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12 BARBARA WALDRUP, ELIZABETH
13 WILLIAMS, BECKIE REASTER,
14 REBECCA MURPHY individually, and
15 on behalf of those similarly situated

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

BARBARA WALDRUP, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL
CORPORATION, a Delaware
corporation, et al.,

Defendants.

Case Number: 2:13-cv-08833-
CAS(AGR_x) CLASS ACTION

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND DIRECTION OF
NOTICE UNDER FED. R. CIV. P.
23(E)**

District Court Judge: Christina A. Snyder
Magistrate Judge: Alicia G. Rosenberg

Date: March 30, 2020
Time: 10:00 a.m.
Location: Dept. 8D

1 ELIZABETH WILLIAMS, BECKIE
2 REASTER, REBECCA MURPHY,
3 individually, and on behalf of all others
4 similarly situated,

5 Plaintiffs,

6 vs.

7 COUNTRYWIDE FINANCIAL
8 CORPORATION, a Delaware
9 corporation, et al.

10 Defendants.

Action Filed: November 27, 2013

Trial Date: January 14, 2020

Consolidated with

Case Number: 2:16-cv-4166 CAS(AGR_x)

11 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
12 RECORD:**

13 **PLEASE TAKE NOTICE** that on March 30, 2020, at 10:00 a.m., in Department
14 8D of the above-captioned Court, located at 350 W. First Street, Courtroom 8D, 8th
15 Floor, Los Angeles, CA 90012, the Honorable Christina A. Snyder presiding, Plaintiffs
16 Barbara Waldrup, Beckie Reaster, and Rebecca Murphy (“Plaintiffs” and the
17 “Settlement Class Representatives”)¹ on behalf of themselves all others similarly
18 situated, will, and hereby do, move this Court to:

- 19 1. Preliminarily approve the settlement described in the Settlement Agreement,
20 attached as Exhibit 1 to the Declaration of Roland Tellis;
- 21 2. Conditionally certify the Settlement Class;
- 22 3. Appoint Plaintiffs as Settlement Class Representatives;
- 23 4. Appoint the undersigned counsel as Settlement Class Counsel;
- 24 5. Approve distribution of the proposed Notice of Class Action Settlement to
25 the Settlement Class;
- 26 6. Appoint EPIQ Systems as the Settlement Administrator; and

27 ¹ Class Counsel have concurrently filed a motion to remove Plaintiff Elizabeth Williams as a named
28 plaintiff and class representative.

1 7. Set a hearing date and briefing schedule for Final Settlement Approval and
2 Plaintiffs' motion for fees and expenses.

3 This Motion is based upon: (1) this Notice of Motion and Motion for Preliminary
4 Approval of Class Action Settlement and Class Notice; (2) the Memorandum of Points
5 and Authorities in Support of Motion for Preliminary Approval of Class Action
6 Settlement and Class Notice; (3) the Declaration of Roland Tellis; (4) the Declaration of
7 Professor Eric D. Green; (5) the Declaration of Cameron R. Azari, Esq.; (6) the
8 Settlement Agreement; (7) the records, pleadings, and papers filed in this action; and (8)
9 such other documentary and oral evidence or argument as may be presented to the Court
10 at or prior to the hearing of this Motion.

11 A form of proposed Preliminary Approval is attached the Settlement Agreement as
12 Exhibit A and has been separately lodged with the Court in accordance with the Local
13 Rules. This motion is made following the conference of counsel pursuant to L.R. 7-3
14 which took place over several weeks commencing on January 29, 2020.

15
16 Dated: February 19, 2020

BARON & BUDD, P.C.

17 By: /s/ Roland Tellis

18 Roland Tellis

19 Daniel Alberstone

Roland Tellis

20 Evan Zucker

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REBECCA MURPHY individually, and on
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1 **I. INTRODUCTION**

2 After almost seven years of hard fought litigation, and on the eve of a hearing on
3 Defendants’ summary judgment and decertification motions and approximately 45-days
4 from the scheduled trial date, Plaintiffs and Defendants Countrywide Home Loans, Inc.,
5 Countrywide Financial Corporation, Bank of America, N.A., Bank of America
6 Corporation, LandSafe, Inc., and LandSafe Appraisal Services, Inc. (collectively,
7 “Defendants”) have reached a proposed class action settlement (the “Settlement”) to
8 resolve allegations that, from January 1, 2003 and through December 31, 2008,
9 Defendants charged class members fees for home appraisals that failed to comply with the
10 Uniform Standards of Professional Appraisal Practice (“USPAP”).

11 Defendants have agreed to a **\$250 million common fund settlement** (plus an
12 additional \$2.5 million for settlement administration costs) from which funds will be used
13 to send settlement checks to Plaintiffs and the Settlement Class *without* the need for claim
14 forms or documentary “proof.” This Settlement is the result of contentious, prolonged,
15 arm’s length negotiations during three in-person mediation sessions, between February
16 2019 and November 2019, with the Court-appointed mediator, Professor Eric D. Green, as
17 well as numerous other telephonic and written discussions between the parties. The
18 Settlement confers substantial relief for Class members who will automatically receive a
19 refund check for a percentage of the appraisal fees they paid, without having to complete
20 a cumbersome claim form, answer any questions or provide any documentation.

21 A qualified settlement administrator, EPIQ Systems (“EPIQ”), has designed a direct
22 mail and publication notice campaign that builds on the class contact information EPIQ
23 obtained after this Court’s grant of class certification. EPIQ provided notice of the
24 Court’s class certification order to the Class and is therefore familiar with the case and the
25 scope and breadth of the Class. Additionally, the settlement administrator will update the
26 Class notice website to provide information concerning the Settlement and the rights of
27 the Settlement Class. The proposed notice program far exceeds all applicable
28 requirements of law, including Rule 23 and Constitutional Due Process, to apprise

1 Settlement Class members of the pendency of this action, the terms of the Settlement, and
2 their rights to opt out of, or object to, the Settlement.

3 As described in detail below, the Settlement provides direct and significant benefits
4 to the Settlement Class, while avoiding the risks and delay associated with further
5 litigation (including resolution of Defendants' summary judgment and decertification
6 motions, trial and appeal). Accordingly, Plaintiffs request that the Court grant this motion
7 for preliminary approval, approve the form and manner of notice to the Settlement Class,
8 and set the Final Approval Hearing.

