

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 18-23240-CIV-ALTONAGA/Goodman**

**STEPHANE POIRIER,**  
individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

**CUBAMAX TRAVEL INC.,**

Defendant.

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**ORDER**

**THIS CAUSE** came before the Court on Plaintiff, Stephane Poirier’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Incorporated Memorandum of Law [ECF No. 41], filed December 28, 2018. Plaintiff and Defendant, Cubamax Travel, Inc. have agreed to settle this class-action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release [ECF No. 41-1] (the “Agreement”). The parties reached the Agreement through arm’s-length negotiations with the help of experienced mediator, Steven Jaffe, Esquire. Under the Agreement, Plaintiff and the proposed Class (the “Settlement Class”) will fully, finally, and forever resolve, discharge, and release their claims. (*See generally* Agreement).

Plaintiff subsequently filed the present Motion seeking preliminary approval of the Agreement. Upon considering the Motion, the Agreement, the record, and applicable law, it is

**ORDERED AND ADJUDGED** that the Motion [ECF No. 41] is **GRANTED** as follows:

1. As used in this Order, unless otherwise noted, capitalized terms shall have the

definitions and meanings accorded to them in the Agreement.

2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. sections 1331 and 1332.
3. Venue is proper in this District.
4. The Court finds, for settlement purposes, that the Federal Rule of Civil Procedure 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court therefore provisionally certifies the following Settlement Class.

All individuals residing in the United States (i) who were sent a text message, (ii) on a cellular telephone to which he or she was the subscriber at the time the text message was received, (iii) using the Nexmo platform, (iv) by or on behalf of Cubamax Travel, Inc., (v) promoting one of Cubamax Travel, Inc.'s specials, promotions, and/or locations, (vi) from August 8, 2014 through the date of certification.

Excluded from the Settlement Class are: (i) the trial judge presiding over this case; (ii) Cubamax, as well as any parent, subsidiary, affiliate, or control person of Cubamax, and the officers, directors, agents, servants, or employees of Cubamax; (ii) any of the Released Parties; (iv) the immediate family of any such person(s); (v) any Settlement Class Member who has timely opted out of this proceeding; and (vi) Plaintiff's Counsel, their employees, and their immediate family.

5. Specifically, the Court finds, for settlement purposes and conditioned on final certification of the proposed class and on the entry of the Final Approval Order, that the Settlement Class satisfies the following factors of Federal Rule of Civil Procedure 23:

- a. Numerosity: In the action, over 115,000 individuals are received text messages from Nexmo, and may be Settlement Class members. The proposed Settlement Class is thus so numerous that joinder of all members

is impracticable.

- b. Commonality: The commonality requirement is also satisfied. Multiple questions of law and fact centering on Defendant's class-wide practices are common to the Plaintiff and the Settlement Class, are alleged to have injured all members of the Settlement Class in the same way, and would generate common answers central to the viability of the claims were this case to proceed to trial.
- c. Typicality: Plaintiff's claims are typical of the Settlement Class because they concern the same alleged Defendant's practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied.
- d. Adequacy: Rule 23(a)(4) is satisfied because there are no conflicts of interest between the Plaintiff and the Settlement Class, and Plaintiff has retained competent counsel to represent him and the Settlement Class. Class Counsel regularly engage in consumer class litigation, complex litigation, and other litigation similar to this action, and have dedicated substantial resources to the prosecution of the action. Moreover, the Plaintiff and Class Counsel have vigorously and competently represented the Settlement Class in the action.
- e. Predominance and Superiority: Rule 23(b)(3) is satisfied because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for the members of the Settlement Class in a single, coordinated proceeding is

superior to thousands of individual lawsuits addressing the same legal and factual issues.

Indeed, common questions present a significant aspect of the case and can be resolved for all members of the Settlement Class in a single adjudication. In a liability determination, those common issues would predominate over any issues that are unique to individual members of the Settlement Class. Moreover, each member of the Settlement Class has claims that arise from the same or similar alleged practices as well as the same legal theories.

6. The Court appoints Plaintiff, Stephan Poirier, as Class Representative.
7. The Court appoints the following people and firms as Class Counsel: (1) Scott A. Edelsberg of Edelsberg Law, P.A.; (2) Andrew J. Shamis of Shamis and Gentile, P.A.; and (3) Manuel S. Hiraldo of Hiraldo P.A.
8. The Court recognizes that Defendant reserves all of its defenses and objections against and rights to oppose any request for class certification in the event that the proposed Agreement does not become final for any reason. Defendant also reserves its defenses to the merits of the claims asserted in the event the Agreement does not become final for any reason.
9. The Court preliminarily approves the Agreement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds the Agreement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the parties and their capable and experienced counsel. The Court also finds the Agreement is within the range of

reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

10. The Court approves the form and content of the Class Notices, substantially in the forms attached as Exhibits 2, 3 and 5 to the Agreement, and the Claim Form attached as Exhibit 1 to the Agreement. The Court also finds that the Class Notice program described in the Agreement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the action, certification of a Settlement Class, the terms of the Agreement, Class Counsel's attorney's fees application and the request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Agreement. The Class Notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class Notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional due process requirements.

