

1 George V. Granade (State Bar No. 316050)
2 *ggranade@reesellp.com*
3 **REESE LLP**
4 8484 Wilshire Boulevard, Suite 515
5 Los Angeles, California 90211
6 Telephone: (310) 393-0070

7 Michael R. Reese (State Bar No. 206773)
8 *mreese@reesellp.com*
9 **REESE LLP**
10 100 West 93rd Street, 16th Floor
11 New York, New York 10025
12 Telephone: (212) 643-0500

13 Sabita J. Soneji (State Bar No. 224262)
14 *ssoneji@tzlegal.com*
15 **TYCKO & ZAVAREEI LLP**
16 1970 Broadway, Suite 1070
17 Oakland, California 94612
18 Telephone: (510) 254-6808

19 Hassan A. Zavareei (State Bar No. 181547)
20 *hzavareei@tzlegal.com*
21 Gemma Seidita (State Bar No. 322201)
22 *gseidita@tzlegal.com*
23 **TYCKO & ZAVAREEI LLP**
24 2000 Pennsylvania Avenue, NW, Suite 1010
25 Washington, District of Columbia 20006
26 Telephone: (202) 973-0900

27 *Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,*
28 *and Cheryl Rowan and the Classes*

Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com
John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555

Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com
Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com
KAUFMAN P.A.
237 South Dixie Highway, Floor 4
Coral Gables, Florida 33133
Telephone: (305) 469-5881

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
LAW OFFICES OF STEFAN COLEMAN
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH BUMPUS, MICHELINE PEKER,
and CHERYL ROWAN, *individually, and on*
behalf of a class of similarly situated persons,

Plaintiffs,

v.

REALOGY HOLDINGS CORP.;
REALOGY INTERMEDIATE HOLDINGS
LLC; REALOGY GROUP LLC; REALOGY
SERVICES GROUP LLC; *and* REALOGY
BROKERAGE GROUP LLC (f/k/a NRT
LLC),

Defendants.

Case No. 3:19-cv-03309-JD

PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND FOR
CERTIFICATION OF SETTLEMENT
CLASSES; MEMORANDUM OF POINTS
AND AUTHORITIES

Date: February 27, 2025
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Honorable James Donato

1 **TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 27, 2025, at 10:00 a.m., or as soon thereafter as
3 this matter may be heard, before the Honorable James Donato in Courtroom 11, 19th Floor, located
4 at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Sarah Bumpus, Micheline Peker, and
5 Cheryl Rowan will respectfully move for preliminary approval of the class action Settlement reached
6 in this case.

7 Plaintiffs request that the Court enter the proposed Preliminary Approval Order and:

- 8 1. Preliminarily approve the Settlement;
- 9 2. Preliminarily certify the Settlement Classes;
- 10 3. Appoint Sarah Bumpus as the representative of the Settlement NDNC Class and
11 Micheline Peker and Cheryl Rowan as the representatives of the Settlement Prerecorded Message
12 Class;
- 13 4. Appoint Tycko & Zavareei LLP, Reese LLP, Kaufman, P.A., and Bailey & Glasser
14 LLP as counsel for the Settlement Classes;
- 15 5. Appoint Epiq Class Action & Claims Solutions, Inc., as the Settlement Administrator
16 and direct it to carry out the duties assigned to it in the Settlement Agreement;
- 17 6. Approve the proposed Notice Plan, direct that Notice be distributed to the Settlement
18 Classes, and direct that Non-Settlement Class Notice be distributed to members of the Certified
19 Classes who are not members of the Settlement Classes;
- 20 7. Approve the Parties' proposed Claim Form and the proposed procedures for
21 submitting Claims, objecting to the Settlement, and requesting exclusion; and
- 22 8. Schedule a Final Approval Hearing.

23 Plaintiffs base the motion on the following documents: this Notice of Motion and Motion;
24 the accompanying Memorandum of Points and Authorities; the pleadings, record, and other filings in
25 the case; the Declaration of George V. Granade and its accompanying exhibits; the Declaration of
26 John W. Barrett; the Declaration of Cameron A. Azari, Esq. Regarding Notice Plan; and such other
27 oral and written points, authorities, and evidence as the parties may present at the time of the hearing
28 on the motion. Defendants Realogy Holdings Corp., Realogy Intermediate Holdings LLC, Realogy

1 Group LLC, Realogy Services Group LLC, and Realogy Brokerage Group LLC (formerly known as
2 NRT LLC) support this motion.

3 Respectfully submitted,

4 Date: January 20, 2025

REESE LLP

5 By: /s/ George V. Granade
George V. Granade (State Bar No. 316050)
6 *ggranade@reesellp.com*
8484 Wilshire Boulevard, Suite 515
7 Los Angeles, California 90211
Telephone: (310) 393-0070

REESE LLP

9 Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com
10 100 West 93rd Street, 16th Floor
New York, New York 10025
11 Telephone: (212) 643-0500

TYCKO & ZAVAREEI LLP

12 Sabita J. Soneji (State Bar No. 224262)
ssoneji@tzlegal.com
13 1970 Broadway, Suite 1070
14 Oakland, California 94612
Telephone: (510) 254-6808

TYCKO & ZAVAREEI LLP

15 Hassan A. Zavareei (State Bar No. 181547)
hzavareei@tzlegal.com
16 Gemma Seidita (State Bar No. 322201)
gseidita@tzlegal.com
17 2000 Pennsylvania Avenue, NW, Suite 1010
18 Washington, District of Columbia 20036
19 Telephone: (202) 973-0900

BAILEY & GLASSER LLP

20 Brian A. Glasser (*pro hac vice*)
bglasser@baileyglasser.com
21 John W. Barrett (*pro hac vice*)
jbarrett@baileyglasser.com
22 209 Capitol Street
23 Charleston, West Virginia 25301
Telephone: (304) 345-6555

KAUFMAN P.A.

