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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 TESSIBLE “SKYLER” FOSTER;
12 MARIE SCOTT; and KRISTA
13 BAUMBACH, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 V.
16 800-FLOWERS, INC., D/B/A 1-
17 800-FLOWERS.COM, HARRY &
18 DAVID, PERSONALIZATION
19 MALL, SHARI’S BERRIES, 1-800-
20 BASKETS.COM, SIMPLY
21 CHOCOLATE, FRUIT
22 BOUQUETS.COM, CHERYL’S
COOKIES, THE POPCORN
FACTORY, WOLFERMAN’S
BAKERY, AND VITAL CHOICE,

Case No. 2:23-cv-07441-AB-PVC

Motion and Memorandum of
Points/Authorities in Support of Preliminary
Approval of the Proposed Class Action
Settlement

Judge: Hon. André Birotte, Jr.
Date: September 27, 2024 at 10:00 a.m.

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1 Plaintiffs Tessible “Skyler” Foster, Marie Scott, and Krista Baumbach, hereby
2 move for preliminary approval of the class-wide Settlement Agreement (attached as
3 Exhibit “1” to the Declaration of Frank S. Hedin (“Hedin Decl.”) submitted
4 concurrently herewith) entered into between Plaintiffs and Defendant 800-Flowers,
5 Inc. (“Flowers”) (collectively, the “Parties”).¹

6 **I. INTRODUCTION**

7 This is a putative class action that alleges Defendant engaged in an “automatic
8 renewal” program with respect to its Celebrations Passport product that Defendant
9 sells on its network of websites and through other channels, including its telephone
10 lines, that plaintiffs contend violated California law. Defendant is a retailer of flowers
11 and gifts. Defendant’s Celebrations Passport is a membership program that provides
12 customers free shipping and no service fees for the first year of enrollment at a cost of
13 approximately \$19.99 that then automatically renews every year after the initial year
14 at a higher price plus tax (the “Automatic Renewal Fee”) charged to the consumer’s
15 stored credit card, debit card or third-party payment account. Plaintiffs alleged in the
16 operative Second Amended Class Action Complaint (“SAC”) (ECF No. 45) that
17 before Defendant charged the Automatic Renewal Fees, it not only failed to obtain
18 Plaintiffs’ and other California consumers’ consent to be charged these fees, but
19 Defendant failed to even disclose the existence of the fee to them in a clear and
20 conspicuous manner. The SAC further alleges that by assessing the Automatic
21 Renewal Fees to Plaintiffs and other California consumers without providing adequate
22 notice or obtaining the requisite consent, Defendant violated California’s Automatic
23 Renewal Law (“ARL”), Cal. Bus. & Prof. Code § 17600, *et. seq.* and that such
24 violation, in turn, was a violation of California’s Unfair Competition Law, Cal. Bus.

25
26 _____
27 ¹ Unless otherwise defined herein, all capitalized terms have the same force,
28 meaning and effect as ascribed in Section II (“Definitions”) of the Settlement
Agreement.

1 & Prof. Code § 17200, *et. seq.* The SAC sought as relief, among other things,
2 damages, injunctive relief, and an award of attorneys' fees.

3 Defendant denies liability and has vigorously defended the litigation. Indeed,
4 this litigation has spanned two filed actions, has involved multiple motions to compel
5 various representative plaintiffs in these actions to arbitration, multiple amended
6 complaints and related motions, document discovery, consultation with retained
7 experts, and hours of conferral amongst the Parties, all of which culminated in a day-
8 long mediation that ultimately yielded the proposed Settlement. Plaintiffs' counsel
9 thoroughly investigated the claims alleged in this action, including reviewing the
10 Celebrations Passport accounts of numerous members of the Settlement Class and
11 assessing Defendant's practices with respect to the sales of Celebrations Passport,
12 presentation of autorenewal terms, and the methods of autorenewal of Celebrations
13 Passport at various times.

14 The considerable time and resources Plaintiffs and their counsel devoted to this
15 case, in advance of ever discussing settlement with Defendant, allowed them to
16 meaningfully assess the strengths and weaknesses of the Settlement Class's claims, the
17 risks posed by continued litigation, and the benefits that might be realized for the
18 Settlement Class through early resolution.

19 Settlement negotiations proceeded against that backdrop. The Parties resolved
20 the case through arm's length negotiation in a full-day mediation before Jill Sperber,
21 Esq. of Judicate West, a mediator with substantial experience mediating complex civil
22 actions, including consumer class actions.

23 The proposed Settlement reached by the Parties provides fair, reasonable, and
24 adequate relief to the Settlement Class, in a timely and efficient manner. Confirmatory
25 discovery has shown that there are approximately 112,000 members of the Settlement
26 Class. Defendant has agreed to fund a non-reversionary Common Fund in the amount
27 of \$1,200,000.00 from which each Settlement Class Member who does not exclude
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1 him or herself will be automatically paid a *pro rata* Settlement Share without the need
2 to file a claim form. Attorneys’ fees not to exceed \$300,000.00 (25% of the Settlement
3 Fund), Service Awards for the each of the representative Plaintiffs in the amount of
4 \$2,500.00, the reimbursement of reasonable litigation costs not to exceed \$14,000.00,
5 and Notice and Administration Costs to be paid to the proposed Settlement
6 Administrator, Kroll Settlement Administration, LLC (“Kroll”) shall be paid from the
7 Common Fund. It is estimated that if the Settlement is finally approved, each
8 Settlement Class Member who does not opt out will automatically receive between
9 \$6.91 and \$6.99.

10 If approved, the Settlement will provide relief to the Settlement Class in an
11 expeditious manner – an eminently fair, reasonable, and adequate resolution to this
12 litigation. Accordingly, Plaintiffs respectfully request that the Court (1) preliminarily
13 approve the Settlement, (2) provisionally certify the proposed Settlement Class and
14 appoint Plaintiffs as class representatives and their counsel as Class Counsel, (3)
15 approve the proposed Settlement Class Notice Program, and appoint Kroll as the
16 Settlement Administrator, (4) establish a procedure and timetable for the Settlement
17 administration, and (5) set a Final Approval Hearing date.

18 **II. BACKGROUND**

19 **A. California’s Autorenewal Statute**

20 California passed the ARL, Cal. Bus. Prof. Code §17600, *et. seq* in 2009. The
21 ARL’s purpose is “to end the practice of ongoing charging of consumer credit or debit
22 cards or third-party payment accounts without the consumers’ explicit consent for
23 ongoing shipments of a product or ongoing deliveries of service.” Cal. Bus. Prof. Code
24 § 17600. The ARL was passed to address “increasingly common” consumer
25 complaints of unwanted charges for products or services consumers did not explicitly
26 request or know they agreed to, “often the result of agreements enumerated in the ‘fine
27

1 print’ on an order or advertisement that the consumer responded to.” California Bill
2 Analysis, S.B. 340 Sen., 4/21/2009.

3 Under the ARL, an “automatic renewal means a plan or arrangement in which a
4 paid subscription or purchasing agreement is automatically renewed at the end of a
5 definite term for a subsequent term.” Cal. Bus. Prof. Code § 17601(a). The ARL
6 requires that the disclosure of certain facts pertaining to an automatic renewal (the
7 “automatic renewal offer terms”) be “clear and conspicuous” – specifically, that prior
8 to purchase, a customer be advised that a subscription agreement will continue until a
9 customer cancels; of the length of the automatic renewal term; that customers’ credit,
10 debit, or third-party payment information will be automatically charged on a recurring
11 basis; any material changes (including price increases); and of the cancellation policy.
12 Cal. Bus. Prof. Code § 17601(b). As defined by the statute, “[c]lear and conspicuous’
13 or ‘clearly conspicuous’ means in larger type than the surrounding text, or in
14 contrasting type, font, or color to the surrounding text of the same size, or set off from
15 the surrounding text of the same size by symbols or other marks, in a manner that
16 clearly calls attention to the language. In the case of an audio disclosure, ‘clear and
17 conspicuous’ and ‘clearly and conspicuously’ means in a volume and cadence
18 sufficient to be readily audible and understandable.” Cal. Bus. & Prof. Code §
19 17601(c).

20 The ARL makes it unlawful for a business to (1) make an automatic renewal
21 offer that fails to present the “automatic renewal offer terms” in a “clear and
22 conspicuous manner” “before the subscription or purchasing agreement is fulfilled and
23 in visual proximity, or, in the case of an offer conveyed by voice, in temporal proximity
24 . . . to the request for consent to the offer”; and (2) to charge the consumer’s Payment
25 Method without first obtaining the consumer’s “affirmative consent” to the automatic
26 renewal. Cal. Bus. Prof. Code § 17602(a)(1) & (2). Additionally, under the ARL, if
27 “the consumer accepted an automatic renewal offer or continuous service offer with an
28

1 initial term of one year or longer, that automatically renews unless the consumer
2 cancels the automatic renewal or continuous service,” then “notice shall be provided at
3 least 15 days and not more than 45 days before the automatic renewal offer or
4 continuous service offer renews.” Cal Bus. & Prof. Code § 17601(b)(2).

