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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EVANGELIA REMOUNDOS, et al.,  
Plaintiffs,  
v.  
LENDUS, LLC,  
Defendant.

Case No. [22-cv-00749-EMC](#)

**ORDER GRANTING PLAINTIFFS’  
RENEWED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Docket No. 39

United States District Court  
Northern District of California

This case is before the Court on Plaintiffs Evangelia Remoundos, John Biegger, and Anne Biegger’s (collectively, “Plaintiffs”) (collectively, “Plaintiffs”) Unopposed Renewed Motion for Preliminary Approval of the Class Action Settlement (the “Motion”). The Court, having considered the Renewed Motion, the supporting brief, the Parties’ Amended Settlement Agreement dated June 20, 2022 (the “Settlement Agreement”) (available at Docket No. 40-1); the proposed Claim Form (Exhibit 7), Long Notice (Exhibit 6), Short Notice (Exhibit 4), Postcard Notice (Exhibit 5); the pleadings and other papers filed in this Action; and the statements of counsel and the Parties, and for good cause shown.

**IT IS HEREBY ORDERED** as follows:

Preliminary Approval of Settlement Agreement

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.
2. This Court has jurisdiction over the Litigation, Plaintiffs, all Settlement Class Members, Defendant LendUS, LLC (“LendUS”), and any party to any agreement that is part of or related to the Settlement.



1 court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or  
2 abetting the Data Incident or who pleads *nolo contendere* to any such charge.

3 7. Subject to final approval of the Settlement, the Court finds and concludes for  
4 settlement purposes only that the prerequisites to a class action, set forth in Fed. R. Civ. P. 23(a)  
5 and (b), are satisfied in that:

- 6 a. the Settlement Class and California Subclass are so numerous that joinder  
7 of all members is impracticable;
- 8 b. there are questions of law or fact common to the Settlement Class and the  
9 California Subclass;
- 10 c. Plaintiffs and Class Counsel (as defined below) fairly and adequately  
11 represent the Settlement Class and the California Subclass;
- 12 d. the claims of Plaintiffs are typical of those of Settlement Class Members  
13 and California Subclass Members;
- 14 e. common issues predominate over any individual issues affecting the  
15 members of the Settlement Class and the California Subclass;
- 16 f. Plaintiffs fairly and adequately protect and represent the interests of all  
17 members of the Settlement Class and the California Subclass, and Plaintiffs'  
18 interests are aligned with the interests of all other members of the  
19 Settlement Class and the California Subclass; and
- 20 g. settlement of the Litigation on a class-action basis is superior to other  
21 means of resolving this matter.

22 8. The Court appoints M. Anderson Berry of Clayeo C. Arnold, A Professional Law  
23 Corp., Terence R. Coates of Markovits, Stock & DeMarco, LLC, and Joseph M. Lyon of The  
24 Lyon Firm as Settlement Class Counsel, having determined that the requirements of Rule 23(g) of  
25 the Federal Rules of Civil Procedure are fully satisfied by this appointment.

26 9. The Court hereby appoints Plaintiffs Evangelia Remoundos, John Biegger, and  
27 Anne Biegger as the Class Representatives for settlement purposes only on behalf of the  
28 Settlement Class.

Notice to Settlement Class Members

10. Pursuant to Federal Rule of Civil Procedure 23(e), the Court approves the Short Notice, Postcard Notice, and Long Notice (the “Settlement Notices”), respectively, to the Settlement Agreement, and finds that the dissemination of the Settlement Notices substantially in the manner and form set forth in Section 3 of the Settlement Agreement (“Notice Plan”) complies fully with the requirements of the Federal Rule of Civil Procedure 23 and due process of law, and is the best notice practicable under the circumstances.

11. The Court further approves the Claim Form which will be available both on the Settlement Website and by request.

12. The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

13. The Court hereby orders that, within fourteen (14) days of entry of this Order, LendUS shall provide to the Claims Administrator the contact information of Settlement Class Members and California Subclass Members, including names, email addresses (where available), and physical addresses, that is currently in LendUS’s possession.

