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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 PHILIP ALVAREZ, RANDALL
12 BETTISON, MARC KELLEHER, and
13 DARLENE VAUGH, individually and
14 on behalf of all others similarly
situated,

15
16 Plaintiffs,

17 v.

18 SIRIUS XM RADIO INC.,

19
20 Defendant.

Case No. 2:18-cv-08605-JVS-SS

**PLAINTIFFS’ NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hon. James V. Selna, presiding

Date: July 13, 2020

Time: 1:30 PM

Location: Courtroom 10C

411 West 4th Street,
Santa Ana, CA 92701

[Filed concurrently with the
Settlement Agreement and Release,
Declarations of Robert Ahdoot,
Philip Alvarez, Cameron Azari,
Randall Bettison, Keith S.
Dubanevich, Cornelius P. Dukelow,
Marc Kelleher, Christian Tregillis,
Darlene Vaugh, and Paul Wright,
and Proposed Order Granting
Preliminary Approval of Class
Action Settlement]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2

3 **PLEASE TAKE NOTICE** that on July 13, 2020 at 1:30 p.m., in
4 Courtroom 10C of the above-captioned Court before the Honorable James V.
5 Selna, Plaintiffs Philip Alvarez, Randall Bettison, Marc Kelleher, and Darlene
6 Vaugh (collectively, “Plaintiffs”) will and hereby do move for an Order Granting
7 Preliminary Approval of Class Action Settlement, pursuant to the Settlement
8 Agreement and Release filed concurrently herewith.

9

10 More specifically, Plaintiffs move for an Order: (1) granting preliminary
11 approval of the proposed Settlement; (2) finding that a Class can be certified for
12 settlement purposes; (3) approving the parties’ proposed Notice Plan and forms
13 of notice; (4) directing that the notice of the proposed Settlement be disseminated
14 to the Class; (5) approving the procedures for Settlement Class Members to
15 exclude themselves from or object to the Settlement; (6) appointing Plaintiffs as
16 Class Representatives for the Class; (7) appointing Tina Wolfson and Robert
17 Ahdoot of Ahdoot & Wolfson, PC, Keith S. Dubanevich of Stoll Stoll Berne
18 Lokting & Shlacter, PC, and Cornelius P. Dukelow of Abington Cole & Ellery as
19 Class Counsel; (8) appointing Epiq Class Action & Claims Solutions, Inc. as the
20 Settlement Administrator specified in the Settlement; and (9) setting the following
21 schedule on further proceedings to determine whether the proposed Settlement is
22 fair, reasonable, and adequate and whether an order awarding attorneys’ fees and
23 reimbursement of expenses and service payments should be approved, which
24 would set dates to be calculated from the date on which the Court enters an order
25 granting this motion, as indicated:

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Event	Date
Initial Date for Publishing Notice	45 days after entry of preliminary approval order
Deadline for Plaintiffs' Counsel To File Any Motion For Award Of Attorneys' Fees And Service Payments	24 days after the Notice Date; 21 days before objection deadline)
Deadline for Class Members To Submit Objections To The Proposed Settlement Or Requests For Exclusion	45 days after the Notice Date
Deadline for Settlement Administrator to file list of exclusions with the Court	14 days before the Final Approval Hearing
Deadline for Plaintiffs' Counsel To File Motion For Final Approval Of Class Action Settlement, including responses to any objections	14 days before the Final Approval Hearing
Final Approval Hearing	115 days after entry of preliminary approval order, or such other date as the Court deems appropriate, but no sooner than 90 days after service of CAFA notice

This motion is made pursuant to Fed. R. Civ. P. 23 and is based upon: this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the Settlement Agreement and Release; the supporting declarations filed concurrently herewith; and such evidence and argument as the Court may consider at any hearing on this motion.

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Dated: June 11, 2020

Respectfully Submitted,

AHDOOT & WOLFSON, PC

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**Pro Hac Vice application pending*

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I. INTRODUCTION

1
2 Plaintiffs respectfully seek preliminary approval of a proposed class action
3 Settlement, filed concurrently herewith, that if approved would resolve claims
4 alleged in a number of class actions against Defendant Sirius XM Radio Inc.
5 (“Sirius XM”).¹ These actions all result from Sirius XM’s sale of “Lifetime
6 Subscriptions” to its satellite radio service, that lasted not for the lifetime of the
7 consumers who purchased them (as plaintiffs alleged they should have done), but
8 for the lifetime of the particular Device such consumers first used to receive the
9 service and, up to three more Devices thereafter with a \$75 transfer fee for each
10 transfer between Devices (which Sirius XM asserts was consistent with its
11 marketing).

12 The proposed Settlement achieves a “Lifetime Subscription” for Settlement
13 Class Members that can actually last for their lifetime, as opposed to a maximum
14 of four Devices. (Settlement Agreement (“SA”) ¶¶ 66-68.) Pursuant to the
15 Settlement, Settlement Class Members will be able to transfer their Lifetime
16 Subscriptions to an *unlimited* number of different Devices, for a charge of \$35 per
17 transfer (a significant reduction from Defendant’s \$75 per transfer fee). (*Id.*
18 ¶ 66(a).)

19 In the event a Settlement Class Member no longer holds an Active Lifetime
20 Subscription (but, rather, an Inactive Lifetime Subscription that, for instance,
21 expired along with a Device, or was converted to a yearly, monthly, or some other
22 subscription), he or she will have the option of reactivating that Lifetime
23 Subscription (at no charge) with the above benefits, or claiming \$100 in cash. (*Id.*
24 ¶ 67.) Finally, and in addition, Internet streaming of Sirius XM’s radio service will
25 be made available to inactive lifetime subscribers who choose to reactivate, with
26

27 ¹ Unless otherwise defined, Capitalized terms herein have the meaning set
28 forth in the Settlement Agreement and Release, filed concurrently herewith.

1 no additional fee paid to Sirius XM (Internet streaming is already available to
2 active lifetime subscribers at no additional fee paid to Sirius XM). (*Id.* ¶ 66(c).)

3 Plaintiffs' expert, Christian Tregillis, opines that the Settlement's benefits
4 are worth approximately \$96.4 million. (Concurrently filed Declaration of
5 Christian Tregillis ("Tregillis Decl.") ¶ 35.) The terms of this Settlement are not
6 only fair, reasonable, and adequate, as required for approval under the Federal
7 Rules, but represent an achievement that most likely is better than any result
8 Plaintiffs could hope to achieve through continued litigation of these actions, were
9 they to certify a class and make it to trial before a court — no mean feat,
10 particularly given that this Court previously compelled the earliest filed of these
11 actions to individual arbitration under the terms of Defendant's alleged subscriber
12 agreement. *See Wright v. Sirius XM Radio, Inc.*, No. 16-01688 JVS, ECF 59.

