

1 Jahan C. Sagafi (Cal. Bar No. 224887)
2 Rachel Dempsey (Cal. Bar No. 310424)
3 OUTTEN & GOLDEN LLP
4 One California Street, 12th Floor
5 San Francisco, CA 94111
6 Telephone: (415) 638-8800
7 Facsimile: (415) 638-8810
8 jsagafi@outtengolden.com
9 rdempsey@outtengolden.com

Ossai Miazad*
Michael N. Litrownik*
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
om@outtengolden.com
mlitrownik@outtengolden.com

7 Brian James Shearer*
8 Craig L. Briskin*
9 JUSTICE CATALYST LAW
10 718 7th Street NW
11 Washington, D.C. 20001
12 Telephone: (518) 732-6703
13 brianshearer@justicecatalyst.org
14 cbriskin@justicecatalyst.org

Benjamin D. Elga*
JUSTICE CATALYST LAW
81 Prospect Street, 7th Floor
Brooklyn, NY 11201
Telephone: (518) 732-6703
belga@justicecatalyst.org

12 *Attorneys for Plaintiff and the Proposed Class*
13 **admitted pro hac vice*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

16 EDUARDO PEÑA, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 WELLS FARGO BANK, N.A.,

21 Defendant.

Case No. 19-cv-04065-MMC-TSH

22 **NOTICE OF MOTION AND MOTION FOR**
23 **PRELIMINARY SETTLEMENT APPROVAL**
24 **ORDER**

25 Judge: Maxine M. Chesney
26 Hearing Date: July 10, 2020
27 Hearing Time: 9:00 a.m.
28 Courtroom: 7, 19th Floor

NOTICE OF MOTION AND MOTION

1
2 PLEASE TAKE NOTICE that on July 10, 2020, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Courtroom 7 on the 19th floor of this Court’s San Francisco Courthouse,
4 located at 450 Golden Gate Avenue in San Francisco, California, Plaintiff Eduardo Peña,
5 individually and as a class representative, will, and hereby does, move this Court for the
6 following relief with respect to the Settlement Agreement and Release (attached as Exhibit A to
7 the Declaration of Ossai Miazad in Support of Motion for Preliminary Settlement Approval
8 Order) with Defendant Wells Fargo Bank, N.A.:

- 9 1. that the Court certify, for settlement purposes only, settlement classes pursuant to
10 Federal Rule of Civil Procedure 23(a) and (b)(3);
11 2. that the Court appoint Plaintiff as representative of the Class;
12 3. that the Court appoint Plaintiff’s attorneys as Class Counsel;
13 4. that the Court grant preliminary approval of the Settlement;
14 5. that the Court approve mailing to the Class Members the proposed Class Notice;
15 6. that the Court appoint JND Legal Administration Co. as the Settlement
16 Administrator; and
17 7. that the Court schedule a hearing for final approval of the Settlement.

18 This Motion is made on the grounds that the Settlement is the product of arms-length,
19 good-faith negotiations; is fair, reasonable, and adequate to the Class; and should be preliminarily
20 approved, as discussed in the attached memorandum.

21 The Motion is based on: this notice, the following memorandum in support of the motion,
22 the Miazad declaration (which annexes a copy of the Settlement), the Briskin declaration, the
23 Court’s record of this action, all matters of which the Court may take notice, and oral and
24 documentary evidence presented at the hearing on the motion. This motion is unopposed by
25 Wells Fargo.

1 Dated: June 16, 2020

Respectfully submitted,

2 By: /s/ Ossai Miazad
3 Ossai Miazad

4 Ossai Miazad*
5 Michael N. Litrownik*
6 OUTTEN & GOLDEN LLP
7 685 Third Avenue, 25th Floor
8 New York, NY 10017
9 Telephone: (212) 245-1000
10 Facsimile: (646) 509-2060
11 om@outtengolden.com
12 mlitrownik@outtengolden.com

13 Jahan C. Sagafi (Cal. Bar No. 224887)
14 Rachel Dempsey (Cal. Bar No. 310424)
15 OUTTEN & GOLDEN LLP
16 One California Street, 12th Floor
17 San Francisco, CA 94111
18 Telephone: (415) 638-8800
19 Facsimile: (415) 638-8810
20 jsagafi@outtengolden.com
21 rsun@outtengolden.com
22 rdempsey@outtengolden.com

23 Benjamin D. Elga*
24 JUSTICE CATALYST LAW
25 81 Prospect Street, 7th Floor
26 Brooklyn, NY 11201
27 Telephone: (518) 732-6703
28 belga@justicecatalyst.org

Brian James Shearer*
Craig L. Briskin*
JUSTICE CATALYST LAW
718 7th Street NW
Washington, D.C. 20001
Telephone: (518) 732-6703
brianshearer@justicecatalyst.org
cbriskin@justicecatalyst.org

*admitted *pro hac vice*

Attorneys for Plaintiff and the Proposed Class

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MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION**I. INTRODUCTION**

Plaintiff Eduardo Peña (“Plaintiff” or “Class Representative”) has lived in Illinois since he was a child and was granted temporary protection from deportation, federal work authorization, and a Social Security number under the June 2012 program known as Deferred Action for Childhood Arrivals (“DACA”). After obtaining DACA, Plaintiff sought an auto loan from Wells Fargo’s direct auto financing line of business but was denied. Plaintiff then brought a class action lawsuit against Wells Fargo in July 2019 alleging lending discrimination. The parties have now settled this litigation for significant monetary and programmatic relief. In connection with the settlement, Wells Fargo will change its direct auto lending policy to make direct auto loans available to DACA recipients on the same terms and conditions as it offers credit to U.S. citizens, fully eliminating the harm challenged by the lawsuit. The settlement also provides for significant monetary relief totaling \$1.185 million, comprised of cash payments of at least \$280,000 that could increase to as much as \$630,000 to class members who submit valid claim forms, as well as \$50,000 in administration costs, a \$5,000 service award for Class Representative, and \$500,000 in fees and costs. *See* Ex. A (Settlement Agreement or SA) §§ 3.2; 3.3; 15.2.¹

For the reasons set forth below, the proposed Settlement and this Motion readily satisfy the requirements of Rule 23, Ninth Circuit precedent, *see, e.g., Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1060 (9th Cir. 2019), and established Northern District practice, including the Class Action Settlement Guidance. *Procedural Guidance for Class Action Settlements*, U.S. Dist. Ct. for Northern District Cal., <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/> (last updated Dec. 5, 2018). Although the parties reached a resolution relatively early in this case, they litigated a number of issues at the pleading stage and exchanged sufficient discovery to adequately assess the strengths and weaknesses of Plaintiff’s claims. Further, the parties reached settlement through an arms-length mediation overseen by Hunter R. Hughes, one of the leading national mediators of complex discrimination class actions. Plaintiff

¹ All exhibits are attached to the accompanying Declaration of Ossai Miazad in Support of Motion for Preliminary Settlement Approval Order (“Miazad Decl.”)