14. No later than thirty (30) days from the date of this Order preliminarily approving the Settlement, Settlement Class Counsel shall cause the Claims Administrator to send the Short Notice to each Settlement Class Member via email, if an email address is available, and/or through mailing to any potential Settlement Class member for whom an email address was unavailable; and shall cause to be published the Long Form Notice available to the rest of the Class as stated in the proposed Notice Plan. Should the emailed version of the Short Notice be returned as undeliverable for any Settlement Class Member, the Claims Administer will send the Short Notice to that Settlement Class Member via mail using the physical addresses provided to the Claims Administrator by LendUS. All notices by publication shall be complete forty-five (45) days prior

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1 to the Final Approval Hearing. Contemporaneously with seeking Final Approval of the  
2 Settlement, Settlement Class Counsel and LendUS shall cause to be filed with the Court an  
3 appropriate affidavit or declaration from the Claims Administrator with respect to complying with  
4 the Notice Plan.

5 15. All costs incurred in disseminating and otherwise in connection with the Settlement  
6 Notices shall be paid by LendUS pursuant to the Settlement Agreement.

7 16. The Settlement Notices and Claim Form satisfy the requirements of due process  
8 and of Rule 23(e) of the Federal Rules of Civil Procedure and thus are approved for dissemination  
9 to the Settlement Class. The Claim Form shall be made available to the Settlement Class as set  
10 forth on the Notice Plan and shall be made available to any potential Class Member that requests  
11 one.

12 Responses by Settlement Class Members and the Scheduling of a Final Approval Hearing

13 17. Settlement Class Members may opt-out or object up to sixty (60) days from the  
14 Notice Commencement Date (the “Opt-Out Date”).

15 18. Any member of the Settlement Class who or that wishes to be excluded (“opt out”)  
16 from the Settlement Class must send a written request to the designated Post Office box  
17 established by the Claims Administrator postmarked on or before the Opt-Out Date. Members of  
18 the Settlement Class may not opt-out of the Settlement by submitting requests to opt-out as a  
19 group or class, but must in each instance individually and personally submit an opt-out request.  
20 All Settlement Class Members that opt-out of the Settlement will not be eligible to receive any  
21 benefits under the Settlement, will not be bound by any further orders or judgments entered for or  
22 against the Settlement Class, and will preserve their ability to independently pursue any claims  
23 they may have against LendUS.

24 19. Any member of the Settlement Class who does not properly and timely opt-out of  
25 the Settlement shall, upon entry of the Order and Final Judgment, be bound by all the terms and  
26 provisions of the Settlement Agreement and Release, whether or not such Settlement Class  
27 Member objected to the Settlement and whether or not such Settlement Class Member received  
28 consideration under the Settlement Agreement.

20. The Court adopts the following schedule for the remaining events in this case, which ensures that the appropriate state and federal officials are served with the notification required by the Class Action Fairness Act:

<b>Event</b>	<b>Date</b>
LendUS to Cause CAFA Notice to be Provided to Appropriate Governmental Officials (“CAFA Notice”)	Within 10 days after filing Motion for Preliminary Approval
LendUS to Provide to Claims Administrator Contact Information for Settlement Class Members	Within 14 days after entry of Preliminary Approval Order
Notice Program Commences	Within 30 days after entry of Preliminary Approval Order
Notice Program Concludes	Within 45 days after entry of Preliminary Approval Order
Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d)	90 days after the appropriate governmental officials are served with CAFA Notice
Deadline for Plaintiffs’ Motion for Final Approval of the Class-Action Settlement Agreement and Motion for Attorneys’ Fees, Expenses, and Service Awards	Within 25 days after Notice Commencement Date
Postmark Deadline for Request of Exclusion (Opt-Out) or Objections	Within 60 days after Notice Commencement Date
Postmark / Filing Deadline for Submitting Claims	Within 90 days after Notice Commencement Date
Deadline for Plaintiffs to File any Response to Objections or Supplement to Motion for Final Approval	Not later than 14 days prior to the Final Approval Hearing
Deadline for Parties to File, if Necessary, Supplemental Declaration from Claims Administrator	At least 12 days prior to the Final Approval Hearing
Final Approval Hearing	Early June 2023

1           21.     A hearing on the Settlement (the “Final Approval Hearing”) shall be held before  
2 this Court on a date to be set by the Court.

