UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHERI DODGE, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. PHH CORPORATION, et al., Defendants.	Case No. SA CV 15-1973 FMO (AFMx) **ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS**

Having reviewed and considered all the briefing filed with respect to plaintiffs' Renewed Motion for Entry of an Order Granting Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Class Notice, (Dkt. 135, "Motion"), and the oral argument presented at the hearings on October 19, 2017, and December 14, 2017, the court concludes as follows.

INTRODUCTION

On November 25, 2015, Timothy L. Strader Sr. ("Strader") filed this action on behalf of himself and all others similarly situated, against PHH Corporation, its subsidiaries and affiliates, and Realogy Holdings Corp. and its subsidiaries and affiliates ("defendants"), asserting a claim for violation of § 8(a) the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607(a). (See Dkt. 1, Complaint). On December 10, 2015, Strader filed an amended complaint, adding Lester L. Hall, Jr. ("Hall") as a named plaintiff, and asserting an additional claim under RESPA. (See Dkt. 10, Amended Class Action Complaint []). After the court granted defendants' motion to dismiss with leave to amend, (see Dkt. 62, Court's Order of April 5, 2016), Strader and Susan M.

Strader, as trustees of the T/S Strader Family Trust ("Straders"), and Hall, filed a Second Amended Class Action Complaint ("SAC"), (see Dkt. 67, SAC), and pursuant to a stipulation, filed a Third Amended Complaint ("TAC"). (See Dkt. 74, TAC; Dkt. 73, Court's Order of May 12, 2016).

On October 6, 2016, the court denied defendants' joint motion to dismiss the TAC. (See Dkt. 90, Court's Order of October 6, 2016, at 2). Defendants filed their Answers to the TAC on October 20, 2016. (See Dkts. 91-93).

On January 31, 2017, the parties participated in a mediation with Viggo Boserup, Esq. ("Boserup"). (See Dkt. 123-1, Plaintiffs' Memorandum in Support of [First] Motion for Preliminary Approval of Class Action Settlement [], Certification of Settlement Class, and Approval of Class Notice ("Memo")[1] at 5-6). Although the parties did not reach an agreement at the mediation with Boserup, they reached a settlement on May 19, 2017, after participating in a settlement conference before Magistrate Judge Jay C. Gandhi. (See id. at 6). The Straders and Hall agreed to settle their individual claims, and the parties stipulated to the filing of a Fourth Amended Complaint ("4AC"). (See id.). The 4AC, the operative complaint, amended certain claims and added as named plaintiffs Sheri Dodge ("Sheri"), Neil Dodge ("Neil"), Ram Agrawal ("Ram"), and Sarita Agrawal ("Sarita") (collectively, "plaintiffs"). (See Dkt. 115, 4AC).

In their Motion, plaintiffs seek an order: (1) certifying the proposed class for settlement purposes; (2) preliminarily approving the settlement; (3) appointing class representatives and class counsel; (4) appointing the notice and settlement administrator; (5) approving the notice documents and directing dissemination of the class notice; and (6) scheduling a final approval hearing. (See Dkt. 135, Motion at 2-3).

BACKGROUND

This case arises from allegations that PHH Corporation, PHH Broker Partner Corp., PHH Mortgage Corp., Realogy Intermediate Holdings LLC, Realogy Holdings Corp., Realogy Group LLC, Realogy Services Venture Partner LLC, Realogy Services Group LLC, Title Resource Group

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[1] Although plaintiffs filed a renewed Motion, they primarily rely upon the previously-filed Memo and declarations. (See Dkt. 135-1, Plaintiffs' Memorandum in Support of Renewed Motion for Preliminary Approval [] ("Renewed Memo") at 3).

LLC ("TRG"), West Coast Escrow Company, TRG Services Escrow, Inc., Equity Title Company, NRT LLC, PHH Home Loans, LLC ("PHH Home Loans"), RMR Financial, LLC, and NE Moves Mortgage LLC ("defendants") violated § 8(a) of RESPA by (1) paying and receiving kickbacks, referral fees, or other things of value in connection with the referral of title insurance and other settlement services to TRG and its affiliates, and (2) operating PHH Home Loans as an improper "Affiliated Business Arrangement" ("ABA").[2] (See Dkt. 115, 4AC; Dkt. 123-1, Memo at 1).

Plaintiffs allege that following the restructuring of Cendant Corporation ("Cendant') in 2005, the parent of all the PHH and Realogy businesses, PHH was "spun off" from Cendant, but thereafter "PHH and Cendant entered into a series of contractual arrangements that reconstituted and maintained the close affiliations that existed prior to the spin-off." (Dkt. 115, 4AC at ¶ 4). "When thoroughly analyzed and stitched together, this seemingly disparate set of corporate-level commitments, preferences, exclusivities, and referrals – as implemented at the consumer level – had the design and effect of guiding and pushing unwitting consumers through the home-buying process in a manner that caused the consumers not to use competing settlement service providers." (Id. at ¶ 5).

