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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JAMIE JWEINAT and RICHARD LECHLEITNER, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

LOANDEPOT.COM, LLC; and DOES 1-10 inclusive,

Defendant

CASE NO.: Case No. CGC-23-605149

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

Filed Concurrently with Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Declaration of Todd M. Friedman, Declaration of Jamie Jweinat and Declaration of Richard Lechleitner

Date: April 21, 2025
Time: 9:30 a.m.
Dept: 301

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

PLEASE TAKE NOTICE THAT ON April 21, 2025, in Department 302 of the Superior Court County of San Francisco, located at 400 McAllister Street, San Francisco, Ca 94012, Plaintiffs, Jamie Jweinat and Richard Lechleitner, on behalf of themselves and all other similarly situated class members, will hereby and do, move for an order granting Final approval of the Class Action Settlement described herein.

The motion is based on this Notice of Motion, the Memorandum of Pointes and Authorities in support thereof, submitted herewith, The Declarations of Jamie Jweinat and Richard Lechleitner, The Declaration of Todd M. Friedman and Brad Madden, the complete file in this action and any other documentary and/or oral evidence as may be presented at the time of the hearing on this Motion.

Date: March 10, 2025 **THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

By: Todd M. Friedman
Todd M. Friedman
Attorneys for Plaintiffs, Jamie Jweinat, Richard Lechleitner, and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After Plaintiffs Jaime Jweinat and Richard Lechleitner ("Plaintiffs") and Defendant Loandepot.com, LLC. ("Loandepot" or "Defendant") have reached a full and final settlement, they appeared before this Court and moved this Court to allow the parties to inform the Members of the Class of the Settlement that was reached, which is embodied in the Class Action Settlement Agreement and Release ("Settlement Agreement") filed concurrently with the Court. The Honorable Court ruled that the Agreement was "fair, reasonable and adequate" due to having been reached at arms-length with an experienced mediator, and being sufficiently substantiated to justify notice to the Class. *See* Order Granting Motion for Preliminary Approval. Since that time, the overwhelmingly positive response of the Class Members is illustrative that the settlement reached was fair to both the parties who participated in a full day of mediation and the rest of the Class Members affected by the settlement. In fact, *all* the factors evidencing a strong presumption that the Settlement Agreement is fair and reasonable is present in this case. There have been zero objectors, and only nine opt outs. *See* Declaration of Brad Madden ("Madden Decl."), at ¶¶15-16, served and filed herewith.

The proposed Settlement resulted from the Parties' participation in a day long mediation session before the Honorable Hon. Suzanne Segal, Ret, Ret. of Signature Resolution and subsequent settlement discussions. The Settlement provides for a substantial financial benefit to the Class Members. The Settlement Class consists all persons in the United States whose bank accounts were debited on a reoccurring basis by Defendant without such person being provided a copy of the authorization to make a preauthorized electronic fund transfer, between September 21, 2021, and October 6, 2023, inclusive, except loanDepot, its employees, officers, and directors, and the Court staff and judge(s) assigned to this matter. The Settlement Class comprises approximately 118,300 individuals.

The compromise Settlement reached with the guidance of Judge Segal will create a Settlement Fund to be established by Defendant in the amount of $1,025,000. The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class

electing to opt out or be excluded from the Settlement or for any other reason. The Settlement Fund will pay for a Settlement Administrator, Postlethwaite & Netterville, which was responsible for providing notice to the Settlement Class, providing notice of this proposed settlement, providing and disbursing settlement checks to Class Members who submit a claim form and who do not opt-out, creating and maintaining a Settlement Website, maintaining a toll-free telephone number, preparing an Opt-Out List, preparing a list of persons submitting objections to the settlement and acting as a liaison between Class Members and the Parties regarding the settlement. Settlement members who submit a timely and valid Claim Form and do not opt-out will receive a pro rata share of the Settlement Fund in the form of a check (after any attorneys' fees and costs awarded by the Court, any Service Award to Class Representative, and any costs of claims administration are deducted from the Settlement Fund). Plaintiffs Jaime Jweinat and Richard Lechleitner will each receive a Service Award of $10,000.00 (subject to Court approval) for bringing and litigating this action. Class Counsel will request an attorneys' fee award of Three Hundred Forty-One Thousand Six Hundred Thirty-Two Dollars and Fifty Cents ($341,632.50), (i.e., approximately 33.33% of the total settlement amount), and costs of up to $15,000 subject to Court approval, to be paid out of the Settlement Fund, In consideration for the Settlement Fund, Plaintiffs, on behalf of the proposed Settlement Class, will enter judgment under the terms of the Settlement. The Settlement is fair, reasonable and adequate, and should be given final approval. Therefore, Plaintiffs respectfully requests that this Court grant final approval and enter the proposed order submitted herewith.

