

1 Norman E. Siegel (*pro hac vice*)
2 J. Austin Moore (*pro hac vice*)
3 STUEVE SIEGEL HANSON LLP
4 460 Nichols Road, Suite 200
5 Kansas City, MO 64112
6 Tel: 816-714-7100
7 siegel@stuevesiegel.com
8 moore@stuevesiegel.com

9 Daniel S. Robinson (SBN 244245)
10 ROBINSON CALCAGNIE, INC.
11 19 Corporate Plaza Drive
12 Newport Beach, CA 92660
13 Tel: 949-720-1288
14 [drobinson@robinsonfirm.com](mailto:drobenson@robinsonfirm.com)

15 *Attorneys for Plaintiff and the Class*

16 *Additional Counsel on Signature Page*

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA

19 DEMETA REYES, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 EXPERIAN INFORMATION
24 SOLUTIONS, INC.,

25 Defendant.

Case No. 8:16-cv-563-AG-AFMx

Hon. Andrew J. Guilford

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION TO
DIRECT CLASS NOTICE AND
GRANT PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing: January 27, 2020

Time: 10:00 a.m.

Courtroom: 10D

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1 **I. INTRODUCTION**

2 After nearly four years of hard-fought litigation, the parties have reached a
3 \$24 million settlement to resolve consumer claims arising out of Experian’s
4 reporting of delinquent loan accounts. The settlement—one of the largest in history
5 relating to inaccurate reporting violations under the Fair Credit Reporting Act
6 (“FCRA”)—was achieved only after significant discovery, contested discovery-
7 related disputes, extensive motion practice that included several dispositive
8 motions, a successful appeal reversing a judgment in Experian’s favor, an order
9 granting class certification, and months of arm’s-length negotiations through an
10 experienced mediator.

11 The result is an outstanding one for class members. The settlement fund is
12 100% non-revisionary and will be used solely for the benefit of the Class. It will
13 pay for the costs of notice and administration, service award payments, and
14 attorneys’ fees and costs approved by the Court—with the remaining funds to be
15 distributed equally to class members without the need to file a claim. Accordingly,
16 every class member will automatically receive a payment of at least \$270 without
17 having to take any action under the settlement. In light of the valuable benefits
18 conveyed to members of the Class, and the significant risks faced through
19 continued litigation, the Court should readily conclude that it is likely to find the
20 Settlement “fair, reasonable, and adequate” pursuant to Rule 23(e)(2). Because the
21 Court has already found that the prerequisites to a class action under Rules 23(a)
22 and (b)(3) have been satisfied, Plaintiff moves the Court for an order directing
23 class notice and scheduling a final approval hearing.¹

24 ¹ This request is unopposed. Plaintiff submits herewith the executed Settlement
25 Agreement and Release (“Settlement Agreement” or “Agreement”) as Exhibit A;
26 the Declaration of Norman E. Siegel (“Siegel Dec.”) as Exhibit B; and the
27 Declaration of Christian J. Clapp (“Angeion Dec.”) regarding Angeion Group’s
28 qualifications and proposed notice program as Exhibit C.

1 **II. SUMMARY OF THE LITIGATION**

2 **A. Case filing and discovery**

3 On February 16, 2016, Plaintiff filed a one-count putative class action
4 against Experian in the Superior Court of California for willfully violating §
5 1681e(b) of the FCRA by reporting accounts furnished by Delbert Services Corp.
6 (“Delbert”) on loans originated by online lender Western Sky Financial, LLC
7 (“Western Sky”) that had been deemed illegal by numerous states. Experian
8 thereafter removed the case to this Court. Doc. 1. Following the initial case
9 management conference, the parties engaged in early-stage discovery. Siegel Dec.,
10 ¶ 3. On August 29, 2016, Experian filed a motion for judgment on the pleadings
11 pursuant to Federal Rule of Civil Procedure 12(c) with a corresponding request for
12 judicial notice. Docs. 35, 36. Experian’s Rule 12(c) motion argued that Plaintiff’s
13 pleading did not state a claim under the FCRA because Plaintiff’s Western Sky
14 loan was not unambiguously illegal under Georgia law and Experian had no
15 obligation to determine the legality of the loan. Doc. 35.

16 On September 20, 2016, Plaintiff filed a motion to amend the complaint in
17 order to conform the allegations to newly-discovered facts and assert a narrower
18 class definition. Doc. 39. Specifically, Plaintiff learned through discovery that
19 Experian had intended to delete the accounts in December 2014, but failed to do so
20 after a series of internal mistakes even after Delbert went out of business and
21 instructed Experian to stop reporting its data. Plaintiff amended her legal theory to
22 contend that Experian’s failure to delete the Delbert accounts rendered consumers’
23 reports materially misleading and therefore inaccurate under the FCRA. *See id.* On
24 October 27, 2016, the Court granted the motion and Plaintiff filed a First Amended
25 Complaint on November 23, 2016. Doc. 48. The Amended Complaint mooted
26 Experian’s Rule 12(c) motion and Experian answered the complaint on December
27 7, 2016. Doc. 49.

1 During this period, Plaintiff aggressively sought discovery from Experian
2 and relevant third parties. Plaintiff served document requests, requests for
3 admission, and interrogatories on Experian, and served subpoenas and Freedom of
4 Information Act (FOIA) requests on Delbert, CashCall, and more than 30 state and
5 federal regulatory agencies who investigated or prosecuted cases relating to
6 Western Sky loans. After the exchange and collection of documents, Class Counsel
7 reviewed nearly 20,000 pages of documents, including more than 13,000 pages
8 from third-party regulators. Siegel Dec., ¶ 3.

9 Class Counsel also deposed several key fact witnesses, including Experian
10 employees Mary Cheatham, Richard Hills, and Carmen Hearn, as well two
11 corporate representatives including Experian’s membership director Peter Henke,
12 and Experian’s “in-house” expert witness Kimberly Cave, who testified she has
13 been deposed more than 200 times in litigation involving Experian. Siegel Dec., ¶
14 4. Plaintiff also engaged Dean Binder, a 13-year veteran of the credit reporting
15 industry and former employee of FICO, who submitted a 28-page expert report
16 supporting Plaintiff’s positions that the presence of the Delbert account would
17 create a misleading impression to third-party creditors and had a negative impact
18 on Plaintiff’s credit score. *See* Doc. 57-61. Experian likewise deposed Ms. Reyes
19 and Mr. Binder in connection with the litigation. Siegel Dec., ¶ 5.