1 accordingly and respectfully submits that the Court should preliminary approve this exceptional
 2 settlement, and notice should issue to Class Members to let them make claims, object, or opt out,
 3 as appropriate.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Wells Fargo's Lending Policies Made DACA Recipients Ineligible for 6 Direct Auto Financing.**

7 DACA, announced by President Obama on June 15, 2012, and promulgated through the
 8 Department of Homeland Security, allows non-citizens who entered the United States as children
 9 and who meet certain requirements to apply for work authorization and relief from deportation
 10 proceedings.² DACA was promulgated to provide opportunities to young people who came to the
 11 United States as children and “who want to staff our labs, or start new businesses, or defend our
 12 country.”³ Its motivating principle was to strengthen its recipients’ ability to actively participate
 13 in the American economy and contribute to civic life.⁴ In addition to work authorization, DACA
 14 recipients are eligible to apply for and receive SSNs, enabling them to identify themselves for
 15 employment and other contractual purposes.⁵

16 There is no federal or state law or regulation that prohibits banks from lending to non-
 17 citizens generally, or DACA recipients specifically, based on their status as non-citizens. Wells
 18 Fargo, however, maintained lending policies that made DACA recipients facially ineligible for
 19 credit products offered by its direct auto financing line of business (“direct auto”). Plaintiff is a
 20 DACA recipient living in the United States with a valid SSNs who was denied the opportunity to
 21 be considered for credit from Wells Fargo.

22
 23
 24 ² Remarks on Immigration Reform and Exchange With Reporters, 2012 Daily Comp. Pres.
 25 Doc. 201200483 (June 15, 2012), [https://www.govinfo.gov/content/pkg/DCPD-
 26 201200483/html/DCPD-201200483.htm](https://www.govinfo.gov/content/pkg/DCPD-201200483/html/DCPD-201200483.htm). See generally Memorandum from Janet Napolitano,
 27 Sec’y of Homeland Sec., on Exercising Prosecutorial Discretion with Respect to Individuals Who
 28 Came to the United States as Children (June 15, 2012), [https://www.dhs.gov/xlibrary/assets/s1-
 exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf](https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf).

³ Obama, *supra* note 2.

⁴ *Id.*

⁵ Fact Sheet, Social Security Number and Card – Deferred Action for Childhood Arrivals,
https://www.ssa.gov/pubs/deferred_action.pdf.

1 **B. Procedural History**

2 On July 16, 2019, Plaintiff Peña filed a putative class action complaint against Wells
3 Fargo Bank, seeking to represent two nationwide classes consisting of all non-United States
4 citizens who resided in the United States and held DACA status at the time they applied for direct
5 auto financing from Wells Fargo. ECF No. 1. Plaintiff Peña amended the complaint in
6 September 2019, seeking to represent a third class of DACA recipients. ECF No. 27. In all,
7 Plaintiff Peña sought to represent classes of DACA residents who were (1) declined direct auto
8 financing by Wells Fargo, (2) declined direct auto financing and who received a written notice of
9 adverse action with an inaccurate statement of the reasons for the denial, and (3) declined direct
10 auto financing and whose consumer reports were obtained by Wells Fargo. *Id.* ¶¶ 65-68.
11 Plaintiff Peña asserted claims of alienage discrimination under 42 U.S.C. § 1981, a violation of
12 the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f, and its implementing
13 regulations, and a violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681b(f)-
14 1681x. *Id.* ¶¶ 78-98.

15 Wells Fargo moved to dismiss the First Amended Complaint on several grounds,
16 including that Peña failed to plead facts sufficient to state claims under ECOA and FCRA. ECF
17 No. 39. On December 23, 2019, the Court granted Wells Fargo’s motion in part, dismissing
18 Plaintiff Peña’s ECOA and FCRA claims but granting leave to amend. ECF No. 54. Plaintiff
19 Peña filed a Motion for Leave to File a Partial Motion for Reconsideration, which the Court
20 denied. ECF Nos. 63, 75.

21 On January 17, 2020, Plaintiff Peña filed a Second Amended Class Action Complaint,
22 repleading his claims under ECOA and FCRA. ECF No. 66. The parties agreed to stay the case
23 on February 7, 2020 and engage experienced private mediator, Hunter Hughes, to assist them in
24 settlement discussions. ECF Nos. 81, 82; Miazad Decl. ¶¶ 20. The parties executed a binding term
25 sheet on March 4, 2020, and then spent several months negotiating a long-form settlement
26 agreement, which they signed on June 16, 2020. Miazad Decl. ¶¶ 21-23.

27 Prior to staying the case, the parties engaged in discovery, including the exchange of written
28 discovery requests and responses and the production of documents. Miazad Decl. ¶ 13. The parties

1 have also exchanged information as to Wells Fargo’s systems and denial codes, briefed issues as to
 2 the confidentiality of discovery materials, and were in the process of negotiating several discovery
 3 disputes at the time the case settled. *Id.* ¶ 16. During settlement negotiations, Wells Fargo produced
 4 the direct auto lending eligibility policy. *Id.* ¶ 22.

5 **III. THE PROPOSED SETTLEMENT**

6 **A. The Settlement Classes**

7 For settlement purposes only and consistent with the parties’ settlement agreement,
 8 Plaintiff seeks certification of the following classes, defined as:

9 **California Class** means all individuals who applied for credit from the Wells Fargo direct
 10 auto financing line of business between July 16, 2017 and the date of preliminary approval and
 11 were denied as set forth in the Class Data produced by Wells Fargo, and, at the time they applied,
 12 were California residents as set forth in the Class Data produced by Wells Fargo and held valid
 13 and unexpired DACA status. SA § 1.9.2

14 **National Class** means all individuals who applied for credit from the Wells Fargo direct
 15 auto financing line of business between July 16, 2017 and the date of preliminary approval and
 16 were denied as set forth in the Class Data produced by Wells Fargo, and, at the time they applied,
 17 were not California residents as set forth in the Class Data produced by Wells Fargo and held
 18 valid and unexpired DACA status.⁶ SA § 1.9.1.

19 Because Wells Fargo did not record whether applicants had DACA, its data set listing
 20 potential Class Members consists of approximately 1,625 applicants in the United States with
 21 valid SSNs who did not meet Wells Fargo’s citizenship or immigration status requirements—
 22 DACA and non-DACA applicants alike, including work-authorized non-citizens with
 23 employment or student visas and recipients of temporary protected status (“TPS”), all of whom
 24 are eligible for SSNs. Miazad Decl. ¶ 31. However, limiting this data set based on characteristics
 25 common to DACA recipients, such as U.S. addresses and valid SSNs, suggest that the California
 26 and National Classes (*i.e.*, those with DACA), comprise approximately 400 individuals. *Id.* ¶ 32.

27 _____
 28 ⁶ Excluded from both Classes are Wells Fargo, all officers, directors, and employees of
 Wells Fargo, and their legal representatives, heirs, or assigns, and any Judges to whom the Action
 is assigned, their staffs, and their immediate families.

1 **B. Settlement Overview**

2 The settlement provides two important forms of relief for the Class Members: (1)
3 programmatic relief under which Wells Fargo will change its lending practices for its direct auto
4 line of business to extend loans to current and valid DACA recipients on the same terms and
5 conditions as U.S. citizens; and (2) a Settlement Fund of \$280,000 to \$630,000, depending on the
6 number of claimants, to compensate for the harm they suffered. The parties have agreed that the
7 settlement shall be administered as if governed by 28 U.S.C. § 1715, and Wells Fargo has agreed
8 to provide CAFA Notice as required by that statute.

9 **1. Programmatic Relief**

10 This settlement provides exceptional programmatic relief: Wells Fargo will change its
11 lending practice for its direct auto financing line of business to extend unsecured credit to current
12 DACA recipients on the same terms and conditions as U.S. citizens, so long as there is an
13 appropriate product. SA § 3.2.1. Wells Fargo has also agreed to annually provide to Class
14 Counsel a written description explaining the status of the Programmatic Relief for a period of two
15 years. *Id.* § 3.2.2.

