

1 individuals, alleging that defendants Harman and 3Seventy, Inc.¹ (“3Seventy”) sent unauthorized,
2 automated text messages to putative class members’ cellular phones in violation of the Telephone
3 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”). (Doc. No. 1.) Plaintiff’s first
4 amended complaint (“FAC”) alleged that, in 2012, Harman and 3Seventy “set out on a
5 telemarketing campaign to send consumers coupons for Harman restaurant food items via
6 automated text messages” and that, “[b]y the beginning of 2014, Defendants were text messaging
7 more than 150,000 consumers.” (Doc. No. 22 at 5–6.) Plaintiff alleged that “Defendants sent
8 [him] and other consumers its automated telemarketing text messages without obtaining clear and
9 conspicuous prior express written consent as required by the TCPA.” (*Id.* at 2.) Plaintiff also
10 claimed that these messages were sent “as part of a marketing program called the ‘A&W Text
11 Club.’” (Doc. No. 193 at 6.) The FAC sought injunctive relief prohibiting similar violations of
12 the TCPA by defendants in the future; statutory damages of \$500.00 for each and every call/text
13 in violation of the TCPA; and treble damages of up to \$1,500.00 for each and every call/text in
14 violation of the TCPA. (Doc. No. 22 at 15–16.)

15 After plaintiff filed suit, the parties “heavily litigated this case.” (Doc. No. 193 at 6.)
16 Plaintiff reviewed “over 46,000 pages of documents produced by Harman, 3Seventy or from third
17 parties,” including “emails, contracts, system manuals, slideshows, reports of the progress of the
18 A&W Text Club, [and] audiovisual materials such as videos and web advertisements.” (*Id.*) In
19 addition, plaintiff took seven depositions of Harman, 3Seventy, and non-party employees, and
20 Harman took plaintiff’s and his expert’s depositions and forensically examined plaintiff’s cellular
21 phone. (*Id.* at 6–7.) Moreover, the parties engaged in extensive motion practice, including a
22 motion to dismiss and to strike plaintiff’s class allegations (Doc. No. 26), three motions to stay
23 (Doc. Nos. 64, 108, 167), three motions for summary judgment (Doc. Nos. 101, 128, 174), and a
24 motion for class certification (Doc. No. 98).

25
26 ¹ On June 12, 2019, plaintiff and defendant 3Seventy stipulated to dismissing 3Seventy from this
27 action without prejudice, and the court thereafter gave effect to their stipulation. (*See* Doc. Nos.
28 194, 195.) That stipulated dismissal will convert to a dismissal with prejudice upon entry of a
final order from this court approving a class settlement between settlement class and defendant
Harman. (Doc. No. 194 at 2.)

1 In December 2018, the parties agreed to engage in settlement negotiations by way of
2 mediation before the Honorable Morton Denlow (Ret.). (Doc. No. 193 at 7.) On February 19,
3 2019, after the parties provided Judge Denlow with detailed mediation briefs, he presided over a
4 full day of negotiations between the parties which did not result in a settlement being reached.
5 (*Id.*) Following that mediation session, however, the parties continued their discussions and
6 eventually reached the proposed settlement agreement that is now before the court (the “proposed
7 settlement agreement”). (*Id.*; *see also* Doc. No. 193-1, Ex. A.)

8 Pursuant to the proposed settlement agreement, Harman has agreed to deposit
9 \$4,000,000.00 into a settlement fund. (Doc. No. 193-1, Ex. A at 11–12.) “Settlement Class
10 Members who timely submit a valid claim form will receive a pro-rata distribution from the
11 settlement fund, after the Attorneys’ Fees and Costs, any Incentive Award to the Named Plaintiff,
12 and any Settlement Administration Costs are deducted from the Settlement Fund and the
13 Settlement Administrator reviews all Claim Forms to determine a final number of claimants.”
14 (Doc. No. 193 at 9.) While the agreement does not provide for any specific incentive or fee
15 award, class counsel “will apply for an Incentive Award of up to \$10,000 for the Class
16 Representative and of up to 1/3 of the Settlement Fund (\$1,333,333.33) in Class Counsel Fees.”
17 (*Id.* at 10.) The parties agree that “[t]he Court and only the Court shall determine the amount of
18 Attorneys’ Fees and Costs and any Incentive Award in this action.” (*Id.*)

19 On June 12, 2019, plaintiff filed the pending motion for preliminary approval of the class
20 action settlement. (Doc. No. 193.) Plaintiff seeks an order: (1) preliminarily approving the terms
21 of the Proposed Settlement Agreement; (2) appointing plaintiff as the class representative;
22 (3) appointing attorneys Sergei Lemberg and Stephen Taylor of Lemberg Law, LLC as class
23 counsel; (4) conditionally certifying the putative settlement class; (5) approving and directing
24 distribution of the class notice packet to class members; and (6) scheduling a final fairness
25 hearing with respect to the proposed settlement agreement. (Doc. No. 193 at 8.)

26 At the hearing on the motion for preliminary approval, the court requested supplemental
27 briefing regarding the appropriateness of requiring class members to submit claim forms to
28 recover from the settlement fund, as well as the overall reasonableness of the settlement fund in

1 light of the estimated maximum value of the class’s claims. On July 23, 2019, plaintiff filed
2 supplemental briefing as requested by the court. (Doc. No. 198.)

