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7 Attorneys for Plaintiff
8 DAVID WEINER, individually, and on
behalf of other members of the public
9 similarly situated

10
11 UNITED STATES DISTRICT COURT

12 EASTERN DISTRICT OF CALIFORNIA

13 DAVID WEINER, individually, and on
14 behalf of other members of the public
similarly situated,

15 Plaintiff,

16 vs.

17 OCWEN FINANCIAL CORPORATION,
a Florida corporation, and OCWEN
18 LOAN SERVICING, LLC, a Delaware
limited liability company,

19 Defendants.
20
21
22

Case Number: 2:14-cv-02597-DJC-DB
CLASS ACTION

Judge: Hon. Daniel J. Calabretta

**REPLY IN SUPPORT OF (1) MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND (2) MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
LITIGATION COSTS, AND CLASS
REPRESENTATIVE SERVICE AWARD**

Date: September 19, 2024

Time: 1:30 p.m.

Place Courtroom 10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 With still over a year to go before the September 25, 2025 claims deadline, the
3 Settlement Class Members' reaction to the Settlement has been overwhelmingly positive.
4 The class notice program has reached over 97% of Settlement Class Members, and only
5 **six**, out of over 330,000, opted-out of the Settlement (0.000018%), and **none have**
6 **objected**. See Supplemental Declaration of Ryan J. Bahry ("Bahry Decl."), ¶¶ 11-14.

7 Given the robust notice program, the fractional opt out rate and the absence of any
8 objections reflects the Settlement Class Members' resounding approval of the Settlement
9 and constitutes powerful evidence of its fairness and adequacy. Indeed, "the Court may
10 appropriately infer that a class action settlement is fair, adequate, and reasonable when
11 few class members object to it." *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC,
12 2022 WL 425559, at *6 (N.D. Cal. Feb. 11, 2022) ("Courts have repeatedly recognized that
13 the absence of a large number of objections to a proposed class action settlement" is a
14 factor suggesting "that the terms of a proposed class settlement action are favorable to
15 the class members."); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he
16 fact that the overwhelming majority of the class willingly approved the offer and stayed in
17 the class presents . . . positive commentary as to its fairness."). The record unquestionably
18 supports that inference here.¹

19 Additionally, Settlement Class Members have moved quickly to take advantage of
20 the Settlement. Just three months into the claims period, 11,495 Settlement Class
21 Members (and counting) have submitted claims for settlement benefits. Bahry Decl., ¶ 16.
22 The preliminary claims rate of approximately 3.5% already approaches the mean national
23 class action claims rate for similar consumer class action settlements.² The results are

24 ¹ See, e.g., *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (approving
25 district court's finding of "favorable reaction" to settlement where fifty-four objected in class
26 of approximately 376,000); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir.
27 2004) (same where forty-five of 90,000 class members objected to the settlement, and
28 500 opted out); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal.
2010) (approving settlement where 4.86% of the class opted out).

² Federal Trade Commission Staff Report, *Consumers and Class Actions: A Retrospective*
Footnote continued on next page

1 exceptional under the unique circumstances here, and a significant number of additional
2 claims are sure to come. Additionally, over the next year, the Settlement requires the
3 Settlement Administrator to periodically deliver publication notice to the Settlement Class
4 to encourage those who have not yet filed claims to do so before the claims deadline.

5 The Settlement Class Members' overwhelmingly positive response is unsurprising
6 given the strength of the Settlement. To recap, the Settlement provides that each
7 Settlement Class Member will receive **uncapped** settlement benefits that **exceed** the
8 average amount that Ocwen allegedly overcharged them for property valuation products
9 known as Broker Price Opinions ("BPOs") and Hybrids Valuations ("Hybrids"). Specifically,
10 (1) Nationwide Settlement Class Members can seek reimbursement of \$60 for each BPO
11 fee paid and \$70 for each Hybrid fee paid during the class period and (2) California
12 Settlement Sub-Class Members who continue to have loans serviced by Ocwen can seek
13 a reversal of \$60 of each unpaid BPO fee and \$70 for each unpaid Hybrid fee that was
14 assessed by Ocwen during the class period. Importantly, the average alleged mark-up of
15 the BPO and Hybrid fees at issue in the case are \$56 and \$66 respectively, so Settlement
16 Class Members are receiving a reimbursement amount which **exceeds** the average
17 amount of the alleged fee mark-up. In other words, the Settlement provides Settlement
18 Class Members with **complete relief**. Based on Ocwen's loan records, the Nationwide
19 Settlement Class can recover up to \$52,895,150 in reimbursements for BPO and Hybrid
20 fees paid, and the California Settlement Sub-Class can recover up to \$931,070 in fee
21 "reversals" for unpaid BPO and Hybrids assessed to their mortgage accounts, for a gross
22 reimbursement settlement amount of \$53,826,220.

23 Additionally, the Settlement requires Ocwen to implement an important change to
24 its business practices: it must modify its disclosures to borrowers, and in any applicable
25 fee schedules, to identify the "reconciliation" service included in the vendors' BPO and
26

27 _____
28 and Analysis of Settlement Campaigns (Sep. 2019), at 11, 21, available at
https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (FTC's comprehensive study of class actions, identifying the weighted mean claims rate of 4%).

