

1 Chiharu Sekino, SBN #306589
Email: csekino@sfmslaw.com
2 SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
1230 Columbia Street, Suite 1140
3 San Diego, California 92101
Telephone: (619) 235-2416
4 Facsimile: (866) 300-7367

5 Beth E. Terrell, SBN #178181
Email: bterrell@terrellmarshall.com
6 Jennifer Rust Murray, *Admitted Pro Hac Vice*
Email: jmurray@terrellmarshall.com
7 TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
8 Seattle, Washington 98103
Telephone: (206) 816-6603
9 Facsimile: (206) 319-5450

10 [Additional Counsel Appear on Signature Page]

11 *Class Counsel*

12
13 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 ABANTE ROOTER AND PLUMBING,
INC., MARK HANKINS, and PHILIP J.
16 CHARVAT, individually and on behalf of all
others similarly situated,

17 Plaintiffs,

18 v.

19 ALARM.COM INCORPORATED, and
ALARM.COM HOLDINGS, INC.,

20 Defendants.
21

NO. 4:15-cv-06314-YGR

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

As Modified by the Court

DATE: November 27, 2018
TIME: 2:00 p.m.
LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

22 Plaintiffs Abante Rooter and Plumbing, Inc., Mark Hankins, and Philip J. Charvat
23 ("Plaintiffs") on behalf of themselves and a proposed Settlement Class and Alarm.com
24

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT - 1

1 Incorporated and Alarm.com Holdings, Inc. (“Alarm.com”) have entered into a Settlement
2 Agreement. Plaintiffs and Alarm.com together constitute the “Parties,”

3 Plaintiffs have moved for, and Alarm.com does not oppose, entry of this order, which
4 (a) conditionally certifies the Settlement Class (as defined below) for settlement purposes only;
5 (b) preliminarily approves the proposed Settlement as fair, reasonable and adequate; (c) appoints
6 the Settlement Administrator; (d) provides for notice of the Settlement Agreement to Settlement
7 Class members in accordance with the terms of the Settlement Agreement; (e) establishes
8 procedures for objecting to, and opting out of, the proposed Settlement Agreement; (f) describes
9 procedures for submitting claims; and (g) sets a date for hearing to finally approve the Settlement
10 Agreement (“Final Approval Hearing”).

11 The Court has considered the Settlement Agreement and Addendum to Settlement
12 Agreement (Dkt. Nos. 273-1 and 287-1), the Motion for Preliminary Approval (Dkt. No. 272),
13 Plaintiffs’ supplemental memorandum (Dkt. No. 282) and second supplemental memorandum
14 (Dkt. No. 286), the declarations of Plaintiffs’ counsel (Dkt. Nos. 273-276, 283 and 287), the
15 declarations of Plaintiffs (Dkt. Nos. 277-279), and the declarations of the Settlement
16 Administrator (Dkt. Nos. 280 and 288p), as well as counsel’s argument at the November 27,
17 2018 hearing.

18 **IT IS ORDERED THAT:**

19 1. The Court has jurisdiction over the subject matter of this Action and personal
20 jurisdiction over the Parties and the conditionally certified Settlement Class, as defined below.

21 2. This Order incorporates by reference the definitions in the Settlement Agreement,
22 and all capitalized terms used in this Order will have the same meanings as set forth in the
23 Settlement Agreement, unless otherwise defined in this Order.

1 3. The Parties have agreed to and the Court provisionally certifies the following
2 “Settlement Class” for purposes of settlement:

3 All persons who, from December 30, 2011 through the date of Final Approval,
4 received a telemarketing call made by Alliance Security or any of Alliance’s
5 sub-dealers, Independent Business Operators, vendors, lead generators, or
6 agents (defined as “Alliance”) either promoting Alarm.com’s goods or services
7 or that could have resulted in the installation of a security system that could use
8 or include any Alarm.com product or service (a) to a cellular telephone number
9 through the use of an automatic telephone dialing system or an artificial or
10 prerecorded voice, (b) to a residential telephone line using an artificial or
11 prerecorded voice, or (c) to a cellular or residential telephone number registered
12 on the national Do Not Call Registry and who received more than one such call
13 within any twelve-month period. Persons who provided their telephone numbers
14 to Alarm.com prior to receiving calls from Alliance are not Settlement Class
15 Members. Class Members who previously excluded themselves from the Class
16 are not Settlement Class Members.