9 **II. BACKGROUND**

10 **A. Summary of Plaintiffs' Allegations**

11 During the class period (2003-2008), Countrywide was the largest home mortgage
12 lender in the United States. Plaintiffs' Third Amended Complaint, Dkt. 46, ("TAC") ¶1.
13 at ¶2. Appraisals are an integral part of real estate lending transactions. *Id.* at ¶4. The
14 appraisal process protects the financial and public policy interest in real estate transactions
15 by providing an independent estimate of value prior to the funding of a loan. Plaintiffs
16 allege Defendants failed to provide required independent appraisals in accordance with
17 the ethical and independence rules set forth in USPAP, in order to ensure the closing of
18 loans on a mass scale. *Id.* at ¶¶9, 47

19 On May 13, 2009, a former LandSafe manager named Kyle Lagow filed a sealed
20 complaint against Countrywide, LandSafe, Bank of America, and others for damages and
21 civil penalties under the False Claims Act. *Id.* at 49. In May 2012, Mr. Lagow's complaint
22 was unsealed and his *qui tam* action (1:09-cv-02040-RJD-JMA) regarding LandSafe's
23 appraisal procedures has now been settled, but without providing any relief to borrowers.
24 Shortly after Mr. Lagow's complaint was unsealed, this litigation commenced to obtain
25 relief for borrowers.

1 **B. History of this Litigation**

2 **i. Commencement of this Action and Motion Practice**

3 On November 27, 2013, Plaintiff Barbara Waldrup filed a putative class action
4 complaint against various Countrywide, LandSafe and Bank of America entities in the
5 Central District of California. (Dkt. 1.) On January 24, 2014, Defendants filed a Motion to
6 Dismiss the Complaint. (Dkt. 14.) After full briefing and a hearing the court granted in
7 part and denied in part Defendants' motion and gave Plaintiff leave to amend to address
8 the Court's order. (Dkt. 22.) On May 5, 2014, Plaintiff Waldrup filed her First Amended
9 Complaint (Dkt. 23) and on May 22, 2014 and May 30, 2014 respectively, Defendants
10 filed a Motion to Dismiss that complaint along with a supplement to their motion to
11 dismiss. (Dkts. 24, 28.) Plaintiff opposed this motion on June 2, 2014 (Dkt. 29) and after
12 a hearing on the motion, the court dismissed Plaintiff's First Amended Complaint without
13 prejudice. (Dkt. 36.)

14 Plaintiff filed her Second Amended Complaint on August 18, 2014. (Dkt. 37) and
15 Defendants filed a motion to dismiss that complaint on September 3, 2014. (Dkt. 39.)
16 After full briefing and a hearing, the Court granted in part and denied in part Defendants'
17 motion. (Dkt. 45.)

18 Plaintiff filed a Third Amended Complaint on October 27, 2014 (dkt. 46) which
19 was again challenged by a motion to dismiss (Dkt. 47) but that motion, after full briefing
20 and a hearing was denied in its entirety. (Dkt. 52.) The Defendants answered Plaintiff's
21 Third Amended Complaint on January 20, 2015. (Dkt. 53.)

22 Thereafter, the parties entered into a stipulated protective order and engaged in
23 extensive discovery in preparation for class certification and trial. Discovery was
24 extensive. In addition to the normal procedure of document production pursuant to
25 categorical requests, the parties engaged in a detailed, negotiated ESI discovery protocol
26 which resulted in the production of more than 615,000 pages of documents, comprised of,
27 among other things, email correspondence, company procedures, corporate documentation
28 and class member information. Due to disputed document production, in addition to

1 Magistrate Judge Rosenberg, the parties engaged the services of the now-retired
2 Magistrate Judge Carla Worele as a discovery master to review and determine privilege
3 issues for thousands of documents.

4 Class Counsel deposed 26 witnesses who were either employees/contractors or ex-
5 employees of Defendants, including five 30(b)(6) depositions, as well as six expert
6 witnesses put forth by Defendants. (Tellis Decl. at ¶ __.) On November 14, 2016 this
7 Court granted Plaintiff's request to consolidate the pending *Waldrup* matter with the then
8 recently filed *Williams* matter. (Case No. 2:16-cv-4166-CAS-AGR.)

9 Subsequent to consolidation, Class Counsel defended depositions for each of the
10 four named class representatives, as well as their spouses. Also, Class Counsel defended
11 absent class member depositions spread around the country. (*Id.*)

12 On August 28, 2017, Plaintiffs filed their motion for class certification, seeking
13 certification of a nationwide class pursuant to their RICO causes of action as well as a
14 Texas subclass for similar claims under Ms. Waldrup's unjust enrichment claim. (Dkt.
15 171.) On October 2, 2017, Defendants filed their opposition to class certification along
16 with supporting motions to strike Plaintiffs' experts (dkt. 182-189, 192-197) and on
17 November 13, 2017, Plaintiffs filed their replies and responses. (Dkt. 208.)

18 On December 4, 2017 the Court heard argument on Plaintiffs' motion for class
19 certification and February 6, 2018 the Court granted the motion. (Dkt. 248.) Defendants
20 then petitioned the Ninth Circuit for an interlocutory appeal of the Court's order granting
21 class certification under Rule 23(f). On March 26, 2018 this Court granted a stay pending
22 the Ninth Circuit's decision on the Rule 23(f) petition. (Dkt. 275.) On May 22, 2018 the
23 Ninth Circuit denied Defendants' petition. (See appellate case number 18-80024, Dkt. 6.)

24 On February 2, 2019, the Court set this case for trial to begin on January 14, 2020.
25 (Dkt. 338.) Pursuant to the schedule set by the Court, fact discovery closed on July 1,
26 2019 and after the parties designated and deposed experts, expert discovery closed on
27 August 16, 2019. On September 13, 2019, the dispositive motion deadline, Defendants
28 filed a motion for summary judgment, a motion for decertification and a motion to amend

1 their answer. (Dkts. 431-435.) On October 14, 2019 Plaintiffs' opposed summary
2 judgment, class decertification and leave to file an amended answer. (Dkts. 440-444.) On
3 October 28, 2019, Defendants filed replies in support of the motions. (Dkts. 445-449.)

4 On November 4, 2019, after a third in-person mediation session with Professor Eric
5 Green, the parties reached an agreement to settle the claims and filed a notice of
6 settlement. (Dkt. 453.) Pursuant to an executed settlement agreement between the parties,
7 Plaintiffs, by this motion, seek preliminary approval of the settlement and leave to provide
8 notice to the class.

9 **III. TERMS OF THE SETTLEMENT**

10 **A. The Settlement Class Definition**

11 The Settlement Class includes all residents of the United States of America who,
12 during the period January 1, 2003 through December 31, 2008, made a mortgage loan
13 application to Countrywide in connection with which LSA obtained an appraisal
14 excepting those persons who successfully opted out of the class previously. This
15 definition is intended to encompass all persons who made any inquiry, expressed an
16 interest in, or applied for credit, including but not limited to applications within the
17 meaning of the Equal Credit Opportunity Act, so long as LSA obtained an appraisal in
18 connection with it. This definition is also intended to and does, to the best of the Parties'
19 understanding, embrace the exact same persons who were originally (a) defined as part of
20 the class when the nationwide class and Texas subclass were certified, and (b) identified
21 on the earlier master class member list.

