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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
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

1 Pending before the Court are the Motion for Final Approval of Class Action Settlement, ECF
2 No. 294, and the Motion for Award of Attorneys’ Fees and Costs and Service Awards, ECF No. 289,
3 filed by Plaintiffs Ruby Mitchell and Edward J. Kelly (together, the “Motions”). The Motions came
4 before the Court for hearing in Courtroom 3, 5th Floor, San Jose Division of the United States District
5 Court for the Northern District of California on October 20, 2022, at 9:00 a.m.

6 Having read all of the papers filed in connection with the Motions, reviewed all of the evidence
7 submitted with respect to the proposed Settlement, and heard the arguments of counsel, the Court
8 finds the proposed Settlement is fair, reasonable, and adequate. The Court FINDS AS FOLLOWS:

9 1. Unless otherwise indicated, capitalized terms have the same meanings as those set
10 forth in the Parties’ Settlement Agreement and Release, ECF No. 277-2.

11 2. The Court has personal jurisdiction over all Settlement Class Members, and the Court
12 has subject matter jurisdiction to approve the Agreement, including all exhibits thereto.

13 3. The Notice and the Class Notice plan implemented pursuant to the Agreement (1)
14 constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably
15 calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of
16 the Action, their right to object to or exclude themselves from the proposed Settlement, and their
17 right to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and
18 sufficient notice to all persons entitled to receive notice; and (4) meet all applicable requirements of
19 the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and
20 the rules of the Court.

21 4. The Court finds that Intero properly notified the appropriate state and federal officials
22 of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C.
23 § 1715. The Court has reviewed the substance of Defendant’s notice and finds it complied with all
24 applicable requirements of CAFA.

25 5. Pursuant to Federal Rule of Civil Procedure 23, and for purposes of this settlement
26 only:

27 a. The Settlement Class is defined as follows:

28 All persons in the United States who: (a) received two or more calls on

1 their residential telephone number; (b) that had a duration of more
2 than zero seconds; (c) initiated by, or on behalf of, a real estate
3 salesperson at a time when Intero or Intero Referral Services was the
4 salesperson's responsible broker (as reflected in the records maintained
5 by the California Department of Real Estate ("DRE")); (d) promoting
6 the purchase of Intero's goods or services; (e) placed through the
7 dialing platform provided by Mojo Dialing Solutions, LLC, the call
8 records for which appear in one of 35 account files, identified in
9 Appendix A to the Court's order granting class certification in the
10 Litigation; (f) within a 12-month period; (g) whose telephone
11 number(s) were on the NDNCR for at least 31 days prior to the calls;
12 and (h) at any time since September 13, 2014.

13 Excluded from the Settlement Class are: (a) Intero; (b) any entity in
14 which Intero has a controlling interest; (c) Intero's officers, directors,
15 legal representatives, successors, subsidiaries, and assigns; (d) any
16 judicial officer presiding over this matter, as well as members of their
17 immediate family and members of their judicial staff; and (e) any judge
18 sitting in the presiding court system who may hear an appeal of any
19 judgment entered.

20 b. The Settlement Class is ascertainable and so numerous that joinder of all
21 members is impracticable. The Settlement Class consists of thousands of class members, and the
22 Settlement Class Members have been determined by objective means from the records of Mojo
23 Dialing Solutions, LLC.

24 c. There are questions of law or fact common to the Settlement Class, centered
25 around Intero's real estate salespeople's unwanted calls to the Settlement Class Members' telephone
26 numbers.

27 d. The claims of the proposed Class Representatives are typical of the claims of
28 the Settlement Class. The proposed Class Representatives and each member of the Settlement Class

1 are alleged to have suffered the same injury caused by the same course of conduct.

2 e. Plaintiffs have fairly and adequately represented and protected the interests of
3 the Settlement Class. Plaintiffs are members of the Settlement Class. Neither Plaintiffs nor Class
4 Counsel have any conflicts of interest with the Settlement Class Members, and Class Counsel have
5 demonstrated that they have adequately represented the Settlement Class.

6 f. The questions of law or fact common to the members of the Settlement Class
7 predominate over any questions affecting only individual members.

8 g. A class action is superior to other available methods for the fair and efficient
9 adjudication of the controversy, as the Settlement substantially benefits both the litigants and the
10 Court, and there are few manageability issues, as settlement is proposed rather than a further trial.

11 6. Pursuant to Federal Rule of Civil Procedure 23(e), the Settlement Agreement is, in all
12 respects, fair, reasonable, and adequate, and is in the best interests of all Settlement Class Members,
13 taking into account the following factors: (1) the strength of the plaintiffs' case; (2) the risk, expense,
14 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
15 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
16 the stage of the proceedings; (6) the experience and view of counsel; and (7) the reaction of the class
17 members to the proposed settlement.

