

1 provide personal information when making a credit card purchase
2 in violation of California Civil Code section 1747.08. Presently
3 before the court is plaintiffs' motion for final approval of the
4 class action settlement.

5 I. Factual and Procedural Background

6 Charming Charlie is a retailer selling women's apparel
7 and accessories in stores across the country, including
8 California. Plaintiffs Heidi Anderson-Butler and Paula Haug
9 visited Charming Charlie stores located in Chino Hills and
10 Folsom, California, respectively. Upon attempting to pay for
11 items with their credit cards, a clerk told both women they were
12 required to provide personal information including their physical
13 address, email address, and phone number. Plaintiffs provided
14 the information to the clerk.² Defendant allegedly used the
15 collected information for direct marketing purposes.

16 Plaintiffs allege defendant violated the Song-Beverly
17 Credit Card Act, Cal. Civ. Code § 1747.08, which provides that a
18 corporation may not "request, or require as a condition to
19 accepting the credit card as payment in full or in part for goods
20 or services, the cardholder to provide personal identification
21 information, which . . . the corporation . . . causes to be
22 written, or otherwise records" Plaintiffs brought this
23 lawsuit on behalf of a putative class of consumers in California
24 from whom defendant requested personal information during the
25 course of credit card transactions. The case settled before the
26

27 ² Plaintiff Haug refused to provide her physical address
28 and provided only her telephone number and email address.
(Compl. ¶ 26 (Docket No. 1-2).)

1 parties filed any dispositive motions.

2 Plaintiffs filed an unopposed motion for preliminary
3 approval of class action settlement on June 18, 2015 and the
4 court granted preliminary approval on July 29, 2015. (Docket No.
5 15.) Plaintiffs now seek final approval of the parties'
6 stipulated class-wide settlement pursuant to Federal Rule of
7 Civil Procedure 23(e). Defendant does not oppose plaintiffs'
8 motion for final approval.

9 II. Discussion

10 Rule 23(e) provides that "[t]he claims, issues, or
11 defenses of a certified class may be settled . . . only with the
12 court's approval." Fed. R. Civ. P. 23(e). "Approval under 23(e)
13 involves a two-step process in which the Court first determines
14 whether a proposed class action settlement deserves preliminary
15 approval and then, after notice is given to class members,
16 whether final approval is warranted." Nat'l Rural Telecomms.
17 Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004)
18 (citing Manual for Complex Litig., Third, § 30.41 (1995)).

19 The Ninth Circuit has declared a strong judicial policy
20 favoring settlement of class actions. Class Plaintiffs v. City
21 of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless,
22 where, as here, "the parties reach a settlement agreement prior
23 to class certification, courts must peruse the proposed
24 compromise to ratify both the propriety of the certification and
25 the fairness of the settlement." Staton v. Boeing Co., 327 F.3d
26 938, 952 (9th Cir. 2003).

27 A. Class Certification

28 A class action will be certified only if it meets the

1 four prerequisites identified in Rule 23(a) and additionally fits
2 within one of the three subdivisions of Rule 23(b). See
3 Ontiveros v. Zamora, Civ. No. 2:08-567 WBS DAD, 2014 WL 3057506,
4 at *4 (E.D. Cal. July 7, 2014); Fed. R. Civ. P. 23(a)-(b).
5 Although a district court has discretion in determining whether
6 the moving party has satisfied each Rule 23 requirement, see
7 Califano v. Yamasaki, 442 U.S. 682, 701 (1979); Montgomery v.
8 Rumsfeld, 572 F.2d 250, 255 (9th Cir. 1978), the court must
9 conduct a rigorous inquiry before certifying a class, see Gen.
10 Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982); E. Tex.
11 Motor Freight Sys. v. Rodriguez, 431 U.S. 395, 403-05 (1977).

12 1. Rule 23(a) Requirements

13 Rule 23(a) restricts class actions to cases where:

14 (1) the class is so numerous that joinder of all
15 members is impracticable; (2) there are questions of
16 law or fact common to the class; (3) the claims or
17 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.