II. STATEMENT OF FACTS

A. Factual Background

Plaintiffs operative Complaint alleges that LoanDepot violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq* ("EFTA") by failing to provide Plaintiffs with copies of their written preauthorized electronic fund transfers. Plaintiffs contend they and the Class are entitled to statutory and actual damages pursuant to EFTA. Defendant has vigorously denied and continue to deny that it violated EFTA, and denies all charges of wrongdoing or liability asserted against it in the Action.

B. Proceedings to Date

On September 21, 2022, Plaintiffs filed a complaint in the United States District Court for the Northern District of California entitled *Jamie Jweinat and Richard Lechleitner v. loandepot.com, LLC*, Case No. 3:22-cv-05387-VC (the "Federal Class Action"). The Federal Class Action complaint alleged that loanDepot violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.* (the "EFTA") by failing to provide Plaintiffs with copies of their written preauthorized electronic fund transfers. Plaintiffs also alleged a derivative claim under the "unlawful" prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL").

On December 8, 2022, Defendant filed a motion to dismiss the Federal Class Action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) based on Plaintiffs' lack of Article III standing and failure to allege statutory standing under the UCL. The Federal Class Action was dismissed without prejudice on February 14, 2023, for lack of subject matter jurisdiction due to Plaintiffs' lack of injury in fact.

On March 14, 2023, Plaintiffs re-filed their complaint (the "Complaint") in the Superior Court of California, County of San Francisco, asserting virtually identical allegations and causes of action. (*Jamie Jweinat and Richard Lechleitner v. loanDepot.com, LLC*, Case No. CGC-23-60514 (the "Action").) The Parties engaged in informal discovery before agreeing to mediation.

The Parties attended a mediation with the Hon. Suzanne H. Segal, Ret. of Signature Resolution on October 6, 2023. Through her guidance, this Settlement was reached. *See Friedman Decl*, ¶ 9. This Honorable Court granted Plaintiffs' Motion for Preliminary Approval of October 17, 2024.

After, notice was mailed to 118,299[1] Class Members' last known addresses, fully laying out the terms of the settlement agreement, the rights of the Class Members to object and the rights of the Class Members to opt out of the class[2], less than 3% of which were returned without finding an updated address. *See Declaration of Brad* Madden. at ¶13. In additional P&N also successfully delivered email Notice to Over 98% of the class. *Id.* After the Class Members were so informed, ***zero objections and only 11 opt-outs*** were lodged. *See* Madden Decl. at ¶ ¶15-16. The Settlement is fair, reasonable and adequate, and should be given final approval. Therefore, Plaintiff respectfully requests that this Court grant final approval of the Settlement Agreement and enter the proposed order submitted herewith.

C. Description of the Settlement

1. The Settlement Class

a. The Settlement Class

The "Settlement Class" is defined in the Agreement as follows: *"All persons in the United States whose bank accounts were debited on a reoccurring basis by Defendant without such person being provided a copy of the authorization to make a preauthorized electronic fund transfer, between September 21, 2021, and October 6, 2023, inclusive, except loanDepot, its employees, officers, and directors, and the Court staff and judge(s) assigned to this matter."* (Agreement § 2.33). Based on data by LoanDepot and its counsel, the number of class members is approximately 118,300. This was verified by a data review by Class Counsel and the Class Settlement Administrator.

2. Settlement Payment

Under the Proposed Settlement, Defendants agree to establish a Settlement Fund in the amount of $1,025,000 (Agreement § 4.01) in order to fund the following:

(1) providing notice to Class Members; (2) providing settlement checks to Class Members entitled to receive a settlement check; (3) creating and maintaining the Settlement Website; (4)

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[1] This was the total number of confirmed addresses for class members between the addresses provided by Defendant and the reverse look ups performed by P&N.

