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 12 Individually and on Behalf of All Others Similarly Situated

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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

TAQUELIA WASHINGTON TOLAND
 and GEORGIA TOLAND, individually
 and on behalf of All Others Similarly
 Situated,

Plaintiffs,

vs.

NATIONSTAR MORTGAGE LLC, a
 Delaware limited liability company;
 VERIPRO SOLUTIONS INC., a Delaware
 corporation, and DOES 1 through 20,

Defendants.

Case No. 3:17-cv-02575-JD

CLASS ACTION

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

**Date: April 15, 2021
 Time: 10:00 a.m.
 Courtroom 11, 19th Floor
 Hon. James Donato**

Complaint Filed: March 24, 2017

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NOTICE OF MOTION

Please take notice that on April 15, 2021 at 10:00 a.m., or as soon thereafter as the matter can be heard, Plaintiffs will and do hereby move for an Order preliminarily approving a proposed class-wide settlement in this case as fair, reasonable, and adequate, order dissemination of notice pursuant the notice plan set forth in the Settlement Agreement, and set a schedule for final settlement approval.

The proposed Settlement Class is defined as follows:

All natural persons who obtained a second mortgage, or home equity line of credit, secured by a deed of trust on property located in California

- (a) to secure payment of the purchase price of a dwelling
- (b) for not more than four families and which
- (c) was occupied entirely or in part by the purchaser, and, after a foreclosure or short sale of the dwelling, any of the defendants
 - (1) sent the person a letter in the form of Exhibits “A” and/or “C” to the Complaint within the Class Period (“the Collection Letter Subclass”); and/or
 - (2) reported such person’s second mortgage loan or home equity line of credit to one or more of the credit reporting agencies Experian, Equifax, or TransUnion as having an outstanding balance owing and/or otherwise as currently delinquent within the Class Period (“the Credit Reporting Subclass”).

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

After nearly four years of litigation, one mediation, and two mandatory settlement conferences, the parties have a signed Settlement Agreement proposing a class-wide settlement to the Court. (Kemnitzer Decl., Exhibit A, “Settlement Agreement and Release” or “SAR”). The Settlement proposes to resolve this litigation by settling Plaintiffs’ claims to challenge the collection and credit reporting practices of the Defendants on purchase money second mortgages following foreclosures and short sales.

Plaintiffs respectfully submit that the Settlement is fair, adequate, and reasonable to the Settlement Class and respectfully request that the Court preliminarily approve the Settlement. In

1 Plaintiffs' view, the Settlement is an excellent result for Class Members. The highlights of the
2 settlement include:

- 3 • Individual mailed settlement notice to all Class Members (SAR ¶ 6.1)
- 4 • Payment of 100% of all amounts paid to Veripro by Collection Letter Subclass Members
5 in response to the collection letters at issue, without the need for a Claim Form (SAR ¶
6 4.1(a));
- 7 • Payment of \$150 in statutory damages for each member of the Collection Letter Subclass,
8 without the need for a Claim Form (SAR ¶ 4.1(b));
- 9 • A simple Claim Form to establish that the borrower is a member of the Credit Reporting
10 Subclass (SAR ¶ 7.3; Exh. "B(1)");
- 11 • Cessation of all collection attempts (SAR ¶ 4.2);
- 12 • Credit reporting correction for each Collection Letter Subclass member whose loans were
13 previously serviced by Nationstar and for each other Credit Reporting Subclass Member
14 who submits a valid Claim Form (SAR ¶ 4.3);
- 15 • Class-wide releases for Nationstar and Veripro (SAR ¶ 10.1); and
- 16 • Defendants shall pay Notice and Administration Costs up to \$25,000.00 SAR ¶ 4.4);
- 17 • Payment of Class Counsel's attorney's fees and expenses by Defendants in amounts
18 approved by the Court, subject to a maximum of \$390,000 separate and apart from Class
19 Members' recovery (SAR ¶ 4.6);
- 20 • Payment of incentive awards to the Plaintiffs in amounts to be approved by the Court,
21 subject to a maximum for each Plaintiff separate and apart from Class Members' recover
22 (SAR ¶ 4.5).

23 **II. STATEMENT OF THE CASE**

24 The legal substrate underlying all of Plaintiffs' claims—California Code of Civil
25 Procedure section 580b(a)(3)—reflects the Legislature's determination that residential mortgage
26 borrowers be exonerated from all personal liability on purchase money mortgages after a
27 foreclosure or short sale. The California Supreme Court has long held that a lender must look
28 solely to the property to recover the debt; it is barred from recovering any "deficiency balance"

1 that may remain. *Brown v. Jensen* (1953) 41 Cal. 2d 193, 197. Plaintiffs allege that Defendants
2 violated California fair debt collection and credit reporting statutes by attempting to collect
3 mortgage deficiencies barred by section 580b(a)(3) after foreclosure and short sales.

4 **A. Plaintiffs' Debt Collection and Credit Reporting Claims**

5 Plaintiffs allege state law unfair debt collection claims under California's Rosenthal Act,
6 Civil Code §§1788, *et seq.* and the Unfair Competition Law ("UCL"), Business & Professions
7 Code §§17200, *et seq.* These claims rest on common allegations that two form collection letters
8 defendant Veripro sent to Plaintiffs and the Class are "false, deceptive and misleading." (Dkt. No.
9 1 at p. 19 ("Complaint") at pp. 7-8 (¶¶ 29-31) & Exhs. "A," "B", "C").