5 **B. The SAC’s Allegations Concerning the Autorenewal of Celebrations**
6 **Passport**

7 Defendant 800-Flowers, Inc. is a retailer that operates a family of brands for
8 special occasion flower deliveries and gift giving. (SAC ¶ 19). Defendant offers the
9 “Celebrations Passport” program across most of its brands.² Celebrations Passport is a
10 membership program that provides customers free shipping and no service fees for the
11 first year at a cost of \$19.99, which then automatically renews every year after the
12 initial year at a cost of \$29.99 plus tax (the “Automatic Renewal Fee”) charged to the
13 consumer’s stored credit card, debit card or third-party payment account (collectively
14 the “Payment Method”). (SAC ¶ 19). Plaintiffs are California consumers who each
15 purchased Celebrations Passport. (SAC ¶¶ 27-40).

16 Defendant sells Celebrations Passport through different channels, including by
17 phone and online (including its websites and mobile apps). (SAC ¶ 22). The SAC
18 alleges that Defendant has used various means to induce customers to add the
19 Celebrations Passport to their orders, including, for example, automatically adding
20 Celebrations Passport to customers’ orders without customers requesting Celebrations
21 Passport be added. (*Id.*)

22 The SAC further alleges that regardless of the means Defendant has used to
23 induce consumers to purchase the Celebrations Passport, Defendant has uniformly
24

25 ² Defendants sold Celebrations Passport through sales channels for the following
26 brands: 1-800-Flowers.com, Harry & David, Personalization Mall, Shari’s Berries,
27 1-800-Baskets.com, Simply Chocolate, Fruit Bouquets.com, Cheryl’s Cookies, the
28 Popcorn Factory, Wolferman’s Bakery, and Vital Choice. (SAC, ¶¶ 19-20).

1 failed to disclose the key, statutorily required autorenewal terms, in a clear and
2 conspicuous manner, *prior to* the customer’s completion of the order process – namely:
3 (a) the fact that the Celebrations Passport automatically renews, (b) that the renewal
4 fee is \$29.99, \$10.00 higher than the introductory fee, and (c) that the customer’s stored
5 payment method will be charged every year. (SAC ¶ 22).

6 To the extent the checkout process on Defendant’s websites, phone lines, and
7 other sales channels included the necessary automatic renewal terms, plaintiffs allege
8 these disclosures were not “clear and conspicuous” as required under the ARL and, as
9 such, did not manifest a customer’s consent to the autorenewal terms. (SAC ¶ 23).
10 Plaintiffs allege that to capture more revenue per transaction, Defendant designed its
11 order processes to present the terms of the Celebrations Passport in an intentionally
12 inconspicuous manner, including by hiding the fact that Celebrations Passport is
13 automatically renewed each year and that a customer’s stored Payment Method will
14 be automatically charged each year (and that the customer can cancel at any time).
15 (*Id.*) The SAC alleges that Defendant displays such language in font type that is
16 smaller than and not otherwise in contrast to surrounding text, and not otherwise in a
17 manner that clearly calls attention to such language, and, that with respect to its sales
18 of Celebrations Passport by telephone that such disclosures were not made in a volume
19 or cadence sufficient to be readily audible or understandable. (SAC ¶ 24).

20 The SAC further alleges that Defendant concealed that Celebrations Passport is
21 automatically renewed each year and that a customer’s stored Payment Method will
22 be automatically charged each year (and that the customer can cancel at any time). It
23 also alleged that Defendant falsely represented to consumers that the product costs
24 \$19.99/year when in fact it renews every year after the initial year at the price of
25 \$29.99 plus tax. (SAC ¶ 25). Additionally, Plaintiffs allege that once a customer is
26 enrolled in the Celebrations Passport, Defendant does not send those customers a
27 notice between 15 and 45 days before Celebrations Passport automatically renews for
28

1 another year, as required under Cal. Bus. & Prof. Code § 17602(b)(2), even though
2 Defendant previously obtained these customers' mailing addresses, email addresses,
3 and phone numbers at the time of their initial purchases and could thus readily provide
4 them with such notices. (SAC ¶ 26).

5 **C. History of this Litigation**

6 On April 20, 2023, after extensive pre-filing investigation, Damon Tate,
7 represented by the undersigned, filed a putative class action against Defendant in the
8 Superior Court of Los Angeles County styled *Tate v. 800-Flowers, Inc.*, alleging, as
9 here, that Defendant violated the ARL in connection with its Celebrations Passport
10 customer loyalty program.

11 At all times thereafter, Defendant vigorously defended the litigation. It removed
12 the case to the Central District of California, whereupon the case was assigned case
13 number 2:23-cv-04340-AB-PVC (C.D. Cal. filed June 2, 2024). (*Tate*, ECF No. 1). On
14 August 7, 2023, Defendant filed a motion to compel each of the *Tate* plaintiffs to
15 arbitration, stay the case pending arbitration, strike class claims, and to dismiss the
16 several of the *Tate* plaintiffs for lack of standing. (*Tate*, ECF No. 16). On September
17 6, 2023, the *Tate* plaintiffs voluntarily dismissed the action without prejudice. (*Tate*,
18 ECF No. 22).

19 On September 7, 2023, plaintiff Foster, along with Anayancy Paiz, Susan
20 Finkbeiner, and Larissa Rapadas, filed the initial class action complaint in this Action
21 (ECF No. 1), which, like the *Tate* action, alleged that Defendant violated the ARL in
22 connection with its Celebrations Passport membership program.

23 On November 14, 2023, Defendant filed a motion to compel arbitration and stay
24 the case as to Anayancy Paiz and Larissa Rapadas, arguing that their purchase of
25 Celebrations Passport using the desktop computer sales channel bound them to terms
26 and conditions which required arbitration of disputes. (ECF No. 14). In the same
27 motion, Defendant moved to dismiss Ms. Finkbeiner for lack of standing. (*Id.*)

1 On December 5, 2023, the plaintiffs filed a first amended complaint, which
2 retained Tessible Foster, Anayancy Paiz, and Larissa Rapadas as representative
3 plaintiffs, and added Marie Scott, Krista Baumbach, Kimberly Moore Keller and
4 Latricia Anderson Thompson representative plaintiffs. (ECF No. 20).

5 On January 18, 2024, Defendant filed a motion to compel Anayancy Paiz,
6 Larissa Rapadas, Kimberly Moore Keller, Latricia Anderson Thompson, and Marie
7 Scott to arbitration, sought a stay of the case pending final resolution of the arbitrations,
8 and separately moved to dismiss Kimberly Moore Keller and Latricia Anderson
9 Thompson for lack of standing. (ECF No. 27).

10 Contemporaneously, Defendant answered the first amended complaint as to
11 plaintiffs Foster and Baumbach. (ECF No. 28).

12 The Parties filed a Case Management Stipulation on January 19, 2024, and a
13 stipulation regarding class certification briefing on February 1, 2024. (ECF No. 29,
14 31). The Court entered both stipulations. (ECF No. 34, 37).

15 On March 28, 2024, the Court granted Plaintiffs leave to file a second amended
16 complaint (ECF No. 43), which Plaintiffs sought to file in lieu of opposing the then
17 pending motion to compel arbitration. On April 12, 2024, Plaintiffs filed the second
18 amended class action complaint (ECF No. 45), the operative complaint in the Action.
19 The second amended class action complaint named Plaintiffs Foster, Scott, and
20 Baumbach as the only representative plaintiffs and, like each of the prior complaints
21 alleged, Defendant violated the ARL in connection with its Celebrations Passport
22 membership program. (*Id.*)

23 On May 10, 2024, Defendant filed a motion to compel plaintiffs Baumbach and
24 Scott to arbitration and stay the case, or alternatively, to dismiss plaintiff Baumbach
25 for lack of standing or strike the class action allegations as to plaintiffs Baumbach and
26 Scott. (ECF No. 46). Defendant also filed an answer to the second amended complaint
27 as to plaintiff Foster. (ECF No. 47).

1 Plaintiffs prepared to oppose the motion by engaging and consulting a web
2 design expert who examined the web flow that Defendant asserts bound Ms. Baumbach
3 to arbitration. (Hedin Decl., ¶ 15). Plaintiffs moved to adjourn the hearing on the
4 Motion to Compel to take discovery on the factual issues raised in the Motion (ECF
5 No. 49), which the Court granted (ECF No. 51).

6 The Parties' discussions concerning the scope of discovery needed as to the
7 pending motion, turned towards a discussion concerning resolution of the Action.
8 (Hedin Decl., ¶ 16). The Parties agreed to engage Jill Sperber, Esq. of Judicate West,
9 a mediator with substantial experience mediating compel civil actions, including
10 consumer class actions. Plaintiffs agreed to mediate on the condition that in advance
11 of the mediation, Defendant provide Plaintiffs with class size information and
12 information concerning the number of automatic renewals paid by California
13 consumers across various sales channels. To facilitate the mediation, the Parties
14 stipulated to, and the Court granted, a 90-day enlargement of time of deadlines related
15 to the pending motion to compel arbitration and a 180-day enlargement of all other
16 case management deadlines, including trial. (ECF No. 52, 53).