According to plaintiffs, defendants executed the scheme in two ways. First, PHH and Realogy created an ABA called PHH Home Loans, "which was and is a sham venture carefully engineered to facilitate and disguise the payment of unlawful referral fees and other kickbacks and things of value in exchange for referrals of settlement services to and among the Defendants, including referrals of title insurance and other settlement services to Realogy's subsidiary," TRG. (Dkt. 115, 4AC at ¶ 7). PHH also entered into a Strategic Relationship Agreement ("SRA") with Cendant and, prior to October 21, 2015, PHH was bound under the SRA to refer all title insurance and settlement services to TRG. (Id. at ¶ 8). "In return, PHH received a variety of monetary and nonmonetary referral fees and kickbacks via its ownership and control of the sham ABA and PHH's intricate relationship with Realogy." (Id.). "Pursuant to the SRA, PHH Home Loans is the

[2] Capitalization, emphasis, internal alteration marks, and internal quotation marks may be altered or omitted without notation in record citations.

exclusively recommended mortgage lender for Realogy's vast real estate brokerage network, which is operated by Realogy's subsidiary, NRT LLC ("NRT"), and includes such recognizable brands as Coldwell Banker, Sotheby's International Realty, ZipRealty, The Corcoran Group, and Citi Habitats." (Id. at ¶ 9).

Second, under a Private Label Solutions ("PLS") model, "in which PHH manages all aspects of the mortgage process for various banking institutions, including, but not limited to, Morgan Stanley, Merrill Lynch (a subsidiary of and trade name for Bank of America, N.A.), HSBC, and UBS (collectively, the 'PLS Partners') – PHH directs the PLS Partners to refer title insurance and other settlement services to TRG (and/or its affiliates) without notifying consumers of the existence of PHH's affiliation with TRG, nor the fact that PHH was required to cause the PLS Partners to refer title insurance and other settlement services to TRG under the terms of the SRA. Similar to the PHH Home Loans customers, these unknowing consumers were charged by TRG for the referred services." (Dkt. 115, 4AC at ¶ 11). PHH also received kickbacks and fees for the referrals made via the PLS Partners, in the form of, among other things, the right of first refusal over the purchase of the servicing rights to mortgages originated by PHH Home Loans, along with the economic benefits resulting from these servicing rights. (See id. at ¶ 12).

Plaintiffs "seek redress for all consumers who were victimized by Defendants' deceptive and collusive practices, which have suppressed competition in the market for settlement services." (Dkt. 115, 4AC at ¶ 15). They seek damages encompassing all amounts paid to defendants as fees and other charges for settlement services, and treble damages. (See id.).

During the litigation of this action, which included the filing of several motions to dismiss and amended complaints, (see Dkts. 10, 46, 67, 74, 75), and following some discovery, the parties attended a mediation session with Boserup on January 31, 2017. (See Dkt. 123-7, Declaration of Daniel S. Robinson in Support of Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Class Notice ("Robinson Decl.") at ¶¶ 14-15). While the parties did not reach an agreement at that mediation, they continued to negotiate over discovery and other issues, and attended a settlement conference with Judge Gandhi in May 2017, where the case was settled. (See id. at ¶ 15).

The parties have defined the settlement class as "all borrowers who, on or after November 25, 2014 and on or before November 25, 2015, (1) closed on any mortgage loan originated by PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, or their affiliates (including loans where PHH Mortgage Corporation provided origination services on behalf of any PLS Partners), and (2) paid title-, escrow-, or closing-related charges in connection with that mortgage loan to Title Resource Group LLC or its affiliates. Excluded from the Class are borrowers who exclude themselves by submitting a Request For Exclusion that is accepted by the Court." (Dkt. 134, Amended Stipulation of Settlement ("Settlement Agreement") at § IV.A.6; Dkt. 123-1, Memo at 6).

The relief available to the class, which involves 32,221 transactions, will come from a non-reversionary $17,000,000 settlement fund, (see Dkt. 134, Settlement Agreement at §§ IV.D.1, IV.D.10; Dkt. 123-7, Robinson Decl. at ¶¶ 19, 21), after deductions for attorney's fees and costs, the costs of the claims administrator, any class representative service awards and taxes. (See Dkt. 134, Settlement Agreement at § IV.D.13; Dkt. 123-7, Robinson Decl. at ¶ 21). The class notice will include the class member's "Amount Paid" figure, which reflects the amount the class member paid in settlement services as reflected in defendants' records.[3] (See Dkt. 123-1, Memo at 7 n. 3; Dkt. 134, Settlement Agreement at § IV.D.16(a) & Exhibit ("Exh.") A-1 ("Notice") at 1, 4). If the class member does not dispute the Amount Paid figure, he or she is not required to do anything to receive a monetary payment from the settlement fund. (See Dkt. 134, Exh. A-1, Notice at 4). However, if a class member disputes the Amount Paid figure, he or she may submit a claim form with supporting documentation setting forth the settlement charges they paid. (See Dkt. 123-1, Memo at 8; Dkt. 134, Settlement Agreement at § IV.D.16(a) & Exh. A-2 (Claim Form)). The Claims Administrator will be tasked with reviewing and determining whether the amount stated in the Claim Form will be accepted or denied. (See Dkt. 134, Settlement Agreement at § IV.D.16.(a)-(b)).

