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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FAITH BAUTISTA, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

VALERO MARKETING AND SUPPLY COMPANY,

Defendant.

Case No. 3:15-cv-05557-RS

CLASS ACTION

NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: November 5, 2020
Time: 1:30 p.m.
Courtroom: 3 – 17th Floor
Judge: Hon. Richard Seeborg

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on November 5, 2020, at 1:30 p.m., or on a date selected by the Court, Plaintiff Faith Bautista will and hereby does respectfully move the Court, in the courtroom of the Honorable Richard Seeborg, Courtroom 3, 17th Floor of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102, for an Order granting preliminary approval of the Settlement and directing notice of the Settlement to the Settlement Class.

This motion is based on the notice of motion and motion for an Order granting preliminary approval of the Settlement and directing notice of the Settlement to the Settlement Class, the following memorandum of points and authorities in support, the attached declarations and exhibits, the arguments of counsel, and any other matters in the record or that properly come before the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Parties have seen their fortunes change repeatedly over the course of this four-year-old case. In 2017, the Court certified Plaintiff Faith Bautista's ("Bautista" or "Plaintiff") proposed Class and thereafter ordered that notice of pendency be disseminated. In 2018, the Court decertified the Class and granted summary judgment as to certain of Plaintiff's legal theories and as to certain of Defendant Valero Marketing and Supply Company's ("Valero") defenses. In 2019, the Ninth Circuit granted Plaintiff's Rule 23(f) petition for permission to file an interlocutory appeal of the Court's decertification Order. At each of these major turning points, the Parties attempted to mediate their dispute. Now after four years of hard-fought litigation, three full-day private mediation sessions at three significant litigation milestones, months of follow-up negotiations, and extensive oversight by, and assistance from, a private mediator that culminated in a "mediator's proposal," the Parties have reached a Settlement that they and the mediator are confident addresses Plaintiff's complaint and satisfies the criteria for approval of a class settlement.

Plaintiff alleges that Valero violated California's consumer protection laws by permitting Valero-branded stations in California to advertise separate "cash" and "credit" prices for gasoline

without requiring those stations to specify how debit card purchases would be treated. The Settlement directly resolves this complaint by obligating Valero to adopt policies requiring any and all Valero-branded stations that engage in split-pricing to prominently display ***how*** debit cards will be charged, *i.e.*, whether they will be charged the "cash" or the "credit" price.

If approved, the Settlement will obviate the risks of further litigation while ensuring that the Settlement Class receives meaningful injunctive relief that responds precisely to Plaintiff's primary complaint. As discussed below, the Settlement is a fair, reasonable, and adequate resolution for the Settlement Class. Plaintiff respectfully requests that the Court preliminarily certify the Settlement Class for settlement purposes, preliminarily approve the proposed Settlement Agreement, attached hereto as Exhibit A, and direct notice of the Settlement to the Settlement Class so that they can determine whether to accept or object to the Settlement, or opt out of the Settlement Class.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff Files This Action, and the Parties Engage in Discovery

Plaintiff filed this proposed class action on December 4, 2015. ECF No. 1. The complaint generally alleged (and the operative complaint still alleges) that reasonable consumers would be misled by split-pricing signage displayed at certain Valero-branded stations advertising a lower "cash" price and higher "credit" price (but no "debit" price) for gasoline. *Id.* Plaintiff alleged that, because consumers consider a debit card to be the same as cash, split-pricing signage would lead reasonable consumers to conclude that their debit card purchases would be charged the lower cash price when, in reality, they received the higher credit price at some (but not all) stations.

The Parties engaged in several rounds of Rule 12 motion practice. ECF Nos. 31, 45, 72. As a result, certain causes of action were dismissed, and Plaintiff's Second Amended Complaint was largely upheld with three significant causes of action intact: (1) violations of the Consumer Legal Remedies Act, Cal. Civ. Code §1750, *et seq*. ("CLRA"); (2) false and misleading advertising in violation of the False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq*. ("FAL"); and (3) violations of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200, *et seq*. ECF No. 78. Valero answered the Second Amended Complaint on December 22, 2016. ECF No. 82.

Throughout this time and thereafter, the Parties engaged in extensive discovery that included the production, review, and analysis of thousands of pages of documents, and the depositions of five Valero employees, two third-parties (a Valero distributor representative and a Valero-branded station representative), the Plaintiff, two expert witnesses, and an investigator. *See* Declaration of Christopher C. Gold ("Gold Decl."), submitted herewith, ¶¶8-10; ECF Nos. 103, 111-112.

B. Class Certification and the Parties' First Mediation Session

Plaintiff moved for class certification on May 26, 2017. ECF No. 87. The Parties engaged in significant motion practice related to that motion, which included multiple motions to strike expert evidence. ECF Nos. 105, 113-114, 117-119. On October 4, 2017, the Court granted Plaintiff's class certification motion, concluding that the proposed Class satisfied all of the requirements of Rule 23(a) and (b)(3). ECF No. 123.

After the Court certified the litigation Class, the Parties agreed to participate in private mediation. In late 2017, the Parties selected Cathy Yanni of JAMS[1] to act as the mediator and thereafter submitted detailed mediation briefs for her review. On March 27, 2018, the Parties attended a full-day, in-person mediation session but were unable to reach agreement despite their best efforts. *See* Declaration of Cathy Yanni ("Yanni Decl."), ¶¶4-9.

