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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHERI DODGE and NEIL DODGE, and RAM AGRAWAL and SARITA AGRAWAL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PHH CORPORATION, a Maryland corporation; REALOGY HOLDINGS CORP., a Delaware corporation; PHH HOME LOANS LLC, a Delaware limited liability company; PHH MORTGAGE CORPORATION, a New Jersey corporation; RMR FINANCIAL, LLC, a California limited liability company; NE MOVES MORTGAGE LLC, a Massachusetts limited liability company; PHH BROKER PARTNER CORPORATION, a Maryland corporation; REALOGY GROUP LLC, a Delaware limited liability

Case No. 8:15-CV-01973-FMO-AFM

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT CLASS, CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF CLASS NOTICE

Date: September 14, 2017
Time: 10:00 a.m.

Judge: Hon. Fernando M. Olguin
Ctrm: 6D, 6th Floor – 1st Street

company; REALOGY INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company; TITLE RESOURCE GROUP LLC, a Delaware limited liability company; WEST COAST ESCROW COMPANY, a California corporation; TRG SERVICES ESCROW, INC., a Delaware corporation; EQUITY TITLE COMPANY, a California corporation; NRT LLC, a Delaware limited liability company; REALOGY SERVICES GROUP LLC, a Delaware limited liability company; REALOGY SERVICES VENTURE PARTNER LLC, a Delaware limited liability company,

Defendants.

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Plaintiffs Sheri Dodge, Neil Dodge, Ram Agrawal, and Sarita Agrawal (collectively, "Class Representatives"), individually and on behalf of all others similarly situated, seek: (1) certification of the proposed class for settlement; (2) preliminary approval of the proposed class action settlement; (3) appointment of class representatives and class counsel; (4) appointment of the notice and settlement administrator; (5) approval of the class notice and related settlement administration documents; and (6) approval of the proposed class settlement administrative deadlines and procedures, including the proposed final fairness hearing date and procedures regarding objections, exclusions and submitting Claim Forms.

I. INTRODUCTION

On November 25, 2015, Plaintiffs filed a putative class action against Defendants 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 LLC ("TRG"), West Coast Escrow Company, TRG Services Escrow, Inc., Equity Title Company, NRT LLC, PHH Home Loans, LLC, RMR Financial, LLC, and NE Moves Mortgage LLC (collectively, the "Defendants") alleging violations of section 8(a) of the Real Estate and Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607(a), 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").

Specifically, Plaintiffs alleged Defendants entered into an improper scheme of providing cross-referrals, preferences, exclusivities, and other things of value to and among themselves, often through their many affiliates and subsidiaries, for settlement services related to federally-related mortgage loans. This scheme encompassed an ABA between PHH and Realogy called PHH Home Loans, and a Strategic Relationship Agreement ("SRA") between PHH and Realogy, which bound PHH to

refer all title insurance and settlement services to Realogy's subsidiary, TRG, in exchange for monetary and nonmonetary referral fees and kickbacks, including what was a right of first refusal to purchase the mortgage servicing rights for PHH Home Loans-originated mortgages. PHH directed various banking institutions, known as the Private Label Solutions ("PLS") Partners, to refer title insurance and other settlement services to TRG without notifying consumers of the existence of PHH's affiliation with TRG or the fact that PHH was required to have the PLS Partners refer title insurance and other settlement services to TRG. These agreements constituted per se violations of RESPA, which bans the payment or acceptance of "any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." 12 U.S.C. § 2607(a).

As detailed below, the Parties litigated this Action for over 14 months before engaging in settlement discussions at a January 31, 2017 mediation. On May 19, 2017, the Parties reached an agreement to settle for $17,000,000 at a settlement conference before the Honorable Jay C. Gandhi. Plaintiffs request that the Court preliminarily approve the Settlement so members of the proposed Class can receive notice about this Action, the proposed Settlement, and their rights regarding the Settlement.

II. HISTORY OF THE LITIGATION

RESPA—particularly its prohibition on referral fees and kickbacks in 12 U.S.C. § 2607—was designed to protect consumers "from unnecessarily high settlement charges caused by certain abusive practices." 12 U.S.C. § 2601(a). One goal of RESPA was the "elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services." 12 U.S.C. § 2601(b).

Section 8(a) of RESPA prohibits certain business referral fees and provides:

> No person shall give and no person shall accept any fee, kickback, or *thing of value* pursuant to any *agreement or understanding*, oral or otherwise, that business incident to or a part of a real estate settlement

> service involving a *federally related mortgage loan* shall be referred to any person.