[2] A copy of the notice mailed to the class members is attached as Exhibit #1 to Madden Decl.

maintaining a toll-free telephone number (total estimated administration costs of up to $182,983)); (5) Litigation expenses of up to $15,000.00; (6) to pay the proposed $10,000 Service Award to each Plaintiff Class Representatives (Agreement § 5.02); (7) payment of the proposed Attorneys' Fees of $341,632.50 (33.33% of the Settlement Fund) (Agreement § 5.01,). *See Friedman Decl,* ¶ 29. Any funds remaining after payment of all settlement costs and Payments to the Settlement Class shall be paid to Habitat for Humanity of Orange County, as cy pres recipients.

The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason.

3. Monetary Benefit to Class Members and Class Notice

The Settlement Agreement provides for $1,025,000 in cash benefits (minus Settlement Costs, attorney's fees, and litigation costs) to Class Members on a pro rata basis after the claims period. There are approximately 118,300 Class Members. The Claims Administrator provided notice first via First Class U.S. Mail within 14 days of the Preliminary Approval Order. (Agreement § 2.01) Claims Forms were also made available on the Settlement Website and online Claim Forms.

The Claims Period commenced after the entry of the Preliminary Approval Order and this Claims Period remained open to all Class Members to: submit a Claim by the last date of the 90-day "Claim Period", which was 135 days following entry for the Preliminary Approval Order. (Agreement § 6.02; Class Members who Opt Out, must postmark before the Objection Deadline, which was 90 days following entry for the Preliminary Approval Order *(Id*); and the deadline to Opt Out and Object was also 90 days following entry for the Preliminary Approval Order *(Id).*

The Class Members who filed a Claims Form and did not Opt Out and/or Object will each receive a pro-rata share. After fees, costs and administration expenses, it is estimated there will be approximately $ 468,124.25 for the Settlement Class to be distributed on a pro-

rata basis. This number is significant in that it is very close to the the maximum award allowable class should they be successful at trial ($500,000)[3].

4. Scope of Release

The scope of the release by all Settlement Class Members who do not request exclusion includes any and all claims against the Released Parties with respect to recurring electronic fund transfers, provision of copies of written preauthorizations therefor, compliance with the notification and documentation requirements and any provision of the EFTA or related regulatory or administrative promulgations and case law, including, but not limited to, claims under or for a violation of the EFTA, and any other statutory or common law claim arising from the recurring electronic fund transfers. Friedman Decl. Ex. A at § 14.01

5. Opportunity to Opt Out and Object

As explained before, both the Opt Out and Objection deadlines were 90 days following entry of Preliminary Approval. (Agreement § 6.02); There were only nine opt outs and zero objections to the Settlement.

After all payments have been made to Settlement Class Members, as required by this Agreement, any remaining portion of the Distribution Amount, along with any amounts remaining from settlement checks that have not been cashed by their stale date and have not

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See 15 USC 1993 **(a)INDIVIDUAL OR CLASS ACTION FOR DAMAGES; AMOUNT OF AWARD"**

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;
(2)

(A)in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B)in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of **class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant**;

been reissued, will be identified and reported to the Court as part of a final accounting on a date set by the Court. In connection with the final accounting, The Settlement Administrator shall submit a declaration that, states the total amount that was actually paid to all Settlement Class. After the final accounting report is received, the Court shall amend the judgment to direct the Settlement Administrator to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, for cy pres distribution to Habitat for Humanity of Orange County.

6. Payment of Notice and Administrative Costs

After final judgment is issued, LoanDepot will make a single payment of $1,025,000, less advance payments of estimated Settlement Administration Costs LoanDepot has already made, into an escrow account held by the Settlement Administrator. (Agreement § 7.02). The Settlement Administrator will use these funds to administer all costs of the settlement, including providing Class Notice, maintaining the website and toll free number and arranging for payments to Class Members. (*Id*.) The funds shall also be used to cover Attorneys' Fee Award to Class Counsel and the Service Awards to the named Plaintiffs. (*Id*.)

7. Class Representative's Application for Service Award

The proposed Settlement contemplates that Class Counsel will request a Service Award in the amount of $10,000 to be distributed to each Class Representative, subject to Court approval.

8. Class Counsel's Application for Attorneys' Fees, Costs and Expenses

The proposed Settlement contemplates that Class Counsel shall be entitled to apply to the Court for an award of attorneys' fees in the amount of $341,632.50 (33.33% of the Settlement Fund), plus costs of up to $15,000. (Agreement § 5.01).

