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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 JACOB FIGUEROA and MARY
11 JACKSON, on behalf of themselves and
12 all other similarly situated,
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14 v.
15 CAPITAL ONE, N.A.,
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Plaintiffs,

Defendant.

Case No.: 18cv692 JM(BGS)

**ORDER ON PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Presently before the court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement. A telephonic hearing on the motion was held on June 8, 2020. For the reasons set forth on the record and as explained in more detail below, the motion is **GRANTED**.

I. Background

This dispute centers around the fees Defendant Capital One, N.A., (“Capital One”), charges its customers for using Out-of-Network (“OON”) automatic teller machines (“ATMs”). When a Capital One accountholder withdraws funds from an OON ATM they are typically assessed a \$2 or \$3 fee by the ATM owner along with a \$2 charge by Capital One. Capital One also charges its accountholders a third fee if a customer checks their balance while in the process of making a cash withdrawal at OON ATMs. (Doc. No. 6, “FAC” at ¶ 6.) Plaintiffs allege that these fees for OON balance inquiries, or “third” fees,

1 were wrongfully charged and were in violation of Capital One’s standardized account
2 agreement, Fee Schedule and Electronic Funds Transfers Agreement and Disclosure.
3 (FAC at ¶¶ 24, 31, 33, 50, 67-71.) Typically, Capital One charged its customers \$2.00¹ for
4 each OON balance inquiry about which they complain.

5 On April 6, 2018, Plaintiffs initiated this action by filing suit. (Doc. No. 1.) On
6 May 30, 2019, an amended complaint was filed that alleges eight causes of action, namely:
7 (1) breach of contract; (2) breach of the covenant of good faith and fair dealing;
8 (3) conversion; (4) unjust enrichment; (5) violation of the unfair prong of California’s
9 Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE § 17200, *et seq*; (6) violation
10 of the fraudulent prong of the UCL; (7) violation of the California Consumer Legal
11 Remedies Act (“CLRA”), CAL. CIV. CODE § 1770, *et seq*; and (8) violation of the New
12 York Consumer Protection Act, N.Y. GEN. BUS. LAW §§ 349-350. (*See generally* FAC.)

13 On October 7, 2019, the court denied Defendant’s motion for partial summary
14 judgment on Plaintiffs’ breach of contract claim. (Doc. No. 56.)

15 On March 4, 2020, the parties participated in a private mediation before Bruce
16 Freidman, Esq., which, after a full day’s mediation, led to the proposed settlement currently
17 before the court.

18 **II. Settlement Agreement Terms**

19 On May 8, 2020, Plaintiffs filed the instant motion for preliminary approval of the
20 class action settlement.² (Doc. No. 74.) The motion contained drafts of the notices to
21 potential class members that would be emailed, mailed and posted on a website. (Doc. No.
22 75, Exhibit A-C, at 24-38.)

23 The class is defined as follows:

24 All Capital One accountholders in the United States who, within the Class
25 Period, incurred at least one OON Balance Inquiry Fee. Excluded from the

26
27 ¹ This third fee has now increased to \$2.50.

28 ² A corrected appendix of exhibits was filed after the original motion was filed. (*See* Doc. No 75.)

1 Settlement Class is Capital One, its parents, subsidiaries, affiliates, officers
2 and directors; all accountholders who make a timely election to be excluded;
3 and all judges assigned to this litigation and their immediate family members.

4 (Doc. No. 75, "Agreement" at ¶ 1.22.) At the hearing, Mr. Kaliel clarified that the class
5 includes former and current account holders.

6 The class period is defined as follows:

- 7 • For settlement Class Members whose accounts were established in
8 Louisiana: the period from April 6, 2008 to June 30, 2020;
- 9 • For settlement Class Members whose accounts were established in
10 Connecticut, New York, and New Jersey: the period from April 6, 2012
11 to June 30, 2020;
- 12 • For settlement Class Members whose accounts were established in
13 Virginia: the period from April 3, 2013 to June 30, 2020;
- 14 • For settlement Class Members whose accounts were established in
15 Texas: the period from April 6, 2014 to June 30, 2020; and
- 16 • For Settlement Class Members whose accounts were established in the
17 District of Columbia, Maryland, and Delaware; the period from
18 April 6, 2015 to June 30, 2020.