11. Epiq Class Action & Claims Solutions, Inc. shall serve as the Class Administrator. The Administrator shall implement the Class Notice program, as set forth below and in the Agreement, using the Class Notices substantially in the forms attached as Exhibits 2, 3, and 5 to the Agreement and approved by this

Order. Notice shall be provided to the members of the Settlement Class pursuant to the Class Notice program, as specified in the Agreement and approved by this Order. The Class Notice program shall include, to the extent necessary, Email Notice, Mail Notice, and Long-Form Notice, as set forth in the Agreement and below.

- a. *Email Notice:* The Administrator shall administer Email Notice as set forth in the Agreement. Email Notice shall be completed no later than 60 days after the entry of this order — by **March 4, 2019**.
- b. *Mail Notice:* The Administrator shall administer Mail Notice as set forth in the Agreement. Mail Notice shall be completed no later than 60 days after the entry of this order — by **March 4, 2019**.
- c. *Settlement Website:* The Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following preliminary approval, but no later than before commencement of the Class Notice program. The Settlement Website shall include an online portal to file Claim Forms, hyperlinks to the Agreement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendant agree to include. These documents shall remain on the Settlement Website until at least 60 days following the Claim Deadline. The Administrator is directed to perform all substantive responsibilities with respect to effectuating the Class Notice program, as set forth in the

Agreement.

12. A Final Approval Hearing will take place on **May 23, 2019 at 9:00 a.m.** to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order, and whether Class Counsel's Fee Application and request for a Service Award for the Class Representative should be granted.
13. Any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Agreement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out requests must be received by all those listed in the Long-Form Notice on or before the last day of the Opt-out Period, which is 30 days before the Final Approval Hearing ("Opt-Out Deadline") — by **April 23, 2019** — and mailed to the addresses indicated in the Long Form Notice.
14. Any Settlement Class Member may object to the Agreement, Class Counsel's Fee Application, or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendant's Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than 30 days before the Final Approval Hearing — by **April 23, 2019** — as set forth in the Notice. To be valid, an objection must include the following information:
  - a. the name of the action;
  - b. the objector's full name, address, and telephone number;
  - c. an explanation of the basis upon which the objector claims to be a

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Settlement Class Member;

- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Agreement or Fee Application;
- g. a copy of any orders related to or ruling upon the objector's counsel's or the counsel's law firm's prior objections made by individuals or organizations represented by them that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;
- h. any and all agreements that relate to the objection or the process of objecting — whether written or oral — between objector or objector's counsel and any other person or entity;
- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

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- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
  - k. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
  - l. the objector's signature (an attorney's signature is not sufficient).
15. Plaintiff and Class Counsel shall file their Motion for Final Approval of the Settlement, Fee Application and request for a Service Award for Plaintiff, no later than **April 8, 2019** — 45 days before the Final Approval Hearing.
16. Plaintiff and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Agreement, the Fee Application and/or request a Service Award for Plaintiff no later than **May 8, 2019** — 15 days before the Final Approval Hearing.
17. If the Agreement is not finally approved by the Court, or for any reason the parties fail to obtain a Final Approval Order as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the following shall apply:
  - a. All orders and findings entered in connection with the Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any other proceeding;
  - b. Nothing in this Order is, or may be construed as, any admission or concession by or against the parties on any point of fact or law; and
  - c. Neither the Agreement's terms nor any publicly disseminated information

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regarding the Agreement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Agreement, any failure of the Court to approve the Agreement and/or any objections or interventions may be used as evidence.

18. All proceedings in the action are **STAYED** until further order of the Court, except as may be necessary to implement the terms of the Agreement. Pending final determination of whether the Agreement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

19. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

<u>Event</u>	<u>Date</u>
Completion of Mailed Notice	March 4, 2019
Email Notice	March 4, 2019
Motion for Final Approval of the Agreement and Class Counsel's Fee Application and Expenses, and for a Service Award	April 8, 2019
Opting-out of the Agreement and Submission of Objections	April 23, 2019
Responses to Objections	May 8, 2019
Final Approval Hearing	May 23, 2019
Last Day Class Claimants May Submit a Claim Form	June 7, 2019

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**DONE AND ORDERED** in Miami, Florida, this 3rd day of January, 2019.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record