1 Hybrid products. Thus, going forward, borrowers will be fully apprised of the nature and
2 scope of the BPO and Hybrid Valuation fees charged by Ocwen.

3 In sum, the Settlement is an excellent result for Settlement Class Members,
4 reached on the eve of trial after almost a decade of litigation and appeals. In light of this
5 the complete relief offered to Settlement Class Members, and their *overwhelmingly*
6 positive response with still a year to go in the claims period, the Court should affirm its
7 earlier conclusion that “the Settlement Agreement is fair, reasonable, and adequate” (see
8 ECF 770 at 25-26) and grant final approval of the Settlement.

9 Additionally, Settlement Class Counsel’s motion for attorneys’ fees and litigation
10 costs details the significant work counsel undertook to tenaciously litigate this case on a
11 contingent basis for nearly a decade, without any assurance of victory and with the
12 singular focus of maximizing the recovery for class members. In the end, the record here
13 is clear. Resolving this litigation was no easy feat. Settlement Class Counsel’s prosecution
14 of this case was vigorously opposed by experienced and skilled attorneys representing
15 Defendants zealously throughout the litigation. Through perseverance against well-funded
16 adversaries, Settlement Class Counsel was able to achieve an exceptional settlement for
17 class members. In short, Settlement Class Counsel’s attorney fee request unquestionably
18 seeks fair and reasonable compensation for their time and effort, which resulted in
19 substantial benefits provided to hundreds of thousands of Settlement Class Members.

20 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final
21 approval of the proposed Settlement and approve Settlement Class Counsel’s reasonable
22 request for attorneys’ fees in the amount of \$7,915,313.25, reimbursable costs incurred in
23 litigating the case in the amount of \$953,106.45, and a service award of \$5,000.00 for
24 Plaintiff’s work in the prosecution of this decade-old case.

25 Dated: August 6, 2024

Respectfully submitted,

26 /s/ Roland Tellis

27 Roland Tellis (SBN 186269)

rtellis@baronbudd.com

28 Daniel Alberstone (SBN 105275)

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Attorneys for Plaintiff DAVID WEINER,
individually, and on behalf of other members
of the public similarly situated

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record, including counsel for Defendants.

/s/ Roland Tellis

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9 DAVID WEINER, individually, and on
behalf of other members of the general
10 public similarly situated

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 DAVID WEINER, individually, and on behalf of
14 other members of the public similarly situated,

15 Plaintiff,

16 vs.

17 OCWEN FINANCIAL CORPORATION, a
18 Florida corporation, and OCWEN LOAN
SERVICING, LLC, a Delaware limited liability
company,

19 Defendants.
20

Case No.: 2:14-cv-02597-DJC-DB
CLASS ACTION

**SUPPLEMENTAL DECLARATION OF RYAN
BAHRY REGARDING SETTLEMENT
NOTICE PROGRAM IMPLEMENTATION**

Hon. Daniel J. Calabretta

1 I, RYAN BAHRY, declare and state as follows:

2 1. I am a Director at JND Legal Administration (“JND”). JND is a legal administration service
3 provider with its headquarters located in Seattle, Washington. JND has extensive experience with all
4 aspects of legal administration and has administered settlements in hundreds of class action cases.

5 2. JND is serving as the Settlement Administrator¹ in the above-captioned litigation
6 (“Action”), for the purposes of administering the Settlement Agreement, approved by the Court in its Order
7 (1) Granting Preliminary Approval of Settlement Agreement and (2) Directing Notice to the Settlement
8 Class, entered March 29, 2024 (“Order”).

9 3. This Supplemental Declaration is meant to supplement my previous declaration dated June
10 12, 2024 (the “Declaration”). This Supplemental Declaration is based on my personal knowledge and
11 information provided to me by experienced JND employees and, if called on to do so, I could and would
12 testify competently thereto.

13 **MAILED NOTICE**

14 4. As detailed in the Declaration, on April 26, 2024, JND mailed the Court-approved postcard
15 notice (“Postcard Notice”) to 330,505 Settlement Class Member addresses via USPS first-class mail.

16 5. As of the date of this Supplemental Declaration, of the total 330,505 Postcard Notices
17 mailed, JND tracked 35,068 Postcard Notices that were returned to JND as undeliverable. Of these, 1,566
18 Postcard Notices were forwarded to updated addresses provided by the USPS. JND conducted advanced
19 address research for the remaining undeliverable Postcard Notices and received updated address
20 information for an additional 16,941 Settlement Class Members. JND promptly re-mailed Postcard
21 Notices to these 16,941 Settlement Class Members (of which 2,229 were returned to JND as undeliverable
22 and 351 of the 2,229 were forwarded to updated addresses provided by the USPS).

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27 _____
28 ¹ Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Settlement Agreement (“Settlement Agreement”).

E-MAIL NOTICE

6. As detailed in the Declaration, on April 26, 2024, JND sent the Court-approved e-mail notice (“E-mail Notice”) to each of the 250,963 e-mail addresses associated with Settlement Class Member records.

7. As of the date of this Supplemental Declaration, JND tracked a total of 30,445 E-mail Notice attempts which were returned as undeliverable.