19 (Agreement at ¶ 1.4.) During the hearing, the court confirmed that all class members are
20 covered in the class periods.

21 A total of 1,683,345 Capital One customers are eligible class member. (Doc. No. 74-
22 3, Kaliel Decl. at ¶ 30.) The Settlement Agreement requires Capital One to pay a gross
23 settlement amount of \$13,000,000, allocated as follows: \$10,000 as an incentive award for
24 Figueroa; \$10,000 as an incentive award for Jackson; \$3,900,000 to Plaintiffs' counsel (*See*
25 Agreement, at ¶¶ 1.6, 3.1, 3.2.) What was unknown from the papers was the amount
26 estimated to be paid to BrownGreer, PLC, the Class Administrator for administration cost
27 and Plaintiffs' counsels' costs. When questioned by the court, Plaintiffs' counsel, Mr.
28 Kaliel, informed the court that Administrator costs are estimated to be at \$750,000, with
counsels' cost estimated at approximately \$100,000. The resulting amount left in the

1 settlement fund to pay class member, based off Plaintiffs' numbers, is projected to be
2 \$8,230,000.³

3 The settlement provides that each member who paid at least one OON Balance
4 Inquiry Fee that was assessed during the Class Period shall be entitled to receive a class
5 member payment from the Settlement Fund. "Each member's payment shall be equal to
6 the member's pro rata share of the settlement fund based on the total number of OON
7 Balance Inquiry Fees paid by class member." (Agreement at 7.) No information regarding
8 the average amount each class member will recover was provided. At the hearing, Mr.
9 Kaliel informed the court that over the class period Capital One has assessed the third fee
10 approximately 20 million times.

11 In exchange for their pro rata share, all class members are deemed to release Capital
12 One from claims relating to the subject matter of this action. (*Id.* at 7, 8.)

13 The updated Notices submitted following the hearing clarify that the settlement
14 administration costs will be paid from the Settlement Amount, and that both current and
15 former Capital One accountholders are eligible for relief under the Settlement. The Notices
16 also state expressly that Plaintiffs may seek Service Awards of up to \$10,000 and may seek
17 attorneys' fees of up to 30% of the Settlement Amount, plus costs and expenses incurred
18 in litigating this matter. (*See* Doc. No. 79-6, Exhibits 1A, 1B, 1C.)

19 **III. Preliminary Certification of Rule 23 Class**

20 Before approving the Settlement, the court's "threshold task is to ascertain whether
21 the proposed settlement class satisfies the requirements of Rule 23(a) of the Federal Rules
22 of Civil Procedure applicable to class actions, namely: (1) numerosity, (2) commonality,
23 (3) typicality, and (4) adequacy of representation." *Hanlon v. Chrysler Corp.*, 150 F.3d
24 1011, 1019 (9th Cir. 1998). In the settlement context, the court "must pay undiluted, even
25 heightened, attention to class certification requirements." *Id.* In addition, the court must
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28 ³ This figure was calculated using the amounts Plaintiffs are requesting and projecting.

1 determine whether class counsel is adequate (Fed. R. Civ. P. 23(g)), and whether “the
2 action is maintainable under Rule 23(b)(1), (2), or (3).” *In re Mego Fin. Corp. Sec. Litig.*,
3 213 F.3d 454, 462 (9th Cir. 2000) (quoting *Amchem Prod. v. Windsor*, 521 U.S. 591, 614
4 (1997)).

5 **A. Numerosity**

6 This requirement is satisfied if the class is “so numerous that joinder of all members
7 is impracticable.” Fed. R. Civ. P. 23(a)(1). “A class greater than forty members often
8 satisfies this requirement” *Walker v. Hewlett-Packard Co.*, 295 F.R.D. 472, 482 (S.D.
9 Cal. 2013) (citing *Californians for Disability Rights, Inc. v. Cal. Dep’t of Transp.*, 249
10 F.R.D. 334, 346 (N.D. Cal. 2008). Here, the parties estimate approximately 1,683,345
11 class members. Joinder of all these potential plaintiffs would be impracticable.
12 Accordingly, this requirement has been met.

