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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

GARY DAVIS, an individual; on behalf of himself, and as PRIVATE ATTORNEY GENERAL, and on behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CV 06 4804 DDP (PJWx)

Honorable Dean D. Pregerson

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declarations of Drew E. Pomerance, Jeff S. Westerman, Nicole D. Fricke, and Wyatt Lim-Tepper, and Motion for Attorneys' Fees and Expenses and Service Awards Filed Concurrently]

Date: **October 27, 2014**
Time: **11:00 a.m.**
Courtroom: **3**

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GENE CASTILLO, individually,
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PLEASE TAKE NOTICE that on October 27, 2014 at 11:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Dean D. Pregerson in Courtroom 3 of the above-entitled court, located at 312 North Spring Street, Los Angeles, California, Plaintiff Gene Castillo will move this Court for an order: (1) granting final approval of the settlement in this case; (2) approving the terms of the settlement as set forth in the Stipulation and Agreement of Settlement filed on April 23, 2014, and for which preliminary approval was granted on June 5, 2014; and (3) certifying the class for settlement purposes.

Defendant Chase Bank U.S.A., N.A. (Chase) does not oppose this motion, which is being made following conferences between counsel earlier this year, pursuant to L.R. 7-3.

This motion is based on this notice and motion, the accompanying memorandum of points and authorities, the declarations of Drew E. Pomerance, Nicole D. Fricke, Jeff S. Westerman, and Wyatt Lim-Tepper, and documents attached thereto, all the matters of record filed with the Court, and such other evidence and argument as may be submitted to the Court.

DATED: August 29, 2014 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

By: s/ Drew E. Pomerance
DREW E. POMERANCE
BURTON E. FALK
Attorneys for Plaintiff
GENE CASTILLO, individually,
and on behalf of all others similarly situated

DATED: August 29, 2014 WESTERMAN LAW CORP.

By: s/ Jeff Westerman
JEFF WESTERMAN
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GENE CASTILLO, individually,
and on behalf of all others similarly situated

DATED: August 29, 2014 MILBERG LLP

By: s/ Nicole Duckett Fricke
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I. INTRODUCTION

The settlement reached in this case is the result of an eight year litigation odyssey involving extensive investigation, analysis and discovery, multiple and complex motion work, an appeal to and decision from the Ninth Circuit, three formal mediation sessions, and hard fought negotiations by experienced arm's length counsel. On June 5, 2014, the Court granted preliminary approval of the Stipulation and Agreement of Settlement (Settlement) filed on April 23, 2014, and approved the proposed notice program. *See* Court's Preliminary Approval Order dated June 5, 2014 (Docket No. 340.)

The terms of the settlement more than meet the requirements for final approval. Chase has agreed to pay $5.5 million in cash benefits to resolve this matter, including direct payments to specified Settlement Class Members who need not file a claim. The class action alleged that Chase misled consumers and failed to properly apply its customers' payments first to regular balance purchases before promotional purchases. The result was that class members were wrongly assessed finance charges on those purchases.

This settlement pays real cash benefits back to class members and compensates them for some of the finance charges that Chase assessed against them. The settlement is the result of extensive negotiations that continued on and off for the past four years, substantial discovery, investigation, and analysis to verify the size and extent of the potential class, the potential damages the Class members incurred, as well as a thorough analysis of Plaintiff's legal theories and Chase's defenses – both on the merits and having to do with class certification issues. The parties also twice mediated the dispute before the Honorable Edward Infante, Ret., who helped broker the terms of the Settlement. Judge Infante is a former U.S. Magistrate Judge and respected mediator with significant experience in mediating large, complex class actions like this.

As set forth below, the settlement is fair, reasonable and adequate, and in

the best interest of the Settlement Class. Therefore, final approval should be granted.

II. BACKGROUND OF THE CASE

A. The Allegations

Gary Davis filed this putative class action complaint on June 26, 2006, alleging that Chase misled and deceived consumers in the manner in which it applied credit card payments to promotional purchases made at Circuit City. Mr. Davis alleged causes of action for violation of the Consumers Legal Remedies Act, violation of Business & Professions Code §17200, violation of Business & Professions Code §17500, fraud and deceit, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. The class action sought restitution and compensatory damages.