9. Cy Pres Distribution.

Under the proposed Settlement, any funds remaining after payment of all settlement costs and Payments to the Settlement Class shall be paid to a *cy pres* recipient. (Agreement § 7.04). The parties propose Habitat for Humanity of Orange County. Since, the distribution is

pro-rata for those who file Claims Forms, this *cy pres* distribution is not expected to be substantial.

The Plaintiffs and Class Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Defendant in the Action. Friedman Decl. ¶¶ 32-36. The Plaintiffs and Class Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. *Id.* They also have considered the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. *Id.* In light of the risk of further litigation and the defenses that Defendant has asserted and could assert, the proposed Settlement set forth in the Settlement Agreement is fair, reasonable, adequate, in the best interests of the Settlement Class. *Id.* The Parties then prepared the full Settlement Agreement now presented to this Court for final approval. Friedman Decl. Ex. A.

For settlement purposes only, Defendant does not oppose certification of class claims that are subject to the certification requirements of California Code of Civil Procedure Section 382. Defendant disputes that certification is proper for the purposes of litigating the class' claims proposed in or flowing from the claims asserted in the Action.

III. LEGAL STANDARD

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2H. Newberg& A. Conte, *Newberg on Class Actions (3d* ed. 1992) at §11.41, p.l 1- 87. The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation,* Second §30.44 at 229; *Gautreaux v. Pierce,* 690 F.2d 616, 621 n.3 (7th Cir. 1982).[4] During Final Approval, however, the Court

[4] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents

must determine whether the settlement is "fair, adequate, and reasonable." *See Wershba v. Apple 10 Computer*, 91 Cal. App. 4th 224, 244 (2001). The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Id*. at 235. In making this determination the courts look to the following factors: 1) the strength of plaintiffs' case, 2) the risk, expense, complexity and likely duration of further litigation, 3) the risk of maintaining class action status through trial, 4) the amount offered in settlement, 5) the extent of discovery completed and the stage of the proceedings, 6) the experience and views of counsel, 7) the presence of a governmental participant, and 8) the reaction of the class members to the proposed settlement." *See Id*. at 244-45. "However 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *Id*. at 245. (internal citations omitted).

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT FINAL APPROVAL

This settlement agreement is fair, adequate, and reasonable by every standard set out by the California courts. The initial presumption is met here as the parties had engaged in a day long mediation, where this settlement agreement was reached by adverse parties who were adequately represented by experienced counsel who examined the evidence supporting both parties' claims and fully evaluated the strengths and weaknesses of their respective cases and the risk of prolonged litigation, and zero objections were filed in this case. In addition, as explained below, each and every factor weighs in favor of the position that this settlement is fair, adequate and reasonable.

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trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond,* 184 Cal. App.3d 1491, 1499 (1986) (citing *Green* v. *Obledo,* 29 Cal.3d 126, 145-146 (1981)).

A. <u>There is a Strong Initial Presumption of Fairness in this Case</u>

a. <u>The settlement was reached through arm's-length bargaining</u>

As mentioned above, the parties' entered into this settlement with conflicting positions about the case and as adverse parties who came to the terms of the Settlement Agreement after a day long mediation and several months of additional negotiation, with the help and advice of Hon. Suzanne H. Segal ret, a retired Judge and well-respected and experienced mediator for class actions and EFTA lawsuits. In preparation for the mediation, Defendant provided Class Counsel with necessary records and information for the members of the Class, including the number of class members, information necessary to assess the scope of the claims. Plaintiffs analyzed the documents, data and prepared and each party submitted a mediation brief to Judge Segal. As a result, the Parties negotiated final settlement terms were then negotiated and set forth in the Settlement Agreement now presented for this Court's approval. Friedman Decl. Ex A. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate. This settlement is the result of extensive and hard fought negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Lawsuit. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to put to rest the Class Members' Released Claims.

Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Lawsuit against Defendant through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex actions such as this Lawsuit. Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the Lawsuit. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members. Friedman Decl ¶¶ 32-36. Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly,

"[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.,* 720 F. Supp. at 1392.

b. Investigation and discovery are sufficient to allow counsel and the court to act intelligently

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice,* 688 F.2d615, 625 (9th Cir. 1982); *In re Wash. Public Power Supply System Sec. Litig.,* 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli,* 695 F. Supp. 446,451 (N.D. Cal. 1988); *Weinberger,* 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.,* [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that "[experienced and competent counsel have assessed these problems and the probability of success on the merits.... The parties' decision regarding the respective merits of their position has an important bearing." *Id.* at 92,520. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.,* 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop.* v. *DIRECTV, Inc.,* 221 F.R.D. 523, 528 (C.D. Cal. 2004).