13 **B. Commonality**

14 This requirement is satisfied if “there are questions of law or fact common to the
15 class.” Fed. R. Civ. P. 23(a)(2). “To satisfy this commonality requirement, plaintiffs need
16 only point to a single issue common to the class.” *Vasquez v. Coast Valley Roofing, Inc.*,
17 670 F. Supp. 114, 1121 (E.D. Cal. 2009). Here, the commonality requirement is satisfied
18 because the class claims involve common questions of law and fact regarding Defendant’s
19 allegedly deceptive assessment of OON Balance Inquiry Fees which purportedly violated
20 Capital One’s standardized account agreement, fee schedule and disclosures.

21 **C. Typicality**

22 This requirement is satisfied if “the claims or defenses of the representative parties
23 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The test of
24 typicality is whether other members have the same or similar injury, whether the action is
25 based on conduct which is not unique to the named plaintiffs, and whether other class
26 members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*,
27 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation and citation omitted). Here, the
28 typicality requirement is satisfied because the claims of lead Plaintiffs and the class are

1 based on the allegations that Capital One’s practices violated the contracts it had entered
2 into with class members. Moreover, the Plaintiffs and the class members are alleged to
3 have suffered the same injuries and will benefit from the relief provided by the settlement.
4 Therefore, for purposes of settlement, Plaintiffs have made an adequate showing of
5 typicality.

6 **D. Adequacy**

7 The final Rule 23(a) requirement is that “the representative parties will fairly and
8 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requires the
9 court address two questions: “(a) do the named plaintiffs and their counsel have any
10 conflicts of interest with other class members and (b) will the named plaintiffs and their
11 counsel prosecute the action vigorously on behalf of the class.” *In re Mego*, 213 F.3d at
12 462. A court certifying a class must consider: “(i) the work counsel has done in identifying
13 or investigating potential claims in the action; (ii) counsel’s experience in handling class
14 actions; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel
15 will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The court may also
16 consider “any other matter pertinent to counsel’s ability to fairly and adequately represent
17 the interests of the class.” *Id.* at 23(g)(1)(B). Here, there is no obvious conflict between
18 Figueroa’s and Jackson’s interests and those of the class members. Similarly, Plaintiffs’
19 counsel appears to have extensive experience in litigating consumer actions, has litigated
20 and resolved several similar cases involving bank fees, have spent “many hours”
21 investigating the claims of potential plaintiffs and “expended significant resources”
22 researching and developing the claims. (*See*, Kaliel Decl. ¶¶ 4-10.) Accordingly, the court
23 finds this element satisfied for the purposes of preliminary approval.

24 **E. Predominance and Superiority**

25 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking
26 class certification must show that the action is maintainable under Fed. R. Civ. P 23(b)(1),
27 (2) or (3).” *Hanlon*, 150 F.3d at 1022. “Rule 23(b)(3) permits a party to maintain a class
28 action if . . . the court finds that the questions of law or fact common to class members

1 predominate over any questions affecting only individual members, and that a class action
2 is superior to other available methods for fairly and efficiently adjudicating the
3 controversy.” *Conn. Ret. Plans & Trust Funds v. Amgen Inc.*, 660 F.3d 1170, 1173 (9th
4 Cir. 2011), *aff’d* 133 S. Ct. 1184 (2013) (citing Fed. R. Civ. P. 23(b)(3)). The
5 “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant
6 adjudication by representation.” *Hanlon*, 150 F.3d at 1022-23 (quoting *Amchen Prods,*
7 *Inc.*, 521 U.S. at 623). An examination into whether there are “legal or factual questions
8 that qualify each class member’s case as a genuine controversy” is required. *Id.* The
9 superiority inquiry “requires determination of whether the objectives of a particular class
10 action procedure will be achieved in a particular case.” *Id.* at 123.

