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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16 **SOUTHERN DIVISION**

16 TERRI N. WHITE, *et al.*,

17 *Plaintiffs,*

18 *v.*

19 EXPERIAN INFORMATION  
20 SOLUTIONS, INC.,

21 *Defendant.*

CASE No. 05-cv-1070 DOC  
(MLGx) (Lead Case)

**NOTICE OF MOTION  
AND MOTION FOR  
FINAL APPROVAL;  
MEMORANDUM OF  
POINTS AND  
AUTHORITIES**

22 **AND RELATED CASES:**

- 23 05-cv-0173-DOC (MLGx)  
24 05-cv-7821-DOC (MLGx)  
25 05-cv-0392-DOC (MLGx)  
26 05-cv-1172-DOC (MLGx)  
27 05-cv-5060-DOC (MLGx)

Date: December 11, 2017  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

28 CASE No. 05-cv-1070 DOC (MLGx)

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CASES

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*Browning v. Yahoo!, Inc.*,  
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*Bryan v. Pittsburgh Plate Glass Co.*,  
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*Ellis v. Naval Air Rework Facility*,  
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*Hanlon v. Chrysler Corp.*,  
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*Holloway v. Full Spectrum Lending*,  
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*In re Prudential Sec. Inc. Ltd. P’ships Litig.*,  
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*M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*,  
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*Marshall v. Holiday Magic, Inc.*,  
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*Maywalt v. Parker & Parsley Petroleum Co.*,  
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*Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*,  
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*Officers for Justice v. Civil Serv. Comm’n of City and County of San Francisco*,  
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3 *Radcliffe v. Hernandez*,  
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14 MANUAL FOR COMPLEX LITIG..... 12, 13

15 NEWBERG ON CLASS ACTIONS (4th ed. 2002) ..... 15, 21

16 **RULES**

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1 **MOTION AND NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT, on December 11, 2017 at 8:30 a.m. or  
4 such other date and time as the Court may set, in Courtroom 9D of the above-  
5 captioned Court, located at 411 West Fourth Street, Santa Ana, CA 92701, Plaintiffs  
6 José Hernandez, Kathryn Pike, Robert Randall, Bertram Robison, and Lewis Mann<sup>1</sup>  
7 will, and hereby do, move this Court for an order granting final approval of the  
8 Amended Settlement Agreement and Release (the “Settlement”), attached as  
9 Exhibit 1 to the Declaration of Michael A. Caddell, filed contemporaneously  
10 herewith.

11 Pursuant to the Court’s Preliminary Approval Order, (Dkt. 1067), notice was  
12 provided to members of the provisionally certified 23(b)(3) Settlement Class<sup>2</sup> by  
13 email or mail in accordance with the Court-approved notice plan.

14 This motion is based on this Notice of Motion and Motion; the accompanying  
15 Memorandum of Points and Authorities; the Court’s Preliminary Approval Order,  
16 (Dkt. 1067); the declaration of Jennifer Keough, (Dkt. 1105), the declarations of  
17 Michael A. Caddell, Professor Geoffrey Miller, and John Ulzheimer filed herewith;  
18 the pleadings and records of this action; any argument presented at the hearing on  
19 the Motion; and such other and further matters as the Court may properly consider.  
20  
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23

24 <sup>1</sup> Class Counsel do not represent Plaintiffs Robert Radcliffe, Chester Carter, Maria  
25 Falcon, Clifton C. Seale III, and Arnold E. Lovell. Pursuant to the Court’s Orders  
26 consolidating *Hernandez v. Equifax Info. Servs.*, No. 2:06-cv-03924, with *White v.*  
27 *Equifax Info. Servs., LLC*, 05-cv-7821 DOC (MLGx) and *Pike v. Equifax Info. Servs.*  
*LLC*, 06-cv-5600 DOC (MLGx) for all purposes pursuant to FED. R. CIV. P. 42(a)  
(*Hernandez* Dkt. No. 33; *Acosta* Dkt. No. 152), Plaintiffs file this motion under the  
consolidated case but on their own behalf only.

28 <sup>2</sup> Capitalized terms herein have the meanings assigned in the Settlement Agreement.

1 Dated: November 13, 2017

Respectfully submitted,

2 By: /s/ Michael A. Caddell

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **I. INTRODUCTION**

3           This Settlement, which will finally resolve litigation that has been pending  
4 since 2005, is an excellent result for the class and easily merits final approval. It is  
5 the result of extensive litigation and discovery and numerous contentious, arm’s-  
6 length mediations. Improving on an already impressive result, it will add valuable  
7 non-monetary relief to available Actual Damage and Convenience Awards similar to  
8 those Class members would have received in the settlement that was proposed in  
9 2009 (the “2009 Proposed Settlement”). Following a comprehensive new notice  
10 program, hundreds of thousands of additional Class members—collectively 25%  
11 more than approved under the 2009 Proposed Settlement—have submitted claims  
12 and, subject to the Settlement Administrators’ review and approval, will benefit  
13 from this Settlement. Remarkably, this excellent result was achieved despite  
14 significant risks and potential obstacles to the Class’s recovery, including a complex,  
15 hotly disputed issue of first impression regarding whether Defendants’ conduct was  
16 “willful” and a tentative Order from this Court denying class certification.  
17 (Dkt. 369.)

18           In 2008, this Court approved the settlement of Plaintiffs’ injunctive relief  
19 claims. (Dkt. 338.) Plaintiffs’ widely published consumer-credit expert, John  
20 Ulzheimer, opined at the time that the agreed relief was “groundbreaking.”  
21 (Dkt. 605-4 ¶ 6.) Updating his opinion, Mr. Ulzheimer affirms that the Injunctive  
22 Relief Settlement continues to be effective and, based on his vantage point, has “all  
23 but eliminated the inaccurate credit reporting of pre-bankruptcy, statutorily  
24 dischargeable debts as being ‘due and owing’ after the filing date of Chapter 7  
25 bankruptcies.” (Ulzheimer Decl. ¶ 28.) Following the Injunctive Relief Settlement,  
26 the parties continued to litigate and, after significant discovery and contentious,  
27 arm’s-length negotiations, agreed to the 2009 Proposed Settlement, which this

1 Court approved as “fair, reasonable, and adequate” in 2011. (Dkt. 837.) On appeal,  
2 the Ninth Circuit vacated that settlement based on its service award provision, and  
3 not for any reason related to the substantive terms of the settlement benefits to the  
4 Class members. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164–65  
5 (9th Cir. 2015) (“*Radcliffe I*”). After two rounds of appeal, additional litigation, and  
6 two further mediation efforts before experienced and highly respected mediators—  
7 the Hon. Daniel Weinstein and the Hon. Dickran M. Tevrizian—the parties now  
8 present this new Settlement for final approval. Class members have received Notice  
9 and an opportunity to file claims in accordance with the Court-approved Notice  
10 Plan, (*see* Dkt. 1105), and this Court should now grant final approval so that Class  
11 members can finally receive compensation for their claims.

