BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
Daniel E. Birkhaeuser (Bar No. 136646)
Robert M. Bramson (Bar. No. 102006)
2125 Oak Grove Road, Suite 125
Walnut Creek, California 94598
Telephone: (925) 945-0200
Email: dbirkhaeuser@bramsonplutzik.com
jrosenberg@bramsonplutzik.com

THE NATIONAL CONSUMER LAW CENTER
Charles Delbaum
Stuart Rossman
7 Winthrop Square, 4th Fl.
Boston, MA 02110
Telephone: (617) 542-8010
Facsimile: (617) 542-8028
Email: cdelbaum@nclc.org

LAW OFFICE OF IAN CHOWDHURY
Ian D. Chowdhury (Bar No. 199018)
700 N. Valley St., Suite B #15595
Anaheim, CA 92801
Telephone: (661) 242-1898
Facsimile: (818) 337-2215
Email: ian@ianchowdhury.com

Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

JUDITH REIMANN and MICHAEL DaRONCO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ERICA L. BRACHFELD, THE BRACHFELD LAW GROUP, P.C., MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, LLC, and MIDLAND FUNDING NCC-2 CORP. and DOES 1-100, inclusive,

Defendants.

Case No. RG10-529702

PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH MIDLAND DEFENDANTS

Date: February 3, 2023
Time: 10:00 a.m.
Dept: 21
Reservation Number: 499881204952

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

PAGE(S)

I. INTRODUCTION

After 12 years of hard-fought litigation in this class action case, Plaintiffs and Defendants Midland Funding, LLC, Midland Funding NCC-2 Corp., and Midland Credit Management, Inc. (together, "Midland" or "Defendants") (collectively, "the Parties) reached a settlement of this entire action. Plaintiffs have agreed to release all claims in exchange for Midland's payment of $2.8 million. This amount, combined with the previously-approved settlement with defendant Brachfeld Law Group, will result in a total class recovery of $3.5 million.

The Parties patterned their Class Settlement and Release Agreement (the "Settlement Agreement") after the agreement to which this Court granted Final Approval with respect to the BLG settlement on December 17, 2021. The Settlement Agreement provides for a final judgment and contains a release of all claims that is limited to the facts alleged in the complaint. It does not contain a release of claims under California Civil Code section 1542. Under the Settlement Agreement, unclaimed funds will not revert to Midland. Instead, the Parties propose that any unclaimed funds be directed to HERA, a *cy-pres* recipient previously approved by the Court. There is no "clear-sailing" provision with respect to fees.

Therefore, pursuant to California Rule of Court 3.769 ("C.R.C. 3.769"), Plaintiffs Judith Reimann and Michael DaRonco ("Plaintiffs") and Midland jointly move for an order preliminarily approving the proposed settlement. The Class Settlement and Release Agreement ("Settlement Agreement") is attached as Exhibit 1 to the Declaration of Daniel E. Birkhaeuser in Support of Motion for Preliminary Approval of Settlement ("Birkhaeuser Decl.") filed contemporaneously with this Memorandum. The proposed order ("Preliminary Approval Order") submitted with this Memorandum, would: (1) preliminarily approve the proposed settlement ("Settlement") as set forth in the Settlement Agreement; (2) approve the form and manner of notice of the Settlement to the Class, to be substantially in the form attached as Exhibit 2 to the Birkhaeuser Declaration; and (3) schedule a hearing to consider (a) final approval of the Settlement ("Final Approval Hearing") and (b) Plaintiffs' forthcoming motion for an award of attorneys' fees and service awards to the class representatives.

At this preliminary stage of the settlement process, the Parties therefore request that the Court: (i) grant preliminary approval of the proposed Settlement; (ii) schedule a Final Approval Hearing to consider final approval; (iii) direct that notice of the proposed Settlement and hearing be provided to absent Settlement Class members; and (iv) enter the proposed Preliminary Approval Order submitted contemporaneously herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Parties have litigated this case extensively over the course of 12 years. The most salient points regarding the litigation's involved procedural history are as follows:

Plaintiffs filed this action on August 5, 2010. The complaint alleges that the Brachfeld Law Group ("BLG") and Midland, used debt collection procedures that violated the California Fair Debt Collections Act (Civil Code § 1788 et seq.), and the Unfair Competition Law (Business and Profession Code § 17200). The complaint alleges that BLG filed and pursued collection lawsuits on Midland's behalf without prior reasonable investigation or meaningful attorney involvement, and that Defendants submitted false affidavits and evidence in support of requests for default judgments in collection lawsuits. Defendants' Answers denied all liability and contended they did not violate the law or engage in any wrongful or unlawful conduct and asserted several affirmative defenses..