10 Plaintiffs allege that Veripro, a debt collection subsidiary of Nationstar acting as
11 Nationstar's collection agent, violated the Rosenthal Act by sending the debt collection letters,
12 which indicated that borrowers remained liable to pay mortgage deficiency balances, even though
13 no amount was due from the borrower and the loan balance owed by the borrower was zero.
14 (Complaint at p. 7 (¶ 30(a)) (emphasis added).)

15 Plaintiffs also allege state law credit reporting claims under the California Credit
16 Reporting Agencies Act ("CCRAA"), Cal. Civil Code §§1785, *et seq.* These claims rest on
17 common allegations that Defendants' credit reporting of loans covered by California's purchase
18 money anti-deficiency statute is "inaccurate, incomplete, and misleading." (Complaint ¶¶ 34-38.)

19 Plaintiffs allege that Defendants violated California credit reporting laws by reporting
20 purchase money loans after foreclosure and short sales indicating that the borrower "remains
21 personally liable to pay the balance, has failed to pay a debt for which the borrower is personally
22 liable, and is currently delinquent." (Complaint at pp. 8-9 (¶ 35).)

23 Plaintiffs' UCL claims include "unlawful business practices" predicated on the Rosenthal
24 Act and the CCRAA violations (Complaint ¶ 41) and a claim under the "fraud" prong of the UCL
25 and the False Advertising Law, Business & Professions Code §§17500 *et seq.* (Complaint ¶ 45.)

26 **B. Procedural Background**

27 Plaintiffs filed their Complaint on March 23, 2017 in Alameda County Superior Court.
28 (Dkt. No. 1 at p. 14.) On May 4, 2017, Defendants removed the case to this Court pursuant to 28

1 U.S.C. § 1332(d) based upon the Class Action Fairness Act. (Dkt. No. 1.) Plaintiffs filed a
2 Motion for Remand on June 2, 2017. (Dkt. No. 12.) On July 13, 2018, The Court denied
3 Plaintiffs' Motion for Remand. (Dkt. No. 27.)

4 The parties then engaged in significant discovery that included Special Interrogatories and
5 Requests for Production of Documents. (Kemnitzer Decl., ¶¶28-29.) Plaintiffs' counsel took Fed.
6 R. Civ. P. 30(b)(6) depositions of both Defendants. Defense counsel took the depositions of both
7 Plaintiffs. The parties changed expert reports and rebuttal reports. Both sides took expert
8 depositions.

9 The parties participated in a full day mediation with Hon. George Hernandez (Ret.) of
10 ADR Services on October 25, 2019. The case did not settle. (Kemnitzer Decl., ¶37.)

11 Plaintiffs filed their Motion for Class Certification on January 14, 2020. (Dkt. No. 72.)
12 The original hearing was continued due to the COVID-19 pandemic and at the requests of the
13 parties. (Dkt. Nos. 79, 83, 89, 96.) Defendants later filed Motions for Summary Judgment and to
14 Exclude Testimony of Expert Evan Hendricks (Dkt. Nos. 94, 95.) All three motions were fully
15 briefed and set for hearing on August 13, 2020. (Dkt. Nos. 77, 104, 105, 83.)

16 The parties engaged in a Mandatory Settlement Conference with Hon. Donna Ryu on July
17 27, 2020. (Kemnitzer Decl., ¶38; Dkt. No. 106.) The case did not settle but the parties made
18 progress. The parties stipulated to continue the hearing on the Motion for Class Certification,
19 Motion for Summary Judgment, and Exclude Testimony of Expert Evan Hendricks in light of the
20 continuing settlement discussions. (Dkt. No. 107.) The Court then stayed the action and vacated
21 all hearing dates. (Dkt. No. 108.)

22 The parties then engaged in a second mandatory settlement conference with Judge Ryu on
23 August 25, 2020. (Kemnitzer Decl., ¶39; Dkt. 110.) The parties were able to reach an agreement
24 in principle. (Dkt. No. 111.) The parties negotiated the final settlement agreement and release
25 over the following months and fully executed the Settlement on January 8, 2021.

26 **III. TERMS OF THE PROPOSED SETTLEMENT**

27 The following summarizes the key elements of the SAR:

28 **Class Definition:** The class definition in the SAR remains identical to the class definition

1 in the Complaint. (SAR ¶ 1.6.) The SAR provides for two Subclasses, a Collection Letter
2 Subclass and a Credit Reporting Subclass, which correspond to subparts (1) and (2) of the Class
3 definition. (*Id.*)

4 **Identification of the Collection Letter Subclass:** Defendants will review each of the 677
5 loans that are potentially members of the Collection Letter Subclass and identify Collection Letter
6 Subclass Members by the process explained in SAR ¶ 2.1.

7 **Identification of the Credit Reporting Subclass Class:** Defendants will also identify the
8 universe of Credit Reporting Subclass members by the process explained in SAR ¶ 2.2.