13 The Settlement was achieved after two-and-a-half years of hard-fought
14 litigation, in this Court on behalf of Plaintiffs Alvarez and Wright (formerly a
15 plaintiff in his own case), as well as in other trial courts on behalf of Plaintiffs
16 Bettison and Vaughn, and in the Ninth Circuit Court of Appeals after Wright
17 appealed this Court's order in an earlier case compelling individual arbitration of
18 his claims. The Settlement is the result of extensive arms'-length negotiations
19 overseen by Judge Carl West (Ret.), a respected and experienced JAMS mediator
20 and former California Superior Court Judge.

21 For all these reasons, and for those set forth in more detail below, Plaintiffs
22 respectfully request that the Court grant preliminary approval to the Settlement,
23 issue the proposed Preliminary Approval Order, appoint Epiq Class Action &
24 Claim Solutions, Inc. ("Epiq") as the Settlement Administrator, find, solely for
25 purposes of effectuating the proposed Settlement, and pursuant to Rule 23(e)(1),
26 that the prerequisites for class certification under Rules 23(a), 23(b)(2), and
27 23(b)(3) of the Federal Rules of Civil Procedure are likely to be found to be
28 satisfied, and allow notice of the Settlement to issue to Class Members.

II. PROCEDURAL AND FACTUAL BACKGROUND

1
2 All Plaintiffs allege that, at the time of their purchases, they understood that
3 that their Lifetime Subscriptions would last for *their* lifetime, as opposed to the
4 lifetime of a particular Device. Sirius XM denies such allegations and maintains
5 that such so-called Lifetime Subscriptions were limited to the lifetime of four
6 Devices (the first plus three additional Devices) and that a \$75 fee is required for
7 each such transfer from one Device to another until a subscriber reached their
8 given limit of three transfers.

9 Plaintiff, Paul Wright, filed the earliest of the actions, on September 12,
10 2016, in this Court. (C.D. Cal. Case No. 8:16-cv-01688-JVS-JCG (“*Wright*”). On
11 November 14, 2016, Sirius XM filed a motion to dismiss and to compel arbitration
12 in the *Wright* case. The parties fully briefed that motion, and the Court heard oral
13 argument on April 24, 2016. In response to Plaintiffs’ counsel’s argument at that
14 hearing, the Court permitted further briefing on the impact of the California
15 Supreme Court’s then-recent decision in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945,
16 956 (2017). After that briefing, on June 1, 2017, the Court granted Defendant’s
17 motion, dismissing Plaintiff Wright’s claims without prejudice. (*Wright*, ECF 59.)
18 The Court also denied Wright’s request for leave to amend his complaint to add
19 additional class representatives. (*Id.*)

20 Thereafter, three other lifetime subscribers filed their own class actions,
21 including Plaintiff Alvarez, who filed this action in the Superior Court of
22 California for Los Angeles County on August 28, 2018, seeking only declaratory
23 and injunctive relief rather than monetary damages. Sirius XM removed this action
24 to this Court on October 5, 2018 and answered the complaint on October 6, 2018
25 (C.D. Cal. Case No. 18-cv-08605-JVS-SS (“*Alvarez*”).

26 Plaintiff Randall Bettison filed a class action complaint in the Circuit Court
27 of Oregon for Multnomah County on May 17, 2018, entitled *Bettison v Sirius XM*
28 *Radio Inc.* Sirius XM removed the *Bettison* action to the District of Oregon on

1 June 19, 2018 and answered the complaint on June 20, 2018 (D. Or. Case No.
2 3:18-cv-01065-PK) (“*Bettison*”).

3 Plaintiff Darlene Vaugh filed her class action complaint on May 8, 2018, in
4 the Superior Court of New Jersey for Atlantic County. Sirius XM removed this
5 action to the District of New Jersey on June 8, 2018 and answered the complaint
6 there on June 11, 2018 (D.N.J. Case No. 1:18-cv-10331-NLH-AMD) (“*Vaugh*”).

7 On April 4, 2017, counsel for then-Plaintiff Wright and for Plaintiff Alvarez
8 held an in-person settlement conference with counsel for Sirius XM at the Jones
9 Day office in New York, but despite a number of follow up conversations, a
10 resolution did not occur at that time. (Declaration of Robert Ahdoot (“Ahdoot
11 Decl.”) ¶ 9.)

12 On June 28, 2017, shortly before Alvarez, Bettison, and Vaugh filed their
13 cases, Plaintiff Wright appealed this Court’s order granting Defendant’s motion to
14 dismiss and to compel arbitration of his claims. (9th Cir. Case No. 17-55928 (the
15 “Appeal”).) Thereafter, the parties filed their opening, response, and reply briefs
16 in the Appeal. (*Id.* ECF Nos. 11, 21, 23.)

17 While that appeal and the other Plaintiffs’ claims were pending, and after
18 all briefing in the Appeal was submitted, on November 29, 2018, the parties
19 participated in a full-day mediation session before the Honorable Carl J. West
20 (Ret.). (Ahdoot Decl. ¶ 11.)

21 At Plaintiffs’ counsel’s request, Defendant provided substantial information
22 in advance of mediation, sufficient to enable Plaintiffs’ counsel to value the claims
23 and understand the prospective Class’s composition. (*Id.* ¶ 12.) This information,
24 and the parties’ prior investigations, litigation, and briefing, gave Plaintiffs’
25 counsel an understanding of the claims and defenses sufficient to meaningfully
26 conduct informed settlement discussions. (*Id.*)

27 The Settlement was not reached at the November 29, 2018 mediation. (*Id.*)
28 Nonetheless, with the continued assistance of Judge West, after protracted and

1 lengthy negotiations, and immediately before oral argument before the Ninth
2 Circuit in the Appeal, on December 5, 2018, the Parties were able to reach an
3 agreement in principal. (*Id.* ¶ 15.) Accordingly, Plaintiff Wright moved to dismiss
4 his appeal at oral argument, and the Ninth Circuit did not rule on the appeal. (9th
5 Cir. Case No. 17-55928, ECF 38.)

6 The Parties then engaged in additional and extensive months long
7 negotiations, through many telephone discussions, to finalize and memorialize all
8 aspects of the Settlement Agreement, including each of its exhibits. (Ahdoot Decl.
9 ¶¶ 16-17.) Also, after a competitive bidding process amongst well known national
10 settlement administration companies, the Parties engaged Epiq to advise regarding
11 the mechanics of the Settlement, the notice process, and to administer the
12 Settlement. (*Id.* ¶¶ 18-19.) The notice program and each document comprising the
13 notice were extensively negotiated and exhaustively refined, with input from
14 experts at Epiq, to make them easy to read and understand. (*Id.*; *see also* generally
15 Declaration of Cameron Azari filed concurrently herewith.)

