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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

**PLAINTIFF'S NOTICE OF MOTION,
MOTION, AND MEMORANDUM IN
SUPPORT OF FINAL APPROVAL OF
SETTLEMENT**

The Honorable William H. Orrick

Date: November 16, 2022

Time: 2:00 p.m.

Location: Courtroom 2

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 16, 2022, at 2:00 p.m. in Courtroom 2 of the United States District Court for the Northern District of California, located at 450 Golden Gate Ave., San Francisco, CA 94102, Plaintiff Lawrence Torliatt (“Plaintiff” or “Torliatt”), by and through undersigned counsel and pursuant to the Settlement Agreement and Release, dated June 24, 2022 (Doc. 164-3) (the “Settlement Agreement”), and this Court’s Preliminary Approval Order, dated July 20, 2022 (Doc. 168) (the “Preliminary Approval Order”), will and hereby does move this Court for an order granting final approval of the settlement (the “Settlement”) of this action (the “Action”).

More specifically, Plaintiff respectfully requests this Court enter an order, in substantial form to the proposed order attached hereto as Exhibit 1, (i) granting final approval of the Settlement as fair, reasonable, and adequate; (ii) granting final certification to the Settlement Class; and (iii) finding that the notice program as set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order satisfies the requirements of Federal Rule of Civil Procedure 23 (c) and due process and constitutes the best notice practicable under the circumstances. Plaintiff further requests this Court enter final judgment, in substantial form to the proposed order attached hereto as Exhibit 2.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

Pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) and the Court’s Preliminary Approval Order, Plaintiff respectfully requests that the Court grant final approval of the Settlement reached between Plaintiff and Defendant PHH Mortgage Corporation (“PHH”), individually and as successor by merger to defendant Ocwen Loan Servicing, LLC (“Ocwen”), (together with PHH the “Defendants,” and collectively with Plaintiff, the “Parties”).

1 Plaintiff firmly believes that the Settlement is in the best interest of the Settlement Class¹
 2 and clearly satisfies the standard of approval as discussed herein. Plaintiff and Class Counsel
 3 have adequately represented the Settlement Class, obtaining an excellent Settlement to which no
 4 class member or governmental entities have objected.² The Settlement is the product of arm's-
 5 length negotiations by experienced and informed counsel with a firm understanding of the
 6 strengths and weaknesses of their clients' respective claims and defenses, and it was reached only
 7 after intensive litigation, discovery, and arm's length negotiations, including two full-day
 8 mediation sessions and three other mediations over the span of three years.

9 The Settlement provides for a common fund of \$7,000,000 (the "Settlement Fund") for
 10 the benefit of Settlement Class Members, with no reverter. This common fund represents
 11 approximately 42% of the total amount of Convenience Fees that Plaintiff alleges were
 12 improperly collected by Defendant. There is no claims process; instead, each Settlement Class
 13 Member who does not opt out will automatically receive a payment on a pro rata basis, based
 14 upon the amount of Convenience Fees paid by the Settlement Class Member during the Class
 15 Period. Any residual funds that remain undeliverable three hundred (300) days after the Final
 16 Settlement Date, and after payment of all fees and costs, will be disbursed to Homes For Our
 17 Troops as a *cy pres* award.

18 In addition to the foregoing monetary relief, the Settlement also provides valuable
 19 injunctive relief to Settlement Class Members. More specifically, as part of the Settlement, the
 20 Defendants have agreed to the cessation of the Convenience Fees to borrowers whose loan is

21
 22 ¹ The Settlement Class as defined in Section 1.1.34 of the Settlement Agreement is "all borrowers
 23 on residential mortgage loans involving mortgaged property located in the State of California
 24 who, between July 26, 2015 and June 24, 2022 (the last day of the Class Period), paid a
 25 Convenience Fee to Ocwen and/or, between July 30, 2015 and June 24, 2022, paid a Convenience
 26 Fee to PHH to make a due and owing monthly payment over the telephone, by IVR, or online.
 27 Excluded from the Class are (a) all employees of the 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."

28 ² The deadline for objections is November 2, 2022.

subject to the Rosenthal Act—*i.e.*, borrowers on residential mortgage loans involving mortgaged property in the State of California who are making a payment on or after the payment’s due date—for a period of 2 years from the Final Settlement Date. *Id.* at ¶ 5.1. Based on the aggregate amount of Convenience Fees collected during the Settlement Class Period, it is estimated that the Defendants collect approximately \$2,440,000 in Convenience Fees per annum. Accordingly, the value of the injunctive relief is estimated to equal approximately \$4,880,000. *See* Doc. 164 at ¶ 10.

Consistent with Ninth Circuit precedent, Class Counsel is requesting attorney’s fees and expenses equal to 33% of the Settlement Fund. Also, consistent with Ninth Circuit precedent, Plaintiff will request a Service Award of \$10,000 in recognition of Plaintiff’s service as the Class Representative. Settlement administrative costs are estimated to be \$240,683, which is only 3.4% of the Settlement Fund. *See* Declaration of Mary Jane Fait Re: Notice Procedures (“Fait Decl.”) at ¶ 11.

Class Counsel believe that this is an excellent result for the Settlement Class, especially when weighed against the costs, risks, and delay of continued litigation, trial, and appeal. Moreover, the Court-approved notice program has been fully implemented, with an estimated notice reach of 97%, which is within the range endorsed by the Federal Judicial Center. *See* Fait Decl. at ¶ 6. And, to date, no objections or requests for exclusion have been received. *See id.* at ¶¶ 9-10; *see also* Declaration of Lee Lowther (“Lowther Decl.”) at ¶ 13.

Accordingly, Plaintiff respectfully submits that the Settlement satisfies all criteria for final approval, and specifically requests this Court: (i) grant final approval of the Settlement as fair, reasonable, and adequate; (ii) grant final certification to the Settlement Class; (iii) find that the notice program as set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order satisfies the requirements of Federal Rule of Civil Procedure 23 (c) and due process and constitutes the best notice practicable under the circumstances; and (iv) enter final judgment.

II. SUMMARY OF THE PROCEEDINGS.

On July 26, 2019, Plaintiff, on behalf of himself and all others similarly situated, filed a putative class action styled *Torliatt v. Ocwen Loan Servicing, LLC*, No. 3:19-cv-04303-WHO (N.D. Cal.) (the “Ocwen Action”). On July 30, 2019, Plaintiff, on behalf of himself and all others similarly situated, filed a putative class action styled *Torliatt v. PHH Mortgage Corp.*, Case No. 3:19-cv-04356-WHO (N.D. Cal.) (the “PHH Action”). In the initial complaints in each action, Plaintiff asserted various claims against PHH and Ocwen based on their practice of charging fees, ranging from \$7.50 to \$19.50, to borrowers when they paid their mortgages by phone or online (“Convenience Fees”).³

The Ocwen and PHH Actions were consolidated under Case Number 3:19-cv-04303 (the “Action”) (Doc. 14). On October 16, 2019, the Parties moved to stay this Action while they attempted early mediation to resolve this case (Doc. 28). Following a full-day mediation, the Parties’ continued their attempts, through the mediator, to reach a resolution, (Doc. 30), but their efforts proved unsuccessful and they moved to lift the stay, (Doc. 32).

On February 14, 2020, Plaintiff filed an Amended Consolidated Class Action Complaint (the “Amended Complaint”) against the Defendants (Doc. 34). The Amended Complaint asserts four claims: (1) violation of the federal Fair Debt Collection Practices Act (“FDCPA”), (2) violation of California’s Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), Cal. Civ. Code § 1788, *et seq.*, (3) violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, and (4) breach of contract. More specifically, the Amended Complaint alleges that Defendants violated the FDCPA, the Rosenthal Act and the UCL, as well as breached their contracts, by collecting Convenience Fees from borrowers when they paid their mortgage payments online or over the phone.

³ For most of the period at issue in this Action, Ocwen and PHH used Speedpay, Inc.’s “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 Following consolidation, the Defendants filed a Motion to Dismiss Plaintiff's Amended
2 Complaint on March 6, 2020 (Doc. 36). In their Motion to Dismiss, the Defendants argued
3 dismissal was warranted because (i) the Convenience Fees were fully disclosed and consented to
4 in advance, (ii) Plaintiff failed to allege that Ocwen or PHH was a debt collector under the either
5 the Rosenthal Act of the FDCPA, and (iii) Plaintiff failed to allege that his Deed of Trust was
6 breached.

7 On March 11, 2020, the Defendants filed a Motion to Temporarily Stay Discovery and
8 Case Management Deadlines Until After Resolution of Pending Motion to Dismiss and
9 Incorporated Memorandum of law (Doc. 37), which the Court denied on March 13, 2020 (Doc.
10 39).

11 On March 27, 2020, Plaintiff filed his Opposition to Defendants' Motion to Dismiss
12 Plaintiff's Amended Complaint (Doc. 43). And, on April 8, 2020, the Defendants filed a reply
13 brief in further support of their Motion to Dismiss (Doc. 48).

14 On April 17, 2020, the Court entered an order granting, in part, and denying, in part, the
15 Motion to Dismiss (Doc. 49). More specifically, the Court granted the Motion to Dismiss as to
16 Plaintiff's FDCPA and breach of contract claims, but denied the Motion to Dismiss as to
17 Plaintiff's Rosenthal Act and UCL claims. The Court further ordered that Plaintiff "shall file an
18 amended complaint by May 1, 2020." *Id.* at p. 10.

19 In accord with the Court's April 17th Order, Plaintiff filed a Second Amended
20 Consolidated Class Action Complaint ("Second Amended Complaint") on May 1, 2020 (Doc.
21 50). On May 15, 2020, the Defendants filed (i) a Motion to Dismiss Plaintiff's Second Amended
22 Complaint (Doc. 54), and (ii) a Motion for Leave to File a Motion for Reconsideration and, in
23 the Alternative, for Conditional Certification of an Interlocutory Appeal, with Accompanying
24 Memorandum of Points and Authorities (Doc. 55).

25 On May 29, 2020, Plaintiff filed (i) a Notice of Voluntary Dismissal of Counts II and IV
26 of the Second Amended Complaint (Doc. 56), (ii) an Opposition to Defendants' Motion to
27 Dismiss Plaintiff's Second Amended Complaint (Doc. 57); and (iii) a Response to Defendants'

1 Motion for Leave to File a Motion for Reconsideration and, in the Alternative, for Conditional
2 Certification of an Interlocutory Appeal (Doc. 58).

3 On June 5, 2020, the Defendants filed (i) a Reply in Further Support of their Motion to
4 Dismiss Plaintiff's Second Amended Complaint (Doc. 59), and (ii) a Reply in Further Support
5 of their Motion for Leave to File a Motion for Reconsideration and, in the Alternative, for
6 Conditional Certification of an Interlocutory Appeal (Doc. 60).

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

12 On March 25, 2020, Vincent Morris filed suit against PHH in the United States District
13 Court for the Southern District of Florida, asserting claims under Florida law challenging PHH's
14 collection of Convenience fees (Doc. 67). On May 12, 2020, Class Counsel participated in a
15 mediation with Defendants' Counsel and the attorneys for Mr. Morris. Following that mediation,
16 it became clear the *Morris* counsel were going to agree to the Defendants' demand to amend the
17 notes and deeds of trust of all class members to expressly authorize the collection of Convenience
18 Fees. Class Counsel refused to agree to this injunctive relief against members of the, at that time,
19 putative classes. Instead, on July 27, 2020, Class Counsel moved to intervene in the *Morris* action
20 to oppose preliminary approval of the settlement, which was broadened to include borrowers in
21 the state of California.

22 Accordingly, on August 21, 2020, Plaintiff filed a Motion for Order Under the All Writs
23 Act and Incorporated Memorandum of Law (Doc. 66). On that same date, Plaintiff filed a Motion
24 to Appoint Interim Class Counsel under Rule 23(g) and Incorporated Memorandum of Law (Doc.
25 68).

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

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

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

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

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

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

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

21 On June 7, 2021, Defendant PHH filed a Motion to Stay, seeking to stay all proceedings
22 pending the United States Court of Appeals for the Ninth Circuit's resolution of the appeal in
23 *Amy Thomas-Lawson et al. v. Carrington Mortgage Services, LLC*, Case No. 21-55459 (9th Cir.
24 2021) (Doc. 111), which Plaintiff timely opposed (Doc. 113).

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

1 On July 14, 2021, the Court entered an order denying Defendants' Motion to Stay (Doc.
2 118).

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

6 On August 18, 2021, Plaintiff filed a Motion for Partial Summary Judgment and
7 Incorporated Memorandum of Law (both redacted and unredacted versions) (Doc. 130 and 130a).
8 On that same date, PHH filed a Motion for Summary Judgment on All Claims and Incorporated
9 Memorandum of Law (Doc. 131).

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

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

17 On November 8, 2021, following oral argument, this Court entered an order granting
18 Plaintiff's Motion for Class Certification and denying Defendant's Motion to Exclude Expert
19 Patricia Forcier (Doc. 152).

20 In addition to engaging in extensive motions practice, the Parties also engaged in
21 extensive discovery. In particular, the Defendants produced 925 documents (totaling 4,281 pages
22 and comprising spreadsheets with data on hundreds of thousands of transactions) in response to
23 68 requests for production served by Plaintiff; responded to 20 total interrogatories; and made
24 three separate corporate representatives available for depositions in response to 64 combined
25 30(b)(6) deposition topics. In turn, Plaintiff produced 679 documents (totaling 3,875 pages) in
26 response to the Defendants' requests for production, and the Defendants also took Plaintiff's
27 deposition. The Parties also engaged in expert discovery. Plaintiff offered the opinions of Ms.

1 Patricia Forcier concerning her opinions on the uniformity of loan documents, while the
2 Defendants offered the opinions of Dr. Andrew Carron concerning the absence and
3 individualized nature of putative class member injuries. Both experts were deposed.

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 considering that the Defendants' motion for preliminary approval of their nationwide settlement
7 was still pending in the *Morris* action.

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

11 On April 27, 2022, the Parties participated in a second Court-ordered mediation session,
12 their fourth mediation session over the course of the litigation, before Chief Magistrate Judge
13 Spero. By this point, the Parties recognized that both regulators and courts have reached different
14 conclusions on the merits of the claims presented, and that compromise was preferable to
15 continued litigation for all concerned. On the one hand, many federal district courts have held
16 that Convenience Fees do not violate the FDCPA or state analogs, such as the Rosenthal Act.
17 Additionally, the Defendants interpret guidance from the Federal Trade Commission ("FTC") as
18 opining that Convenience Fees do not violate the FDCPA because any required authorization and
19 consent could be expressed in general terms in the loan documents or granted orally in a side
20 agreement entered into at the time of the payment transaction. On the other hand, many other
21 federal district courts have held that Convenience Fees do violate the FDCPA or state analogs if
22 neither the underlying loan documents nor state statutes expressly authorize Convenience Fees.
23 And in 2017, the Consumer Financial Protection Bureau ("CFPB") issued guidance stating its
24 position that that the assessment of Convenience Fees could violate the FDCPA in certain
25 circumstances. One federal appellate court has weighed in on the dispute, with the Fourth Circuit
26 recently concluding that the convenience fees of a different servicer violated Maryland's analog
27 to the FDCPA and Rosenthal Act.

As a result of the settlement conference and further negotiations, and based upon their own respective independent investigations and evaluations of the facts and law relating to all of the matters alleged in the pleadings, the Parties entered into a “Proposed Settlement Term Sheet” on May 9, 2022, subject to approval by upper management or the board of the Defendants. After obtaining such approval, the Parties filed a Joint Notice Concerning Settlement on May 16, 2022, notifying the Court that the Parties had reached a settlement and expected to file a motion for preliminary approval on or about June 25, 2022 (Doc. 162).

Thereafter, the Parties worked cooperatively to draft a comprehensive Settlement Agreement and exhibits thereto, which was fully executed by the Parties on June 27, 2022. On June 29, 2022, Plaintiff filed an Unopposed Motion for Preliminary Approval of Settlement and Incorporated Memorandum of Law in Support (Doc. 163), which was granted by the Court on July 20, 2022 (Doc. 168). In its Preliminary Approval Order, this Court (i) conditionally certified the proposed Settlement Class and appointed Plaintiff as the Settlement Class Representative and Plaintiff’s Counsel as Class Counsel, (ii) determined that the requirements for preliminary approval had been satisfied and preliminarily approved the Settlement as fair, adequate, and reasonable, subject to further consideration at the Final Fairness Hearing, (iii) approved the notice program as reasonable and adequate, and (iv) scheduled a Final Approval Hearing for December 7, 2022 at 2:00 p.m.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCEDURES.