22 **B. The Settlement Terms**

23 Under the Settlement, Defendants have agreed to pay \$250 million to resolve the
24 claims, and to pay an additional \$2.5 million for settlement administration costs. The
25 appraisal fees charged to borrowers at issue are identifiable from Defendants' records.
26 Using those records, the Settlement compensates all Settlement Class members who paid
27 for an appraisal performed during the class period.

28 The major Settlement terms are as follows:

- a. Settlement Class members will receive direct, first class postcard notice of the Settlement using Defendants' records of their last known contact information as well as confirmed contact information verified by the settlement administrator as a result of the original class notice process;
- b. Settlement Class members will also receive notice via publication notice methods (newspaper and internet banner ads) and be provided an opportunity to opt-out or object to the Proposed Settlement;
- c. Settlement checks will be automatically mailed to each Settlement Class member who does not opt-out of the Proposed Settlement without the need to submit a claim form;
- d. Settlement Class members will receive checks in an amount estimated to represent at least 22% of the appraisal fee assessed in connection the Class member's loan or application;
- e. The Settlement Administrator will engage in outreach to contact Settlement Class members and remind them to cash their checks;
- f. In addition to the amounts paid to the Settlement Class, Defendants shall pay all costs of providing notice to the Settlement Class and administration of the settlement up to an amount of \$2,500,000.00;
- g. Each Settlement Class Representative will petition the Court to receive service award payments in a sum not to exceed \$15,000; and
- h. Defendants will pay Class Counsel for attorneys' fees and costs approved by the Court in an amount, consistent with Ninth Circuit precedent, not to exceed 25% of the settlement amount.

(Tellis Decl., Ex. 1.)

In exchange for these significant benefits, all Settlement Class members who do not opt-out of the Settlement Class will be subject to a release of their claims against Defendants related to appraisal fees paid in connection with appraisals performed by

1 Defendants during the class period. (*Id.*)

2 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

3 **A. The Class Action Settlement Process**

4 Under Rule 23(e) of the Federal Rules of Civil Procedure, class actions “may be
5 settled, voluntarily dismissed, or compromised only with the court’s approval.” As a
6 matter of “express public policy,” federal courts favor and encourage settlements,
7 particularly in class actions, where the costs, delays, and risks of continued litigation
8 might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class*
9 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong
10 judicial policy that favors settlements, particularly where complex class action litigation is
11 concerned”); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (same); *see*
12 *also* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“*Newberg*”) §13:1
13 (5th ed.) (noting that there is a “strong judicial policy in favor of class action settlement”).

14 The *Manual for Complex Litigation (Fourth)* (2004) (the “*Manual*”) describes a
15 three-step procedure for approval of class action settlements: (1) preliminary approval of
16 the proposed settlement; (2) dissemination of the notice of the settlement to class
17 members, providing for, among other things, a period for potential objectors and
18 dissenters to raise challenges to the settlement’s reasonableness; and (3) a formal fairness
19 and final settlement approval hearing. *Id.* at §21.63. The *Manual* characterizes the
20 preliminary approval stage as an “initial evaluation” of the fairness of the proposed
21 settlement made by the court on the basis of written submissions and informal
22 presentations from the settlement parties. *Id.* at § 21.632.

23 Here, Plaintiffs request the Court grant preliminary approval of the Settlement and
24 authorize the dissemination of notice of the Settlement to the Settlement Class.

25 **B. The Standard for Preliminary Approval**

26 As the Ninth Circuit has explained, the “settlement or fairness hearing is not to be
27 turned into a trial or rehearsal for trial on the merits.” *Officers for Justice v. Civil Service*
28 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Moreover, a district court should not “reach

1 any ultimate conclusions on the contested issues of fact and law which underlie the merits
2 of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of
3 wasteful and expensive litigation that induce consensual settlements.” *Id.* Rather,
4 “a district court’s only role in reviewing the substance of [a] settlement is to ensure that it
5 is ‘fair, adequate, and free from collusion.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819
6 (9th Cir. 2012), *cert. denied*, 134 S.Ct. 8 (2013) (quoting *Hanlon v. Chrysler Corp.*, 150
7 F.3d 1011, 1027 (9th Cir. 1998).)

8 A recent revision to Rule 23(e)(2) includes a list of factors to consider in
9 determining whether a class settlement should be approved. The new formulation of this
10 rule identified the following factors to be used in determining whether a settlement is fair,
11 reasonable, and adequate:

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

27 The factors identified in Rule 23(e)(2) are not intended “to displace any factor
28 [previously utilized by district courts], but rather to focus the court and the lawyers on the

1 core concerns of procedure and substance that should guide the decision whether to
2 approve the proposal.” Fed. R. Civ. Pro. 23, 2018 Amendment Notes to Section (e)(2).

3 Similar to the newly codified factors, the Ninth Circuit has identified the following
4 factors to be used in determining whether a settlement is fair, reasonable, and adequate to
5 all concerned:

6 the strength of the plaintiffs’ case; the risk, expense, complexity, and
7 likely duration of further litigation; the risk of maintaining class
8 action status throughout the trial; the amount offered in settlement;
9 the extent of discovery completed and the stage of the proceedings;
10 the experience and views of counsel; the presence of a governmental
settlement.

11 *Hanlon*, 150 F.3d at 1026. “The relative degree of importance to be attached to any
12 particular factor will depend upon and be dictated by the nature of the claim(s) advanced,
13 the type(s) of relief sought, and the unique facts and circumstances presented by each
14 individual case.” *Officers for Justice*, 688 F.2d at 625; see also *Nat’l Rural*
15 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004)
16 (“Under certain circumstances, one factor alone may prove determinative in finding
17 sufficient grounds for court approval.”)

18 “If the proposed settlement ‘appears to be the product of serious, informed, non-
19 collusive negotiations, has no obvious deficiencies, does not improperly grant preferential
20 treatment to class representatives or segments of the class, and falls within the range of
21 possible approval,’ the court should grant preliminary approval of the class and direct
22 notice of the proposed settlement to the class.” *Kenneth Glover, et al. v. City of Laguna*
23 *Beach, et al.*, 2018 WL 6131601, at *2 (C.D. Cal. 2018) (quoting *In re Tableware*
24 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (citation omitted); see
25 also *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013)
26 (applying at preliminary approval a “presumption” of fairness to settlement that was “the
27 product of non-collusive, arms’ length negotiations conducted by capable and experienced
28 counsel.”)

1 **V. THIS SETTLEMENT MERITS PRELIMINARY APPROVAL UNDER THE**
2 **RULE 23(E)(2) FACTORS**

3 The relevant factors set forth by the Ninth Circuit and recently revised Rule
4 23(e)(2)(A)-(D) for evaluating the fairness of a settlement weigh in favor of preliminary
5 approval, and there can be no doubt that the Settlement was accomplished in a
6 procedurally fair manner. For these reasons, the Settlement merits an initial presumption
7 of fairness, and thus preliminary approval should be granted. *Nat'l Rural*
8 *Telecommunications Coop.*, 221 F.R.D. at 527 (stating that if the “settlement follow[s]
9 sufficient discovery and genuine arms-length negotiation,” it should be “presumed
10 fair.”)

