

1 John A. Yanchunis (*pro hac vice*)
2 jyanchunis@forthepeople.com
3 Morgan & Morgan Complex Litigation Group
4 201 North Franklin Street 7th Floor
5 Tampa, Florida 33602
6 (813) 223-5505 (tel)
7 (813) 223-5402 (fax)

8 *Attorneys for Plaintiffs and the Proposed Class*

9 [List of Counsel Continued on Signature Page]

10
11 **UNITED STATES DISTRICT COURT FOR THE**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 JASON LEWIS, DANIELLE HALL,
15 JUSTIN THORNTON, on behalf of
16 themselves and all others similarly
17 situated,

18 Plaintiffs,

19 v.

20
21 GREEN DOT CORPORATION;
22 GREEN DOT BANK;
23 MASTERCARD INCORPORATED;
24 and MASTERCARD
INTERNATIONAL INCORPORATED,

25 Defendants.
26
27
28

Case No.: 2:16-cv-03557-FMO-AGR

CLASS ACTION

**PLAINTIFFS' NOTICE OF
AMENDED MOTION
AND AMENDED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hon. Fernando M. Olguin

NOTICE OF MOTION

PLEASE TAKE NOTICE Plaintiffs Jason Lewis, Danielle Hall, and Justin Thornton will and hereby do respectfully move the Court for preliminary approval of the Settlement; certification of the proposed settlement class under Rule 23(b)(3); appointment of Plaintiffs as class representatives; appointment of lead counsel (John A. Yanchunis of Morgan & Morgan Complex Litigation Group) and class counsel (Richard D. McCune and Joseph G. Sauder of McCune Wright Arevalo LLP, Jean Sutton Martin of Law Office of Jean Sutton Martin PLLC, and Daniel C. Girard and Linh G. Vuong of Girard Gibbs LLP) to serve as counsel for the certified class under Rule 23(g); an order for dissemination of class notice pursuant to the notice plan set forth in the Amended Settlement Agreement; and a schedule for final settlement approval.

Plaintiffs' amended motion is based on this notice; the accompanying Memorandum of Points and Authorities and all attachments thereto (including the Amended Settlement Agreement); Proposed Order Granting Preliminary Approval of Class Settlement; and all records, pleadings and papers filed in this action. This Motion is unopposed by Defendants.

DATED: February 13, 2017

Respectfully submitted,

By: /s/ John A. Yanchunis

MORGAN & MORGAN

COMPLEX LITIGATION GROUP

John A. Yanchunis

201 North Franklin Street 7th Floor

Tampa, Florida 33602

(813) 223-5505

(813) 223-5402 (fax)

Proposed Lead Counsel

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION..... i

TABLE OF AUTHORITIES iv

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. BACKGROUND 1

III. OVERVIEW OF THE LITIGATION AND PROPOSED SETTLEMENT 5

 A. The Litigation 5

 B. Settlement Negotiations 6

 C. Overview of the Proposed Settlement..... 7

 1. The Proposed Settlement Class..... 7

 2. Settlement Relief..... 7

 3. Notice to the Class 10

 4. Opt-Out and Objection Procedures..... 12

 5. Administrative Costs..... 12

 6. Attorney Fees, Costs, and Service Awards..... 12

 7. Release 13

IV. ARGUMENT..... 14

 A. The Settlement Merits Preliminary Approval..... 14

 1. The Settlement is the Product of Serious, Informed, and Non-Collusive Negotiations Between Experienced Counsel 15

 2. The Settlement has no Obvious Deficiencies and Falls Within the Range of Possible Approval..... 16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. The Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class. 21
- C. The Court Should Certify the Settlement Class 23
 - 1. The Settlement Class Meets The Requirements of Rule 23(a)..... 23
 - 2. The Settlement Class Meets The Requirements Of Rule 23(b)(3). 24
 - 3. The Court Should Appoint Class Counsel..... 25
- D. The Court Should Order Dissemination of Class Notice As Proposed By the Parties 26
 - 1. The Settlement Provides the Best Method of Notice Practicable Under the Circumstances. 26
 - 2. The Proposed Form of Notice Adequately Informs Settlement Class Members of Their Rights in Connection with the Settlement. 27
 - 3. Notice of the Settlement Will Be Provided to Appropriate Federal and State Officials..... 28
- E. The Selected Cy Pres Recipient Is Appropriate 29
- F. The Court Should Set a Schedule for Final Approval 30
- III. CONCLUSION..... 31