11 Here, all of the class members entered into the same or substantially similar
12 agreements with Defendant and each was charged an OON Balance Inquiry Fee that
13 allegedly violates the agreements in question. Thus, although each class member may have
14 paid different cumulative amounts of OON Balance Inquiry Fees over the class period, the
15 class is “sufficiently cohesive to warrant adjudication by representation.” *Local Joint Exec.*
16 *Bd of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* 244 F.3d 1152, 1162 (9th
17 Cir. 2001). Moreover, Capital One’s policies have been applied and continue to be applied
18 uniformly to the settlement class. In sum, the legal and factual questions common to each
19 class member’s claim predominate over any questions affecting individual class members.
20 The relatively limited potential recovery for the class members as compared with the costs
21 of litigating the claims also support the preliminary conclusion that a class action is
22 superior to other methods for adjudicating this controversy.

23 In accordance with the above, for purposes of settlement, Figueroa and Jackson have
24 satisfied the requirements for certification of a class under Rule 23.

25 **IV. Preliminary Approval of Settlement**

26 “At the preliminary approval stage, the Court may grant preliminary approval of a
27 settlement if the settlement: (1) appears to be the product of serious, informed, non-
28 collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant

1 preferential treatment to class representatives or segments of the class; and (4) falls within
2 the range of possible approval.” *Sciortino v. PepsiCo, Inc.*, No. 14-CV-00478-EMC, 2016
3 WL 3519179, at *4 (N.D. Cal. June 38, 2016) (quoting *Harris v. Vector Mktg. Corp.*, No.
4 C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011). “At the preliminary
5 approval stage, a full fairness analysis is unnecessary.” *Zepeda v. Paypal, Inc.*, No. C 10-
6 1668 SBA, 2014 WL 718509, at *4 (N.D. Cal. Feb. 24, 2014) (internal quotation marks
7 and citation omitted). “Closer scrutiny is reserved for the final approval hearing.”
8 *Sicortino*, 2016 WL 3519179, at *4.

9 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses
10 of a certified class may be settled, voluntarily dismissed, or compromised only with the
11 court’s approval.” Fed. R. Civ. P. 23(e). “Adequate notice is critical to court approval of
12 a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. The Rule also “requires
13 the district court to determine whether a proposed settlement is fundamentally fair,
14 adequate and reasonable.” *Id.* at 1026. In making this determination, the court is required
15 to “evaluate the fairness of a settlement as a whole, rather than assessing its individual
16 components.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). Because a
17 “settlement is the offspring of compromise, the question we address is not whether the final
18 product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from
19 collusion.” *Hanlon*, 150 F.3d at 1027.

20 In assessing a settlement proposal, the district court is required to balance a number
21 of factors, namely:

22 the strength of the plaintiff’s case; the risk, expense, complexity, and likely
23 duration of further litigation; the risk of maintaining class action status
24 throughout trial; the amount offered in settlement; the extent of discovery
25 completed and the stage of the proceedings; the experience and views of
26 counsel; the presence of governmental participant; and the reaction of the
27 class members to the proposed settlement.

28 *Id.* at 1026. When reviewing a proposed settlement, the court’s primary concern “is the
protection of those class members, including the named plaintiffs, whose rights may not

1 have been given due regard by the negotiating parties.” *Officers for Justice v. Civil Serv.*
2 *Comm’n of City & Cnty. Of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). Ultimately, “[i]n most
3 situations, unless the settlement is clearly inadequate, its acceptance and approval are
4 preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural*
5 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

6 In the motion, class counsel argues that each of the factors weighs in favor of
7 preliminary approval of the settlement. Class counsel are experienced attorneys in the area
8 of consumer class actions, including those involving assessment of banking fees, and the
9 settlement has been reached following an all-day mediation before an independent third-
10 party. (*See* Kaliel Decl. at ¶¶ 4, 13, 17.) Class counsel had also engaged in formal and
11 informal discovery when the settlement was reached. (*Id.* at ¶¶ 8, 11-13, 15, 18.) In
12 support of the settlement, counsel also point to the risk associated with the uncertainty
13 accompanying continued litigation, the fact that class certification has yet to be obtained
14 and the various defenses available to Capital One. Counsel noted that “Plaintiffs concluded
15 that the benefits of settling outweigh the risks and uncertainties of continued litigation,”
16 also explaining that “[t]he litigation has been hard-fought as the Parties have engaged in
17 motion practice, fact discovery, and reviewed pertinent account data to understand the
18 scope of the damages at issue and sustained by Settlement Class members.” (Doc. No. 74-
19 1 at 17; Kaliel Decl. at ¶ 18.)