## 12 II. FACTUAL AND PROCEDURAL BACKGROUND

### 13 A. Plaintiffs’ Claims

14 Plaintiffs’ claims center on Defendants’ failure to maintain reasonable  
15 procedures to assure the accurate reporting of debts that have been discharged in  
16 bankruptcy because they relied primarily on creditors and public record vendors to  
17 report the discharged status of debts and judgments. Plaintiffs assert claims for  
18 (i) willful and/or negligent violation of Section 1681e(b) of the Fair Credit Reporting  
19 Act, 15 U.S.C. § 1681 (“FCRA”), and its California counterpart, CAL. CIV. CODE  
20 § 1784.14(b), for failure to maintain reasonable procedures to assure maximum  
21 possible accuracy; (ii) willful and/or negligent violation of Section 1681i of the FCRA  
22 and its California counterpart, CAL. CIV. CODE § 1785.16, for failure to reasonably  
23 investigate consumer disputes regarding the status of the discharged accounts; and  
24 (iii) violation of California’s Unfair Competition law, CAL. BUS. & PROF. CODE  
25 § 17200.

1 **B. Extensive Litigation and Multiple Mediations Required to Secure the**  
2 **Proposed Settlement**

3 This litigation dates back to 2005, when José Hernandez filed his original  
4 Class Action Complaint in *Hernandez v. Equifax Info. Services, LLC, et al.*, No. 05-  
5 cv-03996 (N.D. Cal.), which was later transferred to this District and consolidated  
6 with *White v. Equifax Info. Servs., LLC*, 05-cv-7821 DOC (MLGx) and *Pike v. Equifax*  
7 *Info. Servs. LLC*, 06-cv-5600 DOC (MLGx). (*Hernandez* Dkt. No. 33; *Acosta*  
8 Dkt. No. 152.) During the course of this litigation, Plaintiffs undertook substantial  
9 discovery, including taking or defending forty depositions, producing over 50,000  
10 pages of documents, and reviewing over 40,000 pages of documents produced by the  
11 Defendants. (Caddell Decl. ¶ 30.) Plaintiffs also consulted with and retained  
12 numerous credit reporting and consumer bankruptcy experts, interviewed numerous  
13 consumers, and reviewed thousands of consumer credit reports. (*Id.*)

14 From August 15, 2007 to February 2009, the parties engaged in arm's-length,  
15 contentious, lengthy, and complicated negotiations (with the participation of  
16 Defendants' insurance carriers), including seven in-person sessions with a JAMS  
17 mediator, the Hon. Lourdes Baird (Ret.), and five in-person mediation sessions with  
18 mediator Randall Wulff, as well as several additional in-person or telephonic sessions  
19 involving counsel for the parties. (*Id.* ¶ 32.) The initial negotiations resulted in the  
20 April 2008 Injunctive Relief Settlement Agreement, which this Court approved.  
21 (Dkt. 290.) The parties then conducted several mediation sessions trying to achieve  
22 a settlement of the Class's monetary relief claims, but without success. (Caddell  
23 Decl. ¶ 32.) On January 26, 2009, the parties appeared for a hearing on Plaintiffs'  
24 Motion for Class Certification of a 23(b)(3) damages class. Prior to the hearing, the  
25 Court issued a tentative ruling denying Plaintiffs' Motion for Class Certification  
26 pursuant to FED. R. CIV. P. 23(b)(3), decided not to hear the Motion at that time,  
27 and directed the parties to make a final attempt to settle the litigation. (*Id.*)

1 The parties and Defendants' insurance carriers participated in an additional  
2 mediation session before mediator Wulff three days later but did not reach an  
3 agreement. (*Id.* ¶ 33.) The parties and Defendants' insurance carriers then  
4 participated in a settlement conference at the Court on February 5, 2009. (*Id.*) At  
5 that conference, Plaintiffs, Equifax, and Experian reached agreement on the  
6 principal terms of the 2009 Proposed Settlement, which would have resolved all of  
7 Plaintiffs' claims in the Litigation for monetary damages, including statutory and  
8 punitive damages. (Dkt. 383.) TransUnion agreed to join that settlement on  
9 February 18, 2009. (Caddell Decl. ¶ 32.)

10 This Court granted final approval after concluding the settlement was fair and  
11 reasonable and after giving due consideration to all objections received. (Dkt. 837.)  
12 A group of objectors appealed to the Ninth Circuit, which found that the  
13 Settlement's service award provision created an impermissible conflict. *Radcliffe I.*  
14 In response to this ruling, Class Counsel have agreed not to seek any fees or expenses  
15 for the period of conflict identified by the Ninth Circuit, April 1, 2009, through  
16 May 1, 2013. (Dkt. 1096 at 12.)

17 On remand in 2013, out of an abundance of caution, Class Counsel put in place  
18 additional safeguards to ensure that the Class's best interests were protected,  
19 including the presence of newly associated counsel, Public Justice, P.C., and Francis  
20 & Mailman, who, in addition to being unconnected to the prior conflict, bring  
21 considerable additional class action and FCRA expertise to the table. (*Id.* ¶ 35.) Class  
22 Counsel entered into a cooperating counsel agreement, vetted by Professor Charles  
23 Silver, to ensure that newly associated counsel is incentivized to achieve the best  
24 result for the Class. (*Id.*) On May 1, 2014, this Court appointed Class Counsel to  
25 represent the Class under FED. R. CIV. P. 23(g). (Dkt. 956.) Class Counsel were  
26 required to defend their appointment through a lengthy appeal to the Ninth Circuit,  
27  
28

1 including a petition for certiorari to the United States Supreme Court. (Caddell  
2 Decl. ¶ 34.)