TABLE OF AUTHORITIES

Cases

1
2
3
4 *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372
5 (N.D. Cal. July 24, 2015).....21
6
7 *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997).....23, 25
8
9 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004) 15
10
11 *Fuentes v. UniRush, LLC*, Final Approval Order, No. 1:15-cv-08372
12 (S.D.N.Y. Sept. 12, 2016)..... 15, 19
13
14 *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078
15 (N.D. Cal. July 30, 2015).....21
16
17 *Haley v. Medtronic, Inc.*, 169 F.R.D. 643 (C.D. Cal. 1996).....24
18
19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998)23, 24, 25
20
21 *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973
22 (N.D. Cal. 2011) 14
23
24 *Hendricks v. Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423
25 (N.D. Cal. Sept. 29, 2016) 16
26
27 *In re Am. Apparel, Inc. S’holder Litig.*, No. CV 10-06352 MMM (JCGx), 2014 WL
28 10212865 (C.D. Cal. July 28, 2014)..... 16
In re Bluetooth Headset Products Liab. Litig., 654 F.3d 935 (9th Cir. 2011) 15
In re Online DVD-Rental Antitrust Litig., 779 F.3d 934 (9th Cir. 2015).....22, 27
In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078 (N.D. Cal. 2007) 14, 16
In Re: MagSafe Apple Power Adapter Litig., No. 5:09-CV-01911-EJD, 2015 WL
428105 (N.D. Cal. May 29, 2012).....30
Ko v. Natura Pet Prods., Inc., No. C 09-02619 SBA, 2012 WL 3945541
(N.D. Cal. Sept. 10, 2012) 18

1 *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012).....27

2 *Linney v. Cellular Alaska P’ship*, Nos. C-96-3008 DLJ, *et al.*, 1997 WL 450064

3 (N.D. Cal. July 18, 1997).....16

4 *Milano v. Interstate Battery Sys. of Am., Inc.*, No. 4:10-DV-02125

5 (N.D. Cal. July 5, 2012).....30

6 *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011).....29

7 *Nat’l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523 (C.D. Cal. 2004)....14

8 *Nguyen v. Radiant Pharm. Corp.*, 287 F.R.D. 563 (C.D. Cal. 2012)23

9 *Officers for Justice v. Civil Serv. Comm’n of the City & Cnty. Of S.F.*, 688 F.2d 615

10 (9th Cir. 1982)17

11 *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157 (9th Cir. 2013).....22, 23

12 *Rannis v. Recchia*, 380 F. App’x. 646 (9th Cir. 2010)27

13 *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990)29

14 *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395

15 (N.D. Cal. Jan. 29, 2016).....22

16 *Spann v. J.C. Penney Corp.* (“*Spann P*”), 314 F.R.D. 312 (C.D. Cal. 2016).....passim

17 *Staton v. Boeing, Co.*, 327 F.3d 938 (9th Cir. 2003)22

18 *Stern v. Superior Court*, 129 Cal. Rptr. 2d 275 (Cal. Ct. App. 2003)18

19 *Vandervort v. Balboa Capital Corp.*, No. SACV 11-1578-JLS (JPRx)

20 (C.D. Cal. Mar. 27, 2014).....20

21 *Vanwagoner v. Siemens Indus., Inc.*, No. 2:13-cv-01303-KJM-EFB

22 (E.D. Cal. Dec. 17, 2014)20

23 *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168 (9th Cir. 2010)23, 24