24 Rachel E. Kaufman (State Bar No. 259353)
rachel@kaufmanpa.com
25 Avi Kaufman (*pro hac vice*)
avi@kaufmanpa.com
26 237 South Dixie Highway, Floor 4
27 Coral Gables, Florida 33133
28 Telephone: (305) 469-5881

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LAW OFFICES OF STEFAN COLEMAN

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
66 West Flagler Street, Unit 900
Miami, Florida 33130
Telephone: (877) 333-9427

*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*

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3 *Briseno v. Henderson*,

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5 *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-cv-03082-LB,

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7 *Campbell v. Facebook, Inc.*,

8 951 F.3d 1106 (9th Cir. 2020)..... 5

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11 *Churchill Vill., L.L.C. v. Gen. Elec.*,

12 361 F.3d 566 (9th Cir. 2004).....5, 10, 12

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15 *Dunakin v. Quigley*,

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17 *Ellis v. Costco Wholesale Corp.*,

18 657 F.3d 970 (9th Cir. 2011)..... 13

19 *Golan v. FreeEats.com, Inc.*,

20 930 F.3d 950 (8th Cir. 2019)..... 7, 11

21 *Hesse v. Sprint Corp.*,

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23 *In re Hyundai & Kia Fuel Econ. Litig.*,

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25 *In re Mego Fin. Corp. Sec. Litig.*,

26 213 F.3d 454 (9th Cir. 2000)..... 5

27 *In re Mercury Interactive Corp. Sec. Litig.*,

28 618 F.3d 988 (9th Cir. 2010)..... 9

In re Online DVD Rental Antitrust Litig.,

779 F.3d 934 (9th Cir. 2015)..... 14

In re Uber FCRA Litig., No. 14-cv-05200-EMC,

2017 WL 2806698 (N.D. Cal. June 29, 2017)..... 11

Johnson v. Moss Bros. Auto Grp., Inc., No. 19-cv-02456-FMO-SP,

2021 WL 4556052 (C.D. Cal. June 25, 2021)..... 10

Knutson v. Schwan’s Home Serv., Inc., No. 3:12-cv-00964-GPC,

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1 *Lane v. Facebook, Inc.*,
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3 *Linney v. Cellular Alaska P’ship*,
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5 *Louie v. Kaiser Found. Health Plan, Inc.*, No. 08-cv-00795-IEG-RBB,
 6 2008 WL 4473183 (S.D. Cal. Oct. 6, 2008) 6

7 *Moreno v. Cap. Bldg. Maint. & Cleaning Servs., Inc.*, No. 19-cv-07087-DMR,
 8 2021 WL 1788447 (N.D. Cal. May 5, 2021) 6

9 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
 10 221 F.R.D. 523 (C.D. Cal. 2004) 8, 12

11 *Norton v. LVNV Funding, LLC*, No. 18-cv-05051-DMR,
 12 2021 WL 3129568 (N.D. Cal. July 23, 2021) 6

13 *Odom v. ECA Mktg., Inc.*, No. 20-cv-00851-JGB-SHK,
 14 2021 WL 4803488 (C.D. Cal. May 27, 2021) 10

15 *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*,
 16 688 F.2d 615 (9th Cir. 1982) 10

17 *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14-cv-01372-DMS-DHB,
 18 2016 WL 4427439 (S.D. Cal. Feb. 29, 2016) 8

19 *Perks v. Activehours, Inc.*, No. 5:19-cv-05543-BLF,
 20 2021 WL 1146038 (N.D. Cal. Mar. 25, 2021) 6

21 *True Health Chiropractic Inc. v. McKesson Corp.*,
 22 332 F.R.D. 589 (N.D. Cal. 2019) 13

23 *Tyson Foods, Inc. v. Bouaphakeo*,
 24 577 U.S. 442 (2016) 14

25 *Valentino v. Carter-Wallace, Inc.*,
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27 *Wakefield v. ViSalus, Inc.*,
 28 51 F.4th 1109 (9th Cir. 2022) 7, 10

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

After more than five years of litigating this hard-fought case, Plaintiffs¹ are pleased to present to the Court this motion seeking preliminary approval of a \$20 million common fund to resolve the claims against Realogy,² an outstanding result for the proposed Settlement Classes.

From the \$20 million Total Settlement Amount, the Settlement Agreement requires Realogy to pay a cash award to every claimant who submits an Approved Claim, the amount of which will be increased or decreased *pro rata* depending on the claim rate, the amount of attorneys' fee awarded (Plaintiffs propose \$6 million, which is 30% of the Total Settlement Amount), litigation costs (a proposed \$892,373), costs of settlement notice and administration (a maximum of \$475,000³), and service awards (a proposed \$5,000 to each of the three class representatives). Regardless of the claim rate, this represents a substantial recovery for the Settlement Class Members, of which there are approximately 298,494.⁴ If the Court awards the requested attorneys' fees, costs, and Service Awards, \$12,617,627 will remain for distribution to class members, who would receive the following amounts at the claims rates specified below:

Claim Rate	Estimated Cash Award Per Settlement Class Member
100%	\$42.27
50%	\$84.54
20%	\$211.35
15%	\$281.80
10%	\$422.70

To maximize the value to claiming Settlement Class Members, the Settlement Agreement also requires a second distribution of remaining settlement funds, if administratively feasible.

This relief was secured through extensive arm's-length negotiations by experienced and

¹ Unless otherwise indicated, capitalized terms are defined in the Settlement Agreement. *See generally* Stlmt. Agmt. (filed herewith as Exhibit 1 to the Declaration of George V. Granade ("Granade Decl." or "Granade Declaration")).

² Collectively, Realogy Holdings Corp., Realogy Intermediate Holdings LLC, Realogy Group LLC, Realogy Services Group LLC, and Realogy Brokerage Group LLC are "Realogy."

³ The Settlement Administrator has agreed to cap Settlement Administrative Expenses at \$475,000 and estimates that Settlement Administrative Expenses will be \$422,692. Granade Decl. ¶ 143.

⁴ When the lists of telephone numbers in the Settlement Classes are consolidated into a single list and duplicates are removed, there are 298,494 unique telephone numbers in the Settlement Classes. *See* Stlmt. Agmt., Ex. C. A single person might use more than one number on the list, however.

1 informed counsel, who had litigated the case through a contested class certification motion, summary
2 judgment motions, motions to exclude critical experts, and up to nearly the eve of trial, with all pretrial
3 submissions filed. The Parties also mediated before the Honorable Edward A. Infante (Ret.) and Bruce
4 A. Friedman, Esquire, of JAMS and participated in a settlement conference before the Honorable
5 Magistrate Judge Thomas S. Hixson; while none of these were immediately successful, they informed
6 the Parties' settlement negotiations. The Settlement contains no clear-sailing provision regarding
7 attorneys' fees and costs and is supported by a strong class Notice Plan, with innovative class Notice,
8 intended to generate a robust claims rate. No other cases will be affected by the Settlement.

