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*Settlement Class Counsel*

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 DONALD M. LUSNAK, on behalf  
17 of himself and all others similarly  
situated,

18 Plaintiff,

19 v.

20 BANK OF AMERICA, N.A.; and  
21 DOES 1 through 10, inclusive,

22 Defendant.

Case No. 2:14-cv-01855-GW(GJSx)

**NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL  
OF CLASS SETTLEMENT**

Date: August 10, 2020

Time: 8:30 a.m.

Judge: Hon. George H. Wu

23 TO THE ABOVE-NAMED COURT AND TO THE PARTIES AND THEIR  
24 ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on August 10, 2020, at 8:30 a.m., at 350 West  
26 1st Street, Los Angeles, CA, 90012, Courtroom 9D, 9th Floor, Plaintiff Donald M.  
27 Lusnak (“Plaintiff”) will and hereby does move the Court, under Federal Rule of  
28 Civil Procedure 23, for an Order granting final approval of the proposed Class

1 Action Settlement Agreement and Release (the “Settlement”)<sup>1</sup> entered into between  
2 the parties.

3 This motion is based on this notice of motion and motion, the accompanying  
4 memorandum of points and authorities, the Settlement (including all exhibits  
5 thereto), the declarations of Donald M. Lusnak, Roger N. Heller, Richard D.  
6 McCune, and Cameron R. Azari, Epiq Class Action & Claims Solutions, Inc., filed  
7 herewith, the papers filed in support of preliminary settlement approval, the  
8 argument of counsel, all papers and records on file in this matter, and such other  
9 matters as the Court may consider.

10 As discussed in the accompanying memorandum of points and authorities,  
11 the requested relief is appropriate because the Settlement satisfies the standards for  
12 final approval under Fed. R. Civ. P. 23 and Ninth Circuit precedent.

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28 <sup>1</sup> The Settlement is on file at Dkt. 112-1.

1 Dated: May 19, 2020

Respectfully submitted,

2 LIEFF CABRASER HEIMANN &  
3 BERNSTEIN, LLP

4  
5 By: /s/ Roger N. Heller

6 Roger N. Heller

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14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA

16 DONALD M. LUSNAK, on behalf  
 17 of himself and all others similarly  
 situated,

18 Plaintiff,

19 v.

20 BANK OF AMERICA, N.A.; and  
 21 DOES 1 through 10, inclusive,

22 Defendant.

Case No. 2:14-cv-01855-GW(GJSx)

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION FOR FINAL APPROVAL  
 OF CLASS SETTLEMENT**

Date: August 10, 2020  
 Time: 8:30 a.m.  
 Judge: Hon. George H. Wu

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1 **INTRODUCTION**

2 The Court has preliminarily approved the Settlement reached by the parties  
3 in this action, and approved the proposed notice program. *See* Dkt. 117. Notice is  
4 being disseminated to the Settlement Class as directed by the Court. By this  
5 motion, Plaintiff respectfully requests that the Court conduct a final review of the  
6 Settlement, and approve the Settlement as fair, reasonable, and adequate.

7 As previously reported, the Settlement here is the product of arms-length  
8 negotiations. It follows years of hard-fought litigation involving complex and  
9 challenging legal issues—including a Ninth Circuit appeal and petitions for en banc  
10 and certiorari review regarding federal preemption, and a fully briefed motion for  
11 class certification—as well as substantial discovery conducted by the parties.

12 The Settlement is absolutely fair, reasonable, and adequate. Under the  
13 Settlement, Bank of America will pay \$35 million to create a non-reversionary  
14 common settlement fund. Settlement Class Members will be sent settlement checks  
15 directly, without the need to file a claim or take any other action. The \$35 million  
16 settlement amount represents approximately **80.7%** of the alleged damages (i.e., the  
17 unpaid escrow interest) for the Settlement Class (a California-only class). In  
18 addition, following Plaintiff’s successful appeal in this case on the preemption  
19 issue, Bank of America changed its policies and practices—beginning in 2019,  
20 Bank of America began paying escrow interest for all residential mortgage escrow  
21 accounts in California. This has resulted, and will result, in substantial additional  
22 escrow interest being paid each year to Settlement Class Members and other Bank  
23 of America California customers.

24 Moreover, the Settlement provides for a robust notice program, including  
25 direct notice to Settlement Class Members, which is being implemented by the  
26 Settlement Administrator.

27 For the foregoing reasons and the others detailed below, the Settlement meets  
28 the standards for final settlement approval and should be approved.

## **BACKGROUND**

### **I. Procedural History**

1  
2  
3 Plaintiff filed this California-only putative class action on March 12, 2014  
4 and filed a First Amended Complaint on June 27, 2014, challenging Bank of  
5 America's alleged failure to pay Plaintiff and a putative class of California Bank of  
6 America customers interest on the balances in their mortgage escrow accounts in  
7 accordance with California Civil Code § 2954.8(a). (Dkt. 1, 22.)

8 On July 31, 2014, Bank of America filed a motion to dismiss the case based  
9 on, *inter alia*, its argument that the California statute is preempted by federal law.  
10 (Dkt. 26.) On October 29, 2014, the Hon. George H. King, (Ret.) granted Bank of  
11 America's motion to dismiss and entered judgment for Bank of America. (Dkt. 33,  
12 34.) Plaintiff appealed to the Ninth Circuit.

13 After full briefing on Plaintiff's appeal, oral argument on the appeal was  
14 heard by the Ninth Circuit panel on November 7, 2016. On March 2, 2018, the  
15 Ninth Circuit issued an opinion reversing the dismissal of the case and holding that  
16 California Civil Code § 2954.8(a) was not preempted. (Dkt. 40.) After the panel  
17 issued its opinion, Bank of America filed a petition for rehearing en banc. (Appeal  
18 Dkt. 40-1.) The Office of the Comptroller of the Currency ("OCC") and certain  
19 trade groups and organizations filed amicus briefs in support of en banc review  
20 (Appeal Dkt. 43, 46.) On May 16, 2018, the Ninth Circuit denied Bank of  
21 America's en banc petition. (Appeal Dkt. 52.)

