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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SONNY LOW, J.R. EVERETT and JOHN
BROWN, on Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

v.

TRUMP UNIVERSITY, LLC, a New
York Limited Liability Company, and
DONALD J. TRUMP,

Defendants.

ART COHEN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

DONALD J. TRUMP,

Defendant.

Case No.: 3:10-cv-00940-GPC-WVG
Case No.: 3:13-cv-02519-GPC-WVG

ORDER:

- (1) GRANTING JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- (2) DIRECTING ISSUANCE OF NOTICE; AND**
- (3) SETTING FINAL APPROVAL HEARING**

[10cv940, ECF No. 583.]
[13cv2519, ECF No. 281.]

On December 19, 2016, the Parties in the above-captioned, related actions (collectively, “Actions”; individually, “*Low*” and “*Cohen*”) pending before this Court entered into a Stipulation of Class Action Settlement (“Agreement”), after arm’s-length

1 settlement negotiations overseen by the Honorable Jeffrey T. Miller.¹ (*Low*, Dkt. No.
2 583-1; *Cohen*, Dkt. No. 281-1.) The Parties now jointly move this Court, pursuant to
3 Federal Rule of Civil Procedure (“Rule”) 23(e), for an order (1) preliminarily approving
4 the classwide settlement of these Actions upon the terms and conditions set forth in the
5 Agreement, (2) directing dissemination of the Class Notices to Class Members, and (3)
6 setting a date and time for a final approval hearing. (*Low*, Dkt. No. 583 at 8; *Cohen*, Dkt.
7 No. 281 at 8.²)

8 LEGAL STANDARD

9 The Ninth Circuit adheres to a “strong judicial policy that favors settlements,
10 particularly where complex class action litigation is concerned.” *Class Plaintiffs v. City*
11 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “The initial decision to approve or reject
12 the settlement under Fed. R. Civ. P. 23(e) is committed to the sound discretion of the trial
13 judge.” *Id.* at 1291.

14 Rule 23(e) “requires the district court to determine whether a proposed settlement
15 is fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938,
16 959 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
17 1998)). In making this determination, a district court must consider a number of factors,
18 including, but not limited to:

19 the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration
20 of further litigation; the risk of maintaining class action status throughout the trial;
21 the amount offered in settlement; the extent of discovery completed, and the stage
22 of the proceedings; the experience and views of counsel; the presence of a
23 governmental participant; and the reaction of the class members to the proposed
24 settlement.

25 *Staton*, 327 F.3d at 959 (internal citation and quotation marks omitted). Moreover, “the
26 settlement may not be the product of collusion among the negotiating parties.” *In re*
27

28 ¹ Unless otherwise defined, all terms used herein have the same meanings as set forth in the Agreement.

² All citations to the record are based upon the pagination generated by the CM/ECF system.

1 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000), *as amended* (June 19,
2 2000).

3 Because some of these factors—including the Class Members’ reactions and
4 governmental participation—cannot be fully assessed until the Court conducts a final
5 fairness hearing, “a full fairness analysis is unnecessary at this stage.” *Alberto v. GMRI,*
6 *Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008) (internal citation and quotation marks
7 omitted). Rather, “[t]he Court’s task at the preliminary approval stage is to determine
8 whether the settlement falls ‘within the range of possible approval.’” *Hart v. Colvin*, No.
9 15-CV-00623-JST, 2016 WL 6611002, at *4 (N.D. Cal. Nov. 9, 2016) (quoting *In re*
10 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)). In examining
11 “overall fairness,” the Court must review the proposed settlement “as a whole, rather than
12 the individual component parts.” *Id.* (quoting *Hanlon*, 150 F.3d at 1026). A court lacks
13 “the ability to delete, modify or substitute certain provisions. The settlement must stand
14 or fall in its entirety.” *Hanlon*, 150 F.3d at 1026 (internal citations and quotation marks
15 omitted).