20 In their papers, Plaintiffs also proclaim that the settlement “is squarely within the
21 range of appropriateness for approval” and that after “analyzing Capital One’s Class-wide
22 data, Class Counsel estimates that the Settlement Class is recovering approximately 33%
23 of their most probable damages, without further risks attendant to litigation.” (Doc. No.
24 74-1 at 21, 22.) Further, Plaintiffs claim that the \$13,000,000 settlement result is even
25 better when considering Capital One’s commitment to modify its disclosures. As disclosed
26 at the hearing, Capital One has charged its customers this third OON Balance Inquiry Fee
27 over twenty million times during the class period. Although, the preliminary approval
28 papers do not disclose, or even attempt to estimate, the average amount of the settlement

1 fund each class member will receive, Plaintiffs have purportedly recovered 33% of their
2 most probable damages.⁴

3 Thus, based on the court’s experience with consumer class actions, and the
4 accompanying declarations from experienced class counsel, the court preliminarily
5 approves the settlement.

6 **V. Conclusion and Order**

7 In light of the foregoing, it is hereby ORDERED as follows:

8 1. The court finds on a preliminary basis that the provisions of the Settlement
9 Agreement and Release (hereinafter “Agreement”), filed with the court as Exhibit 1 to the
10 Memorandum of Points and Authorities in Support of Plaintiffs’ Unopposed Motion for
11 Preliminary Approval of Class Settlement and for Certification of Settlement Class (Doc.
12 No. 75), are fair, just, reasonable, and adequate and, therefore, meet the requirements for
13 preliminary approval.

14 2. For purposes of this Order, the court adopts all defined terms as set forth in
15 the Agreement.

16 3. The court conditionally certifies, for settlement purposes only, the following
17 Settlement Class described in the Agreement as: “All Capital One accountholders in the
18 United States who, within the Class Period, incurred at least one OON Balance Inquiry
19 Fee. Excluded from the Settlement Class is Capital One, its parents, subsidiaries, affiliates,
20 officers and directors; all accountholders who make a timely election to be excluded; and
21 all judges assigned to this litigation and their immediate family members.”

22 Class Period means:

- 23 • For settlement Class Members whose accounts were established in Louisiana:
24 the period from April 6, 2008 to June 30, 2020;

26
27 ⁴ The court anticipates that an explanation of how class counsel calculated the most likely
28 recoverable damages will accompany Plaintiffs’ motion for Final Approval of the
Settlement (*see* Doc. No 75, Exhibit D, ¶ 23.c.).

- 1 • For settlement Class Members whose accounts were established in
2 Connecticut, New York, and New Jersey: the period from April 6, 2012 to
3 June 30, 2020;
- 4 • For settlement Class Members whose accounts were established in Virginia:
5 the period from April 3, 2013 to June 30, 2020;
- 6 • For settlement Class Members whose accounts were established in Texas: the
7 period from April 6, 2014 to June 30, 2020; and
- 8 • For Settlement Class Members whose accounts were established in the
9 District of Columbia, Maryland, and Delaware; the period from April 6, 2015
10 to June 30, 2020.

11 4. The court finds, for settlement purposes only, that Capital One has acted on
12 grounds that apply generally to the Settlement Class, so that the injunctive relief to which
13 the Parties have agreed is appropriate respecting the Settlement Class as a whole.

14 5. The court appoints, for settlement purposes only, Plaintiffs Jacob Figueroa
15 and Mary Jackson as representatives for the Settlement Class.

16 6. The court preliminarily appoints Class Counsel Kaliel PLLC and Carlson
17 Lynch as Class Counsel for purposes of settlement.