12 U.S.C. § 2607(a) (emphasis added).

In response to RESPA, many settlement service providers abandoned the classic kickback and instead devised business arrangements where one settlement service provider maintained an enhanced relationship with a second provider of a different settlement service, through which each service provider captured the clients of the other. In turn, Congress enacted two amendments to section 8 to address instances in which no direct kickback or referral fee is paid. First, Congress changed the calculation of damages from three times the amount of the kickback or referral fee to three times "any charge paid" for the settlement service. 12 U.S.C. § 2607(d)(2). Second, Congress severely limited the existence of ABAs. 12 U.S.C. § 2607(c)(4).

A. Overview of Plaintiffs' Allegations

Plaintiffs alleged that Defendants entered a series of illegal contracts to refer to one another "settlement services" in exchange for items of value and other contractual benefits (*i.e.*, kickbacks), which constitute per se violations of RESPA. *See* Declaration of Daniel S. Robinson in Support of Motion for Preliminary Approval ("Robinson Decl."), ¶ 7; *see also* Dkt. 115, ¶¶ 2-12. Specifically, Plaintiffs alleged PHH and Realogy created an ABA (PHH Home Loans), which was designed to facilitate the payment of unlawful referral fees, kickbacks and things of value in exchange for referrals of settlement services among Defendants. Robinson Decl. ¶ 8.

Around this time, PHH entered into an SRA with Cendant Corporation, the former parent of both PHH and Realogy, that provided contractually mandated exchanges of value in violation of RESPA. First, Plaintiffs alleged that, prior to an amendment that occurred on October 21, 2015, PHH was bound to refer all title insurance and settlement services to Realogy's subsidiary, TRG. Each customer of PHH Home Loans was also referred to TRG for title insurance and other settlement services. In return, PHH received a variety of monetary and nonmonetary referral fees

and kickbacks via its ownership and control of the ABA and PHH's relationship with Realogy. Pursuant to the SRA, PHH Home Loans was also the exclusively recommended mortgage lender for Realogy's vast real estate brokerage network. Robinson Decl. ¶ 9.

Second, PHH managed all aspects of the mortgage process for the PLS Partners. Under this line of business and the SRA, PHH directed the PLS Partners to refer title insurance and other settlement services to Realogy's subsidiary, TRG, without disclosing to consumers the existence of PHH's affiliation with TRG or the fact that PHH was required to have the PLS Partners refer title insurance and other settlement services to TRG. TRG charged these borrowers for the referred services and PHH received kickbacks and fees for the referrals made in the form of, among other things, the right of first refusal over the purchase of mortgage servicing rights. Robinson Decl. ¶ 10. Defendants have denied these allegations.

RESPA provides borrowers with a private right of action and imposes joint and several liability against each person involved in a kickback violation for three times the full amount paid for the referred settlement service. 12 U.S.C. § 2607(d)(2); *see Edwards v. First Am. Corp.,* 610 F.3d 514, 516-17 (9th Cir. 2010) (plaintiffs need not show that they were overcharged for the settlement service in order to recover treble damages based on the full amount paid). Moreover, courts have upheld the use of federal class actions to enforce kickback violations under RESPA. *See, e.g., Edwards v. First Am. Corp.,* 798 F.3d 1172, 1185 (9th Cir. 2015), *cert. dismissed sub nom. First Am. Fin. Corp. v. Edwards*, 136 S. Ct. 1533 (2016) (reversing denial of class certification for alleged kickback violations under RESPA).

B. The Litigation

On November 25, 2015, after extensive pre-litigation investigation, witness interviews, and review of documents, Plaintiffs Lester L. Hall, Jr., and Timothy L. Strader, Sr. and Susan M. Strader, as trustees of the T/S Strader Family Trust, individually and on behalf of a Class of all similarly situated residential mortgage

borrowers and purchasers of settlement services from Defendants, filed a Complaint. Robinson Decl. ¶ 12. On December 10, 2015, Plaintiffs filed their First Amended Complaint (Dkt. 10), which Defendants moved to dismiss on February 5, 2016 (Dkt. 46) on the basis that Plaintiffs failed to plead sufficient facts for equitable tolling of RESPA's one-year statute of limitations. Following the Court's granting of Defendants' motion to dismiss on April 5, 2016, Plaintiffs filed their Second Amended Complaint on April 21, 2016 (Dkt. 67), and, pursuant to a joint stipulation granted by the Court, Plaintiffs subsequently filed their Third Amended Complaint on May 12, 2016 (Dkt. 74). Defendants again moved to dismiss on May 26, 2016 (Dkt. 75) on the same grounds. In successfully defending against the motion to dismiss, Plaintiffs argued that under the appropriate Ninth Circuit equitable tolling standard, Plaintiffs had met their burden. The Court denied Defendants' motion to dismiss on October 6, 2016, finding that Defendants' contention regarding equitable tolling for the statute of limitation was "better resolved in either a motion for summary judgment or trial" (Dkt. 90). *Id.*, ¶ 13.