18 Fed. R. Civ. P. 23(a). These requirements are more commonly
19 referred to as numerosity, commonality, typicality, and adequacy
20 of representation.

21 In its Preliminary Approval Order, the court found that
22 the class satisfied the numerosity, commonality, and typicality
23 requirements of Rule 23(a). The court expressed some concern,
24 however, as to adequacy of representation. Since the court is
25 unaware of any changes that would alter its analysis as to
26 numerosity, commonality, or typicality, the court will proceed to
27 evaluate adequacy of representation for purposes of final
28 certification.

1 a. Adequacy of Representation

2 To resolve the question of adequacy, the court must
3 make two inquiries: "(1) do the named plaintiffs and their
4 counsel have any conflicts of interest with other class members
5 and (2) will the named plaintiffs and their counsel prosecute the
6 action vigorously on behalf of the class?" Hanlon v. Chrysler
7 Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). These questions
8 involve consideration of a number of factors, including "a
9 sharing of interests between representatives and absentees."
10 Brown v. Ticor Title Ins., 982 F.2d 386, 390 (9th Cir. 1992).

11 Although the Ninth Circuit has specifically approved
12 the award of "reasonable incentive payments" to named plaintiffs,
13 the use of an incentive award nonetheless raises the possibility
14 that plaintiffs' interest in receiving that award will cause
15 their interests to diverge from the class's interest in a fair
16 settlement. Staton, 327 F.3d at 977-78 (declining to approve a
17 settlement agreement where size of incentive award suggested that
18 named plaintiffs were "more concerned with maximizing [their own]
19 incentives than with judging the adequacy of the settlement as it
20 applies to class members at large"). As a result, the court must
21 "scrutinize carefully the awards so that they do not undermine
22 the adequacy of the class representatives." Radcliffe v.
23 Experian Info. Sys., Inc., 715 F.3d 1157, 1163 (9th Cir. 2013).

24 "In general, courts have found that \$5,000 incentive
25 payments are reasonable." Hopson v. Hanesbrands Inc., Civ. No.
26 08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009)
27 (citing In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th
28 Cir. 2000); In re SmithKline Beckman Corp., 751 F. Supp. 525, 535

1 (E.D. Pa. 1990); Alberto v. GMRI, Inc., 252 F.R.D. 652, 669 (E.D.
2 Cal. 2008)).

3 The settlement agreement provides for an incentive
4 award of \$5,000 to each of the named plaintiffs, to be paid
5 separate from and in addition to the class recovery of \$350,000
6 in vouchers. In its Preliminary Approval Order, the court
7 questioned whether the incentive awards were proportionate to the
8 recovery of the other class members because, at the time of the
9 preliminary approval hearing, there was a possibility that all
10 200,000 class members would submit claim forms and each class
11 member would therefore receive only a \$1.75 voucher. However,
12 notice has now been sent to 200,000 class members and only 13,505
13 submitted timely claim forms. (Pls.' Mot. for Final Approval
14 ("Pls.' Mot.") at 9 (Docket No. 18-1); see Settlement Agreement ¶
15 3.6.) This means that each claimant will receive a voucher for
16 roughly \$26.00--significantly more than the \$1.75 originally
17 contemplated by the court. (Id.)

18 In addition, plaintiffs provided important
19 justification for the incentive awards by explaining that class
20 representatives Heidi Anderson-Butler and Paula Haug spent around
21 forty hours engaging in investigation efforts, discovery, and
22 settlement negotiations for this case. (Pls.'s Mot. for Att'y's
23 Fees at 12 (Docket No. 17-1).) More specifically, Anderson-
24 Butler and Haug each spent around six hours discussing the matter
25 with plaintiffs' counsel and investigating other Charming Charlie
26 stores in the state; three hours working on filing the complaint;
27 fifteen hours on the mediation process; five hours on the
28 settlement agreement process; and two hours keeping abreast of

1 the settlement approval process. (Anderson-Butler Decl. ¶¶ 2-8
2 (Docket No. 17-3); Haug Decl. ¶¶ 2-8 (Docket No. 17-4).) Both
3 also stated that they bore the risk of an adverse judgment,
4 risking their own personal assets and credit. (Id.) Given this
5 new information, the court finds that the incentive awards are
6 proportional to the overall class recovery.