18 7. The court appoints BrownGreer PLC as the Settlement Administrator. The
19 Settlement Administrator shall administer the notice procedures and distribute payments
20 and shall abide by the terms and conditions of the Agreement regarding the duties the
21 Settlement. All reasonable fees and costs of the Settlement Administrator shall be paid
22 from the Settlement Fund.

23 8. Capital One shall deposit the Cash Settlement Amount into an escrow account
24 selected by the Settlement Administrator within 15 days of this Order. Capital One will
25 implement the disclosure language changes, as stated in Exhibit E to the Agreement, by
26 June 30, 2020.

27 9. The Updated Class Notices, filed with the court (Doc. No. 79-6, Exhibit 1A,
28 1B, 1C) are approved. The Court approves, as to form and content, the updated Settlement
Class Notices for the purpose of notifying the Settlement Class as to the proposed
Settlement, the Final Approval Hearing, and the rights of Settlement Class members. The

1 Court finds that the Settlement Class Notices are reasonable; constitute due, adequate, and
2 sufficient notice to all persons entitled to receive notice; and that they meet the
3 requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.
4 Specifically, the Court finds that the Settlement Class Notices comply with Rule 23(e) of
5 the Federal Rules of Civil Procedure as they are a reasonable manner of providing notice
6 to those Settlement Class members who would be bound by the Agreement. The Court also
7 finds that the manner of dissemination of notice complies with Rule 23(c)(2), as it is also
8 the most practicable notice under the circumstances, provides individual notice to all
9 Settlement Class members who can be identified through a reasonable effort, and is
10 reasonably calculated, under all the circumstances, to apprise Settlement Class members
11 of the pendency of this Action, the terms of the Settlement, and their right to object to the
12 Settlement or exclude themselves from the Settlement Class.

13 10. As soon as possible after the entry of this order, but not later than 70 days after
14 the entry of this Order, the Settlement Administrator will complete notice to the Settlement
15 Class as provided in the Agreement.

16 11. The Settlement Class Notices shall be updated by Plaintiffs and/or the
17 Settlement Administrator to identify the Opt-out and Objection Deadlines of 130 days after
18 the entry of this Order, as well as the date and time of the Final Approval Hearing as set
19 forth below.

20 12. The court will hold a Final Approval Hearing on **January 11, 2021** at **10:00**
21 **a.m.** before Honorable Jeffrey T. Miller, United States District Court for the Southern
22 District of California, Courtroom 5D (5th Floor – Schwartz), 221 West Broadway, San
23 Diego, CA 92101, for the following purposes:

- 24 a. Finally determining whether the Class meets all applicable requirements
25 of Rule 23 of the Federal Rules of Civil Procedure and whether the Class
26 should be certified for the purpose of effectuating the Settlement;
- 27 b. Finally determining whether the proposed Settlement is fundamentally
28 fair, reasonable, and adequate, and in the best interests of the Settlement

1 Class Members and should be approved by the court;

2 c. Considering the application of class counsel for an award of attorneys' fees
3 and costs, as provided in the Agreement;

4 d. Considering the applications of the named Plaintiffs for a class
5 representative incentive award as provided in the Agreement;

6 e. Considering whether the order granting final approval of the class action
7 settlement and judgement, as provided under the Agreement, should be
8 entered, dismissing the Action with prejudice and releasing the Released
9 Claims against the Released Parties; and

10 f. Ruling upon such other matters as the court may deem just and appropriate.

11 13. The court may adjourn the Final Approval Hearing and later reconvene such
12 hearing without further notice to the Class Members.

13 14. Attendance at the Final Approval Hearing is not necessary. Settlement Class
14 Members need not appear at the hearing or take any action to indicate their approval of the
15 proposed class action Settlement.

16 15. Class counsel shall file a motion for final approval of the Settlement no later
17 than December 3, 2020. Any request by class counsel for an award of attorneys' fees and
18 expenses shall be filed August 25, 2020, and that request shall be accompanied by
19 supporting evidence to allow Class Members an opportunity to object to the fee motion
20 itself before deciding whether to exclude themselves or object.