22 On May 22, 2018, Bank of America moved to stay issuance of the mandate  
23 pending its forthcoming petition to the U.S. Supreme Court for certiorari review.  
24 Plaintiff opposed the motion to stay. On June 6, 2018, the Ninth Circuit granted  
25 Bank of America's motion to stay the mandate (Appeal Dkt. 53-56.) On  
26 August 14, 2018, Bank of America filed a petition for certiorari review. Plaintiff  
27 filed an opposition, and Bank of America filed a reply. On November 19, 2018, the  
28 U.S. Supreme Court denied certiorari review and the mandate issued, returning

1 jurisdiction to this Court. (Dkt. 47.)

2 On November 21, 2018, this case was reassigned to this Court, in light of  
3 Judge King's retirement. (Dk. 48.) On December 21, 2018, Bank of America filed  
4 its Answer (Dkt. 57), after which the parties conducted significant discovery over  
5 the course of the next several months, as summarized below.

6 On August 8, 2019, Plaintiff filed his motion for class certification. (Dkt. 76.)  
7 On September 27, 2019, Bank of America filed its opposition to class certification  
8 (Dkt. 84), and also filed two additional motions—a motion for summary judgment  
9 and a motion to stay the case pending the result in another case before the Ninth  
10 Circuit. (Dkt. 83, 85.) On October 24 and 25, 2019, Plaintiff filed his reply in  
11 support of class certification and filed oppositions to Bank of America's summary  
12 judgment and stay motions. (Dkt. 94, 95, 102-1.) The parties' respective filings in  
13 connection with the class certification and other motions were voluminous and  
14 included numerous declarations, deposition excerpts, and supporting documents.  
15 Moreover, each party designated experts and submitted expert reports from their  
16 respective experts (and, for Plaintiff's expert, a supplemental report), both of whom  
17 were deposed. With the class certification motion fully briefed and the hearing on  
18 the motions pending, through the mediation efforts described below, the parties  
19 reached an agreement to resolve this case on a class-wide basis.

## 20 **II. Settlement Class Counsel's Investigation and Discovery**

21 The Settlement in this case was negotiated by counsel who were well-  
22 informed about the issues and litigation risks as a result of their substantial  
23 investigation and discovery efforts. Prior to filing suit, and continuing through the  
24 course of the litigation, Settlement Class Counsel conducted an extensive  
25 investigation into the factual and legal issues raised in this litigation. These  
26 investigative efforts have included analyzing Bank of America's relevant practices  
27 regarding the establishment and maintenance of escrow accounts and the payment  
28 of escrow interest, investigating the impact of the Dodd-Frank Act on such

1 practices and on the practices of other lenders in California, identifying potential  
2 fact witnesses, and speaking with borrowers about their experiences. Settlement  
3 Class Counsel also thoroughly researched and analyzed the legal issues regarding  
4 the claims pled and Bank of America's defenses and potential defenses, including  
5 but not limited to conducting extensive research throughout the course of the  
6 proceedings on the issue of federal preemption, the history of regulation in the  
7 banking industry, and the interplay among the National Bank Act, federal banking  
8 regulations, the Dodd-Frank Act, and preemption standards. Heller Decl., ¶¶ 5-10.

9 Moreover, the parties have engaged in extensive discovery, making them  
10 well-informed about the relative strengths and weaknesses of their respective  
11 positions, and providing them with information needed to negotiate the proposed  
12 Settlement. Among other things, Settlement Class Counsel deposed three pertinent  
13 Bank of America employee witnesses about the issues in this case (including two  
14 Rule 30(b)(6) corporate designees), reviewed and analyzed approximately 25,000  
15 pages of pertinent documents and data produced by Bank of America,<sup>2</sup> and  
16 propounded and responded to numerous written discovery requests. The Bank's  
17 production included, *inter alia*, internal documents and voluminous historical loan  
18 and transactional data for Bank of America's California mortgage customers  
19 (consisting of millions of records), the contours of which were negotiated by  
20 counsel. Moreover, Plaintiff was deposed by Bank of America's counsel, and the  
21 parties deposed each other's designated experts. Further, counsel for the parties  
22 held multiple meet and confer sessions regarding, *inter alia*, the scope and details of  
23 Bank of America's electronic document search, the nature and scope of the class  
24 member loan and transactional data to be produced by Bank of America, and to  
25 resolve various discovery disputes and potential disputes without the need for Court

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26  
27 <sup>2</sup> Some of the files were produced by Bank of America in native format. If those  
28 native files had been produced in pdf format, the total number of pages produced  
would have been significantly greater than 25,000 pages.

1 intervention. Heller Decl., ¶ 12.

2 **III. Settlement Negotiations**

3 The Settlement here is the product of hard-fought, arms-length negotiations  
4 between the parties. On October 28, 2019, with Plaintiff’s class certification  
5 motion fully briefed and the hearing on that motion scheduled to occur on  
6 November 14, 2019, the parties participated in a full-day mediation session with  
7 Eric Green of Resolutions LLC. Through arms-length negotiations, facilitated by  
8 Prof. Green, the parties reached an agreement in principle on the terms of a  
9 settlement. The parties did not discuss the issue of Settlement Class Counsel’s  
10 attorneys’ fees and expenses as part of the negotiations (other than that any amount  
11 awarded would be paid from the common settlement fund). After reaching an  
12 agreement in principle, the parties worked diligently to craft the Settlement  
13 Agreement and related papers, including the notice program, working together with  
14 the Settlement Administrator. Heller Decl., ¶ 14.

15 **IV. Preliminary Settlement Approval**

16 On January 30, 2020, following a hearing, the Court entered an Order  
17 granting preliminary approval of the proposed Settlement, certifying the Settlement  
18 Class for settlement purposes, and directing that class notice, under Fed. R. Civ. P.  
19 23(e)(1), be disseminated pursuant to the parties’ proposed notice program. Dkt.  
20 117.

21 **THE SETTLEMENT**

22 The full Settlement terms are set forth in the Settlement Agreement, which is  
23 filed at Dkt. 112-1. The following is a summary of the Settlement terms.