3 After the Ninth Circuit’s March 2016 ruling in *Radcliffe v. Hernandez*, 818  
4 F.3d 537 (9th Cir. 2016) (“*Radcliffe II*”) and remand to this Court, Plaintiffs re-  
5 evaluated the litigation options that would best serve the Class’s interests. (*Id.* ¶ 36.)  
6 The Parties resumed settlement negotiations and attended a mediation with the  
7 Hon. Daniel Weinstein (Ret.) on August 25, 2016, but did not reach agreement. (*Id.*)  
8 On September 19, 2016, Plaintiffs moved for leave to file a Third Amended  
9 Complaint to add two additional Class Representatives and two subclasses.  
10 (Dkt. 1005.) On October 11, 2016, this Court tentatively denied Plaintiffs’ motion  
11 and ordered the parties to appear for a settlement conference before the  
12 Hon. Dickran M. Tevrizian. (Dkt. 1021.) The parties reached an agreement and  
13 signed a term sheet on November 7, 2016. (Caddell Decl. ¶ 36.) Over the next few  
14 months, the parties worked to document the detailed settlement language. (*Id.*) The  
15 final Settlement Agreement was executed on April 14, 2017. (*Id.*)

### 16 **C. Proposed Settlement Terms**

#### 17 **1. The Settlement Class**

18 The “23(b)(3) Settlement Class”<sup>3</sup> that will benefit from this Settlement is co-  
19 extensive with the Settlement Class under the 2009 Proposed Settlement. (Caddell  
20 Decl. ¶ 37.) It includes all consumers who have received an order of discharge  
21 pursuant to Chapter 7 of the United States Bankruptcy Code and who, at any time  
22 between and including March 15, 2002 and May 11, 2009 (or, for California residents  
23 in the case of Trans Union, any time between and including May 12, 2001 and  
24 May 11, 2009), have been the subject of a Post-bankruptcy Credit Report issued by a  
25 Defendant in which one or more of the following appeared:  
26  
27

28 <sup>3</sup> Capitalized terms herein have the meanings defined in the Settlement Agreement.

- 1 a. A Pre-bankruptcy Civil Judgment that was reported as outstanding
- 2 (i.e. it was not reported as vacated, satisfied, paid, settled or
- 3 discharged in bankruptcy) and without information sufficient to
- 4 establish that it was, in fact, excluded from the bankruptcy
- 5 discharge;
- 6 b. A Pre-bankruptcy Installment or Mortgage loan that was reported as
- 7 delinquent or with a derogatory notation (other than “discharged in
- 8 bankruptcy,” “included in bankruptcy,” or similar description) and
- 9 without information sufficient to establish that it was, in fact,
- 10 excluded from the bankruptcy discharge; and/or
- 11 c. A Pre-bankruptcy Revolving Account that was reported as
- 12 delinquent or with a derogatory notation (other than “discharged in
- 13 bankruptcy,” “included in bankruptcy” or similar description) and
- 14 without information sufficient to establish that it was, in fact,
- 15 excluded from the bankruptcy discharge; and/or
- 16 d. A Pre-bankruptcy Collection Account that remained in collection
- 17 after the bankruptcy date.

18 (Settlement Agreement § 1.75.)

19 Under the 2009 Proposed Settlement, Defendants identified Class members  
20 using commercially reasonable procedures to search a selection of their archived  
21 files. Defendants have now updated that list and provided the Settlement  
22 Administrator with the last known mailing address associated with Class members.  
23 (Settlement Agreement § 6.1; Dkt. 1105 ¶ 4.) The Settlement Administrator has de-  
24 duplicated and updated the Class list to identify 15,335,681 Settlement Class  
25 members. (Dkt. 1105 ¶ 5.)

1           **2. Settlement Benefits**

2           The Settlement provides both significant monetary and important  
3 nonmonetary benefits. In terms of monetary benefits, the Settlement creates a non-  
4 reversionary fund consisting of approximately \$37.65 million<sup>4</sup> remaining in the  
5 registry of the Court after payment of notice and administration expenses in  
6 connection with the 2009 Proposed Settlement and an additional \$1 million  
7 contributed by the Defendants, for a total of approximately \$38.65 million in non-  
8 reversionary cash benefits. (Settlement Agreement § 1.66.) Class members may  
9 claim either an Actual Damage Award or a Convenience Award. (*Id.* § 7.2.)  
10 Importantly, all approved claims submitted in connection with the 2009 Proposed  
11 Settlement will be honored in this Settlement. (*Id.* § 7.1(a).) Actual Damage Awards  
12 are reserved for Class members who can demonstrate that a credit inquiry was  
13 performed between March 15, 2002, and May 11, 2009 (or, for California residents  
14 in the case of TransUnion, any time between and including May 12, 2001 and  
15 May 11, 2009) related to employment, a mortgage or housing rental, a credit card,  
16 auto loan, or other credit applied for, or payment of a discharged debt to obtain  
17 credit. (Settlement Agreement, Schedule 6.2.) Actual Damage Awards Claimants  
18 will receive \$750 for denial of employment, \$500 for denial of a mortgage or housing  
19 rental, or \$150 for denial of other credit. (*Id.*) To date, the Settlement Administrator  
20 has preliminarily approved 18,863 Actual Damage Award claims, including 15,329  
21 claims approved in connection with the 2009 Proposed Settlement and 3,534 new  
22 claims submitted in response to the Notice of this Settlement. (*See* Dkt. 1105 ¶¶ 27-  
23 29.)

24           If Class members cannot meet the proof requirements for an Actual Damage  
25 Award, they may claim a Convenience Award, with no requirement of attestation.

26 \_\_\_\_\_  
27 <sup>4</sup> This total includes \$37,350,666.18 in principal remaining in the fund as of  
28 December 31, 2016, plus approximately \$300,000 in accrued interest. (*See*  
Settlement Agreement at 5.)



1 (Settlement Agreement § 1.14; Dkt. 1066-7 at 3.) Convenience Award Claimants will  
2 receive a pro rata share of Convenience Award Funds remaining after payment of  
3 notice and administration costs, service awards, if any, any award of attorneys' fees  
4 and costs, and estimated amounts to be paid for Actual Damage Awards. (*Id.* §§ 1.4,  
5 7.2.) The amounts of any checks, including both Actual Damage and Convenience  
6 Award checks, that remain uncashed more than 120 days after the date on the check  
7 will be redistributed on a *pro rata* basis to Convenience Award Claimants who cashed  
8 their first check, so long as the redistribution would not result in too low an amount  
9 to be economically feasible. (*Id.* § 7.2(c).) Convenience Awards are estimated to be  
10 \$15–20. (Dkt. 1066-6 at 6.) To date, the Settlement Administrator has preliminarily  
11 approved 895,617 Convenience Award Claims, including 754,007 claims approved  
12 in connection with the 2009 Proposed Settlement and 141,610 new claims submitted  
13 in response to the Notice of this Settlement. (Dkt. 1105 ¶¶ 27–29.)