21 16. Each Settlement Class Member will have one-hundred-thirty (130) days
22 from the date of this order to object to the Settlement by serving on the Settlement
23 Administrator, Class Counsel, and Counsel for Defendant and filing with the Court, by the
24 one-hundred-thirty (130) day deadline, a written objection to the Settlement.

25 17. Each Settlement Class Member who wishes to Opt-Out and be excluded from
26 the settlement shall mail a letter to the Settlement Administrator. The written request must:
27 (a) state the Class Member's full legal name, home address, telephone number, and Capital
28 One account number(s); (b) include the words "I want to opt-out and understand I will

1 receive no money from the Settlement of this Action”; (c) be addressed to the Settlement
2 Administrator; (d) be signed by the Class Member or their lawful representative; and
3 (e) be postmarked to the Settlement Administrator no later than 130 days from the date of
4 this order.

5 18. Each Settlement Class Member who wishes to object to the settlement must
6 do so in writing. The objection must: (a) state the Class Member’s full legal name, home
7 address, telephone number; (b) include the words “Notice of Objection” or “Formal
8 Objection,” state in clear and concise terms, the legal and factual arguments supporting the
9 objection, and include a list identifying any witness(es) the objector may call to testify at
10 the Fairness Hearing, as well as true and correct copies of any exhibit(s) the objector
11 intends to offer (a “Written Objection Notice”); (c) indicate the number of times the
12 objector has objected to a class action settlement in the past 5 years and the caption for any
13 such case(s) and a copy of any orders related to or ruling upon the objector’s prior
14 objections issued by the trial and appellate courts in each case; (d) identify any counsel
15 representing the objector; (e) identify the number of times the objector’s counsel and/or
16 counsel’s law firm have objected to a class action settlement within the five (5) years
17 preceding the date of the filed objection; (f) be directed to the Hon. Jeffrey T. Miller, United
18 States District Court – Southern District of California, 221 West Broadway, Suite 5190,
19 San Diego, California 92101, and must reference case number 3:18-cv-0692-JM-BGS;
20 (e) be sent to the Settlement Administrator; (g) be signed by the Class Member or their
21 lawful representative; and (g) be postmarked to the Settlement Administrator no later than
22 130 days after the date of this order.

23 19. If the Agreement is not finally approved for any reason, then this Order shall
24 be vacated, the Agreement shall have no force and effect, and the Parties’ rights and
25 defenses shall be restored, without prejudice, to their respective positions as if the
26 Agreement had never been executed and this Order never entered.

27 20. The parties may further modify the Agreement prior to the Final Approval
28 Hearing so long as such modifications do not materially change the terms of the Settlement

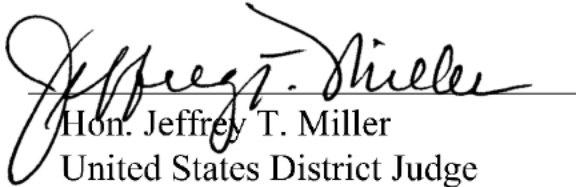
1 provided thereunder. The court may approve the Settlement Agreement with such
2 modifications as may be agreed to by the parties, if appropriate, without further notice to
3 the Settlement Class.

4 21. No later than **thirty (30) days** prior to the Final Approval hearing date, the
5 Settlement Administrator shall file an affidavit and serve a copy on class counsel and
6 defense counsel, regarding attesting that Notice was disseminated as required by the terms
7 of the Agreement or as ordered by the court. This affidavit shall also inform the court of
8 any requests for exclusion from the Class and objections or other reactions from Class
9 Members received by the Settlement Administrator. The affidavit should provide a full
10 report of the duties performed in support of the settlement administration costs.

11 22. The Court retains continuing and exclusive jurisdiction over the action to
12 consider all further matters arising out of or connected with the settlement, including the
13 administration and enforcement of the Agreement.

14 IT IS SO ORDERED.

15 Dated: June 16, 2020

16 
17 Hon. Jeffrey T. Miller
18 United States District Judge
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