After Defendants filed Answers to the Third Amended Complaint (Dkt. 91-93), the Parties continued a lengthy and highly contested meet and confer regarding the scope of discovery.[1] Defendants ultimately produced over 35,000 pages of documents

[1] Plaintiffs' discovery, which included 71 Requests for Production of Documents, was aimed at understanding the schemes and business relationships, including the reasons for them, alleged in Plaintiffs' Fourth Amended Complaint. Specifically, Plaintiffs were seeking exemplars of the different forms, disclosures, and contracts that Defendants provided to residential homebuyers; Defendants' policies, practices, and procedures related to their marketing, referral, and provision of residential mortgage loans and settlement services; Defendants' policies, practices, and procedures related to their operation of the PHH-Realogy-PHH Home Loans joint venture and PHH's PLS Partner business; documents relating to the nature and extent of Defendants' joint venture or relationship agreements amongst themselves, including communications regarding amendments to the agreements in September and October 2015; communications regarding Defendants' SEC filings in November 2015 that disclosed the amendments to Defendants' agreements; communications regarding Defendants'

to Plaintiffs. *Id.*, ¶ 14. On January 31, 2017, the Parties participated in a mediation with Viggo Boserup, Esq. Although the Parties did not reach an agreement to settle at that time, they continued to participate in negotiations regarding discovery. On May 19, 2017, the Parties participated in a settlement conference before the Honorable Jay C. Gandhi, which resulted in an agreement to settle this Action. *Id.*, ¶ 15. Through those arm's-length negotiations, the original named plaintiffs agreed to settle their individual claims and the Parties stipulated to the filing of the Fourth Amended Complaint, which was filed on July 31, 2017 (Dkt. 115), that amended certain claims and added Sheri Dodge, Neil Dodge, Ram Agrawal, and Sarita Agrawal as plaintiffs (Dkt. 108). Following the settlement conference, the Parties engaged in confirmatory discovery, including document production, written discovery, and depositions to, among other things, confirm Class Members and the amount each Class Member paid for title-, escrow-, and closing-related settlement services. *Id.*, ¶ 16.

III. TERMS OF THE SETTLEMENT

A. The Class Definition

The Settlement Class is defined as follows:

> All borrowers who, on or after November 25, 2014 and on or before November 25, 2015, 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 paid title-, escrow-, and 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.

Through confirmatory discovery, the Parties have determined that Defendants'

RESPA compliance, including internal communications related to government investigations and that led up to Defendants' amendment of the SRA; and documents showing settlement amounts charged to putative Class Members. *Id.*, ¶ 14.

records reflect 32,221 transactions fall within the Settlement Class definition.[2] *Id.*, ¶ 19. Borrowers in these transactions are also referred to as "Class Members" or "Authorized Claimants". The proposed Class Representatives are Sheri Dodge, Neil Dodge, Ram Agrawal, and Sarita Agrawal. Each of these proposed Class Representatives are named in the Fourth Amended Complaint.

B. The Settlement Benefits

The proposed Settlement requires Defendants to pay $17,000,000 into a settlement fund that will be used to make cash payments to Class Members. Subject to the Court's approval, a portion of the Settlement Fund will be used to pay Class Counsel's attorneys' fees and reasonable Litigation Expenses, including any incentive awards to the Class Representatives. A portion of the Settlement Fund will be used to pay taxes due on any interest earned by the Settlement Fund, if necessary, and any notice and claims administration expenses permitted by the Court. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to Class Members. *Id.*, ¶ 21; *see also* Stipulation of Settlement ("Stipulation"), ¶ IV.D.1.

1. Plan of Distribution

The Parties determined the amount of title-, escrow-, and closing-related charges each Class Member paid to TRG or its affiliates.[3] The Notice will identify a

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[2] Defendants' records also reflect 1,014 transactions where (1) the mortgage loan closed on or after November 25, 2014 and on or before November 25, 2015; (2) the mortgage loan was originated by PHH; and (3) TRG provided, *but Defendants' records show the borrower did not pay for*, title insurance or other settlement services in connection with the loan. Although these additional 1,014 transactions do not fall within the Settlement Class, there is a possibility that those borrowers may have paid for title insurance or other settlement services. As such, and in an abundance of caution, the Parties have proposed providing notice to those borrowers. Robinson Decl., ¶ 19.