14 The Settlement's non-monetary benefits are substantial and closely tied to the  
15 nature of the claims and alleged harm in this litigation. The Settlement gives Class  
16 members the option of claiming, as an alternative to a monetary damage award, an  
17 extra free copy of their credit reports (beyond the free annual FACTA disclosure)  
18 and two free VantageScore Credit Scores. (Caddell Decl. ¶ 38.) This benefit is  
19 tailored to be of assistance to persons who, like the Class members here, have been  
20 through bankruptcy and may be seeking to improve their credit scores. John  
21 Ulzheimer, Plaintiffs' highly respected credit expert, estimates the market value of  
22 this package of benefits at \$15.95–\$19.95, in line with the estimated value of  
23 Convenience Award Claims. (Ulzheimer Decl. ¶ 25.)

24 In addition, all Class members, regardless of which benefit they choose to  
25 claim, can access the Settlement Website to receive information about Defendants'  
26 consumer relations and investigation processes and obtain legal assistance to dispute  
27 any erroneous information on their credit reports. (Settlement Agreement § 3.2,  
28



1 Schedule 3.2(A).) This includes an offer of free legal assistance from Class Counsel  
2 with extensive expertise handling consumer credit issues, and as of November 3,  
3 2017, a total of 66 emails had been received to the email account that the Settlement  
4 Administrator established to handle questions directed to them. (Dkt. 1105 ¶ 20.) A  
5 link to the Consumer Credit Reporting Assistance (“CCRA”) webpage was featured  
6 in the Settlement Notice, and as of November 3, 2017, this section of the website had  
7 already received over 87,432 unique visits. (Dkt. 1105 ¶ 16.) Class members who  
8 visited this section received information about (a) how to obtain free file disclosures;  
9 (b) how to read and understand credit reports; (c) the difference between a credit  
10 report and a credit score; (d) how to use settlement benefits to track credit ratings  
11 and monitor improvements; and (g) how to dispute inaccuracies in credit reports and  
12 make the most of Defendants’ reinvestigation processes. (Settlement Agreement  
13 § 3.2, Schedule 3.2(A); *see also* Ulzheimer Decl. ¶ 18 (“many thousands of  
14 individuals will derive meaningful benefit from the website”).

### 15 **3. Notice and Claims Administration**

16 Distributions from the Settlement Fund will be made to Class members who  
17 submit valid claims by the November 13, 2017 deadline. Plaintiffs will provide final  
18 information regarding the number of approved claims for each category of benefit in  
19 advance of the Final Approval Hearing, once the Settlement Administrator has  
20 reviewed all claim submissions and determined the number of valid claims. To date,  
21 the Settlement Administrator has preliminarily approved 9,080 claims for denial of  
22 employment, 6,602 claims for denial of a mortgage or housing rental, 3,181 claims  
23 for denial of other credit or payment of a discharged debt to obtain credit, and  
24 895,617 Convenience Award claims, including both new approved claims and  
25 approved claims submitted in connection with the 2009 Proposed Settlement.  
26 (Dkt. 1105 ¶ 29.) The Settlement Administrator has approved 49,202 Non-  
27 Monetary Claims. (*Id.*) These claims remain subject to review for compliance with

1 the Settlement Agreement’s requirements to verify claims. (Settlement Agreement,  
2 Schedule 6.2.)

3 The Settlement Administrator will first distribute the guaranteed amounts—  
4 \$750 for denial of employment, \$500 for denial of a mortgage or housing rental, or  
5 \$150 for denial of other credit or payment of a discharged debt to obtain credit—to  
6 approved Actual Damage Claimants, paying each claimant the highest award for  
7 which he or she is eligible. (Settlement Agreement § 7.2(b).) After deduction of  
8 administrative and notice costs and amounts paid pursuant to any award of  
9 attorneys’ fees and costs, the remaining amount will be available for pro rata  
10 distribution to the Convenience Award claimants. (*Id.* § 7.2(a).) Based on the  
11 current number of Actual Damage Claims, at least \$10 million will be available for  
12 the initial distribution to Convenience Award Claimants.

Total Funds Available	\$38,650,666.18
Actual Damage Awards (est.)	(\$10,047,516.24)
Notice and Administration Costs (est.)	(\$6,000,000)
Attorneys’ Fees and Expenses (requested)	(\$12,000,000)
Convenience Award Fund (est.)	\$10,603,149.94

19  
20 The Actual Damage Claims submitted remain subject to review, and Class Counsel  
21 will provide updated numbers in advance of the Final Approval Hearing, once the  
22 Settlement Administrator has completed its review of claims submitted.

#### 23 **4. Attorneys’ Fees and Costs**

24 The Settlement provides that Class Counsel shall apply for attorneys’ fees  
25 from the Settlement Fund. (Settlement Agreement § 11.1.) As the approved Notice  
26 informed Class members, Class Counsel have committed not to request more than  
27 25% of the total value of the Settlement, including the fund of at least \$38.6 million

1 and the non-monetary benefits, in attorneys' fees. (Ex. C to Settlement Agreement  
2 at 7.) Class Counsel further committed that in no event would their fee request  
3 exceed \$12 million. (*Id.*) On October 30, 2017, Class Counsel requested an award of  
4 \$11,161,163.06 in fees and \$838,836.94 in expenses, for a combined total of \$12  
5 million in requested fees and expenses. (Dkt. 1096 at 23.) Based on the currently  
6 approved total of 895,617 Convenience Award Claims, (Dkt. 1105 ¶ 29), the  
7 requested fee award would leave sufficient funds for the Settlement Administrator  
8 to distribute approximately \$11 in the initial distribution to each Convenience Award  
9 Claimant. Based on past experience, approximately 25–30% of initial claim checks  
10 typically are not cashed. Moreover, the secondary distribution to Convenience  
11 Claimants will include the uncashed funds from the initial distribution of Actual  
12 Damage Award checks as well as Convenience Award checks, resulting in an  
13 estimated \$7–8.00 secondary distribution, for a total estimated distribution to  
14 Convenience Award Claimants of \$18–19.00. (*Id.*; *see* Settlement Agreement  
15 ¶ 7.2(c).)

16 This cumulative distribution falls within the \$15–20 range estimated in the  
17 Notice and compares favorably with the estimate that Convenience Award  
18 Claimants in the 2009 Proposed Settlement would receive approximately \$20 each.  
19 (Dkt. 384 at 31.) To provide further assurance that Convenience Award Claimants  
20 will receive payments in the estimated \$15–20 range, Class Counsel would not object  
21 to the Court delaying payment of any attorneys' fees awarded until such time as the  
22 amount of the secondary distribution to Convenience Award Claimants can be  
23 calculated with certainty, so that the maximum amount of attorneys' fees could be  
24 reduced, if necessary, to assure that all Convenience Award Claimants will receive  
25 at least \$15.00. (Caddell Decl. ¶ 41.) Overall, this Settlement represents an excellent  
26 result for the Class, providing settlement benefits to hundreds of thousands more  
27

1 class members and adding significant non-monetary benefits to the already  
2 impressive monetary benefits made available by the 2009 Proposed Settlement.