16 **III. TERMS OF THE SETTLEMENT**

17 **A. The Class Definition**

18 The Settlement Class is defined as:

19 All Persons in the United States who purchased a paid subscription
20 from Sirius XM (or one of its predecessors) that was marketed as a
21 “lifetime plan” or “lifetime subscription.” Excluded from the Class
22 are: Sirius XM and its parents, subsidiaries, or any entities in which
23 it has a controlling interest, as well as Sirius XM’s officers, directors,
24 employees, affiliates, legal representatives, heirs, predecessors,
25 successors, and assigns. Also excluded are any Judges to whom this
case is assigned as well as their judicial staff and immediate family
members.

26 (SA ¶ 33.)

27 The Settlement Class currently consists of approximately 964,000
28 individuals. As of the execution date of the Settlement Agreement, approximately

1 838,000 of whom have Active Lifetime Subscriptions² (“Active Subscribers”), and
2 approximately 126,000 of whom have Inactive Lifetime Subscriptions³ (“Inactive
3 Subscribers”). (SA ¶¶ 2, 19; *see also* SA Section I, Recitals.)

4 **B. The Settlement Benefits**

5 Under the Settlement, Sirius XM agrees to: (1) allow Inactive Subscribers
6 to reactivate their Lifetime Subscriptions at no charge;⁴ (2) allow Active
7 Subscribers and Inactive Subscribers who have opted to reactivate their account
8 (pursuant to this Settlement) to transfer their Lifetime Subscriptions to other
9 Devices an *unlimited* number of times; (3) not charge more than \$35 for any
10 transfer of a Lifetime Subscription to other Devices (a reduction of the current fee
11 of \$75 per transfer), and (4) provide Inactive Subscribers who choose to reactivate
12 with access to Sirius XM’s Internet streaming service at no cost (this feature is
13 currently available to Active Lifetime Subscribers). Inactive Subscribers may
14 choose to forgo the relief above and, instead, be paid a \$100 cash payment. Sirius
15

16 ² The Settlement Agreement defines an Active Lifetime Subscription as a
17 Lifetime Subscription that, according to Sirius XM’s records, is associated with a
18 Device that was activated to receive Sirius XM’s satellite radio service prior to
19 June 5, 2020 and that continues to be authorized to receive the Sirius XM satellite
radio service. (SA ¶ 2.)

20 ³ The Settlement Agreement defines an Inactive Lifetime Subscription as a
21 Lifetime Subscription that, according to Sirius XM’s records, as of June 5, 2020,
22 2020, is no longer associated with a Device that was activated to receive Sirius
23 XM’s satellite delivered radio service. A Settlement Class Member who
24 previously had a Lifetime Subscription, but whose Lifetime Subscription was
converted to a yearly, monthly, or some other subscription is deemed to have an
Inactive Lifetime Subscription. (SA ¶ 19.)

25 ⁴ Inactive Lifetime Subscribers who elect to cancel another paid Sirius XM
26 subscription at no charge when they reactivate their Lifetime Subscription will
27 receive a *pro rata* refund of any amounts paid for future service unless such paid
28 subscription purchased included bundled equipment. (SA ¶ 66(c)(i); Ex. B (Long
Form Notice FAQ 8).)

1 XM has also agreed to pay for the costs of the settlement notice and administration,
2 court-approved attorneys' fees and expenses up to \$3.5 million, and Service
3 Payments for each Named Plaintiff and Paul Wright⁵ up to \$5,000 each. (SA ¶¶ 45,
4 76-78.)

5 Active Subscribers will receive the benefits of the Settlement automatically.
6 In the event an Active Subscriber does not opt out, then he or she will be subject
7 to the releases set forth in the Settlement.

8 Inactive Subscribers must submit a Claim Form to obtain the Settlement's
9 benefits (i.e. reactivation of the Lifetime Subscription or a \$100 payment). (*Id.* ¶
10 68(a) and Ex. A (Claim Form).) Claim Forms may be submitted on-line (through
11 the Settlement Website) or by mail. In the event an Inactive Subscriber does not
12 submit a Claim Form, and does not opt out, then he or she will be subject to the
13 releases set forth in the Settlement. Settlement Class Members will be provided an
14 opportunity to determine whether they have either Inactive Lifetime Subscriptions
15 or Active Lifetime Subscriptions (as of the Settlement Agreement's date) *via* a tool
16 on the Settlement Website's landing page. (*Id.* ¶ 51.)

17 Defendant offered Lifetime Subscriptions for prices ranging from \$357.54
18 to \$755.00. (Ahdoot Decl. ¶ 25; Tregillis Decl. ¶ 21 & Ex. B.) Given their
19 relatively high cost and value, the value of each Lifetime Subscription that no
20 longer expires, or that is reactivated, pursuant to the terms of the Settlement, is
21 significant. (Tregillis Decl. ¶¶ 18-36.) In addition, the reduction of the Device
22 transfer fee from \$75 to \$35 – for at least the 838,000 Active Subscribers –

23
24 ⁵ Pursuant to Sirius XM's Motion to Compel Arbitration, Plaintiff Paul
25 Wright was ordered to participate in individual arbitration against Sirius XM.
26 (*Wright*, ECF 59.) Mr. Wright dismissed his appeal of this Order after a settlement
27 in principle was reached. Rather than pursuing arbitration, however, Paul Wright
28 will participate in the Settlement albeit not as a Class Representative. In addition
to the Settlement, Mr. Wright has also agreed to a Covenant Not to Sue Sirius XM.
(SA ¶ 91, Ex. H.)

1 increases the value of the Settlement significantly. Factoring all these data points,
2 Plaintiffs' expert values the Settlement's benefits at \$96.4 million (this valuation
3 does not include any amounts paid for Notice and Administration, Service
4 Payments, and Attorneys' Fees and Expenses, all of which are to be paid by Sirius
5 XM in addition to benefits described above). (Tregillis Decl. ¶ 35.)

6 **C. The Settlement Administrator**

7 The Parties propose that Epiq, an experienced and reputable national class
8 action administrator, serve as Settlement Administrator to provide notice;
9 administer the claim process; distribute payments; and provide other services
10 necessary to implement the Settlement. (SA ¶¶ 32, 41-44, 46; *see also* SA Ex. E
11 (Declaration of Cameron R. Azari, Esq. Re Settlement Notice Plan ("Azari Decl.")
12 ¶¶ 5-9.) Defendant agrees to pay all notice and administration expenses, and this
13 payment will not reduce any of the benefits available to Settlement Class
14 Members. (SA ¶ 45.)

