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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**
19 **SACRAMENTO DIVISION**

20 EUGENIO AND ROSA CONTRERAS,
21 WILLIAM PHILLIPS, TERESA BARNEY,
22 KEITH AND TERESA MARCEL, SHERLIE
23 CHARLOT, and JENNIE MILLER, on behalf
24 of themselves and all others similarly situated,
25 Plaintiffs,

26 v.

27 NATIONSTAR MORTGAGE LLC, a
28 Delaware Limited Liability Company;
SOLUTIONSTAR HOLDINGS LLC (N/K/A
XOME HOLDINGS LLC), a Delaware
Limited Liability Company; and
SOLUTIONSTAR FIELD SERVICES LLC, a
Delaware Limited Liability Company,

Defendants.

No. 2:16-cv-00302-MCE-JDP

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF SETTLEMENT
AGREEMENT AND CERTIFICATION OF
SETTLEMENT CLASS**

Date: November 10, 2022
Time: 2:00 PM
Ctrm: 7
Judge: Hon. Morrison C. England, Jr.

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NOTICE OF MOTION

Please take notice that on November 10, 2022, at 2:00 p.m., or as soon thereafter as Class Counsel¹ may be heard, in the courtroom of the Honorable Morrison C. England, Jr., Senior United States District Judge for the Eastern District of California, Plaintiffs Eugenio and Rosa Contreras, Sherlie Charlot, and Jennie Miller (collectively, “Plaintiffs” or “Named Plaintiffs”), through their respective undersigned counsel, will move this Court for an order granting Plaintiffs’ Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class (the “Motion” or “Final Approval Motion”). Defendants do not oppose this Motion. Plaintiffs request that the Court enter an order:

- 1) approving the Settlement Agreement and Release (“Settlement” or “Settlement Agreement”); and
- 2) certifying the proposed Settlement Classes and appointing Class Counsel.

Plaintiffs are separately moving for approval of Attorneys’ Fees and Expenses, and Service Awards (the “Fee Motion”), which motion is set for hearing contemporaneously with this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After nearly six years of litigation, Plaintiffs secured a Settlement of \$8.6 million for the Classes, inclusive of Attorneys’ Fees and Expenses, and Service Awards. Pursuant to the Court’s July 8, 2022 Order preliminarily approving the Parties’ Settlement, Plaintiffs now file two motions to complete the approval process. Order Granting Prelim. Approval of Class Action Settlement (“Preliminary Approval Order”) at 2-4, ECF No. 162. In this unopposed Motion, Plaintiffs seek final

¹ All capitalized terms used herein shall have the same meanings as set forth in the Settlement and Release Agreement (“Settlement” or “Settlement Agreement”), unless otherwise set forth herein. *See* Joint Decl. of Laura R. Gerber and Thomas E. Loeser in Supp. of Pls.’ Unopposed Mot. for Final Approval of Settlement Agreement & Certification of Settlement Class, & Mot. for Att’ys’ Fees, Reimbursement of Expenses, & Service Awards (“Joint Decl.” or “Joint Declaration”), filed herewith, at Ex. 1.

1 approval of the Settlement, which readily satisfies the “fair, adequate, and reasonable” settlement
2 approval standard of Rule 23. The Settlement provides cash payments for all Settlement Class
3 Members now, in direct proportion to the fees they paid, and mitigates the unpredictable risks of class
4 certification, dispositive motions, trial and potential future appeals. The Parties have now fully
5 complied with the terms of the Preliminary Approval Order, including providing notice of the
6 Settlement to the Settlement Classes. No objections or opt-outs have been received to date. Plaintiffs
7 respectfully ask that the Court finally approve the Settlement and certify the Settlement Classes.
8

9 II. FACTUAL AND PROCEDURAL BACKGROUND

10 A. Procedural History.

11 Plaintiffs’ counsel Keller Rohrback L.L.P. and Hagens Berman Sobol Shapiro LLP
12 (collectively, “Class Counsel”) litigated this case over the past six years. The operative Third Amended
13 Class Action Complaint (“Complaint”), ECF No. 114, alleges that Defendants improperly and unfairly
14 charged Plaintiffs and other Settlement Class Members “pay-to-pay” fees (referred to in the Settlement
15 Agreement and herein as “Convenience Fees”), in connection with telephonic and online mortgage
16 payments in violation of the unfair and deceptive trade practices laws, and/or consumer protection laws
17 of California, Florida, and Illinois. Plaintiffs also asserted claims for breach of contract, breach of the
18 implied covenant of good faith and fair dealing, and unjust enrichment. These Convenience Fees
19 increased the monthly amount due, which in turn made it increasingly difficult for borrowers to avoid
20 further default-related servicing fees. While Nationstar (i.e., Nationstar Mortgage LLC, dba Mr.
21 Cooper), and the two Solutionstar Defendants (i.e., Solutionstar Holdings LLC and Solutionstar Field
22 Services LLC) (collectively, “Defendants”), deny any claim of wrongful conduct and contend that
23 Nationstar’s Convenience Fees associated with customer payment options were warranted and
24 properly explained to Settlement Class Members, because the Parties seek to avoid the ongoing costs
25 and risks associated with this Litigation, the Parties have agreed to this Settlement.
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1 Class Counsel summarized the history of the Litigation and mediation process in Plaintiffs’
2 Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval
3 Motion”) at 3–7, ECF No. 154, and will therefore not repeat that summary here. The Court granted the
4 Preliminary Approval Motion on July 8, 2022. ECF No. 162.