11 **A. Class Representatives and Class Counsel Have and Will Continue to**
12 **Zealously Represent the Class**

13 The Settlement Class Representatives and Class Counsel have prosecuted this
14 action on behalf of the Class with vigor and dedication for nearly seven years. *See Fed. R.*
15 *Civ. P. 23(e)(2)(A)*. For a court to approve a proposed settlement, “[t]he parties must . . .
16 have engaged in sufficient investigation of the facts to enable the court to intelligently
17 make an appraisal of the settlement.” *Byrne v. Santa Barbara Hospitality Services, Inc.*,
18 2017 WL 5035366, at *8 (C.D. Cal. 2017) (citation omitted). Here, Class Counsel
19 deposed 26 witnesses who were either employees/contractors or ex-employees of
20 Defendants, including five 30(b)(6) depositions, as well as six expert witnesses put forth
21 by Defendants. (Tellis Decl. at ¶ 6.) Class Counsel also defended each of the four named
22 class representatives, as well as their spouses in contentious depositions. Also, Class
23 Counsel defended absent class member depositions spread around the country. (*Id.* at ¶ 7)
24 Class Counsel also propounded more than 25 sets of document requests, more than 15 sets
25 of interrogatories and engaged in substantive review of over 615,000 pages of documents
26 produced by Defendants on behalf of 3 primary entities. (*Id.* ¶ 8-9.) Class Counsel
27 responded to in excess of 35 sets of Interrogatories as well as document requests and
28 requests for admission propounded by Defendants. (*Id.* ¶ 9.), including 20 sets served in

1 the final month before the discovery cutoff. (*Id.*) Class Counsel’s analysis of the vast
2 volume of discovery material, publically available data and deposition testimony
3 indisputably establishes they have gathered sufficient information to enter into a reasoned
4 and well-informed settlement. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459
5 (holding “significant investigation, discovery and research” supported “district court’s
6 conclusion that the Plaintiffs had sufficient information to make an informed decision
7 about the Settlement”).

8 The Settlement Class Representatives were likewise actively engaged. They
9 produced numerous documents, sat for a lengthy depositions, assisted Class Counsel
10 with fact development, answered several dozen sets of discovery requests, and regularly
11 communicated with counsel to remain up to date on the litigation. (Tellis Decl., ¶ 10.)
12 Each of the Settlement Class Representatives were also approved by this Court as Class
13 Representatives upon certification of the contested class. (Dkt. 248 at p. 40-41.) Finally,
14 each of them will continue to protect the interests of the Class until the Settlement is
15 approved and its administration completed. (*Id.* at ¶ 15.)

16 As such, both Class Counsel and the Settlement Class Representatives have
17 adequately represented the interests of the Class in prosecuting this litigation and
18 negotiating this Proposed Settlement.

19 **B. The Settlement Is the Product of Good Faith, Informed, and Arm’s-
20 Length Negotiations, and It Is Fair**

21 The proposed Settlement Agreement arises out of serious, informed, and non-
22 collusive negotiations facilitated by a neutral, Court-appointed mediator Professor Eric
23 Green. *See Fed. R. Civ. P. 23(e)(2)(B)*. Class Counsel vigorously prosecuted this action
24 for many years before reaching the Class Settlement. Negotiations were difficult,
25 protracted, and often spirited. The parties’ negotiations were aided by Professor Eric
26 Green, an unbiased, experienced mediator, selected by the parties through a selection
27 process overseen by the Court. Professor Green played a crucial role in supervising the
28 negotiations and helping the parties bridge their differences and evaluate the strengths

1 and weaknesses of their respective positions. (*See* Declaration of Professor Eric Green.)

2 The Parties participated in three separate in-person mediations held in Boston.
3 (Tellis Decl. at ¶3.) On November 4, 2019, the Parties reached agreement on material
4 terms for a settlement and executed an MOU. Subsequently, the parties spent weeks
5 finalizing the release and settlement agreement as well as the related exhibits. The
6 adversarial nature of the litigation and the aid provided by Professor Green are factors
7 that weigh in favor of preliminary approval. *See Rosales*, 2015 WL 4460918, at *16
8 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)
9 (“Notably, the Ninth Circuit has determined the ‘presence of a neutral mediator [is] a
10 factor weighing in favor of a finding of non-collusiveness.’”). Therefore, the proposed
11 Settlement is the product of arm’s length negotiations by Class Counsel.

12 **C. The Settlement Provides Significant Benefits in Exchange for the**
13 **Compromise of Strong Claims**

14 The Settlement provides substantial Class relief, considering (i) the costs, risks,
15 and delay of trial and appeal; (ii) the effectiveness of the proposed distribution plan; and
16 (iii) the fair terms of the proposed award of attorney’s fees. *See* Fed. R. Civ. P.
17 23(e)(2)(C). The Settlement compensates Settlement Class members who obtained
18 appraisals from LandSafe in connection with a loan originated by Countrywide from
19 January 1, 2003 through December 31, 2008. There can be little doubt that resolving the
20 Settlement Class members’ claims through a single class action is superior to potentially
21 millions of individual lawsuits. “From either a judicial or litigant viewpoint, there is no
22 advantage in individual members controlling the prosecution of separate actions. There
23 would be less litigation or settlement leverage, significantly reduced resources and no
24 greater prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Indeed, the terms of the
25 Settlement demonstrate the advantages of a collective bargaining resolution process.

26 **i. The Settlement Mitigates the Risks, Expenses, and Delays the**
27 **Class Would Bear with Continued Litigation**

28 The Settlement secures significant benefits, even in the face of the inherent
uncertainties of litigation. Compromise in exchange for certain and timely provision of the

1 benefits under the Settlement is an unquestionably reasonable outcome. *See Nobles v.*
2 *MBNA Corp.*, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) (“The risks and
3 certainty of recovery in continued litigation are factors for the Court to balance in
4 determining whether the Settlement is fair.”) (citing *Kim v. Space Pencil, Inc.*, No. C 11-
5 03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) (“The substantial and
6 immediate relief provided to the Class under the Settlement weighs heavily in favor of its
7 approval compared to the inherent risk of continued litigation, trial, and appeal, as well as
8 the financial wherewithal of the defendant.”)). While Class Counsel believes in the
9 strength of this case, they recognize that there are uncertainties in litigation, trial and
10 appeal, making compromise of claims in exchange for certain and timely provision to the
11 Settlement Class of the significant benefits described herein an unquestionably reasonable
12 outcome. *See Nat’l Rural Telecommunications Coop.*, 221 F.R.D. at 526 (“In most
13 situations, unless the settlement is clearly inadequate, its acceptance and approval are
14 preferable to lengthy and expensive litigation with uncertain results.”) (citation omitted).