[3] This amount, which the Parties refer to as the "Presumptive Allowed Claim", was determined from Defendants' business records maintained and used in the ordinary

Class Member's Presumptive Allowed Claim. Class Members can submit a Claim Form and sufficient documentation to demonstrate that the title-, escrow-, and closing-related charges they paid to TRG are different than the amount of the Presumptive Allowed Claim. Claim Forms must be postmarked or submitted electronically by a date set by the Court that is no later than 90 calendar days after the mailing of the Notice (the "Bar Date"), signed under penalty of perjury and supported by documentation. Robinson Decl., ¶ 22.

After the Bar Date, the Claims Administrator will determine each Class Member's Final Allowed Claim, which will be combined to calculate the Aggregate Final Allowed Claims. Each Class Member will be entitled to receive a portion of the Net Settlement Fund that represents the same percentage of the Net Settlement Fund as the Class Member's Final Allowed Claim represents as a percentage of the Aggregate Final Allowed Claims ("Distribution 1"). Within 60 days of the Effective Date, the Claims Administrator shall disburse Distribution 1.[4] *Id.*, ¶ 23.

To the extent any monies remain in the Net Settlement Fund more than 150 days after Distribution 1 ("Remaining Net Settlement Fund"), a subsequent Settlement Payment ("Distribution 2") will be made to Authorized Claimants who have cashed their Distribution 1 checks ("Distribution 2 Participants") so long as the

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course of their business activities. This amount reflects the title- and escrow-related charges paid by the Class Member at closing as shown either in the 1100 series lines of the HUD-1 Settlement Statement or in the section in the Closing Disclosure form corresponding to the title and escrow charges paid by the Class Member. *Id.*, ¶ 22.

[4] While a Class Member's share of the Net Settlement Fund will depend on (i) the number of Class Members who exclude themselves from the Class, (ii) the amount of administrative costs, including the costs of notice, (iii) the amount awarded by the Court for Class Counsel's attorneys' fees, reimbursement of Litigation Expenses, and service awards to the Class Representatives, and (iv) the amount of a Class Member's Final Allowed Claim, Plaintiffs estimate that Class Members will receive between 15% and 20% of their Presumptive Allowed Claim. *Id.*, ¶ 23.

average check amount (Remaining Net Settlement Fund divided by the number of Distribution 2 Participants) is equal to or greater than $20.00.[5] The Distribution 2 check amount for each Distribution 2 Participant will be calculated by dividing the amount of each respective Distribution 1 check by the total amount of all Distribution 1 checks cashed (generating each Distribution 2 Participant's individual percentage of Distribution 1 checks cashed), and multiplying each Distribution 2 Participant's individual percentage against the Remaining Net Settlement Funds. *Id.*, ¶ 24.

2. Notice to Class Members

Pursuant to Federal Rule of Civil Procedure 23(e)(4), the Claims Administrator will provide direct mail Notice to Class Members and Defendants' additional 1,014 customers who presumptively do not fall within the Settlement Class based on Defendants' records showing no amounts paid for title-, escrow-, and closing-related services. A copy of the proposed Notice is attached to the Stipulation of Settlement ("Stipulation") as Exhibit A-1. While the number of recipients of the proposed Notice exceeds the number of Class Members, the Parties propose sending Notice to individuals that likely fall outside the Settlement Class. and, because the Defendants have recent mailing address for all of these individuals, the Parties propose only sending out Notice via direct mailing.

C. Proposed Class Representative Incentive Awards

Pursuant to the Settlement Agreement and subject to Court approval, Defendants have agreed not to oppose the payment of $2,500 in incentive awards each to Sheri Dodge, Neil Dodge, Ram Agrawal, and Sarita Agrawal for their service as Class Representatives. *See* Stipulation, Exh. A-1.

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[5] If the average check in a later distribution would be less than $20.00, the Remaining Net Settlement Fund would be distributed to the designated *cy pres* recipient, Consumer Watchdog, a respected non-profit group that advocates for taxpayer and consumer interests. *Id.*, ¶ 24.

D. Attorneys' Fees and Expenses

Pursuant to the Stipulation, Class Counsel will file, and Defendants have agreed not to oppose, a Fee and Expense Application that seeks an amount no more than 30% of the Settlement Fund ($5,100,000). *See* Stipulation, ¶ IV.E.2. This agreement on fees, which would be paid out of the Settlement Fund, was negotiated after an agreement was reached on all material terms of the Settlement. Robinson Decl., ¶ 21. The Proposed Order for Preliminary Approval (Exhibit A) provides the Fee and Expense Application will be filed prior to the final approval hearing. Class Members will have the opportunity to comment on or object to the fee petition under Rule 23(h) of the Federal Rules of Civil Procedure. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir. Cal. 2010).

