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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**TRACY DAVIS, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

BIRCHBOX, INC.,

Defendant.

**TIFFANY LAPUEBLA,
INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY
SITUATED,**

Plaintiff,

v.

BIRCHBOX, INC.,

Defendant.

Lead Case No.:
3:15-CV-00498-BEN-BGS

Case Consolidated with:
3:15-CV-00214-BEN-BGS

THIS DOCUMENT RELATES TO:
ALL CASES

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL**

[Docket No. 38]

Plaintiffs Tracy Davis and Tiffany LaPuebla (“Plaintiffs”) unopposed motion for preliminary approval of class settlement and provisional class certification under Federal Rule of Civil Procedure 23 is before the Court. The Court has considered the Motion, including the Settlement Agreement and Release (“Settlement” or “Agreement”). Based on this review and the findings below, the Court **GRANTS** the motion.

1 **FINDINGS:**

2 Unless otherwise specified, defined terms in this Preliminary Approval and
3 Provisional Class Certification Order have the same definition as the terms in the
4 Agreement.

5 The Agreement appears fair, reasonable, and adequate. The Long-Form Notice and
6 E-Mail Notice constitute the best notice practicable under the circumstances and constitute
7 valid, due, and sufficient notice to all members of the Class and they comply fully with the
8 requirements of the Federal Rule of Civil Procedure, the California and United States
9 Constitutions, and other applicable law.

10 For settlement purposes only, the Class is so numerous that joinder of all Class
11 Members is impracticable. Plaintiffs' claims are typical of the Class's claims. There are
12 questions of law and fact common to the Class, which predominate over any questions
13 affecting only individual Class Members. And, class certification is superior to other
14 available methods for the fair and efficient adjudication of the controversy.

15 **IT IS ORDERED THAT:**

16 **1. Settlement Approval.** The Agreement, including the Long-Form Notice and
17 E-Mail Notice attached to the Agreement as Exhibits B-C, is preliminarily approved.

18 **2. Provision of Class Notice.** Notice will be provided to Class Members of the
19 Settlement in the manner specified under Section 3.3 of the Agreement and Defendant
20 Birchbox, Inc. ("Birchbox") will pay all costs associated with claims administration and
21 providing notice to Class Members.

22 **3. Objection to Settlement.** Pursuant to Federal Rule of Civil Procedure
23 23(e)(5), members of the Settlement Class may object to the terms of the settlement. Class
24 Members who have not submitted a timely written exclusion request pursuant to paragraph
25 6 below and who want to object to the Agreement must deliver written objections to Class
26 Counsel and Birchbox's Counsel no later than ninety (90) calendar days from when the
27 Court enters this Order. The delivery date is deemed to be the date the objection is
28 deposited in the U.S. Mail as evidenced by the postmark. Written objections must include:

1 (a) the name and case number of the Action, “*Davis v. Birchbox, Inc.*, United States District
2 Court, Southern District of California, Civil Action No. 3:14-cv-00498-BEN-BGS”; (b)
3 the full name, address, email address, and telephone number of the person objecting; (c)
4 the words “Notice of Objection” or “Formal Objection;” and (d) in clear and concise terms,
5 the legal and factual arguments supporting the objection, including an attestation under the
6 penalty of perjury of facts demonstrating that the person objecting is a Class Member. Any
7 Class Member that mails a written objection, as described in this paragraph, has the option
8 to appear at the Fairness Hearing, either in person or through personal counsel hired at the
9 Class Member’s expense, to object to the Settlement Agreement.

10 **4. Failure to Object to Settlement.** Class Members who fail to object to the
11 Agreement in the manner specified above will: (1) be deemed to have waived their right to
12 object to the Agreement; (2) be foreclosed from objecting (whether by a subsequent
13 objection, intervention, appeal, or any other process) to the Agreement; and (3) not be
14 entitled to speak at the Fairness Hearing.

15 **5. Requesting Exclusion.** Class Members who want to be excluded from the
16 Settlement must send a letter or postcard to the Settlement Administrator stating: (a) the
17 name and case number of the Actions, “*Davis Birchbox, Inc.*, United States District Court,
18 Southern District of California, Civil Action No. 3:14-cv-00498-BEN-BGS”; (b) the full
19 name, address, email address, and telephone number of the person requesting exclusion;
20 and (c) a statement that he/she does not wish to participate in the Settlement, postmarked
21 no later than ninety (90) calendar days from when the Court enters this Order.

22 **6. Provisional Certification.** The Class is provisionally certified for settlement
23 purposes only as a class of all persons in California who purchased a subscription that
24 automatically renewed from Birchbox between January 1, 2011 and March 6, 2015.

25 **7. Appointment of Class Representative and Class Counsel.** Plaintiffs are
26 conditionally certified as the class representatives to implement the Parties’ Settlement in
27 accordance with the Agreement. HammondLaw, P.C.; Kazerouni Law Group, APC;
28

1 Berman DeValerio; and Hyde & Swigart are appointed as Class Counsel. Plaintiffs and
2 Class Counsel must fairly and adequately protect the Class's interests.

3 **8. Termination.** If the Agreement terminates for any reason, the following will
4 occur: (a) Class certification will be automatically vacated; (b) Plaintiffs will stop
5 functioning as Class representatives; and (c) this Action will revert to its previous status in
6 all respects as it existed immediately before the Parties executed the Agreement. This
7 Order will not waive or otherwise impact the Parties' rights or arguments.

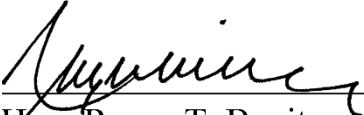
8 **9. No Admissions.** Nothing in this Order is, or may be construed as, an
9 admission or concession on any point of fact or law by or against any Party.

10 **10. Stay of Dates and Deadlines.** All proceedings in this action, including
11 discovery and pretrial proceedings and deadlines, are stayed and suspended until further
12 notice from the Court, except for such actions as are necessary to implement the Agreement
13 and this Order.

14 **11. Fairness Hearing.** On August 11, 2016, at 9:00 a.m. this Court will hold a
15 Fairness Hearing to determine whether the Agreement should be finally approved as fair,
16 reasonable, and adequate. All papers supporting Plaintiff's request for attorneys' fees and
17 costs and for a service award must be filed no later than fourteen (14) calendar days before
18 the deadline for Class Members to object to the Settlement. All other papers supporting
19 final approval of the Agreement must be filed no later than seven (7) calendar days before
20 the Fairness Hearing. This Court may order the Fairness Hearing to be postponed,
21 adjourned, or continued. If that occurs, additional notice to Class Members will not be
22 required, but the Settlement administrator will update the Internet Posting with the new
23 hearing date and time.

24 **IT IS SO ORDERED.**

25 Dated: March 28, 2016

26 
27 Hon. Roger T. Benitez
28 United States District Judge