The Plaintiffs and Class Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Defendant in the Action. The Plaintiff and Class Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. They also have considered the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. In light of the risk of further litigation and the defenses that Defendant has asserted and could assert, the proposed Settlement set forth in the Settlement Agreement is fair, reasonable, adequate, in the best interests of the Settlement Class. Friedman Decl. ¶¶ 32-36.

Prior to mediation, the Parties engaged in investigation and the exchange of documents and information in connection with the Lawsuit. As part of this process, Defendant has provided documents and detailed information to Class Counsel to review and analyze, and the Plaintiffs and Class Counsel have also conducted their own independent investigations and evaluations.

Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel has diligently evaluated the Settlement Class Members' claims against Defendant. Prior to the Parties executing the Settlement Agreement, counsel for Defendant provided Class Counsel with access to data and information for the Class, including call records and information concerning the Defendant's practices. In addition, Class Counsel has previously negotiated settlements involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. Friedman Decl. at ¶¶ 32-36.

At the same time, Plaintiff runs the risk of losing Class Certification, which may make it impossible for the Class Members to find an attorney that would be willing to litigate the issue on an individual basis, leaving the Class Members with nothing. These are just a few of the issues and risks available for Plaintiff, Defendant, and the Court to evaluate the settlement, and Plaintiff will explain these in even more detail below. As a result, there is more than a sufficient amount of investigation and discovery to allow counsel and the Court to evaluate the settlement in this case. As the Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Com'n of City and County of S.F.,* 688 F.2d 615, 624 (9th Cir. 1982).

c. Counsel is experienced in similar litigation

Both Plaintiffs and Defendant's counsel are extremely experienced in this type of litigation. Defendant's counsel is a California based Law firm that specializes in Business Litigation, while Plaintiffs' counsel has years of Class Action and Consumer Protection experience. Plaintiffs' counsel is one of the main plaintiff litigators of consumer rights in the southern California. Attorney Todd M. Friedman has been requested to and has made regular presentations to community organizations regarding consumer rights. The Law Offices of Todd M. Friedman has litigated over 1000 individual based consumer cases and class actions. These class actions were litigated in federal courts in California, as well as California State Courts. The Law Offices of Todd M. Friedman has served as plaintiff's counsel in dozens of class action cases involving various consumer rights and wage and hour claims, where a settlement was reached on a class-wide basis, and have achieved over $300,000,000 in class-wide relief for consumers. *See* Friedman Decl. at ¶¶46-52.

d. The percentage of objectors is small

In settling this class action, the parties agreed to a notice mailing and emailing program that consisted of a two-sided Postcard Form Notice mailing to all Class Members, along with a secondary email notice to all class members whose email address could be obtained. *See* Madden Decl. Exhibit A. The Settlement Class Member master mailing list was prepared from records obtained from Defendant that consisted of a spreadsheet containing approximately 118,300 records. *See Id.* at ¶5. P&N mailed 118,299 postcards to the records on the mailing list after cross referring all available databases to get good addresses for potential class members. *Id* at ¶6. Prior to sending the Notices, P&N processed the names and addresses on this list through the National Change of Address database to update any address information on file with the United States Postal Service ("USPS"). *See Id at ¶8*. Since mailing the Notices, P&N has received 2,297 Postcard Notices returned by the USPS with undeliverable addresses. *See Id.* at ¶13.

Before sending email notice, P&N performed an email hygiene and verification process designed to protect the integrity of the email campaign and maximize deliverability. *See Id.* at

¶8. Beginning on November 15, 2024, P&N caused the short form notice to be sent to the 117,304 email address obtained during the hygiene and verification process. *Id.*

On November 15, 2024, P&N established the dedicated Settlement website, www.EFTAsettlement.com, to provide easy and immediate access to information regarding the proposed Settlement and to allow Settlement Class Members to file a claim electronically. A copy of the *Settlement Agreement and Release*, *Order Granting Motion for Preliminary Approval of Class Action Settlement*, *Notice of Pendency of Class Action Settlement*, *Proposed Settlement and Hearing Date for Court Approval*, *Request for Exclusion/Opt-Out Form* and *Claim Form* were posted on said website. See Id at ¶10.

