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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Joanne Knapper,)	No. CV-17-00913-PHX-SPL
)	
Plaintiff,)	ORDER
vs.)	
)	
Cox Communications, Inc.,)	
)	
Defendant.)	

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. (Doc. 115.) The parties have notified the Court that they have reached a settlement in this case, subject to notice to class members and this Court’s ultimate approval at a final fairness hearing. The parties set forth the terms and conditions of their settlement in their Class Action Settlement Agreement (the “Settlement Agreement”), which Plaintiff has attached to this Motion. (Doc. 115, Ex. 1 at 14-48.) The Court incorporates into this Order the definitions in the Settlement Agreement, including the capitalized terms as used in the Settlement Agreement.

The Court has considered the Settlement Agreement, Plaintiff’s Unopposed Motion (Doc. 115), and the record in this matter, and finds that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate. Therefore, after notice to the Settlement Class Members, the Court will hold a final fairness hearing (the “Final Fairness Hearing”) on December 10, 2019 at 1:30 p.m. to confirm that the proposed settlement is

1 fair, reasonable, and adequate, and to determine whether a final order and judgment should
2 be entered in this lawsuit. Accordingly,

3 **IT IS ORDERED** that:

4 This Court has jurisdiction over the subject matter in this action and over all settling
5 parties.

6 In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d),
7 1453, and 1711-1715, Defendant will cause written notice of the proposed class settlement
8 to be served as directed.

9 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, this action is
10 conditionally certified, for settlement purposes only, as a class action on behalf of the
11 following class of plaintiffs (the “Settlement Class Members”) with respect to the claims
12 asserted in this action:

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

20 The Settlement Class Members excludes individuals who were, at any time, Cox
21 Communications, Inc. customers prior to March 22, 2019.

22 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court confirms its
23 appointment of Joanne Knapper as the Class Representative and Michael L. Greenwald,
24 James L. Davidson, and Aaron D. Radbil of Greenwald Davidson Radbil PLLC as Class
25 Counsel.

26 The Court preliminarily finds, for settlement purposes only, that this action satisfies
27 the applicable prerequisites for class action treatment under Rule 23, namely:

- 28 a. The Settlement Class Members are so numerous and geographically
dispersed that joinder of all of them is impracticable;

- b. There are questions of law and fact common to the Settlement Class Members, which predominate over any individual questions;
- c. Plaintiff's claims are typical of the claims of the Settlement Class Members;
- d. Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members; and
- e. Class treatment of these claims will be efficient and manageable, achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

The Court preliminarily finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members, after considering, in totality, the following factors: "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel." *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, 895 F.3d 597, 610 n.18 (9th Cir. 2018) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

The Court has also considered the following factors in preliminarily finding that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Settlement Class Members:

- a. The Class Representative and Class Counsel have adequately represented the class;
- b. The proposal was negotiated at arm's length;
- c. The relief provided for the class is adequate, taking into account:

- i. the costs, risks, and delay of trial and appeal;
 - ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing Settlement Class Members' claims;
 - iii. the terms of any proposed award of attorney's fees, including timing of payment; and
 - iv. any agreement required to be identified under Rule 23(e)(3); and
- d. The proposal treats the Settlement Class Members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2).

A third-party class administrator acceptable to the parties will administer the settlement and notification to Settlement Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Settlement Class Members who can be identified through reasonable efforts, including reverse look-ups of Settlement Class Members' cellular telephone numbers. All costs of notice and administration will be paid from the settlement fund. Upon the recommendation of the parties, the Court appoints the following class administrator: Epiq Systems, Inc.

The Court approves the form and substance of the postcard notice, claim form, and Question & Answer Notice, which are attached as exhibits to the Settlement Agreement. The proposed form and method for notifying Settlement Class Members of the settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice.

The Court finds that the proposed notice plan is clearly designed to advise Settlement Class Members of their rights. In accordance with the Settlement Agreement, the class administrator will cause the postcard notice to be mailed to Settlement Class Members as expeditiously as possible, but in no event later than 45 days after the Court's entry of this Order, *i.e.*, no later than **August 26, 2019** (the "Notice Deadline"). The class

1 administrator will confirm, and if necessary, update the addresses for the Settlement Class
2 Members through a standard methodology that the class administrator uses to update
3 addresses. In addition, the Settlement Agreement, Question & Answer Notice, and relevant
4 pleadings will be made available to the Settlement Class Members through a dedicated
5 website.

6 Any Settlement Class Member who desires to be excluded from the class must send
7 a written request for exclusion to the class administrator with a postmark date no later than
8 60 days after the Notice Deadline (105 days after the Court's entry of this Order), *i.e.*, no
9 later than **October 25, 2019**. To be effective, the written request for exclusion must state
10 the Settlement Class Member's full name, address, and telephone number, along with a
11 statement that the Settlement Class Member wishes to be excluded. It must also be signed
12 by the Settlement Class Member. Any Settlement Class Member who submits a valid and
13 timely request for exclusion will not be bound by the terms of the Settlement Agreement.

14 Any Settlement Class Member who does not submit a timely, written request for
15 exclusion from the settlement class (*i.e.*, becomes an Opt-Out) will be bound by all
16 proceedings, orders, and judgments in this litigation, even if the Settlement Class Member
17 has previously initiated or subsequently initiates individual litigation or other proceedings
18 encompassed by the Settlement Agreement release.

