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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: ZOOM VIDEO COMMUNICATIONS, INC. PRIVACY LITIGATION

This Document Relates To:

ALL ACTIONS

CASE NO: 3:20-cv-02155-LB

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT

Judge: Hon. Laurel Beeler
Courtroom: B – 15th floor
Date: April 7, 2022
Time: 9:30 a.m.

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I. INTRODUCTION

As set forth in Plaintiffs' Motion for Final Approval, Dkt. No. 216 ("Final Approval Motion"), Plaintiffs obtained a historic settlement for Settlement Class Members, providing one of the largest privacy recoveries to consumers in history and comprehensive reforms to one of the most popular apps in America.[1] Settlement Class Members who submitted Paid Subscription Claims are expected to receive 30% of the total amount paid for the Zoom app (an average of $95), and those with User Claims (users who did not pay to use Zoom) are expected to receive an average of $29.

Settlement Class Members overwhelmingly support the Settlement. The deadline to file a Claim, request exclusion, or object to the Settlement passed on March 5, 2022. Dkt. No. 204, Order Granting Preliminary Approval of Class Action Settlement and Approving Form and Content of Class Notice ("Prelim. App. Order") ¶¶ 17-18. More than 1.45 million Settlement Class Members participated in the Settlement, while only five (5) objections were filed, of which two (2) complain about class action settlements generally.

The Settlement Class Members' response, as well as the declarations from Class Counsel (Dkt. No. 218) and Judge Jay C. Gandhi, the former U.S. Magistrate Judge who mediated the Settlement (Dkt. No. 216-1), all support final approval. Moreover, considering the substantial risks that lay ahead at class certification, summary judgment, and trial, the Settlement is eminently fair, reasonable, and adequate, and should be granted final approval.

II. ADMINISTRATIVE UPDATE

A. Notice Program

The Court-authorized notice program was wide-ranging, robust, and successfully executed by the Court-approved Settlement Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"). Dkt. No. 219, Decl. of Cameron R. Azari on Implementation & Adequacy of Settlement Notice Plan and Notices ("Azari Implementation Decl.") ¶¶ 17-45; *see also* concurrently filed Supplemental Declaration of Cameron R. Azari on Implementation and Adequacy of Settlement

[1] Unless otherwise defined herein, capitalized words and terms shall have the same meaning ascribed to them in the Class Action Settlement Agreement and Release. Dkt. No. 191-1 § 1.

Notice Plan and Notices ("Supp. Azari Decl.") ¶¶ 8-16. Epiq initially emailed 158,203,160 and mailed 485,595 class notices to all known Settlement Class Members, resulting in direct notice to 91% of the identified members of the Class for whom Epiq had contact information. Azari Implementation Decl. ¶¶ 19, 22; Supp. Azari Decl. ¶ 12. Epiq also disseminated the Notice through a robust media campaign, print publication, and the Settlement Website. Azari Implementation Decl. ¶¶ 27-42; Supp. Azari Decl. ¶ 13.

In February 2022, Epiq sent 143,225,659 reminder email notices, and 453,574 reminder postcard notices to potential Settlement Class Members. Supp. Azari Decl. ¶¶ 21-22. Epiq also continued its media campaign, running a reminder banner notice campaign on selected advertising networks and on social media. *Id*. ¶¶ 23-24. More than 181 million targeted impressions were generated by the reminder banner notice nationwide campaign. *Id*. In total, Epiq sent over 300 million emails, and over 900,000 postcards to Settlement Class Members during the notice period. Azari Implementation Decl. ¶¶ 19, 22-25; Supp. Azari Decl. ¶¶ 8-12, 21-22. Epiq's media campaign delivered more than 461 million targeted impressions. Azari Implementation Decl. ¶¶ 30-35; Supp. Azari Decl. ¶¶ 23-24.

The post office box and email address established for the Settlement continue to be available, allowing members of the Settlement Class to contact the Settlement Administrator by mail and/or email with any specific requests or questions. Thus far, Epiq has responded to all inquiries from Settlement Class Members. Supp. Azari. Decl. ¶¶ 16, 26.