5
6 **B. Settlement Negotiations.**

7 The Settlement Agreement is the product of good faith, arm’s-length negotiations during two
8 rounds of mediation. Joint Decl. ¶¶ 5–6. During the second mediation, the Parties engaged the services
9 of the Honorable William J. Cahill (Ret.), a JAMS mediator with substantial experience mediating
10 complex cases, and reached the Settlement² following lengthy and contentious arm’s-length
11 negotiations between the Parties. *Id.* ¶ 6. The process was thorough, adversarial, and professional. *Id.*

12
13 **C. Terms of the Settlement Agreement.**

14 Under the circumstances presented here, the Settlement is an excellent result for the Settlement
15 Classes, the California Class, the Florida Class, and the Illinois Class. The Settlement provides for a
16 Settlement Fund of \$8.6 million in non-reversionary monetary relief. Joint Decl., Ex. 1 at § 2.39; to
17 proportionally compensate Settlement Class Members based upon the amount that they were charged
18 for Convenience Fees during the Class Periods. Additionally, Settlement Class Members will not be
19 subject to being charged for Convenience Fees in the future. As of February 14, 2022, Nationstar
20 ceased charging Convenience Fees to individuals with residential mortgage loans in California,
21 Florida, and Illinois when they make their mortgage payments online or over the telephone.

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27 ² The Parties entered into separate settlement agreements that resolved Plaintiffs’ inspection fee claims
28 on an individual basis. Stipulation to Dismiss Action in Part, ECF No. 151. Those claims were
dismissed with prejudice as to Named Plaintiffs, but without prejudice as to the absent putative class
members. Order to Dismiss Action in Part, ECF No. 156.

1 **III. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASSES**

2 “‘At the final approval stage, the primary inquiry is whether the proposed settlement ‘is
3 fundamentally fair, adequate and reasonable.’” *Taylor v. FedEx Freight, Inc.*, No. 1:13-cv-01137-
4 DAD-BAM, 2016 WL 6038949, at *2 (E.D. Cal. Oct. 13, 2016) (quoting *Lane v. Facebook, Inc.*, 696
5 F.3d 811, 818 (9th Cir. 2012)). The Supreme Court has acknowledged the propriety of certifying a
6 class solely for settlement purposes. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618
7 (1997).

8
9 The Settlement contemplates that the Court will certify three classes under Rule 23(b)(3). Joint
10 Decl., Ex. 1 at §§ 3.1, 3.3.2. The Court has preliminarily done so.

11 Settlement Classes. In its Preliminary Approval Order, the Court conducted a Rule 23 analysis
12 and preliminarily found, under Rule 23(a) and (b)(1), “for purposes of settlement only the []
13 prerequisites of Fed. R. Civ. P. 23(a) have been satisfied.” ECF No. 162 at 2. The Court provisionally
14 certified the following three Settlement Classes:
15

16 (1) California Class: all residents of California, who, from February 1, 2012 to February 14,
17 2022, made a payment to Nationstar on a residential mortgage loan over the phone or online that
18 included a Convenience Fee at Issue charged by Nationstar for using the phone or internet;

19 (2) Florida Class: all residents of Florida, who, from February 1, 2012 to February 14, 2022,
20 made a payment to Nationstar on a residential mortgage loan over the phone or online that included a
21 Convenience Fee at Issue charged by Nationstar for using the phone or internet; and
22

23 (3) Illinois Class: all residents of Illinois, who, from February 1, 2013 to February 14, 2022,
24 made a payment to Nationstar on a residential mortgage loan over the phone or online that included a
25 Convenience Fee at Issue charged by Nationstar for using the phone or internet.

26 Excluded from the Settlement Classes are: (i) individuals who are or were officers or directors
27 of the Defendants or any of their respective affiliates; (ii) any justice, judge, or magistrate judge of the
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1 United States; and (iii) all individuals who file a timely and proper request to be excluded from the
2 Settlement Class. ECF No. 162 at 3.