15 **D. The Notice Plan**

16 Direct Notice of the Settlement will be provided by email (with follow up
17 physical US Mail for "bounced" emails) to every Class Member that Sirius XM
18 can identify in its records. (*Id.* ¶ 52 and Ex. E (Azari Decl. ¶¶ 14-18 and
19 Attachments 3 and 4.) This notice will be augmented by an internet notice
20 campaign and publication. (SA ¶ 53 and Ex. E (Azari Decl. ¶¶ 19-20).) The
21 Settlement Administrator will begin disseminating notice no later than 45-days
22 after this Court enters the Preliminary Approval Order granting this motion (the
23 "Notice Date").

24 No later than fourteen (14) days after the Court enters the Preliminary
25 Approval Order, Defendant will provide the Settlement Administrator with a list
26 of all potential Settlement Class Members that exist in their records, including their
27 physical and email addresses, and whether their Lifetime Subscriptions are
28 Inactive or Active. (SA ¶ 50.) Then, on or before the Notice Date, the Settlement

1 Administrator will email the Summary Notice to the email addresses provided by
2 Defendant. (*Id.* ¶ 52(a).) The Settlement Administrator then will mail Summary
3 Notices to all Settlement Class Members with respect to whom the email “bounces
4 back,” or for whom there is no physical address. (*Id.* ¶ 52(b)-(d).)

5 The Settlement Administrator will make every effort to update physical
6 addresses whenever emails and subsequent physical mailings appear
7 undeliverable. (*Id.* ¶ 52(b)-(d).) Ten (10) days prior to the Claim Deadline, the
8 Settlement Administrator will issue email reminder notices to all Inactive
9 Subscribers who have not submitted a Claim Form and have a valid email address.
10 (*Id.* ¶ 54.) The Settlement Administrator will publish notice over the Internet, in
11 an effort to reach any Settlement Class Members who are not reached through the
12 direct notice efforts described above. (*Id.* ¶ 53.) Finally, the Settlement
13 Administrator will provide the required notice of the Settlement to various
14 governmental agencies in compliance with the Class Action Fairness Act. (*Id.*
15 ¶ 41.)

16 All of the electronic and physical Notice forms will direct Settlement Class
17 Members to the Settlement Website, at www.LifeTimeSiriusXMSettlement.com.
18 There, Settlement Class Members will be able to review the Long Form Notice,
19 submit a claim, determine whether their account is active or inactive as of the date
20 of the Settlement Agreement (*i.e.* June 5, 2020), review key filings from the case
21 docket (including all briefing regarding Settlement approval, attorneys’ fees, and
22 the Court’s orders thereon), and review the answers to Frequently Asked Questions
23 (FAQs). (*Id.* ¶ 51.)

24 **E. Settlement Payments to Inactive Subscribers**

25 Within thirty (30) days after the Effective Date, Defendant will pay the
26 Settlement Administrator all money required to make cash payments to Inactive
27 Subscribers who submitted a valid Claim Form electing the \$100 payment instead
28 of reactivation. (SA ¶ 70.) These payments will be made by check sent via US

1 Mail within sixty (60) days after the Effective Date. (*Id.* ¶ 71.) Settlement Class
2 Members who receive checks will have 180 days to cash their checks. (*Id.* ¶ 71,
3 73.) Any residual (*i.e.* amount of checks mailed and uncashed after 180 days) will
4 be paid back to Sirius XM. (*Id.* ¶ 73.)

5 **F. Proposed Class Representative Service Payments**

6 The Settlement would not have been possible without the time and effort of
7 each of the four Named Plaintiffs, as well as Paul Wright, who stepped forward on
8 behalf of other Settlement Class Members, accepting the risk of negative publicity
9 and the responsibility of cooperating in the litigation and discovery in order to
10 right the wrong that affected them and so many others. Accordingly, Plaintiffs'
11 counsel will ask that the Court award each of them a \$5,000 Service Payment, and
12 Defendant agrees not to oppose any such request. (SA ¶ 75.) Defendant will pay
13 the Court approved Service Payments, which will not reduce the benefits available
14 to Settlement Class Members. (*Id.*)

15 As set forth in their declarations, these Plaintiffs, and Paul Wright, have
16 been active participants in the litigation. They investigated the matter prior to and
17 after retaining their respective attorneys, participated in the plaintiff vetting
18 process implemented by Plaintiffs' counsel, reviewed and approved their original
19 complaints, participated in preparing initial disclosures, understood that they may
20 have to sit for a deposition, kept in contact with counsel to monitor the progress of
21 the litigation, and reviewed and communicated with their counsel regarding the
22 Settlement Agreement and its exhibits. (*See generally* concurrently filed
23 Declarations of Philip Alvarez, Randall Bettison, Marc Kelleher, Darlene Vaugh,
24 and Paul Wright; *see also* Ahdoot Decl. ¶¶ 26-27.)

1 **G. Attorneys' Fees and Costs**

2 As part of the Settlement, Class Counsel agree not to seek an award of fees
3 in excess of \$3.5 million, and Defendant agrees not to oppose such a request. (SA
4 ¶ 76.) Defendant has agreed to pay any amount awarded by the Court (up to a
5 maximum of \$3.5 million). This payment will not reduce the benefits available to
6 Class Members.

7 Attorneys' fees were negotiated only after agreement was reached on all
8 material terms of the Settlement. (Ahdoot Decl. ¶ 17.) *See also In re Nat'l Football*
9 *League Players Concussion Injury Litig.*, 821 F.3d 410, 445 (3d Cir.), *as amended*
10 (May 2, 2016) (deferring discussion of fees until after material settlement terms
11 are agreed upon is a practice routinely approved by courts). Class Counsel may
12 opt to be paid the Attorneys' Fees and Expenses awarded by the Court, prior to the
13 Effective Date, provided they all execute a Stipulated Undertaking. (SA ¶ 77 and
14 Ex. G.)

15 The Proposed Preliminary Approval Order provides that Class Counsel will
16 file a motion for payment of attorneys' fees and expenses prior to the Final
17 Approval Hearing and prior to the Opt-Out and Objection Deadline. Class
18 Members will have the opportunity to comment on or object to the fee petition
19 under Rule 23(h), consistent with Ninth Circuit authority. *See Mercury Interactive*
20 *Corp. Sec. Litig. v. Mercury Interactive Corp.*, 618 F.3d 988, 993-94 (9th Cir.
21 2010).