20 Discovery efforts in the litigation were significant on both sides and
21 included numerous contested disputes that required Court resolution. For example,
22 on January 26, 2017, Plaintiff moved the Court for an order compelling the
23 production of nearly 300 documents redacted or being withheld by Experian on
24 privilege grounds and compelling Experian to supplement its responses to certain
25 requests for admission and interrogatories propounded by Plaintiff. Doc. 53; Siegel
26 Dec., ¶ 6. Following numerous rounds of briefing, oral argument, and Experian’s
27 submission of a revised privilege log and voluntary production of certain
28

1 documents (*see* Docs. 53, 56, 60, 62, 63, 66, 67, 68, 72, 75, 76, 79, 80), Magistrate
2 Judge MacKinnon issued an order granting and denying Plaintiff’s motion in part.
3 Doc. 86. Siegel Dec., ¶ 7.

4 **B. Motion practice**

5 While simultaneously litigating the discovery disputes described above, the
6 parties engaged in significant motion practice in a condensed timeframe in order to
7 comply with the scheduling order. On January 24, 2017, Experian filed a motion
8 for summary judgment contending that Plaintiff’s report was not inaccurate under
9 the FCRA because (1) it did not contain “patent errors” relating to the loan
10 account; and (2) the selective reporting of only the delinquent portion of Plaintiff’s
11 loan was not misleading. Experian also argued its conduct was not “willful” as a
12 matter of law. *See* Doc. 52. Experian’s filing included 18 exhibits and declarations
13 from Experian employees Kimberly Cave, Mary Cheatham, Peter Henke, Melynda
14 Brooker, and David Proctor supporting its position. *See id.* Siegel Dec., ¶ 8.

15 On February 17, 2017, Plaintiff opposed Experian’s motion in a filing that
16 included 60 exhibits in support. Doc. 57; Siegel Dec., ¶ 9. One week later on
17 February 24, 2017, Plaintiff filed a motion for class certification seeking to certify
18 two alternative classes under Rule 23(b)(3), with the primary class consisting of
19 the following individuals:

20 All persons whose Experian consumer report contained an account
21 from Delbert Services Corp. reflecting delinquency on a loan
22 originated by Western Sky Financial, LLC after January 21, 2015 (the
“Class”).

23 Doc. 58, at 11-12.

24 That same day, Plaintiff filed a cross-motion for partial summary judgment,
25 asserting that her report was inaccurate as a matter of law because (1) Experian
26 failed to delete the Delbert account no later than January 21, 2015; and (2)
27
28

1 Experian selectively reported only the delinquent portion of Plaintiff's Western
2 Sky loan in a manner that would adversely affect credit decisions. Doc. 59; Siegel
3 Dec., ¶ 10.

4 Each of these filings laid out the significant evidentiary record before the
5 Court and briefing was hotly-contested. For example, class certification briefing
6 included a motion, memorandum in support, response in opposition, reply in
7 support, two notices of supplemental authority, an *ex parte* application to file a sur-
8 reply, and a response in opposition to that motion. *See* Docs. 58, 73, 77, 81, 82, 89,
9 93; Siegel Dec., ¶ 11. Following full briefing on these motions, the Court issued an
10 order requesting that the parties submit a statement regarding the proper sequence
11 for ruling on the pending motions, including a chart outlining the various
12 intersections between the cross-motions for summary judgment and motion for
13 class certification. Doc. 85; Siegel Dec., ¶ 12.

14 The Court held a hearing on all pending motions on May 15, 2017. Prior to
15 the hearing, the Court entered a tentative ruling granting Experian's motion for
16 summary judgment and oral argument primarily addressed that motion. Siegel
17 Dec., ¶ 13. On October 13, 2017, the Court issued an order granting summary
18 judgment in favor of Experian, and denying Plaintiff's motions for partial
19 summary judgment and class certification as moot. The Court held that (1)
20 Plaintiff's report did not contain patent errors relating to the loan account; (2)
21 Plaintiff's report did not create a misleading impression; and (3) "the evidence
22 presented in this case doesn't appear to support a claim that Defendant 'willfully'
23 failed to comply with the FCRA." Doc. 97. That same day, the Court entered
24 judgment for Experian and against Plaintiff. Doc. 96; Siegel Dec., ¶ 14.

25 Plaintiff filed a timely notice of appeal on November 8, 2017. Doc. 101.
26 Experian thereafter filed a motion to tax costs against Plaintiff, which was granted
27 on December 19, 2017. Doc. 107; Siegel Dec., ¶ 15.

1 **C. The Ninth Circuit appeal**

2 On February 16, 2018, Plaintiff filed her opening brief before the U.S. Court
3 of Appeals for the Ninth Circuit. The parties spent the next 13 months briefing and
4 arguing the appeal, which was fully submitted on March 6, 2019. Siegel Dec., ¶ 16.

5 On May 17, 2019, the Ninth Circuit issued an order reversing the grant of
6 summary judgment in Experian’s favor and vacating the order denying Plaintiff’s
7 motions for partial summary judgment and class certification. *See* Doc. 112; *Reyes*
8 *v. Experian Info. Sols., Inc.*, 773 F. App’x 882 (9th Cir. 2019). The Ninth Circuit
9 held that Reyes raised genuine issues of material fact as to both inaccuracy and
10 willfulness under the FCRA, which precluded a grant of summary judgment in
11 Experian’s favor. Siegel Dec., ¶ 17.

12 *First*, the Ninth Circuit held that a reasonable jury could conclude that
13 “Experian’s continued reporting of Reyes’s Delbert account, either on its own, or
14 coupled with the deletion of portions of Reyes’s positive payment history on the
15 same loan, was materially misleading” because “Experian was reporting an
16 account that was no longer verifiable and that Reyes could not make current,
17 despite having been specifically informed by Delbert that Delbert was no longer in
18 business.” *Id.* at 884.