9 **Class Notice:** The Settlement Administrator will send Class Notice by first class mail to
10 all Class Members. (SAR ¶ 6.3). The proposed Notice is attached as Exhibit 2 to the SAR. The
11 SAR lays out address update procedures for returned Class Notices. (*Id.*) The Settlement
12 Administrator shall maintain a settlement website and toll-free phone number for Class Members
13 to provide information about the Settlement. (SAR ¶¶ 1.31, 5.1, 6.4, 6.5.)

14 **Payments to the Collection Letter Subclass:** All Members of the Collection Letter
15 Subclass will receive a payment of \$150 without the need for any claim form. (SAR ¶ 4.1(b).)

16 **Claim Form for Credit Reporting Subclass:** All Members of the Credit Reporting
17 Subclass whose loans were previously serviced by Nationstar will be deemed Credit Reporting
18 Subclass Members who are not also members of the Collection Letter Subclass will be entitled to
19 the credit reporting relief without submitting a Claim Form. (SAR ¶ 2.2(c).) Other Members of
20 the Credit reporting Subclass will be entitled to credit reporting relief if they submit a simple,
21 one-page Claim Form. (SAR Article VII.) The proposed Claim Form is attached as Exhibit 1 to
22 the SAR. Based upon past experience, Class Counsel and JND expect the claim rate to be
23 between 8% and 16%. (Kemnitzer Decl. ¶44; Levy Decl., ¶13).

24 **Opt-Outs:** Class Members may opt out of the settlement; the Class Notice provides
25 instructions for doing so. (SAR ¶ 8.1 & Exh. 2.)

26 **Objections:** The Class Notice gives instructions on what a Class Member must do to
27 object, and the deadline in which to do so. (SAR ¶ 8.2 & Exh. 2.)

28 **Restitution of Payments Collected:** Defendants shall determine for each Collection

1 Letter Subclass Member whether and what amount was paid to Veripro after the Collection Letter
2 was sent. Defendants shall refund 100% of all amounts paid. (SAR ¶ 4.1(a).)

3 **Statutory Damages Payment Entitlement:** In addition to restitution payments,
4 Defendants shall pay each Collection Letter Subclass member \$150 in statutory damages. Each
5 co-borrower shall be entitled to a separate statutory payment. (SAR ¶ 4.1(b).)

6 **Credit Repair for Credit Reporting Subclass:** For all eligible Credit Reporting Subclass
7 Members whose Nationstar loan was last reported as a charge off, delinquent, and/or with an
8 outstanding current balance and/or current amount past due, Nationstar will request the Credit
9 Reporting Agencies to report such loans with a current outstanding loan balance and current
10 amount past due of zero dollars. (SAR ¶ 4.3.)

11 **Cessation of Collection Attempts:** Defendants shall take all efforts to cease all collection
12 attempts on the subject loans of all Class Members. (SAR ¶ 4.2.)

13 **CAFA Notice:** Defendants shall provide timely CAFA notice no later than ten days after
14 the instant Motion is filed with the Court. (SAR ¶ 3.4)

15 **Cy Pres:** Subject to the Court's approval, the residue of uncashed checks shall be
16 distributed to the non-profit National Housing Law Project.¹ (SAR ¶ 9.4.) There is no
17 reversion to Defendants.

18 **Class Counsel's Fees and Expenses:** Class Counsel have agreed to seek
19 attorneys' fees and costs in an amount set by the Court, but not to exceed \$390,000,
20 which reflects less than half of Class Counsel's actual lodestar. (SAR ¶ 4.6(a); Kemnitzer
21 Decl., ¶47.)

22 **Service Awards to Class Representatives:** Class Representatives will request
23 service awards in an amount set by the Court, but not to exceed \$5,000 each in
24 recognition of the benefits conferred on the Settlement Class and their efforts in
25 achieving the settlement. (SAR ¶ 4.5.)

26 _____
27 ¹ The mission of the National Housing Law Project is "is to advance housing justice for poor people and
28 communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities
for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes." See
National Housing Law Project, available at <https://www.nhlp.org/> as of Jan. 4, 2021.

1 **Class-wide Release**: The SAR narrowly tailors the release of class claims to the
 2 claims in the complaint. Specifically, Settlement Class Members release all claims
 3 “arising out of or relating to any of the Collection Letters and/or credit reporting of the
 4 loans after a short sale or foreclosure that were or could have been asserted by the Class
 5 Representative or Class Members in the Action.” (SAR ¶ 10.1.)

6 **Settlement Administration**: Subject to Court approval, the parties have selected JND
 7 Legal Administration as class administrator from among four candidates. (SAR ¶ 1.29; Kemnitzer
 8 Decl. ¶43 Defendants shall pay up to a maximum of \$25,000 for class administration. Class
 9 Counsel shall pay any remaining amount. (SAR ¶ 4.4.)

10 **IV. ARGUMENT**

11 C. **Plaintiffs Respectfully Submit that the Settlement Class meets the** 12 **Requirements of Fed. R. Civ. P. 23(a) and (b)**

13 The party seeking class certification “must satisfy each of the four requirements of Rule
 14 23(a)—numerosity, commonality, typicality, and adequacy—and at least one of the requirements
 15 of Rule 23(b).” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 (9th Cir. 2017) (citing *Ellis*
 16 *v. Costco Wholesale Corp.*, 657 F.3d 970, 979-80 (9th Cir. 2011)).