16 DISCUSSION

17 I. The Amount Offered in Settlement

18 A settlement is not judged against only the amount that might have been recovered
19 had the plaintiff prevailed at trial; nor must the settlement provide full recovery of the
20 damages sought to be fair and reasonable. *Linney v. Cellular Alaska P’ship*, 151 F.3d
21 1234, 1242 (9th Cir. 1998). “Naturally, the agreement reached normally embodies a
22 compromise; in exchange for the saving of cost and elimination of risk, the parties each
23 give up something they might have won had they proceeded with litigation.” *Officers for*
24 *Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 624 (9th
25 Cir. 1982) (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)). “It is
26 well-settled law that a cash settlement amounting to only a fraction of the potential
27 recovery will not per se render the settlement inadequate or unfair.” *Id.* at 628.
28

1 Here, \$25 million will be paid into an Escrow Account to fund the Settlement.
2 (*Low*, Dkt. No. 583-1 ¶¶ IV.A.1, II.21, IV.A.4; *Cohen*, Dkt. No. 281-1 ¶¶ IV.A.1, II.21,
3 IV.A.4.) \$4 million of that fund will be paid to the New York Attorney General to settle
4 the action pending in New York state court. (*Low*, Dkt. No. 583-1 ¶ IV.3; *Cohen*, Dkt.
5 No. 281-1 ¶ IV.3.) The remaining \$21 million of the Settlement Fund (net of Service
6 Awards,³ Taxes, and Tax Expenses for the Escrow Account) will be distributed to
7 Eligible Class Members on a *pro rata* basis. (*Low*, Dkt. No. 583-1 ¶¶ II.26, III.1; *Cohen*,
8 Dkt. No. 281-1 ¶¶ II.26, III.1.) Eligible Class Members will receive payments estimated
9 to amount to 50% of what they spent on the Trump University Live Events, less any
10 refunds received. (*Low*, Dkt. No. 583 at 11; *Cohen*, Dkt. No. 281 at 11.) Moreover,
11 Eligible Class Members may potentially recover more than 50% of what they spent: if
12 any money remains in the Net Settlement Fund after the initial distribution, the
13 Settlement Administrator will make additional *pro rata* distributions to Eligible Class
14 Members who have cashed their Award checks, until the Net Settlement Fund is
15 exhausted. (*Low*, Dkt. No. 583-1 ¶ III.8; *Cohen*, Dkt. No. 281-1 ¶ III.8.) Notably, none
16 of the amount offered in settlement will inure to Class Counsel’s benefit. Class Counsel
17 will not seek any legal fees or costs; instead, they are foregoing payment and providing
18 their legal services *pro bono*. (*Low*, Dkt. No. 583-1 ¶ IX.1; *Cohen*, Dkt. No. 281-1 ¶
19 IX.1.)

20 As the Parties point out, courts have approved settlements with recovery rates far
21 lower than provided for in the instant Settlement. *See, e.g., Bellinghausen v. Tractor*
22 *Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (finding amount offered in settlement
23 weighed in favor of preliminary approval where the “common fund represent[ed]
24 between 27 percent and 11 percent of the total potential recovery”). In light of the
25 multiple risks of continued litigation, the complexity of individualized damages
26 determinations, and the likelihood of delay of any recovery, (*see infra* Part II), the Court
27

28 ³ Plaintiffs intend to seek Service Awards of up to \$15,000 for each Court-appointed class representative in the Actions.
(*Low*, Dkt. No. 583-1 ¶ IX.2; *Cohen*, Dkt. No. 281-1 ¶ IX.2.)

1 preliminarily finds that the estimated amount of recovery that Eligible Class Members
2 will receive is fair, adequate, and reasonable.

3 Accordingly, the Court concludes that the amount offered in settlement weighs in
4 favor of preliminary approval of the Settlement.

5 **II. The Strength of Plaintiffs' Case; the Risk, Expense, Complexity, and Likely**
6 **Duration of Further Litigation, and the Delay of Further Litigation; and the**
7 **Risk of Maintaining Class Action Status Throughout the Trial**

8 Settlement is favored where a case is “complex and likely to be expensive and
9 lengthy to try.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009). Here,
10 the Parties recognize numerous risks of continuing to litigate the Actions. (*Low*, Dkt. No.
11 583 at 16; *Cohen*, Dkt. No. 281 at 16.) While both Parties remain confident in the
12 strength of their positions, Class Counsel acknowledges a number of risks and the
13 potential for delay of further litigation. (*Id.*) First, Class Counsel acknowledges the risk
14 that Plaintiffs may be unable to obtain a jury verdict against Defendants in *Low* or in
15 *Cohen*. (*Id.*) Class Counsel also acknowledges that even if they obtained a favorable
16 verdict on liability in *Low*, Class Members would face the risk, expense, and delay of
17 having to litigate their damages individually, a process which could have taken years.
18 (*Id.*) The possibility of lengthy appeals following the damages proceedings would delay
19 any recovery for Class Members for even more time. (*Id.*) Finally, the possibility that
20 the Court would decertify *Cohen* in whole or in part presented further risks and delays.
21 (*Id.*)