3 While the objection deadline of September 9, 2022, has not yet passed, to date no objections
4 have been raised to the Court's provisional certification of the Settlement. If such an objection is
5 timely raised, Plaintiffs will address it in their reply, which is due November 3, 2022. In the absence of
6 a viable challenge to certification, since the Court has already conducted a full analysis under Rule 23,
7 it need not do so again, and may simply rely on its rationale for class certification as set out in the
8 Preliminary Approval Order. *See In re Netflix Priv. Litig.*, No. 5:11-CV-00379 EJD, 2013 WL
9 1120801, at *4 (N.D. Cal. Mar. 18, 2013). Accordingly, the Court should finally certify the Settlement
10 Classes.
11

12 **IV. THE NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS**

13 **A. The Content of the Notice Was Proper.**

14 The Class Notice was prepared in three forms, the Long-Form Notice, the Email Notice, and
15 the Postcard Notice.³ The Long-Form Notice provided detailed information about the Settlement to the
16 Settlement Class Members, including: (1) a comprehensive summary of the Settlement's terms; (2)
17 notice of Class Counsel's intent to request Attorneys' Fees and Expenses, and Service Awards for the
18 services performed by Named Plaintiffs; and (3) detailed information about the Released Claims. *See*
19 *Decl. of Mark Cowen in Supp. of Pls.' Unopposed Mot. for Final Approval of Settlement Agreement*
20 *& Certification of Settlement Class ("A.B. Data Decl." or "A.B. Data Declaration")*, filed herewith,
21 Ex. D (Long-Form Notice). In addition, the Long-Form Notice provided information about the
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25 ³ As of September 2, 2022, 258,503 Email Notices were sent and confirmed delivered by electronic
26 mailing, and an additional 79,238 notices were sent by first class mail in the Postcard Notice. A.B.
27 Data Decl. ¶¶ 6–8. The Preliminary Approval Order approved "the Class Notice in the Settlement
28 Agreement," ECF No. 162 at 3, which prioritized Email Notice, followed by notice for individuals
without email addresses, (or for those with email bounce-backs) being sent by first class mail as
Postcard Notice. Joint Decl., Ex. 1 at § 6.1.

1 Fairness Hearing date, and the procedure and deadlines to Opt-Out of the Settlement, to object to the
2 Settlement, or to receive additional information about the Settlement. *Id.* The Long-Form Notice
3 provided Settlement Class Members with contact information for Class Counsel, information on the
4 toll-free phone number for inquiries to the Settlement Administrator, and the Settlement Website
5 address for further information. *Id.*

6
7 The Email Notice and Postcard Notice prominently identify who is in the Settlement Classes
8 and notify them of the Settlement; refer Settlement Class Members to the Long-Form Notice; and
9 provide hyperlinks or weblinks to the Settlement Website that contains the Long-Form Notice and the
10 Settlement Agreement itself. A.B. Data Decl., Ex. A (Email Notice); Ex. B (Postcard Notice). The
11 Notices further summarize the nature of the Litigation and the Settlement terms, including its benefits,
12 releases, and proposed Attorneys' Fees and Expenses, and Service Awards; notify Settlement Class
13 Members of the Objection Deadline and the Opt-Out Deadline and the date of the Fairness Hearing;
14 and provide email and telephone numbers to contact the Settlement Administrator or Class Counsel. *Id.*
15 The Email Notice was abbreviated from the Long-Form Notice to avoid being filtered out as junk mail
16 or spam, A.B. Data Decl., Ex. A; but clearly and succinctly supplies the critical information from the
17 Class Notice. The Postcard Notice was also abbreviated from the Long-Form Class for legibility and to
18 fit the most important content onto the postcard, A.B. Data Decl., Ex. B; Both Notices referred the
19 reader to the Settlement Website.
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22 The content of these Notices easily meets the enhanced notice requirements of Rule 23(b)(3).
23 As for the Email Notice and Postcard Notice, like the short form notice that was met with approval in
24 *In re Hyundai & Kia Fuel Economy Litigation*, 926 F.3d 539 (9th Cir. 2019), "its primary purpose was
25 to alert class members to the settlement, provide a high-level overview of the process, including
26 critical dates, and explain where class members could obtain additional information[.]" *Id.* at 567. *See*
27 *also Noll v. eBay, Inc.*, 309 F.R.D. 593, 601, 605 (N.D. Cal. 2015) (approving use of a settlement
28

1 website that makes the full form of notice available, and short email notice with a hypertext link to the
2 settlement website).

3 **B. The Dissemination of Notice Was Proper.**

4 The Court approved the proposed notice program set out in the Settlement Agreement, Joint
5 Decl., Ex. 1 at § 2.2.3, and set July 26, 2022 as the date for dissemination of Email Notice to the
6 Settlement Class to commence. ECF No. 162 at 4. On July 15, 2022, Nationstar provided the email and
7 mailing addresses to A.B. Data for the notice program from their regular business records. A.B. Data
8 Decl. ¶ 4.⁴ In accordance with the Settlement Agreement, the notice program included the following
9 elements: 1) Email Notice to Settlement Class Members with valid email addresses; and 2) for
10 Settlement Class Members without a valid email address, or if an email bounce-back was received,
11 Postcard Notice via first class mail. If the Postcard Notice was returned undeliverable, the Settlement
12 Administrator performed a skip trace search and made an additional attempt to re-mail the Postcard
13 Notice. Joint Decl., Ex. 1 at § 6.1.2; A.B. Data Decl. ¶¶ 8–11.

