

EXHIBIT 4

IN THE CASE OF

**JAYSON SWIGART, INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED,**

v.

PARCEL PENDING, INC.,

18-cv-2238 BEN (WVG)

**KAZEROUNI LAW GROUP, APC
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**JAYSON SWIGART,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

PARCEL PENDING, INC.,

Defendant.

Case No.: 18-cv-2238 BEN (WVG)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: TBD
TIME: 10:30 a.m.
COURTROOM: 5A

HON. ROGER T. BENITEZ

FINAL APPROVAL ORDER

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2 After arm's length negotiations and settlement discussions, Plaintiff
3 JAYSON SWIGART ("Plaintiff") and Defendant PARCEL PENDING, INC.
4 (herein jointly referred to as the "Parties") entered in to a Class Action Settlement
5 Agreement (hereinafter referred to as the "Agreement"), which is subject to review
6 pursuant to the applicable Rules of Civil Procedure. On April 17, 2019, the Parties
7 filed the Agreement, along with Plaintiff's Motion for Preliminary Approval of
8 Class Action Settlement Agreement (hereinafter referred to as the "Preliminary
9 Approval Motion").

10 On [REDACTED], 2019, upon consideration of the Agreement, Preliminary
11 Approval Motion, and the record, the Court entered an Order of Preliminary
12 Approval of Class Action Settlement (hereinafter referred to as the "Preliminary
13 Approval Order"). Pursuant to the Preliminary Approval Order, the Court, among
14 other things, (i) preliminarily certified (for settlement purposes only) a class of
15 Plaintiff (hereinafter referred to as the "Class Members") with respect to the claims
16 asserted in this Litigation; (ii) preliminarily approved the proposed settlement; (iv)
17 appointed Swigart as the Class Representative; (v) appointed Kazerouni Law
18 Group, APC as Class Counsel; and (vi) set the date and time of the Final Approval
19 Hearing.

20 On [REDACTED], 2019, Class Counsel timely filed their motion for
21 Attorneys' Fees, Litigation Costs, and Incentive Award.

22 On [REDACTED], 2019, Plaintiff filed the Motion for Final Approval of
23 Class Action Settlement Agreement (hereinafter referred to as the "Final Approval
24 Motion"). Pursuant to their Final Approval Motion, the Parties request final
25 certification of the settlement class and final approval of the proposed class action
26 settlement.

1 On [REDACTED], 2019, a Final Approval Hearing was held to determine
2 whether the lawsuit satisfies the applicable prerequisites for class action treatment
3 and whether the proposed settlement is fundamentally fair, reasonable, adequate,
4 and in the best interests of the Class Members and should be approved by the
5 Court. The Court has read and considered the Agreement, Final Approval Motion
6 and the record. All capitalized terms used herein have the meanings defined herein
7 and/or in the Agreement.

8 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 9 1. JURISDICTION: The Court has jurisdiction over the subject matter of the
10 Litigation and over all settling parties hereto.
- 11 2. SETTLEMENT CLASS MEMBERS: The Litigation is hereby finally
12 certified, for settlement purposes only, as a class action on behalf of the
13 following Settlement Class members with respect to the claims asserted in
14 the Litigation:
15 All Parcel Pending registered users who received one or fewer
16 disclosures of Parcel Pending's recorded call policy between
17 February 1, 2018 to October 3, 2018 prior to receiving an
18 outbound customer service call.
- 19 3. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT:
20 The Court finally certifies Plaintiff as the Class Representative. The Court
21 also certifies Abbas Kazerounian; Matthew M. Loker; and, Elizabeth A.
22 Wagner of Kazerouni Law Group, APC as Class Counsel.
- 23 4. NOTICE AND CLAIMS PROCESS: Pursuant to the Court's Preliminary
24 Approval Order, the Claims Administrator has complied with the approved
25 notice process as confirmed in its declaration filed with the Court. The form
26 and method for notifying the Settlement Class members of the settlement and
27 its terms and conditions was in conformity with this Court's Preliminary
28 Approval Order and satisfied the requirements of the applicable Rules of

1 Civil Procedure and due process, and constituted the best notice practicable
2 under the circumstances. The Court finds that the notice process was clearly
3 designed to advise the Settlement Class members of their rights. Further, the
4 Court finds that the claim process set forth in the Agreement was followed
5 and that the process was the best practicable procedure under the
6 circumstances.