22 In sum, the risk and delay factors weigh in favor of preliminary approval of the
23 Settlement.

24 **III. The Extent of Discovery and the Stage of the Proceedings**

25 Where a “case is near trial, and the parties have conducted extensive discovery”
26 and thoroughly litigated the issues, the extent of discovery and the stage of the
27 proceedings weigh in favor of the proposed settlement. *Cervantez v. Celestica Corp.*, No.
28 EDCV 07-729-VAP, 2010 WL 2712267, at *4 (C.D. Cal. July 6, 2010). Here, the Parties

1 took extensive discovery (including, *inter alia*, sixty-five depositions) for four years. The
2 Court ruled on motions for class certification and summary judgment in both Actions and
3 on a motion for decertification in *Low*. (*See Low*, Dkt. Nos. 298, 418, 423; *Cohen*, Dkt.
4 Nos. 53, 268.) The Court ruled on numerous substantive and procedural motions *in*
5 *limine* in *Low*. (*Low*, Dkt. No. 572.) The liability phase of trial in *Low* was slated to
6 begin on November 28, 2016, merely ten days after the Parties settled the Actions. (*Low*,
7 Dkt. Nos. 502, 577.)

8 Accordingly, the extent of discovery and the stage of the proceedings weigh in
9 favor of preliminary approval of the Settlement.

10 **IV. The Experience and Views of Counsel**

11 Where “[b]oth Parties are represented by experienced counsel,” the
12 recommendation of experienced counsel to adopt the terms of the proposed settlement “is
13 entitled to great deal of weight.” *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d
14 1166, 1174 (S.D. Cal. 2007). In particular, “[t]he recommendations of plaintiffs’ counsel
15 should be given a presumption of reasonableness.” *In re Omnivision Techs., Inc.*, 559 F.
16 Supp. 2d 1036, 1043 (N.D. Cal. 2008) (internal citation and quotation marks omitted).

17 Both Parties are represented by experienced, able counsel. Class Counsel—
18 Robbins Geller Rudman & Dowd LLP (“RGRD”) and Zeldes Haeggquist & Eck, LLP
19 (“ZHE”)—have significant experience prosecuting class actions and handling complex
20 litigation. (*Low*, Dkt. No. 583 at 17–18; *Cohen*, Dkt. No. 281 at 17–18.) Counsel on
21 both sides believe that the Settlement provides a fair, adequate, and reasonable recovery
22 for Class Members. (*Id.*) Accordingly, this factor weighs in favor of preliminary
23 approval of the Settlement.

24 **FINDINGS**

25 After carefully considering the Agreement and accompanying Exhibits, the Parties’
26 moving papers; and the applicable law, the Court finds that:

27 1. Pursuant to Rule 23, the Court has certified two overlapping classes of
28 Trump University Live Event purchasers in these Actions. Specifically, in the *Low*

1 Action, the Court certified a class comprised of “All persons who purchased a Trump
2 University three-day live ‘Fulfillment’ workshop and/or a ‘Elite’ program (‘Live Events’)
3 in California, New York and Florida, and have not received a full refund,” divided into
4 five subclasses. (*Low*, Dkt. No. 298 at 35–36.) The Court also appointed Plaintiffs John
5 Brown, J.R. Everett, and Sonny Low (as well as former Plaintiff Tarla Makaeff) to serve
6 as class representatives and appointed Robbins Geller Rudman & Dowd LLP (“RGRD”)
7 and Zeldes Haeggquist & Eck, LLP (“ZHE”) to serve as Class Counsel. (*Id.* at 36.) In
8 the *Cohen* Action, the Court certified a class comprised of “All persons who purchased
9 Live Events from Trump University throughout the United States from January 1, 2007 to
10 the present.” (*Cohen*, Dkt. No. 53 at 22–23.) The Court also appointed Plaintiff Art
11 Cohen to serve as class representative and appointed RGRD and ZHE to serve as Class
12 Counsel. (*Id.* at 23.)