17 1. **Fed. R. Civ. P. 23(a) Requirements for Class Certification Are** 18 **Met**

19 **Numerosity**

20 In determining numerosity, courts may make common sense assumptions regarding
 21 whether joinder is impracticable. *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608 (N.D. Cal.
 22 2003) (“A court may make common sense assumptions to support a finding that joinder would be
 23 impracticable,” citing 1 Robert Newberg, *Newberg on Class Actions*, § 3:3 (4th Ed. 2002)
 24 (“Where the exact size of the class is unknown but general knowledge and common sense
 25 indicate that it is large, the numerosity requirement is satisfied.”)). Here, the Collection Letter
 26 Subclass consists of 677 potential members, indicating a class size in at least the low 100s. (SAR
 27 §2.1). The Settlement also sets forth a methodology for determining Credit Reporting Subclass
 28 Members, which will include at least all Collection Letter Subclass Members whose loans were

1 previously serviced by Nationstar. (SAR §2.2).

2 **Commonality**

3 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”
4 Commonality is met “so long as there is ‘even a single common question’ [of law or fact].”
5 *Parsons v. Ryan*, 754 F.3d 657, 676 (9th Cir. 2014) (quoting *Wang v. Chinese Daily News, Inc.*,
6 737 F.3d 538, 544 (9th Cir. 2013)). The common question must be such that “determination of its
7 truth or falsity will resolve an issue that is central to the validity of each one of the claims in a
8 single stroke.” *Wang*, 737 F.3d at 544, quoting *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,
9 2551 (2011).

10 There are significant common issues driving the resolution of each of Plaintiffs’ claims
11 that meet this standard. Plaintiffs’ debt collection claim under the Rosenthal Act is based on
12 uniform language in the form collection letters Veripro sent to all members of the Debt Collection
13 Class. Plaintiffs allege these form letters violate the prohibition against “false, deceptive, or
14 misleading representation or means in connection with the collection of any debt.” *See* 15 U.S.C.
15 § 1692e, incorporated in the Rosenthal Act, Cal. Civ. Code §1788.17. Deceptiveness under
16 section 1692e is determined by the objective “least sophisticated debtor” standard. *Tourgeman v.*
17 *Collins Fin. Servs.*, 755 F.3d 1109, 1117-18 (9th Cir. 2014). In class actions, statutory damages
18 are awarded on a single, class-wide basis. 15 U.S.C. § 1692k(b)(2); *Mace v. Van Ru Credit Corp.*,
19 109 F.3d 338, 344 (7th Cir. 1997) (dividing class-wide award by the number of members).

20 Plaintiffs also challenge Nationstar’s reporting of putative members’ loan accounts to
21 major credit reporting agencies under a provision of the CCRAA, California Civil Code section
22 1785.25(a). This statute prohibits entities from “furnish[ing] information on a specific transaction
23 or experience to any consumer credit reporting agency if the [entity] knows or should know the
24 information is incomplete or inaccurate.” Plaintiffs allege that Nationstar’s uniform reporting of
25 Class members’ loan accounts as currently delinquent violates the common “incomplete or
26 inaccurate” in violation of section 1785.25(a).

27 Thus, both the Rosenthal Act and CCRAA claims present questions common to the
28 respective Subclass Members.

1 **Typicality**

2 Under Rule 23(a)(3), Plaintiffs’ claims must be typical of the claims of other members of
3 the class. Under the “permissive standards” of Rule 23, Plaintiffs’ claims are typical if they are
4 “reasonably coextensive with those of absent class members; they need not be substantially
5 identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (overruled on other
6 grounds by *Castillo v. Bk. Of Am., N.A.* 980 F.3d 723 (9th Cir. 2020); *Wal-Mart v. Dukes*, 564
7 U.S. 338). Ultimately, the “test of typicality is whether other members have the same or similar
8 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
9 whether other class members have been injured by the same course of conduct.” *Wolin v. Jaguar*
10 *Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (internal citation omitted).

11 Plaintiffs’ claims factually coextend with those of unnamed members—namely, each had
12 a junior purchase money mortgage that was foreclosed or short sold. After the sale, each Debt
13 Collection Class member received one or both of the Veripro form collection letters alleged in the
14 Complaint. And Nationstar reported the loan of each Credit Reporting Subclass Member as
15 delinquent, with outstanding balances due and delinquent. Both named and unnamed members of
16 the proposed Subclasses were subject to Defendants’ “conduct which is not unique to the named
17 plaintiffs.” *Wolin*, 617 F.3d at 1175.

18 **Adequacy**

19 Rule 23 likewise requires that Plaintiffs “fairly and adequately protect the interests of the
20 class.” Fed. R. Civ. P. 23(a)(4). To determine adequacy, courts consider two questions: “(1) do
21 the named plaintiffs and their counsel have any conflicts of interest with other class members and
22 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
23 class?” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (quoting
24 *Hanlon*, 976 F.2d at 508).