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[3] The Memo refers to a "Presumptive Allowed Claim," (see Dkt. 123-1, Memo at 7 n. 3), however, that term was changed to "Amount Paid" in the amended settlement agreement and notice documents.

Pursuant to the Settlement Agreement, class counsel will file an unopposed "Fee and Expense Application" that will seek attorney's fees in an amount of no more than 30% of the settlement fund ($5,100,000), and "costs and expenses incurred by Class Counsel in connection with commencing, prosecuting and settling the Action," of no more than $50,000. (See Dkt. 134, Settlement Agreement at ¶ IV.E.1-2; id. at § IV.A.19).

LEGAL STANDARD

"[I]n the context of a case in which the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

I. CLASS CERTIFICATION.

At the preliminary approval stage, the court "may make either a preliminary determination that the proposed class action satisfies the criteria set out in Rule 23[4] or render a final decision as to the appropriateness of class certification." Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (internal citation omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248 (1997)) ("Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23[.]"). "A court considering such a request should give the Rule 23 certification factors 'undiluted, even heightened, attention in the settlement context.'" Sandoval, 2011 WL 5443777, at *2 (quoting Amchem, 521 U.S. at 620, 117 S.Ct. at 2248). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

A party seeking class certification must first demonstrate that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses

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[4] All "Rule" references are to the Federal Rules of Civil Procedure.

of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011). Rule 23(b) is satisfied if:

> (1) prosecuting separate actions by or against individual class members would create a risk of:
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> > (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
> >
> > (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
>
> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
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> > (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> > (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
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> > (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> >
> > (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(1)-(3).

The party seeking class certification bears the burden of demonstrating that the proposed class meets the requirements of Rule 23. See Dukes, 564 U.S. at 350, 131 S.Ct. at 2551 ("A party seeking class certification must affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc."). However, courts need not consider the Rule 23(b)(3) considerations regarding manageability, as settlement obviates the need for a manageable trial. See Morey v. Louis Vuitton N. Am., Inc., 2014 WL 109194, *12 (S.D. Cal. 2014) ("[B]ecause this certification of the Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement."); Rosenburg v. I.B.M., 2007 WL 128232, *3 (N.D. Cal. 2007) (discussing "the elimination of the need, on account of the Settlement, for the Court to consider any potential trial manageability issues that might otherwise bear on the propriety of class certification").

II. FAIRNESS OF CLASS ACTION SETTLEMENT.

Rule 23 provides that "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." In re Syncor ERISA Litig., 516 F.3d 1095, 1101-02 (9th Cir. 2008) (quoting Officers for Justice v. Civil Service Comm'n of the City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982), cert. denied 459 U.S. 1217 (1983)). Accordingly, a district court must determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton, 327 F.3d at 959; see Fed. R. Civ. Proc. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.), cert. denied, Hoffer v. City of Seattle, 506 U.S. 953 (1992) (internal quotation marks and citation omitted).

"If the [settlement] proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

"[S]ettlement approval that takes place prior to formal class certification requires a higher standard of fairness [given t]he dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative[.]" Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). As the Ninth Circuit has observed, "[p]rior to formal class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement. Accordingly, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

Approval of a class action settlement requires a two-step process – a preliminary approval followed by a later final approval. See Tijero v. Aaron Bros., Inc., 2013 WL 60464, *6 (N.D. Cal. 2013) ("The decision of whether to approve a proposed class action settlement entails a two-step process."); West v. Circle K Stores, Inc., 2006 WL 1652598, *2 (E.D. Cal. 2006) ("[A]pproval of a class action settlement takes place in two stages."). At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval." Wright v. Linkus Enters., Inc., 259 F.R.D. 468, 472 (E.D. Cal. 2009). Although "[c]loser scrutiny is reserved for the final approval hearing[,]" Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. 2011), "the showing at the preliminary approval stage – given the amount of time, money and resources involved in, for example, sending out new class notices – should be good enough for final approval." Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319 (C.D. Cal. 2016). "At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." Id. (internal quotation marks omitted); Harris, 2011 WL 1627973, at *7 (same); Cordy v. USS-Posco Indus., 2013 WL 4028627, *3 (N.D. Cal. 2013) ("Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious

deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.") (internal quotation marks omitted).

DISCUSSION

I. CLASS CERTIFICATION.

A. Rule 23(a) Requirements.

1. **Numerosity**.