13 2. On September 21, 2015, this Court approved a joint Notice of Pendency to
14 be disseminated individually by Epiq Systems, Inc. to potential Class Members in both
15 Actions, providing an opportunity for Class Members to opt out and ordering that “[a]ny
16 Class Member who does not send a completed, signed request for exclusion to the Notice
17 Administrator post-marked on or before the Opt-Out Deadline will be deemed to be a
18 Member of the Class for all purposes and bound by all further orders and judgments of
19 the Court.” (*Low*, Dkt. No. 419 at 11; *Cohen*, Dkt. No. 130 at 10–11.)

20 3. On August 2, 2016, the Court issued an order setting a November 28, 2016
21 jury and bench trial date in the *Low* Action. (*Low*, Dkt. No. 502.)

22 4. On November 18, 2016, the Parties entered into a Settlement Term Sheet,
23 setting forth the basic terms of classwide settlement in the Actions. (*Low*, Dkt. No. 580
24 at 2–7; Dkt. No. 577.)

25 5. On December 19, 2016, the Parties executed the Agreement. (*Low*, Dkt. No.
26 583-1 at 34–35; *Cohen*, Dkt. No. 281-1 at 34.)

27 6. The Court has now reviewed the Agreement and determined the proposed
28 Settlement to be fair, reasonable, adequate, and within the range of possible approval.

1 The proposed Settlement does not improperly grant preferential treatment to any segment
2 of the Class. The proposed Settlement is sufficient to warrant sending notice to Class
3 Members about the Settlement. The procedures for establishing and administering the
4 benefits provided by the proposed Settlement and for notice to Class Members satisfy the
5 requirements of Rule 23 and due process.

6 7. The Court preliminarily finds that the Settlement resulted from arm's-length
7 negotiations among experienced counsel for the Parties, overseen by the Honorable
8 Jeffrey T. Miller. The Court preliminarily finds that the Settlement was concluded only
9 after Plaintiffs and Defendants conducted their own investigations and undertook
10 extensive analyses of the factual and legal issues raised by the claims and defenses, and
11 falls within the range of possible approval. The Court preliminarily finds that the
12 Settlement raises no obvious reasons to doubt its fairness and provides a reasonable basis
13 for presuming that the Settlement satisfies the requirements of Rule 23(e) and due
14 process.

15 8. The Court has reviewed the Class Notices, including the individual emailing
16 and mailing of the Long-form Notice and Claim Form to all Class Members who can be
17 reasonably identified, the posting of the Long-form Notice on the Settlement Website and
18 Class Counsel's websites, and publication of the Summary Notice in the national edition
19 of *USA Today*. The Court has determined that these forms of notice, which are consistent
20 with the notice plan approved by the Court for the Notice of Pendency:

- 21 (a) constitute the best practicable notice under the circumstances;
- 22 (b) are reasonably calculated to apprise Class Members of the terms of
23 the Settlement and of their right to participate in it or object;
- 24 (c) are reasonable and constitute due, adequate, and sufficient notice to all
25 persons entitled to receive notice; and
- 26 (d) meet all applicable requirements of Rule 23, the United States
27 Constitution, and its Amendments.
- 28

1 Accordingly, **IT IS HEREBY ORDERED** that:

2 1. The Joint Motions for Preliminary Approval of Class Action Settlement are
3 **GRANTED**. (*Low*, Dkt. No. 583; *Cohen*, Dkt. No. 281.) The Court
4 **PRELIMINARILY APPROVES** the Settlement, subject to further consideration at the
5 Final Approval Hearing. All defined terms in the foregoing findings and this Order shall
6 have the same meanings as in the Agreement, unless otherwise noted.

7 2. On or before January 18, 2017 (the “Due Date”), the Paying Defendant shall
8 pay the amount of \$25,000,000.00 (the “Settlement Amount”) into the Escrow Account.
9 Should the Paying Defendant fail to pay the Settlement Amount by the Due Date, the
10 Guaranteeing Defendant shall complete payment of the Settlement Amount by the Due
11 Date.