A. Settlement Benefits.

Under the Settlement, the Defendants shall establish a cash settlement fund of \$7,000,000.00 (the “Settlement Fund”) for the benefit of Settlement Class Members. In accord with paragraph 1.1.34 of the Settlement Agreement, the Settlement Class shall include:

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 and/or,

1 between July 30, 2015 and June 24, 2022, paid a Convenience Fee to PHH to
2 make a due and owing monthly payment over the telephone, by IVR, or online.⁴

3 Unless a Settlement Class Member submits a valid and timely Request for Exclusion, he
4 or she will automatically receive a *pro rata* distribution from the Settlement Fund, less any court-
5 approved attorneys' fees and costs, service award, and costs of notice and settlement
6 administration (the "Net Settlement Amount"), upon Court approval. Each Class Loan
7 remaining within the Settlement Class as of the Final Settlement Date will be entitled to receive
8 an Individual Allocation, calculated based on the proportion of Convenience Fees paid to and
9 retained (1) by Ocwen on that Class Loan between July 26, 2015 and June 24, 2022, inclusive,
10 or (2) by PHH on that Class Loan between July 30, 2015 and June 24, 2022, inclusive, on due
11 and owing loan payments, as compared to the total aggregate amount of all Convenience Fees
12 paid to and retained by Ocwen and PHH on due and owing loan payments with respect to all
13 Class Loans during the respective periods. A payment is considered "due and owing" if made on

14 ⁴ The proposed Settlement Class is substantially similar to the litigation Class certified by this
15 Court in its November 8, 2021 order (Doc. 152). In its November 8th Order, this Court certified
16 the following Class:

17 All persons in the United States (1) with a Security Instrument on a residential
18 loan securing a property located in the State of California, (2) that is or was
19 serviced by Ocwen or PHH, (3) who were charged one or more Pay-to-Pay fee,
20 (4) whose Security Instrument did not expressly allow for the charging of a Pay-
21 to-Pay fee at the time the Pay-to-Pay fee was charged, (5) whose mortgage debt
22 was due and owing at the time the fee was charged, and (6) who were not class
23 members in *McWhorter v. Ocwen Loan Servicing, LLC*, 2:15-CV-01831-MHH
24 (N.D. Ala.).

25 *See* Doc. 152 at p. 23. As with the previously certified Class, the Settlement Class includes
26 borrowers on residential loans where the mortgaged property is located in the State of California,
27 and the borrowers paid a Convenience Fee to either Ocwen or PHH to make a due and owing
28 payment over the telephone, by IVR, or online. The Settlement Class further provides for a
Settlement Class Period of between July 26, 2015 and June 24, 2022. The Class Loans
encompassed in the Settlement Class Period have been determined and verified through reference
to the Defendants' records. *See* Settlement Agreement at ¶ 11.7. Excluded from the definition of
Class Loans are all loans where one or more of the borrowers are (a) employees of 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.

1 or after the date the payment was due. The purpose of this method of allocation is to ensure that
2 the Settlement Fund is allocated equitably based on the relative amount of Convenience Fees
3 charged to and paid on due and owing loan payments with respect to each Class Loan. As a
4 result, payments made on Class Loans with multiple borrowers shall be treated as joint payments
5 for purposes of this calculation, such that each Class Loan will be entitled to only one Individual
6 Allocation of the remaining balance of the Settlement Fund. Co-debtors, joint-borrowers, and
7 multiple obligators on a single Class Loan are not entitled to a separate Individual Allocation on
8 the same Class Loan. *See* Settlement Agreement at ¶ 4.5.

9 Checks issued under the Settlement will be negotiable for 180 calendar days after the date
10 of issuance, and Settlement Class Members' failure to deposit, negotiate, or otherwise cash such
11 checks within that one hundred and eighty (180) day period shall constitute a release by those
12 Settlement Class Members (and all other borrowers on their respective Class Loan) of any and
13 all rights to monetary relief under the Settlement. Individual Allocation relief that remains
14 undeliverable three hundred (300) days after the Final Settlement Date despite the Settlement
15 Administrator's efforts to locate the Settlement Class Members shall be paid to Homes For Our
16 Troops, described above. No portion of the Settlement Fund will revert to the Defendants.

17 In addition to the monetary benefits, as a result of the Settlement, the Defendants have
18 agreed to stop charging Convenience Fees to borrowers whose loan is subject to the Rosenthal
19 Act—*i.e.*, borrowers on residential mortgage loans involving mortgaged property in the State of
20 California who are making a payment on or after the payment's due date—for a period of 2 years
21 from the Final Settlement Date. *See* Settlement Agreement at ¶ 5.1.

22 In exchange for the consideration from the Defendants, the Action will be dismissed with
23 prejudice upon final approval of the Settlement, and Settlement Class Members will thereby
24 release all claims against the Defendants and the Released Parties, relating to the Convenience
25 Fees charged by Ocwen to Settlement Class Members, during the period from July 26, 2015
26 through and including the date the settlement is submitted for preliminary approval, and by PHH
27 to Settlement Class Members, during the period from July 30, 2015 through and including the
28

1 date the settlement is submitted for preliminary approval, for making loan payments by
2 telephone, IVR, the internet, and other payment methods. *See* Settlement Agreement ¶ 3.3.

3 **B. Notice**

4 In accord with the Settlement Agreement, the Court's Preliminary Approval Order, and
5 the Court-approved notice plan, notice to Settlement Class Members was made by mailing, by
6 first-class US mail, the Class Notice (substantially in the form attached as Exhibit A to the
7 Settlement Agreement) to the Settlement Class Members identified in the Defendants' records
8 on each Class Loan, addressed to the mailing address of record for that Class Loan as reflected
9 in the Defendants' records. *Fait Decl.* at ¶ 3. Prior to mailing, the Settlement Administrator
10 updated the last known borrower mailing addresses for each Class Loan as reflected in the
11 Defendants' records through the National Change of Address system or similar databases. Skip
12 tracing was also performed by the Settlement Administrator for all returned mail. To date,
13 134,280 Class Members have been mailed a notice packet, and 130,127 notice packets have
14 not been returned as undeliverable. *Id.* at ¶ 6. The Class Notice was also posted on the
15 Settlement Website. *Id.* at ¶ 7. Accordingly, the Court-approved notice program has been fully
16 implemented, with an estimated notice reach of 97%, which is within the range endorsed by the
17 Federal Judicial Center. *See id.* at ¶ 6. And, to date, no objections or requests for exclusion have
18 been received. *See id.* at ¶¶ 9-10; *see also* Lowther Decl. at ¶ 13.

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

Moreover, in accord with the Settlement Agreement and the Court's Preliminary Approval Order, the current motion, along with Plaintiff's Motion for Award of Attorneys' Fees and Litigation Costs, and Service Award ("Plaintiff's Motion for Attorneys' Fees"), will be posted on the Settlement Website.

All costs and fees related to implementation of the notice program and dissemination of the Class Notice are to be paid from the Settlement Fund.

C. Class Counsel's Applications for (i) Attorneys' Fees and Costs and (ii) a Service Award.

In accord with the Settlement Agreement, Class Counsel are requesting an award of attorneys' fees and costs of 33% of the Settlement Fund, or \$2,310,000, to compensate them for all of the work already performed in this case, all of the work remaining to be performed in connection with this Settlement, and the risks undertaken in prosecuting this case, as well as a Service Award in the amount of \$10,000 to compensate Plaintiff for his work on behalf of the Settlement Class. *See* Plaintiff's Motion for Attorneys' Fees, being filed contemporaneously herewith. The enforceability of the Settlement Agreement is not contingent on the Court's approval of Plaintiff's Motion for Attorneys' Fees, and the Defendants remain free to oppose any request for attorneys' fees, costs, or service awards. Any award granted by the Court will be paid out of the Settlement Fund.

IV. APPLICABLE LEGAL STANDARDS.

The approval process for a class action settlement takes place in three stages: preliminary approval, notice, and final approval. *See* Fed. R. Civ. P. 23 (e); *see also In re Bluetooth Headset Prods. Liab. Litig.* ("In re Bluetooth"), 654 F.3d 935 (9th Cir. 2011). On July 20, 2022, this Court granted Plaintiff's Motion for Preliminary Approval of Settlement and Incorporated Memorandum of Law in Support. Doc. 168. In accord with the Court's Preliminary Approval Order, the Settlement Administrator timely and successfully completed the Court-approved notice plan. *See* *Fait Decl.* at ¶¶ 2-8. Now, the Court must determine whether the Settlement "taken as a whole is fair, reasonable, and adequate," warranting final approval. *In re Bluetooth*,

654 F.3d at 946. In determining whether a proposed settlement is fair, reasonable, and adequate, courts are to consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

FRCP 23 (e)(2).

These factors are substantially similar to those adopted by both the Ninth Circuit and district courts in California. *See In re Bluetooth*, 654 F.3d at 946-47 (“[C]ourts generally must weigh ‘(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.’”) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *see also McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2019 WL 1170487, at *3 (N.D. Cal. Mar. 13, 2019) (adopting the factors set forth by the Ninth Circuit in *In re Bluetooth*).

Applying the venerable standards above, final approval should be granted because the Settlement and the notice program satisfy the requirements for final approval in all respects.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE,

1 **WARRANTING FINAL APPROVAL.**

2 **A. Plaintiff and Class Counsel Have Adequately Represented the Class, Obtaining**
 3 **an Excellent Settlement to Which No Class Member or Government Entities**
 4 **Have Objected.**

5 Both Plaintiff and Class Counsel have adequately represented the Settlement Class in this
 6 case. The Plaintiff has adequately represented all Settlement Class Members in this action by
 7 achieving a Settlement that provides for approximately 42% of the sum of all challenged
 8 Convenience Fees collected from all Settlement Class Members during the Class Period, as well
 9 as securing valuable injunctive relief that will carry on for a period of 2 years after entry of the
 10 Final Approval Order. In addition, Plaintiff has been actively involved throughout the course of
 11 the litigation and settlement, assisting Class Counsel in investigating claims on an individual
 12 basis, reviewing case documents, remaining apprised of the litigation, spending more than thirty
 13 hours to find and produce thousands of pages of documents responsive to Defendants' discovery
 14 requests, sitting for an hours-long deposition, and participating in multiple mediation sessions.
 15 Moreover, Plaintiff's efforts, including the risks he voluntarily took as well as the time he
 16 expended supporting the litigation, were crucial to achieving the result for the Settlement Class.

17 Class Counsel have also fully and adequately represented all members of the Settlement
 18 Class. Class Counsel vigorously litigated this case including: (a) extensive pre-filing
 19 investigation; (b) drafting and filing the complaints; (c) successfully defending against
 20 Defendant's motions to dismiss; (d) preparing and propounding written discovery; (e) meeting-
 21 and-conferring with Defendant's counsel regarding various case management matters; (f)
 22 conducting extensive discovery, including taking multiple party depositions and expert
 23 depositions; (g) fully briefing cross-motions for summary judgment; (h) drafting a
 24 comprehensive mediation statement, and participating in two full-day mediation sessions, as well
 25 as three additional mediation sessions; (j) conducting confirmatory discovery to ensure
 26 identification of all Settlement Class Members and the total amount of aggregate Convenience
 27 Fees paid during the Class Period; and (k) ultimately successfully negotiating the Settlement now
 28

before the Court. Class Counsel's efforts demonstrate that they vigorously and zealously represented the Class. It is Class Counsel's informed opinion that this Settlement represents an excellent result and is in the best interest of the Class. *See* Lowther Decl. at ¶¶ 7-10; Declaration of James Kauffman ("Kauffman Decl.") at ¶ 24; *see also Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 543 (W.D. Wash. 2009) (where plaintiffs' attorneys are qualified and well informed, their opinion regarding settlement is entitled to significant weight).

Lastly, to date, no Settlement Class Member has objected to the Settlement. *See* Fait Decl. at ¶ 10. And, while no governmental entity is a party to this litigation, notice was issued to the appropriate federal and state officials in accordance with the 28 U.S.C. § 1715, and to date, no governmental entity has raised an objection or concern about the Settlement. *See* Lowther Decl. at ¶ 13. Accordingly, these factors weigh in favor of final approval.

**B. The Settlement Was the Result of Informed, Arm's Length Negotiations
Between the Parties and Has No Obvious Deficiencies.**

Courts recognize that arm's-length negotiations conducted by competent counsel are *prima facie* evidence of fair settlements. *Dunakin v. Quigley*, No. 2:14-CV-00567-JLR, 2017 WL 123011, at *2 (W.D. Wash. Jan. 10, 2017) ("A presumption of fairness and adequacy attaches to a class action settlement reached in arm's-length negotiations by experienced class counsel after meaningful discovery."). The Court's role is to ensure "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotation omitted). Courts will approve class action settlements entered into after good-faith, arm's-length negotiations. *See Grigoryan v. CEMEX Constr. Materials Pac., LLC*, No. EDCV 18-1563-R, 2019 WL 13149915, at *2 (C.D. Cal. May 21, 2019). Moreover, "[t]he use of a mediator and the presence of discovery 'support the conclusion that the Plaintiff was appropriately informed in negotiating a settlement.'" *Deaver v. Compass Bank*, No. 13-CV-00222-JSC, 2015 WL 4999953, at *4 (N.D. Cal. Aug. 21, 2015) (quoting *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL

5878390, at *6 (N.D. Cal. Nov. 21, 2012)); *see also Dunakin*, 2017 WL 123011, at *2 (concluding the settlement “was the result of arm’s length bargaining” and “was reached in good faith with the assistance of a neutral mediator.”).

Here, the Settlement was reached only after an in-depth factual investigation, extensive motions practice, fulsome discovery, two full-day mediation sessions with a private mediator, and two additional mediation sessions before Magistrate Judge Spero, who succeeded in shepherding the Parties to a resolution. During negotiations, Class Counsel conducted confirmatory discovery regarding the total number of Settlement Class Members and the total amount of aggregate Convenience Fees paid during the Class Period. Hence, Class Counsel had a wealth of information at their disposal before entering into the Settlement. Accordingly, the Settlement was only reached after hard-fought litigation and protracted negotiations conducted by informed, experienced counsel on both sides who were thoroughly familiar with the factual and legal issues. *See* Lowther Decl. at ¶¶ 11-12; Kauffman Decl. at ¶ 23.

Additionally, there are no obvious deficiencies in the Settlement Agreement. *See In re Bluetooth*, 654 F.3d at 947; *Deaver*, 2015 WL 4999953, at *4. Settlement Class Members who do not exclude themselves will automatically receive a *pro rata* distribution from the Settlement Fund less any court-approved attorneys’ fees and costs, service awards, and costs of settlement notice and administration. Plaintiff’s request for attorneys’ fees, litigation costs, and service awards are reasonable and directly in line with prevailing standards in the Ninth Circuit. *Beaver v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *9–10 (S.D. Cal. Sept. 28, 2017) (Courts in the Ninth Circuit “have routinely awarded fees of one-third of the common fund or higher after considering the particular facts and circumstances of each case.”); *Vedachalam v. Tata Consultancy Servs., Ltd*, No. C 06-0963 CW, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (finding “[i]n light of the many cases in this circuit that have granted fee awards of 30% or more, the requested fee [of 30%] is well within the usual range of percentages awarded in similar cases,” and further approving \$268,176 in litigation expenses); *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at *6 (N.D. Cal. Oct. 18,

2013) (approving \$10,000 incentive award). Furthermore, the Settlement provides that 300 days after the Final Settlement Date, and after payment of all fees and costs, any remaining funds shall be disbursed to Homes for Our Troops as a *cy pres* award. Thus, there is no issue of reverter.

Furthermore, the scope of the release is not overly broad as Settlement Class Members will release only those claims related to 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. *See* Settlement Agreement ¶ 3.3.

Lastly, there is no unfair or preferential treatment of any Settlement Class Member. *See Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2015 WL 4498083, at *6 (N.D. Cal. July 23, 2015). Here, payments to Settlement Class Members will be made on a *pro rata* basis, based on the amount of Convenience Fees paid by Settlement Class Members and retained by Ocwen and/or PHH on due and owing payments during the Class Period as a percentage of all such Convenience Fees paid by all Settlement Class Members. Thus, each Settlement Class Member is given fair and equal treatment.

In sum, the Settlement was achieved through arm's-length negotiations conducted by competent counsel, contains no obvious deficiencies, and treats Settlement Class Members equally. Accordingly, there are no grounds to doubt the Settlement's fairness.

C. The Settlement Provides Exceptional Relief for the Settlement Class.

When determining if the relief provided for the class is adequate, Rule 23 instructs courts to take into account “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of

1 payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P.
 2 23 (e)(2). Consideration of each of these sub-factors weighs in favor of final approval.

3 **1. Continued litigation would be risky, complex, lengthy, and expensive.**

4 While Plaintiff has calculated the maximum value of the claims in this Action to be larger
 5 than the settlement amount, when the maximum value of Plaintiff’s and the Class’s claims are
 6 discounted by the identifiable risks, experience dictates that the interests of the Class are better
 7 served by the proposed Settlement. *See Noll v. eBay, Inc.*, 309 F.R.D. 593, 606 (N.D. Cal. 2015)
 8 (“Immediate receipt of money through settlement, even if lower than what could potentially be
 9 achieved through ultimate success on the merits, has value to a class, especially when compared
 10 to risky and costly continued litigation.”); *see also West Virginia v. Chas. Pfizer & Co.*, 314 F.
 11 Supp. 710, 743-44 (S.D.N.Y. 1970), *aff’d*, 440 F.2d 1079 (2d Cir. 1971) (“In considering the
 12 proposed compromise, it seems also to be of importance that (if approved) the substantial
 13 amounts of money are available for class members now, and not at some distant time in the
 14 future. The nature of these actions is such that a final judgment, assuming it to be favorable,
 15 could only be obtained after years of expensive litigation. It has been held proper ‘to take the bird
 16 in hand instead of a prospective flock in the bush.’”); *In re Michael Milken & Assocs. Sec. Litig.*,
 17 150 F.R.D. 46, 53 (S.D.N.Y. 1993) (noting that even a favorable jury verdict “is not a guarantee
 18 of ultimate success”).