Courts in this district have approved notice plans nearly identical to the one the Court approved (Prelim. App. Order ¶¶ 12-16) and the parties implemented in this case. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 328 (N.D. Cal. 2018) ("All of these alternative routes of communication support a finding that Settlement Class Members received adequate notice of the Settlement"); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017) ("Courts have routinely held that notice by publication in a periodical, on a website, or even at an appropriate physical location is sufficient to satisfy due process."). Rule 23 requires the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In other words, "[t]he rule does

not insist on actual notice to all class members in all cases" and "recognizes it might be *impossible* to identify some class members for purposes of actual notice." *Briseno*, 844 F.3d at 1128–29 (internal quotation marks and citation omitted). Indeed, the Notice Plan here delivered the best notice practicable and met the requirements of due process. Supp. Azari Decl. ¶ 30.

B. Number of Claims

The deadline for Settlement Class Members to file their claims was March 5, 2022. As of March 10, 2022, Epiq has received 1,454,796 claims, and may receive more claims postmarked by the deadline. *Id.* ¶ 25. Given the extensive notice efforts here, Plaintiffs have satisfied due process. *Id.* ¶¶ 28-31; *see also In re Anthem,* 327 F.R.D. at 329 (Judge Koh granting final approval and finding "the notice program provided the best notice that is practicable under the circumstances and complied with due process"); *Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-CV-05486-JCS, 2018 WL 8949777, at *4 (N.D. Cal. Oct. 15, 2018) (affirming approval of settlement where 37,970 of 1,750,564 class members filed claims).

C. Exclusion Requests

The deadline for Settlement Class Members to seek exclusion from the Settlement was March 5, 2022. Epiq received approximately 1,600 requests for exclusion as of March 10, 2022.[2] Supp. Azari Decl. ¶ 17. The requests for exclusion are just a tiny fraction compared to the number of initial notices sent (0.001%) or claims filed (0.1%) and is a testament to the excellent result the Settlement represents for the Settlement Class. *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval of settlement with 45 objections and 500 opt-outs out of approximately 90,000 notified class members).

D. CAFA Notices

Epiq sent 57 CAFA Notice Packages as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715. Azari Implementation Decl. ¶ 9 & Ex.1. The Parties have not received any objections from any federal or state official concerning the Settlement (Supp. Azari Decl. ¶ 5) and none have been filed with the Court.

[2] Epiq has not completed its review of the requests for exclusion and will provide a supplemental declaration with the final number of exclusions and detailed list prior to the Final Hearing.

E. Expected Amount of Cash Payments to Claimants

Based on preliminary calculations from Epiq, the anticipated payment for Paid Subscription Claims is 30% of the total amount the Class Member paid Zoom for their use of the Meetings app (an average of approximately $95), and the payment for the User Claims is approximately $29. *Id.* ¶ 25.

III. REACTION OF THE SETTLEMENT CLASS

In the Final Approval Motion (Dkt. No. 216) and Joint Declaration of Mark C. Molumphy and Tina Wolfson (Dkt. No. 218), Plaintiffs summarized the terms of the Settlement and explained why the Settlement was fair, reasonable, and adequate, meriting final approval. The Settlement readily satisfies even the heightened standard for settlements reached prior to class certification. *Saucillo v. Peck*, 25 F.4th 1118, 1133 (9th Cir. 2022). Plaintiffs address below the only factor that has evolved since the Final Approval Motion was filed—the reaction of Settlement Class Members to the Settlement.

A. The Overwhelmingly Positive Reaction of the Class Favors Final Approval

The Court should consider the reaction of the Class when evaluating the Settlement's fairness. *Churchill*, 361 F.3d 566 at 575. Here, the reaction of the Class is overwhelmingly positive. Settlement Class Members registered their approval of the Settlement by filing well over 1.45 million claims. Supp. Azari Decl. ¶ 25. The number of exclusions and objections to the Settlement is minuscule compared with the number of notices disseminated and the number of claims made. Of the over 150 million initial notices sent to potential Settlement Class Members, only five objections[3] and approximately 1,600 requests for exclusion were received. The "low number of opt-outs and objections in comparison to class size is typically a factor that supports settlement approval." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015); *see also Churchill*, 361 F.3d at 577.

[3] Dkt. Nos. 206, 220, 225, 227, and 228.