Defendants removed the case to the United States District Court for the Northern District of California and then filed motions for judgment on the pleadings. Plaintiffs, in turn, filed a motion to remand and opposed Defendants' dispositive motions. On December 13, 2010, the District Court remanded the entire action to this Court and denied Defendants' motions as moot. *Reimann v. Brachfeld*, 200 W.L. 5141858 (N.D. Cal 2010).

The instant case was delayed again by an injunction issued by the United States District Court for the Northern District of Ohio in 2011 while it considered a proposed settlement in a related case alleging Midland used false affidavits, *Midland Funding LLC v. Brent*. The *Brent* parties' first attempt at a settlement, offering $10 claims-made payments to class members, was overturned by the Sixth Circuit Court of Appeals in *Vassalle, et al v. Midland Funding, et al*. 708 F.3d 747 (6th Cir. 2013). The

second proposed settlement, offering the potential for slightly greater monetary relief and curing some deficiencies, was ultimately approved.

During a period in which the case was not stayed, Defendants herein filed Motions for Judgment on the Pleadings and a Motion to Compel Arbitration. Defendants' Motions for Judgment on the Pleadings were denied on all grounds except as to Erica Brachfeld individually. The Court also denied Defendants' motion to compel Michael DaRonco's claims to arbitration. Defendants appealed from this Court's denial of Defendants' motion to compel arbitration, but later dismissed the appeal. In 2018, Defendants filed yet another motion for judgment on the pleadings, which the Court denied.

During the course of the litigation, Plaintiffs propounded extensive written discovery upon BLG and Midland, including interrogatories, requests for admission, and requests for production of documents. Birkhaeuser Decl., ¶5. This discovery was extremely hard fought. The Parties negotiated stipulations when they could agree. When they could not agree, the Parties convened numerous meet and confer sessions, drafted and submitted letter briefs, and attended conferences with the Court. Plaintiffs ultimately filed six motions to compel discovery to obtain document production, responses to interrogatories, and depositions. Plaintiffs reviewed over 20,000 documents produced, took the depositions of BLG's designated corporate witness, the depositions of several Midland PMKs, and three Midland employees. Midland deposed both named Plaintiffs. Both parties retained experts whose depositions also were taken. *Id.*

On October 6, 2019, this Court granted Plaintiffs' motion for class certification (The "Class Certification Order"). The Court certified a class (the "Class") defined as follows:

> All California consumers who both: (1) from August 5, 2006, through February 2, 2015, either (a) were sent collection demand letters, debt collection letters, or dunning letters by Brachfeld Law Group regarding a debt allegedly owed to one of the Midland Entities or (b) were sued by the Midland Entities where Brachfeld Law Group was attorney of record and (2) if they were in the class in *Vassalle v Midland Funding*, LLC, United State District Court, N.D. Ohio) Co. 3:l 1-cv- 0096, excluded themselves from the class.

The Class Certification Order recognized that Midland had the ability to present evidence contrary to Plaintiffs' allegations as to liability, including Plaintiffs' contention that all Class accounts were consumer in nature. The Court also reserved the right to create subclasses concerning Midland's

contention that there were variations in the letters at issue in the action and that Midland obtained certain judgments against Class members.

On December 17, 2021, the Court granted Final Approval to a proposed settlement between Plaintiffs and BLG. The case proceeded against Midland and was initially set for trial on September 27, 2021. Prior to that date, Midland filed motions for summary judgment, to dismiss based upon the five year rule, and to decertify the class. The Court denied[1] all three motions. However, due to Covid and the Court's calendar, the case was rescheduled for trial to commence in June, 2022.

As the foregoing demonstrates, Plaintiffs thoroughly investigated the facts of this case during discovery and the Parties thoroughly briefed and evaluated the legal issues relating to Plaintiffs' claims and Midland's defenses.