19 Here, the risks of continued litigation are substantial. Defendant has vigorously denied
 20 Plaintiff’s allegations of wrongdoing, and the law remains uncertain on the applicability of the
 21 FDCPA and the Rosenthal Act to Convenience Fees. *Compare Thomas-Lawson v. Carrington*
 22 *Mortg. Servs.*, 2021 WL 1253578 (C.D. Cal. April 5, 2021) (dismissing claims); *with Corona v.*
 23 *PNC Financial Services Group, Inc.*, No. 2:20-cv-06521-MCS, 2021 WL 1218258, *2-*8 (C.D.
 24 Cal. 2021) (allowing claims to proceed). Further, Plaintiff anticipates that Defendant would likely
 25 have vigorously opposed class certification and moved for summary judgment if this case were
 26 to continue. Thus, continued litigation of the Action would have been lengthy and expensive, and
 27

1 the possibility of Plaintiff litigating this case on a class basis and prevailing through judgment is
2 uncertain.

3 Moreover, even if Plaintiff were to prevail through continued litigation and trial, he would
4 still face significant risks as an appeal by Defendants would be likely. “It is known from past
5 experience that no matter how confident one may be of the outcome of litigation, such confidence
6 is often misplaced.” *West Virginia*, 314 F. Supp. at 743-44. For example, in *In re Apple Computer*
7 *Sec. Litig.*, No. C-84-20148-(A)-JW, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991), the jury
8 rendered a verdict in favor of plaintiffs and found recoverable damages in excess of \$100 million.
9 Nonetheless, the trial court disagreed and overturned the verdict, entering a judgment
10 notwithstanding the verdict for the individual defendants and ordering a new trial with regard to
11 the corporate defendant. *Id.*

12 **2. The Settlement provides meaningful, automatic payments to Settlement**
13 **Class Members.**

14 Under the Settlement, each Settlement Class Member is entitled to an automatic payment
15 of his or her pro rata distribution unless he or she submits a timely request for exclusion. As such,
16 the method to distribute relief is both simple and efficient.

17 Moreover, the relief provided to Settlement Class Members under the Settlement is
18 significant. As previously noted, the Settlement creates a Settlement Fund of \$7,000,000.00,
19 which equates to approximately 42% of the total Convenience Fees allegedly wrongfully
20 collected by Defendant. Moreover, as an additional benefit to the Settlement Class, Defendant
21 will refrain from charging Convenience Fees for 2 years after Final Approval. Thus, Class
22 Members will enjoy additional benefits as a result of this litigation and the Settlement. This
23 changed practice increases the value of the settlement by approximately \$4,880,000. *See* Doc.
24 164 at ¶ 10. Thus, the Settlement provides meaningful relief with no obligation that requires a
25 Settlement Class Member to submit a claim form in order to receive benefits.

3. The requested attorneys' fees are reasonable and in line with similar awards approved in the Ninth Circuit.

As detailed in Plaintiff's Motion for Attorneys' Fees, Class Counsel requests an award of attorneys' fees of \$2,310,000, which represents 33% of the \$7,000,000 Settlement Fund, and approximately 19% of the total settlement value, inclusive of the injunctive relief. *See* Plaintiff's Motion for Attorneys' Fees at 1; Lowther Decl. at ¶ 19. Further, pursuant to the Settlement Agreement, Class Counsel will not receive any payment until five (5) business days after the Final Settlement Date. *See* Settlement Agreement at ¶ 10.5. Thus, the percentage requested and the timing of the payment also weigh in favor of final approval.

4. The Settlement provides for a non-reversionary common fund.

As noted above, there is no claims process; instead, each Settlement Class Member who does not opt out will automatically receive a check. Any residual funds remaining in the Settlement Fund after 300 days from the date of distribution, and payment of all fees and costs, will be disbursed to Homes for Our Troops as a *cy pres* award. No funds from the Settlement will revert to Defendant. Thus, consideration of each of these four subfactors weigh in favor of final approval.

D. The Settlement Treats All Settlement Class members Equitably.

Under the Settlement, there is no unfair or preferential treatment of any Settlement Class Member. *See Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2015 WL 4498083, at *6 (N.D. Cal. July 23, 2015). Payments to Settlement Class Members will be made on a *pro rata* basis, to be calculated based upon the amount of Convenience Fees paid by the Settlement Class Member during the Class Period. Thus, each Settlement Class Member is given fair and equal treatment.

E. The Notice Program Satisfies Rule 23 and Due Process and Constitutes the Best Notice Practicable.

The Court has already determined that the notice program in this case adequately satisfies Rule 23, and due process. Doc. 168 at ¶¶ 13-14. The Settlement Administrator has now fully implemented the notice program, providing an estimated 97% of Settlement Class Members with

notice, which is at the high end of the range endorsed by the Federal Judicial Center. *See* Fait Decl. at ¶¶ 2-8; *see also* MANAGING CLASS ACTION LITIGATION: A POCKET GUIDE FOR JUDGES, p. 27 (3d ed. 2010) (the norm is in the 70-95% range). Further, to date, there have been no requests for exclusion and no objections. *See* Fait Decl. at ¶¶ 9-10. What is more, the Settlement Administrator continues to maintain the Settlement Website and toll-free phone line and respond to inquiries from Settlement Class Members. *Id.* at ¶¶ 7-8. Accordingly, the notice provided to Settlement Class Members fulfills all of the requirements of Rule 23 and due process and constitutes the best notice practicable under the circumstances.

VI. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

In its Preliminary Approval Order, the Court provisionally certified the Settlement Class upon concluding all of the requirements of Rule 23 (a) and (b)(3) were satisfied. Specifically, the Court found as follows: (1) “the proposed Settlement Class is sufficiently numerous that joinder would be logistically impossible. Based on a review of the Defendants’ records, the proposed Settlement Class consists of 139,491 Class Loans” (Doc. 168 at ¶ 7); (2) the issues in this litigation present common question of law and fact that can be determined on a class wide basis as “Plaintiff’s claims here depend on the common contentions that Convenience Fees are neither authorized by Class Members’ notes and deeds of trust or permitted by law” (*id.* at ¶ 8); (3) for the same reason commonality is satisfied, “the predominance requirement of Fed. R. Civ. P. 23(b)(3) is satisfied for settlement purposes.” (*id.*); (4) “the proposed Settlement Class Representative and Class Counsel have adequately represented the proposed Settlement Class and have no conflicts with Settlement Class Members” (*id.* at ¶ 9); (5) “t the Settlement Class Representative’s claims are typical of those of the Settlement Class Members as they arise from the same alleged course of conduct as those of the Settlement Class Members” (*id.* at ¶ 10); and (6) “[a class action is a superior method of resolving the claims of the Settlement Class Members, which are of modest amounts” (*id.* at ¶ 11). For these same reasons, this Court should grant final certification of the Settlement Class for settlement purposes only.

VII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that this Court enter an order, in substantial form to the proposed order attached as Exhibit 1: (i) granting final approval of the Settlement as fair, reasonable, and adequate; (ii) granting final certification to the Settlement Class; and (iii) finding that the notice program as set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order satisfies the requirements of Federal Rule of Civil Procedure 23 (e) and due process and constitutes the best notice practicable under the circumstances. Plaintiff further requests this Court enter final judgment, in substantial form to the proposed order attached as Exhibit 2.

Dated: October 19, 2022

Respectfully submitted,

/s/ James L. Kauffman

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2022, 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/ James L. Kauffman

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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

**DECLARATION OF LEE LOWTHER IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF SETTLEMENT AND
MOTION FOR AWARD OF
ATTORNEYS' FEES AND LITIGATION
COSTS, AND SERVICE AWARD**

The Honorable William H. Orrick

Date: November 16, 2022

Time: 2:00 p.m.

Location: Courtroom 2

1 I, Lee Lowther, declare and state as follows:

2 1. I am a partner with the law firm Carney, Bates and Pulliam, PLLC ("CBP"). My
3 firm, along with co-counsel Bailey & Glasser, LLC ("Bailey Glasser") (collectively referred to
4 with CBP as "Class Counsel"), represent Plaintiff Lawrence Torliatt ("Plaintiff") and the
5 proposed Settlement Class in this action (the "Action").

6 2. I make this Declaration in support of Plaintiff's (i) Motion for Final Approval of
7 Settlement and (ii) Motion for Award of Attorneys' Fees and Litigation Costs, and Service
8 Award. Except where otherwise stated, I have personal knowledge of the facts set forth in this
9 Declaration based on active participation in all aspects of the prosecution and resolution of the
10 Action. If called upon to testify, I could and would truthfully and competently testify as to all
11 matters stated herein.

12 **BACKGROUND AND EXPERIENCE**

13 3. CBP's firm resume details each CBP attorney's background, as well as provides
14 a full listing of the cases CBP has been involved in. The resume was previously submitted to
15 the Court in conjunction with Plaintiff's Motion for Preliminary Approval of Settlement. *See*
16 Doc. 164-1 (Joint Declaration filed in support of Preliminary Approval).

17 4. To briefly highlight CBP's extensive experience in class action and complex
18 litigation, CBP has served or is serving as co-lead counsel in the following cases: *Langston, et*
19 *al. v. Gateway Mortgage Group, LLC*, No. 5:20-cv-01902-VAP-KK (C.D. Cal.) (Pay-to-Pay
20 class action settling for \$1,175,000 and receiving final approval in August 2022); *Caldwell, et*
21 *al. v. Freedom Mortgage Co.*, No. 3:19-cv-02193-N (N.D. Tex.) (Pay-to-Pay class action,
22 settling for \$2,250,000 and receiving final approval in December 2021); *Phillips, et al. c.*
23 *Caliber Home Loans, Inc.*, 19-cv-02711-WMW-LIB (D. Minn.) (Pay-to-Pay class action
settling for \$5,000,000, which represented 29.39% of the aggregate Pay-to-Pay fees collected
from the settlement class); *Williams v. Lakeview Loan Servicing, LLC, et al.*, 4:20-cv-01900
(S.D. Tex.) (counsel to a certified class of mortgage borrowers challenging defendants'
collection of Pay-to-Pay fees under Texas law); *Williams v. State Farm Mutual Automobile*

1 *Insurance Company*, 4:11-cv-00749-KGB (E.D. Ark.) (resulting in a settlement of \$21.7
 2 million with 7,635 individuals receiving 100% recovery plus six percent prejudgment interest
 3 while releasing no claims or rights (other than named plaintiffs)); *Ebarle, et al. v. LifeLock,*
 4 *Inc.*, 3:15-cv-00258 (N.D. Cal.) (class action on behalf of customers of the identity theft
 5 protection service, resulting in a nationwide settlement of \$81 million that was granted final
 6 approval in September 2016); *Wayne Miner et al. v. Philip Morris USA Inc.*, Case No. 60CV-
 7 03-4661 (Pulaski Co. Cir. Ct.) (class action brought on behalf of Arkansas smokers over claims
 8 that the defendant misrepresented the safety of its “light” cigarette products, which settled in
 2016 for \$45 million).

9 5. Additionally, CBP served as lead counsel in *Econo-Med Pharmacy, Inc. v.*
 10 *Roche Diagnostics Corporation*, 1:16-cv-00789-TWP-MPB (S.D. Ind.), representing a class of
 11 pharmacies in a Telephone Consumer Protection Act (“TCPA”) litigation resulting in a \$17
 12 million settlement, which was granted final approval on September 21, 2017. CBP also served
 13 as lead counsel in *ARcare, Inc. v. Qiagen North America Holdings, Inc., et al.*, Case No. 43CV-
 14 17-46 (Lonoke Co. Cir. Ct.), representing a class of pharmacies in a TCPA litigation resulting
 15 in a \$15.5 million settlement, which was granted final approval on December 3, 2018. CBP has
 16 also been involved in such notable data breach cases as *In re: The Home Depot, Inc., Customer*
 17 *Data Security Breach Litigation*, 1:14-md-02583-TWT (N.D. Ga.) (serving on Plaintiffs’
 18 Steering Committee), and *In re: Target Corporation Customer Data Security Breach*
Litigation, 0:14-cmd-02522-PAM-JJK (D. Minn.) (serving as counsel for lead plaintiff
 Umpqua Bank).

19 6. In sum, CBP has extensive knowledge in class action litigation, including class
 20 litigation involving Pay-to-Pay fees, and is adequately capitalized and staffed, allowing CBP to
 21 dedicate the resources needed to vigorously pursue the claims of putative class members and to
 22 achieve the best possible result.

**THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND
SHOULD BE FINALLY APPROVED.**

7. As detailed in the Joint Declaration filed in support of Preliminary Approval (Doc. 164), the Settlement in this Action creates a non-reversionary, cash settlement fund of \$7,000,000 (the “Settlement Fund”) for the benefit of Settlement Class Members.

8. Based on records obtained from Defendant, the Settlement Fund of \$7,000,000 represents roughly 42% of the sum of all challenged Convenience Fees collected from Settlement Class Members during the Class Period. *See* Settlement Agreement (Doc. 164-3), at ¶ 4.2.

9. In addition to the monetary benefits, as part of the Settlement, the PHH Defendants have agreed to the cessation of the Convenience Fees to borrowers whose loan is subject to the Rosenthal Act—*i.e.*, borrowers on residential mortgage loans involving mortgaged property in the State of California who are making a payment on or after the payment’s due date—for a period of 2 years from the Final Settlement Date. *Id.* at ¶ 5.1. This practice change provides meaningful injunctive relief valued at approximately \$2,440,000 per year, yielding the total value of the injunctive relief at \$4,880,000. *See, e.g. Corker v. Costco Wholesale Corp.*, No. 2:19-CV-00290-RSL, 2021 WL 2790518, at *1 (W.D. Wash. June 25, 2021) (“[T]he settlements also provide for meaningful injunctive relief in the form of practice changes on the part of the Settling Defendants . . .”).

10. When measured against all the relevant standards for approval of class action settlements, Class Counsel believes the results achieved are excellent and the Settlement is in the best interests of the Settlement Class.

11. Specifically, the Settlement was reached only after Class Counsel conducted an extensive factual investigation into the Defendants’ alleged misconduct and thoroughly researched the law pertinent to the Class’s claims and the Defendant’s defenses. In addition to Class Counsel’s extensive investigative efforts, Class Counsel performed the following tasks: drafting and filing the complaints; successfully opposing two motions to dismiss; prevailing on

1 a contested motion for class certification; successfully opposing Defendants' petition for
2 interlocutory review of the Court's order granting class certification; briefing and arguing
3 cross-motions for summary judgment; successfully opposing Defendant's motion to stay;
4 drafting and propounding discovery requests; reviewing documents submitted by Defendant;
5 preparing for the deposition of Defendant's corporate representative; participating in multiple
6 mediation sessions; engaging in contentious, arm's-length settlement negotiations; conducting
7 confirmatory discovery regarding the total number of Settlement Class Members and the total
8 amount of aggregate Convenience Fees paid during the Class Period; drafting the Settlement
9 Agreement along with corresponding documents; and participating in calls with opposing
10 counsel and the Settlement Administrator concerning the issuance of the Class Notice and
11 creation of the Settlement Website following the Court's granting the Settlement preliminary
12 approval. The efforts undertaken by Class Counsel and Plaintiff demonstrate they have fully,
13 vigorously, zealously and adequately represented the Settlement Class.

12 12. The settlement negotiations in this Action were further informed through the
13 mediation process, as well as the parties' exchange of information related to class size and
14 damages issues. Here, the Parties engaged in five mediation sessions. Through this process, the
15 parties, recognizing that both regulators and courts have reached different conclusions on the
16 merits of similar claims as those presented here, were able to identify, explore, and promote a
17 better understanding of the legal and factual issues involved on both sides. Thus, with the
18 assistance of a trained, neutral mediator, Chief Magistrate Judge Spero, as well as the parties'
19 exchange of information and prior litigation and experience, Class Counsel had ample
20 information to assess the strengths and weaknesses of Plaintiff's case and balance the benefits
21 of settlement against the risks of further litigation.

22 13. The Settlement enjoys the support of the Settlement Class. To date, no
23 Settlement Class Member has objected to the Settlement or requested to be excluded. *See*
Declaration of Mary Jane Fait Regarding Notice Procedures ("Fait Decl.") at ¶¶ 9-10. And,
while no governmental entity is a party to this litigation, notice was issued to the appropriate

1 federal and state officials in accordance with the 28 U.S.C. § 1715, and to date, no
2 governmental entity has raised an objection or concern about the Settlement. *See id.*

3 14. Further, the notice program approved by the Court has now been fully
4 implemented. *See* Fait Decl. at ¶¶ 3-8. According to the Settlement Administrator, the notice
5 reached an estimated 97% of Settlement Class Members, which is at the high end of the range
6 established by Federal Judicial Center, “*Judge’s Class Action Notice and Claims Process*
7 *Checklist and Plain Language Guide*” (2010) (available at
8 <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>) (stating a notice reach of between
9 70-95% is reasonable). *See* Fait Decl. at ¶ 6. Thus, the notice program satisfies the
10 requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best
11 notice practicable under the circumstances.

12 15. Moreover, the total estimated costs for disseminating notice to the Settlement
13 Class and administration of the Settlement, as detailed in the Fait Declaration is \$240,683. This
14 sum is approximately 3.4% of the Settlement Fund, which is fair and reasonable. *See, e.g.,*
15 *Hose v. Washington Inventory Serv., Inc.*, No. 14-CV-2869-WQH-AGS, 2020 WL 3606404, at
16 *10 (S.D. Cal. July 2, 2020) (“Courts regularly award administrative costs associated with
17 providing notice to the class.”); *Mauss v. NuVasive, Inc.*, No. 13CV2005 JM (JLB), 2019 WL
18 13179078, at *3 (S.D. Cal. July 23, 2019) (approving \$280,394.13 in total settlement
19 administration costs).