The basis of the lawsuit is the allegation that Chase engaged in a deceptive and unfair business practice of misrepresenting a promotional purchase program and then misallocating payments made by customers participating in the program. The lawsuit alleged that this resulted in customers not only failing to receive the benefit of Chase's promotional offer, but also being wrongly assessed finance and interest charges in violation of Chase's cardmember agreement.

The class action alleged Chase marketed promotional rewards card purchases at Circuit City as "interest free" (or some variant thereof) but charged California credit cardholders interest and fees for those purchases. (First Amended Complaint (FAC), ¶ 1, Docket No. 91.) The class action asserted that Chase improperly applied credit card payments to the "interest free" promotional balances that were not due before applying them to interest-bearing, non-promotional balances, causing consumers to incur interest and fees they otherwise would not have and in direct contradiction to Chase's advertising and its cardmember agreement. (Id. at ¶¶ 1, 20-25.)

B. Procedural History

After the June 2006 filing of the case in state court, Defendants removed the action to this Court in August 2006. (Docket No. 1.) After addressing removal and remand issues, the case was stayed for approximately 21 months due to an appeal of the Court's determination that Chase's arbitration clause and class action waiver provisions in its cardmember agreements were unenforceable under California law. This Court's determination was eventually affirmed by the Ninth Circuit. (Docket No. 80.) Around that time, the claims against Circuit City were withdrawn due to its bankruptcy. (Docket No's. 79, 91.)

On March 17, 2009, a First Amended Complaint was filed. (Docket No. 91.) On September 3, 2009, the Court dismissed the Unfair Competition Law claim to the extent it challenged the allocation of payments apart from the way that allocation intersects with deceptive advertising. (Docket No. 112.) The Court subsequently dismissed the Consumers Legal Remedies Act claim, and determined that Chase is not liable for any claims related to conduct prior to Chase's May 25, 2004 acquisition of the credit card assets at issue in the case. (Docket No's. 167, 203.) On January 16, 2013, the Court granted summary judgment on the breach of the implied covenant of good faith and fair dealing claim. (Docket No. 291.) Accordingly, the two claims that remain are breach of contract and a limited claim for violation of the Unfair Competition Law.

The Court also denied the Motion for Class Certification on January 16, 2013. (Docket No. 291.) The denial was based on the Court's finding that the "factual circumstances surrounding [Gary Davis'] purchases are so atypical as to fall below the normally permissive standard of Rule 23(a)'s typicality requirement." The Court found that "questions regarding [Gary Davis'] individual circumstances are likely to predominate over factual questions common to the class." (Docket No. 291.)

Gene Castillo subsequently moved for an order granting leave to file a

complaint in intervention. Mr. Davis moved simultaneously, and in the alternative, for leave to file a second amended complaint adding Gene Castillo as a party Plaintiff. (Docket No. 293.) Chase moved to dismiss the entire case as moot. (Docket No. 296.) The Court vacated the hearings on these motions when it granted preliminary approval of the Settlement and set a final approval hearing for October 27, 2014. (Docket No. 339.)

C. Mediation and Settlement

The parties initially participated in private mediation on June 18, 2009. (Declaration of Drew E. Pomerance (Pomerance Decl.), ¶ 2.) A second mediation with a different neutral, the Honorable Edward Infante, Ret., took place on November 16, 2011. The parties remained unable to resolve the litigation. (Pomerance Decl., ¶ 3.)

Following the Court's denial of the Motion for Class Certification, the parties participated in a third mediation on October 22, 2013. This mediation was again held with Judge Infante. (Pomerance Decl., ¶ 4.) Drew E. Pomerance of Roxborough, Pomerance, Nye & Adreani, LLP and Jeff Westerman of Westerman Law Corp., attended on behalf of the class, while Chase was represented by its attorneys, Julia Strickland and Stephen Newman of Stroock & Stroock & Lavan, LLP. Also attending the mediation on behalf of Chase were several of its authorized representatives. (Pomerance Decl., ¶ 5.) The mediation session lasted all day, and resulted in a tentative agreement which was subject to confirmatory discovery whereby Chase would have to verify under oath the size of the Settlement Class, the amount of finance charges that Plaintiff contends were improperly charged and collected by Chase, and the period of time in which the promotional purchases were made. (Pomerance Decl., ¶ 6.)