7 2. Rule 23(b)

8 An action that meets all the prerequisites of Rule
9 23(a) may be certified as a class action only if it also
10 satisfies the requirements of one of the three subdivisions of
11 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th
12 Cir. 2013). Plaintiffs seek certification under Rule 23(b)(3),
13 which provides that a class action may be maintained only if (1)
14 “the court finds that questions of law or fact common to class
15 members predominate over questions affecting only individual
16 members” and (2) “that a class action is superior to other
17 available methods for fairly and efficiently adjudicating the
18 controversy.” Fed. R. Civ. P. 23(b)(3).

19 In its Preliminary Approval Order, the court found that
20 both prerequisites were satisfied. The court is unaware of any
21 changes that would affect this conclusion. Accordingly, since
22 the settlement class satisfied both Rule 23(a) and Rule 23(b)(3),
23 the court will grant final certification of the settlement class.

24 B. Rule 23(e): Fairness, Adequacy, and Reasonableness of
25 Proposed Settlement

26 Having determined class treatment to be warranted, the
27 court must now determine whether the terms of the parties’
28 settlement appear fair, adequate, and reasonable. See Fed. R.

1 Civ. P. 23(e) (2); Hanlon, 150 F.3d at 1026. This process
2 requires the court to "balance a number of factors," including:

3 the strength of the plaintiff's case; the risk,
4 expense, complexity, and likely duration of further
5 litigation; the risk of maintaining class action status
6 throughout the trial; the amount offered in settlement;
7 the extent of discovery completed and the stage of the
8 proceedings; the experience and views of counsel; the
9 presence of a governmental participant; and the
10 reaction of the class members to the proposed
11 settlement.

12 Hanlon, 150 F.3d at 1026.

13 1. Terms of the Settlement Agreement

14 (1) **Settlement Class:** All persons who, between July 9, 2013
15 and the date of entry of the Preliminary Approval Order,
16 engaged in a credit card transaction at a California
17 Charming Charlie Store and whose personal identification
18 information was requested and recorded by Charming
19 Charlie and the Charming Charlie Store for purposes other
20 than shipping, delivery, or special orders. (Pls.' Mot.
21 at 2.)

22 (2) **Notice:** The settlement administrator, Dahl
23 Administration, LLC, mailed notices to 16,980 class
24 members and emailed notices to 198,784 class members
25 within thirty days of the court's granting preliminary
26 approval. (Kratz Decl. ¶¶ 2, 5-6 (Docket No. 18-3).)
27 Notices were also mailed to 14,300 (of the 29,955) class
28 members whose notice was not successfully delivered via
email. (Id. ¶¶ 6, 7.)

(3) **Opt-out Procedure:** To opt out of the settlement, class
members submitted by U.S. mail a letter or postcard

1 addressed to the Claims Administrator indicating (a) the
2 name and case number of the action; (b) the full name,
3 address, and telephone number of the person requesting
4 exclusion; and (c) a statement that he/she did not wish
5 to participate in the Settlement. (Settlement Agreement
6 ¶ 3.10.) Fifteen class members opted-out. (Kratz Decl.
7 ¶¶ 9-10 (Docket No. 18-3).)

8 (4) **Objections to Settlement:** Class members could object to
9 the fairness, reasonableness, or adequacy of the
10 settlement by delivering written objections to
11 plaintiffs' counsel and defendant's counsel, and filing
12 such objection with the court, no later than forty-five
13 calendar days after the last day for notice to be
14 provided. (Settlement Agreement ¶ 3.9.) No class
15 members objected. (Kratz Decl. ¶¶ 9-10.)

16 (5) **Settlement Amount:** Defendant agreed to comply with
17 section 1747.08 in its California stores, although the
18 agreement does not require defendant to notify plaintiffs
19 of changes to its policies, practices, and procedures.
20 In addition, defendant will pay \$350,000 in the form of
21 transferable store vouchers to class members valid for
22 six months after issuance and redeemable for in-store
23 purchases of merchandise at Charming Charlie stores.
24 Class members who made claims will receive vouchers for
25 about \$26.00. Although the settlement agreement provided
26 for a limit of \$20.00 per voucher with remainder vouchers
27 to be distributed to claimant class members if necessary,
28 defendant has agreed to distribute the entirety of the

1 voucher fund at once. (Pls.' Mot. at 3.)

