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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GILLIAN BROWN, *on behalf of
herself and all others similarly
situated,*
Plaintiff,

v.

22ND DISTRICT
AGRICULTURAL ASSOCIATION,
a State entity; and DOES 1 through
10, inclusive,

Defendant.

Case No. 15-cv-2578-DHB

**ORDER GRANTING MOTION
FOR PRELIMINARY
APPROVAL OF NATIONWIDE
CLASS ACTION SETTLEMENT
AND CERTIFICATION OF
SETTLEMENT CLASS**

[ECF No. 33]

On November 17, 2015, Plaintiff Gillian Brown (“Plaintiff”) commenced this class action against Defendant 22nd District Agricultural Association (the “Association” or “Defendant”) seeking relief for violations of the Fair and Accurate Credit Transaction Act, 15 U.S.C. § 1681, *et seq.* (“FACTA”). (ECF No. 1.) On February 8, 2016, the Association filed a Third Party Complaint against Cross-Defendant Solar on Set, LLC (“Solar”) alleging breach of contract, breach of the implied covenant of good faith and fair dealing, express contractual indemnity, comparative indemnity, equitable indemnity, and declaratory relief. (ECF No. 10.)

1 Plaintiff now moves unopposed for preliminary approval of a settlement reached
2 between the parties and for certification of a settlement class. (ECF No. 33.)

3 The Court finds this motion suitable for determination on the papers submitted
4 and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the following reasons, the
5 Court **GRANTS** Plaintiff's Motion for Preliminary Approval of Nationwide Class
6 Action Settlement.

7 **I. PROPOSED SETTLEMENT**

8 **A. Settlement Class**

9 Following many months of litigation and attending mediation with the Court,
10 the parties have reached a proposed settlement of this matter ("Settlement"). (Class
11 Action Settlement Agreement and Release ("Settlement Agreement") ECF No. 35.)¹
12 The Settlement applies to a proposed Settlement Class that is defined as follows:

13 [T]hose persons who were issued an electronically printed debit and/or
14 credit card receipt during the San Diego County Fair at the Del Mar
15 Fairgrounds in violation of the truncation requirements of FACTA at
16 any time between September 30, 2010 and the date of preliminary
approval of [the Settlement].

17 (*Id.* § 2.31.) The parties estimate that Defendant generated approximately 100,000
18 allegedly defective receipts at the 2011-2015 County Fairs. (ECF No. 33-1 at ¶ 24.)

19 A Settlement Class Member is a person or entity who is encompassed by the
20 Settlement Class and does not timely and properly opt out of the Settlement. (ECF
21 No. 35 at § 2.31, 11.1.) To represent the Settlement Class, the parties agree to seek
22 appointment of Plaintiff as Class Representative and Gaines and Gaines, APLC—as
23 Class Counsel. (*Id.* § 2.6, 2.9.)

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28 ¹ Capitalized terms used in this Order but not defined herein have the meanings ascribed to them in
the Settlement Agreement.

1 **B. Settlement Fund**

2 The Association and Solar deny that they have violated FACTA or any other
3 law or agreement, but agree to the following economic relief:

4 1. Reduced Admission Prices. Each admission entrance fee for the 2017 San
5 Diego County Fair (subject to a \$750,000 total reduction cap) shall be reduced fifty
6 (50) cents from the then-current fair market value of such admission prices as
7 determined by the Neutral Expert or as otherwise agreed upon between Class Counsel
8 and the Association and the Association's counsel. To the extent the reduction cap
9 has not been met through the 2017 San Diego County Fair fee reduction, each
10 admission entrance fee for the 2018 San Diego County Fair (subject to a \$750,000
11 total reduction cap, inclusive of the previous year reduction) shall be reduced pro rata
12 based on a calculation of the expected 2018 attendance and the remaining amount
13 under the reduction cap. The Neutral Expert shall conduct its analysis and provide
14 its recommendations no later than the Opt-Out and Objection Deadline, and the final
15 agreed upon pricing for the 2017 San Diego County Fair shall be submitted to the
16 Court in connection with the Motion for Final Approval. (Settlement Agreement §
17 9.2.)