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15
16 A.B. Data disseminated the following notices starting on July 26, 2022. First, an Email Notice
17 was sent to the email addresses of 262,928 Settlement Class Members substantially in the form of the
18 Email Notice approved by the Court. A.B. Data Decl. ¶ 6, Ex. A (Email Notice). At the conclusion of
19 the process, 258,503 emails were confirmed as delivered. A.B. Data Decl. ¶ 7. Beginning on August
20 10, 2022, Postcard Notice was sent to the last known addresses of 24,640 Settlement Class Members
21 for whom no email address was available. A.B. Data Decl. ¶ 10, Ex. B (Postcard Notice). A.B. Data
22 received notification that 1,132 Postcard Notices were returned as undeliverable and performed tracing
23 to locate a better address and re-mailed 641 Postcard Notices. *Id.* ¶ 11. On September 2, 2022, an
24

25
26 ⁴ After analyzing and deduplicating the 368,848 records received, A.B. Data determined there were
27 358,727 unique records, and that 262,928 had sufficient data for those records to be issued by email.
28 A.B. Data Decl. ¶¶ 4–6. A.B. Data identified 24,460 records providing mailing addresses only, *id.* ¶
10, and 54,598 of the emails sent had bounce-backs or invalid email addresses. *Id.* All those
individuals were sent a Postcard Notice at the available address. *Id.*

1 additional 54,598 Settlement Class Members were mailed Postcard Notice because an email address
2 was not verified, or because Email Notice was sent and not delivered. *Id.* ¶¶ 8, 10.

3 Due process requires that notice to class members be “reasonably calculated, under all the
4 circumstances, to apprise interested parties of the pendency of the action and afford them an
5 opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314
6 (1950) (citations omitted). For the due process standard to be met, “[a]ctual notice need not be
7 provided to absent members of a class action settlement to bind them, assuming the notice provided
8 was the ‘best practicable notice.’” *Villegas v. United States*, 963 F. Supp. 2d 1145, 1159 (E.D. Wash.
9 2013) (quoting *Silber v. Mabon*, 18 F.3d 1449, 1453–54 (9th Cir. 1994)). Indeed, the stricter “best
10 practicable notice” standard—which expressly authorizes notice by “electronic means”—applies to
11 Rule 23(b)(3) opt-out classes. Fed. R. Civ. P. 23(c)(2)(B). Here, the dissemination of the notices by
12 electronic means and first-class mail satisfies all due process considerations and Rules 23(c)(2) and
13 (e)(1).
14
15

16 By July 26, 2022, as required by the Settlement Agreement and Preliminary Approval Order,
17 ECF No. 162 at 3–4, A.B. Data also posted and linked the Complaint, the Settlement Agreement, the
18 Long-Form Notice, and other relevant documents on the Settlement Website. *See* A.B. Data Decl. ¶ 13.
19 As of September 2, 2022, Class Counsel and/or A.B. Data have responded to 630 email and phone
20 inquiries. Joint Decl. ¶ 22; A.B. Data Decl. ¶ 13.
21

22 **C. Notice Was Properly Given Under the Class Action Fairness Act.**

23 The Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, requires each defendant
24 participating in a proposed settlement of a class action to give notice, in the form specified in CAFA,
25 to the U.S. Attorney and the “appropriate state official” as defined by CAFA, within ten (10) days after
26 the proposed settlement is filed in court. 28 U.S.C. § 1715(b). The Settlement Agreement was filed
27
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1 with the Court on April 29, 2022, and proper CAFA notice was given by all Defendants on May 9,
2 2022. Joint Decl. ¶ 14, Ex. 2 (CAFA Notice). CAFA has also been satisfied.

3 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

4 Now that the Court has preliminarily approved the Settlement and caused notice issued to
5 Settlement Class Members consistent with Rule 23(c)(2)(B) and 23(e)(1), the Court must decide
6 whether final approval is warranted. Ultimately, the Court should finally approve the Settlement if it
7 determines that the Settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Court
8 must consider the factors listed in Rule 23(e)(2) in making this assessment. *Briseño v. Henderson*, 998
9 F.3d 1014, 1023 (9th Cir. 2021); Fed. R. Civ. P. 23(g). All of the factors support approval of this
10 Settlement.
11

12 **A. Rule 23(e)(2)(A): Adequate Representation.**

13 Class Counsels’ Joint Declaration details nearly seven years of engagement with this Litigation.
14 Joint Decl. ¶¶ 25–30. Named Plaintiffs and the Settlement Class have had excellent representation in
15 this Litigation.
16