On May 24, 2018, Plaintiff moved for approval of a Class notice plan. ECF No. 136. On June 7, 2018, the Parties fully briefed their respective motions, which included briefing on a contested motion by Valero to file a sur-reply. ECF Nos. 140-141, 143-144, 147-148, 150. Valero strongly objected to Plaintiff's proposed method of identifying for Class members the Valero-branded stations that were at issue (*i.e.*, that displayed allegedly deceptive signage). On July 16, 2018, the Court granted Valero's motion and denied Plaintiff's motion without prejudice. ECF

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[1] Ms. Yanni is a full-time specialist in ADR. Since joining JAMS in 1998, she has settled thousands of cases. Her practice includes mediation and Special Master work. Her substantive knowledge, her focused attention to detail, and her persistent follow up are the keys to her high success. Ms. Yanni has also been included on the "National Mediators" List, *Chambers USA* (2019), where she is acknowledged for her "high-quality reputation." Sources also praise her ability to "maintain good relations and credibility with both sides." *Chambers USA* (2020). https://www.jamsadr.com/yanni/.

No. 152. On August 3, 2018, Plaintiff filed a Renewed Motion for Approval of Class Notice Plan, which included: (1) an online banner campaign; (2) a social media campaign; (3) a print campaign in six California newspapers; (4) a national press release in English and Spanish; (5) an informational website; and (6) a 90-day opt-out period. ECF No. 157. On August 15, 2018, the Court granted Plaintiff's renewed Class notice plan, finding that the proposed method of providing notice to the certified Class "satisfie[d] the requirements of Rule 23 . . . and due process." ECF No. 164 at 1. Notice was provided pursuant to the Court's Order. ECF No. 246.

C. Class Decertification and the Second Mediation Session

On September 20, 2018, Valero moved to decertify the Class primarily on the grounds that individualized issues predominated over common questions of fact and law. ECF No. 173. Valero argued that because Plaintiff could not accurately identify the stations relevant to her liability claims for the entirety of the class period, a trial on each station's signage during the relevant period would require individualized evidence and that consideration of Plaintiff's evidence on the issue would be unmanageable. *Id.* at 15. Valero and Plaintiff also cross-moved for summary judgment on certain of Plaintiff's theories of liability and Valero's defenses. ECF Nos. 174, 193.

The Court heard argument on October 25, 2018 and ordered further briefing on whether class certification would be appropriate under Rule 23(b)(2) instead of Rule 23(b)(3). ECF No. 237. The Parties filed supplemental briefs on November 9, 2018. ECF Nos. 243-244.

While these motions were under submission, the Parties attended a second full-day mediation session with Ms. Yanni on November 29, 2018. Despite everyone's good-faith efforts, they were unable to reach an agreement to resolve this case. Yanni Decl., ¶¶10-11.

On December 4, 2018, the Court issued an Order decertifying the Class, holding that the Class still satisfied the requirements of Rule 23(a), but it no longer met the requirements of Rule 23(b)(3), including predominance and superiority. ECF No. 248. At the same time, the Court partially granted the Parties' cross-motions for summary judgment. ECF No. 249. The Court denied the Parties' cross-motions to exclude certain expert testimony. *Id.* at 2-6.

On December 17, 2018, Plaintiff sought permission to seek reconsideration of the Court's decertification and summary judgment Orders, which the Court granted. ECF Nos. 250-251. The

Parties fully briefed Plaintiff's motion for reconsideration [ECF Nos. 254-255], which the Court denied on February 6, 2019 [ECF No. 257.]

D. Plaintiff's Rule 23(f) Petition and the Parties' Third Mediation Session

On February 20, 2019, Plaintiff filed her Rule 23(f) petition in the Ninth Circuit seeking interlocutory review of the Court's Order decertifying the Class. ECF No. 261. On March 4, 2019, Valero filed an opposition to Plaintiff's Rule 23(f) petition. Gold Decl., ¶11. On June 26, 2019, the Ninth Circuit granted Plaintiff's Rule 23(f) petition and later set a briefing schedule. ECF No. 269; Gold Decl., ¶12. On September 17, 2019, the Ninth Circuit vacated the briefing schedule on Plaintiff's appeal to allow the Parties to engage in settlement discussions. Gold Decl., ¶13.

The Parties' third full-day, in-person mediation session was held on October 29, 2019. Although the Parties were unable to reach a final settlement that day, they made substantial progress under Ms. Yanni's guidance. *See* Yanni Decl., ¶12.

Over the next two months, the Parties continued their settlement efforts through Ms. Yanni as a neutral mediator. In December 2019, with Ms. Yanni's assistance and oversight, and following a "mediator's proposal" by Ms. Yanni, the Parties reached an agreement in principle providing for a settlement on the terms and subject to the conditions set forth in the Settlement Agreement. Yanni Decl., ¶¶13-16. The Settlement Agreement is the product of arms-length negotiations and reflects a recognition that the Parties face significant risks in continuing litigation; each side has gained and lost the upper-hand during the pendency of the case, and although Plaintiff is confident in her case, it is unclear who would prevail in the Ninth Circuit or at trial. Yanni Decl., ¶17.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Proposed Settlement Class

The Settlement Class includes: "All persons who, between December 3, 2011 and the date of preliminary approval, purchased gasoline using a debit card at a Valero-branded station in California that advertised a 'cash' price and 'credit' price on Relevant Valero-Branded Signage but the Relevant Valero-Branded Signage did not affirmatively disclose how gasoline purchased

with a debit card was priced, and were charged more money per gallon than the advertised 'cash' price." S.A., §3.27. The Court previously certified a litigation Class consisting of "[a]ll persons who, between December 3, 2011 and the final disposition of this action, purchased gasoline using a debit card at a Valero-branded station in California that does not disclose how gasoline purchased with a debit card is priced, and were charged more money per gallon than the advertised 'cash' price." ECF No. 152 at 6 (modifying Class definition). The Parties intend for the Settlement Class to include the same members and therefore use a similar Class definition, modified only for clarity, not substance.