2 (6) **Attorney's Fees, Costs, and Plaintiffs' Incentive Award:**

3 Plaintiffs request an award of attorney's fees and costs
4 of \$140,000 total to be paid separate and apart from the
5 award to the class. (Pls.' Mot. for Attorney's Fees at
6 1.) Defendant does not oppose plaintiffs' counsel's
7 application. (Id.) Plaintiffs also request, and
8 defendant does not oppose, an incentive award of \$5,000
9 to each of the named plaintiffs to be paid separate and
10 apart from the award to the class. (Id. at 2.)

11 (7) **Release:** Class members who participate in the settlement
12 who have not timely opted out agree to release defendant
13 from claims arising out of acts, omissions, or other
14 conduct that could have been alleged or otherwise
15 referred to in the action, including but not limited to
16 any and all violations of California Civil Code Section
17 1747.8. (Settlement Agreement ¶ 4.4.)

18 2. Rule 23(e) Factors

19 a. Strength of the Plaintiffs' Case

20 An important consideration is the strength of the
21 plaintiffs' case on the merits balanced against the amount
22 offered in the settlement. DIRECTV, 221 F.R.D. at 526. The
23 district court, however, is not required to reach any ultimate
24 conclusions on the merits of the dispute, "for it is the very
25 uncertainty of outcome in litigation and avoidance of
26 wastefulness and expensive litigation that induce consensual
27 settlements." Officers for Justice v. Civil Serv. Comm'n of the
28 City & Cty. of SF, 688 F.2d 615, 625 (9th Cir. 2004).

1 Plaintiffs allege defendant violated California Civil
2 Code section 1747.08 by requesting and recording customers'
3 personal identification information as part of its credit card
4 transactions. (Pls.' Mot. at 5.) The parties have exchanged
5 significant informal discovery and plaintiffs believe they have
6 sufficient evidence to establish their prima facie case. (Id. at
7 8.) On the other hand, defendant avers that it never conditioned
8 a sale upon the customer providing personal identification
9 information and such information was requested only for the
10 purpose of enrolling customers in a loyalty club. (Def.'s
11 Statement of Non-Opp'n ("Def.'s Stmt.") at 7 (Docket No. 19).)
12 Defendant argues that requesting personal identification
13 information for the purpose of enrolling customers in a loyalty
14 program falls within the "special purposes" exception to section
15 1747.08. (Id. at 8.) Plaintiffs counter that the loyalty club
16 was not mentioned at the time they were requested to provide
17 identification information. (Pls.' Mot. at 6.) The settlement
18 terms compare favorably to these uncertainties with respect to
19 liability.

20 Even if plaintiffs prevailed at trial, there is a
21 significant possibility that plaintiffs would receive only
22 minimal damages. California Civil Code section 1747.08 provides
23 a safe harbor for bona fide errors made unintentionally and also
24 does not mandate fixed or minimum penalties. (Def.'s Stmt. at 8,
25 11.) While each class member could recover \$250 in damages for
26 the first violation and up to \$1,000 for each subsequent
27 violation, it is also possible each member would receive as
28 little as a penny. (Id. at 11; Pls.' Mot. at 7.) This is

1 especially true given that there is no evidence that any class
2 member was financially harmed by defendant's practice. (Id.)

3 The proposed settlement provides broad injunctive
4 relief requiring defendant to comply with section 1747.08 in its
5 California stores and provides each claimant with a \$26.00
6 voucher. In comparing the strength of plaintiffs' case with the
7 proposed settlement, the court finds that the proposed settlement
8 is a fair resolution of the issues in this case.

