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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

RUBY MITCHELL *and* EDWARD J. KELLY,  
*individually, and on behalf of a class of similarly  
situated persons,*

Plaintiffs,

v.

INTERO REAL ESTATE SERVICES,

Defendant.

Case No. 5:18-cv-05623-BLF

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 Plaintiffs Ruby Mitchell and Edward J. Kelly and Defendant Intero Real Estate Services have  
2 entered into a Settlement Agreement,<sup>1</sup> which, together with the exhibits attached thereto, sets forth  
3 the terms and conditions for a proposed Settlement and dismissal of the Action with prejudice as to  
4 Intero upon the terms and conditions set forth therein.

5 The Court has before it Plaintiffs' Motion for Preliminary Approval of Class Action Settlement  
6 and for Certification of Settlement Class, ECF No. 276 (the "Motion"). After reviewing the Motion,  
7 the Settlement Agreement and exhibits thereto, the arguments and authorities presented by the Parties  
8 and their counsel at the Preliminary Approval Hearing held on \_\_\_\_\_ 2021,  
9 and the record in the Action, and good cause appearing,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

11 1. The Court finds that it has jurisdiction over the subject matter of this Action and over  
12 all Parties to the Action.

13 2. The Parties have moved the Court for an order approving the Settlement of the Action  
14 in accordance with the Settlement Agreement, which, together with the documents incorporated  
15 therein, sets forth the terms and conditions for a proposed Settlement and dismissal of the Action  
16 with prejudice, and the Court having read and considered the Settlement Agreement and having heard  
17 the Parties, hereby preliminarily approves the Settlement Agreement in its entirety, subject to the Final  
18 Approval Hearing referred to in Paragraph 20 of this Order.

19 3. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement  
20 is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the  
21 Settlement Class defined below. The Court further finds that the Settlement Agreement substantially  
22 fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement  
23 Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or  
24 appeal. The Court also finds that the Settlement Agreement: (a) is the result of arm's-length

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise indicated, capitalized terms have the same meanings as those set forth in the Parties'  
27 Settlement Agreement and Release, attached as Exhibit A to the Declaration of Sabita Soneji  
28 submitted in support of Plaintiffs' Motion for Preliminary Approval.

1 negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the  
2 Settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all  
3 applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action  
4 Fairness Act, 28 U.S.C. § 1715, the United States Constitution, and the United States District Court  
5 for the Northern District of California’s Procedural Guidance for Class Action Settlements; and (d) is  
6 not a finding or admission of liability by Intero or any other person(s), nor a finding of the validity of  
7 any claims asserted in the Action or of any wrongdoing or any violation of law.

8 **Certification of the Settlement Class**

9 4. For purposes of settlement only: (a) Tycko & Zavareei LLP, Reese LLP, and Bailey &  
10 Glasser LLP are appointed as Class Counsel for the Settlement Class; and (b) Plaintiffs Ruby Mitchell  
11 and Edward J. Kelly are appointed Class Representatives for the Settlement Class. The Court finds  
12 that these attorneys are competent and capable of exercising the responsibilities of Settlement Class  
13 Counsel and that Plaintiffs will adequately protect the interests of the Settlement Class defined below.

14 5. For purposes of settlement only, the Court conditionally certifies the following  
15 Settlement Class as defined in the Settlement Agreement:

16 All persons in the United States who: (a) received two or more calls on their residential  
17 telephone number (b) that had a duration of more than zero seconds; (c) initiated by,  
18 or on behalf of, a real estate salesperson at a time when Intero or Intero Referral  
19 Services was the salesperson’s responsible broker (as reflected in the records  
20 maintained by the California Department of Real Estate (“DRE”)); (d) promoting the  
21 purchase of Intero’s goods or services; (e) placed through the dialing platform  
22 provided by Mojo Dialing Solutions, LLC, the call records for which appear in one of  
23 35 account files, identified in Appendix A to the Court’s order granting class  
24 certification in the Litigation; (f) within a 12-month period; (g) whose telephone  
25 number(s) were on the NDNCR for at least 31 days prior to the calls; and (h) at any  
26 time since September 13, 2014.