19 *Second*, the Ninth Circuit Court concluded that a jury could find “Experian’s
20 continued reporting of the Delbert account” and “extraordinarily lengthy delay in
21 implementing its internal decision to delete the Delbert accounts (after it made the
22 decision and after it essentially told Delbert that it had deleted the accounts)”
23 reckless and willful in that it “entail[ed] ‘an unjustifiably high risk of harm that is
24 either known or so obvious that it should be known.’” *Id.* (quoting *Safeco Ins. Co.*
25 *v. Burr*, 551 U.S. 47, 68 (2007)). The Ninth Circuit remanded the *Reyes* case for
26 further proceedings consistent with its decision.
27
28

1 **D. Class certification and post-appeal briefing**

2 Following remand, the parties filed a joint status report agreeing to submit
3 on their prior class certification briefing with each side having the opportunity to
4 file a five-page supplemental brief. Doc. 117. Class certification was fully briefed
5 as of July 3, 2019, and argued on September 30. Doc. 128; Siegel Dec., ¶ 18.
6 Experian dedicated nearly all of its supplemental briefing and argument to
7 challenging Plaintiff’s Article III standing to sue, an argument that had not been
8 raised prior to the appeal. During this period, Class Counsel engaged Daniel
9 Robinson of Robinson Calcagnie, Inc. as local counsel to assist in the anticipated
10 trial of the case. Siegel Dec., ¶ 19.

11 On October 1, 2019, the Court issued an order granting Plaintiff’s motion for
12 class certification and certifying her primary class of “All persons whose Experian
13 consumer report contained an account from Delbert reflecting delinquency on a
14 loan originated by Western Sky after January 21, 2015.” Doc. 132; Siegel Dec., ¶
15 20. In so doing, the Court rejected Experian’s argument that Plaintiff lacked
16 Article III standing to sue, undertaking an in-depth analysis of the Supreme Court’s
17 decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) and the Ninth Circuit’s
18 subsequent decision in *Spokeo II*. *See id.*

19 *First*, this Court concluded that Plaintiff has standing to sue given that “[t]he
20 nature of the statutory violation that allegedly occurred here—namely, Defendant’s
21 failure to use maximum reasonable procedures to prevent the continued reporting
22 of delinquent Delbert accounts—presents a clear risk of material harm to Plaintiff’s
23 concrete interest in accurate credit reporting.” *Id.* at 6. The Court rejected
24 Experian’s argument that some additional harm beyond the statutory violation—
25 such as an adverse action decision by a creditor, employer, or insurer—is
26 necessary to confer standing. The Court further rejected Experian’s argument that
27 Plaintiff must prove standing on behalf of unnamed class members, especially
28

1 where the class is narrowly-defined to only include those individuals who were
2 harmed or exposed to the same risk of material harm as Plaintiff.

3 *Second*, this Court concluded that the proposed class met the requirements of
4 Federal Rules of Civil Procedure 23(a) and 23(b)(3), including finding that
5 common issues relating to accuracy, liability, and willfulness are subject to
6 common proof. In so finding, the Court rejected each of Experian’s arguments
7 contending that individual issues predominate.

8 To ensure notice would be provided to the Class in advance of the January
9 28, 2020, trial setting, the day after the class certification order was entered,
10 Plaintiff’s counsel sent a draft class notice to Experian’s counsel for comment or
11 approval, along with a proposed schedule for exchanging class information. After
12 the parties were unable to reach agreement, on October 14, 2019, Plaintiff moved
13 the Court to approve the class notice and set scheduling deadlines. Doc. 135;
14 Siegel Dec., ¶ 21. That same day, Experian filed a motion for reconsideration of
15 the Court’s order granting class certification, again challenging Plaintiff’s Article
16 III standing to sue. Doc. 136. Siegel Dec., ¶ 22.

17 On October 15, 2019, Experian filed a petition to the U.S. Court of Appeals
18 for the Ninth Circuit for permission to appeal this Court’s Order granting class
19 certification pursuant to Rule 23(f). *See Reyes v. Experian Info. Sols., Inc.*, Appeal
20 No. 19-80139 (“23(f) Appeal”), Doc. 1-2 (9th Cir. filed Oct. 15, 2019). Again, the
21 parties engaged in significant motion practice in a condensed timeframe. In the
22 Ninth Circuit, Plaintiff filed an answering brief opposing Experian’s Rule 23(f)
23 petition within 10 days of the filing. 23(f) Appeal, Doc. 2. Several days later,
24 Experian filed a motion for leave to file a reply brief, which Plaintiff promptly
25 opposed. 23(f) Appeal, Docs. 3, 4. Siegel Dec., ¶ 23.

26 Plaintiff also notified this Court and the Ninth Circuit of supplemental
27 authority supporting her position; in particular, the case *Nayab v. Capital One*
28

1 *Bank, N.A.*, No. 17-55944 (9th Cir. Oct. 31, 2019), where the Ninth Circuit issued
2 a published opinion reversing the district court's dismissal of a case under the
3 FCRA for lack of Article III standing. *See* Doc. 139; 23(f) Appeal, Doc. 5.

4 The parties likewise fully briefed Plaintiff's motion to approve class notice
5 and Experian's motion for reconsideration before this Court, with the pending
6 motions set for hearing on November 18, 2019. On the evening before the Court
7 issued an anticipated tentative ruling on those motions, the parties reached a
8 settlement resolving the litigation on a classwide basis. Siegel Dec., ¶ 24.

9 **E. Settlement negotiations**

10 Virtually no settlement negotiations took place until several years into the
11 litigation and only after Plaintiff prevailed on many of the key legal issues
12 presented in the case. *Id.*, ¶ 25. For example, after discovery had uncovered many
13 of the facts forming the basis for the Amended Complaint, Class Counsel presented
14 Experian with a classwide settlement demand in October 2016. No settlement
15 discussions resulted. *Id.*, ¶ 26. Following the order granting Experian's motion for
16 summary judgment, the parties participated in the Ninth Circuit's mandatory
17 mediation program, but quickly reached an impasse as to both the scope and
18 amount of relief for any settlement. *Id.*, ¶ 27.

19 Only after Plaintiff's successful appeal did the parties for the first time
20 discuss engaging a mediator to oversee settlement discussions. In August 2019, the
21 parties agreed to engage the Honorable Jay C. Gandhi of JAMS ADR, a retired
22 federal magistrate judge in this Court, to serve as the mediator in this matter.
23 Although the parties discussed their respective positions through Judge Gandhi in
24 advance of mediation, they made little progress towards settlement. *Id.*, ¶ 28.