17 4. The Court finds that conditional certification of the Settlement Class for
18 settlement purposes only is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3).
19 The Court previously certified two narrower classes. Dkt. Nos. 126, 178. The Settlement Class is
20 broader than the previously certified classes because it includes calls made by all of Alliance’s
21 agents in addition to calls made by Alliance and Nationwide, includes calls made to residential
22 numbers using an artificial or prerecorded voice, and expands the class period for calls made to
23 cell phones. The Court finds that certification of the Settlement Class is appropriate for many of
24 the same reasons the Court identified in certifying the narrower classes.

 a. Numerosity is satisfied because the Class consists of at least 1,215,993
 members. *See Celano v. Marriott Int’l Inc.*, 242 F.R.D. 544, 548-49 (N.D.
 Cal. 2007) (numerosity is generally satisfied when a class has at least 40
 members).

- 1 b. Commonality is satisfied because the answers to the common questions of
2 whether Alarm.com is vicariously liable for calls made on its behalf,
3 whether Alliance and its agents called numbers on the DNC registry, and
4 whether Alliance and its agents called cell and residential numbers using
5 an ATDS or prerecorded message, turn on common evidence and can be
6 fairly resolved for all class members at once. *See, e.g., Kristensen v.*
7 *Credit Payment Servs.*, 12 F. Supp. 3d 1292, 1306 (D. Nev. 2014) (finding
8 that questions of vicarious liability satisfied commonality); *Whitaker v.*
9 *Bennett Law, PLLC*, No. 13-3145, 2014 WL 5454398, at *5 (S.D. Cal.
10 Oct. 27, 2014) (finding commonality satisfied where the central issue was
11 whether the defendant used an ATDS or prerecorded or artificial voice to
12 make calls).
- 13 c. Typicality is satisfied because Plaintiffs’ claims arise from the same
14 course of alleged conduct as all Settlement Class Members’ claims:
15 telemarketing calls placed to cell phones and residential lines promoting
16 Alarm.com’s goods and services. *See, e.g., Whitaker*, 2014 WL 5454398,
17 at *5 (finding typicality satisfied because each class member’s claim
18 “revolves exclusively around [the defendant’s] conduct as it specifically
19 relates to the alleged violations of the TCPA”); *Agne v. Papa John’s Int’l,*
20 *Inc.*, 286 F.R.D. 559, 569 (W.D. Wash. 2012) (finding typicality satisfied
21 where the plaintiff’s claims, “like all class members’ claims, arise from
22 text marketing campaigns commissioned by Papa John’s franchisees and
23 executed by the same marketing vendor”).
- 24

1 d. Adequacy is satisfied because Plaintiffs have no conflicts of interest with
2 the other proposed class members, have demonstrated their commitment to
3 the class by actively participating in the litigation, and have retained
4 qualified and committed counsel. *Ellis v. Costco Wholesale Corp.*, 657
5 F.3d 970, 985 (9th Cir. 2011) (citation omitted).

6 e. Predominance is satisfied because the common questions predominate
7 over any questions affecting only individual Settlement Class Members.
8 For example, the question of whether Alarm.com is vicariously liable for
9 the calls placed on its behalf can be resolved using the same evidence for
10 all class members and is exactly the kind of predominant common issue
11 that makes class certification appropriate. *See Tyson Foods, Inc. v.*
12 *Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the
13 central issues in the action are common to the class and can be said to
14 predominate, the action may be considered proper under Rule 23(b)(3)
15 ’” (citation omitted)).

16 f. Superiority is satisfied because classwide resolution is the only practical
17 method of addressing the alleged telemarketing violations at issue in this
18 case. There are millions of class members with modest individual claims,
19 most of whom likely lack the resources necessary to seek individual legal
20 redress. *See Local Joint Exec. Bd. of Culinary/ Bartender Trust Fund v.*
21 *Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases
22 involving “multiple claims for relatively small individual sums” are
23 particularly well suited to class treatment); *see also Wolin v. Jaguar Land*
24

1 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where
2 recovery on an individual basis would be dwarfed by the cost of litigating
3 on an individual basis, this factor weighs in favor of class certification.”).