16 While it is difficult to quantify the benefit that this programmatic relief will convey to
17 DACA recipients in the years to come, these changes will be extremely valuable. If even 1,000
18 DACA recipients nationwide apply for direct auto financing each year for the next four years, and
19 the availability of such credit is worth \$2,000 (half the statutory penalty for depriving someone
20 access to loans and credit under the Unruh Act), these changes are worth \$2,000,000. Moreover,
21 this figure may be conservative, as many more individuals will get even greater economic
22 opportunity from these changes in the coming years.

23 **2. Monetary Relief**

24 The \$1,185,000 settlement amount will cover: (a) up to \$630,000 in cash payments to
25 Class Members; (b) an incentive award of \$5,000 for Plaintiff; (c) settlement administration costs,
26 not to exceed \$50,000; and (d) up to \$500,000 in attorneys' fees and costs. SA §§ 3.3; 15.1-15.2.

27 Wells Fargo will create separate settlement funds for the California Class and the National
28 Class ("California Fund" and "National Fund," respectively), both of which will be funded based

1 on claims made by Class Members. *Id.* §§ 3.3.2-3.3.8. Wells Fargo’s Class Data will determine
 2 how many claims each Class Member may make, *i.e.*, how many times each Class Member was
 3 denied a direct auto loan in the relevant period. *Id.* §§ 1.27; 1.46. In other words, as long as a
 4 Class Member makes one valid claim, they will receive a cash payment for each credit denial that
 5 appears in the Class Data. *Id.* For the California Fund, (1) the first 110 Verified Claims⁷ from
 6 California Class members shall add \$2,500 per claim to the fund, up to \$275,000; (2) any
 7 remaining Verified Claims from California Class members shall add \$800 per claim to the fund.
 8 *Id.* § 3.3.2. The California Fund will have a floor of \$225,000 and a cap of \$525,000, depending
 9 on the number of claimants. *Id.* § 3.3.4.

10 The National Fund will be created by adding \$300 to the fund for every Verified Claim
 11 from National Class Members, up to and not to exceed \$105,000. *Id.* §§ 3.3.5-3.3.6. The amount
 12 in each fund will be determined based on Verified Claims and will only be funded up to the
 13 number of Verified Claims. *Id.* §§ 1.43.1-1.43.2. As explained in detail below, California Class
 14 Members who submit a Verified Claim shall be paid *pro rata* from the California Fund and
 15 National Class Members shall be paid *pro rata* from the National Fund. *Id.* §§ 3.3.3; 3.3.7. In
 16 other words, National Class Members will receive up to \$300 per Verified Claim and California
 17 Class Members will receive an amount up to \$2,500 per claim, depending on the number of
 18 Verified Claims.

19 Following preliminary approval of the Settlement Agreement, Wells Fargo will provide
 20 the Settlement Administrator and Class Counsel with the updated Class Data.⁸ *Id.* § 7.2. The
 21 Settlement Administrator will issue notice via U.S. mail and email (where an email address is
 22

23 ⁷ “Verified Claim” means a written request, submitted via a Claim Form, submitted by a
 24 Settlement Class Member to the Settlement Administrator, pursuant to the instructions set forth in
 25 the Claim Form, including Official Documentation. SA § 1.46. “Verified Claim Form” means a
 26 Claim Form that is (a) fully completed and properly executed showing the Verified Claimant is
 27 entitled to Claim Settlement Relief, including a fully completed and properly executed Form W-9,
 28 (b) timely returned to the Settlement Administrator, (c) validated by the Settlement Administrator
 pursuant to the procedures set forth in this Agreement, and (d) which includes Official
 Documentation. *Id.* § 1.47.

⁸ The Class Data will identify (i) individuals who were denied a direct auto product; (ii)
 during the class period; (iii) based on agreed-to denial codes related to their residency status; (iv)
 where the individual provided an SSN, a U.S. address, and were not listed as a U.S. citizen or
 LPR.

1 available) to all individuals on the Notice List within 35 days of the preliminary approval order.
2 SA § 7.3. Those individuals will have 60 days to make a claim in the settlement or 45 days to
3 exclude themselves or file an objection with the Court. *Id.* §§ 1.6; 1.28; 1.30.

4 To make a claim in, opt out of, or object to the settlement, Class Members will be required
5 to sign and return a one-page form (“Claim Form”) to the Settlement Administrator. *Id.* §§ 5.2;
6 5.3; 11.1; 12.3. The Claim Form will require the recipient to affirm that they: (1) had valid and
7 unexpired DACA status at the time they applied for one of the relevant credit products; (2) were
8 denied at least one of those products; and (3) that they have and are prepared to provide official
9 documentation to verify that status. *Id.* Class Members seeking to opt-out of or object to the
10 settlement will, in addition, be asked to demonstrate their current or former valid and unexpired
11 DACA status by providing (1) an I-797 Approval Notice from an I-821-D and/or (2) a work
12 authorization card containing the code “C-33” (“Official Documentation”). *Id.* §§ 11.1; 12.3.
13 Claim Forms may be submitted online or by email or mail. *Id.* Ex. 2 (Claim Form). Consistent
14 with current best practices, the Settlement Administrator will maintain a dual-language (English-
15 Spanish) website providing the Notice, Claim Form, Settlement Agreement and Exhibits, key
16 motions, and orders. *Id.* § 6.2. The Claims Administrator will also create a dual-language
17 (English-Spanish) toll-free phone number. *Id.* A reminder notice will be issued by email only, if
18 available, 30 days into the claims period. *Id.* § 7.6.

19 After final approval of the Settlement Agreement, the Settlement Administrator will
20 contact the individuals who submitted Claim Forms and request documentation to demonstrate
21 that they have valid and unexpired DACA status or had valid DACA status at the time of their
22 denial. *Id.* §§ 5.2.2; 5.3.2. Upon timely receiving this information, the Settlement Administrator
23 will validate the Claim Form and documentation and, if consistent with the terms of the
24 Settlement Agreement, will deem the claim to be one or more Verified Claims. *Id.* If at any
25 point during the claims period an individual submits a Claim Form or Official Documentation
26 that the Settlement Administrator deems deficient, the Settlement Administrator will promptly
27 notify that individual and Class Counsel, and the individual will have 14 days to cure any
28 deficiency. *Id.* § 5.4. A Class Member may make only one Verified Claim per denied

1 application. *Id.* §§ 5.2.3; 5.3.3. Joint or multiple borrowers who are denied on a single
 2 application will be treated as a single application and their *pro rata* share will be divided equally
 3 per applicant. *Id.*

4 After this phase, the Settlement Administrator will advise Wells Fargo of the amount of
 5 each Settlement Fund based on the number of Verified Claims. *Id.* § 3.3.10. Within 21 days of
 6 receiving notice of the amount of the Settlement Funds, Wells Fargo will transfer those funds to
 7 the Settlement Administrator, which will issue and mail checks to Class Members. *Id.* §§ 3.3.2,
 8 3.3.5, 3.3.10.