3 **LEGAL STANDARD**

4 “Courts have long recognized that settlement class actions present unique due process
5 concerns for absent class members.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
6 946 (9th Cir. 2011) (citation and internal quotations omitted). To protect the rights of absent
7 class members, Rule 23(e) of the Federal Rules of Civil Procedure requires that the court approve
8 all class action settlements “only after a hearing and on finding that it is fair, reasonable, and
9 adequate.” Fed. R. Civ. P. 23(e)(2); *Bluetooth*, 654 F.3d at 946. Moreover, it has been
10 recognized that when parties seek approval of a settlement agreement negotiated prior to formal
11 class certification, “there is an even greater potential for a breach of fiduciary duty owed the class
12 during settlement.” *Bluetooth*, 654 F.3d at 946. Thus, the court must review such agreements
13 with “a more probing inquiry” for evidence of collusion or other conflicts of interest than what is
14 normally required under the Federal Rules. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
15 Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011);
16 *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

17 When parties seek class certification only for purposes of settlement, Rule 23 “demand[s]
18 undiluted, even heightened, attention” to the certification requirements. *Amchem Prods., Inc. v.*
19 *Windsor*, 521 U.S. 591, 620 (1997). The district court must examine the propriety of certification
20 under Rule 23 both at this preliminary stage and at a later fairness hearing. *See, e.g., Ogbuehi v.*
21 *Comcast*, 303 F.R.D. 337, 344 (E.D. Cal. Oct. 2, 2014); *West v. Circle K Stores, Inc.*, No. 04-cv-
22 0438 WBS GGH, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006).

23 Review of a proposed class action settlement ordinarily involves two hearings. *See*
24 *Manual for Complex Litigation* (4th) § 21.632. First, the court conducts a preliminary fairness
25 evaluation and, if applicable, considers class certification. If the court makes a preliminary
26 determination on the fairness, reasonableness, and adequacy of the settlement terms, the parties
27 are directed to prepare the notice of certification and proposed settlement to the class members.
28 *Id.* (noting that if the parties move for both class certification and preliminary approval, the

1 certification hearing and preliminary fairness evaluation can usually be combined). Second, the
2 court holds a final fairness hearing to determine whether to approve the settlement. *Id.*; *see also*
3 *Narouz v. Charter Commc 'ns, Inc.*, 591 F.3d 1261, 1266–67 (9th Cir. 2010).

4 Here, the parties move for preliminary approval of a class settlement and preliminary class
5 certification. Though Rule 23 does not explicitly provide for such a procedure, federal courts
6 generally find preliminary approval of settlement and notice to the proposed class appropriate if
7 the proposed settlement “appears to be the product of serious, informed, non-collusive
8 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to
9 class representatives or segments of the class, and falls with the range of possible approval.”
10 *Lounibos v. Keypoint Gov’t Solutions Inc.*, No. 12-00636, 2014 WL 558675, at *5 (N.D. Cal.
11 Feb. 10, 2014) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
12 2007)); Newberg on Class Actions § 13:13 (5th ed. 2011); *see also Dearauju v. Regis Corp.*, Nos.
13 2:14-cv-01408-KJM-AC, 2:14-cv-01411-KJM-AC, 2016 WL 3549473 (E.D. Cal. June 30, 2016)
14 (“Rule 23 provides no guidance, and actually foresees no procedure, but federal courts have
15 generally adopted [the process of preliminarily certifying a settlement class].”).

16 ANALYSIS

17 A. Preliminary Evaluation of Fairness of Proposed Class Action Settlement

18 Plaintiff seeks preliminary approval of the proposed settlement agreement. (*See* Doc. No.
19 193.) As noted, under Rule 23(e), a court may approve a class action settlement only if the
20 settlement is fair, reasonable, and adequate. *Bluetooth*, 654 F.3d at 946. “[P]reliminary approval
21 of a settlement has both a procedural and substantive component.” *See, e.g., In re Tableware*
22 *Antitrust Litigation*, 484 F. Supp. 2d at 1079 (citing *Schwartz v. Dallas Cowboys Football Club,*
23 *Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001)). In particular, preliminary approval of a
24 settlement and notice to the proposed class is appropriate if: (i) the proposed settlement appears
25 to be the product of serious, informed, non-collusive negotiations; and (ii) the settlement falls
26 within the range of possible approval, has no obvious deficiencies, and does not improperly grant
27 preferential treatment to class representatives or segments of the class. *Id.*; *see also Ross v. Bar*
28 *None Enterprises, Inc.*, No. 2:13-cv-00234-KJM-KJN, 2014 WL 4109592, at *9 (E.D. Cal.

1 Aug. 19, 2014). While it is not a court’s province to “reach any ultimate conclusions on the
2 contested issues of fact and law which underlie the merits of the dispute,” a court should weigh
3 the strength of a plaintiff’s case; the risk, expense, complexity, and likely duration of further
4 litigation; the stage of the proceedings; and the value of the settlement offer. *Chem. Bank v. City*
5 *of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *see also Officers for Justice v. Civil Serv.*
6 *Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

7 1. The Proposed Settlement Agreement Appears to be the Product of Serious,
8 Informed, Non-Collusive Negotiations.

9 The court must first consider whether the process by which the parties arrived at their
10 settlement is truly the product of arm’s length bargaining, rather than collusion or fraud. *Millan*
11 *v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 613 (E.D. Cal. 2015). A settlement is presumed
12 fair if it “follow[s] sufficient discovery and genuine arms-length negotiation.” *Adoma v. Univ. of*
13 *Phx., Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012) (quoting *Nat’l Rural Telecomms. Coop. v.*
14 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)). In addition, participation in mediation
15 “tends to support the conclusion that the settlement process was not collusive.” *Palacios v. Penny*
16 *Newman Grain, Inc.*, No. 1:14-cv-01804-KJM, 2015 WL 4078135, at *8 (E.D. Cal. July 6, 2015)
17 (citation omitted).

18 Here, the proposed settlement agreement appears to be the product of serious, substantial,
19 and arm’s length negotiations. As discussed above, the parties reached the agreement after
20 engaging in extensive discovery and motion practice and after participating in a mediation before
21 Retired Judge Denlow. (Doc. No. 193 at 6–7, 14–15.) Specifically, this litigation resulted in
22 production of over 46,000 pages of documents, several expert reports and depositions, and several
23 dispositive motions, including three summary judgment motions. (*Id.* at 15.) The parties then
24 adjourned the briefing schedule on Harman’s second motion for summary judgement to engage
25 with the mediation before Judge Denlow. (*See* Doc. Nos. 182, 183.) Although that mediation
26 session concluded without a settlement being reached, the parties continued to engage in
27 negotiations and eventually arrived at the proposed settlement agreement. Based upon this
28 history, the court is convinced that the parties’ negotiations were extensive, involved, and non-

1 collusive, lending credence to the fairness of the settlement and supporting the granting of
2 plaintiff's motion for preliminary approval.