24 **I. The Settlement Class**

25 The Settlement Class, as certified by the Court, is defined as:

26 All mortgage loan customers of Bank of America—including any  
27 customers whose loans were originated by Bank of America, whose loans  
28 Bank of America later acquired an ownership interest in, or whose loans  
Bank of America serviced—whose mortgage loan is for a one- to four-  
family residence located in California, and who paid Bank of America

1 money in advance for payment of taxes and assessments on the property,  
2 for insurance, or for other purposes relating to the property, and did not  
3 receive at least 2 percent simple interest per annum on the amounts so  
4 held by Bank of America from July 1, 2008 to December 31, 2018.  
5 “Bank of America” as used in this definition includes Bank of America  
6 Corp., Bank of America, N.A., and their subsidiaries or predecessors.

(Settlement, §§ 1.30, 3.1)

## 7 **II. \$35 Million Non-Reversionary Common Settlement Fund**

8 Under the Settlement, Bank of America will pay \$35 million to establish a  
9 non-reversionary common settlement fund (the “Settlement Consideration”). The  
10 \$35 million settlement amount represents approximately **80.7%** of the alleged class  
11 damages (i.e., the unpaid escrow interest).

12 As detailed below, the common settlement fund will be used to pay: the  
13 settlement payments to Settlement Class Members, the costs of Notice and other  
14 costs of the Settlement Administrator, and any attorneys’ fees and expenses and any  
15 Plaintiff service award granted by the Court. (Settlement, § 3.2)

### 16 **A. Direct Payments to Settlement Class Members**

17 The entirety of the Net Settlement Amount—i.e., the \$35 million Settlement  
18 Consideration, less: notice and administration costs, Court-awarded attorneys’ fees  
19 and expenses for Settlement Class Counsel and any Plaintiff service award—will be  
20 distributed to the Settlement Class Members directly, via mailed checks, without  
21 the need for Settlement Class Members to submit claims. The full Net Settlement  
22 Amount will be divided among the mortgage loans in the Settlement Class in  
23 amounts based on the unpaid escrow interest each of them is allegedly owed for the  
24 settlement class period, July 1, 2008 through December 31, 2018. Specifically,  
25 each loan in the Settlement Class will receive: (a) a minimum payment of \$5.00;  
26 plus (b) a portion of the remaining settlement payment funds—i.e., most of the  
27 funds (the Net Settlement Amount minus the minimum payments)—which will be  
28 allocated among the loans in the Settlement Class (on top of the minimum  
payment) in amounts directly proportionate to the alleged unpaid escrow interest for

1 each loan.<sup>3</sup> (Settlement, § 3.4)

2 Within 45 days after the Effective Date (following the payment amount  
3 calculations and Bank of America's provision of updated mailing address  
4 information for current customers), the Settlement Administrator will mail the  
5 settlement payments to the Settlement Class Members. The settlement checks will  
6 be valid for 180 days. For any checks that are returned undeliverable with  
7 forwarding address information, the Settlement Administrator will re-mail the  
8 check to the new address indicated. For any checks that are returned undeliverable  
9 without forwarding address information, the Settlement Administrator will conduct  
10 a skip-trace to try to identify an updated address and will re-mail the check if an  
11 updated address is identified. (Settlement, §§ 3.4, 3.5)

12 For any checks that remain uncashed or are deemed undeliverable by the  
13 Settlement Administrator one year after the checks are initially mailed, such  
14 residual funds will be treated as unclaimed property of the corresponding  
15 Settlement Class Members (i.e., of those who have not negotiated their checks),  
16 subject to applicable state unclaimed property procedures, pursuant to which the  
17 funds will remain available for the Settlement Class Members in question to claim.<sup>4</sup>

18 \_\_\_\_\_  
19 <sup>3</sup> As determined by the Calculation Advisor (Settlement, §§ 1.20, 3.4(d)(i), (4.2)),  
20 there are 837,372 loans within the Settlement Class. The average alleged damages  
21 (i.e., unpaid interest) per loan is approximately \$52. Assuming the Court awards  
22 attorneys' fees, expenses, and a service award in the amounts requested, and based  
23 on the administrative costs estimate (Azari Decl., filed herewith, ¶ 25), the average  
24 settlement payment check is expected to be approximately \$30.

25 <sup>4</sup> Any additional administrative costs associated with this residual process will be  
26 paid from the residual funds, and will reduce *pro rata* the respective unclaimed  
27 property amounts for the Settlement Class Members with uncashed or undeliverable  
28 checks. (Settlement, § 3.5(c)) The unclaimed property process and timing vary by  
state. In California, where most Settlement Class Members are expected to reside,  
following a "dormancy period," during which the funds would be claimable from  
the Settlement Administrator, and after a "due diligence" notice is sent to the  
individuals in question, the funds that remain unclaimed, along with the  
corresponding names, payment amounts, and last known addresses, would be sent  
to the California State Controller's Office for deposit in the State's general fund.  
At that point, the Settlement Class Members in question will still be able to claim

*Footnote continued on next page*

1 (Settlement, § 3.5(c))

2 **B. Notice and Administration Costs**

3 The fees and costs of the Settlement Administrator, in implementing the  
4 Notice program, mailing the settlement checks, and performing the other  
5 administrative tasks described in the Settlement, will be paid from the Settlement  
6 Consideration. (Settlement, § 2.4) The Settlement Administrator's estimate for  
7 notice and administration costs is \$1,075,963.<sup>5</sup>

8 **C. Attorneys' Fees and Expenses; Service Award**

9 Settlement Class Counsel are filing herewith their fee application, requesting  
10 \$8,511,043.66 in attorneys' fees, plus reimbursement of \$238,956.34 in litigation  
11 expenses. They are also requesting a service award for Plaintiff (\$10,000), to  
12 compensate him for his effort and commitment on behalf of the Settlement Class.  
13 Any attorneys' fees, expenses, and service award granted will be paid from the \$35  
14 million common Settlement Consideration. (Settlement, §§ 3.6, 3.7)

15 **III. Bank of America's Change in Practice**

16 In addition to the relief that is provided in the Settlement, Bank of America  
17 changed its policy regarding the payment of escrow interest in California following  
18 Plaintiff's successful appeal on the preemption issue in this case. Specifically,  
19 whereas Bank of America had previously paid escrow interest for some California

20 *Footnote continued from previous page*

21 the funds by following the state unclaimed property procedure; in California, there  
22 is no time limit for submitting such claims (i.e., the funds would be available to  
23 claim in perpetuity). See Cal. Code Civ. Proc. §§ 1501.5, 1531;  
<https://ucpi.sco.ca.gov/UCP/#>.