7 5. FINAL CLASS CERTIFICATION: The Court again finds that the Litigation
8 satisfies the applicable prerequisites for class action treatment, namely:

9 (a) The Settlement Class members are so numerous that joinder of all of
10 them in the Litigation would be impracticable;

11 (b) There are questions of law and fact common to the Settlement Class
12 members, which predominate over any individual questions;

13 (c) The claims of Plaintiff are typical of the claims of the Settlement Class
14 members;

15 (d) Plaintiff and Class Counsel have fairly and adequately represented and
16 protected the interests of all the Settlement Class members; and

17 (e) Class treatment of these claims will be efficient and manageable, thereby
18 achieving an appreciable measure of judicial economy, and a class action
19 is superior to other available methods for a fair and efficient adjudication
20 of this controversy.

21 6. The Court finds that the settlement of the Litigation, on the terms and
22 conditions set forth in the Agreement, is in all respects fundamentally fair,
23 reasonable, adequate, and in the best interests of the Settlement Class
24 members, especially in light of the benefits to the Settlement Class members,
25 the strength of the Plaintiff's case, the complexity, expense and probable
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1 duration of further litigation, the risk and delay inherent in possible appeals,
2 and the risk of collecting any judgment obtained on behalf of the class.

3 7. SETTLEMENT TERMS: The Agreement, which has been filed with the
4 Court and shall be deemed incorporated herein, and the proposed settlement
5 are finally approved and shall be consummated in accordance with the terms
6 and provisions thereof, except as amended by any order issued by this Court.

7 8. The Court finds that the settlement of the Litigation, on the terms and
8 conditions set forth in the Agreement, is in all respects fundamentally fair,
9 reasonable, adequate, and in the best interests of the Settlement Class
10 members, especially in light of the benefits to the Settlement Class members,
11 the strength of the Plaintiff's case, the complexity, expense and probable
12 duration of further litigation, the risk and delay inherent in possible appeals,
13 and the risk of collecting any judgment obtained on behalf of the class.

14 9. EXCLUSIONS AND OBJECTIONS: [REDACTED] exclusions were received. The
15 persons requesting exclusion are named on Exhibit A to this Order. The
16 Court hereby excludes these individuals from the Settlement Class.

17 10. The Court finds that the settlement of the Litigation, on the terms and
18 conditions set forth in the Agreement, is in all respects fundamentally fair,
19 reasonable, adequate, and in the best interests of the Settlement Class
20 members, especially in light of the benefits to the Settlement Class members,
21 the strength of the Plaintiff's case, the complexity, expense and probable
22 duration of further litigation, the risk and delay inherent in possible appeals,
23 and the risk of collecting any judgment obtained on behalf of the class.

24 11. The Settlement Class members were given an opportunity to object to the
25 settlement. [REDACTED] Settlement Class members filed objections. After
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1 consideration of each of the objections, the Court hereby overrules such
2 objections.

3 12. This Order is binding on all Settlement Class members, except those
4 individuals named on Exhibit A, who validly and timely excluded themselves
5 from the Class.

6 13. RELEASE OF CLAIMS AND DISMISSAL OF Litigation: The Class
7 Representative, Settlement Class members, and their successors and assigns
8 are permanently barred and enjoined from instituting or prosecuting, either
9 individually or as a class, or in any other capacity, any of the Released
10 Claims against any of the Released Parties, as set forth in the Agreement.
11 Pursuant to the release contained in the Agreement, the Released Claims are
12 compromised, discharged, and dismissed with prejudice by virtue of these
13 proceedings and this Order.

14 14. The Litigation is hereby dismissed with prejudice in all respects.

15 15. This Order is not, and shall not be construed as, an admission by Defendant.

16 16. Without affecting the finality of this Final Judgment and Order of Dismissal
17 with Prejudice, the Court hereby retains continuing and exclusive jurisdiction
18 over the Parties and all matters relating to the Litigation and/or Agreement,
19 including the administration, interpretation, construction, effectuation,
20 enforcement, and consummation of the settlement and this order.

21 **IT IS SO ORDERED.**

22
23 Date: _____, 2019

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25 HONORABLE ROBERT T. BENITEZ
26 UNITED STATES DISTRICT COURT JUDGE
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