

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MOISES ZEPEDA, MICHAEL SPEAR,
RONYA OSMAN, BRIAN PATTEE,
CASEY CHING, DENAE ZAMORA,
MICHAEL LAVANGA, and GARY
MILLER, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PAYPAL, INC., E-BAY INC., and DOES 1
through 10, inclusive,

Defendants.

Case No: C 10-2500 SBA

**ORDER RE MOTION FOR FINAL
APPROVAL AND MOTIONS FOR
ATTORNEYS' FEES AND
SERVICE AWARDS**

Related to:
No. C 10-1668 SBA

Dkt. 295, 296, 297, 340

This is a putative nationwide class action brought by Plaintiffs Moises Zepeda, Michael Spear, Ronya Osman, Brian Pattee, Casey Ching, Denae Zamora, Michael Lavanga and Gary Miller (collectively "Plaintiffs") against PayPal, Inc., and its parent entity, eBay, Inc., (collectively "Defendants"). Plaintiffs allege that PayPal improperly handled disputed transactions relating to their user accounts by unilaterally placing holds and reserves thereon without explanation. PayPal also is alleged to have failed to provide annual error-resolution notices and monthly account statements in violation of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693, et seq. The parties have resolved the above-captioned action on a class-wide basis and entered into a Settlement Agreement, as amended ("the Settlement"), which the Court preliminarily approved in a prior order.

1 The parties are presently before the Court on the following motions: (1) Plaintiffs’
2 Motion for Final Approval of Amended Class Action Settlement Agreement; (2) Motion for
3 Award of Attorneys’ Fees and Reimbursement for Costs and Service Awards, filed by the
4 Lexington Law Group and Quantum Legal LLC (“Class Counsel Fee Motion”); (3) Motion
5 for Attorneys’ Fees and Reimbursement of Expenses filed by Marina Trubitsky (“Trubitsky
6 Fee Motion”); and (4) Application for Attorney Fees by Local Counsel David Hicks
7 (“Hicks Fee Application”).¹ Also before the Court are various objections that the Court has
8 received in response to Notice of the Settlement.

9 This matter came before the Court for a hearing on the above-mentioned matters on
10 February 8, 2017. The parties in this action and related action, Fernando v. PayPal,
11 No. C 10-1668 SBA, appeared through their counsel of record. Attorney Anthony Ferrigno
12 appeared for Objectors Wally Collins and Lucinda Christian (collectively “Collins
13 Objectors”), and Objector Sam Miorelli (“Miorelli”), an attorney, appeared pro se. Having
14 read and considered the papers filed in connection with these matters and upon
15 consideration of the arguments presented at the hearing, the Court hereby GRANTS
16 Plaintiffs’ Motion for Final Approval, GRANTS IN PART the Class Counsel Fee Motion
17 and the Hicks Fee Application, and DENIES the Trubitsky Fee Motion. All objections to
18 final settlement approval are OVERRULED.

19 **I. BACKGROUND**

20 **A. OVERVIEW**

21 PayPal operates an on-line payment processing service that functions as a third party
22 intermediary to facilitate payments between buyers and sellers of goods and services sold
23 on-line through commercial websites, such as eBay. As a condition of using PayPal’s
24 service, subscribers must abide by the PayPal User Agreement (“User Agreement”), among
25 other agreements. Third Am. Compl (“TAC”). ¶ 35, Dkt. 291. The User Agreement
26

27 ¹ Marina Trubitsky (“Trubitsky”) and David Hicks (“Hicks”) are counsel of record
28 in the related action, Fernando v. PayPal, No. C 10-1668 SBA, and are permitted under the
terms of the Settlement to submit an application for attorneys’ fees.

1 provides that upon a breach of its terms—such as by engaging in defined “Restricted
2 Activities”—PayPal “may hold funds in a seller’s account by placing reserves on accounts
3 and/or limiting and/or suspending seller’s accounts and holding the funds in the accounts
4 for up to and in some cases exceeding 180 days.” Id. ¶ 38. Among other things, Restricted
5 Activities are defined to include a breach of the User Agreement or any other agreements
6 with PayPal, selling counterfeit goods, and providing false or inaccurate information. Id.
7 ¶ 39. Plaintiffs are PayPal users who allege that PayPal placed holds on their account funds
8 TAC ¶¶ 10-17. The foregoing policies and practices have given rise to several actions
9 including the instant case, Zepeda v. PayPal, No. 10-2500 SBA, and Fernando v. PayPal,
10 No. 10-1668 SBA.² The procedural history of these actions is summarized below.

11 **1. Zepeda v. PayPal**

12 On May 12, 2010, Ronya Osman and Brian Pattee filed a complaint in this Court
13 against PayPal and eBay. See Osman v. PayPal, Inc., No. C 10-2046 PVT. A month later
14 on June 7, 2010, Moises Zepeda (“Zepeda”) filed the instant action against PayPal. Two
15 days thereafter, Michael Spear filed a third complaint against PayPal and eBay in the matter
16 styled as Spear v. PayPal, Inc. and eBay, Inc., No. C 10-2555 PVT. In July 2010, the
17 plaintiffs in Osman and Spear voluntarily dismissed their respective actions under Federal
18 Rule of Civil Procedure 41(a), without prejudice. In their place, Zepeda filed a First
19 Amended Class Action Complaint (“FAC”) on August 13, 2010, which joined the plaintiffs
20 from the Osman and Spear actions, among others. Dkt. 22.

21 The FAC alleged causes of action against PayPal for: (1) breach of contract;
22 (2) breach of fiduciary duty; (3) accounting; (4) violation of California’s Consumers Legal
23 Remedies Act (“CLRA”); (5) violation of California’s Unfair Competition Law (“UCL”),
24 Cal. Bus. & Prof. Code § 17200; and (6) unjust enrichment. The FAC was filed on behalf
25 of a nationwide class defined as “[a]ll PayPal, Inc. account holders whose funds have been
26

27 ² The Court deemed Fernando to be a “related action” under Civil Local Rule 3-12,
28 though the actions have not been consolidated under Federal Rule of Civil Procedure 42.
Dkt. 61.

1 held by Pay[P]al or whose accounts were closed, suspended, or limited by PayPal,” along
2 with a natural person class defined as “[a]ll natural persons whose funds have been held by
3 Pay[P]al or whose accounts were closed, suspended, or limited by PayPal.” FAC ¶ 57.
4 Mark Todzo of Lexington Law Group LLC and Jeffrey Leon of Quantum Legal LLC
5 (formerly Complex Litigation Group LLC) have served as the principal attorneys
6 representing Plaintiffs and are now Class Counsel.

7 After Plaintiffs filed the FAC, the Honorable Lucy Koh, the judge originally
8 assigned to the action, recused herself and the matter was reassigned to the Honorable
9 Jeremy Fogel. On September 30, 2010, PayPal filed a motion to dismiss the FAC, pursuant
10 to Federal Rule of Civil Procedure 12(b)(6). Dkt. 26. Shortly thereafter, Plaintiffs filed a
11 motion for the appointment of lead counsel. Dkt. 28. On February 15, 2011, Judge Fogel
12 granted PayPal’s motion and dismissed all claims with leave to file a Second Amended
13 Complaint (“SAC”) within thirty days. See 2/15/11 Order Granting Motions to Dismiss
14 and to Appoint Interim Lead, Liaison, and Class Counsel (“2/15/11 Order”) (reported as
15 Zepeda v. PayPal, Inc., 777 F. Supp. 2d 1215, 1220-21 (N.D. Cal. 2011)), Dkt. 49. In the
16 same order, Judge Fogel granted Plaintiffs’ motion for the appointment of lead counsel.
17 Zepeda, 777 F. Supp. 2d at 1223-24.

18 In rejecting Plaintiffs’ tort and contract claims and demand for an accounting, Judge
19 Fogel ruled that: (1) the PayPal User Agreement affords PayPal “sole discretion” to place
20 holds on its users’ accounts, irrespective of whether the user has engaged in restricted
21 activities; and (2) PayPal has no contractual obligation to provide users with an explanation
22 as to why their accounts may have been frozen. Id. at 1219-221. Judge Fogel also rejected
23 the CLRA claim on the ground that Plaintiffs are not “consumers” and therefore lack
24 prudential standing. Id. at 1222. As to the UCL claim, Judge Fogel ruled that the pleadings
25 failed to satisfy the heightened standard for pleading fraudulent conduct under Federal Rule
26 of Civil Procedure 9(b). Id. at 1222-23. Finally, he dismissed the unjust enrichment claim
27 on the ground that the parties’ relationship was governed by an express contract. Id. at
28 1223.

1 While Plaintiffs were given the opportunity to attempt to replead their claims, it
2 became apparent to them that filing a SAC would trigger another motion to dismiss and
3 engender further delay and cost. Mot. for Prelim. Approval at 3, Dkt. 166. In addition,
4 Plaintiffs were concerned that, in light of Judge Fogel’s interpretation of the User
5 Agreement, it would be difficult to cure the deficiencies that resulted in the dismissal of the
6 FAC. Id. For its part, PayPal was receptive to discussing settlement. Id. Thus, instead of
7 amending the pleadings, Plaintiffs commenced settlement discussions with PayPal. Id.

8 **2. Fernando v. PayPal and eBay**

9 On April 19, 2010, Devinda Fernando and Vadim Tsigel, represented by New York
10 attorney Trubitsky and local counsel Hicks, filed the Fernando putative class action against
11 PayPal and eBay. On March 22, 2011, the plaintiffs filed a First Amended Class Action
12 Complaint (“Fernando FAC”), which, inter alia, joined Michail Zinger, Amy Rickel, Fred
13 Rickel, Ira Gilman, Lacy Reintsma and Shaul Behr as additional party-plaintiffs. Fernando
14 FAC, Dkt. 23.

15 The Fernando FAC alleges that PayPal improperly restricts, freezes or closes
16 customer accounts because of “suspicious activity,” without notice, explanation or
17 responding to the inquiries of affected users. Id. ¶¶ 23-24. The pleadings also aver that
18 PayPal freezes the accounts of affected users, thereby preventing them from cancelling
19 their accounts and recovering their funds. Id. ¶ 25. Such conduct is alleged to violate the
20 EFTA, as well as Section III of the Injunctive Relief portion of the settlement agreement
21 reached in In re PayPal Litigation (Comb v. PayPal, Inc.), Nos. C 02-1227 JF, C 02-2777
22
23
24
25
26
27
28

1 JF. Id. ¶¶ 25-26.³ The Fernando FAC alleges six claims for: (1) violation of the EFTA;
2 (2) violation of the Comb settlement agreement; (3) conversion; (4) money had and
3 received; (5) unjust enrichment; and (6) negligence. Fernando, Dkt. 1. Although PayPal
4 filed a motion to dismiss the FAC, the motion was taken off calendar to facilitate settlement
5 discussions. Id., Dkt. 26, 52.

6 B. SETTLEMENT NEGOTIATIONS

7 1. The Original Settlement

8 a) Zepeda

9 Following the dismissal of the FAC by Judge Fogel in Zepeda, PayPal shared
10 detailed and confidential information concerning its hold and reserve practices with the
11 Plaintiffs' counsel. Dkt. 166 at 9. The parties thereafter engaged in settlement negotiations
12 over the course of several months regarding the underlying claims and facts. Mot. for
13 Prelim. Approval at 5, Dkt. 112. The parties then participated in a mediation which took
14 place on or about May 11, 2011, supervised by mediator Randall Wulff of Dispute
15 Resolution. Id. Those discussions and the ensuing mediation resulted in the first settlement
16 in this action. Id.; 2/24/14 Order at 4, Dkt. 205.

17 According to the original Settlement Agreement, "the primary focus of the
18 settlement is the implementation (or maintenance) of business practices" with respect to
19 PayPal's policies and practices regarding "holds," "reserves" and "limitations," as those
20 terms are used by PayPal. Settlement Agt. § 3.3, Dkt. 166-1. To that end, PayPal agreed to
21 provide prospective injunctive relief to a Settlement Class defined as "all current and
22

23 ³ Comb was a class action brought on behalf of a class defined as "[a]ll Persons who
24 opened a PayPal account during the period from October 1, 1999 through January 31,
25 2004," which alleged that PayPal routinely "froze" customer accounts flagged as
26 "suspicious," without justification or explanation. Comb, Dkt. 234 at 6-7. The parties
27 eventually entered into a settlement agreement that provided both injunctive relief and a
28 settlement fund in the amount of \$9.25 million. Id., Dkt. 249. The injunctive relief portion
of the settlement was intended "to implement the requirements of the [EFTA] . . . and to
address the operating practices which led to widespread complaints by users of the PayPal
system." Id., Dkt. 247 at 7. On November 2, 2004, Judge Fogel finally approved the class
settlement in Comb and entered a Final Judgment and Order of Dismissal with Prejudice.
Id.