9 As outlined below, the proposed Settlement is fair, reasonable, and adequate, and the Court
10 should preliminarily approve it under Federal Rule of Civil Procedure 23(e), Ninth Circuit case law,
11 and this District's Procedural Guidance for Class Action Settlements ("Settlement Guidance").

12 **II. Overview of the History of the Litigation**

13 The Granade Declaration, outlining the multi-year, hotly-contested litigation requiring
14 enormous efforts by Plaintiffs' Counsel, is an integral part of this submission. It includes a detailed
15 description of the factual and procedural history of the litigation. Granade Decl. ¶¶ 5-138.

16 **III. The Terms of the Settlement Agreement**

17 In exchange for the proposed release, Realogy has agreed to pay a \$20 million non-reversionary
18 Total Settlement Amount, which will pay Settlement Class Members, the Fee Award, all Service
19 Awards, and all Settlement Administrative Expenses. §§ A.30, F.49-53, F.55, I.64-65, J.70-71.⁵ The
20 key terms of the Settlement are discussed below.

21 **A. The Proposed Settlement Classes**

22 Under the Settlement Agreement, Plaintiffs seek, and Realogy does not oppose, certification
23 under Rule 23(a) and (b)(3) of the following Settlement Classes for Settlement purposes only:

24 (a) "NDNC Class" means all persons in the United States who received two or more
25 calls, as indicated by non-zero call durations and/or disposition codes other than "No
26 Answer," "NO_ANSWER," or "NOANSWER," made by a Coldwell Banker-
27 affiliated real estate agent using a Mojo, PhoneBurner, and/or Storm dialer in any 12-
month period on a residential landline or cell phone number that appeared on the
National Do Not Call Registry for at least 31 days for the time period beginning June
11, 2015 and ending December 3, 2020 (all phone numbers within NDNC Class are

28 ⁵ Unless otherwise specified, all section (§) references are to sections of the Settlement Agreement.

1 listed in Exhibit A to the Settlement Agreement);

2 (b) “Prerecorded Message Class” means all persons in the United States who received
 3 a call on their residential telephone line or cell phone number with an artificial or
 4 prerecorded message, as indicated by the following call disposition codes: (i) ‘Drop
 5 Message’ (if using the Mojo dialer), (ii) ATTENDED_TRANSFER’ (if using the
 6 Storm dialer), and (iii) ‘VOICEMAIL’ (if using a PhoneBurner dialer) and made by a
 7 Coldwell Banker-affiliated real estate agent for the time period beginning June 11, 2015
 8 and ending December 3, 2020 (all phone numbers within the Prerecorded Message
 9 Class are listed in Exhibit B to the Settlement Agreement).

10 §§ A.26, D.32.⁶ The Parties stipulate to the appointment of Sarah Bumpus as the representative of the
 11 Settlement NDNC Class, Micheline Peker and Cheryl Rowan as the representatives of the Settlement
 12 Prerecorded Message Class, and Plaintiffs’ Counsel as counsel for the Settlement Classes. § D.32.
 13 There are 131,892 telephone numbers in the proposed Settlement NDNC Class and 201,001
 14 telephone numbers in the proposed Settlement Prerecorded Message Class. Stlmt. Agmt., Exs. A-B.
 15 There are 298,494 unique telephone numbers in both Settlement Classes. Stlmt. Agmt., Ex. C.

16 **B. The Benefits to the Settlement Classes**

17 The settlement will pay a *pro rata* share to every Settlement Class Member who submits a
 18 timely, valid Approved Claim. §§ I.64-65. With 298,494 unique telephone numbers in the Settlement
 19 Classes, each Settlement Class Member will receive approximately \$281.80 if the claim rate is 15% and
 20 the Court awards all requested fees and costs. *See supra* p. 1.

21 Approved Claims will be paid 60 days after the Effective Date, § I.67, electronically or by
 22 check, and will expire unless cashed within 180 days after issuance, § I.68.

23 Regarding Settlement Guidance ¶ 1.f, the Settlement Administrator has estimated a claim rate
 24 of around 15% for this settlement. Granade Decl. ¶ 144. Plaintiffs’ Counsel support this estimate, as
 25 it is reasonable and consistent with their experience. *Id.*

26 **C. Class Member Release**

27 All Settlement Class Members who do not exclude themselves will release the Released Parties
 28

⁶ Excluded from both Settlement Classes are: (a) current or former officers and directors of Anywhere,
 (b) Anywhere’s employees, agents, and counsel and its counsel’s employees, (c) independent
 contractor real estate agents affiliated with an Anywhere brand, (d) Plaintiffs’ Counsel and their
 employees, (e) any judge, magistrate, mediator, arbitrator, and/or court personnel that was involved
 in presiding over or rendering a decision in this case, and their immediate family members, and (f) any
 valid Opt-Out Members. § A.26.

1 from all claims “that were brought in the Action or could have been brought in the Action or that
2 arise from telephone communications made or attempted by any Coldwell Banker affiliated real estate
3 agent from June 11, 2015 to December 3, 2020 to Settlement Class Members or telephone numbers
4 assigned to Settlement Class Members.” §§ A.19, A.21, J.70. This release is appropriately tailored to
5 the legal and factual claims of the Settlement Classes in the Action.

6 **D. Settlement Administrator and Administration Costs**

7 The proposed Settlement Administrator is Epiq Class Action & Claims Solutions, Inc.
8 (“Epiq”), a leading class action administration firm in the United States. Decl. Azari re: Notice Plan
9 ¶¶ 4-7 (“Azari Decl.”) (filed concurrently herewith). Before selecting Epiq, Plaintiffs’ Counsel
10 considered bids from six reputable administrators. Granade Decl. ¶ 140. Plaintiffs’ Counsel selected,
11 and Realogy agreed to, Epiq because of Epiq’s expertise, the competitiveness of its bid, and because
12 Epiq already handled the litigation notice to the Certified Classes and was familiar and experienced
13 with the class data. *Id.* at ¶ 141. Plaintiffs’ Counsel’s history of engagements with Epiq over the last
14 two years is set forth in the Granade Declaration. *Id.* at ¶ 142. Epiq estimates Settlement
15 Administrative Expenses of \$422,692, and has agreed that in no event will Settlement Administrative
16 Expenses exceed \$475,000. *Id.* at ¶ 143; Azari Decl. ¶ 38.