9 b. Risk, Expense, Complexity, and Likely Duration
10 of Further Litigation

11 Further litigation could greatly delay resolution of
12 this case and increase expenses. Prior to any judgment, the
13 parties will likely litigate class certification, summary
14 judgment, and a bench trial. In addition, defendant contends
15 that appellate proceedings would almost certainly follow.
16 (Def.'s Stmt. at 9.) This weighs in favor of settlement of the
17 action.

18 c. Risk of Maintaining Class Action Status
19 Throughout Trial

20 Defendant argues that plaintiffs would not be able to
21 maintain this case as a class action "because the varied
22 circumstances surrounding each customer's transactions present
23 individualized factual issues that cannot be jointly tried."
24 (Def.'s Stmt. at 7.) Plaintiff also acknowledges that "class
25 certification is not guaranteed, if opposed" and cites to a
26 recent class action under section 1747.08 that was decertified at
27 trial. (Pls.' Mot. at 8.) Accordingly, this factor also favors
28 approval of the settlement.

1 d. Amount Offered in Settlement

2 In assessing the amount offered in settlement, “[i]t is
3 the complete package taken as a whole, rather than the individual
4 component parts, that must be examined for overall fairness.”
5 Officers for Justice, 688 F.2d at 628. “It is well-settled law
6 that a cash settlement amounting to only a fraction of the
7 potential recovery will not per se render the settlement
8 inadequate or unfair.” Id.

9 The value of the settlement fund in this case is
10 \$350,000. (Pls.’ Mot. ¶ 9.) As of the time of the fairness
11 hearing, 13,505 members had opted into the class and, as a
12 result, each claimant will receive a voucher for roughly \$26.00.
13 (Id.) The attorney’s fees and incentive awards will be paid
14 separate and apart from class compensation and will not detract
15 from the settlement fund. (Pls.’s Mot. for Att’y’s Fees at 1.)
16 The transferable voucher will not require claimants to spend any
17 money in order to realize the benefits of the settlement, as a
18 coupon would. (Def.’s Stmt. at 10.)

19 Plaintiffs’ counsel believes that “recovery would most
20 likely be in a similar amount if the action was tried with the
21 facts as known.” (Pls.’ Mot. at 9.) While section 1747.08
22 provides for a maximum award of \$250 for the first violation and
23 \$1,000 for each subsequent violation, plaintiffs concede that
24 defendant did not commit an egregious violation that would
25 warrant the maximum allowable penalty. (Id. at 10.) Instead,
26 plaintiffs analogize defendant’s violation to that of a first-
27 time corporate offender that collected minimally-sensitive
28 information and estimate that the case is worth less than

1 \$500,000. (Id.) Class members' actual recovery, therefore,
2 appears at least comparable to the amount they would recover at
3 trial and is particularly fair and reasonable in light of the
4 risks and costs of further litigation in this case.

5 e. Extent of Discovery and the State of Proceedings

6 A settlement that occurs in an advanced stage of the
7 proceeding indicates the parties carefully investigated the
8 claims before reaching a resolution. Alberto v. GMRI, Inc., Civ.
9 No. 07-1895 WBS DAD, 2008 WL 4891201, at *9 (E.D. Cal. Nov. 12,
10 2008.) Plaintiffs served formal written discovery on defendant
11 and both parties exchanged significant informal discovery in
12 preparation for mediation. (Pls.' Mot. at 8.) Among other
13 information, defendant has provided plaintiffs with information
14 relating to the total number of transactions completed in
15 California during the relevant time period, the number of times
16 personal identification information was requested, the
17 utilization and storage of such information, and the production
18 of its policy directives. (Id.) The parties also engaged in a
19 full day of mediation before the Honorable William C. Pate
20 (retired) in San Diego and several communications following the
21 mediation with his assistance. (Id. at 2.) The parties'
22 investigation of the claims through informal discovery and
23 mediation and their consideration of the views of a third-party
24 mediator weigh in favor of settlement.