3 2. The Proposed Settlement Agreement Does Not Contain Obvious Deficiencies.

4 A proposed settlement does not meet the test for preliminary fairness if there are any
5 obvious deficiencies in the proposed agreement. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
6 at 1079. Here, the settlement states that defendant Harman shall deposit \$4,000,000.00 into a
7 non-reversionary settlement fund to settle this action. (Doc. Nos. 193 at 17; 193-1, Ex. A at 11–
8 12.) This total includes amounts to be paid to class members, awards for attorneys' fees and
9 costs, an incentive payment for the named plaintiff, and the settlement administration expenses.
10 (Doc. No. 193-1, Ex. A at 14.) The parties propose that the awards for attorneys' fees and costs,
11 an incentive payment for the named plaintiff, and that the settlement administration expenses be
12 deducted from the settlement fund prior to the *pro rata* distribution of benefits to the settlement
13 class. (*Id.*) However, the agreement makes clear that the settlement is not conditioned on any
14 particular amount for either the incentive award or award of attorneys' fees. (*Id.* at 32.) Further,
15 to the extent that settlement checks remain uncashed after the void date, the agreement provides
16 for a second distribution of funds to class members, provided that this second distribution is not
17 cost-prohibitive, as determined by the settlement administrator. (Doc. No. 193-1, Ex. A at 12.) If
18 a second distribution is determined to not be feasible, the settlement administrator will pay any
19 remaining funds to the *Cy Pres* recipient(s) approved by this court. (*Id.* at 12–13.) The
20 settlement provides a means for class members to exclude themselves from the settlement (*id.* at
21 20–21), and the release of liability appears reasonably tailored to the claims presented in the
22 action for class members, with the named plaintiff agreeing to a general release of all claims. (*Id.*
23 at 28–32). Finally, the agreement provides for the settlement administrator to coordinate notice to
24 the class, any requests for exclusion, and payments to class members upon final approval. (*Id.* at
25 13–14, 20.)

26 Based upon this showing, the court is satisfied there are no obvious deficiencies with the
27 proposed settlement agreement.

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1 3. The Proposed Settlement Agreement Does Not Improperly Grant Preferential
2 Treatment to Class Representatives or Segments of the Class.

3 In making a preliminary fairness determination, the court must assure itself that the
4 proposed settlement does not provide preferential treatment to certain members of the class or to
5 the named plaintiff. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. As noted above,
6 the settlement terms here provide for the settlement amount to be divided among class members
7 in equal shares. (Doc. No. 193 at 19.) The court therefore turns to the attorneys’ fees provisions
8 and the anticipated incentive award.

9 a. *Attorneys’ Fees*

10 When a negotiated class action settlement includes an award of attorneys’ fees, the fee
11 award must be evaluated in the overall context of the settlement. *Knisley v. Network Assocs.*, 312
12 F.3d 1123, 1126 (9th Cir. 2002). Where, as here, fees are to be paid from a common fund, the
13 relationship between the class members and class counsel “turns adversarial.” *In re Washington*
14 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994). Thus, the district court
15 must assume a fiduciary role for the class members in evaluating a request for an award of
16 attorneys’ fees from the common fund. *Id.*; *Rodriquez v. W. Publ’g Corp.*, 563 F.3d 948, 968 (9th
17 Cir. 2009). Similarly, while “[i]ncentive awards are fairly typical in class action cases,”
18 *Rodriquez*, 563 F.3d at 958–59, “district courts must be vigilant in scrutinizing all incentive
19 awards to determine whether they destroy the adequacy of the class representatives
20 [C]oncerns over potential conflicts may be especially pressing where . . . the proposed service
21 fees greatly exceed the payments to absent class members.” *Radcliffe v. Experian Info. Sols.,*
22 *Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (internal quotation marks and citations omitted).

23 The Ninth Circuit has approved two methods for determining attorneys’ fees in cases
24 where the attorneys’ fee award is taken from the common fund set aside for the entire settlement:
25 the “percentage of the fund” method and the “lodestar” method. *Vizcaino v. Microsoft Corp.*, 290
26 F.3d 1043, 1047 (9th Cir. 2002) (citation omitted). The district court retains discretion in
27 common fund cases to choose either method. *Id.*; *Vu v. Fashion Inst. of Design & Merch.*, No.
28 CV 14-08822 SJO (EX), 2016 WL 6211308, at *5 (C.D. Cal. Mar. 22, 2016). Under either

1 approach, “[r]easonableness is the goal, and mechanical or formulaic application of either
2 method, where it yields an unreasonable result, can be an abuse of discretion.” *Fischel v.*
3 *Equitable Life Assurance Soc’y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002).

4 Here, plaintiff’s counsel state that they will seek attorneys’ fees in the total amount not to
5 exceed one-third of the ultimate gross settlement amount. (Doc. No. 193 at 10.) Accordingly,
6 assuming the gross settlement amount remains at \$4,000,000.00, plaintiffs’ co-counsel will seek a
7 total award of attorneys’ fees in an amount not to exceed \$1,333,333.33. (*Id.*) This fee amount is
8 above the Ninth Circuit benchmark amount. *See Bluetooth*, 654 F.3d at 947 (setting a 25%
9 benchmark); *Staton*, 327 F.3d at 952 (same); *Six (6) Mexican Workers*, 904 F.2d at 1311 (same).
10 However, that percentage is not unreasonable as an upper bound. *See Vizcaino*, 290 F.3d at 1047
11 (observing that percentage awards of between twenty and thirty percent are common); *In re*
12 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) (“This court’s review of recent
13 reported cases discloses that nearly all common fund awards range around 30% even after
14 thorough application of either the lodestar or twelve-factor method.”). Reasons to vary the
15 benchmark award may be found when counsel achieves exceptional results for the class,
16 undertakes ‘extremely risky’ litigation, generates benefits for the class beyond simply the cash
17 settlement fund, or handles the case on a contingency basis. *Vizcaino*, 290 F.3d at 1048–50; *see*
18 *also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954 (9th Cir. 2015). An explanation
19 is necessary when the district court departs from the twenty-five percent benchmark. *Powers v.*
20 *Eichen*, 229 F.3d 1249, 1256–57 (9th Cir. 2000). Ultimately, however, “[s]election of the
21 benchmark or any other rate must be supported by findings that take into account all of the
22 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.” Accordingly, while preliminary
23 approval will be granted, in connection with the final fairness hearing, the court will consider any
24 objections as well as the evidence presented by counsel in order to determine whether the award
25 of an above-benchmark percentage in attorneys’ fees is reasonable in this case. *See Powers v.*
26 *Eichen*, 229 F.3d 1249, 1256–57 (9th Cir. 2000) (noting that an explanation is necessary when the
27 district court departs from the twenty-five percent benchmark).