17 On July 24, 2024, the Parties attended a full day of mediation before Ms.
18 Sperber, Esq. (Hedin Decl., ¶ 18). Before the mediation, Defendant provided the class
19 size and the sales channel information requested. (*Id.*)

20 The Parties each disclosed to the mediator (but did not exchange) position
21 statements. (Hedin Decl., ¶ 19). Plaintiffs' statement set forth their evaluation of the
22 case, including their favorable assessment of prevailing on both the pending motion to
23 compel arbitration in light of, among other things, the motion to dismiss Ms. Baumbach
24 for lack of standing, and the high likelihood of certifying a class. (*Id.*) Armed with
25 the number of customers and number of renewals, Plaintiffs were further able to make
26 a cogent, good faith assessment of the range of potential damages which informed the
27 settlement negotiations. (*Id.*)

1 The mediation concluded with a settlement in principle memorialized by a
2 comprehensive term sheet executed by counsel for both Parties on July 24, 2024. Prior
3 to executing the Settlement Agreement on August 30, 2024, Defendant produced to
4 Plaintiffs a confirmatory sworn declaration which attested to the fact that there were
5 112,356 email addresses associated with California customers who purchased
6 Celebrations Passport from September 7, 2019, through May 31, 2022, and who
7 incurred at least one automatic renewal charge for Celebrations Passport that was not
8 fully refunded. (Hedin Decl. ¶ 23). The Parties worked together to select Kroll as a
9 Settlement Administrator upon joint review of Kroll’s comprehensive bid proposal,
10 which provided for every aspect of the proposed notice plan and which was in line with
11 that of similar class action settlement administrators. (Hedin Decl. ¶ 29).

12 **III. TERMS OF THE SETTLEMENT**

13 A copy of the Settlement Agreement is attached to the Hedin Decl. as Exhibit 1,
14 the key terms of which are summarized as follows:

15 **A. Class Definition**

16 Pursuant to the Settlement Agreement, Plaintiffs request in this Motion that the
17 Court provisionally certify the following Settlement Class:

18 All Persons who purchased Celebrations Passport in California on or after
19 September 7, 2019, through May 31, 2022, and who incurred at least one
20 automatic renewal charge for Celebrations Passport that was not fully refunded.

21 Specifically excluded from the Settlement Class are the following Persons:

- 22 a. 800-Flowers, Inc., the Released Persons and their employees,
23 officers, directors, agents, and representatives, and their immediate family
24 members;
 - 25 b. Class Counsel;
- 26
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1 c. The Court, the Court’s immediate family members, and Court staff;
2 and

3 d. The mediator, Jill Sperber, Esq. of Judicate West.

4 Settlement Agreement §§ III.76-77.

5 **B. Monetary Relief**

6 Defendant has agreed to pay exactly \$1,200,000.00 into a Common Fund.
7 Settlement Agreement §§ II.37. The payment into the Common Fund is non-
8 reversionary and is in full satisfaction of all Defendant’s monetary obligations under
9 the Settlement Agreement. (*Id.*) The Common Fund shall be used to pay, on an
10 automatic, non-claims-made basis, Settlement Shares to every Settlement Class
11 Member who does not opt out of the Settlement, an Attorneys’ Fee Award to Class
12 Counsel, Service Awards to each of the three representative Plaintiffs, and Settlement
13 administration fees to Kroll. (*Id.*, §§ IV.82-83.)

14 All identifiable Settlement Class Members who do not timely exclude
15 themselves from the Settlement will automatically receive – without the need to file a
16 claim form – a Settlement Share. (*Id.* at § IV.82.) Each Settlement Share shall be
17 calculated by dividing the value of the Net Common Fund (which is the amount of the
18 Common Fund that remains after Attorneys’ Fee Award, Notice and Administration
19 Costs, Service Awards, and any other costs of the class Settlement, not including the
20 Settlement Shares due to each Settlement Class Member) by the total of the number of
21 Settlement Class Members minus Opt-Outs. (*Id.* at § II.72.) All Settlement Shares
22 shall be of equal value. Settlement Shares shall be paid automatically without the need
23 to file a claim form. (*Id.*) Settlement Shares shall be paid by default to a Zelle account
24 linked to the email address the Settlement Class Member most recently used to renew
25 Celebrations Passport, or, if Zelle is unavailable, via an electronic MasterCard gift card
26 sent to that same email address. (*Id.*) On the Settlement Class Member’s election on
27 the Settlement Website, a Settlement Share may be paid by paper check. (*Id.*)

28

1 Discovery has shown that there are approximately 112,000 email addresses reflecting
2 accounts in the Settlement Class. (*Id.* at § IV.81.)

3 The default method of distribution of Settlement Shares will be by automatic
4 deposit to an electronic wallet as set forth above. However, if the Settlement
5 Administrator is unable to communicate the Class Notice by e-mail to a Settlement
6 Class Member (as described in Section C below), the Settlement Class Member will
7 automatically be sent a paper check to the same address at which he or she received a
8 Post Card Notice. (*Id.* at § IV.92.)

9 Paper checks sent to Settlement Class Members will expire after 180 days. (*Id.*
10 at § IV.93.) The expiration date will be provided on each paper check, and the Class
11 Notice will inform Settlement Class Members that paper checks must be cashed or
12 deposited prior to the expiration date on the paper check (and that the paper check will
13 no longer be valid after such date). (*Id.*) Any uncashed funds remaining after the paper
14 checks' expiration date will be distributed to the National Consumer Law Center as a
15 *cy pres* recipient. (*Id.* at § IV.93.)

16 **C. Class Notice and Settlement Administration**

17 All Notice and Administration Costs to the Settlement Administrator shall be
18 paid from the Common Fund. Settlement Agreement § IV.81, § IV.85. The Settlement
19 Administrator's "not to exceed cost" is \$89,400.00 and has estimated settlement
20 administration costs of between \$81,091.87 and \$89,400.00 (*See id.*; *see also*
21 Declaration of Andrea R. Dudinsky ("Dudinsky Decl.") ¶ 17.)

22 Two days after the Preliminary Approval Date, Defendant will provide to the
23 Settlement Administrator a Class List that includes the names and email addresses for
24 the Settlement Class Members, which identifies the most recent email address and the
25 postal address each Settlement Class Member used to renew their Celebrations Passport
26 account. Settlement Agreement § II.36, § V.95. The primary method of Class Notice
27 shall be by email. (*Id.* at § V.97.) The Settlement Administrator shall send an email

1 containing the Class Notice to every email address associated with each Settlement
2 Class Member contained on the Class List. (*Id.*)

3 The Email Notice provides all of the important information and dates pertaining
4 to the case and the proposed Settlement, discloses to each Settlement Class Member
5 the anticipated amount of the Settlement Share that they will receive, and that they will
6 receive the funds by default by automatic transfer to a Zelle account linked to the email
7 address the Settlement Class Member most recently used to renew Celebrations
8 Passport, or, if Zelle is unavailable, via an electronic MasterCard gift card sent to that
9 same email address, discloses the specific amounts of the Attorneys’ Fee Award and
10 Service Awards to be requested by Class Counsel and class representatives, and fully
11 informs Settlement Class Members of their right to opt out of or object to the Settlement
12 (and sets forth the procedure and deadlines for doing so). (*Id.* § V.97.; Ex. A (Email
13 Notice).)

14 The Email Notice also invites Settlement Class Members to visit the Settlement
15 Website or to call the IVR toll-free telephone number for additional information about
16 the Settlement, to obtain copies of the Settlement Agreement and all other important
17 filings and orders in the case, to submit updated postal addresses to which their
18 Settlement Share should be sent by paper check, to submit requests to receive
19 Settlement Shares by electronic payment or paper check, and to submit requests for
20 exclusion from the Settlement. (*Id.* § II.100.)³ The Settlement Website shall further
21 contain a long form version of the Class Notice. (*Id.* at Ex. C (Long Form Notice).)

22
23
24 ³ Additionally, a notice pursuant to the Class Action Fairness Act of 2005
25 (“CAFA”), Pub. L. No. 109–2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.).
26 will be made to the U.S. Attorney General and Attorney General of California as
27 “appropriate federal and state officials” under 28 U.S.C. § 1715 (Settlement
28 Agreement, §V.101).

1 If every email sent to a Settlement Class Member bounces back, the Settlement
2 Administrator will send a Post Card Notice, first to the last address associated with the
3 Settlement Class Member's Celebrations Passport account, and if that Post Card Notice
4 is returned as undeliverable, then to the postal address obtained through further
5 research. (*Id.* §§ V.98-99.).

6 The Class Notice is described in more detail in the Settlement Agreement, and
7 the proposed Class Notices are attached as exhibits to the Settlement Agreement.

