

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JAMES STEWART, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 19-cv-04700-LB

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS-ACTION SETTLEMENT**

Re: ECF No. 147

INTRODUCTION

This is a class action against Apple Inc.. The plaintiffs — current and former paid subscribers of Apple’s “iCloud” cloud storage service — alleged that Apple breached its iCloud agreement by storing their data on non-Apple facilities, resulting in overcharges. Their remaining claim is for breach of contract.¹ The parties settled their case, and the plaintiffs moved for preliminary approval of the proposed settlement.² The court grants the unopposed motion.

¹ First Am. Compl. (FAC) – ECF No. 38. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 1–18; Mot. – ECF No. 147.

STATEMENT

1. The Lawsuit

The plaintiffs filed the lawsuit on August 12, 2019, claiming breach of contract, violations of California’s False Advertising Law, and violations of California’s Unfair Competition Law.³ Apple filed a motion to dismiss, which was granted in part without prejudice.⁴ The plaintiffs then filed a first amended complaint with the same three claims on April 27, 2020.⁵ The court subsequently dismissed with prejudice the False Advertising Law and Unfair Competition Law claims.⁶

On May 28, 2021, the court denied certification of a Rule 23(b)(2) “injunctive class” but certified the following “damages class” under Rule 23(b)(3):

All persons in the United States who paid for a subscription to iCloud at any time during the period September 16, 2015 to January 31, 2016. Excluded from this Class definition are all employees, officers, or agents of Defendant Apple Inc. Also excluded from this Class definition are all judicial officers assigned to this case as well as their staff and immediate families.

The court also found one named plaintiff to be an inadequate class representative, leaving James Stewart as the sole class representative.⁷ Notice has not yet been provided to the class, so class members have not had an opportunity to request exclusion.⁸

The parties engaged in extensive discovery, including “thousands of pages of written discovery,” “numerous lay and expert depositions,” and exchanges of both class certification and merits expert reports, for a total of twelve expert reports from five experts.⁹ In addition, one of the plaintiffs’ expert economists prepared a damages assessment.¹⁰

³ Compl. – ECF No. 1.

⁴ Order – ECF No. 34.

⁵ First Am. Compl. – ECF No. 38.

⁶ Order – ECF No. 65.

⁷ Order – ECF No. 110 at 43–44.

⁸ Joint Case Mgmt. Statement – ECF No. 127 at 3–4.

⁹ Mot. – ECF No. 147 at 9, 17–18 & n.6; Katriel Decl. – ECF No. 147-1 at 3 (¶ 8).

¹⁰ Katriel Decl. – ECF No. 147-1 at 2 (¶ 5).

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1 The parties reached their settlement after two mediations with the Honorable Edward Infante
2 (Ret.), on February 17, 2021 and October 27, 2021.¹¹ Following the initial agreement to settle, the
3 parties had “extensive follow-up telephonic discussions on numerous occasions” and executed a
4 settlement agreement on January 13, 2022.¹²

5 Prior to the settlement, the parties had plans to file *Daubert* motions, motions for summary
6 judgment, and a motion to decertify the class.¹³ Trial was scheduled to begin on May 2, 2022.¹⁴

7 On January 13, 2022, the plaintiffs moved for preliminary approval of the settlement.¹⁵ The
8 court held a hearing on February 17, 2022. The parties consented to magistrate-judge jurisdiction.¹⁶

9 10 **2. The Proposed Settlement**

11 All defined terms in this Preliminary Approval Order have the same meaning as in the
12 Settlement Agreement.

13 **2.1 Settlement Class**

14 The class is termed the Subscriber Class and is defined as in the order granting class
15 certification.¹⁷ There are approximately 16,900,000 Subscriber Class Members.¹⁸ Apple will
16 identify them based on its internal iCloud subscription data.¹⁹ Subscriber Class Members will have
17 an opportunity to request exclusion.²⁰

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¹¹ *Id.* (¶ 4); Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 5–6.

22 ¹² Mot. – ECF No. 147 at 7; Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 17–18.

23 ¹³ Mot. – ECF No. 147 at 18–19.

24 ¹⁴ Case Mgmt. Order – ECF No. 139.

25 ¹⁵ Mot. – ECF No. 147.

26 ¹⁶ Stipulation – ECF No. 142.

