

FILED

16 OCT 17 AM 8:28

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]*

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRACY DAVIS, 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

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

Plaintiff,

v.

BIRCHBOX, INC.,

Defendant.

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL

Date: October 14, 2016
Time: 9:30 AM
Courtroom: 5A
Judge: Hon. Roger T. Benitez

VIA FAX

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1 On October 14, 2016, this Court heard Plaintiffs Tracy Davis and Tiffany
2 Lapuebla ("Plaintiffs") unopposed motion for final approval of the class action
3 settlement. This Court reviewed the motion and the supporting papers, including the
4 Settlement Agreement and Release ("Agreement" or "Settlement"); and Class Counsels'
5 arguments. Based on this review and the findings below, the Court found good cause to
6 grant the motion.

7 **FINDINGS:**

8 1. Unless otherwise specified, defined terms in this Final Order and Judgment
9 have the same definition as the terms in the Agreement.

10 2. The Settlement was entered into in good faith, is fair, reasonable and
11 adequate, and satisfies the standards and applicable requirements for final approval of
12 this class action settlement pursuant to Rule 23(e)(1)(A) of the Federal Rules of Civil
13 Procedure.

14 3. The Parties adequately performed their obligations under the Agreement.

15 4. Notice was provided to Class Members in compliance with Section 3.3 of
16 the Agreement, Federal Rules of Civil Procedure Rule 23(e)(1)(B), the United States
17 Constitution, and any other applicable law. The notice: (i) fully and accurately informed
18 Class Members about the lawsuit and Settlement; (ii) provided sufficient information so
19 that Class Members were able to decide whether to accept the benefits offered, opt out
20 and pursue their own remedies, or object to the proposed Settlement; (iii) provided
21 procedures for Class Members to file written objections to the proposed Settlement, to
22 appear at the hearing, and to state objections to the proposed Settlement; and (iv)
23 provided the time, date and place of the final fairness hearing.

24 5. An award of \$ 300,000. in attorneys' fees and costs to Class
25 Counsel is fair and reasonable in light of the nature of this case, Class Counsel's
26 experience and efforts in prosecuting this Action, and the benefits obtained for the Class.

27 6. An incentive award to each Plaintiff of \$ 2,500. is fair and
28 reasonable in light of: (a) Plaintiffs' risks (including financial, professional, and

1 emotional) in commencing this action as the class representative; (b) the time and effort
2 spent by Plaintiffs spent in litigating this action as the class representative; and (c)
3 Plaintiffs' public interest service.

4 **IT IS ORDERED THAT:**

5 **1. Class Members.** The Class Members are defined in the Settlement as:

6 All persons in California who purchased a subscription that
7 automatically renewed from Birchbox, Inc. ("Birchbox") between
8 January 1, 2011 and March 6, 2015.

9 **2. Binding Effect of Order.** This order applies to all claims or causes of
10 action settled under the Agreement, and binds all class members, including those who did
11 not properly request exclusion under paragraph 6 of the Preliminary Approval and
12 Provisional Class Certification Order. This order does not bind persons who filed timely
13 and valid requests for exclusion. Attached to this Order as **Exhibit A** is a list of persons
14 who properly requested to be excluded from the Settlement. There have been no
15 objections by Class Members to the Settlement.

16 **3. Release.** Plaintiffs and all Class Members who did not properly request
17 exclusion are: (1) deemed to have released and discharged Birchbox from all claims
18 arising out of or asserted in this Action and claims released under the Agreement; and (2)
19 barred and permanently enjoined from asserting, instituting, or prosecuting, either
20 directly or indirectly, these claims. The full terms of the release described in this
21 paragraph are set forth in paragraphs 4.2 and 4.3 of the Agreement.

22 **4. Class Relief.** Birchbox, through the Settlement Administrator, will issue
23 two \$5 credits, to be used separately, equivalent to a total credit of \$10 to each Class
24 Member who subscribed to the Women's Subscription and two \$10 credits, to be used
25 separately, equivalent to a total credit of \$20 to each Class Member who subscribed to
26 the Men's Subscription, to each pursuant to the terms and timeline set forth in Section 2.1
27 of the Agreement.
28

1 **5. Attorneys' Fees and Costs.** Class Counsel is awarded
2 \$ 300,000.00 in fees and costs. Birchbox must pay Class Counsel this
3 amount according to the timeline set forth in Section 2.3 of the Agreement.

4 **6. Incentive Award.** Plaintiffs are each awarded \$ 2,500.00 as
5 an incentive award. Birchbox must pay Plaintiffs this amount according to the timeline
6 set forth in Section 2.4 of the Agreement.

7 **7. Court's Jurisdiction.** This action is hereby dismissed with prejudice;
8 provided, however, that without affecting the finality of this Order, the Court retains
9 exclusive and continuing jurisdiction over the case for purposes of supervising,
10 implementing, interpreting and enforcing this Order and the Settlement Agreement, as
11 may become necessary, until all of the terms of the Settlement Agreement have been
12 fully carried out. Plaintiffs' counsel shall notify the Court when this has occurred.

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14 **IT IS SO ORDERED.**

15
16 Dated: 10/17, 2016

17 By:


18 HON. ROGER T. BENITEZ
19 U.S. DISTRICT JUDGE
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EXHIBIT A

ClaimantName
ALLISON CARLSON
GUADALUPE GODINEZ
DANA VECA
LAURA E GALIHER
STEFANIE SMALL
KARINE MAXIMIANO DA SILVA
MICHELE GIBNEY
DORCAS LEE
CARMEN CHEUNG
MRS. LAURA KAMINSKI
AMANDA BERENDSEN
ROBIN AKASHI
JENNIFER SKIDGEL-CLARKE
JULIANA SEMIONE
KATIA HASTINGS
CLAIRE MORLOCK
KATHLEEN CRUZ
LINDSAY DYER
KELSEY FISHER
BRIENNA HASTINGS
ANNA CHMIELOWIEC
DANIELLE HURST
PETER ROSDIL
CORRINE PAHLER
CARLY MONIZ
MOIRA JEPSEN
LAUREN VAN SCHILFGAARDE
LYNNA CORTEZ
SUNWOO YOO
EUNICE GARCIA
VIRGINIA CHAIDEZ
KELLY HEINLEIN
AMY YANOE
SONALI BOSIGER
MADDIE MATHEWS
LINDA LAY
RENEE WESTERGAARD
ALMA CANO
KIM BANGS
KELLY WONG
EMILY SORMANO
JOANNE TRAN
JULIE LIPE
DANI HV
COURTNEY SABAHI
JACQUELINE EXLINE

MARIA HERNANDEZ
CHRISTINE BRONOLA