SETTLEMENT WEBSITE AND E-MAIL ADDRESS

8. As detailed in the Declaration, on April 24, 2024, JND established a Settlement Website for this matter (www.OcwenFeeSettlement.com). As of the date of this Supplemental Declaration, the Settlement Website has tracked 53,914 unique users with 200,230 page views. JND will continue to update and maintain the Settlement Website throughout the administration process.

9. As detailed in the Declaration, JND established a dedicated e-mail address for this matter. To date, JND has received approximately 1,321 incoming email inquiries to the dedicated e-mail address.

TOLL-FREE INFORMATION LINE

10. As detailed in the Declaration, on April 24, 2024, JND established a case-specific toll-free number for this matter. As of the date of this Supplemental Declaration, the toll-free number has received 4,403 incoming calls. JND will continue to maintain the toll-free number throughout the settlement administration process.

REQUESTS FOR EXCLUSION

11. As detailed in the Declaration, the Notices informed recipients that any Settlement Class Member who wished to exclude themselves from the proposed Settlement (“opt-out”) must do so on or before July 12, 2024.

12. As of the date of this Supplemental Declaration, JND has received six (6) timely exclusion request from Settlement Class Members M. Oyarzabal (Murrieta, GA), K. A. Decker (Nottingham, MD), S. McCorkle (Bluffton, GA) referencing two (2) loan numbers, G. Anderson Jr. (Akron, OH), D. Kovarik (Butternut, WI), and J. Anderson (Charlotte, NC). JND also received one (1) late exclusion request from Class Member P. Rowland (Waterford, MI) referencing two (2) loan numbers.

OBJECTIONS

13. As detailed in the Declaration, the Notices informed recipients that any Settlement Class Member who wished to object to the proposed Settlement could do so on or before July 12, 2024.

14. As of the date of this Supplemental Declaration, JND has not received, and is not aware of, any objections.

CLAIMS RECEIVED

15. As detailed in the Declaration, the Notices informed recipients that any Settlement Class Member wishing to receive a payment must submit a complete and timely Claim Form on or before September 29, 2025.

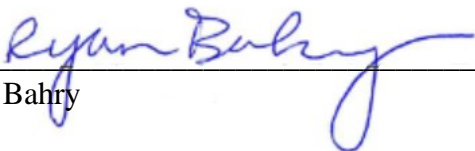
16. As of the date of this Supplemental Declaration, JND has received 11,495 Claim Form submissions, of these, 375 were mailed, and 11,120 were submitted online. JND is in the process of receiving, reviewing, and validating Claim Form submissions.

REACH

17. The direct notice effort alone reached 97.1% of Settlement Class Members. As detailed in the Declaration, the supplemental media efforts further enhanced notice exposure, and the achieved reach surpasses the 70–95% reach standard set forth by the Federal Judicial Center, exceeding that of other court approved programs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 6, 2024 in Seattle, Washington.



Ryan Bahry

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

DAVID WEINER, individually, and on behalf
of other members of the public similarly
situated,

Plaintiff,

vs.

OCWEN FINANCIAL CORPORATION, a
Florida corporation, and OCWEN LOAN
SERVICING, LLC, a Delaware limited liability
company,

Defendants.

Case Number: 2:14-cv-02597-DJC-DB
CLASS ACTION

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AND GRANTING
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARD**

1 WHEREAS, the Court, having considered the Settlement Agreement (Dkt. 244-1, Ex. 1)
2 between and among the Settlement Class Representative, Settlement Class Counsel, and
3 Defendants Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (together,
4 “Ocwen”); the Court’s March 25, 2024, Order Granting Preliminary Approval of Class
5 Settlement and Direction of Notice (Dkt. 249); the Court’s March 29, 2024, Order (1) Granting
6 Preliminary Approval of Settlement Agreement; and (2) Directing Notice to the Settlement
7 Class (Dkt. 251) (the “Preliminary Approval Order”); and Plaintiff’s Motion for Final Approval of
8 Class Settlement, and Award of Attorneys’ Fees, Expenses, and Service Awards to Settlement
9 Class Representatives and the parties’ memoranda in support (Dkts. 255-257), having held a
10 Fairness Hearing on September 19, 2024, and having considered all of the submissions and
11 arguments with respect to the Settlement, and otherwise being fully informed, and good cause
12 appearing therefor;

13 **IT IS HEREBY ORDERED AS FOLLOWS:**

14 1. This Order Granting Final Approval of Class Action Settlement (“Final Approval
15 Order”) incorporates herein and makes a part hereof the Settlement Agreement and its exhibits
16 and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in
17 the Settlement Agreement and Preliminary Approval Order shall have the same meanings for
18 purposes of this Final Approval Order and accompanying Final Judgment.

19 2. The Court has personal jurisdiction over all parties in the Action pursuant to 28
20 U.S.C. § 1332, including, but not limited to all Settlement Class Members, and has subject
21 matter jurisdiction over the Action and the claims therein, including, without limitation,
22 jurisdiction to finally approve the Settlement Agreement, grant final certification of the
23 Settlement Class, settle, and release all claims released in the Settlement Agreement, and
24 dismiss the Action with prejudice and enter final judgment in the Action as to Ocwen. Venue is
25 proper in this District.

