

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 21-cv-339-WQH-MDD

HAYES, Judge:

The Court has considered the Parties' Settlement Agreement, along with Plaintiff's unopposed Motion for Preliminary Approval of the Settlement Agreement (ECF No. 41) and the Memorandum of Points and Authorities, Declaration of Joshua B. Swigart, Declaration of Peter F. Barry, Declaration of David Greenley, and other documents filed in support thereof, and finds good cause for issuing an Order Preliminarily Approving the Parties' Settlement.

1 IT IS HEREBY ORDERED:

2 1. The Court GRANTS the request for Preliminary Approval of the Class Action
3 Settlement. All defined terms contained herein shall have the same meanings as set forth
4 in the Settlement.

5 2. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court
6 GRANTS the Parties' request for certification of the following Rule 23 Settlement Class
7 for the sole and limited purpose of implementing the terms of the Settlement Agreement,
8 subject to this Court's final approval:

9 **A. The Confidential Communication Class for Violation of Penal Code**
10 **§ 632, consisting of:**

11 All persons in California who booked a move online through the
12 Mayflower Gemini program and whose conversations were
13 recorded without their consent, by Defendant, and or its agents,
14 within the one year prior to the filing of the Complaint.

15 **B. The Cellular Phone Communication Sub-Class for Violation of Penal**
16 **Code §632.7, consisting of:**

17 All persons in California who booked a move online through the
18 Mayflower Gemini program and whose cellular telephone
19 conversations were recorded without their consent, by Defendant,
20 and or its agents, within the one year prior to the filing of the
21 Complaint.

22 3. The Court recognizes that certification under this Order is for settlement
23 purposes only and shall not constitute or be construed as an admission by Defendant that
24 this action is appropriate for class treatment for litigation purposes. Entry of this Order is
25 without prejudice to the rights of Defendant to oppose certification of a class in this action
26 should the proposed Settlement not be granted final approval.

27 4. The Court appoints and designates: (a) Plaintiff David Greenley as the Class
28 Representative and (b) the firms of Swigart Law Group, APC and The Barry Law Office,

1 Ltd as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class
2 with respect to all acts or consents required by, or which may be given, pursuant to the
3 Settlement, and such other acts necessary to finalize the Settlement Agreement and its
4 terms.

5 5. Any Settlement Class Member may opt out of the Settlement and enter an
6 appearance through his or his own counsel at such Class Member's own expense. Any
7 Settlement Class Member who does not opt out will be represented by Class Counsel. The
8 Court hereby preliminarily approves the terms provided for in the Settlement, finding them
9 to be fair, adequate, and reasonable and in the best interests of the Settlement Class
10 Members.

11 6. The Court hereby preliminarily approves the Settlement in the Maximum
12 Settlement Amount of \$1,450,000.00, with the Net Settlement Amount being calculated by
13 subtracting the following from the Maximum Settlement Amount: (1) Class Counsel's
14 attorneys' fees (not to exceed 25% of the Maximum Settlement Amount or \$362,500.00);
15 (2) Class Counsel's Costs (not to exceed \$50,000.00); (3) Class Representative Service
16 Award to be paid to Representative David Greenley not to exceed \$10,000; and (4) the
17 Claims Administration Costs to the Claims Administrator, CPT Group, Inc. The Net
18 Settlement Amount remaining for paying Individual Settlement Payments to the
19 Participating Class Members is anticipated to be approximately \$1,010,000.00. The Court
20 further preliminarily approves the formulas provided in the Settlement for calculating
21 Individual Settlement Payments, the Opt-Out Deadline, the Objection Deadline, and the
22 claim submission deadline.

23 7. The Court finds on a preliminary basis that the Settlement, including the Class
24 Representative Service Award, Class Counsel Fees and Costs, the Claims Administration
25 Costs and the proposed allocation of Individual Settlement Payments to Participating Class
26 Members, appears to be within the range of reasonableness of a settlement that could
27 ultimately be given final approval by this Court.
28

1 8. It appears to the Court on a preliminary basis that the Settlement is fair,
2 adequate and reasonable as to all potential Settlement Class Members when balanced
3 against the probable outcome of further litigation relating to certification, liability and
4 damages issues. It also appears that extensive investigation, research and Court
5 proceedings have been conducted so that counsels for the Parties have been able to
6 reasonably evaluate their respective positions. It appears to the Court that settlement at this
7 time will avoid substantial additional costs by all Parties, as well as avoid the delay and
8 risks that would be presented by the further prosecution of this Action. It also appears that
9 settlement has been reached because of intensive, serious, and non-collusive arms-length
10 negotiations, including a full-day mediation with a third-party neutral.

11 9. A final approval hearing shall be held before this Court on August 4, 2022, in
12 Courtroom 14B of the United States District Court, Southern District of California, at 10:30
13 a.m. to determine all necessary matters concerning the Settlement, including whether the
14 proposed Settlement of the Action on the terms and conditions provided for in the
15 Settlement are fair, adequate and reasonable and should be finally approved by the Court
16 and whether a Judgment should be entered herein. At that time, a hearing on Class
17 Counsel's Motion for Attorneys' Fees and Costs and the Class Representative's Service
18 Award shall also be held.