B. The Proposed Class Relief

The Settlement provides meaningful and valuable injunctive relief to the Settlement Class. Under the Settlement Agreement, Valero will modify its approved signage and branding manuals to address the central complaint in this Action. Valero agrees to: (1) no longer approve the use of signage that advertises "cash" and "credit," but omits debit prices; (2) amend its "Wholesale Branding Manual" to include a statement that any station advertising discounted pricing must indicate how debit cards will be charged; (3) provide fuel pump decals and signage that prominently show debit card pricing to any Valero-branded stations that notify Valero that they offer discounted pricing; and (4) promptly notify and demand compliance from any Valero-branded stations it discovers are violating these terms. S.A., §4.2. These changes will come at significant costs of time and money to Valero. *See* Declaration of Charles Pettibon, ¶¶7-10.

If Plaintiff had fully prevailed on each of her claims, Settlement Class members might have received this same injunctive relief and a *de minimis* amount of actual damages (as the price differential between the advertised "cash" and "credit" prices at Valero stations is often only 4-cents per gallon). *See Bautista v. Valero Mktg. & Supply Co.*, No. 15-cv-05557-RS, 2016 WL 3924117, at *4 (N.D. Cal. July 21, 2016). The compromise in the Settlement is appropriate given the Court's decertification of the Rule 23(b)(3) damages Class and its finding that Plaintiff lacked evidence to identify each Valero station at issue, which is required to prove damages. *See* ECF No. 248 at 3, 9-12.

C. The Proposed Release of Claims

In exchange for the Settlement consideration, Plaintiff and each Settlement Class member ***who does not opt out*** agrees to release Valero and its parents, subsidiaries, affiliates, and all of their respective officers, employees, and counsel in this matter of and from all Plaintiff's Released Claims. S.A., §3.20. Plaintiff's Released Claims are limited to the claims asserted in the operative complaint only. *Id.* This release is appropriate because any amount of individual damages Settlement Class members could recover would be *de minimis* and uncertain, and as discussed below, Settlement Class members have the right to exclude themselves from the Settlement Class and retain any claims for damages they may have (subject to whatever defenses Valero may have).

D. Class Counsel's Fees and Expenses and Plaintiff's Service Award

Plaintiff intends to file a motion for an award of attorneys' fees and expenses and for a service award to Plaintiff. This motion will accompany Plaintiff's motion for final approval of the Settlement (and prior to the deadline for objections to the Settlement). Specifically, Plaintiff intends to seek, and Valero has agreed to pay, attorneys' fees and expenses in the aggregate amount of up to $1,650,000, subject to Court approval. S.A., §4.7. Plaintiff's counsel have incurred out-of-pocket expenses and charges of over $500,000 in litigating this case (including expert witness fees and Class notice fees), and have accumulated a lodestar of $7,621,422.80. Gold Decl., ¶14. Thus, Plaintiff's counsel will be seeking a substantial ***negative*** multiplier to their lodestar.

Plaintiff will further seek, and Valero has agreed to pay, a service award to Plaintiff of no more than $2,000 in light of the material amounts of time, effort, and money Plaintiff spent participating in this Action and assisting in achieving the Settlement, including by providing documentation concerning her experiences at Valero-branded stations, communicating with counsel regarding the litigation, and being available for all mediations, including traveling by air to participate in a full-day mediation. S.A., §4.9; Declaration of Faith Bautista ("Bautista Decl."), ¶¶2-6. She also intends to request, and Valero does not oppose, reimbursement of up to $2,000 for Plaintiff in actual out-of-pocket expenses incurred in connection with her service as a Class representative. S.A., §4.11; Bautista Decl., ¶¶5-6. If approved, this reimbursement would be paid from Class Counsel's fee and expense award. S.A., §4.11.

E. The Proposed Settlement Notice Plan

The Settlement Notice Plan replicates the Renewed Notice Plan that the Court previously found "satisfie[d] the requirements of Rule 23 . . . and due process." ECF No. 164 at 1. Like the Renewed Notice Plan, the Settlement Notice Plan consists of: (1) an online banner ad campaign; (2) a social media campaign; (3) a print campaign in six specific California newspapers; (4) a national press release in English and Spanish; and (5) a dedicated informational website. *See* Declaration of Cameron Azari, Esq. ("Azari Decl."), ¶¶7-13; S.A., §§4.13-4.17; *compare* ECF Nos. 136, 157, 164, 246. The dedicated informational website will be established by the same notice and administration firm previously approved by the Court (formerly Garden City Group, which has since merged into Epiq Class Action & Claims Solutions, Inc. ("Epiq")). S.A., §4.14. Notice will be provided both in English and Spanish. Azari Decl., ¶9.

Like the previously approved Renewed Notice Plan, the Settlement Notice Plan is designed to provide the Settlement Class with important information regarding the Settlement and their rights thereunder, including a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from, or "opt-out" of, the Settlement Class; a date by which Settlement Class members may object to the Settlement; Class Counsel's fee and expense application and request for a service award and reimbursement of out-of-pocket expenses for Plaintiff; the date of the final approval hearing; and information regarding the Settlement website where Settlement Class members may access the Settlement Agreement and other important documents. S.A., §§4.13-4.17. Notice pursuant to the Class Action Fairness Act of 2005 will be given. *Id.*, §4.17.

F. Settlement Class Members' Rights to Opt-Out or Object to the Settlement

Settlement Class members who do not wish to participate in the Settlement may opt-out of the Settlement Class or object to the Settlement by sending a written request to the Settlement Administrator at the address designated in the notice. Persons who timely opt-out preserve their existing rights to individually pursue any claims they may have against Valero as alleged in the operative complaint, including damages, subject to any defenses Valero may have. In accordance

with the District's Guidance for Class Action Settlements,[2] the procedure for opting out requires only that Settlement Class members provide the Settlement Administrator with their name, mailing address, and email address or telephone number; an explanation of why they believe they are a Settlement Class member; the words "Notification of Exclusion" or a statement that they want to be excluded from the Settlement; and their signature. S.A., §4.19.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

Rule 23(e) provides that class actions may be settled "only with the court's approval." The Rule requires the parties to "provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class[,]" which requires a "showing that the court will likely be able to:" (1) "approve [the proposal] only after a hearing and only on finding that it is fair, reasonable, and adequate"; and (2) "certify the class for purposes of judgment on the proposal." Rule 23(e)(1)(A)-(B) & (e)(2).