25 Plaintiffs’ interests are fully aligned with the interests of the Classes. There are no
26 conflicts of interest between Plaintiffs, or their counsel, and the unnamed members of the
27 proposed classes. (Kemnitzer Decl., ¶52.) Plaintiffs’ counsel are experienced in litigating
28 consumer class actions and are well-qualified, experienced, and able to prosecute this case on

1 behalf of Class members. (Levy Decl., ¶¶3,6; Kemnitzer Decl. ¶¶ 12, 23.)

2 **2. Fed. R. Civ. P. 23(b)(3) Requirements for Class Certification**
3 **Are Met**

4 Further, under Fed. R. Civ. P. 23(b)(3), “a plaintiff must demonstrate the superiority of
5 maintaining a class action and show ‘that the questions of law or fact common to class members
6 predominate over any questions affecting only individual members.’” *Mazza v. Am. Honda Motor*
7 *Co., Inc.*, 666 F.3d 581, 596 (9th Cir. 2012) (quoting Fed. R. Civ. P. 23(b)(3)).

8 **Predominance**

9 Plaintiffs must demonstrate “‘that the questions of law or fact common to class members
10 predominate over any questions affecting only individual members.’” *Castillo v. Bk. of Am. N.A.*,
11 *supra*, 980 F.3d at 730 (quoting *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 586 (9th Cir.
12 2012)).

13 Here, common issues significantly outweigh any individual issues that may exist. As
14 discussed *supra*, common issues dominate the unfair debt collection claims: (1) the challenged
15 language in Veripro’s form collection letters is uniform across the Class; (2) the objective “least
16 sophisticated debtor” standard applies class-wide for determining liability under the Rosenthal
17 Act; and (3) recovery of statutory damages is a class-wide, not an individualized, determination.

18 Plaintiffs’ common contention, as to the credit reporting claims, challenges the “accuracy
19 and completeness” of Nationstar’s reporting of delinquent balances on the members’ loan
20 accounts. Plaintiffs’ remedy under the CCRAA depends on Nationstar’s uniform reporting
21 practice under a uniform statutory standard, not on individualized harms suffered by members of
22 the Class.

23 **Superiority**

24 Rule 23 requires that a class action be “superior to other available methods for fairly and
25 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The ability of unnamed
26 members to maintain individual lawsuits for consumer law violations where the stakes are low or
27 even modest is extremely limited. (Levy Decl., ¶12.) Here, for many members of the class—all of
28 whom have suffered the loss of at least one home—the litigation of “claims [that are] worth less

1 than it would realistically cost to litigate an expert- and discovery-intensive case,” is an unlikely
2 endeavor. *In re Lidoderm Antitrust Litig.*, 2017 U.S. Dist. LEXIS 24097, at *70.

3 As observed by Judge Henderson:

4 Case law affirms that class actions are a more efficient and consistent means of
5 trying the legality of collection letters. The fact is that plaintiffs may not know
6 their rights are being violated, may not have a monetary incentive to individually
7 litigate their rights, and may be unable to hire competent counsel to protect their
8 rights. A class action is judicially efficient in lieu of clogging the courts with
9 thousands of individual suits. The FDCPA itself recognizes the propriety of class
10 actions by providing special damages sections for class action cases. For these
11 reasons, a class action is a superior method of adjudicating the claims of the class.

12 *Herrera v. LCS Financial Services Corp.*, 274 F.R.D. 666, 682 (N. D. Cal. 2011) (citing, *e.g.*,
13 *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541, 547 (N.D. Cal. 2005)).

14 **D. The Settlement Should Be Preliminarily Approved Because It Is Fair,
15 Reasonable, and Adequate Pursuant to Fed. R. Civ. P. 23(e)(2)**

16 “The Court will give preliminary approval to a class settlement and notice only when (1)
17 ‘the proposed settlement appears to be the product of serious, informed, noncollusive
18 negotiations,’ (2) ‘has no obvious deficiencies,’ (3) ‘does not improperly grant preferential
19 treatment to class representatives or segments of the class,’ and (4) it ‘falls with the range of
20 possible approval.’” *McDonald v. Killoo A/S*, No. 17-cv-04344-JD, 2020 U.S. Dist. LEXIS
21 175865, at *19-20 (N.D. Cal. Sep. 24, 2020), quoting *Stokes v. Interline Brands, Inc.*, No. 12-cv-
22 05527-JD, 2014 U.S. Dist. LEXIS 111734, 2014 WL 5826335, at *3 (N.D. Cal. Nov. 10,
23 2014) (citation omitted).

24 **6. The Settlement is the Product of Serious, Informed, Non-
25 Collusive Negotiations**

26 As the Court’s docket shows, this litigation was hard fought for over three years. The
27 parties engaged in extensive discovery, six lay and expert depositions, document discovery, and
28 discovery disputes that resulted in two informal discovery telephone conferences with the Court
(Dkt. Nos. 53, 58) and a Court-ordered in-person discovery meet and confer in the jury room
(Dkt. No. 59). (Kemnitzer Decl., ¶¶27-35.)