24 <sup>5</sup> The main costs are for printing/mailing the notice to the Settlement Class  
25 Members, and printing/mailing checks to those Settlement Class Members who do  
26 not opt-out. The updated estimate is about \$71,000 higher than the previous  
27 estimate of \$1,004,968. The primary reasons for the change are: (a) the content of  
28 the Court-approved postcard notice required a larger postcard size than the  
Settlement Administrator had anticipated, which in turn required higher printing  
and postage costs per parcel; while on the other hand (b) the number of  
notices/checks to mail is slightly lower than the Settlement Administrator had  
assumed. Azari Decl., ¶ 25.



1 loans, beginning in 2019 and going forward, Bank of America began paying escrow  
2 interest for *all* residential mortgage escrow accounts in California. (Settlement,  
3 Recitals ¶ 5) This has resulted, and will continue to result, in substantial additional  
4 escrow interest being paid each year to Settlement Class Members who continue to  
5 have active escrow accounts and other Bank of America California customers, (in  
6 addition to and separate from the \$35 million Settlement Consideration).

7 **IV. Opt-Out and Objection Procedures**

8 Any person within the Settlement Class definition may request to be  
9 excluded from the Settlement Class by sending a signed request, including their  
10 contact information and stating their desire to be excluded, to the Settlement  
11 Administrator, postmarked or delivered by the opt-out deadline of July 6, 2020.  
12 Any Settlement Class Member who does not submit a timely and valid exclusion  
13 request may object to the Settlement, Settlement Class Counsel’s application for  
14 attorneys’ fees and expenses, and/or the request for a Plaintiff service award. To be  
15 considered, an objection must be in writing, must be filed with or mailed to the  
16 Court, and mailed to the Settlement Administrator, at the addresses listed in the  
17 Website Notice, must be filed/postmarked by the objection deadline of July 6,  
18 2020, and must include the information prescribed by the Website Notice.  
19 (Settlement, §§ 4.3, 4.6)

20 **V. Release**

21 In exchange for the consideration provided under the Settlement, Settlement  
22 Class Members will release Bank of America and its affiliates from any claims  
23 about the issues in this case. (Settlement, § 3.8)

24 **VI. Rule 23(e)(3) Confirmation**

25 Pursuant to Fed. R. Civ. P. 23(e)(3) and 23(e)(2)(c)(iv), this confirms that the  
26 only agreement made in connection with the proposed class action settlement in this  
27 case, is the Class Action Settlement Agreement and Release, dated December 27,  
28 2019 and filed on the same date in this case at Dkt. 112-1 (i.e., the Settlement).

1                   **THE NOTICE PLAN DIRECTED BY THE COURT IS BEING**  
2                   **IMPLEMENTED AND SATISFIES ALL APPLICABLE STANDARDS.**

3                   The notice program set forth in Section 4.2 of the Settlement and approved  
4 by the Court in the Preliminary Approval Order (Dkt. 117) has been, and is being,  
5 implemented. Such notice program includes the following:

6                   Direct Notice to Settlement Class Members: Direct notice was sent to the  
7 entire Settlement Class. Pursuant to the Court-approved notice program, the  
8 Calculation Advisor utilized Bank of America's historical transactional and loan  
9 data for the relevant time period (July 1, 2008 through December 31, 2018) to  
10 create a list of Settlement Class Member loans. Bank of America then provided  
11 contact information for the loans to the Settlement Administrator for its use in  
12 disseminating direct notice to the Settlement Class. That information included  
13 borrower(s) names and mailing addresses for all of the loans, as well as email  
14 addresses to the extent Bank of America's loan database had an email address  
15 associated with the loan. Azari Decl., ¶ 13.

16                   By May 4, 2020 (the "Notice Date" set by the Court, *see* Dkt. 117, ¶ 34), the  
17 Settlement Administrator timely updated all mailing addresses through the U.S.  
18 Postal Service National Change of Address database and mailed the Postcard  
19 Notice to all Settlement Class Members via first class U.S. Mail, with appropriate  
20 steps being taken to re-mail notices that are returned undeliverable. Azari Decl., ¶¶  
21 14-16, Attach. 2. The Settlement Administrator also timely emailed the Email  
22 Notice to those Settlement Class Members with an email address on the Settlement  
23 Class Member List. Azari Decl., ¶¶ 17-18, Attach. 3. (Settlement, § 4.2)

24                   Publication Notice: By the Notice Date, the Settlement Administrator also  
25 timely caused the Publication Notice to be published in the San Francisco  
26 Chronicle, Sacramento Bee, Los Angeles Times, and San Diego Union-Tribune.  
27 Azari Decl., ¶¶ 19-20, Attach. 4. (Settlement, § 4.2(c))

28                   Settlement Website and Toll-Free Number: In addition, the Settlement

1 Administrator timely established and has been maintaining a Settlement Website  
2 (www.EscrowInterestSettlement.com) which contains the long-form Website  
3 Notice, relevant case deadlines, and key case documents. A Spanish language  
4 version of the notice was also available on the Settlement Website. Azari Decl., ¶¶  
5 14, 17, 21, Ex. 5. The Settlement Administrator also timely established and has  
6 been maintaining a toll-free telephone number that Settlement Class Members can  
7 call for additional information. Azari Decl., ¶ 22. (Settlement, §§ 4.2(d)-(e))

8 The Court-approved notice program, which was designed in consultation  
9 with the Settlement Administrator, satisfies all applicable standards, including Fed.  
10 R. Civ. P. 23(e)(1) and 23(c)(2)(B).

11 **CAFA NOTICE WAS TIMELY SENT**

12 Notice was sent to the appropriate government entities in compliance with  
13 the Class Action Fairness Act, 28 U.S.C. § 1715. Azari Decl., ¶ 12, Attach. 1.