19 Any Settlement Class Member who intends to object to the fairness of this
20 settlement must file a written objection with the Court within 60 days after the Notice
21 Deadline (105 days after the Court's entry of this Order), *i.e.*, no later than **October 25,**
22 **2019**. Further, any such Settlement Class Member must, within the same time period,
23 provide a copy of the written objection to Class Counsel, Attention: Michael L. Greenwald,
24 Greenwald Davidson Radbil PLLC, 7601 N. Federal Highway, Suite A-230, Boca Raton,
25 FL 33487; and to Counsel for Defendant, Attention: Petrina A. McDaniel, Squire Patton
26 Boggs (US) LLP, 1372 Peachtree Street NW, Atlanta, GA 30309. To be effective, an
27 objection to the proposed settlement must:
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- 1 a. Contain a heading which includes the name of the case and case number;
- 2 b. Provide the name, address, telephone number, and signature of the
- 3 Settlement Class Member filing the objection;
- 4 c. Attach documents establishing, or provide information sufficient to allow the
- 5 Parties to confirm, that the objector is a Settlement Class Member, including
- 6 providing the cellular telephone number called by Cox Communications, Inc.
- 7 and a verification that the objector is not, and never was, a Cox customer;
- 8 d. Be sent to Class Counsel and counsel for Defendant at the addresses above
- 9 by first-class mail, postmarked no later than **October 25, 2019**;
- 10 e. Be filed with the Clerk of the Court no later than **October 25, 2019**;
- 11 f. Contain the name, address, bar number and telephone number of the
- 12 objecting Settlement Class Member's counsel, if represented by an attorney.
- 13 If the Settlement Class Member is represented by an attorney, he/she must
- 14 comply with all applicable laws and rules for filing pleadings and documents
- 15 in the U.S. District Court for the District of Arizona;
- 16 g. Include a statement of such Settlement Class Member's specific objections;
- 17 and
- 18 h. State the grounds for objection, as well as identify any documents which such
- 19 objector desires the Court to consider.

20 Any Settlement Class Member who has timely filed an objection may appear at the
21 Final Fairness Hearing, in person or by counsel, and be heard to the extent allowed by the
22 Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy
23 of the proposed settlement, and on the application for an award of attorneys' fees, costs,
24 and expenses. The right to object to the proposed settlement must be exercised individually
25 by an individual Settlement Class Member, not as a member of a group or subclass and,
26 except in the case of a deceased, minor, or incapacitated class member, not by the act of
27 another person acting or purporting to act in a representative capacity.

1 The Court approves the Claim Form attached as an exhibit to the Settlement
2 Agreement, as well as the claims process described in the Settlement Agreement. Upon
3 final approval from the Court, the class administrator will mail a settlement check to each
4 Settlement Class Member who submits a timely, valid claim form and does not exclude
5 himself or herself from the class. The settlement checks to the Settlement Class Members
6 will be sent via U.S. mail no later than 45 days after the judgment in this case becomes
7 final.

8 Plaintiff may petition the Court to receive an amount not to exceed \$20,000 as
9 acknowledgement for her role in prosecuting this case on behalf of the Settlement Class
10 Members.

11 Pending determination of whether final approval of the Settlement Agreement
12 should be granted, the Court enjoins Plaintiff and Settlement Class Members unless and
13 until they have timely excluded themselves from (a) filing, commencing, prosecuting,
14 intervening in or participating as a plaintiff in any other lawsuit, arbitration, or other
15 proceeding against Cox Communications, Inc. in any jurisdiction based on the Released
16 Claims; (b) filing, commencing or prosecuting a lawsuit, arbitration, or other proceeding
17 against Cox Communications, Inc. as a class action on behalf of any members of the
18 Settlement Class who have not timely excluded themselves (including by seeking to amend
19 a pending complaint to include class allegations or seeking class certification in a pending
20 action), based on the Released Claims; and (c) attempting to effect Opt-Outs of a class of
21 individuals in any lawsuit or arbitration proceeding against Cox Communications, Inc.
22 based on the Released Claims, except that Settlement Class Members are not precluded
23 from participating in any investigation or suit initiated by a state or federal agency.

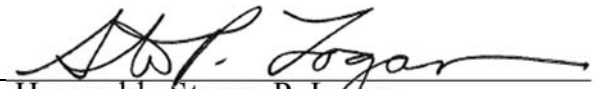
24 The Court will conduct the Final Fairness Hearing on **December 10, 2019 at 1:30**
25 **p.m.** before the Honorable Steven P. Logan, United States District Judge, in the Sandra
26 Day O'Connor United States Courthouse, located at 401 West Washington Street, Phoenix,
27 Arizona 85003, 5th Floor, Courtroom 501, to review and rule upon the following issues:
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Thus, the Court sets the following schedule:

- a. Preliminary Approval Order Entered: July 11, 2019
- b. Notice Sent: August 26, 2019
- c. Deadline to Submit Exclusion Request or File Objection: October 25, 2019
- d. Final Fairness Hearing: December 10, 2019 at 1:30 p.m.

Dated this 12th day of July, 2019.



Honorable Steven P. Logan
United States District Judge