15 The settlement is a product of Parties’ assessment of the merits of Plaintiffs’ case,
16 the merits of Defendants’ defenses, the risks and uncertainty associated with continued
17 litigation, and the possibility that Defendants might be successful either in their motion
18 for Class Decertification, (Dkt. 434) or their Motion for Summary Judgment. (Dkt. 435.)
19 For example, a prior case filed against the same Defendants for other conduct related to
20 their loan practices was denied class certification. *See In re Countrywide Fin. Corp.*
21 *Mortg. Mktg. & Sales Practices Litig.*, 2011 WL 6325877 (S.D. Cal. Dec. 16, 2011).
22 Additionally, even if the Defendants’ motions were denied, Plaintiffs still faced
23 vigorously contested issues at trial and on any potential appeal. As another example, in a
24 *qui tam* action against the same Defendants for other conduct related to their loan
25 practices, the Second Circuit Court of Appeals reversed a jury verdict in favor of the
26 plaintiff on grounds that there was insufficient evidence to support a claim of mail and
27 wire fraud. *U.S. ex rel. O’Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650 (2d
28 Cir. 2016). As such, the Class claims faced significant risk if continued.

1 Class Counsel, all experienced class action litigators, support the Settlement, and it
2 is highly uncertain whether the Settlement Class would be able to obtain a better outcome
3 through continued litigation and a trial. Given Class Counsel’s “experience and familiarity
4 with the facts, their recommendation that the settlement be approved is entitled to
5 significant weight.” *Rosales v. El Rancho Farms*, 2015 WL 4460918, at *15 (E.D. Cal.
6 July 21, 2015) (citing *Nat’l Rural Telecommunications Coop.*, 221 F.R.D. at 528 (“‘Great
7 weight’ is accorded to the recommendation of counsel, who are most closely acquainted
8 with the facts of the underlying litigation. This is because ‘[p]arties represented by
9 competent counsel are better positioned than the courts to produce a settlement that fairly
10 reflects each party’s expected outcome in the litigation.’”) (internal references omitted);
11 *see also Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013)
12 (“In considering the adequacy of the terms of the settlement, the trial court is entitled to,
13 and should, rely upon the judgment of experienced counsel for the parties.”)

14 Indeed, should Class Counsel prosecute these claims against Defendants to
15 conclusion, any potential recovery could come years in the future and at far greater
16 expense. There is also a risk that the Settlement Class would receive less or nothing at all
17 at trial. That “risk of continued litigation balanced against the certainty and immediacy of
18 recovery from the Settlement” strongly favors preliminary approval. *In re Omnivision*
19 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1041 (N.D. Cal. 2008) (citing *In re Mego Fin.*
20 *Corp. Sec. Litig.*, 213 F.3d at 458).

21 **ii. The Settlement Allows Class Members to Obtain Relief Easily and**
22 **Does Not Require the Submission of Any Claims or Other Proof**

23 The distribution method agreed upon for this Settlement provides significant
24 benefits for the Class members as there will be no need to fill out claims forms or submit
25 any information. Settlement checks will be automatically mailed to each Settlement Class
26 member who does not opt-out of the Proposed Settlement and for whom the EPIQ
27 identifies a valid mailing address. As discussed in further detail below, the Settlement
28 Administrator, EPIQ Systems (“EPIQ”), will utilize and update the data that Defendants’

1 have on the contact information for each of the Settlement Class members. (*See*
2 Declaration of Cameron R. Azari Esq. On Settlement Notices and Notice Plan) EPIQ will
3 also utilize any updates of contact information obtained during the notice of the contested
4 class to make every best attempt to reach settlement class members. In addition, on the
5 class notice website, class members will have the ability to update and/or correct their
6 mailing information. Once a Class member's contact information is verified, EPIQ will
7 directly mail the check to the Class member. EPIQ will also send follow up notices to
8 Class members reminding them and encouraging them to cash their checks. Finally, EPIQ
9 will directly mail to each Class member a check for a pro-rata share of any amount
10 remaining in the settlement fund after the initial settlement distribution. To the extent
11 there remain funds left over after a subsequent pro-rata payment, and the funds left do not
12 allow for an efficient administrative payment of subsequent settlement benefits, all
13 remaining amounts shall be distributed to a *cy pres* recipient designated as the Center for
14 Responsible Lending (or other *cy pres* recipient mutually-agreeable to the parties and
15 approved by the Court.) Such an automatic distribution system will allow Settlement
16 Class members to easily collect their recovery from the settlement without the delay or
17 uncertainty of the claims process.

18 **iii. Counsel Will Seek Reasonable Attorneys' Fees and Costs**

19 Defendants will pay Class Counsel for attorneys' fees and costs approved by the
20 Court in an amount, consistent with Ninth Circuit precedent, not to exceed 25% of the
21 Settlement recovery. Class Counsel negotiated the terms and amount of the Settlement
22 separately from the amount of attorneys' fees and costs. Waiting until after the Settlement
23 terms are nailed down before discussing fees is a practice routinely approved by courts as
24 in the Class' best interest. *See Volkswagen.*, 2016 WL 6248426, at *23. Class Counsel
25 will provide information on the amount of attorneys' fees and costs sought before the
26 preliminary approval hearing, in the class notice, and in a fee application, so that Class
27 Members will have the opportunity to comment on or object under Fed. R. Civ. P. 23(h)
28 prior to the final approval hearing.

1 **D. The Proposed Settlement Treats All Class Members Equitably Relative**
2 **to One Another**

3 The proposed Settlement fairly and equitably allocates benefits among Class
4 members without any unwarranted preferential treatment of class representatives or
5 segments of the Class. *See* Fed. R. Civ. P. 23(e)(2)(D). Each Class member will receive an
6 estimated 22% of the appraisal fee assessed in connection their Countrywide loan or
7 application. Class members were assessed different fees for each appraisal depending on
8 factors such as the size or features of the property being appraised. Therefore, it is most
9 equitable for Class members to recover an amount based on each of their individually
10 assessed appraisal fees. If any of the settlement amount remains after the expiration of the
11 period for Class Members to cash their settlement checks, then each Class member will
12 receive an additional check with a pro-rata share of the remaining balance.