B. The Court Should Overrule All Objections

While five Settlement Class Members submitted objections, there were no objections to the $85 million consideration or comprehensive reforms provided by the Settlement. Rather, as discussed below, the small number of objections describe individual issues with the proposed plan of distribution or claim process, none of which have merit. Since Plaintiffs' Motion for Final Approval (Dkt. No. 216) addressed the Matthies objection (Dkt. No. 206), the remaining four objections are addressed below.[4]

i. Cohen's Objection

Objector Judith Cohen, a mental health counselor, argues for a separate subclass for those who used Zoom "as part of a business that was legally or contractually required to maintain client confidentiality as a part of services the business provided." Dkt. No. 227 at 1. Ms. Cohen wrongly asserts that "hea[l]th care professionals and other class members for whom Zoom's guarantees of end-to-end encryption was necessary to satisfy their legal or contractual obligations to maintain client confidentiality were harmed in ways qualitatively different from general users of Zoom products." *Id.* at 4.

Plaintiffs allege that Zoom users overpaid for Zoom's services based on its misrepresentation that Zoom offered true end-to-end encryption. Ms. Cohen, just like every other Paid Subscriber, was harmed by overpaying for Zoom. The Settlement addresses those injuries by compensating Paid Subscribers for money they might not otherwise have paid had Zoom not misrepresented its services. This is not a data breach case where personally identifiable information was allegedly disclosed to hackers or identity thieves.

Ms. Cohen's argument that she "suffered qualitatively different harms as a result of Zoom's encryption failures" is unsupported. Ms. Cohen does not allege that she lost any business nor does she explain how her injuries were greater than anyone else's. Even if she could, it is doubtful that such unique injuries would be amenable to class treatment. *See, e.g.*, Fed. R. Civ. P. 23(b)(3) (requiring questions of fact to "predominate over any questions affecting only individual members"

[4] Joseph Lofthouse, who submitted a letter to the Court (Dkt. No. 208), opted-out. Dkt. No. 216 at 20.

to certify a class action for damages). As Ms. Cohen admits, "it may be difficult to quantify the lost business resulting" from Zoom's misrepresentation. Dkt. No. 227 at 5.

Ms. Cohen's argument that the Settlement "does not distinguish between class members who used Zoom products for communications subject to HIPPA [sic]" is irrelevant. There is no private right of action under HIPAA and HIPAA protects patients, not healthcare professionals like Ms. Cohen. *Webb v. Smart Document Sols.*, 499 F.3d 1078, 1081 (9th Cir. 2007). Moreover, Plaintiff Brice, a speech therapist, is similarly situated to Ms. Cohen, so she and other members of her proposed class have been well represented throughout the litigation and settlement processes. Dkt. No. 179, Second Amended Consolidated Class Action Complaint ("SAC") ¶ 54. In sum, Ms. Cohen's claims do not differ from the other Paid Subscribers, and a separate subclass is not required or appropriate. For these same reasons, Ms. Cohen's objections to the Settlement's method of allocation are also misplaced, as her injuries are no different than the rest of the Paid Subscribers. Finally, to the extent Ms. Cohen was not satisfied with the benefits of the Settlement, she had the opportunity to opt out.[5] The objection should be overruled.

ii. Rodgers-Neace's Objection

The late-filed objection filed by Sammy Rodgers and Alvery Neace (Dkt. No. 228, the "Rodgers-Neace Objection") is a laundry list of meritless objections that criticizes several aspects of the Settlement's Notice and claims procedures. The Rodgers-Neace Objection fails to meet the requirements for objections as set forth in the Preliminary Approval Order (Dkt. No. 204, ¶ 18) because it does not provide (i) an address and email address for either individual, and (ii) any explanation or evidence that the objectors are Settlement Class Members.[6] The objection also offers

[5] "Federal courts routinely hold that the opt-out remedy is sufficient to protect class members who are unhappy with the negotiated class action settlement terms." *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS, 2014 WL 439006, at *7 (C.D. Cal. Jan. 30, 2014); *Amador v. Baca*, No. 2:10-cv-1649-SVW-JEM, 2020 WL 5628938, at *5 (C.D. Cal. Aug. 11, 2020) ("To the extent that these individuals feel that this settlement is inadequate, their proper remedy would be to opt-out, as a small number of other class members have done . . . .").