9 In exchange for the consideration described above, each Class Member shall release Wells
 10 Fargo of any and all claims (the “Released Claims”) relating to Wells Fargo’s denial of their loan
 11 applications based on alienage, lack of citizenship and/or immigration status, including, but not
 12 limited to, any claims under 42 U.S.C. § 1981, the California Unruh Act, Cal. Civil Code §§ 51
 13 and 52 *et seq.*, other state civil rights statutes, ECOA, and FCRA.⁹ SA §§ 1.35; 10.1. The Class
 14 Representative will also agree to a general release of all Released Claims against Wells Fargo for
 15 claims related to the denial of their loan applications. *Id.*

16 After consulting with the proposed Settlement Administrator about its experience and,
 17 based on their communications with Class Members to date and the realities of DACA recipients’
 18 lives, Plaintiff estimates that 5% to 15% of the Class Members will return Claim Forms. *See*,
 19 *e.g.*, *Donnenfeld v. Petro, Inc.*, No. 17 Civ. 2310 (E.D.N.Y. Mar. 5, 2020), ECF No. 80-1
 20 (8,074/91,807 or 8.6% of class members filed claims); *In re MyFord Touch Consumer Litig.*, No.
 21 13 Civ. 3072 (N.D. Cal. Nov. 7, 2019), ECF No. 542 (claims submitted on behalf of 4.5% of
 22 class); *Edwards v. Hearst Commc’ns*, No. 15 Civ. 9279 (S.D.N.Y. Apr. 4, 2019), ECF No. 310
 23 (294,748/3,930,421 or 7% of class members filed claims); *see also* Miazad Decl. ¶ 33. Plaintiff
 24

25 ⁹ Although this release is broader than the claims pled in the complaint, the settlement
 26 provides significant value for Unruh Act claims, and Class Counsel are unaware of any additional
 27 viable claims it would extinguish. Beyond the Unruh Act, no other state law civil rights statutes
 28 provide comparable statutory penalties for claims related to the denial of Class Members’ loan
 applications based on alienage, lack of citizenship and/or immigration status. These special
 circumstances justify a broadened release. *See, e.g.*, *Seguin v. Cty. of Tulare*, No. 16 Civ. 01262,
 2018 WL 1919823, at *5 (E.D. Cal. Apr. 24, 2018) (a broad release was permissible where the
 settlements reflected a reasonable compromise achieved through negotiation).

1 estimates that the return rate for California Class Members will be on the higher end of that range,
 2 considering the high amount of the settlement award per denial, and that the return rate for
 3 National Class Members will fall on the lower end of the range. Miazad Decl. ¶ 34.

4 **C. Class Representative Service Award¹⁰**

5 The settlement provides that, subject to Court approval, Wells Fargo will pay Plaintiff a
 6 service award of \$5,000. SA § 15.2. This payment is intended to compensate him for (a) the time
 7 and effort that he has spent on behalf of the Class assisting Class Counsel with the prosecution of
 8 these claims, (b) the resulting significant value he has conferred to Class Members, and (c) the
 9 significant exposure and risk he incurred by exposing himself as a DACA recipient and taking a
 10 leadership role in a lawsuit that has garnered media coverage.¹¹ *See, e.g., Galeener v. Source*
 11 *Refrigeration & HVAC, Inc.*, No. 13 Civ. 04960, 2015 WL 12976106, at *3 (N.D. Cal. Aug. 20,
 12 2015) (Chhabria, J.) (\$27,000 and \$25,000 to two class representatives); *Buccellato v. AT&T*
 13 *Operations, Inc.*, No. 10 Civ. 00463, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (Koh,
 14 J.) (\$20,000 to lead plaintiff); *Lewis v. Wells Fargo & Co.*, No. 08 Civ. 2670, slip op. at 4 (N.D.
 15 Cal. Apr. 29, 2011), ECF No. 315 (Wilken, J.) (\$22,000 and \$20,000 for named plaintiffs); *Ross*
 16 *v. U.S. Bank Nat'l Ass'n*, No. 07 Civ. 2951, 2010 WL 3833922, at *4 (N.D. Cal. Sept. 29, 2010)
 17 (Illston, J.) (\$20,000 service award for each of four class representatives); *Glass v. UBS Fin.*
 18 *Servs., Inc.*, No. 06 Civ. 4068, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) (Chesney,
 19 J.) (\$25,000 to each of four class representatives). For these reasons, the service awards are
 20 appropriate and do not undermine the adequacy of Plaintiff as a Class Representative.

21 **D. Attorneys' Fees and Costs**

22 The Settlement Agreement allows Class Counsel to request an award of attorneys' fees
 23 and expenses of up to \$500,000. SA § 15. In a non-common fund case brought under fee-
 24 shifting statutes such as Section 1981 and the Unruh Act, the lodestar method for awarding

25 _____
 26 ¹⁰ This Section and the next Section preview, at a general level, the more detailed factual and
 legal presentation Plaintiff will provide in his fee petition and request for approval of Incentive
 Awards to be filed prior to the Final Approval Hearing.

27 ¹¹ *See, e.g.,* Matt Egan, *Wells Fargo Discriminated Against Dreamer by Denying Auto Loan,*
 28 *Lawsuit Claims*, CNN Business (July 19, 2019, 5:05 PM),
<https://www.cnn.com/2019/07/19/business/wells-fargo-dreamers-daca-lawsuit-auto-lending/index.html>.

1 attorneys' fees is appropriate. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42
2 (9th Cir. 2011); *Ross v. Trex Co.*, No. 09 Civ. 670, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16,
3 2013). The lodestar figure is "presumptively reasonable." *Cunningham v. Cty. of Los Angeles*,
4 879 F.2d 481, 488 (9th Cir. 1988). Additionally, the fact that the award of attorneys' fees and
5 costs was negotiated separately and will not be paid out of the relief available to the class
6 supports a finding that the requested fee award is reasonable. *Fulford v. Logitech, Inc.*, No. 08
7 Civ. 204, 2010 WL 807448, at *1 (N.D. Cal. Mar. 5, 2010) (Chesney, J.).

8 Class Counsel's lodestar in this litigation is approximately \$387,393, based on
9 approximately 723 attorney hours over the course of this litigation, and Plaintiff's costs are
10 approximately \$8,466. Miazad Decl. ¶ 53. Plaintiff intends to request an award of attorneys' fees
11 and expenses of \$500,000. Class Counsel have performed substantial work to earn this fee,
12 including amending the complaint twice, briefing a motion to dismiss, and exchanging discovery.
13 Further, the fees and costs were negotiated separately from the Settlement Fund.

14 Class Counsel's lodestar will increase during the coming months while Class Counsel
15 continues to work to secure preliminary approval, oversee the dissemination of notice, respond to
16 Class Member inquiries, and brief and seek final approval. *Johnson v. Triple Leaf Tea Inc.*, No.
17 14 Civ. 1570, 2015 WL 8943150, at *8 (N.D. Cal. Nov. 16, 2015) (Chesney, J.) (accounting for
18 "future attorney time" in decision whether attorneys' fees were reasonable). Class Counsel
19 expects that its total lodestar and costs will approach \$500,000. If not, Class Counsel will request
20 that the Court approve a modest multiplier. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th
21 Cir. 1998), *overruled in part on other grounds*, *Walker v. Life Ins. Co. of the Sw.*, 953 F.3d 624
22 (9th Cir. 2020).

23 E. Settlement Administration Costs

24 The Settlement Agreement provides that Wells Fargo will pay the cost of a Settlement
25 Administrator, up to \$50,000. The parties have selected JND Legal Administration Co. ("JND")
26 as Settlement Administrator. The parties selected JND by gathering bids from three settlement
27 administrators from a list of four approved settlement administrators proposed by Wells Fargo.
28 Miazad Decl. ¶ 44. Because the method of notice and claims payment processes are delineated in

1 the Settlement Agreement, no new methods were proposed by the proposed settlement
 2 administrators, and instead the parties evaluated whether the proposed settlement administrators
 3 were equipped to handle the notice and claims process as negotiated by the parties. *Id.* ¶ 45.
 4 Class Counsel has retained JND to administer the claims process in 14 cases in the past two years,
 5 including cases with complex claims processes like this one. *See, e.g., del Toro Lopez v. Uber*
 6 *Techs., Inc.*, No. 17 Civ, 6255, 2018 WL 5982506, at *14 (N.D. Cal. Nov. 14, 2018); Miazad
 7 Decl. ¶ 48 (listing cases JND has worked on with Class Counsel in the past two years).

