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2 **IT IS HEREBY STIPULATED AND AGREED**, by and between Plaintiff Lawrence
3 Torliatt (“Plaintiff”) and Defendant PHH Mortgage Corporation (“PHH”), individually and as
4 successor by merger to named defendant Ocwen Loan Servicing, LLC (“Ocwen”), with all terms
5 as defined below, each through their duly authorized counsel, that the above-captioned actions,
6 *Lawrence Torliatt v. Ocwen Loan Servicing, LLC.*, No. 3:19-cv-04303-WHO (N.D. Cal.) (the
7 “Ocwen Action”), and *Lawrence Torliatt v. PHH Mortgage Corp.*, Case No. 3:19-cv-04356-
8 WHO (N.D. Cal.) (the “PHH Action”) (consolidated together under Case Number 3:19-cv-
9 04303), are hereby settled on all of the terms and conditions set forth in this Stipulation of
10 Settlement and Release, and that upon approval by the Court, final judgment shall be entered on
11 the terms and conditions set forth herein.

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13 **I. INTRODUCTION**

14 **1. The Litigation**

15 The actions concern PHH’s and Ocwen’s practice of charging Convenience Fees for
16 borrowers’ use of optional online and telephonic expedited payment methods.¹ Plaintiff filed the
17 Ocwen Action on July 26, 2019 (Doc. 1) and the PHH Action on July 30, 2019. In the initial
18 complaints in each action, Torliatt asserted claims for violations of the federal Fair Debt
19 Collection Practices Act (“FDCPA”), California’s Rosenthal Fair Debt Collection Practices Act
20 (“Rosenthal Act”), and the “unlawful” prong of California’s Unfair Competition Law (“UCL”),
21 as well as for breach of contract, all based on the PHH Defendants’ assessment of Convenience
22 Fees when Torliatt sought to pay his mortgage using online or telephonic payment methods.
23 Torliatt asserted these claims on behalf of a putative class of similarly situated Ocwen and PHH
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27 ¹ For most of the period at issue in this action, Ocwen and PHH used Speedpay, Inc.’s
28 “Speedpay™” service to facilitate these kinds of online and telephonic payment methods, so the
Convenience Fees charged by Ocwen and PHH were often referred to as “Speedpay” fees.

1 borrowers with mortgaged property in California. Thereafter, the Ocwen and PHH Actions were
2 consolidated (Doc. 14), and Torliatt filed an amended consolidated class action complaint,
3 asserting the same claims against both PHH Defendants on behalf of the same putative classes
4 (Doc. 34). The Rosenthal Act provides potential recovery of actual damages plus statutory
5 damages not greater than \$1,000 for each borrower in an individual action. Cal. Civ. Code §
6 1788.30. Although a provision of the Rosenthal Act bars class actions, California courts have
7 concluded that the FDCPA's class action procedure and potential remedies have been
8 incorporated into the Rosenthal Act, and under the FDCPA, statutory damages not greater than
9 \$500,000 in total are available in a class action. Under the UCL, prevailing plaintiffs may be
10 entitled to injunctive relief.
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12 Following the PHH Defendants' motion to dismiss, the Court dismissed Torliatt's breach
13 of contract and FDCPA claims (Doc. 49), but denied the motion to dismiss as to Torliatt's
14 Rosenthal Act and UCL claims. Thereafter, Torliatt filed his Second Amended Consolidated
15 Class Action Complaint (Doc. 50) on May 1, 2020, which is the Operative Complaint. Although
16 the Operative Complaint asserted not only the Rosenthal Act and UCL claims on behalf of the
17 putative class of California borrowers, but also the breach of contract and FDCPA claims, Torliatt
18 later dismissed all counts alleging violations of the FDCPA and for breach of contract in response
19 to the PHH Defendants' motion to dismiss (Doc. 56). PHH also moved for reconsideration of the
20 Court's earlier order denying the motion to dismiss as to the Rosenthal Act and UCL claims, but
21 the Court denied that motion. (Doc. 62.)
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24 Thereafter, the PHH Defendants filed an answer to the Operative Complaint, expressly
25 denying the allegations of wrongdoing therein, and discovery ensued. In discovery, the PHH
26 Defendants produced 925 documents (totaling 4,281 pages) in response to 68 total requests for
27 production served by Torliatt; responded to 20 total interrogatories; and made three separate
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1 corporate representatives available for depositions in response to 64 combined 30(b)(6)
2 deposition topics. In turn, Torliatt produced 679 documents (totaling 3,875 pages) in response to
3 the PHH Defendants' requests for production, and the PHH Defendants also took Torliatt's
4 deposition. The Parties also engaged in expert discovery. Torliatt offered the opinions of Ms.
5 Patricia Forcier concerning her opinions on the uniformity of loan documents, while the PHH
6 Defendants offered the opinions of Dr. Andrew Carron concerning the absence and
7 individualized nature of putative class member injuries.
8

9 After completion of discovery, Plaintiff filed a Motion for Class Certification (Doc. 116)
10 and the parties filed cross-motions for summary judgment (Docs. 130 and 131). The Court
11 granted the Motion for Class Certification on November 8, 2021, certifying the Litigation Class.
12 The PHH Defendants then filed a timely Rule 23(f) petition for permission to appeal to the Ninth
13 Circuit, which was denied on February 28, 2022. The parties' competing summary judgment
14 motions remain pending before the trial court.
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16 The parties had their first Court-ordered mediation session before Chief Magistrate Judge
17 Joseph C. Spero on November 17, 2021, but it was not successful. Following denial of the PHH
18 Defendants Rule 23(f) petition, the parties participated in a second Court-ordered mediation
19 session before Chief Magistrate Judge Spero on April 27, 2022. By this point, the Parties
20 recognized that both regulators and courts have reached different conclusions on the merits of
21 the claims presented, and that compromise was preferable to continued litigation for all
22 concerned. On the one hand, many federal district courts have held that Convenience Fees do not
23 violate the FDCPA or state analogs, such as the Rosenthal Act. Likewise, the Federal Trade
24 Commission ("FTC") issued guidance stating that Convenience Fees do not violate the FDCPA
25 because any required authorization and consent could be expressed in general terms in the loan
26 documents or granted orally in a side agreement entered into at the time of the payment
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1 transaction. On the other hand, many other federal district courts have held that Convenience
2 Fees do violate the FDCPA or state analogs if neither the underlying loan documents nor state
3 statutes expressly authorize Convenience Fees. And in 2017, the Consumer Financial Protection
4 Bureau (“CFPB”) issued guidance stating its position that that the assessment of Convenience
5 Fees could violate the FDCPA in certain circumstances. One federal appellate court has weighed
6 in on the dispute, with the Fourth Circuit recently concluding that the convenience fees of a
7 different servicer violated Maryland’s analog to the FDCPA.

9 Through their arms’-length negotiations and mediation efforts, the Parties were able to
10 reach an agreement on the principal terms of a potential settlement, subject to further negotiation
11 of the remaining details. The Parties only then discussed and agreed that their only agreements
12 regarding incentive payments to the class representatives and attorneys’ fees for Class Counsel
13 would be (1) that Plaintiff would seek a Service Award of up to \$10,000, and Class Counsel
14 would seek an award of Attorneys’ Fees and Expenses from the District Court of up to thirty
15 three percent (33%) of the Settlement Fund, both to be paid solely out of the Settlement Fund,
16 while (2) the PHH Defendants would remain free to object to any request for Service Awards
17 and Attorneys’ Fees and Expenses if and as the PHH Defendants deemed fit.

19 As a result of the settlement conference and those subsequent fee-related negotiations,
20 and based upon their own respective independent investigations and evaluations of the facts and
21 law relating to all of the matters alleged in the pleadings, the Parties entered into a “Proposed
22 Settlement Term Sheet” on May 9, 2022, subject to approval by upper management and/or the
23 board of the PHH Defendants. After obtaining such approval, the Parties provided joint notice to
24 the Court that they had agreed in principle on the major terms of a potential settlement. (Doc.
25 162). The Parties then engaged in further negotiation of all details of this June 24, 2022 proposed
26 settlement, along with further information and due diligence exchanges.
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1 This Agreement is a compromise, and the Agreement, any related documents, and any
2 negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission
3 or concession of liability or wrongdoing on the part of the PHH Defendants, or any of the
4 Released Persons (as defined in this Agreement), with respect to any claim of any fault or liability
5 or wrongdoing or damage whatsoever, in this or any other action.

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7 **2. Plaintiff's Views on Benefits of Settlement**

8 Plaintiff, individually and on behalf of the Settlement Class, desires to settle the claims
9 alleged against Defendants, having taken into account through Plaintiff's counsel the risks, delay,
10 and difficulties involved in further litigation and the likelihood that the litigation will be further
11 protracted and expensive.

12 Plaintiff's counsel has conducted an extensive investigation of the facts and applicable
13 law, including, but not limited to, obtaining discovery on issues pertaining to class size and
14 damages. Based on the foregoing, and upon an analysis of the benefits afforded by this
15 Agreement, Plaintiffs' counsel considers it to be in the best interest of the Settlement Class to
16 enter into this Agreement.
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19 **3. The PHH Defendants' Denial of Wrongdoing and Liability, Opinion of**
20 **Plaintiff's Claims, and Reasons for Settlement**

21 At all times, the PHH Defendants have denied and continue to deny liability for the claims
22 asserted in the Action and deny that they committed, threatened, attempted or intended to commit
23 any wrongful act or violation of law or duty. They maintain that Ocwen's and PHH's practices
24 and procedures associated with charging Convenience Fees for loan payments made by
25 telephone, IVR or the internet were at all times lawful, and that every Convenience Fee charged
26 was expressly consented to by the borrowers at the time of each and every online and telephonic
27 payment after full disclosure of the avoidable nature and amount of the Convenience Fees. The
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1 evidence is uncontroverted that no law or contract requires the PHH Defendants to offer online
2 or telephonic payment methods at all. The PHH Defendants also adduced evidence that even with
3 the fees, these optional online and telephonic payment methods were advantageous to borrowers,
4 particularly where payment was tendered near a loan's payment grace period deadline, given that
5 the Convenience Fees were in almost all cases less than the contractual late fees that would have
6 been imposed had Ocwen or PHH demanded that borrowers tender payment by the means
7 authorized by their loan documents (through the U.S. mail), and borrowers could not at that late
8 date have submitted payment by such means before the grace deadline.
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10 For most of the litigation, Torliatt traveled under the theory that the PHH Defendants'
11 Convenience Fees violated the Rosenthal Act's "piggyback" provision, § 1788.17, which
12 penalizes violations of the FDCPA. According to Torliatt, Convenience Fees violate FDCPA §
13 1692f(1), which prohibits the assessment of fees "incidental to" the underlying debt unless those
14 fees are expressly authorized in the borrower's loan documents or otherwise permitted by law.
15 But the PHH Defendants contend that their assessment of Convenience Fees could not have
16 violated FDCPA § 1692f(1), and, by extension, Rosenthal Act § 1788.17, for a number of
17 independent reasons. *First*, and foremost, the Rosenthal Act applies when a debt collector is
18 "collect[ing] or attempt[ing]" to collect a consumer debt."² Defendants maintain that their
19 assessment of convenience fees in return for allowing Plaintiff to utilize an optional payment
20 service is not "debt collection" because the objective of the charge was not the satisfaction of the
21 underlying debt. Convenience Fees were voluntarily paid by fully-informed borrowers in return
22 for an entirely optional and separate service: expedited payment processing. No borrower is
23 required to pay telephonically or online; borrowers can pay without incurring any fee whatsoever
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27 ² Cal. Civ. Code § 1788.14 ("No debt collector shall collect or attempt to collect a consumer
28 debt by means of the following practices...").

1 by mailing a check or money order, as their loan documents contemplate, or by signing up for
2 automatic scheduled monthly debits to their checking account. For these exact reasons, a
3 substantial number of federal district courts have dismissed actions arising from the assessment
4 of convenience fees for use of optional telephonic or internet payment methods, including in
5 substantially similar actions against PHH as successor to Ocwen.

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7 *Second*, the PHH Defendants contend that they did not violate the Rosenthal Act's
8 "piggyback" provision because the FDCPA does not even apply to them *vis-à-vis* Torliatt's loan.
9 The FDCPA only applies to "debt collectors." But the PHH Defendants contend they were not
10 "debt collectors" as to Torliatt, because his loan was not in default at the time that they began
11 servicing it. As such, the PHH Defendants could not possibly have violated the FDCPA, which
12 means Torliatt's "piggyback" Rosenthal Act claim, entirely predicated on an FDCPA violation,
13 necessarily fails.

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15 *Third*, the PHH Defendants further contend that their Convenience Fees did not violate
16 FDCPA § 1692f(1), in any event. For one, PHH contends that the Convenience Fees were not
17 "incidental to" Torliatt's principal obligation, but instead were a separate fee that Torliatt never
18 had to incur for a separate, optional service that Torliatt never had to use. Because the
19 Convenience Fees were always optional and avoidable, they were never "incidental to" the
20 payment of Torliatt's mortgage. In addition, PHH contends that Torliatt's Deed of Trust
21 authorizes the PHH Defendants to charge convenience fees. And finally, the PHH Defendants
22 also contend that their Convenience Fees were permitted by settled state common law contractual
23 principles, because Convenience Fees are paid pursuant to a separate contract for separate
24 consideration, formed at the time of each online or telephonic payment transaction. Plus, the PHH
25 Defendants have identified various state and federal statutes and regulations that they contend
26 permit the assessment of Convenience Fees in these circumstances, including the FTC's
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1 regulatory guidance that Convenience Fees do not violate the FDCPA because any required
2 authorization and consent could be expressed in general terms in the loan documents or granted
3 orally in a side agreement entered into at the time of the payment transaction. Finally, nothing in
4 borrowers' loan documents prohibits the PHH Defendants from assessing Convenience Fees for
5 the use of optional payment methods not expressly provided for in the borrowers' promissory
6 notes. To the contrary, the PHH Defendants contend the loan documents state that they are
7 governed by or subject to federal laws and regulations, which permit the assessment of
8 Convenience Fees in return for offering expedited or more convenient payment services.
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10 In response to the PHH Defendants' arguments against his "piggyback" Rosenthal Act
11 claim, Torliatt focused late in the litigation upon a different theory of liability: that Convenience
12 Fees constitute "per se" violations of § 1788.14(b), which prohibits "collecting or attempting to
13 collect" a "fee or charge for services rendered ... except as permitted by law." But PHH contends
14 that Torliatt's position—that liability under § 1788.14(b) is broader than liability under §
15 1788.17—is wrong as a matter of law and has been rejected by the California Attorney General.
16 In fact, § 1788.14(b) and § 1788.17 are coextensive with respect to proscribing a "debt
17 collector's" fees, as the California Attorney General recognized twenty years ago. *See* 85 Ops.
18 Cal. Atty. Gen. 215 at *3 (2002). Specifically, the first sentence of § 1788.17 begins:
19 "Notwithstanding any other provision of this title." As the California Attorney General
20 explained, and as the California Court of Appeals and Ninth Circuit have also recognized, that
21 language indicates legislative intent to have § 1788.17 control *despite* the existence of other law.
22 For that exact reason, the Ninth Circuit and California Court of Appeals allow plaintiffs to pursue
23 Rosenthal Act class actions by importing the FDCPA's class action provisions, notwithstanding
24 the fact that § 1788.30(a) expressly prohibits plaintiffs from bringing class actions. By the same
25 token, § 1788.17 imports the FDCPA's provision for certain fees, notwithstanding language in
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1 the Rosenthal Act that may otherwise more broadly or narrowly penalize such fees.

2 The PHH Defendants also maintain that Plaintiff’s UCL claims are deficient as a matter
3 of law. Under well settled principles governing the equitable power of federal courts, equitable
4 relief, including monetary restitution, is not available unless no adequate remedy at law is
5 available. Because Plaintiff has a remedy at law for fees charged that are ultimately deemed
6 illegal—damages under the Rosenthal Act—PHH contends that he cannot simultaneously
7 advance a UCL claim arising out of the same facts. And the fact that the UCL’s statute of
8 limitations is longer than the Rosenthal Act’s does not change this analysis in PHH’s view, as
9 class members had an adequate remedy at law for any alleged Rosenthal Act violation—
10 damages—and as a matter of law their failures to timely avail themselves of that legal remedy
11 does not render the remedy inadequate.
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13 The PHH Defendants further maintain that the Court’s certification of a litigation class in
14 this action was improper, for the reasons explained in the PHH Defendants’ opposition brief to
15 class certification, at oral argument on the same motion, and in the PHH Defendants’ Rule 23(f)
16 petition.
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18 Nevertheless, taking into account the uncertainty and risks inherent in any litigation, the
19 PHH Defendants have concluded that further defense of the Action would be counterproductive,
20 would not be cost-efficient, and would be unduly protracted, costly, burdensome and disruptive
21 to its business operations, as compared to the terms of Settlement. Therefore, the PHH
22 Defendants believe that it is desirable and beneficial that the Action be fully and finally settled
23 and terminated in the manner and upon the terms and conditions set forth in this Agreement. As
24 set forth in Paragraphs 2.3, 6.5, 12.6.3, and 13.3 below, this Agreement shall in no event be
25 construed as or deemed to be evidence of an admission or concession by the PHH Defendants or
26 any of the Released Persons with respect to any claim of any fault or liability or wrongdoing or
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1 damage whatsoever in this case or any other.

2 * * *

3 Given all of the foregoing, and considering the risks and uncertainties inherent in
4 continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied
5 that the terms and conditions of this Agreement and Settlement are more than fair, reasonable,
6 adequate and in their respective best interests.
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8 **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

9 **1 Definitions**

10 1.1 As used in this Agreement and the attached exhibits (which are integral parts of
11 this Stipulation and are incorporated in their entirety by reference), the following terms have the
12 following meanings, unless this Agreement specifically provides otherwise:

13 1.1.1 “Action” or “Actions” means the lawsuits captioned *Lawrence Torliatt v.*
14 *Ocwen Loan Servicing, LLC*, Case No. 3:19-cv-04303-WHO (the “Ocwen Action”), and
15 *Lawrence Torliatt v. PHH Mortgage Corp.*, Case No. 3:19-cv-04356, individually and as
16 consolidated together, both pending in the United States District Court for the Northern
17 District of California.
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19 1.1.2 “Agreement” means this Stipulation of Settlement and Release and the
20 exhibits attached hereto or incorporated herein, including any amendments subsequently
21 agreed to by the Parties pursuant to the provisions of Section 12 of this Agreement and
22 any exhibits to such amendments.
23

24 1.1.3 “Attorneys’ Fees and Expenses” means such aggregate funds as may be
25 awarded by the Court from the Settlement Fund to compensate Class Counsel (and any
26 other past, present, or future attorneys for Plaintiff or the Class in this Action) for all of
27 the past, present, and future attorneys’ fees, costs (including court costs), expenses, and
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1 disbursements earned or incurred collectively and individually by any and all of them,
2 their investigators, experts, staff, and consultants combined in connection with the Action.

3 1.1.4 “Class Counsel” means Joseph Henry Bates, III, Edwin Lee Lowther,
4 and Randall K. Pulliam of Carney Bates & Pulliam, PLLC and James Lawrence Kauffman
5 of Bailey & Glasser LLP.

6 1.1.5 “Class Loans” means residential mortgage loans taken out by borrowers
7 on mortgaged property in the State of California, who, between July 26, 2015 and June 24,
8 2022 (the last day of the Class Period), paid a convenience fee to Ocwen and/or, between
9 July 30, 2015 and June 24, 2022, paid a convenience fee to PHH to make a due and owing
10 monthly payment over the telephone, by IVR, or online. Excluded from the definition of
11 Class Loans are all loans where one or more of the borrowers are (a) employees of
12 Defendants, (b) all members of the Settlement Class in *McWhorter, et al. v. Ocwen Loan*
13 *Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1,
14 2019), and (c) the federal district court and magistrate judges assigned to the Actions,
15 along with persons within the third degree of relationship to them.
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18 1.1.6 “Class Notice” means the legal notice summarizing the terms of this
19 Agreement, in a form substantially similar to that attached as **Exhibit A**, to be provided to
20 the Settlement Class pursuant to the provisions of Section 7 of this Agreement.
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22 1.1.7 “Class Roster Date” means 11:59 p.m. EDT on June 24, 2022, the date as
23 of which the Class Loans encompassed within the Settlement Class was determined and
24 verified through reference to the PHH Defendants’ records.

25 1.1.8 “Convenience Fee” means fees paid by borrowers to the PHH Defendants
26 for making loan payments by telephone, IVR, or the internet.

27 1.1.9 “Costs of Administration” means the reasonable and necessary costs
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1 incurred by the Settlement Administrator to: (a) provide notice of the Settlement and this
2 Agreement to the Settlement Class, as set forth in Section 7 of this Agreement, with such
3 costs being limited to those associated with establishing and maintaining the Settlement
4 Website and the automated interactive voice response telephone system, responding to
5 Settlement Class Member inquiries, and printing, mailing, and otherwise distributing the
6 Class Notice to the Settlement Class as provided in Section 7; and (b) to calculate and
7 distribute the Individual Allocations as set forth in Section 4 of this Agreement. The Costs
8 of Administration include the reasonable fees and expenses incurred by the Settlement
9 Administrator in performing all of the tasks for which the Settlement Administrator is
10 retained. The Costs of Administration will be paid from the Settlement Fund. The Costs
11 of Administration do not include any Attorneys' Fees and Expenses or Service Awards,
12 which—if awarded by the Court—will also be paid from the Settlement Fund.
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15 1.1.10 “Court” means the United States District Court for the Northern District
16 of California, the Honorable William H. Orrick presiding, or any other judge of this Court
17 who shall succeed him as the Judge assigned to this Action.

18 1.1.11 “Fairness Hearing” means the hearing held by the Court to consider
19 evidence and argument for the purposes of determining, among other things, whether this
20 Agreement and the Settlement are fair, reasonable and adequate; whether this Agreement
21 should be given final approval through entry by the Court of the Final Order and Judgment;
22 and whether certification of the Settlement Class should be made final. The Fairness
23 Hearing shall be held no earlier than one hundred and thirty-five (135) days after the date
24 of entry of the Preliminary Approval Order.
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26 1.1.12 “Final Order and Judgment” means the order entered by the Court finally
27 approving the Settlement and this Agreement; certifying the Settlement Class pursuant to
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1 Rule 23(b)(3) of the Federal Rules of Civil Procedure; and granting judgment pursuant to
2 Rule 58 of the Federal Rules of Civil Procedure, which unless the Parties otherwise agree
3 shall be in substantially the same form as is agreed to by the Parties and submitted to the
4 Court at or before the Fairness Hearing.

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6 1.1.13 “Final Settlement Date” means ten (10) days after the date on which the
7 Final Order and Judgment approving this Agreement becomes final. For purposes of this
8 Agreement, the Final Order and Judgment shall become final: (a) if no appeal is taken
9 from the Final Order and Judgment, on the date on which the time to appeal therefrom has
10 expired pursuant to Federal Rule of Appellate Procedure 4; or (b) if any appeal is taken
11 from the Final Order and Judgment, on the date on which all appeals therefrom, including
12 petitions for rehearing or re-argument pursuant to Federal Rule of Appellate Procedure 40,
13 petitions for rehearing *en banc* pursuant to Federal Rule of Appellate Procedure 35 and
14 petitions for certiorari pursuant to Rule 13 of the Supreme Court or any other form of
15 appellate review, have been fully and finally disposed of in a manner that affirms all of
16 the material provisions of the Final Order and Judgment.

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18 1.1.14 “Individual Allocations” means the share of the Settlement Fund that all
19 borrowers on a given Class Loan are jointly entitled to receive following payment from
20 the Settlement Fund of any Attorneys’ Fees and Expenses and Service Awards that may
21 be awarded by the Court, to be calculated and determined in accordance with Section 4 of
22 this Agreement.

23
24 1.1.15 “Litigation Class” means the litigation class previously certified by the
25 Court and defined as “All persons in the United States (1) with a Security Instrument on a
26 residential loan securing a property located in the State of California, (2) that is or was
27 serviced by Ocwen or PHH, (3) who were charged one or more Pay-to-Pay fee, (4) whose
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1 Security Instrument did not expressly allow for the charging of a Pay-to-Pay fee at the
2 time the Pay-to-Pay fee was charged, (5) whose mortgage debt was due and owing at the
3 time the fee was charged, and (6) who were not members in *McWhorter v. Ocwen Loan*
4 *Servicing, LLC*, 2:15-cv-01831-MHH (N.D. Ala.)” (Doc. 152 at 8–9).

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6 1.1.16 “Objection/Exclusion Deadline” means the date by which any written
7 objection to this Agreement must be filed with the Court and any request for exclusion by
8 a Potential Settlement Class Member must be received by the Settlement Administrator,
9 which shall be designated as a date thirty-five (35) days before the originally scheduled
10 date of the Fairness Hearing (if the Fairness Hearing is continued, the deadline runs from
11 the first scheduled Fairness Hearing), or on such other date as may be ordered by the Court.

12 1.1.17 “Ocwen” means Ocwen Loan Servicing, LLC.

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14 1.1.18 “Operative Complaint” means the Second Amended Complaint, filed in
15 the Action on May 1, 2020 (Doc. 50), and annexed hereto as **Exhibit B**.

16 1.1.19 “Parties” or “Party” means Plaintiff and the PHH Defendants, separately
17 and collectively, as each of those terms is defined in this Agreement.

18 1.1.20 “Person” means an individual, corporation, partnership, limited
19 partnership, association, joint stock company, estate, legal representative, trust,
20 unincorporated association, government or any political subdivision or agency thereof, and
21 any business or legal entity and their respective spouses, heirs, predecessors, successors,
22 representatives, or assignees.

23 1.1.21 “PHH” means PHH Mortgage Corporation d/b/a PHH Mortgage Services.

24 1.1.22 “PHH Defendants” means PHH and Ocwen, separately and collectively,
25 as each of those terms is defined in this Agreement, on its own behalf and as successor by
26 merger to Ocwen, and any of their affiliates, subsidiaries, parents, partners, members,
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1 and/or predecessors.

2 1.1.23 “PHH Defendants’ Counsel” means Michael R. Pennington, Scott Burnett
3 Smith, Zachary A. Madonia, and Kimberly M. Ingram of the law firm of Bradley Arant
4 Boulton Cummings LLP and Austin Benjamin Kenney and Mary Kate Sullivan of the law
5 firm of Severson & Werson, APC.

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7 1.1.24 “Plaintiff” or “Torliatt” mean Lawrence Torliatt, the named plaintiff in the
8 Actions.

9 1.1.25 “Potential Settlement Class Members” mean Persons who fall within this
10 Agreement’s definition of the Settlement Class.

11 1.1.26 “Preliminary Approval Order” means the order to be entered by the Court
12 preliminarily approving the Settlement as outlined in this Agreement, certifying the
13 Settlement Class for settlement purposes only, designating Class Counsel as counsel for
14 the Settlement Class and Plaintiff as the representative of the Settlement Class, and
15 approving the form and content of the Class Notice to be disseminated to the Settlement
16 Class. A proposed version of the Preliminary Approval Order is attached hereto as **Exhibit**
17 **C**.

18
19 1.1.27 “Release” means the release and waiver set forth in Section 3 of this
20 Agreement.

21 1.1.28 “Released Claims” means each and all of the claims, causes of action,
22 suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether
23 punitive, statutory, or compensatory and whether liquidated or unliquidated), losses,
24 controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based
25 on any federal law, state law, common law, territorial law, foreign law, contract, rule,
26 regulation, any regulatory promulgation (including, but not limited to, any regulatory
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1 bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity,
2 whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
3 unforeseen, actual or contingent, that relate to or arise out of Convenience Fees charged
4 by Ocwen to Settlement Class Members, during the period from July 26, 2015 through
5 and including June 24, 2022, and charged by PHH to Settlement Class Members, during
6 the period from July 30, 2015 through and including June 24, 2022.
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8 1.1.29 “Released Persons” means (a) PHH, Ocwen, and any and all of their
9 current or former predecessors, successors, assigns, parent corporations, subsidiaries,
10 divisions, related and affiliated companies and entities, associates, vendors, service
11 providers, software licensors and licensees, clients and customers, principals,
12 stockholders, directors, officers, partners, principals, members, employees, attorneys,
13 consultants, independent contractors, representatives, and agents, transferee servicers, and
14 all individuals or entities acting by, through, under, or in concert with any of them; and (b)
15 any trustee of a mortgage securitization trust which includes loans on which Settlement
16 Class Members are borrowers, including, but not limited to, any direct or indirect
17 subsidiary of any of them, and all of the officers, directors, employees, agents, brokers,
18 distributors, representatives, and attorneys of all such entities.
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20 1.1.30 “Releasing Persons” means individually and collectively (a) Plaintiff and
21 (b) the Settlement Class and each Settlement Class Member thereof, and in each case in
22 clauses (a)–(b), on behalf of themselves and any of their respective past, present, or future
23 heirs, guardians, assigns, executors, administrators, representatives, agents, attorneys,
24 partners, legatees, predecessors, co-obligors, and/or successors.
25

26 1.1.31 “Service Award” means such funds as may be awarded by the Court from
27 the Settlement Fund to Plaintiff Torliatt to compensate him for his efforts in bringing the
28

1 Action and achieving the benefits of this Agreement on behalf of the Settlement Class.

2 1.1.32 “Settlement” means the settlement and related terms between the Parties
3 as set forth in this Agreement.

4 1.1.33 “Settlement Administrator” means KCC, selected by mutual agreement of
5 the Parties to help implement the distribution of the Class Notice, host the Settlement
6 Website and automated interactive voice recognition telephone system, calculate
7 Individual Allocations and distribute Individual Allocations to Settlement Class Members
8 paid by check, and aid in fulfilling the related requirements set forth in this Agreement.
9 Class Counsel will seek the Court’s approval of KCC as the Settlement Administrator in
10 connection with the preliminary approval of this Agreement and Settlement.
11

12 1.1.34 “Settlement Class” means, for purposes of the Settlement and this
13 Agreement only, all borrowers on residential mortgage loans involving mortgaged
14 property located in the State of California who, between July 26, 2015 and June 24, 2022
15 (the last day of the Class Period), paid a Convenience Fee to Ocwen and/or, between July
16 30, 2015 and June 24, 2022, paid a Convenience Fee to PHH to make a due and owing
17 monthly payment over the telephone, by IVR, or online. Excluded from the Class are (a)
18 all employees of Defendants, (b) all members of the Settlement Class in *McWhorter, et al.*
19 *v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D.
20 Ala. Aug. 1, 2019), and (c) the federal district court and magistrate judges assigned to the
21 Actions, along with persons within the third degree of relationship to them.
22

23 1.1.35 “Settlement Class Members” mean Persons who fall within the definition
24 of the Settlement Class, who do not timely and properly exclude themselves from the
25 Settlement Class as provided in this Agreement, and who otherwise are not excluded by
26 specific order of the Court from the Settlement Class.
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1 1.1.36 “Settlement Fund” means the monetary relief with an aggregate value of
2 \$7,000,000.00 that the PHH Defendants have agreed to make available to the Settlement
3 Class as a whole, to be distributed pursuant to the terms of Sections 4 and 10 of this
4 Agreement.

5 1.1.37 “Settlement Website” means the internet website that the Settlement
6 Administrator will establish and host pursuant to the provisions of Section 7 of this
7 Agreement, following entry of the Preliminary Approval Order.

8 1.2 Other capitalized terms used in this Agreement but not defined in this Section 1
9 shall have the meanings ascribed to them elsewhere in this Agreement and the exhibits attached
10 hereto.

11 1.3 The terms “he or she” and “his or her” include “it” or “its” where applicable.

12 **2 Representations, Acknowledgements, and Warranties**

13 2.1 Class Counsel have concluded, after due investigation and after carefully
14 considering the relevant circumstances, that: (1) it is in the best interest of Plaintiff and the
15 Settlement Class to enter into this Agreement to avoid the uncertainties of litigation and assure
16 that the benefits reflected herein, including the value of the Settlement Fund under this
17 Agreement, are obtained for Plaintiff and the Settlement Class, and (2) the Settlement set forth
18 in this Agreement is fair, reasonable, and adequate within the meaning of Federal Rule of Civil
19 Procedure 23 and in the best interests of Plaintiff and the Settlement Class.
20 2.2 Based on, among other things, their extensive investigation in the Action,
21 including their extensive legal research and the extensive discovery conducted in the course of
22 litigating the Actions, as well as the information sharing that occurred before, during, and after
23 the Parties’ protracted mediation, Class Counsel recommend and agree to this Settlement as set
24 forth herein.

1 2.3 Plaintiff, both for himself individually and on behalf of each Settlement Class
2 Member, and the PHH Defendants acknowledge and agree that neither this Agreement nor the
3 releases given herein, nor any consideration therefore, nor any actions taken to carry out or obtain
4 Court approval of this Agreement are intended to be, nor may they be deemed or construed to
5 be, an admission or concession of liability, or the validity of any claim, or defense, or of any
6 point of fact or law (including but not limited to matters respecting class certification) on the part
7 of any Party. The PHH Defendants expressly deny the allegations of Plaintiff's complaints
8 including, without limitation, the allegations of the Operative Complaint. Neither this
9 Agreement, nor the fact of the Settlement, nor the settlement proceedings, nor settlement
10 negotiations, nor statements made in court proceedings, nor any related document, shall be used
11 as an admission of any fault or omission by the PHH Defendants or the Released Persons, or be
12 construed as, offered as, received as, or used as evidence of an admission, concession,
13 presumption, or inference of any fact or of any liability or wrongdoing by the PHH Defendants
14 or the Released Persons in any proceeding, or as a waiver by the PHH Defendants or the Released
15 Persons of any applicable defense, or for any other purposes other than such proceedings as may
16 be necessary to defend, consummate, interpret, or enforce the Settlement contemplated by this
17 Agreement.
18

19
20 2.4 Each counsel or other Person executing this Agreement on behalf of any Party
21 hereto expressly warrants and represents that (a) such Person has the full authority to execute this
22 Agreement on behalf of the Party for whom such Person is executing the Agreement (including
23 on behalf of such Person's client, to the extent the Person signing this Agreement is an attorney);
24 (b) it is acting upon its respective independent judgment and upon the advice of its respective
25 counsel, and not in reliance upon any representation, warranty, or covenant, express or implied,
26 of any nature or kind by any other Person other than the representations, warranties and covenants
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1 contained and memorialized in this Agreement; and (c) any representation, warranty or covenant,
2 express or implied, of any nature or kind that is not contained in this Agreement is immaterial to
3 the decision to enter into this Agreement. The undersigned Class Counsel represent and warrant
4 that they are authorized to execute this Agreement on behalf of both Plaintiff and the Settlement
5 Class.

6
7 2.5 Plaintiff represents and warrants that he: (a) has entered into and executed this
8 Agreement voluntarily and without duress or undue influence, and with and upon the advice of
9 counsel, selected by him; (b) has agreed to serve as representative of the Settlement Class; (c) is
10 willing, able, and ready to perform all of the duties and obligations of a representative of the
11 Settlement Class; (d) has read the complaints filed in the Actions, or has had the contents of such
12 pleadings described to him by Class Counsel; (e) is familiar with the results of the fact-finding
13 and discovery undertaken by Class Counsel; (f) has been kept apprised of the progress of the
14 Actions and the settlement negotiations between the Parties, and has either read this Agreement
15 (including the exhibits annexed hereto) or has received a detailed description of it from Class
16 Counsel and he has agreed to its terms; (g) has consulted with Class Counsel about the Actions,
17 this Agreement and the duties and obligations imposed on a representative of the Settlement
18 Class; (h) has authorized Class Counsel to execute this Agreement on his behalf; and (i) will
19 remain and serve as the representative of the Settlement Class until the terms of the Agreement
20 are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any
21 time determines that he can no longer serve in a representative capacity on behalf of the
22 Settlement Class.

23
24
25 2.6 Plaintiff represents and warrants that he is the sole and exclusive owner of all
26 claims that he is personally asserting in this Action and releasing under this Agreement, including
27 all Released Claims. Plaintiff further acknowledges that he has not assigned, pledged, or in any
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1 manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim
2 arising out of or in any way whatsoever pertaining to the Actions or to the Released Claims, and
3 that he is not aware of anyone other than himself claiming any interest, in whole or in part, in the
4 Actions, the Released Claims, or in any benefits, proceeds or values under the Actions or the
5 Released Claims on his behalf. Plaintiff further represents and warrants that he will indemnify,
6 defend and hold all other Parties harmless as a result of any assignment of such right, and enters
7 into this Settlement without coercion of any kind.
8

9 **3 Dismissal, Release, and Covenant not to Sue**

10 3.1 Subject to Court approval, Plaintiff agrees, on behalf of himself and the
11 Settlement Class Members, that this Agreement shall be the full and final disposition of: (i) the
12 Actions against the PHH Defendants; and (ii) any and all Released Claims as against all Released
13 Persons.
14

15 3.2 Upon final approval of the Settlement reflected in this Agreement, and as part of
16 the entry of the Final Order and Judgment, Plaintiff and Class Counsel shall take all steps
17 necessary to effectuate dismissal of the Actions with prejudice as to the PHH Defendants.

18 3.3 The Parties agree that the following release and waiver for the Settlement Class
19 shall take effect upon the Final Settlement Date:

20 3.3.1 The Settlement Class Members who did not timely and validly request to
21 be excluded from the Settlement Class will be deemed to have fully, finally and forever
22 released, on behalf of themselves and all of their present, former and future heirs, assigns,
23 and/or successors, each and all of the PHH Defendants and Released Parties of and from,
24 and shall be permanently enjoined from pursuing against each and all of the Released
25 Parties, any and all claims, causes of action, suits, obligations, debts, demands,
26 agreements, promises, liabilities, damages, losses, controversies, costs, expenses and
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1 attorneys' fees of any nature whatsoever, whether based on any federal law, state law,
2 common law, territorial law, foreign law, contract, rule, regulation, any regulatory
3 promulgation (including, but not limited to, any opinion or declaratory ruling), common
4 law or equity, whether known or unknown, suspected or unsuspected, asserted or
5 unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated,
6 punitive or compensatory, arising out of the Convenience Fees charged by Ocwen to
7 Settlement Class Members, during the period from July 26, 2015 through and including
8 the date the settlement is submitted for preliminary approval, and by PHH to Settlement
9 Class Members, during the period from July 30, 2015 through and including the date the
10 settlement is submitted for preliminary approval, for making loan payments by telephone,
11 IVR, the internet, and other payment methods.
12

13
14 3.4 Without in any way limiting its scope, and, except to the extent otherwise
15 specified in this Agreement, the Released Claims include, by example and without limitation,
16 any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees,
17 costs or any other fees, costs, and/or disbursements incurred by Class Counsel, or by Plaintiff or
18 by the Settlement Class Members regarding Released Claims for which any of the Released
19 Persons might otherwise be claimed liable.
20

21 3.5 The Releasing Persons may hereafter discover facts other than or different from
22 those which they now know or believe to be true with respect to the subject matter of the Released
23 Claims. Nevertheless, Plaintiff and the other Releasing Persons do hereby expressly, fully,
24 finally, and forever settle and release, and each Releasing Person, upon the Final Settlement Date,
25 shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully,
26 finally, and forever settled and released, any and all Released Claims, whether or not concealed
27 or hidden, without regard to the subsequent discovery or existence of such different or additional
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1 facts.

2 3.6 With respect to any and all Released Claims against any and all Released Persons,
3 the Parties stipulate and agree that, by operation of the Final Order and Judgment upon the Final
4 Settlement Date, each Releasing Person shall have expressly waived, and shall be deemed to
5 have waived, and by operation of the Final Order and Judgment shall have expressly waived, the
6 provisions, rights and benefits of Cal. Civ. Code § 1542 or any federal, state or foreign law, rule,
7 regulation or common-law doctrine that is similar, comparable, equivalent or identical to, or that
8 has the effect in whole or part of, Section 1542 of the California Civil Code, which provides:

9
10 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
11 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
12 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
13 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
14 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

15 3.7 All Settlement Class Members and other Releasing Persons shall be bound by the
16 releases set forth in this Section 3 whether or not they ultimately cash, negotiate or deposit any
17 check mailed for their Individual Allocations.

18 3.8 Subject to the provisions of this Section 3 and the injunctions contemplated herein
19 and in Section 5, nothing in this Release shall preclude any filing in the Actions seeking to have
20 the Court enforce the terms of this Agreement, including participation in any of the processes
21 detailed therein.

22 **4 The Settlement Fund, Claims Administration Process, and Distribution of**
23 **Individual Allocations**

24 4.1 Pursuant to and subject to all other terms of this Agreement, and in consideration
25 for (a) the dismissal of the Actions with prejudice, (b) the Release set forth in Section 3 and the
26 approval, entry, and enforcement thereof by the Court, and (c) the other promises and covenants
27 in this Agreement, the PHH Defendants have agreed to make available to Plaintiff and the
28 Settlement Class the following monetary relief (and only the following monetary relief), subject

1 to each and all of the terms and conditions specified herein.

2 4.2 The PHH Defendants shall make available to the Settlement Class a Settlement
3 Fund of \$7,000,000.00. The Settlement Fund is a lump sum and is not designated as any specific
4 category of monetary relief potentially available under the Rosenthal Act, Plaintiff's UCL claims,
5 and/or any other federal or state claim Plaintiff could have brought in this litigation. The PHH
6 Defendants and Class Counsel estimate that the amount of the Settlement Fund equals
7 approximately 41% of the aggregate amount of Convenience Fees charged to the Class Loans on
8 due and owing payments during the Class Period, including amounts that were retained by third
9 parties who helped to process the transactions.
10

11 4.3 The Settlement Fund shall first be applied to pay all Costs of Administration,
12 including notice costs, for administration of the settlement incurred prior to Final Settlement
13 Date, and funds sufficient to pay the administrator for such costs expected to be incurred prior to
14 final approval shall be provided by the PHH Defendants to the Settlement Administrator within
15 3 business days of Preliminary Approval Order.
16

17 4.4 The Settlement Fund shall next be applied to pay any Attorneys' Fees and
18 Expenses and any Service Awards that may be approved by the Court, pursuant to the provisions
19 of Section 10 of this Agreement, as well as all remaining Costs of Administration, including
20 those costs associated with the disbursement of Individual Allocations to Settlement Class
21 Members. The PHH Defendants shall transfer to the Settlement Administrator from the
22 Settlement Fund an amount equal to the total of any Attorneys' Fees and Expenses and/or Service
23 Awards that may be approved by the Court within 10 business days after the Final Settlement
24 Date, and also shall pay directly to the Settlement Administrator all remaining Costs of
25 Administration within 10 business days after the Final Settlement Date.
26

27 4.5 The PHH Defendants shall also cause the remaining balance of the Settlement
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1 Fund, after payment of any such Attorneys' Fees and Expenses, Service Awards, and Costs of
2 Administration, to be transferred to the Settlement Administrator within 10 business days after
3 the Final Settlement Date, to be divided and distributed as Individual Allocations among Plaintiff
4 and those members of the Settlement Class who did not submit timely and valid exclusion
5 requests. Each Class Loan remaining within the Settlement Class as of the Final Settlement Date
6 will be entitled to receive an Individual Allocation, calculated based on the proportion of
7 Convenience Fees paid to and retained (1) by Ocwen on that Class Loan between July 26, 2015
8 and June 24, 2022, inclusive, and/or (2) by PHH on that Class Loan between July 30, 2015 and
9 June 24, 2022, inclusive, on due and owing loan payments, as compared to the total aggregate
10 amount of all Convenience Fees paid to and retained by Ocwen and PHH on due and owing loan
11 payments with respect to all Class Loans during the respective periods. The purpose of this
12 method of allocation is to ensure that the Settlement Fund is allocated equitably based on the
13 relative amount of Convenience Fees charged to and paid on due and owing loan payments with
14 respect to each Class Loan. As a result, payments made on Class Loans with multiple borrowers
15 shall be treated as joint payments for purposes of this calculation, such that each Class Loan will
16 be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund.
17 Co-debtors, joint-borrowers, and multiple obligators on a single Class Loan are not entitled to a
18 separate Individual Allocation on the same Class Loan.

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22 4.6 The Parties shall cause the Settlement Administrator to distribute the Individual
23 Allocations to Settlement Class Members no later than sixty (60) days following the Final
24 Settlement Date. The Parties shall cause the Settlement Administrator to distribute Settlement
25 Class Members' respective Individual Allocations by check, with each such check made
26 payable—unless otherwise mutually agreed to by the Parties for good cause shown—jointly to
27 all borrowers on each such Class Loan, in an amount equal to that Class Loan's respective
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1 Individual Allocation, payable in U.S. funds, and mailed to the mailing address of record for that
2 Class Loan as determined from the PHH Defendants' records. Individual Allocation relief shall
3 reduce and be paid out of the Settlement Fund. All checks for Individual Allocation relief shall
4 state on the face of the check that the check will expire and become null and void unless cashed
5 within one hundred and eighty (180) days after the date of issuance of the check, and Settlement
6 Class Members' failure to deposit, negotiate or otherwise cash such checks within that one
7 hundred and eighty (180) day period shall constitute a release by those Settlement Class Members
8 (and all other borrowers on their respective Class Loan) of any and all rights to said monetary
9 relief under the Settlement. Individual Allocation relief that remains undeliverable three hundred
10 (300) days after the Final Settlement Date despite the Settlement Administrator's efforts to locate
11 the Settlement Class Members shall be paid to Homes for Our Troops, "a privately funded
12 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes
13 nationwide for severely injured post – 9/11 Veterans, to enable them to rebuild their lives."
14 <https://www.hfotusa.org/mission/> (last visited May 19, 2022). No portion of the Settlement Fund
15 will revert to the PHH Defendants.

18 4.7 Only Settlement Class Members are entitled to any distribution of Individual
19 Allocations. Potential Settlement Class Members who timely and properly exclude themselves
20 from the Settlement Class as provided in this Agreement or who otherwise are specifically
21 excluded by order of the Court are not entitled to any distribution of Individual Allocations.

23 4.8 Subject to the terms of the Final Order and Judgment, no certifications by the
24 Parties regarding their compliance with the terms of the Settlement and this Agreement will be
25 required. Any dispute as to the Parties' compliance with their obligations under the Settlement
26 and this Agreement shall be brought and resolved only in the Action and only by the Court, and
27 applicable appellate courts, and in no other action or proceeding.

1 **5 Additional Consideration for the Settlement**

2 5.1 As additional consideration for (a) the dismissal of the Action with prejudice on
3 the merits, (b) the Release set forth in Section 3 and the approval, entry, and enforcement thereof
4 by the Court, and (c) the other promises and covenants in this Agreement, the PHH Defendants
5 have agreed to stop charging Convenience Fees to borrowers whose loan is subject to the
6 Rosenthal Act—*i.e.*, borrowers on residential mortgage loans involving mortgaged property in
7 the State of California who are making a payment on or after the payment’s due date—for a
8 period of 2 years from the Final Settlement Date. While at this time, the PHH Defendants intend
9 to continue offering California borrowers the option of making payments subject to the Rosenthal
10 Act online or by phone during the 2-year period from the Final Approval Date without charging
11 a fee, nothing in this Settlement shall require the PHH Defendants to continue to accept online
12 or telephonic payments or offer online or telephonic payment options. Put differently, nothing in
13 this Settlement shall prohibit the PHH Defendants from discontinuing the offering of online or
14 telephonic payment options for borrowers subject to the Rosenthal Act.
15

16 5.2 Except as expressly set forth in this Agreement, neither the Settlement, nor the
17 Release, nor any of the relief to be offered pursuant to the Settlement shall: (a) alter or extinguish
18 (or be construed as altering or extinguishing) the terms of the debts, promissory notes, mortgages,
19 security interests and other pre-existing contracts of the Settlement Class Members which are
20 still in effect as of the Final Settlement Date; (b) constitute a novation or release of those debts,
21 promissory notes, mortgages, security interests and other pre-existing contracts; or (c) in any way
22 alter the rights of any party under those debts, promissory notes, mortgages, security interests
23 and other pre-existing contracts which are still in effect as of the Final Settlement Date. Nothing
24 in this Agreement, the Settlement or the Release shall prevent the Released Persons from
25 continuing to service or collect such debts, promissory notes, mortgages, security interests and
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1 other pre-existing contracts consistent with the terms of those agreements.