8 **D. Service Award for Class Representatives and Attorneys' Fees for**
9 **Class Counsel**

10 Subject to the Court's approval, reasonable Service Awards of \$2,500 to each of
11 the three Plaintiffs in recognition of the time and effort they expended in pursuing this
12 action and in fulfilling their obligations and responsibilities as class representatives,
13 shall be paid from the Common Fund. Settlement Agreement § VII.109. Proposed
14 Class Counsel must file applications for an Attorneys' Fee Award and Service Awards
15 no later than thirty-five (35) days before the Opt-Out and Objection Date. (*Id.* §
16 VII.110. Proposed Class Counsel has agreed not to seek or accept an Attorneys' Fee
17 Award of more than 25% of the Common Fund, which is \$300,000.⁴ (*Id.*) Defendant
18 agrees not to oppose an Attorneys' Fee Award of \$300,000 or less. (*Id.*) The
19 Settlement Agreement is not contingent on the amount of any Service Award or
20 Attorneys' Fee Award. (*Id.* § VII.111.) The proposed Class Notices inform Settlement
21 Class Members of the amounts of the Service Awards and the Attorneys' Fee Award
22 that Plaintiffs and Class Counsel will request. (*Id.*, Exs. A-C.)

23 **E. Objections and Opt-Out Rights**

24 Any Settlement Class Member who intends to object must do so on or before the
25 Opt-Out and Objection Date, which will be sixty (60) days following the Notice Date.

26 ⁴ Plaintiffs Counsel is also entitled to seek the reimbursement of reasonable litigation
27 costs, which shall not exceed \$14,000.00.

1 Settlement Agreement § II.54; § VIII.115. In order to object, a Settlement Class
2 Member must timely file with the Court or send to the Clerk of Court a written
3 objection containing all of the information set forth in Section VIII.116 of the
4 Settlement Agreement. Settlement Agreement § VIII.116.

5 Any Settlement Class Member who wishes to opt out of the Settlement Class
6 must complete and send to the Settlement Administrator a request for exclusion that is
7 post-marked or submitted electronically no later than the Opt-Out and Objection Date,
8 which will be sixty (60) days following the Notice Date. (*Id.* § II.54; § VIII.117.) The
9 request for exclusion must comply with all of the requirements set forth in Section
10 VIII.117 of the Settlement Agreement. Settlement Agreement § VIII.117.

11 The Class Notice provided to the Settlement Class will contain language
12 consistent with the provisions of Section VIII of the Settlement Agreement concerning
13 objections and Opt-Outs. Settlement Agreement, Exs. A-C

14 **F. Release of Liability**

15 If the Settlement is finally approved and a Final Approval Order and Judgment
16 entered by the Court, Defendant (along with Released Persons) will be released and
17 discharged by the Releasing Persons from any and all claims arising from or relating
18 to the causes of action for violation of the ARL made by Plaintiffs in the Action as well
19 as any similar claims for violation of any federal or state statutory or common law
20 arising from automatic renewal of Celebrations Passport (as set forth in Section X.123
21 of the Settlement Agreement) – except that none of the claims of Settlement Class
22 members who timely and properly request exclusion will be released, as set forth in the
23 Settlement Agreement. *See id.* § X.123.; *see also id.* §§ VIII.118-19.

24 **IV. THE CLASS ACTION SETTLEMENT APPROVAL PROCESS**

25 As the Ninth Circuit has repeatedly recognized, federal courts strongly favor and
26 encourage settlements, particularly in class actions and other complex matters, where
27 the inherent costs, delays, and risks of continued litigation might otherwise overwhelm

1 any potential benefit the class could hope to obtain. *See Officers for Justice v. Civil*
2 *Service Com'n of City and County of San Francisco*, 688 F.2d 615 (9th Cir. 1982);
3 *Lane v. Facebook*, 696 F.3d 811, 819 (9th Cir. 2012); 4 Alba Conte & Herbert B.
4 Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (collecting cases)
5 (hereinafter *Newberg*).

6 The approval process for a proposed class action settlement has three steps:

- 7 (1) Preliminary approval of the proposed settlement at an
8 informal hearing;
- 9 (2) Dissemination of mailed and/or published notice of the
10 settlement to all affected class members; and
- 11 (3) A “formal fairness hearing” or final settlement approval
12 hearing, at which class members may be heard regarding
the settlement, and at which evidence and argument
concerning the fairness, adequacy, and reasonableness of
the settlement may be presented.

13 David F. Herr, *Manual for Complex Litigation* (4th ed. 2004) § 21.63. This procedure
14 safeguards the due process rights of unnamed Settlement Class Members and enables
15 the Court to fulfill its role as the guardian of the Settlement Class’s interests.
16 4 *Newberg* § 11.25. Plaintiffs are presently at the first step of this three-step process.

17 **V. ARGUMENT**

18 The proposed Settlement was negotiated at arm’s length by competent,
19 experienced counsel and would, if approved, provide strong monetary relief to
20 Settlement Class Members, in a prompt and efficient manner. Accordingly, the Court
21 should (A) preliminarily approve the Settlement, (B) provisionally certify the
22 Settlement Class, (C) appoint Plaintiffs as class representatives and their counsel as
23 Class Counsel, (D) approve the proposed Settlement Class Notice Program, and (E)
24 schedule the Final Approval Hearing.

25 **A. The Settlement Should Be Preliminarily Approved**

26 Rule 23(e) provides that a court may approve a proposed class settlement “on a
27 finding that it is fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2); *see also*

1 *Lane*, 696 F.3d at 818 (“a district court’s only role in reviewing the substance of [a]
2 settlement is to ensure that it is ‘fair, adequate, and free of collusion.’”) (citing *Hanlon*
3 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)). At the preliminary approval
4 stage, the district court need only assess whether the proposed settlement falls within
5 the range of possible approval in order to ascertain whether there is any reason to notify
6 the class members of the proposed settlement and to proceed with a fairness hearing.
7 *See Officers for Justice*, 688 F.2d at 625.

8 In making this appraisal, courts consider a range of factors such as “the strength
9 of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further
10 litigation; the risk of maintaining class action status throughout the trial; the amount
11 offered in settlement; the extent of discovery completed and the stage of the
12 proceedings; [and] the experience and views of counsel.” *Id.* (citing *Torrisi v. Tucson*
13 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)). “The relative importance to be
14 attached to any factor will depend upon and be dictated by the nature of the claim(s)
15 advanced, the type(s) of relief sought, and the unique facts and circumstances presented
16 by each individual case.” *Officers for Justice*, 688 F.2d at 625.

17 Here, each factor weighs in favor of finding the Settlement fair, reasonable, and
18 adequate, warranting its preliminary approval.

19 **1. The Settlement Provides Substantial Relief to the Settlement Class,
20 Particularly Given the Risks Posed by Continued Litigation**

21 Among the most important factors relevant to the fairness of a class action
22 settlement is the strength of the plaintiff’s case on the merits balanced against the
23 amount offered in the settlement. Still, settlement is necessarily “an amalgam of
24 delicate balancing, gross approximations and rough justice,” *Officers for Justice*, 688
25 F.2d at 625, and thus “the question whether a settlement is fundamentally fair . . . is
26 different from the question whether the settlement is perfect in the estimation of the
27 reviewing court.” *Lane*, 696 F.3d at 819.

1 The amount offered in the Settlement – \$1.2 million – is substantial. Should the
2 Settlement be approved, each Settlement Class Member will automatically receive a
3 paper check in the amount of between \$6.91 and \$6.99. (Dudinsky Decl. ¶ 18). The
4 relief the Settlement provides is favorable in terms of per-claimant recovery and in
5 absolute terms.

6 For example, in *Kissel v. Code 42 Software, Inc.*, No. 8:15-cv-01936-JLS-KES
7 (C.D. Cal. Apr. 14, 2016), a finally-approved ARL class action before Judge Stanton,
8 the court approved a settlement that created a Settlement Fund in the amount of
9 \$400,000 to pay settlement shares to 32,200 class members. The product in *Kissel* was
10 an online computer backup service, which renewed monthly under three different
11 subscription plans and cost between \$5.00 and \$13.99 per month. Ultimately, the
12 settlement yielded a recovery of \$7.00-\$7.50 per class member. The court noted that
13 assessing the recovery was not “straightforward” because of potential disputes about
14 the recoverability of fees. *Kissel*, No. 8:15-cv-01936-JLS-KES (C.D. Cal. Oct. 4,
15 2017), ECF No. 47 at 15-16. Similar disputes exist here, as Defendant would assert
16 that the Settlement Class members were constructively on notice of charges after the
17 first renewal and continued to accept the benefits of the Celebrations Passport. (ECF
18 No. 47 at 11); *see also* Hedin Decl. ¶¶ 27-28.

