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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**LILLIAN FRANKLIN,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No.: 14-cv-2349 MMA (BGS)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

DATE: August 3, 2015
TIME: 2:30 p.m.
COURTROOM: 3A

HON. MICHAEL M. ANELLO

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I. INTRODUCTION

1
2 Plaintiff LILLIAN FRANKLIN (“Plaintiff”) submits this Memorandum in
3 Support of Final Approval of the Parties’ Class Action Settlement. As discussed
4 in Plaintiff’s Motion for Preliminary Approval, the Parties’ Settlement Agreement
5 resolves all Telephone Consumer Protection Act (“TCPA”) claims in this matter
6 against Defendant Wells Fargo Bank, N.A. (“Defendant” or “Wells Fargo”)
7 arising from calls relating to credit card collections that occurred between
8 November 1, 2009 and September 17, 2014. [*See* ECF No. 11, Order Certifying
9 Provisional Settlement Class. Preliminary Approving Class Action Settlement
10 (“Preliminary Approval Order”).]

11 The reaction of the Class and the result obtained establishes this settlement
12 clearly deserves final approval. Assuming the Court awards the amount of
13 attorneys’ fees requested, and after deducting the cost of notice and claims
14 administration and incentive payment, each approved claimant will receive \$71.16
15 in the form of a cash payment, based on the approved claims filed during the
16 lengthy 90 day claims period. [*See* Declaration of Lisa M. Mullins filed
17 concurrently herewith]. That is an excellent result for the Class.

18 Furthermore, notice has been given to the 4,076,207 persons in Class. Out of
19 the many millions of consumers that received said notice, only 68 persons have
20 requested exclusion from the Class. [*Id.*]. However, only 59 of these exclusion
21 requests were deemed valid since the other nine consumers did not appear on the
22 Class List. [*Id.*]. In addition, there have been only nine objections filed, most of
23 which have been withdrawn prior to filing this motion. That is a miniscule
24 amount, based on the millions of consumers in the Class. These factors also
25 support final approval.

26 Plaintiff brought this action on behalf of herself and all others similarly
27 situated that received one or more telephone calls on their cellular telephones that
28 were placed on behalf of Wells Fargo through the use of an automatic telephone

1 dialing system (“ATDS”) and/or prerecorded voice without the called party’s
 2 consent. [Preliminary Approval Order, page 2]. As described in Plaintiff’s
 3 Motion for Preliminary Approval of Class Action Settlement, Defendant shall
 4 establish a non-reversionary cash settlement fund of \$13,859,103.80. [See Joint
 5 Motion To Correct/Amend the Motion for Preliminary Approval, 2:15-17, ECF
 6 No. 12]. The Parties were able to resolve this action at a fairly early date because
 7 of extensive previous litigation over the same claims against this Defendant in
 8 several prior and concurrent actions. The settlement was followed by
 9 confirmatory discovery to confirm the exact number of Class Members as
 10 represented in mediation. [See Plaintiff’s Motion for Preliminary Approval, 1:12-
 11 20]. As a result of litigating the claims herein, and litigating the other Wells
 12 Fargo credit card TCPA litigation, Plaintiff has determined that the settlement is
 13 fair, reasonable and adequate.

14 With this Motion, Plaintiff now seeks final approval of the Parties’ Class
 15 Action Settlement. No facts have arisen that would call into question the Class
 16 Action Settlement being fair, adequate and reasonable. [ECF No. 11]. As
 17 discussed in detail below, the proposed Settlement satisfies all criteria for
 18 settlement approval under Ninth Circuit authority.

19 **II. PROCEDURAL BACKGROUND**

20 The Parties’ settlement is the culmination of multiple class actions that have
 21 been previously litigated against Defendant. After years of tenacious litigation
 22 with Wells Fargo in a number of cases over alleged TCPA violations involving
 23 calls to credit cardholders, as explained below, the Parties were finally able to
 24 reach this substantial settlement with the assistance of several in-person and
 25 telephonic mediation sessions with the Honorable Irma E. Gonzalez (Ret.). [See
 26 Plaintiff’s Motion for Preliminary Approval, 1:112-17].