3           22.     At the Final Approval Hearing, the Court will consider (a) the fairness,  
4 reasonableness, and adequacy of the proposed class Settlement and whether the Settlement should  
5 be granted final approval by the Court; (b) dismissal with prejudice of the Litigation; (c) entry of  
6 an order including the Release; (d) entry of the Final Approval Order; and (e) entry of final  
7 judgment in this Litigation. Settlement Class Counsel’s application for award of attorney’s fees  
8 and costs, and request for the Court to award a service award to the named Plaintiffs, shall also be  
9 heard at the time of the hearing. As the Court noted at the preliminary approval hearing, what fees  
10 will ultimately be awarded (assuming there is final approval of the settlement) may turn on the  
11 claims rate and/or participation rate (in the Financial Shield program).

12           23.     The date and time of the Final Approval Hearing shall be subject to adjournment by  
13 the Court without further notice to the members of the Settlement Class, other than that which may  
14 be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, that  
15 shall not alter the deadlines for mailing and publication of notice, the Opt-Out Date, or the  
16 deadlines for submissions of settlement objections, claims, and notices of intention to appear at the  
17 Final Approval Hearing unless those dates are explicitly changed by subsequent Order. The Court  
18 may also decide to hold the hearing via zoom or telephonically. Instructions on how to appear at  
19 the Final Approval Hearing will be posted on the Settlement Website.

20           24.     Any person or entity who or which does not elect to be excluded from the  
21 Settlement Class may, but need not, enter an appearance through its own attorney. Settlement  
22 Class Members that do not timely object or opt out and that do not have an attorney enter an  
23 appearance on their behalf will be represented by Settlement Class Counsel.

24           25.     Any person or entity who or which does not elect to be excluded from the  
25 Settlement Class may object to the proposed Settlement. Any Settlement Class Member may  
26 object to, among other things, (a) the proposed Settlement, (b) entry of Final Approval Order and  
27 the judgment approving the Settlement, (c) Class Counsel’s application for fees and expenses, or  
28 (d) the service award request, by mailing a written objection to Class Counsel and LendUS’s

1 counsel, with a postmark date no later than sixty (60) days following commencement of notice, as  
2 defined in § 3.2 of the Settlement Agreement (“Objection Date”). The objector or his or her  
3 counsel may also file, no later than the Objection Date, the written objection with the Court  
4 through the Court’s ECF system, with service on Settlement Class Counsel and LendUS’s counsel  
5 made through the ECF system. For all objections mailed to Settlement Class Counsel and counsel  
6 for LendUS, Settlement Class Counsel will file them with the Court as an exhibit to the Motion for  
7 Final Approval of the Settlement.

8           26. Any Settlement Class Member making the objection (an “Objector”) must sign the  
9 objection personally or through Objector’s counsel. An objection must state: (i) the objector’s full  
10 name and address; (ii) the case name and docket number - *Remoundos, et al. v. LendUS, LLC*,  
11 Case No. 4:22-cv-00749-EMC (N.D. Cal.); (iii) information identifying the objector as a  
12 Settlement Class Member, including proof that the objector is a member of the Settlement Class  
13 (e.g., copy of the objector’s settlement notice, copy of original notice of the Data Incident, or a  
14 statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a  
15 written statement of all grounds for the objection, accompanied by any legal support for the  
16 objection the objector believes applicable; (v) the identity of any and all counsel representing the  
17 objector in connection with the objection; (vi) a statement whether the objector and/or his or her  
18 counsel will appear at the Final Fairness Hearing; and (vii) the objector’s signature or the  
19 signature of the objector’s duly authorized attorney or other duly authorized representative (if any)  
20 representing him or her in connection with the objection.