19 In *Kissel*, the court compared the value of the settlement to the class at three
20 levels: a high estimate which assumed recovery of all renewal fees paid by all class
21 members during the class period, a mid-range estimate which assumed recovery of all
22 fees after the first renewal period, and a low range which considered as recoverable
23 damages only the fees paid in the first month of the first autorenewal period. *Id.* The
24 *Kissel* court found that “[u]sing the highest estimate, and net settlement amount of
25 \$247,500, the proposed settlement fund represents approximately 3.7% of Defendant’s
26 maximum potential liability. For the mid-range estimate, the settlement award
27 represents approximately 10.3% of the potential liability of \$2,396,162. And using the

1 lowest estimate, the settlement represents 93% of the maximum liability.” Following
2 the same analysis, assuming approval of a \$300,000 Attorneys’ Fee Award and Service
3 Awards of \$7500 total, and that Settlement Administrator’s fees were the highest
4 estimated at \$89,400, the net Settlement Fund to be distributed to Settlement Class
5 Members would be \$803,100. At the low, middle, and high ranges of prospective
6 recovery, this equates to a recovery of **5.4%, 14.5%, and 21.7%**, respectively.⁵

7 Regarding the settlement’s fairness, the *Kissel* court stated as follows:

8 A “settlement amounting to only a fraction of the potential recovery does
9 not per se render the settlement inadequate or unfair,” *In re Mego Fin.*
10 *Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (internal quotation
11 marks and citation omitted). These various percentages fall in the range
12 of prior approved settlements in class actions. *See Noll v. eBay, Inc.*, 309
13 F.R.D. 593, 607 (approving settlement representing 50% of the first
14 month renewal fees and nine percent of all renewal fees); *Custom LED,*
15 *LLC v. eBay, Inc.*, No. 12-cv-350, 2013 WL 6114379 at *4 (November
16 20, 2013) (approving settlement recovery of 1.8% or 16% for breach of
17 contract and unfair competition claims related to online fees).
18 Accordingly, in considering the difficulties of potential recovery, the

17 ⁵ As set forth in the Hedin Declaration at paragraph 22, Plaintiffs’ best estimate of the
18 potential liability Defendant faced had the Proposed Settlement not been reached as
19 \$5,544,000, which assumes 1.5 automatic renewals per Settlement Class Member at
20 approximately \$33.00 per renewal, which includes sales tax. This would be the
21 “middle range” under the *Kissel* analysis. Defendant would have certainly argued that
22 only a single renewal was compensable because the customer would have been on
23 notice of the automatic renewal of Celebrations Passport. Under this scenario, the
24 anticipated damages would be \$3,696,000. This would be the low range. As a point
25 of comparison, the highest theoretical liability would be \$14,784,000, which assumes
26 four renewals for every member of the Settlement Class, *e.g.*, one each year of the class
27 period, a figure which is impossible given that most members of the Settlement Class
28 paid one or two renewal fees. Though the comparison at the high level is somewhat
apples to oranges given the impossibility of damages at this level, it is provided for
context.

1 Court finds that the amount offered in settlement weighs in favor of
2 preliminary approval.

3 Here, the range of recovery percentages underpinning the Settlement is squarely
4 within the heartland of reasonableness amongst comparable recent California ARL
5 settlements relied upon in *Kissel*, and this Court, like the court in *Kissel*, should find
6 this factor favors preliminary approval.

7 Notably, on absolute terms, the Settlement, which provides an all-cash benefit
8 with direct payments made to Settlement Class Members, is better than settlements
9 involving similar ARL claims that have involved the issuance of “credits”, have
10 involved a claims process, or both. *See e.g. Davis v. Birchbox Inc.*, No. 3:15-cv-
11 00498-BEN-BGS (S.D. Cal., Mar. 28, 2016), ECF No. 43 at 1 (class members received
12 a \$10-\$20 credit for use on defendant’s goods and subscriptions); *Williamson v.*
13 *McAfee, Inc.*, No. 5:14-cv-00158-EJD (N.D. Cal., Feb. 3, 2017), ECF No. 114, at 2
14 (approving settlement where auto-renewal class members received \$11.50 in “value
15 certificates” and could only receive cash upon filing a claim form).

16 Additionally, there are several legal uncertainties associated with continued
17 litigation that pose a substantial risk of non-recovery to the Settlement Class, further
18 underscoring the fairness, reasonableness, and adequacy of the proposed Settlement.
19 *See Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116, 2013 WL 163293, at *3 (S.D.
20 Cal. Jan. 14, 2013) (where “the settlement avoids the risks of extreme results on either
21 end, *i.e.*, complete or no recovery . . . it is plainly reasonable for the parties at this stage
22 to find that the actual recovery realized and risks avoided here outweigh the opportunity
23 to pursue potentially more favorable results through full adjudication. These factors
24 support approval.”).

25 First, through its highly qualified and experienced counsel, Defendant,
26 throughout the litigation, vigorously defended the litigation including by seeking to
27 enforce what Defendant believes is a binding agreement to arbitrate between Defendant
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1 and its customers. Indeed, Defendant moved to compel to arbitration with respect to
2 of the 8 proposed representative plaintiffs in this action, and earlier moved to compel
3 to arbitration as to all five representative plaintiffs in the *Tate* action. Ultimately,
4 Defendant filed four separate motions to compel arbitration and dismiss for lack of
5 standing in the two cases, which were directed at 12 of the 13 proposed representative
6 plaintiffs. *See generally* Hedin Decl. ¶¶ 4-13.

7 Defendant’s latest motion seeking to compel plaintiffs Baumbach and Scott to
8 arbitration remains pending. And though Plaintiffs believe they would defeat the
9 motion had the Parties not reached the proposed Settlement, if Defendant won the
10 motion, then it is possible that the claims of those consumers who used the same sales
11 channels to purchase Celebrations Passport as plaintiffs Baumbach and Scott, mobile
12 and 1-800 number respectively, would have been excluded from any potential class-
13 wide relief.⁶ This potentially would have significantly reduced the number of
14 consumers who would benefit.

15 Second, Defendant disputes that it violated the ARL’s requirement that notice of
16 the ARL terms be “clear and conspicuous”. For written disclosures, this means “in
17 larger type than the surrounding text, or in contrasting type, font, or color to the
18 surrounding text of the same size, or set off from the surrounding text of the same size
19 by symbols or other marks, in a manner that clearly calls attention to the language.”
20 Cal. Bus. Prof. Code § 17601(c). For audio disclosures, this means in “a volume and
21 cadence sufficient to be readily audible and understandable.” *Id.* Over the years,
22 Defendant made several revisions to its sales channels and the methods in which it

23 ⁶ The pending motion also seeks to dismiss Ms. Baumbach for lack of standing because
24 Defendant refunded her renewal fee. The Ninth Circuit has determined, however, that
25 a temporary deprivation of money is sufficient to confer Article III standing. *Van v.*
26 *LLR, Inc.*, 962 F.3d 1160, 1164 (9th Cir. 2020) (“we hold that the temporary loss of
27 use of one’s money constitutes an injury in fact for purposes of Article III.”). Plaintiffs
28 are confident that the facts would have established that Ms. Baumbach has standing to
bring her claim. Defendant disagrees.

1 presented Celebrations Passport’s terms. If this factual dispute had been resolved in
2 the Defendant’s favor, the outcome would have been that fewer consumers than those
3 who hold the approximately 112,000 email addresses in Defendant’s records who stand
4 to benefit under the proposed Settlement would have received relief.

5 Third, and related to the first and second litigation risks just discussed, the Parties
6 disagree on whether the Settlement Class could be certified on a contested motion for
7 class certification. During the litigation and the Parties’ settlement discussions,
8 Defendant steadfastly maintained, *inter alia*, that individual issues among Settlement
9 Class Members would predominate and preclude class certification. (Hedin Decl. ¶
10 28). For example, Defendant asserts that plaintiffs Baumbach and Scott, and,
11 ostensibly, the many other proposed Settlement Class who purchased Celebrations
12 Passport in the same manner, agreed to arbitrate the claims alleged in this action and
13 waived their right to proceed in a class action. (*Id.*) In addition, separate from the issue
14 of whether certain class members agreed to arbitrate, Defendant indicated that it would
15 have opposed a contested motion for class certification by arguing that variations
16 across the content and context of its sales channels’ disclosures of the ARL terms at
17 different times require an individualized determination of the ARL notice Settlement
18 Class received at the time of their purchase of Celebrations Passport. (*Id.*) While
19 Plaintiffs disagree and believe the Settlement Class is well-suited for certification,
20 including on a contested basis, winning class certification was still far from a sure thing.

21 Fourth, even if Plaintiffs were to win class certification, and were to prevail on
22 liability at trial, there would still be issues as to the amount of damages recoverable.
23 Defendant argues that Plaintiffs waived any right to recovery by making voluntary
24 payments for Celebrations Passport; that they were on notice of the automatic renewal
25 by virtue of the charge after the first year; and, potentially, that accepting the benefits
26 of Celebrations Passport should offset any damages. Ultimately, even if the Settlement
27 Class were to prevail at trial, resolution through appeal could take years, which further
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1 underscores the reasonableness of the immediate, certain, and meaningful relief
2 provided by the Settlement.

3 Accordingly, the first and most important factor weighs heavily in favor of
4 finding the Settlement fair, reasonable and adequate. *See In re Tableware Antitrust*
5 *Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (settlement should be
6 preliminarily approved if it is free of “obvious deficiencies” and generally falls within
7 the range of “possible” approval.).

8 **2. Continued Litigation Would Be Complex, Costly, and Lengthy**

9 Preliminary approval is also favored where settlement allows the class to avoid
10 the inherent risk, complexity, time, and cost associated with continued litigation. *See*
11 *Nat’l Rural Telecommc’ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.
12 2004) (“The Court shall consider the vagaries of litigation and compare the significance
13 of immediate recovery by way of the compromise to the mere possibility of relief in
14 the future, after protracted and expensive litigation.”).