27 ///

28 ///

1 **A. PROCEEDINGS TO DATE**

2 Since 2012, Counsel have engaged in a comprehensive litigation strategy to
3 pursue class action TCPA claims against Wells Fargo. Counsel, including Class
4 Counsel, achieved the current settlement through work in five separate TCPA
5 class actions brought against Defendant, all seeking compensation only for TCPA
6 violations involving collection of Wells Fargo's credit card accounts.
7 Specifically, said matters are:

- 8
- 9 1. *Masters v. Wells Fargo Bank, N.A.*, Case No.: 1:12-cv-00376-SS
10 (W.D. Texas);
 - 11 2. *Heinrichs v. Wells Fargo Bank N.A.*, Case No.: 3:13-cv-05434 (N.D.
12 Cal);
 - 13 3. *Martin v. Wells Fargo Bank, N.A.*, Case No. 3:12-cv-06030-SI (N.D.
14 Cal);
 - 15 4. *Shehan v. Wells Fargo Bank, N.A.*, Case No.: 1:14-cv-00900-JHE
16 (N.D. Alabama); and,
 - 17 5. *Franklin v. Wells Fargo Bank N.A.*, Case No.: 14-cv-2349 (S.D. Cal),
18 the current action.

19 On October 3, 2014, Plaintiff Lillian Franklin initiated this action against
20 Defendant in the United States District Court, Southern District of California.
21 [Plaintiff's Complaint, ECF No. 1 ("Complaint")]. The Complaint alleged that
22 Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227
23 ("TCPA") by placing telephone calls to consumer's cellular telephones utilizing
24 an ATDS and/or prerecorded voice message without said consumer's prior
25 express consent. On January 8, 2015, Defendant filed an Answer to Plaintiff's
26 Complaint. [Defendant's Answer, ECF No. 9 ("Answer")].

27 ///

28 ///

1 **B. MEDIATION AND SETTLEMENT NEGOTIATIONS**

2 Prior to attending formal mediation sessions with Judge Gonzalez, the
 3 Parties engaged in informal settlement discussions to further establish and justify
 4 the Parties' respective positions. [Kazerounian Decl., ¶ 5; Swigart Decl., ¶ 5; and,
 5 Campion Decl., ¶ 5]. Said discussions included examination of the legal
 6 landscape regarding the TCPA and the settlements reached in those cases. [*Id.*].
 7 In addition, the Parties also discussed the policies and procedures instituted by
 8 Defendant in order to avoid such violations. [*Id.*]. After thorough investigation
 9 and settlement discussions between Counsel, the Parties determined that
 10 mediation might assist the Parties in resolving this matter. [Kazerounian Decl., ¶
 11 26; Swigart Decl., ¶ 26; and, Campion Decl., ¶ 26]. To that end, the Parties
 12 utilized the Honorable Irma E. Gonzalez (Ret.) of JAMS. [*Id.*]. As a result of an
 13 all-day mediation session with Judge Gonzalez on October 13, 2014, followed by
 14 several telephonic sessions, the Parties were able to reach an agreement. [*Id.*].
 15 Only after the Parties agreed on the material terms of the settlement did the Parties
 16 discuss payment of attorneys' fees, costs and Plaintiff's incentive award. [*Id.*].
 17 The Parties then continued negotiations about the details of the settlement for
 18 several months and were eventually able to agree on the remaining terms of the
 19 settlement. [*Id.*].

20 On December 22, 2014, Plaintiff filed a Motion for Preliminary Approval
 21 of the current Class Action Settlement. [ECF No. 5]. That Motion was granted on
 22 February 9, 2015. [ECF No. 11]. In compliance with this Court's Preliminary
 23 Approval Order, Plaintiff filed Plaintiff's Motion for Attorneys' Fees; Costs; and,
 24 Incentive Award for Plaintiff. [ECF No. 20].

25 **C. PRELIMINARY APPROVAL AND CONDITIONAL CERTIFICATION**

26 On December 22, 2014, Plaintiff filed a Motion for Preliminary Approval of
 27 the Class Action Settlement. [ECF No. 5]. That Motion was granted on February
 28 9, 2015. [ECF No. 11] and the Court preliminarily determined that the settlement

1 was fair, reasonable, and adequate. [*Id.* at page 1]. In compliance with this
 2 Court’s Preliminary Approval Order, Plaintiff filed her Motion for Attorneys’
 3 Fees; Costs; and, Incentive Award for Plaintiff. [ECF No. 20]. This Court
 4 preliminarily approved the Parties’ settlement agreement in which the following
 5 settlement class was provisionally certified:

6 All cell phone users or subscribers to wireless or cellular
 7 service within the United States who used or subscribed to
 8 telephone numbers to which Wells Fargo placed any calls from
 9 November 1, 2009 to September 17, 2014 using any automated
 dialing technology or artificial or prerecorded voice technology
 in an effort to collect on a consumer credit card account.