4 5. The Court preliminarily approves the Settlement as fair, reasonable, and adequate.
5 In making this determination, the Court has considered the Northern District of California
6 Procedural Guidance for Class Action Settlements, the criteria set forth in recently amended
7 Federal Rule of Civil Procedure 23, and the factors outlined in *Hanlon v. Chrysler Corp.*, 150
8 F.3d 1011, 1026 (9th Cir. 1998), and *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566,
9 575-76 (9th Cir. 2004).

10 6. The Settlement requires Alarm.com to pay \$28,000,000 into a Settlement Fund
11 that the Parties propose to use to make payments to all Settlement Class Members who submit
12 timely and valid claims; pay the Settlement Administrator the costs of notice and Settlement
13 Administration Expenses in an amount capped at \$1,825,000; pay Service Awards in the amount
14 of \$10,000 to each Class Representative; and pay Class Counsel’s attorneys’ fees in an amount
15 not to exceed \$8,400,000 and litigation costs of approximately \$525,000. Each Settlement Class
16 Member will be entitled to submit only one claim for each cellular or residential number on
17 which calls were claimed to be received, regardless of the number of calls claimed to be received
18 on each cellular or residential telephone. The Settlement Fund is non-reversionary and any
19 amounts remaining after the initial distribution to Settlement Class Members and a second
20 distribution, if necessary and administratively feasible, will be disbursed *cy pres* to the National
21 Consumer Law Center, a non-profit organization dedicated to protecting consumers, including
22 consumers harassed by unlawful telemarketing calls.

1 7. The Settlement also provides prospective relief. Alarm.com has agreed that
2 Alliance will no longer be permitted to market or activate new accounts with Alarm.com
3 products or services. Alarm.com is also in the process of implementing changes to its practices to
4 increase awareness of TCPA compliance, including increased TCPA training for Alarm.com
5 employees, changes to its contractual arrangement with service providers, and raising TCPA
6 awareness among its service providers

7 8. The Court has considered the terms of the Settlement Agreement in light of
8 Plaintiffs' and Class Counsel's representation of the Settlement Class, the arm's length
9 negotiations that led to the Settlement, the experience and views of counsel, the equitable
10 treatment of Settlement Class members, and the relief that will be provided to the Settlement
11 Class. In preliminarily approving the relief to the Settlement Class, the Court has considered,
12 among other things, the amount offered in settlement, the stage of the proceedings, the strength
13 of Plaintiffs' case and the costs, risks, and delay of continued litigation; the method of
14 distributing relief to the class, which will include the option of electronic payments; and the
15 proposed attorneys' fee award and Service Awards.

16 9. Plaintiffs' motion to preliminarily approve the Settlement Agreement and certify
17 the Settlement Class is granted. The Court will make a final determination as to the fairness,
18 reasonableness, and adequacy of the Settlement after the Final Approval Hearing.

19 10. The Court appoints Abante Rooter and Plumbing, Inc., Mark Hankins, and Philip
20 Charvat as Class Representatives and Bailey & Glasser, LLP, Broderick & Paronich, P.C.,
21 Terrell Marshall Law Group PLLC, and The Law Offices of Matthew P. McCue as Class
22 Counsel.

1 11. The Court appoints KCC as Settlement Administrator to fulfill the functions,
2 duties, and responsibilities of the Settlement Administrator as set forth in the Settlement
3 Agreement and this Order. By accepting this appointment, the Settlement Administrator has
4 agreed to the Court's jurisdiction solely for purposes of enforcement of the Settlement
5 Administrator's obligations under the Settlement Agreement. The Court approves the estimated
6 Settlement Administration Expenses.

7 12. The Court finds that the method of providing notice to Settlement Class members
8 specified in section 4.2 of the Settlement Agreement, the forms of notice (as modified following
9 the hearing), the method for submitting claims, and the manner of providing for exclusion
10 requests and objections to the Settlement specified in sections 4.3 and 4.4 of the Settlement
11 Agreement are reasonable and appropriate, and satisfy the requirements of due process and the
12 Federal Rules of Civil Procedure.