18 7. The plan for distribution of Cash Awards is fair and equitable. The Settlement
19 Administrator shall perform the distribution to Settlement Class Members following the process set
20 forth in the Settlement Agreement without further order of this Court.

21 8. Settlement Class Members have been given due and adequate notice of the Settlement
22 Agreement.

23 9. There are no objections to the Settlement.

24 10. Three requests for exclusion have been submitted, by or on behalf of Joseph Ponte,
25 Hosea Colvin, and Ada Colvin. All of these requests, however, were not timely. Consequently, in
26 accordance with Section 11 of the Settlement Agreement and paragraph 15 of the Preliminary
27 Approval Order, the Court DENIES each of the requests for exclusion from the Settlement Class.

28 11. The Court has held a hearing to consider the fairness, reasonableness, and adequacy

1 of the proposed settlement.

2 12. Having considered the motion for Service Awards, Class Representative Service
3 Awards in the amount of \$_____ payable to each Plaintiff (for a total of \$_____) are approved
4 as fair and reasonable, in light of the results that were obtained under the Settlement Agreement and
5 the risks they incurred in prosecuting the Action. The Court further finds that \$_____ is a fair and
6 reasonable Service Award for each Plaintiff because of Plaintiffs' investment and involvement in all
7 aspects of the litigation. The award also comports with incentive awards made in other TCPA class
8 action settlements. Accordingly, the Court approves that amount as a Service Award for each Plaintiff
9 and directs that the Service Awards be paid pursuant to the terms of the Settlement Agreement.

10 13. Under the Settlement Agreement, Class Counsel is permitted to seek Court approval
11 of attorneys' fees and documented and reasonable expenses and costs. Having considered Class
12 Counsel's motion for an award of Attorneys' Fees and Costs, and considering Class Counsel's lodestar
13 and hourly rates, the negative lodestar multiplier requested, the quality of representation provided, the
14 results obtained, the risk of nonpayment, the time and effort invested, the percentage of the
15 constructive fund requested (as a cross-check), as well as a number of other factors, Class Counsel are
16 awarded attorneys' fees of \$_____ and reimbursement of costs and expenses of
17 \$_____, representing fair and reasonable compensation and reimbursement for Class
18 Counsel's efforts in investigating, litigating, and settling this Action.

19 14. All payments of attorneys' fees and reimbursement of costs and expenses to Class
20 Counsel in this Action shall be made in accordance with the Settlement Agreement, and the Released
21 Persons shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or
22 expenses except as provided in the Settlement Agreement.

23 15. Accordingly, the Court hereby finally APPROVES the proposed settlement as
24 reflected in the Settlement Agreement, the terms of which, including but not limited to the Releases,
25 are hereby incorporated by reference as though fully set forth herein.

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1 The Court having granted final approval to the Settlement Agreement, it is hereby
2 **ORDERED, ADJUDGED, and DECREED** as follows:

3 1. Immediately upon entry of this Final Approval Order by the Clerk, this Action shall
4 be closed according to the Court's standard practices.

5 2. The Settlement Agreement is approved as fair, reasonable, and adequate as to, and in
6 the best interests of, the Settlement Class Members; the Parties and their counsel are directed to
7 implement and consummate the Agreement according to its terms and provisions; and the Agreement
8 is declared to be binding on, and have preclusive effect on, all pending and future lawsuits or other
9 proceedings maintained by or on behalf of the Class Representative Plaintiffs and the Releasing
10 Persons.

11 3. The Parties are hereby directed to take all actions required under the terms and
12 provisions of the Settlement Agreement.

13 4. To the extent permitted by law, and without affecting the other provisions of this Final
14 Approval Order, this Final Approval Order is intended by the Parties and the Court to be *res judicata*,
15 and to prohibit and preclude any prior, concurrent, or subsequent litigation brought individually, or
16 in the name of, and/or otherwise on behalf of the Settlement Class Members with respect to any and
17 all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities,
18 agreements, costs, expenses, or losses arising out of or relating to the claims released under the
19 Settlement Agreement.

20 5. All persons who are Settlement Class Members are bound by this Final Approval
21 Order and are enjoined from instituting, maintaining, prosecuting, or enforcing, either directly or
22 indirectly, any claims discharged by the Settlement Agreement.

23 6. The Court shall retain continuing jurisdiction over this Action as to the following
24 matters: (i) enforcement of the terms of the Settlement Agreement; (ii) issues relating to settlement
25 administration; and (iii) enforcement of this Final Approval Order, the Judgment, and any order
26 relating to Attorneys' Fees and Costs and Class Representative Service Awards.

27 7. This Action (including all individual claims and Settlement Class Member claims
28 asserted therein) is hereby dismissed on the merits and with prejudice, without fees or costs to any

1 Party, except as provided in the Settlement Agreement. No just reason exists for delay in entering this
2 Final Approval Order.

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4 **IT IS SO ORDERED.**

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6 Date: _____

Honorable Beth Labson Freeman
United States District Court Judge

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