15 This would be lengthy and very expensive litigation if it were to continue,
16 involving extensive motion practice, including, *inter alia*, motions to dismiss and to
17 compel arbitration, a motion for class certification (and possibly a motion for
18 decertification), motions for summary judgment and various pretrial motions, as well
19 as the retention of experts, preparation of expert reports, and conducting expert
20 depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (“[C]lass action
21 suits have a well-deserved reputation as being most complex.”). The case would not go
22 to trial until at least September 2025, over one year from now. (ECF No. 53). And
23 even if the Settlement Class recovered a judgment at trial in excess of the \$1.2 million
24 provided by the Settlement, post-trial motions and the appellate process would deprive
25 them of any recovery for years, and possibly forever in the event of a reversal.

26 Rather than embarking on years of protracted and uncertain litigation, Plaintiffs
27 and their counsel negotiated a Settlement that provides immediate, certain, and

1 *meaningful* relief to all Settlement Class Members. *See DIRECTV, Inc.*, 221 F.R.D. at
2 526. Accordingly, this factor weighs in favor of finding the Settlement fair, reasonable
3 and adequate. *See Borcea v. Carnival Corp.*, 238 F.R.D. 664, 674 (S.D. Fla. 2006)
4 (noting that “[i]t has been held proper to take the bird in the hand instead of a
5 prospective flock in the bush”).

6 **3. Proposed Class Counsel is Competent, Well-Informed and**
7 **Experienced, and Strongly Endorses the Settlement**

8 Courts may also examine the opinion of competent counsel as to whether a
9 proposed settlement is fair, reasonable, and adequate. *Officers for Justice*, 688 F.2d at
10 625. In assessing the qualifications of counsel under this factor, a court may rely upon
11 affidavits submitted by class counsel as well as its own observations of class counsel
12 during the litigation. *Id.*

13 Plaintiffs’ counsel and proposed Class Counsel, Frank S. Hedin of Hedin LLP,
14 has extensive experience in similar complex class action litigation, including serving
15 as class counsel in similar consumer class actions concerning the commercial practices
16 of large entities like Defendant. (*See generally* Hedin Decl.). Mr. Hedin strongly
17 endorses this Settlement, which was negotiated at arm’s length before an experienced
18 mediator. (*See id.*)

19 Accordingly, this factor also weighs in favor of finding the Settlement fair,
20 reasonable and adequate. *See, e.g., Smith*, 2013 WL 163293, at *3 (given their
21 “experience and understanding of the strengths and weaknesses of cases such as this,
22 class counsel’s endorsement weighs in favor of final approval.”); *Bellinghausen v.*
23 *Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015) (“The trial court is entitled
24 to, and should, rely upon the judgment of experienced counsel for the parties.” (citation
25 omitted)).
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4. The Settlement is the Product of a Thorough Investigation, Efficiently Prosecuted Litigation, and Arm’s-Length Negotiations

The stage of the proceedings and the amount of discovery that has been completed at the time a proposed settlement is reached also bears on whether the settlement is fair, reasonable, and adequate. *Lane*, 696 F.3d at 819.

The proposed Settlement was reached after the informal exchange of discovery and following Plaintiffs’ serving formal discovery requests on Defendant concerning every aspect of the automatic renewal of Celebrations Passport – the means and methods that Defendant used to disclose Celebrations Passport’s terms, the various sales channels Defendant used to sell Celebrations Passport, Defendant’s policies for notifying customers about renewal, and the number of California consumers who purchased Celebrations Passport during the class period. (Hedin Decl. ¶ 14). In addition, Plaintiffs’ counsel conducted a thorough pre-filing investigation, a continuing post-filing investigation concerning every aspect of this case, and conferrals with Defendant’s counsel. (Hedin Decl. ¶ 2, 11). Armed with this information, Plaintiffs and their counsel had “a clear view of the strengths and weaknesses” of the case and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class, at mediation and beyond. *In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff’d* 798 F.2d 35 (2d Cir. 1986).

Mediation was hard-fought and lasted an entire day. (Hedin Decl. ¶¶ 18-19). Before the mediation, each Party provided the mediator with confidential position statements. (*Id.*) The initial proposed Settlement was only finalized after several more weeks of post-mediation negotiations between the Parties. (*Id.* at ¶ 23). Prior to finalizing the Settlement Agreement, Counsel confirmed the critical information related to the size of the Settlement Class with confirmatory discovery from the

1 Defendant. (*Id.* at 24). Because the Settlement is the product of arm’s length
2 negotiations between experienced counsel with the benefit of confirmatory
3 discovery, this factor also weighs in favor of finding the proposed Settlement fair,
4 reasonable, and adequate. *See Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir.
5 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive,
6 negotiated resolution.”); *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL
7 1627973, at *8 (N.D. Cal. Apr. 29, 2011) (“An initial presumption of fairness is usually
8 involved if the settlement is recommended by class counsel after arm’s-length
9 bargaining.”); 4 *Newberg* § 11.41 (presumption of fairness exists where a proposed
10 class settlement “is the product of arm’s length negotiations, sufficient discovery has
11 been taken to allow the parties and the court to act intelligently, and counsel involved
12 are competent and experienced.”).⁷

13 Accordingly, this factor also weighs in favor of finding the Settlement fair,
14 reasonable and adequate.

15 **B. The Settlement Class Should Be Provisionally Certified for**
16 **Settlement Purposes**

17 The Court must next find that the proposed Settlement Class is appropriate for
18 provisional certification pursuant to Rule 23(a) and that it fits into one of the three
19 subsections of Rule 23(b). *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 621
20 (1997). Provisional certification will allow the Settlement Class to receive notice of
21 the Settlement and its terms, including the rights of Settlement Class Members to
22 recover a Settlement Share if the Settlement is finally approved, to object and be heard
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24 ⁷ *See also, e.g., Adams v. Inter-Con Sec. Sys., Inc.*, No. 06-cv-5428, 2007 WL
25 3225466, at *3 (N.D. Cal. Oct. 30, 2007) (“The assistance of an experienced mediator
26 in the settlement process confirms that the settlement is non-collusive.”); *In re Indep.*
27 *Energy Holdings PLC*, No. 00-cv-6689, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29,
2003) (“the fact that the settlement was reached after exhaustive arm’s-length
28 negotiations, with the assistance of a private mediator experienced in complex
litigation, is further proof that it is fair and reasonable”).

1 on the Settlement’s fairness at the Final Approval Hearing, and to opt out of the
2 Settlement.

3 For the reasons below, the Court should provisionally certify the Settlement
4 Class – defined as “[a]ll Persons who purchased Celebrations Passport in California
5 on or after September 7, 2019, through May 31, 2022, and who incurred at least one
6 automatic renewal charge for Celebrations Passport that was not fully refunded” –
7 under Rule 23(a) and Rule 23(b)(3).

8 **1. The Requirements of Rule 23(a) Are Satisfied**

9 Rule 23(a) requires that (1) the proposed settlement is so numerous that joinder
10 of all individual class members is impracticable (numerosity); (2) there are questions
11 of law or fact common to the proposed settlement class (commonality); (3) the
12 plaintiff’s claims are typical of those of the class (typicality), and (4) the plaintiff and
13 class counsel will adequately protect the interests of the class (adequacy). Fed. R. Civ.
14 P. 23(a)(1)–(4). The Settlement Class readily satisfies each of these requirements.

15 a. **Numerosity**

16 The first requirement of Rule 23(a) is that “the class is so numerous that joinder
17 of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Class
18 consists of customers dispersed throughout the state of California and potentially
19 elsewhere who registered approximately 112,000 email addresses to Celebrations
20 Passport accounts. Joinder of all Settlement Class Members is obviously
21 impractical. *See Celano v. Marriott Int’l Inc.*, 242 F.R.D. 544, 548-49 (N.D. Cal. 2007)
22 (numerosity is satisfied where at least 40 class members).

23 Accordingly, the numerosity requirement of Rule 23(a) is satisfied.

24 b. **Commonality**

25 The second requirement is that “there are questions of law or fact common to the
26 class.” Fed. R. Civ. P. 23(a)(2). The commonality requirement is satisfied where a
27 plaintiff asserts claims that “depend upon a common contention” that is “of such a
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1 nature that it is capable of class-wide resolution – which means that determination of
2 its truth or falsity will resolve an issue that is central to the validity of each one of the
3 claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

4 Many questions of law and fact are common to the Settlement Class in this case,
5 including, among others, whether Defendant’s annual renewal of Celebrations Passport
6 constitutes an “automatic renewal” within the meaning of Cal. Bus. & Prof. Code §
7 17601(a); whether Defendant failed to present the automatic renewal offer terms or
8 continuous service offer terms, in a clear and conspicuous manner before the
9 subscription or purchasing agreement was fulfilled and in visual proximity, or in the
10 case of an offer conveyed by voice, in temporal proximity, to the request for consent
11 to the offer, in violation of Cal. Bus. & Prof. Code § 17602(a)(1); whether Defendant
12 charged Plaintiffs’ and Class Members’ stored Payment Method an Automatic
13 Renewal Fee without first obtaining their affirmative consent to the automatic renewal
14 offer terms in violation of Cal. Bus. & Prof. Code §17602(a)(2); and whether the goods
15 and services provided by Defendant are deemed “unconditional gifts” in accordance
16 with Cal. Bus. & Prof. Code § 17603. *See Kissel v. Code 42 Software, Inc.*, No. 8:15-
17 cv-01936-JLS-KES (C.D. Cal. Oct. 4, 2017), ECF No. 47 at 8 (finding identical
18 identified common questions of law and fact satisfied Rule 23 commonality analysis
19 in ARL class action); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 603 (N.D. Cal. 2015)
20 (commonality satisfied where description and function of autorenewal terms was a
21 common factual question amongst Class Members).