13 13. The Settlement Administrator shall cause the Notice Plan to be commenced on or
14 before 60 days after entry of this Order. The Notice Plan includes Email Notice to Settlement
15 Class Members for whom an email address is available in the calling records, mailed Postcard
16 Notice to all Settlement Class Members for whom a mailing address can be obtained, and a
17 media campaign with targeted ads in People and Better Homes and Gardens magazines and on
18 Google Display Network, Facebook and YouTube that is designed to reach over 70% of
19 Settlement Class Members. The Settlement Administrator will send an email no later than 30
20 days before the expiration of the Claim Period to all Settlement Class Members who have not
21 submitted claims for whom an email address is available. The Settlement Administrator will also
22 make the Long Form Notice and other relevant documents, including Class Counsel's motion for
23 attorneys' fees, litigation costs and Service Awards, available on the Settlement Website.

1 14. To participate in the Settlement, Settlement Class Members must submit a simple
2 Claim Form no later than **60 days after the commencement of the Notice Plan**, which they
3 may do by mail or online through the Settlement Website.

4 15. Any member of the Settlement Class may request to be excluded from the
5 Settlement Class by sending, by first class mail, a written exclusion to the Settlement
6 Administrator postmarked on or before **60 days after the commencement of the Notice Plan**.
7 The request for exclusion must include the name of this action, *Abante Rooter and Plumbing,*
8 *Inc. v. Alarm.com*, the Settlement Class member's full name, address, and telephone number
9 where he or she may be contacted, the telephone number(s) which he or she maintains was
10 called, and a statement that the member of the Settlement Class submitting the request wishes to
11 be excluded from the Settlement of this litigation, and personally signed by the member of the
12 Settlement Class submitting the request. Any member of the Settlement Class who submits a
13 timely and valid exclusion request shall not: (i) be bound by the Final Approval Order and
14 Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue
15 of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.

16 16. Any member of the Settlement Class may object to this Agreement by filing a
17 written statement with the Court by **60 days after the commencement of the Notice Plan** that
18 includes: his or her full name; address; telephone number where he or she may be contacted; the
19 telephone number or numbers that he or she maintains were called; all grounds in detail for the
20 objection, with factual and legal support for each stated ground; whether the objection applies
21 only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;
22 the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she
23 intends to introduce into evidence at the Final Approval Hearing; the identity (including name,
24

1 address, phone number and email) of any lawyer who will be representing him or her with
2 respect to any objection, and a statement of whether he or she intends to appear at the Final
3 Approval Hearing with or without counsel. In accordance with the Court's Procedural Guidance
4 for Class Action Settlements, the Court will scan all objections into the electronic case docket
5 and the parties will receive electronic notices of filing. Any payment or other consideration given
6 to an objector or objector's counsel for forgoing or withdrawing an objection, or forgoing,
7 dismissing, or abandoning an appeal from a judgment approving a class settlement shall require
8 Court approval.

9 17. The Court directs the Settlement Administrator to file with the Court no later than
10 20 days before the Final Approval Hearing a sworn declaration containing the information set
11 forth in section 6.1.1 of the Settlement Agreement. This information includes (a) confirmation
12 that the Email and Postcard Notices were sent to Settlement Class members as section 6.1
13 requires; (b) confirmation that the Publication Notices were timely published in accordance with
14 the Notice Plan; (c) a tally of persons who opted out of the Settlement Class pursuant to section
15 4.4; (d) a tally of objections received; (e) confirmation that the Settlement Administrator timely
16 reviewed all claims for deficiencies and fraud in accordance with the Settlement Agreement; (f) a
17 tally of the total number of valid claims submitted; and (g) confirmation that the Settlement
18 Administrator complied with 28 U.S.C. § 1715 by serving notice of the settlement upon the
19 various state attorneys general and any other appropriate officials.

20 18. The Court will hold a Final Approval Hearing on **July 30, 2019 at 2:00 p.m.** to
21 finally determine whether the Settlement Class should be certified under Rule 23(a) and (b)(3) of
22 the Federal Rules of Civil Procedure; to determine whether the Settlement Agreement is fair,
23 reasonable, and adequate, and should be approved by the Court; to determine whether the Final
24

1 Approval Order and Judgment should be entered; to consider the motion for attorneys' fees,
2 reimbursement of litigation costs, and Service Awards; and to rule on any other matters that the
3 Court may deem appropriate. At the Final Approval Hearing, the Court may enter the Final
4 Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate
5 the rights of Settlement Class Members.