2 5.3 The Parties hereby agree and acknowledge that the provisions of this Section 5
3 together constitute essential and material terms of this Agreement and shall be included, approved
4 and made effective in any Final Order and Judgment entered by the Court.

5 **6 Preliminary Approval Order**

6 6.1 Promptly after the execution of this Agreement, but in no event later than seven
7 (7) court days after this Agreement is fully executed (unless such time is extended by the written
8 agreement of Class Counsel and the PHH Defendants' Counsel), Class Counsel shall submit this
9 Agreement together with its exhibits to the Court and shall move the Court for entry of the
10 Preliminary Approval Order, substantially in the form of **Exhibit C** hereto.

11 6.2 The requested Preliminary Approval Order shall include, among other things
12 included in Exhibit C, provision for the following:

13 6.2.1 Preliminary approval of the Settlement set forth in this Agreement as fair,
14 reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23;

15 6.2.2 Conditionally vacating the certification of the Litigation Class, subject to
16 the Settlement reaching the Final Settlement Date;

17 6.2.3 Conditional approval of the Settlement Class as for settlement purposes
18 only;

19 6.2.4 Appointment of Class Counsel and Plaintiff as the representative of the
20 Settlement Class;

21 6.2.5 Approval of the mailing of the Class Notices, substantially in the form
22 attached as Exhibit A, which shall include, among other things, the information identified
23 in Paragraph 7.2.3 and all its subparagraphs;

24 6.2.6 Approval of the procedures set forth in the Class Notices for Potential
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1 Settlement Class Members to seek exclusion from the Settlement Class or to object to the
2 Settlement and/or the Fee and Expense Application;

3 6.2.7 Approval of the appointment of a Settlement Administrator;

4 6.2.8 Preliminarily enjoining (i) Potential Settlement Class Members from
5 directly or indirectly filing, commencing, participating in, or prosecuting (as class
6 members or otherwise) any lawsuit in any jurisdiction asserting on their own behalf claims
7 that would be Released Claims if this Settlement is finally approved, unless and until they
8 timely exclude themselves from the Settlement Class as specified in the this Order and in
9 the Agreement and its exhibits; and (ii) regardless of whether they opt out, Potential
10 Settlement Class Members from directly or indirectly filing, prosecuting, commencing, or
11 receiving proceeds from (as class members or otherwise) any separate purported class
12 action asserting, on behalf of any Settlement Class Members who have not opted out from
13 this Settlement Class, any claims that would be Released Claims if this Settlement receives
14 final approval and becomes effective; and
15

16 6.2.9 The scheduling of the Fairness Hearing.

17 6.3 The PHH Defendants, without admitting that the Action meets the requisites for
18 certification of a contested litigation class under Federal Rule of Civil Procedure 23 or for class
19 certification for any purpose other than settlement, hereby agree, on each and all of the terms and
20 conditions set forth herein, and solely for purposes of and in consideration of the Settlement set
21 forth herein, not to oppose the certification of the Settlement Class for settlement purposes only,
22 the appointment of Class Counsel as legal counsel for the Settlement Class, or the approval of
23 Plaintiff as the representative of the Settlement Class.
24

25 6.4 Plaintiff and Class Counsel, without conceding in any way that the Action does
26 not meet the requisites for certification of a contested litigation class or otherwise conceding in
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1 any way that the Court's certification of the Litigation Class was improper in any respect, hereby
2 agree, on each and all of the terms and conditions set forth herein, and solely for purposes of and
3 in consideration of the Settlement set forth herein, to agree to the decertification of the Litigation
4 Class for settlement purposes only, to facilitate the certification of the Settlement Class.

5
6 6.5 The Court's certification of the Settlement Class for settlement purposes only
7 (whether in the Preliminary Approval Order or Final Order and Judgment) shall not be deemed
8 to be an adjudication of any fact or issue for any purpose other than the accomplishment of the
9 provisions of this Settlement and this Agreement, and shall not be considered as law of the case,
10 res judicata, judicial estoppel, promissory estoppel, or collateral estoppel in the Action or in any
11 other proceeding unless and until the Final Settlement Date is reached. Whether or not the
12 Settlement reaches the Final Settlement Date, the Parties' stipulations and agreements as to class
13 certification for settlement purposes only (and any and all statements or submission made by the
14 Parties in connection with seeking the Court's approval of the Settlement and this Agreement)
15 shall not be deemed to be any stipulation or grounds for estoppel or preclusion as to the propriety
16 of class certification, nor any admission of fact or law regarding any request for class
17 certification, in any other action or proceeding, whether or not involving the same or similar
18 claims. In the event the Settlement and this Agreement are not approved, or the Final Settlement
19 Date is not reached, or this Agreement is terminated, canceled, or fails to become effective for
20 any reason whatsoever, the Parties' stipulations and agreements as to certification of the
21 Settlement Class shall be null and void and the Court's certification order in any Preliminary
22 Approval Order or Final Order and Judgment shall be vacated, and thereafter no settlement class
23 or settlement classes will remain certified, and nothing in this Agreement or other papers or
24 proceedings related to the Settlement shall be used as evidence or argument by any party
25 concerning whether the Action may properly be maintained as a class action under applicable
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1 law; provided, however, that Plaintiff and Class Counsel have already obtained certification of
2 the Litigation Class before the Court, which shall be reinstated by the Court *nunc pro tunc* as of
3 the date the Court originally issued its order certifying the Litigation Class (November 8, 2021),
4 but further provided that the PHH Defendants may continue to oppose, object to, and challenge
5 such certification of the Litigation Class on any available grounds in this Court or any other court
6 of competent jurisdiction. In the event the Settlement and this Agreement are not approved, or
7 the Final Settlement Date is not reached, or this Agreement is terminated, canceled, or fails to
8 become effective for any reason whatsoever, nothing in this Settlement or this Agreement shall
9 be admissible in any effort related to the certification of the Litigation Class or any other class in
10 this Court or any other court under any circumstances.

11
12 **7 Notice to, and Communications with, the Settlement Class and Federal and**
13 **State Officials**

14 **7.1 Notice to Appropriate Federal and State Officials.** Pursuant to the notice
15 provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after this
16 Agreement is deemed filed with the Court, the PHH Defendants will provide notice of this Action
17 and this Agreement to the Attorney General of the United States; the Consumer Finance
18 Protection Bureau; the Federal Trade Commission; and the Attorneys General of the States,
19 Districts, Commonwealths and Territories in which Settlement Class Members are determined
20 to reside based on the borrower mailing addresses for the Class Loans as reflected in the PHH
21 Defendants' business records, and will submit confirmation of such notice to the Court.

22
23 **7.2 Individual Notice to the Settlement Class**

24 **7.2.1** The Class Notice shall be the legal notice to be provided to the Settlement
25 Class Members and shall otherwise comply with Federal Rule of Civil Procedure 23 and
26 any other applicable statutes, laws, and rules, including, but not limited to, the Due Process
27 Clause of the United States Constitution.
28

1 7.2.2 Subject to the requirements of the Preliminary Approval Order, the Parties
2 shall cause the Settlement Administrator to send, no later than twenty-eight (28) days after
3 entry of the Preliminary Approval Order, the Class Notice by First-Class U.S. Mail, proper
4 postage prepaid, to the Potential Settlement Class Members identified in the PHH
5 Defendants' records on each Class Loan, addressed to the mailing address of record for
6 that Class Loan as reflected in the PHH Defendants' records. As a result, one (1) Class
7 Notice will be sent with respect to each Class Loan, addressed jointly to all Potential
8 Settlement Class Members identified as borrowers with respect to that Class Loan in the
9 PHH Defendants' records. Prior to mailing, the Settlement Administrator shall attempt to
10 update the last known borrower mailing addresses for each Class Loan as reflected in the
11 PHH Defendants' records through the National Change of Address system or similar
12 databases.
13

14
15 7.2.3 The Class Notice shall advise the Potential Settlement Class Members of
16 the following:

17 7.2.3.1 General Terms. The Class Notice shall contain a plain, neutral,
18 objective, and concise summary description of the nature of the
19 Action and the terms of the proposed Settlement, including all
20 relief that will be provided by the PHH Defendants and the
21 Settlement Class in the Settlement, as set forth in this Agreement.
22 This description shall also disclose, among other things, that (a)
23 any relief to Settlement Class Members offered by the Settlement
24 is contingent upon the Court's approval of the Settlement, which
25 will not become effective until the Final Settlement Date; (b) Class
26 Counsel and Plaintiff have reserved the right to petition the Court
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1 for an award of Attorneys' Fees and Expenses from the Settlement
2 Fund, and (c) the Settlement is not made contingent upon any
3 particular amount of Service Award or Attorneys' Fees and
4 Expenses being awarded by the Court.

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6 7.2.3.2 The Settlement Class. The Class Notice shall define the Settlement
7 Class and shall disclose that the Settlement Class has been
8 provisionally certified for purposes of settlement only.

9 7.2.3.3 Opt-Out Rights. The Class Notice shall inform the Potential
10 Settlement Class Members of their right to seek exclusion from the
11 Settlement Class and the Settlement and provide the deadlines and
12 procedures for exercising this right.

13
14 7.2.3.4 Objection to Settlement. The Class Notice shall inform Potential
15 Settlement Class Members of their right to object to the proposed
16 Settlement and to appear at the Fairness Hearing and provide the
17 deadlines and procedures for exercising these rights.

18 7.2.3.5 Fairness Hearing. The Class Notice shall disclose the date and
19 time of the Fairness Hearing and explain that the Fairness Hearing
20 may be rescheduled without further notice to the Potential
21 Settlement Class Members.

22
23 7.2.3.6 Release. The Class Notice shall summarize or recite the proposed
24 terms of the Release contemplated by this Agreement.

25 7.2.4 **Further information.** The Class Notice shall disclose where Potential
26 Settlement Class Members may direct written or oral inquiries regarding the Settlement,
27 and also where they may obtain additional information about the Action, including
28

1 instructions on how Potential Settlement Class Members can access the case docket using
2 PACER or in-person.

3 7.2.5 **Class Loan Number.** The Class Notice to be addressed to all borrowers
4 of record on each Class Loan shall also include that Class Loan's loan number, as
5 described in the PHH Defendants' records.

6 7.2.6 Following issuance of the Preliminary Approval Order, Class Counsel and
7 the PHH Defendants' Counsel may by mutual agreement make any changes in the font,
8 format, or content of the Class Notice or the exhibits thereto any time before the Class
9 Notice is first mailed to Potential Settlement Class Members, so long as such changes do
10 not materially alter the substance of the Class Notice. Any material substantive changes
11 proposed by Class Counsel and the PHH Defendants' Counsel following issuance of the
12 Preliminary Approval Order must be approved by the Court.

13 7.2.7 The Parties shall cause the Settlement Administrator to re-mail any Class
14 Notices returned by the United States Postal Service with a forwarding address and shall
15 continue to do so with respect to any such Class Notice that is received seven (7) days or
16 more prior to the Objection/Exclusion Deadline. With respect to Class Notices that are
17 returned by the United States Postal Service without a new or forwarding address, the
18 Parties shall cause the Settlement Administrator to as soon as practicable determine
19 whether a valid address can be located through use of the United States Postal Service's
20 National Change of Address database and/or other reasonable means and without undue
21 cost and delay, and then promptly re-mail Class Notices for whom the Settlement
22 Administrator is reasonably able to locate a valid address in accordance herewith, so long
23 as the valid address is obtained by the Settlement Administrator at least seven (7) days or
24 more prior to the Objection/Exclusion Deadline.

1 7.2.8 **Settlement Website.** The Parties shall cause the Settlement
2 Administrator to establish the Settlement Website, whose address shall be included and
3 disclosed in the Class Notice, and which will inform Potential Settlement Class Members
4 of the terms of this Agreement, their rights, dates, and deadlines and related information.
5 The Settlement Website shall include, in .pdf format, a copy of the Operative Complaint,
6 this Agreement and its exhibits, any Preliminary Approval Order entered by the Court, and
7 a copy of the Class Notice, along with such other case or contact information as the Court
8 may designate or the Parties may agree to post there. The Settlement Website will be
9 operational and live by the date of the first mailing of the Class Notice. A certified Spanish-
10 language translation of the Class Notice shall be placed on the Settlement Website by the
11 Settlement Administrator at the time the Settlement Website becomes operational and live.
12 However, in the case of conflict, the English-language version of the Class Notice shall
13 control.
14

15
16 7.2.9 The Parties shall cause the Settlement Administrator to establish an
17 automated interactive voice recognition telephone system for the purposes of providing
18 information concerning the nature of the Action, the material terms of the Settlement, and
19 the deadlines and procedures for Potential Settlement Class Members to exercise their opt-
20 out and objection rights. The Class Notice and Settlement Website shall include and
21 disclose the telephone number of this automated interactive voice recognition telephone
22 system.
23

24 7.3 The Costs of Administration associated with the Settlement shall be paid from the
25 Settlement Fund.

26 7.4 Not later than ten (10) days before the date of the Fairness Hearing, the Settlement
27 Administrator, and to the extent necessary the Parties, shall file with the Court a declaration or
28

1 declarations, based on the personal knowledge of the declarant(s), verifying compliance with
2 these class-wide notice procedures.

3 7.5 The Parties agree that the PHH Defendants shall have the right to communicate
4 with, and respond to inquiries from, Potential Settlement Class Members in the ordinary course
5 of the PHH Defendants' business, a right which the PHH Defendants expressly reserve.
6 However, any inquiries about this Agreement or about the Action shall be referred to Class
7 Counsel or to the Settlement Administrator.
8

9 7.6 **Media Communications.**

10 7.6.1 The Parties and their counsel agree to ensure that any comments about or
11 descriptions of this Settlement and Agreement or its value or cost in the media or in any
12 other public forum apart from the Action are accurate. In addition, the Parties and their
13 counsel agree that until such time as the Final Order and Judgment is entered:
14

15 7.6.1.1 Any press releases or public communications regarding the
16 Agreement shall be reviewed and mutually approved and agreed
17 to by Class Counsel and the PHH Defendants' Counsel before
18 dissemination or publication.

19 7.6.1.2 Class Counsel and the PHH Defendants' Counsel may, after
20 mutual consultation, make only mutually agreeable press
21 communications announcing the Settlement, but shall not
22 otherwise issue any press release or printed or broadcast public
23 communication about this Agreement or the Settlement.
24

25 7.6.2 Notwithstanding the foregoing, the PHH Defendants may disclose this
26 Agreement to, and discuss this Agreement with, its parent companies, affiliated
27 companies, customers, and clients, and each of their respective accountants, shareholders,
28

1 auditors, consultants and investors, as well as with government entities as necessary to
2 comply with applicable law, at any time before or after the Final Order and Judgment.

3 **8 Requests for Exclusion**

4 8.1 Any Potential Settlement Class Member who wishes to be excluded from the
5 Settlement Class must mail a written “request for exclusion” to the Settlement Administrator at
6 the address provided in the Class Notice, mailed sufficiently in advance to be received by the
7 Settlement Administrator no later than the Objection/Exclusion Deadline. A written request for
8 exclusion must: (a) contain a caption or title that identifies it as “Request for Exclusion in *Torliatt*
9 *v. Ocwen* (case number 3:19-cv-04303-WHO)”; (b) include the Potential Settlement Class
10 Member’s name, mailing and email addresses, and contact telephone number; (c) specify that he
11 or she wants to be “excluded from the Settlement Class” and identify the Class Loan number(s)
12 for which he or she seeks exclusion from the Settlement; and (d) be personally signed by the
13 Settlement Class Member. The requirements for submitting a timely and valid request for
14 exclusion shall be set forth in the Class Notice.

15 8.2 Each Potential Settlement Class Member who wishes to be excluded from the
16 Settlement Class must submit his or her own personally signed written request for exclusion. A
17 single written request for exclusion submitted on behalf of more than one Potential Settlement
18 Class Member will be deemed invalid. A request for exclusion for a Class Loan on which there
19 is one or more co-debtor, joint debtor, or other borrower will not be effective unless it is signed
20 by each such co-debtor, joint-debtor, or other borrower.

21 8.3 Unless excluded by separate Order entered by the Court for good cause shown
22 prior to the final approval of this Settlement, any Potential Settlement Class Member who fails
23 to strictly comply with the procedures set forth in this Section 8 for the submission of written
24 requests for exclusion will be deemed to have consented to the jurisdiction of the Court, will be
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1 deemed to be part of the Settlement Class, and will be bound by all subsequent proceedings,
2 orders, and judgments in the Action, including, but not limited to, the Release, even if he or she
3 has litigation pending or subsequently initiates litigation against the PHH Defendants relating to
4 the Released Claims.

5 8.4 The Settlement Administrator shall file with the Court, no later than ten (10) days
6 before the Fairness Hearing, a list reflecting all the borrower name(s) and mailing address(es) for
7 all requests for exclusion it has received. The list shall also identify which of those requests for
8 exclusion were received late, and which requests for exclusion failed to comply with the
9 requirements of this Section 8.
10

11 8.5 Potential Settlement Class Members who exclude themselves from the Settlement
12 Class as set forth in this Section 8 expressly waive any right to the continued pursuit of any
13 objection to the Settlement as set forth in Section 9, or to otherwise pursue any objection,
14 challenge, appeal, dispute, or collateral attack to this Agreement or the Settlement, including to
15 the Settlement's fairness, reasonableness, and adequacy; to the appointment of Class Counsel
16 and Plaintiff as the representative of the Settlement Class; to any Service Awards or Attorneys'
17 Fee and Expense awards; and to the approval of the Class Notice, and the procedures for
18 disseminating the Class Notice to the Settlement Class.
19

20 **9 Objections to Settlement**

21 9.1 Any Settlement Class Member who has not filed a timely written request for
22 exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this
23 Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or the
24 Service Awards, or to any other aspect or effect of the proposed Settlement, must file with the
25 Court a written statement of his or her objection no later than the Objection/Exclusion Deadline.
26 To file a written statement of objection, a Settlement Class Member must (a) mail it sufficiently
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1 in advance to be received by the Clerk of the Court on or before the Objection/Exclusion
2 Deadline, or (b) file it in person on or before the Objection/Exclusion Deadline at any location
3 of the United States District Court for the Northern District of California, except that any
4 objection made by a Settlement Class Member represented by counsel must be filed through the
5 Court's Case Management/Electronic Case Filing (CM/ECF) system.
6

7 9.2 A written statement of objection must: (a) contain a caption or title that identifies
8 it as "Objection to Class Settlement in *Torliatt v. Ocwen* (case number 3:19-cv-04303-WHO)";
9 (b) include the Settlement Class Members' name, mailing and email addresses, contact telephone
10 number, and Class Loan number(s) for which an objection is being made; (c) set forth the specific
11 reason(s), if any, for each objection, including all legal support the Settlement Class Member
12 wishes to bring to the Court's attention and all factual evidence the Settlement Class Member
13 wishes to introduce in support of the objection, and state whether the objection applies only to
14 the objector, to a specific subset of the class, or to the entire class; (d) disclose the name and
15 contact information of any and all attorneys representing, advising, or in any way assisting the
16 Settlement Class Member in connection with the preparation or submission of the objection; and
17 (e) be personally signed by the Settlement Class Member.
18

19 9.3 A Settlement Class Member may file and serve a written statement of objection
20 either on his own or through an attorney retained at his own expense; provided, however, that a
21 written statement of objection must be personally signed by the Settlement Class Member,
22 regardless of whether he has hired an attorney to represent him.
23

24 9.4 Any Settlement Class Member who properly files and serves a timely written
25 objection, as described in this Section 9, may appear at the Fairness Hearing, either in person or
26 through personal counsel hired at the Settlement Class Member's own expense, to object to the
27 fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the
28

1 award of Attorneys' Fees and Expenses or Service Awards, or to any other aspect or effect of the
2 proposed Settlement. However, any Settlement Class Member who intends to make an
3 appearance at the Fairness Hearing must include a statement to that effect in his or her objection.
4 If a Settlement Class Member hires his or her own personal attorney to represent him or her in
5 connection with an objection, and if that attorney wishes to appear at the Fairness Hearing, the
6 attorney must: (a) file a notice of appearance with the Clerk of Court in the Action no later than
7 the Objection/Exclusion Deadline and (b) serve and deliver a copy of that notice of appearance
8 to Class Counsel and the PHH Defendants' Counsel no later than the Objection/Exclusion
9 Deadline.
10

11 9.5 Any Settlement Class Member who fails to strictly comply with the provisions
12 and deadlines of this Section 9 shall waive any and all objections to the Settlement, its terms, or
13 the procedures for its approval, shall forfeit any and all rights he or she may have to appear
14 separately and/or to object, and will be deemed to have consented to the jurisdiction of the Court,
15 to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and
16 judgments in the Action, including, but not limited to, the Release.
17

18 9.6 Any Settlement Class Member who objects to the Settlement but does not file an
19 exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain
20 a Settlement Class Member and therefore be entitled to all of the benefits, obligations and terms
21 of the Settlement if this Agreement and the terms contained therein are approved and the Final
22 Settlement Date is reached.
23

24 9.7 Only Settlement Class Members may object to the Settlement as set forth in this
25 Section 9. Potential Settlement Class Members who are excluded from the Settlement Class,
26 whether by submitting a timely and valid request for exclusion as set forth in Section 8 or by
27 order of the Court, have no standing to object to the Settlement.
28

1 **10 Attorneys' Fees and Expenses and Service Awards**

2 10.1 Class Counsel may petition the Court for an award of Attorneys' Fees and
3 Expenses from the Settlement Fund in an aggregate amount not to exceed thirty three percent
4 (33%) of the Settlement Fund. Class Counsel shall file its motion for an Attorneys' Fees and
5 Expenses award no later than fourteen (14) days before the Objection/Exclusion Deadline. As
6 soon as is practicable after filing, Class Counsel shall cause the Settlement Administrator to post
7 on the Settlement Website all papers filed and served in support of Class Counsel's motion for
8 an award of Attorneys' Fees and Expenses. The PHH Defendants reserve the right to oppose any
9 petition by Class Counsel for Attorneys' Fees and Expenses that the PHH Defendants deem to
10 be unreasonable in nature or amount or otherwise objectionable.
11

12 10.2 All attorneys' fees for, and any reimbursement of litigation expenses incurred by,
13 Class Counsel shall be paid solely out of the Settlement Fund. Other than making available the
14 Settlement Fund pursuant to the requirements of Section 4, the PHH Defendants and the Released
15 Persons shall have no responsibility for, and no liability whatsoever with respect to, any payment
16 of attorneys' fees or expenses to Class Counsel, which Class Counsel and Plaintiff shall accept
17 and seek to have paid only from the Settlement Fund.
18

19 10.3 Class Counsel is solely responsible for distributing any Attorneys' Fees and
20 Expenses award to and among all attorneys that may claim entitlement to attorneys' fees or costs
21 in the Action. It is a condition of this Settlement that the PHH Defendants and the Released
22 Persons shall not be liable to anyone else for any attorneys' fees or costs, or any claim by any
23 other counsel or Settlement Class Member for additional attorneys' fees, incentive or service
24 awards, costs or expenses, relating in any way to the Action, the Settlement, its administration
25 and implementation, any appeals of orders or judgments relating to the Settlement, any objections
26 or challenges to the Settlement, and/or any proceedings on behalf of Settlement Class Members
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1 who do not exclude themselves from the Settlement Class based on any of the claims or
2 allegations forming the basis of the Action or any other claims that are defined as Released
3 Claims in this Settlement. If any other or additional attorneys' fees, costs, incentive or service
4 awards, or expenses to be paid by the PHH Defendants separate from the Settlement Fund are
5 awarded to anyone, including but not limited to any parties other than Plaintiff and Class Counsel,
6 the PHH Defendants at their sole option may declare this Agreement void as set forth in Section
7 12.
8

9 10.4 Plaintiff and Class Counsel may also petition the Court for a Service Award to the
10 Plaintiff to be paid from the Settlement Fund, in an amount not exceeding \$10,000. The purpose
11 of the Service Award is to compensate Plaintiff for his efforts and risks in bringing and
12 prosecuting the Action on behalf of the Settlement Class Members and achieving the benefits of
13 this Agreement on behalf of the Settlement Class. The PHH Defendants reserve the right to
14 oppose any petition by Plaintiff and Class Counsel for Service Awards that the PHH Defendants
15 deem to be unreasonable in nature or amount or otherwise objectionable.
16

17 10.5 Within five (5) business days of the Final Settlement Date, the Settlement
18 Administrator shall pay Class Counsel from the Settlement Fund any Attorneys' Fees and
19 Expenses and Service Awards that may be awarded by the Court. Class Counsel shall be solely
20 responsible for supplying the Settlement Administrator with all information required by the
21 Settlement Administrator in order to pay such awards from the Settlement Fund, and to comply
22 with the Settlement Administrator's state and local reporting obligations. Class Counsel will also
23 be solely responsible for distributing such Service Award to the Plaintiff, in accordance with the
24 terms and provisions of any Order entered by the Court approving such awards.
25

26 10.6 In the event the Final Order and Judgment is not entered, or this Agreement and
27 the Settlement do not reach the Final Settlement Date, the PHH Defendants will not be liable for,
28

1 and shall be under no obligation to pay, any of the Attorneys' Fees and Expenses and Service
2 Awards set forth herein and described in this Agreement.