22 **c. Typicality**

23 Rule 23(a)(3) requires that “the claims or defenses of the representative parties
24 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The
25 typicality requirement is not demanding.” *Fogarazzao v. Lehman Bros., Inc.*, 232
26 F.R.D. 176, 180 (S.D.N.Y. 2005).

1 Plaintiffs' claims are typical of the claims of Settlement Class Members because
2 their claims arise out of the same event, practice or course of conduct that gives rise to
3 the claims of the other class members and are based on the same legal theory. *See, e.g.,*
4 *Whitaker*, 2014 WL 5454398, at *5 (finding typicality satisfied because each class
5 member's claim "revolves exclusively around [the defendant's] conduct as it
6 specifically relates to the alleged violations of the TCPA"); *Agne v. Papa John's Int'l,*
7 *Inc.*, 286 F.R.D. 559, 569 (W.D. Wash. 2012) (finding typicality satisfied where the
8 plaintiff's claims, "like all class members' claims, arise from text marketing campaigns
9 commissioned by Papa John's franchisees and executed by the same marketing vendor
10"). Plaintiffs and each Settlement Class Member purchased Celebrations Passport
11 in California and paid at least one unrefunded autorenewal fee.

12 Accordingly, the typicality requirement of Rule 23(a) is satisfied.

13 **d. Adequacy of Representation**

14 The fourth and final Rule 23(a) requirement is "adequacy of representation,"
15 Fed. R. Civ. P. 23(a)(4), which has two components: (1) the representatives must not
16 possess interests that are antagonistic to the interests of the class, and (2) the
17 representatives' counsel must be qualified, experienced, and generally able to
18 conduct the proposed litigation. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,
19 985 (9th Cir. 2011).

20 Both components are satisfied because Plaintiffs' interests in this litigation are
21 aligned with, and not antagonistic to, those of the Settlement Class, and because
22 Plaintiffs hired qualified and competent counsel. Plaintiffs each challenge the same
23 allegedly unlawful conduct that each Settlement Class Member challenges, and they
24 each seek the same monetary relief that each Settlement Class Member seeks. Plaintiffs
25 have retained competent counsel, provided substantial assistance to their counsel in
26 advance of and during the litigation, vigorously prosecuted the case on behalf of the
27 Settlement Class, and assisted their counsel in reaching a proposed resolution to

1 this action on behalf of the Settlement Class. Finally, Plaintiffs’ counsel has
2 substantial class action litigation experience, having successfully investigated,
3 prosecuted, and resolved many complex class actions, including prior consumer class
4 actions similar to the instant matter. (*See generally* Hedin Decl.)

5 Accordingly, the adequacy of representation requirement of Rule 23(a) is
6 satisfied.

7 **2. The Requirements of Rule 23(b)(3) Are Satisfied**

8 Finally, because Plaintiffs seek provisional certification under Rule 23(b)(3),
9 Plaintiffs must additionally show (1) that common questions of law or fact predominate
10 over questions affecting only individual members of the class (predominance); and (2)
11 that a class action is superior to other available methods of resolving the controversy
12 (superiority). Fed. R. Civ. P. 23(b)(3).⁸ Both requirements are easily satisfied here.

13 **a. Common Questions Predominate**

14 The predominance requirement of Rule 23(b)(3) is satisfied because common
15 questions comprise a substantial aspect of the case and can be resolved for all
16 Settlement Class Members in a single adjudication. *See Tyson Foods, Inc. v.*
17 *Bouaphakeo*, 577 U.S. 442, 453 (2016) (“When ‘one or more of the central issues in
18 the action are common to the class and can be said to predominate, the action may be
19 considered proper under Rule 23(b)(3)” (citation omitted)); *True Health*
20 *Chiropractic, Inc. v. McKesson Corporation*, 896 F.3d 923, 932 (9th Cir. 2018); *accord*
21 *Roach v. T.L Cannon Corp.*, 773 F.3d 401, 405 (2d Cir. 2015) (predominance is
22 satisfied “if resolution of some of the legal or factual questions that qualify each class
23 member’s case as a genuine controversy can be achieved through generalized proof,
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25 ⁸ Because the Court is called upon to assess the requirements of Rule 23 in the
26 context of a settlement, the Court need not consider whether any manageability
27 problems would arise at trial if the Settlement Class is certified. *Amchem*, 521 U.S. at
28 620 (“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.”).

1 and if these particular issues are more substantial than the issues subject only to
2 individualized proof”).

3 The Settlement Class Members uniformly received the same disclosures via the
4 sales channels they used to purchase Celebrations Passport – desktop, mobile, and
5 telephone – which Plaintiffs allege were non-compliant with the ARL. Thus, the
6 central questions in this case – whether such disclosures were presented in a clear and
7 conspicuous manner under Cal. Bus. & Prof. Code § 17602(a)(1) and whether
8 Defendant charged Plaintiffs’ and Settlement Class Members’ stored payment method
9 an Automatic Renewal Fee without first obtaining their affirmative consent to the
10 automatic renewal offer terms in violation of Cal. Bus. & Prof. Code §17602(a)(2) –
11 are each capable of resolution by looking at the Defendant’s records. Because no
12 apparent issues require individualized proof, the predominance requirement is satisfied
13 for purposes of preliminary approval.

14 **b. Class Treatment of Plaintiffs’ Claims is Superior**

15 Rule 23(b)(3) also requires that a class action be superior to other available
16 methods for adjudicating the controversy. It is axiomatic that cases involving “multiple
17 claims for relatively small individual sums” are well suited to class treatment. *Local*
18 *Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d
19 1152, 1163 (9th Cir. 2001); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,
20 1175 (9th Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the
21 cost of litigating on an individual basis, this factor weighs in favor of class
22 certification.”); *see also Amchem*, 521 U.S. at 617 (noting that “the Advisory
23 Committee had dominantly in mind vindication of the rights of groups of people who
24 individually would be without effective strength to bring their opponents into court at
25 all”).

26 A class action is the superior method for the fair and efficient adjudication of
27 these claims. Plaintiffs’ claims are shared by consumers who registered approximately
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1 112,000 email addresses to Celebrations Passports accounts, each of whom paid at least
2 one unrefunded fee to renew Celebrations Passport receiving the same notification of
3 the Celebrations Programs autorenewal terms which Plaintiffs allege are non-compliant
4 with California’s ARL. Resolution of all claims of all Settlement Class Members in a
5 single proceeding promotes judicial efficiency and avoids inconsistent decisions. *See*
6 *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (noting “the class-action
7 device saves the resources of both the courts and the parties by permitting an issue
8 potentially affecting every class member to be litigated in an economical fashion under
9 Rule 23”). Further, the damages available under the ARL, which are limited to the cost
10 of the goods purchased insofar as the goods are deemed unconditional gifts, are small
11 in comparison to the costs of litigation. As a result, it is unlikely any Settlement Class
12 Member would be willing or able to pursue relief on an individual basis.

13 Accordingly, the superiority requirement is satisfied for purposes of preliminary
14 approval. The Court should provisionally certify the Settlement Class.

15 **c. Plaintiffs’ Counsel Should Be Appointed Class Counsel**

16 Upon certifying a class, Rule 23 requires that a court appoint class counsel who
17 will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P.
18 23(g)(1)(B), (2), (4). In appointing class counsel, the court must consider (1) the work
19 counsel has done in identifying or investigating potential claims; (2) counsel’s
20 experience in handling class actions, other complex litigation, and the types of claims
21 asserted in the case; (3) counsel’s knowledge of the applicable law, and (4) the
22 resources class counsel has committed to representing the class. Fed. R. Civ. P.
23 23(g)(1)(A)(i)–(iv); *Cabiness v. Educational Fin. Solutions, LLC*, No. 16-cv-1109-
24 JST, 2018 WL 3108991, at *4 (N.D. Cal. June 25, 2018).

25 In this case, proposed Class Counsel, Frank S. Hedin of Hedin LLP, readily
26 satisfies the criteria of Rule 23(g). First, Plaintiffs’ counsel and proposed Class
27 Counsel have devoted substantial time, effort, and resources to this litigation,

1 beginning with an initial investigation of Plaintiffs’ allegations, continuing through
2 almost two years of litigation, informal discovery, the service of formal discovery,
3 expert consultation, and ending with hard-fought settlement negotiations, a lengthy
4 mediation and confirmatory discovery. (See Hedin Decl. ¶ 14-24.) Second, Plaintiffs’
5 counsel has extensive experience in complex class action litigation, in district courts of
6 the Ninth Circuit and elsewhere, and Mr. Hedin previously served as class counsel in
7 several prior cases involving the rights of large consumer classes. *See e.g., Lloyd et al.*
8 *v. Eaze Solutions, Inc.*, No. 18-cv-5176-JD (N.D. Cal.) (\$3.49 million class settlement
9 finally approved on behalf of 52,104 class members); *Chimeno-Buzzi, et al. v.*
10 *Hollister, Co.*, No. 14-cv-23120-MGC (S.D. Fla.) (\$10 million class settlement finally
11 approved on behalf of 3.7 million settlement class members); *Farnham v. Caribou*
12 *Coffee Company, Inc.*, No. 16-cv-295-wmc (W.D. Wisc.) (\$8.5 million class settlement
13 finally approved on behalf of approximately 530,000 settlement class members);
14 *Rivera et al. v. Google, LLC*, No. 2019-CH-00990 (Cir. Ct. Cook Cnty. Ill., Apr. 5,
15 2022) (class counsel in action alleging violations of Illinois’s Biometric Information
16 Privacy Act (“BIPA”), obtained \$100 million non-reversionary class settlement).