17 **B. Rule 23(e)(2)(B): The Settlement Was Negotiated at Arm’s Length.**

18 The settlement process for Plaintiffs’ Litigation, as explained in the Joint Declaration, consisted
19 of two major in-person efforts to settle the Litigation, with mediators skilled in handling class actions.
20 Joint Decl. ¶¶ 5–6. The Litigation only settled following years of private negotiations, contentious
21 litigation, and then the second in-person mediation with the Honorable William J. Cahill (Ret.) in early
22 2022, after the Parties accepted a mediator’s proposal that covered the claims of the three Settlement
23 Classes, Attorneys’ Fees and Expenses, and Service Awards.
24

25 **C. Rule 23(e)(2)(C)(i): The Costs, Risks, and Delay of Trial and Appeal.**

26 Consumer cases are complex, expensive, and unpredictable, especially in view of the still-
27 unsettled nature of the law as it relates to the disclosures required for imposition of various fees and
28

1 charges. This Litigation has now been pending for over six years, during which time the Parties have
2 litigated multiple motions to dismiss, commenced briefing of class certification, and engaged in
3 extensive formal written, document, and deposition discovery and informal mediation discovery.
4

5 Plaintiffs believe that their case was very strong on the merits of their state law consumer
6 protection claims and breach of contract claims. Plaintiffs also assert that they had strong rebuttals to
7 Nationstar’s defenses. Plaintiffs nevertheless face a number of uncertainties. Had this Litigation not
8 settled, the Parties would have continued to engage in significant additional fact and expert discovery,
9 including substantial depositions. Class certification was in the process of being briefed, indeed,
10 Plaintiffs were working on their reply brief when the Parties commenced mediation for the second
11 time. Following discovery, the Parties would almost certainly have litigated cross-motions for
12 summary judgment.
13

14 The legal landscape concerning the disclosures required for imposing Convenience Fees shifted
15 over the course of the Litigation and continues to change. The critical issue of whether Plaintiffs’
16 mortgage contracts prohibit the assessment of Convenience Fees remains in dispute, and Defendants
17 dispute that Nationstar was “unjustly enriched” by charging the Convenience Fees. Further, Nationstar
18 continues to assert that their Convenience Fees did not violate the various unfair and deceptive trade
19 practices acts and/or consumer protection statutes because, they claim, the Convenience Fees were
20 disclosed to borrowers—a claim that Plaintiffs also dispute.
21

22 The Settlement Agreement’s cash payments to Settlement Class Members provides certain
23 benefits to Settlement Class Members by providing them immediate payments. Joint Decl., Ex. 1 at
24 §§ 4.3-4.5.

25 This risk mitigation is particularly significant in light of the *Morandi v. Nationstar Mortgage,*
26 *LLC*, No. 2:19-cv-06334-MCS-MAA, 2021 WL 1398967, at *6 (C.D. Cal. Apr. 6, 2021) decision,
27 where the court denied class certification in a similar case based on differing language in borrowers’
28

1 mortgage contracts, along with similar cases from other jurisdictions denying class certification when
2 relying on the borrower mortgage contracts. *See Lane v. Wells Fargo Bank, N.A.*, No. C 12-04026-
3 WHA, 2013 WL 3187410, at *4-5 (N.D. Cal. June 21, 2013); *Gustafson v. BAC Home Loans*
4 *Servicing, LP*, 294 F.R.D. 529, 543-45 (C.D. Cal. 2013); *see also Gordon v. Chase Home Fin., LLC*,
5 No. 8:11-cv-2001-T-33EAJ, 2013 WL 436445, at *5 (M.D. Fla. Feb. 5, 2013). Although, as
6 demonstrated by the Court's denial of Defendants' motions to dismiss, and a number of other cases
7 from California and elsewhere certifying classes of mortgage borrowers, while the cases cited above
8 are not determinative of the outcome here, they do illustrate the litigation risk that this Settlement
9 avoids. Given the uncertain and high-stakes backdrop, this Settlement is particularly favorable for the
10 proposed Settlement Classes and eliminates the risk in further litigation. *See Joint Decl.* ¶¶ 8, 26.

11
12 If the case continued, pre-trial proceedings would have been expensive, complex, and
13 protracted, and may have been a precursor to a full trial. Moreover, Defendants would likely have
14 pursued an appeal if Plaintiffs were to prevail. If Plaintiffs did not prevail on liability on their
15 consumer claims, there would still remain for decisions on their breach of contract and unjust
16 enrichment law claims. This Settlement avoids these expenditures of resources for all Parties and the
17 Court and provides the certainty of near-term payments that Settlement Class Members would not
18 receive if the case proceeded. The monetary consideration is far better for the Settlement Classes than
19 the possibility of a more significant recovery, if any, after an expensive and protracted trial and appeal.
20 Because of the prospect of extensive further litigation and delay, together with the uncertainty of the
21 outcome, this factor strongly supports final approval of the Settlement.