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1 b. *Incentive Payments*

2 As the named plaintiff in this class action, plaintiff Larson will also seek an incentive
3 award in an amount not to exceed \$10,000.00. (Doc. No. 193 at 10.) This incentive award is
4 significantly higher than the average recovery amount of individual class members. However,
5 courts in this circuit have approved enhancement awards in this amount, and such an award here
6 would not necessarily be “outside the realm of what has been approved as reasonable by other
7 courts.” *Aguilar v. Wawona Frozen Foods*, No. 1:15cv00093 DAD EPG, 2017 WL 2214936, at
8 *8 (E.D. Cal. May 19, 2017) (and cases cited therein); *see also Brown v. Hain Celestial Grp.,*
9 *Inc.*, No. 3:11-cv-03082-LB, 2016 WL 631880, at *9 (N.D. Cal. Feb. 17, 2016) (approving an
10 enhancement award of \$7,500 to each class representative). Plaintiff contends that the requested
11 incentive award is appropriate in light of his efforts expended during the course of the litigation.
12 At the July 16, 2019 hearing on the pending motion, plaintiff’s counsel indicated that plaintiff
13 will provide additional information regarding the time he expended on this litigation and other
14 reasons for why he is seeking an incentive award not to exceed \$10,000.00. While preliminary
15 approval will be granted, the court will review the additional evidence presented at the final
16 approval hearing in determining whether a \$10,000.00 incentive award to plaintiff Larson is
17 ultimately warranted in this case.

18 4. The Proposed Settlement Agreement is Within the Range of Possible Approval.

19 To evaluate the fairness of the settlement award, the court should “compare the terms of
20 the compromise with the likely rewards of litigation.” *See Protective Comm. for Indep.*
21 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). “It is well-
22 settled law that a cash settlement amounting to only a fraction of the potential recovery does not
23 per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d
24 454, 459 (9th Cir. 2000). To determine whether a settlement “falls within the range of possible
25 approval” a court must focus on “substantive fairness and adequacy,” and “consider plaintiffs’
26 expected recovery balanced against the value of the settlement offer.” *In re Tableware Antitrust*
27 *Litig.*, 484 F. Supp. 2d at 1080.

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1 As discussed above, the total proposed settlement fund here is for \$4,000,000.00.
2 Assuming plaintiffs’ counsel receives one-third of the settlement amount in attorneys’ fees,
3 plaintiff Larson receives a \$10,000.00 incentive award, and the cost of settlement administration
4 is \$209,557.00, the class members will share \$2,446,666.66. (Doc. No. 193 at 19.) Class
5 members who submit a timely, valid claim form will receive a pro-rata distribution from these
6 remaining funds. (*Id.* at 9.) Plaintiff notes that Harman’s “total exposure here is in the billions of
7 dollars with 13.5 million messages having been sent as part of the A&W Text Club,” given that
8 the TCPA provides for damages of \$500 for each violation, (which can be tripled to \$1500 for
9 violations that are willful. (Doc. No. 198 at 7–8.) Plaintiff, however, contends that “[t]he value
10 of the settlement is intertwined with the risks of litigation,” and that, here, several risks are
11 present, including: “(1) whether Plaintiff can maintain the action as a class action; (2) whether
12 the system used by Defendants qualifies as an automatic telephone dialing system under the
13 TCPA; and (3) whether the Plaintiff’s theories of individual and vicarious liability can succeed.”
14 (*Id.* at 6.) Plaintiff also points out that, despite the TCPA providing for damages of \$500 or
15 \$1500, some courts have found that such statutory damages, when aggregated for each purported
16 TCPA violation, violate the Due Process Clause. For example, the Eighth Circuit recently
17 observed:

18 \$1.6 billion is a shockingly large amount. Compare that to the
19 conduct of [the defendant]. It plausibly believed it was not violating
20 the TCPA. It had prior consent to call the recipients about religious
21 liberty, and a predominant theme of Last Ounce of Courage is
22 religious liberty. Moreover, only the recipients who voluntarily
23 opted in during the call heard the message about the film. The call
24 campaign was conducted for only about a week. And the harm to the
25 recipients was not severe — only about 7% of the calls made it to the
26 third question, the one about the film. Under these facts, \$1.6 billion
27 is “so severe and oppressive as to be wholly disproportioned to the
28 offense and obviously unreasonable.”

24 *Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 962–63 (8th Cir. 2019) (quoting *St. Louis, I.M. & S.*
25 *Ry. Co. v. Williams*, 251 U.S. 63, 67 (1919)). Accordingly, plaintiff contends that the
26 \$2,446,666.66 that is to be distributed to class members—when viewed in light of the risks
27 associated with continued litigation which the parties have extensively addressed in their briefing,

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1 as well as the likelihood that an award of damages in the billions would be deemed
2 unconstitutional—is reasonable.