12 3. This Court shall hold a Final Approval Hearing on **March 30, 2017 at 1:00**
13 **p.m.** in Courtroom 2D of the United States District Court for the Southern District of
14 California, located at 221 West Broadway, San Diego, California 92101, to determine:
15 (a) whether the Settlement of the Actions on the terms and conditions provided for in the
16 Agreement is fair, reasonable, and adequate to Class Members and should be finally
17 approved by the Court; (b) whether a judgment should be entered; and (c) whether
18 Service Awards should be awarded to the Court-appointed Class Representatives, and if
19 so, in what amount. The Court may postpone the Final Approval Hearing and will
20 provide notice of any such postponement on the Settlement Administrator’s website
21 without further notice to Class Members.

22 4. The Better Business Bureau of Metropolitan New York (“Settlement
23 Administrator”) is hereby appointed to supervise and administer the Class Notice
24 procedure and administer the Settlement Fund as provided for in the Agreement, under
25 the direction and supervision of Class Counsel and the Court.

26 5. The Settlement Administrator is directed to compile a list of names and
27 addresses of purchasers of Trump University programs as they appear in the Parties’
28 records.

1 6. The Settlement Administrator shall treat the records of Class Members as
2 confidential and shall not disclose these records to any person or entity except as
3 authorized by Court order. The Settlement Administrator shall use these records solely
4 for the purposes of providing direct notice to Class Members, verifying Claim Forms, and
5 calculating Awards. No copies of files containing these records may be made, nor may
6 these records be utilized by the Settlement Administrator for any other purpose. Within
7 thirty (30) calendar days of notifying the Parties that the Net Settlement Fund has been
8 exhausted, and confirmation by the Parties of the same, the Settlement Administrator
9 shall destroy the Class Member records and shall certify in writing to Class Counsel and
10 Defendants' Counsel that it has done so.

11 7. The Settlement Administrator is directed to update and monitor the
12 Settlement Website (trumpuniversitylitigation.com), posting all Settlement-related
13 documents, including the Agreement, the Long-form Notice and this Order; listing a
14 mailing address and the toll-free telephone number below; and providing for the online
15 submission of Claim Forms.

16 8. The Settlement Administrator shall update and monitor the toll-free
17 telephone number, (866) 841-7311, where Class Members may call for additional
18 information.

19 9. The Proposed Class Notices and Claim Form (attached as Exhibits A1–A3
20 hereto) are approved for dissemination to Class Members. The Parties are authorized to
21 make non-substantive changes to the Class Notices and Claim Form, as long as they are
22 acceptable to both Parties, to reflect deadlines, mailing addresses, and similar
23 information, or to format the notice for printing.

24 10. The Settlement Administrator is ordered to send through U.S. First-Class
25 mail (and email to the extent available), within **fifteen (15) calendar days of this Order**,
26 the Long-form Notice and Claim Form, substantially in the forms attached as Exhibits A1
27 and A3 hereto, to all potential Class Members whose contact information is available in
28 the records provided by the Parties. Among other things, the Long-form Notice shall

1 provide the Settlement Website and a mailing address and toll-free telephone number.
2 Upon request, the Settlement Administrator shall also mail and/or email the Long-form
3 Notice and/or Claim Form to Class Members.

4 11. The Settlement Administrator is ordered to publish on one occasion in the
5 national edition of *USA Today* the Summary Notice, substantially in the form attached as
6 Exhibit A2 hereto, within **fifteen (15) calendar days of this Order**, which will give
7 those who did not receive the Long-form Notice and Claim Form by mail an opportunity
8 to request them.

9 12. No later than **seven (7) calendar days prior to the Final Approval**
10 **Hearing**, Class Counsel shall obtain from the Settlement Administrator, and file with the
11 Court, an affidavit attesting that Class Notice was effectuated pursuant to and consistent
12 with this Order, specifying the dates that the Long-form Notice was disseminated to Class
13 Members and that Summary Notice was published, including a copy of the Summary
14 Notice as published.