22
23
24 **D. Rule 23(e)(2)(C)(ii): The Effectiveness of Distribution of Relief.**

25 The analysis here is very short. The primary relief is a cash payment to each Settlement Class
26 Member or loan number. The Settlement Class Members need do nothing to have the benefit of this
27 relief. The amounts will be automatically distributed per loan, either electronically at Settlement Class
28

1 Members' election, or by first class mail, within fifteen (15) days following the Final Settlement Date.
2 Joint Decl., Ex. 1 at § 4.5. The Settlement Class Members do not need to fill out claim forms or
3 anything else to receive their payments. The "effectiveness," in the words of the Rule, is 100%.

4 **E. Rule 23(e)(2)(C)(iii): Attorneys' Fees.**

5 As explained in the Parties' respective Fee Motion filed concurrently herewith, the Attorneys'
6 Fees and Expenses, and Service Awards that Plaintiffs are seeking are 25% of the Settlement Fund,
7 matching the Ninth Circuit's benchmark for recovery in the class context. *See Fischel v. Equitable Life*
8 *Assurance Soc'y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002). Thus, this factor supports a determination
9 that the Settlement is fair, reasonable, and adequate.
10

11 **F. Rule 23(e)(2)(C)(iv): "Agreement Made in Connection with the Proposal."**

12 Class Counsel have jointly represented Plaintiffs. They have no "agreement in connection with
13 the proposal [i.e., the settlement]." Their only agreement is to share the responsibility for the Litigation
14 and the fees, if any, that they generate. One other firm, Land Counsel, has performed work in the
15 Litigation, and it will be compensated based upon its actual time spent working on this Litigation from
16 any attorneys' fees awarded. This factor also supports final approval of the Settlement.
17

18 **G. Rule 23(e)(2)(D): Equitable Treatment Among Settlement Class Members.**

19 The Settlement Classes are treated equitably vis-à-vis each other. Every Settlement Class
20 Member receives the benefit of the cash payments, in proportion to the payments they have already
21 made to Nationstar for Convenience Fees. Joint Decl., Ex. 1 at §§ 4.3-4.5. This Settlement achieves
22 equity among all Settlement Class Members.
23

24 **H. Rule 23(g): Appointing Class Counsel.**

25 Rule 23(g) requires the Court to examine the capabilities and resources of Class Counsel. Class
26 Counsel have detailed the claims brought in this Litigation, and the time and effort already expended in
27 connection with this Litigation. *See supra* Section II.A-B; *see also* Joint Decl. ¶¶ 25–30, Ex. 7 (Keller
28

1 Rohrback Resume), Ex. 8 (Hagens Berman Resume). Class Counsel thus satisfy the requirements of
2 Rule 23(g).

3
4 **VI. CONCLUSION**

5 For the reasons discussed herein, Named Plaintiffs respectfully submit that the Settlement
6 Classes meet all the requirements of Rule 23 and should be finally certified, and that the Settlement
7 should be granted final approval because it is a fair and reasonable result when viewed against the
8 governing standard. Attached hereto is a [Proposed] Order and Final Judgment, which addresses both
9 the merits of the Settlement, as addressed in this Final Approval Motion, and the Motion for Attorneys'
10 Fees and Expenses, and Service Awards, as addressed in the Fee Motion, filed this same date.

11
12 DATED this 6th day of September 2022.

13 By /s/ Laura R. Gerber

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Seattle, WA 98101

Tel.: (206) 623-7292

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

/s/ Laura R. Gerber _____

Laura R. Gerber

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

EUGENIO AND ROSA CONTRERAS,
WILLIAM PHILLIPS, TERESA BARNEY,
KEITH AND TERESA MARCEL, SHERLIE
CHARLOT, and JENNIE MILLER, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, a
Delaware Limited Liability Company;
SOLUTIONSTAR HOLDINGS LLC (N/K/A
XOME HOLDINGS LLC), a Delaware
Limited Liability Company; and
SOLUTIONSTAR FIELD SERVICES LLC, a
Delaware Limited Liability Company,

Defendants.

No. 2:16-cv-00302-MCE-EFB

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Action Filed: February 12, 2016
FAC Filed: August 30, 2017
SAC Filed: September 24, 2018
TAC Filed: May 6, 2020

This matter having come before the Court for hearing pursuant to Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class, and Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards, as set forth in the Settlement Agreement and Release ("Settlement Agreement"), and due to adequate notice having been given to the Settlement Class Members as required in the Order Granting Preliminary Approval of Class Action Settlement, ECF No. 162, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed of the promises and good

1 cause appearing therefore, it is ORDERED, ADJUDGED, AND DECREED THAT:

2 1. This Final Approval Order and Judgment (“Final Approval Order”) incorporates by
3 reference the definitions in the Settlement Agreement. All capitalized terms used herein shall
4 have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth
5 herein.

6 2. This Court has jurisdiction over the subject matter of the Litigation and over all of
7 the Parties to the Litigation.