After, notice was mailed and emailed to the Class Members' last known addresses, fully laying out the terms of the settlement agreement, the rights of the Class Members to object and the rights of the Class Members to opt out of the class, less than 3% of which were returned without finding an updated address. *See* Id. At ¶13. After the Class Members were so informed, *zero objections and only 11 opt outs* were lodged. *S*ee Id. at ¶¶15-16. Consequently, this Settlement is presumed to be fair, since the settlement is reached through arm's-length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small.

B. The Settlement Agreement is Fair, Reasonable, and Adequate

As mentioned above, in making this determination the courts look to the following factors: 1) the strength of plaintiffs' case, 2) the risk, expense, complexity and likely duration of further litigation, 3) the risk of maintaining class action status through trial, 4) the amount offered in settlement, 5) the extent of discovery completed and the stage of the proceedings, 6) the experience and views of counsel, 7) the presence of a governmental participant, and 8) the reaction of the class members to the proposed settlement." *See Wershba v. Apple 10 Computer*, 91 Cal. App. 4th 224, 244 (2001). As explained below, all of these factors weigh in favor of the Court approving the Settlement Agreement.

a. The strength of Plaintiffs case

On September 21, 2022, Plaintiffs filed a complaint in complaint in the United States District Court for the Northern District of California Court Case No. 3:22-cv-05387-VC asserting claims under the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq* ("EFTA).

Plaintiffs operative Complaint alleges that LoanDepot violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq* ("EFTA") by failing to provide Plaintiffs with copies of their written preauthorized electronic fund transfers. Defendant denies the allegations in the Action, denies that it has engaged in any wrongdoing; denies that any Settlement Class Member were ever damaged. Defendant denies that Plaintiffs' allegations state valid claims, denies that a litigation class could properly be certified in the Action, and states that it is entering into this Settlement Agreement solely to eliminate the uncertainties, burden, expense, and delay of further protracted litigation. A bona fide dispute exists as to whether any amount of money is due from Defendant to any putative Settlement Class Member. Friedman Decl. ¶¶ 32-36.

b. The risk, expense, complexity and likely duration of further litigation

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998). Class actions such as these pose serious risk, expense, complexity and likely last for years of protracted litigation, and this case is no different. There is a significant risk on liability, damages, and issues of Class Certification.

Here, a number of defenses asserted by Defendant presented serious threats to the claims of the Plaintiffs and the other Settlement Class Members. These defenses arguably weakened Plaintiffs' claims, on liability, value, and class certifiability. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery. Friedman Decl. at ¶¶ 32-36.

There was also a significant risk that, if the Lawsuit was not settled, Plaintiffs would be unable to obtain class certification and thereby not recover on behalf of any individuals other

than himself. Friedman Decl. at ¶¶ 32-36. After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the settlement of $1,025,000. As the federal court recently held in *Glass*, where the parties faced similar uncertainties:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. "The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial Corp, Securities Litigation.*, 213 F.3d 454, 458 (9th Cir. 2000).

Here, the risk of further litigation is substantial. These risks of liability are multiplied for each Class Members if certification cannot be established, which may make it impossible for the Class Members to find an attorney that would be willing to litigate the issue on an individual basis, leaving the Class Members with little to no recourse. However, even if Class Certification were established in this case, additional risks ensue for both parties as Plaintiffs are forced to prove a widespread, systematic and common violations as to all Members of the Class, while Defendant is forced to carry a huge seven figure judgement over its head.

c. The risk of maintaining class action status through trial

At trial, many of the risks and expenses that were outlined above with respect to litigation are also applicable to trial. Plaintiff and Defendant will have to call multiple witnesses and experts with little assurance of succeeding at trial. The case would only proceed to trial if there were genuine factual issues that must be determined by a fact-finder, and thus no party would be able to accurately predict the outcome. In the meantime, there would be a long, difficult struggle that would likely last for days with substantial risk hanging over both parties.

d. The amount offered in settlement

As set forth above, Defendant has agreed to a common fund settlement in the amount of $1,025,000. After administration costs, proposed attorney's fees, costs of suit, and the

proposed incentive award, Settlement Class Members will collectively receive at least $468,124.50 of these available funds.