The first prerequisite of class certification requires that the class be "so numerous that joinder of all members is impractical[.]" Fed. R. Civ. P. 23(a)(1). Although impracticability does not hinge only on the number of members in the putative class, joinder is usually impracticable if a class is "large in numbers." See Jordan v. Cnty. of Los Angeles, 669 F.2d 1311, 1319 (9th Cir.), vacated on other grounds, 459 U.S. 810 (1982) (class sizes of 39, 64, and 71 are sufficient to satisfy the numerosity requirement); Jimenez v. Domino's Pizza, Inc., 238 F.R.D. 241, 247 (C.D. Cal. 2006) (same). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); see Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 473 (C.D. Cal. 2012) ("A proposed class of at least forty members presumptively satisfies the numerosity requirement.").

Here, the members of the class are so numerous that joinder of all members is impracticable. According to defendants' records, 32,221 transactions fall within the class definition. (See Dkt. 123-7, Robinson Decl. at ¶ 19). The large number of mortgage transactions leaves no doubt that the class exceeds 40 members.

2. **Commonality**.

The commonality requirement is satisfied if "there are common questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiff to demonstrate that his claims "depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 564 U.S. at 350, 131 S.Ct. at 2551; see Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (The commonality requirement demands that "class members' situations share a common issue

of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.") (internal quotation marks omitted). "The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation." Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012) (internal quotation marks omitted). "This does not, however, mean that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact." Abdullah v. U.S. Sec. Assocs., Inc., 731 F.3d 952, 957 (9th Cir. 2013), cert. denied, 135 S.Ct. 53 (2014) (emphasis and internal quotation marks omitted); see Mazza, 666 F.3d at 589 (characterizing commonality as a "limited burden[,]" stating that it "only requires a single significant question of law or fact"). Proof of commonality under Rule 23(a) is "less rigorous" than the related preponderance standard under Rule 23(b)(3). See Mazza, 666 F.3d at 589. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

This case involves common class-wide issues that are apt to drive the resolution of plaintiffs' claims. This litigation concerns an alleged scheme involving the illegal exchange of referral fees and kickbacks by and between PHH and Realogy. (See Dkt. 123-1, Memo at 14). Common questions include: whether defendants engaged in the alleged conduct; the nature of defendants' relationships to each other and whether such relationships violate RESPA; the nature of the benefits exchanged by PHH and Realogy under the terms of the SRA; and whether defendants gave and accepted benefits in exchange for the referral of settlement services. (See id.); Edwards v. First American Corp., 798 F.3d 1172, 1183 (9th Cir. 2015), cert. dismissed, 136 S.Ct. 1533 (2016) ("Edwards I") ("This common scheme, if true, presents a significant aspect of First American's transactions that warrant class adjudication: Whether First American paid a thing of value to get its agreement for exclusive referrals."); Edwards v. First American Corp., 2016 WL 8943464, *4-5 (C.D. Cal. 2016) ("Edwards II").

3. **Typicality**.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted). To demonstrate typicality, plaintiffs' claims must be "reasonably co-extensive with those of absent class members[,]" although "they need not be substantially identical." Hanlon, 150 F.3d at 1020; see Ellis, 657 F.3d at 984 ("Plaintiffs must show that the named parties' claims are typical of the class."). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff[], and whether other class members have been injured by the same course of conduct." Ellis, 657 F.3d at 984 (internal quotation marks and citation omitted).

Here, the claims of the representative plaintiffs are typical of the claims of the class. Plaintiffs' claims arise from the same nucleus of facts as the class and are based on the same legal theory, i.e., defendants violated RESPA by engaging in an illegal referral for kickback scheme. (Dkt. 115, 4AC at ¶¶ 1-14, 46-88; Dkt. 123-7, Robinson Decl. at ¶¶ 6-10). Named plaintiffs and class members closed on mortgage loans from PHH, between November 25, 2014 and November 25, 2015, and paid for the subject services from TRG. (See Dkt. 115, 4AC at ¶¶ 98-122, 127; Dkt. 123-7, Robinson Decl. at ¶¶ 6-10); see also Edwards II, 2016 WL 8943464, at *5 ("Like the Settlement Class, Plaintiff was referred to First American by a title agency pursuant to an exclusive referral agreement, Plaintiff obtained title insurance underwritten by First American, and Plaintiff was injured by paying for that insurance."). Additionally, the court is not aware of any facts that would subject the class representatives "to unique defenses which threaten to become the focus of the litigation." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992).

4. **Adequacy of Representation**.

"The named Plaintiffs must fairly and adequately protect the interests of the class." Ellis, 657 F.3d at 985 (citing Fed. R. Civ. P. 23(a)(4)). "To determine whether [the] named plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named

plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Id. (internal quotation marks omitted). "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." Id.