17 **E. Proposed Notice Plan**

18 The notice plan has five components: (1) direct Postcard Notice, (2) direct Email Notice,
19 (3) an internet digital notice campaign, (4) a Class Settlement Website, and (5) a toll-free settlement
20 hotline. Azari Decl. ¶¶ 23-35. The program is reasonably calculated to reach approximately 90% of
21 the Settlement Classes. *Id.* at ¶ 40. Epiq will also provide the CAFA Notice to state and federal officials
22 as provided in 28 U.S.C. § 1715 within 10 days after the filing with the Court of the Settlement
23 Agreement and this motion for preliminary approval. *Id.* at ¶ 18.

24 **F. Objections and Exclusions**

25 The notices will advise Settlement Class Members that they may opt out of or object to any
26 aspect of the Settlement. Stlmt. Agmt., Ex. F. Objectors must mail objections to the Court within 90
27 days of the Notice Date, and must provide: (i) the objector’s name, address, and telephone number;
28 (ii) the name, address, and telephone number of any attorney for the objector with respect to the

1 objection; (iii) the factual basis and legal grounds for the objection, with documents to establish
2 standing as a Settlement Class Member, including the phone number(s) at which he or she received
3 communications covered by this Settlement; and (iv) identification of the case name, case number,
4 and court for any prior class action lawsuit in which the objector and the objector's attorney (if
5 applicable) has objected to a proposed class action settlement. § E.41. If an objector chooses to appear
6 at the Final Approval Hearing, the objector must also file a notice of intention to appear, either in
7 person or through an attorney, with the name, address, and telephone number of the person and
8 attorney who will appear. *Id.*

9 Settlement Class Members can exclude themselves via a written, mailed request postmarked
10 by the Opt-Out Deadline that states their request to opt out. § E.46. The request must be personally
11 signed by the Opt-Out Member, and must include his or her name, address, and the telephone number
12 that allegedly received a telephone communication covered by the Settlement. *Id.*

13 **G. Fee and Service Awards**

14 The Settlement Agreement contemplates Plaintiffs' Counsel petitioning the Court for a Fee
15 Award. § G.58. Plaintiffs' Counsel intend to seek \$6 million, which is 30% of the Total Settlement
16 Amount. Separately from the request for fees, Plaintiffs' Counsel also intend to seek \$892,373 in
17 litigation costs⁷ and Settlement Administrative Expenses of approximately \$422,692. Plaintiffs'
18 Counsel may also petition for Service Awards, § H.62, and intend to request \$5,000 for each of the
19 three class representatives. There is no clear-sailing provision.

20 **IV. Legal Standard for Preliminary Approval**

21 The Ninth Circuit has a "strong judicial policy that favors settlements, particularly where
22 complex class action litigation is concerned." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir.
23 2020). The trial judge may exercise his or her sound discretion in considering a preliminary approval
24 motion. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). The Rule 23(e)(2) factors
25 that inform the analysis, along with additional factors outlined in *Churchill Vill., L.L.C. v. Gen. Elec.*,
26 361 F.3d 566, 575 (9th Cir. 2004), are discussed below.

27 _____
28 ⁷ Plaintiffs anticipate there may be additional costs but have not factored them in here. Plaintiffs will
provide adequate detail for all costs, including any additional costs, in their motion for fees and costs.

1 **V. Argument**

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

3 **1. Rule 23(e)(2)(A): Plaintiffs and Plaintiffs’ Counsel have adequately**
 4 **represented the proposed Settlement Classes**

5 Plaintiffs and Plaintiffs’ Counsel have adequately represented the Settlement Classes. All
 6 Plaintiffs have “actively participated in the prosecution of this case,” *Norton v. LVNV Funding, LLC*,
 7 No. 18-cv-05051-DMR, 2021 WL 3129568, at *8 (N.D. Cal. July 23, 2021), and “[t]here are no
 8 indications that [Plaintiffs have] failed to adequately represent the interests of the class,” *Moreno v. Cap.*
 9 *Bldg. Maint. & Cleaning Servs., Inc.*, No. 19-cv-07087-DMR, 2021 WL 1788447, at *10 (N.D. Cal. May
 10 5, 2021). Plaintiffs assisted Plaintiffs’ Counsel by reviewing the pleadings, responding to
 11 interrogatories, searching for and producing documents, sitting for their depositions, being available
 12 during mediations and a settlement conference, and reviewing the Settlement Agreement. Granade
 13 Decl. ¶ 145. Plaintiffs have no conflicts with the other Settlement Class Members. *Id.* at ¶ 146.

14 Further, the Court concluded Plaintiffs and their counsel were adequate when it certified the
 15 classes. ECF No. 223 at 8-9, 16. Since that appointment, counsel have poured time and expense into
 16 the case and have secured what they believe is an outstanding settlement. *Perks v. Activehours, Inc.*, No.
 17 5:19-cv-05543-BLF, 2021 WL 1146038, at *5 (N.D. Cal. Mar. 25, 2021) (“Initially, when originally
 18 certifying the Settlement Class, the Court found that . . . Class Counsel will adequately represent the
 19 class, have done so, and are adequate. No contrary evidence has emerged.” (citation omitted));
 20 Granade Decl. ¶¶ 147-53 & Exs. 2-4 (firm resumes); Decl. Barrett ¶¶ 3-6 (filed concurrently herewith).

21 **2. Rule 23(e)(2)(B): The Settlement was negotiated at arm’s length**

22 The Ninth Circuit “put[s] a good deal of stock in the product of an arms-length, non-collusive,
 23 negotiated resolution” in analyzing whether to approve a class action settlement. *In re Hyundai & Kia*
 24 *Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019). Here, the Parties completed extensive factual and
 25 expert discovery, and the settlement was reached on the eve of trial. Granade Decl. ¶¶ 45-77, 124,
 26 137-38. Thus, Plaintiffs and Plaintiffs’ Counsel were well apprised of the salient legal and factual issues
 27 before reaching the decision to settle the Action. *Id.* at ¶ 155; *see also Louie v. Kaiser Found. Health Plan,*
 28 *Inc.*, No. 08-cv-00795-IEG-RBB, 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6, 2008) (“Class counsels’

1 extensive investigation, discovery, and research weighs in favor of preliminary settlement approval.”).