27 Excluded from the Settlement Class are: (a) Intero; (b) any entity in which Intero has a controlling  
28 interest; (c) Intero’s officers, directors, legal representatives, successors, subsidiaries, and assigns; (d)



1 sufficient notice to all persons entitled thereto and meets the requirements of Due Process. The Court  
2 further finds that the Class Notice program fully complies with the United States District Court for  
3 the Northern District of California’s Procedural Guidance for Class Action Settlements.

4 9. The Parties have selected a reputable settlement administration company, KCC Class  
5 Action Services LLC (“KCC”), to serve as the Settlement Administrator. The Court hereby appoints  
6 and authorizes KCC to be the Settlement Administrator, and thereby to perform and execute the  
7 notice responsibilities set forth in the Settlement Agreement.

8 10. The Parties, without further approval from the Court, are hereby permitted to revise  
9 the Claim Form and forms of Notice to the Settlement Class (Exhibits 1 through 4 of the Settlement  
10 Agreement) in ways that are appropriate to update those documents for purposes of accuracy or  
11 formatting, so long as they are consistent in all material respects with the Settlement Agreement and  
12 this Order.

13 11. The Court finds that KCC will comply with the notice provisions of the Class Action  
14 Fairness Act of 2005, 28 U.S.C. § 1715, as described in the Declaration of Carla A. Peak in Support  
15 of Settlement Notice Program.

16 12. The Court orders KCC to send the Postcard Notice and the Email Notice to potential  
17 Settlement Class Members by the Notice Deadline, which is 30 Days after entry of this Preliminary  
18 Approval Order.

19 **Submission of Claims and Requests for Exclusion from the Settlement Class**

20 13. Settlement Class Members who wish to receive benefits under the Settlement must  
21 complete and submit a timely and valid Claim Form in accordance with the instructions contained  
22 therein. All Claim Forms must be postmarked or electronically submitted by the Claim Deadline,  
23 which is 60 Days after the Notice Deadline.

24 14. Any person falling within the definition of the Settlement Class may, upon valid and  
25 timely request, exclude him or herself or “opt out” from the Settlement Class. Any such person may  
26 do so if they comply with the exclusion procedures set forth in the Settlement Agreement on or before  
27 the Opt-Out Deadline, which is 60 Days after the Notice Deadline. Any members of the Class so  
28 excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its

1 benefits.

2 15. Settlement Class Members who fail to submit a valid and timely Request for Exclusion  
3 shall be bound by all terms of the Settlement Agreement and the Final Approval Order (if issued),  
4 regardless of whether they have requested exclusion from the Settlement Agreement, regardless of  
5 whether they have submitted a Claim Form, and regardless of whether that Claim Form has been  
6 deemed valid.

7 **Objections and Appearances**

8 16. Any Settlement Class Member who has not timely filed a Request for Exclusion may  
9 object to the fairness, reasonableness, or adequacy of the Settlement Agreement, to the Final Approval  
10 Order being entered dismissing the Action with prejudice, to the Attorneys' Fees and Costs sought by  
11 Class Counsel, or to the Service Awards sought for the Class Representatives as set forth in the Class  
12 Notice and the Settlement Agreement.

13 17. Any Settlement Class Member who wishes to object must do so on or before the  
14 Objection Deadline, which is 60 Days after the Notice Deadline. Settlement Class Members shall  
15 submit written objections to the Court, either by (1) mailing them to the Clerk of the Court, United  
16 States District Court for the Northern District of California, 280 South 1st Street, Room 2112, San  
17 Jose, California 95113, (2) filing them in person at any location of the United States District Court for  
18 the Northern District of California, or (3) filing them via the ECF electronic filing system.