14 **THE RESPONSE FROM THE CLASS THUS FAR**  
15 **HAS BEEN VERY POSITIVE**

16 The deadline for Settlement Class Members to opt-out or object is July 6,  
17 2020. The Settlement Administrator reports that as of May 18, 2020, only 8  
18 persons have requested to be excluded from the Settlement Class and no objections  
19 have been submitted.<sup>6</sup>

20 **ARGUMENT**

21 **I. Overview of the Class Settlement Approval Process**

22 Pursuant to Rule 23(e), a class action settlement must be approved by the  
23 court before it can become effective. The process for court approval is comprised  
24 of three principal steps:

25 (1) Preliminary approval of the proposed settlement and direction to

26 <sup>6</sup> Azari Decl., ¶ 24. The final numbers of opt-outs and objections will be provided  
27 to the Court in advance of the August 10, 2020 Final Approval Hearing. Pursuant  
28 to the procedure established by the Court in the Preliminary Approval Order, the  
parties will address in their reply papers any objections that may be submitted  
before the July 6, 2020 objection deadline. See Dkt. 117, ¶ 34.

1 disseminate notice to the class;  
2 (2) Dissemination of notice to the class; and  
3 (3) A final approval hearing, at which evidence and argument  
4 concerning the fairness, adequacy, and reasonableness of the  
5 settlement are presented.

6 In granting preliminary approval of the Settlement and directing that notice  
7 be disseminated to the Settlement Class, the Court took the first step in the process,  
8 and the Settlement Administrator has taken the second step by implementing the  
9 class notice program directed by the Court. Dkt. 117; *see also generally* Azari  
10 Decl., filed herewith. By this motion, Plaintiff respectfully requests that the Court  
11 take the third and final step by granting final approval of the Settlement.

12 **II. The Settlement is Fair, Reasonable, and Adequate and Should Be**  
13 **Approved.**

14 The law favors the compromise and settlement of class action suits. *See, e.g.,*  
15 *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Officers*  
16 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) (“[V]oluntary  
17 conciliation and settlement are the preferred means of dispute resolution. This is  
18 especially true in complex class action litigation.”). In weighing final approval of a  
19 class settlement, the Court’s task is to determine whether the settlement, taken as a  
20 whole, is fair, reasonable, and adequate. *Staton v. Boeing Co.*, 327 F.3d 938, 952  
(9th Cir. 2003) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
21 1998)).

22 The Ninth Circuit has established a list of factors to consider when making  
23 that assessment: (1) the strength of the plaintiffs’ case; (2) the risk, expense,  
24 complexity, and likely duration of further litigation; (3) the risk of maintaining  
25 class action status throughout the trial; (4) the amount offered in the settlement; (5)  
26 the extent of discovery completed and the stage of the proceedings; (6) the  
27 experience and views of counsel; (7) the presence of a governmental participant;  
28 and (8) the reaction of the class members to the proposed settlement. *Churchill*  
*Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026.

1           Additionally, Rule 23(e)(2) establishes factors for the Court’s consideration  
2 which overlap to some degree with the *Churchill Village* factors. Fed. R. Civ. P.  
3 23(e)(2) (court must consider whether: (a) the class representatives and class  
4 counsel have adequately represented the class; (b) the proposal was negotiated at  
5 arm’s length; (c) the relief provided for the class is adequate, taking into account  
6 the costs, risks, and delay of trial and appeal, the effectiveness of any proposed  
7 method of distributing relief to the class, including the method of processing class-  
8 member claims, the terms of any proposed award of attorney’s fees, including  
9 timing of payment, and any agreement required to be identified under Rule  
10 23(e)(3); and (d) the proposal treats class members equitably relative to each other).

11           Application of these factors here supports the conclusion that the Settlement  
12 is fundamentally fair, reasonable, and adequate, and should be finally approved.

13           **A. The Settlement is the Product of Good Faith, Arm’s-Length**  
14           **Negotiations (Fed. R. Civ. P. 23(e)(2)(B))**

15           “Before approving a class action settlement, the district court must reach a  
16 reasoned judgment that the proposed agreement is not the product of fraud or  
17 overreaching by, or collusion among, the negotiating parties.” *Class Plaintiffs v.*  
18 *City of Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992); *see also* Fed. R. Civ. P.  
19 23(e)(2)(B). The Settlement here is the product of hard-fought, arms-length  
20 negotiations. The parties participated in a full-day mediation session with a well-  
21 respected mediator, Eric Green of Resolutions LLC, and were able to reach an  
22 agreement with the help of Prof. Green. The parties did not discuss the issue of  
23 Settlement Class Counsel’s attorneys’ fees and expenses as part of the negotiations  
24 (other than that any amount awarded would be paid from the common settlement  
25 fund). After reaching an agreement, the parties worked diligently on the settlement  
26 papers and to select a proposed Settlement Administrator. Throughout these  
27 negotiations, the parties were represented by counsel experienced in the  
28 prosecution, defense, and settlement of complex class actions.

1           **B. The Settlement Represents a Very Strong Result for the**  
2           **Settlement Class, in Light of the Strength of Plaintiff's Claims,**  
3           **Alleged Harm, and Risks, Complexities, and Likely Duration of**  
4           **Ongoing Litigation (Churchill Village Factors 1, 2, 3 & 4; Fed. R.**  
5           **Civ. P. 23(e)(2)(C))**

6           The Settlement provides substantial monetary relief that is well-tailored to  
7           the alleged harm. Plaintiff in this case alleges that Bank of America violated  
8           California law by failing to pay 2% interest per year on the Settlement Class  
9           Members' mortgage loan escrow balances. The Settlement directly addresses the  
10          alleged harm by providing monetary payments for each loan in the Settlement  
11          Class, pursuant to an allocation plan that is appropriately designed to give the most  
12          compensation to the Settlement Class Members with the most alleged harm.