27 ¹⁷ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 4 (¶ BB).

28 ¹⁸ Weisbrot Decl. – ECF No. 147-4 at 4 (¶ 13).

¹⁹ *Id.*; Mot. – ECF No. 147 at 8.

²⁰ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 10 (¶ 5).

1 **2.2 Settlement Amount and Allocation**

2 The Gross Settlement Amount is \$14,800,000.²¹ The Net Settlement Amount — the fund
3 recovered by the Subscriber Class — will be determined after the following deductions: (1)
4 Administrative and Notice Costs (estimated at \$2,250,000 and not to exceed \$2,400,000, unless
5 the parties’ counsel agree to an increase over that amount); (2) any Attorneys’ Fees and Costs
6 approved by the court; and (3) any Service Award for the Named Plaintiff approved by the court
7 (not to exceed \$5,000).²² Class Counsel may apply to the court later for the Attorneys’ Fees and
8 Costs and Service Award, and Apple reserves the right to oppose those applications.²³

9 The individual settlement payment amounts will be “based on the overall payments made by
10 each Subscriber Class Member for his or her iCloud subscription during the Subscriber Class
11 Period.” “Such pro rata distribution shall not exceed the value of a Subscriber Class Member’s
12 total iCloud subscription payments during the Subscriber Class Period.”²⁴

13 Claim forms are not required.²⁵ The Settlement Administrator will issue settlement payments
14 either by check or “ACH transfer.” Of the Subscriber Class Members who make no choice as to
15 payment method, those who are current iCloud subscribers will receive payment in their Apple
16 accounts and those who are not will receive a check.²⁶

17 The Settlement is non-reversionary.²⁷ Uncashed checks will be distributed to the *cy pres*
18 recipient Digitunity.²⁸ In addition, if the Attorneys’ Fees and Costs are determined after payments
19 are distributed and those fees and costs are less than the amount requested by Class Counsel’s
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23 ²¹ *Id.* at 6 (¶ 2.1).

24 ²² *Id.* at 3 (¶ O), 11–13 (¶¶ 6.3, 7); Weisbrot Decl. – ECF No. 147-4 at 6 (¶ 23).

25 ²³ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 12–13 (¶¶ 7.1, 7.3).

26 ²⁴ *Id.* at 6 (¶ 2.2).

27 ²⁵ *Id.* at 7 (¶ 2.5).

28 ²⁶ *Id.* (¶ 2.3).

²⁷ *Id.* at 3 (¶ M).

²⁸ Notice – ECF No. 150.

1 motion, the amount of the reduction will be distributed to the Subscriber Class to the extent
2 “administratively and economically feasible” and otherwise to the *cy pres* recipient.²⁹

3 **2.3 Release**

4 The Named Plaintiff and Subscriber Class Members agree to release all claims “that arise out
5 of or relate to the allegations made . . . in the Action and that occurred during the Subscriber Class
6 Period.”³⁰ They also waive their rights under “California Civil Code § 1542, or any other similar
7 provision under federal or state law.”³¹

8 **2.4 Administration**

9 Angeion Group is the proposed Settlement Administrator.³² Angeion “is an experienced class
10 action notice and claims administration company formed by a team of executives” that,
11 collectively, have “overseen more than 2,000 class action settlements and distributed over \$15
12 billion to class members.”³³ Angeion also has “prior experience disseminating email notice to
13 email addresses provided by Apple.”³⁴

14 After Apple provides the Subscriber Class Members’ names and email addresses to Angeion,
15 Angeion will administer the Email and Website Notices.³⁵ Angeion will set up a toll-free
16 number.³⁶ The procedures for exclusion and objection are in the Settlement Agreement.³⁷

21 ²⁹ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 7 (¶ 2.5).

22 ³⁰ *Id.* at 4 (¶ V), 13 (¶ 8.1).

23 ³¹ *Id.* at 13–14 (¶ 8.2).

24 ³² *Id.* at 4 (¶ Z); Weisbrot Decl. – ECF No. 147-4.

25 ³³ Weisbrot Decl. – ECF No. 147-4 at 3 (¶ 9).

26 ³⁴ *Id.* at 5 (¶ 20).