13 Class Counsel also requests service awards for the Settlement Class Representatives
14 in the amount of \$15,000. Service awards “are fairly typical in class action cases” and
15 “are intended to compensate class representatives for work done on behalf of the class, to
16 make up for financial or reputational risk undertaken in bringing the action, and,
17 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*
18 *v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

19 A service award is appropriate here and does not constitute preferential treatment,
20 especially in light of the prolonged nature of this litigation. No Settlement Class
21 Representative was promised, nor conditioned their representation on the expectation of a
22 service award. (*See* Tellis Decl. ¶ 1.) The Settlement Class Representatives have spent
23 many hours over the years developing the case, conferring with counsel, answering
24 discovery requests, searching for and producing documents, and preparing and testifying
25 at their depositions. (*Id.* at ¶ 1.) Further, they have lent their names to this litigation for
26 many years. Plaintiff Waldrup has been involved in this litigation since its inception in
27 2013, and the remaining Plaintiffs have been involved since 2016. (*Id.* at ¶ 14.) Service
28 awards are particularly appropriate in this case considering the Settlement Class

1 Representatives continued service to the Class over the many years of hard fought
2 litigation.

3 Taken together, the Rule 23(e)(2) factors support preliminary approval. The
4 Settlement's substantial and extensive benefits and the procedurally fair manner in which
5 it was reached strongly favor preliminary approval.

6 **VI. CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES**
7 **BECAUSE THE SETTLEMENT CLASS MEETS THE REQUIREMENTS**
8 **OF RULE 23(A) AND (B)(3)**

9 Here, an analysis of the requirements of Fed. R. Civ. P. 23 show that certification of
10 the agreed-upon Settlement Class is appropriate for settlement purposes.²

11 **A. The Settlement Class Meets the Requirements of Rule 23(a)**

12 Before granting preliminary approval of the Settlement, the Court should determine
13 that the proposed settlement class meets the requirements of Rule 23 of the Federal Rules
14 of Civil Procedure. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for
15 Complex Litigation, § 21.632. An analysis of the requirements of Rule 23(a) and (b)(3),
16 commonly referred to as numerosity, commonality, typicality, adequacy of representation,
17 predominance, and superiority, shows that certification of this proposed Settlement Class
18 is appropriate. Indeed, through a contested process, the Court already determined that
19 class certification was proper under the circumstances of this case and with an identical
20 class definition for the class sought here for settlement purposes. (Dkt. 248.)

21 **i. The Settlement Class is Sufficiently Numerous**

22 Rule 23(a)(1) requires the class to be so large that joinder of all members is
23 impracticable. Numerosity is generally satisfied when the class exceeds forty members.
24 *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). Here, Defendants'
25 records indicate that there were approximately 2.4 million Class members for whom

26 _____
27 ² When “[c]onfronted with a request for settlement only class certification, a district court
28 need not inquire whether the case, if tried, would present intractable management
problems ... for the proposal is that there will be no trial.” *Amchem Prods.*, 521 U.S. at
620.

1 Countrywide originated a loan in connection with at least one property during the class
2 period. The large size of the Settlement Class and its geographic dispersal across the
3 United States also renders joinder impracticable. *See Palmer v. Stassinis*, 233 F.R.D. 546,
4 549 (N.D. Cal. 2006) (“Joinder of 1,000 or more co-plaintiffs is clearly impractical.”).
5 Therefore, as this Court previously found, numerosity is satisfied. (Dkt. 248 at p. 15-16.)

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

7 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on
8 demonstrating that members of the proposed class share common ‘questions of law or
9 fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014).
10 Commonality “does not turn on the number of common questions, but on their relevance
11 to the factual and legal issues at the core of the purported class’ claims.” *Jimenez v.*
12 *Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). Indeed, “[e]ven a single question
13 of law or fact common to the members of the class will satisfy the commonality
14 requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).

15 Courts routinely find commonality where the class claims arise from the
16 defendant’s uniform course of conduct. *See, e.g., Cohen v. Trump*, 303 F.R.D. 376, 382
17 (S.D. Cal. 2014) (“Here, Plaintiff argues his RICO claim raises common questions as to
18 ‘[Defendant’s] scheme and common course of conduct, which ensnared Plaintiff[] and the
19 other Class Members alike.’ The Court agrees.”); *Negrete v. Allianz Life Ins. Co. of N.*
20 *Am.*, 238 F.R.D. 482, 488 (C.D. Cal. 2006) (finding common core of factual and legal
21 issues in “the questions of whether Allianz entered into the alleged conspiracy and
22 whether its actions violated the RICO statute.”).

23 Here, Plaintiffs have argued, and the Court previously held, that the Settlement
24 Class claims are rooted in common questions of fact as to whether the class appraisals
25 complied with the Uniform Standards of Professional Appraisal Practice, and that
26 answering this question would generate common answers “apt to drive the resolution of
27 the litigation” for the Settlement Class as a whole. *See Dukes*, 564 U.S. at 350. Thus,
28 commonality is satisfied for purposes of the Settlement. (Dkt. 248 at p. 16.)

1 **iii. Plaintiffs’ Claims Are Typical of the Settlement Class Members’**
2 **Claims**

3 Rule 23(a)(3)’s typicality requirement counsels that “‘the claims or defenses of the
4 representative parties are typical of the claims or defenses of the class.’” *Parsons v. Ryan*,
5 754 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). “Like the
6 commonality requirement, the typicality requirement is ‘permissive’ and requires only
7 that the representative’s claims are ‘reasonably co-extensive with those of absent class
8 members; they need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105,
9 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020). Typicality “assure[s] that the
10 interest of the named representative aligns with the interests of the class.” *Wolin*, 617 F.3d
11 at 1175 (quoting *Hanlon*, 976 F.2d at 508). Thus, where a plaintiff suffered a similar
12 injury and other class members were injured by the same course of conduct, typicality is
13 satisfied. *See Parsons*, 754 F.3d at 685; *see also Evon v. Law Offices of Sidney Mickell*,
14 688 F.3d 1015, 1030 (9th Cir. 2012) (“The test of typicality is whether other members
15 have the same or similar injury, whether the action is based on conduct which is not
16 unique to the named plaintiffs, and whether other class members have been injured by the
17 same course of conduct.”).

18 Here, Plaintiffs have argued, and the Court previously held, that their claims and
19 injuries are typical of the claims of and injuries suffered by the Class because they were
20 charged, and paid for, an appraisal that did not comply with the Uniform Standards of
21 Professional Appraisal Practice. Similarly, Plaintiffs’ interest in obtaining a fair,
22 reasonable, and adequate settlement of the claims asserted are identical to the interests of
23 the Settlement Class members. Under the Settlement Agreement here, Plaintiffs and
24 Settlement Class members will be compensated based on an identical methodology.
25 Instead, compensation amounts are based exclusively on the appraisal fee amount charged
26 to each Settlement Class members. Accordingly, the typicality element is satisfied for
27 purposes of this Settlement. (Dkt. 248 at p. 17.)
28

1 **iv. Class Counsel and the Settlement Class Representatives Have**
2 **Protected, and Will Continue to Protect, the Interests of the**
3 **Settlement Class**

4 Rule 23(a)(4)'s adequacy requirement is met where, as here, "the representative
5 parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P.
6 23(a)(4). "This requirement is rooted in due-process concerns—'absent class members
7 must be afforded adequate representation before entry of a judgment which binds them.'" *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (quoting
8 *Hanlon*, 150 F.3d at 1020). Adequacy entails a two-prong inquiry: "'(1) do the named
9 plaintiffs and their counsel have any conflicts of interest with other class members and (2)
10 will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
11 class?'" *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at 1020). Both prongs are
12 satisfied here.