8 JND has agreed to perform all administration work set forth in the Settlement Agreement
 9 for a will-not-exceed cost of \$50,000, which JND anticipates being sufficient to cover the total
 10 costs of settlement administration. SA § 3.3.1. The Settlement Administrator’s maximum fee
 11 amounts to approximately 2.7% of the \$1,185,000 maximum Settlement Fund, which is
 12 reasonable in light of the amount and complexity of the work to be performed (especially
 13 processing and verifying the Claim Forms, which will require careful manual review), and is in
 14 line with settlement administration fees in comparable cases. *See, e.g., Pappas v. Naked Juice Co*
 15 *of Glendora, Inc.*, No. 11 Civ. 8276, 2014 WL 12382279, at *19 (C.D. Cal. Jan. 2, 2014)
 16 (\$816,000 administration fee, equal to 9% of \$9 million settlement); *Covillo v. Specialtys Cafe*,
 17 No. 11 Civ. 00594, 2013 WL 5781574, at *7 (N.D. Cal. Oct. 25, 2013) (up to \$48,741
 18 administration fee, equal to 2.4% of \$2 million settlement).

19 F. Cy Pres Awardees

20 Plaintiff has negotiated a settlement that requires Wells Fargo to pay at least \$280,000. In
 21 the event that the combined payments to Class Members from the California and National
 22 Settlement Funds is less than this floor, the amount between the total distributions to Class
 23 Members and \$280,000 shall be distributed equally between United We Dream and Consumer
 24 Action. *Id.* § 3.3.9; *see Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307
 25 (9th Cir. 1990) (holding that *cy pres* distribution is appropriate “for the limited purpose
 26 of distributing the unclaimed funds”); *In re Easysaver Rewards Litig.*, 906 F.3d 747, 761 (9th Cir.
 27 2018) (same). United We Dream is an immigrant youth-led non-profit that empowers young
 28 people to develop leadership and organizing skills and undertake campaigns promoting justice

1 and the dignity of immigrants. Miazad Decl. ¶ 55. Consumer Action is a non-profit that
 2 promotes consumer rights and advocates for consumer policies that promote financial prosperity
 3 for underrepresented consumers. *Id.* ¶ 56; *see also Easysaver*, 906 F.3d at 761-62 (*cy pres*
 4 recipients should be selected in light of the objectives of the underlying statute and the interests of
 5 the class). Class Counsel do not have any relationships, presently or in the past, with these
 6 organizations. Miazad Decl. ¶ 57.

7 **IV. ARGUMENT**

8 Settlement approval “involves a two-step process in which the Court first determines
 9 whether a proposed class action settlement deserves preliminary approval and then, after notice is
 10 given to class members, whether final approval is warranted.” *Nat’l Rural Telecomm. Coop. v.*
 11 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *see also* Manual for Complex Litigation
 12 §§ 21.632-634 (4th ed. 2004). Preliminary approval requires two elements: First, the court must
 13 determine that the settlement class meets the requirements for class certification if it has not yet
 14 been certified, Fed. R. Civ. P. 23(a), (b), and second, the court must determine that the settlement
 15 is fair, reasonable, and adequate, Fed. R. Civ. P. 23(e)(2). *Hanlon*, 150 F.3d at 1025-26.

16 **A. Certification of the Rule 23 Classes Is Proper.**

17 For settlement purposes, the parties agree to certification of the California Class and the
 18 National Class.¹² “The validity of use of a temporary settlement class is not usually questioned.”
 19 Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002). The
 20 relevant factors also weigh in favor of certification.

21 **1. Rule 23(a) Is Satisfied.**

22 First, numerosity is met because joinder of Class Members would be impractical. Fed. R.
 23 Civ. P. 23(a)(1). Numerosity is satisfied here because Wells Fargo’s data on applicants who did

24 ¹² Plaintiff pled three nationwide classes in his Second Amended Complaint (“SAC”). ECF
 25 No. 66. The National Class as defined in the Settlement Agreement is substantively the same as
 26 the nationwide classes pled in the SAC; they cover the same products offered by the same line of
 27 business within the same time period, and both encompass denials made under the same internal
 28 Wells Fargo denial codes. Although Plaintiff did not plead a California Class in his SAC, the
 Unruh Act claims of the California Class are based on the identical factual predicate as the
 Section 1981 claims brought by the National Class. *See Reyn’s Pasta Bella, LLC v. Visa USA,*
Inc., 442 F.3d 741, 748 (9th Cir. 2006).

1 not meet Wells Fargo’s citizenship or immigration status requirements – refined based on
2 characteristics common to DACA recipients – reveals that the California and National Classes
3 likely consist of hundreds of individuals. The Notice List contains approximately 1,625
4 individuals and Class Counsel believe 20-25%, or up to approximately 400 individuals, are
5 DACA recipients who could be National or California Class Members. Miazad Decl. ¶ 32.
6 Further, potential Class Members are “geographically dispersed” nationwide, including within
7 California, which supports a finding of numerosity. *See Civil Rights Educ. & Enf’t Ctr. v. RLJ*
8 *Lodging Tr.*, No. 15 Civ. 224, 2016 WL 314400, at *6 (N.D. Cal. Jan. 25, 2016) (noting that
9 “joinder may be impracticable where a class is geographically dispersed”).

10 Second, commonality is met because “there are questions of law or fact common to the
11 class.” Fed. R. Civ. P. 23(a)(2). In examining commonality, the Supreme Court has stated that
12 the focus is on whether there are common issues of fact among class members and whether class
13 treatment will “generate common *answers* apt to drive the resolution of the litigation.” *Abdullah*
14 *v. U.S. Sec’y Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Wal-Mart Stores, Inc. v. Dukes*,
15 564 U.S. 338, 350 (2011)). Here, there are numerous common questions, such as whether Wells
16 Fargo’s lending policies deny Plaintiff and Class Members the opportunity to be considered for
17 credit because of their alienage or DACA status and whether Wells Fargo’s lending policies
18 violate Section 1981 or the Unruh Act. Further, Plaintiff asserts liability based on uniform
19 lending policies that apply to all Class Members. *See, e.g., Stevens v. Harper*, 213 F.R.D. 358,
20 377 (E.D. Cal. 2002) (in civil rights context, “commonality is satisfied ‘where the lawsuit
21 challenges a system-wide practice or policy that affects all of the putative class members’”
22 (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001))).

23 Third, typicality is satisfied. Rule 23 typicality requires a finding that the “claims or
24 defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R.
25 Civ. P. 23(a)(3). Under the rule’s “permissive” standard, “representative claims are ‘typical’ if
26 they are reasonably co-extensive with those of absent class members; they need not be
27 substantially identical.” *Johnson*, 2015 WL 8943150, at *3 (quoting *Hanlon*, 150 F.3d at 1020).
28 Here, the Class Representative is typical of the California Class and the National Class he

1 proposes to represent because (1) he held DACA and a valid SSN when he applied for a loan
2 from the line of business at issue in this Settlement; and (2) he alleges that he was denied credit
3 because he is not a U.S. citizen or LPR pursuant to Wells Fargo's policies.