Chase produced a detailed declaration under penalty of perjury from Suzanne Morgan, a Risk Director in Chase's Risk Department who has worked for Chase or its predecessor Bank One since 1997. Ms. Morgan is familiar with

and oversaw the compilation of data that produced information necessary for Class Counsel to evaluate the reasonableness of the settlement. (Pomerance Decl., ¶ 7.) After carefully evaluating Ms. Morgan's declaration, Class Counsel determined that the existing deal adequately compensates the Settlement Class. (Pomerance Decl., ¶ 8.) The parties then formalized and finalized a settlement agreement.

The settlement agreement calls for Chase to establish a settlement fund totaling $5.5 million. (Pomerance Decl., ¶ 9.) Class Counsel remain confident that they have properly evaluated the risks of further prosecuting this class action as compared to the benefits of the Settlement preliminarily approved by the Court, and as well have appropriately evaluated the reasonableness of the benefits that will be going to the Settlement Class. (Pomerance Decl., ¶ 10.)

Given the substantial delays resulting from further prosecution of this lawsuit, Chase's likely renewal of its motion to dismiss if the Settlement is not approved, the Court's denial of the Motion for Class Certification, and the serious and fundamental question of whether the Settlement Class would ever prevail on the merits, Class Counsel is confident that the Settlement is more than fair and reasonable, and that final approval should be granted by the Court. (Pomerance Decl., ¶ 11.)

III. THE SETTLEMENT

The Settlement reached by the parties provides real and tangible benefits to the Settlement Class, and as such, more than meets the standards required to be deemed fair and reasonable. This is an all cash settlement, and does not involve the provision of coupons whatsoever. If approved, the key terms of the settlement are as follows:

(a) Chase will contribute $5.5 million for the benefit of the Settlement Class (Pomerance Decl., ¶ 12; Exhibit (Exh.) 2, Settlement Agreement, §4.1.);

(b) All Settlement Class Members for whom the settlement administrator is able to determine a valid address shall receive a direct payment. (Exh. 2, §§ 4.4-4.6.) These class members need not make a claim or do anything in order to receive payment. Based on confirmatory discovery provided prior to preliminary approval, there were approximately 439,000 Settlement Class Members who were eligible to receive direct payments. (Pomerance Decl., ¶ 13.)[1] The discovery had also disclosed that this group incurred an average finance charge of approximately $40.33. (Pomerance Decl., ¶ 14.) The direct payments were therefore calculated to be approximately $10 each. (Pomerance Decl., ¶ 15.) Thus, this group is set to receive back approximately 25% of the average finance charge. (Pomerance Decl., ¶ 16.);

(c) Chase has agreed, subject to this Court's approval, to pay service awards to Plaintiff Gene Castillo and Gary Davis in amounts not to exceed $5,000 each, to compensate them for their time and effort in prosecuting this case (Exh. 2, §5.1.);

(d) Chase has also agreed, subject to court approval, not to oppose Class Counsel's fee request up to $1.5 million – ***which represents about 27% of the $5.5 million common fund.*** (Exh. 2, §5.1.) The attorneys' fees were negotiated separately from and after the parties reached their agreement on the benefits going to the Class (Pomerance Decl., ¶ 17.);

(e) Costs of notice and administration are to be deducted from the settlement fund. (Exh. 2, §§4.2, 4.4).

[1] There were 438,969 class notices subsequently mailed out by the claims administrator.

IV. THE SETTLEMENT WARRANTS FINAL APPROVAL

As a matter of public policy, settlement is a strongly favored method for resolving disputes. *See Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). This is especially true in complex class actions such as this one. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

A. Standards for Final Approval

Federal Rule of Civil Procedure 23(e) requires judicial approval for the compromise of claims brought on a class basis. In *Officers for Justice*, the Ninth Circuit set forth the factors the trial court should consider in assessing whether a proposed settlement is fair, reasonable, and adequate.

> Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate, and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial, the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Id. at 625 (citations omitted). *Accord Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

1. Plaintiff Has Engaged In Sufficient Discovery and Investigation to Properly Evaluate the Propriety of Settlement

As a result of extensive negotiations and discovery, counsel have been able to fairly and properly evaluate the risks of litigation and the propriety of this Settlement. In addition to formal discovery over the course of several years, Class Counsel also conducted a thorough investigation and analysis of data that was voluntarily supplied under oath by Chase's authorized representative. The information Class Counsel received from Chase through both formal and informal discovery was detailed, thorough, and directly responsive to Class Counsel's inquiries. (Pomerance Decl., ¶¶ 18-20.)

After analyzing the discovery, Class Counsel persisted in asking follow up questions which Chase answered. In addition to carefully studying the information obtained through formal and informal confirmatory discovery, Class Counsel have also carefully evaluated the legal issues, including the Court's denial of the Motion for Class Certification, the potential that the Court may grant Chase's motion to dismiss, and the likelihood of prevailing on the merits. (Pomerance Decl., ¶ 21.)

Class Counsel therefore believes that they have sufficiently analyzed both the liability and damages information necessary to properly evaluate the propriety of the Settlement. Based on this analysis, Class Counsel have determined that a settlement of $5.5 million is fair, reasonable, and adequate, and in the best interest of the Settlement Class. (Pomerance Decl., ¶ 22.)

2. The Strength of Plaintiff's Case, When Balanced Against the Risk, Expense and Duration of Further Litigation, Supports Approval of This Settlement

This Settlement is well within the range of possible approval. The Court has denied the Motion for Class Certification. In most such cases that would be

the end. Any potential settlement on behalf of a class would be highly improbable. Despite this, efforts were made to bring in another class representative. While these efforts were underway, Chase moved to dismiss the case on the grounds that the case is now moot. While the Court vacated the hearing on that motion when it granted preliminary approval of the Settlement, it is entirely possible that the Court may grant Chase's motion to dismiss if the Settlement is not finally approved and Chase renews its motion. In that event, the Settlement Class would get nothing.

In addition, even if the Court were to deny Chase's motion to dismiss, several obstacles remain to the Settlement Class prevailing on the merits at trial. A substantial risk will remain that the class will not be certified. For example, Chase has argued and will undoubtedly continue to argue that the circumstances surrounding each particular transaction, including the possible violation of the terms of the cardmember agreement by cardholders, will result in individualized issues.

Finally, even if the class were certified, it is far from certain that the class would prevail on the merits. Chase has vigorously disputed Plaintiff's claims on the merits. Chase contends that its cardmember agreement and other materials expressly allowed it to allocate payments to lower-interest balances before higher-interest balances. And, just getting to a trial on the merits could take up to several years more, on top of the eight years that the case has thus far proceeded. Final approval of the Settlement eliminates the risks associated with continuing litigation, including possible outright dismissal, as well as the substantial risk of no recovery after several more years of litigation.

The immediacy and certainty of recovery is a factor for the court to balance in determining whether the proposed settlement is fair, adequate and reasonable. *See In Re Mego Financial Corporation Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Hence, the present Settlement must be balanced against the

expense, risk and delay of achieving a more favorable result at trial.

Approval of the Settlement means a present, tangible and significant recovery for the Settlement Class. The benefits are all cash – no coupons whatsoever. Individuals were billed on average approximately $40.33 in improper finance charges, and most of the Settlement Class Members (if the Settlement is approved) will receive approximately $10, without needing to file a claim form or dig up records, which in some cases may be a decade old. The Settlement Class Members, of which there are approximately 439,000, will be receiving about 25% of their total claimed damages on a completely risk free basis, without any further delay, and without further risk of dismissal of the entire case.

Absent the Settlement, the case will likely proceed with a hearing on Chase's motion to dismiss, Gary Davis' motion for leave to amend, and Gene Castillo's motion to intervene. Additional discovery will proceed, if allowed by the Court, and yet another motion for class certification will take place. If that is granted, more rounds of motions to dismiss and for summary judgment are expected. While Class Counsel believes they have well-founded arguments in support of their claims, there is no question that final approval of settlement at this time ensures an immediate and substantial recovery for Settlement Class Members with no further risk whatsoever.