The factors the Court should consider when evaluating whether a proposed settlement is fair, reasonable, and adequate are whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement [made in connection with the proposal]; and
>
> (D) the proposal treats class members equitably relative to each other.

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

"When applying Rule 23(e), the courts use a two-step process for the approval of class action settlements." *Alabsi v. Savoya, LLC*, No. 18-cv-06510-KAW, 2020 WL 587429, at *4

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[2] https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements.

(N.D. Cal. Feb. 6, 2020).[3] "First, the Court decides whether the class action settlement deserves preliminary approval." *Id.* "Second, after notice is given to class members, the Court determines whether final approval is warranted." *Id.* "At the preliminary approval stage, the settlement need only be potentially fair." *Chen v. Chase Bank USA, N.A.*, No. 19-cv-01082-JSC, 2020 WL 264332, at *6 (N.D. Cal. Jan. 16, 2020). "[A] full fairness analysis is unnecessary at this stage." *Id.*

Courts in this District have held that preliminary approval of a settlement should be granted where the proposed settlement: "(1) appears to be the product of serious, informed, non-collusive negotiations; (2) does not grant improper preferential treatment to class representatives or other segments of the class; (3) falls within the range of possible approval; and (4) has no obvious deficiencies." *Schneider v. Chipotle Mexican Grill, Inc.*, No. 16-cv-02200-HSG, 2020 WL 511953, at *7 (N.D. Cal. Jan. 31, 2020); *see also Chen*, 2020 WL 264332, at *6; *Walsh v. CorePower Yoga LLC*, No. 16-cv-05610-MEJ, 2017 WL 589199, at *6 (N.D. Cal. Feb. 14, 2017); *Alabsi*, 2020 WL 587429, at *4. "Closer scrutiny is reserved for the final approval hearing."[4] *Walsh*, 2017 WL 589199, at *9.

The proposed Settlement here satisfies each of the relevant factors and should be granted preliminary approval.

A. The Proposed Settlement Is the Product of Serious, Informed, Non-Collusive Negotiations and a Mediator's Proposal

Plaintiff and Class Counsel vigorously litigated this Action on behalf of the Settlement Class prior to Settlement. Indeed, the Parties arrived at the Settlement Agreement only after extensive discovery, during which both sides became well acquainted with the relevant facts and law. *See Bailey v. Romanoff Floor Covering, Inc.*, No. 2:17-cv-00685-TLN-DMC, 2020 WL 4018225, at *4 (E.D. Cal. July 16, 2020) (granting preliminary approval where "the Settlement

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[3] Internal citations, quotations, and footnotes omitted and emphasis added unless otherwise noted.

[4] Of course, the Court should still scrutinize the Settlement carefully enough at the initial stage so as to "identify[] any flaws [and] allow[] the parties to decide how to respond to those flaws . . . before they waste a great deal of time and money in the notice and opt-out process." *See Alabsi*, 2020 WL 587429, at *4.

Agreement appears to have been entered into only after substantial investigation that enabled the Parties to make a reasoned and informed decision"). Before reaching an agreement, the Parties engaged in extensive motion practice, including two motions to dismiss, two discovery motions, a class certification motion, six *Daubert* motions, a motion for approval of class notice, a class decertification motion, cross-motions for summary judgment, multiple motions for reconsideration, and a Fed. R. Civ. P. 23(f) petition and answer.[5] The Parties consequently "had the benefit of several [substantive] decisions from this Court, including the Court's [certification, decertification,] and summary judgment order[s]," all of which helped them "assess the strengths and weakness of their [respective] arguments and evidence[.]" *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011). The discovery, motion practice, and Court orders in this case collectively enabled the Parties to make reasoned and informed decisions during arms-length settlement negotiations facilitated by an experienced professional mediator.

The Class Settlement was negotiated at arm's length. The Parties' settlement negotiations were extensive, consisting of three, separate in-person mediation sessions and months of additional mediated discussions via telephone and email. Yanni Decl., ¶¶4-13. "[T]he involvement of a neutral or court-affiliated mediator or facilitator in [the parties'] negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Rule 23(e)(2)(B) advisory committee's note to 2018 amendment; *see also Satchell v. Fed. Exp. Corp.*, No. C03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). The Parties' negotiations here were, at all times, overseen and facilitated by Ms. Yanni – an experienced mediator who guided the Parties and helped them reach an agreement. Ms. Yanni "never witnessed or sensed any collusiveness between the parties" and confirms that "the

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[5] *See e.g.* ECF Nos. 45, 48, 52, 60, 69, 72, 75, 77-79, 81, 87, 92, 100, 103, 105, 111-114, 117-119, 136-137, 140-141, 143-144, 147-148, 150, 157, 168-170, 173-175, 189, 193, 219-221, 224, 227-228, 230-233, 250, 254-255, 261.

settlement process was conducted at arm's-length and, while professionally conducted, was quite adversarial." Yanni Decl., ¶14.