6 19. Any interested person who has not excluded himself or herself from the
7 Settlement Class and who filed a written objection on or before **60 days after the**
8 **commencement of the Notice Plan** may appear at the Final Approval Hearing to show cause
9 why the proposed Settlement Agreement should or should not be approved as fair, reasonable,
10 and adequate. The Court will consider all properly submitted objections. Any Settlement Class
11 Member who does not submit an objection in the manner provided above shall be deemed to
12 have waived any objection to the Settlement Agreement and shall forever be foreclosed from
13 making any objection to certification of the Settlement Class, to the fairness, adequacy and
14 reasonableness of the Settlement Agreement, and to any attorneys' fees, litigation cost
15 reimbursements, and Service Awards approved by the Court.

16 20. Class Counsel's motion for approval of attorneys' fees, litigation costs, and
17 Service Awards shall be filed on or before **25 days after the commencement of the Notice**
18 **Plan**, which is 35 days before the deadline for Settlement Class members to opt out or object to
19 the Settlement Agreement. This deadline complies with the Court's Procedural Guidance for
20 Class Action Settlements and *In re Mercury Interactive Corp.*, 618 F.3d 988, 994 (9th Cir.
21 2010).

1 21. All memoranda, declarations, responses to objections, and other evidence in
2 support of the motion for final approval of the Settlement Agreement shall be filed on or before
3 **June 21, 2019.**

4 22. All proceedings in this Action other than those that are necessary to carry out, or
5 incidental to carrying out, the terms and conditions of this Order are stayed and suspended until
6 further order of the Court.

7 23. Pending entry of the Final Approval Order and Judgment, Plaintiffs, Settlement
8 Class members, and any person or entity allegedly acting on behalf of the Settlement Class,
9 either directly, representatively, or in any other capacity, are preliminarily enjoined from
10 commencing or prosecuting against the Released Parties any action or proceeding in any court or
11 tribunal asserting any of the Released Claims; provided, however, that this injunction shall not
12 apply to individual claims of any Settlement Class Members who timely exclude themselves in a
13 manner that complies with this Order. This injunction is necessary to protect and effectuate the
14 Settlement Agreement, this Order, and the Court's flexibility and authority to effectuate this
15 Settlement Agreement and to enter judgment when appropriate, and is ordered in aid of the
16 Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

17 24. The Court retains jurisdiction over the Action and all matters arising out of or
18 connected with the proposed Settlement Agreement. The Court reserves the right to adjourn or
19 continue the date of the Final Approval Hearing without further notice to Settlement Class
20 members, and retains jurisdiction to consider all further applications arising out of or connected
21 with the Settlement Agreement. The Court may approve or modify the Settlement Agreement
22 without further notice to Settlement Class members.

1 25. If the Effective Date does not occur, the Parties will return to the status quo ex
2 ante, for all litigation purposes, as if no settlement had been negotiated or entered into and thus
3 this Order and all other findings or stipulations regarding the Settlement, including but not
4 limited to certification of the Settlement Class will be automatically void, vacated, and treated as
5 if never filed.

6 26. The following timeline will govern proceedings through the Final Approval
7 Hearing:

DEADLINE	EVENT
Ten business days after entry of this Order	Alarm.com makes initial payment to KCC
Sixty business days after entry of this Order	Deadline to commence Notice Plan
Thirty- five days before the Exclusion/Objection deadline	Deadline for Class Counsel to file motion for attorneys' fees, reimbursement of litigation costs, and for service awards
Sixty days after the Settlement Administrator commences Notice Plan	Deadline for Settlement Class Members to submit claims, exclusion requests, and objections
June 21, 2019	Deadline to file responses to objections, motion for final approval, and declaration from Settlement Administrator
Tuesday, July 30, 2019 at 2:00 p.m.	Final Approval Hearing

8 IT IS HEREBY ORDERED.

9 DATED: December 19, 2018

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE