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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.

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

~~PROPOSED~~ ORDER GRANTING  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT

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The Honorable William H. Orrick

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CONSOLIDATED WITH:

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

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  
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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  
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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.<sup>1</sup>

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 <sup>1</sup> 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 D. Settlement Administrator and Notice

2 The proposed Settlement Administrator is KCC, a leading class action administration  
3 firm in the United States. The Parties reviewed proposals from five prominent settlement  
4 administrators before deciding on KCC based on overall cost and value to the Settlement Class.

5 The Parties proposed notice plan consists of direct notice made by mailing, via first-class  
6 US mail, the Class Notice to Settlement Class Members identified in the PHH Defendants'  
7 records on each Class Loan, addressed to the mailing address of record for that Class Loan as  
8 reflected in the PHH Defendants' records. As a result, one (1) Class Notice will be sent with  
9 respect to each Class Loan, addressed jointly to all Settlement Class Members identified as  
10 borrowers with respect to that Class Loan in the PHH Defendants' records. Prior to mailing, the  
11 Settlement Administrator shall attempt to update the last known borrower mailing addresses for  
12 each Class Loan as reflected in the PHH Defendants' records through the National Change of  
13 Address system or similar databases. To the extent any Class Notice is returned with a forwarding  
14 address or if no forwarding address, to the extent the Administrator is reasonably able to locate  
15 a more current mailing address using skip tracing, the Administrator shall re-mail the Class  
16 Notice so long as the valid address is obtained by the Administrator at least seven (7) days or  
17 more prior to the Objection/Exclusion Deadline. *See* Settlement Agreement at ¶ 7.2.7. All costs  
18 and fees related to dissemination of the Class Notice and skip tracing will be considered  
19 administrative costs to be paid from the Settlement Fund. *Id.* at ¶ 7.3.

20 The Class Notice includes the following information: (1) a plain and concise description  
21 of the nature of the Action and the terms of the proposed Settlement, (2) a definition of the  
22 Settlement Class and an explanation that the Settlement Class has been provisionally certified  
23 for purposes of settlement only, (3) the right of Settlement Class Members to request exclusion  
24 from the Settlement Class or to object to the Settlement, (4) a summary of the proposed terms of  
25 the Release contemplated by the Settlement, (5) specifics on the date, time and place of the Final  
26 Fairness Hearing, and (6) information regarding Class Counsel's anticipated fee application and  
27 the anticipated request for the Class Representative's Service Award.

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 November 2, 2022 (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           2. The Settlement was reached through serious, informed, noncollusive negotiations  
2           conducted by competent counsel before an experienced mediator. The Parties’  
3           settlement negotiations spanned four separate mediation sessions, two before a private  
4           mediator and two before Chief Magistrate Judge Spero. The record demonstrates that  
5           the Parties engaged in ample discovery to support the finding that counsel for both  
6           sides were appropriately informed in negotiating the Settlement. Moreover, both sides  
7           were represented by competent and experienced counsel, adequately representing  
8           their respective client’s interests.
- 9           3. The Settlement does not appear to have any obvious deficiencies. The proposed  
10          releases appear to be tailored to claims related to the Convenience Fees charged by  
11          Ocwen and PHH to Settlement Class Members, and thus are not overly broad. The  
12          anticipated requests for attorneys’ fees and costs and a service award are within the  
13          ranges contemplated in the Ninth Circuit. The Settlement provides for a proportionate  
14          distribution of the Settlement Fund among the Settlement Class and does not  
15          improperly grant preferential treatment to the Settlement Class Representative or  
16          segments of the Settlement Class. Indeed, the method of allocation was crafted to  
17          ensure that the Settlement Fund is allocated equitably based on the relative amount of  
18          Convenience Fees charged to and paid on due and owing loan payments with respect  
19          to each Class Loan. Lastly, no funds will revert to the PHH Defendants.
- 20          4. The Settlement falls within the range of reasonableness of possible approval. The  
21          Settlement provides for a common fund of \$7,000,000, which is equivalent to 42% of  
22          the total amount of Convenience Fees alleged to have been wrongfully collected by  
23          the PHH Defendants. The Settlement also provides valuable equitable relief to  
24          Settlement Class Members. This is within the range of possible approval.
- 25          5. Accordingly, the Court does hereby preliminarily approve the Settlement Agreement  
26          and the proposed Settlement set forth therein as fair, adequate and reasonable, subject  
27          to further consideration at the Final Fairness Hearing described below.
- 28

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  
29          Settlement Class Members. Class Counsel are experienced and sophisticated, with  
30          years of experience in complex class action litigation and litigation involving  
31          mortgage servicers, financial institutions, and fees. The Settlement Class  
32          Representative has devoted substantial time and effort in pursuing the claims on  
33          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  
28

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 December 7, 2022 at 2:00 p.m.  
6 PST at the United States District Court for the Northern District of California, United  
7 States 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.

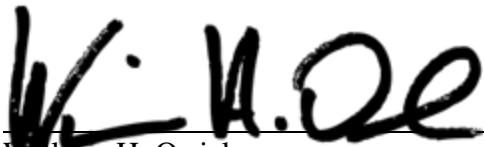
12            30. Pursuant to the foregoing, the following schedule shall apply:

| 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   |
| October 19, 2022                                 | 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 |
| November 2, 2022                                 | Objection/Exclusion Deadline   |
| November 30, 2022                                | Deadline for the Parties to respond to objections, if any  |
| December 7, 2022                                 | Final Fairness Hearing   |

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**IT IS SO ORDERED.**

Dated: July 20, 2022



William H. Orrick  
United States District Judge