3. The Recommendations of Experienced Counsel Favor the Approval of Settlement

Class Counsel have concluded that the settlement is fair, reasonable, and adequate after carefully considering and evaluating, among other things, the relevant legal authorities and the substantial data and information provided by Chase, as well as evaluating the likelihood of prevailing on the merits, the risks, expense and duration of continued litigation, and the likely appeals and subsequent proceedings necessary if Plaintiff did prevail against Chase at trial. There is no question the Settlement is fair, reasonable, and adequate, and in the

best interest of the Settlement Class.

Due to Class Counsels' extensive efforts over an eight year period on the Settlement Class' behalf and the settlement achieved, Class Counsel have provided fair and adequate representation to the Settlement Class. Class Counsel have significant experience in complex class action litigation and have negotiated numerous other substantial class action settlements throughout the country. Where, as here, the settlement is the product of serious, informed, non-collusive negotiations, significant weight should be attributed to the belief of experienced Class Counsel that settlement is fair, reasonable, and adequate, and in the best interest of the Settlement Class. *See National Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (finding that "'great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *In Re Washington Public Power Supply Systems Securities Litigation*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989), *aff'd sub nom., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1296 (9th Cir. 1992).

V. CERTIFICATION OF THE SETTLEMENT CLASS IS PROPER

The parties have stipulated to class certification for settlement purposes only. (Pomerance Decl., ¶ 12; Exh. 2, §3.1.) The Supreme Court has expressly approved the use of a settlement class. *See Amchem Products v. Windsor*, 521 U.S. 591, 620 (1997). Plaintiff requests that the court enter an order certifying a class for settlement purposes, defined as follows:

> All Chase Circuit City Rewards Credit Cardmembers with California billing addresses who, between May 26, 2004 and the entry of preliminary approval of this Settlement (inclusive), made a promotional or deferred-interest purchase at Circuit City and who, as a result of payments or credits being allocated to a regular purchase balance after the promotional or deferred-

> interest balance, paid more in finance charges than they would have paid if the payments or credits had first been applied to the regular purchase balance.

The agreed upon Settlement Class satisfies all requirements of Federal Rule of Civil Procedure 23(a) and (b)(3).

A. The Settlement Class Is So Numerous That Joinder of All Settlement Class Members Is Impracticable

Rule 23(a)(1) requires a class be so numerous that joinder of all class members is "impracticable." That phrase does not require that joinder be impossible, only that it would be difficult or inconvenient to join all class members. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). There is no fixed number of class members that either compels or precludes class certification. *Arnold v. United Artists Theater Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994).

Here, there is no question that the Settlement Class satisfies the numerosity requirement. Notices have been mailed out to 438,969 Settlement Class Members, and obviously joinder would be highly impracticable.

B. Common Questions of Law and Fact

Federal Rule of Civil Procedure 23(a)(2) requires that there be questions of law or fact common to the class. A common nucleus of operative facts suffices to satisfy the commonality requirement. *See Moore v. Fitness Intern., LLC*, 2013 WL 3189080, 5 (S.D. Cal. 2013); *Hanlon*, 150 F.3d at 1019-1020. Rule 23's "commonality" requirement is not particularly rigorous. Indeed "one significant issue common to the Class may be sufficient to warrant certification . . . the necessary showing to satisfy commonality is minimal." *Blackwell v. Sky West Airlines*, 245 F.R.D. 453, 460 (S.D. Cal. 2007).

Here, there are numerous questions of fact and law that would satisfy Rule 23(a)(2), including:

1. Whether Chase's payment allocation policy breached the terms of the cardmember contract when Chase gave priority of payment to promotional items that were not yet due or owing;
2. Whether Chase's allocation of payments violates the Unfair Competition Law because it is contrary to the advertisements used to promote the promotional purchases;
3. Whether Chase's allocation of payments violates the Unfair Competition Law because it is contrary to the cardmember contract;
4. Whether Chase's payment allocation policy was applied in a uniform and consistent manner to the Settlement Class as a whole.

