

1 preliminarily approving the class settlement, the Court: (1) conditionally certified the class
2 of plaintiffs as defined in the Amended Complaint; (2) preliminarily approved the proposed
3 settlement; (3) confirmed the appointment of Joanne Knapper as the class representative;
4 (4) confirmed the appointment of Michael L. Greenwald, James L. Davidson, and Aaron
5 D. Radbil of Greenwald Davidson Radbil PLLC as class counsel; and (5) directed the
6 issuance of a notice of settlement to the class members pursuant to Federal Rule of Civil
7 Procedure 23 and the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and
8 1711-1715. (Doc. 120 at 2-9) Plaintiff sent the notice of settlement to each prospective
9 class member, and the deadline for objections ended on October 25, 2019. (Doc. 122 at 2)
10 To date, approximately 10,000 class members filed timely claims for a pro rata share of
11 the settlement, ten class members excluded themselves from the settlement, and there are
12 no objections to the settlement. (Doc. 122 at 2)

13 On September 25, 2019, Plaintiff filed the Motion for Attorneys' Fees, Costs,
14 Expenses, and Incentive Award. (Doc. 121) On November 8, 2019, Plaintiff filed the
15 Motion for Final Approval of Class Action Settlement. (Doc. 122) In the Motion for Final
16 Approval, the Plaintiff requests, *inter alia*, that the Court approve the plan for Defendant
17 to create a non-reversionary common fund of \$10.75 million for the benefit of all the
18 settlement class members. (Doc. 122 at 5) In addition, the Plaintiff requests an attorneys'
19 fee award of 28% of the common fund, \$52,635.34 in costs and expenses, and \$20,000 in
20 an incentive award for Plaintiff as the class representative. (Doc. 121 at 1)

21 On December 10, 2019, the Court held a Final Fairness Hearing pursuant to Federal
22 Rule of Civil Procedure 23(e). (Doc. 125) The Court has read and considered the settlement
23 agreement, both pending motions, and the record. The Court finds that the settlement
24 agreement is fundamentally fair, reasonable, adequate, and in the best interest of the class
25 members. Accordingly,

26 **IT IS ORDERED** that Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and
27 Incentive Award (Doc. 121) and Motion for Final Approval of the Class Action Settlement
28 (Doc. 122) are **granted**.

1 **IT IS FURTHER ORDERED:**

2 1. **ADEQUACY OF THE CLASS SETTLEMENT:** The Court finds that the settlement
3 of this action, on the terms and conditions set forth in the settlement agreement, is
4 in all respects fundamentally fair, reasonable, adequate, and in the best interest of
5 the class members, especially in light of: “the strength of the Plaintiff’s case; the
6 risk, expense, complexity, and likely duration of further litigation; the risk of
7 maintaining class action status throughout the trial; the amount offered in
8 settlement; the extent of discovery completed and the stage of the proceedings; the
9 experience and views of counsel; the presence of a governmental participant; and
10 the reaction of the class members to the proposed settlement.” *See In re Volkswagen*
11 *“Clean Diesel” Mktg., Sales Practices, and Prods. Liab. Litig.*, 895 F.3d 597, 611
12 n.18 (9th Cir. 2018) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
13 Cir. 1998)).

14 2. **FINAL CLASS CERTIFICATION:** The Court’s February 6, 2019, class
15 certification order (Doc. 89) is vacated, and the previously approved class is
16 decertified. Instead, pursuant to Federal Rule of Civil Procedure 23(b)(3), the
17 lawsuit is hereby certified—for settlement purposes only—as a class action on
18 behalf of the following class of plaintiffs with respect to the claims asserted in the
19 Amended Complaint (Doc. 116):

20 (1) All users of or subscribers to cellular telephones throughout the United
21 States, (2) to whom Cox Communications, Inc. made or initiated at least
22 one call to a cellular telephone, (3) via an automatic telephone dialing
23 system or with an artificial or prerecorded voice, (4) from March 28, 2013
24 through March 21, 2019, (5) whose cellular telephone number was at any
 time associated with a Neustar score of 01 in Cox Communications, Inc.’s
 available records.