20 16. Based upon the foregoing, Class Counsel believe that the Settlement is an
21 excellent result for the Settlement Class and is appropriate for final approval.

22 **CLASS COUNSEL’S FEE REQUEST IS REASONABLE**
23 **AND SHOULD BE APPROVED.**

17. In accord with the terms of the Settlement Agreement, Class Counsel are
seeking an award of 33% of the Settlement Fund, or \$2,310,000, inclusive of attorneys’ fees
and litigation expenses.

1 18. Class Counsel's fee request is supported by the significant relief obtained for the
 2 Settlement Class. Specifically, the Settlement provides for a common fund of \$7,000,000,
 3 representing approximately 42% of all Convenience Fees paid by the Settlement Class during
 4 the Class Period that were allegedly improperly collected, as well as meaningful injunctive
 5 relief that Class Counsel calculates to be worth approximately \$2,440,000 per year, or
 \$4,880,000 in the aggregate.

6 19. Class Counsel calculates the total value of the Settlement to equal \$11,880,000.
 7 Thus, the requested fee award is approximately 19.4% of the total value of the Settlement.

8 20. Moreover, the negotiated releases are specifically tailored to release only those
 9 claims related to the Convenience Fees charged by Ocwen to Settlement Class Members,
 10 during the period from July 26, 2015 through and including June 24, 2022, and by PHH to
 11 Settlement Class Members, during the period from July 30, 2015 through and including June
 12 24, 2022, for making loan payments by telephone, IVR, the internet, and other payment
 methods. *See* Settlement Agreement ¶ 3.3.

13 21. Class Counsel's fee request is further supported by the time and resources
 14 expended by Class Counsel, the complexity of the case, the skill and expertise needed to
 15 advance Plaintiffs' claims, and the risk undertaken in prosecuting this case.

16 22. Attached hereto as Exhibit A is a true and accurate summary lodestar chart,
 17 which reflects, for each CBP timekeeper: (i) their title or position (e.g., partner, associate); (ii)
 18 their hourly rate; (iii) the total number of hours they worked; and (iv) their lodestar. As
 demonstrated therein, CBP has expended a total of 1,473.25 hours¹ in this litigation.

19 23. Class Counsel's requested percentage is directly in line with Ninth Circuit
 20 precedent. *Beaver v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *9–
 21 10 (S.D. Cal. Sept. 28, 2017) (Courts in the Ninth Circuit “have routinely awarded fees of one-

22
 23 ¹ This does not include time spent preparing the Motion for Final Approval of Settlement or the Motion for Award of Attorneys' Fees, Litigation Costs, and Service Award. Nor does it reflect the time that will be required to oversee settlement administration, including a final accounting and distribution of the settlement proceeds and related case filings.

1 third of the common fund or higher after considering the particular facts and circumstances of
2 each case.”); *Vedachalam v. Tata Consultancy Servs., Ltd*, No. C 06-0963 CW, 2013 WL
3 3941319, at *2 (N.D. Cal. July 18, 2013) (finding “[i]n light of the many cases in this circuit
4 that have granted fee awards of 30% or more, the requested fee [of 30%] is well within the
5 usual range of percentages awarded in similar cases,” and further approving \$268,176 in
6 litigation expenses).

7 24. While not required, Class Counsel submit that a lodestar crosscheck underscores
8 the reasonableness of Class Counsel’s fee request. Class Counsel have collectively expended a
9 total of 2,756.45 hours throughout the course of this litigation. The time expended by Class
10 Counsel was necessary to sufficiently address the needs of the case, to move the litigation
11 forward in an expeditious manner, and to achieve the favorable results ultimately reached.
12 Moreover, to ensure against duplication, tasks were assigned to specific attorneys and every
13 reasonable effort was made to avoid repetition of work. As such, the hours expended by Class
14 Counsel are reasonable.

15 25. Moreover, based on Class Counsel’s total lodestar, the fee request results in a
16 modest multiplier of 1.37, which is reasonable. *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043,
17 1051-52 (9th Cir. 2002) (approving of 3.65 multiplier and citing multipliers as high as 19.6);
18 *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D. Cal. 2015) (listing multipliers as high as 5.2
19 among “the range of acceptable lodestar multipliers”); *Dyer v. Wells Fargo Bank, N.A.*, 303
20 F.R.D. 326, 334 (N.D. Cal. 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s
21 presumptively acceptable range of 1.0–4.0.”)

22 26. Thus, a lodestar crosscheck demonstrates the reasonableness of Class Counsel’s
23 fee request.

24 27. I have personal knowledge of the hourly rates charged by CBP attorneys
25 included in the exhibits to this declaration. The hourly rates for the attorneys in my firm are the
26 usual and customary rates set by the firm for each individual, and reflect the rate for each
27 attorney at the time the task was performed. These hourly rates are the same as, or comparable

1 to, the rates accepted by courts in other class action litigation including courts in this district
 2 and Circuit. My firm's rates are set based on periodic analysis of rates charged by firms
 3 performing comparable work and that have been approved by courts in other class actions
 4 within this Circuit and nationwide. Different timekeepers within the same employment
 5 category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety
 6 of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years
 7 as a partner), relevant experience and the rates of similarly experienced peers in the legal
 community.

8 28. Class Counsel's rates are consistent with the prevailing market rates in the
 9 Northern District of California. *See Durham v. Sachs Elec. Co.*, No. 18-CV-04506-BLF, 2022
 10 WL 2307202, at *8 (N.D. Cal. June 27, 2022) (approving hourly rates of \$875); *In re Optical*
 11 *Disk Drive Prod. Antitrust Litig.*, No. 3:10-md-2143-RS, 2016 WL 7364803, at *8 (N.D. Cal.
 12 Dec. 19, 2016) (approving hourly rates of \$205 to \$950); *Civil Rights Educ. and Enforcement*
 13 *Ctr. v. Ashford Hospitality Trust, Inc.*, No. 15-cv-00216-DMR, 2016 WL 1177950 (N.D. Cal.
 14 Mar. 22, 2016) (finding that requested hourly rates of \$900, \$750, \$550, \$500, \$430, and \$360
 15 for attorneys and \$225 for paralegals were "in line with the market rates charged by attorneys
 16 and paralegals of similar experience, skill, and expertise practicing in the Northern District of
 17 California"); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *5 (N.D. Cal. May
 18 21, 2015) (approving hourly rates of \$475 to \$975); *see also Silveira v. M&T Bank*, Case No.
 19 2:19-cv-06958-ODW-KS, 2021 WL 4776065 (C.D. Cal. Oct. 12, 2021) (approving as
 20 reasonable hourly rates ranging from \$465 to \$914) (the hourly rates can be found at Dkt. No.
 21 37-2, ¶ 20); *Jimenez v. Allstate Ins. Co.*, 2021 WL 4316961, at *11 (C.D. Cal. Sept. 16, 2021)
 22 (approving hourly rates of \$375 to \$900); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446,
 23 455 (9th Cir. 2012) (finding that the district court did not abuse its discretion by awarding
 hourly rates between \$425, \$700, and \$875).

29. CBP's reasonably incurred litigation expenses of \$5,107.89, which are summarized in Exhibit A hereto. These costs were associated with mediation, court and docket fees, deposition fees, travel expenses, and telephone/federal express/mailing services. These expenses are customary litigation expenses and were reasonably incurred in furtherance of the investigation, prosecution, and settlement of the Action. As such, they are reasonable and should be approved. The requested fee and expense award of \$2,310,000 is inclusive of Class Counsel's expenses.

30. Plaintiff's request for a service award of \$10,000 for serving as the Class Representative is in line with similar awards approved in this district. *See Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403, at *6 (N.D. Cal. Oct. 18, 2013) (approving \$10,000 incentive award). Moreover, it is supported by the time and effort he invested in the prosecution and settlement of this Action, which included: (1) initial factual investigation; (2) reviewing and providing commentary to counsel on drafts of the complaints; (3) reviewing all pleadings relating to Defendant's motions to dismiss and motion to stay; (4) working with counsel to review and respond to discovery; (5) keeping in regular contact with counsel concerning case developments and discovery; (6) participating in the mediation process and considering various settlement offers and counteroffers with counsel; (7) spending between twenty-five and thirty hours gathering thousands of documents to produce in response to discovery, (8) appearing for an hours-long deposition, (9) participating in 5 mediation sessions, and (9) reviewing and discussing the terms of the settlement reached in this case. *See* ECF No. 116-15 (Torliatt Dep.) at 69:1-16; 57:10-58:7, 66:18-67:20, 68:9-25

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 19th day of October, 2022.

By: /s/ Lee Lowther

EXHIBIT A

Carney Bates & Pulliam, PLLC
Torliatt, et al., v. Ocwen Loan Servicing, LLC,
Case No. 3:19-cv-04303-WHO

Time Summary

Timekeeper	Hourly Rate	Hours	Lodestar
Bates, Hank (P)	\$850.00	11.30	\$9,605.00
DeCoursey, Cassandra (A)	\$395.00	221.60	\$87,532.00
Lowther, Lee (P)	\$485.00	856.30	\$415,305.50
Pulliam, Randy (P)	\$850.00	345.05	\$293,292.50
Windley, Jake (A)	\$395.00	20.20	\$7,979.00
Wyatt-Oldham, Tiffany (P)	\$640.00	18.80	\$12,032.00
Total		1,473.25	\$825,746.00

(P)-Partner

(A)-Associate

Expense Summary

Expense Category	Amount
Mediation	\$2,812.50
Court and Docket Fees	\$1,068.23
Deposition Fees	\$564.50
Travel	\$334.63
Telephone/Federal Express/Mailing Services	\$328.03
Total	\$5,107.89

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Attorneys for Plaintiff

**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

**DECLARATION OF JAMES L.
KAUFFMAN IN SUPPORT OF MOTION
FOR FINAL APPROVAL AND MOTION
FOR AWARD OF ATTORNEYS' FEES
AND LITIGATION COSTS, AND
SERVICE AWARD**

The Honorable William H. Orrick

Date: November 16, 2022

Time: 2:00 p.m.

Location: Courtroom 2

1 I, James L. Kauffman, declare:

2 1. I am a partner at Bailey & Glasser LLP, and I am admitted to practice before this
3 Court as counsel of record for Plaintiff and the Settlement Class in this case. I have personal
4 knowledge of all the facts set forth in this Declaration unless otherwise stated, and I am
5 competent to testify to these facts if called on to do so.
6

7 **BAILEY & GLASSER LLP**

8 2. Bailey & Glasser LLP was founded in 1999 and has an established reputation for
9 successfully prosecuting and defending multimillion dollar cases, including complex class
10 actions. With eighteen offices across the country from Boston, MA to Oakland, CA, our lawyers
11 routinely handle high-stake litigation and other lawyers call upon our firm routinely because of
12 our unique blend of resources and trial experience.
13

14 3. Bailey & Glasser has years of experience litigating class actions, including
15 consumer financial class actions, ERISA, and securities cases and has obtained millions of
16 dollars in restitution and debt forgiveness for consumers by successfully asserting state and
17 federal consumer credit law claims on their behalf. A partial listing of those cases includes the
18 following:
19

- 20 • *Krakauer v. Dish Network, L.L.C.*, Case No. 1:14-cv-00333 (M.D. N.C.) (\$20.5
21 million jury verdict in a class action trial against Dish Network, alleging Dish was
22 liable for more than 51,000 telemarketing calls placed by a defunct DISH dealer to
23 persons whose telephone numbers were on the National Do Not Call Registry).
- 24 • *Tadepalli v. Uber Technologies, Inc.*, Case 3:15-cv-04348 (N.D. Cal.) (100% refunds
25 made in class action settlement for California Uber riders charged approximately \$2.2
26 million in “airport fee tolls” which Uber did not pay to California airports).
- 27 • *Wieland v. Bring Care Home, Inc.*, C.A. No. ESCV2013-01380 (Essex County,
28 Mass.) (class action settlement for failure to pay all hours worked).
- *Thomas v. Home Credit Corp., Inc.*, 11-CVS-1116 (Vance County, N.C.) (class
action settlement in favor of state-wide class of borrowers denied consumer rights
disclosures).

- 1 • *Desai v. Charvat*, Civil Action No. 1:11-cv-1925 (N.D. Ill.) (\$15 million TCPA class
2 settlement).
- 3 • *Roberts v. Walgreen Co., et al.*, Civil Action No. 12-C-337 (Circuit Court of Mercer
4 County, West Virginia) (wage payment class settlement).
- 5 • *Glover v. Bank of America, N.A.*, C.A. No. 13-40042-TSH (D. Mass.) (class action
6 settlement for Massachusetts borrowers regarding late fees).
- 7 • *Powers v. Santander Consumer USA, Inc.*, Civil Action No. 12-cv-11932-TSH (D.
8 Mass.) (consumer class action resulting in the establishment of a \$750,000 settlement
9 fund and \$20 million in debt relief).
- 10 • *Pirillo v. PNC Mortgage Corp.*, Civil Action No. 11-C-751 (Circuit Court of
11 Monongalia County, West Virginia) (consumer class action settlement).
- 12 • *Ross v. CitiFinancial Auto Ltd.*, Case No. 12-1173-TJC (M.D. Fla.) (class action
13 settlement in favor of state-wide class of borrowers denied consumer rights
14 disclosures).
- 15 • *Morris v. Merck Sharp & Dahme Corp.*, Civil Action No. 3:11-cv-00882 (S.D. W.
16 Va.) (wage payment class action settlement totaling \$750,000).
- 17 • *Hall v. Capital One Auto Fin., Inc.*, Case No. 08-1181 (N.D. Ohio) (\$37 million
18 settlement on behalf of state-wide class of car owners sent allegedly flawed
19 repossession notices).
- 20 • *Brailsford v. Jackson Hewitt, Inc.*, Case No. 06-00700 (N.D. Cal.) (\$672,000
21 settlement on behalf of class of California consumers).
- 22 • *Hardwick v. Rent-A-Center, Inc.*, Civil Action No. 3:06-0901 (S.D. W. Va.) (class
23 action settlement worth more than \$5 million, alleging violations of state Consumer
24 Goods Rental Protection Act).
- 25 • *Triplett v. NationStar Mortgage, LLC*, Civil Action No. 3:11-cv-238 (S.D. W. Va.)
26 (loan servicing case settled for \$1.5 million).
- 27 • *Shonk v. SG Sales Co.*, Case No. 07-C-1800 (Circuit Court of Kanawha County, West
28 Virginia) (\$2.4 million nationwide settlement of class action brought under the
Telephone Consumer Protection Act).
- *Lowe v. Ford Motor Credit*, Case No. 99 CVF 15806 (Cuyahoga County, Ohio) (\$22
million settlement on behalf of state-wide class of car owners subject to flawed
repossession practices).

- 1 • *Muhammad v. National City Mortgage, Inc.*, Case No. 2:07-cv-00423 (S.D. W. Va.)
2 (\$700,000 settlement of West Virginia loan servicing class action alleging National
3 City Bank charged late loan-payment fees in violation of state law).
- 4 • *Brailsford v. Jackson Hewitt*, Case No. C 06-00700 CW (N.D. Cal.) (class action
5 against Jackson Hewitt, Inc. for class of California consumers who purchased the tax
6 preparer's refund anticipation loan product, settled for \$672,000).
- 7 • *Dunlap v. Wells Fargo Financial West Virginia, Inc.*, Case No. 04-C-101 (Lincoln
8 County, W. Va.) (predatory lending class action for over 100 West Virginia mortgage
9 borrowers, settled for just over \$9 million, including more than \$4.9 million write
10 down in mortgage balances, \$4.15 million in cash, and credit repair).
- 11 • *Cummins v. H & R Block, Inc.*, Case No. 03-C-134 (Kanawha County, W. Va.) (in a
12 case litigated for five years in venues ranging from the West Virginia trial and
13 appellate courts, to federal district courts in West Virginia and Illinois, to the United
14 States Supreme Court, firm lawyers served as lead counsel in winning a \$62.5 million
15 multistate class action settlement against H&R Block. The case involved first-
16 impression claims relating to the application of West Virginia's credit-services
17 organization statute to Block's refund anticipation loan product. Other firms across
18 the country litigated cases against Block alleging similar claims, without success, for
19 more than ten years. West Virginia's share of the settlement was \$32.5 million).
- 20 • *Malacky v. Huntington Nat'l Bank*, Case No. CV 03 491420 (Cuyahoga County,
21 Ohio) (\$15 million settlement in favor of state-wide class of car owners sent flawed
22 repossession notices).
- 23 • *Anderson v. Provident Bank*, Civil Action No. 04-C-199 (Circuit Court of Mercer
24 County, West Virginia) (predatory mortgage lending class action settled for \$8.1
25 million on behalf of 140 class members).
- 26 • *Mey v. Herbalife Int'l, Inc.*, Civil Action No. 01-C-263 (Circuit Court of Ohio
27 County, West Virginia) (\$7 million nationwide class action settlement alleging
28 violations of the federal Telephone Consumer Protection Act).
- *Cooley v. F.N.B. Corp.*, Case No. 10010 of 2003, C.A. (Lawrence County, Penn.)
(\$14 million settlement on behalf of state-wide class of car owners allegedly deprived
of post-repossession disclosures).
- *Dillon v. Chase*, Civil Action No. 03-C-164-W (Circuit Court of Hancock County,
West Virginia) (\$3.3 million consumer class action settlement).
- *In re Household Lending Litig.*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million
settlement on behalf of nationwide class of home mortgage borrowers injured by
predatory mortgage lending practices).

- 1 • *Curry v. Fairbanks Capital Corporation*, Case No. 03-10875-DPW (D. Mass.) (\$55
- 2 million settlement on behalf of nationwide class of borrowers subject to predatory
- 3 loan servicing practices).
- 4 • *Deem v. Ames True Temper, Inc.*, Civil Action No. 6:10-cv-01339 (S.D. W. Va.)
- 5 (\$405,000 class action settlement in an ERISA action).

6 EXPERIENCE

7 4. I am licensed and in good standing to practice law in the State of Florida, State of

8 Arkansas, and District of Columbia. I have been a member of the Arkansas Bar since 2003 after I

9 obtained my J.D. from the University of Florida Levin College of Law in December 2002. For

10 more than 18 years, I have served as class and appellate counsel in a wide variety of cases

11 including deceptive trade practices, securities fraud, ERISA, and consumer protection. I am a

12 member of Public Justice, the Florida Bar Association, the Arkansas Bar Association, and the

13 American Association of Justice (AAJ).

14 5. I was appointed as lead class counsel in one of the first filed class action lawsuits

15 in the country to challenge Convenience fees, *Montesi v. Seterus, Inc.*, Case No. 50-2015-CA-

16 010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cty.). *Montesi* was heavily litigated and resulted

17 in class certification over the defendant's opposition. It resulted in a \$1.75 million class

18 settlement of Florida borrowers, which represented 35% of the amount collected by Seterus

19 during the class period.

20 6. Bailey Glasser is among a handful of law firms litigating cases involving

21 Convenience Fees across the country and is in the forefront of that litigation.

22 7. I was also appointed as class counsel by the district courts in other class actions

23 involving Convenience Fees, which obtained settlement that is either pending or approved:

24 *Elbert v. Roundpoint Mortgage Servicing, Corp.*, No. 3:20-cv-00250-MMC (N.D. Cal.)

25 (approved); *Fernandez v. Rushmore Loan Servicing*, Case No. 8:21-cv-00621-DOC (C.D. Cal.)

26

27

28

(approved); *Lembeck v. Arvest Central Mortgage Co.*, No. 3:20-cv-03277-VC (N.D. Cal.) (approved); *Phillips v. Caliber Home Loans*, No. 0:19-cv-02711 (D. Minn.) (approved); *Caldwell v. Freedom Mortgage Corp.*, No. 3:19-cv-02193-N (N.D. Tex.) (approved); *Pierce v. Statebridge Co.*, No. 1:20-cv-117 (M.D.N.C.) (approved); *Silveira v. M&T Bank*, No. 2:19-cv-06958-ODW (C.D. Cal.) (approved); *Williams v. PHH Mortgage Corp.*, No. 20-cv-04018 (S.D. Tex.) (pending); *Langston v. Gateway Mortgage Group, LLC*, No. 5:20-cv-01902 (C.D. Cal.) (approved); *Wilson v. Santander Consumer USA, Inc.*, No. 4:20-cv-00152-KGB (E.D. Ark.) (pending), and *Alexander v. Carrington Mortgage Services, LLC*, Case No. 1:20-cv-2369-TEB (D. Md.) (pending). In *Elbert* and *Fernandez*, Judges Chesney and Carter awarded attorney-fees of one-third of the common fund based on the significance of the recoveries of those cases. *Elbert*, DE 98 (N.D. Cal. Apr. 18, 2022) (35% recovery and two-years injunctive relief); *Fernandez*, DE 42 (C.D. Cal. Feb. 14, 2022) (29.39% recovery and two-year injunctive relief).

8. I am currently representing proposed class representatives in several other class action cases in courts across the country challenging the legality of the collection of Convenience Fees from residential borrowers. See *McFadden v. Nationstar Mortgage Co. d/b/a Mr. Cooper*, No. 1:20-cv-00166-EGS (D.D.C.); *Desimone v. Select Portfolio Servicing, Inc.*, No. 1:20-cv-03837-PKC (E.D. N.Y.); and *Williams v. Lakeview Loan Servicing, LLC et al.*, Case No 4:20cv-01900 (S.D. Tex.).

ATTORNEYS' FEES AND COSTS

9. Bailey & Glasser started working on this case in 2019 when the original complaint in this matter was filed. BG investigated the facts and legal claims asserted in this matter.

10. Class Counsel undertook the case on a contingent basis under an agreement with Plaintiff that Class Counsel would seek a percentage-based fee of up to one third of any recovery. Class Counsel have not received any compensation for their work to this point.

11. Bailey & Glasser attorneys and paralegals spent more than 1,200 hours litigating these two actions to date, preparing, researching, briefing, litigating, settling, and administering this case and the issues therein. A summary of the hours litigated is as follows:

Name	Title	Hours	Rate	Lodestar
Attorneys				
Ryan, Elizabeth A.	Partner	287.7	\$ 840.00	\$ 241,668.00
Marshall, Jonathan R.	Partner	41.6	\$ 800.00	\$ 33,280.00
Kauffman, James L.	Partner	584	\$ 650.00	\$ 379,600.00
Kipnis, Patricia M.	Partner	23.4	\$ 640.00	\$ 14,976.00
Woods, Victor S	Senior Associate	15.8	\$ 500.00	\$ 7,900.00
Charonko, Kate E.	Partner	5.1	\$ 575.00	\$ 2,932.50
Littles, Britney A.	Associate	147.3	\$ 470.00	\$ 69,231.00
Babiak, Laura E.	Associate	16.1	\$ 350.00	\$ 5,635.00
Attorney Subtotal Lodestar		1,121		\$ 755,222.50
Paralegals				
McClay, Mary E.	Paralegal	50.9	\$ 300.00	\$ 15,270.00
Pierre, Vanessa K.	Paralegal	101.5	\$ 270.00	\$ 27,405.00
Pulliam, Troy M.	Paralegal	9.8	\$ 250.00	\$ 2,450.00
Paralegal Subtotal Lodestar		162.2		\$ 45,125.00
TOTAL LODESTAR		1,283.2		\$ 800,347.50

1 12. Attorneys and paralegals from Bailey & Glasser (“BG”) worked closely with our
2 co-counsel Carney Bates and Pulliam (CPB) on this case. Work was divided relatively evenly
3 between the firms on these cases to avoid duplication of efforts. On all cases, our firms
4 endeavored to divide work based on which firm’s attorneys had the most experience in a given
5 area. In addition, the reported time was adjusted in the exercise of billing judgment, omitting
6 time spent that may have been duplicative, or non-essential.

8 13. Counsel’s efforts to date included, without limitation: pre-filing investigation;
9 drafting and filing the complaints; successfully opposing two motions to dismiss, engaging in
10 extensive discovery, including experts, appearing in a class action pending in Florida that
11 threatened to release the unique California claims asserted by the class here, successfully moving
12 for class certification, moving for summary judgment, participating in five mediations,
13 negotiating, drafting, and finalizing the Settlement Agreement and associated paperwork,;
14 preparing Initial Disclosures, Interrogatories, and Requests for the Production of Documents;
15 preparing various procedural filings; meeting-and-conferring with PHH Defendants’ counsel
16 regarding various case management matters; drafting mediation statements, supervising the work
17 of the Claims Administrator; and preparing this motion and the motion for final approval and
18 supporting documentation.

21 14. In addition, Class Counsel’s efforts will also include: continued correspondence
22 with Settlement Class Members and supervision of the work of the Settlement Administrator;
23 researching and drafting a reply memorandum to this motion, if any; opposing objections, if any;
24 and preparing for, and attending the hearing on the motion for final approval; attending to
25 miscellaneous case management responsibilities, including any status reports that this Court may
26 order.
27
28

1 15. Class Counsel estimates that approximately 20 hours of work will be required to
2 see this matter to completion, and that number assumes that no objections will be filed.

3 16. Counsel's lodestar does not include activities by Class Counsel in other similar
4 pay-to-pay litigation against other servicers, which enabled Class Counsel to gain expertise and
5 oversee developments in the case law more efficiently.

6 17. Class Counsel's rates have been reported to state and federal courts approving fee
7 applications in other contingent matters. These rates are consistent with those that courts have
8 found reasonable for law firms that were serving as plaintiffs' counsel in class actions. My firm
9 sets billing rates for its attorneys and other legal workers on an annual basis in a manner
10 designed to assure that those rates are commensurate with the rates charged by attorneys with
11 similar levels of education, skill and experience in the markets in which they practice. The firm's
12 rates established in this manner have been consistently approved by federal and state courts
13 considering petitions for fee awards in which Bailey & Glasser has served as class counsel.

14 18. A firm resume was submitted with the Joint Declaration of Lee Lowther and
15 James Kauffman in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class
16 Action Settlement, ECF # 164-2.

17 19. Time records were kept contemporaneously. For each task performed, staff
18 accounted for their time in 1/10th of an hour (6-minute) increments or shorter and included a
19 brief narrative description of the work performed. Staff did not "block bill."

20 20. Our time records were reviewed for duplicative or erroneous entries, and
21 timekeepers who logged less than 5 hours were removed.

22 21. The hourly rates shown for the attorneys at Bailey & Glasser LLP are our 2022
23 rates. I personally have several hourly clients who pay me rates of \$600-850 per hour or more for
24
25
26
27
28

1 attorneys and \$250 per hour for paralegals of the same experience as those who performed work
2 in this matter.

3 22. Class Counsel has expended time and resources to move this case along
4 expeditiously.
5

6 23. Discovery was wide ranging and comprehensive. This discovery included
7 extensive data relevant to the size of the class and the aggregate amount of Convenience Fees
8 paid to Defendant by Class Members during the relevant period. The Settlement was only
9 reached after hard-fought litigation and protracted negotiations conducted by informed,
10 experienced counsel on both sides who were thoroughly familiar with the factual and legal
11 issues.
12

13 24. Class Counsel's work in this case led to an excellent result for the Settlement
14 Class, a recovery of approximately 42% of class wide damages, and is in the best interest of the
15 Class.
16

17 25. Each member of the Settlement Class who does not opt out will receive their *pro*
18 *rata* share of the \$7,000,000 Settlement Fund, as well as the benefit of the non-monetary
19 injunctive relief Settlement Class Members whose loan is subject to the Rosenthal Act.
20

21 26. PHH Defendants will stop charging Convenience Fees to borrowers whose loans
22 are subject to the Rosenthal Act for a period of two years from the Final Settlement Date, which
23 represents a savings to Class Members of approximately \$4.88 million based on the amounts
24 they collected and retained from Class Members during the class period.

25 27. In my opinion, the time expended, and expenses incurred in prosecuting this
26 action were reasonable and necessary for the diligent litigation and fair resolution of this matter.
27 The work Class Counsel performed and the results they achieved in this litigation reflect their
28

skill and experience in this field and in complex class litigation. The lodestar reflected in the above extract does not include all of the time to be devoted to preparing for and appearing at the final approval hearing or dealing with post-hearing matters.

28. I anticipate that Class Counsel will devote substantial additional time to this case after the date of this Declaration, including: (1) finalizing this application; (2) preparing for and attending the final approval hearing; (3) monitoring the claims and distribution process; corresponding with the Settlement Administrator; (4) managing the extended payment plan; (5) ensuring compliance with the injunctive relief; and (6) responding to Class Member inquiries.

29. Bailey & Glasser also incurred \$73,830 in unreimbursed case-related expenses. These expenses do not include any legal research, copying or postage costs, which were expenses incurred by Class Counsel but are not sought to be reimbursed. An itemized list of Bailey & Glasser LLP's expenses is as follows:

Expense	Amount
Experts/Consultants	\$54,097.75
Deposition Transcripts	\$7,870.08
Data Case Hosting	\$6,440.00
Arbitrators/Mediators	\$3,106.25
Hearing Transcript	\$1,036.09
Court Fees	\$710.00
Travel	\$556.58
Outside Delivery Services	\$13.43
TOTAL	\$73,830.18

1 30. Mr. Torliatt actively participated in this action for two and a half years. He
2 assisted in Class Counsel's investigation, reviewed the pleadings in this action, produced
3 thousands of pages of documents, sat for a deposition, participated in five mediations, conferred
4 with Counsel on settlement discussions, and was ready and willing to testify at trial.
5

6 31. Mr. Torliatt took on a substantial risk by bringing claims against the company that
7 services his home mortgage, and undertook reputational risk, as his association with these
8 lawsuits is publicly available. Mr. Torliatt also worked with Class Counsel to provide
9 information regarding his experiences and claims to enable him to join this case and represent a
10 class throughout the litigation, conducted searches of his personal records and shared sensitive
11 information, including bank records and mortgage documents, prepared for and sat for a
12 deposition, and remained actively involved in the litigation after the Settlement was reached.
13 Without his involvement, there would be no settlement.
14

15 32. I declare under penalty of perjury under the laws of California that the foregoing
16 is true and correct.
17

18 Executed this 19th day of October 2022 in Washington D.C.
19
20

21 /s/ James L. Kauffman

22 James L. Kauffman
23
24
25
26
27
28

**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

**DECLARATION OF MARY JANE FAIT
RE: NOTICE PROCEDURES**

The Honorable William H. Orrick

I, MARY JANE FAIT, declare and state as follows:

1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”), located at San Rafael, California. Pursuant to the Order Granting Preliminary Approval of Settlement (the “Preliminary Approval Order”) dated July 20, 2022, the Court appointed KCC as the Settlement Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

CLASS LIST

2. On July 22, 2022, KCC received from Defense Counsel two lists containing 1,735,830 records identified as the Class List. The Class List included borrower and co-borrower names and addresses, property addresses, loan number(s), loan type, occupancy status, payments, payment dates, payment due dates, Speedpay fee amounts, and source of Speedpay charges. KCC formatted the list for mailing purposes, removed duplicate records, and processed the names and addresses through the National Change of Address Database (“NCOA”) to update any addresses on file with the United States Postal Service (“USPS”). A total of 11,877 addresses were found and updated via NCOA. KCC updated its proprietary database with the Class List.

MAILING OF THE NOTICE PACKET

3. On August 17, 2022, KCC caused the Notice to be printed and mailed to the 134,280 names and mailing addresses in the Class List. A true and correct copy of the Notice is attached hereto as Exhibit A.

4. Since mailing the Notice to the Class Members, KCC has received 3719 Notices returned by the USPS with forwarding addresses. These Notices were forwarded by the USPS.

5. Since mailing the Notice Packets to the Class Members, KCC has received 5549 Notice Packets returned by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, KCC performed address searches for these undeliverable Notice

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement and Release, dated June 27, 2022 (the “Settlement”) and/or the Preliminary Approval Order.

1 Packets and was able to find updated addresses for 1413 Class Members. KCC promptly re-mailed
 2 Notice Packets to the new addresses. Four (4) Class Members were not searched because they
 3 contacted KCC and updated their addresses. In addition, KCC received Notice Requests from 33
 4 Class Members who had already been sent a Notice and 34 individuals who had not received a
 5 Notice because they were not in the Class List. On October 17, 2022, the Notice attached as Exhibit
 6 A was re-mailed to those 33 Class Members, and the Notice attached as Exhibit B was mailed to
 7 those 34 individuals not on the Class List (which advised that they were receiving the Notice even
 8 though they did not appear in the Class List used for Mailing of the Notice).

9 6. Thus, as of the date of this Declaration, KCC has mailed 134,280 Class Members,
 10 with 130,127 Notices currently not returned as Undeliverable, which is a 97% deliverable rate.
 11

12 **SETTLEMENT WEBSITE**

13 7. On or about August 17, 2022, KCC established a website
 14 www.torliattmortgagefeesettlement.com dedicated to this matter to provide information to the
 15 Class Members and to answer frequently asked questions. The website URL was set forth in the
 16 Notice. Visitors of the website can download copies of the Notice, a version of the Notice in
 17 Spanish (attached as Exhibit C) and other case-related documents. As of the date of this
 18 Declaration, the website had 1,372 users, 1,859 hits and 3,891 pageviews.
 19

20 **TELEPHONE HOTLINE**

21 8. KCC established and continues to maintain a toll-free telephone number (1-844-
 22 494-0394) for potential Class Members to call and obtain information about the Settlement, or
 23 request a Notice Packet. The telephone hotline became operational on 8/17/2022, and is accessible
 24 24 hours a day, 7 days a week. As of the date of this Declaration, KCC has received a total of 969
 25 calls to the telephone hotline.
 26

27 **REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE**

28 9. The Notice informs Class Members that requests for exclusion from the Class must

1 be received or postmarked no later than November 2, 2022. As of the date of this declaration, KCC
2 has received 0 requests for exclusion.

3 **OBJECTIONS TO THE SETTLEMENT**

4 10. The Notice informs Class Member that objections must be received or postmarked
5 no later than November 2, 2022. As of the date of this declaration, KCC has received 0 objections
6 to the settlement.
7

8
9 **ADMINISTRATION COSTS**

10 11. As of the Date of this Declaration, KCC estimates its total cost of administration to
11 be \$240,683. This amount includes costs to date as well as through the completion of this matter.
12

13 12. KCC's estimated fees and charges are based on certain information provided to KCC
14 by the parties as well as significant assumptions. Accordingly, the estimate is not intended to limit
15 KCC's actual fees and charges, which may be less or more than estimated due to the scope of actual
16 services or changes to the underlying facts or assumptions.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19 Executed on October 18, 2022 at SAN RAFAEL, CALIFORNIA

20
21 
22 MARYJANE FAIT

EXHIBIT A

OCO

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

OCO «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

LoanNumber

>>

«Co-borrowers»

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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.torliattmortgagefeesettlement.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 two 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: Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100.