22 **IV. PRELIMINARY APPROVAL IS APPROPRIATE**

23 **A. Legal Standards**

24 "[I]n the context of a case in which the parties reach a settlement agreement
25 prior to class certification, courts must peruse the proposed compromise to ratify
26 both the propriety of the certification and the fairness of the settlement." *Staton v.*
27 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

28

1 **1. Class Certification**

2 Parties seeking class certification for settlement purposes must satisfy the
3 requirements of FRCP 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620,
4 117 S.Ct. 2231, 2248 (1997). “A court considering such a request should give the
5 Rule 23 certification factors ‘undiluted, even heightened, attention in the
6 settlement context.’” *Sandoval v. Roadlink USA Pac., Inc.*, No. EDCV 10-00973
7 VAP, 2011 WL 5443777, at *2 (C.D. Cal. Oct. 9, 2011) (quoting *Amchem*, 521
8 U.S. at 621). At the preliminary approval stage, “if a class has not [yet] been
9 certified, the parties must ensure that the court has a basis for concluding that it
10 likely will be able, after the final hearing, to certify the class.” Fed. R. Civ. P. 23,
11 Adv. Comm. Notes to 2018 Amendment.

12 A party seeking class certification must first demonstrate that: “(1) the class
13 is so numerous that joinder of all members is impracticable; (2) there are questions
14 of law or fact common to the class; (3) the claims or defenses of the representative
15 parties are typical of the claims or defenses of the class; and (4) the representative
16 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
17 23(a). “Second, the proposed class must satisfy at least one of the three
18 requirements listed in Rule 23(b).” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
19 345, 131 S.Ct. 2541, 2548 (2011).

20 **2. Fairness of the Proposed Class Action Settlement**

21 Rule 23(e) provides that “the claims, issues, or defenses of a certified class
22 may be settled. . . only with the court’s approval.” Fed. R. Civ. P. 23(e). “The
23 parties must provide the court with information sufficient to enable it to determine
24 whether to give notice of the proposal to the class,” and if, upon reviewing that
25 information, the Court concludes that is likely “to: (i) approve the proposal under
26 Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal,”
27 then the Court “must direct notice in a reasonable manner to all class members
28 who would be bound by the proposal.” *Id.* This is the “preliminary approval”

1 decision that Plaintiffs now ask the Court to make. Fed. R. Civ. P. 23, Adv. Comm.
2 Notes to 2018 Amendment.

3 “The primary concern of [Rule 23(e)] is the protection of th[e] Class
4 Members, including the named plaintiffs, whose rights may not have been given
5 due regard by the negotiating parties.” *Officers for Justice v. Civil Service Comm’n*
6 *of the City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982), *cert.*
7 *denied*, 459 U.S. 1217 (1983). The Court may approve a settlement agreement
8 “after a hearing and only on finding that it is fair, reasonable, and adequate.” Fed.
9 R. Civ. P. 23(e)(2). District courts must consider various factors in assessing a
10 settlement proposal:

- 11 • the strength of the plaintiffs’ case;
- 12 • the risk, expense, complexity, and likely duration of further litigation;
- 13 • the risk of maintaining class action status throughout the trial;
- 14 • the amount offered in settlement;
- 15 • the extent of discovery completed and the stage of the proceedings;
- 16 • the experience and views of counsel;
- 17 • the presence of a governmental participant; and
- 18 • the reaction of the Class Members to the proposed settlement.

19 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004).

20 “[I]n the context of a case in which the parties reach a settlement agreement
21 prior to class certification, courts must peruse the proposed compromise to ratify
22 both the propriety of the certification and the fairness of the settlement.” *Staton v.*
23 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). “Prior to formal class certification,
24 there is an even greater potential for a breach of fiduciary duty owed the class
25 during settlement. Accordingly, such agreements must withstand an even higher
26 level of scrutiny for evidence of collusion or other conflicts of interest than is
27 ordinarily required under Rule 23(e) before securing the court’s approval as fair.”
28 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

1 Ultimately, “[s]trong judicial policy favors settlements.” *Churchill*, 361 F.3d at
2 576 (ellipses and quotation marks omitted) (quoting *Class Plaintiffs v. City of*
3 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

4 Approval of a class action settlement requires a two-step process:
5 preliminary approval followed by a later, final approval. See *West v. Circle K*
6 *Stores, Inc.*, 2006 WL 1652598, *2 (E.D. Cal. 2006) (“[A]pproval of a class action
7 settlement takes place in two stages.”); *Tijero v. Aaron Bros., Inc.*, 2013 WL
8 60464, *6 (N.D. Cal. 2013) (“The decision of whether to approve a proposed class
9 action settlement entails a two-step process.”). At the preliminary approval stage,
10 the court “evaluate[s] the terms of the settlement to determine whether they are
11 within a range of possible judicial approval.” *Wright v. Linkus Enters., Inc.*, 259
12 F.R.D. 468, 472 (E.D. Cal. 2009). Although “[c]loser scrutiny is reserved for the
13 final approval hearing[,]” *Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, *7
14 (N.D. Cal. 2011), “the showing at the preliminary approval stage—given the
15 amount of time, money and resources involved in, for example, sending out new
16 class notices—should be good enough for final approval.” *Spann v. J.C. Penney*
17 *Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016).

18 **B. Discussion**

19 **1. Class Certification**

20 As shown below, the Settlement Class meets the requirements of Rule 23
21 and, accordingly, the Court should direct notice informing Settlement Class
22 Members that the Court “likely will be able to” certify the Settlement Class for
23 purposes of judgment on the appeal. Fed. R. Civ. P. 23(e)(1)(B).

24 **i. The Class Is Sufficiently Numerous**

25 Rule 23(a)(1) requires that “the class is so numerous that joinder of all
26 members is impracticable.” Fed. R. Civ. P. 23(a). Joinder is usually impracticable
27 if a class is “large in numbers.” See *Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311,
28 1319 (9th Cir.), *vacated on other grounds*, 459 U.S. 810 (1982) (class sizes of 39,

1 64, and 71 are sufficient to satisfy the numerosity requirement). Joinder of all
2 964,000 Settlement Class Members would be impractical, to say the least. The
3 Settlement Class is sufficiently numerous.

4 **ii. There Are Common Questions of Law and Fact**

5 The commonality requirement is satisfied if “there are questions of law or
6 fact common to the class.” Fed. R. Civ. P. 23(a)(2). “This does not, however, mean
7 that every question of law or fact must be common to the class; all that Rule
8 23(a)(2) requires is a single significant question of law or fact.” *Abdullah v. U.S.*
9 *Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013), *cert. denied*, 135 S.Ct. 53
10 (2014) (emphasis and internal quotation marks omitted); *see Mazza v. Am. Honda*
11 *Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (characterizing commonality as a
12 “limited burden,” stating that it “only requires a single significant question of law
13 or fact”). Proof of commonality under Rule 23(a) is “less rigorous” than the related
14 preponderance standard under Rule 23(b)(3). *See Mazza*, 666 F.3d at 589.