13          The \$35 million settlement amount is approximately **80.7%** of the potential  
14          class damages,<sup>7</sup> an excellent result for the Settlement Class that appropriately  
15          balances the strengths of Plaintiff's claims and Bank of America's defenses, and the  
16          remaining risks and delay of ongoing litigation, including the risks associated with  
17          maintaining class certification through trial (never a given). As the Court is aware,  
18          Bank of America filed a vigorous opposition to class certification, wherein the  
19          Bank argued, *inter alia*, that a class trial here would be unmanageable. Bank of  
20          America also filed a motion for summary judgment and a motion to stay this case  
21          for up to a year or more pending a Ninth Circuit decision in another case. Bank of  
22          America has also disputed whether damages can be precisely measured on a class-  
23          wide basis. Moreover, notwithstanding the Ninth Circuit's no-preemption ruling,  
24          Bank of America has made it clear that it will continue to pursue its federal

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25          <sup>7</sup> Plaintiff's preliminary approval motion estimated that the \$35 million was 76.1%  
26          of an estimated \$46 million in damages for the class period. As explained therein,  
27          Plaintiff's expert, Arthur Olsen, had calculated class damages for the 2010 through  
28          2018 time period, but had not yet received data for the first 18 months of the class  
29          period (i.e., for July 1, 2008 through December 31, 2009). That remaining data has  
30          now been produced by the Bank and analyzed by Mr. Olsen, resulting in a total  
31          class damages calculation (for the entire class period) of approximately \$43.37  
32          million (i.e., the damages for the first 18 months were \$2-3 million lower than had  
33          been estimated). \$35 million is about 80.7% of that figure.

1 preemption argument, including in cases pending in other Circuits involving similar  
2 state escrow interest requirements where Bank of America hopes to create a Circuit  
3 split. If Bank of America were to prevail on certain of these issues, it is quite  
4 possible the result could be no recovery at all for the Settlement Class.

5 While Plaintiff absolutely believes he can overcome these challenges, they  
6 are indicative of the risks that Plaintiff and the Settlement Class would face if the  
7 litigation were to continue. The Settlement provides substantial, appropriately-  
8 tailored relief while allowing Settlement Class Members to avoid the risks of  
9 unfavorable, and in some cases dispositive (or effectively so), rulings on these and  
10 other issues.

11 Moreover, the method for distributing the settlement payments—direct  
12 payments via mailed checks, without the need for Settlement Class Members to  
13 submit claims—further supports the reasonableness of the Settlement. Fed. R. Civ.  
14 P. 23(e)(2)(C)(ii). The entirety of the Net Settlement Amount will be issued to  
15 Settlement Class Members. No money will revert to Bank of America. Further, the  
16 Settlement provides that attorneys’ fees and expenses for Settlement Class Counsel  
17 will collectively be capped at a maximum of 25% of the common settlement fund.  
18 Settlement Class Counsel are filing their motion for fees and expenses herewith.  
19 As with the payments to Settlement Class Members, any attorneys’ fees and  
20 expenses awarded by the Court will be paid from the common Settlement  
21 Consideration following the Effective Date of the Settlement. Fed. R. Civ. P.  
22 23(e)(2)(C)(iii).

23 The Settlement also provides another significant benefit that would not be  
24 available if the litigation were to continue—prompt relief. Proceeding to trial could  
25 add years to the resolution of this litigation, given the legal and factual issues raised  
26 and likelihood of additional appeals if Plaintiff and the class prevailed at trial.

27 Further, as discussed above, in addition to the relief achieved via the  
28 Settlement itself, because of Plaintiff’s successful appeal in this case, Bank of

1 America changed its policies and practices regarding the payment of escrow  
2 interest. Specifically, beginning in 2019, Bank of America began paying escrow  
3 interest for all residential mortgage escrow accounts in California. This has  
4 resulted, and will continue to result in, substantial amounts of additional escrow  
5 interest being paid to Settlement Class Members and other Bank of America  
6 California customers each year.

7 **C. The Advanced Stage of Proceedings, and the Significant**  
8 **Investigation and Discovery Conducted, Further Support**  
9 **Approval (Churchill Village Factor 5)**

10 As discussed above, the Settlement is informed by Settlement Class  
11 Counsel's substantial investigation and discovery regarding the legal and factual  
12 issues in the litigation. Before filing suit, Settlement Class Counsel investigated the  
13 factual underpinnings of the alleged practices at issue and the applicable law.  
14 Additionally, Settlement Class Counsel engaged in ongoing factual investigation  
15 throughout the course of the litigation, including identifying potential witnesses and  
16 speaking with borrowers about their experiences. Settlement Class Counsel also  
17 conducted extensive, ongoing legal research about the issues in this case. These  
18 substantial efforts are described in further detail in the accompanying fee motion  
19 and declarations.

20 Settlement Class Counsel also conducted substantial formal discovery,  
21 including deposing three key Bank of America employees, reviewing  
22 approximately 25,000 pages of documents and data produced by Bank of America,  
23 propounding and responding to numerous written discovery requests, and engaging  
24 in multiple meet and confers with Bank of America's counsel. Both sides also  
25 designated experts who submitted expert reports and were deposed. *See supra*  
26 Background § II.

27 Further, as the Court is aware, there was significant litigation and motion  
28 practice in this case, including: Bank of America's motion to dismiss, Plaintiff's  
29 appeal to the Ninth Circuit, Bank of America's en banc petition, Bank of America's



1 petition for Supreme Court certiorari review, Bank of America's motion for  
2 summary judgment, Bank of America's motion to stay, and Plaintiff's motion for  
3 class certification, which was fully briefed and scheduled to be heard when the  
4 parties reached an agreement. *See supra* Background § I. In negotiating the  
5 Settlement, the parties and their counsel were significantly informed by their work  
6 in briefing these issues and by the various court rulings.