3 10.7 The effectiveness of this Agreement and Settlement will not be conditioned upon
4 or delayed by the Court's failure to approve in whole or in part any petition by Plaintiff and Class
5 Counsel for Attorneys' Fees and Expenses and Service Awards. The denial, downward
6 modification, or failure to grant any petition by Plaintiff and Class Counsel for Attorneys' Fees
7 and Expenses and Service Awards shall not constitute grounds for modification or termination
8 of this Agreement or the Settlement proposed herein.

10 **11 Final Order and Judgment**

11 11.1 If the Preliminary Approval Order is entered by the Court, after the dissemination
12 of the Class Notice and not later than ten (10) days before the Fairness Hearing, Class Counsel
13 shall move the Court to enter a Final Order and Judgment. The Final Order and Judgment shall,
14 among other things:

16 11.1.1 Find that the Court has personal jurisdiction over the Parties and all
17 Settlement Class Members and that the Court has subject matter jurisdiction to approve
18 the Agreement, including all attached exhibits;

19 11.1.2 Approve the Agreement and the proposed Settlement as fair, reasonable
20 and adequate as to, and in the best interests of, the Settlement Class Members; direct the
21 Parties and their counsel to implement and consummate the Agreement according to its
22 terms and provisions; and declare the Agreement to be binding upon, and have res judicata
23 and collateral estoppel effect in all pending and future lawsuits or other proceedings
24 maintained by or on behalf of, Plaintiff and the Settlement Class Members;

26 11.1.3 Find that the Class Notice implemented pursuant to the Agreement (a)
27 constituted the best practicable notice under the circumstances; (b) constituted notice that
28

1 is reasonably calculated, under the circumstances, to apprise the Settlement Class of the
2 pendency of the Action, their right to object or exclude themselves from the Agreement
3 and proposed Settlement; and to appear at the Fairness Hearing; (c) was reasonable and
4 constituted due, adequate and sufficient notice to all persons entitled to receive notice; and
5 (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due
6 Process Clause of the United States Constitution, and the rules of the Court;
7

8 11.1.4 Find that Plaintiff and Class Counsel adequately represented the
9 Settlement Class for purposes of entering into and implementing the Agreement;

10 11.1.5 Incorporate the Release set forth in Section 3 of this Agreement, make the
11 Release effective as of the Final Settlement Date, and forever discharge the Released
12 Persons as set forth in this Agreement;

13 11.1.6 Permanently bar and enjoin all Settlement Class Members from filing,
14 commencing, prosecuting, intervening in, or participating (as class members or otherwise)
15 in, any lawsuit or other action in any jurisdiction based on the Released Claims;
16

17 11.1.7 Temporarily enjoin, for a period of 2 years from the Final Settlement Date,
18 the PHH Defendants from charging Convenience Fees to residential borrowers with
19 mortgaged property in the State of California whose loan is subject to the Rosenthal Act,
20 *i.e.*, borrowers on residential mortgage loans involving mortgaged property in the State of
21 California who are making a payment on or after the payment's due date.
22

23 11.1.8 Authorize the Parties, without further approval from the Court, to agree to
24 and adopt such amendments, modifications and expansions of this Agreement and its
25 implementing documents (including all exhibits to this Agreement) if such changes are
26 not materially inconsistent with the Court's Final Order and Judgment or do not materially
27 limit, or materially and adversely affect, the rights or obligations of the Settlement Class
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1 Members under this Agreement;

2 11.1.9 Order that the Court retains continuing and exclusive jurisdiction over all
3 matters relating to the Settlement or the consummation of the Settlement; the validation of
4 the Settlement; the construction and enforcement of the Settlement and any orders entered
5 pursuant thereto; and all other matters pertaining to the Settlement or its implementation
6 and enforcement;

7
8 11.1.10 Direct that judgment of dismissal on the merits and with prejudice of the
9 Action (including all individual claims and class action claims presented thereby) shall be
10 final and entered forthwith, without fees or costs to any Person or Party except as provided
11 in this Agreement; and

12 11.1.11 Without affecting the finality of the Final Order and Judgment for
13 purposes of appeal, retain jurisdiction as to the administration, consummation,
14 enforcement and interpretation of this Agreement and the Final Order and Judgment, and
15 for any other necessary purpose.

16
17 **12 Modification, Disapproval, Cancellation, or Termination of this Agreement**

18 12.1 Before entry of the Final Order and Judgment, the terms and provisions of this
19 Agreement may be amended, modified, or expanded by written agreement of the Parties and
20 approval of the Court; provided, however, that after entry of the Final Order and Judgment, the
21 Parties may by mutual written agreement affect such amendments, modifications or expansions
22 of this Agreement and its implementing documents (including all exhibits hereto) without further
23 notice to the Settlement Class or approval of the Court if such changes are not materially
24 inconsistent with the Court's Final Order and Judgment and do not materially limit, or materially
25 and adversely affect, the rights or obligations of Settlement Class Members under this
26 Agreement.
27
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1 12.2 This Agreement shall terminate at the sole option and discretion of either Party if:
2 (a) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of
3 this Agreement that the terminating Party in his or its sole judgment and discretion determine(s)
4 is material, including, without limitation, the terms of relief, the findings or conclusions of the
5 Court, the provisions relating to notice (including the proposed plan for the dissemination of
6 notice to the Settlement Class as set forth in Section 7 of this Agreement), the definition of the
7 Settlement Class and the terms and conditions for its certification, and/or the terms of the Release;
8 or (b) the Court, or any appellate court(s), does not enter or completely affirm, or alters or
9 expands, any portion of the Final Order and Judgment, or any of the Court's findings of fact or
10 conclusions of law, that the terminating Party in his or its sole judgment and discretion
11 determine(s) is material. However, under no circumstances shall the Court's failure to approve,
12 in whole or in part, any petition by Plaintiff and Class Counsel for a Service Award and
13 Attorneys' Fees and Expenses as set forth in Section 10 of this Agreement provide Plaintiff or
14 Class Counsel with a basis for terminating this Agreement.

17 12.3 The PHH Defendants may also in their sole and absolute judgment and discretion
18 elect to terminate this Agreement if: (a) any attorneys' fees and costs, expert fees, costs, expenses,
19 service awards or incentive awards are awarded other than from the Settlement Fund; or (b)
20 requests for exclusion are submitted by Potential Settlement Class Members on 3,000 or more
21 Class Loans.

23 12.4 Any terminating Party must exercise its option to withdraw from and terminate
24 this Agreement, as provided in this Section 12, by a signed writing served on the other Party no
25 later than thirty-five (35) days after receiving notice of the event prompting the termination unless
26 there is a motion or petition seeking reconsideration, alteration or appeal review of the event, in
27 which case no later than thirty-five (35) days after the final conclusion of any such motion or
28

1 petition seeking reconsideration, alteration, or appellate review thereof, whichever is later.

2 12.5 If any of the foregoing termination events occurs, no Party is required for any
3 reason or under any circumstance to exercise that option.

4 12.6 If the Final Settlement Date does not occur or this Agreement is terminated
5 pursuant to the provisions of this Section 12, then:
6

7 12.6.1 This Agreement shall be null and void and shall have no force or effect,
8 through principles of estoppel, res judicata, or otherwise, and no Party to this Agreement
9 shall be bound by any of its terms, except for the terms of this Paragraph 12.6 and its sub-
10 parts;

11 12.6.2 This Agreement, all of its provisions, and all negotiations, statements,
12 documents, orders and proceedings relating to it shall be inadmissible in evidence for any
13 purpose, and shall be without prejudice to the rights of the PHH Defendants, Plaintiff and
14 the Settlement Class, all of whom shall be restored to their respective positions in the
15 Action as of the date existing immediately before the signing of this Agreement, except
16 that the Parties shall cooperate in requesting that the Court set a new scheduling order such
17 that neither Party's substantive or procedural rights is prejudiced by the attempted
18 Settlement;
19

20 12.6.3 Neither this Agreement, nor the Settlement contained in this Agreement,
21 nor any act performed or document executed pursuant to or in furtherance of this
22 Agreement or the Settlement:
23

24 12.6.3.1 Is, may be deemed, or shall be used, offered or received
25 against the Released Persons, or each or any of them, as an
26 admission, concession, or evidence of, the validity of any Released
27 Claims, the truth of any fact alleged by Plaintiff, the deficiency of
28

1 any defense that has been or could have been asserted in the
2 Action, the violation of any law or statute, the reasonableness of
3 the Settlement amount or of Class Counsel's reasonable attorneys
4 fees' and expenses, or of any alleged wrongdoing, liability,
5 negligence or fault of the Released Persons, or any of them;
6

7 12.6.3.2 Is, may be deemed, or shall be used, offered, or received
8 against Plaintiff, the Settlement Class or each of any of them as an
9 admission, concession, or evidence of any fault, misrepresentation,
10 or omission with respect to any statement or written document
11 approved or made by the Released Persons, or any of them; and
12

13 12.6.3.3 Is, may be deemed, or shall be used, offered, or received
14 against the Released Persons, or each or any of them, as an
15 admission or concession with respect to any liability, negligence,
16 fault or wrongdoing as against any Released Persons, or of the
17 certifiability of any class, in any bankruptcy, civil, criminal or
18 administrative proceeding in any court, administrative agency, or
19 other tribunal. However, the Settlement, this Agreement, and any
20 acts performed and/or documents executed in furtherance of or
21 pursuant to this Agreement and/or Settlement may be used in any
22 proceedings as may be necessary to effectuate or enforce the
23 provisions of this Agreement. If this Agreement is approved by
24 the Court and the Final Settlement Date is reached, any of the
25 Parties or any of the Released Persons may file this Agreement
26 and/or the Final Order and Judgment in any action that may be
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1 brought against such Person or Persons in order to support a
2 defense or counterclaim based on principles of res judicata,
3 collateral estoppel, release, good faith estimate, judgment bar or
4 preclusion, or any other theory of claim preclusion or issue
5 preclusion or similar defense or counterclaim.
6

7 12.6.4 Any Settlement-related order(s) or judgments entered in this Action after
8 the date of execution of this Agreement shall be deemed vacated, nunc pro tunc, and shall
9 be without force or effect, and the Parties and the Settlement Class Members shall be
10 returned to the status quo ante with respect to the Action as if they had never entered into
11 this Agreement, and any of the Parties may move the Court to vacate any and all orders
12 entered by the Court pursuant to the provisions of this Agreement;
13

14 12.6.5 The Parties agree that this Agreement shall not be used to support the
15 certification of the Litigation Class or any other litigation class and the Parties stipulate
16 that certification of the Settlement Class will be deemed to have been conditional and made
17 only for purposes of this particular Agreement and for purposes of settlement only, and
18 will therefore be immediately vacated and voided for all other purposes, without prejudice
19 to or effect on the currently certified Litigation Class; and the Parties further stipulate that
20 the decertification of the Litigation Class will be deemed to have been conditional and
21 done only for purposes of this particular Agreement and for purposes of settlement only,
22 and any order vacating certification of the Litigation Class will itself be immediately
23 vacated and voided and reinstated *nunc pro tunc* as of the date the order certifying the
24 Litigation Class was issued (November 8, 2021), but without prejudice to or effect on the
25 PHH Defendants' right and ability to oppose or object to the certification of the Litigation
26 Class or any other litigation class. For the avoidance of doubt, the PHH Defendants and
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1 the PHH Defendants' Counsel will not be deemed to have consented to (and will not be
2 estopped to oppose) the certification of any class for purposes of litigation, including the
3 Litigation Class, and will retain all rights to object to or oppose the Court's certification
4 of the Litigation Class and any other motion for certification of a class for purposes of
5 litigation, including certification of the Settlement Class provided for in this Agreement
6 as a litigation class or any other class(es);
7

8 12.6.6 The Released Persons expressly do not waive any, but instead
9 affirmatively reserve all, of their defenses, arguments and motions as to all claims that
10 have been or might later be asserted in the Action including, without limitation, the
11 argument that the Action may not be litigated as a class action; and
12

13 12.6.7 Plaintiff and all other Settlement Class Members expressly reserve and do
14 not waive any motions as to, and arguments in support of, all claims that have been or
15 might later be asserted in the Action including, without limitation, any argument
16 concerning class certification, liability and/or available remedies.
17

18 **13 General Matters and Reservations**

19 13.1 The obligation of the Parties to implement and conclude the proposed Settlement
20 is and shall be contingent upon each of the following:
21

22 13.1.1 Entry by the Court of the Preliminary Approval Order, followed thereafter
23 by the Fairness Hearing and subsequent entry by the Court of the Final Order and
24 Judgment approving the Settlement, from which the time to appeal has expired or which
25 has remained unmodified after the exhaustion and final disposition of any appeal(s) or
26 petition(s) for appellate review; and
27

28 13.1.2 Any other conditions stated in this Agreement.

13.2 The Parties: (a) acknowledge that it is their intent to consummate this Agreement;

1 and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent
2 reasonably necessary to effectuate and implement all terms and conditions of this Agreement and
3 to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this
4 Agreement. The Parties, Class Counsel, and the PHH Defendants' Counsel agree to cooperate
5 with one another in (a) seeking Court approval of the Preliminary Approval Order, the
6 Agreement, and the Final Order and Judgment and in the event of any appeal(s), to use their
7 reasonable best efforts to effect prompt consummation of this Agreement and the proposed
8 Settlement; (b) promptly agreeing upon and executing all such other documents as may be
9 reasonably required to obtain final approval of the Agreement; and (c) resolving any disputes
10 that may arise in the implementation of the terms of this Agreement.
11

12 13.3 The PHH Defendants' execution of this Agreement shall not be construed to
13 release—and the PHH Defendants expressly do not intend to release—any claim they may have
14 or make against any insurer, reinsurer, indemnitor, client, loan investor, prior loan servicers,
15 consultant, or vendor (including, but not limited to, Speedpay Inc., ACI Worldwide, Inc., or
16 Western Union) for any judgment, payment, liability, cost or expense incurred in connection with
17 this Agreement, including, without limitation, for attorneys' fees and costs.
18

19 13.4 This Agreement, complete with its exhibits, sets forth the sole and entire
20 agreement and understanding of the Parties with respect to its subject matter, and it may not be
21 altered, amended, or modified except by written instrument made in accordance with the
22 provisions of this Agreement and executed by or on behalf of all Parties or their respective
23 successors in interest. The Parties expressly acknowledge that no other agreements,
24 arrangements, or understandings not expressed in this Agreement exist among or between them
25 regarding the subject matter of this Agreement and that in deciding to enter into this Agreement,
26 they each have relied solely upon their own judgment and knowledge. This Agreement
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28

1 supersedes any prior agreements, understandings, or undertakings (written or oral) by and
2 between the Parties regarding the subject matter of this Agreement.

3 13.5 Any inconsistency between this Agreement and the attached exhibits will be
4 resolved in favor of this Agreement.

5 13.6 To the extent not governed by federal law, this Agreement, any amendments
6 thereto, and any claim, cause of action or dispute arising out of or relating to this Agreement shall
7 be governed by, interpreted under, and enforced in accordance with the laws of the State of
8 California without regard to any conflict-of-law principles that may otherwise provide for the
9 application of the law of another jurisdiction.
10

11 13.7 Any disagreement and/or action seeking directly or indirectly to challenge,
12 modify, construe, obtain relief from, extend, limit, or enforce this Agreement shall be
13 commenced and maintained only in this Court and in this Action. Without in any way
14 compromising the finality of the Final Order and Judgment, the Court shall retain exclusive and
15 continuing jurisdiction over all matters related in any way to the Settlement and the Agreement,
16 including but not limited to the implementation of the Settlement and the interpretation,
17 administration, supervision, enforcement and modification of this Agreement and the relief it
18 provides to Plaintiff and the Settlement Class Members.
19

20 13.8 Whenever this Agreement requires or contemplates that one of the Parties shall or
21 may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding
22 Saturdays, Sundays, and Legal Holidays) express delivery service as follows:
23

24 13.8.1 If to the PHH Defendants, then to Michael R. Pennington, Bradley Arant
25 Boulton Cummings LLP, 1819 Fifth Avenue North, Birmingham, Alabama 35203
26 (Telephone: (205) 521-8000; Email: mpennington@bradley.com).

27 13.8.2 If to Plaintiff, or the Settlement Class, or Class Counsel, then to James
28

1 Lawrence Kauffman, Bailey & Glasser LLP, 1055 Thomas Jefferson Street NW, Suite
2 540, Washington, DC 20007 (Telephone: (202) 463-2101; Email:
3 jkauffman@baileyglasser.com).

4 13.9 Subject to the terms of the Final Order and Judgment, no certifications by the
5 Parties regarding their compliance with the terms of the Settlement and this Agreement will be
6 required. Any dispute as to the Parties' compliance with their obligations under the Settlement
7 and this Agreement shall be brought and resolved only in the Action and only by the Court, and
8 applicable appellate courts, and in no other action or proceeding.
9

10 13.10 All time periods set forth herein shall be computed in calendar days unless
11 otherwise expressly provided. In computing any period of time prescribed or allowed by this
12 Agreement or by order of the Court, the day of the act, event, or default from which the designated
13 period of time begins to run shall not be included. The last day of the period so computed shall
14 be included, unless it is a Saturday, a Sunday or a Legal Holiday (as defined in Rule 6(a)(6) of
15 the Federal Rules of Civil Procedure), or, when the act to be done is the filing of a paper in court,
16 a day on which weather or other conditions have made the office of the clerk of the court
17 inaccessible, in which event the period shall run until the end of the next day that is not one of
18 the aforementioned days.
19

20 13.11 The time periods and dates described in this Agreement are subject to the Court's
21 approval. These time periods and dates may be changed by the Court or by the Parties' written
22 agreement without notice to the Settlement Class. The Parties reserve the right, subject to the
23 Court's approval, to agree to any reasonable extensions of time that might be necessary to carry
24 out any of the provisions of this Agreement.
25

26 13.12 Neither the Settlement Class, Plaintiff, Class Counsel, the PHH Defendants nor
27 the PHH Defendants' Counsel shall be deemed to be the drafter of this Agreement or of any
28

1 particular provision, nor shall any of them argue that any particular provision should be construed
2 against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties
3 agree that this Agreement was drafted by counsel for the Parties during and through extensive
4 arm's length negotiations with the aid of a neutral mediator. No parol or other evidence may be
5 offered to explain, construe, contradict, or clarify this Agreement's terms, the intent of the Parties
6 or their counsel, or the circumstances under which this Agreement was made or executed.
7

8 13.13 The Parties expressly acknowledge and agree that this Agreement and its exhibits,
9 along with all related drafts, motions, pleadings, conversations, negotiations, and
10 correspondence, constitute an offer of compromise and a compromise within the meaning of
11 Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall
12 this Agreement, any of its provisions or any negotiations, statements or court proceedings relating
13 to its provisions, or any documents created for the purposes of mediation, negotiation, or
14 confirmatory due diligence or informal discovery, whether or not exchanged with opposing
15 counsel, in any way be construed as, offered as, received as, used as, or deemed to be evidence
16 of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other
17 proceeding, except in a proceeding to effectuate or enforce this Agreement or the rights of the
18 Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related
19 negotiations, statements, or court proceedings shall be construed as, offered as, received as, used
20 as or deemed to be evidence of an admission or concession of any proposition of fact or law or
21 of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not
22 limited to, the Released Persons, Plaintiff or the Settlement Class or as a waiver by the Released
23 Persons, Plaintiff or the Settlement Class of any applicable privileges or immunities (including,
24 without limitation, the attorney-client privilege or work product immunity), claims or defenses.
25
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27 13.14 Plaintiff expressly affirms that the allegations contained in the complaints,
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1 including the Operative Complaint, were made in good faith and have a basis in fact, but that he
2 considers it desirable for the Action to be settled and dismissed because of the risks associated
3 with continued litigation and the substantial benefits that the Settlement will provide to the
4 Settlement Class Members.

5
6 13.15 The waiver by one of the Parties of any breach of this Agreement by another of
7 the Parties shall not be deemed a waiver of any other prior or subsequent breaches of this
8 Agreement.

9
10 13.16 If one Party to this Agreement considers the other Party to be in breach of its
11 obligations under this Agreement, that Party must provide the breaching Party with written notice
12 of the alleged breach and provide a reasonable opportunity to cure the breach before taking any
13 action to enforce any rights under this Agreement.

14
15 13.17 No opinion concerning the tax consequences, if any, of this Agreement and
16 Settlement as to individual Settlement Class Members or anyone else is being given or will be
17 given by the PHH Defendants, the PHH Defendants' Counsel, Plaintiff or Class Counsel; nor is
18 any representation or warranty in this regard made by virtue of this Agreement or Settlement.
19 The Class Notice will direct Settlement Class Members to consult their own tax advisor(s)
20 regarding the tax consequences of the Settlement and this Agreement, and any tax reporting
21 obligations they may have with respect thereto. Each Settlement Class Member's tax obligations,
22 and the determination thereof, are the sole responsibility of the Settlement Class Member, and it
23 is understood that the tax consequences may vary depending on the particular circumstances of
24 each individual Settlement Class Member. Nothing in this Agreement or in the Class Notice is
25 to be construed as tax advice of any kind.

26
27 13.18 Headings contained in this Agreement are used for the purpose of convenience
28 only and are not intended to alter or vary the construction and meaning of this Agreement.

Signature: 
Larry Torliatt (Jun 24, 2022 14:02 PDT)

Email: ltorliatt@gmail.com

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APPROVED AS TO FORM BY COUNSEL:


Dated: 6/24, 2022

BAILEY & GLASSER LLP
Attorneys for Plaintiff Torliatt and the Settlement Class

By: 
James Lawrence Kauffman

Dated: 6/24, 2022

CARNEY BATES & PULLIAM, PLLC
Attorneys for Plaintiff Torliatt and the Settlement Class

By: 
Randall K. Pulliam

Dated: _____, 2022

BRADLEY ARANT BOULT CUMMINGS LLP
Attorneys for Defendant PHH Mortgage Corporation

By: _____
Michael R. Pennington

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APPROVED AS TO FORM BY COUNSEL:

Dated: _____, 2022 BAILEY & GLASSER LLP
Attorneys for Plaintiff Torliatt and the Settlement Class

By: _____
James Lawrence Kauffman

Dated: _____, 2022 CARNEY BATES & PULLIAM, PLLC
Attorneys for Plaintiff Torliatt and the Settlement Class

By: _____
Randall K. Pulliam

Dated: June 27, 2022 BRADLEY ARANT BOULT CUMMINGS LLP
Attorneys for Defendant PHH Mortgage Corporation

By: /s/ Michael R. Pennington
Michael R. Pennington

EXHIBIT A

A class action settlement may affect your rights if you paid a fee to Ocwen on or after July 26, 2015 or to PHH on or after July 30, 2015 to make a mortgage loan payment by telephone, through an interactive voice response telephone system, or through the internet

A federal court authorized this notice. This is not a solicitation from a lawyer.

PARA VER ESTE AVISO EN ESPAÑOL, VISITE [www.class-settlement.com/\[\[REDACTED\]\].com](http://www.class-settlement.com/[[REDACTED]].com)

A settlement of \$7,000,000.00 has been reached in a class action lawsuit alleging that Ocwen Loan Servicing, LLC (“Ocwen”) and PHH Mortgage Corporation (“PHH,” and with Ocwen, “Defendants” or the “PHH Defendants”) violated the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) and the California Unfair Competition Law (“UCL”) by charging fees to borrowers for making loan payments by methods not specified for in their loan documents, such as by telephone, through interactive voice response telephone system (“IVR”), or through the internet (“Convenience Fees”). For much of the period at issue in this lawsuit, Ocwen and PHH used the “Speedpay™” service to facilitate these kinds of payments, so the Convenience Fees charged by Ocwen and PHH were often referred to as “Speedpay” fees. Ocwen and PHH deny that they did anything wrong and the Court has not decided who is right. Ocwen, PHH, and the Plaintiff, Lawrence Torliatt, (together with PHH and Ocwen, the “Parties”), agreed to enter into this Settlement to avoid the uncertainties, delays, and expenses of ongoing litigation, while providing class members with definite benefits now. **The purpose of this notice is to inform you of the class action and the proposed settlement so that you may decide what to do.**

QUICK SUMMARY OF SETTLEMENT

WHO’S INCLUDED? Ocwen’s and PHH’s records indicate that you may be a “Settlement Class Member.” The “Settlement Class” consists of all borrowers on residential mortgage loans with mortgaged property located in the State of California who, between July 26, 2015 and June 24, 2022, paid a Convenience Fee to Ocwen or between July 30, 2015 and June 24, 2022, paid a convenience fee to PHH to make a due and owing monthly payment over the telephone, by IVR, or online. A payment is considered “due and owing” if it was made on or after the date the payment was due. Excluded from the Settlement Class are all employees of Ocwen and/or PHH and all members of the Settlement Class in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH (N.D. Ala. Aug. 1, 2019).

WHAT ARE THE SETTLEMENT TERMS?

What the Settlement Class is getting:

Monetary Relief. Defendants have agreed to create a \$7,000,000.00 settlement fund (the “Settlement Fund”), which will be distributed to Settlement Class Members (after first deducting costs of administration and any fees, expenses or service awards that the Court awards Plaintiff and the attorneys representing the Settlement Class (“Class Counsel”). The Settlement Fund will be calculated and distributed on a loan-by-loan basis. Every loan for which a Settlement Class Member paid a Convenience Fee to Ocwen or PHH during the relevant time periods will receive an Individual Allocation from the Settlement Fund. Each such “Class Loan” will be entitled to receive an Individual Allocation, calculated based on the proportion of Convenience Fees paid to and retained by PHH Defendants on that Class Loan on due and owing payments during the relevant time periods, as compared to the total aggregate amount of all Convenience Fees paid to and retained by the PHH Defendants during those periods. As a result, payments made on Class Loans with multiple borrowers shall be treated as joint payment for purposes of this calculation, such that each Class Loan will be entitled to only one Individual

Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and multiple obligors on a single Class Loan are not entitled to a separate Individual Allocation on the same Class Loan.

Other Relief. The PHH Defendants have also agreed to stop charging Convenience Fees to California residents whose loan is subject to the Rosenthal Act—*i.e.* California residents who are making a “due and owing” payment, which is a payment on or after the payment’s due date—for a period of 2 years from the Final Settlement Date.

What the Settlement Class is giving up: In return for the relief that Defendants are providing, Settlement Class Members are deemed to have agreed to the following:

- **A release of any claims that they may have against Ocwen relating in any way to their payment of Convenience Fees during the period from July 26, 2015 through June 24, 2022 and against PHH relating in any way to their payment of Convenience Fees during the period from July 30, 2015 through June 24, 2022.** See Part 10 of this Notice below for more information concerning what the Settlement Class is giving up in the Settlement.

HOW CAN I GET PAYMENT? You do not need to take any action to share in the relief offered by the Settlement. If you have moved since making a payment and paying a Convenience Fee to Ocwen or PHH, you may notify the Settlement Administrator of your new mailing address by writing to: [_____].

WHAT ARE MY OTHER OPTIONS?

You can exclude yourself: If you do not want to be bound by the Settlement, you must exclude yourself by **MONTH DAY, 2022**. Part 11 below explains what you need to do to exclude yourself. If you do not exclude yourself, and the Settlement is given final approval by the Court, you will remain a member of the Settlement Class, you will receive your Individual Allocation, and you will be bound by the Settlement, including the release of claims against Ocwen and PHH.

You can object: You alternatively may object to the Settlement by **MONTH DAY, 2022**. Part 16 below explains what you need to do to object to the Settlement. The Court will hold a hearing on **MONTH DAY, 2022** beginning at **0:00 a.m.** to consider whether to finally approve the Settlement, as well as any request for attorneys’ fees and litigation costs by Class Counsel and Service Award to Plaintiff Larry Torliatt (the “Fairness Hearing”). If you object, Part 20 explains how you may ask the Court to speak at the Fairness Hearing. Persons who exclude themselves from the Settlement Class will not be bound by the Settlement but cannot file an objection and cannot speak at the Fairness Hearing.

The rest of this Notice provides you with a more detailed summary of the Settlement, and also more fully describes your legal rights and options. For even more information, please visit [_____] (the “Settlement Website”), at which you may download a complete copy of the “Stipulation of Settlement and Release” (together with all attached exhibits, the “Settlement”). *Please read all of this Notice carefully and in its entirety because your legal rights may be affected whether you act or don’t act.*

BASIC INFORMATION

1. Why did I get this Notice?

If this Notice was addressed to you, then according to Defendants’ records you paid a fee to make one or more mortgage loan payments to Ocwen on or after July 26, 2015 or to PHH on or after July 30, 2015 by telephone, through an IVR, or through the internet. Ocwen and PHH were not required by your loan documents to offer these optional payment methods, but nevertheless offered these extra payment methods in exchange for a Convenience Fee.

You have received this Notice because you have a right to know about a proposed Settlement of *Torliatt v. Ocwen Loan Servicing, LLC*, case number 3:19-cv-04303-WHO, pending in the United States District Court for the Northern District of California (the “Action”). This Notice describes the lawsuit, the Settlement, your legal rights, what relief is being offered to you, how that relief will be distributed and other important information. This Notice only

summarizes the Settlement, the full terms of which are available for review at [www.\[\]](http://www.[]). If there is any conflict between this Notice and the Settlement, the Settlement governs. You should review the Settlement before deciding what to do. Please share this Notice with any co-borrower(s) on your loan(s).

2. What is this lawsuit about?

Plaintiff alleges that Ocwen and PHH violated the Rosenthal Act and the UCL by charging Convenience Fees to borrowers for making loan payments by telephone, through IVR, or through the internet. Although Ocwen and PHH were not required to offer these payment methods, and although use of these extra payment methods was always purely optional, Plaintiff contends that such fees were still unlawful because they were not expressly authorized by the Settlement Class Members' underlying loan documents. Defendants deny that they did anything wrong because all customers who were charged a Convenience Fee (a) were informed in advance that the payment methods for which such fees were charged were entirely optional and the borrower's decision to use them would result in a disclosed charge amount, and (b) were required to expressly consent to the Convenience Fee before it was charged. Defendants contend that under both the plain language of the Rosenthal Act, other relevant law, and regulatory guidance issued by the Federal Trade Commission, separate fees for a separate, optional, entirely avoidable, and agreed-upon service do not violate the Rosenthal Act and do not violate the UCL. Defendants also contend that Convenience Fees are permitted by state and federal law.

Section 1788.30 of the Rosenthal Act provides that prevailing plaintiffs may recover any actual damages sustained as a result of a defendant's violation of the Rosenthal Act, if any, along with statutory damages not exceeding \$1,000 per borrower.

This Settlement is a compromise of these and other claims described in the Settlement, as explained in Part 10 below. Meanwhile, Part 22 of this Notice explains how you may obtain more information about the claims in this Action and Defendants' response to those claims. You can also visit [www.\[\]](http://www.[]) to review Plaintiff's operative complaint, the Parties' proposed Settlement, and other documents related to this Action.

3. Why is this lawsuit a class action?

In a class action, one or more people, called class representatives (here Plaintiff Lawrence Torliatt), sue on behalf of all other people who have similar claims. Together, all of these people are called a class, and the persons in it are called class members. In a class action, one court resolves the claims of all class members, except for those who ask in writing to be excluded from the class. The Honorable William H. Orrick of the United States District Court for the Northern District of California is in charge of all aspects of this case, and has already given preliminary approval to the Settlement. Nevertheless, because the Settlement will determine the rights of the Settlement Class, the Parties must make the best effort practicable to send all of the Settlement Class Members notice before the Court can consider entering final approval of the Settlement and making it effective.

The Court has conditionally certified the Settlement Class for settlement purposes only. If the Settlement is not given final approval, or otherwise fails to become final, or is terminated by the Parties for any of the reasons set forth in Section 12 of the Settlement, the Settlement will become void, the Settlement Class will no longer remain certified, and the Action will proceed as if there had been no Settlement and no certification of the Settlement Class.

4. Why is there a Settlement?

The Court has not decided whether Plaintiff or Defendants would win this case. Instead, both sides agreed to the Settlement before any judgment was entered in the case. That way, the Parties avoid the uncertainties and expenses of ongoing litigation, and the delays of a trial and possible appeals, while providing Settlement Class Members with definite benefits now rather than the uncertain benefits potentially available from fully contested litigation years from now (if at all). Plaintiff and Class Counsel believe the Settlement is in the best interests of the Settlement Class because it offers relief now, while at the same time allowing anyone who wishes to pursue their own individual claims against Defendants to exclude themselves from the Settlement Class.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Settlement?

The Court decided that everyone who fits the following description is a member of the Settlement Class:

all borrowers on residential mortgage loans involving mortgaged property located in the State of California who, between July 26, 2015 and June 24, 2022 (the last day of the Class Period), paid a Convenience Fee to Ocwen or between July 30, 2015 and June 24, 2022, paid a convenience fee to PHH to make a due and owing monthly payment over the telephone, by IVR, or online. Excluded from the Class are (a) all employees of the PHH Defendants, (b) all members of the Settlement Class in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019), and (c) the federal district court and magistrate judges assigned to the Actions, along with persons within the third degree of relationship to them.

As noted in Part 1, if this Notice was addressed to you, then according to Defendants' records, you are a member of the Settlement Class unless you timely and properly exclude yourself from the Settlement Class as described in Part 11 of this Notice.

WHAT YOU CAN GET UNDER THE SETTLEMENT

6. What relief does the Settlement provide?

Defendants have agreed to create the \$7,000,000.00 Settlement Fund which, if the Settlement obtains final approval, will be used first to pay Costs of Administration of the Settlement Fund, then any Court-awarded fees and expenses to Class Counsel and service award to the Plaintiff. Following the payment of any such fees, expenses, and service award, the remaining balance of the Settlement Fund will be divided and distributed among Plaintiff and the rest of the Settlement Class Members. The distributions of the Settlement Fund to Settlement Class Members are called "Individual Allocations."

Individual Allocations will be calculated on a loan-by-loan basis, not a borrower-by-borrower basis. Every loan for which a Settlement Class Member paid a Convenience Fee to Ocwen or PHH during the relevant time period (each "Class Loan") will receive an Individual Allocation from the Settlement Fund, calculated as follows. Individual Allocations will be divided and distributed among Plaintiff and those members of the Settlement Class who did not submit timely and valid exclusion requests. Each Class Loan remaining within the Settlement Class following the deadline to submit exclusion reports will be entitled to receive an Individual Allocation, calculated based on the proportion of Convenience Fees paid to and retained by the PHH Defendants on that Class Loan on due and owing payments during the relevant time periods, as compared to the total aggregate amount of all Convenience Fees paid to and retained by the PHH Defendants with respect to all Class Loans on due and owing payments during those periods. The purpose of this method of allocation is to ensure that the Settlement Fund is allocated equitably based on the relative amount of Convenience Fees charged to and paid with respect to each Class Loan. As a result, payments made on Class Loans with multiple borrowers shall be treated as joint payments for purposes of this calculation, such that each Class Loan will be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and multiple obligors on a single Class Loan are not entitled to a separate Individual Allocation on the same Class Loan.

The actual amount that each Settlement Class Member will receive as an Individual Allocation will ultimately depend on a variety of factors, including whether and in what amounts the Court will approve any attorneys' fees and expenses to Class Counsel and service award to Plaintiff.

7. How can I get such relief?

As long as you do not exclude yourself from the Settlement Class, you will automatically receive an Individual Allocation, and you do not need to take further action. If you have moved since July 26, 2015, however, you may

wish to notify the Settlement Administrator of your current mailing address by contacting the Settlement Administrator at 1- [REDACTED] or [REDACTED]. This will help ensure that your Individual Allocation is mailed to the correct address.

8. When would I get such relief and how will it be distributed to me?

As described in Part 18, the Court will hold a Fairness Hearing on **MONTH DAY, YEAR** to decide whether to grant final approval to the Settlement. The Court must finally approve the Settlement before any relief will be distributed, and it will only do so after finding that the Settlement is fair, reasonable and adequate. In addition, any final approval order the Court may enter may be subject to appeal. If there are any such appeals, resolving them takes time—sometimes more than a year. Finally, it is possible that this Settlement may be terminated for other reasons, such as those set forth in Section 12 of the Settlement (available for review at [www.\[REDACTED\]](http://www.[REDACTED])). Please be patient.

The “Final Settlement Date,” as defined in the Settlement, is ten days after the order finally approving the Settlement becomes non-appealable or any appeals have been resolved in favor of the Settlement. Individual Allocations are expected to be distributed within 60 days of the Final Settlement Date. The Settlement Website will be updated from time to time to reflect the progress of the Settlement.

Individual Allocations will be distributed by check, with each such check made payable jointly to all borrowers on each Class Loan, in an amount equal to that Class Loan’s respective Individual Allocation, payable in U.S. funds, and mailed to the mailing address of record for that Class Loan as determined from the PHH Defendants’ records.

NOTE: All checks will expire and become void 180 days after they are issued and will be considered unclaimed funds. Unclaimed funds will be considered a waiver by you and any co-borrowers on your Class Loan of the right to receive Individual Allocation relief. Individual Allocation relief that remains unclaimed or undeliverable 300 days after the Final Settlement Date despite reasonable efforts to locate you will be donated and paid to Homes for Our Troops, “a privately funded 501(c)(3) nonprofit organization that builds and donates specially adapted custom homes nationwide for severely injured post-9/11 Veterans, to enable them to rebuild their lives.”

9. Will the Settlement have any tax consequences on me?

Neither the Court nor the Parties (including their counsel) can advise you about what, if any, tax consequences might arise for you from the Settlement. You are encouraged to consult with your own tax advisor to determine whether any potential tax consequences could arise from your receipt of an Individual Allocation.

10. Am I giving anything up by remaining in the Settlement Class?

Unless you exclude yourself, you will remain in the Settlement Class, and that means that if the Settlement is given final approval and reaches the Final Settlement Date then you:

will be deemed to have fully, finally and forever released, on behalf of yourself and all of your present, former and future heirs, assigns, and/or successors, each and all of the PHH Defendants and Released Parties of and from, and will be permanently enjoined from pursuing against each and all of the Released Parties, any and all claims, causes of actions, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, arising out of the Convenience Fees charged by Ocwen to Settlement Class Members, during the period from July 26, 2015 through and including the date the settlement is submitted for preliminary approval, and by PHH to Settlement Class Members, during the period from July 30, 2015 through and including the date the settlement is submitted for preliminary approval, for making loan payments by telephone, IVR, the internet, and other payment methods.

This release will include claims that Settlement Class Members do not know or suspect to exist in their favor at the time final approval may be granted to the Settlement, if those claims arise from, are based on, or relate to the Released Claims. If the Settlement is given final approval and reaches the Final Settlement Date, all Settlement Class Members will be deemed to have knowingly and voluntarily waived, relinquished and released the protections of any laws that would limit this release, including, without limitation, Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The phrase “Released Claims” means and refers to:

each and all of the claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages (whether punitive, statutory, or compensatory and whether liquidated or unliquidated), losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any regulatory bulletin, guidelines, handbook, opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that relate to or arise out of Convenience Fees charged by Ocwen to Settlement Class Members, during the period from July 26, 2015 through and including June 24, 2022, and by PHH to Settlement Class Members, during the period from July 30, 2015 through and including June 24, 2022.

The phrase “Released Persons” means and refers to:

(a) PHH, Ocwen, and any and all of their current or former predecessors, successors, assigns, parent corporations, subsidiaries, divisions, related and affiliated companies and entities, associates, vendors, service providers, software licensors and licensees, clients and customers, principals, stockholders, directors, officers, partners, principals, members, employees, attorneys, consultants, independent contractors, representatives, and agents, transferee servicers, and all individuals or entities acting by, through, under, or in concert with any of them; and (b) any trustee of a mortgage securitization trust which includes loans on which Settlement Class Members are borrowers, including, but not limited to, any direct or indirect subsidiary of any of them, and all of the officers, directors, employees, agents, brokers, distributors, representatives, and attorneys of all such entities

The full terms of the Settlement’s release are set forth in Section 3 of the Settlement, which is available for review at [www.\[\]](http://www.[]).

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How do I exclude myself from the Settlement Class?

If you don’t want to be part of the Settlement, or if you want to keep the right to sue or continue suing Ocwen or PHH on your own about the Released Claims, then you must take steps to exclude yourself from the Settlement Class. This is called excluding yourself, or “opting out.” If you exclude yourself from the Settlement Class, you will not be bound by the Settlement and will not receive any relief offered by the Settlement, but you will be free to file and then pursue your own individual lawsuit regarding the Released Claims if you wish to do so. However, the Court has ruled that neither the Settlement, nor this Notice, nor the Court’s preliminary approval order may be used as evidence in such individual lawsuits. You should be aware that if you do exclude yourself and you plan to file your own action against Defendants, the statute of limitations applicable to your claim may prevent you from separately suing Defendants unless you act promptly.

To exclude yourself, you must mail a letter sufficiently in advance to be received by the “Settlement Administrator,” [REDACTED], no later than **MONTH DAY, YEAR**, saying that you want to be excluded from the Settlement Class. Your letter must be addressed to Torliatt v. Ocwen, c/o [REDACTED], and must: (a) contain a caption or title that identifies it as “Request for Exclusion in *Torliatt v. Ocwen* (case number 3:19-cv-04303-WHO);” (b) include your name, mailing and e-mail addresses, and contact telephone number; (c) specify that you want to be excluded from the Settlement Class and identify the Class Loan number(s) for which you seek exclusion from the Settlement; and (d) be *personally* signed by you and every other co-debtor, joint debtor, or other borrower on the Class Loan. A request for exclusion for a Class Loan will not be effective unless it is signed by each such co-debtor, joint debtor, or other borrower. For your convenience, your Class Loan number or numbers are included on the back of this Notice.

NOTE: If your request for exclusion is late or incomplete, it will not be valid and you will remain part of the Settlement Class, you will still be bound by the Settlement and all other orders and judgments in the Action, and you will not be able to participate in any other lawsuits against Defendants and the Released Persons based on the Released Claims.

12. If I don’t exclude myself, can I sue Ocwen or PHH later for the same thing?

No. If you do not exclude yourself from the Settlement Class and the Settlement is given final approval and reaches the Final Settlement Date, you will give up the right to sue Defendants and the Released Persons for the Released Claims.

13. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not be eligible to receive any of the individual benefits that the Settlement offers.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. The Court has appointed Joseph Henry Bates, III, Edwin Lee Lowther, and Randall K. Pulliam of the law firm Carney Bates & Pulliam, PLLC, and James Lawrence Kauffman of the law firm Bailey & Glasser LLP to represent you and the other Settlement Class Members in this Action and for purposes of this Settlement, and for no other purpose. These attorneys are called “Class Counsel,” and they can be reached by writing them at Bailey & Glasser LLP, 1055 Thomas Jefferson Street NW, Suite 540, Washington, DC 20007. You will not be separately charged for the services of Class Counsel for issues related to this Action.

You have the right to retain your own separate lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will be solely responsible for all of his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer, but if you want to appear at the Fairness Hearing you must comply with the procedures set forth in Part 20 of this Notice below.

15. How will Class Counsel Be Paid?

Class Counsel have prosecuted this case on a contingent-fee basis and, so far, have not yet been paid anything for their services. If the Settlement is approved, Class Counsel will ask the Court for an award of attorneys’ fees and expenses, to be paid from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund. Class Counsel will also ask the Court for a service award to Plaintiff for his services as the class representative and his efforts in bringing the Action in an amount not to exceed \$10,000, which will also be paid from the Settlement Fund. Class Counsel will file with the Court their request for attorneys’ fees and expenses and a service award on or before **MONTH DAY, YEAR**, which will then be posted on [www. \[REDACTED\]](http://www.[REDACTED]).

Defendants reserve the right to oppose any request for attorneys’ fees and expenses and service awards that Defendants deem to be unreasonable in nature or amount or otherwise objectionable. The Settlement is not conditioned on the Court approving any specific amount of attorneys’ fees and expenses or service awards. The Court will ultimately decide whether any attorneys’ fees and expenses should be awarded to Class Counsel or any service awards awarded to Plaintiff, and in what amounts.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't agree with any part of it. You can provide reasons why you think the Court should deny approval of the Settlement by filing an objection. However, you can't ask the Court to order a larger or different type of settlement as the Court can only approve or deny the Settlement presented by the Parties. If the Court denies approval, no settlement relief will be available to the Settlement Class Members and the lawsuit will continue. If you file a written objection, the Court will consider your views.

To object, you must file a written statement of objection with the Court. Your written objection must: (a) include a caption or title that identifies it as "Objection to Class Settlement in *Torliatt v. Ocwen* (case number 3:19-cv-04303-WHO);" (b) include your name, mailing and email addresses, contact telephone number, and your Class Loan number(s); (c) set forth the specific reason(s), if any, for each of your objections, including all legal support you wish to bring to the Court's attention and all factual evidence you wish to introduce in support of your objection, and state whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (d) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection, and (e) be *personally* signed by you. For your convenience, your Class Loan number or numbers are included on the back of this Notice.

You may file your written statement of objection in person at, or you may mail it to, the Clerk of the Court, United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102. However, if you are represented by your own attorney, your attorney must file your objection through the Court's Case Management/Electronic Case Filing (CM/ECF) system. To be considered timely and valid, all statements of objection must be filed with the Court by, or mailed sufficiently in advance to be received by the Court by, **MONTH DAY, 2022**. Any Settlement Class Member who does not comply with the above deadline and requirements shall be deemed to have waived all objections to and shall be forever barred from challenging the Settlement.

17. What's the difference between objecting and excluding myself?

Objecting simply means telling the Court that you don't agree with something about the Settlement, but that you are still willing to be bound by it if the Settlement is finally approved despite your objection. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class at all. If you exclude yourself, you will not be subject to the Settlement and therefore cannot object to the Settlement or appear at the Fairness Hearing because the case will no longer affect you.

THE COURT'S FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

A Fairness Hearing has been set for **MONTH DAY, YEAR**, beginning at **XX:XX** a.m., before the Honorable William H. Orrick at the United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102. At the hearing, the Court will consider whether to: (1) grant final certification to the Settlement Class for settlement purposes; (2) approve the Settlement as fair, reasonable, and adequate; and (3) award any attorneys' fees and expenses to Class Counsel and service award to Plaintiff. The Court will also consider any and all objections to the Settlement and any other issues relating to the Settlement. After the hearing, the Court will decide whether to approve the Settlement. It is not possible to predict how long the Court's decision will take.

NOTE: The Court has reserved the right to change the date and/or time of the Fairness Hearing, or to continue it, without further notice. If you plan to attend the Fairness Hearing, you should confirm the date and time shortly before

travelling to attend the hearing by checking [www. \[\]](http://www.[]) or the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov/>.