15 Here, there are many common issues of law and fact that affect the Class
16 uniformly and satisfy the commonality requirement, including: The terms and
17 conditions covering Defendant’s sale of Lifetime Subscriptions to Settlement
18 Class Members; Defendant’s communication of those terms to Settlement Class
19 Members; whether Defendant’s representations concerning its Lifetime
20 Subscriptions were misleading in any way; and whether Settlement Class
21 Member’s claims are subject to individual arbitration.

22 **iii. The Class Representatives’ Claims are Typical of Those of**
23 **Other Class Members**

24 Rule 23(a)(3) requires that the Class Representatives’ claims be typical of
25 those of the Class. The typicality requirement of Rule 23 is satisfied if the claim
26 of the named class representative arises “from the same course of conduct that
27 gives rise to the claims of unnamed Class Members to bring individual actions.
28 *Thomas v. Baca*, 231 F.R.D. 397, 401 (C.D. Cal. 2005); *Hanlon v. Chrysler Corp.*,

1 150 F.3d 1011, 1020 (9th Cir. 1998) (describing standard for typicality as
2 permissive; claims typical if “reasonably co-extensive with those of absent Class
3 Members” although “they need not be substantially identical.”). “The test of
4 typicality is whether other members have the same or similar injury, whether the
5 action is based on conduct which is not unique to the named plaintiffs, and whether
6 other Class Members have been injured by the same course of conduct.” *Ellis v.*
7 *Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation
8 marks and citation omitted).

9 Here, the claims of the named Plaintiffs are typical of the claims of the
10 Settlement Class. Plaintiffs’ and Class Members’ claims arise from the same
11 nucleus of facts and are based on the same legal theory: that Defendant’s sale of
12 Lifetime Subscriptions was misleading.

13 **iv. Class Representatives and Class Counsel Adequately**
14 **Represent Class Members**

15 Rule 23(a)(4) permits certification of a class action only if “the
16 representative parties will fairly and adequately protect the interests of the class,”
17 which requires (1) that the named Plaintiff not have conflicts of interest with the
18 proposed Class; and (2) that the named Plaintiff be represented by qualified and
19 competent counsel. *See In re Volkswagen “Clean Diesel” Mktg., Sales Practices,*
20 *& Prod. Liab. Litig.*, 895 F.3d 597, 607 (9th Cir. 2018). “Adequate representation
21 depends on, among other factors, an absence of antagonism between
22 representatives and absentees, and a sharing of interest between representatives
23 and absentees.” *Ellis*, 657 F.3d at 985; *see also Amchem*, 521 U.S. at 625-26 (“The
24 adequacy inquiry under Rule 23(a) . . . serves to uncover conflicts of interest
25 between named parties and the class they seek to represent. A class representative
26 must be part of the class and possess the same interest and suffer the same injury
27 as the class members.”).

1 Plaintiffs and their counsel are adequate. First, the proposed Class
2 Representatives do not have any conflicts of interest with the absent Class
3 Members, as their claims are coextensive with those of the Class Members, both
4 Active and Inactive Subscribers. *General Tel. Co. v. Falcon*, 457 U.S. 147, 157-
5 58, fn. 13 (1982). They have read and understood the basic allegations of the CAC
6 and are willing to prosecute this matter on behalf of the Class. (Ahdoot Decl. ¶¶
7 26-27; *see also generally* concurrently filed proposed Class Representative
8 Declarations of Philip Alvarez, Randall Bettison, Marc Kelleher, and Darlene
9 Vaughn.) As detailed in their declarations, the proposed Class Representatives have
10 been consistently involved in this litigation, providing valuable insight and useful
11 facts allowing Class Counsel to effectively litigate this action, perform discovery,
12 and negotiate this Settlement. Further, all proposed Class Representatives were
13 clearly advised of and understand their obligations as Class Representatives.
14 Plaintiffs regularly communicated with Class Counsel regarding various issues
15 pertaining to this case and will continue to do so until the Settlement is approved,
16 and its administration completed. *Id.*

17 Second, proposed Class Counsel are qualified and experienced in
18 conducting class action litigation, especially cases involving consumer protection.
19 (Ahdoot Decl. ¶¶ 29-37 & Ex. B; Declaration of Keith S. Dubanevich
20 (“Dubanevich Decl.”) ¶¶ 3-5; Declaration of Cornelius Dukelow (“Dukelow
21 Decl.”) ¶¶ 2-5.) Proposed Class Counsel vigorously prosecuted this action and will
22 continue to do so through final approval. Proposed Class Counsel identified and
23 investigated the claims in this lawsuit and the underlying facts, and successfully
24 negotiated this Settlement. (Ahdoot Decl. ¶¶ 12-16, 21-24; Dukelow Decl. ¶¶ 4-5;
25 Dubanevich Decl. ¶ 6.) *See also In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717,
26 720 (C.D. Cal. 2002) (a court evaluating adequacy of representation may examine
27 “the attorneys’ professional qualifications, skill, experience, and resources . . .
28 [and] the attorneys’ demonstrated performance in the suit itself”); *Barbosa v.*

1 *Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 443 (E.D. Cal. 2013) (“There is no
2 challenge to the competency of the Class Counsel, and the Court finds that
3 Plaintiffs are represented by experienced and competent counsel who have
4 litigated numerous class action cases.”)).

5 **v. The Settlement Class Meets the Requirements of Rule 23(b)(3)**
6 **Because Common Issues of Law and Fact Predominate**

7 In addition to the requirements of Rule 23(a), at least one of the prongs of
8 Rule 23(b) must be satisfied. Rule 23(b)(3) allows certification of a class if the
9 Court finds that “questions of law or fact common to class members predominate
10 over any questions affecting only individual members, and that a class action is
11 superior to other available methods for fairly and efficiently adjudicating the
12 controversy.” Fed. R. Civ. P. 23(b)(3). In the settlement context, the manageability
13 criterion of Rule 23(b)(3)(D) does not apply. *Amchem*, 521 U.S. at 620.