### 3 III. ARGUMENT AND AUTHORITIES

#### 4 A. The Court should certify the Settlement Class for settlement purposes.

5 In its Order Granting Preliminary Approval, (Dkt. 1067), the Court  
6 provisionally certified the 23(b)(3) Settlement Class, finding that the Class met  
7 FED. R. CIV. P. 23 (a)'s requirements of numerosity, commonality, typicality, and  
8 adequacy of representation. (*Id.* at 15–19.) The Court further concluded that the  
9 Class met FED. R. CIV. P. 23 (b)'s predominance and superiority requirements.  
10 (*Id.* at 19–21.) For the same reasons, the Court should finally certify the Settlement  
11 Class for settlement purposes here.

#### 12 B. The Court-ordered notice program satisfies due process and has been fully 13 implemented.

14 “Rule 23(e)(1)(B) requires the court to ‘direct notice in a reasonable manner  
15 to all class members who would be bound by a proposed settlement, voluntary  
16 dismissal, or compromise.’” MANUAL FOR COMPLEX LITIG. § 21.312 (4th ed.  
17 2004). In order to protect the rights of absent class members, the Court must provide  
18 the best notice practicable to class members. *See Phillips Petroleum Co. v. Shutts*, 472  
19 U.S. 797, 811–12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174–75 (1974).  
20 Here, the Court approved four different forms of Email and Mail Notice: (1) notice  
21 to Class members who had filed approved Actual Damage Claims in the 2009  
22 Proposed Settlement; (2) notice to Class members who had filed approved  
23 Convenience Award Claims in the 2009 Proposed Settlement; (3) notice to Class  
24 members who had not filed approved claims in the 2009 Proposed Settlement; and  
25 (4) notice to Class members who had opted out of the 2009 Proposed Settlement.  
26 (Dkts. 1066-4-5; Dkt. 1105 ¶ 7 & Ex. A thereto.) According to the Manual for  
27 Complex Litigation, the settlement notice should:

1 define the class; describe clearly the options open to the class members  
2 and the deadlines for taking action; describe the essential terms of the  
3 proposed settlement; disclose any special benefits provided to the class  
4 representatives; provide information regarding attorneys' fees; indicate  
5 the time and place of the hearing to consider approval of the settlement,  
6 and the method for objecting to or opting out of the settlement; explain  
7 the procedures for allocating and distributing settlement funds, and, if  
8 the settlement provides different kinds of relief for different categories  
9 of class members, clearly set out those variations; provide information  
10 that will enable class members to calculate or at least estimate their  
11 individual recoveries; and prominently display the address and phone  
12 number of class counsel and the procedure for making inquiries.

13 MANUAL FOR COMPLEX LITIG. § 21.312. The Class Notices satisfy all of these  
14 criteria. (Dkt. 1067 at 29.)

15 As the Court-approved Settlement Administrator, JND Legal Administration  
16 ("JND") was responsible for sending the notice by email or mail to each Class  
17 member. JND obtained at least one email address for 8,894,695 Class members.  
18 (Dkt. 1105 ¶ 6.) JND then delivered the appropriate Email Notice to each Class  
19 member for whom an email address was available. (*Id.* ¶ 8.) JND delivered the Email  
20 Notice in a manner that permitted JND to reasonably determine whether emails had  
21 been delivered and opened by the recipient. (*Id.*) In total, JND successfully delivered  
22 Email Notice to at least one email address for approximately 80% of the Settlement  
23 Class Members for whom at least one email address was available. (*Id.* ¶ 9.) Of those  
24 individuals, JND was able to confirm that 382,691 of the Settlement Class members  
25 opened the Email Notice. (*Id.*) Pursuant to § 6.2a of the Settlement Agreement, JND  
26 then sent Mail Notice to all Class members for whom email addresses were  
27 unavailable, to whom emails were not deliverable, or who JND could not confirm  
28

1 opened the Notice within a reasonable time period. (*Id.* ¶ 10.) In total, JND sent Mail  
2 Notice to 14,953,209 Class members. (*Id.*)

3 **C. The required CAFA notices have been sent.**

4 In addition, the notice required by the Class Action Fairness Act (“CAFA”),  
5 28 U.S.C. § 1715, was provided by Defendant TransUnion LLC, on behalf of all  
6 Defendants, on June 23, 2017. (Dkt. 1070.) Neither the Department of Justice nor  
7 any state Attorney General has objected to the Settlement, which also favors  
8 approval. *Browning v. Yahoo!, Inc.*, No. 04-cv-1463, 2007 WL 4105971, at \*12 (N.D.  
9 Cal. Nov. 16, 2007) (holding that where governmental agencies were given notice of  
10 the settlement and did not object, factor weighed in favor of settlement).

11 **D. The Court should grant final approval of the settlement as fair, reasonable,  
12 and adequate.**

13 To approve a class action settlement under FED. R. CIV. P. 23(e), the Court  
14 must find that the settlement is “fair, adequate, and reasonable,” recognizing that  
15 “it is the settlement taken as a whole, rather than the individual component parts,  
16 that must be examined for overall fairness.” *Staton v. Boeing*, 327 F.3d 938, 960 (9th  
17 Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
18 “[T]he court’s intrusion upon what is otherwise a private consensual agreement  
19 negotiated between the parties to a lawsuit must be limited to the extent necessary  
20 to reach a reasoned judgment that the agreement is not the product of fraud or  
21 overreaching by, or collusion between, the negotiating parties, and that the  
22 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.”  
23 *Officers for Justice v. Civil Serv. Comm’n of City and County of San Francisco*, 688 F.2d  
24 615, 625 (9th Cir. 1982).

25 “Voluntary conciliation and settlement are the preferred means of dispute  
26 resolution,” especially in complex class actions. *Officers for Justice*, 688 F.2d at 625;  
27 *see also, e.g., Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th  
28

1 Cir. 1989). Class action lawsuits readily lend themselves to compromise because of  
2 the difficulties of proof, the uncertainties of the outcome, and the typical length,  
3 costs, and risks of the litigation. As a result, courts should exercise their discretion  
4 to approve settlements “in recognition of the policy encouraging settlement of  
5 disputed claims.” *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 209  
6 (S.D.N.Y. 1995); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)  
7 (“[S]trong judicial policy ... favors settlements, particularly where complex class  
8 action litigation is concerned.”); 4 NEWBERG ON CLASS ACTIONS  
9 (“NEWBERG”) § 11.41 (4th ed. 2002) (citing cases).