2 Further, the Settlement includes none of the indicia of collusion identified by the Ninth
3 Circuit. Plaintiffs’ Counsel will not receive a disproportionate distribution of the settlement, the
4 settlement agreement contains no “clear sailing” provisions for fees or service awards, and unclaimed
5 settlement funds will not revert to Realogy—they will be redistributed to Settlement Class Members
6 or be distributed as *cy pres*. *Briseno v. Henderson*, 998 F.3d 1014, 1025-28 (9th Cir. 2021); § I.68.

7 **3. Rule 23(e)(2)(C): The relief for the Settlement Classes is substantial**

8 **a. Rule 23(e)(2)(C)(i): The costs, risks, and delay of trial and appeal**

9 *First*, the Settlement is fair, reasonable, and adequate in light of the strengths and risks of
10 Plaintiffs’ case. Granade Decl. ¶ 156. While Plaintiffs’ Counsel are confident in the strength of
11 Plaintiffs’ claims, there is risk inherent in litigation of this magnitude. *Id.* Should the case proceed in
12 litigation, Plaintiffs could see their claims dismissed or narrowed by motions *in limine*, at trial, or on a
13 subsequent appeal. *Id.* The Court could grant Realogy’s motion *in limine* to exclude the PhoneBurner
14 and WAVV call logs, and it could decline to admit the Mojo call logs, which at minimum would greatly
15 increase the complexity and difficulty of prevailing on a classwide basis at trial. *Id.* The jury could also
16 decline to credit Plaintiffs’ evidence. *Id.* For example, if the jury does not credit Sarah Bumpus’s
17 testimony that she told Coldwell Banker agents not to call her back before she received the calls at
18 issue, then Ms. Bumpus would not be able to prevail on the NDNC Class’s claims because she would
19 have an established business relationship with Coldwell Banker. *Id.* The jury could also find for the
20 NDNC Class but award them only a de minimis amount in damages on a per violation basis, *see* 47
21 U.S.C. § 227(c)(5) (providing for “up to \$500” per call). *Id.* Plaintiffs would also likely face a post-
22 verdict motion to reduce the judgment amount for both the NDNC Class and Prerecorded Message
23 Class based on the Ninth Circuit’s direction in *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022)
24 (citing *Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (affirming district court’s reduction of
25 statutory damages by 98%, from \$500 to \$10 per violation for TCPA violative prerecorded calls)).
26 Granade Decl. ¶ 156. Realogy has also repeatedly requested to decertify the classes, and the Court has
27 held open the possibility that decertification could occur at or after trial. *Id.*; ECF No. 390.

28 *Second*, the risks, expense, complexity, and likely duration of further litigation also support

1 preliminary approval of the Settlement. Granade Decl. ¶ 157. In evaluating these factors, the Court
 2 should “consider the vagaries of litigation and compare the significance of immediate recovery by way
 3 of the compromise to the mere possibility of relief in the future, after protracted and expensive
 4 litigation.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). “In
 5 this respect, ‘[i]t has been held proper to take the bird in hand instead of a prospective flock in the
 6 bush.’” *Id.* If the Court does not approve the Settlement, the Parties would incur the expense and
 7 burden of continuing to prepare for trial, finalizing all pretrial filings, and conducting the trial. Granade
 8 Decl. ¶ 157; *see Paz v. AG Adriano Goldschmeid, Inc.*, No. 14-cv-01372-DMS-DHB, 2016 WL 4427439,
 9 at *5 (S.D. Cal. Feb. 29, 2016). Even if Plaintiffs were to succeed on the merits at trial, any recovery
 10 would likely be delayed by challenges to the judgment and appeals that could take years to resolve.
 11 Granade Decl. ¶ 157. Absent settlement, there is no guarantee that any of this would lead to greater
 12 benefits for the Settlement Class Members. *Id.* The Settlement provides immediate and substantial
 13 cash payments to claiming class members. It is “plainly reasonable for the parties at this stage to agree
 14 that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially
 15 more favorable results through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L-WMC, 2013
 16 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013).

17 **b. Rule 23(e)(2)(C)(ii): The proposed method of distributing relief**
 18 **and of processing Claims is and will be effective**

19 The proposed distribution plan is effective. Settlement Class Members must only submit a
 20 simple Claim Form with basic questions about contact information, the unique identifier assigned to
 21 the Settlement Class Member in the Notice, and the telephone number(s) they used during the class
 22 period on which they were called by Coldwell Banker agents. Stmt. Agmt., Ex. E. They may submit
 23 Claim Forms through the Settlement Website or by hard copy mailed to Epiq. *Id.* Payments will be
 24 made through check or electronic payment, at the Settlement Class Member’s option. § I.68; *see also*
 25 Settlement Guidance ¶ 3 (Plaintiffs’ Counsel should consider “distributions to class members via direct
 26 deposit”). This procedure is Claimant-friendly, efficient, cost-effective, proportional, and reasonable.

27 **c. Rule 23(e)(2)(C)(iii): The terms and timing of the proposed Fee**
 28 **Award are fair and reasonable**

The terms and timing of the proposed Fee Award are fair and reasonable. Plaintiffs’ Counsel

1 will seek approval of attorneys' fees in the amount of \$6 million, which is 30% of the \$20 million Total
 2 Settlement Amount. Plaintiffs' Counsel's lodestar is \$10,126,551, for 10,456 hours of work. Granade
 3 Decl. ¶¶ 162, 166. Thus, their fee request amounts to a negative multiplier of approximately 0.59.

4 Proposed Settlement Administrative Expenses are \$422,692, and are capped at \$475,000.
 5 Granade Decl. ¶ 164. In addition, separately from attorneys' fees, Plaintiffs will also seek \$892,373 in
 6 litigation costs,⁸ which includes \$288,815 paid to expert witnesses, most of which (\$266,128) was paid
 7 to Anya Verkhovskaya and her company, Class Experts Group. *Id.* at ¶¶ 163-65. Ms. Verkhovskaya's
 8 work supplied the basis for identifying violative class calls, and was the subject of Realogy's *Daubert*
 9 motion, which the Court denied. Also included in the litigation costs is \$365,390 to pay Epiq for the
 10 cost of the initial class notice. *Id.* at ¶¶ 164-65.