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 **November 2, 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 **November 2, 2022**. Part 16 below explains what you need to do to object to the Settlement. The Court will hold a hearing on **November 16, 2022** beginning at **2:00 p.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 www.torliattmortgagefeesettlement.com (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"), a copy of the Court's Order Granting Unopposed Motion for Preliminary Approval of Settlement; and Plaintiff's forthcoming Motion for Attorney's Fees, Costs, and service award and forthcoming motion for Final Approval of 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.torliattmortgagefeesettlement.com. 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 \$1,000.00 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.torliattmortgagefeesettlement.com 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 II.12 of the Settlement Agreement, 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 requests 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 1-844-494-0394 or Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100. 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 November 16, 2022 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 do so only 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 Agreement (available for review at www.torliattmortgagefeesettlement.com). 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 II.3 of the Settlement Agreement, which is available for review at www.torliattmortgagefeesettlement.com.

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 received or postmarked to the "Settlement Administrator," Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, no later than **November 2, 2022**, stating that you want to be excluded from the Settlement Class. Your letter must be addressed to Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, 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 page 1 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 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 \$10,000.00, 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 October 19, 2022, which will then be posted on www.torliattmortgagefeesettlement.com.

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 page 1 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, CA 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 or postmarked by the Court by, November 2, 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.

Plaintiff and Defendants must respond to objections, if any, on or before November 9, 2022.

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 November 16, 2022, beginning at 2:00 p.m., before the Honorable William H. Orrick at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 2, 17th Floor, 450 Golden Gate Ave., San Francisco, CA 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.torliattmortgagefeesettlement.com 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 November 2, 2022. 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.torliattmortgagefeesettlement.com, 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, CA 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

OCO

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

OCO «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 2»

«ADDRESS LINE 1»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

**THIS IS BEING SENT TO YOU AT YOUR REQUEST EVEN THOUGH YOU DO
NOT APPEAR TO BE INCLUDED IN THE CLASS ROSTER USED FOR MAILING
CLASS NOTICE.**

OCO

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

OCO «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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.torliattmortgagefeesettlement.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 two 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: Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100.

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 **November 2, 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 **November 2, 2022**. Part 16 below explains what you need to do to object to the Settlement. The Court will hold a hearing on **November 16, 2022** beginning at **2:00 p.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 www.torliattmortgagefeesettlement.com (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"), a copy of the Court's Order Granting Unopposed Motion for Preliminary Approval of Settlement; and Plaintiff's forthcoming Motion for Attorney's Fees, Costs, and service award and forthcoming motion for Final Approval of 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.torliattmortgagefeesettlement.com. 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 \$1,000.00 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.torliattmortgagefeesettlement.com 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 II.12 of the Settlement Agreement, 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 requests 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 1-844-494-0394 or Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100. 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 November 16, 2022 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 do so only 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 Agreement (available for review at www.torliattmortgagefeesettlement.com). 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 II.3 of the Settlement Agreement, which is available for review at www.torliattmortgagefeesettlement.com.

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 received or postmarked to the "Settlement Administrator," Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, no later than **November 2, 2022**, stating that you want to be excluded from the Settlement Class. Your letter must be addressed to Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, 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 page 1 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 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 \$10,000.00, 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 October 19, 2022, which will then be posted on www.torliattmortgagefeesettlement.com.

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 page 1 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, CA 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 or postmarked by the Court by, November 2, 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.

Plaintiff and Defendants must respond to objections, if any, on or before November 9, 2022.

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 November 16, 2022, beginning at 2:00 p.m., before the Honorable William H. Orrick at the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 2, 17th Floor, 450 Golden Gate Ave., San Francisco, CA 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.torliattmortgagefeesettlement.com 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 November 2, 2022. 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.torliattmortgagefeesettlement.com, 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, CA 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 C

TRIBUNAL DE DISTRITO DE ESTADOS UNIDOS POR EL DISTRITO NORTE DE CALIFORNIA

Un acuerdo de demanda colectiva puede afectar sus derechos si pagó una comisión a Ocwen a partir del 26 de julio de 2015 o a PHH a partir del 30 de julio de 2015 por pagar un préstamo hipotecario por teléfono, mediante un sistema telefónico interactivo de respuesta de voz o por Internet.

Un tribunal federal ha autorizado este Aviso. No es una oferta de representación por parte de un abogado.

PARA CONSULTAR ESTE AVISO EN ESPAÑOL, VISITE WWW.TORLIATTMORTGAGEFEESSETTLEMENT.COM

Se ha alcanzado un acuerdo de \$7,000,000.00 en una demanda colectiva alegando que Ocwen Loan Servicing, LLC ("Ocwen") y PHH Mortgage Corporation ("PHH", que junto con Ocwen son los "Demandados" o los "Demandados de PHH") infringieron la Ley de Prácticas Justas para el Cobro de Deudas de Rosenthal ("Ley Rosenthal") y la Ley de Competencia Desleal de California ("UCL") al cobrar comisiones a los prestatarios por pagar préstamos mediante métodos no especificados en sus documentos de préstamo, como por teléfono, mediante el sistema telefónico interactivo de respuesta de voz ("IVR") o por Internet ("Comisiones de Conveniencia"). Durante gran parte del período en cuestión de esta demanda, Ocwen y PHH emplearon el servicio "Speedpay™" para facilitar este tipo de pagos, por lo que las Comisiones de Conveniencia que cobraron Ocwen y PHH se denominaron a menudo comisiones "Speedpay". Ocwen y PHH niegan que hayan cometido alguna irregularidad y el Tribunal no ha decidido quién tiene razón. Ocwen, PHH y el Demandante, Lawrence Torliatt (en su conjunto se denominan las "Partes") acordaron celebrar este Acuerdo para evitar las incertidumbres, retrasos y gastos de los litigios futuros, y a su vez ofrecer ya beneficios definitivos a los miembros del colectivo. **El objetivo de este Aviso es informarle sobre la demanda colectiva y el Acuerdo propuesto para que pueda decidir qué hacer.**

RESUMEN RÁPIDO DEL ACUERDO

¿QUIÉN ESTÁ INCLUIDO? Los registros de Ocwen y PHH indican que usted puede ser un "Miembro del Colectivo del Acuerdo". El "Colectivo del Acuerdo" consta de todos los prestatarios de préstamos hipotecarios residenciales con una propiedad hipotecada ubicada en el estado de California y que, entre el 26 de julio de 2015 y el 24 de junio de 2022, pagaron una Comisión de Conveniencia a Ocwen o que, entre el 30 de julio de 2015 y el 24 de junio de 2022, pagaron una Comisión de Conveniencia a PHH para efectuar un pago mensual vencido y debido por teléfono, IVR o en línea. Un pago se considera "vencido y debido" si se efectuó en la fecha de vencimiento o posterior del pago. Quedan excluidos del Colectivo del Acuerdo todos los empleados de Ocwen o PHH y todos los miembros del Colectivo del Acuerdo de *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, n.º 2:15-cv-01831-MHH (N. D. Ala. 1 de agosto de 2019).

¿CUÁLES SON LAS CONDICIONES DEL ACUERDO?

El Colectivo del Acuerdo obtiene lo siguiente:

Compensación monetaria. Los Demandados han acordado crear un fondo del Acuerdo de \$7,000,000.00 (el "Fondo del Acuerdo"), que se distribuirá a los Miembros del Colectivo del Acuerdo (después de deducir primero los costos de administración y cualquier comisión, gasto o adjudicación de servicio que el Tribunal conceda al Demandante y a los abogados que representan al Colectivo del Acuerdo ("Abogados del Colectivo")). El Fondo del Acuerdo se calculará y distribuirá por préstamos. Cada préstamo por el que un Miembro del Colectivo del Acuerdo haya pagado una Comisión de Conveniencia a Ocwen o PHH durante los períodos pertinentes recibirá una Asignación Individual del Fondo del Acuerdo. Por cada "Préstamo del Colectivo" tendrá derecho a recibir una Asignación Individual, que se calculará en función de la proporción de Comisiones de Conveniencia pagadas y retenidas por los Demandados de PHH en ese Préstamo del Colectivo en los pagos vencidos y adeudados durante los períodos pertinentes, en comparación con el importe total agregado de todas las Comisiones de Conveniencia pagadas y retenidas por los Demandados de PHH durante esos períodos. Como resultado, los pagos efectuados en Préstamos del Colectivo con varios prestatarios se tratarán como un pago conjunto a los efectos de este cálculo, de modo que cada Préstamo del Colectivo tendrá derecho a una sola Asignación Individual del saldo restante del Fondo del Acuerdo. Los codeudores, prestatarios conjuntos y múltiples deudores en un solo Préstamo del Colectivo no tienen derecho a una Asignación Individual independiente en el mismo Préstamo del Colectivo.

Otra compensación. Los Demandados de PHH también han acordado dejar de cobrar Comisiones de Conveniencia a los residentes de California cuyo préstamo esté sujeto a la Ley Rosenthal (*es decir*, los residentes de California que efectúen un pago "vencido y debido", que se trata de un pago efectuado a partir de la fecha de vencimiento del pago) durante un período de dos años a partir de la fecha definitiva del Acuerdo.

El Colectivo del Acuerdo renuncia a lo siguiente:

A cambio de la compensación que los Demandados proporcionan, se considera que los Miembros del Colectivo del Acuerdo han acordado lo siguiente:

- **La exoneración de cualquier reclamación que puedan tener contra Ocwen (que se relacione de alguna manera con el pago de Comisiones de Conveniencia durante el período del 26 de julio de 2015 al 24 de junio de 2022) y contra PHH (que se relacione de alguna manera con el pago de Comisiones de Conveniencia durante el período del 30 de julio de 2015 al 24 de junio de 2022).** Consulte la Sección 10 de este Aviso para saber a qué renuncia el Colectivo del Acuerdo en este Acuerdo.

¿CÓMO PUEDO OBTENER EL PAGO?

No tiene que adoptar ninguna medida para compartir la compensación que se ofrece en el Acuerdo. Si se ha mudado desde que efectuó un pago y pagó una Comisión de Conveniencia a Ocwen o PHH, puede informar al Administrador del Acuerdo de su nueva dirección postal escribiendo a: Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100.

¿CUÁLES SON MIS OTRAS OPCIONES?

Puede excluirse a sí mismo: si no desea estar sujeto al Acuerdo, debe excluirse no más tarde del **2 de noviembre de 2022**. La Sección 11 que aparece a continuación explica lo que debe hacer para excluirse. Si no se excluye a sí mismo y el Tribunal concede la aprobación final del Acuerdo, seguirá siendo miembro del Colectivo del Acuerdo, recibirá su Asignación Individual y estará sujeto al Acuerdo, junto a la exoneración de las reclamaciones contra Ocwen y PHH.

Puede objetar: como alternativa, puede objetar al Acuerdo no más tarde del **2 de noviembre de 2022**. La Sección 16 que se muestra a continuación explica lo que debe hacer para objetar al Acuerdo. El Tribunal celebrará una audiencia el **16 de noviembre de 2022** a partir de las **2:00 p. m.** para considerar si se aprueba finalmente el Acuerdo, así como cualquier solicitud de honorarios de abogados y costos de litigio por parte de los Abogados del Colectivo y de adjudicación de servicios para el Demandante Larry Torliatt (en la "Audiencia de Equidad"). Si objeta, la Sección 20 explica cómo puede pedirle al Tribunal que comparezca ante la Audiencia de Equidad. Las personas que se excluyan del Colectivo del Acuerdo no estarán sujetas a este, pero no podrán presentar una objeción ni hablar en la Audiencia de Equidad.

El resto de este Aviso le aporta un resumen más detallado del Acuerdo y también describe con mayor detenimiento sus derechos y opciones legales. Para obtener aún más información, visite www.torliattmortgagefeesettlement.com (el "Sitio web del Acuerdo"), en el que puede descargar una copia completa de la "Estipulación del Acuerdo y Exoneración" (que, junto con todos los anexos adjuntos, constituyen el "Acuerdo"), una copia de la Orden del Tribunal que concede la moción sin oposición para la aprobación preliminar del Acuerdo; la próxima moción del Demandante para los honorarios de abogados, costos y adjudicación de servicios y la próxima moción para la aprobación final del Acuerdo. *Lea todo este Aviso detenidamente y en su totalidad, ya que sus derechos legales pueden verse afectados tanto si actúa como si no.*

INFORMACIÓN BÁSICA

1. ¿Por qué he recibido este Aviso?

Si este Aviso se dirigió a usted, entonces conforme a los registros de los Demandados usted pagó una Comisión por hacer uno o más pagos de préstamos hipotecarios a Ocwen a partir del 26 de julio de 2015 o a PHH a partir del 30 de julio de 2015 por teléfono, IVR o a través de Internet. Ocwen y PHH no estaban obligados por sus documentos de préstamo a ofrecer estos métodos de pago opcionales, pero los ofrecieron a cambio de una Comisión de Conveniencia.

Usted ha recibido este Aviso porque tiene derecho a obtener información sobre el Acuerdo propuesto de *Torliatt v. Ocwen Loan Servicing, LLC*, caso n.º 3:19-cv-04303-WHO, que está pendiente en el Tribunal de Distrito de los Estados Unidos por el Distrito Norte de California (la "Demanda"). Este Aviso describe la demanda, el Acuerdo, sus derechos legales, qué compensación se le ofrece, cómo se distribuirá esta compensación y otra información importante. Este Aviso solo resume el Acuerdo, cuyas condiciones completas están disponibles para su análisis en www.torliattmortgagefeesettlement.com. Si hay algún conflicto entre este Aviso y el Acuerdo, el Acuerdo es el documento determinante. Debe revisar el Acuerdo antes de decidir qué hacer. Comparta este Aviso con cualquier coprestatario de sus préstamos.

2. ¿De qué trata esta Demanda?

El Demandante alega que Ocwen y PHH infringieron la Ley Rosenthal y UCL al cobrar Comisiones de Conveniencia a los prestatarios por efectuar pagos de préstamos por teléfono, IVR o a través de Internet. Aunque Ocwen y PHH no estaban obligados a ofrecer estos métodos de pago, y aunque el uso de estos métodos de pago adicionales siempre fue meramente opcional, el Demandante sostiene que dichas comisiones aún eran ilegales porque no estaban expresamente autorizadas por los documentos de préstamo subyacentes de los Miembros del Colectivo del Acuerdo. Los Demandados niegan haber hecho algo mal porque a todos los clientes a los que se les cobró una Comisión de Conveniencia (a) se les informó de antemano que los métodos de pago por los que se cobraron dichas comisiones eran completamente opcionales y que la decisión del prestatario de usarlas daría lugar a un importe de cargo revelado, y (b) se les exigió que dieran su consentimiento expreso de la Comisión de Conveniencia antes de que se cobrara. Los Demandados sostienen que bajo el lenguaje sencillo de la Ley Rosenthal, otra ley pertinente y la guía regulatoria emitida por la Comisión Federal de Comercio, las comisiones aparte por un servicio independiente, opcional, completamente evitable y acordado no infringen la Ley Rosenthal y ni UCL. Los Demandados también sostienen que las Comisiones de Conveniencia están permitidas por las leyes estatales y federales.

El artículo 1788.30 de la Ley Rosenthal establece que los demandantes prevaecientes pueden recuperar cualquier daño real sufrido debido a la infracción de la Ley Rosenthal por parte del Demandado, si corresponde, junto con daños legales que no superen los \$1,000.00 por prestatario.

Este Acuerdo constituye un compromiso de estas y otras reclamaciones descritas en el Acuerdo, tal y como se explica en la Sección 10 a continuación. Por otro lado, la Sección 22 de este Aviso explica cómo puede obtener más información sobre las reclamaciones de esta Demanda y la respuesta de los Demandados a dichas reclamaciones. También puede visitar www.torliattmortgagefeesettlement.com para revisar la queja operativa del Demandante, el Acuerdo propuesto por las Partes y otros documentos relacionados con esta Demanda.

3. ¿Por qué esta Demanda es una demanda colectiva?

En una demanda colectiva, una o más personas denominadas Representantes del Colectivo (en este caso, el Demandante Lawrence Torliatt) demandan en nombre del resto de personas con reclamaciones similares. En su conjunto, todas estas personas son un colectivo, y las personas que forman parte de este colectivo se denominan Miembros del Colectivo. En una demanda colectiva, un tribunal resuelve las reclamaciones de todos los miembros del colectivo, salvo aquellos que soliciten por escrito ser excluidos del colectivo. El Honorable William H. Orrick del Tribunal de Distrito de los Estados Unidos por el Distrito Norte de California está a cargo de todos los aspectos de este caso, y ya ha concedido la aprobación preliminar del Acuerdo. No obstante, como el Acuerdo determinará los derechos del Colectivo del Acuerdo, las Partes deben esforzarse lo máximo posible para enviar a todos los Miembros del Colectivo del Acuerdo un aviso antes de que el Tribunal pueda considerar la concesión de la aprobación final del Acuerdo y su entrada en vigor.

El Tribunal ha certificado de manera condicional al Colectivo del Acuerdo solo a efectos del Acuerdo. Si el Acuerdo no recibe la aprobación final, no se convierte en definitivo o las Partes le ponen fin por alguna de las razones establecidas en la Sección II.12 del Acuerdo de Resolución, este Acuerdo será nulo, el Colectivo del Acuerdo ya no seguirá certificado, y se procederá a la Demanda como si no hubiera habido Acuerdo ni certificación del Colectivo.