1 former users of PayPal who had an active PayPal account between April 19, 2006 and the
2 date of entry of the Preliminary Approval Order.” Id. § 1.26. Defendants agreed to pay
3 \$1,425,000 into a Settlement Fund, from which \$712,500 in attorneys’ fees, and \$5,000 in
4 incentive awards for each of the eight class representatives were to be deducted. Id. § 1.24.
5 The remainder of the Settlement Fund was to be contributed as a cy pres award to the
6 Electronic Frontier Foundation (“EFF”). Id. § 3.7. No part of the Settlement Fund was
7 designated for a monetary distribution to the Class.

8 b) **Fernando**

9 On December 20, 2011, the parties in the Fernando action participated in a separate
10 mediation before the Honorable Ellen James (Ret.), which resulted in a global settlement of
11 both actions. Given the overlapping claims of both lawsuits, the parties decided to merge
12 the settlements in Zepeda and Fernando in order to avoid confusing serial notices to the
13 Class. Mot. for Prelim. Approval at 5-6. The Settlement Term Sheet⁴ indicated that
14 Plaintiffs in Zepeda were to file a Second Amended Complaint that joined eBay as a party-
15 defendant, and joined the named plaintiffs from Fernando and incorporated their claims.
16 Hicks Decl. Ex. E, Dkt. 295-2 at 1. In addition, Defendants agreed to contribute an
17 additional \$425,000 to the global settlement fund in order to settle the Fernando action, and
18 that Trubitsky and Hicks (collectively “Fernando counsel”) could submit a fee application
19 seeking up to 50% of the additional settlement funds (i.e., \$212,500). Id.

20 **2. Trubitsky’s Disruptive Conduct**

21 In January 2012, Trubitsky informed the other parties that certain of
22 the Fernando plaintiffs no longer desired to participate in the global settlement, and
23 demanded the opportunity to negotiate individual settlements with PayPal and eBay.
24 3/29/12 Case Mgt. Conf. Stmt. (“3/29/12 CMC Stmt.”) at 6-7, Dkt. 80; Moon Decl. in
25 Supp. of Def.’s Opp’n to Intervenors’ Mot to Intervene and for a Stay of Proceedings ¶¶ 2-
26 5 (“Moon Decl.”), Dkt. 99-1. Trubitsky reiterated these demands at the Case Management
27

28 ⁴ The Settlement Term Sheet was signed by Trubitsky and Hicks on behalf of the
Fernando plaintiffs and counsel for PayPal and eBay. Id.

1 Conference held on April 19, 2012, and insisted that the global settlement could not move
2 forward. 4/19/12 Minute Order, Dkt. 84. The Court indicated that any party who did not
3 desire to be bound by the settlement was free to opt out and file a separate action. Id.
4 Counsel representing Plaintiffs in Zepeda, in turn, indicated their intention to proceed with
5 the settlement and file a motion for preliminary approval. Stipulation, Dkt. 89.

6 Consistent with the terms of their original settlement, Plaintiffs filed a SAC in
7 Zepeda on October 9, 2012, which joined eBay, and added claims for violations of the
8 EFTA and the Comb settlement, which had been alleged in the Fernando pleadings.
9 However, the SAC did not join any of the Fernando plaintiffs as party-plaintiffs. On
10 October 18, 2012, Plaintiffs in this action filed their initial motion for preliminary approval.
11 Dkt. 112.

12 Apparently as a result of the Zepeda plaintiffs' decision to move forward with the
13 settlement without including the Fernando plaintiffs, Trubitsky began a series of actions
14 ostensibly intended to derail the Zepeda settlement. Pls.' Opp'n to Mot. to Extend
15 Deadline to File Mot. for Prelim. Approval at 2-3, Dkt. 88 at 2-3; 11/27/12 Order at 2, Dkt.
16 122; 2/24/14 Order at 5. Among other things, Trubitsky commenced a new lawsuit against
17 eBay, styled as Dunkel, et al. v. eBay, Inc., No. C 12-1452 EJD, and moved for an order
18 permitting the Dunkel plaintiffs to intervene in the Zepeda action. Id. In addition,
19 Trubitsky separately sought to take control of the Zepeda action by resurrecting her
20 dormant motions to consolidate Zepeda and Fernando, to be appointed lead counsel, and
21 have those motions heard prior to Plaintiffs' motion for preliminary approval. See
22 Fernando, Dkt. 79, 51.⁵ The Court denied all motions without prejudice. 11/27/12 Order,
23 Dkt. 122. Finding that it was in the best interest of all parties to resolve their differences
24 and reach a global settlement, the Court instead referred the parties to Magistrate Judge
25 Nathanael Cousins for a joint, mandatory settlement conference relating to Zepeda,

26 _____
27 ⁵ The Fernando plaintiffs originally filed their Motion to Consolidate Case and
28 Appoint Lead Counsel on October 3, 2011. Fernando, Dkt. 40. However, in light of their
pending settlement, the parties in Fernando stipulated to vacate the hearing on that motion,
as well as Defendants' pending motion to dismiss the Fernando FAC. Fernando, Dkt. 51.

1 Fernando and Dunkel. Id. at 4. Judge Edward Davila, who was presiding over the Dunkel
2 action, also referred his case to Judge Cousins for the settlement conference.

3 The global settlement conference was originally scheduled for January 17, 2013, but
4 was reset to February 7, 2013. Fernando, Dkt. 84, 88. On February 7, 2013, counsel in
5 Zepeda, Fernando and Dunkel appeared, though none of the Fernando plaintiffs attended
6 the settlement conference, as required. Id., Dkt. 95. Judge Cousins continued the matter to
7 the next day for further settlement discussions. Id. Trubitsky and her clients, however,
8 failed to appear for the second day of the settlement conference and no settlement was
9 reached in Fernando. 2/8/13 Minute Order, Dkt. 133. Accordingly, Judge Cousins issued
10 an order to show cause (“OSC”) directing Trubitsky and the Fernando plaintiffs to show
11 cause why that action should not be dismissed, civil sanctions should not be imposed, a
12 payment of expenses to the other participants in the settlement conference should not be
13 awarded, and/or the pro hac vice admission of Trubitsky should not be revoked. Order to
14 Show Cause, Dkt. 135; Fernando, Dkt. 100.⁶ The Fernando action was stayed until Judge
15 Cousins later vacated the OSC. Fernando, Dkt. 158 at 9, 169.⁷

16 C. MOTIONS FOR PRELIMINARY APPROVAL

17 1. Original Settlement

18 Following the unsuccessful global settlement conference before Judge Cousins, the
19 Zepeda plaintiffs filed a renewed motion for preliminary approval, based principally on the
20 settlement they had previously reached with PayPal and eBay in May and December 2011.
21 Dkt. 166. On February 24, 2014, the Court denied Plaintiffs’ motion on the grounds that

22 _____
23 ⁶ Around this time period, the Court was inundated with numerous, albeit
24 unsuccessful, attempts by attorney Garrett Skelly to intervene and assume control over the
25 Zepeda and Fernando actions. Skelly claimed to represent three Fernando plaintiffs—Amy
26 and Fred Rickel, and Lacy Reintsma—as well as two non-party putative class members,
Burgess and Caleb Reintsma. The incessant, frivolous motion practice and interference by
Skelly led to further delays in resolving this action. Dkt. 122, 125, 129, 147, 151, 157, 163,
165, 196, 197, 202.

27 ⁷ In a brief order, Judge Cousins found that Trubitsky’s absence was not willful, and
28 that in light of Judge Davila’s dismissal of the Dunkel action and the Court’s preliminary
approval of the Zepeda settlement, no further action on the OSC was necessary. Fernando,
Dkt. 169.

1 the settlement release was overbroad and the Settlement did not provide monetary relief for
2 the class. 2/24/14 Order at 11-12. The Court granted the parties leave to resubmit a
3 renewed motion for preliminary approval within thirty days. *Id.* at 12. The parties
4 subsequently requested, and the Court granted, several continuances of that deadline in
5 order to facilitate additional settlement discussions. 7/2/14 Order, Dkt. 234.

6 2. **Revised Settlement**

7 a) *Terms*

8 The parties participated in two full-day mediations on March 24, 2014, and June 9,
9 2014, before Magistrate Judge Edward Infante (ret.) of JAMS, which eventually led to an
10 Amendment to Settlement Agreement, which revised certain of the terms of the original
11 Settlement. Todzo Decl. in Supp. of Mot. for Prelim. Approval ¶ 3, Dkt. 275-1. PayPal
12 again agreed to provide the injunctive relief from the original settlement. But unlike its
13 prior version, the revised Settlement created a \$3,200,000 settlement fund to provide two
14 forms of monetary relief to the class members who had a hold placed on their account:
15 (1) a Basic Claim, which is a guaranteed payment based on the amount and length of a hold
16 or reserve; and (2) an Alternate Claim, which compensates for business damages, subject to
17 proof of such damages by Claims Class members. Am. Settlement Agt. §§ 1.2, 1.3, Dkt.
18 235-1. The payments for Basic Claims are equal to two-thirds of the average amount of
19 interest at market rates⁸ that would have accrued on the funds subject to a hold or reserve,
20 subject to a \$3 floor and rounded to the nearest \$1 or \$10, as follows:
21
22
23

24 ⁸ In July 2014, Plaintiffs retained Cornerstone Research, a consulting firm, to
25 evaluate the amount of interest that would have accrued on accounts subject to a hold or
26 reserve. McCabe Decl. ¶ 2, Dkt. 340-3. Cornerstone evaluated over 180 transactions
27 involving over 10 million unique accounts during the time period from July 27, 2006, and
28 March 20, 2014. *Id.* Based on an annualized money market interest rate of 3.65% in 2007,
Id. ¶ 5. Applying that formula across the board, Cornerstone estimated the aggregate amount
of interest across all accounts during the aforementioned time period to be \$3,009,839.84.
Id. ¶ 6.

LENGTH OF HOLD/RESERVE	HOLD/RESERVE UNDER \$1,000	HOLD/RESERVE UP TO \$1,000	HOLD/RESERVE OVER \$10,000
1-30 days	\$3.00	\$3.00	\$3.00
31-90 days	\$3.00	\$5.00	\$150.00
91-150 days	\$3.00	\$10.00	\$100.00
Over 150 days	\$14.00	\$25.00	\$440.00

Alternate Claims will be paid in full, subject to proof, up to an individual cap of \$2,000 per claim. Id. § 5.1. If the total of Alternate Claims (including administration expenses associated with those claims) exceeds \$800,000, the Alternate Claims payments will be reduced on a pro-rata basis. Id. § 5.5.

Of the \$3,200,000 Settlement Fund, at least \$1,840,000 will be available to pay Basic Claims. Id. § 4.4. If the Settlement Fund is not exhausted by the payment of Basic Claims, attorneys' fees and administrative costs, then up to an additional \$200,000 from the Settlement Fund may be used to pay Alternate Claims. Id. §§ 4.5, 5.4. If the additional \$200,000 is insufficient to cover all Alternate Claims, Defendants will pay an additional \$800,000 to accommodate those claims. Id. § 5.5. Any leftover funds from uncashed settlement checks will be distributed on a cy pres basis to the EFF, a non-profit organization that works to defend civil liberties in the digital world, including the rights of users of commercial websites, such as PayPal. Id. § 4.7. Notably, the Settlement provides for the upward proration of payments to Claims Class members to ensure that the maximum possible relief goes to Settlement Class Members rather than a cy pres recipient, and that the only funds that need to be distributed on a cy pres basis are funds from uncashed settlement checks. Id. § 5.4.

Consistent with the above, the Settlement creates two Settlement Classes: A Claims Class and an Injunctive Relief Class. The Claims Class is comprised of "all current and former users of PayPal in the United States who: (1) had an active PayPal account between April 19, 2006 and the date of entry of the Preliminary Approval Order; and (2) had a hold or reserve placed on the account and/or the account was closed or suspended by PayPal." Id. § 1.6. The Claims Class is intended to address claims for damages allegedly resulting

1 from either a hold or a reserve on funds held in a PayPal account, or due to the suspension
2 or closure of a PayPal account. *Id.* §§ 1.6, 1.7.