10 To determine whether a settlement is fair, some or all of the following factors  
11 should be considered: (1) the strength of Plaintiffs’ case; (2) the risk, expense,  
12 complexity, and duration of further litigation; (3) the risk of maintaining class  
13 certification; (4) the amount of settlement; (5) the amount of investigation and  
14 discovery that preceded the settlement; (6) the experience and views of counsel; and  
15 (7) the reaction of class members to the proposed settlement. *See Hanlon*, 150 F.3d  
16 at 1027; *Staton*, 327 F.3d at 959. The relative degree of importance attached to any  
17 particular factor depends on the nature of the claims advanced, the types of relief  
18 sought, and the unique facts and circumstances of each case. *Officers for Justice*, 688  
19 F.2d at 625. The decision to approve a proposed settlement is committed to the  
20 Court’s sound discretion. *Class Plaintiffs*, 955 F.2d at 1276; *see also Hanlon*, 150 F.3d  
21 at 1026 (affirming that the Ninth Circuit has “repeatedly stated that the decision to  
22 approve or reject a settlement is committed to the sound discretion of the trial judge  
23 because he is exposed to the litigants and their strategies, positions, and proof”).  
24 Because this Settlement is an excellent result for the Class, particularly in light of the  
25 risks of further litigation, and is supported by experienced, highly qualified counsel  
26 and the reaction of Class members, the Court should grant final approval.



1           **1. This Settlement represents an excellent result for the Class in light of**  
2           **the strength of Plaintiffs’ case and the risk, complexity, and duration**  
3           **of further litigation.**

4           Unlike protracted litigation with an uncertain outcome, the Settlement  
5           provides Class members with prompt and efficient relief. Each of the CRAs is  
6           “incentivized to litigate this case as aggressively as possible.” (Miller Decl. ¶ 35.) If  
7           this case were to proceed, Plaintiffs would be required to prove that Defendants  
8           acted willfully in violating the FCRA. 15 U.S.C. § 1681n(a). Because this is a complex  
9           legal and factual issue raising matters of first impression, including whether the  
10          FCRA requires a CRA to cross-check information they receive from creditors with  
11          public records of bankruptcy discharges, proving willfulness would present a  
12          significant challenge. (*See* Miller Decl. ¶ 36 (“While the evidence might have  
13          established that the Defendants failed to utilize best practices, it would have been  
14          difficult to prove by a preponderance of the evidence that Defendants’ conduct met  
15          the high level of culpability required under the statute.”); Dkt. 837 at 8–9.)

16          Second, the Settlement enables Class members to avoid the risks of going to  
17          trial. The factual and legal issues in this action are complex, and the trial of Plaintiffs’  
18          claims under the FCRA and related state laws would require substantial preparation  
19          and ultimately the presentation of dozens of witnesses and numerous experts.  
20          Although Plaintiffs believe their claims have merit, they also recognize that they  
21          would face significant legal, factual, and procedural obstacles to recovering damages  
22          on their claims. The Defendants deny that they willfully or negligently violated the  
23          FCRA or related state laws, and “even if Plaintiffs could establish willfulness as to  
24          some class members, “it would have been difficult to prove that Defendants acted  
25          willfully as to all.” (Miller Decl. ¶ 37.) Defendants also contend that, while some  
26          reports might be rendered inaccurate by the challenged practices, there were many  
27          instances in which a given class member’s report would still be accurate. (*See* Miller  
28



1 Decl. ¶ 38.) Even if the Class were successful in winning at trial, proceeding to trial  
2 would add years to the resolution of this case and could be further delayed by appeals.

3 **2. The risk of maintaining class certification weighs heavily in favor of**  
4 **approval.**

5 Were this case to proceed, the Class also faces a significant risk that the Class  
6 might not be certified, or that class certification might not be maintained through  
7 trial. (*See* Miller Decl. ¶ 40 (identifying the problem of obtaining class certification  
8 as “[p]erhaps the largest threat hanging over the plaintiffs’ case”).) At the hearing  
9 on class certification on January 26, 2009, the Court issued a tentative opinion  
10 denying Plaintiffs’ Motion for Class Certification. (Dkt. 369.) As Prof. Miller  
11 observes, “[i]t would be hard to imagine a stronger indication that certification was  
12 very much in doubt.” (Miller Decl. ¶ 40.) This Court has noted that trial of this case  
13 as a class action would pose significant manageability issues which, while they do not  
14 prevent certification for settlement purposes, could be a real threat to the Class  
15 receiving any recovery if these claims had to be tried to a jury. (Dkt. 837 at 10.)  
16 “Because the claims in this litigation are for relatively small amounts of money, this  
17 case would not have been viable to litigate on an individual basis.” (Miller Decl.  
18 ¶ 40.) Consideration of the very real class certification risk therefore counsels  
19 strongly in favor of Settlement approval.

20 **3. The amount of the Settlement represents an excellent result for the**  
21 **Class.**

22 This Settlement provides relief for all Class members who have had a credit  
23 report issued by a Defendant that contained alleged errors regarding debts  
24 discharged in bankruptcy. *See* Section II. C. 2. *supra*. The Class will benefit from  
25 approximately \$38.65 million in non-reversionary monetary benefits as well as  
26 significant non-monetary benefits. The amount of the cash fund alone justifies  
27 approval of this Settlement, particularly in light of the FCRA’s goal of awarding  
28

1 statutory damages to deter offenders from improperly reporting consumers' credit  
2 history. *See Holloway v. Full Spectrum Lending*, 2007 U.S. Dist. LEXIS 59934, at \*15  
3 (C.D. Cal. June 26, 2007) (“the determination of statutory damages, which range  
4 from \$100 to \$1,000 per violation, need not be determined on an individual basis,  
5 but rather can be determined based upon Defendant’s conduct in the aggregate”);  
6 *see also* Dkt. 837 at 14 (“Given the FCRA’s goal of deterring offenders from  
7 improperly reporting credit, the detriment that the Settlement imposes on  
8 Defendants ought to be considered alongside the benefit that the Settlement confers  
9 on the class members.”) The addition of the non-monetary relief makes this  
10 Settlement truly an outstanding result for the Class.