1. Settlement Discussions and Mediation

In May, 2017, and again in March, 2020, the Parties participated in mediations in an attempt to resolve this matter. Birkhaeuser Decl., ¶6. Both mediations were conducted before the Honorable Bonnie Sabraw (Ret.) and both afforded the Parties the opportunity to exchange their views in writing and in discussions with the mediator. However, neither mediation resulted in a settlement between Plaintiffs and Midland[2]. *Id.*

Thereafter, Midland and Plaintiffs participated in three settlement conferences before the Honorable Robert McGuiness. *Id,* ¶7. At the final conference before Judge McGuiness, the parties reached the basic settlement terms presented herein. *Id.* Thereafter, the Parties had extended discussion, both orally and in writing, and participated in two further conferences with Judge McGuiness to arrive at the final written settlement agreement presented in this Motion. *Id.*

---

[1] With respect to the motion to decertify, the Court did create certain subclasses but did not require further notice to be published to the class.

[2] Following the mediations with Judge Sabraw, Plaintiffs and BLG agreed to the terms of a $700,000 settlement that was finally approved by this Court on December 17, 2021. Plaintiffs determined at that time that it was economically inefficient to distribute the settlement amount to class members and the Court approved Plaintiffs' request to defer distribution to the class as well as payment of attorneys' fees and service awards to the named representatives until claims against Midland were resolved through settlement or trial. The $700,000 in BLG settlement funds (less costs of notice) remains on deposit awaiting further order of this Court.

III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. Terms of the Proposed Settlement

1. Monetary Terms of the Settlement

Pursuant to the terms of the settlement agreement, Midland will pay $2.8 million to resolve all claims against it in this litigation. The money will be deposited in a settlement fund after final approval.

2. Distribution of Settlement Fund

The $2.8 million from Midland, together with the previously-approved settlement of $700,000 from BLG, will yield a total of $3.5 million dollars in settlement funds recovered in this case. After subtracting the costs of notice and settlement administration, and assuming hypothetically that the Court awards the amounts of attorneys' fees and expenses and class representative service awards which Plaintiffs will request, Plaintiffs estimate the net amount available for distribution to the class will be approximately $2,240.000. Birkhaeuser Decl, ¶ 11. Plaintiffs propose that these funds be distributed in an equitable manner to class members considering the facts and claims in this action.

Plaintiffs have two claims in this action. The first, under the Rosenthal Act, provides statutory damages, limited to a maximum of $1,000 for an individual or $500,000 for the class as a whole. The second, under the UCL, provides restitution as its remedy. In this case, Plaintiffs' theory of restitution, if successful, would have recovered the amounts paid by each class member to Midland following the violations alleged in the complaint.

All class members have a Rosenthal Act statutory damage claim against Midland. All class members also have a Rosenthal Act statutory damage claim against BLG. Moreover, each UCL class member's claim is predicated upon a violation of the Rosenthal Act. Therefore, Plaintiffs propose that all class members receive a minimum payment of $50. In addition, those class members who made payments to Midland and who therefore have a claim for restitution will receive a pro rata share of the remaining settlement funds, to the extent their share exceeds $50. Further specifics of the plan to calculate the pro rata share to those class members entitled to restitution, plus interest, are set forth as Plaintiffs' Proposed Plan of Allocation. Birkhaeuser Decl., Exhibit 3.

3. Attorneys' Fees, Costs, and Service Awards

In connection with the BLG settlement, this Court awarded Plaintiffs $203,385 in attorneys' fees and $22,047 in expenses for work that Plaintiffs allocated to the BLG matter alone. *See* Order dated December 17, 2021 Granting Final Approval and Awarding Fees. Because distribution to the class was to be deferred until after a resolution of claims against Midland, Plaintiffs proposed that the Court's award of fees and expenses be deferred as well. The Court so ordered. *Id*.

Plaintiffs now intend to apply for additional attorneys' fees, in the amount of 30% of the Midland settlement fund, and for the expenses of litigation that were not previously awarded pursuant to the BLG settlement. Plaintiffs will file that motion concurrently with the motion for final approval of this settlement with Midland.

Plaintiffs will also seek service awards to the class representatives individually of $5,000 each out of the Midland portion of the settlement funds. The Court previously awarded each Plaintiff that amount out of the BLG portion.

4. Proposed Cy Pres Recipient

In connection with the BLG settlement, this Court approved the Housing and Economic Rights Advocates as the beneficiary of any residual funds after distribution to class members. Plaintiffs propose that HERA be similarly designated for any Midland settlement residual funds. HERA is an organization based in Alameda County representing low- and moderate-income consumers statewide in a wide variety of debt and debt collection matters. Thus, HERA's work has a strong nexus to this lawsuit. Birkhaeuser Decl, ¶ 14. As Plaintiffs confirm anew, Class Counsel has no connection or relationship with HERA. Id., ¶ 15. Thus, there is no appearance of impropriety as to the selection of HERA as a recipient of residual funds.