25 f. Experience and Views of Counsel

26 Plaintiffs' counsel indicates that he has extensive
27 experience litigating consumer class actions. In the past ten
28 years, he has brought more than twenty class actions under the

1 Song-Beverly Credit Card Act of 1971. (Id. at 10.) Based on his
2 experience, counsel believes the proposed settlement is fair and
3 adequate to the class members. (Id.) The court gives
4 considerable weight to class counsel's opinions regarding the
5 settlement due to counsel's experience and familiarity with the
6 litigation. Alberto, 2008 WL 4891201, at *10. This factor
7 supports approval of the settlement agreement.

8 g. Presence of Government Participant

9 No governmental entity participated in this matter;
10 this factor, therefore, is irrelevant to the court's analysis.

11 h. Reaction of the Class Members to the Proposed
12 Settlement

13 The settlement administrator, Dahl Administration, LLC,
14 mailed notices to approximately 200,000 class members. (Kratz
15 Decl. ¶¶ 2, 5-7.) Fifteen class members requested to be excluded
16 and none objected. (Id. ¶¶ 9-10.) "It is established that the
17 absence of a large number of objections to a proposed class
18 action settlement raises a strong presumption that the terms of a
19 proposed class settlement action are favorable to the class
20 members." DIRECTV, 221 F.R.D. at 529. Accordingly, this factor
21 weighs in favor of the court's approval of the settlement.

22 Having considered the foregoing factors, the court
23 finds the settlement is fair, adequate, and reasonable pursuant
24 to Rule 23(e).

25 C. Attorney's Fees

26 Federal Rule of Civil Procedure 23(h) provides, "[i]n a
27 certified class action, the court may award reasonable attorney's
28 fees and nontaxable costs that are authorized by law or by the

1 parties' agreement." If a negotiated class action settlement
2 includes an award of attorney's fees, that fee award must be
3 evaluated in the overall context of the settlement. Knisley v.
4 Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio
5 v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013)
6 (England, J.). The court "ha[s] an independent obligation to
7 ensure that the award, like the settlement itself, is reasonable,
8 even if the parties have already agreed to an amount." In re
9 Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th
10 Cir. 2011).

11 The parties agreed as part of the settlement agreement
12 that defendant would pay attorney's fees and costs of \$140,000,
13 to be paid separate and apart from the recovery of the class.
14 (Pls.' Mot. for Att'y's Fees at 2; Settlement Agreement ¶ 2.5.)
15 Of this sum, plaintiffs' counsel explains that \$9,118.43 is for
16 costs and \$130,881.57 for attorney's fees. (Id.) Plaintiffs'
17 counsel submitted a declaration in support of his requested fees
18 providing a general breakdown of his hours worked; he did not
19 attach detailed time sheets because the motion is not opposed by
20 defendant and plaintiffs' counsel hoped "to avoid public
21 disclosure of privileged matters and work product." (Lindsay
22 Decl. in Support of Pls.' Mot. for Att'y's Fees ("Lindsay Decl.")
23 ¶ 8 (Docket No. 17-2).)

24 The parties negotiated the agreed-upon attorney's fees
25 and costs only after reaching an agreement as to all other
26 material terms of the settlement, including class compensation.
27 (Pls.' Mot. for Att'y's Fees at 3; Lindsay Decl. ¶ 7.) In
28 negotiating the fee award, the parties took into account

1 plaintiffs' counsel's efforts, the results achieved, and the risk
2 of protracted litigation if no agreement on attorney's fees was
3 reached. (Id. at 3.)

4 While plaintiffs' counsel's substantial hourly rate
5 might not have been accepted by the court under different
6 circumstances, the court finds plaintiffs' counsel request for
7 attorney's fees and costs in the agreed-upon amount of \$140,000
8 fair, appropriate, and reasonable given that it was negotiated
9 independently from the class settlement, defendant does not
10 oppose, and it did not detract from the amount class members will
11 recover.

12 D. Incentive Payments to Named Plaintiffs

13 For the reasons previously discussed, see supra Part
14 II.A.1.a, the court orders that incentive payments of \$5,000 be
15 paid to each named plaintiff.

16 III. Conclusion

17 Based on the foregoing, the court grants final
18 certification of the settlement class and approves the settlement
19 set forth in the settlement agreement as fair, reasonable, and
20 adequate. Consummation of the settlement agreement is therefore
21 approved, and the definitions provided in the settlement
22 agreement shall apply to the terms used herein. The settlement
23 agreement shall be binding upon all members of the class action
24 who did not timely elect to be excluded.