25 On September 18, 2019, the parties participated in an all-day, in-person
26 mediation session in Irvine, California before Judge Gandhi. The parties were
27 unable to reach resolution at that session. Given the outstanding class certification
28

1 motion, Class Counsel believed the case would not be able to settle on terms they
2 deemed sufficient until after a ruling was issued on that motion—and tabled further
3 settlement discussions pending its resolution. *Id.*, ¶ 29.

4 Following the Court’s class certification order, the parties resumed
5 settlement discussions through Judge Gandhi, but only began making significant
6 progress after Experian’s motion for reconsideration and Rule 23(f) appeal were
7 fully briefed and ripe for determination. Judge Gandhi exchanged several offers
8 and counteroffers throughout this period, but the parties again were at impasse with
9 both sides entrenched in their position. *Id.*, ¶ 30. On November 13, 2019, Judge
10 Gandhi made a final double-blind mediator’s proposal that was accepted by both
11 sides. On the evening of November 14, 2019, the parties executed a binding term
12 sheet setting forth the essential terms of settlement and notified the Court. *Id.*, ¶ 31.

13 On November 15, 2019, the Court entered an order vacating pending
14 motions, pretrial deadlines, and the trial date in light of settlement. Doc. 143. That
15 same day, Experian voluntarily dismissed its 23(f) appeal. 23(f) Appeal, Doc. 6.
16 Siegel Dec., ¶ 32. After executing the term sheet, the parties negotiated the
17 Settlement Agreement and sought competitive bids from several third-party
18 providers to administer the Settlement and provide notice to the Class. Plaintiff
19 also conducted discovery on the class size, confirming it includes 56,375
20 individuals. Siegel Dec., ¶ 33. After soliciting competing bids, the parties selected
21 Angeion Group to serve as the administrator and notice provider for the
22 Settlement. *Id.*, ¶ 34.

23 **III. TERMS OF THE PROPOSED SETTLEMENT**

24 **A. The Settlement Class**

25 Under the Agreement, the Settlement Class is defined the same as the Class
26 certified by the Court in its order granting class certification. It includes the 56,375
27 individuals whose Experian consumer report contained an account from Delbert
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1 reflecting delinquency on a loan originated by Western Sky after January 21, 2015,
2 with customary exclusions. *See* Agreement, ¶ 27; Siegel Dec., ¶ 35. The
3 Agreement also reflects the Court’s prior appointment of Ms. Reyes as the “Class
4 Representative” and her counsel Norman E. Siegel and J. Austin Moore of Stueve
5 Siegel Hanson LLP as “Class Counsel.” Agreement, ¶¶ 2, 3; Siegel Dec., ¶ 36.

6 **B. Consideration**

7 The Agreement requires Experian to establish a settlement fund of
8 \$24,000,000 to resolve classwide claims in this litigation. Agreement, ¶ 34.
9 Experian is required to pay \$500,000 into the settlement fund within 7 days after
10 the Court issues an order directing class notice and pay an additional \$23,500,000
11 into the fund within 10 days after the effective date of settlement. *See id.*; Siegel
12 Dec., ¶ 37. The settlement fund is completely non-revisionary and will be used to
13 fund the various relief described below.

14 **1. Automatic cash payments to class members**

15 The settlement fund will be used to make automatic cash payments to all
16 class members who do not exclude themselves from the Settlement, without the
17 need to file a claim. Within 3 days of an order directing notice, Experian will
18 provide to the Settlement Administrator a class list containing the last known name
19 and mailing address, as well as phone numbers and email addresses where known,
20 for all class members. Agreement, ¶ 28; Siegel Dec., ¶ 38.

21 The Settlement Administrator will use the settlement class list to provide
22 class notice and issue settlement checks. All class members will receive equal
23 distributions of the settlement fund after payment is allocated for (1) the costs of
24 notice and administration; (2) any service award payment approved by the Court;
25 and (3) attorneys’ fees and costs approved by the Court. Accordingly, each class
26 member will receive a check for at least \$270 sent via U.S. Mail no later than 45
27 days after the effective date of the Settlement. Agreement, ¶ 40; Siegel Dec., ¶ 39.

1 The parties have also agreed on a robust process to ensure class members
2 receive and cash their checks. For example, if a settlement check is not cashed
3 within 60 days after the date of issue, the Settlement Administrator is authorized to
4 send an e-mail or place a telephone call to the class member reminding the class
5 member to cash the check before it expires. Agreement, ¶ 41; Siegel Dec., ¶ 40.

6 For any settlement check that is returned to as undeliverable, the Settlement
7 Administrator is required to make reasonable efforts to locate a valid address and
8 resend the settlement payment within 30 days after the check is returned. In
9 attempting to locate a valid address, the Settlement Administrator is authorized to
10 send an e-mail or place a telephone call to that class member to obtain updated
11 address information. Any replacement settlement checks issued to class members
12 shall remain valid and negotiable for 60 days from the date of their issuance.
13 Agreement, ¶ 42; Siegel Dec., ¶ 41.

14 To the extent that a settlement check is not cashed within 90 days after the
15 date of issue, the Settlement Administrator is required to undertake the following
16 actions: (1) attempt to contact the class member by e-mail and/or telephone to
17 discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make
18 reasonable efforts to locate an updated address for the class member using
19 advanced address searches or other reasonable methods; and (3) reissuing a check
20 or mailing the class member a postcard (either to an updated address if located or
21 the original address if not) providing information regarding how to obtain a
22 reissued check. Agreement, ¶ 43; Siegel Dec., ¶ 42; Angeion Dec., ¶ 21.

23 Finally, if the Settlement Administrator is notified that a class member is
24 deceased, the Settlement Administrator is authorized to reissue the settlement
25 check to the class member's estate upon receiving proof the individual is deceased
26 and after consultation with Class Counsel. Agreement, ¶ 44; Siegel Dec., ¶ 43.