21           27. Only Settlement Class Members that have filed and served valid and timely notices  
22 of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class  
23 Member who does not timely file and serve an objection in writing in accordance with the  
24 procedure set forth in the Settlement Notices and mandated in this Order shall be deemed to have  
25 waived any objection to (a) the Settlement; (b) the Release; (c) entry of Final Approval Order or  
26 any judgment; (d) Class Counsel’s application for fees, costs, and expenses; and/or (e) the service  
27 award request for the named Plaintiff, whether by appeal, collateral attack, or otherwise.  
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1 28. Settlement Class Members need not appear at the hearing or take any other action  
2 to indicate their approval.

3 29. Upon entry of the Order and Final Judgment all members of the Settlement Class  
4 that have not personally and timely requested to be excluded from the Settlement Class will be  
5 enjoined from proceeding against LendUS with respect to all of the Released Claims.

6 30. LendUS shall prepare and send, at LendUS’s expense, all notices that are required  
7 by the Class Action Fairness Act of 2005 (“CAFA”) as specified in 28 U.S.C. § 1715. Class  
8 Counsel and Counsel for LendUS shall cooperate promptly and fully in the preparation of such  
9 notices, including providing LendUS with any and all information in their possession necessary  
10 for the preparation of these notices. LendUS shall provide courtesy copies of the notices to Class  
11 Counsel for the purpose of implementing the Settlement. LendUS shall provide notice to Class  
12 Counsel of compliance with the CAFA requirements within ten (10) days of providing notice to  
13 Attorneys General under CAFA.

14 Administration of the Settlement.

15 31. The Court hereby appoints the claims administrator proposed by the parties, Kroll  
16 Settlement Administration (the “Claims Administrator”). Responsibilities of the Claims  
17 Administrator shall include: (a) establishing a post office box for purposes of communicating with  
18 Settlement Class Members; (b) disseminating notice to the Settlement Class; (c) developing a  
19 website to enable Settlement Class Members to access documents; (d) accepting and maintaining  
20 documents sent from Settlement Class Members relating to claims administration; and (e)  
21 distributing settlement checks to Settlement Class Members. Pursuant to the Settlement  
22 Agreement, the Claims Administrator and costs of administration shall be paid by LendUS.

23 32. In the event the Settlement Agreement and the proposed settlement are terminated  
24 in accordance with the applicable provisions of the Settlement Agreement, the Settlement  
25 Agreement, the proposed Settlement, and all related proceedings shall, except as expressly  
26 provided to the contrary in the Settlement Agreement, become null and void, shall have no further  
27 force and effect, and Settlement Class Members shall retain all of their current rights to assert any  
28 and all claims against LendUS and any other Released Person, and LendUS and any other

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1 Released Persons shall retain any and all of their current defenses and arguments thereto  
2 (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3)  
3 are not satisfied for purposes of continued litigation). The Litigation shall thereupon revert  
4 forthwith to its respective procedural and substantive status prior to the date of execution of the  
5 Settlement Agreement and shall proceed as if the Settlement Agreement and all other related  
6 orders and papers had not been executed.

7 33. Neither this Order nor the Settlement Agreement nor any other settlement-related  
8 document nor anything contained herein or therein or contemplated hereby or thereby nor any  
9 proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or  
10 herein or in any other settlement-related document, shall constitute, be construed as or be deemed  
11 to be evidence of or an admission or concession by LendUS as to the validity of any claim that has  
12 been or could have been asserted against it or as to any liability by it as to any matter set forth in  
13 this Order, or as to the propriety of class certification for any purposes other than for purposes of  
14 the current proposed settlement.

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16 **IT IS SO ORDERED.**

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18 Dated: December 20, 2022

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21 EDWARD M. CHEN  
22 United States District Judge  
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