18 2. A Common Fund in the amount of \$175,000 (\$170,000 by the Association
19 and \$5,000 by Solar) to be used to compensate (1) the Settlement Administrator for
20 its services in providing publication and website notice and other settlement
21 administration services; (2) Plaintiff Gillian Brown for an incentive award; (3) Class
22 Counsel for their attorney's fees and costs; and (4) the Neutral Expert. Any
23 unawarded or unrequested portion of the Common Fund shall be paid to a privacy
24 protection-related *cy pres* recipient to be proposed to the Court in connection with
25 the Motion for Final Approval. (*Id.*)

26 **C. Notice to Settlement Class Members**

27 The Settlement requires the Settlement Administrator to provide three forms
28 of notice to the Settlement Class Members. (Settlement Agreement § 10.) First, the

1 Settlement Administrator will establish and maintain the Settlement Website to
2 provide information regarding the Settlement. (*Id.* § 10.2(A).) The Settlement
3 Website will provide access to the Website Notice that contains among other things,
4 a summary of the terms of the Settlement, instructions for opting out of the settlement
5 or objecting to the settlement, and a notice in question and answer format that
6 provides more detailed information about the settlement and other matters. (ECF No.
7 33-2 at 45-52.)

8 Second, the Association's website shall include a link to the Settlement
9 Website and brief description of the Action on the landing page of the Association's
10 website for a period of 60 days following the Notice Deadline. (Settlement
11 Agreement § 10.2(B).)

12 Third, notice will be provided by publication in a newspaper of regional
13 circulation in Southern California, and will be published two times during the first
14 30 days following the Notice Deadline. (*Id.* § 10.2(C).)

15 **D. Right to Opt Out or Object and Release of Claims**

16 Settlement Class Members will have 60 days after the Notice Deadline to opt
17 out of the Settlement, object to the Settlement, or seek to intervene in the Action.
18 (Settlement Agreement § 11.) Class members may opt out by submitting a written
19 request by mail to the Settlement Administrator. (*Id.* § 11.1.) If more than 100
20 Settlement Class Members opt out of the Settlement, the Association has the sole and
21 absolute discretion to terminate the Settlement. (*Id.* § 16.2.)

22 Upon final approval of the Settlement, all Settlement Class Members shall be
23 deemed to have released and discharged the Association and Solar from any and all
24 claims that are known or unknown to the class members and relate to the this action.
25 (Settlement Agreement § 15.)

26 **E. Attorneys' Fees and Settlement Costs**

27 As compensation for its services and to recover its expenses, Class Counsel
28 may move the Court for an award of attorneys' fees and expenses paid from the

1 Common Fund, not to exceed \$150,000. (Settlement Agreement § 6.) Neither the
2 Association nor Solar shall oppose any request that does not exceed \$150,000. (*Id.*)
3 Class Counsel will also seek from the Court an incentive payment for Plaintiff in an
4 amount not to exceed \$5,000. (*Id.* § 6.2.) In addition, the Association and Solar
5 agree to pay all costs necessary to administer the Settlement and provide class notice
6 as detailed in the Settlement Agreement, which is estimated to be \$15,000. (*Id.* §
7 2.20.) Finally, the Association and Solar agree to pay up to \$5,000 for a Neutral
8 Expert to consult and opine regarding the fair market value of admission prices of
9 the 2017 and 2018 County Fairs, which will be used as a basis to compute the fifty-
10 cent reduction required by the Settlement. (*Id.* §2.20, 2.21

11 **II. DISCUSSION**

12 The Ninth Circuit maintains a “strong judicial policy” that favors the
13 settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
14 (9th Cir. 1992). However, Federal Rule of Civil Procedure 23(e) first “require[s] the
15 district court to determine whether a proposed settlement is fundamentally fair,
16 adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th
17 Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).
18 Where the “parties reach a settlement agreement prior to class certification, courts
19 must peruse the proposed compromise to ratify both the propriety of the certification
20 and the fairness of the settlement.” *Stanton v. Boeing Co.*, 327 F.3d 938, 952 (9th
21 Cir. 2003). In these situations, settlement approval “requires a higher standard of
22 fairness and a more probing inquiry than may normally be required under Rule
23 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation
24 marks omitted).

25 **A. Class Certification**

26 Before granting preliminary approval of a class-action settlement, the Court
27 must first determine whether the proposed class can be certified. *Amchem Prods.,*
28 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court must apply

1 “undiluted, even heightened, attention [to class certification] in the settlement
2 context” in order to protect absentees).

3 The class action is “an exception to the usual rule that litigation is conducted
4 by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v.*
5 *Dukes*, 564 U.S. 338, 131 S.Ct. 2541, 2550 (2011) (quoting *Califano v. Yamasaki*,
6 442 U.S. 682, 700-01 (1979)). In order to justify a departure from that rule, “a class
7 representative must be part of the class and ‘possess the same interest and suffer the
8 same injury’ as the class members.” *Id.* (citing *E. Tex. Motor Freight Sys., Inc. v.*
9 *Rodriguez*, 431 U.S. 395, 403 (1977)). In this regard, Rule 23 contains two sets of
10 class-certification requirements set forth in Rule 23(a) and (b). *United Steel, Paper*
11 *& Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union v.*
12 *ConocoPhillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). “A court may certify a class
13 if a plaintiff demonstrates that all of the prerequisites of Rule 23(a) have been met,
14 and that at least one of the requirements of Rule 23(b) have been met.” *Otsuka v.*
15 *Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 443 (N.D. Cal. 2008).

16 “Rule 23(a) provides four prerequisites that must be satisfied for class
17 certification: (1) the class must be so numerous that joinder of all members is
18 impracticable; (2) questions of law or fact exist that are common to the class; (3) the
19 claims or defenses of the representative parties are typical of the claims or defenses
20 of the class; and (4) the representative parties will fairly and adequately protect the
21 interests of the class.” *Otsuka*, 251 F.R.D. at 443 (citing Fed. R. Civ. P. 23(a)). “A
22 plaintiff must also establish that one or more of the grounds for maintaining the suit
23 are met under Rule 23(b), including: (1) that there is a risk of substantial prejudice
24 from separate actions; (2) that declaratory or injunctive relief benefitting the class as
25 a whole would be appropriate; or (3) that common questions of law or fact
26 predominate and the class action is superior to other available methods of
27 adjudication.” *Id.* (citing Fed. R. Civ. P. 23(b)).

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1 In the context of a proposed settlement class, questions regarding the
2 manageability of the case for trial are not considered. *E.g., Wright v. Linkus Enters.,*
3 *Inc.*, 259 F.R.D. 468, 474 (E.D. Cal. 2009) (citing *Amchem Prods., Inc.*, 521 U.S. at
4 620 (“Confronted with a request for settlement-only class certification, a district
5 court need not inquire whether the case, if tried, would present intractable
6 management problems . . . for the proposal is that there be no trial.”)).

7 The Court considers the threshold issue of whether the Settlement Class is
8 ascertainable and each of prerequisites for certification in turn below.

9 **1. Ascertainability**

10 “As a threshold matter, and apart from the explicit requirements of Rule 23(a),
11 the party seeking class certification must demonstrate that an identifiable and
12 ascertainable class exists.” *Mazur v. eBay, Inc.*, 257 F.R.D. 563, 567 (N.D. Cal.
13 2009). Certification is improper if there is “no definable class.” *See Lozano v. AT &*
14 *T Wireless Servs., Inc.*, 504 F.3d 718, 730 (9th Cir. 2007).

15 “A class should be precise, objective, and presently ascertainable,” though “the
16 class need not be so ascertainable that every potential member can be identified at
17 the commencement of the action.” *O’Connor v. Boeing N. Am. Inc.*, 184 F.R.D. 311,
18 319 (C.D. Cal. 1998) (internal quotation marks omitted). “A class is ascertainable if
19 it is defined by ‘objective criteria’ and if it is ‘administratively feasible’ to determine
20 whether a particular individual is a member of the class.” *Bruton v. Gerber Prods.*
21 *Co.*, No. 12-CV-02412-LHK, 2014 WL 2860995, at *4 (N.D. Cal. June 23, 2014).
22 However, “[a] class definition is inadequate if a court must make a determination of
23 the merits of the individual claims to determine whether a person is a member of the
24 class.” *Hanni v. Am. Airlines, Inc.*, No. C 08-00732, 2010 WL 289297, at *9 (N.D.
25 Cal. Jan. 15, 2010). “It is not fatal for a class definition to require some inquiry into
26 individual records, as long as the inquiry is not so daunting as to make the class
27 definition insufficient.” *Herrera v. LCS Fin. Servs. Corp.*, 274 F.R.D. 666, 673 (N.D.
28 Cal. 2011) (internal quotation marks omitted).

1 Here, the Court notes that there are issues with ascertainability because the
2 Settlement Class Members' contact information as not retained by the Association or
3 Solar and is not available. *See e.g. Rowden v. Pacific Parking Systems*, 282 F.R.D.
4 581, 587 (C.D. Cal. 2012). To solve this issue, the parties propose an allocation of
5 settlement proceeds which yields a reduction in admission fees for those most likely
6 to be Class Members – future fairgoers. (Settlement Agreement § 9.2(A).) The Court
7 finds this solution is acceptable. Thus, the Court concludes the Settlement Class is
8 ascertainable.

9 **2. Numerosity – Rule 23(a)(1)**

10 Rule 23(a)(1) requires that the class be “so numerous that joinder of all
11 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[C]ourts generally find that
12 the numerosity factor is satisfied if the class comprises 40 or more members and will
13 find that it has not been satisfied when the class comprises 21 or fewer.” *Celano v.*
14 *Marriott Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).