24

25

26

27 **Statutes**

28 Class Action Fairness Act, 28 U.S.C. § 171529

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rules

Fed. R. Civ. P. 23(a).....23

Fed. R. Civ. P. 23(c)(2)(B)26, 27

Fed. R. Civ. P. 23(g)(1)(A)25

Treatises

Manual for Complex Litigation (Fourth) §21.632 at 320 (2004).....14, 23

Newberg on Class Actions § 13:10 (5th ed.) 14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 12, 2017, a hearing was held on Plaintiffs' unopposed motion for
 4 preliminary approval of class action settlement with counsel for both Plaintiffs and
 5 Defendants present. At the hearing, the Court facilitated an in-depth discussion,
 6 providing the parties with the Court's view of the initially proposed settlement while
 7 also allowing counsel to present argument as to why the parties believed the initially
 8 proposed settlement was fair, reasonable and adequate. In doing so, the Court advised
 9 the parties of its concerns with the proposed settlement and directed the parties to
 10 address them in a supplemental submission. With the Court's suggestions and
 11 guidance in mind, the parties began additional negotiations to make modifications to
 12 the settlement which would address the Court's previously stated concerns. After
 13 extensive discussions, the parties were able to reach a settlement addressing the
 14 Court's concerns. Most significantly, Defendants have now agreed to a minimum
 15 contribution of \$1.5 million for the Tier 2 and 3 Settlement Fund, with any excess
 16 being paid to a designated *cy pres* entity. Should the total value of validly filed claims
 17 exceed the Minimum Payment of \$1.5 million, Defendants shall pay the total value of
 18 validly filed claims up to the Tier 2 and Tier 3 Maximums as described below and in
 19 the Settlement Agreement. Plaintiffs hereby renew their motion for preliminary
 20 approval of the Settlement Agreement and Amended Settlement Agreement
 21 (collectively, "Settlement" or "Settlement Agreement").¹

22 **II. BACKGROUND**

23 On May 14, 2016, at 7:00 p.m. EDT, the Green Dot Defendants ("Green Dot")
 24 launched the third wave of conversion of its processing services for its Prepaid Cards
 25 to its new provider, a unit of MasterCard International Incorporated ("MasterCard").
 26 Of the Prepaid Cards being converted during the Wave Three Conversion, 93% were

27 _____
 28 ¹ Capitalized terms used herein are defined in the Amended Settlement Agreement
 ("SA"), attached hereto as **Exhibit 1**.

1 WalMart MoneyCards issued by Green Dot and 7% were general Green Dot prepaid
2 MasterCard and Visa cards. Once the Green Dot system went live after the
3 conversion, some Cardholders, approximately 58,600, noted various issues, including
4 1) active cards reflected as inactive; 2) incorrect card balances causing declined
5 transactions; 3) authorization holds incorrectly applied twice, causing declined
6 transactions; 4) duplicate charging of monthly maintenance fees; and, 5) delays in
7 activating new cards. Some of these issues occurred sporadically until May 22, 2016
8 causing these approximately 58,600 Cardholders difficulty accessing their funds,
9 which, in some cases, affected their ability to pay rent, pay electricity bills, purchase
10 food and water, and withdraw cash, among other things. As a result, members of the
11 Class incurred economic harm in the form of, *inter alia*, missed bill payments, the
12 assessment of late fees, termination of utility services and the inability to pay for daily
13 living expenses.

14 Since the Service Disruption, Class Counsel have worked vigorously to remedy
15 the harms imposed on the Settlement Class, which led to preliminary relief in the form
16 of a \$50 account credit (“Courtesy Credit”) and a waiver of monthly fees (“Fee
17 Holiday”) for two months for most Settlement Class Members who had an active
18 Green Dot account in May and June 2016. Through the Fee Holiday and Courtesy
19 Credit, Green Dot has provided more than \$3.3 million to Settlement Class Members
20 already, and approximately an additional \$1.1 million in individualized courtesy
21 credits. After intensive and informed arm’s-length negotiations, the parties reached a
22 settlement to provide additional benefits that are tailored to the losses suffered by
23 Settlement Class Members as a result of the Service Disruption, address the issues
24 raised in the litigation and provide significant and prompt relief to the proposed
25 Settlement Class Members.