The Settlement was reached as the result of arm’s-length negotiations only after an

1 unsuccessful private mediation and a successful mandatory settlement conference before
2 Magistrate Judge Ryu on the eve of the August 13, 2020 hearing of the class certification and
3 summary judgment motions, which had been full briefed. The negotiations that led to the
4 Settlement were conducted with the aid of Judge Ryu over the course of multiple settlement
5 conferences, confirming the Settlement’s non-collusive nature. (Kemnitzer Decl., ¶¶37-39.) The
6 use of an experienced neutral mediator “confirms that the settlement is non-collusive.” *See G. F.*
7 *v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30,
8 2015) (internal quotations omitted).

9 **7. The Settlement Has No Obvious Deficiencies**

10 The Settlement’s terms are favorable to the Settlement Class. This settlement will provide
11 full restitution to all Collection Letter Subclass Members who paid any amount to Veripro as a
12 result of the debt collection letters, \$150 in statutory damages per Collection Letter Subclass
13 Member, credit repair for all Class Members, and cessation of collection activity. These
14 advantages strongly weigh in favor of settlement approval.

15 Likewise, the proposed attorneys’ fees and costs reimbursements for Plaintiffs’ Counsel
16 reflect the lack of any collusion. The fee negotiation was conducted separately after an agreement
17 in principle had already been reached for the Class. (Kemnitzer Decl., ¶47.) The awards, if
18 approved, are capped at \$390,000 and represent the expenses Plaintiffs’ Counsel actually incurred
19 and less than half the lodestar fees that Plaintiffs’ Counsel spent litigating the case. (*Id.* ¶47.)

20 **8. The Settlement Does Not Improperly Grant Preferential**
21 **Treatment to Class Representatives or Segments of the Class**

22 This analysis turns, among other things, on whether there is any disparity among what
23 class members are scheduled to receive and, if so, whether the settlement “compensates class
24 members in a manner generally proportionate to the harm they suffered on account of [the]
25 alleged misconduct.” *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL
26 4512372, at *8 (N.D. Cal. July 24, 2015) (finding no preferential treatment); *accord G. F. v.*
27 *Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13-14 (N.D. Cal. July 30,
28 2015) (analyzing whether the settlement singles out particular class members or whether it instead

1 “appears uniform”).

2 The settlement terms treat all Class Members equitably. Specifically, members of the
3 Collection Letter Subclass shall receive 100% of amounts that they paid to Veripro in response to
4 the collection letters and each Collection Letter Subclass Member shall also receive \$150 in
5 statutory damages. (SAR ¶ 4.1(a) and (b).) Further, each Collection Letter Subclass Member
6 whose loan was previously serviced by Nationstar and each Credit Reporting Subclass Member
7 who submits a valid Claim Form will receive specific credit reporting relief. (SAR ¶ 4.3). Finally,
8 Defendants shall cease all collection attempts against all Class Members. (SAR ¶ 4.2.)
9 Accordingly, no Class Member will receive preferential treatment under the Settlement. Service
10 awards to the Plaintiffs are subject to review and approval by the Court. (SAR ¶ 4.5.)

11 **9. The Settlement Falls Well Within the Range of Possible**
12 **Approval**

13 To assess whether a proposed settlement is within the range of possible judicial approval,
14 courts typically assess the following factors:

- 15 i. the strength of the Plaintiffs’ case;
16 ii. the risk, expense, complexity, and likely duration of further litigation;
17 iii. the risk of maintaining class action status throughout the trial;
18 iv. the amount offered in settlement;
19 v. the extent of discovery completed and the stage of the proceedings;
20 vi. the experience and views of counsel;
21 vii. the presence of a governmental participant; and
22 viii. the reaction of the class members to the proposed settlement.

23 *Churchill Village v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004). These factors indicate
24 whether a settlement is “fair, adequate, and reasonable.” *See id.* at 576; *La Parne v. Monex*
25 *Deposit Co.*, No. SACV 08-0302 DOC, 2010 WL 4916606, at *1 (C.D. Cal. Nov. 29, 2010). As
26
27
28

1 described below, these factors confirm that this Settlement fully merits preliminary approval.²

2 **a. The Strength of Plaintiffs' Case and the Risk of Further**
 3 **Litigation Support Preliminary Approval**

4 Class actions involve a high level of risk, expense, and complexity, which is one reason
 5 that judicial policy strongly favors resolving class actions through settlement. *See Linney v.*
 6 *Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (affirming district court's approval
 7 of settlement and certification of class). Courts should recognize that "the agreement reached
 8 normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the
 9 parties each gave up something they might have won had they proceeded with litigation." .,
 10 *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 624
 11 (9th Cir. 1982) (internal quotations and citation omitted). Further, "[a]pproval of a class
 12 settlement is appropriate when there are significant barriers plaintiffs must overcome in making
 13 their case." *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14 Civ. 01788, 2016 WL
 14 344532, at * 4 (N.D. Cal. Jan 28, 2016) (internal citations omitted).

15 Here, further litigation would be protracted, costly, and uncertain for the Class.
 16 Defendants vigorously contested their liability, and their Motion for Summary Judgment was
 17 pending when the parties agreed to settle. (Dkt. No. 94.)