Here, the proposed class representatives do not appear to have any conflicts of interest with the absent class members, as they have no individual claims separate from the class claims. Plaintiff Dodge states: "My interests are aligned with those of the Class. Throughout my involvement in the case, I have sought to maximize the benefits recovered by the Class relating to the claims that Defendants violated the [RESPA]. I know of no interests that are antagonistic with or in conflict with the interests of the Class." (Dkt. 123-2, Declaration of Neil Dodge ("N. Dodge Decl.") at ¶ 18). The other proposed class representatives make the same representations. (See Dkt. 123-3, Declaration of Sheri Dodge ("S. Dodge Decl.") at ¶ 14; Dkt. 123-4, Declaration of Ram Agrawal ("R. Agrawal") at ¶ 10; Dkt. 123-5, Declaration of Sarita Agrawal ("S. Agrawal Decl.") at ¶ 10). Under the circumstances, "[t]he adequacy-of-representation requirement is met here because Plaintiff[s have] the same interests as the absent Class Members[.] Further, there is no apparent conflict of interest between the named Plaintiffs' claims and those of the other Class Members' – particularly because the named Plaintiffs have no separate and individual claims apart from the Class." Barbosa v. Cargill Meat Solutions Corp, 297 F.R.D. 431, 442 (E.D. Cal. 2013).

Finally, the court is satisfied that plaintiffs' counsel are competent and willing to prosecute this action vigorously. Plaintiffs' counsel request, and the Settlement Agreement provides, that the court appoint as class counsel Daniel S. Robinson ("Robinson"), Robinson Calcagnie, Inc. and Evan C. Borges ("Borges"), Greenberg Gross LLP. (See Dkt. 135, Motion at 2; Dkt. 123-7, Robinson Decl. at ¶¶ 29-31; Dkt. 134, Settlement Agreement at § IV.A.7). Robinson states that he has "been appointed to leadership positions in numerous state and federal courts, including in complex and multi-district product liability and consumer class action litigation." (Dkt. 123-7, Robinson Decl. at ¶ 29). For instance, he was appointed co-lead counsel in Risperdal and Invega Product Liability Cases, JCCP No. 4775 and In re Experian Data Breach Litig., SA CV 15-1592 (C.D. Cal.). (Id.; see also id. at Exh. 1 (Robinson Calcagnie, Inc. Firm Resume)). With respect

to Borges, Robinson represents that he "has significant experience leading consumer class action lawsuits" and has "been appointed as lead trial and litigation counsel in numerous state and federal courts." (Id. at ¶ 30). Based on Robinson's representations, and having observed counsel's diligence in litigating this case, the court finds that plaintiffs' counsel are competent, and that the adequacy of representation requirement is satisfied. See Barbosa, 297 F.R.D. at 443 ("There is no challenge to the competency of the Class Counsel, and the Court finds that Plaintiffs are represented by experienced and competent counsel who have litigated numerous class action cases."); Avilez v. Pinkerton Gov't Servs., Inc., 286 F.R.D. 450, 457 (C.D. Cal. 2012) vacated and remanded on other grounds, 595 F.Appx. 579 (9th Cir. 2015) ("Defendants do not dispute and the evidence confirms that, as detailed in their declarations, Plaintiff's counsel are experienced class action litigators who have litigated many . . . class actions and have been certified as class counsel in numerous other class actions[.]").

B. Rule 23(b) Requirements.

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022 (internal quotation marks omitted). The rule requires two different inquiries, specifically a determination as to whether: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members[;]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); see Spann, 314 F.R.D. at 321-22.

1. **Predominance**.

"The Rule 23(b)(3) predominance inquiry tests whether [the] proposed class[is] sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623, 117 S.Ct. at 2249. "Rule 23(b)(3) focuses on the relationship between the common and individual issues. When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Hanlon, 150 F.3d at 1022 (internal quotation marks and citations omitted); see In re Wells Fargo Home Mortg. Overtime Pay Litig.,

571 F.3d 953, 959 (9th Cir. 2009) ("[T]he main concern in the predominance inquiry . . . [is] the balance between individual and common issues."). Additionally, the class damages must be sufficiently traceable to plaintiffs' liability case. See Comcast Corp. v. Behrend, 569 U.S. 27, 35, 133 S.Ct. 1426, 1433 (2013).

Under the circumstances, see supra at § I.A.2., the court is persuaded that common questions predominate over individual questions. For example, the overwhelming common question of whether defendants engaged in a referral for kickback scheme in violation of RESPA predominates over any individualized issues. See Edwards I, 798 F.3d at 1182-83. Additionally, the relief sought applies to all class members and is traceable to plaintiffs' liability case. See Comcast, 569 U.S. at 35, 133 S.Ct. at 1433. In short, common questions predominate over all others in this litigation.

2. **Superiority**.