26 Although Defendants do not admit liability, the Settlement provides three tiers
27 of relief to compensate Settlement Class Members for inconveniences and losses as a
28 result of the Service Disruption. Tier 1 relief entitles all Settlement Class Members

1 to reimbursement of their monthly maintenance fee for one month. At the time of the
2 Wave Three Conversion, the monthly maintenance fee for the affected PrePaid Cards
3 fell within a range of \$3.00–\$7.95 depending on the type of card at issue. Benefits
4 under this tier are automatic and Settlement Class Members will not be required to
5 submit a Claim Form to receive them. Defendants estimate Tier 1 benefits will
6 provide approximately \$250,000 to Settlement Class Members.

7 In addition to receiving automatic benefits under Tier 1, Settlement Class
8 Members may also participate in either Tier 2 or Tier 3 for payment of losses
9 incurred as a result of any inability to access or spend account funds from May 15,
10 2016 through May 22, 2016 as a result of the Service Disruption. The bifurcation of
11 these tiers allows for Settlement Class Members to make a claim for losses with the
12 option to submit documentation to support their losses for greater reimbursement.
13 Under the terms of the Settlement, Defendants will pay a guaranteed minimum of
14 \$1.5 million and a maximum of \$3.5 million under the provisions related to Tiers 2
15 and 3 of the Settlement. If an insufficient number of valid and timely claims are
16 submitted and paid to exhaust the minimum amount of \$1.5 million, then the
17 Defendants shall pay the difference of the Minimum Payment (\$1.5 million minus the
18 total value of valid claims filed across Tier 2 and Tier 3), as explained below and
19 subject to the Court’s approval, to a *cy pres* recipient approved by the Court. Subject
20 to the Court’s approval, the parties have selected Consumer Action, a non-profit
21 organization that has been committed to advancing the rights of consumers
22 nationwide in a variety of areas, including financial advocacy and education, for
23 more than 40 years.

24 To make a claim, Settlement Class Members must simply submit a Claim Form
25 online on the Settlement website or submit a Claim Form by mail. Settlement Class
26 Members may each submit one claim electing either Tier 2 or Tier 3 benefits. Under
27 Tier 2, Settlement Class Members who suffered a qualifying loss (as defined in the
28 Settlement Agreement) who do not submit documents to support their losses will be

1 eligible for a payment of up to \$100, with an aggregate amount not to exceed \$2
2 million. In the event that the amounts to be paid to Settlement Class Members under
3 Tier 2 exceed the \$2 million maximum payment, which would require an
4 uncharacteristically high claims rate, then the amount paid to each Settlement Class
5 Member will be reduced pro rata. Under Tier 3, Settlement Class Members who
6 submit proof of a qualifying loss will be eligible for a payment of up to \$750, with an
7 aggregate amount not to exceed \$1.5 million, plus any residue from Tier 2. In the
8 event that the amounts to be paid to Settlement Class Members under Tier 3 exceed
9 the \$1.5 million maximum payment plus any residue from Tier 2, which again would
10 require an uncharacteristically high claims rate, then the amount paid to each
11 Settlement Class Member will be reduced pro rata.

12 Defendants will bear the costs of class notice and other costs associated with
13 administering the Settlement, estimated to be approximately \$145,000. Subject to
14 Court approval, Defendants will also pay Class Counsel's attorneys' fees, costs and
15 expenses, not to exceed \$750,000 in the aggregate, and Service Awards not to exceed
16 \$500 per Settlement Class Representative. These fees, costs and expenses and the
17 Service awards will be paid separate and apart from the relief provided to Settlement
18 Class Members; that is, the fees, cost and expenses and Service awards will not
19 reduce the benefits and payments to the Settlement Class Members

20 After investigating the facts and carefully considering applicable law, the
21 Named Plaintiffs and Class Counsel have concluded that it would be in the best
22 interests of the Settlement Class Members to enter into this Settlement in order to
23 avoid the uncertainties of litigation and to assure meaningful and timely benefits to
24 the Settlement Class Members. For the reasons stated in this Memorandum and
25 accompanying documents, the Named Plaintiffs and Class Counsel respectfully
26 submit that the terms and conditions of this Settlement are fair, reasonable, and
27 adequate and in the best interests of all Members of the Settlement Class.