4 Fourth, Plaintiff has fairly and adequately protected the interests of the class and will
5 continue to do so. Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met where the class
6 representative: (1) has common, and not antagonistic, interests with unnamed class members, and
7 (2) will vigorously prosecute the interests of the class through qualified counsel. *Hanlon*, 150
8 F.3d at 1020; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

9 Adequacy is met because Class Representative has the same interests as other Class
10 Members and has shown that he can fairly and adequately protect Class Members' interests. Like
11 all Class Members, Class Representative was denied credit by Wells Fargo under specific denial
12 codes pursuant to Wells Fargo's lending policies. Miazad Decl. ¶ 49. The Class Representative
13 has no conflicts of interest with the Class Members and, indeed, Class Members stand to benefit
14 substantially from his pursuit of statutory damages on their behalf. Although members of the two
15 classes will receive different ranges of awards under the proposed allocation plan for monetary
16 relief, this feature of the Settlement does not present adequacy issues. *Hanlon*, 150 F.3d at 1021.
17 This is in part because the Class Representative, as a member of the National Class only, will
18 receive a lower award than members of the California Class because he is not releasing an Unruh
19 Act claim, which is more valuable. However, the differences between the damages and potential
20 remedies are ultimately small, all Class Members are subject to the same settlement terms and, of
21 course, if any Class Member disagrees with the proposed relief, he or she may opt out. *Id.*
22 Further, the Class Representative has vigorously represented the interests of his fellow Class
23 Members and devoted time to the prosecution of this action, including by responding to discovery
24 and having numerous phone calls with counsel. Miazad Decl. ¶¶ 51-52.

25 In addition, Plaintiff is represented by adequate counsel. Outten & Golden LLP and the
26 lawyers at Justice Catalyst Law ("JCL") have extensive experience litigating complex class
27 actions and have vigorously prosecuted this action on behalf of Plaintiff through motion practice
28 and discovery. Miazad Decl. ¶¶ 4-9 (collecting cases); Briskin Decl. ¶¶ 4-7; *see also, e.g., Walsh*

1 v. *CorePower Yoga LLC*, No. 16 Civ. 05610, 2017 WL 589199, at *8 (N.D. Cal. Feb. 14, 2017)
2 (“[Outten & Golden] ha[s] a proven track record in the prosecution of class actions as they have
3 successfully litigated and tried many major class action cases.”).

4 For these reasons, Class Counsel satisfy the adequacy requirement of Rule 23(a).

5 **2. Certification Is Proper Under Rule 23(b)(3).**

6 Rule 23(b)(3) requires that common questions “predominate over any questions affecting
7 only individual members, and that a class action is superior to other available methods for fairly
8 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Both of these
9 requirements are met here.

10 The proposed classes, the California Class and the National Class, are sufficiently
11 cohesive to satisfy predominance. *Amchem*, 521 U.S. at 623. Predominance does not require
12 “that each element of [a plaintiff’s] claim [is] susceptible to classwide proof.” *Amgen Inc. v.*
13 *Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (internal quotation marks and citation
14 omitted). Rather, “[t]he predominance inquiry ‘asks whether the common, aggregation-enabling,
15 issues in the case are more prevalent or important than the non-common, aggregation-defeating,
16 individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting
17 William B. Rubenstein, *Newberg on Class Actions* § 4:50 (5th ed.)). Here, Plaintiff challenges
18 discriminatory policies that apply to all Class Members. Common questions as to the nature and
19 legality of these blanket policies can be adjudicated collectively and will drive the resolution of
20 Plaintiff’s claims. *See, e.g., Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 509, 538 (N.D.
21 Cal. 2012) (predominance requirement satisfied as to discrimination claims where plaintiffs
22 challenged “specific employment practices” that applied “companywide”); *cf. Jones v. Wells*
23 *Fargo Bank, N.A.*, No. B237282, 2015 WL 661757, at *8, 15 (Cal. Ct. App. Feb. 17, 2015)
24 (affirming class certification under California law for Unruh Act claims challenging Wells
25 Fargo’s practices resulting in race-based lending discrimination); *id.* at *14 (“Claims that a
26 uniform policy was consistently applied to a group are proper for class treatment.”). Further,
27 Plaintiff’s status as Class Representative of the California Class, comprised of members who are
28 releasing Unruh Act claims and will receive higher settlement awards than the National Class,

1 does not present any obstacle to satisfying predominance. Differences between state laws do not
 2 preclude predominance where claims revolve around a “common nucleus of facts,” as they do
 3 here. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 563 (9th Cir. 2019); *see also Hanlon*,
 4 150 F.3d at 1022.

5 Superiority rests on factors like individual class members’ desire to bring individual
 6 actions and the utility of concentrating the litigation in one forum. Fed. R. Civ. P. 23(b)(3).
 7 Here, “there is no indication, that class members seek to individually control their cases, that
 8 individual litigation is already pending in other forums, or that this particular forum is undesirable
 9 for any reason.” *Tierno v. Rite Aid Corp.*, No. 05 Civ. 02520, 2006 WL 2535056, at *11 (N.D.
 10 Cal. Aug. 31, 2006); *see also Amchem*, 521 U.S. at 615. Few Class Members would invest the
 11 time and money, plus the stress inherent in litigation, for a chance to possibly recover modest
 12 damages. In addition, individual lawsuits from hundreds of plaintiffs would be wasteful and
 13 inefficient for the court system. *See, e.g., Whiteway v. FedEx Kinko’s Office & Print Servs., Inc.*,
 14 No. 05 Civ. 2320, 2006 WL 2642528, at *11 (N.D. Cal. Sept. 14, 2006). Because the class
 15 mechanism will achieve economies of scale for Class Members, conserve judicial resources, and
 16 preserve public confidence in the system by avoiding repetitive proceedings and preventing
 17 inconsistent adjudications, superiority is met.

18 **3. Plaintiff’s Counsel Should Be Appointed as Class Counsel.**

19 Adequacy of class counsel depends on (1) work performed on the matter, (2) experience,
 20 (3) knowledge of the law, and (4) resources counsel can commit. Fed. R. Civ. P. 23(g)(1)(A).
 21 Class Counsel readily satisfy these criteria, as set forth above. *See supra* Part IV.A.1; *see also*
 22 Miazad Decl. ¶¶ 4-9; Briskin Decl. ¶¶ 4-7.

23 **B. The Settlement Is Fair, Reasonable, And Adequate.**

24 Once the Court has found class certification proper, the next step of the preliminary
 25 approval process is to assess whether the settlement is “fundamentally fair, adequate, and
 26 reasonable.” *Hanlon*, 150 F.3d at 1026. Typically, the first-stage analysis inquires into “obvious
 27 deficiencies,” with preliminary approval granted if the settlement is non-collusive and within the
 28

1 range of possible final approval. *Walsh*, 2017 WL 589199, at *6 (quoting *In re Tableware*
2 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).¹³

3 When considering whether to grant approval, courts often “put a good deal of stock in the
4 product of an arms-length, non-collusive, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*,
5 563 F.3d 948, 965 (9th Cir. 2009). Courts may also assess the following factors, which are
6 assessed in greater detail at final approval. These factors are: (1) “the strength of the plaintiffs’
7 case,” “the risk, expense, complexity, and likely duration of further litigation,” and “the risk of
8 maintaining class action status throughout the trial,” (2) “the amount offered in settlement,” (3)
9 “the extent of discovery completed and the stage of the proceedings,” and (4) “the experience and
10 views of counsel.” *Hanlon*, 150 F.3d at 1026. In addition, courts review “the presence of a
11 governmental participant” and “the reaction of the class members to the proposed settlement.” *Id.*
12 The former is not relevant, and the latter cannot be gauged at this stage.