17 Accordingly, the Court should appoint Plaintiffs’ counsel as Class Counsel.

18 **C. The Court Should Approve the Proposed Notice Plan**

19 “Rule 23(e)(1)(B) requires the court to ‘direct notice in a reasonable manner to
20 all class members who would be bound by a proposed settlement, voluntary dismissal,
21 or compromise’ regardless of whether the class was certified under Rule
22 23(b)(1), (b)(2), or (b)(3).” *Manual for Complex Litigation, supra*, at § 21.312. The
23 best practicable notice is that which is “reasonably calculated, under all the
24 circumstances, to apprise interested parties of the pendency of the action and afford
25 them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank &*
26 *Trust Co.*, 339 U.S. 306, 314 (1950). The notice must contain specific information in
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1 plain, easily understood language, including the nature of the action and class members'
2 rights. Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii).

3 In this case, the Settlement Agreement provides for a comprehensive Settlement
4 Class Notice Program under which the Settlement Administrator will directly provide
5 the Class Notice to Settlement Class Members.

6 Two (2) Days after the Preliminary Approval Date, Defendant will provide to
7 the Settlement Administrator a Class List that includes the names and all known email
8 addresses for the Settlement Class Members, and which separately identifies the most
9 recent email address and the postal address each Settlement Class Member used to
10 renew their Celebrations Passport account. The default method of Class Notice shall
11 be by email, and the default method of payment of Settlement Shares shall be by direct
12 payment to a Zelle account linked to the email address the Settlement Class Member
13 most recently used to renew Celebrations Passport, or, if Zelle is unavailable, via an
14 electronic MasterCard gift card sent to that same email address. The Settlement
15 Administrator shall send an email containing the Email Notice to every email address
16 associated with each Settlement Class Member contained on the Class List. Each Email
17 Notice will specify the email address linked to the Zelle account which the Class
18 Member’s Settlement Share shall be deposited, or to which the MasterCard gift card
19 will be sent. If every email sent to a Settlement Class Member bounces back, the
20 Settlement Administrator will send a Post Card Notice, first to the most recent address
21 associated with the Settlement Class Member’s renewal of Celebrations Passport, and
22 if that Post Card Notice is returned as undeliverable, then to the postal address obtained
23 through further research. *See Mullane*, 339 U.S. at 314 (explaining that Rule 23
24 “requires that individual notice in 23(b)(3) actions be given to class members who
25 can be identified through reasonable effort.”); *see also* Fed. R. Civ. P. 23(e)(1) (calling
26 for notice to be provided in a “reasonable manner to all class members who would be
27

1 bound by the proposal”).) For those Settlement Class Members who receive Post Card
2 Notice, the default method of payment of Settlement Shares shall be by paper check.

3 The Class Notice will, *inter alia*: (i) describe the essential terms of the
4 Settlement, the relief provided by the Settlement, the specific amount of each Cash
5 Award that each Settlement Class member will receive (unless he or she submits a
6 request for exclusion), and the email or postal address to which the Settlement
7 Administrator will deliver the Class Member’s Settlement Share (unless an updated
8 address is provided by the Settlement Class Member on the Settlement Website or a
9 request for request for electronic payment is made on the Settlement Website); (ii)
10 disclose Class Counsel’s intention to file an application with the Court for Service
11 Awards to the class representatives and an Attorneys’ Fee Award to Class Counsel, the
12 specific amounts that will be requested for each, and the date on which such application
13 will be filed with the Court; (iii) indicate the time and place of the hearing to consider
14 Final Approval of the Settlement, and the method for filing objections to and/or
15 requests for exclusion from the Settlement; (iv) provide information concerning the
16 timing of the distribution of Settlement Shares to Settlement Class Members; and (v)
17 prominently display the address of the Clerk of Court, the Settlement Administrator,
18 and Class Counsel and the procedure for making inquiries concerning the Settlement.
19 The Class Notice also invites Settlement Class Members to visit the Settlement
20 Website, which is accessible through a unique Class Member identifier, or to call the
21 IVR toll-free telephone number to obtain additional information about the Settlement,
22 submit requests for exclusion, provide an updated postal address to which a Settlement
23 Class Member’s paper check should be sent, and request payment via electronic
24 transfer in lieu of payment by paper check.

25 The Settlement Website will provide access to the long-form Class Notice, as
26 well as answers to frequently asked questions, the toll-free Settlement telephone
27 number, and copies of the full Settlement Agreement and other important documents

1 (including the Settlement Agreement and the Class Notice, the Motion for Preliminary
2 Approval, the Preliminary Approval Order, the motion for Attorneys' Fee Award and
3 Service Award, and the Motion for Final Approval). The Settlement Website will also
4 contain web-based forms for Settlement Class Members to submit updated postal
5 addresses to ensure the proper delivery of Settlement paper checks, to submit requests
6 that their Settlement Share be sent via electronic transfer in lieu of by paper check and
7 vice versa, and to submit requests for exclusion from the Settlement.

8 The proposed Settlement Class Notice Program is robust, comprehensive, and
9 informative; notifying additional members of the Settlement Class through email, and
10 where unavailable, by U.S. Mail, by the Settlement Website, and by the automated toll-
11 free Settlement telephone number; and providing for the submission of address
12 updates, requests for exclusion, and requests for payment of Settlement Shares by
13 electronic transfer or paper check on the Settlement Website.

14 As discussed above, the Settlement Administrator will automatically transfer a
15 Settlement Share to each Settlement Class Member who does not exclude themselves
16 from the Settlement, by electronic transfer to a Zelle account linked to the email address
17 the Settlement Class Member most recently used to renew Celebrations Passport, or, if
18 Zelle is unavailable, via an electronic MasterCard gift card sent to that same email
19 address. If a notice was made by U.S. Mail, the Settlement Administrator will send a
20 paper check to the same address at which the postal notice was made. Paper checks
21 will be void 180 days from the issued date. The Settlement Administrator shall transfer
22 voided paper check funds to the National Consumer Law Center as *cy pres* recipient.

23 Plaintiffs respectfully request that the Court, as set forth in the proposed order
24 accompanying this Motion, find that the notice provided by the Settlement Class Notice
25 Program: (i) is the best practicable notice; (ii) is reasonably calculated, under the
26 circumstances, to apprise the Settlement Class of the pendency of the Action and of
27 their right to object to or to exclude themselves from the proposed Settlement; (iii) is

1 reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled
2 to receive notice; and (iv) meets all requirements of applicable law. *See, e.g., Touhey*
3 *v. United States*, No. 08-cv-1418, 2011 WL 3179036, at *11 (C.D. Cal. July 25, 2011)
4 (finding mail, publication, website and toll-free number were sufficiently calculated
5 to reach class members, and satisfied Rule 23 notice requirements).⁹

6 **D. The Court Should Schedule the Final Approval Hearing**

7 The last step in the settlement approval process, after completion of the
8 Settlement Class Notice Program, will be a Final Approval Hearing on Final Approval
9 of the Settlement and Settlement Agreement to consider the fairness, reasonableness,
10 and adequacy of the proposed Settlement and whether it should be finally approved by
11 the Court, and to determine the reasonableness of the requested Attorneys' Fee Award
12 and Service Award. Plaintiffs respectfully request that the Court set a date for the Final
13 Approval Hearing at the Court's convenience and consistent with the proposed
14 timetable set forth in the proposed order accompanying this Motion.

15 **VI. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Court: (1)
17 preliminarily approve the Settlement; (2) provisionally certify the Settlement Class and
18 appoint Plaintiffs as class representatives and Plaintiffs' counsel as Class Counsel; (3)
19 approve the Class Notice, appoint Kroll as Settlement Administrator, and order that the
20 Settlement Class Notice Program be effectuated by Kroll; (4) establish a procedure and
21 timetable, consistent with the procedure set forth in the Settlement Agreement, for
22 Settlement Class Members to object to the Settlement and exclude themselves from the
23 Settlement Class; and (5) set a Final Approval Hearing to consider whether to finalize
24 its approval of the Settlement.

25
26 ⁹ Promptly after the filing of this Motion and the attached Settlement Agreement,
27 the Class Administrator will serve CAFA Notice to the California Attorney General
28 and U.S. Attorney General in compliance with 28 U.S.C. § 1715.

1 Dated: August 30, 2024

Respectfully submitted,

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