28 Accordingly, the Named Plaintiffs respectfully request that the Court enter an Order

1 (1) preliminarily approving the proposed Settlement; (2) certifying the proposed
2 Settlement Class under Rule 23(b)(3); (3) appointing lead counsel (John A.
3 Yanchunis of Morgan & Morgan Complex Litigation Group) and class counsel
4 (Richard D. McCune and Joseph G. Sauder of McCune Wright Arevalo LLP, Jean
5 Sutton Martin of Law Office of Jean Sutton Martin PLLC, and Daniel C. Girard and
6 Linh G. Vuong of Girard Gibbs LLP) to serve as counsel for the certified class under
7 Rule 23(g); (4) approving and ordering dissemination of the proposed class notice
8 and forms pursuant to the Notice Plan set forth in the Settlement Agreement; and (5)
9 scheduling a Final Approval Hearing.

10 **III. OVERVIEW OF THE LITIGATION AND PROPOSED SETTLEMENT**

11 **A. The Litigation**

12 This consolidated litigation is a result of two putative class actions—*Lewis, et*
13 *al. v. Green Dot Corporation*, No. 2:16-cv-03557 (C.D. Cal.), and *Crook v. Green Dot*
14 *Corporation*, No. 2:16-cv-04172 (C.D. Cal.). Plaintiffs Jason Lewis, Danielle Hall,
15 and JC Montgomery filed the *Lewis* complaint on May 22, 2016 and alleged that
16 Defendants’ conduct constituted negligence, unjust enrichment, breach of contract,
17 conversion, and violations of California consumer protection statutes. (*See Lewis*
18 *Action*, ECF No. 1.) Plaintiff Kathleen Crook filed her suit on June 10, 2016 and
19 asserted materially similar claims as the *Lewis Action*. (*See Crook Action*, ECF No.
20 1). On July 14, 2016, the Court consolidated the *Lewis* and *Crook* Actions. (*See*
21 *Lewis Action*, ECF No. 63).

22 After the Court consolidated the actions, Class Counsel coordinated their
23 resources and expertise to effectively and efficiently prosecute this case. Class
24 Counsel continued to communicate with other affected Cardholders to further
25 investigate the Service Disruption and its effects, researched and evaluated potential
26 claims, and strategized on types of relief suitable for the Class.

1 On September 9, 2016, Plaintiffs Jason Lewis, Danielle Hall, and Justin
2 Thornton² filed a consolidated complaint on behalf of all Cardholders affected by the
3 Service Disruption. Named Plaintiffs alleged that Defendants' failure to make their
4 money available to them violated the California False Advertising Act, Cal. Bus. &
5 Prof. Code § 17500, *et seq.*, and the California Unfair Competition Law, Cal. Bus. &
6 Prof. Code § 17200, *et seq.*, and constituted negligence, unjust enrichment, breach of
7 contract, conversion, and breach of bailment contract. (*See* Lewis Action, ECF No.
8 70).

9 **B. Settlement Negotiations**

10 On July 15, 2016, counsel for the Parties participated in a full-day meeting in
11 Los Angeles to exchange information on the parties' respective positions as to the
12 facts and the law underlying the litigation, including the cause of the Service
13 Disruption, the consequences of the Service Disruption on Cardholders, the size of
14 the proposed Class, and the strengths and weaknesses of the allegations in support of,
15 and defenses to, the litigation, including the applicability of the arbitration clause
16 contained in the Cardholder Agreement. (SA § I.H.) Counsel for the Parties also
17 discussed a possible framework for resolving the matter in light of the information
18 relevant to the allegations of the litigation. (SA § I.I.)