B. The Standard for Preliminary Approval

California has a strong policy favoring compromises of litigation. See *Hamilton v. Oakland Sch. Dist*., 219 Cal. 322, 329 (1933); *Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water Co*., 109 Cal. App. 4th 891, 912 (2003). This policy is particularly compelling in class actions. See *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1151 (2000); *Bell v. Am. Title Ins. Co*., 226 Cal. App. 3d 1589, 1607 (1991).

In determining whether preliminary approval is warranted, the issue before the Court is whether the Settlement is within the range of what might be found fair, reasonable, and adequate, so that notice of the proposed Settlement may be given to the Class and a hearing scheduled to consider final settlement approval. Review of a proposed class action settlement is a two-step process, with the first step being a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." Cal. Rule of Court 3.769(c); *Cohelan on California Class Actions* § 9:10 (2022-2023 ed.) ["At the preliminary stage, the court considers general settlement terms. It reviews information on the arms-length nature of the negotiation, any obvious signs of collusion, presence or absence of conflicts within the class, and possible preferential treatment within the class. The court also determines whether the settlement is likely to be approved at the hearing to be scheduled after notice."].) If so, notice can be given to class members and the Court can schedule a final approval hearing whether a more in-depth review of the settlement terms will take place. California Rule of Court 3.769(e).

Preliminary approval does not require an answer to the ultimate question whether the proposed settlement is fair and adequate, for that determination occurs only after notice of the settlement has been given to the members of the Class. *See Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). Nevertheless, a review of the standards applied in determining whether a settlement should be given *final* approval is helpful to the determination of preliminary approval.

The standard for final approval is whether the settlement is fair, adequate and reasonable to the class. To determine whether a settlement meets that standard, courts consider a variety of factors. Those relevant here include (1) the benefit obtained, (2) the risk, expense, and likely duration of further litigation, and (3) the recommendation of experienced counsel. *See Dunk, supra,* 48 Cal. App. 4th at 1801.

Furthermore, assuming the burden is on the proponents, a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

litigation; and (4) the percentage of objectors is small. *Id. at* 1802; *see also In re Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010).

C. The Proposed Settlement Meets the Standard for Approval

The terms of the Settlement were fairly and aggressively negotiated by all parties after two mediations with the Honorable Bonnie Sabraw (Ret.) and three before Judge McGinnis. Class counsel obtained substantial benefits for Class Members, benefits that directly address the claims and relief sought in the Action.

1. The Settlement Was Negotiated at Arms' Length

The Settlement is presumptively fair, as it is the result of arm's-length negotiations between experienced counsel after extensive complex motion practice addressing the merits of the claims and defenses and discovery.

That there has been no collusion is obvious, as the case has been litigated for nearly twelve years. Midland extensively contested the allegations asserted by Plaintiffs, including that the case was suitable for class treatment and that Plaintiffs were entitled to any recovery, both from a liability and damages perspective. Plaintiffs successfully opposed Defendants' motions for judgment on the pleadings, motion for summary judgment, motion for decertification of the class, and its motion to dismiss based upon California's five-year rule. Plaintiffs aggressively pursued discovery, filing six motions to compel when meet and confer efforts failed and conducted numerous depositions, and also pursued and obtained sanctions against Defendants when warranted their discovery practices. Indeed, even after a settlement in principle was reached in April, 2022, it required six months of contentious negotiations and two additional sessions with Judge McGinnis before the settlement was finalized.

2. The Settlement Confers Substantial Benefits on the Class

The amount of the Midland settlement ($2.8 million) represents 56% of the maximum amount which might have been recovered at trial, exclusive of prejudgment interest (which may or may not have been awarded). Complaint, ¶ 3 (limiting recovery to $4,999,999). Adding the $700,000 previously recovered in settlement with BLG brings the total settlement proceeds to 70% of the maximum available. In class counsel's experience, this represents an excellent recovery through settlement.

Moreover, under the combined settlements, after deducting attorneys' fees and expenses, as well as the cost of administration, the individual class members will receive significant monetary benefits. Class members who were sent a challenged dunning letter but did not make any payments to BLG or Midland, will receive a $50 payment. Class members who were sent a letter *and* made payments, will receive between $50 and $3,193.00. Birkhaeuser Decl, ¶12.