10 See Preliminary Approval Order, page 2 [ECF No. 11].

11 Following Preliminary Approval, the claims administrator ILYM has
 12 performed its obligations pursuant to the Settlement Agreement. [Kazerounian
 13 Decl., ¶ 13; Swigart Decl., ¶ 13; and, Campion Decl., ¶ 13].

14 D. CAFA NOTICE

15 Notice of the proposed settlement pursuant to the Class Action Fairness Act
 16 28 U.S.C. §1715(b) (“CAFA Notice”) was accomplished by sending the
 17 documents specified by 28 U.S.C. §1715(b)(1)-(8) to the Attorney General of the
 18 United States and to the requisite state Attorneys General. [See Mullins Decl.
 19 filed concurrently herewith].

20 E. CLASS NOTICE DISSEMINATION

21 “Adequate notice is critical to court approval of a class [action] settlement.”
 22 *Hanlon v Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998); Fed. R. Civ. P.
 23 23(e)(1). ILYM administered the notice process following the Preliminary
 24 Approval Order. [Preliminary Approval Order, page 4]. In accordance with the
 25 Settlement Agreement and the Preliminary Approval Order, ILYM provided
 26 direct mail notice; publication notice to consumers through *USA Today*; a
 27 settlement website; Internet banner advertisements; and publication of Web
 28 Notice. The various forms of Class Notice provided detailed information

1 regarding (a) class members’ rights, including the manner in which objections and
 2 exclusions could be lodged; (b) the case’s nature, history and progress; (c) the
 3 proposed settlement and reason for the settlement; (d) the settlement’s benefits;
 4 (e) Class Counsel’s requested fees and costs; (f) the Fairness Hearing’s date, time
 5 and location; and, (g) Class Counsel’s contact information. [*Id.*]. The preliminary
 6 estimate of the cost of notice and claims administration as provided at Preliminary
 7 Approval was \$2,987,795.18. [*See* Mullins Declaration in Support of Preliminary
 8 Approval providing estimated cost of notice and claims administration]. The final
 9 estimate of the cost of providing such notice and claims administration is
 10 \$2,768,727.56, an amount \$219,067.62 less than previously approved by this
 11 Court. [Mullins Decl., ¶ 23].

12 **F. RESPONSE TO CLASS NOTICE**

13 Class members contacted ILYM and Class Counsel to discuss the Class
 14 Notice, their options and the case status. Out of all the class members that
 15 received notice, only eight consumers have objected to the settlement and 68 have
 16 requested exclusion. [Kazerounian Decl., ¶¶ 18-19; *see also* Mullins Decl. ¶ 18].
 17 As of the date of this filing, the claims period has closed and the settlement
 18 administrator’s report of approved claims will be filed.

19 **III. LEGAL ARGUMENT**

20 “In evaluating a class action settlement under Rule 23(e), the district court
 21 determines whether the settlement is fundamentally fair, reasonable, and
 22 adequate.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir.) (citing Fed.
 23 R. Civ. P. 23(e). The purpose of this Rule “is to protect the unnamed members of
 24 the class from unjust or unfair settlements affecting their rights.” *Id.* In evaluating
 25 a class action settlement, “a district court has both the duty and the broad authority
 26 to exercise control over a class action and to enter appropriate orders governing the
 27 conduct of counsel and parties.” *Hanlon*, 150 F.3d at 1025 (9th Cir. 1998) quoting
 28 *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981). Nevertheless, the District Court

1 does not have the “ability to delete, modify, or substitute certain provisions.” *Id.* at
 2 1026. “The settlement must stand or fall in its entirety.” *Id.*

3 **A. THE CLASS ACTION SETTLEMENT APPROVAL PROCESS**

4 Federal Courts strongly favor and encourage settlements, particularly in class
 5 actions and other complex matters where the inherent costs, delays and risks of
 6 continued litigation might otherwise overwhelm any potential benefit the class
 7 could hope to obtain. *See Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276
 8 (9th Cir. 1992) (noting that “strong judicial policy...favors settlements, particularly
 9 where complex class action litigation is concerned”); 4 Alba Conte & Herbert B.
 10 Newberg, *Newberg on Class Actions* § 11.41 (4th Ed. 2002) (gathering cases).
 11 The traditional means for handling claims like those at issue here – individual
 12 litigation – would require a massive expenditure of public and private resources
 13 and, given the relatively small value of the claims of the proposed individual class
 14 members, would be impractical. Thus, the proposed Settlement is the best vehicle
 15 for Class Members to receive the relief to which they are entitled in a prompt and
 16 efficient manner.