3 Although the ultimate recovery as to each class member here will depend on how many of
4 the owners of the 232,602 cellular phone numbers who were sent text messages from the A&W
5 Text Club during the class period submit a timely, valid claim form (Doc. No. 193 at 19), plaintiff
6 argues that “[t]he settlement here compares very favorably to other TCPA settlements.” (Doc.
7 No. 198 at 8.) According to plaintiff, “if 5% of class members submit claims, each claiming
8 member would recover \$210, 10% would result in claiming members receiving \$105, and a 20%
9 claims rate would result in members receiving \$52.” (*Id.*) Such recoveries are in line those
10 obtained in other TCPA settlements. *See, e.g., Couser v. Comenity Bank*, 125 F. Supp. 3d 1034,
11 1044 (S.D. Cal. 2015) (approving a TCPA class settlement where each of the 308,026 approved
12 claim members (or a 7.7% claims rate) received \$13.75); *Rose v. Bank of Am. Corp.*, No. 5:11-
13 CV-02390-EJD, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (\$20.00-\$40.00 awarded to
14 each class member with a 3% claims rate was “in line with recoveries obtained in similar TCPA
15 class action settlements”); *Grannan v. Alliant Law Grp., P.C.*, No. C10-02803 HRL, 2012 WL
16 216522, at *7 (N.D. Cal. Jan. 24, 2012) (“[T]he relief to each class member will be in the range of
17 \$300–325, less than what the TCPA provides for a negligent violation, yet considerable when
18 aggregated over the 1,986 opt-in class members” out of the 137,891 potential class members, or a
19 1.44% claim rate); *Bellows v. NCO Fin. Sys., Inc.*, No. 3:07-CV-01413-W-AJB, 2008 WL
20 4155361, at *6 (S.D. Cal. Sept. 5, 2008) (\$70.00 per class member, in a TCPA class consisting of
21 “thousands of individuals,” although no information was given for how many members submitted
22 claims). Given the uncertainty of whether plaintiff could prevail in this action, and whether
23 plaintiff could even maintain this action as a class action, as well as the fact that individual
24 recoveries called for by the proposed settlement agreement are in line with individual recoveries
25 obtained in other TCPA class action settlements, the court is satisfied that the proposed settlement
26 agreement falls within the range of possible approval.

27 For the reasons set forth above, the court finds the settlement agreement in this case to be
28 fair for the purposes of preliminary approval.

1 **B. Preliminary Certification of the Settlement Class**

2 Plaintiff seeks preliminary certification of the following proposed class: “All individuals
3 and entities who were sent text messages from, or related to, the A&W Text Club between
4 February 17, 2012 and the date of entry of the Preliminary Approval Order.” (Doc. No. 193 at 8.)
5 Under Federal Civil Procedure Rule 23(c)(1), courts must determine by order whether an action
6 should be maintained as a class action “[a]t an early practicable time after a person sues or is sued
7 as a class representative.” Fed. R. Civ. P. 23(c)(1). The court must independently consider
8 whether the proposed class meets the requirements of Rule 23 both at this stage and at the later
9 fairness hearing. *See Pointer v. Bank of Am. Nat’l Ass’n*, No. 2:14-cv-00525-KJM-CKD, 2016
10 WL 696582, at *3 (E.D. Cal. Feb. 22, 2016) (citing *Amchem Prods., Inc.*, 521 U.S. at 622).

11 Certification requires satisfaction of the prerequisites of Rule 23(a) and (b). *Id.* As noted
12 above, courts analyzing a motion to certify a settlement class must pay “undiluted, even
13 heightened attention” to Rule 23 requirements. *See Amchem*, 521 U.S. at 620, n.16. A thorough
14 Rule 23 analysis is especially important where a motion to certify a settlement class is unopposed,
15 because in such circumstances “[t]here is no advocate to critique the proposal on behalf of absent
16 class members.” *Kakani v. Oracle Corp.*, No. 06-06493, 2007 WL 1793774, at *1 (N.D. Cal.
17 June 19, 2007); *see also Pointer*, 2016 WL 696582, at *4 (“The problem is greater at this
18 preliminary approval stage, where objectors are unlikely to have already appeared.”).

19 On a motion for preliminary approval, plaintiff bears the burden of showing that the
20 proposed class satisfies Rule 23 requirements. Even at the preliminary stage, “[a] court that is not
21 satisfied that the requirements of Rule 23 have been met should refuse certification until they
22 have been met.” Fed. R. Civ. P. 23(c)(1), Advisory Committee 2003 Note.

23 1. Rule 23(a) Requirements

24 “Rule 23(a) establishes four prerequisites for class action litigation, which are: (1)
25 numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.” *Staton v.*
26 *Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003); *see also Lozano v. AT&T Wireless Services, Inc.*,
27 504 F.3d 718, 730 (9th Cir. 2007). The court addresses each requirement below.

28 /////

1 a. *Numerosity*

2 A proposed class must be “so numerous that joinder of all members is impracticable.”
3 Fed. R. Civ. P. 23(a)(1). The numerosity requirement demands “examination of the specific facts
4 of each case and imposes no absolute limitations.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446
5 U.S. 318, 330 (1980). Courts have found the requirement satisfied when the class comprises of as
6 few as thirty-nine members, or where joining all class members would serve only to impose
7 financial burdens and clog the court’s docket. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468,
8 474 (E.D. Cal. 2010) (citing *Jordan v. L.A. Cty.*, 669 F.2d 1311, 1319 (9th Cir.), *vacated on other*
9 *grounds*, 459 U.S. 810 (1982)); *In re Intel Securities Litig.*, 89 F.R.D. 104, 112 (N.D. Cal. 1981).

10 Here, plaintiff estimates that the proposed class consists of the owners of 232,602 cellular
11 phone numbers who were sent text messages from the A&W Text Club during the class period.
12 (Doc. No. 193 at 21.) This is clearly sufficient to satisfy the numerosity requirement of Rule
13 23(a)(1).