27 ³⁵ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 10–11 (¶¶ 6.1–6.2); Email Notice,
28 Ex. 1 to *id.* – ECF No. 147-2 at 19–21; Website Notice, Ex. 4 to *id.* – ECF No. 147-2 at 33–43;
Weisbrot Decl. – ECF No. 147-4 at 3–6 (¶¶ 12–21) (describing notice program).

³⁶ Weisbrot Decl. – ECF No. 147-4 at 6 (¶ 22).

³⁷ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 8–10 (¶¶ 4–5).

ANALYSIS

1. Jurisdiction

The court has diversity jurisdiction under the Class Action Fairness Act. 28 U.S.C. 1332(d)(2).

2. Certification of Settlement Class

The court previously certified the Subscriber Class under Rule 23, as described above.

3. Preliminary Approval of Settlement

A court may approve a proposed class-action settlement only “after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These factors “are substantially similar to those articulated” in *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1027 (9th Cir. 1998). *Student A v. Berkeley Unified Sch. Dist.*, No. 17-CV-02510-JST, 2021 WL 6332353, at *2 n.2 (N.D. Cal. July 8, 2021).

In *Hanlon*, the Ninth Circuit identified factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class-action status throughout trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. 150 F.3d at 1026.

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1 “Where a settlement is the product of arms-length negotiations conducted by capable and
2 experienced counsel, the court begins its analysis with a presumption that the settlement is fair and
3 reasonable.” *Garner v. State Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL
4 1687832, at *13 (N.D. Cal. Apr. 22, 2010); *see, e.g., In re Hyundai and Kia Fuel Econ. Litig.*, 926
5 F.3d 539, 570 (9th Cir. 2019) (“[W]e put a good deal of stock in the product of an arms-length,
6 non-collusive, negotiated resolution.”) (cleaned up); *Nat’l Rural Telecomms. Coop. v. DIRECTV,*
7 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“A settlement following sufficient discovery and
8 genuine arms-length negotiation is presumed fair.”).

9 The court has evaluated the Settlement Agreement for overall and concludes preliminarily that
10 it is free of collusion and approval is appropriate.

11 First, the settlement provides good value (when contrasted to the maximum damages estimated
12 by the plaintiffs, which assumes complete success on the merits). The settlement “represents
13 approximately 40 percent of the contractual damages calculated by Plaintiffs’ expert economist.”³⁸

14 Second, the value of the settlement is significant compared to the litigation risks and
15 uncertainties. The maximum recovery assumes complete success for the plaintiffs, which was not
16 a guaranteed outcome. Apple was vigorously contesting the case and planned several motions,
17 including a *Daubert* motion (in this expert-rich case), a motion for summary judgment, and a
18 motion to decertify the class. The outcome of a trial is uncertain, especially because the court
19 previously “stressed that the contractual language at issue in this case was ambiguous, thereby
20 opening the door to extrinsic evidence.”³⁹ When viewed against the risk of no recovery, this
21 settlement is fair. *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 331 (N.D. Cal. 2014) (litigation
22 risks, including maintaining class-action status, favor settlement approval). Moreover, settlement
23 allows payment to the Class Members now, before costly and protracted litigation.

24 Third, a class action allows class members — who otherwise would not pursue their claims
25 individually because costs would exceed recoveries — to obtain relief.

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28 ³⁸ Katriel Decl. – ECF No. 147-1 at 2 (¶ 5).

³⁹ Mot. – ECF No. 147 at 16.

1 Finally, the settlement is the product of serious, non-collusive, arm's-length negotiations and
2 was reached after mediation with an experienced mediator.

3 The recoveries here are adequate to justify preliminary approval. Given other comparable
4 settlements and the litigation risks identified above, the settlement amount at least preliminarily
5 appears fair.

6 The court has also considered the Rule 23(e)(2) factors and finds that they support preliminary
7 approval of the settlement as fair, reasonable, and adequate.

8 The Class Counsel have not yet moved for attorney's fees, and in any case the court will
9 address the issue of attorney's fees at the final fairness hearing. *See Hanlon*, 150 F.3d at 1029
10 (twenty-five percent is a benchmark in common fund cases); *cf. Vizcaino v. Microsoft Corp.*, 290
11 F.3d 1043, 1048 (9th Cir. 2002) (twenty-five percent benchmark, though a starting point for
12 analysis, may be inappropriate in some cases; fees must be supported by findings).