11 John Ulzheimer, a highly respected expert who has written and been published  
12 extensively on consumer credit issues, affirms that the non-monetary benefits have  
13 “real and significant value” to Class members. (Ulzheimer Decl. ¶ 12.) Regarding  
14 the CCRA information available on the Settlement Website, Mr. Ulzheimer affirms  
15 that the information is “accurate, helpful, and valuable to consumers.” (Ulzheimer  
16 Decl. ¶ 14.) Moreover, the site content is “unique in its breadth and provenance.”  
17 (*Id.* ¶ 17.) While other websites may offer consumers information on credit issues,  
18 the Settlement website “is rare in that all the content can be found on one page.”  
19 (*Id.*) Much of the credit information offered to consumers on the internet is not  
20 accurate and “it can be difficult for a layman to differentiate between the accurate  
21 and inaccurate information.” (*Id.* ¶ 13.) The fact that the content on the Settlement  
22 Website “has been vetted for accuracy by the three credit reporting agencies ensures  
23 that consumers are getting accurate information.” (*Id.* ¶ 17.) There have been over  
24 87,000 visits to the website already, and it is important to note that the website will  
25 remain available throughout the settlement process, including any appeals. (*Id.* ¶ 18.)  
26 Overall, Mr. Ulzheimer concludes that “it is fair to say that many thousands of  
27 individuals will derive meaningful benefit from the website.” (*Id.*)

1           Regarding the free credit report and two free VantageScore credit scores,  
2 Mr. Ulzheimer notes that Defendants Equifax and TransUnion currently sell a  
3 package consisting of a single report and single credit score—i.e., less than the report  
4 and *two* scores offered free here—for \$15.95 and \$19.95, respectively. (Ulzheimer  
5 Decl. ¶ 25.) While credit reports and credit scores are also available from certain  
6 credit card issuers and “free-mium” websites, Mr. Ulzheimer notes that these  
7 services come with strings attached. (Ulzheimer Decl. ¶ 22.) For example, websites  
8 such as CreditKarma or CreditSesame require consumers to provide their personal  
9 information and become “registered users” of the site. (*Id.*) The sites then share  
10 their registered users’ information with other companies that solicit the consumers  
11 for various credit-related products, such as credit cards. (*Id.*) The non-monetary  
12 benefit available through the settlement thus offers consumers an attractive option,  
13 not available elsewhere, to obtain their credit reports and two VantageScore credit  
14 scores for free and without giving away their personal information to lead generation  
15 websites or email marketers. (*Id.* ¶ 23.) Based on the prices of similar products sold  
16 to consumers, Mr. Ulzheimer estimates the market value of the package of a free  
17 credit report and two free VantageScore credit scores offered to Class members here  
18 at \$19.95. (*Id.* ¶ 25); *see Browning*, No. C04-01463 HRL, 2007 WL 4105971, at \*14  
19 (valuing in-kind settlement relief based on retail price of credit scores (\$5.00 each)  
20 and credit monitoring (\$9.95).) Confirming Mr. Ulzheimer’s analysis, the fact that  
21 approximately 50,000 class members have already chosen this benefit over a  
22 Convenience Award estimated to be between \$15–20 indicates that those Class  
23 members value the non-monetary relief at least that much. (Dkt. 1105 ¶ 27–29.)  
24 While the precise value of the Non-Monetary relief in the Settlement cannot be  
25 calculated precisely, given that roughly 50,000 Class members have availed  
26 themselves of the free credit report and scores, and more than 87,000 visits have  
27 already been made to the CCRA website, and particularly since the CCRA website

1 will remain available for Class members through the pendency of any appeal and until  
2 the Effective Date, it is reasonable to value the Non-Monetary relief as a whole at \$1  
3 per class member.

4 Regarding the cash benefit option, it is noteworthy that the Settlement is  
5 structured to provide compensation appropriate to the nature of the injury incurred,  
6 with \$750 awards available for employment inquiries, \$500 for mortgage loans or  
7 housing inquiries, and \$150 for other credit inquiries, and Convenience Awards  
8 available to those who cannot provide documentary proof of injury. (Settlement  
9 Agreement, Schedule 6.2.) As Prof. Miller concludes, the Settlement “is well-  
10 structured to provide real and substantial value to class members.” (Miller Decl.  
11 ¶ 13.) This factor strongly supports Settlement approval.

12 **4. The Settlement is the product of thorough investigation and**  
13 **discovery.**

14 In order to achieve this Settlement, Class Counsel took substantial discovery,  
15 allowing a full development of the factual issues in dispute. Prior to the 2009  
16 Proposed Settlement, Class Counsel undertook substantial investigation, fact-  
17 gathering, and formal discovery (including review of tens of thousands of pages of  
18 documents, retention and consultation of numerous experts in the fields of credit  
19 reporting and consumer bankruptcies, interviews with numerous consumers, review  
20 of thousands of consumer credit reports, and numerous depositions), as well as  
21 significant motion practice and other litigation. (*See* Caddell Decl. ¶¶ 30–32.)  
22 Plaintiffs took or defended forty depositions, produced over 50,000 pages of  
23 documents, and reviewed over 40,000 pages of documents produced by the  
24 Defendants. (*Id.* ¶ 30; *see also* Miller Decl. ¶ 49.) The depositions taken by Plaintiffs  
25 included depositions of each of Defendants’ experts, as well as testimony from  
26 Directors, Vice Presidents, other senior officers, and analysts and consultants from  
27 Defendants’ departments handling, among other subjects, data acquisition services,

1 consumer relations, consumer fraud, technical, software, and modeling, compliance,  
2 decision analytics, and predictive services. (Caddell Decl. ¶ 30.) Class Counsel also  
3 retained several experts who have filed numerous declarations with the Court and  
4 engaged in extensive motion practice, including briefing and arguing a motion for  
5 summary judgment. (Caddell Decl. ¶ 32.)

6 Further demonstrating that this Settlement is the product of vigorous, well-  
7 informed advocacy, it was achieved only after multiple intensive, arm's-length  
8 negotiations before experienced mediators. (*See* Caddell Decl. ¶¶ 31–32; Miller  
9 Decl. ¶ 41 (“The Settlement emerged from a negotiating process as adversarial as  
10 any I have seen in more than twenty years of involvement in class action  
11 litigation.”)); *see also* 4 NEWBERG § 11.43 (explaining that in approving settlements,  
12 courts should consider the presence of good faith and the absence of collusion on the  
13 part of settling parties). Negotiations leading up to the 2009 Proposed Settlement  
14 were hard fought. (Caddell Decl. ¶ 32.) The parties conducted extensive arm's-  
15 length and contentious negotiations during the course of a lengthy and complicated  
16 mediation with the Hon. Lourdes Baird (Ret.) and with Randall Wulff. (*Id.*) The  
17 parties participated in seven full days of mediation with the participation of Judge  
18 Baird, as well as numerous telephonic conferences with Judge Baird. (*Id.*) The  
19 parties also participated in five in-person mediation sessions with mediator Randall  
20 Wulff, including a mandatory settlement conference at the Court on February 5,  
21 2009. (*Id.* ¶¶ 32–33.)