1 **2. Notice and settlement administration**

2 The Settlement Fund will be used to pay all costs of settlement
3 administration and disseminating notice, which is described in the Declaration of
4 Christian J. Clapp submitted herewith. *See generally* Angeion Dec. Within 21 days
5 after receipt of settlement class list, Angeion is responsible for disseminating
6 notice to the Settlement Class via U.S. Mail. Agreement, ¶ 46. In addition to the
7 requirements described herein, Angeion’s responsibilities will include: (1)
8 creating, administering, and overseeing the settlement fund; (2) obtaining the
9 settlement class list for the purpose of disseminating notice to class members; (3)
10 sending notice to class members via U.S. mail; (4) establishing and maintaining the
11 settlement website; (5) establishing and maintaining a toll-free telephone line for
12 class members to call with Settlement-related inquiries, and answering the
13 questions of class members who call with or otherwise communicate such inquiries
14 within 24 hours; (6) responding to any mailed or emailed settlement class member
15 inquiries within 24 hours; (7) receiving and processing requests for exclusion and
16 objections from class members; (8) following the effective date, processing and
17 transmitting settlement payments to class members; and (9) providing weekly or
18 other periodic reports to Class Counsel and Experian’s Counsel as requested. *See*
19 *id.*, ¶ 49. Angeion has represented that the costs of notice and administration will
20 not exceed \$110,950. Angeion Dec., ¶ 22.

21 **3. Attorneys’ fees, expenses, and service award payment**

22 The settlement fund will be used to pay for an award of attorneys’ fees and
23 expenses and a service award payment as approved by the Court. Class Counsel
24 will move for an attorneys’ fee award not to exceed 35% of the settlement fund and
25 for reimbursement of costs and expenses not to exceed \$200,000. Agreement, ¶ 64.
26 Class Counsel will also move for a service award payment for Ms. Reyes in an
27 amount not to exceed \$15,000 for her time and effort in pursuing this action on
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1 behalf of the Class. Class Counsel will file the motion for attorneys’ fees,
2 expenses, and a service award payment no later than 21 days before the opt-out and
3 objection deadlines. Experian has agreed not to oppose these requests. *Id.*, ¶ 62.

4 **4. Residual funds**

5 The Agreement provides that there will be no reversion of any funds to
6 Experian. In the event there are funds remaining as the result of uncashed checks
7 after the Settlement Administrator has undertaken the robust procedures described
8 above to locate and contact class members, any remaining funds shall be
9 distributed as required by state law or to a non-profit organization approved by the
10 Court following distribution of settlement payments. Agreement, ¶¶ 12, 45; Siegel
11 Dec., ¶ 45.

12 **C. Proposed releases**

13 In exchange for the benefits provided under the Settlement, class members
14 will release any legal claims that may arise from or relate to the facts and claims
15 alleged in the Complaint filed in this litigation, as specified in paragraphs 20-22
16 and 59-61 of the Agreement. *See id.*, ¶¶ 20-22, 59-61; Siegel Dec., ¶ 46.

17 **IV. ISSUING NOTICE TO THE CLASS IS JUSTIFIED**

18 **A. Legal standards**

19 Under Rule 23(e)(1), as amended December 1, 2018, the Court must direct
20 notice to the class of a class action settlement upon determining that notice is
21 justified because the Court concludes it will likely be able to approve the
22 settlement and certify the class for purposes of judgment on the settlement.
23 Because the Court has already certified the Settlement Class pursuant to Rule
24 23(b)(3), the Court must determine that it is likely to conclude the settlement is
25 “fair, reasonable, and adequate” under Rule 23(e)(2). Fed. R. Civ. P. 23(e)(2).

26 Judicial review of a proposed settlement generally involves two separate
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1 hearings. Federal Judicial Center, Manual for Complex Litigation, § 21.632 (4th
2 ed. 2004). First, the court makes a preliminary fairness evaluation. *Id.* It then holds
3 a final approval hearing, where it “takes a closer look at the proposed settlement,
4 taking into consideration objections and any other further developments in order to
5 make a final fairness determination.” *True v. Am. Honda Motor Co.*, 749 F. Supp.
6 2d 1052, 1062 (C.D. Cal. 2010).

7 In determining whether a settlement is fair, reasonable, and adequate under
8 Rule 23(e)(2), the Court must “consider[] whether:

- 9 (A) the class representatives and class counsel have adequately represented
10 the class;
- 11 (B) the proposal was negotiated at arm’s length;
- 12 (C) the relief provided for the class is adequate, taking into account:
- 13 (i) the costs, risks, and delay of trial and appeal;
- 14 (ii) the effectiveness of any proposed method of distributing relief to
15 the class, including the method of processing class-member
16 claims;
- 17 (iii) the terms of any proposed award of attorney’s fees, including
18 timing of payment; and
- 19 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 20 (D) the proposal treats class members equitably relative to each other.”

21 Fed. R. Civ. P. 23(e)(2).

22 Additionally, courts in this Circuit may consider the following additional
23 factors in determining whether a settlement agreement is fair, reasonable, and
24 adequate: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity, and
25 likely duration of further litigation; (3) the risk of maintaining class action status
26 throughout the trial; (4) the amount offered in settlement; (5) the extent of
27 discovery completed, and the stage of the proceedings; (6) the experience and
28 views of counsel; (7) the presence of a governmental participant; and (8) the

1 reaction of the class members to the proposed settlement. *Staton v. Boeing Co.*, 327
2 F.3d 938, 959 (9th Cir. 2003) (citation omitted). “This is by no means an
3 exhaustive list of relevant considerations.” *Officers for Justice v. Civil Serv.*
4 *Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

5 “The relative degree of importance to be attached to any particular factor
6 will depend upon and be dictated by the nature of the claim(s) advanced, the
7 type(s) of relief sought, and the unique facts and circumstances presented by each
8 individual case.” *Id.* “It is the settlement taken as a whole, rather than the
9 individual component parts, that must be examined for overall fairness, and the
10 settlement must stand or fall in its entirety.” *Staton*, 327 F.3d at 960 (quoting
11 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

12 At this stage, “a court determines whether a proposed settlement is ‘within
13 the range of possible approval’ and whether or not notice should be sent to class
14 members.” *True*, 749 F. Supp. 2d at 1063; *see also* 4 W. Rubenstein, Newberg on
15 Class Actions § 13:10 (5th ed.) (the primary objective a court at the preliminary
16 approval stage is “to establish whether to direct notice of the proposed settlement
17 to the class, invite the class’s reaction, and schedule a final fairness hearing.”). The
18 “settlement need only be *potentially* fair.” *Acosta v. Trans Union, LLC*, 243 F.R.D.
19 377, 386 (C.D. Cal. 2007) (emphasis in original). If the proposed settlement
20 “appears to be the product of serious, informed, non-collusive negotiations, has no
21 obvious deficiencies, does not improperly grant preferential treatment to class
22 representatives or segments of the class, and falls within the range of possible
23 approval,” the court should grant preliminary approval of the class and direct
24 notice of the proposed settlement to the Class. *In re Tableware Antitrust Litig.*, 484
25 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citation omitted).