14 b. *Commonality*

15 Rule 23(a) also requires “questions of law or fact common to the class.” Fed. R. Civ. P.
16 23(a)(2). To satisfy the commonality requirement, the class representatives must demonstrate
17 that common points of facts and law will drive or resolve the litigation. *Dukes*, 564 U.S. at 350
18 (“What matters to class certification . . . is not the raising of common ‘questions’—even in
19 droves—but, rather the capacity of a classwide proceeding to generate common answers apt to
20 drive the resolution of the litigation.”) (internal citations omitted). “Commonality is generally
21 satisfied where . . . ‘the lawsuit challenges a system-wide practice or policy that affects all of the
22 putative class members.’” *Franco v. Ruiz Food Prods., Inc.*, No. CV 10-02354 SKO, 2012 WL
23 5941801, at *5 (E.D. Cal. Nov. 27, 2012) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th
24 Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005));
25 *see also Parsons v. Ryan*, 754 F.3d 657, 681-82 (9th Cir. 2014). The rule does not require all
26 questions of law or fact to be common to every single class member. *See Hanlon*, 150 F.3d at
27 1019 (noting that commonality can be found through “[t]he existence of shared legal issues with
28 divergent factual predicates”). However, the raising of merely any common question does not

1 suffice. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011) (“Any competently crafted
2 class complaint literally raises common ‘questions.’”) (quoting Nagareda, *Class Certification in*
3 *the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 131–32 (2009)).

4 Here, plaintiff argues that the class action claims all stem from a common set of questions
5 of fact and law regarding: (1) whether Harman used an automated telephone dialing system to
6 call cellular phones; (2) whether Harman knew or should have known that it called consumers
7 without prior express written consent if it, in fact, did call consumers without prior express
8 written consent; (3) whether a private right of actions exists; (4) whether jurisdiction is proper;
9 and (5) whether statutory damages are available. (Doc. No. 193 at 22.) Because it appears that
10 the same conduct that plaintiff alleges Harman engaged in “would form the basis of each of the
11 plaintiff’s claims,” the court finds that commonality is satisfied here. *Murillo*, 266 F.R.D. at 475
12 (citing *Acosta v. Equifax Info. Servs., L.L.C.*, 243 F.R.D. 377, 384 (C.D. Cal. 2007)) (internal
13 quotation omitted).

14 c. *Typicality*

15 Rule 23(a)(3) also requires that “the claims or defenses of the representative parties are
16 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3); *Armstrong v. Davis*, 275
17 F.3d 849, 868 (9th Cir. 2001). Typicality is satisfied “when each class member’s claim arises
18 from the same course of events, and each class member makes similar legal arguments to prove
19 the defendant’s liability.” *Armstrong*, 275 F.3d at 868; *see also Kayes v. Pac. Lumber Co.*, 51
20 F.3d 1449, 1463 (9th Cir. 1995) (claims are typical where named plaintiffs have the same claims
21 as other members of the class and are not subject to unique defenses). While representative
22 claims must be “reasonably co-extensive with those of absent class members,” they “need not be
23 substantially identical.” *Hanlon*, 150 F.3d at 1020; *see also Hanon v. Dataproducts Corp.*, 976
24 F.2d 497, 508 (9th Cir. 1992).

25 Here, plaintiff alleges that his claims are based on the same type of factual and legal
26 circumstances as those of the class members. (Doc. No. 193 at 22.) Specifically, plaintiff alleges
27 that he received unauthorized text messages from Harman relating to the A&W Text Club during

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1 the class period. The court is therefore satisfied that plaintiff’s claims are reasonably co-
2 extensive with those of the class and that typicality is satisfied here.

3 d. *Adequacy of Representation*

4 The final Rule 23(a) prerequisite is satisfied if “the representative parties will fairly and
5 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “The proper resolution of
6 this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel
7 have any conflicts of interest with other class members and (b) will the named plaintiffs and their
8 counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec.*
9 *Litig.*, 213 F.3d 454, 462 (9th Cir. 2000); *see also Pierce v. County of Orange*, 526 F.3d 1190,
10 1202 (9th Cir. 2008).

11 Plaintiff contends that there are no conflicts of interest between him and the other class
12 members, “as they are all seeking recovery under the same law for the same kind of injuries.”
13 (Doc. No. 193 at 23.) Moreover, there is no indication of antagonism between the plaintiff’s
14 interests and those of the class members. *See Amchem*, 521 U.S. at 626. Plaintiff also seeks
15 appointment of his counsel, attorneys Sergei Lemberg and Stephen Taylor of Lemberg Law,
16 LLC, as class counsel. (Doc. No. 193 at 23.) The declarations submitted by counsel describing
17 their extensive experience in consumer class action litigation are clearly adequate to establish
18 their suitability to represent the class. (*See* Doc. Nos. 193-2 at ¶¶ 4–5; 193-3 at ¶¶ 4–5.) The
19 court thus finds that plaintiff has satisfied the adequacy of representation requirements with
20 respect to the class.

21 2. Rule 23(b)(3) Requirements

22 The parties seek certification under Rule 23(b)(3). Rule 23(b)(3) requires: (i) that the
23 questions of law or fact common to class members predominate over any questions affecting only
24 individual members; and (ii) that a class action is superior to other available methods for fairly
25 and efficiently adjudicating the controversy. *See Amchem*, 521 U.S. at 615. The test of Rule
26 23(b)(3) is “far more demanding” than that of Rule 23(a). *Wolin v. Jaguar Land Rover N. Am.*,
27 *LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (quoting *Amchem*, 521 U.S. at 623–24). The court will
28 examine each of the requirements in turn below.

1 a. *Predominance*

2 First, the common questions must “predominate” over any individual questions. While
3 this requirement is similar to the Rule 23(a)(2) commonality requirement, the standard is much
4 higher at this stage of the analysis. *Dukes*, 564 U.S. at 359; *Amchem*, 521 U.S. at 624–25;
5 *Hanlon*, 150 F.3d at 1022 (9th Cir. 1998). While Rule 23(a)(2) can be satisfied by even a single
6 question, Rule 23(b)(3) requires convincing proof the common questions “predominate.”
7 *Amchem*, 521 U.S. at 623–24; *Hanlon*, 150 F.3d at 1022. “When common questions present a
8 significant aspect of the case and they can be resolved for all members of the class in a single
9 adjudication, there is clear justification for handling the dispute on a representative rather than on
10 an individual basis.” *Hanlon*, 150 F.3d at 1022.