19. Do I have to come to the Fairness Hearing?

No. Class Counsel will represent the Settlement Class at the Fairness Hearing. But you are welcome to come at your own expense. Even if you send an objection, you are not required to come to the Fairness Hearing to talk about it. As long as your objection was timely filed and meets the other requirements described in Part 16, the Court will consider it. You may also hire and pay your own lawyer to attend the Fairness Hearing at your expense, but you are not required to do so.

20. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing, but only *if* you timely file an objection in full compliance with the instructions set forth in Part 16, and *if* you also state in that objection that you would like to speak at the Fairness Hearing. However, any separate attorney you hire may appear only if he or she files through the Court's Case Management/Electronic Case Filing (CM/ECF) system a separate "Notice of Intention to Appear in *Torliatt v. Ocwen* (case number 3:19-cv-04303-WHO)." That notice must be filed with the Court no later than **MONTH DAY, YEAR**. You cannot speak at the Fairness Hearing if you have excluded yourself from the Settlement Class.

IF YOU DO NOTHING

21. What if I do nothing?

If you do nothing, and the Settlement is approved and reaches the Final Settlement Date, you will be a Settlement Class Member and you will be entitled to receive an Individual Allocation. You will also be bound by the Settlement's release and other terms, and therefore you will not be able to file your own lawsuit, continue with your own lawsuit, or be part of any other lawsuit against Ocwen, PHH, and the Released Persons concerning any of the Released Claims.

GETTING MORE INFORMATION

22. Where can I get additional information?

This notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please see the full Stipulation of Settlement and Release available at [www. \[\]](http://www.[]), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT, THE COURT CLERK'S OFFICE, OCWEN, OR PHH
TO INQUIRE ABOUT THIS SETTLEMENT.**

EXHIBIT B

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12
13
14 **IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 *San Francisco Division*

16 LAWRENCE TORLIATT,)
17 on behalf of himself and)
18 all others similarly situated,)

19 Plaintiff,)

20 v.)

21 OCWEN LOAN SERVICING, LLC,)

22 Defendant.)

Case No. 3:19-cv-04303-WHO

**SECOND AMENDED
CONSOLIDATED CLASS
ACTION COMPLAINT**

**CLASS ACTION
DEMAND FOR JURY TRIAL**

23)
24) Leave to File Granted April 17, 2020
ECF No. 49

25)
26 CONSOLIDATED WITH:)

27 *Lawrence Torliatt v. PHH Mortgage Corp.*,)
28 Case No. 3:19-cv-04356-WHO)

1 Plaintiff, LAWRENCE TORLIATT, on behalf of himself and all others similarly
2 situated, alleges that Defendants Ocwen Loan Servicing, LLC (“Ocwen”) and PHH Mortgage
3 Corporation (“PHH”) (collectively, “Defendants”) violated the Rosenthal Fair Debt Collection
4 Practices Act (“Rosenthal Act”), breached their contracts with borrowers, and that PHH
5 violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692f and §1692e (“FDCPA”), as
6 described more fully below.

7 1. Many borrowers in California struggle enough to make their regular mortgage
8 payments without getting charged extra, illegal fees when they try to pay by phone or online
9 (“Pay-to-Pay fees”). Federal and state debt collection laws strictly prohibit any such charges
10 unless expressly agreed to by the borrower in the agreement creating the obligation. But Pay-
11 to-Pay fees are found nowhere in any standard deed of trust.

12 2. Here, Defendants pay Western Union to process Pay-to-Pay transactions at a
13 cost of about \$0.40 each. Despite this low cost, Defendants charge homeowners a \$5.00 to
14 \$20.00 Pay-to-Pay fee for each online or pay-by-phone mortgage payment transaction,
15 pocketing the difference as profit.

16 3. Defendants service mortgages on behalf of mortgage loan investors and other
17 servicers throughout the United States, including California. According to Defendant’s public
18 filings with the Securities Exchange Commission, they service 1,419,943 loans nationwide with
19 unpaid principal balances exceeding \$214 Billion.¹ Servicing primarily involves the collection
20 of principal and interest payments from borrowers, as well as the management of loans that are
21 delinquent or in foreclosure or bankruptcy, and other related activities, on behalf of mortgage
22 loan investors and other servicers.² Defendants collect payments owed to third parties on
23 hundreds of thousands of loans in California and over a million loans nationwide.
24

25
26 ¹ <https://sec.report/Document/0001628280-20-002312/> at 5.

27 ² *Id.* See also, Exhibit A (Deed of Trust at ¶ 20 (Loan Servicer is an entity “that collects
28 Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.”)).

1 limitation. To be conservative, multiplying that damages figure by California’s twelve percent
2 of the U.S. population, the damages at issue here amount to approximately \$4,000,000.00,
3 exclusive of the value of the injunction Plaintiff seeks to stop the practice and attorneys’ fees.
4 Thus, the amount in controversy exceeds \$5,000,000.00.

5 11. Venue is proper because this is where the cause of action accrued.

6 **PARTIES**

7 12. Plaintiff Lawrence Torliatt is a natural person residing in California who has a
8 mortgage loan that was serviced by Ocwen on his home located in California.

9 13. Defendant Ocwen Loan Servicing, LLC is a corporation with a principal place
10 of business in West Palm Beach, Florida. Defendant is one of the nation’s leading specialty
11 loan servicing companies.

12 14. Defendant PHH Mortgage Corporation is a corporation with a principal place of
13 business in Mount Laurel, New Jersey. Defendant is one of the nation’s leading specialty loan
14 servicing companies.

15 **APPLICABLE LAW**

16 **FDCPA**

17 15. The purpose of the FDCPA is “to eliminate abusive debt collection practices . . .
18 and to promote consistent State action to protect consumers against debt collection abuses.” 15
19 U.S.C. § 1692.

20 16. The FDCPA prohibits debt collectors from using “any false, deceptive, or
21 misleading representation or means in connection with the collection of any debt,” which
22 includes the false representation of “the character, amount, or legal status of any debt.” *Id.* §
23 1692e.

24 17. The FDCPA also prohibits debt collectors from “unfair or unconscionable
25 means to collect or attempt to collect any debt,” including “[t]he collection of any amount
26 (including any interest, fee, charge, or expense incidental to the principal obligation) unless
27 such amount is expressly authorized by the agreement creating the debt or permitted by law.”
28 *Id.* § 1692f(1).

1 18. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

2 19. The FDCPA defines “consumer” as “any natural person obligated or allegedly
3 obligated to pay any debt.” *Id.* § 1692a(3).

4 20. The FDCPA defines “debt collector” as “any person who uses . . . any business
5 the principal purpose of which is the collection of any debts, or who regularly collects or
6 attempts to collect . . . debt owed . . . or asserted to be owed or due another.” *Id.* § 1692a(6).

7 21. The FDCPA contains an exclusion from the term “debt collector” for “any
8 person collecting or attempting to collect any debt owed or due or asserted to be owed or due
9 another to the extent such activity: . . . (iii) concerns a debt which was *not in default at the time it*
10 *was obtained* by such person.” *Id.* (emphasis added).

11 22. The FDCPA defines communication as “conveying of information regarding a
12 debt directly or indirectly to any person through any medium.” *Id.* § 1692a(2).

13 23. The FDCPA defines “debt” as “any obligation or alleged obligation of a
14 consumer to pay money arising out of a transaction . . . [that] are primarily for personal, family,
15 or household purposes.” *Id.* § 1692a(5).

16 **ROSENTHAL ACT**

17 24. The Rosenthal Act is “a remedial statute [that] should be interpreted broadly in
18 order to effectuate its purpose.” *See People ex rel. Lungren v. Superior Court*, 14 Cal. 4th 294,
19 313, 58 Cal. Rptr. 2d 855, 926 P.2d 1042 (Cal. 1996) (“[C]ivil statutes for the protection of the
20 public are, generally, broadly construed in favor of that protective purpose.”); *Komarova v.*
21 *National Credit Acceptance, Inc.*, 95 Cal. Rptr. 3d 880, 892, 175 Cal. App. 4th 324, 340 (Cal.
22 Ct. App. 2009).

23 25. The Rosenthal Act defines “debt collector” as “any person who, in the ordinary
24 course of business, regularly, on behalf of himself or herself or others, engages in debt
25 collection.” Cal. Civ. Code § 1788.2(c).

26 26. The Rosenthal Act defines a “consumer debt” as “money, property or their
27 equivalent, due or owing or alleged to be due or owing from a natural person by reason of a
28 consumer credit transaction.” Cal. Civ. Code § 1788.2(f).

1 24-1, at 50.)³ Mr. Torliatt’s monthly payments are each due on the first of the month. (*Id.*, at 7,
2 ¶ 3.)

3 36. Mr. Torliatt’s Deed of Trust does not authorize a fee to make a payment online.

4 37. On or about April 16, 2019, Mr. Torliatt was notified by PHH that the servicing
5 of his mortgage was transferred from Ocwen to PHH on April 11, 2019. (*See* Notice of
6 Servicing Transfer, ECF No. 24-1, at 28–39.)

7 38. The Notice of Servicing Transfer included an “FDCPA Validation of Debt”
8 which stated that as of 4/11/19, Mr. Torliatt owed: \$530 in late charges, \$2,545.52 in Collection
9 Costs, and \$1,648.46 in Escrow Advances, for a “Total Unpaid Debt” of \$4,729. (*Id.*, at 34.)

10 39. Under the terms of Mr. Torliatt’s Deed of Trust, collection costs may only be
11 charged in connection with Mr. Torliatt’s default. Exhibit A, ¶ 9.

12 40. The FDCPA Validation of Debt states: “This communication is from a debt
13 collector attempting to collect a debt; any information obtained will be used for that purpose.”
14 (*Id.*, at 53.) This language is required by the FDCPA in all debt collector communications with
15 debtors. 15 U.S. Code § 1692e(11).

16 41. Mr. Torliatt’s monthly statements show that much of the Unpaid Debt listed in
17 his FDCPA Validation of Debt is the result of collection charges imposed in October and
18 November of 2018, totaling approximately \$1,348.52. (Exhibit B, 11/13/2018 Monthly
19 Statement.) These charges included fees for “Notice of Default Recording,” “Appt. of
20 Substitute Trustee,” “FC Thru Complaint,” and “Statutory Mailings.” (*Id.*) Again, according to
21 Mr. Torliatt’s Deed of Trust, these are fees that can only be charged in connection with Mr.
22 Torliatt’s default. Exhibit A, ¶ 9.

23 42. Monthly statements in the months that follow the 11/13/18 statement show that
24 these charges, fees, and advances remained “Past Due” from November 13, 2018 until at least
25 through May 13, 2019, a date after PHH had begun servicing Mr. Torliatt’s mortgage on April
26

27 _____
28 ³ Pinpoint citations to the record refer to the page number stamped at the top of each page by
the CM/ECF system.

1 11, 2019. *See* Exhibit B, Monthly Statements for December 2018 through April 2019; and ECF
2 No. 24-1 at 45, Monthly Statement dated May 13, 2019.

3 43. Thus, as of 4/11/2019, when the servicing of Mr. Torliatt's loan was transferred
4 to PHH, PHH had treated Mr. Torliatt's loan as past due and delinquent.

5 44. According to Mr. Torliatt's April 8, 2019 statement he had Past Due Payment
6 Amounts of \$5,115.98, plus Regular Payment of \$2,034.96 for a total Unpaid Amount of
7 \$7,150.94.

8 45. The first statement Mr. Torliatt received from PHH, dated May 13, 2019
9 reflected that he then owed PHH past due late charges, shortages and other fees of \$2,545.52,
10 as well as his regular mortgage payment for a total of \$5,115.98. This is the amount of Mr.
11 Torliatt's previous balance with Ocwen less a monthly mortgage payment paid on April 11,
12 2019.

13 46. Mr. Torliatt's Note states that he is obligated to make payments on the first day
14 of each month. (ECF No. 24-1, at 7, ¶ 3.) The Note further states under the heading "Default":
15 "If I do not pay the full amount of monthly payment on the date it is due, I will be in default."
16 (*Id.*, at 29, ¶7(B).)

17 47. Mr. Torliatt's Deed of Trust states "[a]ny amounts disbursed by Lender under
18 this Section 9 shall become additional debt of Borrower secured by this Security Instrument. . .
19 . and shall be payable, with such interest, upon notice from Lender to Borrower requesting
20 payment." Exhibit A, ¶ 9.

21 48. Before transferring the servicing of Mr. Torliatt's loan to PHH, Ocwen
22 requested payment each month of amounts it had advanced Mr. Torliatt, as well as previously
23 accrued late fees and collection costs.

24 49. PHH continued these requests when it began servicing Mr. Torliatt's mortgage.

25 50. Thus, at the time PHH acquired the servicing rights to Mr. Torliatt's loan, he
26 was in default, as defined by his note and mortgage.

27 51. PHH collected from Mr. Torliatt \$7.50 for internet payments, including
28 payments made on 4/11/2019, 5/13/2019, 6/13/2019, and 7/15/2019. (ECF No. 24-1, at 50.)

1 Mr. Torliatt’s monthly payments are each due on the first of the month. (*Id.*, at 7, ¶ 3.)

2 52. Since beginning the servicing of his loan in April 2019, PHH has continued to
3 charge Mr. Torliatt fees of \$7.50 for making his mortgage payments online.

4 53. Defendants, as servicers, regularly collect or attempt to collect, directly or
5 indirectly, debts owed or asserted to be owed or due another. Defendants collect debts on
6 behalf of mortgage loan investors, and other servicers. *See* ¶ 3, *supra*. Neither Defendant is or
7 was the holder or investor of Mr. Torliatt’s mortgage.

8 54. According to the FDCPA Validation of Debt letter PHH sent to Mr. Torliatt on
9 or about April 16, 2019, PHH Mortgage Services is the servicer of his account “for (‘Creditor’)
10 ARSI 2006-W2.” (ECF No. 24-1, at 34.) On Information and belief, ARSI 2006-W2 is Argent
11 Mortgage Company, LLC, the originator of Mr. Torliatt’s loan, or an affiliated entity.

12 55. With respect to loans acquired in default, mortgage servicers are debt collectors
13 under the FDCPA if they regularly collect debts owed another. *See e.g. Randall v. Ditech*
14 *Financial, LLC*, 233 Cal.Rptr.3d 271, 276, 23 Cal.App.5th 804, 810 (Cal.App. 4 Dist. 2018)
15 (mortgage servicer who regularly collects debts on behalf of others, and who began servicing
16 the plaintiff’s mortgage after the loan was in default was a debt collector under the FDCPA;
17 denying motion to dismiss where complaint alleged Ditech collects debts on behalf of others,
18 and began servicing plaintiff’s loan when it was in default); *Babadjanian v. Deutsche Bank*
19 *National Trust Company*, 2010 WL 11549894, at *5 (C.D. Cal. Nov. 12, 2010).

20 56. PHH is a debt collector under the FDCPA because it regularly collects debts on
21 behalf of others and acquired the servicing rights to debts, including Plaintiff’s, when it
22 considered those debts to be in default.

23 57. Defendants contract with Western Union to process all of their online and
24 automated phone payment transactions (“Pay-to-Pay Transactions”). The cost to Defendants
25 under the contract depends on the monthly volume of Pay-to-Pay Transactions processed by
26 Western Union. Given the volume of Pay-to-Pay Transactions, the actual cost that Defendants
27 pays Western Union to process Pay-to-Pay Transactions is about \$0.20 to \$0.40 per transaction.
28

1 58. Defendants' demands for payment of Pay-to-Pay fees is a breach of the Deed of
2 Trust, which does not delineate Pay-to-Pay fees as one of the charges that the lender, or loan
3 servicer acting on behalf of the lender, may charge. There is no provision in the mortgage that
4 allows Defendants to collect Pay-to-Pay fees.

5 59. Defendants' demand for payment of Pay-to-Pay fees is a direct breach of
6 Paragraph 14 of the Deed of Trust: "Lender may not charge fees that are expressly prohibited
7 by this Security Instrument or by Applicable Law." Exhibit A, ¶ 14. The Agreement defines
8 "Applicable Law" in Paragraph I as "all controlling applicable federal, state, and local statutes,
9 regulations, ordinances and administrative rules and orders (that have the effect of law) as well
10 as all applicable final, non-appealable judicial opinions." *Id.*, ¶ (I). Moreover, "[t]his Security
11 Instrument shall be governed by Federal law and the law of the jurisdiction in which the
12 Property is located." *Id.*, ¶ 16. Federal debt collection law prohibits the collection of any
13 amount incidental to the principle obligation unless that amount is *expressly* stated in the loan
14 agreement. *See* 15 U.S.C. § 1692f(1) (making unlawful the "collection of any amount
15 (including any interest, fee, charge or expense incidental to the principal obligation) **unless**
16 **such amount is expressly authorized by the agreement creating the debt or permitted by**
17 **law.**" (emphasis added).

18 60. Ocwen's collection of Pay-to-Pay fees violated the Rosenthal Act. PHH's
19 collection of Pay-to-Pay fees violated both the Rosenthal Act and the FDCPA.

20 61. Further, Fannie Mae's servicing guidelines, which Defendants must follow
21 when sub-servicing Fannie Mae loans, do not allow the collection of any fees on routine
22 borrower collections, including the Pay-to-Pay fees charged by Defendants. *See* Fannie Mae
23 Servicing Guide A2-3-05 ("The servicer is not authorized to charge the borrower fees relating
24 to the following activities: facilitating routine borrower collections.").

25 62. By charging the Pay-to-Pay fees, Ocwen has breached the "Uniform Covenants"
26 contained in Paragraphs 14 and 16 of Plaintiff's uniform deed of trust on a class-wide basis.

27 63. Prior to filing this Complaint, Mr. Torliatt made a written pre-suit demand upon
28 Defendants.

1 64. Defendants were given a reasonable opportunity to cure their breaches described
2 herein but failed to do so.

3 **CLASS REPRESENTATION ALLEGATIONS**

4 65. Plaintiff LAWRENCE TORLIATT, brings this action under Fed. R. Civ. P.
5 23(b)(3) on behalf of the following classes of persons, subject to modification after discovery
6 and case development:

7 **The California Class:**

8 All persons with a California address who paid a fee to Ocwen and/or PHH for
9 making a loan payment by telephone, IVR, or the internet during the applicable
10 statutes of limitations for Plaintiff's non-FDCPA claims through the date a class
11 is certified.

12 **The Nationwide Class:**

13 All persons who were borrowers on residential mortgage loans that were not
14 owned by PHH and to which PHH acquired servicing rights when such loans
15 were in default on their loan payment obligations, and paid a fee to PHH for
16 making a loan payment by telephone, IVR, or the internet, during the applicable
17 statutes of limitations for Plaintiff's FDCPA claim through the date a class is
18 certified.

19 66. Class members are identifiable through Defendants' records and payment
20 databases.

21 67. Excluded from the Classes are any class members who did not opt-out of the
22 class action settlement in *McWhorter et al. v. Ocwen Loan Servicing, LLC*, Case No. 2:15-cv-
23 01831 (N.D. Ala.); the Defendants; any entities in which Defendants have a controlling
24 interest; Defendants' agents and employees; and any Judge to whom this action is assigned and
25 any member of such Judge's staff and immediate family.

26 68. Plaintiff proposes that he serve as representative of the Classes.

27 69. Plaintiff and members of the Classes have all been harmed by the actions of
28 Defendants.

1 70. Numerosity is satisfied. According to Defendants' servicing records there are
2 likely thousands of members of the classes. Individual joinder of these persons is impracticable.

3 71. There are questions of law and fact common to Plaintiff and to the Classes,
4 including, but not limited to:

- 5 a. Whether Ocwen and PHH violated the Rosenthal Act by charging Pay-to-Pay
6 fees to members of the California Class that were not expressly authorized by
7 contract or permitted by law;
- 8 b. Whether Ocwen and PHH violated the unlawful prong of the California Unfair
9 Practices Act (Cal. Bus. & Prof. Code § 17000 *et. seq.*) by charging Pay-to-Pay
10 fees to members of the California Class in violation of the Rosenthal Act;
- 11 c. Whether PHH violated the FDCPA by charging Pay-to-Pay fees to Plaintiff and
12 members of the Nationwide Class that were not expressly authorized by contract
13 or permitted by law;
- 14 d. Whether Ocwen and PHH breached their Deeds of Trust by charging Pay-to-Pay
15 fees to members of the California Class;
- 16 e. Whether Ocwen and PHH violated Fannie Mae's servicing guidelines as a sub-
17 servicer by charging Pay-to-Pay fees to members of the California Class;
- 18 f. Whether Ocwen's and PHH's cost of Pay-to-Pay transactions under its contract
19 with Western Union is less than the amount it charged Plaintiff and members of
20 the Classes for Pay-to-Pay fees;
- 21 g. Whether Plaintiff and members of the Classes are entitled to actual and/or
22 statutory damages as a result of Defendants' actions;
- 23 h. Whether Plaintiff and members of the California Class are entitled to an
24 injunction prohibiting Defendants from collecting and attempting to collect Pay-
25 to-Pay fees; and
- 26 i. Whether Plaintiff and members of the Classes are entitled to attorney's fees and
27 costs.
28

1 72. Plaintiff's claims are typical of the claims of members of the Classes. Ocwen
2 and PHH charged Plaintiff Pay-to-Pay fees in the same manner as the class members. Ocwen
3 and PHH entered into a contract with Western Union to process the Plaintiff's and class
4 members' Pay-to-Pay Transactions. Plaintiff and class members entered into uniform covenants
5 in their Deeds of Trust that prohibit Pay-to-Pay charges. Alternatively, if Ocwen and PHH are
6 allowed under the Deeds of Trust to charge Pay-to-Pay fees as a default-related fee, such
7 amount is capped for Plaintiff and class members at the actual amounts disbursed by Ocwen or
8 PHH to Western Union for the Pay-to-Pay Transactions, approximately \$0.20 to \$0.40 under
9 Defendants' contracts with Western Union.

10 73. Plaintiff is an adequate representative of the Classes because his interests do not
11 conflict with the interests of members of the Classes, and he will fairly and adequately protect
12 the interests of members of the Classes. Plaintiff has taken actions before filing this complaint,
13 by hiring skilled and experienced counsel, and by making a pre-suit demand on behalf of class
14 members to protect the interests of the Classes.

15 74. Plaintiff has hired counsel that is skilled and experienced in class actions and is
16 adequate class counsel capable of protecting the interests of the Classes.

17 75. Common questions of law and fact predominate over questions affecting only
18 individual class members, and a class action is the superior method for fair and efficient
19 adjudication of this controversy.

20 76. The likelihood that individual members of the Classes will prosecute separate
21 actions is remote due to the time and expense necessary to conduct such litigation.

22 **COUNT I AS TO DEFENDANTS' VIOLATIONS OF THE ROSENTHAL ACT**

23 **CAL. CIV. CODE §§ 1788 *et seq***

24 **(By Mr. Torliatt on behalf of California Class)**

25 77. The Rosenthal Act applies to Defendants because they regularly engage in debt
26 collection within California. Cal. Civ. Code § 1788.2(c).

27 78. Mr. Torliatt purchased his home by residential mortgage for personal, family or
28 household use and is a person who incurred a consumer debt. Cal. Civ. Code § 1788.2(e), (f).

1 79. Plaintiff's mortgage was at all relevant times due and owing, for the reasons
2 stated above

3 80. By collecting Pay-to-Pay fees from Plaintiff and members of the California
4 Class, Defendants collected an amount incidental to the principal obligation without the amount
5 being expressly stated in the underlying loan agreement or permitted by law, conduct that is
6 prohibited by Section 1692f(1) of the FDCPA.

7 81. The Rosenthal Act makes it illegal for any entity covered by it to engage in
8 conduct prohibited by the FDCPA. Cal. Civ. Code § 1788.17. By engaging in conduct
9 prohibited by the FDCPA, Defendants violated the Rosenthal Act.

10 82. Moreover, by collecting and attempting to collect Pay-to-Pay fees that were not
11 otherwise permitted by law from Plaintiff and class members, Defendants violated the
12 Rosenthal Act's prohibition against "(b) Collecting or attempting to collect from the debtor the
13 whole or any part of the debt collector's fee or charge for services rendered, or other expense
14 incurred by the debt collector in the collection of the consumer debt, except as permitted by
15 law." Cal. Civ. Code § 1788.14.