In fact, the material terms of the Settlement were the product of Ms. Yanni's "mediator's proposal." *Id.*, ¶13. And "[i]t was only upon reaching an agreement on the substantive terms of a settlement and Class member relief that further and reasonable consideration was given to a reasonable and appropriate amount of Plaintiff[']s[] Counsel's attorneys' fees, Plaintiff[']s[] counsels['] out-of-pocket costs incurred in prosecuting this case, and the named Plaintiff's incentive awards[.]" *Id.*, ¶14. The final Settlement Agreement the Parties reached is the product of serious, informed, non-collusive negotiations after four years of zealous litigation where every issue was contested. This factor weighs in favor of preliminary approval. *See Conti v. L'Oreal USA S/D, Inc.*, No. 1:19-cv-00769-LJO-SKO, 2020 WL 416403, at *10 (E.D. Cal. Jan. 27, 2020) ("A settlement is presumed fair if it follow[s] sufficient discovery and genuine arms-length negotiation.").

B. The Proposed Settlement Does Not Grant Preferential Treatment

If the Settlement is approved, Valero will take steps to address Plaintiff's core concerns in this case. Specifically, Valero will: (1) no longer approve the use of signage that advertises "cash" and "credit" prices, but not "debit" prices; (2) amend its "Wholesale Branding Manual" to state that any Valero-branded stations engaged in split-pricing must indicate how debit card purchases will be charged; (3) provide fuel pump decals and signage indicating how debit cards will be charged to any Valero-branded stations that notify Valero they offer discounted pricing; and (4) notify and demand compliance from any Valero-branded stations it discovers are violating these terms. S.A., §4.2. Plaintiff will not receive unique benefits from the injunctive relief. The relief will benefit each Settlement Class member equally by clearly stating how debit card purchases are treated and further ensuring that Settlement Class members make informed choices about where and how to purchase gasoline.

Plaintiff does intend to seek a service award, but there is nothing improper about that. *See Schneider*, 2020 WL 511953, at *10 ("because incentive awards are not per se unreasonable, the Court finds that this factor weighs in favor of preliminary approval"). To the contrary, service

awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action[,]" and are entirely reasonable depending on the case and the amount requested. *Id.* "Incentive awards of $5,000 have been deemed presumptively reasonable in this District." *Chen*, 2020 WL 2464332, at *7.

Given the amount of time, money, and energy she dedicated to this case and the Settlement (including sitting for deposition and attending mediation), Plaintiff will seek a service award of up to $2,000. This amount is "relatively small, well within the usual norms of modest compensation paid to class representatives for services performed in the class action." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). It falls well within the range of service awards this Court has awarded in other cases. *See, e.g.*, *Lucero v. Solarcity Corp.*, No. 15-cv-05107-RS, 2018 WL 573593, at *2 (N.D. Cal. Jan. 26, 2018) ($2,500); *EK Vathana v. Everbank*, No. 09-cv-02338-RS, 2016 WL 3951334, at *3-4 (N.D. Cal. July 20, 2016) ($12,500); *Milligan v. Toyota Motor Sales, U.S.A., Inc.*, No. C 09-05418 RS, 2012 WL 10277179, at *9 (N.D. Cal. Jan. 6, 2012) ($5,000).

Plaintiff also intends to seek approval for reimbursement of up to $2,000 in out-of-pocket expenses incurred in connection with her service as a Class representative, to be paid out of Class Counsel's fee and expense award. S.A., §4.11; Bautista Decl., ¶¶5-6. The combined total Plaintiff intends to seek for the service award ***and*** expense reimbursement (*i.e.*, $4,000) is less than the $5,000 amount that courts in this District have found to be presumptively reasonable. Moreover, while these amounts are reasonable, the "class settlement agreement provide[s] no guarantee that the class representative[] w[ill] receive incentive payments, leaving that decision to later discretion of the district court." *DVD-Rental*, 779 F.3d at 943. Under these circumstances, this factor weighs in favor of preliminarily approving the Settlement. *See Schneider*, 2020 WL 511953, at *10 ("The Court will consider the evidence presented at the final fairness hearing and evaluate the reasonableness of any incentive award request [at that time]. Nevertheless, because incentive awards are not per se unreasonable, the Court finds that this factor weighs in favor of preliminary approval.").

C. The Proposed Settlement Falls Within the Range of Possible Approval

"To determine whether a settlement falls within the range of possible approval a court must focus on substantive fairness and adequacy, and consider plaintiffs' expected recovery balanced against the value of the settlement offer." *Conti*, 2020 WL 416403, at *11.

While this Court found that Plaintiff does not have individual standing to litigate injunctive relief ***at trial***, that finding does not bar her from securing that form of relief for herself and the Class ***in a settlement***. Just like an individual plaintiff in a non-class lawsuit against a single defendant, a class representative who settles a dispute on behalf of a class is ***not*** limited to the relief they could secure at trial. Parties to a class action are "free to agree to a settlement enforcing a contractual obligation that could not be imposed without its consent" – provided, of course, that the settlement terms are fair, reasonable, and adequate. *See Berry v. Schulman*, 807 F.3d 600, 610 (4th Cir. 2015). "[I]n the settlement context, 'it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all.'" *Id.* (quoting *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 522 (1986)); *see also Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11-CV-754, 2014 WL 4403524 (E.D. Va. Sept. 5, 2014) ("Courts in this district and elsewhere have found that the lack of a private right of action does not preclude … inclusion of injunctive relief in a negotiated settlement.").[6]

The Settlement is fair, reasonable, and adequate. Valero has agreed to take steps that will ensure consumers are more fully informed as to how their debit cards will be charged at Valero-branded stations in California. S.A., §4.2; ECF No. 69 ¶¶1, 12. This change was at all times Plaintiff's primary goal in this litigation. *See* ECF No. 243 at 2 ("Injunctive relief enjoining Valero from designing, creating, approving, and distributing misleading signage and marketing materials that fail to disclose the price treatment of debit cards is a key component of Plaintiff's claims under

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[6] To be sure, a named plaintiff must have standing to bring claims against the defendant. But, so long as she has such standing, she can settle those claims for whatever relief she and the court find fair, reasonable, and adequate. Here, Plaintiff has standing to bring damages claims against Valero in a 23(b)(3) class action and (after years of hard-fought litigation) has agreed that those claims can and should be settled for the relief set forth in the Settlement Agreement. There is no requirement that Plaintiff show that she would have been able to pursue that same relief at trial.