11 As discussed above, plaintiff alleges in the FAC that Harman used an automated
12 telephone dialing system to send him text messages without his prior express written consent.
13 The central inquiry then is whether Harman violated the TCPA by sending these allegedly
14 unauthorized text messages, an inquiry that presents a significant aspect of the case and can be
15 resolved for all class members in a single adjudication. The court therefore concludes that the
16 predominance requirement has been satisfied in this case.

17 b. *Superiority*

18 Rule 23(b)(3) also requires a court to find “a class action is superior to other available
19 methods for the fair adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). In resolving the
20 Rule 23(b)(3) superiority inquiry, “the court should consider class members’ interests in pursuing
21 separate actions individually, any litigation already in progress involving the same controversy,
22 the desirability of concentrating in one forum, and potential difficulties in managing the class
23 action—although the last two considerations are not relevant in the settlement context.” *Palacios*,
24 2015 WL 4078135, at *6 (citing *Schiller v. David’s Bridal Inc.*, No. 10-0616, 2012 WL 2117001,
25 at *10 (E.D. Cal. June 11, 2012)).

26 A class action is superior in this instance to any other available method for adjudicating
27 this controversy. As discussed, plaintiff estimates that the proposed class consists of the owners
28 of 232,602 cellular phone numbers. (Doc. No. 193 at 21.) The court system would be

1 significantly burdened if all class members were to litigate their claims individually. The court
2 therefore concludes that this dispute appears well-suited for class-wide resolution.

3 **C. Proposed Class Notice**

4 For proposed settlements under Rule 23, “the court must direct notice in a reasonable
5 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1); *see*
6 *also Hanlon*, 150 F.3d at 1025 (“Adequate notice is critical to court approval of a class settlement
7 under Rule 23(e).”). For a class certified under Federal Rule of Civil Procedure 23(b)(3), the
8 notice must contain, in plain and easily understood language: (1) the nature of the action; (2) the
9 definition of the class certified; (3) the class claims, issues, or defenses; (4) that a class member
10 may appear through an attorney if desired; (5) that the court will exclude members who seek
11 exclusion (6) the time and manner for requesting an exclusion; and (7) the binding effect of a
12 class judgment on members of the class. Fed. R. Civ. P. 23(c)(2)(B). A class action settlement
13 notice “is satisfactory if it generally describes the terms of the settlement in sufficient detail to
14 alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill*
15 *Vill., LLC v. Gen. Elec.*, 561 F.3d 566, 575 (9th Cir. 2004) (internal quotations and citations
16 omitted).

17 Plaintiff represents that the “Settlement Agreement calls for a process that the Parties
18 anticipate will provide individual notice by mail to the vast majority of the Settlement Class
19 Members.” (Doc. No. 193 at 25.) That process requires the settlement administrator to review
20 the A&W Text Club’s messaging records and then “perform a reverse lookup of class members’
21 current or last-known address information, and [] then cross-reference this information with the
22 United States Postal Services’ change of address database to confirm its accuracy.” (*Id.*) The
23 settlement administrator will also “maintain a case-specific website to post relevant documents
24 (the Settlement Agreement, the Complaint, any Preliminary Approval Order) in addition to the
25 Long Form Notice.” (*Id.*) Accordingly, plaintiff seeks approval of two notices: (1) a post-card
26 notice that will be mailed to “the vast majority of the Settlement Class Members”; and (2) a long-
27 form notice that will be posted on a case-specific website that the settlement administrator will
28 maintain. (Doc. No. 193 at 25–26.) Both the long-form and post card notices describe the terms

1 of the settlement and the claims and defenses at issue, inform the class of the proposed attorneys’
2 fee and incentive award amounts, provide information concerning the time, place, and date of the
3 final approval hearing, and inform absent class members that they may enter an appearance
4 through counsel. (Doc. No. 198-2 at 2–9.) The proposed notices also advise absent class
5 members as to how they may object to the proposed settlement or opt out of it. (*Id.*)

6 The court notes that the proposed notices require putative class members to submit a claim
7 form to recover their *pro rata* share of the settlement fund. (*See* Doc. No. 198-2 at 46) (“By
8 completing and submitting a Claim Form you may recover a pro-rata share of the Settlement
9 Fund. This is the only way to claim and receive money from the Fund.”). Plaintiff contends that
10 “[i]t is typical in class action settlements under the [TCPA] to require settlement class members to
11 submit valid claim forms in order to recover their portion of the fund.” (Doc. No. 198 at 2.)
12 Plaintiff contends that a claim form is necessary here because defendant Harman “does not have
13 the names and addresses of class members,” and proposes the following two-pronged plan for
14 providing notice and receiving claim forms. (*Id.* at 3–4.) “First, to identify class members and
15 provide notice, the [settlement administrator] . . . [will] perform a reverse directory search and
16 lookup to append names and address[es] to the cellular telephone numbers in the class data.” (*Id.*
17 at 4.) From that search process, the administrator will send individual notices to the physical
18 addresses that have been successfully identified. Each notice will have a dedicated claim number
19 ID which corresponds to a specific unique number in the class data. (*Id.*) Second, after receiving
20 the notice (either by mail, or via the case-specific website that the settlement administrator will
21 maintain), the putative class member will fill out a claim form, on which they will submit their
22 name, address, and either (1) the claim ID if they received one or (2) the phone number to which
23 A&W text messages were sent. (*Id.*) The claim form requires members to “certify and affirm
24 that the information I am providing is true and correct to the best of my knowledge and belief.”
25 (*Id.*) Plaintiff contends that if claim forms are not used, “we risk several problems,” including the
26 potential of “mailing out hundreds of thousands of checks without any confirmation or
27 affirmation that the payee is a class member, wants to participate, or is at the right address.” (*Id.*
28 at 5.)