3 The Injunctive Relief Class is defined as “all current and former users of PayPal in
4 the United States who had an active PayPal account between April 19, 2006 and the date of
5 entry of the Preliminary Approval Order.” *Id.* § 1.19. The Injunctive Relief Class is
6 intended primarily to address claims that are *not* based on damages that arise from a
7 violation of the settlement in Comb and related violations of the EFTA, including PayPal’s
8 alleged failure to provide annual error-resolution notices and monthly account statements.
9 *Id.* §§ 1.19, 1.20.

10 b) *Second Motion for Preliminary Approval*

11 Plaintiffs filed a second motion for preliminary approval based on the revised
12 settlement, which the Court denied on March 25, 2015. Dkt. 264. The Court found that
13 while the revised settlement agreement resolved many of the concerns that resulted in the
14 rejection of the prior agreement, two obvious deficiencies remained. First, the Court
15 questioned whether it was appropriate to allege, much less settle, claims based on alleged
16 violations of the Comb settlement. Since the judgment in that action specified that any
17 disputes concerning the agreement must be litigated in that case, the Court found that this
18 action was not the proper forum to address or release any claims arising from that
19 settlement. *Id.* at 11. Second, the Court noted that, although the issue was raised in the
20 order denying the first motion for preliminary approval, the parties still had not explained
21 why both settlement classes include persons who have been PayPal accountholders since
22 2006, even though the practices at issue allegedly began in 2008. *Id.* at 12.

23 **3. Amendment to the Revised Settlement**

24 a) *Terms*

25 Following the denial of Plaintiffs’ second motion for preliminary approval, the
26 parties agreed upon amendments to the settlement agreement. Todzo Decl. ¶ 6 & Ex. 1
27 (Amendment to Settlement Agreement), Dkt. 275-1, 275-2. To address the Court’s
28 concerns, the parties agreed that Plaintiffs would file a TAC that omits any claims based on

1 the alleged breach of the Comb Settlement. Todzo Decl. Ex. 1 ¶ 5, Dkt. 275-2. The
2 settlement release has correspondingly been modified to eliminate any reference to the
3 Comb Settlement. Id. ¶¶ 1, 2. With regard to the issue pertaining to the Class Period, the
4 parties continued to propose that the Class Period for both of the proposed settlement
5 classes should run from April 19, 2006, which is four years prior to the filing of the
6 Complaint in the Fernando Action on April 19, 2010. TAC ¶ 59. Importantly, they
7 explained that this Class Period is appropriate because Plaintiffs claims include allegations
8 based on the closing or suspending of accounts and claims arising from PayPal’s handling
9 of buyers’ accounts, and these activities occurred both before and after 2008. To that end,
10 the proposed TAC adds allegations that PayPal began engaging in the disputed practices
11 prior to 2006. Id. ¶ 39.

12 b) *Third Motion for Preliminary Approval*

13 Based on the above amendments, Plaintiffs filed a third motion for preliminary
14 approval on September 9, 2015. Dkt. 275. In connection with said request, Plaintiffs
15 sought: (1) provisional certification of the two proposed Settlement Classes (i.e., the Claims
16 Class and the Injunctive Relief Class); (2) the appointment of (a) the Complex Litigation
17 Group, (b) Lexington Law Group, (c) Farmer, Jaffe, Weissing, Edwards, Fistos &
18 Lehman, P.L., and (d) Seeger Weiss LLP, as Class Counsel; (3) approval of the proposed
19 Class Notice; and (4) and the scheduling of a final approval hearing. Proposed Order, Dkt.
20 275-8. Non-party Reginald Burgess (“Burgess”), acting pro se, filed an Objection to
21 Preliminary Approval of Settlement Motion and Demand Opt-Out if Proposed Settlement
22 in Approved. Dkt. 277.

23 On November 5, 2015, the Court granted Plaintiffs’ motion for preliminary
24 approval. Dkt. 281. In its Order, the Court conditionally certified a proposed Settlement
25 Class comprised of a Claims Class and an Injunctive Relief Class, pursuant to Federal Rule
26 of Civil Procedure 23(a) and (b)(2) & (3). The Injunctive Relief Class is defined as: “All
27 current and former users of PayPal in the United States who had an active PayPal account
28 between April 19, 2006 and the date of entry of the Preliminary Approval Order.” The

1 Claims Class is defined as: “All current and former users of PayPal in the United States
2 who: (1) had an active PayPal account between April 19, 2006 and the date of entry of the
3 Preliminary Approval Order; and (2) had a hold or reserve placed on the account and/or the
4 account was closed or suspended by PayPal. Excluded from the Claims Class are judicial
5 officers presiding over this action and the members of their immediate families and judicial
6 staff.”

7 The Court appointed Plaintiffs Moises Zepeda, Michael Spear, Ronya Osman, Brian
8 Pattee, Casey Ching, Denae Zamora, Michael Lavanga and Gary Miller as class
9 representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure. Only Jeffrey
10 A. Leon of Quantum Legal LLC and Mark N. Todzo and Howard Hirsch of Lexington Law
11 Group were appointed as counsel for the Settlement Class. Epiq Systems (“Epiq”) was
12 appointed as claims administrator, and deemed responsible for performing the duties
13 described in the Amended Settlement Agreement. The preliminary approval order
14 approved, as to form and content, the proposed form of notice to the class via email notice,
15 postcard notice, an Internet notice program and a settlement website including a long-form
16 notice. 10/5/15 Order Granting Pls.’ Motion for Prelim. Approval of Am. Class Action
17 Settlement Agt. at 14-15, Dkt. 281. Following preliminary approval, notice of the
18 Settlement was served on the Class Members. Marr Decl. ¶¶ 4-14, Dkt. 340-2; Leon Decl.
19 ¶ 4, Dkt. 340-1. Per the terms of the Settlement, PayPal provided email notice to
20 approximately 100 million PayPal customers, including approximately 10.5 million Claims
21 Class members. Mot. for Final Approval at 10, Dkt. 340.

22 **D. FINAL APPROVAL SCHEDULE AND PROCESS**

23 On January 29, 2016, the Court approved the final approval schedule proposed by
24 the parties. Dkt. 285, 290. On the same day, Plaintiffs filed their TAC, as contemplated by
25 the Settlement. Dkt. 291. In March 2016, Class Counsel and Fernando counsel filed their
26 respective motions for attorneys’ fees in anticipation of the fairness hearing then scheduled
27 for July 13, 2016. Dkt. 295, 296, 297. Shortly before the date set for the fairness hearing,
28 however, the parties notified the Court that some members of the Settlement Class may not

1 have received notice in accordance with the Court’s scheduling Order. Stipulation, Dkt.
2 325. Thus, at the parties’ request, the Court vacated and reset the fairness hearing and
3 extended the deadlines governing notice and for the submission of claim forms, opt-out
4 requests and objections to the Settlement. 7/6/16 Order, Dkt. 329; see also Wilson Decl.
5 ¶ 2-4 & Exs. A & B, Dkt. 350.⁹

6 As of November 4, 2016, the claims administrator has received 392,191 claims,
7 comprised of 379,720 Basic Claims and 12,448 Alternate Claims submitted electronically,
8 and 23 paper claims by mail. Marr Decl. ¶ 8. Epiq has received a total of 75 opt-outs. Id.
9 ¶ 7. In response to Notice of the proposed Settlement, the Court has received a total of 10
10 objections from: (1) Miorelli; (2) Collins Objectors; (3) Tammy Perkins (“Perkins”);
11 (4) Larry A. Guess (“Guess”); (5) Glenn Greene (“Greene”); (6) Paul Leach (“Leach”);
12 (7) Frank Phillips (“Phillips”); (8) Steve Schroeder (“Schroeder”); and (9) Carmen DeBellis
13 (“DeBellis”). Dkt. 292, 293, 294, 303, 315, 317, 333, 337, 338, 339.

14 Miorelli is an out of state attorney and a professional objector. See In re: Target
15 Corp. Customer Data Sec. Breach Litig., No. MDL142522PAMJJK, 2016 WL 4942081, at
16 *1 (D. Minn. Jan. 29, 2016). Collins Objectors are represented by the attorneys who are
17 suing PayPal and eBay in a competing state court class action styled as, Chen v. eBay, Inc.,
18 Alameda Cty. Super. Ct., No RG 15780778. Perkins is represented by attorney Matthew
19 Kurilich, a professional objector. The remaining Objectors submitted pro se objections.¹⁰

20 _____
21 ⁹ Notice to the Settlement Class was effectuated in accordance with the Court’s
22 preliminary approval order. See Wilson Decl. ¶¶ 2-4, and Exs. A & B. Distribution of the
23 Class Notice constituted the best notice practicable under the circumstances, and fully
satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the
requirements of due process.

24 ¹⁰ Burgess previously filed a pro se objection to Plaintiffs’ motion for preliminary
25 approval. The Court found that certain of his objections had already been addressed, while
26 the remaining objections were more appropriately raised in connection with the motion for
27 final approval. 11/5/15 Order at 9, Dkt. 281. Since he did not renew his objections, the
28 Court finds Burgess has waived his right to assert any. On October 16, 2016, Melanie
Catanese (“Catanese”) filed an objection, claiming that she did not receive Notice of the
Settlement until after the October 14, 2016 deadline had passed. Dkt. 339. However,
Catanese’s objection is, in fact, not an objection. Rather, she requests leave to file a late
claim. Plaintiffs do not address her request. Finding no opposition, the Court grants
Catanese additional time to file her claim.

1 **E. MOTION FOR FINAL APPROVAL AND FEE MOTIONS**

2 On November 14, 2016, Plaintiffs filed a Motion for Final Approval of Amended
3 Class Action Settlement. In their motion, Plaintiffs seek an order (1) conferring final
4 approval of the Settlement Agreement and Amendment to Settlement Agreement, see Dkt.
5 No. 275-2; and (2) confirming certification of the Settlement Class as defined therein. In
6 addition, Plaintiffs’ motion responds to each of the objections to the Settlement.
7 Separately, in their companion Motion for Award of Attorneys’ Fees, and Reimbursement
8 for Costs and Service Awards, Plaintiffs seek payment of: (1) \$902,000 in attorneys’ fees;
9 (2) \$38,000 in costs; and (3) incentive (service) awards in the amount of \$20,000 (\$2,500
10 for each of the named plaintiffs in Zepeda). Fernando counsel filed separate fee motions
11 requesting payment of \$212,500.

12 The hearing on the aforementioned motions took place on February 7, 2017. Mark
13 Todzo and Jeffrey Leon appeared on behalf of the Zepeda Plaintiffs; David Hicks and
14 Christine Tour-Sarkissian (“Tour-Sarkissian”)—specially appearing for Trubitsky—
15 appeared on behalf of the Fernando Plaintiffs; Julia Strickland and David Moon appeared
16 by telephone for Defendants eBay and Paypal; Anthony Ferrigno appeared for Collins
17 Objectors; and Objector Miorelli appeared pro se. At the conclusion of the hearing, the
18 Court took all matters under advisement.¹¹

19 **II. FINAL APPROVAL**

20 **A. LEGAL STANDARD**

21 The Ninth Circuit maintains “a strong judicial policy” that favors class action
22 settlements. Allen v. Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015). Nonetheless, the Court
23 may finally approve of a class settlement “only after a hearing and on finding that it is fair,
24 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To assess the fairness of a settlement,
25 courts are to consider the eight “Churchill factors,” including:
26

27 _____
28 ¹¹ At the hearing, the parties confirmed that in the event the Court finally approves
the Settlement, both the instant action and Fernando should be dismissed.

1 (1) the strength of the plaintiff's case; (2) the risk, expense,
2 complexity, and likely duration of further litigation; (3) the risk
3 of maintaining class action status throughout the trial; (4) the
4 amount offered in settlement; (5) the extent of discovery
5 completed and the stage of the proceedings; (6) the experience
6 and view of counsel; (7) the presence of a governmental
7 participant; and (8) the reaction of the class members of the
8 proposed settlement.

9 In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 944 (9th Cir. 2015) (quoting
10 Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)). “Additionally,
11 when (as here) the settlement takes place before formal class certification, settlement
12 approval requires a ‘higher standard of fairness.’” Lane v. Facebook, Inc., 696 F.3d 811,
13 819 (9th Cir. 2012) (citation omitted). The rationale for the heightened standard is to
14 ensure that “class representatives and their counsel have [not] sacrificed the interests of
15 absent class members for their own benefit.” Id.