As of today's date, 18,932 class members have made a claim to this settlement. The net recovery, after fees and costs, to each Class Member claimant will be approximately $25 Madden Decl. at ¶15. Moreover, this outstanding result was achieved without having to subject Settlement Class members to the substantial risks ahead in litigation, which include having to fight class decertification.

The settlement award that each Class Member will receive is fair, appropriate, and reasonable given the purposes of EFTA, the limitations of class-wide liability, and in light of the anticipated risk, expense, and uncertainty of continued litigation. Although it is well-settled that a proposed settlement may be acceptable even though it amounts to only a small percentage of the potential recovery that might be available to the class members at trial, here, the Settlement provides significant and meaningful relief.[5] Moreover, Class Members were able to avoid the time, expense and risk associated with bringing their own EFTA action.

e. The extent of discovery completed and the stage of the proceedings

The stage of the proceedings at which this settlement was reached also militates in favor of final approval of the settlement. As mentioned above, Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before this action was filed. Class Counsel engaged in a thorough review and analysis of the relevant documents and data. Class Counsel was also experienced with the claims at issue. The agreement to settle did not occur until Class Counsel possessed

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[5] *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather, the percentage should be considered in light of strength of the claims"); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) (court-approved settlement amount that was just over 9% of the maximum potential recovery); *In re Mego Fin'l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).

sufficient information to make an informed judgment regarding the likelihood of success and the results that could be obtained through further litigation. Friedman Decl. at ¶¶ 7-9.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Friedman Decl. at ¶¶ 7-9; 32-36.

In *Glass*, the Northern District of California granted final approval of a class action although in *Glass* no formal discovery had been conducted prior to the settlement:

> Here, no formal discovery took place prior to settlement. As the Ninth Circuit has observed, however," [i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." See *In re Mego Financial Corp. Securities Litigation,* 213 F.3d at 459.

Glass, 2007 U.S. Dist. LEXIS 8476 at *14. Here, Class Counsel was in a far stronger position to evaluate the fairness of this settlement because Class Counsel had the same sufficient information, as well as independent investigations and due diligence to confirm the accuracy of the information supplied by Defendant.

f. <u>The experience and views of counsel</u>

As mentioned above, counsel for both Plaintiffs and Defendant have a plethora of experience in cases similar to this one. Class Counsel has conducted a thorough investigation into the facts of the class action. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including

the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. Friedman Decl. at ¶¶ 32-36.

g. The presence of a governmental participant

In this case, there is no governmental participant who has an interest in this case. This is a civil matter brought by private parties.

h. The reaction of the class members to the proposed settlement

As mentioned above, the reaction of the class members was exceptionally positive. After, notice was mailed to 118,299 Class Members' last known addresses, fully laying out the terms of the settlement agreement, the rights of the Class Members to object and the rights of the Class Members to opt out of the class, less than 3% of which were returned without finding an updated address. *See* Madden Decl. at ¶13. After the Class Members were so informed, ***zero objections*** were lodged and ***only nine opt outs*** were received. *See* Madden Decl. at ¶¶15-16. Moreover, the 14.4% claims rate is indicative of an engaged Class who finds the terms favorable. This is a higher claims rate than typical in consumer class actions.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff contends that the proposed settlements meet all of the requirements for class certification under California Code of Civil Procedure §382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Settlement Agreement.[6] This Court should conditionally certify the Class for settlement purposes only, defined as: *All persons in the United States whose bank accounts were debited on a reoccurring basis by Defendant without such person being provided a copy of the authorization to make a preauthorized electronic fund transfer, between September 21, 2021, and October 6, 2023, inclusive, except loanDepot, its employees, officers, and directors, and the Court staff and judge(s) assigned to this matter."* (Agreement § 2.33).

[6] Defendant strongly disputes that a litigation class would meet the standard for certification in this case but has agreed to certification for purposes of resolution of this case.

A. California Code of Civil Procedure §382

Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court..." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members, *(citations omitted).* The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004). While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement.