18 Regarding the statutory damage payment of \$150 to each Collection Letter Subclass
 19 Member, the FDCPA specifies the factors for the court to consider when issuing class-wide
 20 statutory damages:

21 In determining the amount of liability [for statutory damages under 15 U.S.C. §
 22 1692k(a)(2)], the court shall consider, among other relevant factors—... in any
 23 class action under subsection (a)(2)(B), the frequency and persistence of
 24 noncompliance by the debt collector, the nature of such noncompliance, the
 resources of the debt collector, the number of persons adversely affected, and the
 extent to which the debt collector's noncompliance was intentional.

25 15 U.S.C. § 1692k(b)(2). The same standard applies under the Rosenthal Fair Debt Collection
 26 Practices Act. Cal. Civ. Code § 1788.17.

27
 28 ² In this case, there is no governmental participant; and, the reaction of the Class Members cannot be fully evaluated until after notice has been disseminated.

1 Here, “the frequency and persistence of any non-compliance” was relatively low because
 2 Veripro’s collections from Class Members resulted from a systematic error in Veripro’s “lien
 3 scrub” procedure that affected only a fraction of borrowers in comparison with total number who
 4 were sent the same collection letters. (Levy Dec. ¶9.) The number of persons affected was
 5 comparatively small; from Defendants’ data, Plaintiffs’ counsel were able to identify 677
 6 potential Collection Letter Subclass Members. (*Id.* ¶9.)

7 The “resources of the debt collector” presents the issue whether Nationstar’s net worth can
 8 be considered in setting the statutory damages. Statutory damages are limited to “the lesser of
 9 \$500,000 or 1 per centum of the net worth of the debt collector.” 15 U.S.C. § 1692k(a)(2)(B).

10 Nationstar did not send the letters; its agent (Veripro) did. Veripro has a negative net
 11 worth, and there is no reported case law squarely establishing a principal’s net worth can be
 12 considered when the violation is committed by an agent. (Levy Dec. ¶10.) Uncertainty on this
 13 issue adds additional risk to the statutory damages recovery.

14 Further, Plaintiffs’ Counsel believe that credit reporting relief is the most significant and
 15 enduring benefit to the Class. (Levy Dec. ¶11.) Plaintiffs faced the challenge that this Court had
 16 recently dismissed another mortgage deficiency credit reporting case for failure to state a claim.
 17 *Gray v. Ocwen Mortg. Servicing, Inc.*, No. 18-cv-01864-JD (N.D. Cal.) (Dkt. No. 47). Further,
 18 the decision in *Trujillo v. First American Registry, Inc.* (2007) 157 Cal. App. 4th 628, 638 was a
 19 threat to the recovery of the Credit Reporting Subclass. (Dkt. No. 72 at pp. 20-21; Dkt. No.76 at
 20 pp. 10-13; Dkt. No. 77 at pp. 2-5.)

21 These issues are fully addressed in the class certification briefing (Dkt. Nos. 72, 76, 77)
 22 and present significant risks for the Class. Plaintiffs’ counsel overcame these obstacles during
 23 settlement negotiations to negotiate credit reporting relief for the Class.

24 By way of example, the following chart sets forth a comparison of results that could have
 25 been achieved at trial compared with the results of the settlement.

Best Possible Trial Outcome	Current Settlement
Restitution of 100% of amounts paid by Collection Letter Subclass Members to Defendants following Veripro’s collection letters.	Restitution of 100% of amounts paid by Collection Letter Subclass Members to Defendants following Veripro’s collection letters. (SAR ¶ 4.1(a).)

1 2 3	Statutory damages of up to \$500,000.00 total for Collection Letter Subclass Members. <i>See</i> Civil Code § 1788.17, incorporating the FDCPA, 15 U.S.C. §1692k(a)(1), (2).	\$150 for each Collection Letter Subclass Member. (SAR ¶ 4.1(b).) Defendants will review each of the 677 potential Collection Letter Subclass Members manually to determine entitlement to funds. (SAR ¶ 2.1.)
4 5 6	Injunctive relief in the form for cessation of collection attempts against all Class Members. Business & Professions Code §§ 17203, 17535; Civil Code §1785.25, subd. (b).	Cessation of collection attempts. (SAR ¶ 4.2.)
7 8	Punitive damages pursuant to Civ. Code § 1785.31(c)	Waived for settlement purposes. <i>See Gray</i> . No. 18-cv-01864-JD (Dkt. No. 47), 157 Cal. App. 4th at 638.
9 10 11	Credit reporting changes for Credit Reporting Subclass Members.	Credit reporting changes for Credit Reporting Subclass Members who submit a valid Claim Form. (SAR ¶ 4.3.) Identification of Credit Reporting Subclass Members performed pursuant to SAR ¶ 2.2.

12 The risks inherent in future litigation therefore support preliminary approval of the
13 Settlement.

14 **b. The Amount Offered in Settlement and Allocation Are**
15 **Fair**

16 “[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential
17 recovery does not *per se* render the settlement inadequate or unfair. Rather, the fairness and the
18 adequacy of the settlement should be assessed relative to risks of pursuing the litigation to
19 judgment.” *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 U.S.
20 Dist. LEXIS 166704, at *16-17 (N.D. Cal. Nov. 20, 2012) (internal quotations and citations
21 omitted).