16 Courts must examine “the settlement taken as a whole, rather than the individual
17 component parts” for fairness. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.
18 1998). The Court may approve or reject the settlement and cannot “delete, modify or
19 substitute certain provisions” of the settlement. Id. “The proposed settlement is not to be
20 judged against a hypothetical or speculative measure of what might have been achieved by
21 the negotiators.” Officers for Justice v. Civil Serv. Comm’n of San Francisco, 688 F.2d
22 615, 624 (9th Cir. 1982). Rather, “the court’s intrusion upon what is otherwise a private
23 consensual agreement negotiated between the parties to a lawsuit must be limited to the
24 extent necessary to reach a reasoned judgment that the agreement is not the product of
25 fraud or overreaching by, or collusion between, the negotiating parties, and that the
26 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” Id. To that
27 end, the Court should consider whether there are any objections to the proposed settlement
28 and, if so, the nature of those objections. Ko v. Natura Pet Prod., Inc., No. C 09-02619
SBA, 2012 WL 3945541, at *6 (N.D. Cal. Sept. 10, 2012). If objections are filed, the
district court is to evaluate whether they suggest serious reasons why the settlement
proposal might be unfair. Id.

1 **B. ANALYSIS OF FACTORS**

2 **1. Strength of Plaintiffs' Case**

3 The first factor to consider is the strength of Plaintiffs' case. Such an evaluation
4 entails "objectively" considering "the strengths and weaknesses inherent in the litigation
5 and the impact of those considerations on the parties' decisions to reach [a settlement]." Adoma v. Univ. of Phoenix, Inc., 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012). In situations
6 where a case is not particularly strong, a settlement is preferable. See In re M.L. Stern
7 Overtime Litig., No. 07CV118 BTM (JMA), 2009 WL 3272872, at *2 (S.D. Cal. Oct. 9,
8 2009) ("the diminished strength of Plaintiff's case favors settlement approval."). In
9 assessing the strength of a case, a court need not "reach any ultimate conclusions on the
10 contested issues of fact and law which underlie the merits of the dispute, for it is the very
11 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that
12 induce consensual settlements." Officers for Justice, 688 F.2d at 625.

13 Here, the substantive merits of Plaintiffs' claims appear to be weak. As discussed,
14 the Court previously granted Defendants' motion to dismiss and dismissed *all claims*
15 alleged in the FAC. Dkt. 49. Similarly, the claims later asserted by Plaintiffs that have not
16 yet been subject to motion practice, i.e., violation of the Comb settlement and the EFTA,
17 are not likely to fare any better.¹² With regard to the Comb settlement, the Court, in its
18 March 25, 2015 Order, pointed out that the Judgment entered in that action specifically
19 retained jurisdiction over any dispute over the enforcement of that settlement, including any
20 claim that PayPal has not fulfilled its obligations under that agreement. Dkt. 264 at 11
21 (citing Comb, Dkt. 309 ¶ 14). As such, the instant action is not the proper vehicle to assert
22 violations of the Comb settlement. Id.

23 The Court also questions the likelihood of success on Plaintiffs' claim that PayPal
24 violated EFTA's disclosure and error correction requirements (which is alleged as the Ninth
25

26 _____
27 ¹² As noted, in connection with the original version of the settlement reached in
28 December 2011, Plaintiffs incorporated the claims from the Fernando action that PayPal's
practices violate the Comb settlement and the EFTA.

1 claim for relief in the TAC). The EFTA was enacted “to provide a basic framework
2 establishing the rights, liabilities, and responsibilities of participants in electronic fund and
3 remittance transfer systems.” 15 U.S.C. § 1693(b). But those obligations only apply to a
4 “financial institution”, which PayPal arguably is not.¹³ C.f., Friedman v. 24 Hour Fitness
5 USA, Inc., 580 F. Supp. 2d 985, 996 (C.D. Cal. 2008) (ruling that an operator of fitness
6 centers that receives credit card payments is not a financial institution and characterizing
7 plaintiffs’ claim as “frivolous”). Moreover, Plaintiffs’ claims appear to be largely
8 predicated upon commercial transactions, which are outside the ambit of the EFTA. See
9 Ironforge.com v. Paychex, Inc., 747 F. Supp. 2d 384, 402 (W.D.N.Y. 2010) (“Accordingly,
10 the EFTA does not apply to accounts that are used primarily or solely for commercial
11 purposes.”) (internal quotations and citation omitted); see also 15 U.S.C. § 1693a(2)
12 (specifying that accounts subject to the EFTA must be “established primarily for personal,
13 family, or household purposes.”). Although the Court need not definitively conclude
14 whether or not Plaintiffs would ultimately prevail on their EFTA claim, it suffices to say
15 that the merits of such claim are, at best, uncertain. See Officers for Justice, 688 F.2d at
16 625.

17 In sum, the Court finds that the facial weakness of Plaintiffs’ claims militates in
18 favor of settlement.

19 **2. Risk, Expense, Complexity and Likely Duration of Further**
20 **Litigation**

21 The strength of the claims alleged (or lack thereof) should be balanced against the
22 risk, expense, and complexity of their case, as well as the likely duration of further
23 litigation. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000), as
24 amended (June 19, 2000). Here, Plaintiffs admittedly face substantial risks and are likely to
25 incur significant expense in the event they choose to proceed further with the litigation.

26 _____
27 ¹³ The EFTA defines a financial institution as a “State or National bank, a State or
28 Federal savings and loan association, a mutual savings bank, a State or Federal credit
union, or any other person who, directly or indirectly, holds an account belonging to a
consumer.” 15 U.S.C. § 1693a(9).

1 Absent a settlement, Plaintiffs would be required to seek and obtain an order certifying the
2 class, which may prove difficult in light of the complexity of the claims presented and the
3 number of class members. In addition, the parties would likely be required to engage in
4 significant fact and expert discovery germane to the merits of the claims and damages.
5 Given the tenuousness of Plaintiffs' claims, coupled with the risk, expense, complexity and
6 the likely extended duration of further litigation, the Court finds that this factor weigh in
7 favor of approving the settlement. See Rodriguez v. W. Publ'g Co., 563 F.3d 948, 966 (9th
8 Cir. 2009) (recognizing that difficulties and risks in litigating weigh in favor of approving a
9 class settlement).

10 **3. The Risk of Maintaining Class Action Status Throughout the Trial**

11 The third factor for the Court's consideration involves evaluating the risk of
12 maintaining class certification if the litigation were to proceed. Plaintiffs have not
13 previously sought to certify the class in this matter – and it is an open question as to
14 whether, absent a settlement, any class would, in fact, be certified in this action.
15 Defendants' position is that PayPal's imposition of account holds and reserves results from
16 the operation of its proprietary fraud monitoring program. As a result, each Plaintiff
17 arguably would be required to individually prove that the hold or reserve which PayPal
18 placed on his or her account was not justified based on activities which were in
19 contravention of the terms of service. Comcast Corp. v. Behrend, – U.S. –, –, 133 S.Ct.
20 1426, 1433 (2013); see also Sweet v. Pfizer, 232 F.R.D. 360, 365 (C.D. Cal. 2005)
21 (denying class certification based on allegations that the drug manufacturer inadequately
22 warned consumers about the side-effects based on lack of typicality and the presence of too
23 many individualized issues). Individualized proof would also be necessitated by the fact
24 that different Plaintiffs may be affected differently, depending on the Terms of Service then
25 in effect. While Plaintiffs claim they have responses to these arguments, there is no
26 question that maintaining this case as a class action through trial would be highly uncertain.
27 The grant or denial of class certification would result in interlocutory appeals, and involve
28 the expenditure of significant time and expense. In contrast, a settlement delivers certain

1 and concrete benefits now – on a classwide basis – without the necessity of proving and
2 maintaining a certified class. See, e.g., Noll v. eBay, 309 F.R.D. 593, 606-607 (N.D. Cal.
3 2015).

4 **4. The Amount Offered in Settlement**

5 a) *Sufficiency of Monetary Relief*

6 The Settlement provides for injunctive relief to address the PayPal practices
7 underlying this action along with a \$3,200,000 settlement fund, of which at least
8 \$1,840,000 will be available to pay the Basic Claims of Claims Class members whose
9 accounts were subject to holds or reserves and lost interest income. The Settlement, as
10 amended, also creates a separate fund of \$800,000 for Alternate Claims from which class
11 members can pursue specific, individual claims for damages to their businesses upon
12 presentation of proper documentation.

13 Miorelli and Collins Objectors argue that the Settlement provides insufficient
14 monetary relief. However, “[i]t is well-settled law that a cash settlement amounting to only
15 a fraction of the potential recovery does not per se render the settlement inadequate or
16 unfair.” Officers for Justice, 688 F.2d at 628. Rather, courts evaluating the amount offered
17 in settlement for fairness must consider the settlement as a “complete package taken as a
18 whole, rather than the individual component parts[.]” Id. at 628. In the instant case, the
19 parties’ matrix for claims payments is based on a reasonable assessment of the time value
20 of funds temporarily placed on hold—as it takes into account the *amount* involved as well
21 as the *duration* of the hold. See McCabe Decl. ¶¶ 2-6. The Court finds that the approach
22 undertaken by the parties in negotiating the monetary component of the Settlement, coupled
23 with the injunctive relief provided, is fair, reasonable and adequate.

24 Separately, Miorelli faults Plaintiffs for not calculating the maximum potential
25 recovery on their claims or taking into account Defendants’ exposure to punitive damages.
26 Setting aside Miorelli’s failure to cite any relevant decisional authority to support his
27 position, he ignores that “the very essence of a settlement is compromise, ‘a yielding of
28 absolutes and an abandoning of highest hopes.’” Officers for Justice, 688 F.2d 625

1 (citations omitted). It is for that very reason that the Ninth Circuit has rejected Miorelli's
2 argument. Rodriguez, 563 F.3d at 965 (“We are not persuaded otherwise by Objectors’
3 further submission that the court should have specifically weighed the merits of the class’s
4 case against the settlement amount and quantified the expected value of fully litigating the
5 matter.”); accord Koumoulis v. LPL Fin. Corp., No. 09CV1973-DMS BLM, 2010 WL
6 4868044, at *2 (S.D. Cal. Nov. 19, 2010) (“Although Class Counsel did not indicate what
7 the maximum potentially recoverable amount would be if the instant case was to proceed to
8 trial, the Court is able to assess the reasonableness of the amount offered in settlement
9 without such a comparison point.”). Miorelli’s ancillary contention that Plaintiffs should
10 have taken into account Defendants’ potential exposure to punitive damages has likewise
11 been rejected by this Circuit. See Rodriguez, 563 F.3d at 965.

12 Miorelli next complains that the Basic Claims payment matrix “only looks at the
13 longest hold, not the cumulative sum of moneys held and days held.” Dkt. 333 at 8. The
14 parties structured the payouts on a per hold basis based on the core allegation by Plaintiffs
15 that PayPal does not disclose its hold policy. Dkt. 340 at 23. In other words, after
16 experiencing a first hold, the user would be aware of PayPal’s policy. As such, the parties
17 concluded that a user should not be able to recover for more than one hold. Id. In any
18 event, the mere possibility that the claims matrix could have been structured differently or
19 better does not demonstrate that the Settlement is not fair, reasonable or adequate. See
20 Linney, 151 F.3d at 1242 (noting that fairness of a proposed settlement “is not to be judged
21 against a hypothetical or speculative measure of what might have been achieved by the
22 negotiators.”); In re TD Ameritrade Account Holder Litig., No. C 07-2852 SBA, 2011 WL
23 4079226, at *9 (N.D. Cal. Sept. 13, 2011) (“The fundamental flaw in Mr. Elvey’s argument
24 is that it ignores that the Settlement is a *compromise*, which balances the possible recovery
25 against the risks inherent in litigating further. The possibility that the Settlement does not
26 provide for a payout to every conceivable accountholder who in some way may have been
27 affected by the data breach does not establish that the Settlement is unfair or
28 unreasonable.”). In any event, even if Miorelli’s criticisms of the Settlement had merit—

1 which they clearly do not—they fail to account for the weakness of Plaintiffs’ claims and
2 the risk of maintaining this litigation going forward. See Officers for Justice, 688 F.2d at
3 628.

4 Finally, Collins Objectors assert that the monetary component of the Settlement is
5 insufficient to cover all potential class claims. In particular, they posit that a settlement
6 fund of \$243 million would be necessary to pay each of the 81 million class members’
7 claim of \$3. The flaw in this argument is that it ignores that approximately 90 percent of
8 the Settlement Class members are *not* Claims Class members and therefore are not entitled
9 to submit a claim for damages (and are thus subject to a substantially narrower release of
10 claims). Moreover, the parties calculated the amount necessary for the Settlement Fund by
11 taking into account the universe of accounts that were subject to a reserve or hold during
12 the relevant time period. Plaintiffs’ retained expert analyzed those accounts and
13 determined that the aggregate amount of interest on all holds was approximately \$3
14 million—not \$243 million as speculated by Collins Objectors. See McCabe Decl. ¶ 6.