26 **I. THE SETTLEMENT CLASS**

27 3. Based on the record before the Court, including all submissions in support of the
28 Settlement, all objections and responses thereto, and all prior proceedings in the Action, as

1 well as the Settlement Agreement itself and its related documents and exhibits, the Court
2 hereby confirms the certification of the following “Settlement Class” for settlement purposes
3 only:

- 4 a. Nationwide Settlement Class: All residents of the United States of America
5 who have or had a loan serviced by Ocwen Financial Corporation or
6 Ocwen Loan Servicing LLC (together, “Ocwen”) and who paid for one or
7 more Broker Price Opinions (“BPOs”) or Hybrid Valuations (“Hybrids”)
8 charged by Ocwen through Altisource, from November 5, 2010 through
9 September 29, 2017, the date of the class certification order in this action.
- 10 b. California Settlement Sub-Class: All residents of the State of California
11 who have a loan serviced by Ocwen and to whom charges for one or more
12 BPOs or Hybrids were assessed to their mortgage account by Ocwen
13 through Altisource, from November 5, 2010 through September 29, 2017.

14 The following entities and individuals are excluded from the Settlement Class:

- 15 a. Defendants’ officers, directors, and employees; Defendants’ affiliates and
16 affiliates’ officers, directors, and employees; Defendants’ distributors and
17 distributors’ officers, directors, and employees; Released Parties;
- 18 b. Judicial officers and their immediate family members and associated court
19 staff assigned to this case; and
- 20 c. All those otherwise in the Settlement Class who or which timely and
21 properly exclude themselves from the Settlement Class as provided in the
22 Settlement Agreement.

23 The Court finds that only those persons/entities/organizations listed on Appendix A to
24 this Final Approval Order have timely and properly excluded themselves from the Settlement
25 Class and, therefore, are not bound by this Final Approval Order or the accompanying Final
26 Judgment.

27 4. Since this Court granted preliminary approval, there have been no “material
28 changes to any of the information relevant to the application of the factors that are used to

1 determine whether the certification of a class is appropriate under Fed. R. Civ. P. 23.” *Miller v.*
2 *Wise Co., Inc.*, No. ED CV17-99616 JAK (PLAx), 2020 WL 1129863, at *4 (C.D. Cal. Feb. 11,
3 2020).

4 5. Therefore, the Court confirms, for settlement purposes and conditioned upon the
5 entry of the Final Approval Order and Final Judgment and upon the occurrence of the Effective
6 Date, that the Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23(a)
7 and (b)(3):

8 a. *Numerosity.* The Settlement Class, as defined above, is ascertainable and,
9 based on Ocwen’s loan data, consists of approximately 322,958 class members
10 in the Nationwide Settlement Class and 7,419 class members in the California
11 Settlement Sub-Class, which satisfies the numerosity requirement of Fed. R. Civ.
12 P. 23(a)(1). Joinder of these widely dispersed, numerous Settlement Class
13 Members into one suit would be impracticable.

14 b. *Commonality.* Several questions of law or fact regarding Ocwen’s alleged
15 activities are common to all Settlement Class Members, and therefore
16 commonality is satisfied under Fed. R. Civ. P. 23(a)(2).

17 c. *Typicality.* The claims of Settlement Class Representative are typical of the
18 claims of the Settlement Class Members he seeks to represent for purposes of
19 settlement, and therefore Fed. R. Civ. P. 23(a)(3) is satisfied.

20 d. *Adequate Representation.* The Settlement Class Representative’s interests do
21 not conflict with those of absent members of the Settlement Class, and the
22 Settlement Class Representative’s interests are co-extensive with those of
23 absent Settlement Class Members. Additionally, this Court recognizes the
24 experience and competence of Settlement Class Counsel. The Settlement Class
25 Representative and his counsel have prosecuted this Action vigorously on behalf
26 of the Settlement Class. The Court finds that the requirement of adequate
27 representation of the Settlement Class has been fully met under Fed. R. Civ. P.
28 23(a)(4).

1 e. *Predominance of Common Issues.* The Settlement Class Representative alleges
2 a common course of conduct that applies to all Settlement Class Members and
3 is central to their claims, and the questions of law or fact common to the
4 Settlement Class Members, as it pertains to consideration of the Settlement,
5 predominate over any questions affecting any individual Settlement Class
6 Member. Therefore, the Court finds that the predominance requirement of Fed.
7 R. Civ. P. 23(b)(3) is met.

8 f. *Superiority of the Class Action Mechanism.* The class action mechanism
9 provides a superior procedural vehicle for settlement of this matter compared to
10 other available alternatives. Class certification promotes efficiency and uniformity
11 of judgment because the many Class Members will not be forced to separately
12 pursue claims or execute settlements in various courts around the country.
13 Therefore, the Court finds that the superiority requirement of Fed. R. Civ. P.
14 23(b)(3) is met.

15 6. The Court finds that the Settlement Class Representative has adequately
16 represented the Settlement Class for purposes of entering into and implementing the
17 Settlement Agreement and confirms its appointment of Settlement Class Representative David
18 Weiner. The Court finds that Settlement Class Representative David Weiner has adequately
19 represented the Class for purposes of entering into and implementing the Settlement
20 Agreement.

21 7. The Court confirms its appointment of Baron & Budd, P.C. as Settlement Class
22 Counsel under Fed. R. Civ. P. 23(g).