26 At any rate, “the decision to approve or reject a settlement is committed to
27 the sound discretion of the trial judge.” *Hanlon*, 150 F.3d at 1026. Ultimately,
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1 “[s]trong judicial policy favors settlements.” *Churchill Vill., LLC. v. Gen. Elec.*,
2 361 F.3d 566, 576 (9th Cir. 2004) (omission and quotation marks omitted) (quoting
3 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

4 **B. The proposed notice meets the requirements of Rule 23(c)(2)(B).**

5 The proposed class notice attached as Exhibit 1 to the Settlement Agreement
6 meets the standards of Rule 23(c)(2)(B). The notice will be sent via U.S. Mail to
7 class members’ most current addresses as reflected in Experian’s records, which is
8 the best notice practicable under these circumstances. It uses plain English in an
9 easy-to-read format that concisely explains to class members the nature of the case
10 and their options under the Settlement. It includes information such as the case
11 caption, a description of the Class, a description of the claims and the history of the
12 litigation, a description of the Settlement and the claims being released, the names
13 of Class Counsel, a statement of the maximum amount of attorneys’ fees that will
14 be sought by Class Counsel, the maximum amount Class Counsel will seek for a
15 service award at the final approval hearing, a description of the procedures and
16 deadlines for requesting exclusion and objecting to the Settlement, a link to the
17 settlement website containing relevant case documents, and the manner in which to
18 obtain further information. The notice thus satisfies the requirements of Rule
19 23(c)(2)(B). *See* Siegel Dec., ¶ 48.

20 **C. Plaintiff and Class Counsel have adequately represented the Class**
21 **and the Settlement is recommended by counsel**

22 Mr. Reyes and Class Counsel have adequately represented the interests of
23 the Class. Ms. Reyes has been an ideal class representative, demonstrated by her
24 willingness to pursue this case for four years while regularly putting the interests of
25 the class above her own. For example, Ms. Reyes produced significant discovery,
26 sat for a deposition, provided declarations in support of filings on behalf of the
27 Class, stayed in close contact with Class Counsel, and continued pursuing the case
28

1 even after a judgment was entered in Experian’s favor and costs exceeding \$12,000
2 were taxed against her. Doc. 111; Siegel Dec., ¶ 49. The result of Ms. Reyes’s
3 ongoing efforts is a meaningful recovery for more than 56,000 individuals.
4 Additionally, Ms. Reyes does not have any interests that could be viewed as
5 antagonist to the Class. As this Court previously recognized in its order granting
6 class certification, “[t]he Court isn’t aware of any conflict between Plaintiff and the
7 proposed class members, and the record doesn’t suggest any antagonism between
8 the named Plaintiff and absent class members.” *Reyes v. Experian Info. Sols., Inc.*,
9 2019 WL 4854849, at *7 (C.D. Cal. Oct. 1, 2019).

10 Class Counsel have also adequately represented the interests of the Class.
11 They have actively litigated this case from the outset—aggressively seeking
12 discovery, opposing Experian’s dispositive motions, and vigorously litigating this
13 case even after a judgement was entered in Experian’s favor. As this Court
14 previously recognized: “As for Plaintiff’s and counsel’s willingness to vigorously
15 prosecute this action on behalf of the class, the Court has no doubt. The Court
16 knows only too well how actively this case has been litigated on both sides from its
17 inception in 2016. Indeed, the present motion is before this Court only because
18 Plaintiff’s counsel successfully appealed a grant of summary judgment in
19 Defendant’s favor.” *Reyes*, 2019 WL 4854849, at *7.

20 In negotiating the proposed Settlement, the Class had the benefit of highly
21 skilled and experienced counsel who have broad experience litigating and trying
22 some of the most significant consumer class actions in the country. *See* Siegel
23 Dec., ¶¶ 50-55; *see also Reyes*, 2019 WL 4854849, at *10 (“Class counsel is amply
24 qualified to litigate this case. They have extensive experience handling class
25 actions and other complex litigation.”). “Great weight is accorded to the
26 recommendation of counsel, who are most closely acquainted with the facts of the
27 underlying litigation.” *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*,

1 221 F.R.D. 523, 528 (C.D. Cal. 2004) (quotations omitted). Class Counsel strongly
2 recommend approval of the proposed Settlement because it provides substantial,
3 guaranteed benefits to the Class, especially when weighed against the expense,
4 risks, delays, and uncertainties of trial and post-trial proceedings. Siegel Dec., ¶ 56.

5 **D. The settlement negotiations were at arm’s length**

6 “There is a presumption of fairness when a proposed class settlement, which
7 was negotiated at arm’s-length by counsel for the class, is presented for Court
8 approval.” Herbert B. Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS §
9 11.41 (4th ed. 2002). There is no doubt that the proposed settlement was reached
10 through arm’s length negotiations. As noted above, there were no settlement
11 negotiations at all until after Plaintiff prevailed on an appeal addressing novel
12 issues under the FCRA. Following the appeal, negotiations did not significantly
13 progress until after Plaintiff prevailed on her motion for class certification, which
14 implicated many hotly-contested legal issues, including Article III standing to sue.
15 Additionally, settlement discussions were conducted through an experienced and
16 capable mediator, the Honorable Jay C. Gandhi, who can corroborate the
17 adversarial nature of the negotiations. *See Williams v. Brinderson Constructors,*
18 *Inc.*, 2017 WL 490901, at *2 (C.D. Cal. Feb. 6, 2017) (quotations omitted) (“The
19 assistance of an experienced mediator in the settlement process confirms that the
20 settlement is non-collusive.”). There was no collusion or fraud in the hard-fought
21 negotiations that led to this Settlement.