19 18. To be valid, an objection must comply with the objection procedures set forth in the  
20 Settlement Agreement, must be in writing, must include a caption or title that identifies it as an  
21 objection related to *Mitchell v. Intero Real Estate Services*, No. 5:18-cv-05623-BLF, and must include the  
22 following: (a) the name, address, and telephone number of the Settlement Class Member objecting  
23 and, if different, the telephone number at which the Settlement Class Member was called by Intero  
24 during the Settlement Class Period; (b) if represented by counsel, the name, address, and telephone  
25 number of the Settlement Class Member's counsel; (c) the basis for the objection; and (d) a statement  
26 of whether the Settlement Class Member objecting intends to appear at the Final Approval Hearing,  
27 either with or without counsel.

28 19. Settlement Class Members who fail to file and serve timely written objections in

1 compliance with the requirements of the foregoing paragraph and the Settlement Agreement shall be  
2 deemed to have waived any such objection, shall not be permitted to object to any terms or approval  
3 of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the  
4 Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be foreclosed  
5 from objecting to any of the following: (a) whether the proposed settlement of the Action on the  
6 terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and  
7 should be given final approval by the Court; (b) whether the Final Approval Order dismissing the  
8 Action with prejudice should be entered; (c) whether to approve payment of the Attorneys' Fees and  
9 Costs requested by Class Counsel; and (d) whether to approve payment of Service Awards to the Class  
10 Representatives as requested by Class Counsel.

11 **Final Approval Hearing**

12 20. The Final Approval Hearing shall be held before this Court on \_\_\_\_\_,  
13 2022, at \_\_\_\_\_ in Courtroom 3 at the Robert F. Peckham Federal Building, located at 280 South  
14 1st Street, San Jose, California 95113, such date being at least 155 days after the entry of this  
15 Preliminary Approval Order, to determine: (a) whether the proposed Settlement Agreement is fair,  
16 reasonable, and adequate and should be given final approval by the Court; (b) whether the Final  
17 Approval Order dismissing the Action with prejudice should be entered; (c) whether to approve  
18 payment of the Attorneys' Fees and Costs requested by Class Counsel; and (d) whether to approve  
19 payment of the Service Awards to the Class Representatives as requested by Class Counsel.

20 21. Plaintiffs and Class Counsel shall file their motion seeking final approval of the  
21 Settlement by no later than the Final Approval Motion Deadline, which is 30 Days after the Objection  
22 Deadline.

23 22. Plaintiffs and Class Counsel shall file their motion for an award of Attorneys' Fees and  
24 Costs and for Service Awards for the Class Representatives by no later than the Fee and Incentive  
25 Motion Deadline, which is 25 Days after the Notice Deadline.

26 **Related Orders**

27 23. All further proceedings in the Action are ordered stayed until entry of the Final  
28 Approval Order or termination of the Settlement Agreement, whichever occurs earlier, except for

1 those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

2 24. Settlement Class Members who do not submit a timely Request for Exclusion shall be  
3 bound by all determinations and judgments in the Action concerning the Action and/or Settlement  
4 Agreement, whether favorable or unfavorable.

5 25. The Court retains jurisdiction to consider all further applications arising out of or  
6 connected with the proposed Settlement Agreement. The Court may approve the Settlement, with  
7 such modifications as may be agreed to by the Parties, if appropriate, without further notice to the  
8 Class.

9 26. Any Settlement Class Member who does not submit a timely and valid Claim Form:  
10 (a) shall be forever barred from receiving any monetary payment under the Settlement; (b) shall be  
11 bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders,  
12 and judgments in the Action relating thereto, including, without limitation, the Final Approval Order,  
13 if applicable, and the Releases provided for therein, whether favorable or unfavorable to the  
14 Settlement Class Member.

15 27. If the Settlement receives Final Approval, all Settlement Class Members shall be  
16 deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and  
17 discharged the Released Persons in all capacities, including individual and trustee capacities, from any  
18 and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities,  
19 damages, losses, controversies, costs, expenses and attorneys' fees of any nature whatsoever, whether  
20 based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation,  
21 any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common  
22 law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen  
23 or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the  
24 date of Final Approval, that relate to or arise out of the calls that were placed through the dialing  
25 platform provided by Mojo Dialing Solutions, LLC, the calling records for which appear in one of 35  
26 account files, identified in Appendix A to the Court's Order Granting Class Certification (Docket No.  
27 126). This release includes any and all claims for violation of the Telephone Consumer Protection Act,  
28 47 U.S.C. § 227 and the regulations promulgated thereunder, and any and all claims for violation of

1 any laws of any state that regulate, govern, prohibit or restrict the making, placing, dialing or initiating  
2 of calls to phone numbers on the NDNCR (or any state law equivalent) or to persons who asked not  
3 to be called or to be placed on an internal do-not-call list..