23 **II. NOTICE TO SETTLEMENT CLASS MEMBERS**

24 8. The record shows and the Court finds that class notice has been given to the
25 Settlement Class in the manner approved by the Court in its Preliminary Approval Order (Dkt.
26 251). See Declaration of Ryan Bahry Regarding Settlement Notice Program Implementation
27 (“Bahry Decl.”) (Dkt. 255-1). The Court finds that the form, content, and methods of
28 disseminating notice to the Settlement Class previously approved and directed by the Court

1 have been implemented by the Parties, and: (a) is reasonable and constitutes the best
2 practicable notice to Settlement Class Members under the circumstances; (b) constitutes
3 notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
4 Members of the pendency of the Action and the terms of the Settlement Agreement, their right
5 to exclude themselves from the Settlement Class or to object to all or any part of the
6 Settlement, their right to appear at the Fairness Hearing (either on their own or through counsel
7 hired at their own expense), Settlement Class Counsel's motion for reasonable attorney's fees
8 and costs, and their right to object to any such motion, and the binding effect of the orders and
9 Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons
10 who do not exclude themselves from the Settlement Class; (c) constitutes due, adequate, and
11 sufficient notice to all persons or entities entitled to receive notice; and (d) fully satisfied the
12 requirements of the United States Constitution (including the Due Process Clause), Fed. R.
13 Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's
14 illustrative class action notices.

15 9. The Court further finds that, through the Settlement Administrator, notice of the
16 Settlement has been provided to the appropriate state and federal government officials
17 pursuant to 28 U.S.C. § 1715. See Bahry Decl., Dkt. 255-1, at ¶¶ 4-5. Furthermore, the Court
18 has given the appropriate state and federal government officials the requisite time period to
19 comment on or object to the Settlement before entering its Final Approval Order and Final
20 Judgment.

21 **III. FINAL APPROVAL OF SETTLEMENT AGREEMENT**

22 10. The Court finds that the Settlement Agreement resulted from extensive arm's
23 length good faith negotiations between Settlement Class Counsel, on behalf of the Settlement
24 Class Representative and Ocwen, through experienced counsel, with the mediation assistance
25 of Honorable Dickran M. Tevrizian (Ret.) of JAMS ADR, and thereafter Robert Fairbank, Esq.
26 of Fairbank ADR.

27 11. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects
28 the Settlement as set forth in the Settlement Agreement and finds that the Settlement

1 Agreement, and all other parts of the Settlement are, in all respects, fair, reasonable, and
2 adequate, and in the best interest of the Settlement Class and are in full compliance with all
3 applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution
4 (including the Due Process Clause), the Class Action Fairness Act, and any other applicable
5 law. The Court hereby declares that the Settlement Agreement is binding on all Settlement
6 Class Members, except those identified on Appendix A, and it is to be preclusive in the Action.
7 The decisions of the Settlement Administrator relating to the review, processing, determination,
8 and payment of Claims submitted pursuant to the Settlement Agreement are final and not
9 appealable.

10 12. Although Rule 23 imposes strict procedural requirements on the approval of a
11 class settlement, a district court's only role in reviewing the substance of that settlement is to
12 ensure that it is "fair, adequate, and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d
13 1011, 1026–27 (9th Cir.1998) (holding that district court should have broad discretion because
14 it "is exposed to the litigants, and their strategies, positions and proof").

15 13. A number of factors guide the district court in making its determination, including:
16 the strength of the plaintiffs' case; the risk, expense, complexity, and likely
17 duration of further litigation; the risk of maintaining class action status throughout
18 the trial; the amount offered in settlement; the extent of discovery completed and
19 the stage of the proceedings; the experience and views of counsel; the presence
20 of a governmental participant; and the reaction of the class members to the
21 proposed settlement.

22 *Lane v. Facebook, Inc.*, 9 F.3d 811, 818 (9th Cir. 2012) (*citing Hanlon*, 150 F.3d at 1026); *Nat'l*
23 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

24 14. Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations
25 in evaluating whether a proposed settlement is fair, reasonable, and adequate. It states that a
26 court must consider whether:

- 27 (A) the class representative and counsel have adequately represented the class;
- 28 (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:

- 1 (i) the costs, risks, and delay of trial and appeal;
- 2 (ii) the effectiveness of any proposed method of distributing relief to the class,
3 including the method of processing class-member claims;
- 4 (iii) the terms of any proposed award of attorney's fees, including timing of
5 payment; and
- 6 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 7 (D) the proposal treats class members equitably relative to each other.

8 Fed. R. Civ. P. 23(e)(2).

9 15. In preliminarily approving the Settlement, the Court analyzed the Rule 23(e)(2)
10 and Ninth Circuit factors and concluded that the Settlement was fair, reasonable, and
11 adequate. Those conclusions stand and counsel equally in favor of final approval now.