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case" and "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." Hanlon, 150 F.3d at 1023. Rule 23(b)(3) provides a list of four non-exhaustive factors relevant to superiority. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

The first factor considers "the class members' interests in individually controlling the prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). "This factor weighs against class certification where each class member has suffered sizeable damages or has an emotional stake in the litigation." Barbosa, 297 F.R.D. at 444. Here, plaintiffs do not assert claims for emotional distress, nor is there any indication that the amount of damages any individual class member could recover is significant or substantially greater than the potential recovery of any other class member. (See, generally, Dkt. 115, 4AC). The alternative method of resolution is individual claims for a relatively modest amount of damages, and such claims would likely never be brought, as "litigation costs would dwarf potential recovery." Hanlon, 150 F.3d at 1023; see Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013) ("In light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only

feasible means for them to adjudicate their claims. Thus, class certification is also the superior method of adjudication."); Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 537 (C.D. Cal. 2011) ("Given the small size of each class member's claim, class treatment is not merely the superior, but the only manner in which to ensure fair and efficient adjudication of the present action."). In short, "there is no evidence that Class members have any interest in controlling prosecution of their claims separately nor would they likely have the resources to do so." Munoz v. PHH Corp., 2013 WL 2146925, *26 (E.D. Cal. 2013).

The second factor to consider is "the extent and nature of any litigation concerning the controversy already begun by or against class members." Fed. R. Civ. P. 23(b)(3)(B). There is no indication that any class member is involved in any other litigation concerning the claims in this case. (See Dkt. 123-1, Memo at 19) ("There is no indication that any Class Member is involved in any other litigation concerning the claims set forth in this litigation.").

The third factor is "the desirability or undesirability of concentrating the litigation of the claims in the particular forum[,]" Fed. R. Civ. P. 23(b)(3)(C), and the fourth factor relates to "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(D). As noted above, "[i]n the context of settlement, . . . the third and fourth factors are rendered moot and are irrelevant." Barbosa, 297 F.R.D. at 444; see Amchem, 521 U.S. at 620, 117 S.Ct. at 2248 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.") (internal citation omitted).

The only factor in play here weighs in favor of class treatment. Further, the filing of separate suits by several thousand class members "would create an unnecessary burden on judicial resources." Barbosa, 297 F.R.D. at 445. Under the circumstances, the court finds that the superiority requirement is satisfied.

II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.

A. The Settlement is the Product of Arm's-Length Negotiations.

"This circuit has long deferred to the private consensual decision of the parties." Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit has "emphasized" that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." Id. (internal quotation marks omitted). When the settlement is "the product of an arms-length, non-collusive, negotiated resolution[,]" id., courts afford the parties the presumption that the settlement is fair and reasonable. See Spann, 314 F.R.D. at 324 ("A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery.") (internal citation omitted); In re Netflix Privacy Litig., 2013 WL 1120801, *4 (N.D. Cal. 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive arms' length negotiations conducted by capable and experienced counsel.").

Here, defendants vigorously defended against the claims by, among other things, filing two motions to dismiss. (See Dkts. 46, 75). With respect to discovery, Robinson states that the parties engaged in "lengthy and highly contested meet and confer regarding the scope of discovery[,]" which included 71 requests for production of documents. (See Dkt. 123-7, Robinson Decl. at ¶ 14). The discovery centered on "understanding the schemes and business relationships[.]" (Id.). Defendants ultimately produced over 35,000 pages of documents. (Id.).

Although the parties' mediation with Boserup was unsuccessful, (see Dkt. 123-7, Robinson Decl. at ¶ 15), the parties reached a settlement before Judge Gandhi a few months later. (See id.). Following the settlement conference, the parties engaged in more discovery, including production of documents, written discovery, and depositions to, among other things, confirm class members and the amount each class member paid for title- and escrow-related settlement

services. (Id. at ¶ 16).

Based on the evidence and record before the court, the court is persuaded that the parties thoroughly investigated and considered their own and the opposing parties' positions. The parties had a sound basis for measuring the terms of the settlement against the risks of continued litigation, and there is no evidence that the settlement is "the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" Rodriguez, 563 F.3d at 965 (quoting Officers for Justice, 688 F.2d at 625).

B. The Amount Offered In Settlement Falls Within a Range of Possible Judicial Approval and is a Fair and Reasonable Outcome for Class Members.

1. **Recovery for Class Members.**

As described above, the settlement class members will share in a settlement fund of $17,000,000. See supra at Background. Plaintiffs estimate that class members will receive between 15% and 20% of the amount they paid for the services at issue. (See Dkt. 123-1, Memo at 20; Dkt. 123-7, Robinson Decl. at ¶ 23).