15 Here, it is estimated that Defendant generated approximately 100,000
16 defective receipts during the applicable class period, from September 10, 2010
17 through the date of preliminary approval. (ECF No. 33-1 at §24.) The Court therefore
18 finds joinder of all class members is impracticable for the purposes of Rule 23(a)(1)
19 and the numerosity requirement is satisfied. *See Celano*, 242 F.R.D. at 549.

20 **3. Commonality – Rule 23(a)(2)**

21 Under Rule 23(a)(2), the named plaintiff must demonstrate that there are
22 “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).
23 “Commonality requires the plaintiff to demonstrate that the class members ‘have
24 suffered the same injury[.]’” *Dukes*, 131 S. Ct. at 2551 (quoting *Gen. Tel. Co. of Sw.*
25 *v. Falcon*, 457 U.S. 147, 157 (1982)). However, “[a]ll questions of fact and law need
26 not be common to satisfy this rule.” *Hanlon*, 150 F.3d at 1019. “The existence of
27 shared legal issues with divergent factual predicates is sufficient, as is a common core
28 of salient facts coupled with disparate legal remedies within the class.” *Id.*

1 In this case, the Class Members all seek the same remedies under FACTA, and
2 all the claims relate to the Association's alleged failure to truncate the expiration
3 dates of Class Members' credit and debit cards during the class period. Thus, it
4 appears the same factual predicates apply to every Class Member. Given this context,
5 the Court finds there are questions of law and fact common to the Settlement Class
6 Members. Accordingly, the commonality requirement is satisfied.

7 **4. Typicality – Rule 23(a)(3)**

8 To satisfy Rule 23(a)(3), the named plaintiff's claims must be typical of the
9 claims of the class. Fed. R. Civ. P. 23(a)(3). The typicality requirement is
10 "permissive" and requires only that the named plaintiff's claims "are reasonably co-
11 extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. "The test
12 of typicality 'is whether other members have the same or similar injury, whether the
13 action is based on conduct which is not unique to the named plaintiffs, and whether
14 other class members have been injured by the same course of conduct.'" *Hanon v.*
15 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*,
16 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "[C]lass certification should not be granted
17 if 'there is a danger that absent class members will suffer if their representative is
18 preoccupied with defenses unique to it.'" *Id.* (quoting *Gary Plastic Packaging Corp.*
19 *v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 180 (2d Cir. 1990)).

20 Here, Plaintiff's and the unnamed Class Members' claims arise from the same
21 alleged conduct of the Association and Solar. Plaintiff alleges the Association failed
22 to truncate the expiration date of her credit card number on the printed receipt that
23 she was provided at the point of sale. Plaintiff alleges this violates FACTA and
24 subjects the Association and Solar to statutory penalties. This is the same claim
25 alleged on behalf of the Class Members. The typicality requirement is therefore
26 satisfied.

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1 **5. Adequacy – Rule 23(a)(4)**

2 Rule 23(a)(4) requires that the representative plaintiff “will fairly and
3 adequately protect the interest of the class.” Fed. R. Civ. P. 23(a)(4). “To satisfy
4 constitutional due process concerns, absent class members must be afforded adequate
5 representation before entry of a judgment which binds them.” *Hanlon*, 150 F.3d at
6 1020 (citing *Hansberry v. Lee*, 311 U.S. 32, 42–43 (1940)). “Resolution of two
7 questions determines legal adequacy: (1) do the named plaintiffs and their counsel
8 have any conflicts of interest with other class members and (2) will the named
9 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”
10 *Id.* (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.
11 1978)).

12 Here, there is no indication that Plaintiff and her counsel have a conflict of
13 interest with the Settlement Class Members, and they appear to have vigorously
14 investigated and litigated this action. (See ECF No. 33-1 ¶¶ 14-15, 19-26.) Thus, the
15 interests of Plaintiff and the Settlement Class Members are aligned. In addition,
16 Plaintiff’s counsel are qualified in class-action litigation. They have handled
17 numerous class actions focused on consumer protection, including matters involving
18 FACTA. (*Id.* ¶ 5-6, ECF No. 33-2 at 1-9.) Consequently, the Court finds Plaintiff
19 and her counsel adequately represent the unnamed class members.