12 16. As of August 6, 2024, with more than 13 months left in the claims period, the
13 Settlement Administrator has received 11,495 Claim Forms, covering approximately (3.5%) of
14 the Settlement Class. This is already approaching the weighted mean claims rate in similar
15 class action settlements and reflects the Class's positive engagement with the Settlement.¹

16 17. From a Settlement Class of approximately 322,958 class members in the
17 Nationwide Settlement Class and 7,419 class members in the California Settlement Sub-Class,
18 **no** Settlement Class Members have objected to any aspect of the Settlement, and **only six**
19 opted out, collectively representing just 0.000018% of the Settlement Class. The positive
20 reaction from the Settlement Class strongly supports approval. See, e.g., *Rodriguez v. W.*
21 *Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (approving district court's finding of "favorable
22 reaction" to settlement where fifty-four objected in class of approximately 376,000); *Churchill*
23 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming district court's approval
24 of settlement where forty-five of 90,000 class members objected to the settlement, and 500
25

26 ¹ Federal Trade Commission Staff Report, *Consumers and Class Actions: A Retrospective and*
27 *Analysis of Settlement Campaigns* (Sep. 2019), available at
28 https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (FTC's comprehensive study of class actions, identifying the weighted mean claims rate of 4%).

1 class members opted out); *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-CV-00066-SKO,
2 2017 WL 4340337, at *14 (E.D. Cal. Sept. 29, 2017) (“Indeed, ‘[i]t is established that the
3 absence of a large number of objections to a proposed class action settlement raises a strong
4 presumption that the terms of a proposed class action settlement are favorable to the class
5 members.’”) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
6 (C.D. Cal. 2004)); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2022 WL 425559,
7 at *6 (N.D. Cal. Feb. 11, 2022) (“[T]he Court may appropriately infer that a class action
8 settlement is fair, adequate, and reasonable when few class members object to it.”).

9 18. The Court affirms its prior conclusion that the Settlement offers adequate
10 compensation to all Settlement Class Members by offering complete relief, which is fair and
11 reasonable based on the economic harm that each Settlement Class Member allegedly
12 suffered at the hands of Ocwen.

13 19. The Parties are hereby directed to implement and consummate the Settlement
14 according to the terms and provisions of the Settlement Agreement. In addition, the Parties are
15 authorized to agree to and adopt such amendments and modifications to the Settlement
16 Agreement as (a) shall be consistent in all material respects with this Final Order Approving
17 Class Action Settlement, and (b) do not limit the rights of the Settlement Class.

18 **IV. CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES, COSTS AND**
19 **EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

20 20. Class Counsel requests an award of \$7,915,313.25 in attorneys’ fees and
21 \$953,106.45 in costs, for an aggregate total of \$8,868,419.70, for work undertaken in
22 prosecuting the claims resolved by the Settlement. This amount is to be paid by Ocwen. See
23 Settlement Agreement, § IV.B.

24 21. Federal Rule of Civil Procedure 23(h) provides that, “[i]n a certified class action,
25 the court may award reasonable attorneys’ fees and nontaxable costs that are authorized by
26 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Attorneys’ fees provisions included in
27 proposed class action agreements are, like every other aspect of such agreements, subject to
28 the determination whether the settlement is ‘fundamentally fair, adequate and reasonable.’”

1 *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (citation omitted). Thus, “courts have
2 an independent obligation to ensure that the award, like the settlement itself, is reasonable.”
3 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

4 22. Because there is no common fund in this case, and because this action was
5 brought under fee-shifting statutes, reasonable fees should be calculated according to the
6 “lodestar” method. See *Ontiveros v. Zamora*, No. 2:08-567 WBS DAD, 2014 WL 3057506, at
7 *15 (E.D. Cal. July 7, 2014) (noting “the lodestar method is most often applied in class actions
8 brought under fee-shifting statutes or those where the relief obtained is not easily monetized,
9 it may be used in common fund cases as well”); *Bruno v. Quten Rsch. Inst., LLC*, No. SACV
10 11-00173 DOC EX, 2013 WL 990495, at *3 (C.D. Cal. Mar. 13, 2013) (“the ‘lodestar method’
11 is appropriate in class actions brought under fee-shifting statutes” (*quoting In re Bluetooth*, 654
12 F.3d at 941)).

13 23. The lodestar is determined by “the number of hours reasonably expended on the
14 litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433
15 (1983).

16 24. The Court has received lodestar billing reports from Settlement Class Counsel.
17 These records show that Settlement Class Counsel's reasonable lodestar amount based on
18 10,573.65 hours worked on this case is \$7,915,313.25. Both the hours worked, and the rates
19 billed (a blended average rate of approximately \$748.58 per hour) are customary and
20 reasonable. See, e.g., *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab.*
21 *Litig.*, No. 2672 CRB (JSC), ECF 3396-2 ¶ 29 (N.D. Cal. June 30, 2017) (noting that the
22 average blended rate of 40 class action settlements approved in that District in 2016 and 2017
23 was \$528.11 per hour); *Herrera v. Wells Fargo Bank, N.A.*, No. 8:18-CV-00332-JVS-MRW,
24 2021 WL 9374975, at *13 (C.D. Cal. Nov. 16, 2021) (approving a blended rate of approximately
25 \$613 per hour).

26 25. In sum, the lodestar method is reasonable in light of the substantial benefits
27 obtained for the Settlement Class and the risks and complexities of this litigation.
28

1 26. Settlement Class Counsel's request for \$7,915,313.25 in attorneys' fees and
2 \$953,106.45 in costs (for a total of \$8,868,419.70) is hereby **GRANTED**.