11 Plaintiffs' Counsel will also seek \$5,000 each as Service Awards for the three class
 12 representatives, who responded to discovery requests, produced documents, sat for depositions,
 13 participated in settlement, and prepared to testify at trial. Granade Decl. ¶¶ 145-46, 166; *Wong v. Arlo*
 14 *Techs., Inc.*, No. 5:19-cv-00372-BLF, 2021 WL 1531171, at *12 (N.D. Cal. Apr. 19, 2021) ("Service
 15 awards as high as \$5,000 are presumptively reasonable in this judicial district.").

16 Plaintiffs' Counsel will file a motion seeking this relief at least 60 days before the objections
 17 deadline, § I.58, which will afford Settlement Class Members a full opportunity to consider this issue
 18 before deciding how to proceed under the Settlement. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d
 19 988, 993 (9th Cir. 2010); *see also* Settlement Guidance ¶ 9.

20 **d. Rule 23(e)(2)(C)(iv): There are no supplemental agreements**

21 The Parties have no agreements other than the Settlement Agreement. Granade Decl. ¶ 139.

22 **4. Rule 23(e)(2)(D): Settlement Class Members are treated equitably**

23 The settlement proposal treats class members equitably relative to each other. FED. R. CIV. P.
 24 23(e)(2)(D). Each Settlement Class Member may make a claim, to be reviewed and reasonably audited
 25 by Epiq for timeliness and validity, and will receive the same amount regardless of the number of calls
 26 they may have received. This is consistent with the approved distribution of funds in other settlements

27
 28 ⁸ *See supra* note 7.

1 of TCPA cases. *See, e.g., Johnson v. Moss Bros. Auto Grp., Inc.*, No. 19-cv-02456-FMO-SP, 2021 WL
 2 4556052, at *8 (C.D. Cal. June 25, 2021) (preliminarily approving TCPA class action settlement in
 3 which each class member would receive approximately \$46, less fees and costs, regardless of the
 4 number of calls they received); *Odom v. ECA Mktg., Inc.*, No. 20-cv-00851-JGB-SHK, 2021 WL
 5 4803488, at *3 (C.D. Cal. May 27, 2021) (preliminarily approving TCPA class action settlement in
 6 which each class member would receive approximately \$35, regardless of number of calls received).

7 **5. Additional Ninth Circuit factors favor approval or are neutral**

8 **a. The amount offered in Settlement**

9 The “relief that the settlement is expected to provide to class members is a central concern,”
 10 which the Court should consider. *Wong*, 2021 WL 1531171, at *9; *see also Churchill Vill., L.L.C.*, 361
 11 F.3d at 575. Here, the expected recovery per Approved Claim is substantial, *see supra* p. 1, and Epiq
 12 has estimated the claim rate will be around 15%, Granade Decl. ¶ 144.

13 “It is well-settled law that a cash settlement amounting to only a fraction of the potential
 14 recovery will not per se render the settlement inadequate or unfair.” *Officers for Just. v. Civ. Serv. Comm’n*
 15 *of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

16 Here, the Settlement NDNC Class received a total of 438,921 calls, Granade Decl. ¶ 160;
 17 because the TCPA allows for damages of “up to \$500” per call for do-not-call claims, 47 U.S.C.
 18 § 227(c)(5), a favorable jury verdict for those claims could bring damages ranging from \$438,921 (at
 19 \$1 per call) to up to \$219,460,500 (at the \$500 maximum). This amount could reach \$658,381,500 if
 20 the Court were to find the violations were knowing or willful. *Id.*

21 The Settlement Prerecorded Message Class received a total of 264,104 calls, Corrected Expert
 22 Rep. Verkhovskaya ¶¶ 127-28, ECF No. 355-1, and, consequently, could have recovered \$132,052,000
 23 at trial at the statutory rate of \$500 per call and up to \$396,156,000 if the Court were to find the
 24 violations were knowing or willful, *see* 47 U.S.C. § 227(b)(3).

25 Notwithstanding, at any of these amounts, class members faced the risk of a post-judgment
 26 reduction of damages. *See Wakefield*, 51 F.4th at 1122-25 (“Constitutional limits on aggregate statutory
 27 damages awards therefore must be reserved for circumstances in which a largely punitive per-violation
 28 amount results in an aggregate that is gravely disproportionate to and unreasonably related to the legal

1 violation committed.”). In fact, courts have reduced per call awards by as much as 98%, *see Golan*, 930
2 F.3d at 962 n.11, a path that Realogy would likely urge here were the case to proceed to trial and
3 judgment. As unlikely as this reduction would be, its mere urging makes it at least a possibility.

4 What all of this adds up to is that the guaranteed and immediate class recovery of \$20 million
5 compares favorably to the almost worst-case⁹ low-end recovery of \$3,079,961 and to a maximum
6 non-trebled recovery of \$351,512,500. Under this range, the Total Settlement Amount spans from far
7 *more* than the almost worst-case result, to 5.68% of the best-case non-trebled scenario. Or, if the jury
8 were to award \$1 per violative call for the NDNC Class, and Plaintiffs could also sustain the \$500
9 penalty for the Prerecord Class against a *Golan*-type challenge, the recovery would total \$132,490,921,
10 and the \$20 million Total Settlement Amount would be 15.095% of that figure.

11 The difficulty of predicting jury trial outcomes has in part caused courts to find similar
12 recoveries to be fair and reasonable. *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
13 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does
14 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
15 disapproved.”); *Wong*, 2021 WL 1531171, at *9 (settlement amount of 2.35% of potential trial damages
16 was adequate); *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal.
17 June 29, 2017) (settlement of “7.5% or less” of total possible liability was adequate).

18 In accordance with Settlement Guidance ¶ 11, paragraph 158 of the Granade Declaration
19 includes a chart providing information about comparable class action settlements. Based on the
20 anticipated payout per claimant, the Settlement compares favorably to settlements in substantively
21 similar TCPA vicarious liability cases against national realty brokerages. *See* Decl. Granade ¶ 158
22 (Keller Williams: approximately \$14/claimant; eXp Realty: approximately \$59/claimant).

23 The discount applied to the claims is further justified by the costs, risks, and delay of trial and
24 appeal. *See supra* Part V.A.3.a.