17 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.**

18 Before granting final approval of a class action settlement, a reviewing court
 19 must first find the settlement “is fair, reasonable, and adequate.” Fed. R. Civ. P.
 20 23(e)(1)(A). In evaluating whether a class settlement is “fair, adequate and
 21 reasonable,” courts generally refer to eight criteria, with differing degrees of
 22 emphasis: (1) the likelihood of success by Plaintiff; (2) the amount of discovery or
 23 evidence; (3) the settlement terms and conditions; (4) recommendation and
 24 experience of counsel; (5) future expense and likely duration of litigation; (6)
 25 recommendation of neutral parties, if any; (7) number of objectors and nature of
 26 objections; and, (8) the presence of good faith and the absence of collusion. *See* 2
 27 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) §
 28 11.43 “General Criteria for Settlement Approval” (3d ed. 1992). *Officers for*

1 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

2 “A settlement following sufficient discovery and genuine arms-length
3 negotiation is presumed fair.” *Knight v. Red Door Salons, Inc.*, 2009 WL 248367,
4 at *4 (N.D. Cal. 2009); *Garner v. State Farm Mut. Ins.*, 2010 WL 1687832, at *13
5 (N.D. Cal. 2010) (“Where a settlement is the product of arms-length negotiations
6 conducted by capable and experienced counsel, the court begins its analysis with a
7 presumption that the settlement is fair and reasonable.”). This is because “[t]he
8 extent of the discovery conducted to date and the stage of the litigation are both
9 indicators of counsel’s familiarity with the case and of Plaintiff having enough
10 information to make informed decisions.” *Knight*, 2009 WL 248367, at *4.

11 In the end, “[s]ettlement is the offspring of compromise; the question we
12 address is not whether the final product could be prettier, smarter or snazzier, but
13 whether it is fair, adequate and free from collusion.” *Hanlon v. Chrysler Corp.*,
14 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Pelletz v. Weyerhaeuser Co.*, 255
15 F.R.D. 537, 544 (W.D. Wash 2009) (same). Here, the record before the Court
16 demonstrates that the settlement agreement satisfies the Ninth Circuit’s standard
17 and that final approval is warranted. Thus, the Parties request this Court grant the
18 Parties’ Motion for Final Approval.

19 **1. The Strength of Plaintiff’s Case and the Risks, Expenses, Complexity**
20 **and Likely Duration of Further Litigation**

21 Plaintiff’s claims against Defendant have merit and could make a compelling
22 case if Plaintiff’s claims were tried. If Plaintiff was to prevail, Defendant could
23 face substantial statutory penalties. Nevertheless, Plaintiff and the Class would
24 face a number of challenges if the litigation were to continue, justifying this
25 compromise settlement.

26 ***a. Challenges to the claims on their merits***

27 In Plaintiff’s Preliminary Approval Motion, there were a number of potential
28 issues if the case proceeded on the merits. [Preliminary Approval Motion, pages

1 12-13]. Those include various individual issues relating to arbitration, prior
 2 express consent, whether the equipment used to place calls meets the statutory
 3 requirement necessary to trigger liability, whether a telephone call was placed to a
 4 cellular telephone or landline and a potential offset of consumer's claims versus
 5 the amount allegedly owed to Defendant might preclude class certification. [*Id.* at
 6 13:4-21]. Of course, Defendant denies any and all liability related to Plaintiff's
 7 Complaint. While Plaintiff believes that Plaintiff would overcome each of these
 8 issues, the risk to the class is substantial. Thus, Plaintiff believes it is in the best
 9 interest of the Class to accept this substantial monetary benefit and seeks final
 10 approval of this settlement.