7 **D. Plaintiff and Settlement Class Counsel Have and Continue to**  
8 **Zealously Represent the Class (Fed. R. Civ. P. 23(e)(2)(A))**

9 Plaintiff and Settlement Class Counsel have prosecuted this action on behalf  
10 of the Settlement Class with vigor and dedication for more than five years, in this  
11 Court and on appeal. Fed. R. Civ. P. 23(e)(2)(A). As detailed above, Settlement  
12 Class Counsel have thoroughly investigated the factual and legal issues involved,  
13 conducted extensive discovery, and engaged in considerable motions, appellate, and  
14 expert practice in furtherance of prosecuting the claim here. *See supra* Background  
15 §§ I, II. Likewise, Plaintiff has been actively engaged—he provided information,  
16 produced pertinent documents, responded to written discovery requests, had his  
17 deposition taken by Bank of America, and communicated regularly with Settlement  
18 Class Counsel up to and including evaluating and approving the Settlement.<sup>8</sup>

19 **E. The Settlement Treats Settlement Class Members Equally (Fed. R.**  
20 **Civ. P. 23(e)(2)(D))**

21 The settlement benefits will be distributed pursuant to a fair and equitable  
22 allocation plan. Fed. R. Civ. P. 23(e)(2)(D). All Settlement Class Members will be  
23 sent a settlement check, and the settlement payments will be based on the unpaid  
24 escrow interest each of them is allegedly owed for the settlement class period, July  
25 1, 2008 through December 31, 2018. Specifically, each loan in the Settlement  
26 Class will receive: (a) a minimum payment of \$5.00; plus (b) a portion of the  
27 remaining settlement payment funds—i.e., most of the funds (the Net Settlement

28 <sup>8</sup> Lusnak Decl., ¶¶ 4-7.

1 Amount minus the minimum payments)—which will be allocated among the loans  
 2 in the Settlement Class (on top of the minimum payment) in amounts directly  
 3 proportionate to the alleged unpaid escrow interest for each loan. This allocation  
 4 plan ensures that all Settlement Class Members will be sent meaningful  
 5 compensation and that the most compensation will be provided to Settlement Class  
 6 Members who incurred the most alleged harm.<sup>9</sup>

7 **F. The Experience and Views of Counsel Further Support Approval**  
 8 **(Churchill Village Factor 6)**

9 The recommendation of experienced plaintiffs’ counsel weighs in favor of  
 10 granting final approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18  
 11 (N.D.Cal.1980) *aff’d*, 661 F.2d 939 (9th Cir.1981) (“[T]he fact that experienced  
 12 counsel involved in the case approved the settlement after hard-fought negotiations  
 13 is entitled to considerable weight.”); *Abelar v. Am. Residential Servs., L.L.C.*, No.  
 14 EDCV1900726JAKJPRX, 2019 WL 6054607, at \*5 (C.D. Cal. Nov. 14, 2019)  
 15 (“Experienced counsel participated in the settlement process and concurred in the  
 16 outcome....[T]his factor weighs in favor of approval.”). Settlement Class Counsel  
 17 here have extensive experience litigating and settling consumer class actions and  
 18 other complex matters, including cases involving mortgage lenders and other  
 19 financial institutions (including multiple cases involving federal preemption  
 20 defenses).<sup>10</sup> They have conducted an extensive investigation into, and taken  
 21 considerable discovery regarding, the factual and legal issues raised. The fact that

22 \_\_\_\_\_  
 23 <sup>9</sup> There are a significant number of Settlement Class Members with low calculated  
 24 damages amounts, including many with less than \$1. Plaintiff and Settlement Class  
 25 Counsel believe it is appropriate for all borrowers who were subject to this alleged  
 26 violation to receive a meaningful settlement payment, and that the proposed  
 27 allocation plan—i.e., a \$5 minimum payment for all Settlement Class Members,  
 28 plus an allocation of most of the funds proportionate to the amounts of alleged  
 unpaid interest for each loan—is reasonable and appropriately serves the function  
 of ensuring all Settlement Class Members get meaningful relief and that Settlement  
 Class Members with the most alleged damages get the highest payments.

<sup>10</sup> Heller Decl., ¶¶ 2-4; McCune Decl., ¶¶ 2-17.

1 qualified and well-informed counsel endorse the Settlement as being fair,  
 2 reasonable, and adequate weighs heavily in favor of the Court approving the  
 3 Settlement.

4 **G. The Presence of a Governmental Participant (*Churchill Village***  
 5 **Factor 7)**

6 Notice has been issued to the relevant governmental agencies pursuant to the  
 7 Class Action Fairness Act, 28 U.S.C. § 1715.<sup>11</sup> To date, no governmental entity has  
 8 raised objections or concerns about the Settlement.

9 **H. The Reaction of the Class (*Churchill Village* Factor 8)**

10 Direct notice of the Settlement was sent to the Settlement Class Members.  
 11 The deadline for Settlement Class Members to opt-out or object is July 6, 2020. As  
 12 of May 18, 2020, only 8 persons have requested to be excluded, and no objections  
 13 have been submitted.<sup>12</sup> Plaintiff will provide updated opt-out and objection  
 14 numbers in advance of the August 10, 2020 Final Approval Hearing. The positive  
 15 reaction thus far further supports the conclusion that the Settlement is fair,  
 16 reasonable, and adequate. *Churchill Village*, 361 F.3d at 577 (upholding approval  
 17 of class settlement with 45 objections and 500 opt-outs for a class of 150,000).

18 **III. The Court Should Reaffirm Certification of the Settlement Class.**

19 The Court previously provisionally certified the Settlement Class as part of  
 20 the Preliminary Approval Order. (Dkt. 117, ¶¶ 5-9.) The Court should reaffirm  
 21 certification of the Settlement Class, for settlement purposes, in conjunction with  
 22 final approval of the Settlement, because the standards of Rule 23(a) and Rule  
 23 23(b)(3) are satisfied.

24 **A. The Requirements of Rule 23(a) are Satisfied.**

25 **1. Numerosity (Rule 23(a)(1))**

26 Rule 23(a)(1) requires that “the class is so numerous that joinder of all class

27 <sup>11</sup> Azari Decl., ¶ 12.

28 <sup>12</sup> Azari Decl., ¶ 24.

1 members is impracticable.” Fed. R. Civ. P. 23(a)(1). A “class of 41 or more is  
2 usually sufficiently numerous.” *5 Moore’s Federal Practice—Civil* § 23.22 (2016);  
3 *see also In re Banc of California Sec. Litig.*, 326 F.R.D. 640, 646 (C.D. Cal. 2018).  
4 Numerosity is easily satisfied here. The Settlement Class includes more than  
5 837,000 California mortgage loans (some of which have multiple co-borrowers).