[6] Because their objection is defective and because they fail to establish themselves as Settlement Class Members, Rodgers and Neace do not have standing to object. *Dennis v. Kellogg Co.*, No. 09-cv-1786-L (WMc), 2013 WL 6055326, at *4 (S.D. Cal. Nov. 14, 2013) (ruling that failure to

no facts pertaining to the objectors' use of the Zoom Meetings app and instead deals only in hypotheticals. Neither Rodgers nor Neace are on the list of known Settlement Class Members which Zoom provided to Epiq (Supp. Azari Decl. ¶ 18), and neither filed a claim (*id.*) nor describe any actual attempt to file a claim. Finally, the objection is devoid of any supporting authority.

a. The Pro Hac Vice Arguments are Meritless

The Rodgers-Neace Objection attempts to resuscitate their counsel's arguments regarding the Court's *pro hac vice* requirements that have already been rejected. Dkt. No. 222. The Court already considered this issue in the Administrative Motion filed by Rodger and Neace's counsel, J. Allen Roth. *Id*. The Court granted Mr. Roth's *pro hac vice* application and waived the application fee, but not any other requirements of Rule 11-3. Dkt. Nos. 226, 230. As Class Counsel pointed out in response to Mr. Roth's Administrative Motion, the *pro hac vice* application is not onerous. Dkt. No. 223. The process exists to protect the parties and the integrity of the Court. Indeed, there is no fundamental right to appear *pro hac vice*, and "federal courts have long had the authority to establish criteria for admitting lawyers to argue before them." *In re Bundy*, 840 F.3d 1034, 1042 (9th Cir. 2016) (internal quotations marks and citation omitted).

Mr. Roth also asserts that obtaining a certificate of good standing discourages objections because it "costs $25.00 and takes about two weeks" (Dkt. No. 228 at 3), but the Court here granted his application with a simple screenshot from the website of the Disciplinary Board of the Supreme Court of Pennsylvania. Dkt. No. 229-1. Putting aside these challenges to the *pro hac vice* requirements, the Court's Preliminary Approval Order clearly sets forth the relevant objection procedures (Dkt. No. 204 ¶ 18), which were disclosed in the Notice disseminated to Settlement Class Members. These standard procedures in no way limit Settlement Class Members' ability to easily participate or be heard, as they are expressly informed that they may, but are not required to, be represented by counsel of their choice. The Court should reject this argument.

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provide items required by the settlement notice, like telephone number or address, and failure to establish themselves as objectors, renders an objection defective, and thus objectors have no standing to object); *In re Apple Inc. Sec. Litig.,* No. 5:06-cv-05208-JF (HRL), 2011 WL 1877988, at *3 n.4 (N.D. Cal. May 17, 2011) (finding objector "lacks standing to object [because] he did not provide evidence to show that he is a class member.").

b. The Claim Filing and Opt-Out Deadlines are Appropriate

Rodgers and Neace complain that "both the claims filing deadline and the opt out deadline occur[] prior to this Court approving the fairness of the settlement agreement and terms of administering the claims process." Dkt. No. 228 at 5. These objectors contend that potential modifications to the settlement or administration terms forces "class members to opt out prior to knowing what the final court-approved terms of the settlement and the administration of the settlement are," which "violates due process and fundamental fairness." *Id.* at 6. The objectors argue that "the claims and opt-out deadline should be extended to ninety (90) days from the time this Court approves the final terms of the settlement." *Id.* at 7. These objections are contrary to authority and common practice in class actions. *See, e.g.*, Supp. Azari Decl. ¶¶ 19(e)-(f).

First, this Court's Procedural Guidance for Class Action Settlements requires Class Counsel to submit the number of class members who submitted valid claims, requests for exclusions, and objections in conjunction with the final approval briefing, to better facilitate the Court's determination of the settlement.[7] The Court cannot evaluate the reaction of the settlement class without close-to-final numbers, necessitating a deadline prior to the final approval briefing.

Second, Class Counsel have not made *any* modifications to the Settlement. Even if Class Counsel made modifications, they may only do so if such changes "are consistent in all material respects with the terms of the Final Approval Order and do not limit or impair the rights of the Settlement Class." Settlement Agreement ("SA") § 7.2. Moreover, this objection's assumption that the Court has unfettered power to revise the Settlement in response to an objection, misunderstands the Settlement's terms and the Court's role at this stage. MANUAL FOR COMPLEX LITIGATION, FOURTH § 21.61 (2004) ("The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement.").

[7] *See Procedural Guidance for Class Action Settlements*, available at www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements, § 9 ("The parties should ensure that class members have at least thirty-five days to opt out or object to the settlement and the motion for attorney's fees and costs.")