1 In most contexts putative class members, as a result of class certification and in the
2 absence of opting out of the class, are participating in the settlement, and need not submit a claim
3 form or “opt-in” to the action. However, here, the court finds that a claim form will serve as a
4 useful check to prevent fraud and to ensure that the settlement fund is distributed to class
5 members who deserve to recover from it. Indeed, district courts have approved the requirement
6 that putative class members submit claim forms in other TCPA class actions like this one.
7 *Robinson v. Paramount Equity Mortg., LLC*, No. 2:14-cv-02359-TLN-CKD, 2017 WL 117941,
8 at *8 (E.D. Cal. Jan. 10, 2017) (preliminarily approving a TCPA class action settlement, and
9 noting that “it is not uncommon for a settlement to require class members to submit valid claims,
10 even though some class members may fail to do so, going uncompensated for releasing their
11 claims”); *Lambert v. Buth-Na-Bodhaige, Inc.*, No. 2:14-CV-00514-MCE, 2015 WL 4602942, at
12 *1 (E.D. Cal. July 29, 2015) (preliminarily approving a TCPA class action settlement and
13 approving the use of a claim form in the class notice).

14 Accordingly, the court finds that the proposed notice meets the requirements of Rule
15 23(c)(2)(B) and the parties may require putative class members to submit claim forms.²

16 **D. Settlement Administrator and Settlement Administration Costs**

17 The parties have selected KCC Class Action Services (“KCC”) as the settlement
18 administrator in this case. (Doc. No. 193 at 11.) The court has reviewed the declaration of Carla
19 Peak, KCC’s Vice President of Legal Notification Services, and is satisfied that KCC can
20 diligently and effectively carry out its duties as the settlement administrator in this action. (*See*
21 Doc. No. 193-4 at 2–3) (“KCC is a leading class action administration firm that provides
22 comprehensive services, including legal notification, email, and postal mailing campaign
23 implementation, . . . settlement fund escrow and reporting, as well as other related services
24 critical to the effective administration of class action settlements.”).

25 ² Attached to plaintiff’s supplemental briefing are updated proposed postcard and long-form
26 notices. (*See* Doc. No. 198-2 at 2–9.) These are the notices that the court is approving, and the
27 parties are to disseminate these notices to the putative class members. Similarly, the claim form
28 that the court is approving is that which plaintiff attached to his supplemental briefing. (*See* Doc.
No. 198-1 at 3.) This is the claim form that the parties are to disseminate to the putative class
members.

1 Plaintiff states that the estimated cost of claims administration in connection with this
 2 proposed settlement is \$209,557.00. (Doc. No. 193 at 11.) As discussed, these costs will be
 3 deducted from the settlement fund. (*Id.*) The budgeted claims administration costs are within the
 4 range of other proposed settlements submitted to this court and do not cause the court to question
 5 the preliminary fairness of this settlement. See *Dakota Med., Inc. v. RehabCare Grp., Inc.*, No.
 6 1:14-cv-02081-DAD-BAM, 2017 WL 1398816, at *5 (E.D. Cal. Apr. 19, 2017) (administration
 7 costs of \$94,000 for \$25 million settlement); *Aguilar v. Wawona Frozen Foods*, No. 1:15-cv-
 8 00093-DAD-EPG, 2017 WL 117789, at *7 (E.D. Cal. Jan. 11, 2017) (administration costs of
 9 \$45,000 for \$4.5 million settlement); *Mitchinson v. Love’s Travel Stops & Country Stores, Inc.*,
 10 No. 1:15-cv-01474-DAD-BAM, 2016 WL 7426115, at *1 (E.D. Cal. Dec. 22, 2016)
 11 (administration costs up to \$20,000 for \$290,000 settlement).

12 **E. Implementation Schedule**

13 The court finds the following schedule is appropriate and adopts it:

Event	Date
Notice mailing deadline (commencement of Notice Plan) within:	Thirty (30) days after entry of Preliminary Approval Order
Attorneys’ Fees and Costs application due within:	Sixty (60) days following the Notice mailing deadline
Incentive Award application due within:	Sixty (60) days following the Notice mailing deadline
Last day for class members to opt-out of the class settlement is:	Ninety (90) days after the Notice mailing deadline
Last day for class members to object to the class settlement is:	Ninety (90) days after the Notice mailing deadline
Last day to submit a valid claim form is:	Ninety (90) days after the Notice mailing deadline
Briefs in support of final approval (including declaration regarding Notice by Settlement Administrator) are due:	Fourteen (14) days prior to the Final Approval Hearing
Defendant Harman is to file certification regarding CAFA notice requirements:	Fourteen (14) days prior to the Final Approval Hearing
Final Approval Hearing	June 15, 2020

1 **CONCLUSION**

2 For the reasons stated above, plaintiff’s unopposed motion for preliminary approval of
3 class action settlement (Doc. No. 192) is granted, and:

- 4 1. Preliminary class certification under Rule 23 is approved;
- 5 2. The following settlement class is conditionally certified for settlement purposes:
6 “All individuals and entities who were sent text messages from, or related to, the
7 A&W Text Club between February 17, 2012 and the date of entry of the
8 Preliminary Approval Order.”
- 9 3. Named plaintiff Cory Larson is appointed as the class representative;
- 10 4. Plaintiff’s counsel, Sergei Lemberg and Stephen Taylor of Lemberg Law, LLC,
11 are appointed as class counsel;
- 12 5. KCC Class Action Services is approved as the settlement administrator;
- 13 6. The proposed notices and claim form are found to conform with Rule 23 and are
14 approved;
- 15 7. The proposed settlement detailed herein is approved on a preliminary basis as fair
16 and adequate;
- 17 8. The hearing for final approval of the proposed settlement is set for June 15, 2020
18 at 4:00 p.m. before the undersigned in Courtroom 5, with the motion for final
19 approval of class action settlement to be filed twenty-eight (28) days in advance of
20 the final approval hearing, in accordance with Local Rule 230; and
- 21 9. Plaintiffs’ proposed settlement implementation schedule is adopted.

22 IT IS SO ORDERED.

23 Dated: December 18, 2019

24 *Dale A. Ingh*
25 UNITED STATES DISTRICT JUDGE