22 And negotiations continued to be contentious after this case was remanded  
23 from the Ninth Circuit. After the *Radcliffe II* ruling in March 2016, Plaintiffs re-  
24 evaluated the litigation options that would best serve the Class's interests. (Caddell  
25 Decl. ¶ 36.) The parties resumed settlement negotiations and attended a mediation  
26 with the Hon. Daniel Weinstein (Ret.) on August 25, 2016, but did not reach  
27 agreement. (*Id.*) On September 19, 2016, Plaintiffs moved for leave to file a Third  
28

1 Amended Complaint to add two additional Class Representatives and two narrower,  
2 more focused subclasses. (Dkt. 1005.) On October 11, 2016, this Court tentatively  
3 denied Plaintiffs’ motion and ordered the parties to appear for a settlement  
4 conference before the Hon. Dickran M. Tevrizian. (Dkt. 1021.) The parties reached  
5 an agreement and signed a term sheet on November 7, 2016. (Caddell Decl. ¶ 35.)  
6 Over the next few months, the parties worked to document the detailed settlement  
7 language, finally executing the Settlement Agreement on April 14, 2017. (*Id.*) The  
8 thorough investigation and discovery and numerous arm’s length mediations that  
9 informed this settlement support that it represents a fair and reasonable result for  
10 the Class. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 852 (1999) (holding that “[o]ne  
11 may take a settlement amount as good evidence of the maximum available if one can  
12 assume that parties of equal knowledge and negotiating skill agreed upon the figure  
13 through arm’s-length bargaining ...”).

14 **5. The recommendations of experienced counsel favor approval of the**  
15 **Settlement.**

16 Class Counsel, which include highly experienced consumer class action  
17 practitioners and the most well-known and successful FCRA lawyers in the country,  
18 strongly endorse this settlement as an excellent result for the Class. (Caddell Decl.  
19 ¶¶ 42–45; Dkt. 1098 ¶ 6; *see* Miller Decl. ¶ 41 (“I have worked with Class Counsel  
20 in previous stages of this litigation and can attest that they are among the finest  
21 attorneys I have encountered in more than two decades of involvement in this  
22 field.”) “The recommendations of plaintiffs’ counsel should be given a presumption  
23 of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *see*  
24 *also M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass.  
25 1987). Here, The fact that qualified and well-informed counsel endorse the  
26 Settlement as fair, reasonable, and adequate weighs heavily in favor of final approval;  
27 *see Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (“the fact that



1 experienced counsel involved in the case approved the settlement after hard-fought  
2 negotiations is entitled to considerable weight”).

3 **6. Class members’ positive reaction supports final approval.**

4 A court may appropriately infer that a class action settlement is fair, adequate,  
5 and reasonable when few Class members object to it. *See, e.g., Marshall v. Holiday*  
6 *Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977). Indeed, a court can approve a class  
7 action settlement as fair, adequate, and reasonable even over the objections of a  
8 significant percentage of Class members. *See Class Plaintiffs*, 955 F.2d at 1291–96;  
9 *see also Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529  
10 (C.D. Cal. 2004) (“It is established that the absence of a large number of objections  
11 to a proposed class action settlement raises a strong presumption that the terms of a  
12 proposed class action settlement are favorable to the class members”); *Bryan v.*  
13 *Pittsburgh Plate Glass Co.*, 494 F.2d 799, 803 (3d Cir. 1974) (“While the proportion  
14 of the class opposed to a settlement is one factor to be considered in assessing its  
15 fairness, ... a settlement is not unfair or unreasonable simply because a large number  
16 of class members oppose it.”) When a significant majority of Class members have  
17 not objected to or excluded themselves from a class action settlement, courts have  
18 interpreted that response as evidence that the settlement warrants final approval.  
19 For example, in *Churchill Village*, the Ninth Circuit affirmed settlement approval  
20 where 45 of approximately 90,000 notified class members objected and 500 opted  
21 out. *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004).

22 **a. Few opt-outs and no objections have been received thus far.**

23 Here, the deadline for opt-outs, claims, and objections will expire  
24 contemporaneously with this filing, so that final data is not yet available. Plaintiffs  
25 will update this information in advance of the Final Approval Hearing. As of Nov. 9,  
26 2017, however, the Settlement Administrator has received only 120 valid opt-out  
27 requests, in addition to the 1,555 Class members who opted out of the 2009 Proposed  
28

1 Settlement and will be deemed to have opted out of this Settlement if they do not  
2 submit claims. (Dkt. 1105 ¶ 22; *see also* Miller Decl. ¶ 48 (observing that “the  
3 number of opt-outs and objectors has been minimal”).) As of November 12, 2017,  
4 no objections had been filed, and Plaintiffs will respond to any objections that may  
5 be filed today in a separate brief on December 4, 2017. (*See* Dkt. 1067 at 33.) The  
6 small number of objections and requests to opt out of the Settlement thus far  
7 indicates a decisively positive response to the Settlement and supports its approval.  
8 *See Marshall*, 550 F.2d at 1178; *Class Plaintiffs*, 955 F.2d at 1291–96 (upholding trial  
9 court’s grant of final approval over Class member objections); *see also Boyd*, 485  
10 F. Supp. at 622 (finding that objections from only 16% of the class was persuasive  
11 that the settlement was adequate).

12 **b. Any objections from the *White* Plaintiffs should not prevent final**  
13 **approval.**

14 Counsel for the White Plaintiffs, who objected to the 2009 Proposed  
15 Settlement, have represented that, while they would ask the Court to award them a  
16 share of any attorneys’ fees granted for helping to achieve this Settlement, they  
17 nevertheless oppose the Settlement and believe the consideration offered to be  
18 inadequate. (Dkt. 1095 at 2.) Plaintiffs will respond to any Objections on  
19 December 4, but it is worth noting that assuming the White Plaintiffs do choose to  
20 object, as this Court has previously ruled in this case, the support of all named  
21 plaintiffs is not required for settlement approval. *See* Dkt. Nos. 423, 438, 837; *see also*  
22 *Officers for Justice*, 688 F.2d at 631. The Court should approve the Settlement if it  
23 determines it is in the best interest of the Class, even if not all plaintiffs agree.  
24 *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1078 (2d Cir. 1995) (holding  
25 that “[t]he ultimate responsibility to ensure that the interests of class members are  
26 not subordinated to the interests of either the class representatives or class counsel  
27 rests with the district court”).





1 Dated: November 13, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Amy Tabor, hereby certify that on November 13, 2017 this document was filed with the Court using the CM/ECF system and thereby served on all counsel of record.

/s/ Amy Tabor  
Amy Tabor