Settlement Class Members were provided with sufficient notice under Federal Rule of Civil Procedure 23 and due process to review the terms of the Settlement Agreement and to decide—by a date certain in advance of the fairness hearing—whether to opt-out or remain in the Class (and object if desired). This allows the Court to assess "the reaction of class members to the proposed settlement," in terms of claims, opt-outs, and objections filed and expected payouts to Claimants, before granting final approval—a factor the Court is required to consider. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (citation omitted). This procedure is standard practice in class actions. There is no merit to the argument that due process was violated because the deadline to opt-out occurred before final approval of the Settlement.

c. The Notice Sufficiently Described the Settlement's Release

Rodgers and Neace argue that the Notice did not adequately warn Settlement Class Members that the Settlement "waives 'Unknown Claims.'" Dkt. No. 228 at 7.[8] However, all of the Notice forms sufficiently summarized the Settlement's Release, and these arguments lack merit.

In the Preliminary Approval Order, the Court approved the form and content of the Class Notice, which "constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the effect of the proposed Settlement (including the releases contained therein)." Dkt. No. 204 ¶ 14. Settlement Class Members were also advised that the Notice merely "summarizes the proposed Settlement and does not cover all of the issues and proceedings that have occurred" but that "the precise terms and conditions of the Settlement" are in "the Settlement Agreement, which can be found, along with other important documents and information about the current status of the case, by visiting www.ZoomMeetingsClassAction.com."[9] This is standard practice and such forms are often approved. Supp. Azari Decl. ¶¶ 19(c)-(d).

The Notice thus "generally describe[d] the terms of the settlement in sufficient detail to alert

[8] Rodgers and Neace's objection on this point appears to incorrectly cite to Section 1.14, which concerns Enterprise Level Accounts. Class Counsel presumes Rodgers and Neace are criticizing the Settlement's release of unknown claims described in Section 1.47, and address the objection based on that presumption.

[9] *See* www.zoommeetingsclassaction.com/Content/Documents/Notice.pdf.

those with adverse viewpoints to investigate and to come forward and be heard." *Torrisi v.Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993) (citation omitted). The Ninth Circuit has specifically rejected the notion that "notice must recite the language of every provision of a proposed settlement agreement." *In re Cement & Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987); *see also In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1125 n.1 (9th Cir. 1977) ("The notices were worded in such a way as to alert appellant to its rights, and are not required to provide a complete source of settlement information."). This principle is sensible. If a class notice were required to include every detail about the lawsuit and the proposed settlement, the notice would be prohibitively lengthy and confusing to most class members.

To the extent Rodgers and Neace object to inclusion of the "Unknown Claims" provision (which is limited to "claims that could have been raised in the Action" (SA § 1.47)), the objection is unsupported as Judge Koh has specifically allowed this release in a number of prior cases. *See, e.g., Schulken v. Washington Mut. Bank*, No. 09-CV-2708-LHK, 2012 WL 12921069, at *4 (N.D. Cal. Nov. 13, 2012); *In re Anthem*, 327 F.R.D. at 326-27. Because the Notice forms sufficiently summarized the Settlement's Release, this objection should be overruled.

d. The Claim Form and Reasonable Documentation Requirement are Fair and Reasonable

Rodgers and Neace object to the Settlement's claim form, and the requirement that Settlement Class Members submit "reasonable documentation" in certain circumstances. Dkt. No. 228 at 9. These arguments are hypothetical and should be rejected.

First, Rodgers and Neace do not actually say they are Settlement Class Members, let alone describe how they themselves used Zoom. At most, they posit that the reasonable documentation requirement cannot be satisfied if a Class Member "stepp[ed] into someone else's conference to merely waive [sic] hello." *Id.* at 1 n.1. Indeed, Rodgers and Neace have not provided any evidence that they submitted a claim, (or attempted to), supported by reasonable documentation, that was rejected. Their arguments are just hypotheticals that should be rejected.