B. The Proposed Class Is Ascertainable and Numerous

Plaintiffs bring this action on behalf of a class of consumers during the applicable Class Period. All of these individuals are ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the class consists of approximately 118,300 members, numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward,* 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, the majority of the individuals that comprise the class can be identified based on Defendant's records and are sufficiently numerous for class certification.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions,* Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages

does not mean individual fact questions predominate.'" *Sav-On,* 34 Cal. 4th at 334. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) Whether Plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.,* 23 Cal. 4th 429, 439-440 (2003). Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendant violated EFTA by not providing the Class Members provided with a copy of a an authorization to make a pre authorized electronic funds transfer from their bank accounts. Defendant disputes that common questions predominate, but will not oppose such a finding for purposes of this settlement only.

D. The Claims of the Plaintiff Are Typical of the Class Claims

The typicality requirement requires the Plaintiff to demonstrate that the members of the class have the same or similar claims as the Plaintiff. "The typicality requirement is met when the claims of the Plaintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.,* 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon v. Chrysler Co.,* 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." 50 F.3d at 1020.

In the instant case, there can be little doubt that the typicality requirement is fully satisfied. In the instant case, there can be little doubt that the typicality requirement is fully satisfied. The Plaintiffs, like every other member of the Settlement Class, claims they allegedly were not provided with a copy of a an authorization to make a pre authorized electronic funds transfer from their bank accounts by Defendant. The Plaintiffs contend that, like every other member of the Class, they were subject to the same violations of EFTA and are all subject to the same defenses. Defendant disputes that the typicality requirement is satisfied, but will not oppose such a finding for purposes of this settlement only

E. The Class Representation Fairly and Adequately Protected the Class

Plaintiffs contend that the Settlement Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have actively participated in the prosecution of this case to date. They have effectively communicated with counsel, provided documents to counsel and participated in discovery, investigation and negotiations in the Lawsuit. Second, Plaintiffs retained competent counsel who are experienced in EFTA class actions. Friedman Decl. at ¶¶ 42-52. The Law Offices of Todd M. Friedman P.C. have extensive experience in class action litigation in California and throughout the country, specifically in consumer protection litigation, including the prosecution of class actions seeking to protect consumer rights, including EFTA actions. *Id*. Class Counsel is qualified and able to conduct this Litigation. Third, there is no antagonism between the interests of the Plaintiffs and those of the Settlement Class. Both the Plaintiffs and the Settlement Class Members seek monetary relief under the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied, but will not oppose such a finding for purposes of this settlement only.

F. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentinov. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues."

Sav-On, 34 Cal. 4th at 340 (citing *Boggs* v. *Divested Atomic Corp*., 141 F.R.D. 58, 67 (S.D. Ohio 1991)). Here, a class action is the superior mechanism for resolution of the claims as pled

by the Plaintiff. While Defendant disputes that the superiority requirement may be satisfied, it will not dispute such a finding for purposes of this settlement only.

VI. PLAINTIFFS ARE ENTITLED TO A SERVICE AWARD

Plaintiffs apply to the Court for a Service Award of $10,000 each in consideration for their service and for the risks undertaken on behalf of the class. Plaintiffs performed their duty by working with Class Counsel. Declarations of Jaime Jweinat and Richard Lechleitner at ¶¶ 8-12. At this stage, the requested Service Award is well within the accepted range of awards. See e.g. *Louie v. Kaiser Foundation Health Plan, Inc., 2008 WL 4473183, *7* (S.D. Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. Jan. 27 2007) (awarding $25,000 service award in class action and a pool of $100,000.00 in enhancements); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (awarding incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 373 (6th Cir. 2003); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate for the time and effort expended on the case, for the risk of litigation, and to serve as an incentive to vindicate the rights of other similarly situated Class Members. 2007 WL 221862 at *16-17. Both Plaintiffs assisted counsel in the investigation of this lawsuit, and gave up their right to bring the claims individually, in order to pursue claims on behalf of the other Class Members.

Plaintiffs apply for and respectfully request an award of $10,000 be awarded to each of them for their services. Were it not for Plaintiffs' awareness and vigilance regarding this consumer violation, the Class Members would never have known that their rights were being violated, and there would have never been any justice for these invasions. Plaintiffs should be provided an incentive award for not only spending time working on behalf of the Class, but also for bringing these issues before the Court on their behalf, that otherwise would have unquestionably gone unchecked.

VII. CONCLUSION

Plaintiffs respectfully requests that the Court approve the proposed settlement and sign the proposed Final Approval Order, which is submitted herewith.

Dated: March 10, 2025

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: Todd M. Friedman

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