20 **6. Predominance and Superiority – Rule 23(b)(3)**

21 **(i) Predominance**

22 “The predominance inquiry focuses on ‘the relationship between the common
23 and individual issues’ and ‘tests whether proposed classes are sufficiently cohesive
24 to warrant adjudication by representation.’” *Vinole v. Countrywide Home Loans,*
25 *Inc.*, 571 F.3d 935, 944 (9th Cir. 2009) (citing *Hanlon*, 150 F.3d at 1022). The focus
26 of the inquiry is not the presence or absence of commonality as it is under Rule
27 23(a)(2). Instead, the predominance requirement ensures that common questions
28 “present a significant aspect of the case” such that “there is clear justification”—in

1 terms of efficiency and judicial economy—for resolving those questions in a single
2 adjudication. *Hanlon*, 150 F.3d at 1022; *see also Vinole*, 571 F.3d at 944 (“[A]
3 central concern of the Rule 23(b)(3) predominance test is whether adjudication of
4 common issues will help achieve judicial economy.”)

5 Here, the Court finds a common issue predominates over any individual issue
6 – specifically, whether the Association and Solar provided printed receipts that
7 violated FACTA. Accordingly, the Court finds the predominance requirement is
8 met.

9 (ii) **Superiority**

10 “Plaintiffs must also demonstrate that a class action is ‘superior to other
11 available methods for fairly and efficiently adjudicating the controversy.’” *Otsuka*,
12 251 F.R.D. at 448 (quoting Fed. R. Civ. P. 23(b)(3)). “Where classwide litigation of
13 common issues will reduce litigation costs and promote greater efficiency, a class
14 action may be superior to other methods of litigation,” and it is superior “if no
15 realistic alternative exists.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234–
16 35 (9th Cir. 1996). The following factors are pertinent to this analysis:

- 17 (A) the class members’ interest in individually controlling the prosecution or
18 defense of separate actions;
- 19 (B) the extent and nature of any litigation concerning the controversy already
20 begun by or against class members;
- 21 (C) the desirability or undesirability of concentrating the litigation of the
22 claims in the particular forum; and
- 23 (D) the likely difficulties in managing a class action.

24 Fed. R. Civ. P. 23(b)(3).

25 A class action is a superior method for adjudicating the claims presented in
26 this case because of the relatively low value of the average Class Member’s potential
27 action against the Association and Solar. FACTA provides for statutory damages in
28 the amount of not less than \$100 and not more than \$1,000 for each violation. 15
U.S.C. § 1681n(a)(1)(A). The cost a Settlement Class Member would have to incur

1 to bring an individual action against the Association and Solar very likely outweighs
2 the prospective recovery of the class member. This disparity between litigation costs
3 and prospective recovery provides “the most compelling rationale for finding
4 superiority in a class action.” *Smith v. Microsoft Corp.*, 297 F.R.D. 464, 468–69
5 (S.D. Cal. 2014) (quoting *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 748 (5th Cir.
6 1996)). Moreover, the Court is unaware of any other litigation regarding the claims
7 at issue involving the Association and Solar, and the parties agree it is desirable to
8 resolve the class members’ claims in this forum. Thus, the superiority requirement
9 is satisfied.

10 For the foregoing reasons, the Court provisionally finds the prerequisites for a
11 class action under Rule 23 of the Federal Rules of Civil Procedure have been met for
12 the Settlement Class.

13 **B. Preliminary Fairness Determination**

14 Having certified the Settlement Class, the Court must next make a preliminary
15 determination of whether the class-action settlement is “fair, reasonable, and
16 adequate” pursuant to Rule 23(e)(2). “It is the settlement taken as a whole, rather
17 than the individual component parts, that must be examined for overall fairness.”
18 *Hanlon*, 150 F.3d at 1026. A court may not “delete, modify or substitute certain
19 provisions” of the settlement; rather, “[t]he settlement must stand or fall in its
20 entirety.” *Id.* Relevant factors to this determination include, among others:

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

26 *Id.*; see also *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

27 Preliminary approval of a settlement and notice to the proposed class is
28 appropriate if “the proposed settlement appears to be the product of serious,

1 informed, non-collusive negotiations, has no obvious deficiencies, does not
2 improperly grant preferential treatment to class representatives or segments of the
3 class, and falls within the range of possible approval.” *In re Tableware Antitrust*
4 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and
5 citations omitted).

6 Here, the proposed Settlement complies with all of these requirements. The
7 Court addresses the relevant factors in further detail below.

8 **1. Strength of the Plaintiffs’ Case and Risk of Further Litigation**

9 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes
10 and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n of*
11 *the City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (quoting *Cotton*
12 *v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). As explained by the Supreme Court,
13 “[n]aturally, the agreement reached normally embodies a compromise; in exchange
14 for the saving of cost and elimination of risk, the parties each give up something they
15 might have won had they proceeded with litigation.” *United States v. Armour & Co.*,
16 402 U.S. 673, 681 (1971).