Second, Rodgers and Neace claim to be "perplexed" by a documentation requirement since "[t]here would be no documentation" if "they merely 'used, opened, or downloaded the Zoom

Meeting Application.'" Dkt. No. 228 at 9. However, there are many types of documentation that would show that a Settlement Class Member used, opened, or downloaded the Zoom Meeting Application. The information may exist on the Class Member's computer or device, or be available from the Apple App Store or Google Play Store. *See* Supp. Azari Decl. ¶ 19(b). In fact, Epiq received more than 27,000 claims with supporting documentation. *Id.* These Settlement Class Members submitted their claims relying on a variety of supporting documentation. *Id.*

Lastly, the Settlement's "reasonable documentation" is necessary as it prevents fraudulent claims. *Id.* Such a requirement is well-supported by Ninth Circuit authority. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 568 (9th Cir. 2019) ("Some sort of claims process is necessary in order to verify" the eligibility of the Class Member.). "Courts frequently approve settlements that require class members to submit receipts or other documentation; they find that such a requirement is reasonable and fair, given the defendant's need to avoid fraudulent claims." *Keegan v. Am. Honda Motor Co, Inc.*, No. 10-cv-09508 MMM (AJWx), 2014 WL 12551213, at *15 (C.D. Cal. Jan. 21, 2014) (citation omitted).

e. The Claim Procedures are Adequate

Rodgers and Neace are wrong to contend that the Settlement lacks a review procedure for denied claims. Under Section 2.3(b) of the Settlement, if the Administrator receives an "incomplete or otherwise invalid Settlement Claim," the Administrator does not simply deny it. Rather, the Administrator notifies the Claimant of the deficiency, and the Claimant then has 14 days to cure it. SA § 2.3(b). Only if the deficiency is not cured in this timeframe will the Administrator deny a claim. *Id.* In the event issues arise with respect to a particular Claim, Class Members can contact Class Counsel. This type of claim process is common and appropriate. *See* MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.661 (courts "often" appoint an administrator to review claims and determine if they are "late, deficient in documentation, or questionable for other reasons"). Moreover, this argument again is hypothetical, and objectors fail to show that any Settlement Class Member's claim was even denied, let alone prevented from a subsequent review of that denial. Indeed, most claims submitted do not require supporting documentation.

f. The Procedures for Delivering Payments to Claimants are Fair, Reasonable, and Adequate

These objectors' complaints concerning the processes for issuing paper checks under the Settlement similarly are misplaced. Dkt. No. 228 at 13-14. First, most of the Settlement Payments are expected to be electronic. Supp. Azari Decl. ¶ 19(g). Second, these objectors' proposal ignores the additional administration costs of sending multiple emails to the same addresses receiving electronic Settlement Payments or sending multiple mailings to the same physical addresses to which physical checks are sent, and fails to justify such costs.

Instead of requiring such needless waste of limited resources, the Settlement includes much better procedures designed to get Claimants their money. "In the event that an electronic deposit or digital payment to a Claimant is unable to be processed, the Settlement Administrator shall attempt to contact the Claimant within thirty (30) calendar days to correct the problem." SA § 2.5(d). Epiq will run address correction, check forwards, and send new checks or digital payments to correct addresses, if possible. Supp. Azari Decl. ¶ 19(g).

These objectors complain that "many settlement administrators have been using 'junk mail' tear apart check mailers that people often throw away," and that checks "should be required to be sent in a normal business (#10) envelope." Dkt. No. 228 at 13. However, that argument ignores that Epiq's normal practice is to send checks in a number 10 business envelope via first class USPS Mail. Supp. Azari Decl. ¶ 19(g).

Moreover, there is no merit to these objectors' assertion that Settlement Payments must be valid for more than 90 days. After that 90-day period, if "an electronic deposit or digital payment to a Claimant is unable to be processed, the Settlement Administrator shall attempt to contact the Claimant within thirty (30) calendar days to correct the problem," and if there are enough uncashed checks and electronic payments to merit a second distribution, then such a distribution will take place. SA §§ 2.5(d)-(e). Waiting six months to contact Claimants to whom digital payments do not go through, and to evaluate whether a second distribution is viable, would needlessly reduce the effectiveness of both provisions and cause a significant delay in redistributing the funds to the remaining Settlement Class Members.

g. Expensive Escheat Provisions are Not Required

These objectors argue that the distribution of unclaimed funds under Section 2.5(e)[10] "violates public policy and state escheat laws." Dkt. No. 228 at 15. Getting funds to Claimants is much preferable compared to undertaking the expensive task of seeking to escheat these funds to various states, which would have to be paid for out of the Settlement Fund and would reduce the overall payment to Settlement Class Members.