14 “Common questions that yield common answers” and are “apt to drive the
15 resolution of this case” predominate over any individual issues. *Dukes*, 564 U.S.
16 at 345. Here, The Amended Consolidated Class Action Complaint alleges a
17 common law breach of contract cause of action for the nationwide class. The
18 Complaint alleges that Sirius XM did not honor the terms of the Lifetime
19 Subscriptions it sold to all Class Members. These common issues of law and fact
20 include: the terms and conditions covering Sirius XM’s sale of Lifetime
21 Subscriptions to Settlement Class Members; Sirius XM’s communication of those
22 terms to Settlement Class Members; whether Sirius XM’s representations
23 concerning its Lifetime Subscriptions were misleading in any way; and whether
24 Settlement Class Member’s claims are subject to individual arbitration.

25 Whether Defendant breached a contract with the Class Members — the sole
26 cause of action in the Complaint — is a straightforward legal question that is
27 common to all Class Members. Indeed, even if all fifty states’ law applies to the
28 respective residents of those states, this question still predominates because the

1 elements of this cause of action do not vary state-by-state in any significant
2 respect. (Ahdoot Decl. ¶ 24 and Ex. A, 50-State survey of breach of contract law).

3 Finally, if the proposed Settlement Agreement is approved, there will be no
4 need for a trial, and thus manageability of the classes for trial is irrelevant.
5 *Amchem*, 521 U.S. at 620. A class settlement is superior to other methods of
6 litigation where, as here, class treatment will promote greater efficiency and no
7 realistic alternative exists. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust*
8 *Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001); *Otsuka v.*
9 *Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 448 (N.D. Cal. 2008).

10 **2. The Proposed Settlement Should be Preliminarily Approved**

11 **i. The Strength of Plaintiffs' Case**

12 Plaintiffs are confident that they would succeed if this case proceeded to
13 trial. However, given the heavy obstacles and inherent risks Plaintiffs face with
14 respect to their claims — and even getting to trial — the substantial benefits the
15 Settlement provides favor preliminary approval of the Settlement. *See pp. 6-8,*
16 *supra.*

17 **ii. The Risk, Expense, Complexity, and Likely Duration of** 18 **Further Litigation**

19 This factor overwhelmingly weighs in favor of preliminary approval of the
20 Settlement. The risk, expense, complexity, and likely duration of further litigation
21 in this Action is substantial.

22 **iii. The Risk of Maintaining Class Action Status Throughout the** 23 **Trial**

24 Class certification has not yet been granted in this Action. Given
25 Defendant's insertion of class action waivers into the terms and conditions it
26 contends govern all Settlement Class Members' Lifetime Subscriptions, attaining
27 and maintaining class action status would be risky.
28

1 Even if Plaintiffs obtained class certification, there is no guarantee that the
2 class action status would be maintained. Defendant would likely appeal any
3 decision by the Court, resulting in additional delay to Class Members.

4 **iv. The Amount Offered in Settlement**

5 Through this Settlement, Settlement Class Members will get substantial
6 benefits from the Lifetime Subscriptions Plaintiffs always contended they were
7 owed. Active Subscribers, as well as those Inactive Subscribers who choose to
8 reactivate those subscriptions, will be able to transfer their Lifetime Subscriptions
9 to different Devices an unlimited number of times, at a reduced price of \$35, which
10 is less than half of the \$75 Defendant currently charges for the three transfers it
11 allows under its current alleged terms and conditions. As Plaintiffs' expert opines,
12 the Settlement fairly is valued at \$96.4 million. Accordingly, this factor weighs
13 heavily in favor of preliminary approval.

14 **v. The Extent of Discovery Completed and the Stage of the**
15 **Proceedings**

16 Although the *Wright* action did not proceed far into the discovery period,
17 given this Court's ruling on Defendant's Motion to Dismiss and to Compel
18 Arbitration, that action was intensely litigated in this Court and in the Ninth Circuit
19 before the Settlement finally was reached. Ultimately, Defendant disclosed
20 substantial evidence under mediation privilege, and thus the extent of discovery
21 completed is more extensive than the stage of proceedings alone might suggest.
22 (Ahdoot Decl. ¶ 12.) Again, this factor supports preliminary approval.

23 **vi. The Experience and Views of Counsel**

24 Plaintiffs are represented by attorneys who have substantial experience
25 serving as counsel in numerous complex actions. (Ahdoot Decl. ¶¶ 29-37 & Ex.
26 B; Dukelow Decl. ¶¶ 2-5; Dubanevich Decl. ¶¶ 3-5.) They fully endorse the
27 Settlement as fair, reasonable, and adequate and in the best interests of the Class.
28 (Ahdoot Decl. ¶ 38; Dukelow Decl. ¶ 5; Dubanevich Decl. ¶ 6.)

1 **vii. The Presence of a Governmental Participant**

2 No governmental agency is involved in this litigation, but the Attorney
3 General of the United States and Attorneys General of each State will be notified
4 of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §
5 1715, and will have an opportunity to raise any concerns or objections. (SA ¶ 41.)

6 **viii. The Reaction of the Class Members to the Proposed**
7 **Settlement**

8 The Settlement Class has yet to be notified of the Settlement and given an
9 opportunity to object, so it is premature to assess this factor. Before the Final
10 Approval Hearing, the Court will receive and be able to review all objections or
11 other comments received from Settlement Class Members, along with a full
12 accounting of all requests for exclusion.

13 **3. The Settlement was the Product of Arm’s-Length Negotiations**

14 In addition to the above factors, the Court also must be satisfied that “the
15 settlement is not the product of collusion among the negotiating parties.” *In re*
16 *Bluetooth Headset*, 654 F.3d at 946-47. Here, there are no indicia of collusion.

17 When negotiations began, Plaintiffs had a clear view of the strengths and
18 weaknesses of their case and were in a strong position to make an informed
19 decision regarding the reasonableness of a potential settlement. The Parties
20 engaged in extensive arm’s length negotiations, including a full-day mediation
21 session and extensive negotiations after that, with the assistance of Judge West.
22 (Ahdoot Decl. ¶ 11.)

23 Plaintiffs began to negotiate attorney fees only after the Parties reached an
24 agreement on all other terms of the Settlement with the assistance of Judge West.
25 (Ahdoot Decl. ¶ 17; Dukelow Decl. ¶ 4; Dubanevich Decl. ¶ 6.) Any award of
26 Attorneys’ Fees and Expenses to Plaintiffs’ counsel will not reduce the significant
27 benefits inuring to Settlement Class Members. There is no indication of collusion
28 or fraud in the settlement negotiations, and none exists.