17 Although each party here strongly believes in the merits of the party’s side of
18 the case, the parties have agreed to settle the matter in light of the risks to both sides
19 in continuing this matter through trial. (*See* Settlement Agreement § 1.) The Court
20 agrees with the parties that the proposed Settlement eliminates litigation risks and
21 ensures that the Settlement Class Members receive some compensation for their
22 claims, and this factor weighs in favor of approving the Settlement.

23 **2. Amount of the Proposed Settlement**

24 The Settlement provides for a economic relief in the form of Reduced
25 Admission Prices (up to a \$750,000 cap) and a Common Fund of \$150,000.
26 (Settlement Agreement § 9.) Offsetting this amount are anticipated notice and claims
27 administration expenses in the amount of \$15,000; an incentive award up to \$5,000;
28 a Neutral Expert fee in the amount of \$5,000; and attorneys’ fees up to \$150,000. (*Id.*

1 §9.2(B); 2.20.)

2 Based on the Association's estimate of the number of allegedly defective
3 receipts, Plaintiff alleges she and the Class are entitled to minimum statutory
4 damages of \$10,000,000. Thus, given the potential for statutory damages per
5 Settlement Class Member, the amount of the Settlement Fund is only a small
6 percentage of the potential recovery that might be available to the class at trial. Yet,
7 "[t]he fact that a proposed settlement may only amount to a fraction of the potential
8 recovery does not, in and of itself, mean that the proposed settlement is grossly
9 inadequate and should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d
10 1234, 1242 (9th Cir. 1998) (internal quotation marks omitted). However, as a result
11 of this settlement, the Association has amended its practices so that the issue at the
12 heart of this case – the failure to redact private information from consumers' credit
13 and debit card receipts – will cease in the future. Moreover, given the structure of
14 the settlement in the form of a reduced admission price, the amount of the settlement
15 appears appropriate. Therefore, under the circumstances, the Court concludes that
16 the amount offered in the Settlement weighs in favor of preliminary approval.

17 3. Extent of Discovery Completed and Stage of the Proceedings

18 The Court assesses the stage of proceedings and the amount of discovery
19 completed to ensure the parties have an adequate appreciation of the merits of the
20 case before reaching a settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371
21 (E.D. Cal. 2014) ("A settlement that occurs in an advanced stage of the proceedings
22 indicates that the parties carefully investigated the claims before reaching a
23 resolution."). So long as the parties have "sufficient information to make an informed
24 decision about settlement," this factor will weigh in favor of approval. *Linney v.*
25 *Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998); *see also In re Mego*
26 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (explaining that a
27 combination of investigation, discovery, and research conducted prior to settlement
28 can provide sufficient information for class counsel to make an informed decision

1 about settlement).

2 This action has been pending for approximately a year, and the parties have
3 engaged in pre-certification discovery. (ECF No. 33-1 at § 15.) The parties also
4 participated in mediation with the Court through an Early Neutral Evaluation
5 Conference, as well as held numerous follow-up meetings and negotiations for nearly
6 four months afterwards. (*Id.*) Given the discovery conducted, the stage of the
7 proceedings, and the evidence of significant arms-length negotiations, the Court
8 concludes that this factor weighs significantly in favor of preliminary approval of the
9 Settlement.

10 **4. Experience and Views of Counsel**

11 As mentioned above, Class Counsel have significant experience in handling
12 class actions. (ECF No. 33-1 at 5.) For example, Class Counsel's firm has been
13 involved in over 100 class actions. (ECF No. 33-2 at 1-9.) As for their opinions of
14 the Settlement, Class Counsel believe the Settlement is desirable, fair, and beneficial
15 to the Settlement Class. (ECF No. 33-1 ¶ 6.) "The recommendations of plaintiffs'
16 counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*,
17 485 F. Supp. 610, 622 (N.D. Cal. 1979). Accordingly, giving the appropriate weight
18 to Class Counsel's recommendation, the Court concludes that this factor also weighs
19 in favor of approval.

20 **5. Reaction of the Class to the Settlement**

21 Plaintiff, aside from her own view, provides no evidence regarding any
22 putative Settlement Class Members' reactions to the proposed settlement –
23 presumably because no other class members have been informed of the proposed
24 Settlement. The proposed Settlement Website Notice, Association Website Notice,
25 and Publication Notice provide instructions as to how class members may exclude
26 themselves from the Settlement, object to the Settlement, and request to appear at the
27 Fairness Hearing. (ECF No. 33-2 at 45-52.) Accordingly, the Court will further
28 consider this factor at the Fairness Hearing before granting final approval of the

1 Settlement.

2 On balance, the Court finds the Settlement falls within the range of
3 reasonableness meriting possible final approval. The Court therefore preliminarily
4 approves the Settlement and the terms and conditions set forth in the Settlement
5 Agreement, subject to further consideration at the Fairness Hearing.