25 IT IS THEREFORE ORDERED that plaintiffs' motion for
26 final approval of the class and class action settlement be, and
27 the same hereby is, GRANTED.

28 IT IS FURTHER ORDERED THAT:

1 (1) solely for the purpose of this settlement, and pursuant
2 to Federal Rule of Civil Procedure 23, the court hereby
3 certifies the following class: All persons who, between
4 July 9, 2013 and the date of entry of the Preliminary
5 Approval Order, engaged in a credit card transaction at a
6 California Charming Charlie Store and whose personal
7 identification information was requested and recorded by
8 Charming Charlie and the Charming Charlie Store for
9 purposes other than shipping, delivery, or special
10 orders. Specifically, the court finds that:

11 (a) the settlement class members are so numerous that
12 joinder of all settlement class members would be
13 impracticable;

14 (b) there are questions of law and fact common to the
15 settlement class which predominate over any
16 individual questions;

17 (c) claims of the named plaintiffs are typical of the
18 claims of the settlement class;

19 (d) the named plaintiffs and plaintiffs' counsel have
20 fairly and adequately represented and protected the
21 interests of the settlement class; and

22 (e) a class action is superior to other available
23 methods for the fair and efficient adjudication of
24 the controversy.

25 (2) the court appoints the named plaintiffs, Heidi Anderson-
26 Butler and Paula Haug, as representatives of the class
27 and finds that they meet the requirements of Rule 23;

28 (3) the court appoints James M. Lindsay of Lindsay Law

1 Corporation, 21 Natoma Street, Suite 160, Folsom,
2 California 95630, as counsel to the settlement class and
3 finds that counsel meets the requirements of Rule 23;

4 (4) the settlement agreement's plan for class notice is the
5 best notice practicable under the circumstances and
6 satisfies the requirements of due process and Rule 23.

7 The plan is approved and adopted. The notice to the
8 class complies with Rule 23(c)(2) and Rule 23(e) and is
9 approved and adopted;


10 (5) the parties have executed the notice plan in the court's
11 Preliminary Approval Order, in response to which 13,505
12 class members submitted a claim form, fifteen requested
13 to be excluded, and none objected. Having found that the
14 parties and their counsel took extensive efforts to
15 locate and inform all putative class members of the
16 settlement, and given that no class members have filed
17 any objections to the settlement, the court finds and
18 orders that no additional notice to the class is
19 necessary;

20 (6) as of the date of the entry of this Order, plaintiffs and
21 all class members who have not timely opted out hereby do
22 and shall be deemed to have fully, finally, and forever
23 released, settled, compromised, relinquished, and
24 discharged any and all of the released parties (as
25 defined by paragraph 4.4 of the settlement agreement) of
26 and from any and all released claims (as defined in
27 paragraph 4.4 of the settlement agreement). The claims
28 released by plaintiffs and class members include, but are

- 1 not limited to, claims arising from any and all
2 violations of California Civil Code section 1747.8;
3 (7) the distribution of settlement vouchers shall occur
4 within thirty calendar days following the final
5 settlement date. Defendant will itself or through the
6 claims administrator mail the vouchers;
7 (8) plaintiffs' counsel is entitled to fees and costs in the
8 amount of \$140,000 and payment shall be made within ten
9 days after the final settlement date and plaintiffs'
10 counsel provides defendant with its Form W-9, whichever
11 is later;
12 (9) the named plaintiffs are entitled to incentive payments
13 of \$5,000 each; and
14 (10) this action is dismissed with prejudice; however, without
15 affecting the finality of this Order, the court shall
16 retain continuing jurisdiction over the interpretation,
17 implementation, and enforcement of the settlement
18 agreement with respect to all parties to this action and
19 their counsel of record.

20 The clerk is instructed to enter judgment accordingly.

21 Dated: November 3, 2015

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23 **WILLIAM B. SHUBB**
24 **UNITED STATES DISTRICT JUDGE**

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