E. The Notice and Claims Administrator

The Parties have stipulated to, and propose that, KCC, LLC, which is an experienced and reputable national class action administrator, serve as Claims Administrator to provide notice, administer and make determinations regarding claims forms, process settlement payments, and provide other services to implement the Settlement. The costs of the Claims Administrator will be paid out of the Settlement Fund, and KCC, LLC has agreed to cap its fees at $160,000.

IV. PRELIMINARY APPROVAL IS APPROPRIATE

A. Legal Standards

"[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).

1. 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 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 (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). "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.

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 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 (2011). The party seeking class certification bears the burden of demonstrating that the proposed class meets the requirements of Rule 23. *Id.* at 131 ("Rule 23 does not set forth a mere pleading standard. 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.").[6]

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[6] Rule 23(b)(3) considerations regarding manageability are obviated by settlement. *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.").

2. Fairness of the Proposed 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." *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 the] 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).

Approval of a class action settlement requires a two-step process – preliminary approval followed by final approval. *See 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."); *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."). For preliminary approval, 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).

B. Discussion

1. Certification—The Rule 23(a) Requirements are Satisfied

a. The Class is Sufficiently Numerous

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a); *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). "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 also 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 as Defendants' records reflect 32,221 transactions fall within the Settlement Class. Robinson Decl., ¶ 19.

b. There are Common Questions of Law and Fact

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). The common questions must "generate common answers" that are "apt to drive the resolution of the

litigation." *Dukes*, 564 U.S. at 350 (2011) (citation omitted). Commonality is thus satisfied where the claims of all class members "depend upon a common contention . . . of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* Commonality "requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Id.* (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982). "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).

In *Edwards.*, 798 F.3d at 1176,78, 1183, a RESPA case, the Ninth Circuit recognized the Rule 23(a) commonality requirement was met where plaintiffs alleged the defendant title insurer engaged in a scheme of purchasing minority interests in title agencies in exchange for the agencies' agreement to refer title insurance business to the defendant. Here, the commonality element is easily satisfied. Each Class Member's claim arises from the same alleged conduct, namely, the illegal exchange of referral fees and kickbacks by and between PHH and Realogy, where Realogy brokerage businesses were obligated to refer their customers exclusively to PHH Home Loans for mortgage loans, and, in return, PHH was required to refer all settlement services back to Realogy's subsidiaries. As a result, the common questions that drove this case included: whether Defendants engaged in the alleged conduct; the nature of Defendants' relationships to each other; the nature of the benefits exchanged by PHH and Realogy under the terms of the SRA and otherwise; whether Defendants gave and accepted benefits in exchange for the referral of settlement services, and if so, the nature and extent of such benefits and services; and whether Defendants' relationships with each other and exchange of benefits violated section 8 of RESPA. Thus, the Rule 23(a) commonality requirement is satisfied for settlement purposes.

c. Class Representatives' Claims are Typical

Rule 23(a)(3) requires that class representatives' claims be typical of those of the class. "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). Typicality is satisfied if the class representative's claim arises "from the same course of conduct that gives rise to the claims of unnamed class members" to bring individual actions. *Thomas v. Baca*, 231 F.R.D. 397, 401 (C.D. Cal. 2005); *Hanlon*, 150 F.3d at 1020 (claims typical if "reasonably co-extensive with those of absent class members" although "they need not be substantially identical."). "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 plaintiffs, 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 Class Representatives are typical of the claims of the Class Members as the claims arise from the same nucleus of facts and are based on the same legal theory, *i.e.*, that Defendants engaged in an illegal referral for kickback scheme in violation of RESPA. Plaintiffs, like all Class Members, closed on mortgage loans on or after November 25, 2014 and on or before November 25, 2015 from PHH, and paid for title-, escrow-, and closing-related services from TRG. Robinson Decl., ¶¶ 6, 7-10.

d. Class Representatives and Class Counsel Adequately Represent Class Members

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class," which requires (1) that the class representative not have conflicts of interest with the proposed class; and (2) that class representative be represented by qualified and competent counsel. *Dukes*, 603 F.3d at 614. "Adequate representation depends on, among other factors,

an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis*, 657 F.3d at 985. The adequacy requirement is similar to the Rule 23(a)(3) typicality requirements: if a named plaintiff's claims are typical of the class members' claims, it is unlikely that there will be a disabling conflict of interest between the named plaintiff and the class. *See Amchem*, 521 U.S. at 625-26 ("The adequacy inquiry under Rule 23(a) . . . serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and possess the same interest and suffer the same injury as the class members.").