4. ¿Por qué hay un Acuerdo?

El Tribunal no ha decidido si el Demandante o los Demandados ganarán este caso. En su lugar, ambas partes acordaron el Acuerdo antes de que se dictara sentencia del caso. De ese modo, las Partes evitan las incertidumbres y los gastos de los litigios futuros, y los retrasos de un juicio y las posibles apelaciones, a la vez que proporcionan ya a los Miembros del Colectivo del Acuerdo beneficios definitivos, en lugar de beneficios inciertos posiblemente disponibles después de años de litigio plenamente impugnados (si los hubiera). El Demandante y los Abogados del Colectivo creen que el Acuerdo es la mejor opción del Colectivo del Acuerdo porque ofrece una compensación ahora, a la vez que permite que cualquier persona que desee presentar sus propias reclamaciones individuales contra los Demandados se excluya del Colectivo del Acuerdo.

QUIÉN ESTÁ EN EL ACUERDO

5. ¿Cómo sé si formo parte del Acuerdo?

El Tribunal decidió que todas las personas que concuerdan con la siguiente descripción son miembros del Colectivo del Acuerdo:

todos los prestatarios de préstamos hipotecarios residenciales con propiedades hipotecadas ubicadas en el estado de California que, entre el 26 de julio de 2015 y el 24 de junio de 2022 (el último día del Período del Colectivo), pagaron una Comisión de Conveniencia a Ocwen o que, entre el 30 de julio de 2015 y el 24 de junio de 2022, pagaron una Comisión de Conveniencia a PHH para efectuar un pago mensual vencido y debido por teléfono, IVR o en línea. Quedan excluidos del Colectivo (a) todos los empleados de los Demandados de PHH, (b) todos los Miembros del Colectivo del Acuerdo de *McWhorter, et al. v. Ocwen Loan Servicing, LLC, et al.*, n.º 2:15-cv-01831-MHH, ECF n.º 71 en 7 (N. D. Ala. 1 de agosto de 2019), y (c) los jueces federales de distrito y magistrados asignados a las Demandas, junto con las personas con relación de parentesco de hasta tercer grado.

Como se indica en la Sección 1, si este Aviso estaba dirigido a usted, esto quiere decir entonces que, según los registros de los Demandados, usted es miembro del Colectivo del Acuerdo a menos que se excluya a tiempo y adecuadamente de dicho Colectivo como se describe en la Sección 11 de este Aviso.

LO QUE PUEDE OBTENER CONFORME AL ACUERDO

6. ¿Qué compensación aporta el Acuerdo?

Los Demandados han acordado crear el Fondo del Acuerdo de \$7,000,000.00 que, si el Acuerdo obtiene la aprobación final, se utilizará primero para pagar los Costos de Administración del Fondo del Acuerdo y después los honorarios y gastos que conceda el Tribunal a los Abogados del Colectivo y la adjudicación de servicios al Demandante. Después de pagar dichos honorarios, gastos y adjudicación de servicios, el saldo restante del Fondo del Acuerdo se dividirá y distribuirá entre el Demandante y el resto de los Miembros del Colectivo del Acuerdo. Las distribuciones del Fondo del Acuerdo a los Miembros del Colectivo del Acuerdo se denominan "Asignaciones Individuales".

Las Asignaciones Individuales se calcularán préstamo por préstamo, no prestatario por prestatario. Cada préstamo por el cual un Miembro del Colectivo del Acuerdo haya pagado una Comisión de Conveniencia a Ocwen o PHH durante el período pertinente (cada "Préstamo del Colectivo") recibirá una Asignación Individual del Fondo del Acuerdo, que se calculará de la manera siguiente. Las Asignaciones Individuales se dividirán y distribuirán entre el Demandante y aquellos miembros del Colectivo del Acuerdo que no hayan presentado solicitudes de exclusión válidas y a tiempo. Cada Préstamo del Colectivo que permanezca dentro del Colectivo del Acuerdo después del plazo límite para presentar solicitudes de exclusión tendrá derecho a recibir una Asignación Individual, que se calculará según la proporción de las Comisiones de Conveniencia pagadas y retenidas por los Demandados de PHH en ese Préstamo del Colectivo en pagos vencidos y debidos durante los períodos pertinentes, en comparación con el importe total agregado de todas las Comisiones de Conveniencia pagadas y retenidas por los Demandados de PHH con respecto a todos los Préstamos del Colectivo en pagos vencidos y debidos durante esos períodos. El objetivo de este método de asignación es garantizar que el Fondo del Acuerdo se asigne de manera equitativa en función de la cantidad relativa de Comisiones de Conveniencia cobradas y pagadas en relación con cada Préstamo del Colectivo. Como resultado, los pagos efectuados en Préstamos del Colectivo con varios prestatarios se tratarán como un pago conjunto

a efectos de este cálculo, de modo que cada Préstamo del Colectivo tendrá derecho a una sola Asignación Individual del saldo restante del Fondo del Acuerdo. Los codeudores, prestatarios conjuntos y múltiples deudores de un solo Préstamo del Colectivo no tienen derecho a una Asignación Individual independiente del mismo Préstamo del Colectivo.

El importe real que cada Miembro del Colectivo del Acuerdo recibirá como Asignación Individual dependerá en última instancia de distintos factores, como, por ejemplo, si y en qué cantidades el Tribunal aprobará los honorarios y gastos de abogados a los Abogados del Colectivo y la adjudicación de servicios al Demandante.

7. ¿Cómo puedo obtener una compensación?

Recibirá automáticamente una Asignación Individual y no tendrá que adoptar más medidas mientras no se excluya del Colectivo del Acuerdo. No obstante, si se mudó a partir del 26 de julio de 2015, puede que desee notificar al Administrador del Acuerdo su dirección postal actual poniéndose en contacto con él llamando al 1-844-494-0394 o escribiendo a: Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100. Con ello se asegurará de que su Asignación Individual se envíe por correo a la dirección correcta.

8. ¿Cuándo obtendrá la compensación y cómo se distribuirá?

Como se describe en la Sección 18, el Tribunal celebrará una Audiencia de Equidad el 16 de noviembre de 2022 para decidir si concede o no la aprobación final del Acuerdo. El Tribunal debe aprobar definitivamente el Acuerdo antes de que se distribuya cualquier compensación, y lo hará solo después de determinar que el Acuerdo es justo, razonable y adecuado. Además, cualquier orden de aprobación final que el Tribunal pueda dictar puede ser objeto de apelación. Si se presentan dichas apelaciones, resolverlas lleva un tiempo (a veces más de un año). Por último, puede que este Acuerdo se rescinda por otras razones, como las establecidas en la Sección 12 del Acuerdo de Resolución (disponible para su consulta en www.torliattmortgagefeesettlement.com). Le rogamos que tenga paciencia.

Tal y como se define en el Acuerdo, la "Fecha Final del Acuerdo" es diez días después de que la orden que definitivamente apruebe el Acuerdo se convierta en una sentencia en firme o que las apelaciones se hayan resuelto a favor del Acuerdo. Se prevé que las Asignaciones Individuales se distribuyan en el plazo de los 60 días posteriores a la Fecha Final del Acuerdo. El sitio web del Acuerdo se actualizará periódicamente para reflejar el progreso del Acuerdo.

Las Asignaciones Individuales se distribuirán mediante cheques, y cada cheque se pagará conjuntamente a todos los prestatarios de cada Préstamo del Colectivo, con una suma equivalente a la Asignación Individual correspondiente de dicho Préstamo del Colectivo, pagadera en fondos de EE. UU., y se enviará por correo a la dirección postal registrada para dicho Préstamo del Colectivo según lo que determinan los registros de los Demandados de PHH.

NOTA: Todos los cheques caducarán y se anularán a los 180 días después de su emisión y se considerarán fondos no reclamados. Se considerará que los fondos no reclamados constituyen una renuncia por su parte y por parte de cualquier coprestatario de su Préstamo del Colectivo del derecho a recibir una compensación de Asignación Individual. La compensación de Asignación Individual que permanezca sin reclamar o no se pueda entregar 300 días después de la Fecha Final del Acuerdo, a pesar de los esfuerzos razonables para localizarle, se donará y pagará a Homes for Our Troops, "una organización sin ánimo de lucro 501(c)(3) con financiación privada que construye y dona hogares personalizados adaptados de manera especial por todo el país para veteranos gravemente heridos después del 11 de septiembre, para permitirles reconstruir sus vidas".

9. ¿Tendré alguna consecuencia fiscal por el Acuerdo?

Ni el Tribunal ni las Partes (su abogado incluido) pueden aconsejarle acerca de las consecuencias fiscales que, si las hubiera, usted pudiera tener por el Acuerdo. Le recomendamos que consulte con su propio asesor fiscal para determinar si podrían surgir posibles consecuencias fiscales por recibir una Asignación Individual.

10. ¿Renuncio a algo al permanecer en el Colectivo del Acuerdo?

Permanecerá en el Colectivo del Acuerdo a menos que se excluya, y eso quiere decir que si el Acuerdo recibe la aprobación final y se alcanza la Fecha Final del Acuerdo, entonces:

Se considerará que usted ha exonerado por completo, definitivamente y para siempre (en su nombre y en el de todos sus herederos, cesionarios o sucesores presentes, antiguos y futuros) a todos y cada uno de los Demandados de PHH y a las Partes Exoneradas, y se le prohibirá de manera permanente que presente contra todas y cada una de las Partes Exoneradas, todas y cada una de las reclamaciones, causas de acción, demandas, obligaciones, deudas, demandas, acuerdos, promesas, responsabilidades, daños, pérdidas, controversias, costos, gastos y honorarios de abogados de cualquier naturaleza, ya sea conforme a alguna ley federal, ley estatal, ley común, ley territorial, ley extranjera, contrato, norma, regulación, promulgación normativa (entre las que se incluyen cualquier opinión o resolución declarativa), derecho consuetudinario o equidad, ya sea conocidas o desconocidas, sospechosas o no, afirmadas o no, previstas o no, reales o contingentes, liquidadas o no, punitivas o compensatorias, que surjan de las Comisiones de Conveniencia cobradas por Ocwen a los Miembros del Colectivo del Acuerdo durante el período entre el 26 de julio de 2015 hasta la fecha en que el Acuerdo se somete a aprobación preliminar, y por PHH a los Miembros del Colectivo del Acuerdo durante el período entre el 30 de julio de 2015 hasta la fecha en la que el Acuerdo se somete a aprobación preliminar, para efectuar pagos de préstamos por teléfono, IVR, Internet y otros métodos de pago.

Esta exoneración abarcará las reclamaciones que los Miembros del Colectivo del Acuerdo no sepan ni sospechen que existan a su favor

en el momento en el que se pueda conceder la aprobación final del Acuerdo, si esas reclamaciones surgen, se basan o se relacionan con las Reclamaciones Exoneradas. Si el Acuerdo recibe la aprobación final y se alcanza la Fecha Final del Acuerdo, se considerará que todos los Miembros del Colectivo del Acuerdo han renunciado y exonerado de manera consciente y voluntaria las protecciones de cualquier ley que limite dicha exoneración, entre las que se incluye el artículo 1542 del Código Civil de California, que establece lo siguiente:

UNA EXONERACIÓN GENERAL NO SE EXTIENDE A LAS RECLAMACIONES QUE EL ACREEDOR NO CONOCE NI SOSPECHA QUE EXISTAN A SU FAVOR EN EL MOMENTO DE LLEVAR A CABO LA EXONERACIÓN, YA QUE DE HABERLAS CONOCIDO HUBIERAN AFECTADO MATERIALMENTE SU ACUERDO CON EL DEUDOR.

La frase "Reclamaciones Exoneradas" significa y se refiere a:

Todas y cada una de las reclamaciones, causas de acción, demandas, obligaciones, deudas, exigencias, acuerdos, promesas, responsabilidades, daños (ya sean punitivos, estatutarios o compensatorios y liquidados o no), pérdidas, controversias, costos, gastos y honorarios de abogados de cualquier naturaleza, ya sean de conformidad con alguna ley federal o estatal, ley común, ley territorial, ley extranjera, contrato, norma, regulación, cualquier promulgación normativa (entre las que se incluyen cualquier boletín normativo, directrices, manual, opinión o resolución declarativa), derecho consuetudinario o equidad, como conocidas o no, sospechadas o no, afirmadas o no, previstas o no, reales o contingentes, que se relacionen o surjan de las Comisiones de Conveniencia cobradas por Ocwen a los Miembros del Colectivo del Acuerdo durante el período comprendido entre el 26 de julio de 2015 y el 24 de junio de 2022, y por PHH a los Miembros del Colectivo del Acuerdo durante el período comprendido entre el 30 de julio de 2015 y el 24 de junio de 2022.

La frase "Personas Exoneradas" significa y se refiere a:

(a) PHH, Ocwen y a todos y cada uno de sus predecesores, sucesores, cesionarios, empresas matrices, subsidiarias, divisiones, empresas y entidades relacionadas y afiliadas, asociados, proveedores, proveedores de servicios, licenciarios y licenciarios de software, clientes y consumidores, jefes, accionistas, directores, funcionarios, socios, miembros, empleados, abogados, consultores, contratistas independientes, representantes y agentes, y prestadores de servicios cesionarios actuales o antiguos, y todas las personas o entidades que actúen por, mediante, bajo o junto con cualquiera de ellos; y (b) cualquier fiduciario de un fideicomiso de titulización hipotecaria que contenga préstamos en los que los Miembros del Colectivo del Acuerdo sean prestatarios, entre los que se incluyen cualquier subsidiaria directa o indirecta de cualquiera de ellos, y todos los funcionarios, directores, empleados, agentes, corredores, distribuidores, representantes y abogados de dichas entidades.

Los términos completos de la exoneración del Acuerdo se establecen en la Sección II.3 del Acuerdo de Resolución, que está disponible para su consulta en www.torliattmortgagefeesettlement.com.

EXCLUIRSE DEL ACUERDO

11. ¿Cómo me excluyo del Colectivo del Acuerdo?

Si no desea formar parte del Acuerdo, o si desea conservar el derecho a demandar o seguir demandando a Ocwen o PHH por su cuenta en relación con las Reclamaciones Exoneradas, entonces debe adoptar medidas para excluirse del Colectivo del Acuerdo. A esto se le denomina "excluirse a sí mismo" u "optar por no participar". Si se excluye del Colectivo del Acuerdo, no estará sujeto al Acuerdo y no recibirá ninguna compensación que en él se ofrezca, pero será libre de presentar y entablar su propia demanda individual en relación con las Reclamaciones Exoneradas si así lo desea. No obstante, el Tribunal ha dictaminado que ni el Acuerdo, ni este Aviso, ni la orden de aprobación preliminar del Tribunal pueden usarse como prueba en tales demandas individuales. Debe tener en cuenta que si se excluye y tiene la intención de presentar su propia demanda contra los Demandados, la ley de prescripción aplicable a su reclamación puede impedirle demandar de manera independiente a los Demandados a menos que actúe a tiempo.

Para excluirse, debe enviar por correo una carta recibida o que tenga matasellos a la dirección del "Administrador del Acuerdo", Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, no más tarde del **2 de noviembre de 2022**, indicando que desea excluirse del Colectivo del Acuerdo. Su carta debe estar dirigida a la dirección del Administrador del Acuerdo Torliatt Mortgage Fee Settlement Administrator, P.O. Box 5100, Larkspur, CA 94977-5100, y debe: (a) tener un título que le identifique, como "Solicitud de Exclusión en *Torliatt v. Ocwen* (caso número 3:19-cv-04303-WHO)"; (b) incluir su nombre, direcciones de correo y correo electrónico, y número de teléfono de contacto; (c) especificar que desea excluirse del Colectivo del Acuerdo e identificar el número (o números) del Préstamo del Colectivo para el que solicita la exclusión del Acuerdo; y (d) firmarlo usted *personalmente* y cualquier otro codeudor, deudor conjunto u otro prestatario del Préstamo del Colectivo. La solicitud de exclusión para el Préstamo del Colectivo no tendrá efecto a menos que esté firmada por cada uno de dichos codeudores, deudores conjuntos u otros prestatarios. A efectos prácticos, su número o números del Préstamo del Colectivo aparecen en la página 1 de este Aviso.

NOTA: Si su solicitud de exclusión llega después del plazo o está incompleta, no será válida y seguirá formando parte del Colectivo del Acuerdo, seguirá sujeto al Acuerdo y al resto de órdenes y sentencias de la Demanda, y no podrá participar en ninguna otra demanda contra los Demandados y las Personas Exoneradas con base en las Reclamaciones Exoneradas.

12. Si no me excluyo, ¿puedo demandar a Ocwen o PHH por el mismo motivo?

No. Si no se excluye del Colectivo del Acuerdo, se recibe la aprobación final del Acuerdo y se alcanza la Fecha Final del Acuerdo,

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renunciará al derecho de demandar a los Demandados y a las Personas Exoneradas por las Reclamaciones Exoneradas.

13. Si me excluyo, ¿puedo obtener algo de este Acuerdo?

No. Si se excluye, no reunirá los requisitos para recibir alguno de los beneficios individuales que ofrece el Acuerdo.

LOS ABOGADOS QUE LE REPRESENTAN

14. ¿Tengo un abogado en este caso?