3 27. Finally, the Settlement Class Representative requests a service award of \$5,000
4 in addition to compensation available to him through the claims program. "Courts have
5 generally found that \$5,000 incentive payments are reasonable." *Alberto v. GMRI, Inc.*, 252
6 F.R.D. 652, 669 (E.D. Cal. 2008). The time and effort the proposed Settlement Class
7 Representative dedicated to prosecuting this case up to the brink of trial clearly supports the
8 request here.

9 28. The request for a service award of \$5,000 for Settlement Class Representative
10 David Weiner is therefore **GRANTED**.

11 **V. DISMISSAL OF CLAIMS, RELEASE, AND INJUNCTION**

12 29. The Action is hereby dismissed with prejudice on the merits and without costs to
13 any party, except as otherwise provided herein or in the Settlement Agreement.

14 30. Upon entry of this Final Order and the Final Judgment, the Settlement Class
15 Representative, and each member of the Settlement Class (except those listed on Appendix
16 A), on behalf of himself or herself and on behalf of his or her respective heirs, assigns,
17 beneficiaries, successors, agents, administrators, servants, employees, representatives,
18 executors, trustees, joint venturers, partners, predecessors, and attorneys (the "Settlement
19 Class Releasers") shall be deemed to have fully, conclusively, irrevocably, forever, and finally
20 released, relinquished, and discharged Defendants, and each of their future, present and
21 former direct and indirect parents, subsidiaries, divisions, affiliates, predecessors, successors
22 and assigns, and the future, present and former directors, officers, employees, managers,
23 servants, principals, agents, insurers, reinsurers, shareholders, investors, attorneys, advisors,
24 consultants, representatives, partners, joint venturers, divisions, predecessors, successors,
25 assigns, and agents thereof ("Settlement Class Releasees") from any and all claims, causes
26 of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages,
27 losses, controversies, costs, expenses and attorneys' fees of any nature whatsoever, whether
28 based on any federal law, state law, common law, territorial law, foreign law, contract, rule,

1 regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory
2 ruling), common law or equity, whether known or unknown, suspected or unsuspected,
3 asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or
4 unliquidated, punitive or compensatory, as of the date of Final Approval, which are included in
5 or relate to the Action (“Settlement Class Released Claims”).

6 31. By not excluding themselves from the Action and to the fullest extent they may
7 lawfully waive such rights, the Settlement Class Representative and Settlement Class
8 Members are deemed to acknowledge and waive any benefits conferred by (a) Section 1542
9 of the Civil Code of the State of California, and any statute, rule and legal doctrine similar,
10 comparable, or equivalent to it, which reads:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
12 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
13 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY**
14 **HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
15 **SETTLEMENT WITH THE DEBTOR.**

16 And (b) by any law or principle of law of any jurisdiction that would limit or restrict the effect or
17 scope of the provisions of the release set forth in the Settlement Agreement.

18 32. The Court orders that the Settlement Agreement shall be the exclusive remedy
19 for all claims released in the Settlement for all Settlement Class Members not listed on
20 Appendix A.

21 33. Therefore, except for those listed on Appendix A, Settlement Class
22 Representative and all Settlement Class Members shall not now or hereafter file, commence,
23 prosecute, intervene in, or participate in (as class members or otherwise) any action in any
24 jurisdiction based on any of the Released Claims against any of the Released Persons.

25 **VI. OTHER PROVISIONS**

26 34. Without affecting the finality of this Final Approval Order or the accompanying
27 Final Judgment, the Court retains continuing and exclusive jurisdiction over the Action and all
28 matters relating to the administration, consummation, enforcement, and interpretation of the

1 Settlement Agreement and of this Final Approval Order and the accompanying Final Judgment,
2 to protect and effectuate this Final Approval Order and the accompanying Final Judgment, and
3 for any other necessary purpose. The Settlement Class Representative, and each Settlement
4 Class Member not listed on Appendix A are hereby deemed to have irrevocably submitted to
5 the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding, or dispute
6 arising out of or relating to the Settlement Agreement or the applicability of the Settlement
7 Agreement, including the exhibits thereto, and only for such purposes.

8 35. In the event that the Effective Date does not occur, certification of the Settlement
9 Class shall be automatically vacated and this Final Approval Order and the accompanying
10 Final Judgment, and other orders entered in connection with the Settlement and releases
11 delivered in connection with the Settlement, shall be vacated and rendered null and void as
12 provided by the Settlement Agreement.

13 36. Without further order of the Court, the Parties may agree to reasonably
14 necessary extensions of time to carry out any of the provisions of the Settlement Agreement.
15 Likewise, the Parties may, without further order of the Court, agree to and adopt such
16 amendments to the Settlement Agreement (including exhibits) as are consistent with this Final
17 Approval Order and the accompanying Final Judgment and do not limit the rights of Settlement
18 Class Members under the Settlement Agreement.

19 37. Nothing in this Final Approval Order or the accompanying Final Judgment shall
20 preclude any action in this Court to enforce the terms of the Settlement Agreement.

