

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH BUMPUS, MICHELINE PEKER,
*and CHERYL ROWAN, individually, and on behalf
of a class of similarly situated persons,*

Plaintiffs,

V.

REALOGY HOLDINGS CORP.,
REALOGY INTERMEDIATE HOLDINGS
LLC, REALOGY SERVICES GROUP LLC,
REALOGY GROUP LLC, and REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No.: 3:19-cv-03309-JD

**[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. **XXX**, and the Motion for Award of Attorneys' Fees and Costs and Service Awards, ECF No.
 3 **XXX**, filed by Plaintiffs Sarah Bumpus, Micheline Peker, and Cheryl Rowan (together, the "Motions").
 4 The Motions came before the Court for hearing in Courtroom 11, 19th Floor, San Francisco Division
 5 of the United States District Court for the Northern District of California on [date], at [time].

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, ECF No. **XXX**.

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 Court previously appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq")
 14 as the Settlement Administrator. Epiq has submitted a declaration reporting on the Class Notice plan,
 15 ECF No. **XXX**. The Notice and the Class Notice plan implemented pursuant to the Agreement (1)
 16 constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably
 17 calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of
 18 the Action, their right to object to or exclude themselves from the proposed Settlement, and their
 19 right to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and
 20 sufficient notice to all persons entitled to receive notice; and (4) meet all applicable requirements of
 21 the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and
 22 the rules of the Court.

23 4. The Court finds that the Settlement Administrator properly notified the appropriate
 24 state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of
 25 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of the notice and finds it
 26 complied with all applicable requirements of CAFA.

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

1 a. The Settlement Classes are as follows:

2 i. “NDNC Class” means all persons in the United States who received two
 3 or more calls, as indicated by non-zero call durations and/or disposition
 4 codes other than “No Answer,” “NO_ANSWER,” or “NOANSWER,”
 5 made by a Coldwell Banker-affiliated real estate agent using a Mojo,
 6 PhoneBurner, and/or Storm dialer in any 12-month period on a residential
 7 landline or cell phone number that appeared on the National Do Not Call
 8 Registry for at least 31 days for the time period beginning June 11, 2015
 9 and ending December 3, 2020;

10 ii. “Prerecorded Message Class” means all persons in the United States who
 11 received a call on their residential telephone line or cell phone number with
 12 an artificial or prerecorded message, as indicated by the following call
 13 disposition codes: (i) ‘Drop Message’ (if using the Mojo dialer), (ii)
 14 ATTENDED_TRANSFER’ (if using the Storm dialer), and (iii)
 15 ‘VOICEMAIL’ (if using a PhoneBurner dialer) and made by a Coldwell
 16 Banker-affiliated real estate agent for the time period beginning June 11,
 17 2015 and ending December 3, 2020.

18 b. Excluded from both Settlement Classes are: (a) current or former officers and
 19 directors of Anywhere, (b) Anywhere’s employees, agents, and counsel and its
 20 counsel’s employees, (c) independent contractor real estate agents affiliated with
 21 an Anywhere brand, (d) Plaintiffs’ Counsel and their employees, (e) any judge,
 22 magistrate, mediator, arbitrator, and/or court personnel that was involved in
 23 presiding over or rendering a decision in this case, and their immediate family
 24 members, and (f) any valid Opt-Out Members.

25 c. The Settlement Classes are ascertainable and so numerous that joinder of all
 26 members is impracticable. The Settlement Classes consist of thousands of class
 27 members, and the Settlement Class Members have been determined by objective
 28 means.

4 e. The claims of the proposed Class Representatives are typical of the claims of
5 the Settlement Classes. The proposed Class Representatives and each member of the Settlement
6 Classes are alleged to have suffered the same injury caused by the same course of conduct.

7 f. Plaintiffs have fairly and adequately represented and protected the interests of
8 the Settlement Classes. Plaintiffs are members of the Settlement Classes. Neither Plaintiffs nor Class
9 Counsel have any conflicts of interest with the Settlement Class Members, and Class Counsel have
10 demonstrated that they have adequately represented the Settlement Classes.

11 g. The questions of law or fact common to the members of the Settlement
12 Classes predominate over any questions affecting only individual members.