19 10. The Court hereby approves, as to form and content, the Notice of Class Action
20 Settlement ("Notice Packet") to be sent to Settlement Class Members, which is attached as
21 Exhibits 2 and 3 to the Declaration of Joshua B. Swigart (ECF Nos. 41-6–41-7). The Court
22 finds that distribution of the Notice Packets to the Settlement Class Members substantially
23 in the manner and form set forth in the Settlement is the best notice practicable under the
24 circumstances and meets the requirements of due process and shall constitute due and
25 sufficient notice to all parties entitled thereto. The documents to be sent to all Settlement
26 Class Members in the Notice Packet are deemed sufficient to inform Settlement Class
27 Members of the terms of the Settlement, their rights under the Settlement, their rights to
28 object to or comment on the settlement, their right to receive an Individual Settlement

1 Payment without having to take any action, their right to exclude themselves and not
2 participate in the Settlement, and the processes for doing so, and the date and location of
3 the Final Approval Hearing, and the Notice Packet documents, and are therefore approved.

4 11. The Court appoints and designates CPT Group, Inc., as the third-party Claims
5 Administrator. The Court hereby directs the Claims Administrator to provide the approved
6 Notice Packet documents to Settlement Class Members and administer the Settlement in
7 accordance with the procedures set forth in the Settlement herein, including in conformance
8 with the schedule set forth below.

9 12. Any Settlement Class Member may choose to opt out of and be excluded from
10 the Settlement as provided in the Settlement and Notice of Class Action Settlement and by
11 following the instructions for requesting exclusion. Any person who timely and properly
12 excludes themselves from the Settlement will not be bound by it or have any right to object,
13 appeal or comment thereon. Any Request for Exclusion must be signed by each such
14 Settlement Class Member and comply with the requirements for exclusion set forth in the
15 Settlement.

16 13. Settlement Class Members who have not timely submitted a Request for
17 Exclusion shall be bound by all determinations of the Court, the Settlement and the
18 Judgment. If both an opt-out and an objection are received from the same Settlement Class
19 Member, the Class Member will be deemed to have opted out.

20 14. Pursuant to Federal Rule of Civil Procedure 23(e)(5), members of the
21 Settlement Class may object to the terms of the settlement. Settlement Class Members who
22 object to the proposed Settlement may appear and present such objections at the Final
23 Approval Hearing in person or by counsel, provided that any objecting Settlement Class
24 Member submit a written statement containing the basis of that person's objections,
25 together with a notice of the intention to appear, if appropriate, which must be sent to the
26 Class Counsel and Defendant's Counsel and postmarked no later than the date set by the
27 schedule of dates below.
28

1 15. No person shall be heard at the Final Approval Hearing, and no briefs or
2 papers shall be received or considered, unless the foregoing documents have been filed and
3 served as provided in this Order, except as this Court may permit for good cause shown.

4 16. The motion for final approval of the Settlement and Awarding Administration
5 Costs shall be filed according to the schedule of dates below. Class Counsel shall also file
6 its Motion for Attorneys' Fees and Costs and Class Representative Service Award
7 according to the schedule of dates below, to be heard concurrently with the Final Approval
8 Hearing.

9 17. Upon Final Approval and completion of the Claims Administration process,
10 all Class Members who have not submitted timely Requests for Exclusion and the Class
11 Representatives will be deemed to have forever released and discharged the Released
12 Claims applicable to them and waived their rights under California Civil Code § 1542 for
13 the applicable Released Claims, as set forth and defined in the preliminarily approved
14 Settlement Agreement.

15 18. The Court reserves the right to change or otherwise continue or advance the
16 date of the Final Approval Hearing and all dates provided for in the Settlement without
17 further notice to the Class.

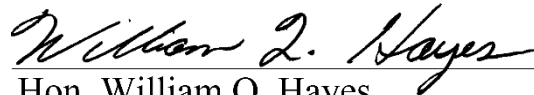
18 19. The Court orders the following schedule of dates and administration
19 milestones for the specified actions and further proceedings in this matter as agreed under
20 the terms of the Settlement:

Date	Event
14 days from date of Preliminary Approval	Last day for Defendant to provide Claims Administrator the Class List
30 days from date of Preliminary Approval	Notice: Last day for Claims Administrator to mail the Notice Packet to Class Members
60 days from date of Preliminary Approval	Last day for Settlement Class to submit a timely signed Request for Exclusion

60 days from date of Preliminary Approval	Last day for Settlement Class to timely submit Objections
30 days before Final Approval Hearing	Last day to file Motion for Final Approval of Class Action Settlement
30 days before Final Approval Hearing	Last day to file Motion for Approval of Class Counsel's Attorneys' Fees and Costs, and Class Representative Service Award
15 days before Final Approval Hearing	Last Day to file a Reply to any objections to the Settlement
August 4, 2022 at 10:30 a.m.	Final Approval Hearing

IT IS FURTHER ORDERED that Plaintiff's Motion to Certify Class (ECF No. 32) is denied as moot, without prejudice to refile if the proposed Settlement is not granted final approval.

Dated: February 10, 2022


Hon. William Q. Hayes
United States District Court