25 **b. The experience and views of Plaintiffs’ Counsel**

26 Plaintiffs’ Counsel believe the Settlement is an outstanding recovery for the Settlement Classes,
27

28 ⁹ “Almost worst-case” because the worst case, of course, is a zero recovery.

1 particularly in light of per claimant recoveries in settlements in substantively similar TCPA vicarious
 2 liability cases against national realty brokerages, and fully endorse it as fair, reasonable, and adequate.
 3 Granade Decl. ¶ 154. Plaintiffs' Counsel are experienced in class action litigation, including TCPA
 4 cases, and they have a nuanced understanding of the legal and factual issues involved in this case. *Id.*
 5 at ¶¶ 149-52 & Exs. 2-4; Decl. Barrett ¶¶ 3-6. "Great weight' is accorded to the recommendation of
 6 counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural*
 7 *Telecomms. Coop.*, 221 F.R.D. at 528. Thus, this *Churchill* factor supports preliminary approval.

8 **c. Government participation and settlement class reaction**

9 The government participation and settlement class reaction factors are neutral here.

10 **B. The Court Should Certify the Settlement Classes for Settlement Purposes**

11 **1. The narrowed scope of the Settlement Classes and claims to be released**

12 *First*, while the Settlement Classes are narrower than the Certified Classes, the differences are
 13 appropriate. *See* Settlement Guidance ¶ 1.a-b. The proposed Settlement NDNC Class is narrower than
 14 the certified NDNC Class as follows: zero-duration calls with the dispositions "No Answer,"
 15 "NO_ANSWER," and "NOANSWER" were excluded, and after the foregoing calls were excluded,
 16 calls that were not made within a 12-month period of another call to the same number on the NDNCR
 17 were excluded. Granade Decl. ¶ 159. This narrowing—proposed to address the difficulties in proof
 18 posed by class calls that Realogy would assert were not even received—would eliminate 113,410
 19 telephone numbers from the NDNC Class, which are listed in Exhibit D to the Settlement Agreement.
 20 The Parties have agreed upon a proposed Non-Settlement Class Notice to be sent to persons
 21 associated with the eliminated telephone numbers. § A.13; Stlmt. Agmt., Ex. I.

22 The narrowing is appropriate, as Rule 23(c)(1)(C) authorizes the Court to amend the class
 23 definition before a decision on the merits; the Parties stipulated to narrow the class; and the Parties
 24 will provide notice to those persons whose claims are no longer part of the class. *Chinitz v. Intero Real*
 25 *Est. Servs.*, No. 18-cv-05623-BLF, 2022 WL 16528137, at *4 (N.D. Cal. Oct. 28, 2022) (narrowing
 26 definition of previously-certified class at settlement to, among other things, exclude zero-duration
 27 calls); *see also Brown v. Hain Celestial Grp., Inc.*, No. 3:11-cv-03082-LB, 2015 WL 12915098, at *3 (N.D.
 28 Cal. Oct. 8, 2015) (approving settlement class narrower in scope than previously-certified classes).

1 **Second**, the claims to be released are narrower than the Certified Classes' claims only in that
2 Plaintiffs do not seek settlement certification of the Internal DNC Class, precisely because it is a Rule
3 23(b)(2) class that does not seek monetary relief. The scope of the release is appropriate because it
4 covers only claims that relate to or arise out of the calls that the Settlement Class Members challenged
5 in the litigation. § J.70; *see also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (release of class
6 claims appropriate where claims are “based on the identical factual predicate as that underlying the
7 claims in the settled class action”).

8 **2. The Settlement Classes satisfy Federal Rule of Civil Procedure 23(a)**

9 **Numerosity.** The Settlement Classes include 298,494 unique telephone numbers. Stlmt.
10 Agmt., Ex. C. Thus, joinder is a logistical impossibility. *See Dumakin v. Quigley*, 99 F. Supp. 3d 1297,
11 1327 (W.D. Wash. 2015) (class of 40 or more members satisfies numerosity).

12 **Commonality.** The Court previously found commonality was met for the Certified Classes in
13 connection with its analysis of predominance. ECF No. 223 at 9-13, 14-15. It should find commonality
14 is met for the Settlement Classes for the same reasons. *See infra* Part V.b.3 (discussing predominance).

15 **Typicality.** “Under the ‘permissive [typicality] standards’ of Rule 23(a)(3), the claims need
16 only be ‘reasonably co-extensive with those of absent class members,’ rather than ‘substantially
17 identical.’” *True Health Chiropractic Inc. v. McKesson Corp.*, 332 F.R.D. 589, 606 (N.D. Cal. 2019). Here,
18 the Court found typicality was met when certifying the Certified Classes. ECF No. 223 at 8-9. Nothing
19 has changed since then that would render Plaintiffs atypical.

20 **Adequacy.** Finally, as discussed above, Plaintiffs and Plaintiffs’ Counsel are adequate. *See supra*
21 Part V.A.1. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011).

22 **3. The Settlement Classes satisfy Federal Rule of Civil Procedure 23(b)(3)**

23 This Court previously found the Certified Classes satisfied Rule 23(b)(3)’s predominance and
24 superiority requirements. ECF No. 223 at 9-13, 14-15. It should do so again for the Settlement Classes.
25 Common questions predominate over any questions affecting only individual members, including
26 whether the call logs provided by Mojo Dialing Solutions, LLC, PhoneBurner, Inc., and WAVV
27 Communications LLC show Realogy’s sales associates violated the TCPA by calling numbers on the
28 NDNCR or by sending prerecorded messages, and whether these calls were intended to encourage

1 the purchase of Realogy’s services. These questions can be resolved using the same evidence for all
2 Settlement Class Members and are exactly the kind of predominant common issues that make
3 certification appropriate. *See Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016). Accordingly,
4 predominance is met. ECF No. 223 at 9-13, 14-15. Superiority is also met. Here, “classwide litigation
5 of common issues will reduce litigation costs and promote greater efficiency,” and “no realistic
6 alternative exists.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-35 (9th Cir. 1996).