8 3. For purposes of settlement only, the Parties have stipulated to the certification of
9 three Settlement Classes under Federal Rule of Civil Procedure 23, defined as all Settlement
10 Class Members who do not request exclusion from the Settlement and meet the following
11 criteria:

12 (1) California Class: all residents of California, who, from February 1, 2012 to
13 February 14, 2022, made a payment to Nationstar on a residential mortgage loan over the phone
14 or online that included a Convenience Fee at Issue charged by Nationstar for using the phone or
15 internet;

16 (2) Florida Class: all residents of Florida, who, from February 1, 2012 to February
17 14, 2022, made a payment to Nationstar on a residential mortgage loan over the phone or online
18 that included a Convenience Fee at Issue charged by Nationstar for using the phone or internet;
19 and

20 (3) Illinois Class: all residents of Illinois, who, from February 1, 2013 to February
21 14, 2022, made a payment to Nationstar on a residential mortgage loan over the phone or online
22 that included a Convenience Fee at Issue charged by Nationstar for using the phone or internet.

23 Excluded from the Settlement Classes are: (i) individuals who are or were officers or directors of
24 the Defendants or any of their respective affiliates; (ii) any justice, judge, or magistrate judge of
25 the United States; and (iii) all individuals who file a timely and proper request to be excluded
26 from the Settlement Class.

27 4. Certification. As to the Settlement Classes, the Court finds that the class action
28 prerequisites of Rule 23(a) have been satisfied. Specifically, the Court finds that: (i) the

1 Settlement Classes are so numerous that joinder would be impractical; (ii) common questions of
2 law and fact exist as to the Settlement Classes; (iii) that the claims or defenses of the Named
3 Plaintiffs are typical of the claims or defenses of the Settlement Classes; and (iv) that the Named
4 Plaintiffs will fairly and adequately protect the interests of the Settlement Classes. As to the
5 Settlement Classes, the Court also finds “that the questions of law or fact common to class
6 members predominate over any questions affecting only individual members, and that a class
7 action is superior to other available methods for fairly and efficiently adjudicating the
8 controversy.” Fed. R. Civ. P. 23(b)(3). Because all the class certification requirements of Rule 23
9 have been met as to the Settlement Classes, the Court certifies the Settlement Classes for
10 purposes of this Settlement.

11 5. The Court appoints Keller Rohrback L.L.P. and Hagens Berman Sobol Shapiro
12 LLP as Class Counsel for the Settlement Classes, and Named Plaintiffs Eugenio and Rosa
13 Contreras, Sherlie Charlot, and Jennie Miller as class representatives for the Settlement Classes.

14 6. The Class Notice provided to the Settlement Classes conformed with the
15 requirements of Rule 23, the United States Constitution, and any other applicable law, and
16 constituted the best notice practicable under the circumstances, by providing individual notice to
17 all Settlement Class Members who could be identified through reasonable effort, and by
18 providing due and adequate notice of the proceedings and of the matters set forth therein to the
19 other Settlement Class Members. The Class Notice fully satisfied the requirements of Due
20 Process.

21 7. [Any and all objections to the Settlement are overruled *or* No Settlement Class
22 Members have objected to the terms of the Settlement].

23 8. [A list of Settlement Class Members who timely requested exclusion is attached
24 hereto as Exhibit 1 *or* No Settlement Class Members have requested exclusion from the
25 Settlement].

26 9. The Court finds that Defendants properly and timely notified the appropriate
27 government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of
28 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendants’ notice

1 sent on May 9, 2022 and finds that it complied with all applicable requirements of CAFA.
2 Further, more than ninety (90) days have elapsed since Defendants provided notice pursuant to
3 CAFA to the appropriate state officials and the date set for the Final Approval Hearing.

4 10. This Court now gives final approval to the Settlement and finds that the Settlement
5 Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Classes. The
6 Settlement consideration provided under the Settlement Agreement constitutes fair value given
7 in exchange for the release of claims against the Released Persons. The Court finds that the
8 consideration to be paid or provided to Settlement Class Members is reasonable and in the best
9 interests of the Settlement Classes considering the disputed facts and circumstances of and
10 affirmative defenses asserted in the Litigation and the potential risks and likelihood of success of
11 pursuing litigation on the merits. The complex legal and factual posture of this Litigation, the
12 amount of discovery completed, and the fact that the Settlement is the result of arm's-length
13 negotiations between the Parties, including negotiations presided over by the Honorable William
14 J. Cahill (Ret.) of JAMS, support this finding. The Court finds that these facts demonstrate that
15 there was no collusion present in the reaching of the Settlement Agreement, implicit or
16 otherwise. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

17 11. The Court has specifically considered the factors relevant to class settlement
18 approval as required by Rule 23(e)(2) including, *inter alia*, whether Named Plaintiffs and Class
19 Counsel have adequately represented the Settlement Classes, whether the Settlement was
20 negotiated at arm's length, the relief provided to the Settlement Classes, taking into account the
21 costs, risks and delay of trial and appeal, the effectiveness of distributing payments to Settlement
22 Class Members; the terms of the proposed attorneys' fees, including timing of payment, and any
23 agreements required to be identified under Rule 23(e)(3); and whether the proposal treats
24 Settlement Class Members equitably relative to one another—and upon consideration of such
25 factors finds that the Settlement is fair, reasonable, and adequate to all concerned.