Plaintiffs believe strongly in the merits of the case and have prevailed on all legal issues Defendants have raised with the Court in this case. However, there is always risk of not prevailing when cases are tried to a jury. Defendants believed strongly in the merits of their defenses and promised to appeal any adverse ruling. Moreover, BLG destroyed all of its documents despite the Court's specific order to preserve them while the case was stayed by the Federal Court in the *Vassalle* litigation. Thus, the documentary evidence regarding the complaints BLG filed, the letters it sent, and its detailed account notes of its communications and transactions with class members no longer exist. The Court reserved for determination at trial all questions as to the scope and appropriateness of issue sanctions resulting from that document destruction. Therefore, uncertainties existed as to how Plaintiffs would prove their case.

While Plaintiffs believe that the deposition testimony of BLG and Midland would carry the day at trial, it is entirely possible that the jury could find that Plaintiffs' burden of proof was not sustained without the missing documents. In addition, Midland contested entitlement to restitution and asserted that, in the event the Class was entitled to restitution, reasonable limits should be placed on any amount, so it was also possible that no restitution would be awarded or the Court would award less that Plaintiffs requested. And, even if Plaintiffs prevailed, an appeal would mean that the class would wait years to receive payment in a case that already took 12 years to get to trial. Thus, proposed Settlement foreclosures the realistic possibility of several more years of complex and expensive litigation with an uncertain outcome. In short, a total settlement amount of $3.5 million compares well with the $4.9 million prayed for in the complaint and Plaintiffs' counsel believes it is in the best interests of the class and recommends it to the Court for approval. Birkhaeuser Decl, ¶8.

3. Counsel's Investigation and Discovery Permit an Intelligent Assessment of The Risk and Expense of Further Litigation

Counsel has diligently pursued discovery and has moved the Court to compel when discovery was improperly withheld. As a result, counsel has taken the depositions of BLG and Midland's corporate designees, and several other Midland employees with knowledge. Counsel has also deposed Midland's two experts and Plaintiffs' expert has been questioned at deposition by defendants. Counsel has also reviewed thousands of documents produced and the written discovery responses of all defendants. Birkhaeuser Decl., ¶5.

Furthermore, through its own independent investigation, Counsel discovered relevant litigation between Midland and BLG regarding their performance under their contract, and reviewed the depositions taken in that action as well as many of the documents produced. Birkhaeuser Decl., ¶5. Counsel has therefore sufficiently investigated the facts and researched the law to perform an intelligent assessment of the risks and expense of further litigation.

Class Counsel has weighed the expense, length, and uncertainty of continued litigation as well as the probability of obtaining a better result after continued litigation, and has determined that the Settlement provides the Class with substantial benefits that address the claims and relief sought in the litigation. A balancing of these considerations supports preliminary approval of the Settlement. Birkhaeuser Decl., ¶8.

When weighed against the risks of continued litigation, the Settlement provides significant benefits and relief to the Class. Thus, the benefits obtained compare favorably with the risks and expense of further litigation. *See, 7-Eleven*, 85 Cal. App. 4th at 1151.

4. The Recommendation of Experienced Counsel

That Class Counsel recommends the Settlement strongly supports its approval. Class Counsel have significant experience in complex class litigation and in unfair debt collection class actions under both California and Federal law. See Birkhaeuser Declaration, ¶8. Class Counsel have tried class action cases to completion and have achieved numerous other class action settlements throughout the country. *Id* ¶2. Where, as here, a settlement is the product of informed, non-collusive negotiations, significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class. *See 7-Eleven*, 85 Cal. App. 4th at 1152.

Before entering into the Settlement, based on their investigation of the facts, their review of both publicly available information and discovery produced by BLG, as well as the stage of the proceedings, Class Counsel obtained sufficient knowledge to make an intelligent evaluation of the litigation and the propriety of the Settlement. The discovery conducted, as well as the stage of the litigation, ensured that enough information was before Class Counsel to permit them to consider the strengths and weaknesses of the parties' respective positions. See *Cellphone Termination*, 186 Cal. App. 4th at 1389. Class Counsel recommends that the proposed settlement be approved.

IV. THE CLASS HAS ALREADY BEEN CERTIFIED

As noted above, this Court granted Plaintiffs' motion for class certification on October 6. 2019. As certified, certified, the class includes both the 90-odd individuals who opted out of the *Vassalle* litigation and approximately 23,000 consumers to whom BLG sent collection letters on Midland's behalf. Notice of pendency was distributed according to the Notice Plan approved by the Court. *See*, Declaration of Brian Manigault re Dissemination of Notice of Pendency, dated February 11, 2021. Notice was completed on August 11, 2020. *Id.* 7 individuals opted out of the class. *Id.*

The Class is not being redefined for purposes of settlement. Consequently, there is no need for certification of a settlement class. Notice of the settlement will be distributed to all Class members, and the settlement agreement affords them a second opportunity to opt out.