13 **1. Plaintiff’s Case Faced Significant Hurdles on Liability and Class**
14 **Certification.**

15 “Approval of a class settlement is appropriate when ‘there are significant barriers
16 plaintiffs must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing,*
17 *Inc.*, No. 14 Civ. 01788, 2016 WL 344532, at *4 (N.D. Cal. Jan. 28, 2016). Plaintiff faces
18 substantial obstacles to full recovery. First, liability is far from guaranteed. This litigation—a
19 lending discrimination class action on behalf of DACA recipients—presents a theory with
20 numerous unsettled issues. Other defendants in cases involving Section 1981 challenges on
21 behalf of DACA recipients have argued that DACA recipients are not “lawfully present” in the
22 United States to show that they are not members of a protected class under Section 1981 and
23 Wells Fargo may raise a similar argument. Wells Fargo may also point to instances in which it
24 extended credit to DACA recipients through what it characterizes as an “exceptions process” as
25 proof that Wells Fargo does not discriminate against DACA recipients. Wells Fargo could also
26 highlight events in Plaintiff’s credit history to show that he was not qualified for the credit

27 ¹³ See also *Cancilla v. Ecolab, Inc.*, No. 12 Civ. 3001, 2015 WL 4760318, at *3 (N.D. Cal.
28 Aug. 12, 2015) (focusing preliminary approval analysis on “noncollusive negotiations,” the lack
of “obvious deficiencies” or “preferential treatment,” and being “with[in] the range of possible
approval”); Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, § 13.15 (5th ed.).

1 products he sought, regardless of his DACA status. Finally, Wells Fargo has vigorously
 2 contended that its lending policies are justified because DACA—which the current administration
 3 has attempted to rescind—is a tenuous immigration status and a bank is justified in limiting credit
 4 to applicants who might be subject to deportation orders at any time from eligibility for credit for
 5 credit risk, business, compliance, and regulatory reasons.

6 Plaintiff also faces obstacles to obtaining class certification. As explained above, Plaintiff
 7 cannot identify Class Members from Wells Fargo’s data with certainty, which presents
 8 manageability issues. Wells Fargo could also argue that Plaintiff cannot show commonality
 9 because Wells Fargo did not have an explicit policy that made DACA recipients ineligible based
 10 on their DACA status for the challenged credit products, or because some applicants would have
 11 been denied credit regardless of immigration status.

12 2. The Settlement Amount Is Appropriate.

13 “[P]erhaps the most important factor” courts consider in determining whether to grant
 14 preliminary approval is “plaintiffs’ expected recovery balanced against the value of the settlement
 15 offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (Chhabria, J.) (internal
 16 quotation marks omitted). Here, the monetary and programmatic relief provide excellent value
 17 for Class Members. Though the precise amount of the monetary awards per Class Member is not
 18 yet known, under any scenario the monetary relief under the Settlement is likely to be a high
 19 percentage of their maximum damages. Similarly, the settlement provides the greatest degree of
 20 programmatic relief possible.

21 California Class Members are eligible for individual awards of up to \$2,500 per denial of
 22 a credit application, which is more than 60% of the statutory damages available under the Unruh
 23 Act for each discriminatory act. Cal. Civil Code § 52(a) (providing statutory damages of \$4,000
 24 per violation); Miazad Decl. ¶ 27. This is an excellent result for California Class Members.¹⁴ If a

25 ¹⁴ See, e.g., *Betancourt*, No. 14 Civ. 1788, 2016 WL 344532, at *5 (N.D. Cal. Jan 28, 2016)
 26 (granting final approval of settlement providing approximately 9.7% of total maximum potential
 27 recovery if class members had prevailed on all claims); *Stovall-Gusman v. W.W. Granger, Inc.*,
 28 No. 13 Civ. 2540, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (finding that a settlement
 constituting 7.3% of plaintiff’s estimated trial award to be “within the range of reasonableness”
 (quoting *Ma v. Covidien Holding, Inc.*, No. 12 Civ. 2161, 2014 WL 360196, at *5 (C.D. Cal. Jan.

1 higher number of California Class Members submit Verified Claim forms – and because
 2 monetary awards are paid *pro rata* – individual awards may decrease to \$1,735 per claim or
 3 lower. Miazad Decl. ¶ 28. However, even if 500 California Class Members submit Verified
 4 Claims – a substantially higher response rate than the parties anticipate – that would amount to
 5 awards of approximately \$1,050 each, more than 25% of the \$4,000 minimum damages under
 6 Unruh. *Id.* In light of the risks of an adverse judgment on the merits or on class certification,
 7 even awards on the lower end of this range still provide an excellent value to California Class
 8 Members.

9 The parties estimate that National Class Members will receive approximately \$300 per
 10 denial. Miazad Decl. ¶ 29. This is an excellent benefit for National Class Members in light of the
 11 obstacles to proving damages on a class-wide basis. First, Plaintiff would likely not have been
 12 able to show actual damages under Section 1981 at all. Class Counsel consulted with economic
 13 experts who determined that significant obstacles existed to valuing and modeling actual or
 14 economic damages for a denial of credit where Class Members could potentially obtain the same
 15 credit elsewhere, or turn to savings accounts or loans from family members. Miazad Decl. ¶ 29.
 16 Second, the average award per National Class Member accounts for Wells Fargo’s statutory
 17 damages exposure of \$100 to \$1000 per violation under FCRA, *see* 15 U.S.C. § 1681n(a)(1)(A), a
 18 claim that the Court had dismissed with leave to replead. ECF No. 54. Leading up to mediation,
 19 Class Counsel was developing a viable theory under FCRA for the recovery of statutory penalties,
 20 which Wells Fargo was willing to take into account during settlement talks.¹⁵ Miazad Decl. ¶ 29.
 21 For these reasons, the monetary relief obtained by Class Counsel for National Class Members in
 22 this action is excellent.

23 Plaintiff also obtained the *maximum* degree of programmatic relief that Class Members
 24 could possibly obtain. Wells Fargo has agreed to extend unsecured credit to current and valid
 25 DACA recipients on the same terms and conditions as U.S. citizens. In other words, Wells Fargo
 26 will *not* consider DACA as a factor in evaluating credit risk or in underwriting, which might

27 31, 2014)); *In re Heritage Bond Litig.*, No. 02 ML 1475, 2005 WL 1594403, at *19 (C.D. Cal.
 28 June 10, 2005) (calling a recovery of 36% of the total net loss an “exceptional result”).

¹⁵ By contrast, statutory penalties are not available under ECOA. *See* 15 U.S.C. § 1691e.

1 invariably lead to inferior credit terms. All DACA recipients nationwide—not just Class
 2 Members—will benefit from this programmatic relief. DACA recipients have a great need for
 3 access to credit and have encountered significant difficulty in obtaining it.¹⁶ As one of the largest
 4 lenders in the country, the programmatic relief offered by Wells Fargo is a significant benefit to
 5 Class Members (and DACA recipients nationwide) and is likely better than what could be
 6 obtained by protracted litigation and trial.

7 **3. The Extent of Discovery Supports Settlement.**

8 A settlement requires adequate discovery. The touchstone of the analysis is whether “the
 9 parties have sufficient information to make an informed decision about settlement,” including
 10 formal and informal discovery. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
 11 2000) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)). Here, the
 12 parties have exchanged written discovery and produced documents, including documents and data
 13 relating to Wells Fargo’s systems and denial codes. Miazad Decl. ¶¶ 13; 16. Additionally, the
 14 parties were in the process of addressing various discovery disputes at the time they reached a
 15 settlement in principle. *Id.* Wells Fargo also produced critical discovery for settlement purposes,
 16 including the direct auto financing lending policy. *Id.* ¶ 22. Finally, the parties benefitted from
 17 the rigorous and exhaustive discovery that the parties exchanged in *Perez v. Wells Fargo*, the
 18 related case in this District. *Id.* ¶ 17. Thus, the Settlement results from Class Counsel’s informed
 19 judgment about the strengths and weaknesses of the claims.