13 Plaintiffs, who all seek to be Settlement Class Representatives, have no interests
14 that conflict with the Settlement Class members and will continue to vigorously protect
15 class interests, as they have throughout this litigation. The Settlement Class
16 Representatives understand their duties as class representatives, have agreed to consider
17 the interests of absent Class members, and have actively participated in this litigation and
18 will continue to do so. (Tellis Decl. at ¶ 15); *See, e.g., Loritz v. Exide Technologies*, No.
19 2:13-CV-02607-SVW-E, 2015 WL 6790247, at *6 (C.D. Cal. Apr. 21, 2016) ("All that
20 is necessary is a 'rudimentary understanding of the present action and ... a demonstrated
21 willingness to assist counsel in the prosecution of the litigation.'"). They are more than
22 adequate Settlement Class Representatives.

23 This Court, in ruling on class certification, appointed Baron & Budd, P.C. and
24 Hagens Berman Sobol Shapiro LLP as Class Counsel. (Dkt. 248 at p. 41.) As this Court
25 has already found, Class Counsel are experienced class action attorneys who specialize in
26 complex litigation. Since the beginning of this lawsuit, Class Counsel have devoted
27 thousands of hours and substantial financial resources to identify, investigate, and
28 successfully litigate the claims of Plaintiffs and the Settlement Class. These efforts led to

1 a settlement that will provide significant financial benefits to the Settlement Class— \$250
2 million in class benefits and an additional \$2.5 million in settlement administration costs.
3 Class Counsel have vigorously prosecuted this action and will continue to do so through
4 final approval. As such, the Court should appoint Baron & Budd, P.C. and Hagens
5 Berman Sobol Shapiro LLP as Class Counsel under Rule 23(g) for purposes of settlement
6 as it did when ruling on contested class certification.³

7 **B. The Settlement Class Meets the Requirements of Rule 23(b)(3)**

8 Under Rule 23(b)(3), a class may be certified if a court finds that, “the questions of
9 law or fact common to class members predominate over any questions affecting only
10 individual members, and that a class action is superior to other available methods for
11 fairly and efficiently adjudicating the controversy.”

12 **i. Common Issues of Law and Fact Predominate**

13 “The predominance inquiry ‘asks whether the common, aggregation-enabling,
14 issues in the case are more prevalent or important than the non-common, aggregation-
15 defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045
16 (2016) (citation omitted). “When ‘one or more of the central issues in the action are
17 common to the class and can be said to predominate, the action may be considered proper
18 under Rule 23(b)(3) even though other important matters will have to be tried separately,
19 such as damages or some affirmative defenses peculiar to some individual class
20 members.’” *Id.* (citation omitted). “[W]hen common questions present a significant aspect
21 of the case and they can be resolved for all members of the class in a single adjudication,
22 there is clear justification for handling the dispute on a representative rather than on an
23 individual basis.” *Hanlon*, 150 F.3d at 1022.

24 The Ninth Circuit favors class treatment of fraud based claims stemming from a
25 “common course of conduct,” as Plaintiffs alleged here. *See, e.g., In re First Alliance*
26 *Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Even

27 _____
28 ³ Class Counsel firm resumes were attached as Exs. 20 and 21 to the Pifko Declaration in support of motion for class certification at Dkt. 171-3 for the Court’s reference.

1 outside of the settlement context, courts in the Ninth Circuit and elsewhere regularly
2 certify RICO based class claims. *See Friedman v. 24 Hour Fitness USA, Inc.*, No. CV 06-
3 6282 AHM (CTx), 2009 WL 2711956, at *8 (C.D. Cal. Aug. 25, 2009) (“Common issues
4 frequently predominate in RICO actions that allege injury as a result of a single fraudulent
5 scheme.”); *see also Klay v. Humana, Inc.*, 382 F.3d 1241, 1256-57 (11th Cir. 2004)
6 (affirming certification of RICO claim where “all of the defendants operate nationwide
7 and allegedly conspired to underpay doctors across the nation, so the numerous factual
8 issues relating to the conspiracy are common to all plaintiffs [and the] corporate policies
9 constitute[d] . . . the very heart of the plaintiffs’ RICO claims”). Here, Plaintiffs have
10 argued and this Court previously held that questions of law or fact common to Settlement
11 Class members predominate over any questions affecting only individual members, such
12 as whether Defendants’ companywide policies and practices resulted in systematic and
13 uniform violations of USPAP’s ethics and independence requirements. (Dkt. 248 at p. 23-
14 24.) Thus, the predominance element is satisfied for purposes of this Settlement.

15 **ii. Class Treatment Is Superior to Other Available Methods for the**
16 **Resolution of This Case.**

17 “The superiority inquiry under Rule 23(b)(3) requires determination of whether the
18 objectives of the particular class action procedure will be achieved in the particular case.”
19 *Hanlon*, 150 F.3d at 1023. As *Hanlon* noted, “[f]rom either a judicial or litigant
20 viewpoint, there is no advantage in individual members controlling the prosecution of
21 separate actions. There would be less litigation or settlement leverage, significantly
22 reduced resources and no greater prospect for recovery.” 150 F.3d at 1023. Indeed, the
23 terms of the Settlement demonstrate the advantages of a collective bargaining and
24 resolution process.

25 Additionally, although the benefits of the Settlement are significant, the amount in
26 controversy for an individual case is likely insufficient to incentivize individual class
27 members to bring individual actions. *See Wolin*, 617 F.3d at 1175 (“Where recovery on an
28 individual basis would be dwarfed by the cost of litigating on an individual basis, this

1 [superiority] factor weighs in favor of class certification.”); *Amchem*, 521 U.S. at 617
2 (“The policy at the very core of the class action mechanism is to overcome the problem
3 that small recoveries do not provide the incentive for any individual to bring a solo action
4 prosecuting his or her rights. A class action solves this problem by aggregating the
5 relatively paltry potential recoveries into something worth someone’s (usually an
6 attorney’s) labor.”).

7 Here, the efforts and funds required to marshal the type of evidence necessary to
8 establish liability against corporate defendants such as Countrywide, LandSafe, and Bank
9 of America would discourage Settlement Class members from pursuing individual
10 litigation. The superiority of proceeding through the class action mechanism is
11 demonstrated by the results of the Settlement, which, if approved, will provide the
12 Settlement Class with significant monetary recovery in connection with their claim.