15 As an ancillary matter, Collins Objectors argue that the Class Counsel intentionally
16 set the claim value at \$3 in the hopes that such an ostensibly small amount would
17 discourage class members from submitting claims. No evidence has been presented to
18 support this assertion. In addition, Class Counsel explained at oral argument that the base
19 figure was intended to *increase* the number of claims. Based on Plaintiffs’ expert’s
20 calculations, the actual “loss” of interest for each hold is around \$0.03. Since it was
21 unlikely that any class member would file a claim for such a negligible amount, they
22 decided to increase the minimum payout to \$3.00, with the goal of encouraging more
23 claims. Indeed, Collins Objectors’ speculation regarding Class Counsel’s intent to dissuade
24 the filing of claims is belied by the fact that close to 400,000 claims have been filed by
25 Claims Class members. Marr Decl. ¶ 8.

26 b) *Sufficiency of Injunctive Relief*

27 With regard to the injunctive relief afforded under the Settlement, Miorelli asserts
28 that it is “illusory” because PayPal implemented the changes to its business practices before

1 it was legally required to do so. Dkt. 333 at 10-11. However, PayPal implemented those
2 changes as a direct result of the tentative settlement reached with Plaintiffs. That PayPal
3 implemented those changes prior to final approval of the Settlement is, in fact, an additional
4 benefit to the Settlement Class members, and does not suggest any deficiency in the relief
5 afforded under the Settlement. Moreover, the Settlement will make the injunctive relief
6 both binding and enforceable, ensuring that Defendants maintain such practices until two
7 years following the date of the Preliminary Approval Order. Dkt. 275-2, p. 59, § 4.2; 281.
8 In the absence of the Settlement, Defendants would be free to cease providing such relief to
9 its users.

10 During oral argument, Miorelli cited the Ninth Circuit's recent decision in Koby v.
11 ARS National Services, Inc., No. 13-56964, 2017 WL 359670 (9th Cir. Jan. 25, 2017) for
12 the proposition that injunctive relief voluntarily provided to the class by a defendant is not
13 considered of "value" to the Class. Koby is distinguishable. In that case, the defendant
14 voluntarily changed its voicemail message over a year before the parties settled their
15 dispute. On appeal, the Ninth Circuit held that because such a change was not made
16 "because of any court- or settlement-imposed obligation," noting that "[t]he injunction does
17 not obligate [defendant] to do anything it was not already doing." Id. at *6. In contrast, the
18 injunctive relief afforded in this action was formulated "because of" the settlement
19 agreement reached by the parties. The fact that Defendants opted to implement the changes
20 prior to the Court's preliminary or final approval of the Settlement does not alter the fact
21 that the Settlement itself was the catalyst for the change.

22 Collins Objectors claim that the Settlement is meaningless because it does not
23 prohibit PayPal from imposing holds or reserves or require PayPal to disclose the reason
24 that a hold has been imposed. Dkt. 316 at 18-19. The stated purpose of PayPal's
25 hold/reserve policy is to protect buyers and sellers in instances where there may be
26 fraudulent practices or other improprieties involved in the transaction. Aside from their
27 opinion that such a practice should be prohibited, Collins Objectors provide no legal
28 analysis or authority to support their assertion. But even if they had done so, the mere fact

1 that the Settlement does not eliminate PayPal’s hold/reserve practice or compel PayPal to
2 explain the reason for a hold does not ipso facto demonstrate that the Settlement,
3 particularly the provisions for injunctive relief, are not fair, reasonable or adequate.

4 **5. Stage of the Proceedings**

5 The stage of the proceedings, including the amount of discovery completed, is
6 germane to the fairness, reasonableness, and adequacy of a settlement. See In re Mego, 213
7 F.3d at 459. Although this case has been pending for an extended period of time, no formal
8 discovery has been conducted due to the parties’ protracted efforts to reach a settlement.
9 Nonetheless, the parties informally exchanged information and documents in connection
10 with the three prior mediations conducted in this action.

11 Collins Objectors contend that the lack of discovery weighs against approving the
12 Settlement. The Court disagrees. “In the context of class action settlements, ‘formal
13 discovery is not a necessary ticket to the bargaining table’ where the parties have sufficient
14 information to make an informed decision about settlement.” Linney v. Cellular Alaska
15 P’ship, 151 F.3d 1234, 1239 (9th Cir. 1998) (citation omitted). As discussed, the record
16 shows that the parties informally exchanged information, and there is no evidence to
17 suggest that Plaintiffs were inadequately prepared for the mediations or settlement
18 discussions. In addition, based on the numerous briefs that have been filed in this action,
19 the Court is persuaded that “[Plaintiffs’] counsel had a good grasp on the merits of their
20 case before settlement talks began.” Rodriguez, 563 F.3d at 967.¹⁴ This factor therefore
21 weighs in favor of the Settlement.

22 **6. The Experience and Views of Class Counsel Support Approval**

23 In considering the adequacy of the terms of a settlement, the trial court considers the
24 judgment of experienced counsel for the parties. See In re Omnivision Techs., Inc., 559 F.
25 Supp. 2d 1036, 1043 (N.D. Cal. 2008) (“The recommendations of plaintiffs’ counsel should
26

27 ¹⁴ Moreover, since the challenges facing Plaintiffs’ claims are primarily legal in
28 nature, it is unlikely that bearing the burden and expense of engaging in discovery would
have impacted the Settlement.

1 be given a presumption of reasonableness.”) (internal citation and quotation marks
2 omitted). This reliance is predicated on the fact that “[p]arties represented by competent
3 counsel are better positioned than courts to produce a settlement that fairly reflects each
4 party's expected outcome in the litigation.” In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378
5 (9th Cir. 1995).

6 Class Counsel—Lexington Law Group and Quantum Legal LLC—opine that in light
7 of the risks associated with further prosecution of the action, the Settlement constitutes a
8 reasonable recovery that confers a substantial benefit on Settlement Class members. Given
9 that Class Counsel have significant experience prosecuting class actions and handling
10 complex litigation, the Court accords weight to their opinion.

11 Collins Objectors assert that Class Counsel could not have vigorously represented
12 the Class, since this action has involved little motion practice or discovery.¹⁵ But it is
13 incorrect and naive to equate vigorous representation with the number of motions filed in
14 an action. Although it is true that the action involved one motion to dismiss, Judge Fogel
15 made it abundantly clear in his ruling that the claims alleged in this case—and the basic
16 premise underlying them—were unlikely to succeed. In view of the Court’s patent
17 skepticism of the action, it would have been far from prudent to invest significant resources
18 in discovery, when it was apparent that the challenges facing Plaintiffs were legal in nature.
19 It was for that reason that Class Counsel sagely decided to focus their time and effort on
20 reaching a settlement with Defendants. That aside, Collins Objectors completely ignore
21 that Class Counsel’s prosecution of this action has resulted in numerous substantive rulings
22

23
24 ¹⁵ Much of Collins Objectors’ challenge to the adequacy of the Settlement is
25 predicated on the notion that the claims alleged in Chen—a class action lawsuit their
26 attorneys are prosecuting in state court—are superior to those alleged in this action. That
27 argument misses the mark. For purposes of Rule 23(e), the task facing this Court is to
28 evaluate whether the Settlement is fair, reasonable and adequate. Thus, whether or not the
causes of action alleged in Chen are superior or whether the plaintiffs’ counsel in that case
are doing a better job simply is not germane to the Court’s analysis. That aside, the Court
questions the veracity of Collins Objectors’ claim, given that they failed to disclose that on
January 17, 2017, the state superior court granted eBay’s demurrer to Collins’ First
Amended Complaint, dismissing all claims. Pls.’ Req. for Jud. Notice, Ex. 1, Dkt. 349-1.

1 by the Court. The suggestion made by Collins Objectors that Class Counsel have not
2 adequately represented the Class is wholly without merit.

3 Equally misplaced is Collins Objectors' reliance on Campbell v. eBay, Inc., et al.,
4 No. C 13-2632 HSG, a putative class action filed against PayPal and eBay by the same
5 counsel representing the plaintiffs in the Chen action. The pleadings in that action sought
6 to challenge various business practices engaged in by the defendants, including the
7 allegedly unnecessary and arbitrary placement of holds and reserves on funds of its users.
8 Collins Objectors' point to Judge Gonzales-Rogers' August 14, 2014, ruling on the
9 defendants' motion to dismiss the Third Amended Complaint. Campbell, Dkt. 66. In
10 particular, they attempt to make much of the Court's finding that "Plaintiff's allegations
11 concerning holds on funds implemented in an arbitrary manner is sufficient to state a claim
12 [for breach of fiduciary duty]." Id. at 5-6.

13 Collins Objectors assert that the fact that their breach of fiduciary claim survived
14 dismissal in the Campbell action, while Class Counsel's similar claim in this action was
15 dismissed, illustrates the "legal malpractice" of Class Counsel. Dkt. 345 at 10. This
16 contention has no merit. Judge Fogel rejected Plaintiffs' breach of fiduciary claim on the
17 ground that the conduct on which said claim was predicated was permitted under the User
18 Agreement. This Court agrees with that assessment. The fact that another judge in a
19 different action may have reached a different conclusion while addressing a similar issue,
20 without more, is not probative of Class Counsel's competence. In any event, Collins
21 Objectors fail to disclose that the judge in Campbell granted the defendants' motion to
22 dismiss under Rule 41(b), based on the fact that over the two and one-half year period the
23 case was pending, the plaintiff completely failed to respond to discovery requests, failed to
24 serve her Rule 26(a)(1) initial disclosures, failed to make herself available for deposition,
25 and failed to appear at a scheduled case management conference. Id., Dkt. 121, 139. In
26 view of such conduct, Collins Objectors complaints regarding Class Counsel ring hollow.

27 Accordingly, this factor weighs in favor of approving the Settlement.
28

1 **7. The Presence of a Government Participant**

2 No governmental entity participated in this matter; this factor, therefore, is irrelevant
3 to the Court’s analysis.

4 **8. The Reaction of Class Members**

5 The Ninth Circuit has held that the number of class members who object to a
6 proposed settlement is a factor to be considered. Mandujano v. Basic Vegetable Prods.
7 Inc., 541 F.2d 832, 837 (9th Cir. 1976). Here, email notice was served on approximately
8 100 million PayPal customers, including approximately 10.5 million Claims Class
9 members. See Wilson Decl. ¶¶ 2-4. In response, close to 400,000 claims have been filed.
10 Marr Decl. ¶ 8. Yet, only eleven class members filed objections and 75 have opted out. Id.
11 These numbers indicate that the notice process has been remarkably successful—and the
12 Settlement Class’s reaction to the Settlement has been overwhelmingly positive. Given the
13 relatively small number of objections and opt-outs, the Court finds that the reaction of the
14 class to the settlement is positive, which favors approving the Settlement. See Rodriguez,
15 563 F.3d at 967 (“The court had discretion to find a favorable reaction to the settlement
16 among class members given that, of 376,301 putative class members to whom notice of the
17 settlement had been sent, 52,000 submitted claims forms and only fifty-four submitted
18 objections.”); In re AT & T Mobility Wireless Data Servs. Sales Tax Litig., 789 F. Supp. 2d
19 935, 965 (N.D. Ill. 2011) (finding that approval of settlement was warranted where “[o]nly
20 235 out of over 32 million Class Members have opted out, which is less than 0.01%,” and
21 where “Class Members ... filed only 10 objections with specific arguments,” which was “a
22 remarkably low level of opposition....”).

23 Collins Objectors dispute that the reaction of the Settlement Class has been positive.
24 Dkt. 345 at 4. They point out that only 2.8% of Claims Class members submitted a claim,
25 which they insist shows that the Settlement was not well-received by class members. Id.
26 However, the indisputably low number of objections and opt-outs, standing alone, presents
27 a sufficient basis upon which a court may conclude that the reaction to settlement by the
28 class has been favorable. E.g., Churchill Vill., 361 F.3d at 577 (holding that the district

1 court properly weighed the reactions of members of the proposed settlement class by taking
2 into account that there were 45 objections and 500 opt-outs in relation to the approximately
3 90,000 notified class members). Even so, taking into account the response rate, the Court
4 finds that, on balance, the reaction of the Settlement Class is favorable. E.g., Moore v.
5 Verizon Commc'ns Inc., No. C 09-1823 SBA, 2013 WL 4610764, at *8 (N.D. Cal. Aug.
6 28, 2013) (approving class action settlement with 3% claim rate).