13 14 **4. Appointment of Class Representative, Class Counsel, and Settlement Administrator**

15 The court previously appointed James Stewart as class representative.⁴⁰

16 The court appoints Angeion Group as the Settlement Administrator. It will administer the
17 settlement in accordance with the requirements set forth in the Settlement Agreement. The court
18 also orders Angeion to file proof of compliance with the Email and Website Notices at or before
19 the Final Approval Hearing.⁴¹

20 The court appoints Roy Katriel and Azra Mehdi as Class Counsel. Fed. R. Civ. P. 23(a) &
21 (g)(1). They have sufficient qualifications, experience, and expertise in prosecuting class actions.⁴²

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27 ⁴⁰ Order – ECF No. 110.

28 ⁴¹ Proposed Order, Ex. 5 to Settlement Agreement – ECF No. 147-2 at 47 (¶ 8).

⁴² Firm Resumes, Exs. 10–11 to Katriel Decl. (Mot. for Class Certification) – ECF Nos. 77-11 & 77-12.

1 **5. Class Notice**

2 The court approves the class notice and plan, including both the Email and Website Notices.
3 The court finds that the class notice provides the best notice practicable, satisfies the notice
4 requirements of Rule 23, adequately advises class members of their rights under the settlement
5 agreement, and meets the requirements of due process. *Cf. In re Hyundai and Kia*, 926 F.3d at 567
6 (“Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to
7 alert those with adverse viewpoints to investigate and to come forward and be heard.”) (cleaned up).

8 The forms of notice fairly, plainly, accurately, and reasonably provide class members with all
9 required information, including the following: (1) a summary of the lawsuit and claims asserted;
10 (2) a clear definition of the class; (3) a description of the material terms of the settlement,
11 including the estimated payment; (4) a disclosure of the release of the claims; (5) the date, time,
12 and location of the final fairness hearing; and (6) the identity of class counsel and the provisions
13 for attorney’s fees, costs, and class-representative service awards.⁴³

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15 **6. Service Awards**

16 District courts must evaluate proposed service awards individually, using relevant factors that
17 include “the actions the plaintiff has taken to protect the interests of the class, the degree to which
18 the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff
19 expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).
20 “Such awards are discretionary . . . and are intended to compensate class representatives for work
21 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
22 action, and, sometimes, to recognize their willingness to act as a private attorney general.”
23 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (citation omitted). The Ninth
24 Circuit has “noted that in some cases incentive awards may be proper but [has] cautioned that
25 awarding them should not become routine practice.” *Radcliffe v. Experian Info. Sols.*, 715 F.3d

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28 ⁴³ Email Notice, Ex. 1 to Settlement Agreement – ECF No. 147-2 at 19–21; Website Notice, Ex. 4 to
Settlement Agreement – ECF No. 147-2 at 33–43; Weisbrot Decl. – ECF No. 147-4 at 3–6 (¶¶ 12–22)
(describing notice program).

1 1157, 1163 (9th Cir. 2013) (discussing *Staton*, 327 F.3d at 975–78). The Ninth Circuit also has
 2 emphasized that district courts “must be vigilant in scrutinizing all incentive awards to determine
 3 whether they destroy the adequacy of the class representatives.” *Id.* at 1164.

4 The court defers consideration of the award until the final approval hearing.

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 6 **7. *Cy Pres* Award**

7 The court defers consideration of the award until the final approval hearing.

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 9 **8. Compliance with Class Action Fairness Act**

10 Apple is to “provide timely notice of [the] motion [for preliminary approval] to the appropriate
 11 official as required by the Class Action Fairness Act.”⁴⁴ Any final settlement approval will be
 12 more than ninety days after service as required by the Act.

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 14 **9. Procedures for Final Approval Hearing**

15 **9.1 Deadlines**

16 The court approves the parties’ proposed schedule discussed at the February 17, 2022, hearing,
 17 including the final fairness hearing, which will be on August 4, 2022, at 9:30 a.m. The parties will
 18 submit an updated proposed order with the agreed-to schedule.

19 **9.2 Final Approval Hearing**

20 At the hearing, the court will consider whether to (1) finally approve the settlement agreement
 21 and the releases in it, (2) finally approve the service award, (3) finally approve the *cy pres* award,
 22 and (4) award attorney’s fees and costs to Class Counsel. The court may, for good cause, extend
 23 any of the deadlines or continue the Final Approval Hearing without further notice to the
 24 Subscriber Class Members.