6 **C. Proposed Class Notice**

7 Under Rule 23(c)(2)(B), “the court must direct to class members the best notice
8 that is practicable under the circumstances, including individual notice to all
9 members who can be identified through reasonable effort.” Fed. R. Civ. P.
10 23(c)(2)(B).

11 The notice must clearly and concisely state in plain, easily understood
12 language: (i) the nature of the action; (ii) the definition of the class
13 certified; (iii) the class claims, issues, or defenses; (iv) that a class
14 member may enter an appearance through an attorney if the member so
15 desires; (v) that the court will exclude from the class any member who
16 requests exclusion; (vi) the time and manner for requesting exclusion;
17 and (vii) the binding effect of a class judgment on members under Rule
18 23(c)(3).

19 Fed. R. Civ. P. 12(c)(2)(B). “[T]he mechanics of the notice process are left to the
20 discretion of the court subject only to the broad ‘reasonableness’ standards imposed
21 by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir.
22 1975).

23 Here, the proposed notices describe the litigation, the terms of the Settlement,
24 and each class member’s rights and options under the Settlement. (ECF No. 33-2 at
25 45-55.) As outlined above, the Claims Administrator will establish the Settlement
26 Website containing the Website Notice, and Notice will be included on the
27 Association’s website. (ECF No. 35 § 10.2.) A Newspaper Publication will also be
28 disseminated. (*Id.*) All of the notices will state the deadlines for opting out or
objecting to the Settlement. (*Id.*)

Having reviewed the proposed class notices, the Court finds that the methods
and contents of the notices comply with due process and Rule 23, are the best notice

1 practicable under the circumstances, and shall constitute due and sufficient notice to
2 all persons entitled to notice of the Settlement. Therefore, the Court approves the
3 form and content of the proposed notices to be provided to the Settlement Class
4 Members as set forth in Section 10 of the Settlement Agreement and Exhibits 1 and
5 2 to the Settlement Agreement.

6 **III. CONCLUSION & ORDER**

7 In light of the foregoing, the Court **GRANTS** Plaintiff's Motion for
8 Preliminary Approval of Class Action Settlement. (ECF No. 33). Accordingly, the
9 Court hereby **ORDERS** the following:

10 1. For purposes of this Order, the Court adopts and incorporates all
11 definitions set forth in the Settlement Agreement unless a different definition is set
12 forth in this Order.

13 2. The Court finds that the requirements of Rule 23 of the Federal Rules of
14 Civil Procedure and other laws and rules applicable to preliminary settlement
15 approval of class actions have been satisfied, and the Court preliminarily approves
16 the settlement of this Action as memorialized in the Settlement Agreement, which is
17 incorporated herein by this reference, as being fair, just, reasonable and adequate to
18 the settlement Class and its members, subject to further consideration at the Final
19 Fairness and Approval Hearing described below, and thus hereby:

20 a. conditionally certifies for purposes of implementing the
21 Settlement Agreement the Settlement Class consisting of those persons who were
22 issued an electronically printed debit and/or credit card receipt during the San Diego
23 County Fair at the Del Mar Fairgrounds in violation of the truncation requirements
24 of FACTA at any time between September 30, 2010 and the date of preliminary
25 approval of [the Settlement] (the "Class");

26 b. appoints Plaintiff Gillian Brown as the representative of the
27 Class; and
28

1 c. appoints Kenneth S. Gaines, Daniel F. Gaines, and Alex P.
2 Katofsky of Gaines & Gaines, APLC as attorneys for the Class for purposes
3 of settlement and finds for the purposes of settlement that these attorneys are
4 qualified to represent the Class.

5 3. A hearing (the “Final Fairness and Approval Hearing”) shall be held on
6 May 11, 2017 at 3:30 p.m. before the Honorable David H. Bartick in Courtroom 1D
7 of the United States District Court for the Southern District of California, located at
8 221 W. Broadway, San Diego, California 92101. At that time, the Court shall
9 determine:

10 a. whether the proposed settlement of the Action on the terms and
11 conditions provided for in the Settlement Agreement is fair, just, reasonable
12 and adequate and should be finally approved;

13 b. whether judgment as provided in the Settlement Agreement
14 should be entered herein; and

15 c. whether to approve Class Counsel’s application for an award of
16 attorneys’ fees and costs and Plaintiff Brown’s application for a service
17 payment. The Court may continue or adjourn the Final Fairness and Approval
18 Hearing without further notice to members of the Class.