15 13. Class Members who wish to participate in the Settlement shall complete and
16 submit Claim Forms in accordance with the instructions contained therein. All Claim
17 Forms must be postmarked or submitted electronically within **seventy-five (75) calendar**
18 **days of this Order (“Claims Deadline”)**. Any Class Member who does not timely
19 submit a Claim Form within the time provided, shall be forever barred from sharing in
20 the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the
21 Court, but will in all other respects be subject to and bound by the provisions of the
22 Agreement, the releases contained therein, this Order, the Final Judgment, and the Final
23 Approval Order. Notwithstanding the foregoing, Class Counsel shall have the discretion
24 (but not the obligation) to accept late-submitted Claim Forms for processing so long as
25 distribution of the Net Settlement Fund to Eligible Class Members is not materially
26 delayed thereby.

27 14. The Settlement Administrator shall review and process each Claim Form to
28 determine whether it qualifies for an Award, and in what amount, in accordance with

1 terms of the Agreement. Claim Forms that do not meet the submission requirements may
2 be rejected. Prior to rejecting a Claim Form, in whole or in part, the Settlement
3 Administrator shall communicate with the claimant in writing to give the claimant the
4 chance to remedy any deficiencies in the Claim Form submitted, including an opportunity
5 to provide documentation of the Live Event purchase.

6 15. Any Class Member who intends to object to the fairness of the Settlement
7 must do so in writing. The written objection must be filed with the Clerk of the United
8 States District Court for the Southern District of California, 333 West Broadway, Suite
9 420, San Diego, California 92101, and served on counsel for the Parties identified in the
10 Long-form Notice such that it is received by counsel no later than **seventy-five (75)**
11 **calendar days from this Order (“Objection Date”)**. The written objection must
12 include: (a) the name, address, and telephone number of the objector; (b) a statement that
13 shows membership in the Class; (c) a statement of whether the objector intends to appear
14 at the Final Approval Hearing, either in person or through his, her, or its counsel; (d) a
15 statement of the objection and the grounds supporting the objection; (e) copies of any
16 papers, briefs, or other documents upon which the objection is based; and (f) the
17 objector’s signature. Any Class Member who files and serves a written objection by the
18 Objection Date may appear at the Final Approval Hearing, either in person or through
19 counsel hired at his or her expense, to object to any aspect of the Settlement. Class
20 Members or their attorneys who intend to make an appearance at the Final Approval
21 Hearing must serve a notice of intention to appear on the Parties’ counsel identified in the
22 Long-form Notice, and file the notice of intention to appear with the Court, no later than
23 the Objection Date, or as the Court may otherwise direct. Any Class Member who does
24 not make his or her objection in the manner provided herein shall be deemed to have
25 waived and forfeited any and all rights that he or she may have to be heard, appear
26 separately and/or to object, and shall be bound by all the terms of this Order and the
27 Agreement and by all proceedings, subsequent orders and judgments, including, but not
28 limited to, the release of the Released Claims.

1 16. Any person filing an objection shall, by doing so, submit himself or herself
2 to the exclusive jurisdiction and venue of this Court, and shall agree to be subject to
3 discovery with respect to the objection and prior objections to class action settlements
4 lodged, subject to this Court's or the Magistrate Judge's approval.

5 17. Given that the Court has already ordered the dissemination of individual
6 Notices of Pendency by U.S. First-Class Mail to all identifiable Class Members (and
7 publication in the national edition of *USA Today*), with an opportunity to opt out and the
8 express provision that any Class Member who did not timely opt out "will be deemed to
9 be a Member of the Class *for all purposes* and bound by all further orders and judgments
10 of the Court" (*Low*, Dkt. No. 419 at 11; *Cohen*, Dkt. No. 130 at 11 (emphasis added)),
11 Class Members will not be given another opportunity to opt out.

12 18. The motion for final approval and any application(s) for Service Awards
13 shall be filed and served within **sixty (60) calendar days of this Order**. Any replies to
14 any objections shall be filed and served at least **seven (7) calendar days prior to the**
15 **Final Approval Hearing**.

16 19. Defendants shall bear no responsibility for any application for Service
17 Awards, and such matters will be considered separately from the fairness, reasonableness,
18 and adequacy of the Settlement. At or after the Final Approval Hearing, the Court shall
19 determine whether any application for Service Awards to Court-appointed Class
20 Representatives shall be approved.