7 **9. Whether the Settlement Was the Product of Collusion**

8 Because the parties negotiated and reached a settlement prior to formal certification
9 of the class, the Court has a heightened responsibility to ensure that the settlement was not
10 the product of collusion. In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 947-48
11 (9th Cir. 2011). Here, each version of the Settlement, including the final version of the
12 Settlement, as amended, resulted from negotiations overseen by independent and
13 experienced mediators—two of whom are former judges. This fact weighs in favor of a
14 finding of non-collusion. See id. at 948 (holding that the use of a “neutral mediator” is “a
15 factor weighing in favor of a finding of non-collusiveness”).

16 Miorelli argues that the parties’ collusiveness is demonstrated by the fact that the
17 Court failed to preliminarily approve the two prior settlement proposals. Dkt. 333 at 10.
18 Nonsense. The mere fact that the Court found deficiencies in the prior settlement proposals
19 is not probative of whether the parties engaged in collusive behavior in connection with the
20 prior or *instant* Settlement. To the contrary, the fact that the parties revised the settlement
21 in a manner that adequately addressed the Court’s concerns with respect to the prior
22 settlement proposal suggests the opposite. The Court therefore rejects Miorelli’s
23 unsupported assertion that the Settlement was the product of collusion between the parties.

24 //

25 //

26 //

27 //

28 //

1 **10. Conclusion**

2 On balance, the Court concludes that the relevant Churchill factors weigh in favor of
3 a finding that the settlement is fair, reasonable and adequate.¹⁶

4 **C. OBJECTIONS**

5 **1. Miorelli**

6 Miorelli contends that: (1) the Settlement’s monetary relief is inadequate; (2) the
7 Settlement is the result of “collusion” between Class Counsel and Defendants; (3) the
8 Settlement’s injunctive relief is “illusory”; and (4) the attorneys’ fees sought by Class
9 Counsel are improperly calculated. Dkt. 33. The first three objections have been addressed
10 in the Court’s analysis of the Churchill factors, while the fourth objection will be addressed
11 in the section below pertaining to the motions for attorneys’ fees. For the reasons stated in
12 each of those sections, Miorelli’s objections to the Settlement are OVERRULED.

13 **2. Collins Objectors**

14 Collins Objectors contend that: (1) the Settlement does not provide sufficient relief
15 to the Class; (2) certification of an injunctive relief class and claims class is improper; and
16 (3) Class Counsel are inadequate because no formal discovery was conducted.¹⁷ Dkt. 316.
17 The first and third objections are discussed above in the context of the Churchill factors,
18 while the second objection is discussed below. For the reasons stated in each of those
19 sections, all objections are OVERRULED.

20 _____
21 ¹⁶ No objections have been interposed regarding the designation of EFF as the cy
22 pres recipient, and the Court finds that EFF satisfies the requirements for approval set forth
23 in Dennis v. Kellogg Co., 697 F.3d 858, 865 (9th Cir. 2012) (holding that there must be “a
24 driving nexus between the plaintiff class and the cy pres beneficiaries” and that the cy pres
award must be “guided by (1) the objectives of the underlying statute(s) and (2) the
interests of the silent class members,... and must not benefit a group too remote from the
plaintiff class”).

25 ¹⁷ On January 27, 2017, Collins Objectors filed a “Reply to the Opposition of Class
26 Counsel to the Objections of Class Members Walley Collins and Lucindia Christian to
27 Settlement Agreement Pending Final Approval in this Court.” Dkt. 345. That brief is not
28 authorized under the scheduling order governing Plaintiffs’ motion for final approval. Dkt.
329. To the extent that Collins Objectors believed they were permitted to respond to
Plaintiffs’ “motion,” such a response would have been due long ago on November 28,
2016. Civ. L.R. 7-3(a). Notwithstanding this flagrant violation, the Court, in the interest of
expediting resolution of the instant motions, will consider Collins Objectors’ reply.

1 Collins Objectors argue that the SAC seeks monetary relief that is not incidental to
2 the requested injunctive relief such that certification of a Rule 23(b)(2) injunctive relief
3 class was inappropriate. Dkt. 316 at 22-23. Claims for monetary relief may not be certified
4 under (b)(2) where “the monetary relief is not incidental to the injunctive or declaratory
5 relief.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 360 (2011). The error in this
6 argument is that it neglects to consider that the Court may properly certify Plaintiffs claim
7 for injunctive relief under (b)(2) and their claim for monetary relief under (b)(3). See Ebert
8 v. Gen. Mills, Inc., 823 F.3d 472, 480 (8th Cir. 2016) (“The use of ... hybrid certification,
9 insulating the (b)(2) class from the money-damages portion of the case, is an available
10 approach that is gaining ground in class action suits.”); Eubanks v. Billington, 110 F.3d 87,
11 96 (D.C. Cir. 1997) (noting that when a “(b)(2) class seeks monetary and injunctive relief,”
12 the court can certify “a (b)(2) class as to the claims for declaratory or injunctive relief, and
13 a (b)(3) class as to the claims for monetary relief”); Ellis v. Costco Wholesale Corp., 285
14 F.R.D. 492, 535-544 (N.D. Cal. 2012) (certifying injunctive relief class under 23(b)(2) and
15 monetary relief class under 23(b)(3)).

16 Collins Objectors’ reliance on Linney v. Cellular Alaska Partnership, 151 F.3d 1234,
17 1240 (9th Cir. 2003), is misplaced. In that case, a single class, which included both claims
18 for monetary relief and claims for injunctive relief, was certified under Rule 23(b)(2) on a
19 non-opt out basis. In cases where both monetary and injunctive claims are certified on a
20 non-opt out basis under Rule 23(b)(2), the court held that due process proscribes the case
21 from being “wholly or predominately for money judgments.” Id. In contrast, here, there
22 are no due process concerns because, unlike Linney, class members with claims for
23 monetary relief have been given an opportunity to opt out of the Claims Class.
24 Accordingly, the Court finds no merit to Collins Objectors’ concerns regarding the Court’s
25 certification of a Settlement Class.

26 3. Perkins

27 Perkins argues that the Settlement should be rejected because: (1) the release
28 improperly includes parens patriae claims; (2) the definitions of the classes in the

1 Settlement do not specifically exclude Defendants; and (3) the attorneys’ fees sought are
2 too high. Dkt. 317. The first two objections are discussed below, while the third objection
3 is addressed in the section pertaining to the motions for attorneys’ fees. For the reasons
4 stated in each of those sections, Perkins objections to the Settlement are OVERRULED.

5 a) *Parens Patriae Claims*

6 Under the parens patriae doctrine, the State may bring an action to protect its “quasi-
7 sovereign interest in the health and well-being-both physical and economic-of its residents
8 in general.” Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 607
9 (1982) (internal quotations and citation omitted). For purposes of standing to bring a
10 parens patriae claim, the State must meet the requirements for Article III standing and
11 “articulate an interest apart from the interests of particular private parties, i.e., the State
12 must be more than a nominal party.” Id.

13 Perkins contends that the Settlement release is unfair to Settlement Class members to
14 the extent it releases parens patriae claims held by the State. Dkt. 317 at 2.¹⁸ However, the
15 Settlement does not require the State to release any parens patriae claims—nor would such
16 an interpretation of the Settlement make any logical sense. The only claims being released
17 are those held by class members. See In re Am. Inv’rs Life Ins. Co. Annuity Mktg. & Sales
18 Practices Litig., 263 F.R.D. 226, 241 (E.D. Pa. 2009). Since class members do not possess
19 the State’s parens patriae powers, it is axiomatic that they cannot release such claims.
20 Rather, the Settlement only specifies that class members release their individual claims,
21 which includes their right to recover in a subsequent parens patriae action if one is brought
22 by the State. The Court therefore rejects Perkins’ contention that the release is improper.

23 b) *Exclusion of Defendants*

24 Perkins next complains that the Settlement is “unfair and unreasonable” by not
25 precluding Defendants or their representatives from submitting a claim under the
26

27 ¹⁸ The Settlement defines “Released Claims” as including claims that have been “or
28 could be asserted in any individual, class, private attorney general, representative, parens
patriae or any other capacity” Settlement § 1.29.

1 Settlement. Dkt. 317 at 3. Since Defendants are funding the Settlement, it is unlikely that
2 either of them will submit a claim. As for Defendants' representative and employees,
3 Perkins cites no authority or reasoned argument demonstrating why the failure to exclude
4 them renders the Settlement unfair.

5 **4. Guess**

6 Guess, acting pro se, states that a hold was placed on his account after the close of
7 the Claims Class Period on November 5, 2015. Dkt. No. 292. He contends that the Claims
8 Class should not be limited to any particular time period and should instead include all
9 PayPal members who at any time in the past or the future had or have a hold or reserve
10 placed on their accounts. Id. Since the hold Guess complains of was imposed outside the
11 Class Period, he is not a member of the Claims Class and has no standing to object. See In
12 re Equity Funding Corp. of Am. Sec. Litig., 603 F.2d 1353, 1360-61 (9th Cir. 1979) (an
13 objector who is not a class member "lacks standing to object").

14 Standing issues aside, the substance of Guess' objection lacks merit. The Court has
15 previously determined that the Class Period is appropriately tailored to the scope of
16 Plaintiffs' claims in the Third Amended Complaint, which are constrained by the four-year
17 statute of limitations running from the filing of the Fernando action on April 19, 2010. Dkt.
18 No. 281. Moreover, terminating the Claims Class period on the date of the Court's
19 preliminary approval order is reasonable and necessary in order to allow the claims
20 administration process to take place prior to final approval. The Class Period simply cannot
21 extend indefinitely into the future.¹⁹ Guess's objections to the Settlement are

22 OVERRULED.

23 **5. Other Objections**

24 Objectors Greene, Phillips, Leach, Schroeder and DeBellis submitted pro se
25 objections to the Settlement. Dkt. 293, 294, 303, 317, 337, 338, 339. Their objections are
26

27 ¹⁹ Guess should be aware that because he is not covered by the Settlement, he
28 likewise is not releasing any claims thereunder and has the option of seeking relief based on
the hold. See Settlement Agt ¶¶ 1.29 & 7.1.

1 entirely conclusory and lack citations to legal authority or evidence. They also fail to
2 identify any specific flaws in the Settlement that render it unfair, inadequate or
3 unreasonable.

4 Greene and Phillips do not address any particular term in the Settlement, and instead
5 appear to assert more generalized grievances with PayPal and/or class action litigation.
6 Dkt. 303, 337.

7 Phillips likewise fails to identify any particular issue regarding the Settlement, but
8 instead appears to question whether a hold was placed on his PayPal account. Dkt. No.
9 315.

10 Schroeder and DeBellis express frustration with holds that were allegedly placed on
11 their PayPal accounts, and make vague complaints that the relief provided by the
12 Settlement is insufficient. Dkt. 294, 315. However, both fail to identify any specific reason
13 they believe the Settlement's terms do not adequately compensate class members,
14 especially considering the significant risk they would receive nothing if the case went to
15 trial.

16 The objections filed by Greene, Phillips, Leach, Schroeder and DeBellis are
17 **OVERRULED.**

18 **D. CERTIFICATION OF SETTLEMENT CLASS**

19 In its Order Granting Plaintiffs' Motion for Preliminary Approval of Amended Class
20 Action Settlement Agreement, Dkt. 281, the Court carefully considered whether Plaintiffs
21 satisfied the Rule 23(a) and (b)(2) and (3) requirements. Dkt. 281 at 9-14. "Because the
22 Settlement Class has not changed, the Court sees no reason to revisit the analysis of Rule
23 23." G. F. v. Contra Costa Cty., No. 13-CV-03667-MEJ, 2015 WL 7571789, at *11 (N.D.
24 Cal. Nov. 25, 2015) (N.D. Cal. Nov. 25, 2015) (internal quotation marks and citation
25 omitted).

26 //

27 //

28 //

1 **III. ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

2 **A. BACKGROUND**

3 The Settlement authorizes Class Counsel to request an award of attorneys' fees,
4 costs and service awards (also referred to as "incentive awards") for each of the eight
5 named plaintiffs in Zepeda "in an amount of up to 30% of the Settlement Fund ... with all
6 amounts paid exclusively from the Settlement Fund." Settlement Agt. §§ 6.1, 1.34. Based
7 on a Settlement Fund of \$3,200,000, the maximum amount that can be awarded for
8 attorneys' fees, costs and incentive awards collectively is \$960,000. The Settlement also
9 authorizes plaintiffs' counsel in the Fernando action (namely Trubitsky and local counsel
10 Hicks) to file separate fee and cost applications for an aggregate amount of up to \$212,500.
11 Id.²⁰ Any sums awarded to the Fernando counsel are to be "paid out of the total award of
12 fees and costs awarded to Class Counsel." Id. The Settlement specifies that the amount of
13 fees, costs and incentive awards is at the discretion of the Court "and the amount of any
14 award is not a condition of [the] Settlement." Id. § 6.2.