Underlying these basic common questions is a common nucleus of operative facts pertaining to Chase's marketing of its Circuit City Rewards Card promotional purchases, and how it allocated its customers' payments on the card. Thus, the Settlement Class satisfies the commonality requirement of Federal Rule of Civil Procedure 23(a).

C. Plaintiff's Claims Are Typical of Those of the Settlement Class

"Representative claims are typical if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020; *accord Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Rule 23(a)(3) requires only that there be no express conflict between the representative parties and the class over the very issue in litigation and that the representative's interests are not antagonistic to those of the class. *Stolz v. United Brotherhood of Carpenters and Joiners, et al.*, 620 F.Supp. 396, 404 (D. Nev. 1985).

While this Court recently determined that Gary Davis could not represent a class if the class were to be certified in a ruling by the Court, Chase has stipulated and agreed, for purposes of certifying a settlement class, to Plaintiff Gene Castillo

serving as the class representative, and to his adequacy to serve in that capacity. (Exh. 1, § 3.1.) The typicality requirement is satisfied here through Plaintiff Gene Castillo serving as class representative because he and the Settlement Class Members alleged the same set of operative facts. Mr. Davis is still a putative member of the Settlement Class. They and every putative Settlement Class Member made a promotional or deferred-interest purchase at Circuit City and had their payments or credits allocated to a regular purchase balance after the promotional or deferred-interest balance, which resulted in more finance charges than they would have paid if the payments or credits had first been applied to the regular purchase balance. There is no dispute that the class representative falls directly within these allegations, and thus satisfies the typicality requirement.

D. The Adequacy Requirement Is Satisfied

Rule 23(a)(4) requires "the representative parties will fairly and adequately protect the interests of the class." Courts have established a two-prong test for this requirement. *See, e.g., In re Apple iPod iTunes Antitrust Litigation*, 2008 WL 5574487, 6 (N.D. Cal. 2008) (citing *Hanlon*, 150 F.3d at 1020); *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124, 130 (S.D. Cal. 1996). First, counsel for the class representative must be competent to undertake the particular litigation at hand. Second, there can be no antagonism or disabling conflict between the interests of the named class representative and the members of the class. *See Hanlon*, 150 F.3d at 1020.

Plaintiff's claims do not conflict with the Settlement Class' claims. First Mr. Davis, and now Mr. Castillo, have vigorously pursued common claims on behalf of themselves and all Settlement Class Members. All claims are directed at resolving the issues raised by Chase's allocation of payments to promotional and non-promotional purchases, an issue common to all Settlement Class Members. Mr. Davis' and Mr. Castillo's vigorous pursuit of this litigation confirms their strong interest in achieving a successful result for the Settlement Class. Further,

Class Counsel have extensive experience in the area of consumer class action litigation, and have successfully prosecuted numerous class actions and other complex litigation on behalf of injured consumers in this District and across the country. There can be no legitimate dispute that Class Counsel has vigorously and skillfully prosecuted this litigation, securing a settlement that is fair, reasonable, and adequate, and in the best interest of the Settlement Class. In addition, Chase has stipulated and agreed, for purposes of certifying a settlement class, that Plaintiff Gene Castillo is an adequate class representative.

The second requirement also is satisfied here. There is no antagonism between the representative and the absent Settlement Class Members. All claims arise from the same set of operative facts and course of conduct, and both Plaintiff and absent Settlement Class Members share the common goal of maximizing recovery. *Lubin v. Sybedon Corp.*, 688 F.Supp. 1425, 1461 (S.D. Cal. 1988).

E. The Settlement Class Satisfies Rule 23(b)(3)

In addition to meeting the prerequisites of Rule 23(a), the present action satisfies the requirements of Rule 23(b)(3), which mandates that common questions of law or fact predominate over individual questions and that a class action is superior to other available methods of adjudication. *See Hernandez v. Alexander*, 152 F.R.D. 192, 193-94 (D. Nev. 1993). Here, common questions of law and fact predominate, and a class action is the superior, if not the only, method available to fairly and efficiently litigate these claims.