The adequacy requirement is met here. The Class Representatives have no conflicts of interest with Class Members, as they have no individual claims separate from the Class claims. Where the claims of the class members and the class representative are coextensive, as is the case here, there is no conflict. *Gen. Tel. Co.*, 457 U.S. at 157-58, fn. 13. The Class Representatives have read and understand the allegations of the Fourth Amended Complaint, and are willing to prosecute this matter on behalf of the class. *See* Sheri Dodge Decl., ¶¶ 15-17; Neil Dodge Decl. ¶ 19-21; Ram Agrawal Decl. ¶¶ 9-11; Sarita Agrawal Decl. ¶¶ 9-11. The Class Representatives have also been very involved in the Action, providing valuable insight and facts to permit Class Counsel to effectively litigate this Action, perform confirmatory discovery, and negotiate this Settlement. They have also spent considerable time reviewing their loan files and meeting with Class Counsel regarding their claims, all of which was incorporated in the Fourth Amended Complaint. Further, all Class Representatives were clearly advised of and understand their obligations as Class Representatives. *See* Sheri Dodge Decl., ¶¶ 13-17; Neil Dodge Decl. ¶ 17-21; Ram Agrawal Decl. ¶¶ 9-13; Sarita Agrawal Decl. ¶¶ 9-13.

Second, Class Counsel are qualified and experienced in conducting class action litigation, especially cases involving consumer protection. *See* Robinson Decl., ¶¶ 29-30. Class Counsel have diligently and vigorously prosecuted this Action, and will

continue to do so through final approval. Class Counsel have the requisite experience and skill in similar complex litigation. *See In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (a court evaluating adequacy of counsels' representation may examine "the attorneys' professional qualifications, skill, experience, and resources . . . [and] the attorneys' demonstrated performance in the suit itself"); *Barbosa v. Cargill Meat Sols. Corp*., 297 F.R.D. 431, 443 (E.D. Cal. 2013) ("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.").

2. Certification—The Rule 23(b)(3) Requirements are Satisfied

Certification is warranted under Rule 23(b)(3) because "the questions of law or fact common to class members predominate over any questions affecting only individual members" and "a class action is superior to other available methods for fairly and efficiently" settling the controversy. This case satisfies both the predominance and superiority requirements.

a. Common Questions Predominate

Rule 23(b)(3)'s predominance requirement aims to "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated." *Amchem*, 521 U.S. at 615. The inquiry thus focuses on "whether proposed classes are sufficiently cohesive to warrant adjudication by representation" (*id.* at 623), and whether "[a] common nucleus of facts and potential legal remedies dominates [the] litigation." *Hanlon*, 150 F.3d at 1022. Because consumer protection cases involve alleged injuries to large numbers of consumers resulting from a challenged uniform practice, the predominance test is "readily met" in such cases. *Amchem*, 521 U.S. at 625; *see also In re ACC/Lincoln Sav. and Loan Sec. Litig.*, 140 F.R.D. 425, 431 (D. Ariz. 1992) (underlying consumer fraud scheme satisfied predominance test as each class member was similarly situated with respect to it).

The predominance requirement is satisfied here. The single, overwhelming common question of whether Defendants engaged in a referral for kickback scheme in violation of RESPA predominates over any individualized issues. *See Edwards*, 798 F.3d at 1182-83. Moreover, the focus is on Plaintiffs' allegations that Defendants engaged in uniform, consistent conduct toward all Class Members—*e.g.*, Defendants' execution of the SRA and the Operating Agreement that rendered each Class Member's transaction identical in at least one key respect: as a result of PHH's referral of TRG, Plaintiffs and Class Members paid title-, escrow-, and closing-related charges to TRG in violation of RESPA. As these common questions "present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication," *Hanlon*, 150 F.3d at 1022, the predominance requirement is met.

b. Class Treatment is Superior

Rule 23(b)(3) requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This factor "requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).[7]

The first Rule 23(b)(3) factor considers "the class members' interests in individually controlling the prosecution or defense of separate actions." Fed. R. Civ.

[7] Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These factors include: (i) the class members' interest in individually controlling separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3); *see Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-92 (9th Cir. 2001).