A. Distribution of Funds to Class Members

After payment of notice expenses, it is anticipated that approximately $2,240,000 will remain in the settlement fund. These funds, less any service awards and fees, will be distributed to the Class, pursuant to the proposed Plan of Allocation described above. Any unclaimed funds will be distributed to the proposed *cy pres* recipient.

Plaintiffs propose that Angeion Group, which the Court appointed as administrator when notice of pendency of this action was disseminated, be appointed to act as Settlement Administrator. Angeion's qualifications and experience have been previously provided to the Court and are set forth in the Declaration of Teri Thompson re Angeion Qualifications and Proposed Notice Plan dated January 22, 2020. Angeion estimates the total cost of notice and administration as $65,198, which Plaintiffs

believe is reasonable and accounts for efficiencies in having previously provided notice to the class. Declaration of Steven Weisbrot In Support of Motion For Preliminary Approval, filed concurrently herewith, ¶ 8, Exhibit 1. Plaintiffs propose that Angeion be permitted to withdraw the amount of $34,818 from the settlement fund for the costs it will incur in mailing notice to the class.

V. THE PROPOSED NOTICE AND HEARING SCHEDULE SHOULD BE APPROVED

In connection with preliminary approval of this Settlement, the Parties ask the Court to set the date by which notice of the Settlement will be sent to the Class by first class mail and the date by which Class members may object to the terms of the Settlement or request to exclude themselves should any choose to do so.

Under C.C.P. § 382, the Court must direct the best notice practicable under the circumstances to members of the class who can be identified through reasonable effort. The proposed Preliminary Approval Order contemplates that, within twenty-one (21) calendar days after the entry of the Order, the Settlement Administrator, shall cause a copy of the Notice to be mailed by United States first class mail, postage pre-paid, to each member of the class. The Settlement Administrator will file appropriate affidavits of proof of mailing with respect to the Notice in advance of the Final Approval Hearing.

The language of the Notice, attached to the Birkhaeuser Declaration as Exhibit 2, is plain and easily understood. It clearly and concisely informs the Class of: (1) the Class definition; (2) the terms of the proposed Settlement; (3) Class members' right to object to any aspect of the Settlement and the procedures for doing so; (4) the date, time, and mode (i.e., in person or via videoconference) of the Final Approval Hearing; (5) Class members' right to attend the Final Approval Hearing and how to submit objections; (6) the procedure by which attorneys' fees and expenses will be sought by Class Counsel; and (7) how to obtain additional information.

Finally, with Midland's consent, Plaintiffs propose a schedule of events leading to the Final Approval Hearing, which is set forth in Plaintiffs' Proposed Order. This schedule is similar to those used in numerous class action settlements and provides due process to members of the Class with respect to their rights concerning the Settlement.

VI. THE PROCEDURE FOR AN AWARD OF ATTORNEYS' FEES SHOULD BE APPROVED

The parties to the settlement have not negotiated attorneys' fees. Birkhaeuser Decl., ¶10. The maximum amount available in the Midland settlement is $2,800,000. Plaintiffs have made Midland aware of their intention to apply for a 30% fee from that $2,800,000. *Id.* Plaintiffs have not sought or obtained a "clear-sailing" provision whereby Midland agrees not to object to Plaintiffs' fee request. *Id.*

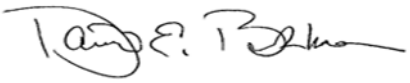
Any Class member having an objection to the 30% fee requested will have an opportunity to be heard at the Final Approval and fee hearing.

VII. CONCLUSION

In light of the benefit of the combined $3.5 million settlement, the risks and expenses of continued litigation, and the legal standards set forth above, the Court should allow the notice of the settlement to be disseminated as set forth above so that class members can express their views as to its fairness and reasonableness. Plaintiffs respectfully request that the Court preliminarily approve the Settlement and the distribution of Notice and schedule the Final Approval Hearing.

DATED: January 11, 2023

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP



Daniel E. Birkhaeuser
2125 Oak Grove Road, Suite 125
Walnut Creek, California 94598
Telephone: (925) 945-0200
Facsimile: (925) 945-8792

Attorneys for Plaintiffs
JUDITH REIMANN, MICHAEL DARONCO and the class