California's UCL, FAL, and CLRA.") (citing *Broomfield v. Craft Brew All., Inc.*, No. 17-cv-01027-BLF, 2018 WL 4952519, at *8 (N.D. Cal. Sept. 25, 2018) ("[I]njunctive relief is the primary form of relief available under the consumer protection laws.")).

This injunctive relief secured through the Settlement is valuable to the Settlement Class going forward given consumers' shopping habits. According to a survey by the National Association of Convenience Stores, "[g]as customers are increasingly saying that they prefer a specific station to fill up. In fact, the percentage has almost doubled in six years (59% in 2019 vs. 31% in 2012)."[7] Thus, Settlement Class members who previously purchased fuel at Valero-branded stations are likely to return to Valero-branded stations and benefit from the new debit-price disclosures with each subsequent purchase. *See Littlejohn v. Copland*, No. 19-55805, 2020 WL 3536531, at *2 (9th Cir. June 30, 2020) (rejecting objector's argument that the injunctive relief in that case was "worthless" because the "purchasers tend[ed] to be repeat buyers who would derive value from the Settlement's injunctive relief upon each future purchase").

Similar settlements providing meaningful injunctive relief for the Class, and monetary amounts only for attorneys' fees, costs, and incentive payments to the named plaintiffs, have been approved by numerous district courts in this Circuit, including this Court. *See, e.g.*, *In re Quaker Oats Labeling Litig.*, No. C 10-0502 RS, 2014 WL 12616763, at *1 (N.D. Cal. July 29, 2014) ("The parties have shown . . . that a settlement providing only injunctive relief is appropriate here given the value of that relief and the limited possibility of recovering damages and distributing them in an economically-feasible manner."); *Littlejohn v. Ferrara Candy Co.*, No. 3:18-cv-00658-AJB-WVG, 2019 WL 2514720, at *5 (S.D. Cal. June 17, 2019) (approving settlement that affords "meaningful injunctive relief"), *aff'd*, 819 F. App'x 491 (9th Cir. 2020); *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 970 (S.D. Cal. 2014) (granting final approval of Rule 23(b)(2) settlement where class members did not receive a direct monetary benefit but were required to release monetary claims); *Guttmann v. Ole Mexican Foods, Inc.*, No. 14-cv-04845-HSG, 2016 WL 9107426, at *1

[7] NACS, *Consumer Behavior at the Pump*, at 7 (Mar. 2019), https://www.-convenience.org/Topics/Fuels/Documents/How-Consumers-React-to-Gas-Prices.pdf.

(N.D. Cal. Aug. 1, 2016) (same); *Johnson v. Triple Leaf Tea Inc.*, No. 3:14-cv-01570-MMC, 2015 WL 8943150, at *1 (N.D. Cal. Nov. 16, 2015) (same).

Injunctive relief in lieu of damages is particularly appropriate in this case given the Court's decertification Order, which leaves individual lawsuits as the only mechanism for Plaintiff and the other Class members to recover any damages. But the amount of individual damages they may have suffered is necessarily *de minimis* (the price differential between the advertised "cash" and "credit" prices at Valero stations is often only 4-cents per gallon). *See Bautista*, 2016 WL 3924117, at *4. It would not be economically feasible to pursue individual lawsuits and damages that are, for all practical purposes, unavailable. *See Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at *7-8 (N.D. Cal. Mar. 18, 2015) (approving injunctive relief settlement where "Plaintiffs would face further difficulty in obtaining monetary compensation for class members given the Court's previous order declining to certify a class for the purposes of determining liability due to the absence of a viable damages model").

Although Plaintiff successfully sought review of the Court's decertification Order, permission to pursue an appeal does not suggest success on the merits. Even if Plaintiff were to win on appeal, she would still need to establish liability and damages at trial. *Id.* at *7 ("in the absence of the settlement, Plaintiffs would first need to succeed in establishing liability – which Defendant still contests – at trial"). "This would take a considerable amount of time and expense and Plaintiff[] would not be certain to succeed." *Id.* In fact, there is a "significant risk that the class would obtain nothing at trial." *See Littlejohn*, 2020 WL 3536531, at *2. "In light of the difficulty Plaintiff[] would face establishing damages on a classwide basis and the relatively small amount of money individual class members would be entitled to, the risk, expense, complexity, and likely duration of further litigation also support the conclusion that the settlement [for injunctive relief] is substantively fair." *Lilly*, 2015 WL 1248027, at *7; *see also Figueroa v. Capital One, N.A.*, No. 18cv692 JM(BGS), 2020 WL 3250603, at *5 (S.D. Cal. June 16, 2020) ("Ultimately, [i]n most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

The injunctive relief here is sufficient consideration for Plaintiff and the Settlement Class members in exchange for a release of their damages claims (asserted in the operative complaint) against Valero. The Ninth Circuit in *Littlejohn* recently affirmed final approval of a settlement that included substantially similar terms. The plaintiff there brought a proposed class action alleging that the labeling and marketing of SweeTARTS candy was false and misleading. 2019 WL 2514720, at *1. The parties reached a settlement where the candy maker agreed to modify SweeTARTS labels in exchange for a release of those claims, including damages claims. *Id.* at *6. The settlement class there – like here – was provided notice and an opportunity to opt out. *Id.* at *5. The Ninth Circuit affirmed approval of the settlement, explaining that the district court's ruling was "[c]onsistent with [its] precedent" and that the settlement was fair since it would benefit class members in their future purchases of the candy. *Littlejohn*, 2020 WL 3536531, at *1-2. In reaching this conclusion, the Ninth Circuit distinguished the "worthless" injunctive relief in *Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071, 1081 (9th Cir. 2017), by reasoning that "SweeTARTS purchasers tend to be repeat buyers who would derive value from the Settlement's injunctive relief upon each future purchase of SweeTARTS." *Id.* at *2. The same is true here with respect to the Settlement Class members who buy from Valero-branded stations.