21 38. Neither this Final Approval Order nor the accompanying Final Judgment (nor any
22 document related to the Settlement Agreement) is or shall be construed as an admission by
23 the Parties. Neither the Settlement Agreement (or its exhibits), this Final Approval Order, the
24 accompanying Final Judgment, or any document related to the Settlement Agreement shall be
25 offered in any proceeding as evidence against any of the Parties of any fact or legal claim;
26 provided, however, that Ocwen may file any and all such documents in support of any defense
27 that the Settlement Agreement, this Final Approval Order, the accompanying Final Judgment,
28 and any other related document is binding on and shall have res judicata, collateral estoppel,

1 and/or preclusive effect in any pending or future lawsuit by any person who is subject to the
2 release described above asserting a released claim against any of the Released Parties.

3 39. The Settlement Administrator shall fulfill any escheatment obligations that arise.

4 40. The Court reserves and retains exclusive and continuing jurisdiction over the
5 Settlement concerning the administration and enforcement of the Settlement Agreement and
6 to effectuate its terms.

7
8 **SO ORDERED** this ____ day of _____ 2024.

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11 Hon. Daniel J. Calabretta
12 UNITED STATES DISTRICT COURT
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APPENDIX A

Weiner v. Ocwen Financial Corporation, et al.

Timely Requests for Exclusion (Deadline: July 12, 2024)

	Name	City/State	Loan Number(s)
1.	Mireya Oyarzabal	Murrieta, GA	705912582
2.	Kelly Ann Decker	Nottingham, MD	80380694
3.	Sandra McCorkle	Bluffton, GA	7147226778 and 7147267616
4.	Gilbert Anderson Jr.	Akron, OH	7092910038
5.	Donna Kovarik	Butternut, WI	102199130
6.	Janice Anderson	Charlotte, NC	34375253

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

DAVID WEINER, individually, and on behalf
of other members of the public similarly
situated,

Plaintiff,

vs.

OCWEN FINANCIAL CORPORATION, a
Florida corporation, and OCWEN LOAN
SERVICING, LLC, a Delaware limited liability
company,

Defendants.

Case Number: 2:14-cv-02597-DJC-DB
CLASS ACTION

[PROPOSED] FINAL JUDGMENT

1 Pursuant to Federal Rules of Civil Procedure 23 and 58, and the Court's [DATE] Final
2 Order Approving Class Action Settlement, and Granting Attorneys' Fees, Expenses, and
3 Service Awards (the "Final Approval Order"), the Court hereby orders, adjudges, finds, and
4 decrees as follows:

5 1. The Court hereby **CERTIFIES** the Settlement Class and **GRANTS** the Motion for
6 Final Approval of Class Action Settlement (Dkt. 255), and Motion for an Award of Attorneys'
7 Fees, Litigation Costs, and Class Representative Service Award (Dkt. 256). The Court fully and
8 finally approves the Settlement in the form contemplated by the Settlement Agreement (Dkt.
9 244-1 at 8-34) and finds its terms to be fair, reasonable, and adequate within the meaning of
10 Fed. R. Civ. P. 23. The Court directs the consummation of the Settlement pursuant to the terms
11 and conditions of the Settlement Agreement.

12 2. The Court **CONFIRMS** the appointment Baron & Budd, P.C. as Settlement Class
13 Counsel.

14 3. The Court **CONFIRMS** the appointment of David Weiner as Settlement Class
15 Representative.

16 4. The Court **CONFIRMS** JND Legal Administration as the Notice and Settlement
17 Administrator that will oversee and administer the Settlement Fund.

18 5. The Court **GRANTS** Settlement Class Counsel's request for attorneys' fees and
19 costs, and **AWARDS** Settlement Class Counsel \$7,915,313.25 in attorneys' fees and
20 \$953,106.45 in reasonable expenses, to be paid by Defendants.

21 6. The Court **AWARDS** a service award of \$5,000 to the Settlement Class
22 Representative identified in paragraph 3 above, to be paid by Defendants.

23 7. As set forth in the Final Approval Order, the Release from Section III of the
24 Settlement Agreement (Dkt. 244-1 at ECF Page No. 18-19) shall take effect from the date of
25 this Final Judgment.

26 8. The individuals and entities listed in Appendix A to the Final Approval Order are
27 excluded from the Settlement Class.
28

1 9. The Court hereby permanently bars and enjoins any Settlement Class Member
2 from instituting or prosecuting any claims released pursuant to this Settlement against the
3 Released Parties, as those terms are used and defined in the Settlement Agreement.

4 10. The Court further reserves and retains exclusive and continuing jurisdiction over
5 the Settlement concerning the administration and enforcement of the Settlement Agreement
6 and to effectuate its terms.

7 11. For the reasons stated in the Court's Final Order, judgment is entered in
8 accordance with the Final Order, and the claims of Plaintiff David Weiner in this Action against
9 Defendants Ocwen Financial Corporation and Ocwen Loan Servicing, LLC are dismissed with
10 prejudice, without costs to any party, except as otherwise provided in the Final Order or in the
11 Settlement Agreement.

12 12. Under Rule 54(b) of the Federal Rules of Civil Procedure, no just reason exists
13 for delay in entering final judgment pursuant to the Final Order. The Court accordingly directs
14 the Clerk to enter final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure
15 in accordance with the Final Order.

16
17 **SO ORDERED** this ____ day of _____ 2024.

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20 _____
21 Hon. Daniel J. Calabretta
22 UNITED STATES DISTRICT COURT
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