11 **b. *The risk of maintaining class action status throughout trial.***

12 The benefits of settlement and a plaintiff's chances of success are typically
 13 evaluated together. *See, e.g. Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
 14 482, 488 (E.D. Cal. 2010) ("An important consideration in judging the
 15 reasonableness of a settlement is the strength of the plaintiff's case on the merits
 16 balanced against the amount offered in the settlement."). Through discovery and
 17 confirmatory discovery, Plaintiff believes that Plaintiff obtained sufficient
 18 information to establish that this Class satisfies the requirements of Fed. R. Civ. P.
 19 23; however, Defendant has focused on the issues addressed above to argue that
 20 Plaintiff and the Class Members face numerous risks in moving forward and that
 21 class treatment of this matter is inappropriate.

22 In addition, there is a substantial risk of losing inherent in any jury trial.
 23 Even if Plaintiff prevailed at trial, Defendant would almost certainly appeal,
 24 threatening a reversal of any favorable outcome. *See Fulford v. Logitech, Inc.*,
 25 2010 U.S. Dist. LEXIS 29042, at *8 (N.D. Cal. 2010) ("[L]iability and damages
 26 issues – and the outcome of any appeals that would likely follow if the Class were
 27 successful at trial – present substantial risks and delays for Class Member
 28 recovery.").

1 Under the Settlement Agreement, the Class Members may avoid each of the
 2 described risks and receive substantial cash benefits. “[T]his
 3 settlement...guarantees a recovery that is not only substantial, but also certain and
 4 immediate, eliminating the risk that class members would be left without any
 5 recovery...at all.” *Fulford*, 2010 U.S. Dist. LEXIS 29042, at *8. Thus, Plaintiff
 6 contends that the substantial risk weighs in favor of granting final approval of this
 7 matter.

8 **2. The Amount Offered in Settlement**

9 The Settlement requires Defendant to pay \$13, 859,103.80 into a settlement
 10 fund of out of which eligible Class Members will receive their share of cash
 11 payments. This is a non-reversionary fund meaning no amount of this fund will
 12 revert back to Defendant. Given the potential issues described above, this
 13 settlement represents an outstanding result for Class Members, particularly
 14 because the damages are purely statutory in that Class Members have not suffered
 15 any out-of-pocket losses or other economic harm.

16 Class Counsel estimate that each Class Member will receive \$71.16.
 17 [Mullins Decl., ¶ 20]. Class Counsel arrived at this number after deducting the
 18 notice costs, incentive award to Plaintiff, as well as Plaintiff’s attorneys’ fees and
 19 costs from the Settlement Fund as required in Class Counsel’s Motion for
 20 Attorneys’ Fees; and, Costs.

21 ***a. Size of the Settlement Fund***

22 The \$13,859,103.80 settlement fund was reached after extensive negotiation
 23 through mediation. It reflected a compromise amount that experienced Class
 24 Counsel and their client believed reflected a fair result in light of the burden, risk,
 25 and expense both sides faced through continued litigation in light of similar TCPA
 26 class action settlements that had received final court approval, which are discussed
 27 in more detail below.

28 ///

1 **b. *What a likely recovery per claim would be***

2 As of the date of this filing, the Claims Period has closed and ILYM's
3 report of approve claims has determined that the claim rat is 2.63% of the Class.
4 As stated above, Class Counsel believes that each class member will receive
5 \$71.16.

6 **3. The Extent of Discovery Completed**

7 The Settlement was reached only after Class Counsel's thorough
8 investigation and analysis of the factual and legal issues involved. As detailed
9 above, Class Counsel spent significant time thoroughly investigating the factual
10 and legal claims involved in this Action, prior to filing this Action. [Kazerounian
11 Decl., ¶ 6; Swigart Decl., ¶ 6; and, Campion Decl., ¶ 6]. In addition, Defendant
12 also provided Plaintiff with informal discovery relating to the proposed Class and
13 the calls made as well as responding to formal confirmatory discovery about the
14 number of class members, including the deposition of Wells Fargo's Person Most
15 Knowledgeable about the class membership and its determination, all to confirm
16 that the settlement was fair, reasonable and adequate. [*Id.*].

