settlement was entered into in good faith, that the
4 settlement is fair, reasonable and adequate, and that the Settlement satisfies
5 the standards and applicable requirements for final approval of this class
6 action settlement under California law, including the provisions of Fed. Rule
7 Civ. Proc. 23. The Court finds that the consideration to be paid to members
8 of the Settlement Class is reasonable and in the best interests of the Settlement
9 Class Members considering the disputed facts and circumstances of and
10 affirmative defenses asserted in the Action and the potential risks and
11 likelihood of success of pursuing litigation on the merits.

12 7. The Court finds that the requirements of Rule 23(e)(2) of the Federal Rules
13 of Civil Procedure are satisfied with request to the settlement. The Class
14 representatives and class counsel have adequately represented the class, as
15 demonstrated by their efforts in certifying the class by contested motion
16 after significant formal discovery and motion practice. The Court found
17 that these requirements were satisfied in its [May 22, 2020] Order granting
18 Plaintiffs' motion for class certification. Dkt. No. 46. Based on the record
19 before the Court, The Court is persuaded that these requirements continue
20 to be satisfied. Further, the settlement was negotiated at arm's length, with
21 the assistance of experienced mediator Hon. George H. King (ret.), and over
22 the course of several sessions of subsequent negotiations, conducted with
23 the oversight and assistance of Judge King. The Court further finds that the
24 relief provided to the class is adequate, fair and reasonable taking into
25 account the costs, risks and delay of trial and appeal. Defendant articulated
26 several bases upon which it planned to mount a vigorous defense, including
27 contesting certification, contesting plaintiffs' claims at summary judgment
28 and trial and filing potential appeals. Plaintiffs and Class Counsel
adequately and appropriately considered these risks in negotiating a

1 settlement. Additionally, the method of distributing relief to the class, by
2 giving direct notice by mail, and creating a pro rata distribution of a
3 common fund without reversion, is a method of distribution and settlement
4 that is commonly accepted by courts, including by This Court, as satisfying
5 the requirements of Rule 23(e)(2). The terms of the proposed award of
6 attorney's fees are fair and determined to be fair and reasonable, given the
7 length of time in litigation, and the results achieved. The timing of payment
8 is fair because fees and costs will be paid out of a common fund, at the same
9 time as the remainder of the class members. Finally, the settlement puts all
10 class members on equal footing, which is appropriate under the facts of this
11 case, which involves the same statutory damages awarded to each class
12 member. Accordingly, the Court finds that the requirements of Rule
13 23(e)(2) are satisfied.

14 8. The Court has specifically considered the factors relevant to class settlement
15 approval (*see, e.g., Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566 (9th Cir.
16 2004))—including, *inter alia*, the strength of Plaintiff's case; the risk,
17 expense, complexity, and likely duration of further litigation; the risk of not
18 maintaining class action status throughout trial; the relief provided for in the
19 settlement; the extent of discovery completed and stage of the proceedings;
20 the experience and views of counsel; and the reaction of the Settlement Class
21 Members to the proposed settlement (including the claims submitted and lack
22 of any opt-outs or objections)—and upon consideration of such factors finds
23 that the Settlement is fair, reasonable, and adequate to all concerned.

24 9. Accordingly, the Settlement is hereby finally approved in all respects, and the
25 Parties are hereby directed to implement and consummate the Settlement
26 Agreement according to its terms and provisions.

27 10. The terms of the Settlement Agreement and of this Final Order, including all
28 exhibits thereto, shall be forever binding in all pending and future lawsuits

1 maintained by the Named Plaintiff and all other Settlement Class Members,
2 as well as their family members, heirs, administrators, successors, and assigns.

3 11. Upon entry of this Order, compensation to the participating Settlement Class
4 Members shall be effected pursuant to the terms of the Settlement.

5 12. In addition to any recovery that Plaintiffs may receive under the Settlement,
6 and in recognition of the Plaintiffs' efforts and risks taken on behalf of the
7 Settlement Class, the Court hereby approves the payment of a Service Award
8 to Plaintiffs, in the amount of \$5,000 to Plaintiff for his role as a Class
9 Representative.

10 13. The Court approves the payment of attorneys' fees to Class Counsel in the
11 sum of \$1,250,000, and the reimbursement of litigation expenses in the sum
12 of \$30,061.51.

13 14. The Court approves and orders payment in an amount commensurate with
14 P&N Consulting's actual costs, and not to exceed \$1,550,000.00 to P&N
15 Consulting for performance of its settlement claims administration services.

16 15. Upon the Effective Date, the Plaintiffs and Settlement Class Members,
17 [except the excluded individuals referenced in paragraph 4 of this Order], shall
18 have, by operation of this Order and the accompanying Judgment, fully,
19 finally and forever released, relinquished, and discharged Defendant from all
20 claims or liabilities arising from or related to the facts, circumstances or
21 subject matter of this Action, as set forth in the Settlement Agreement. Upon
22 the Effective Date, all Settlement Class Members shall be and are hereby
23 permanently barred and enjoined from the institution or prosecution of any
24 and all Released Claims that are released under the terms of the Settlement.
25 This Lawsuit and all claims of Plaintiffs and the Settlement Class Members
26 are hereby dismissed with prejudice. Furthermore, Plaintiffs and all
27 Settlement Class Members are hereby barred and permanently enjoined from
28 (a) filing, commencing, prosecuting, intervening in, promoting, or

1 participating (as class members or otherwise) in any lawsuit in any jurisdiction
2 based on or arising out of the claims and causes of action, or the facts and
3 circumstances relating thereto, in this Action; and (b) organizing Settlement
4 Class Members who have not been excluded from the Settlement Class into a
5 separate class for purposes of pursuing as a purported class action any lawsuit
6 (including by seeking to amend a pending complaint to include class
7 allegations, or seeking class certification in a pending action) based on or
8 relating to the claims and causes of action, or the facts and circumstances
9 relating thereto, in this Action.

10 16. This Final Order and the Settlement Agreement (including the exhibits
11 thereto) may be filed in any action against or by any Released Party (as that
12 term is defined herein and the Settlement Agreement) to support a defense of
13 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar
14 or reduction, or any theory of claim preclusion or issue preclusion or similar
15 defense or counterclaim.

16 17. This Order, the Settlement, and any and all negotiations, statements,
17 documents, and/or proceedings in connection with this Settlement are not, and
18 shall not be construed as, an admission by Defendant of any liability or
19 wrongdoing in this or in any other proceeding.

20 18. Upon completion of administration of the Settlement, the Parties shall file a
21 declaration setting forth that claims have been paid and that the terms of the
22 Settlement have been completed.

23 19. This Judgment is intended to be a final disposition of the above captioned
24 action in its entirety and is intended to be immediately appealable.

25 20. This Court shall retain jurisdiction with respect to all matters related to the
26 administration and consummation of the settlement, and any and all claims,
27 asserted in, arising out of, or related to the subject matter of the lawsuit,
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including but not limited to all matters related to the Settlement and the determination of all controversies related thereto.

IT IS SO ORDERED.

Dated: _____, 2020

Honorable Andre Birotte, Jr.
United States District Court Judge

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PROOF OF SERVICE