15 A total of three fee applications have been submitted for the Court's consideration.
16 Dkt. 295, 296, 297. Class Counsel seeks payment of \$902,000 in attorneys' fees, costs in
17 the amount of \$38,463.29, and incentive (service) awards totaling \$20,000 (\$2,500 for each
18 of the named plaintiffs in Zepeda) for a grand total of \$960,000—the maximum amount
19 that can be awarded under the Settlement. See Settlement Agt. § 6.1. Trubitsky, ostensibly
20 on behalf of herself and Hicks, seeks recovery of \$212,500 in attorneys' fees, also the
21 maximum amount permitted under the Settlement. See id.²¹ Due to his acrimonious

22 _____
23 ²⁰ The original global settlement reached in December 2011 specified that
24 Defendants would contribute an additional \$425,000 to the Settlement Fund established in
25 the May 2011 settlement in Zepeda. Hicks Decl. Ex. D, Dkt. 295-2 at 18. The settlement
26 term sheet also indicated that Fernando counsel could seek recovery of up to 50% of the
27 additional settlement (i.e., \$212,500). Id. at 19. Due to Trubitsky's refusal to honor the
28 December 2011 settlement, it was never reduced to a formal settlement agreement.

26 ²¹ At the hearing on the instant motions, Hicks stated that Trubitsky filed her fee
27 motion with his name on the caption without his prior knowledge or consent. See also
28 Hicks Decl. ¶ 14 ("The Court may not be aware that on occasion [Trubitsky] filed
documents bearing my name without my advance knowledge, review and consent, though
that was clearly by agreement to serve as local counsel.")

1 relationship with Trubitsky, Hicks filed a separate fee application. The Court analyzes
2 these requests below, beginning first with Class Counsel’s request for an incentive award
3 for each of the eight Class Representatives in the Zepeda action.

4 **B. INCENTIVE AWARDS**

5 “Incentive awards are fairly typical in class action cases,” Rodriquez, 563 F.3d at
6 958-59, but the decision to approve and the amount of such awards are matters within the
7 court’s discretion, Mego, 213 F.3d at 463. Generally speaking, incentive awards are meant
8 to “compensate class representatives for work done on behalf of the class, to make up for
9 financial or reputational risk undertaken in bringing the action, and, sometimes to recognize
10 their willingness to act as a private attorney general.” Rodriquez, 564 F.3d at 958-59. In
11 assessing an incentive award request, the court must consider “the actions the plaintiff has
12 taken to protect the interests of the class, the degree to which the class has benefitted from
13 those actions ... [and] the amount of time and effort the plaintiff expended in pursuing the
14 litigation.” Staton v. Boeing Co., 327 F.3d 928, 977 (9th Cir. 2003). The Ninth Circuit has
15 emphasized that “district courts must be vigilant in scrutinizing all incentive awards.”
16 Radcliffe v. Experian Info. Solutions, Inc., 715 F.3d 1157, 1165 (9th Cir. 2013) (internal
17 quotation marks and citation omitted).

18 Plaintiffs seek an incentive award in the amount of \$2,500 for each of the eight
19 named Class Representatives. Although the Court, in its Order granting preliminary
20 approval of the Settlement, specifically instructed Plaintiffs to “include a discussion based
21 on [Staton]” with their motion for incentive awards, Dkt. 281 at 9, no such analysis or
22 supporting evidence has been provided. Instead, Plaintiffs merely state that “Plaintiffs
23 consulted with Class Counsel throughout the six year history of this case, made themselves
24 available as needed, provided factual background to assist in the development of the case,
25 reviewed pleadings and correspondence in the case, and evaluated the settlement papers
26 and terms.” Dkt. 297 at 26. This generic, unsupported assertion could be made in any class
27 action. That aside, the proposed \$2,500 incentive award is otherwise wholly
28 disproportionate relative to the recovery of other class members, which is estimated to be

1 approximately \$3 per claimant. Dkt. 344 at 4. For these reasons, the Court finds that a
2 \$50, as opposed to a \$2,500 incentive award, is reasonable and appropriate. E.g. Russell v.
3 United States, No. C 09-03239 WHA, 2013 WL 3988778, at *4-5 (N.D. Cal. Aug. 2, 2013)
4 (reducing requests for \$5,000 and \$2,000 incentive awards to \$200 and \$100, respectively,
5 where each class member was likely to receive approximately \$36). Accordingly,
6 Plaintiffs' request for an incentive award is GRANTED in the amount of \$50 per Plaintiff.

7 C. ATTORNEYS' FEES

8 In cases such as this where the settlement of a class action creates a common fund,
9 the Court has discretion to award attorneys' fees using either (1) the "lodestar" method or
10 (2) the "percentage of the fund" approach. Vizcaino v. Microsoft Corp., 290 F.3d 1043,
11 1047 (9th Cir. 2002). Under the lodestar method, the lodestar amount is calculated by
12 multiplying the number of hours reasonably expended by counsel by a reasonable hourly
13 rate. Hanlon, 150 F.3d at 1029. "The 'lodestar method' is appropriate in class actions
14 brought under fee-shifting statutes (such as federal civil rights, securities, antitrust,
15 copyright, and patent acts), where the relief sought—and obtained—is often primarily
16 injunctive in nature and thus not easily monetized, but where the legislature has authorized
17 the award of fees to ensure compensation for counsel undertaking socially beneficial
18 litigation." In re Bluetooth Headset, 654 F.3d at 941. Under the percentage of the fund
19 method, the attorneys' fees are calculated as a percentage of the common fund established
20 by the settlement. Id. This approach is permissible in common fund settlements "[b]ecause
21 the benefit to the class is easily quantified in common-fund settlements...." Id. In this
22 Circuit, 25% is the "benchmark" for a reasonable fee award, though a court may depart
23 from the benchmark where "special circumstances" are present. Id. at 942.

24 To assess whether a fee request is reasonable, the Court may consider a number of
25 factors, including, without limitation: (1) the results achieved; (2) the risk of litigation;
26 (3) the skill required and the quality of work; (4) the contingent nature of the fee and the
27 financial burden carried by the plaintiffs; and (5) awards made in similar cases. Vizcaino,
28 290 F.3d at 1048-50. "The overall result and benefit to the class from the litigation is the

1 most critical factor in granting a fee award.” In re Omnivision Techs., Inc., 559 F. Supp. 2d
2 1036, 1046 (N.D. Cal. 2008). Courts applying the percentage method should use the
3 lodestar method as a cross-check to determine the fairness of the award. See Vizcaino, 290
4 F.3d at 1050. However, regardless of the methodology employed, the Court must ensure
5 that the fee award is reasonable. In re Mercury Interactive Sec. Litig., 618 F.3d 988, 992
6 (9th Cir. 2010).

7 **1. Amount of Fees to be Awarded**

8 Class Counsel’s request for \$902,000 in fees correlates to approximately 28% of the
9 Settlement Fund, which is above the 25% benchmark. Weighing the relevant factors, the
10 Court finds that a benchmark fee, as opposed to the requested enhanced fee, is appropriate.
11 As a threshold matter, Class Counsel achieved a reasonable settlement on behalf of class
12 members. The settlement amount and matrix for the payment of claims were based on an
13 analysis of the amount of interest that would have accrued on accounts subject to holds
14 during the Class Period. McCabe Decl. ¶ 2. Though certain Objectors assert that the
15 settlement is too low, they fail to support their arguments with any evidence or meaningful
16 analysis. Objectors also fail to consider the risks facing the Class in the absence of a
17 settlement, which are especially significant considering the questionable merit of Plaintiffs’
18 claims and the risk that no class would be certified. While the results achieved by Class
19 Counsel may not be sufficiently exceptional to warrant an enhanced fee, they are more than
20 adequate to support a benchmark fee award.

21 The remaining factors also militate in favor a Class Counsel fee award. First, for the
22 same reasons just mentioned, Class Counsel assumed substantial risk in representing the
23 Class.

24 Second, Class Counsel have consistently demonstrated both skill and expertise in
25 their pursuit of this case. Class Counsel specialize in consumer class actions, and have
26 served as counsel for classes of plaintiffs in a variety of substantive areas. Leon Decl. ¶ 2,
27 Dkt. 297-3; Todzo Decl., ¶¶ 2, 6-12, Dkt. 297-1. Such expertise proved particularly
28 beneficial in this action, in view of the substantive and procedural complexities involved in

1 litigation and the protracted settlement process. Given the contentious nature of the action,
2 the Court finds that the result achieved in this matter would have been unlikely if entrusted
3 to counsel of lesser experience or capability.

4 Third, Class Counsel represented Plaintiffs on a contingency basis and thus bore the
5 financial burden of pursuing the litigation for an extended period of time. See Vizcaino,
6 290 F.3d at 1050 (noting that the burdens imposed on counsel by taking the case on a
7 contingency basis were shown by the extended length duration of the lawsuit, the
8 significant cost, and the fact that plaintiff’s counsel had to forego other work).

9 Finally, fee awards in other consumer class actions support the conclusion that a fee
10 award based on 25% of the Settlement Fund is reasonable and appropriate. See Ko, 2012
11 WL 3945541, at *14.

12 Finally, the reasonableness of the fee award is supported by a lodestar cross-check
13 analysis.²² The Court therefore concludes that a fee award based on 25% of the Settlement
14 is consistent with the Ninth Circuit’s benchmark and is supported by the facts of this case.

15 2. Allocation of Fees

16 The next issue before the Court concerns the allocation of fees between Class
17 Counsel and Fernando counsel. The salient question in determining whether a fee award is
18 appropriate is whether the work performed by counsel “‘was both useful and of a type
19 ordinarily necessary to advance the ... litigation.’” Armstrong v. Davis, 318 F.3d 965, 971
20 (9th Cir. 2003) (quoting in part Webb v. Bd. of Educ., 471 U.S. 234, 243 (1985))
21 (alterations in orig.); e.g., Fischel v. Equitable Life Assur. Soc’y of U.S., 307 F.3d 997,
22 1006 (9th Cir. 2002) (“When counsel recover a common fund which confers a ‘substantial
23 benefit’ upon a class of beneficiaries, they are entitled to recover their attorney’s fees from
24 the fund.”); Victor v. Argent Classic Convertible Arbitrage Fund L.P., 623 F.3d 82, 87 (2d
25 Cir. 2010) (holding that district court has discretion to award attorneys’ fees to co-counsel
26 whose work “confer[s] substantial benefits on the class”).

27 _____
28 ²² The lodestar for Class Counsel’s work in this case is \$1,015,233.50, which exceeds the amount of fees to be awarded under the percentage of the fund approach.

1 With regard to Class Counsel, the Court finds that they have comported themselves
2 professionally and in a manner that proved useful for and advanced the interests of the
3 Class. Despite the ongoing efforts of Trubitsky and various putative interveners to
4 undermine their efforts to consummate a global settlement, Class Counsel persevered and
5 participated in several multi-day mediations to finally reach a settlement acceptable to the
6 Court. In the face of these impediments, coupled with the Court's rejection of prior
7 iterations of the Settlement, Class Counsel remained steadfast in their attempts to pursue
8 settlement in this action. Ultimately, Class Counsel conferred a substantial benefit upon the
9 Class by securing a settlement in an action where the substantive merit and the ability to
10 obtain and maintain class certification remain questionable. The Court therefore finds that
11 Class Counsel have persuasively demonstrated that they should be awarded attorneys' fees
12 in this action.