20 **4. Counsel’s Experience and Views Support Approval.**

21 “Great weight is accorded to the recommendation of counsel, who are most closely
 22 acquainted with the facts of the underlying litigation.” *DIRECTV, Inc.*, 221 F.R.D. at 528
 23 (quoting *In re Painwebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997)). “[P]arties
 24

25 _____
 26 ¹⁶ More than 800,000 individuals have been approved under DACA in the United States.
 27 U.S. Citizenship & Immigration Servs., *Approximate Active DACA Recipients: Country of Birth*
 28 *as of February 28, 2019* at 5,
https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/2_Approximate_Active_DACA_Recipients_Demographics_-_Feb_28_2019.pdf.

1 represented by competent counsel are better positioned than courts to produce a settlement that
2 fairly reflects each party’s expected outcome in litigation[.]” *Rodriguez*, 563 F.3d at 967.

3 Class Counsel are some of the most experienced class action litigators in the country.
4 Miazad Decl. ¶¶ 4-9; Briskin Decl. ¶¶ 4-7. Class Counsel specialize in prosecuting complex
5 employment and civil rights class actions and, over many years, have successfully—and
6 unsuccessfully—litigated many such cases, putting them in a strong position to weigh the
7 strengths and weaknesses of Plaintiff’s claims and Wells Fargo’s defenses. Miazad Decl. ¶¶ 4-9
8 & Ex. B (describing “Past Distributions” in accordance with Northern District of California
9 Procedural Guidance for Class Action Settlements). Based on their extensive experience, Class
10 Counsel believe that the Settlement is fair, reasonable, and adequate.

11 **5. The Parties Participated in Arms-Length Negotiations Before an** 12 **Experienced Neutral Mediator.**

13 A settlement reached “in good faith after a well-informed arms-length negotiation” is
14 presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. 06 Civ. 04149, 2008 WL
15 8150856, at *4 (C.D. Cal. July 21, 2008).¹⁷ Here, the settlement easily meets the rigorous
16 scrutiny required in this District and by *Roes*, 1–2, for both substantive and procedural reasons.
17 First, the Settlement is substantively strong, providing excellent monetary relief and robust
18 programmatic relief. Second, the Settlement is procedurally sound, (a) having been reached after
19 hard-fought, adversarial litigation, including discovery and motion practice, (b) with no parallel
20 litigation that could give rise to reverse auction concerns, and (c) reached after a mediation
21 overseen by a highly experienced mediator with particular expertise in complex class actions.
22 Miazad Decl. ¶¶ 10-23, 38.

23 **C. The Proposed Notice Is Clear and Adequate.**

24 The proposed Notice is the “best notice that is practicable under the circumstances.” Fed.
25 R. Civ. P. 23(c)(2)(B), and is “reasonable,” Fed. R. Civ. P. 23(e)(1). The Notice and Claim Form
26 are consistent with Northern District of California’s Procedural Guidance for Class Action

27 ¹⁷ See also *Wren v. RGIS Inventory Specialists*, No. 06 Civ. 05778, 2011 WL 1230826, at *6
28 (N.D. Cal. Apr. 1, 2011); *Tijero v. Aaron Bros., Inc.*, 301 F.R.D. 314, 325 (N.D. Cal. 2013)
(private mediation “support[s] the conclusion that the settlement process was not collusive”).

1 Settlements and modern best practices set forth by the Federal Judicial Center.¹⁸ The Notice and
 2 Claim Form are easily understandable and include: (1) contact information for Class Counsel to
 3 answer questions; (2) the address for a website maintained by the Settlement Administrator that
 4 will link to important documents in the case; and (3) instructions on how to access the case docket
 5 via PACER or in person at any of the Court's locations. The Notice will state the date of the final
 6 approval hearing and states that the date may change without further notice to the Class, and
 7 further advises Class Members that they should check the settlement website or the Court's
 8 PACER site to confirm that the date has not been changed. The Notice explains the deadlines for
 9 objecting, opting out, and submitting a Claim Form. SA Ex. 1.

10 The Claim Form is clear, user-friendly, and focused on a few key relevant facts to which
 11 Class Members have ready access. The Claim Form is helpfully pre-printed with individualized
 12 information in customized paper copies. It will also be available online, so that Class Members
 13 can submit Claim Forms via a secure online submission form. In addition, Class Counsel will
 14 assist the Settlement Administrator in responding to Class Member questions, helping them file
 15 Claim Forms and navigate the process generally.

16 **V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.**

17 Plaintiff, in consultation with Wells Fargo, propose the following schedule for finalizing
 18 and implementing the Settlement:

| Event | Proposed Date |
|---|----------------------|
| Preliminary Approval Hearing | July 10, 2020 |
| Court enters Preliminary Approval Order* | July 24, 2020 |
| WF provides class list data to Settlement Administrator | August 7, 2020 |
| Settlement Administrator disseminates Notice | August 28, 2020 |
| Settlement Administrator sends Reminder notices | September 25, 2020 |
| Deadline for Class Members to opt out, and/or object | October 12, 2020 |
| Plaintiff file Fee and Incentive Award Motions | October 23, 2020 |
| Deadline for Class Members to file Claim Forms | October 27, 2020 |
| WF deadline to terminate settlement | November 12, 2020 |

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 28 ¹⁸ See *Illustrative Forms of Class Action Notices: Overview*, Fed. Judicial Center, <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction> (last visited June 15, 2020).

| Event | Proposed Date |
|--|-------------------------|
| Plaintiffs file Final Approval motion | November 13, 2020 |
| Final Approval Hearing | December 4, 2020 |
| Final Approval Order* | December 18, 2020 |
| Effective Date (assuming no appeals)* | January 22, 2021 |
| WF funds Settlement | April 12, 2021 |
| Settlement Administrator mails checks to Class | April 17, 2021 |

* Assumed date for purposes of calculating subsequent dates.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) certify, for settlement purposes only, settlement classes pursuant to Federal Rule 23(a) and 23(b)(3); (2) grant preliminary approval of the Settlement; (3) appoint Plaintiff Peña as Class Representative, his counsel as Class Counsel, and JND as Settlement Administrator; (4) approve mailing to the Class Members the proposed Notice; and (5) schedule a hearing for final approval of the Settlement.

Dated: June 16, 2020

Respectfully submitted,

By: /s/ Ossai Miazad
Ossai Miazad

Ossai Miazad*
Michael N. Litrownik*
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
om@outtengolden.com
mlitrownik@outtengolden.com

Jahan C. Sagafi (Cal. Bar No. 224887)
Rachel Dempsey (Cal. Bar No. 310424)
OUTTEN & GOLDEN LLP
One California St., 12th Floor
San Francisco, California 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
jsagafi@outtengolden.com

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rsun@outtengolden.com
rdempsey@outtengolden.com

Benjamin D. Elga*
JUSTICE CATALYST LAW
81 Prospect Street, 7th Floor
Brooklyn, NY 11201
Telephone: (518) 732-6703
belga@justicecatalyst.org

Brian James Shearer*
Craig L. Briskin*
JUSTICE CATALYST LAW
718 7th Street NW
Washington, D.C. 20001
Telephone: (518) 732-6703
brianshearer@justicecatalyst.org
cbriskin@justicecatalyst.org

*admitted pro hac vice

*Attorneys for Plaintiff and the Proposed
Class*