22 **E. The relief provided under the Settlement is fair and adequate**

23 **1. The stage of proceedings and extent of discovery completed**

24 “A court is more likely to approve a settlement if most of the discovery is
25 completed because it suggests that the parties arrived at a compromise based on a
26 full understanding of the legal and factual issues surrounding the case.” *In re Toys*
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1 *R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*,
2 295 F.R.D. 438, 454 (C.D. Cal. 2014) (quotations omitted). As this Court is aware,
3 the Settlement was reached well after the close of discovery, only after a class was
4 certified, and just over two months before a class trial was set to commence. Given
5 the late stage of the proceedings, there is little doubt that Plaintiff and Class
6 Counsel gained sufficient information through nearly four-years of litigation to
7 make an informed decision regarding Settlement. Siegel Dec., ¶ 57.

8 **2. The cost, risks, and delay of trial and appeal**

9 The expense, complexity, and duration of litigation are important factors
10 considered in evaluating the reasonableness of a settlement and in this case weigh
11 in favor of settlement approval. *See Churchill Village, LLC v. General Electric*,
12 361 F.3d 566, 577 (9th Cir. 2004).

13 Even though Plaintiff succeeded in certifying the Class, she faced risks in
14 maintaining class action status throughout the trial. Experian moved for
15 reconsideration of the Court's order granting class certification and petitioned the
16 Ninth Circuit to review the order granting class certification under Rule 23(f). A
17 ruling against Plaintiff in either instance could result in zero recovery for the Class.
18 Siegel Dec., ¶ 58.

19 If Plaintiff prevailed, she still faced the task of proving liability on a
20 classwide basis at trial, which is a time-consuming and risky proposition. While
21 Class Counsel strongly believe in the merits of the claims, the facts forming the
22 basis for liability in this case are novel and untested. Moreover, liability under the
23 FCRA is not strict—it requires a finding of negligence or willful failure to comply
24 with the statute. 15 U.S.C. §§ 1681n and 1681o. Plaintiff would likely be called
25 upon to present significant witness and expert testimony in order to prove her case,
26 entailing further risks to Plaintiff's and the Class's chances of recovery. *Id.*, ¶ 60.

27 Proving damages also presents a risk. Under the FCRA, a prevailing plaintiff
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1 in a class action may obtain actual damages or between \$100 and \$1,000 in
2 statutory damages for each class member. 15 U.S.C. § 1681n(a)(1)(A). Because
3 Plaintiff is not pursuing actual damages, she would have to show Experian *willfully*
4 violated the statute or otherwise forego recovery altogether. And even if the jury
5 agrees that Experian's conduct was willful, convincing a jury to award damages on
6 the higher end of the statutory range is not a foregone conclusion. Siegel Dec., ¶
7 60. As recognized by one district court:

8 Even if the Plaintiffs were to prevail on their FCRA claims at trial, it
9 is far from certain that a jury would award the maximum of \$1,000 to
10 each Class member, especially given the statutory factors that have to
11 be taken into account in making such an award, including frequency
12 and persistence of noncompliance with the statute, nature of the
 noncompliance, and the extent to which noncompliance was willful or
 negligent.

13 *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 680 (D. Md. 2013)
14 (internal citations omitted). Of course, even if Plaintiff prevailed at trial, Experian
15 would likely appeal the verdict which could delay recovery for months or years.

16 By contrast, the settlement provides significant cash benefits to the Class in
17 the form of FCRA damages. At this stage of litigation, an automatic check of at
18 least \$270 per class member without having to file a claim or take any other action
19 represents a substantial benefit to the Class. Siegel Dec., ¶ 61. In fact, this
20 resolution is far superior to many other publicly-reported FCRA settlements within
21 this Circuit considered on a per-class member basis. *See, e.g., Smith v. A-Check*
22 *Am. Inc.*, 2017 WL 1550158, at *6 (C.D. Cal. Mar. 1, 2017) (FCRA settlement
23 providing for approximately \$88 per class member); *Syed v. M-I LLC*, 2016 WL
24 310135, at *8 (E.D. Cal. Jan. 26, 2016) (FCRA settlement providing for
25 approximately \$16 per class member); *Kirchner v. Shred-It USA Inc.*, 2015 WL
26 1499115, at *5 (E.D. Cal. Mar. 31, 2015) (FCRA settlement providing for average
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1 of \$45.55 per class member); *In re Toys R Us FACTA Litig.*, 295 F.R.D. at 453-54
2 (“A \$5 or \$30 award, therefore, represents 5% to 30% of the recovery that might
3 have been obtained. This is not a *de minimis* amount. Given the likelihood that
4 plaintiffs would have been unable to prove actual damages and the risk that they
5 would have been unable to prove willfulness and recover any damages at all, the
6 court finds that the amount of the settlement weighs in favor of approval.”).

7 Additionally, every class member is treated identically under the Settlement,
8 alleviating any concerns that certain class members could receive preferential
9 treatment. *See* Fed. R. Civ. P. 23(e)(2)(C) (court should consider whether
10 settlement “treats class members equitably relative to each other.”).

11 As set forth above, the Settlement provides significant benefits to the Class
12 without the risks, costs, and delays inherent in continued litigation, trial, and
13 appeal of Plaintiff’s claims.

14 **3. The means of distributing relief to class members is effective**

15 Cash payments will be distributed to members of the Class in the most
16 efficient means available. All class members who does not exclude themselves will
17 automatically receive a check for at least \$270 without having to take any
18 affirmative action under the Settlement. If a class member does not cash her check
19 within 60 days, the Settlement Administrator is tasked with proactively reaching
20 out to the class member to remind her to cash her check or obtain updated
21 information in the manner described above. Only after all reasonable efforts to
22 reach class members have been exhausted will funds available from uncashed
23 checks be provided to a non-profit recipient approved by the Court.