16 83. By assessing Pay-to-Pay fees, Defendants represented to Plaintiff and members
17 of the California Class that their debts may be increased by the addition of the Pay-to-Pay fees,
18 even though Pay-to-Pay fees may not be legally added to the existing obligation. These
19 representations violated the Rosenthal Act's prohibition against representing that a consumer
20 debt "may be increased by the addition of . . . charges if, in fact, such fees and charges may not
21 be legally added to the existing obligation." Cal. Civ. Code § 1788.13(e).

22 84. Defendants assessed the Pay-to-Pay fees against Plaintiff and members of the
23 California Class knowingly and/or willfully. Ocwen has already been sued and settled a similar
24 action, and as an assignee of the Plaintiff's and California Class members' loans is bound with
25 knowledge of the underlying mortgage loan agreements' terms, and has collected these
26 amounts hundreds of thousands of times from class members in a scheme that cannot be
27 accidental.

1 85. Ocwen violated the Rosenthal Act because it retains for itself a portion of the
2 Pay-to-Pay fees it collects from California borrowers.

3 86. As a result of each and every violation of the Rosenthal Act, Plaintiff and
4 members of the California Class are entitled to recover from Defendants any actual damages
5 pursuant to Cal. Civ. Code § 1788.30(a), statutory damages for a knowing or willful violation
6 in the amount up to \$1,000 pursuant to California Civil Code § 1788.30(b), and reasonable
7 attorney's fees and costs pursuant to California Civil Code § 1788.30(c).

8 **COUNT II AS TO PHH'S VIOLATION OF THE**
9 **FAIR DEBT COLLECTION PRACTICES ACT §§ 1692e, 1692f**

10 **(By Mr. Torliatt on behalf of the Nationwide Class)**

11 87. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) because he
12 purchased a home in California by mortgage primarily for personal, family, or household use.

13 88. PHH is a "debt collector" as defined by 15 U.S.C. § 1692a(6) because as a
14 servicer it regularly attempts to collect, and collects, amounts owed or asserted to be owed or
15 due another. Also, PHH began servicing Plaintiff's mortgage while it was in default, according
16 to the terms of Plaintiff's note and mortgage, so none of the exceptions under 15 U.S.C. §
17 1692a applies.

18 89. PHH is a "debt collector" as defined by 15 U.S.C. § 1692a(6) on Plaintiff's loan
19 because every month, from April 11, 2019 to present, it collected Plaintiff's loan payments on
20 behalf of Fannie Mae and Argent.

21 90. PHH violated 15 U.S.C. § 1692f when it collected Pay-to-Pay fees not owed and
22 not expressly authorized by the agreement creating the debt and in excess of the amount
23 disbursed, inuring a benefit to PHH.

24 91. PHH violated 15 U.S.C. § 1692e(2)(A) when it misrepresented the amount,
25 character, and status of the Plaintiff's mortgage debt.

26 92. As a result of PHH's violation of 15 U.S.C. §§ 1692e–f, Plaintiff was harmed
27 monetarily and is entitled to actual damages, plus statutory damages under 15 U.S.C. § 1692k,
28 together with reasonable attorney's fees and costs.

1 **COUNT III AS TO DEFENDANTS' VIOLATION OF THE "UNLAWFUL" PRONG OF**
2 **THE CALIFORNIA UNFAIR PRACTICES ACT § § 17000, 17200 *et seq* ("UCL")**

3 **(By Mr. Torliatt on behalf of California Class)**

4 93. The UCL defines unfair business competition to include any "unlawful, unfair or
5 fraudulent" act or practice. Cal. Bus. & Prof. Code § 17200.

6 94. A business act or practice is "unlawful" under the UCL if it violates any other
7 law or regulation.

8 95. As described in detail above, Ocwen's conduct described herein violates the
9 Rosenthal Act. PHH's conduct described herein violates the Rosenthal Act. These violations
10 are sufficient to support Plaintiff's claim under the unlawful prong of the UCL.

11 96. As a result of the conduct above, Defendants have been unlawfully enriched at
12 the expense of Plaintiff and members of the California Class by obtaining revenues and profits
13 that it would not have otherwise obtained absent its unlawful conduct.

14 97. Through its unlawful acts and practices, Defendants have improperly obtained
15 money from Plaintiff and the members of the California Class. As such, Plaintiff requests that
16 the Court cause Defendants to restore the money to Plaintiff and members of the California
17 Class, and to enjoin Defendants from continuing to violate the UCL in the future. Otherwise,
18 Plaintiff and members of the California Class may be irreparably harmed and/or denied an
19 effective and complete remedy if such an order is not granted.

20 **COUNT IV AS TO DEFENDANTS' BREACH OF CONTRACT**

21 **(By Mr. Torliatt on behalf of California Class)**

22 98. On or about December 14, 2005, Mr. Torliatt entered into a loan and Deed of
23 Trust with Argent with respect to his home.

24 99. The servicing rights to Mr. Torliatt's loan were assigned to Ocwen and then to
25 PHH. Ocwen and PHH collected payments on Mr. Torliatt's loan on behalf of Argent.

26 100. As assignees of the servicing rights, Ocwen and PHH stepped into the shoes of
27 Argent as to servicing obligations and became the servicer (sub-servicer) of Mr. Torliatt's loan.

1 As such they became parties to the Deed of Trust with Mr. Torliatt, by assignment from Argent
2 and/or Fannie Mae (as sub-servicer).

3 101. Mr. Torliatt's Deed of Trust expressly obligates assignees to comply with the
4 terms of the deed of trust. Under the heading "13. Joint and Several Liability; Co-signers;
5 Successors and Assigns Bound," it states: "The covenants and agreements of this Security
6 Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns
7 of Lender." Exhibit A at 12, ¶ 13.⁴

8 102. Defendants' demand for payment of Pay-to-Pay fees is a breach of the Deed of
9 Trust, which does not mention Pay-to-Pay fees as one of the many charges that the lender, or
10 loan servicer acting on behalf of the lender, may collect. There is simply no provision in the
11 mortgage that allows Defendants to collect Pay-to-Pay fees.

12 103. Indeed, Defendants' demand for payment of Pay-to-Pay fees is a direct breach
13 of Paragraph 16 of the Deed of Trust: "This Security Instrument shall be governed by Federal
14 law and the law of the jurisdiction in which the Property is located." *See* Exhibit A, ¶ 16.
15 Federal debt collection law prohibits the collection of any amount incidental to the principle
16 obligation unless that amount is *expressly* stated in the loan agreement. *See* 15 U.S.C. §
17 1692f(1) (prohibiting the "collection of any amount (including any interest, fee, charge or
18 expense incidental to the principal obligation) **unless such amount is expressly authorized by**
19 **the agreement creating the debt or permitted by law.**" (emphasis added)). Ocwen's
20 collection of Pay-to-Pay fees violated both the FDCPA and Rosenthal Act.

21 104. Defendants' demands for payment of Pay-to-Pay fees is a direct breach of
22 Paragraph 14 of its Deed of Trust, "Uniform Covenants" section, stating that lender may not
23 charge fees prohibited by "Applicable Law." The Agreement defines "Applicable Law" in
24 Paragraph I as "all controlling applicable federal, state, and local statutes, regulations,

25 _____
26 ⁴ Section 20 provides that where "the Note is sold and thereafter the Loan is serviced by a Loan
27 Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to
28 Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and
are not assumed by the Note purchaser unless otherwise provided by the Note purchaser." In
other words, the servicer is bound by the terms of the mortgage and owes contractual duties to
the borrower.

1 ordinances and administrative rules and orders (that have the effect of law) as well as all
2 applicable final, non-appealable judicial opinions.” Exhibit A, ¶ 14. For Mr. Torliatt’s loan,
3 Applicable law includes the FDCPA as controlling federal law, and the Rosenthal Act as
4 controlling state law.

5 105. By charging the Pay-to-Pay fees that are expressly prohibited by the Rosenthal
6 Act, Ocwen has violated Paragraph 14 of Plaintiff’s Deed of Trust.

7 106. By charging Pay-to-Pay fees that are expressly prohibited by FDCPA and
8 Rosenthal Act, PHH has violated Paragraph 14 of Plaintiff’s Deed of Trust.

9 107. To the extent that Defendants claim there is any allowance of fees to be charged
10 under section 14 of the Mortgage Agreement, those charges are preference and limited to those
11 charged when the borrower is in default. Even if the Pay-to-Pay fees were default-related fees,
12 which they are not, Defendants’ demand for payment of Pay-to-Pay fees is a direct breach of
13 Paragraph 9 of the Deed of Trust, “Protection of Lender’s Interest in the Property and Rights
14 Under This Security Instrument” section, stating that only “amounts *disbursed* by the lender
15 under this Section 9 will become debt of the borrower.” Exhibit A, ¶ 9 (emphasis added).
16 Defendants collected more than the amount they disbursed to Western Union to process the
17 Pay-to-Pay transactions.

18 108. Further, Fannie Mae’s servicing guidelines, which Defendants must follow
19 when sub-servicing Fannie Mae loans, prohibit the collection of any fees on routine borrower
20 collections, including the Pay-to-Pay fees charged by Defendants. *See* Fannie Mae Servicing
21 Guide A2-3-05 (“The servicer is not authorized to charge the borrower fees relating to the
22 following activities: facilitating routine borrower collections.”).

23 109. Because the “Governing Law” (¶16), “Protection of Lender’s Interest in the
24 Property and Rights Under This Security Instrument” (¶9), and “Applicable Law” (¶14)
25 provisions are contained in the “Uniform Covenants” section, Ocwen has breached the contract
26 on a class-wide basis.

27 110. Defendants’ Uniform Covenants in its Deed of Trust prohibit fees not allowable
28 under applicable law.

1 111. Fannie Mae's Servicing Guide, section A2-3-05, which must be adhered to by
2 Defendants as the loan sub-servicer, prohibits all fees charged relating to routine borrower
3 collections.

4 112. Defendants breached the contracts with Mr. Torliatt and members of the
5 California Class when they charged Pay-to-Pay fees not agreed to in the Deed of Trust.

6 113. Alternatively, Defendants breached the contracts with Mr. Torliatt and members
7 of the California Class when they charged Pay-to-Pay fees in excess of the amounts actually
8 disbursed by Defendants to pay for the cost of the Pay-to-Pay Transactions.

9 114. Additionally, in every contract made in California, including Mr. Torliatt's Deed
10 of Trust, there is an implied covenant of good faith and fair dealing.

11 115. One of the purposes of Mr. Torliatt's Deed of Trust is to inform him clearly of
12 the fees that may be charged on his mortgage loan. Where the Deed of Trust is silent on a
13 specific fee or amount, such as default-related fees, the Deed of Trust protects Mr. Torliatt by
14 capping those fees to the amounts actually disbursed (Exhibit A, ¶ 9), e.g. the actual cost of the
15 fee.

16 116. Defendants know the actual cost of Pay-to-Pay transactions is much less than the
17 amount of Pay-to-Pay fees Defendants collected from Mr. Torliatt and other California
18 borrowers. Defendants intentionally failed to disclose the amount of their profit from Mr.
19 Torliatt and other borrowers so that those borrowers will not challenge the imposition of Pay-
20 to-Pay fees or threaten Defendants' profit center.

21 117. Defendants deliberately leveraged their superior position as Mr. Torliatt's loan
22 servicer to create a profit center through the collection of Pay-to-Pay fees and in doing so,
23 violated the implied covenant of good faith and fair dealing of the Deed of Trust. Mr. Torliatt
24 and members of the California Class have been harmed by these breaches.

25 **JURY DEMAND AND RESERVATION OF PUNITIVE DAMAGES**

26 118. Plaintiff is entitled to and respectfully demands a trial by jury on all issues so
27 triable.

1 119. Plaintiff reserves the right to amend his Second Amended Consolidated Class
2 Action Complaint and add a claim for punitive damages.

3 **RELIEF REQUESTED**

4 WHEREFORE Mr. Torliatt respectfully requests this Court enter judgment
5 against Defendants for all of the following:

- 6 a. That Mr. Torliatt and all members of the Classes be awarded actual damages,
7 including but not limited to all fees improperly charged and forgiveness of all
8 amounts not properly owed;
- 9 b. That Mr. Torliatt and members of the Classes be awarded statutory damages;
- 10 c. That Mr. Torliatt and members of the Classes be awarded costs and attorney's
11 fees;
- 12 d. That the Court enter an order that Defendants and its agents, or anyone acting on
13 its behalf, are immediately restrained from altering, deleting or destroying any
14 documents or records that could be used to identify class members;
- 15 e. That the Court issue an injunction restraining Defendants from future
16 collections, and attempted collections, of Pay-to-Pay fees;
- 17 f. That the Court certify Mr. Torliatt's claims and all other persons similarly
18 situated as class action claims under Rule 23 of the Federal Rules of Civil
19 Procedure; and
- 20 g. Such other and further relief as the Court may deem just and proper.

21 Dated: May 1, 2020

22 /s/ Lee Lowther
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, I caused a copy of the foregoing to be electronically filed with the Clerk of Court using CM/ECF, which will send electronic notification to the parties and registered attorneys of record that the document has been filed and is available for viewing and downloading.

/s/ Lee Lowther _____

LEE LOWTHER

EXHIBIT C

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

San Francisco Division

LAWRENCE TORLIATT,
on behalf of himself and
all others similarly situated,

Plaintiff,

v.

OCWEN LOAN SERVICING,
LLC,

Defendant.

CONSOLIDATED WITH:

Lawrence Torliatt v. PHH Mortgage
Corp., Case No. 3:19-cv-04356-WHO

Case No. 3:19-cv-04303-WHO

**[PROPOSED] ORDER GRANTING
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

The Honorable William H. Orrick

1 Plaintiff Lawrence Torliatt (“Plaintiff” or “Torliatt”), has moved, pursuant to Federal
2 Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action,
3 in accordance with the Settlement Agreement and Release dated June 27, 2022 (the “Settlement
4 Agreement”), which, together with the exhibits thereto, sets forth the terms and conditions for a
5 proposed settlement (the “Settlement”) of the above referenced action (the “Action”). Upon
6 consideration of the Settlement Agreement, including all exhibits thereto, Plaintiff’s Unopposed
7 Motion for Preliminary Approval of Settlement and Incorporated Memorandum of Law, the
8 Court, for the reasons set forth herein, GRANTS preliminary approval of the Settlement,
9 GRANTS conditional decertification of the previously certified litigation Class and GRANTS
10 preliminary certification of the Settlement Class for settlement purposes only, and APPROVES
11 the proposed notice plan.

12 **I. BACKGROUND**

13 In July 2020, Plaintiff commenced two, separate putative class actions: *Lawrence Torliatt*
14 *v. Ocwen Loan Servicing, LLC.*, No. 3:19-cv-04303-WHO (N.D. Cal.) (the “Ocwen Action”),
15 and *Lawrence Torliatt v. PHH Mortgage Corp.*, Case No. 3:19-cv-04356-WHO (N.D. Cal.) (the
16 “PHH Action”, together with the Ocwen Action the “Related Actions”). The Related Actions
17 were consolidated under Case Number 3:19-cv-04303 (the “Action”) (Doc. 14).

18 On October 16, 2019, the Parties moved to stay the Action while they attempted early
19 mediation to resolve the case (Doc. 28). The Parties were unable to resolve the Action at that
20 time.

21 On February 14, 2020, Torliatt filed an Amended Consolidated Class Action Complaint
22 (the “Amended Complaint”) against Defendant PHH Mortgage Corporation (“PHH”),
23 individually and as successor by merger to defendant Ocwen Loan Servicing, LLC (“Ocwen”),
24 (together with PHH the “PHH Defendants,”) (Doc. 34). The Amended Complaint asserts four
25 claims against the PHH Defendants: (1) violation of the federal Fair Debt Collection Practices
26 Act (“FDCPA”), (2) violation of California’s Rosenthal Fair Debt Collection Practices Act
27 (“Rosenthal Act”), Cal. Civ. Code § 1788, *et seq.*, (3) violation of the California Unfair
28

1 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, and (4) breach of contract.
2 More specifically, the Amended Complaint alleges that the PHH Defendants violated the
3 FDCPA, the Rosenthal Act and the UCL, as well as breached their contracts, by collecting
4 Convenience Fees from borrowers when they paid their mortgage payments online or over the
5 phone.

6 Following consolidation, the PHH Defendants filed a Motion to Dismiss Plaintiff’s
7 Amended Complaint on March 6, 2020 (Doc. 36). On March 27, 2020, Plaintiff filed his
8 Opposition to PHH Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 43).
9 And, on April 8, 2020, the PHH Defendants filed a reply brief in further support of their Motion
10 to Dismiss (Doc. 48). On April 17, 2020, this Court entered an order granting in part and denying
11 in part the Motion to Dismiss (Doc. 49), permitting two of the four claims to proceed.

12 During the pendency of the Motion to Dismiss, the PHH Defendants filed a Motion to
13 Temporarily Stay Discovery and Case Management Deadlines Until After Resolution of Pending
14 Motion to Dismiss and Incorporated Memorandum of law (Doc. 37), which this Court denied on
15 March 13, 2020 (Doc. 39).

16 On May 1, 2020, Plaintiff filed a Second Amended Consolidated Class Action Complaint
17 (“Second Amended Complaint”) (Doc. 50). On May 15, 2020, the PHH Defendants filed (i) a
18 Motion to Dismiss Plaintiff’s Second Amended Complaint (Doc. 54), and (ii) a Motion for Leave
19 to File a Motion for Reconsideration and, in the Alternative, for Conditional Certification of an
20 Interlocutory Appeal, with Accompanying Memorandum of Points and Authorities (Doc. 55).

21 On May 29, 2020, Plaintiff filed (i) a Notice of Voluntary Dismissal of Counts II and IV
22 of the Second Amended Complaint (Doc. 56), (ii) an Opposition to the PHH Defendants’ Motion
23 to Dismiss Plaintiff’s Second Amended Complaint (Doc. 57); and (iii) a Response to the PHH
24 Defendants’ Motion for Leave to File a Motion for Reconsideration and, in the Alternative, for
25 Conditional Certification of an Interlocutory Appeal (Doc. 58).

26 On June 5, 2020, the PHH Defendants filed (i) a Reply in Further Support of their Motion
27 to Dismiss Plaintiff’s Second Amended Complaint (Doc. 59), and (ii) a Reply in Further Support
28

1 of their Motion for Leave to File a Motion for Reconsideration and, in the Alternative, for
2 Conditional Certification of an Interlocutory Appeal (Doc. 60).

3 On June 22, 2020, this Court entered an order denying the PHH Defendants' Motion to
4 Dismiss Plaintiff's Second Amended Complaint and denying the PHH Defendants' Motion for
5 Leave to File a Motion for Reconsideration and, in the Alternative, for Conditional Certification
6 of an Interlocutory Appeal (Doc. 62). On July 6, 2020, the PHH Defendants filed their Answer
7 to the Second Amended Complaint (Doc. 63).

8 On August 21, 2020, Plaintiff filed a Motion for Order Under the All Writs Act and
9 Incorporated Memorandum of Law (Doc. 66). On that same date, Plaintiff filed a Motion to
10 Appoint Interim Class Counsel under Rule 23(g) and Incorporated Memorandum of Law (Doc.
11 68).

12 On August 28, 2020, the PHH Defendants filed a Motion to Stay Class Related
13 Proceedings and Incorporated Memorandum of Law (Doc. 72), and a Motion to Consolidate
14 Hearing on Motions and Adjust Briefing Schedule Accordingly (Doc. 73).

15 On September 4, 2020, the PHH Defendants filed an Opposition to Plaintiff's Motion for
16 Order Under All Writs Act (Doc. 75), and an Opposition to Plaintiff's Motion to Appoint Interim
17 Class Counsel (Doc. 76).

18 On September 8, 2020, Plaintiff filed a Reply in Further Support of his Motion for Order
19 Under All Writs Act (Doc. 78), and a Response to Defendant PHH's Motion to Consolidate
20 Hearing (Doc. 80).

21 On September 9, 2020, the Court granted Defendant PHH's Motion to Consolidate
22 Hearing (Doc. 85).

23 On September 11, 2020, Plaintiff filed an Opposition to the PHH Defendants' Motion to
24 Stay Class Related Proceedings (Doc. 87), and a Reply in Further Support of Motion to Appoint
25 Interim Class Counsel Under Rule 23(g) (Doc. 89).

26 On September 19, 2020, the PHH Defendants filed a Reply in Further Support of their
27 Motion to Stay Class Related Proceedings (Doc. 90).

1 On October 2, 2020, following oral argument, this Court entered an order granting
2 Plaintiff's Motion to Appoint Interim Class Counsel Under Rule 23(g), denying Plaintiff's
3 Motion for Order Under the All Writs Act, and denying the PHH Defendants' Motion to Stay
4 Class Related Proceedings (Doc. 93).

5 On June 7, 2021, the PHH Defendants filed a Motion to Stay, seeking to stay all
6 proceedings pending the United States Court of Appeals for the Ninth Circuit's resolution of the
7 appeal in *Amy Thomas-Lawson, et al. v. Carrington Mortgage Services, LLC*, Case No. 21-55459
8 (9th Cir. 2021) (Doc. 111), which Plaintiff timely opposed (Doc. 113).

9 On June 30, 2021, Plaintiff filed a Motion for Class Certification and Incorporated
10 Memorandum of Law (both redacted and unredacted versions) (Docs. 116 and 116a).

11 On July 14, 2021, the Court entered an order denying the PHH Defendants' Motion to
12 Stay (Doc. 118).

13 On August 2, 2021, the PHH Defendants filed an Opposition to Plaintiff's Motion for
14 Class Certification (both redacted and unredacted versions) (Docs. 123 and 123a), and a Motion
15 to Exclude Expert Patricia Forcier (Doc. 124).

16 On August 18, 2021, Plaintiff filed a Motion for Partial Summary Judgment and
17 Incorporated Memorandum of Law (both redacted and unredacted versions) (Docs. 130 and
18 130a). On that same date, the PHH Defendants filed a Motion for Summary Judgment on All
19 Claims and Incorporated Memorandum of Law (Doc. 131).

20 On August 31, 2021, Plaintiff filed an Opposition to Motion to Exclude Expert Patricia
21 Forcier (Doc. 134), a Reply in Further Support of Motion for Class Certification (both redacted
22 and unredacted versions) (Docs. 136 and 136a).

23 On September 1, 2021, Plaintiff filed an Opposition to Defendants' Motion for Summary
24 Judgment on All Claims (Doc. 137), and the PHH Defendants filed an Opposition to Plaintiff's
25 Motion for Partial Summary Judgment (Doc. 139). On September 15, 2021, the Parties filed their
26 respective reply briefs (Docs. 143-145).

1 On November 8, 2021, following oral argument, this Court entered an order granting
2 Plaintiff's Motion for Class Certification and denying the PHH Defendants' Motion to Exclude
3 Expert Patricia Forcier (Doc. 152).

4 On November 17, 2021, the Parties participated in a Court-ordered mediation session
5 before Chief Magistrate Judge Joseph C. Spero, but were unable to resolve the case that day.

6 On November 22, 2021, the PHH Defendants filed a Petition for Permission to Appeal
7 Class Certification Under Rule 23(f) with the Ninth Circuit Court of Appeals, which was denied
8 on March 1, 2022.

9 On April 27, 2022, the Parties participated in a second Court-ordered mediation session,
10 their fourth mediation session over the course of the litigation, before Chief Magistrate Judge
11 Spero. Following mediation, the Parties entered into a "Proposed Settlement Term Sheet" on
12 May 9, 2022, subject to approval by upper management or the board of the PHH Defendants.
13 After obtaining such approval, the Parties filed a Joint Notice Concerning Settlement on May 16,
14 2022, notifying the Court that the Parties had reached a settlement and expected to file a motion
15 for preliminary approval on or about June 25, 2022 (Doc. 162).

16 On June 29, 2022, Plaintiff filed an Unopposed Motion for Preliminary Approval of Class
17 Action Settlement, along with the proposed Settlement Agreement and exhibits thereto.