As in *Littlejohn*, the Settlement here will benefit Settlement Class members in their future purchases of Valero-branded gasoline, enabling them to make informed choices about where and how to purchase gasoline. Also as in *Littlejohn*, the Settlement Class here will be provided notice and an opportunity to opt out should they wish to preserve their individual claims for *de minimis* damages.[8] This Settlement is well within "the range of possible approval."[9] *Conti*, 2020 WL 416403, at *11.

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[8] Although the Ninth Circuit *Littlejohn* decision did not mention it, the "absent class members in [*Koby*] were not afforded notice and an opportunity to opt out" in the rejected settlement. *See Koby*, 846 F.3d at 1078. That is a material distinction from the settlement agreements in *Littlejohn* and here.

[9] Class Counsel intend to seek an award of attorneys' fees and expenses of $1,650,000 in the aggregate, which represents a substantial ***negative multiplier*** on the $7,621,422.80 lodestar. This amount is not unreasonable, within the range of possible approval, and in any event is not a bar to preliminary approval because it is subject to the Court's discretion ***after*** the final approval hearing.

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D. There Are No Obvious (or Latent) Deficiencies

As discussed above, there are no obvious or latent deficiencies with the Class Settlement proposed here, and the Court can and should therefore grant preliminary approval. *See Schneider*, 2020 WL 511953, at *10.

V. THE COURT SHOULD PRELIMINARILY CERTIFY A SETTLEMENT CLASS

"When presented with a proposed settlement, a court must . . . determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23." *Graves v. United Indus. Corp.*, No. 2:17-cv-06983-CAS-SKx, 2020 WL 953210, at *9 (C.D. Cal. Feb. 24, 2020). "In assessing those class certification requirements, a court may properly consider that there will be no trial." *Id.* Thus, a finding that a litigation class is inappropriate is not a barrier to certification of a settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial.").

A. The Settlement Class Still Satisfies Rule 23(a)

The requirements of Rule 23(a) are well known: numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp*., 657 F.3d 970, 979-80 (9th Cir. 2011). When this Court issued its initial class certification Order it found that the proposed Class satisfied each of these requirements. ECF No. 123 at 7, 10-11. And when it later decertified that Class, the Court made clear that the proposed Class still satisfied Rule 23(a). ECF No. 248 at 12 ("[Rule 23(a)'s] requirements are satisfied for essentially the same reasons laid out in the Order Granting Motion to Certify Class"). There is no reason to reach a different conclusion as to the Settlement Class for settlement purposes. *Id.*

1. Numerosity Is Met

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable[.]" "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). Here, as the Court previously found, "[e]ven if only some portion of the [relevant] Valero stations displayed the allegedly misleading signage to the many consumers that use debit cards to purchase fuel, there are likely thousands of qualifying class members." ECF No. 123 at 7; *see also* ECF No. 248 at 12 (decertifying and noting that numerosity is satisfied). Accordingly, numerosity is satisfied.

2. Commonality Is Met

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class[.]" Commonality is established if plaintiffs and class members' claims "depend upon a common contention[,]" "capable of classwide resolution [meaning] 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." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The required showing on the commonality requirement is minimal, *Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 536-37 (N.D. Cal. 2012), because "even a single common question will do[,]" *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-YGR, 2016 WL 3844334, at *4 (N.D. Cal. July 15, 2016).

The Court's initial class certification Order found that the Class satisfied the commonality requirement because there was a "sufficient basis upon which to allege that Valero subjected class members to a common unlawful practice" by allegedly "produc[ing] marketing materials that . . . were misleading as to the price treatment of debit cards" and "fail[ing] to include signs with a less ambiguous (according to Bautista) credit/debit pricing option." ECF No. 123 at 9. Because the allegations remain the same, commonality is satisfied. ECF No. 123 at 9; *see also* ECF No. 248 at 12 (decertifying Class but finding commonality).

3. Typicality Is Met

"Typicality focuses on the class representative's claim – but not the specific facts from which the claim arose – and ensures that the interest of the class representative aligns with the interests of the class." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017). "The requirement is permissive, such that representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Id.*

The Court's initial class certification Order found that typicality was satisfied because Plaintiff "claim[ed] that Valero's ambiguous signage caused her to pay a price higher than what she would reasonably expect, and that this injury is typical of consumers exposed to the signage." ECF No. 123 at 10; *see also* ECF No. 248 at 12 (decertifying Class but finding typicality). Because Plaintiff's claims are unchanged, typicality is still satisfied.

4. Adequacy Is Met

Adequacy of representation is met where: (1) plaintiffs and their counsel do not have conflicts of interests with other class members; and (2) where plaintiffs and their counsel prosecute the action vigorously on behalf of the class. *See Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Adequacy is presumed where a fair settlement was negotiated at arm's length. *See* H. Newberg & A. Conte, 2 NEWBERG ON CLASS ACTIONS §11.28, at 11-59 (3d ed. 1992).