13 The Court is not so sanguine as to Fernando counsel. The Settlement now before the
14 Court was negotiated without either Trubitsky or Hicks' participation and was never signed
15 by either of them or any of the Fernando plaintiffs. Todzo Decl. in Supp. of Class Pls.'
16 Opp'n to Mot for Attorneys' Fees and Reimbursement of Costs by Fernando Counsel ¶ 2,
17 Dkt. 301-1. It is true that Fernando counsel were instrumental in securing Defendants'
18 agreement in December 2011 to pay an additional \$425,000 into the Settlement Fund to
19 resolve the Fernando plaintiffs' claims. Yet, Trubitsky almost immediately reneged on that
20 agreement—instead demanding individual settlements for certain of her clients. See, e.g.,
21 Moon Decl. ¶¶ 2-5; 3/29/12 CMC Stmt. at 6-7; 11/27/12 Order at 2. In addition, once it
22 became clear that the parties in Zepeda were intending to pursue a global resolution
23 irrespective of her involvement, Trubitsky embarked on a course of action directed at
24 disrupting the settlement by, among other things, engaging in unnecessary motion practice
25 and initiating a new lawsuit. See id.²³ These actions resulted in additional delay and
26

27 ²³ In addition, Hicks reports that Trubitsky ignored his advice and repeatedly refused
28 to communicate with his or the class representatives. See Hicks Decl. in Supp. of Appl. for
Fees by Attorney David Hicks ¶¶ 14-15, Dkt. 295-2.

1 litigation costs—all to the detriment of the Class. Thus, as to Trubitsky, the Court finds
2 that she is not deserving of attorneys’ fees or costs on the ground that her actions, on
3 balance, did not provide a substantial benefit to the Class.²⁴

4 The matter of Hicks’ fee request presents a closer question. There is no allegation or
5 evidence that Hicks was directly responsible for Trubitsky’s decision to renege on the
6 settlement or impede the Zepeda plaintiffs’ efforts to obtain judicial approval of the global
7 settlement. To the contrary, the record shows that Trubitsky inappropriately took actions,
8 such as filing the Dunkel action and listing Hicks as co-counsel, without his knowledge or
9 consent. At the same time, Hicks cannot completely absolve himself of Trubitsky’s
10 actions. To the extent that Hicks believed that Trubitsky’s conduct was detrimental to their
11 clients or to the Class, or was inconsistent with the obligations imposed on pro hac vice
12 counsel, it was incumbent upon him to notify the Court that she was in violation of the rules
13 of professional conduct applicable to pro hac vice counsel. See Civ. N.D. Cal. Civ. L.R.
14 11-4. Yet, there is no indication that Hicks endeavored to seek judicial intervention to
15 address her actions or was able to ameliorate the impact of her misconduct.

16 The above notwithstanding, there is no evidence that Hicks, unlike Trubitsky, took
17 any actions that were detrimental to the Fernando plaintiffs or the Class. To the contrary,
18 he provided a substantial benefit to the Class by helping negotiate an additional \$425,000
19 for the Settlement Fund. The Court therefore finds that it is fair and reasonable to award
20 fees to Hicks for the services he performed up to and including the mediation in December
21 2011. The billing records submitted by Hicks reveal that he performed 52.7 hours of work
22 during that time period. See Hicks Decl. Ex. B, Dkt. 295-3 at 3-29. Based on a generous
23

24 _____
25 ²⁴ Trubitsky’s deficient representation of the Class also is underscored by the fact
26 that she failed to appear for the fairness hearing. Instead, the evening before the hearing,
27 Trubitsky requested attorney Tour-Sarkissian to “specially appear” in her stead. Tour-
28 Sarkissian, who is not counsel of record or otherwise involved in Fernando or Zepeda,
acknowledged that she was generally unaware of the facts and history of the actions and
only had the opportunity to review a limited portion of the present motion papers. As such,
through no fault of her own, Tour-Sarkissian could not meaningfully participate in the
hearing.

1 hourly rate of \$660.00 per hour, the lodestar for Hicks' services amounts to \$34,782. Said
2 amount shall be awarded to Hicks as attorneys' fees.

3 3. Miorelli's Objections

4 Miorelli contends that the Class Counsel should only be awarded the 25% of the "net
5 value" of the Settlement Fund after subtracting the notice costs, litigation costs and
6 incentive awards. Dkt No. 333 at 13-17. However, there is no bright-line rule requiring
7 that a court calculate a fee award based on a net settlement fund. See In re Online DVD-
8 Rental Antitrust Litig., 779 F.3d 934, 953 (9th Cir. 2015) ("[W]hether to base an attorneys'
9 fee award on either net or gross recovery should not make a difference so long as the end
10 result is reasonable.").

11 Miorelli next argues that the lack of biographical information for all attorneys who
12 appear on the billing statements submitted to the Court make it "impossible" to ascertain
13 whether the lodestar is reasonable. Dkt. 333 at 16. No authority is cited to support
14 Miorelli's contention that the presentation of attorney biographies or resumes is a
15 prerequisite to a fee request in a class action settlement. That aside, Class Counsel have
16 submitted uncontroverted declarations substantiating the qualifications of the primary
17 billers, the hours worked on the case, and that their hourly rates are commensurate with the
18 prevailing rates in the San Francisco Bay Area. See Todzo Decl. ¶¶ 7-12, Dkt. No. 297-1;
19 Leon Decl. ¶¶ 2, 6-9, Dkt. 297-3.²⁵ Although Class Counsel did not submit biographical
20 for *every* legal professional who billed time to this case, see Dkt. 333 at 16 & n.3, the lack
21 of such information is inapt, given that the amounts billed by those individuals was
22 negligible.²⁶ The Court therefore finds that Class Counsel has provided sufficient
23 information to perform a lodestar cross-check.

24 _____
25 ²⁵ Each of those attorneys attended well-known law schools, such as Hastings
26 College of the Law and Boalt Hall School of Law. Todzo Decl. ¶¶ 8-9. Lead attorneys
27 Mark Todzo and Jeffrey Leon have practiced law for over twenty-two and twenty-four
28 years, respectively, and have worked on numerous class actions. Id. ¶ 8; Leon Decl. ¶ 8.

²⁶ For instance, Miorelli complains that Class Counsel did not submit a resume for
Abigail Blodgett, who billed 0.2 hours (12 minutes) at \$400, which amounts to \$80 in fees.
Dkt. 333 at 16 n.3.

1 Finally, Miorelli contends that the Court should apply the District of Columbia’s
2 “Laffey matrix” to determine Class Counsel’s hourly rate. Dkt. No. 333 at 16-17. “[T]he
3 Laffey matrix is an inflation-adjusted grid of hourly rates for lawyers of varying levels of
4 experience in Washington, D.C.” Prison Legal News v. Schwarzenegger, 608 F.3d 446,
5 454 (9th Cir. 2010). But as the Ninth Circuit in Prison Legal News has explained, “just
6 because the Laffey matrix has been accepted in the District of Columbia does not mean that
7 it is a sound basis for determining rates elsewhere, let alone in a legal market 3,000 miles
8 away.” Id. Accordingly, this Court has previously “decline[d]” an invitation to use the
9 matrix where, as here, the party requesting fees “has submitted competent evidence
10 showing market rates in this area (including those awarded by courts).” Rosenfeld v. U.S.
11 Dep’t of Justice, 904 F. Supp. 2d 988, 1003 (N.D. Cal. 2012) (declining to apply the Laffey
12 matrix where the movant submitted competent evidence showing market rates in local
13 area); see also Jacobson v. Persolve, LLC, No. 14-CV-00735-LHK, 2016 WL 7230873, at
14 *6 (N.D. Cal. Dec. 14, 2016) (rejecting Laffey matrix).²⁷

15 4. Perkins’ Objections

16 Perkins asserts that Class Counsel’s ability to recover fees is governed by California
17 Code of Civil Procedure § 1021.5. Citing California authority, Perkins states that § 1021.5
18 “requires a lodestar analysis and does not provide for any recovery based on a percentage
19 of a common fund.” Dkt. 317 at 4. Perkins apparently is unaware that Class Counsel’s fee
20 request is governed by *federal* law, which expressly confers federal courts with the
21 discretion to determine fee awards in a class action based on either the lodestar method or a
22 percentage of the settlement fund. In re Bluetooth, 654 F.3d at 942. Perkins also claims
23 Class Counsel is “not entitled to any fee multiplier.” Dkt. 317 at 4. This argument is
24 perplexing, given that Class Counsel has not requested application of a multiplier. To the
25

26 ²⁷ Miorelli also contends that the incentive awards are disproportionately high to the
27 recovery of class members. See Dkt. 333 at 11. Miorelli’s analysis is unhelpful because it
28 ignores the Ninth Circuit’s decision in Staton, which articulates the standard for evaluating
incentive award requests. That aside, his concerns are moot, as the Court has
independently lowered the incentive awards.

1 contrary, the fees requested by Class Counsel under the percentage of the fund approach are
2 *less than* the lodestar—which is tantamount to a *negative* multiplier.

3 **5. Conclusion**

4 To summarize, the Class Counsel Fee Motion and Hicks Fee Application are
5 GRANTED IN PART. Class Counsel is awarded attorneys’ fees in the amount of
6 \$800,000, which represents 25% of the Settlement Fund (i.e., \$3,200,000 x 25% =
7 \$800,000). Hicks is awarded attorneys’ fees in the amount of \$34,782, which shall be
8 deducted from the fees awarded to Class Counsel. The Trubitsky Fee Motion is DENIED.

9 **D. COSTS**

10 Class Counsel requests an award of costs of \$38,463.29. See Leon Decl. ¶ 10, Dkt.
11 297-3; Todzo Decl. ¶ 13, Dkt. 297-1. This amount is comprised of \$33,625.29 incurred by
12 Quantum Legal LLC and \$4,838 incurred by Lexington Law Group. Id. The majority of
13 those Class Counsel’s expenses (i.e., \$19,200) are attributable to mediation fees. Todzo
14 Decl. Ex. 3, Dkt. 297-6. The remaining \$19,263.29 is attributable to court fees,
15 computerized research costs, mediation fees, photocopying, postage, telephone and
16 facsimile charges and travel expenses. Leon Decl. Ex. 3; Todzo Decl. Ex. 1.

17 Attorneys are entitled “recover as part of the award of attorneys’ fees those out-of-
18 pocket expenses that would normally be charged to a fee paying client.” Harris v.
19 Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994); Alvarado v. Nederend, No. 1:08-CV-01099
20 OWW DL, 2011 WL 1883188, at *10 (E.D. Cal. May 17, 2011) (noting that “filing fees,
21 mediator fees, ground transportation, copy charges, computer research, and database expert
22 fees ... are routinely reimbursed in these types of cases”) (citation omitted). Class
23 Counsel’s request for reimbursement of costs in the amount of \$38,463.29 is GRANTED.

24 //
25 //
26 //
27 //
28 //

1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT:

4 1. The definitions and provisions of the Settlement Agreement are hereby
5 incorporated as though fully set forth herein. For purposes of this Order, capitalized terms
6 shall have the meaning ascribed to them in the Settlement Agreement.

7 2. The Court has jurisdiction over the subject matter of the Settlement
8 Agreement with respect to all parties to thereto, including all members of the Settlement
9 Class.

10 3. Plaintiffs' Motion for Final Approval of Amended Class Action Settlement
11 Agreement is GRANTED. The Court finds that the Settlement is fair, adequate, and
12 reasonable and is in the best interest of the Settlement Class.

13 4. Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement for
14 Costs and Service Awards is GRANTED IN PART. Class Counsel is awarded attorneys'
15 fees in the amount of \$800,000, plus costs in the sum of \$38,463.29. Plaintiffs Moises
16 Zepeda, Michael Spear, Ronya Osman, Brian Pattee, Casey Ching, Denae Zamora, Michael
17 Lavanga and Gary Miller are each awarded an incentive award in the amount of \$50.00.

18 5. The Hicks Fee Application is GRANTED IN PART. Hicks is awarded
19 attorneys' fees in the amount of \$34,782, with said amount to be paid out of the total award
20 of fees and costs awarded to Class Counsel.

21 6. The Trubitsky Fee Motion is DENIED.

22 7. Melanie Catanese's request for a two week extension to file a claim is
23 GRANTED. Epiq shall notify Catanese that the Court has granted her request for
24 extension.

25 8. This Court dismisses the instant action and Fernando v. PayPal, No. 10-1668
26 SBA, with prejudice as to all Settlement Class Members, consistent with the Released
27 Claims identified in the Settlement. Plaintiffs and each Settlement Class Member will be
28

1 deemed to have fully released and forever discharged Defendants in accordance with the
2 Settlement

3 9. Pursuant to Federal Rule of Civil Procedure 58, judgment shall be entered in
4 accordance with this Order and the terms of the Settlement.

5 10. The Court shall retain exclusive and continuing jurisdiction over this action
6 and the parties, including Class Members, for the purposes of compliance with and
7 performance of the Settlement Agreement.

8 11. This Order shall be filed in Case Nos. C 10-2500 SBA and C 10-1668 SBA,
9 and both files shall be closed and all pending matters therein shall be terminated.

10 IT IS SO ORDERED.

11 Dated: 3/24/17


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28