4. The Proposed Notice Is Appropriate

1 “**4. The Proposed Notice Is Appropriate**

2 “The court must direct notice in a reasonable manner to all Class Members

3 who would be bound by the proposal.” Fed. R. Civ. P. 23©(1). Federal Rule of

4 Civil Procedure 23(c)(2) requires the Court to “direct to Class Members the best

5 notice that is practicable under the circumstances, including individual notice to

6 all members who can be identified through reasonable effort,” although actual

7 notice is not required. *Amchem*, 521 U.S. at 617; *Reppert v. Marvin Lumber &*

8 *Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004); *Silber v. Mabon*, 18 F.3d 1449, 1454

9 (9th Cir. 1994). “The standard for the adequacy of a settlement notice in a class

10 action under either the Due Process Clause or the Federal Rules is measured by

11 reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d

12 Cir.), *cert. denied*, 544 U.S. 1044 (2005). The best practicable notice is that which

13 is “reasonably calculated, under all the circumstances, to apprise interested parties

14 of the pendency of the action and afford them an opportunity to object.” *Mullane*

15 *v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see Trotsky v. Los*

16 *Angeles Fed. Sav. & Loan Ass’n.*, 48 Cal.App.3d 134, 151-52 (1975) (same);

17 *Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224, 252 (2001) (“As a general

18 rule, class notice must strike a balance between thoroughness and the need to avoid

19 unduly complicating the content of the notice and confusing Class Members.”).

20 The notice should provide sufficient information to allow Class Members to decide

21 whether they should accept the benefits of the settlement, opt out and pursue their

22 own remedies, or object to its terms. *See Wershba*, 91 Cal.App.4th at 251-52.

23 “[N]otice is adequate if it may be understood by the average class member.”

24 *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV152171FMOFFMX, 2016 WL

25 8578913, at *14 (C.D. Cal. Dec. 2, 2016) (quoting 4 Newberg on Class Actions §

26 11:53, at p. 167 (4th ed. 2013)).

27 Subject to Court approval, the Parties have selected Epiq Class Action &

28 Claims Solutions, Inc. as the Settlement Administrator. The notice program agreed

1 to by the Parties and approved by Epiq includes direct emails and physical mailings
2 to all Settlement Class Members, an internet campaign, and reminder emails to
3 Inactive Subscribers who have not submitted a Claim Form (to be transmitted 10
4 days prior to the Claim Deadline). The Settlement Administrator estimates that
5 notice will reach at least 90% of Settlement Class Members and that the Notice
6 Plan is the best notice practicable and satisfies all due process requirements. (SA
7 Ex. E (Azari Decl. ¶¶ 13, 26-29).) This represents the best notice practicable, and
8 less extensive notice has been approved by courts in this Circuit. *Noll v. eBay, Inc.*,
9 309 F.R.D. 593, 605 (N.D. Cal. 2015); *Stone v. Howard Johnson Int'l, Inc.*, No.
10 12-CV-01684 PSG (MANX), 2015 WL 13648551, at *2 (C.D. Cal. June 15,
11 2015); *Abat v. Chase Bank USA, N.A.*, No. SACV 0701476-CJC (Anx), 2011 WL
12 13130637, at *6 (C.D. Cal. July 11, 2011).

13 The Long Form Notice (SA Ex. B) is clear, precise, informative, and meets
14 all of the necessary standards. (SA Ex. E (Azari Decl. ¶¶ 18, 24-25).) It includes
15 information such as the case caption; a description of the Settlement Class; a
16 detailed description of the Settlement's benefits and how to obtain them; a
17 description of the claims and the history of the litigation; a description of the
18 Settlement and the claims being released; the names of proposed Class Counsel; a
19 statement of the maximum amount of attorneys' fees that will be sought by
20 proposed Class Counsel; the amount proposed Class Counsel will seek for Service
21 Payments; the Final Approval Hearing date; a description of Settlement Class
22 Members' opportunity to appear at the hearing; a statement of the procedures and
23 deadlines for requesting exclusion and filing objections to the Settlement; and the
24 manner in which to obtain further information. *In re Prudential Ins. Co. of Am.*
25 *Sales Practices Litig.*, 962 F. Supp. 450, 496 (D.N.J. 1997), *aff'd*, 148 F.3d 283
26 (3d Cir. 1998); *see also* Manual For Complex Litigation § 30.212 (4th ed. 2004)
27 (Rule 23© notice designed to be a summary of the litigation and settlement to
28

1 apprise class members of the right and opportunity to inspect the complete
2 settlement documents, papers, and pleadings).

3 The Notice Plan was reviewed and analyzed to ensure it meets the requisite
4 due process requirements. (SA Ex. E (Azari Decl. ¶¶ 10-13).) Indeed, the program
5 here is consistent with, and exceeds, other similar court-approved notice plans, the
6 requirements of FRCP 23©(2)(B), and the Federal Judicial Center (“FJC”)
7 guidelines for adequate notice. (*Id.* ¶ 24.) As there is no alternative method of
8 notice that would be more practicable here or more likely to notify Settlement
9 Class Members, the proposed procedure for providing notice and the content of
10 the Class Notice constitute the best practicable notice to Settlement Class
11 Members and complies with the requirements of Due Process.

12 **5. The Claim Process Is Easy and not Cumbersome**

13 The Claim process is only required for the minority of Settlement Class
14 Members who are Inactive Subscribers. It is straightforward and requires nothing
15 more than logging on to the Settlement Website and submitting a Claim there, or
16 a Settlement Class Member may print the Claim form from that website and mail
17 a filled-in hardcopy to the Settlement Administrator if they prefer. (SA ¶ 68(a)-
18 (b).)

19 **6. The Court Should Set Settlement Deadlines and Schedule a Final** 20 **Approval Hearing**

21 In connection with preliminary approval, the Court must set a Final
22 Approval Hearing date, dates for mailing the Notices, and deadlines for objecting
23 to the Settlement and filing papers in support of the Settlement. Plaintiffs propose
24 the schedule set forth in the Notice of Motion (above), which the Parties believe
25 will provide ample time and opportunity for Class Members to decide whether to
26 request exclusion or object.

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V. CONCLUSION

Plaintiffs respectfully request that the Motion be granted and the Court enter an order substantially in the form accompanying the Settlement as Exhibit F thereto: (1) notifying Settlement Class Members that the Court is likely to certify the proposed Settlement Class; (2) preliminarily approving the proposed class action Settlement; (3) appointing class representatives and Class Counsel; (4) appointing the notice and Settlement Administrator; (5) approving the class Notice and related Settlement administration documents; and (6) approving the proposed class settlement administrative deadlines and procedures, including the proposed Final Approval Hearing date and procedures regarding objections, exclusions and submitting Claim Forms.

Respectfully submitted,

AHDOOT & WOLFSON, PC

Dated: June 11, 2020

By: /s/ Robert Ahdoot

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**Pro Hac Vice application pending*