13 The class action device provides the superior means to effectively and efficiently
14 resolve this controversy. As the other requirements of Rule 23 are satisfied, and as this
15 Court previously found, certification of the non-disputed Settlement Class proposed is
16 appropriate. (Dkt. 248 at p. 40.)

17 **VII. THE PROPOSED NOTICE PROGRAM IS ADEQUATE AND SHOULD BE**
18 **APPROVED**

19 Plaintiffs propose using EPIQ Systems (“EPIQ”) as the Settlement Administrator.
20 EPIQ is uniquely knowledgeable about the class and its membership and makeup because
21 it acted as the notice administrator when the Class was previously provided notice in this
22 case. This will result in efficiencies to ensure the Settlement Class members receive the
23 maximum benefit from the Settlement with as little administrative cost as possible under
24 the circumstances.

25 Under Rule 23(e)(1), before a proposed settlement may be approved, the Court
26 “must direct notice in a reasonable manner to all class members who would be bound by
27 the proposal.” The notice must be “reasonably calculated, under all the circumstances, to
28 apprise interested parties of the pendency of the action and afford them an opportunity to

1 object.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
2 “Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail
3 to alert those with adverse viewpoints to investigate and come forward and be heard.’”
4 *Churchill Vill., L.L.C., v. GE*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson*
5 *Sch. Dist. No. 1*, 623 F.3d 1338, 1352 (9th Cir. 1980)). Here, the proposed notice program,
6 which consists of, among other things, a dedicated website, a robust Long Form Notice, and
7 a Summary Notice, exceeds these standards.

8 As part of the proposed notice program, EPIQ will utilize the pre-established class
9 notice website (<http://waldrupwilliamsappraisallawsuit.com>) to provide Settlement Class
10 members with detailed information about the case and access to key documents, including
11 Settlement notices, the Settlement Agreement, the Complaint, and the Preliminary
12 Approval Order, as well as answers to frequently asked questions. (Azari Decl. at ¶¶ 7-
13 19.) This website address will be prominently displayed on all notice documents.

14 EPIQ will also disseminate notice to all Settlement Class members. The Long Form
15 Notice includes a thorough series of questions and answers designed to explain the
16 Settlement in clear terms and in a well-organized and reader-friendly format. Among
17 other things, it includes an overview of the litigation, an explanation of the benefits
18 available under the Settlement, and detailed instructions on how to comment on,
19 participate in, or opt out of, the settlement. The Summary or Short Form Notice, though
20 less comprehensive, also conveys the basic structure of the Settlement and is designed to
21 capture Settlement Class members’ attention with clear, concise, plain language. The
22 Summary Notice includes the address for the Settlement Website (where the Long Form
23 Notice is available) and it provides Settlement Class members with an overview of the
24 litigation. (*Id.*) Together, these notices cover all of the elements outlined in Rule
25 23(c)(2)(B).

26 Since Defendants have data on the Settlement Class members, Plaintiffs propose
27 that EPIQ send Summary Notices directly to Settlement Class members via United States
28 Postal Service (“USPS”) first class mail using Defendants’ data as supplemented by

1 information learned by EPIQ during their initial class notice campaign. (Azari Decl. ¶¶ 8-
2 11.) Prior to mailing the notices, EPIQ will check the addresses of all Settlement Class
3 members against the USPS National Change of Address (“NCOA”) database and its own
4 records. (*Id.*) Any addresses not confirmed by the NCOA database will be updated (pre-
5 mailing) through a third-party address search service. (*Id.*) In addition, the addresses will
6 be certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of
7 the zip code, and verified through Delivery Point Validation (“DPV”) to confirm their
8 accuracy. (*Id.*)

9 EPIQ will also process all returned and undeliverable mail. Mailings returned as
10 undeliverable will be promptly re-mailed to any new address available through postal
11 service information, for example, to the address provided by the postal service on returned
12 pieces for which the automatic forwarding order has expired, or to better addresses that
13 may be found using a third-party lookup service such as AllFind Address Locator, which
14 is maintained by LexisNexis. (*Id.*)

15 EPIQ also will establish and maintain a toll-free telephone number and a post office
16 box. Settlement Class members can call the toll-free telephone number, which will be
17 prominently displayed on notice documents, to obtain additional information about the
18 Settlement, listen to answers to FAQs and/or request Long Form and/or Summary
19 Notices, or Class Members may also speak to a live operators during normal business
20 hours. (*Id.* ¶¶ 17-19.) EPIQ’s post office box will also allow Settlement Class members to
21 contact EPIQ in writing if they so choose. (*Id.*)

22 Finally, because internet advertising has become a standard component in legal
23 notice programs, EPIQ will also run a comprehensive publication Notice campaign on
24 select websites that Settlement Class members may visit regularly, allowing users to
25 identify themselves as potential Settlement Class members and directly link them to the
26 Settlement website for more information. (*Id.* ¶¶ 13-16.)
27
28

1 Because the proposed method of disseminating class notice is the best practicable
2 method under the circumstances Plaintiffs respectfully request the Court approve the
3 proposed class notice program.

4 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING SCHEDULE**

5 In order to effectuate final approval, the parties respectfully request the Court set a
6 schedule for key dates including a date for a final approval hearing.

7 The parties propose the following schedule for Final Approval of the Settlement
8 and implementation of the Settlement Program:

Date	Event
Monday, March 2, 2020	Defendants to provide notice to appropriate state and federal officials in accordance with the Class Action Fairness Act.
Monday, March 30, 2020 at 10:00 a.m.	Preliminary Approval Hearing
Monday, April 13, 2020	Class Notice Disseminated
Monday, May 11, 2020	Motions for Final Approval and Attorneys' Fees and Expenses filed
Monday, June 15, 2020	Objection and Opt-Out Deadline
Monday, June 29, 2020	Reply Memoranda in Support of Final Approval & Fee and Expense Application filed
Monday, July 13, 2020 at 10:00 a.m.	Settlement Fairness Hearing

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24 **IX. CONCLUSION**

25 For the reasons discussed herein, Plaintiffs respectfully request that the Court: (1)
26 preliminarily approve the Settlement; (2) conditionally certify the Settlement Class; (3)
27 Appoint the Settlement Class Representatives; (4) appoint Baron & Budd, P.C. (Roland
28

1 Tellis, Daniel Alberstone, and Evan Zucker) and Hagens Berman Sobol Shapiro LLP
2 (Steve Berman, Christopher Pitoun) as Class Counsel under Rule 23(g) for purposes of
3 settlement; (5) approve distribution of the proposed Notice of Class Action Settlement to
4 the Settlement Class; (6) appoint EPIQ Systems as the Settlement Administrator; and (7)
5 set a hearing date and briefing schedule for Final Settlement Approval and Plaintiffs' fee
6 and expense application.

7
8 Dated: February 19, 2020

BARON & BUDD, P.C.

9
10 By: /s/ Roland Tellis

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