26 12. Accordingly, the Settlement is hereby finally approved in all respects, and the
27 Parties are hereby directed to implement and consummate the Settlement Agreement according
28 to its terms and provisions.

1 13. The terms of the Settlement Agreement and of this Final Approval Order and
2 Judgment, including all exhibits thereto, shall be forever binding in all pending and future
3 lawsuits maintained by the Named Plaintiffs and all other Settlement Class Members, as well as
4 their family members, heirs, administrators, successors, and assigns.

5 14. Upon entry of this Final Approval Order, compensation to Settlement Class
6 Members shall be effected pursuant to the terms of the Settlement.

7 15. In addition to any recovery that the Named Plaintiffs may receive under the
8 Settlement, and in recognition of the Named Plaintiffs' efforts and risks taken on behalf of the
9 Settlement Classes, the Court hereby approves the payment of Service Awards to the three
10 Named Plaintiffs in the amount of \$ _____, or \$ ____ total.

11 16. The Court approves the payment of Attorneys' Fees to Class Counsel in the sum of
12 \$ _____, and the reimbursement of litigation Expenses in the sum of
13 \$ _____.

14 17. The Court approves and orders payment to the Settlement Administrator, A.B.
15 Data, Ltd., in the amount of \$ _____ for its performance of its settlement claims
16 administration services provided to date, and further approves and orders payment to A.B. Data,
17 Ltd. from the Settlement Fund for future services rendered to the Settlement Classes upon proper
18 submission of invoices for such services to Class Counsel.

19 18. The Releases, which are set forth in Section 9 of the Settlement Agreement, are
20 expressly incorporated herein in all respects and are effective as of the Final Settlement Date.
21 Upon the Final Settlement Date, the Settlement Class Members, (except any excluded
22 individuals referenced in Exhibit 1 of this Final Approval Order), shall, by operation of the Final
23 Approval Order, be deemed to have fully, conclusively, irrevocably, forever, and finally
24 released, relinquished, and discharged the Released Persons from any and all claims, actions,
25 causes of action, suits, debts, sums of money, payments, obligations, promises, damages,
26 penalties, attorneys' fees and expenses, liens, judgments, and demands of any kind whatsoever
27 that each member of the Settlement Classes may have on or before February 14, 2022 or may
28 have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as

1 individual claims or as claims asserted on a class basis, whether past or present, mature or not yet
2 mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local
3 law, statute, ordinance, regulations, contract, common law, or any other source, that were or
4 could have been alleged in the Litigation that relate, concern, arise from, or pertain in any way to
5 the Released Persons' conduct, policies, or practices concerning Convenience Fees at Issue
6 charged by Nationstar to the Settlement Classes during the applicable Class Periods outlined in
7 Paragraph 3.1 of the Settlement Agreement, including but not limited to claims related to charges
8 for making payments to Nationstar over the phone or internet and claims or causes of action
9 based on such charges for breach of contract, breach of the implied covenant of good faith and
10 fair dealing, unjust enrichment, violation of the Rosenthal Fair Debt Collection Practices Act,
11 violation of the California Unfair Competition Law, violation of the Florida Deceptive and
12 Unfair Trade Practices Act, and violation of the Illinois Consumer Fraud Act.

13 19. Furthermore, Named Plaintiffs and all Settlement Class Members are hereby barred
14 and permanently enjoined from: (a) filing, commencing, prosecuting, intervening in, promoting,
15 or participating (as class members or otherwise) in any action in any jurisdiction based on any of
16 the Released Claims or the facts and circumstances relating thereto; and (b) organizing
17 Settlement Class Members who have not been excluded from the Settlement Classes into a
18 separate class for purposes of pursuing as a purported class action (including by seeking to
19 amend a pending complaint to include class allegations, or seeking class certification in a
20 pending action) based on any of the Released Claims or the facts and circumstances relating
21 thereto.

22 20. This Final Approval Order, the Settlement, and all negotiations, statements,
23 documents, and/or proceedings in connection with this Settlement are not and shall not be
24 construed as an admission by Defendants of any liability or wrongdoing in this or in any other
25 proceeding.

26 21. This Final Approval Order is intended to be a final disposition of the above
27 captioned action in its entirety and is intended to be immediately appealable.

28

1 22. This Court shall retain jurisdiction with respect to all matters related to the
2 administration and consummation of the Settlement, and any and all claims, asserted in, arising
3 out of, or related to the subject matter of the Litigation, including but not limited to all matters
4 related to the Settlement and the determination of all controversies related thereto.

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6 DATED: _____, 2022

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Hon. Morrison C. England, Jr.
Senior United States District Judge

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