21 20. Robbins Geller Rudman & Dowd LLP shall be appointed as Escrow Agent.
22 The Escrow Agent shall maintain the Escrow Account as a segregated account containing
23 the Settlement Amount, plus any accrued interest. Upon receipt, the Escrow Agent shall
24 invest the Settlement Amount as provided for in the Agreement. All risks related to the
25 investment of the Settlement Fund in accordance with the investment guidelines set forth
26 in the Agreement shall be borne by the Settlement Fund, and the Released Defendants
27 shall have no responsibility for, interest in, or liability whatsoever with respect to
28 investment decisions or the actions of the Escrow Agent, or any transactions executed by

1 the Escrow Agent. The Escrow Agent shall not disburse the Settlement Fund except as
2 provided in the Agreement, by an order of the Court, or with the written agreement of
3 Defendants' Counsel. All funds held by the Escrow Agent shall be deemed and
4 considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction
5 of the Court, until such time as such funds shall be distributed pursuant to the Agreement
6 and/or further order(s) of the Court.

7 21. All reasonable expenses incurred in identifying and notifying Class
8 Members, as well as administering the Settlement Fund, shall be paid in accordance with
9 the terms set forth in the Agreement.

10 22. In the event the Settlement is not finally approved by the Court, is
11 terminated pursuant to the terms set forth in the Agreement, or otherwise fails to become
12 effective for any reason, the Escrow Agent will: (i) immediately cease incurring costs
13 reimbursable from the Settlement Fund; and (ii) refund the Settlement Fund to Paying
14 Defendant, including all accrued interest thereon, less moneys paid to the NYAG and
15 Taxes and Tax Expenses paid, incurred, or due and owing in connection with the
16 Settlement within thirty (30) calendar days of written notice by Defendants' Counsel and
17 pursuant to written instructions from Defendants' Counsel as provided for in the
18 Agreement.

19 23. Neither the Agreement, nor any of its terms or provisions, nor any of the
20 negotiations or proceedings connected with the Settlement, whether or not consummated,
21 shall be construed as an admission or concession of any kind by any of the Parties.
22 Whether or not consummated, this Agreement and the Exhibits hereto, and any associated
23 or supporting documents or filings, shall not be construed as, offered in evidence as,
24 received in evidence as, and/or deemed to be, evidence of a presumption, concession, or
25 an admission by Plaintiffs, or Defendants: (i) whether the Actions were appropriate for
26 class certification; (ii) the validity of any allegation or claim that has been, could have
27 been or in the future might be asserted against any of the Defendants; (iii) the deficiency
28 of any claim or defense that has been, could have been, or in the future might be asserted

1 in the Actions or in any other civil, criminal, or administrative action or other proceeding;
2 (iv) the truth of any fact alleged; (v) liability, negligence, fault, or wrongdoing of any
3 kind; (vi) the existence or scope of any damages.

4 24. The Court retains exclusive and continuing jurisdiction over the Parties and
5 the Class Members to consider all further motions and applications arising out of, or
6 connected with, the Agreement or related Settlement matters. The Court may approve
7 the Settlement with such modifications as may be agreed to by the Parties, if appropriate,
8 without further notice to the Class. The Court shall also retain jurisdiction with respect to
9 the implementation and enforcement of the terms of the Agreement, and all Parties hereto
10 submit to the jurisdiction of the Court for purposes of implementing and enforcing the
11 Settlement embodied in the Agreement.

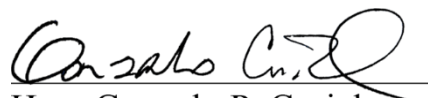
12 25. All Class Members shall be bound by all determinations and judgments of
13 the Court in the Actions concerning the Settlement and related matters, whether favorable
14 or unfavorable to the Class.

15 26. All proceedings in the Actions shall be stayed until further order of the
16 Court, except for proceedings that may be necessary to enforce or implement the
17 Agreement, its Exhibits, or comply with or effectuate the terms and conditions of the
18 Agreement.

19 27. Pending final determination of whether the proposed Settlement should be
20 approved, neither Plaintiffs nor any Class Member, directly or indirectly,
21 representatively, or in any other capacity, shall commence or prosecute against any of the
22 Defendants, any action or proceeding in any court or tribunal asserting any of the
23 Released Claims.

24 **IT IS SO ORDERED.**

25 Dated: December 20, 2016

26 
27 Hon. Gonzalo P. Curiel
28 United States District Judge