P. 23(b)(3)(A). "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023; *see also Wolin*, 617 F.3d at 1176 ("Forcing individual vehicle owners to litigate their cases, particularly where common issues predominate for the proposed class, is an inferior method of adjudication."). The damages sought by Plaintiffs are relatively small compared to the burden, impracticability, and expense required to individually litigate the claims. The second factor 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 set forth in this litigation.[8]

Because the class action device provides the superior means to effectively and efficiently resolve this controversy, and as the other requirements of Rule 23 are each satisfied, certification of the Class is appropriate.

3. The Proposed Settlement is Fair, Reasonable, and Adequate

a. Settlement Resulted From 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

[8] The third factor is "the desirability or undesirability of concentrating the litigation of the claims in the particular forum," and the fourth factor is "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(C)-(D). Typically, "[i]n the context of settlement . . . the third and fourth factors are rendered moot and are irrelevant." *Barbosa*, 297 F.R.D. at 444.

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).

Here, Defendants filed multiple motions to dismiss, Plaintiffs filed multiple complaints, and the Parties engaged in significant, contested discovery, including the production of over 35,000 pages of documents, oral discovery, and written discovery. Plaintiffs also undertook substantial investigation, including interviewing witnesses and industry analysts, and consulted with several experts. In January 2017, the Parties began settlement discussions. When negotiations began, Plaintiffs had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. The Parties engaged in extensive arm's-length negotiations, including a mediation session and settlement conference. Since the settlement conference, the Parties drafted, negotiated, and exchanged many revisions of the Stipulation and related exhibits. Robinson Decl., ¶¶ 12-16. Thus, there is no evidence of collusion or fraud leading to, or taking part in, the settlement negotiations.

b. The Settlement Falls Within the Range of Possible Approval and is a Fair and Reasonable Outcome

The Settlement provides for a common fund of $17,000,000. Plaintiffs estimate that Class Members will receive between 15% and 20% of their Presumptive Allowed Claim. Robinson Decl., ¶ 23. Although RESPA damages are based on the amount of settlement service charges, the litigation risks and a comparison of RESPA settlements support the fairness, reasonableness, and adequacy of this Settlement.

For instance, litigation risks include (a) Defendants moving for summary judgment arguing there were no referrals, no kickbacks, or adequate disclosures; (b) prevailing on the elements of a section 8(a) violation at trial or summary judgment; and (c) Defendants challenging a certification motion by arguing that Class Members' claims were too unique such that individualized issues predominated. In addition, other RESPA settlements support the finding that this settlement is fair, adequate, and reasonable.[9] The settlement thus confers an excellent recovery for Plaintiffs and the putative Class. *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 Cellular Alaska P'ship*, 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 and citation omitted).

Courts also consider whether a class action settlement contains an overly broad release of liability. *See Newberg on Class Actions* § 13:15, at p. 326 (5th ed. 2014) ("Beyond the value of the settlement, courts have rejected preliminary approval when

[9] *See*, *e.g.*, *Moore v. GMAC LLC et al.*, No. 07-04296 (E.D. Pa. Sept. 9, 2014) [class of 122,963 members and the settlement consisted of a fund of $6,250,000.00]; *Alston v. Countrywide Fin. Corp.*, No. 07-3508 (E.D. Pa. Aug. 29, 2011); [class of 276,572 members and the settlement consisted of a fund of $34,000,000.00]; *Edwards v. The First American Corp.*, No. 07-03796 (C.D. Cal Oct. 17, 2016) [class of over 48,000 members and the settlement consisted of a fund of $8,120.465.96]; *Alexander et al v. Washington Mutual*, No. 07-04426 (E.D. Pa Dec. 4, 2012) [class of 42,584 members and the settlement consisted of a fund of $4,000,000.00]; *Liguori et al. v. Wells Fargo & Co. et al.*, No. 08-00479 (E.D. Pa. Feb. 7, 2013) [class of 73,738 members and the settlement consisted of a fund of $12,500,000.00]; *Spears and Scholl v. First American eAppraseIT*, No. 08-00868 (N.D. Cal. Apr. 27, 2015) [class of over 70,000 members and the settlement consisted of a fund of $9,863,945.00].

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 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided 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).

Here, Plaintiffs and Class Members release "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) arising out of the origination of Class Members' mortgage loans and the provision of Settlement Services by any of Defendants' Releasees in the Class Members' real estate transactions that are the subjects of the Action," in exchange for their share of the Settlement Fund. Stipulation, ¶ IV.A.24. Thus, the release balances fairness to Class Members with Defendants' interests in finality. *See 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. Class Representatives are not Treated Preferentially

"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 (7th Cir. 1998).