17 **4. The Experience and Views of Counsel**

18 Class Counsel are particularly experienced in litigating TCPA claims and
19 have a keen understanding of the legal and factual issues involved in this case.
20 [Kazerounian Decl., ¶ 22; Swigart Decl., ¶ 22; and, Campion Decl., ¶ 22]. Based
21 upon this experience, Class Counsel fully endorse this settlement as fair, adequate
22 and reasonable which weighs heavily in favor of the Court approving the
23 settlement. *See In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1043
24 (N.D. Cal. 2007) (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D.
25 Cal. 1979) ("The recommendations of Plaintiff's counsel should be given a
26 presumption of reasonableness."); *Linney v. Cellular Alaska P'ship*, 1997 U.S.
27 Dist. LEXIS 24300, at *16 (N.D. Cal. 1997) ("The involvement of experienced
28

1 class action counsel and the fact that the settlement agreement was reached in
2 arm's length negotiations, after relevant discovery had taken place create a
3 presumption that the agreement is fair.”).

4 **5. The Reaction of Class Members**

5 “It is established that the absence of a large number of objections to a
6 proposed class action settlement raises a strong presumption that the terms of the
7 proposed class action settlement are favorable to the class members.” *In re*
8 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (quoting
9 *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
10 (C.D. Cal. 2004). (3 objections out of 75,630 notices); *Churchill Vill., LLC v.*
11 *Gen. Elec. Co.*, 361 F.3d 566, 577 (9th Cir. 2004) (approving the district court's
12 finding that this fairness factor weighed in favor of settlement when “only 45 of
13 approximately 90,000 notified class members objected to the settlement”);
14 *Rodriguez v. West Publ'g Corp.*, No. 05-3222, 2007 WL 2827379, at *10 (C.D.
15 Cal. Sept. 10, 2007) (54 objections out of 376,000 class members); *Sommers v.*
16 *Abraham Lincoln Fed. Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978)
17 (approving settlement where there were 8,000 opt outs out of 188,000).

18 The response by class members demonstrates widespread approval of the
19 settlement. Out of a class of 4,076,207, persons, there have been 63 opt-outs and
20 only one objector. [Kazerounian Decl., ¶¶ 17-19]. A total of 107,134 class
21 members submitted timely and valid claim form and will receive \$71.16 each [*Id.*
22 at ¶ 13.] The small number of opt-outs and the very few objectors show that class
23 members viewed the settlement as fair, reasonable, and adequate.

24 **6. The Presence of Good Faith, Absence of Collusion, and the Approval** 25 **of a Third-Party Mediator Support Final Approval of the Settlement.**

26 In addition to considering the above factors, the Ninth Circuit has indicated
27 that the Court should carefully review the settlement for any signs of collusion or
28 conflicts of interest. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d

1 935, 946 (9th Cir. 2011). *Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *5
 2 (D.N.J. Sept. 14, 2009) (approving a settlement after a one-day mediation before a
 3 retired federal judge and noting that “the participation of an independent mediator
 4 in settlement negotiation virtually insures that the negotiations were conducted at
 5 arm’s length and without collusion between the parties (emphasis added)”);
 6 *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL 2486346, at *6 (C.D. Cal.
 7 June 15, 2010) (approving settlement after a one-day mediation and noting that
 8 “the assistance of an experienced mediator in the settlement process confirms that
 9 the settlement is non-collusive (emphasis added)”); *Larson v. Sprint Nextel Corp.*,
 10 2010 WL 239934, at *11 (D.N.J. Jan. 15, 2010) (same); *Bert v. AK Steel Corp.*,
 11 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008); 2 McLaughlin on Class
 12 Actions § 6:7 (8th ed) (“A settlement reached after a supervised mediation receives
 13 a presumption of reasonableness and the absence of collusion (emphasis
 14 added.)”); and, *Dennis v. Kellogg Co.*, 2010 WL 4285011, at *4 (S.D. Cal. Oct.
 15 14, 2010) (the parties engaged in a “full-day mediation session,” thus establishing
 16 that the proposed settlement was noncollusive (emphasis added).”).

17 As detailed above, the Settlement is the result of adversarial arm’s-length
 18 negotiations between attorneys experienced in the litigation, certification, trial and
 19 settlement of nationwide class action cases. In addition, the Honorable Irma E.
 20 Gonzalez (Ret.) of JAMS facilitated the final settlement of this action.
 21 [Kazerounian Decl., ¶ 8; Swigart Decl., ¶ 8; and Campion Decl., ¶ 8].
 22 Accordingly, no signs of collusion or conflicts of interest are present here.

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IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests this Court enter an Order granting final approval of the Settlement.

Dated: July 20, 2015

Respectfully submitted,

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