6 **2. Commonality (Rule 23(a)(2))**

7 Rule 23(a)(2) requires that there be one or more questions common to the  
8 class. Commonality “does not turn on the number of common questions, but on  
9 their relevance to the factual and legal issues at the core of the purported class’  
10 claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). “Even a  
11 single question of law or fact common to the members of the class will satisfy the  
12 commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369  
13 (2011). This case raises multiple common questions, including whether Bank of  
14 America failed to pay 2% interest per year on the Settlement Class Members’  
15 escrow balances and whether that violated California Civil Code § 2954.8(a).  
16 Commonality is satisfied here.

17 **3. Typicality (Rule 23(a)(3))**

18 Under Rule 23(a)(3), a plaintiff’s claims are “typical” if they are “reasonably  
19 coextensive with those of absent class members; they need not be substantially  
20 identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted).  
21 “A claim is typical if it: (1) arises from the same event or practice or course of  
22 conduct that gives rise to the claims of other class members; and (2) is based on the  
23 same legal theory as their claims.” *Ayala v. U.S Xpress Enterprises, Inc.*, No.  
24 EDCV 16-137-GW(KKX), 2017 WL 3328087, at \*12 (C.D. Cal. July 27, 2017).  
25 Typicality is satisfied here. Plaintiff’s claims and those of the Settlement Class are  
26 based on the same course of conduct and the same legal theories. Moreover,  
27 Plaintiff and the Settlement Class Members all suffered the same alleged injury—  
28 i.e., the non-payment of escrow interest.

1                   **4.     Adequacy of Representation (Rule 23(a)(4))**

2             Rule 23(a)(4)'s adequacy inquiry asks ““(1) do the named plaintiffs and their  
3 counsel have any conflicts of interest with other class members and (2) will the  
4 named plaintiffs and their counsel prosecute the action vigorously on behalf of the  
5 class?”” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir.  
6 2012). Settlement Class Counsel here have extensive experience litigating and  
7 resolving class actions and other complex matters, and are well qualified to  
8 represent the Settlement Class.<sup>13</sup> Since filing this case, Settlement Class Counsel  
9 have vigorously litigated this action on behalf of the Settlement Class, conducted  
10 extensive investigation and discovery, negotiated the proposed Settlement, and have  
11 and will continue to fairly and adequately protect the interests of the Settlement  
12 Class.<sup>14</sup> Likewise, Plaintiff has demonstrated his commitment to the Settlement  
13 Class, including by sitting for deposition, providing information for pleadings and  
14 in responding to discovery requests, regularly communicating with his counsel  
15 about the case, and reviewing and approving the proposed Settlement.<sup>15</sup> Finally,  
16 Plaintiff's and Settlement Class Counsel's interests are aligned with and are not  
17 antagonistic to the interests of the Settlement Class. Plaintiff and the Settlement  
18 Class Members share an interest in obtaining relief from Bank of America for the  
19 alleged statutory violation.

20                   **B.     The Requirements of Rule 23(b)(3) Are Satisfied.**

21             Rule 23(b)(3) requires that “questions of law or fact common to the class  
22 members predominate over any questions affecting only individual members and  
23 that a class action is superior to other available methods for fairly and efficiently  
24 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

25             “The predominance inquiry ‘asks whether the common, aggregation-

26 \_\_\_\_\_  
<sup>13</sup> Heller Decl., ¶¶ 2-4; McCune Decl., ¶¶ 2-17.

27 <sup>14</sup> Heller Decl., ¶¶ 5-27; McCune Decl., ¶¶ 18-24.

28 <sup>15</sup> Lusnak Decl., ¶¶ 4-7.

1 enabling, issues in the case are more prevalent or important than the non-common,  
2 aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136  
3 S. Ct. 1036, 1045 (2016) (citation omitted). At its core, “[p]redominance is a  
4 question of efficiency.” *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th  
5 Cir. 2012). The Ninth Circuit favors class treatment of claims stemming from a  
6 “common course of conduct,” like that alleged in this case. *See In re First Alliance*  
7 *Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006).

8 Common questions predominate. The Settlement Class Members’ claims all  
9 arise under the same California law and the same alleged course of conduct. The  
10 questions that predominate are whether Bank of America failed to pay 2% per  
11 annum escrow interest and whether that conduct violated California Civil Code §  
12 2954.8(a). Moreover, under the proposed Settlement, there will not need to be a  
13 class trial, meaning there are no potential concerns about any individual issues, if  
14 any, creating trial inefficiencies. *See Amchem Prods., Inc. v. Windsor*, 521 U.S.  
15 591, 620 (1997) (“Confronted with a request for settlement-only class certification,  
16 a district court need not inquire whether the case, if tried, would present intractable  
17 management problems...for the proposal is that there will be no trial.”).

18 Fed. R. Civ. P. 23(b)(3)’s superiority inquiry calls for a comparative analysis  
19 of whether a class action is “superior to other available methods for fair and  
20 efficient adjudication of the controversy.” *Amchem*, 521 U.S. at 615; *Wolin v.*  
21 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“[T]he  
22 purpose of the superiority requirement is to assure that the class action is the most  
23 efficient and effective means of resolving the controversy.”). In considering  
24 “superiority,” courts analyze: (i) class members’ interest in individually controlling  
25 separate actions; (ii) the extent and nature of existing litigation by class members  
26 concerning the same claims; (iii) the desirability of concentrating the litigation in a  
27 particular forum; and (iv) any likely difficulties of managing a class action.

28 Class treatment is superior to other methods for the resolution of this case.

1 Plaintiff is unaware of any individual actions regarding the issues raised in this  
2 case, and the size of each Settlement Class Member’s individual damages would be  
3 dwarfed by the expense of prosecuting an individual case. *See Just Film, Inc. v.*  
4 *Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017) (class action superior where the “risks,  
5 small recovery, and relatively high costs of litigation make it unlikely that plaintiffs  
6 would individually pursue their claims.”) (internal quotation marks omitted). In all  
7 events, they remain free to exclude themselves from the Settlement Class if they  
8 wish to do so. Moreover, it would be far more efficient for the Court and the  
9 parties to have a single resolution (as with the proposed Settlement here), rather  
10 than multiple separate cases about the same issue.

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**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement.

Dated: May 19, 2020

Respectfully submitted,

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