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⁴⁴ Settlement Agreement, Ex. 1 to Katriel Decl. – ECF No. 147-2 at 8 (¶ 3.3).

1 **9.3 Objections to or Exclusions from the Settlement**

2 The objection and exclusion procedures will be those in the Settlement Agreement.⁴⁵ In
3 addition, any attorney hired by a member of the Subscriber Class for the purpose of objecting to
4 the proposed Settlement, the Attorneys' Fee and Costs, or the Service Award and who intends to
5 make an appearance at the Final Approval Hearing, must timely provide to the Settlement
6 Administrator, Class Counsel, and Apple Counsel and file with the Clerk of the Court a notice of
7 intention to appear. Counsel who do not adhere to these requirements will not be heard at the Final
8 Approval Hearing.⁴⁶

9 **9.4 Use of Settlement Agreement and Ancillary Items**

10 Neither the Settlement Agreement, nor any of its provisions, nor any of the documents
11 (including but not limited to drafts of the Agreement, this Preliminary Approval Order, or the
12 Final Order and Judgment), negotiations, or proceedings relating in any way to the Settlement,
13 shall be construed as or deemed to be evidence of an admission or concession by any person, and
14 shall not be offered or received in evidence, or subject to discovery, in this or any other action or
15 proceeding except in an action brought to enforce the Settlement Agreement's terms or except as
16 may be required by law or court order.⁴⁷

17 If the Settlement Agreement terminates for any reason, this Action will revert to its previous
18 status in all respects as it existed immediately before the Parties executed the Settlement
19 Agreement. This Preliminary Approval Order will not waive or otherwise impact the Parties'
20 rights or arguments.⁴⁸

21 All pretrial proceedings in the Action are stayed and suspended until further order of the court.⁴⁹

22 Until they have timely excluded themselves from the Subscriber Class, the court preliminarily
23 enjoins all Subscriber Class Members from: (1) filing, commencing, prosecuting, intervening in,
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25 ⁴⁵ *Id.* at 8–10 (¶¶ 4–5).

26 ⁴⁶ Proposed Order, Ex. 5 to Settlement Agreement – ECF No. 147-2 at 48–49 (¶ 16).

27 ⁴⁷ *Id.* at 50 (¶ 23).

28 ⁴⁸ *Id.* (¶ 22).

⁴⁹ *Id.* (¶ 21).

1 or participating as plaintiff, claimant, or class member in any other lawsuit or administrative,
 2 regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out
 3 of the claims and causes of action or the facts and circumstances giving rise to the Action and/or
 4 the Released Claims; and (2) filing, commencing, or prosecuting a lawsuit or administrative,
 5 regulatory, arbitration, or other proceeding as a class action on behalf of any member of the
 6 Subscriber Class who has not timely excluded himself or herself (including by seeking to amend a
 7 pending complaint to include class allegations or seeking class certification in a pending action),
 8 based on, relating to, or arising out of the claims and causes of action or the facts and
 9 circumstances giving rise to the Action and/or the Released Claims. Any person or entity who
 10 knowingly violates such injunction shall pay the attorney's fees and costs incurred by Defendants
 11 and/or any other Released Person and Class Counsel as a result of the violation.⁵⁰

12 13 CONCLUSION

14 The court (1) preliminarily approves the settlement and authorizes notices as set forth in this
 15 order, (2) approves the notice plan, (3) provisionally appoints the class representative and class
 16 counsel, (4) appoints Angeion Group as the Settlement Administrator, (5) orders the procedures in
 17 this order, and (6) orders the parties and the Settlement Administrator to carry out their obligations
 18 pursuant to the Settlement Agreement. The final fairness hearing is on August 4, 2022, at 9:30
 19 a.m. The court will separately sign the parties' updated proposed order with the case schedule.

20 This disposes of ECF No. 147.

21 **IT IS SO ORDERED.**

22 Dated: February 17, 2022

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24 LAUREL BEELER
 25 United States Magistrate Judge

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28 ⁵⁰ Proposed Order, Ex. 5 to Settlement Agreement – ECF No. 147-2 at 49 (¶ 19).