18 **II. THE PROPOSED SETTLEMENT**

19 **A. The Proposed Settlement Class**

20 The Settlement Agreement contemplates certification of the following Settlement Class
21 for settlement purposes only:

22 All borrowers on residential mortgage loans involving mortgaged property
23 located in the State of California who, between July 26, 2015 and June 24, 2022
24 (the last day of the Class Period), paid a Convenience Fee to Ocwen and/or,
between July 30, 2015 and June 24, 2022, paid a Convenience Fee to PHH to
make a due and owing monthly payment over the telephone, by IVR, or online.

25 Excluded from the Settlement Class are (a) all employees of the PHH Defendants, (b) all
26 members of the Settlement Class in *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No.
27 2:15-cv-01831-MHH, ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019), and (c) the federal district
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1 court and magistrate judges assigned to the Actions, along with persons within the third degree
2 of relationship to them. The proposed Settlement Class is substantially similar to the Class
3 certified by the Court by order dated November 8, 2021.¹

4 B. Settlement Benefits

5 Under the proposed Settlement, the PHH Defendants shall establish a common fund of
6 \$7,000,000.00 (the “Settlement Fund”) for the benefit of Settlement Class Members. The
7 common fund, which represents 42% of damages, will provide cash payments to Settlement Class
8 Members. Unless a Settlement Class Member submits a valid and timely Request for Exclusion,
9 he or she will automatically receive a *pro rata* distribution (an “Individual Allocation”) from the
10 Settlement Fund, less any court-approved attorneys’ fees and costs, service award, and costs of
11 notice and settlement administration (the “Net Settlement Amount”). Each Class Loan remaining
12 within the Settlement Class as of the Final Settlement Date will be entitled to receive an
13 Individual Allocation, calculated based on the proportion of Convenience Fees paid to and
14 retained (1) by Ocwen on that Class Loan between July 26, 2015 and June 24, 2022, inclusive,
15 or (2) by PHH on that Class Loan between July 30, 2015 and June 24, 2022, inclusive, on due
16 and owing loan payments, as compared to the total aggregate amount of all Convenience Fees
17 paid to and retained by Ocwen and PHH on due and owing loan payments with respect to all
18 Class Loans during the respective periods. A payment is considered “due and owing” if made on
19 or after the date the payment was due. Payments made on Class Loans with multiple borrowers
20 shall be treated as joint payments for purposes of this calculation, such that each Class Loan will
21 be entitled to only one Individual Allocation of the remaining balance of the Settlement Fund.
22 Co-debtors, joint-borrowers, and multiple obligators on a single Class Loan are not entitled to a
23 separate Individual Allocation on the same Class Loan. *See* Settlement Agreement at ¶ 4.5.

24 _____
25
26 ¹ There, this Court certified the following Class: All persons in the United States (1) with a Security Instrument on
27 a residential loan securing a property located in the State of California, (2) that is or was serviced by Ocwen or PHH,
28 (3) who were charged one or more Pay-to-Pay fee, (4) whose Security Instrument did not expressly allow for the
charging of a Pay-to-Pay fee at the time the Pay-to-Pay fee was charged, (5) whose mortgage debt was due and
owing at the time the fee was charged, and (6) who were not class members in *McWhorter v. Ocwen Loan Servicing,
LLC*, 2:15-CV-01831-MHH (N.D. Ala.). *See* Doc. 152 at p. 23.

1 Checks issued under the Settlement will be negotiable for 180 calendar days after the date
2 of issuance, and Settlement Class Members' failure to deposit, negotiate, or otherwise cash such
3 checks within that one hundred and eighty (180) day period shall constitute a release by those
4 Settlement Class Members (and all other borrowers on their respective Class Loan) of any and
5 all rights to monetary relief under the Settlement. Individual Allocation relief that remains
6 undeliverable three hundred (300) days after the Final Settlement Date despite the Settlement
7 Administrator's efforts to locate the Settlement Class Members shall be paid to Homes for Our
8 Troops. No portion of the Settlement Fund will revert to the PHH Defendants.

9 In addition to the monetary benefits, as a result of the Settlement, the PHH Defendants
10 have agreed to stop charging Convenience Fees to borrowers whose loan is subject to the
11 Rosenthal Act—*i.e.*, borrowers on residential mortgage loans involving mortgaged property in
12 the State of California who are making a payment on or after the payment's due date—for a
13 period of 2 years from the Final Settlement Date. *See* Settlement Agreement at ¶ 5.1. Class
14 Counsel estimates the value of the injunctive relief to be approximately \$4,880,000.

15 C. Release

16 In exchange for the consideration from the PHH Defendants, the Action will be dismissed
17 with prejudice upon final approval of the Settlement, and the Settlement Class Members will
18 thereby release all claims against the PHH Defendants and the Released Parties, relating to the
19 Convenience Fees charged by Ocwen to Settlement Class Members, during the period from July
20 26, 2015 through and including the date the Settlement is submitted for preliminary approval,
21 and by PHH to Settlement Class Members, during the period from July 30, 2015 through and
22 including the date the Settlement is submitted for preliminary approval, for making loan
23 payments by telephone, IVR, the internet, and other payment methods. *See* Settlement
24 Agreement ¶ 3.3.

1 As soon as practicable but starting no later than twenty-eight (28) days after entry of the
2 Preliminary Approval Order, the Settlement Administrator shall (i) cause the Class Notice to be
3 mailed, and (ii) establish the Settlement Website, which shall contain, among other relevant
4 documents, (1) the Settlement Agreement, (2) the Class Notice, (3) the Court’s Preliminary
5 Approval Order, and (4) when they become available, Class Counsel’s Application for
6 Attorneys’ Fees and Costs and a Service Award.

7 The Settlement Administrator will also ensure that the necessary and timely notice is
8 provided to any state and federal officers as required by the Class Action Fairness Act, 28 U.S.C.
9 § 1715.

10 E. Opt-Outs and Objections

11 The Class Notice will advise Settlement Class Members of their right to opt out of the
12 Settlement or to object to the Settlement and/or to Class Counsel’s application for attorneys’
13 fees and costs and/or a service award to the Class Representative, and of the associated deadlines
14 to exercise the right to opt out or object.

15 Settlement Class Members who choose to opt out must submit a written request for
16 exclusion. Any request for exclusion must be postmarked on or before _____, 20__ (the
17 “Objection/Exclusion Deadline. Any request for exclusion must include (a) a caption or title
18 that identifies it as “Request for Exclusion in *Torliatt v. Ocwen* (case number 3:19-cv-04303-
19 WHO)”; (b) include the Potential Settlement Class Member’s name, mailing and email
20 addresses, and contact telephone number; (c) specify that he or she wants to be “excluded from
21 the Settlement Class” and identify the Class Loan number(s) for which he or she seeks exclusion
22 from the Settlement; and (d) be personally signed by the Settlement Class Member. A single
23 written request for exclusion submitted on behalf of more than one Potential Settlement Class
24 Member will be deemed invalid; provided, however, that an exclusion received from one
25 Potential Settlement Class Member will be deemed and construed as a request for exclusion by
26 all co-debtors, joint-debtors and multiple borrowers on the same Class Loan.

27 Settlement Class Members who wish to object to the Settlement must mail a written
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1 objection, postmarked on or before the Objection/Exclusion Deadline, to the Court c/o the Class
2 Action Clerk, United States District Court for the Northern District of California, 450 Golden
3 Gate Avenue, San Francisco, CA 94102 or file their objection in person on or before the
4 Objection/Exclusion Deadline at any location of the United States District Court for the
5 Northern District of California. All objections must be in writing and personally signed by the
6 Settlement Class Member and: (a) contain a caption or title that identifies it as “Objection to
7 Class Settlement in *Torliatt v. Ocwen* (case number 3:19-cv-04303-WHO)”; (b) include the
8 Settlement Class Member’s name, mailing and email addresses, contact telephone number, and
9 Class Loan number(s) for which an objection is being made; (c) set forth the specific reason(s),
10 if any, for each objection, including all legal support the Settlement Class Member wishes to
11 bring to the Court’s attention and all factual evidence the Settlement Class Member wishes to
12 introduce in support of the objection; (d) disclose the name and contact information of any and
13 all attorneys representing, advising, or in any way assisting the Settlement Class Member in
14 connection with the preparation or submission of the objection; and (e) be personally signed by
15 the Settlement Class Member. If a Settlement Class Member intends to make an appearance
16 either in person or through personal counsel in connection with his or her objection at the Final
17 Fairness Hearing, he, she, or his or her personal counsel must also: (a) file a notice of intent to
18 appear with the Clerk of Court in the Action no later than the Objection/Exclusion Deadline,
19 and (b) serve and deliver a copy of that notice of appearance to Class Counsel and the PHH
20 Defendants’ Counsel no later than the Objection/Exclusion Deadline. Any Settlement Class
21 Member who intends to request the Court to allow him or her to call witnesses at the Final
22 Fairness Hearing must make such a request in a written brief, which contains a list of such
23 witnesses and a summary of their requested testimony. The objector should also comply with
24 Local Rule 3-15 and promptly file a Certification of Interested Entities or Persons in the docket.

25 No person who has opted out of the Settlement may object to it. Any Settlement Class
26 Member who does not provide a timely written objection or who does not make a record of his
27 or her objection at the Final Fairness Hearing shall be deemed to have waived any objection and
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1 shall forever be foreclosed from making any objection to the fairness, reasonableness, or
2 adequacy of the proposed Settlement, Class Counsel’s Fee and Service Awards Application, or
3 the Fee and Expense Award or Service Awards.

4 F. Applications for (i) Attorneys’ Fees and Costs and (ii) a Service Award

5 The Settlement Agreement contemplates that Class Counsel will file a motion with the
6 Court requesting an award of attorneys’ fees not to exceed 33% of the Settlement Fund, or
7 \$2,310,000, to compensate them for all of the work already performed in this case, all of the work
8 remaining to be performed in connection with this Settlement, and the risks undertaken in
9 prosecuting this case and for reimbursement of their costs litigating this Action. Settlement
10 Agreement at ¶ 10.1. The enforceability of the Settlement is not contingent on the Court’s
11 approval of Class Counsel’s application for an award of attorneys’ fees and costs. *Id.* at ¶ 10.7.

12 The Settlement Agreement further provides that Plaintiff will request a Service Award in
13 an amount not to exceed \$10,000. *Id.* at ¶ 10.4. This award will be paid out of the Settlement
14 Fund and will compensate Plaintiff for his time and effort serving as the Class Representative.
15 *Id.* at ¶¶ 10.4 and 10.5.

16 The PHH Defendants remain free to oppose any request for attorneys’ fees, costs, or
17 service awards.

18 **III. APPLICABLE LEGAL STANDARD**

19 Federal Rule of Civil Procedure 23(e) requires a court to determine whether a proposed
20 class settlement is “fundamentally fair, adequate, and reasonable,” which “requires a two-step
21 process — a preliminary approval followed by a later final approval.” *Behfarin v. Pruco Life Ins.*
22 *Co.*, No. CV 17-5290-MWF-FFMx, 2019 WL 7188575, at *5 (C.D. Cal. Nov. 26, 2019) (quoting
23 *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016)). At the final approval stage,
24 a court must consider a number of factors to determine whether a proposed settlement meets Rule
25 23’s standards for approval, including: “the strength of plaintiffs’ case; the risk, expense,
26 complexity, and likely duration of further litigation; the risk of maintaining class action status
27 throughout the trial; the amount offered in settlement; the extent of discovery completed, and the
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1 stage of the proceedings; the experience and views of counsel; the presence of a governmental
2 participant; and the reaction of the class members to the proposed settlement.” *Staton v. Boeing*
3 *Co.*, 327 F.3d 938, 959 (9th Cir. 2003). Because “some of these factors cannot be fully assessed
4 until a court conducts the final approval hearing, “a full fairness analysis is unnecessary at th[e
5 preliminary approval] stage.” *In re Solara Med. Supplies Data Breach Litig.*, No. 3:19-CV-
6 02284-H-KSC, 2022 WL 1174102, at *7 (S.D. Cal. Apr. 20, 2022) (internal citation omitted).
7 “Rather, at the preliminary approval stage, a court need only review the parties’ proposed
8 settlement to determine whether it is within the permissible ‘range of possible judicial approval’
9 and thus, whether the notice to the class and the scheduling of a fairness hearing is appropriate.”
10 *Id.* Thus, “preliminary approval of a settlement and notice to the class is appropriate if [1] the
11 proposed settlement appears to be the product of serious, informed, noncollusive negotiations,
12 [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class
13 representatives or segments of the class, [4] and falls within the range of possible approval.”
14 *Deaver v. Compass Bank, et al.*, No. 13-cv-00222, 2015 WL 4999953, at *6 (N.D. Cal. Aug. 21,
15 2015) (internal quotations and citation omitted).

16 Further, “[i]n determining whether a proposed settlement should be approved, the Ninth
17 Circuit has a ‘strong judicial policy that favors settlements, particularly where complex class
18 action litigation is concerned.’” *In re Solara Med. Supplies Data Breach Litig.*, 2022 WL
19 1174102, at *7 (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1269, 1276 (9th Cir. 1992)).
20 In addition, “the Ninth Circuit favors deference to the ‘private consensual decision [settling]
21 parties,’ particularly where the parties are represented by experienced counsel and negotiation
22 has been facilitated by a neutral party. *Id.* (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d
23 948, 965 (9th Cir. 2009)).

24 **IV. FINDINGS AND ORDERS**

25 **A. The Settlement Agreement Warrants Preliminary Approval.**

- 26 1. After reviewing the Settlement Agreement in light of the foregoing factors, this Court
27 finds that the requirements for preliminary approval have been satisfied.

1 B. Conditional Certification of the Settlement Class and Appointment of the
2 Proposed Class Representative and Class Counsel.

- 3 6. For the following reasons and for the reasons previously stated in this Court’s order
4 granting class certification, this Court finds that conditional certification of the
5 following Settlement Class is appropriate for settlement purposes, subject to further
6 consideration at the Final Fairness Hearing:

7 All borrowers on residential mortgage loans involving mortgaged property located in
8 the State of California who, between July 26, 2015 and June 24, 2022 (the last day of
9 the Class Period), paid a Convenience Fee to Ocwen and/or, between July 30, 2015
10 and June 24, 2022, paid a Convenience Fee to PHH to make a due and owing monthly
11 payment over the telephone, by IVR, or online.” Excluded from the Class are (a) all
12 employees of the PHH Defendants, (b) all members of the Settlement Class in
13 *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 2:15-cv-01831-MHH,
14 ECF No. 71 at 7 (N.D. Ala. Aug. 1, 2019), and (c) the federal district court and
15 magistrate judges assigned to the Actions, along with persons within the third degree
16 of relationship to them.

- 17 7. The Court finds that the proposed Settlement Class is sufficiently numerous that
18 joinder would be logistically impossible. Based on a review of the PHH Defendants’
19 records, the proposed Settlement Class consists of 139,491 Class Loans. Thus,
20 numerosity is satisfied. *See also* Doc. 152 at p. 9.

- 21 8. The Court finds that there is a commonality of interests between the Settlement Class
22 Members, including both questions of law and questions of fact. Plaintiff’s claims
23 here depend on the common contentions that Convenience Fees are neither authorized
24 by Class Members’ notes and deeds of trust or permitted by law. For the same reason,
25 the predominance requirement of Fed. R. Civ. P. 23(b)(3) is satisfied for settlement
26 purposes. *See id.* at pp. 9-10 and 14-18.

- 27 9. The Court finds that the proposed Settlement Class Representative and Class Counsel
28 have adequately represented the proposed Settlement Class and have no conflicts with
Settlement Class Members. Class Counsel are experienced and sophisticated, with
years of experience in complex class action litigation and litigation involving
mortgage servicers, financial institutions, and fees. The Settlement Class
Representative has devoted substantial time and effort in pursuing the claims on
behalf of the Settlement Class, which included sitting for deposition, reviewing

1 pleadings and case-related documents, reviewing the Settlement, and communicating
2 with Class Counsel regarding the litigation and Settlement. *See id.* at pp. 11-14.

3 10. The Court finds that the Settlement Class Representative's claims are typical of those
4 of the Settlement Class Members as they arise from the same alleged course of
5 conduct as those of the Settlement Class Members. Thus, typicality is satisfied. *See*
6 *id.* at pp. 10-11.

7 11. The Court finds that a class action is a superior method of resolving the claims of the
8 Settlement Class Members, which are of modest amounts. *See id.* at p. 18.

9 12. The Court appoints Plaintiff Lawrence Torliatt as Settlement Class Representative
10 and the law firms of Carney Bates & Pulliam, PLLC and Bailey & Glasser LLP as
11 Class Counsel.

12 C. The Proposed Method and Manner of Class Notice Is Reasonable.

13 13. The Court finds that the proposed notice plan provided for in the Settlement
14 Agreement is reasonable and appropriate to inform members of the Settlement Class
15 of the terms of the proposed Settlement.

16 14. The Court approves, as to form and content, the Class Notice, annexed to the
17 Settlement Agreement as Exhibit A, and finds that distribution of the Class Notice in
18 the manner set forth in the Settlement Agreement and herein meets the requirements
19 of Federal Rule of Civil Procedure 23(c) and due process, is the best notice practicable
20 under the circumstances, and constitutes due and sufficient notice to all entitled
21 thereto.

22 15. No later than twenty-eight (28) days after the date of this Order, the Settlement
23 Administrator shall commence the notice program in accord with the notice
24 provisions in the Settlement Agreement, including the mailing, by first-class US mail,
25 of the Class Notice (Exhibit A to the Settlement Agreement), and the creation of the
26 Settlement Website.

1 16. The PHH Defendants shall ensure that timely notice is provided to any state and
2 federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715, and
3 shall otherwise carry out its duties as set forth in ¶ 7.1 of the Settlement Agreement.

4 17. No later than thirty-five (35) calendar days prior to the Final Fairness Hearing (the
5 “Exclusion/Objection Deadline”), members of the Settlement Class who wish to
6 exclude themselves from the Settlement Class must submit a written statement
7 requesting exclusion. To be valid, a request for exclusion must include: (a) a caption
8 or title that identifies it as “Request for Exclusion in *Torliatt v. Ocwen* (case number
9 3:19-cv-04303-WHO)”; (b) include the Potential Settlement Class Member’s name,
10 mailing and email addresses, and contact telephone number; (c) specify that he or she
11 wants to be “excluded from the Settlement Class” and identify the Class Loan
12 number(s) for which he or she seeks exclusion from the Settlement; and (d) be
13 personally signed by the Settlement Class Member.

14 18. Any member of the Settlement Class who properly excludes himself or herself from
15 the Settlement Class shall not be entitled to receive any payment from the Settlement
16 Fund, shall not be bound by the proposed Settlement, and shall have no right to object
17 or comment thereon. Members of the Settlement Class who fail to submit a valid and
18 timely Request for Exclusion shall be bound by all terms of the proposed Settlement
19 and any final judgment entered in this Action if the proposed Settlement is finally
20 approved by the Court.

21 19. Members of the Settlement Class who elect to object to the Settlement Agreement
22 must file written objections, postmarked by the Exclusion/Objection Deadline, in
23 accordance with the terms and conditions of the Settlement Agreement. Such written
24 objections shall be filed with the Court, and must: (a) contain a caption or title that
25 identifies it as “Objection to Class Settlement in *Torliatt v. Ocwen* (case number 3:19-
26 cv-04303-WHO)”; (b) include the Settlement Class Member’s name, mailing and
27 email addresses, contact telephone number, and Class Loan number(s) for which an
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1 objection is being made; (c) set forth the specific reason(s), if any, for each objection,
2 including all legal support the Settlement Class Member wishes to bring to the Court's
3 attention and all factual evidence the Settlement Class Member wishes to introduce
4 in support of the objection; (d) disclose the name and contact information of any and
5 all attorneys representing, advising, or in any way assisting the Settlement Class
6 Member in connection with the preparation or submission of the objection; and (e) be
7 personally signed by the Settlement Class Member.

8 20. If a Settlement Class Member intends to make an appearance either in person or
9 through personal counsel in connection with his or her objection at the Final Fairness
10 Hearing, he, she, or his or her personal counsel must also: (a) file a notice of intent to
11 appear with the Clerk of Court in the Action no later than the Objection/Exclusion
12 Deadline, and (b) serve and deliver a copy of that notice of appearance to Class
13 Counsel and the PHH Defendants' Counsel no later than the Objection/Exclusion
14 Deadline. Any Settlement Class Member who intends to request the Court to allow
15 him or her to call witnesses at the Final Fairness Hearing must make such a request
16 in a written brief, which contains a list of such witnesses and a summary of their
17 requested testimony.

18 21. Settlement Class Members who fail to timely file and serve written objections shall
19 be deemed to have waived any objections and shall be foreclosed from making any
20 objection (whether by appeal or otherwise) to the Settlement.

21 22. Settlement Class Members who properly exclude themselves from the Settlement
22 have no right to object to the proposed Settlement or Class Counsel's application for
23 attorneys' fees and costs, and a service award.

24 23. All Class Members who do not opt out of the Class shall be bound by any Final
25 Approval Order and Judgment entered pursuant to the Settlement Agreement, and
26 shall be barred and enjoined, now and in the future, from asserting any and all of the
27 Released Claims, as defined in the Settlement Agreement, against the PHH
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1 Defendants and the other Released Persons, as defined in the Settlement Agreement,
2 and any such Class Member shall be conclusively deemed to have released any and
3 all such Released Claims.

4 D. The Final Fairness Hearing

5 24. The Court shall hold a Final Approval Hearing on _____, 20__ at ____ at
6 the United States District Court for the Northern District of California, United States
7 Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, before the
8 Honorable William H. Orrick, to determine, among other things, (i) whether the
9 proposed Settlement is fair, reasonable, and adequate to the Settlement Class and
10 should be finally approved; (ii) whether Settlement Class Members should be bound
11 by the Release set forth in the Settlement Agreement; and (iii) to consider Class
12 Counsel's application for fees and costs and a service award. Objections by
13 Settlement Class Members will be considered if timely and validly submitted before
14 the Objection/Exclusion Deadline as set forth above.

15 E. Other Provisions

16 25. Deadlines pending in the Action are hereby stayed. Pending final determination as to
17 whether the proposed Settlement should be approved, each Settlement Class Member
18 is hereby enjoined from continuing, instituting or prosecuting any legal proceeding
19 against the PHH Defendants or any of the other Released Persons.

20 26. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the
21 negotiations or proceedings connected with it, shall be construed as an admission or
22 concession by any of the Parties of any fact or allegation, or of any liability, fault, or
23 wrongdoing of any kind.

24 27. In the event that this Preliminary Approval Order does not become final, (i) it shall
25 be rendered null and void and shall be vacated *nunc pro tunc*, (ii) all other related
26 orders to the Settlement shall be rendered null and void and shall be vacated *nunc pro*
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1 *tunc*, and (iii) the Action shall proceed as if there had never been a settlement and as
2 otherwise provided in the Settlement Agreement.

3 28. The Court reserves the right to adjourn or continue the date of the Final Fairness
4 Hearing without further notice to the members of the Settlement Class, and retains
5 jurisdiction to consider all further applications arising out of or connected with the
6 proposed Settlement. The Court may approve the proposed Settlement, with such
7 modifications as may be agreed to by the Parties, if appropriate without further notice
8 to the Settlement Class.

9 29. The Parties and their respective counsel are authorized to take, without further Court
10 approval, all necessary and appropriate steps to implement the Settlement and to
11 effectuate the terms of the Settlement Agreement.

12 30. Pursuant to the foregoing, the following schedule shall apply:

DATE	EVENT
3 business days from Preliminary Approval Order	Deadline for funding all Costs of Administration
28 calendar days from Preliminary Approval Order	Deadline for disseminating Class Notice (Ex. A to the Settlement Agreement)
28 calendar days from Preliminary Approval Order	Deadline for creating the Settlement Website
14 calendar days before the Objection/Exclusion Deadline	Deadline for filing Motion for Final Approval of Settlement and Class Counsel's application for award of attorneys' fees and costs and a service award
7 days prior to Final Approval Hearing	Deadline for the Parties to respond to objections, if any
_____, 20__ [at least 135 from Preliminary Approval Order]	Final Fairness Hearing

1 **IT IS SO ORDERED.**

2 Dated: _____

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William H. Orrick
United States District Judge

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