24 **4. The terms of the proposed attorneys’ fee award, including the
25 timing of payment**

26 Class Counsel will seek their fee as a percentage of the \$24,000,000
27 settlement fund created for the Class and seek reimbursement of litigation expenses
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1 up to \$200,000. Experian has agreed not to oppose any fee request that is not more
2 than 35% of the fund. Class Counsel will file their fee and expense motion at least
3 21 days before the opt-out and objection deadline and promptly post the filing on
4 the settlement website so that class members will have the opportunity to present
5 their views on the fee request. Importantly, the Settlement is not conditioned upon
6 the Court's approval of the attorneys' fee and expense award. Agreement, ¶ 5;
7 Siegel Dec., ¶¶ 62-64.

8 The Agreement's provision for an attorneys' fee award from the Settlement
9 Fund is fair. "In a certified class action, the court may award reasonable attorney's
10 fees and nontaxable costs that are authorized by law or by the parties' agreement."
11 Fed. R. Civ. P. 23(h). "Where a settlement produces a common fund for the benefit
12 of the entire class, courts have discretion to employ either the lodestar method or
13 the percentage-of-recovery method." *In re Bluetooth Headset Prod. Liab. Litig.*,
14 654 F.3d 935, 942 (9th Cir. 2011). But this "discretion must be exercised so as to
15 achieve a reasonable result." *Id.* Courts generally first calculate a fee award using
16 the percentage method, and then use the lodestar method as a "check" on that
17 amount. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.
18 2002). Class Counsel will argue that the percentage-of-recovery method is the
19 appropriate method for determining attorneys' fees in this case. Siegel Dec., ¶ 63.
20 While a 25% fee award is often cited as the benchmark for common fund cases in
21 the Ninth Circuit, "[s]election of the benchmark or any other rate must be
22 supported by findings that take into account all of the circumstances of the case."
23 *Vizcaino*, 290 F.3d at 1048.

24 Class Counsel anticipate showing that an attorneys' fee award of up to 35%
25 of the settlement fund is appropriate here given a number of factors, including the
26 substantial risk Plaintiff and Class Counsel assumed in pursuing a novel legal
27 theory against a highly sophisticated party with experienced counsel, as well as the
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1 time, effort, and skill Class Counsel brought to this litigation in overcoming an
2 adverse judgment to achieve one of the largest inaccurate reporting settlements in
3 history. Siegel Dec., ¶ 65; *see also Syed v. M-I, L.L.C.*, 2017 WL 3190341, at *6
4 (E.D. Cal. July 27, 2017) (“Reasons to vary the benchmark award may be found
5 when counsel achieves exceptional results for the class, undertakes ‘extremely
6 risky’ litigation, generates benefits for the class beyond simply the cash settlement
7 fund, or handles the case on a contingency basis.”). Pursuant to the Settlement
8 Agreement, the payment for attorneys’ fees and expenses will be issued no later
9 than 45 days after the effective date of Settlement, the same period which class
10 members will be issued their settlement checks. *See* Agreement, ¶¶ 40, 64; Siegel
11 Dec., ¶ 66.

12 While Class Counsel will provide a more thorough analysis of the
13 reasonableness of its forthcoming motion for attorneys’ fees and reimbursement of
14 expenses, at this stage, the Court can conclude that it is likely to approve the
15 Settlement for purposes of sending notice to the class, even if it has not yet
16 concluded whether and in what amount it would award for attorneys’ fees and
17 expenses.²

18 **F. There is no agreement required to be identified under Rule 23(e)(3)**

19 Under Rule 23(e)(3), “[t]he parties seeking approval must file a statement
20 identifying any agreement made in connection with the proposal.” There is no
21 agreement between the parties, except those expressly set forth in the Settlement
22 Agreement. Siegel Dec., ¶ 68.

23
24 ² Similarly, Class Counsel will request a service award payment of up to \$15,000
25 for Demeta Reyes, which they contend is reasonable considering the time and
26 effort Ms. Reyes expended in this litigation on behalf of the class. Siegel Dec., ¶
27 67; *see also Syed*, 2017 WL 3190341, at *9 (approving incentive awards of
28 \$15,000 and \$20,000 for named plaintiffs).

G. The Court should set settlement deadlines and schedule a final approval hearing

In connection with directing class notice, the Court must set a final approval hearing date, dates for mailing notice, and deadlines for opting-out or objecting to the Settlement and filing papers in support of the Settlement. Plaintiff proposes the following schedule:

<u>EVENT</u>	<u>TIMING</u>
Deadline for Experian to disseminate CAFA notices	January 10, 2020
Deadline for Experian to provide Settlement Class List to Settlement Administrator pursuant to paragraph 46 of the Settlement Agreement	[3 days after order permitting issuance of notice]
Deadline for the Settlement Administrator to mail Court-approved Notice to Settlement Class pursuant to paragraph 46 of the Settlement Agreement	[21 days after order permitting issuance of notice]
Notice deadline	[30 days after order permitting issuance of notice]
Deadline to file Plaintiff’s motion for attorneys’ fees, expenses and service award payment	[21 days before objection and opt-out deadline]
Deadline for Plaintiffs’ Counsel to file motion for final approval of settlement and responses to any timely submitted Class member objections	[21 days prior to final approval hearing]
Objection deadline	[30 days after notice deadline]
Opt-out deadline	[30 days after notice deadline]
Final approval hearing	[At least 120 days after order permitting issuance of notice]

V. CONCLUSION.

For the foregoing reasons, Plaintiff’s motion should be granted.

1 Dated: December 31, 2019

2 By: /s/ Norman E. Siegel
3 Norman E. Siegel (*pro hac vice*)
4 J. Austin Moore (*pro hac vice*)
5 STUEVE SIEGEL HANSON LLP
6 460 Nichols Road, Suite 200
7 Kansas City, MO 64112
8 Tel: 816-714-7100
9 siegel@stuevesiegel.com
10 moore@stuevesiegel.com

11 Daniel S. Robinson (SBN 244245)
12 ROBINSON CALCAGNIE, INC.
13 19 Corporate Plaza Drive
14 Newport Beach, CA 92660
15 Tel: 949-720-1288
16 [drobinson@robinsonfirm.com](mailto:drobenson@robinsonfirm.com)

17 Jason S. Hartley (SBN 192514)
18 HARTLEY LLP
19 101 West Broadway, Suite 820
20 San Diego, CA
21 Tel: 619-400-5822
22 hartley@hartleyllp.com

23 *Attorneys for Plaintiff and the Class*
24
25
26
27
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