25 The settlement class excludes individuals who were ever Cox Communications,
26 Inc. customers prior to March 22, 2019. Plaintiff represents there are
27 approximately 10,000 class members who timely submitted claim forms.
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3. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT:
Pursuant to Federal Rule of Civil Procedure 23, the Court certifies Plaintiff Joanne Knapper as the Class Representative and Michael L. Greenwald, James L. Davidson, and Aaron D. Radbil of Greenwald Davidson Radbil PLLC as Class Counsel.

4. NOTICES AND CLAIM FORMS: The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court’s Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.

5. SETTLEMENT TERMS: The settlement agreement, which is outlined in Docket Number 115-1 and shall be deemed incorporated herein, is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any order issued by this Court. The material terms of the settlement agreement include, but are not limited to, the following:

A. Settlement Fund: Defendant shall establish a \$10,750,000 non-reversionary fund for the benefit of the class members (the “Settlement Fund”).

B. Deductions: The following shall be deducted from the Settlement Fund before any other distributions are made:

i. *Costs and Expenses*: the \$52,635.34 expended for the administration of the settlement and class notice, in addition to any additional costs associated with the settlement payment; and

ii. *The Incentive Payment*: Plaintiff, Joanne Knapper, shall receive the sum of \$20,000 as acknowledgment of her role in prosecuting this case on behalf of the class members.

C. Settlement Payment to Class Members: The class members will receive their

1 settlement payments by check. The claims administrator will send a settlement
2 payment to each eligible class member who timely submits a completed, valid
3 claim form within forty-five (45) days after the funding date. All costs of such
4 work will be considered “Notice and Administration Costs” paid from the
5 Settlement Fund. Checks will be valid for one-hundred twenty (120) days from
6 the date on the check. If, after the one-hundred twenty (120) expiration date,
7 there remains money in the Settlement Fund sufficient to pay at least five dollars
8 (\$5.00) to each settlement class member who was not a person who failed to
9 cash his or her initial check, such remaining monies will be distributed on a pro
10 rata basis to those class members (the “Second Distribution”). The Second
11 Distribution will be made within ninety (90) days after the expiration date of
12 the checks in the original settlement payment and will be paid in the same
13 manner as the original settlement payment. Checks issued pursuant to the
14 Second Distribution will be valid for one-hundred twenty (120) days from the
15 date on the check. To the extent that any funds remain in the Settlement Fund
16 after the void date (from uncashed checks or otherwise), these funds will be
17 paid out as *cy pres* to the Boys and Girls Clubs of America.

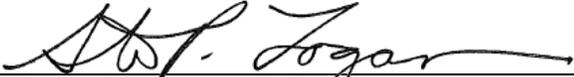
18 D. Objections and Exclusions: The class members were given an opportunity
19 to object to the settlement. No class member objected to the settlement. Ten
20 class members made a valid and timely request for exclusion and are not bound
21 by this Order. Plaintiff shall, upon request, disclose to Defendant the identity of
22 each excluded class member.

23 E. Release of Claims and Dismissal of This Action: The class representative,
24 class members, and their successors and assignees are permanently barred and
25 enjoined from instituting or prosecuting, either individually or as a class, or in
26 any other capacity, any of the released claims against any of the released parties,
27 as set forth in the settlement agreement. Pursuant to the release contained in the
28 settlement agreement, the released claims—except claims for attorneys’ fees,

1 costs, and expenses—are compromised, settled, released, discharged, by virtue
2 of these proceedings and this Order.

- 3 6. ATTORNEYS' FEES: Plaintiff's request for an award of attorneys' fees of twenty-
4 eight percent (28%) of the Settlement Fund (after the Deductions), is approved.
- 5 7. LIABILITY: This Order is not, and shall not be construed as, an admission by
6 Defendant of any liability or wrongdoing in this or in any other proceeding.
- 7 8. JURISDICTION: The Court hereby retains continuing and exclusive jurisdiction
8 over the parties and all matters relating to this action and/or the settlement
9 agreement, including the administration, interpretation, construction, effectuation,
10 enforcement, and consummation of the settlement and this Order.
- 11 9. DISMISSAL: Plaintiff's Amended Complaint (Doc. 116) is hereby dismissed with
12 prejudice without costs to any party, except as provided in the settlement agreement.

13 Dated this 13th day of December, 2019.

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16 Honorable Steven P. Logan
17 United States District Judge
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