19 4. The Court approves, as to form and content, the website notice attached
20 to the Settlement Agreement as Exhibit 1, and the newspaper publication notice
21 attached to the Settlement Agreement as Exhibit 2. The Court finds that distribution
22 of the website notice and newspaper publication notice in the manner set forth in this
23 Order and the Settlement Agreement constitutes the best notice practicable under the
24 circumstances, and constitutes valid, due and sufficient notice to all members of the
25 Class, complying fully with the requirements of Rule 23 of the Federal Rules of Civil
26 Procedure, the Constitution of the United States, and any other applicable laws. The
27 Class Notice and the notice program as set forth in the Settlement Agreement provide
28 a means of notice reasonably calculated to apprise the Class Members of the
 pendency of the action and the proposed settlement, and thereby meet the

1 requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well as due
2 process under the United States Constitution and any other applicable law, and shall
3 constitute due and sufficient notice to all Class Members entitled thereto.

4 **5.** The Court approves the selection of Simpluris, Inc. to be the Settlement
5 Administrator. The Settlement Administrator will administer the applicable
6 provisions of the Settlement Agreement, including, but not limited to, publishing
7 and disseminating the Notice, maintenance of the website, and receiving and
8 examining exclusion requests and objections from Class Members.

9 **6.** Notice shall include a newspaper publication notice, substantially in the
10 form attached to the Settlement Agreement as Exhibit 2, in a newspaper of regional
11 circulation in Southern California, published two times during the first 30 days
12 following the Notice Deadline. The Court finds that, because not all Class Members
13 can be identified from Defendant's records, this publication notice is the most
14 practicable means to notify Class Members of the settlement, and satisfies the
15 requirements of due process.

16 **7.** The Settlement Administrator will establish and maintain the
17 Settlement Website dedicated to the Settlement called
18 <http://classactionsandiegocountyfair.com> or similar, on which will be posted the
19 Website Notice, a copy of the Settlement Agreement, this Preliminary Approval
20 Order, the operative Complaint, the Motion for Preliminary Approval, the Motion
21 for Attorneys' Fees, Costs and Incentive Award, the Motion for Final Approval, and
22 any other materials the Parties agree to include. Additionally, there shall be included
23 a Website Notice in a form substantially similar to the form attached to the
24 Settlement Agreement as Exhibit 1. These documents shall be available on the
25 Settlement Website beginning no later than the Notification Deadline and ending no
26 earlier than thirty (30) calendar days after the last day of the 2018 San Diego County
27 Fair unless the reduction cap described in Section 9.2(A) of the Settlement
28 Agreement has been satisfied through reduction at the 2017 San Diego County Fair,
under which circumstance the documents shall be available ending no later than

1 thirty (30) calendar days after the last day of the 2017 San Diego County Fair. The
2 Settlement Administrator shall secure a URL for the Settlement Website proposed
3 by Class Counsel and approved by the Association.

4 **8.** Notice shall also include a link to the Settlement Website and brief
5 description of the Action (no more than two (2) sentences in length) on the landing
6 page of the San Diego County Fair (www.sdfair.com) during the 60 calendar days
7 following the Notice Deadline.

8 **9.** Class Members shall have sixty calendar (60) days following Notice,
9 after which no one shall be allowed to object to the Settlement, exclude himself or
10 herself from the Settlement, or seek to intervene in the Action. The timeliness of
11 requests for exclusion shall be determined by valid postmark.

12 **10.** Plaintiff and Class Counsel shall file their Motion for an Award of
13 Attorneys' Fees and Costs and a Class Representative Incentive Award no later than
14 the Notice Deadline, and shall file their Motion for Final Approval of Class Action
15 Settlement (which shall include any responses to Objections to the Settlement, a
16 request for approval of the Settlement Administrator's fees, and a request for
17 approval of the Neutral Expert's fees) no later than twenty (20) calendar days prior
18 to the Final Approval Hearing.

19 **11.** The Court reserves the right to adjourn the date of the Final Fairness
20 and Approval Hearing and any adjournment thereof without further notice to the
21 members of the Class, and retains jurisdiction to consider all further applications
22 arising out of or connected with the settlement. The Court may approve the
23 settlement, with such modifications as may be agreed to by the parties to the
24 settlement, if appropriate, without further notice to the Class.

25 **IT IS SO ORDERED.**

26 Dated: December 13, 2016

27 
28 LOUISA S PORTER
United States Magistrate Judge