Sí. El Tribunal ha designado a Joseph Henry Bates, III, Edwin Lee Lowther y Randall K. Pulliam, del bufete de abogados Carney Bates & Pulliam, PLLC, y a James Lawrence Kauffman, del bufete de abogados Bailey & Glasser LLP, para que lo representen a usted y al resto de Miembros del Colectivo del Acuerdo en esta Demanda y para los fines de este Acuerdo, y con ningún otro fin. Estos abogados se denominan "Abogados del Colectivo", y se les puede contactar escribiéndoles a Bailey & Glasser LLP, 1055 Thomas Jefferson Street NW, Suite 540, Washington, DC 20007. No se le cobrará por separado por los servicios de los Abogados del Colectivo por cuestiones relacionadas con esta Demanda.

Tiene derecho a contratar a su propio abogado independiente para que le represente en este caso, pero no se le obliga a ello. Si contrata a su propio abogado, solo usted será responsable de sus honorarios y gastos. También tiene derecho a representarse ante el Tribunal sin un abogado, pero si desea comparecer ante la Audiencia de Equidad, debe cumplir con los procedimientos establecidos en la Sección 20 de este Aviso.

15. ¿Cómo se pagará a los Abogados del Colectivo?

Los Abogados del Colectivo han tramitado este caso sobre la base de honorarios contingentes y, hasta ahora, no se les ha pagado nada por sus servicios. Si se aprueba el Acuerdo, los Abogados del Colectivo pedirán al Tribunal una adjudicación de honorarios y gastos de los abogados, que se pagarán del Fondo del Acuerdo en una cantidad que no supere el 33 % del Fondo del Acuerdo. Los Abogados del Colectivo también pedirán al Tribunal una adjudicación de servicios para el Demandante por sus servicios como representante del Colectivo y sus esfuerzos para presentar la Demanda por una cantidad que no supere los \$10,000.00, que también se pagará del Fondo del Acuerdo. Los Abogados del Colectivo presentarán al Tribunal su solicitud de adjudicaciones de honorarios y gastos de abogados y de servicios antes del 19 de octubre de 2022, que luego se publicará en www.torliattmortgagefeesettlement.com.

Los Demandados se reservan el derecho de oponerse a cualquier solicitud de adjudicaciones de honorarios y gastos de abogados y de servicios que consideren que no sean razonables por su naturaleza o importe, o impugnables por otra razón. El Acuerdo no está condicionado a que el Tribunal apruebe alguna cantidad específica de adjudicaciones de honorarios y gastos de abogados o de servicios. El Tribunal decidirá en última instancia si deben concederse a los Abogados del Colectivo los honorarios y gastos de los abogados o al Demandante cualquier adjudicación de servicios, y qué cantidades.

OBJETAR AL ACUERDO

16. ¿Cómo le comunico al Tribunal que no me agrada el Acuerdo?

Si no se excluye del Colectivo del Acuerdo, puede objetar al Acuerdo si no está de acuerdo con alguna parte del mismo. Puede aportar las razones por las que cree que el Tribunal debe rechazar la aprobación del Acuerdo presentando una objeción. No obstante, no puede pedirle al Tribunal que ordene un tipo de acuerdo más amplio o distinto, ya que el Tribunal solo puede aprobar o rechazar el Acuerdo presentado por las Partes. Si el Tribunal rechaza la aprobación, los Miembros del Colectivo del Acuerdo no recibirán compensación alguna del Acuerdo y la demanda continuará. Si presenta una objeción por escrito, el Tribunal tendrá en cuenta su opinión.

Para objetar, debe presentar una declaración de objeción por escrito ante el Tribunal. Su objeción por escrito debe: (a) incluir una leyenda o título que lo identifique, como "Objeción al Acuerdo del Colectivo en *Torliatt v. Ocwen* (caso número 3:19-cv-04303-WHO)"; (b) incluir su nombre, direcciones de correo y correo electrónico, número de teléfono de contacto y su número (o números) de Préstamo del Colectivo; (c) indicar la razón (o razones) específica, si corresponde, para cada una de sus objeciones, junto con todo el respaldo jurídico que desee poner en conocimiento del Tribunal y todas las pruebas fácticas que desee presentar en apoyo de su objeción, e indicar si la objeción se aplica solo al objetor, a un subconjunto específico del Colectivo o a todo el Colectivo; (d) divulgar el nombre y datos de contacto de todos y cada uno de los abogados que le representan, asesoran o de alguna manera le ayudan en relación con la preparación o presentación de su objeción; y (e) firmarlo usted *personalmente*. A efectos prácticos, su número o números del Préstamo del Colectivo aparecen en la página 1 de este Aviso.

Puede presentar su declaración de objeción por escrito en persona o puede enviarla por correo al Secretario del Tribunal a la dirección: 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, CA 94102. No obstante, si le representa su propio abogado, su abogado debe presentar su objeción mediante el sistema de gestión de casos/presentación electrónica de casos (CM/ECF) del Tribunal. Para que todas las declaraciones de objeción se consideren válidas y enviadas a tiempo, estas deben presentarse ante el Tribunal antes del 2 de noviembre de 2022, o enviarse por correo con suficiente antelación para que el Tribunal las reciba o llevar un matasellos del 2 de noviembre de 2022 a más tardar. Cualquier Miembro del Colectivo del Acuerdo que no cumpla con el plazo límite y los requisitos anteriores se considerará que ha renunciado a todas las objeciones y se le prohibirá para siempre impugnar el Acuerdo.

El Demandante y los Demandados deben responder a las objeciones, si las hubiere, no más tarde del 9 de noviembre de 2022.

17. ¿Cuál es la diferencia entre objetar y excluirse?

¿Tiene alguna pregunta? Llame al 1-844-494-0394 o visite www.torliattmortgagefeesettlement.com

Objetar simplemente significa decirle al Tribunal que no está de acuerdo con algo relacionado con el Acuerdo, pero que mantiene su disposición a estar sujeto al Acuerdo si finalmente se aprueba a pesar de su objeción. Usted puede objetar al Acuerdo solamente si no se excluye. Excluirse es decirle al Tribunal que no desea formar parte del Colectivo del Acuerdo de ningún modo. Si se excluye, no estará sujeto al Acuerdo y, por lo tanto, no puede objetarlo ni comparecer ante la Audiencia de Equidad porque el caso ya no le afectará.

LA AUDIENCIA DE EQUITAD DEL TRIBUNAL

18. ¿Cuándo y dónde decidirá el Tribunal si aprueba el Acuerdo?

Se ha programado una Audiencia de Equidad para el 16 de noviembre de 2022 a las 2:00 p. m., ante el Honorable William H. Orrick en el Tribunal de Distrito de los Estados Unidos por el Distrito Norte de California, en la siguiente dirección: San Francisco Courthouse, Courtroom 2, 17th Floor, 450 Golden Gate Ave., San Francisco, CA 94102. En la audiencia, el Tribunal considerará lo siguiente: (1) conceder la certificación final al Colectivo del Acuerdo a efectos del Acuerdo; (2) aprobar el Acuerdo como justo, razonable y adecuado; y (3) conceder los honorarios y gastos de abogados a los Abogados del Colectivo y la adjudicación de servicios al Demandante. El Tribunal también tendrá en cuenta todas y cada una de las objeciones al Acuerdo y cualquier otro asunto relacionado con este. Después de la audiencia, el Tribunal decidirá si aprueba el Acuerdo. No es posible predecir cuánto tiempo tardará el Tribunal en decidir.

NOTA: El Tribunal se ha reservado el derecho de cambiar la fecha u hora de la Audiencia de Equidad, o de continuarla, sin previo aviso. Si tiene la intención de asistir a la Audiencia de Equidad, debe confirmar la fecha y hora poco antes de viajar para asistir a la audiencia visitando el sitio www.torliattmortgagefeesettlement.com o el sistema de acceso público a los registros electrónicos del Tribunal (PACER) en <https://pacer.uscourts.gov/>.

19. ¿Tengo que asistir a la Audiencia de Equidad?

No. Los Abogados del Colectivo representarán al Colectivo del Acuerdo en la Audiencia de Equidad. No obstante, usted puede asistir a su propio coste. Incluso si envía una objeción, no se le obliga a acudir a la Audiencia de Equidad para hablar de ello. El Tribunal tendrá en cuenta su objeción siempre y cuando la haya presentado a tiempo y cumpla con los otros requisitos descritos en la Sección 16. También puede contratar y pagar a su propio abogado para que asista a la Audiencia de Equidad a su propio costo, pero no se le obliga a ello.

20. ¿Puedo hablar en la Audiencia de Equidad?

Puede solicitar permiso al Tribunal para hablar en la Audiencia de Equidad, pero solo *si* presenta una objeción a tiempo y cumple plenamente las instrucciones establecidas en la Sección 16, y *si* también declara en esa objeción que le gustaría hablar en la Audiencia de Equidad. No obstante, cualquier abogado independiente que contrate puede comparecer si presenta mediante el sistema de gestión de casos/presentación electrónica de casos (CM/ECF) del Tribunal un "Aviso de intención de comparecer en *Torliatt v. Ocwen* (número de caso 3:19-cv-04303-WHO)". Ese aviso debe presentarse ante el Tribunal no más tarde del 2 de noviembre de 2022. No puede hablar en la Audiencia de Equidad si se ha excluido del Colectivo del Acuerdo.

SI NO HACE NADA

21. ¿Qué ocurre si no hago nada?

Si no hace nada y el Acuerdo se aprueba y se alcanza la Fecha Final de este, usted será un Miembro del Colectivo del Acuerdo y tendrá derecho a recibir una Asignación Individual. También estará sujeto a la exoneración del Acuerdo y a otras condiciones y, por lo tanto, no podrá presentar su propia demanda, seguir con su propia demanda o formar parte de cualquier otra demanda contra Ocwen, PHH y las Personas Exoneradas en relación con cualquiera de las Reclamaciones Exoneradas.

DÓNDE OBTENER MÁS INFORMACIÓN

22. ¿Dónde puedo obtener más información?

Este Aviso resume el Acuerdo. Para conocer los términos y condiciones precisos del Acuerdo, consulte la Estipulación completa del Acuerdo y la Exoneración que están disponibles en www.torliattmortgagefeesettlement.com, acceda al expediente del Tribunal de este caso a través del sistema de acceso público a los registros electrónicos del Tribunal (PACER) en <https://pacer.uscourts.gov/>, o visite la oficina del Secretario del Tribunal para el Tribunal de Distrito de los Estados Unidos del Distrito Norte de California, en la dirección Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, entre las 8:30 a. m. y las 4:30 p. m. de lunes a viernes, salvo los días festivos del Tribunal.

POR FAVOR, NO LLAME POR TELÉFONO AL TRIBUNAL, A LA OFICINA DEL SECRETARIO DEL TRIBUNAL, NI A OCWEN O A PHH PARA PREGUNTAR SOBRE ESTE ACUERDO.

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Attorneys for Plaintiff

**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] FINAL APPROVAL
ORDER**

CONSOLIDATED WITH:

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

This matter having come before the Court for a Final Approval Hearing on the proposed Settlement, and the Court having reviewed in detail the Settlement Agreement and Release (the “Settlement Agreement”), all relevant motions and papers that have been filed in connection with the proposed Settlement, and finding good cause,

IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class, and venue in this Court is proper.
3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby finds that the requirements of Rule 23(a) and (b)(3) are satisfied for the following reasons: (a) the Settlement Class is sufficiently numerous to make joinder impracticable, (b) questions of law or fact common to the Settlement Class predominate over any individual questions, (c) the claims of Plaintiff are typical of the Settlement Class, (d) Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all members of the Settlement Class, and (e) the class action procedure is the superior method of settling the claims and defenses in this Lawsuit.
4. For purposes of the Settlement and this Final Approval Order, the Settlement Class shall be defined as follows:

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 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.” 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.

Excluded from the Class are (a) all employees of 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), (c) the federal district court and magistrate judges assigned to the Actions, along with persons within the third degree of relationship to them; and (d) any persons who timely opt-out of the Settlement Class.

5. Plaintiff Lawrence Torliatt is appointed Settlement Class Representative and the law firms of Carney Bates & Pulliam, PLLC and Bailey & Glasser, LLP are appointed as Class Counsel.

6. The Court finds that the notice program as set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order satisfies the requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of (i) the pendency of the lawsuit and of the Settlement, including the terms thereof; (ii) the procedure for objecting to or opting out of the Settlement; (iii) contact information for Class Counsel, the Settlement Administrator and a toll-free number to ask questions about the Settlement; (iv) important dates in the settlement approval process, including the date of the Final Approval Hearing; and (v) Class Counsel's request for an award of reasonable attorneys' fees, reimbursement of litigation expenses, and a service award to the Settlement Class Representative.

7. The Court approves the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members. The Court has specifically considered

the factors relevant to class settlement approval (*see, e.g., Churchill Village, L.L.C. v. General Elec.*, 361 F.3d 566 (9th Cir. 2004)), including, inter alia, the strength of Plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of certifying the proposed Settlement Class and – if successful – maintaining class action status throughout trial; the relief provided for in the Settlement; the extent of discovery completed and stage of the proceedings; the experience and views of Class Counsel; the assistance of a highly-qualified mediator in reaching the Settlement; and the reaction of Settlement Class Members to the proposed Settlement. Furthermore, the Court has specifically considered the factors relevant to class settlement approval pursuant to Fed. R. Civ. P. 23(e)(2), including whether the

- (A) Settlement Class Representative and Class Counsel have adequately represented the Settlement Class;
- (B) Settlement was negotiated at arm's length;
- (C) relief provided for the Settlement Class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the Settlement Class; and
 - (iii) the terms of any proposed award of attorneys' fees, including the timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) Settlement treats Settlement Class Members equitably relative to each other.

8. The Court has reviewed the Settlement and negotiation history for any signs of potential collusion (*see, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d

935 (9th Cir. 2011)) and finds that the Settlement is not the product of collusion. This finding is supported by, among other things: the fact that the Settlement was facilitated by experienced, well-qualified counsel who participated in arm's-length negotiations that included multiple mediation sessions conducted by a respected mediator; the Settlement provides significant benefits to Settlement Class Members and such benefits are not disproportionate to the attorneys' fees and expenses sought separately by Class Counsel; the benefits provided to Settlement Class Members are appropriate under the circumstances of this lawsuit; and the Parties began negotiating attorneys' fees and expenses only after reaching an agreement regarding the key deal terms, including the amount of the Settlement Fund.

9. The Court hereby approves the Settlement Agreement and orders that the Settlement Agreement shall be consummated and implemented in accordance with its terms and conditions.
10. The Action is hereby dismissed with prejudice, with each party to bear its own costs.
11. By operation of this order, all members of the Settlement Class who have not timely and properly submitted a request for exclusion are deemed to have fully, finally and forever released, on behalf of themselves and all of their present, former and future heirs, assigns, and/or successors, each and all of the PHH Defendants and Released Parties of and from, and shall be permanently enjoined from pursuing against each and all of the Released Parties, any and all claims, causes of action, 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 June 24, 2022, and by PHH to Settlement Class Members, during the period from July 30, 2015 through and including June 24, 2022, for making loan payments by telephone, IVR, the internet, and other payment methods.

12. Class Counsel or its designated agent is directed to administer the Settlement in accordance with its terms and provisions.
13. The individuals or entities identified on Exhibit “A” hereto have timely and validly requested exclusion from the Settlement Class and, therefore, are excluded. Such individuals or entities are not included in or bound by this Settlement or Final Judgment. Such individuals or entities are not entitled to any recovery from the settlement proceeds obtained through this Settlement.
14. Class counsel is awarded \$_____ in fees, inclusive of expenses, and shall be paid in the manner set forth in the Settlement Agreement.
15. Plaintiff is awarded a Service Award of \$_____ and shall be paid in the manner set forth in the Settlement Agreement.
16. The Court shall retain exclusive, continuing, jurisdiction to resolve any disputes or challenges that may arise as to compliance with the Settlement Agreement, or any challenge to the performance, validity, interpretation, administration, enforcement, or enforceability of the Class Notice, this Order, the Final Judgment, or the Settlement Agreement.

1 17. In the event that this Order is reversed on appeal or otherwise does not become
2 final, (i) this Order shall be rendered null and void and shall be vacated *nunc pro*
3 *tunc*, (ii) as specified in the Section 12.6 of the Settlement Agreement, the
4 Settlement Agreement and other related orders shall be rendered null, void, and of
5 no force and effect, (iii) the Settlement Fund shall be refunded to the Defendant,
6 less reasonable settlement administrative expenses actually incurred and paid, and
7 (iv) the Action shall proceed as if no settlement had occurred and as otherwise
8 provided for in the Settlement Agreement.

9 18. Neither the Settlement Agreement, the Settlement contained therein, the
10 negotiation nor any proceeding or document executed pursuant to or in furtherance
11 thereof, (i) is or shall be construed as, an admission of, or evidence of, the truth of
12 any allegation or of any liability or the validity (or lack thereof) of any claim or
13 defense, in whole or in part, on the part of any party in any respect, or (ii) is or shall
14 be admissible in any action or proceeding for any reason, other than an action or
15 proceeding to enforce the terms of the Settlement or this Order.
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18 **IT IS SO ORDERED.**

19 **Dated:** _____, 20__
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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] FINAL JUDGMENT

CONSOLIDATED WITH:

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

1 Pursuant to Federal Rule of Civil Procedure 54, this Court hereby enters final judgment in
2 the above-captioned matter. Plaintiff's claims against Defendant PHH Mortgage Corporation
3 ("PHH"), individually and as successor by merger to defendant Ocwen Loan Servicing, LLC
4 ("Ocwen"), are hereby dismissed with prejudice.

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6 **IT IS SO ORDERED.**

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8 **Dated:** _____, 20__

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