The Stipulation permits Class Counsel to petition the Court for incentive awards of up to $2,500 per Class Representative. *See* Stipulation, Exhibit A-1 ("Class Notice"). It further provides that the incentive payments shall be "directly related to [the Class Representatives'] representation of the Class, to be paid from (and out of) the Settlement Fund." *See* Stipulation, ¶ IV.G.1. In addition, the Stipulation provides that "the allowance or disallowance by the Court of the Fee and Expense Application is not a term or condition of the Settlement set forth in this Stipulation, and any order or proceeding relating thereto, or any appeal from any such order, shall not operate to terminate or cancel this Stipulation." *Id.*

There is no doubt the settlement does not improperly grant preferential treatment to the Class Representatives. As an initial matter, the $2,500 incentive award per class member 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). Further, Class Representatives have taken on substantial responsibility in litigating this case, and the Class has benefitted from the time and effort they spent doing so. The Class Representatives also state they have reviewed the Stipulation and "believe that the benefits provided by the settlement represent an excellent result for the settlement class." *See* Sheri Dodge Decl., ¶¶ 15-17; Neil Dodge Decl. ¶ 19-21; Ram Agrawal Decl. ¶¶ 9-11; Sarita Agrawal Decl. ¶¶ 9-11. Since the Parties agree the Settlement shall remain in force regardless of any incentive awards and the amount of the awards are presumptively reasonable, there is no conflict between the Class Representatives and absent Class Members.

d. The Proposed Notice is Appropriate

For a class settlement certified pursuant to Rule 23(b)(3), "the 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). Rule 23(c)(2) requires the Court to "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem*, 521 U.S. at 617. "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). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to object." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The notice should provide sufficient information to allow class members to decide whether to accept the benefits of the settlement, opt out and pursue their own remedies, or object. *See Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251-52 (2001).

The notice program agreed to by the Parties and approved by KCC, LLC will utilize the addresses obtained through confirmatory discovery and Defendants' business records. Because the addresses of all Class Members are available, the proposed direct mail notice program is sufficient. The Notice, Claim Form and Request for Exclusion will be available through the settlement website. Robinson Decl., ¶ 27. The Notice is clear, precise, informative, and meets all of the necessary standards.[10] The notice program is consistent with, and exceeds, other similar court-approved best notice practicable notice plans, the requirements of Rule 23(c)(2)(B),

[10] The Notice includes the case caption; a description of the Class; a description of the claims and the history of the litigation; a description of the Settlement and the claims being released; the names of Class Counsel; a statement of the maximum amount of attorneys' fees that will be sought by Class Counsel; the amount Class Counsel will seek for incentive awards; the Fairness Hearing date; a description of Class Members' opportunity to appear at the hearing; a statement of the procedures and deadlines for requesting exclusion and filing objections to the Settlement; and the manner in which to obtain further information. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 496 (D.N.J. 1997), *aff'd*, 148 F.3d 283 (3d Cir. 1998).

and the Federal Judicial Center guidelines for adequate notice. As there is no more practicable method of notice, or any more reasonably likely to notify the Class Members, the proposed procedure for providing notice constitutes the best practicable notice to Class Members and complies with the requirements of due process.

4. Settlement Deadlines and a Fairness Hearing

In connection with preliminary approval, the Court must set a final approval hearing date, dates for mailing the Notices, and deadlines for objecting to the Settlement and filing papers in support of the Settlement. The following schedule would provide time and opportunity for Class Members to evaluate their options:

DATE	EVENT
October 5, 2017	Notice Postmarked and Mailed
January 3, 2018	Deadline to Submit Claim Form
January 11, 2018	Deadline to Submit Motion for Attorneys' Fees, Costs and Incentive Awards
January 25, 2018	Deadline to Submit Request for Exclusion
February 15, 2018	Hearing on Final Approval

V. CONCLUSION

For all of the above-stated reasons, Plaintiffs respectfully request that the Court enter an order for: (1) certification of the proposed class for settlement; (2) preliminary approval of the proposed class action settlement; (3) appointment of class representatives and class counsel; (4) appointment of the notice and settlement administrator; (5) approval of the class notice and related settlement administration documents; and (6) approval of the proposed class settlement administrative deadlines and procedures, including the proposed final fairness hearing date and procedures regarding objections, exclusions and submitting Claim Forms.

DATED: August 25, 2017

ROBINSON CALCAGNIE, INC.

By: */s/ Daniel S. Robinson*

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2017, I caused to be filed the foregoing PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT CLASS, CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF CLASS NOTICE. This document is being filed electronically using the Court's electronic case filing (ECF) system, which will automatically send a notice of electronic filing to the email addresses of all counsel of record.

Dated: August 25, 2017

/s/ Daniel S. Robinson
Daniel S. Robinson