22 It is possible the Collection Letter Subclass Members might have been successful in
23 recovering more than the \$150 per Class Member in statutory damages and that the Credit
24 Reporting Subclass Members might have recovered punitive damages. However, as explained
25 above, legal uncertainties posed significant risks for those outcomes to be realized, and the Class
26 Members may have recovered little or nothing. And the potentially greater relief would have only
27 come after more time-consuming and expensive litigation.

28 Under the circumstances of the case, the amount of the Settlement is fair, adequate, and

1 reasonable. *See also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding
 2 a recovery of one sixth (16.67%) of the potential recovery adequate in light of the plaintiff's
 3 risks); *Villegas*, 2012 WL 5878390, at *6 (preliminarily approving a settlement representing 15%
 4 of the potential recovery).

5 The plan of allocation of the Settlement to Class Members is also fair and reasonable. As
 6 referenced above, Collection Letter Subclass Members will receive 100% of the actual amounts
 7 they paid, and will also each receive \$150 in statutory damages. Further, those Credit Reporting
 8 Subclass Members who submit Claim Forms will also be entitled to credit reporting relief.

9 **c. The Extent of Discovery Completed and the Stage of**
 10 **Proceedings**

11 After progressing through extensive discovery, Plaintiffs' depositions, Fed. R. Civ. P.
 12 30(b)(6) dispositions, expert depositions, and full briefing on the Motion for Class Certification
 13 and Motion for Summary Judgment, Plaintiffs' Counsel have a well-developed sense of the
 14 strengths and weaknesses of the claims and are well-situated to make an informed decision
 15 regarding settlement. (Kemnitzer Decl., ¶¶27, 48.)

16 **d. The Experience and Views of Counsel**

17 Plaintiff's Counsel are experienced class action litigators who have spent decades
 18 successfully litigating consumer class actions. Their firms have served as class counsel in
 19 numerous class actions in state and federal court. (Kemnitzer Decl., ¶¶3, 12-13, Levy Decl., ¶¶3-
 20 6.) Based on their experience in similar cases, and familiarity with the strengths and weaknesses
 21 of this particular case, Plaintiffs' Counsel believe the proposed Settlement to be in the best
 22 interest of the Class Members. (Kemnitzer Decl., ¶48.)

23 **10. The Proposed Notice is Adequate**

24 The proposed notice and notice plan agreed upon by the parties satisfies the requirements
 25 of Rule 23(e) and due process. (SAR ¶¶ 6.1-6.5 & Exh. 2.) The proposed Class Notice (SAR Exh.
 26 2) and Claim Form (Exh. 1) explain the nature of the action and the terms of the Settlement
 27 (including the total settlement amounts per class member, Claim Form requirements for the
 28 Credit Reporting Subclass, and claims that will be released); how Class Members may exclude

1 themselves from or object to the Settlement and the deadlines for doing so; and the binding nature
 2 of the Settlement on those who do not opt out of the Settlement. This information adequately
 3 informs Class Members of their rights and is sufficient to satisfy Rule 23(e).

4 Class Members will be mailed the Class Notice and Claim Form. (SAR ¶ 6.3). Prior to
 5 mailing, the Class Administrator will run all addresses through the National Change of Address
 6 database. If any Notices are returned, the Class Administrator will perform a credit bureau
 7 address update search and attempt to find a valid address.

8 Plaintiffs respectfully request that the Court approve this method of notice as the best
 9 practicable under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App'x. 646, 650 (9th
 10 Cir. 2010) (finding mailed notice to be the best notice practicable where reasonable efforts were
 11 taken to ascertain class members' addresses).

12 **V. PLAINTIFFS REQUEST THAT THE COURT SET A SCHEDULE FOR**
 13 **FINAL APPROVAL**

14 The parties have agreed to a [Proposed] Order Granting Motion for Preliminary Approval
 15 of Class Action Settlement. This Proposed Order is attached as Exhibit 2 to the Settlement
 16 Agreement and filed concurrently with this Motion. The Order proposes the following calendar
 17 for action under the Settlement Agreement and the Final Approval Hearing.

Event	Date	Settlement Agreement Reference
Plaintiffs' Motion for Preliminary Approval Filed ("as soon as possible after execution of this Agreement")	2/5/21	3.1
Plaintiffs to file fee motion ("Concurrently with the mailing of the Class Notice")	5/25/21	3.3
Preliminary approval hearing, Order entered	4/15/21	1.24
Defendants to provide notice data to Settlement Administrator ("No later than twenty (20) days after entry of the Preliminary Approval Order")	5/5/21	6.2
JND to send Settlement Notice to Class ("no later than forty (40) days after entry of the Preliminary Approval Order")	5/25/21	6.3
Notice period expires, last day for opt outs and objections ("One hundred (100) days after entry of the Preliminary Approval Order")	7/24/21	1.26 8.1(b) 8.2(b)
Plaintiffs to file Motion for Final Approval ("Prior to the Fairness Hearing") (35 days prior to hearing – Local Rule 7-2)	TBA	3.2

Final Approval Hearing (“on a hearing date established in the Preliminary Approval Order”)	TBA	3.2
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VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue the proposed Preliminary Approval Order.

Dated: February 5, 2021

HOUSING & ECONOMIC RIGHTS ADVOCATES
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