The settlement is fair, reasonable, and adequate, particularly when viewed in light of the litigation risks in this case. For example, for plaintiffs there was the risk that defendants would succeed on a motion for summary judgment or defeat a motion for class certification. (See Dkt. 123-1, Memo at 21). Plaintiffs' counsel, Robinson, adds that despite his "strong belief in the merits of this litigation," he nonetheless believes "that the benefits to Plaintiffs and the putative Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims – namely, the delay that would result before Plaintiffs and putative Class Members receive any benefits should the action proceed to trial; the possibility of a negative outcome at trial; and the possibility of a negative outcome post-trial should Defendants appeal a judgment in favor of the putative Class." (Dkt. 123-7, Robinson Decl. at ¶ 31). In short, the risks of continued litigation are significant, and the court takes these real risks into account. Weighed against those risks, and coupled with the costs and delays associated with continued litigation, the court is persuaded that the benefits to the class fall within the range of reasonableness. See, e.g., In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000) (ruling that "the [s]ettlement amount of almost $2

million was roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, [was] fair and adequate"); Rodriguez, 563 F.3d at 964 (affirming settlement approval where the settlement represented 30% of the damages estimated by the class expert); Linney v. Cellular Alaska Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted).

2. **Release of Claims**.

Beyond the value of the settlement, potential recovery at trial, and the inherent risks in continued litigation, courts also consider whether a class action settlement contains an overly broad release of liability. See 4 Newberg on Class Actions § 13:15, at 326 (5th ed. 2014) ("Beyond the value of the settlement, courts have rejected preliminary approval when the proposed settlement contains obvious substantive defects such as . . . overly broad releases of liability."); see, e.g., Fraser v. Asus Computer Int'l, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided defendant a "nationwide blanket release" in exchange for payment "only on a claims-made basis," without the establishment of a settlement fund or any other benefit to the class).

Here, plaintiffs and class members who do not exclude themselves from the settlement will release defendants from "any and all claims, actions, causes of action, rights or liabilities, whether arising out of federal, state, foreign, or common law, including Unknown Claims, of any Class Member, which exist or may exist against any of the Defendants' Releasees by reason of any matter, event, cause or thing that were or could have been alleged: (a) based on the facts, circumstances, transactions, events, occurrences, acts, omissions or failures to act alleged in the Action, including all RESPA claims; and (b) related to the relationships among Defendants' Releasees alleged in Plaintiffs' Fourth Amended Complaint (Dkt. 115) and Settlement Services performed by, obtained by, or paid to any of Defendants' Releasees in the Class Members' real

estate transactions that are the subjects of the Action."[5] (Dkt. 134, Settlement Agreement at § IV.A.23) (emphasis added). With the understanding that, under the release, the settlement class members are not giving up claims unrelated to those asserted in this action, the court finds that the release adequately balances fairness to absent class members and recovery for plaintiffs with defendants' business interest in ending this litigation. See, e.g., Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the Class Representative.

"Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit." Radcliffe v. Experian Info. Solutions Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). The Ninth Circuit has instructed "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Id. The court must examine whether there is a "significant disparity between the incentive awards and the payments to the rest of the class members" such that it creates a conflict of interest. See id. at 1165. "In deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

Here, it is clear that the settlement does not improperly grant preferential treatment to the class representatives. As an initial matter, the $2,500 incentive award for each class representative (see Dkt. 123-1, Memo at 9), is presumptively reasonable. See Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 335 (N.D. Cal. 2014) (finding an incentive award of $5,000 presumptively reasonable). Moreover, because there is no indication that the Settlement Agreement will not remain in force if the court declines to award any or some of the requested

[5] The release expressly carves out the rights class members may have in the In Re PHH Lender Placed Ins. Litig., CV 12-1117 (D.N.J.). (See Dkt. 134, Settlement Agreement at § IV.A.23).

incentive awards, the awards here are unlikely to create a conflict of interest between the named plaintiffs and absent class members.

D. Class Notice and Notification Procedures.

Upon settlement of a certified class, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Federal Rule of Civil Procedure 23(c)(2) requires the "best notice that is practicable under the circumstances, including individual notice" of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

A class action settlement notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, 575 (9th Cir.), cert. denied, 543 U.S. 818 (2004) (internal quotation marks omitted). "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir.), cert. denied, 544 U.S. 1044 (2005). Settlement notices must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." Weinberger v. Kendrick, 698 F.2d 61, 70 (2d Cir. 1982), cert. denied, 464 U.S. 818 (1983) (internal quotation marks and brackets omitted); see Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n., 48 Cal.App.3d 134, 151-52 (1975) (same); Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224, 252 (2001) ("As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members."). The notice should provide sufficient information to allow class members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to the settlement. See Wershba, 91 Cal.App.4th at 251-52. "[N]otice is adequate if it may be understood by the average class member." 4 Newberg on Class Actions § 11:53, at 167 (4th ed. 2013).

Here, the parties have selected KCC, LLC ("KCC") as the Claims Administrator. (See Dkt. 134, Settlement Agreement at § IV.A.5). Class members will receive notice by first class mail.