Section 2.5(e) of the Settlement Agreement contemplates distribution of unclaimed settlement funds first to claimants and then to the proposed *cy pres* recipients and allows a court to distribute unclaimed or non-distributable portions of a class action settlement fund to the "next best" class of beneficiaries. *See Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307–08 (9th Cir. 1990); *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 117 (D.D.C. 2015) ("[A]s a general matter, 'a court's goal in distributing class action damages is to get as much of the money to the class members in as simple a manner as possible.'") (quoting 4 William B. Rubenstein et al., NEWBERG ON CLASS ACTIONS, § 12.28 (5th ed. 2015)); *Hester v. Vision Airlines, Inc.*, No. 2:09-CV-00117-RLH, 2017 WL 4227928, at *2 (D. Nev. Sept. 22, 2017) (reasoning that "redistribution of unclaimed class action funds to existing class members is proper and preferred" because it "ensures that 100% of the [settlement] funds remain in the hands of class members") (quoting NEWBERG, *supra*, § 12.30). Even in cases where a state has claimed that its escheat laws entitle it to settlement funds, federal courts have held that class action settlements do not need to distribute residual funds in accordance with state escheat laws. *See, e.g.*, *Highland Homes Ltd. v. Texas*, 448 S.W. 3d 403 (Tex. 2014) (holding Texas escheat law does not apply to *cy pres* provisions in class action settlement agreement). Complying with various states' escheat laws would incur significant administration costs, and would not direct residual funds to the next best class of beneficiaries.

[10] "To the extent that any second distribution is not economically feasible, or second-distribution funds remain in the Settlement Fund after an additional ninety (90) calendar days, such funds shall be paid to the Non-Profit Residual Recipients in equal amounts." SA § 2.5(e).

h. Settlement Class Members Can Update Addresses with Ease

Contrary to objectors' complaints that "most class actions administered in the Northern District of California do not include an easy form for claimants to use to change their address," (Dkt. No. 228 at 16-17) the Notice forms and the Settlement Website, in this case, include clear instructions as to how Settlement Class Members can update their contact information, and there is a dedicated online form for this very purpose.[11]

iii. Better World Properties' Objection

Better World Properties LLC ("Better World") objects to the Settlement because: "[O]ur relevant and considerable experience suggests to us that these [security] concerns are exaggerated and unlikely to have caused harm that Zoom should be financially responsible for." Dkt. No. 225. This is not a complaint that the Settlement is deficient in any respect, but that the claims in this lawsuit are frivolous. Such characterizations simply illustrate the uncertainty of litigation and the risk of zero recovery that continued litigation would present to the Settlement Class.

iv. Melody Rodgers' Objection

Melody Rodgers complains that the amount that she will receive under the Settlement is too small, given her unique circumstances, and asks the Court to award her $40,000. Dkt. No. 220 at § D. She alleges a disturbing zoombombing incident she suffered, and that Zoom shared detailed personal information with Facebook. *Id*. at ¶¶ 10, 18, 21.

First, the information she alleges Zoom shared with Facebook appears to be different from that alleged by Plaintiffs in the SAC. Plaintiffs allege that "analytic" information was shared by Zoom to help Facebook and Google track users while Ms. Rodgers suggests that the content of her confidential information was accessed by the public. *See e.g.* SAC ¶¶ 5-8; *cf.* Dkt. No. 220.

Ultimately, the Settlement need not compensate all Settlement Class Members for *all* losses they suffered to be considered fair, reasonable, and adequate. *See, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair,

[11] *See* www.zoommeetingsclassaction.com/AddressUpdate; *see also* FAQ No. 37 ("How can I update my contact information") at www.zoommeetingsclassaction.com/Home/FAQ#faq37.

adequate and free from collusion."); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007) (approving settlement over objections wanting a "better deal"). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair." *Officers for Justice v. Civil Service Comm'n of City and County of San Francisco*, 688 F.2d at 615, 628 (9th Cir. 1982). Here, as explained above, the present Settlement will provide Paid Subscribers approximately 30% of the fees they paid to Zoom (Supp. Azari Decl. ¶ 25)—more than a small fraction or a "pittance," and much more than enough to merit final approval.

Finally, Ms. Rodgers was also free to opt-out and pursue her individual claims to the extent she believed her claims were more valuable because of her unique situation. *See supra* n.7.

IV. CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Final Approval Motion be granted.

Respectfully submitted,

Dated: March 14, 2022

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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Plaintiffs' Reply in Support of Motion for Final Approval of Settlement. Pursuant to L.R 5-1(i)(3) regarding signatures, I, Tina Wolfson, attest that concurrence in the filing of this document has been obtained.

DATED: March 14, 2022

/s/ Tina Wolfson
Tina Wolfson