4 28. The Settlement Agreement shall be terminable by any Party if any of the conditions of  
5 Section 3 of the Settlement Agreement are not fully satisfied unless the relevant conditions are waived  
6 in writing signed by authorized representatives of Plaintiffs and Intero.

7 29. The Settlement Agreement shall also terminate at the discretion of Plaintiffs or Intero  
8 if, in the good faith exercise of discretion: (1) the Court, or any appellate court(s), rejects, modifies, or  
9 denies approval of any portion of the Settlement Agreement or the proposed Settlement that is  
10 material, including without limitation, the terms or relief, the findings or conclusions of the Court, the  
11 provisions relating to Class Notice, the definition of the Settlement Class, and/or the terms of the  
12 Releases; (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, or  
13 restricts, or expands, any portion of the Final Approval Order or Judgment, or any of the Court's  
14 findings of fact or conclusions of law, that is material; or (3) if all of the conditions required to be met  
15 before the Final Settlement Date do not occur.

16 30. At its sole discretion, without penalty or sanction, Intero may terminate the Settlement  
17 and the Parties will return to their respective positions in the Litigation if more than 5% of the  
18 Settlement Class Members properly and timely opt out of the Settlement.

19 31. If the Settlement Agreement is terminated pursuant to the provisions of the Settlement  
20 Agreement or for any reason whatsoever the approval of it does not become Final, then the Settlement  
21 shall be null and void from its inception, and the Settling Parties will be restored to their respective  
22 positions in the Litigation as of the day prior to the date of the Preliminary Approval Order. In such  
23 event, the Parties shall move the Court to vacate any and all orders entered by the Court pursuant to  
24 the provisions of the Settlement Agreement, including any order certifying the Settlement Class for  
25 settlement purposes. Further, in such event, the terms and provisions of the Settlement Agreement  
26 will have no further force and effect with respect to the Settling Parties and will not be used in the  
27 Litigation, or in any other proceeding for any purpose, shall not be deemed or construed to be an  
28 admission or confession by the Parties of any fact, matter, or proposition of law, and any judgment

1 or order entered by the Court in accordance with the terms of the Settlement Agreement will be  
2 treated as vacated, *nunc pro tunc*.

3 32. For the sake of clarity, the Court enters the following deadlines for the remainder of  
4 the proceedings in this Action:

Event	Deadline
Notice Deadline	30 Days after the entry of this Preliminary Approval Order
Fee and Incentive Motion Deadline	25 Days after the Notice Deadline
Objection Deadline	60 Days after the Notice Deadline
Opt-Out Deadline	60 Days after the Notice Deadline
Claim Deadline	60 Days after the Notice Deadline
Final Approval Motion Deadline	30 Days after the Objection and Opt-Out Deadline
Final Approval Hearing	At least 125 Days after the Notice Deadline (i.e., at least 35 days after the Final Approval Motion Deadline)
Deadline for Intero to deposit \$350.00 per Approved Claim into an interest-bearing escrow account maintained by the Settlement Administrator	Upon Final Approval of the Settlement, and after receiving specific payment instructions and all required tax information from the Settlement Administrator and all information needed to determine the identities of Claimants
Deadline for the Settlement Administrator to have finished processing the claims and to have remitted the appropriate Settlement Relief amounts by check to Claimants	60 Days after the Final Settlement Date

19  
20 **IT IS SO ORDERED.**

21  
22 Date: \_\_\_\_\_

23 \_\_\_\_\_  
24 Honorable Beth Labson Freeman  
25 United States District Judge  
26  
27  
28