(See id. at § IV.A.20). The Notice describes the nature of the action, including the class claims. (See id., Exh. A-1, Notice at 2); see Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). The class definition is conspicuously included on the first page of the Notice, so that individuals can determine whether they are part of the class. (See Dkt. 134, Settlement Agreement, Exh. A-1, Notice at 1); see also Fed. R. Civ. P. 23(c)(2)(B)(ii). It explains the benefits of the settlement, (see Dkt. 134, Settlement Agreement, Exh. A-1, Notice at 4), and what class members must do to obtain benefits, including challenging the Amount Paid. (See id.). It includes an explanation laying out the class members' options under the settlement, i.e., they may exclude themselves, object, or do nothing. (See id. at 1, 6-7); see also Fed. R. Civ. P. 23(c)(2)(B)(v)-(vi). The Notice explains that all class members who do not exclude themselves will release claims as set forth in the release provision. (See Dkt. 134, Settlement Agreement, Exh. A-1, Notice at 5); see also Fed. R. Civ. P. 23(c)(2)(B)(vii). Also, if class members choose to object to the settlement, they may do so by submitting written objections, and they may attend the Final Fairness Hearing with or without an attorney. (See Dkt. 134, Settlement Agreement, Exh. A-1, Notice at 6-7); see also Fed. R. Civ. P. 23(c)(2)(B)(iv). Information regarding the final approval hearing is also included. (See Dkt. 134, Settlement Agreement, Exh. A-1, Notice at 7). Finally, the Notice directs class members to the settlement website to get more information about the settlement. (See id. at 8).

Based on the foregoing, the court finds that there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. The court further finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members.

E. Summary.

The court's preliminary evaluation of the Settlement Agreement "does not disclose grounds to doubt its fairness[,] . . . such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval[.]" In re Vitamins Antitrust Litig., 2001 WL 856292, *4 (D.D.C. 2001) (quoting Manual for Complex Litigation § 30.41 (3d ed. 1999)); see also Spann, 314 F.R.D. at 323 (same); In re NVIDIA Corp. Derivative Litig., 2008 WL 5382544, *2 (N.D. Cal. 2008) (same).

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiff's Renewed Motion for Entry of an Order Granting Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Class Notice **(Document No. 135)** is **granted** upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in § IV.A.6 of the Amended Stipulation of Settlement ("Settlement Agreement") (Document No. 134) for the purposes of settlement.

3. The court preliminary appoints plaintiffs Sheri Dodge, Neil Dodge, Ram Agrawal, and Sarita Agrawal as class representatives for settlement purposes.

4. The court preliminarily appoints Daniel S. Robinson, Robinson Calcagnie, Inc. and Evan C. Borges, Greenberg Gross LLP as class counsel for settlement purposes.

5. The court preliminarily finds that the terms of the Settlement are fair, reasonable and adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

6. The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. The court approves the form, substance, and requirements of the Mail Notice (Dkt. 134, Exh. A-1); Proof of Claim and Release, (Dkt. 134, Exh. A-2); and Request for Exclusion, (Dkt. 134, Exh. A-3).

8. The parties shall carry out the settlement and claims process according to the terms of the Settlement Agreement.

9. KCC, LLC shall complete dissemination of class notice, in accordance with the Settlement Agreement, no later than **February 12, 2018**.

10. Any class member who wishes to: (a) object to the settlement, including the requested attorney's fees, costs and incentive award; or (b) exclude him or herself from the settlement must file his or her objection to the settlement or request for exclusion (i.e., the Opt Out Form) no later than **May 14, 2018**, in accordance with the Settlement Agreement, Mail Notice, and/or Request

for Exclusion Form.

11. Any class member who wishes to appear at the final approval (fairness) hearing, either on his or her own behalf or through an attorney, to object to the settlement, including the requested attorney's fees, costs and incentive award, shall, no later than **May 14, 2018**, file with the court a Notice of Intent to Appear at Fairness Hearing.

12. A final approval (fairness) hearing is hereby set for **June 28, 2018,** at **10:00 a.m.** in Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and adequacy of the Settlement as well as the award of attorney's fees and costs to class counsel, and service award to the class representative.

13. Plaintiffs shall file a motion for an award of class representative incentive payments and attorney's fees and costs no later than **April 13, 2018,** and notice it for hearing for the date set forth in paragraph 12 above. Any objection to the motion for an award of class representatives incentive payments and attorney's fees and costs, by class members, shall be filed by the deadline set forth in paragraph 10 above. In the event any objections to the motion for an award of class representatives incentive payments and attorney's fees and costs are filed, class counsel shall, no later than **May 31, 2018,** file a reply addressing the objections.

14. Plaintiffs shall, no later than **May 31, 2018,** file and serve a motion for final approval of the settlement and a response to any objections to the settlement. The motion shall be noticed for hearing for the date set forth in paragraph 12 above. Defendants may file and serve a memorandum in support of final approval of the Settlement Agreement or in response to objections no later than **June 7, 2018.**

15. All proceedings in the Action, other than proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed pending the final fairness hearing and the court's decision whether to grant final approval of the settlement.

Dated this 29th day of January, 2018.

/s/
Fernando M. Olguin
United States District Judge