16 6. Pursuant to Federal Rule of Civil Procedure 23(e), the Settlement Agreement is, in all
17 respects, fair, reasonable, and adequate, after considering that (a) the class representatives and class
18 counsel have adequately represented the class; (b) the proposal was negotiated at arm's length; (c) the
19 relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
20 appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the
21 method of processing class-member claims; and (iii) the terms of any proposed award of attorney's
22 fees, including timing of payment; and (d) the proposal treats class members equitably relative to each
23 other. The Court further finds that the Settlement Agreement is in the best interests of all Settlement
24 Class Members, taking into account the following factors: (1) the strength of the plaintiffs' case; (2)
25 the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
26 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
27 completed and the stage of the proceedings; (6) the experience and view of counsel; and (7) the
28 reaction of the class members to the proposed settlement.

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

4 8. Settlement Class Members have been given due and adequate notice of the Settlement
 5 Agreement.

6 9. [There are no objections to the Settlement].

7 10. [There are no requests for exclusion].

8 11. The Court has held a hearing to consider the fairness, reasonableness, and adequacy
 9 of the proposed settlement.

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

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

27 14. All payments of attorneys' fees and reimbursement of costs and expenses to Class
 28 Counsel in this Action shall be made in accordance with the Settlement Agreement, and the Released

1 Persons shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or
 2 expenses except as provided in the Settlement Agreement.

3 15. The Settlement Administrator shall be paid in accordance with the Settlement
 4 Agreement.

5 16. The Court authorizes Class Counsel to withdraw amounts from the Escrow Account
 6 established as a qualified settlement fund as defined in Section 1.468B-1(a) to make the payments
 7 required by the Settlement Agreement.

8 17. The Realogy Defendants have denied any liability, fault, or wrongdoing of any kind in
 9 connection with the allegations in the Action, and neither the Settlement, nor any of its terms or
 10 provisions, nor any of the negotiations or proceedings connected with the Settlements shall be
 11 construed as an admission or concession of the truth of any of the allegations, or of any liability, fault,
 12 or wrongdoing of any kind by the Realogy Defendants.

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

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

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

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

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

28 4. All Releasing Parties are deemed to have irrevocably waived, and fully, finally, and

1 forever settled, discharged, and released the Released Parties from, any and all manner of claims,
 2 demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in
 3 nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or
 4 other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief,
 5 whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or
 6 unknown, suspected or unsuspected, in law or in equity, that any Releasing Party ever had, now has,
 7 or hereafter can, shall, or may have and that have accrued as of the date of this order from or related
 8 to the Released Claims. Released Claims means any and all claims, liabilities, demands, causes of action,
 9 or lawsuits of the Settlement Class Members, whether known or unknown, whether legal, statutory,
 10 equitable, or of any other type or form, whether under federal, state, or local law (such as any violations
 11 of the Telephone Consumer Protection Act, the FCC's related regulations, or an unfair or deceptive
 12 practices act), and whether brought in an individual, representative, or any other capacity, that were
 13 brought in the Action or could have been brought in the Action or that arise from telephone
 14 communications made or attempted by any Coldwell Banker affiliated real estate agent from June 11,
 15 2015 to December 3, 2020 to Settlement Class Members or telephone numbers assigned to Settlement
 16 Class Members.

17 5. All Releasing Parties are bound by this Final Approval Order and are forever enjoined
 18 from prosecuting in any forum any Released Claims against any of the Released Parties.

19 6. The Court expressly retains continuing and exclusive jurisdiction over this Action as
 20 to the following matters: (i) enforcement of the terms of the Settlement Agreement; (ii) issues relating
 21 to settlement administration; and (iii) enforcement of this Final Approval Order, the Judgment, and
 22 any order relating to Attorneys' Fees and Costs and Class Representative Service Awards. The Court
 23 does this for the purpose of satisfying the requirements of *Kokkonen v. Guardian Life Ins. Co. of Am.*,
 24 511 U.S. 375 (1994), concerning the obligation of a court entering a settlement agreement to speak
 25 clearly when it wishes to retain jurisdiction.

26 7. Because all claims against all parties have now been finally resolved, this Action
 27 (including all individual claims and Settlement Class Member claims asserted therein) is hereby
 28 dismissed on the merits and with prejudice, without fees or costs to any Party, except as provided in

1 the Settlement Agreement. No just reason exists for delay in entering this Final Approval Order and
2 entering final judgment.

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4 **IT IS SO ORDERED.**

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6 Date: _____

7 Honorable James Donato
United States District Judge

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