The Court previously found that "there [was] no reason to believe Bautista and class counsel [could not] adequately represent the interests of the putative class." ECF No. 123 at 11; *see also* ECF No. 248 at 12 (decertifying Class finding adequacy satisfied). Class Counsel have extensive experience and expertise in prosecuting complex class actions, and have vigorously pursued the Class members' claims throughout this litigation. *See* Gold Decl., ¶3; Yanni Decl., ¶¶7, 14-16. Neither Class Counsel nor Plaintiff has any conflicts of interest with the Settlement Class. Adequacy is satisfied for settlement purposes.

B. The Settlement Class Satisfies Rule 23(b)(3)

A plaintiff seeking Rule 23(b)(3) certification must establish that: (1) common questions predominate over questions affecting only individual class members; and (2) a class action would be superior to other methods of adjudicating the controversy. *See* Fed. R. Civ. P. 23(b)(3). Although this Court found in its decertification Order that these requirements were not satisfied for litigation purposes, "whether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (Rule 23(b)(3)'s factors "must be considered in light of the reason for which certification is sought – litigation or settlement"). A class that is not certifiable for trial on the merits may nonetheless be certifiable for settlement "if the settlement

obviates the need to litigate individualized issues that would make a trial unmanageable." *Id.* Here, none of the reasons for decertifying the Class apply to the Class for settlement purposes because the Settlement requires Valero to adopt procedures that apply equally to ***all*** Valero-branded stations located in California, obviating the need to litigate the individualized questions about whether and when each Valero-branded station at issue displayed the allegedly misleading signage. Moreover, class treatment is superior to individualized lawsuits given the *de minimis* damages allegedly suffered by each individual Settlement Class member. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). For all of these reasons, class certification under Rule 23(b)(3) is appropriate for the purposes of the Settlement.

C. The Court Should Preliminarily Appoint Settlement Class Counsel

Under Rule 23(g)(1)(B), "a court that certifies a class must [also] appoint class counsel [who must] fairly and adequately represent the interests of the class[.]" In making this determination, courts generally consider: (1) the proposed class counsel's work in identifying or investigating potential claims; (2) the proposed class counsel's experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) the proposed class counsel's knowledge of the applicable law; and (4) the proposed class counsel's resources committed to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

Here, the proposed Class Counsel were already appointed as Class Counsel for purposes of litigation [*see* ECF No. 123], and there is no reason they should not be reappointed for purposes of settlement. Proposed Class Counsel have extensive experience prosecuting consumer class actions. *See* Gold Decl., ¶3. They have spent substantial time and energy and hundreds of thousands of dollars prosecuting this case. *Id.*, ¶14. Accordingly, the Court should preliminarily appoint Christopher C. Gold and Stuart A. Davidson of Robbins Geller Rudman & Dowd LLP, and Rafael Bernardino, Jr. of Hobson, Bernardino + Davis LLP as Class Counsel.

VI. THE PROPOSED NOTICE PLAN CONSTITUTES ADEQUATE NOTICE AND SHOULD BE APPROVED

Rule 23(e)(1)(B) requires courts to "direct notice in a reasonable manner to all class members who would be bound by the proposal[.]" Rule 23 requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128-29 (9th Cir. 2017). Due process requires "that notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974).

Notice plans are not expected to reach every class member. *Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994). Rule 23 "recognizes it might be ***impossible*** to identify some class members for purposes of actual notice." *Briseno*, 844 F.3d at 1129 (original emphasis). If the names and addresses of class members cannot be determined by reasonable efforts, notice by publication is sufficient to satisfy the requirements of due process and Rule 23. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950); *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993); *see also Briseno*, 844 F.3d at 1129 ("Courts have routinely held that notice by publication in a periodical, on a website, or even at an appropriate physical location is sufficient to satisfy due process."). A notice plan that reaches 70% of the class is adequate and complies with Rule 23 and due process. *See* Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), at 3, https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

Valero does not maintain contact information for each Settlement Class member. The Settlement Notice Plan will satisfy due process and Rule 23 because it targets Settlement Class members through a combination of online banner ads, social media ads, press releases, and print media channels designed to reach a minimum of 70% of the Settlement Class an average of three times each. Azari Decl., ¶¶7-13. The plan includes a nationwide supplemental digital campaign and national press release targeting Settlement Class members who have migrated from California or

who were temporarily in California at the time of their transaction, which will further enhance the reach and frequency of the Settlement Notice Plan. *Id.* This constitutes the best notice practicable under the circumstances and satisfies the Federal Judicial Center's standard for reasonable notice. *See Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 786 (7th Cir. 2004) (publication of notice in a national newspaper, plus an online publication, constitutes sufficient notice).

This Court previously approved a nearly identical notice plan in connection with class certification, noting that it satisfied the requirements of Rule 23 and due process. ECF No. 164 at 1. For the same reasons, this Court should approve the proposed Settlement Notice Plan and appoint Epiq to serve as the Settlement Administrator.

VII. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL

If the Court grants this motion, it should also set a schedule for final approval of the Settlement. Plaintiff respectfully proposes the following schedule:

Settlement website activated	15 calendar days after Order Directing Notice to Class
Notice first published in print and electronic sources	15 calendar days after Order Directing Notice to Class
Plaintiff to file motion for final approval and motion for award of attorneys' fees, expenses, and service award	No later than 35 calendar days before Final Approval Hearing
Last day to postmark requests for exclusion or file any objections	No later than 21 calendar days before Final Approval Hearing
Plaintiff to file any reply to any objection to the Settlement or Class Counsel's fee and expense request and Claim Administrator to file Declaration of Compliance regarding Notice	No later than 7 calendar days before Final Approval Hearing
Final Approval Hearing	At least 100 calendar days from the Order Directing Notice to the Class

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily certify the Settlement Class, appoint Class Counsel, preliminarily approve the Settlement, and direct notice of the Settlement to the Class.

1 DATED: September 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 30, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

By: *s/ Christopher C. Gold*
Christopher C. Gold