1. Common Questions of Law and Fact Predominate

Where a complaint alleges a common course of misrepresentations, omissions and other wrongdoings that affect all members of the class in the same manner, common questions predominate. *Blackie v. Barrack*, 524 F.2d 891, 905-8 (9th Cir. 1975). The Court's inquiry should be directed primarily toward the issue of liability. *Id.* at 902.

There are a host of common questions of law and fact, which Plaintiff seeks

to certify. As discussed above, Plaintiff seeks certification for causes of action arising under the Unfair Competition Law, and basic contract law. Three factual issues bear on these claims: (i) Chase's application of the terms of its cardmember agreement with respect to the allocation of payments when a cardholder made promotional and non-promotional purchases; (ii) Chase's assessment of finance charges based on its allocation of payments; and (iii) whether Chase's actions violated the terms of its contract and were contrary to its advertisements. These common factual issues predominate over any purported individual factual issues.

2. A Class Action Is Superior to Other Available Methods for Resolving this Controversy

Rule 23(b)(3) also requires the Court to determine that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." A class action is superior where "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

The class action vehicle is the superior method for adjudicating relatively low-value consumer claims. *See, e.g., Miletak v. Allstate Ins. Co.* 2010 WL 809579, 13 (N.D.Cal. 2010) ("a class action is superior when it is the only realistic form of adjudication available") (citing *Valentino*, 97 F.3d at 1234-35). Where "each member's claim is likely too small to be worth pursuing in an individual action . . . a class action may be the only method for providing meaningful recovery." *Miletak* 2010 WL 809579 at 13; *see also Lowden v. T-Mobile USA, Inc.* 512 F.3d 1213, 1218 (9th Cir. 2008) ("when consumer claims are small but numerous, a class-based remedy is the only effective method to vindicate the public's rights.")

Here, Plaintiff presents class-wide allegations premised on common evidence. Trying each class claim separately would be inefficient, when each of thousands of cases would allege identical misconduct and offer identical proof of

Chase's liability. *See In re Juniper Networks, Inc. Securities Litigation*, 264 F.R.D. 584, 592 (N.D. Cal. 2009); *Mejdreck v. Lockformer Co.*, 2002 WL 1838141, 7 (N.D. Ill. 2002). Most of those injured have not been damaged to a degree where it would be cost-effective for them to seek recovery on their own. Further, without the class settlement device, Defendant could not obtain a class-wide release, and therefore would have little, if any, incentive to enter into the settlement. Certification of the Settlement Class for settlement purposes will enable Class Counsel to handle the administration of the settlement in an organized and efficient manner. Resolution of Plaintiff's and the Settlement Class' claims against Defendant through the proposed Settlement Class is superior to any other available method of resolution. Accordingly, certification of the Settlement Class is appropriate.

VI. CONCLUSION

The Settlement provides real, tangible and immediate relief to consumers without any further costs or delay. Based on the foregoing, and because the settlement is beneficial to the Settlement Class Members and will efficiently, economically and favorably resolve what has been protracted and expensive litigation, Plaintiff respectfully urges the Court to grant final approval of the Settlement.[2]

DATED: August 29, 2014 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

By: s/ Drew E. Pomerance
DREW E. POMERANCE
BURTON E. FALK
Attorneys for Plaintiff
GENE CASTILLO, individually,
and on behalf of all others similarly situated

[2]The form of a Final Approval Order shall be submitted to the Court once the deadlines for opt-outs and objections have passed.

DATED: August 29, 2014 WESTERMAN LAW CORP.

By: s/ Jeff Westerman
JEFF WESTERMAN
Attorneys for Plaintiff
GENE CASTILLO, individually,
and on behalf of all others similarly situated

DATED: August 29, 2014 MILBERG LLP

By: s/ Nicole Duckett Fricke
NICOLE DUCKETT FRICKE
Attorneys for Plaintiff
GENE CASTILLO, individually,
and on behalf of all others similarly situated

CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2014, a true and correct copy of the foregoing PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT, and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF was filed electronically and served by U.S. Mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by facsimile to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

s/ Julie Contreras
Julie Contreras