7 **C. The Court Should Approve the Proposed Class Notice Program**

8 Rule 23(e)(1) requires the Court to “direct notice in a reasonable manner to all class members
9 who would be bound by the proposal” if it is likely Rule 23(e)(2) is met and certification will be granted.
10 The Notice Plan is comprised of direct email and postcard notice as well as a Settlement Website,
11 where the long-form Notice and important case documents will be available. Azari Decl. ¶¶ 23, 34. A
12 toll-free telephone number will be available to Settlement Class Members with questions. *Id.* at ¶ 35.
13 And additional indirect notice will be provided via internet advertisements. *Id.* at ¶¶ 29-33. The
14 operative notice plan is the best notice practicable and is reasonably designed to reach the Settlement
15 Class Members. *Id.* at ¶¶ 39-42. The Ninth Circuit has approved less comprehensive approaches to
16 class notice. *See, e.g., In re Online DVD Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015) (finding
17 notice satisfied due process and Rule 23(e) where an initial email notice was supplemented by a
18 postcard notice only to those whose emails bounced back). And Epiq will rely on the contact
19 information obtained during original Class Notice. Granade Decl. ¶ 141.

20 Moreover, the Notice contains all the critical information required to apprise Settlement Class
21 Members of their rights under the Settlement and is written in simple, straightforward language in full
22 compliance with Settlement Guidance ¶ 3. The postcard notice includes the Settlement Class
23 Member’s unique identification number, the Toll-Free Settlement Hotline, and a link to the Settlement
24 Website, and the email notice include the foregoing information as well as information about the
25 lawsuit, Plaintiffs’ Counsel, how to make a claim or opt out, the deadline to file a claim, and the date
26 of the Final Approval Hearing. Stlmt. Agmt., Exs. G-H. The long-form Notice provides detailed
27 information, including: (1) basic background information about the Action; (2) a description of the
28 benefits provided by the Settlement; (3) an explanation of how Settlement Class Members can obtain

1 benefits; (4) an explanation of how Settlement Class Members can opt out of or object to the
2 Settlement; (5) an explanation that any claims against Realogy that could have been litigated in the
3 Action will be released if the Settlement Class Member does not opt out; (6) information regarding
4 Plaintiffs' Counsel's forthcoming request for a Fee Award and Service Awards; (7) instructions to
5 access the case docket via PACER; (8) the Final Approval Hearing date (subject to change); (9) an
6 explanation of eligibility for appearing at the Final Approval Hearing; and (10) Plaintiffs' Counsel's
7 contact information. Stlmt. Agmt., Ex. F.

8 This approach to notice is more than adequate. *See, e.g., Knutson v. Schwan's Home Serv., Inc.*, No.
9 3:12-cv-00964-GPC, 2014 WL 3519064, at *5 (S.D. Cal. July 14, 2014) (approving mailed notice where
10 notice would include the settlement website with full settlement details and the claim administrator's
11 toll free number). This information provides "sufficient detail" to allow class members with adverse
12 viewpoints to conduct further investigation and "come forward to be heard." *Lane v. Facebook, Inc.*,
13 696 F.3d 811, 826 (9th Cir. 2012). Accordingly, this notice program will fully apprise Settlement Class
14 Members of their rights under Rule 23(e) and should be approved.

15 **VI. Proposed schedule for final approval proceedings**

16 Finally, Plaintiffs ask the Court to schedule the time, date, and place of the Final Approval
17 Hearing to decide whether the Settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2).
18 Plaintiffs also request that the Court set the other deadlines in Granade Declaration paragraph 167.

19 **VII. Conclusion**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve
21 the Settlement; preliminarily certify the Settlement Classes; enter the Preliminary Approval Order;
22 appoint Sarah Bumpus as the representative of the Settlement NDNC Class and Micheline Peker and
23 Cheryl Rowan as the representatives of the Settlement Prerecorded Message Class; appoint Reese
24 LLP, Tycko & Zavareei LLP, Kaufman P.A., and Bailey & Glasser LLP as counsel for the Settlement
25 Classes; appoint Epiq Class Action & Claims Solutions, Inc., as the Settlement Administrator; direct
26 that Notice be distributed to the Settlement Classes and Non-Settlement Class Notice be distributed
27 to members of the Certified Classes who are not members of the Settlement Classes; and schedule a
28 Final Approval Hearing.

1 Date: January 20, 2025

REESE LLP

2 By: /s/ George V. Granade
3 George V. Granade (State Bar No. 316050)
4 *ggranade@reesellp.com*
5 8484 Wilshire Boulevard, Suite 515
6 Los Angeles, California 90211
7 Telephone: (310) 393-0070

REESE LLP

6 Michael R. Reese (State Bar No. 206773)
7 *mreese@reesellp.com*
8 100 West 93rd Street, 16th Floor
9 New York, New York 10025
10 Telephone: (212) 643-0500

TYCKO & ZAVAREEI LLP

9 Sabita J. Soneji (State Bar No. 224262)
10 *ssoneji@tzlegal.com*
11 1970 Broadway, Suite 1070
12 Oakland, California 94612
13 Telephone: (510) 254-6808

TYCKO & ZAVAREEI LLP

13 Hassan A. Zavareei (State Bar No. 181547)
14 *hzavareei@tzlegal.com*
15 Gemma Seidita (State Bar No. 322201)
16 *gseidita@tzlegal.com*
17 2000 Pennsylvania Avenue, NW, Suite 1010
18 Washington, District of Columbia 20036
19 Telephone: (202) 973-0900

BAILEY & GLASSER LLP

17 Brian A. Glasser (*pro hac vice*)
18 *bglasser@baileyglasser.com*
19 John W. Barrett (*pro hac vice*)
20 *jbarrett@baileyglasser.com*
21 209 Capitol Street
22 Charleston, West Virginia 25301
23 Telephone: (304) 345-6555

KAUFMAN P.A.

22 Rachel E. Kaufman (State Bar No. 259353)
23 *rachel@kaufmanpa.com*
24 Avi Kaufman (*pro hac vice*)
25 *avi@kaufmanpa.com*
26 237 South Dixie Highway, Floor 4
27 Coral Gables, Florida 33133
28 Telephone: (305) 469-5881

LAW OFFICES OF STEFAN COLEMAN

Stefan Coleman (*pro hac vice*)
lan@stefancoleman.com
66 West Flagler Street, Unit 900
Miami, Florida 33130

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Telephone: (877) 333-9427

*Counsel for Plaintiffs Sarah Bumpus, Micheline Peker,
and Cheryl Rowan and the Classes*