19 Over the following eleven weeks, counsel for the Parties continued settlement
20 discussions via multiple telephone conferences, and exchanged proposals and
21 counter-proposals regarding Class relief. (*Id.*) On October 6, 2016, the Parties
22 reached an agreement in principle with regard to the material terms of the proposed
23 settlement, as memorialized in the original Settlement Agreement. (*Id.*) The Parties
24 did not discuss attorneys' fees, costs, and expenses prior to reaching a final
25 agreement on relief for the Settlement Class, service awards for Class
26

27 ² The information exchanged between counsel for the Parties confirmed that JC
28 Montgomery and Kathleen Crook were not affected by the Service Disruption as they
believed and they elected not to proceed as class representatives.

1 Representatives, and the remaining material terms of the proposed settlement. (SA §
2 I.M.) On October 7, 2016, the Parties executed a settlement term sheet which
3 memorialized all the essential terms of the Parties' settlement. (SA § I.N.) The
4 Parties worked diligently together in preparing the settlement papers and a
5 comprehensive notice program.

6 After hearing the Court's concerns raised during the preliminary approval
7 hearing on January 12, 2007, counsel for the Parties renewed settlement negotiations
8 via telephone conferences, and exchanged multiple proposals and counter-proposals
9 regarding amendments to the Settlement. On February 13, 2017, the Parties executed
10 an amended settlement agreement.

11 **C. Overview of the Proposed Settlement**

12 **1. The Proposed Settlement Class**

13 The Settlement contemplates relief for the following proposed Settlement
14 Class:

15 All cardholders, as identified in Green Dot Defendants' business
16 records, who attempted to and were unable to use their Green Dot-
17 issued, MasterCard-processed cards to access or spend their account
18 funds from May 15, 2016 through May 22, 2016 as a result of the
19 Service Disruption.

20 (SA, § III.1.) Excluded from the Settlement Class are the Court, the officers and
21 directors of Defendants, persons who have been separately represented by an attorney
22 and entered into a separate settlement agreement, and persons who timely and validly
23 request exclusion from the Settlement Class. (*Id.* at § III.2)

24 **2. Settlement Relief**

25 The valuable benefits made available pursuant to the Settlement squarely
26 address the issues raised in the litigation and provide significant relief to the
27 Settlement Class Members.

1 **Initial Fee Holiday and \$50 Account Credit:** Without requiring Court
2 approval, Defendants provided two benefits to compensate some Settlement Class
3 Members for inconveniences and losses as a result of the Service Disruption. Most
4 Settlement Class Members with an active Green Dot account received a two-month
5 Fee Holiday. (SA § IV.1(a).) During this period, these Settlement Class Members
6 were not assessed any monthly maintenance fees on their Green Dot accounts. (*Id.*) As
7 explained in the accompanying declaration of Teresa Watkins, most Settlement Class
8 Members with an active Green Dot account also received a \$50 credit to their account.
9 (SA § IV.1(b).)

10 **Additional Tiered Relief:** Defendants have agreed to provide the following
11 additional relief to the Settlement Class:

12 **Tier 1 Claims – Fee Holiday Extension:** Each Settlement Class Member will
13 be entitled to a one-month extension of the Fee Holiday that Green Dot previously
14 provided. Settlement Class Members will not be required to submit Claim Forms in
15 order to receive compensation based on Tier 1 Claims. (SA § IV.2(a).)

16 In addition to receiving benefits under Tier 1, Settlement Class Members may
17 make a claim under either Tier 2 or Tier 3 to receive cash payments for losses incurred
18 as a result of the Service Disruption, provided they meet the requirements described in
19 the Settlement Agreement

20 **Tier 2 Claims – Payments for Losses Without Documentation:** Settlement
21 Class Members who attempted to and were unable to use their Prepaid Cards to access
22 or spend their account funds from May 15, 2016 through May 22, 2016 as a result of
23 the Service Disruption and suffered a loss as a result may submit a Claim Form
24 without supporting documents to receive a payment of up to \$100. (SA § IV.3(a).)
25 Tier 2 payments will be reduced by any prior payments Settlement Class Members
26 already received from Green Dot as restitution for the Service Disruption (e.g., \$50
27
28

1 account credit and individual compensation provided by Green Dot³), other than the
 2 Fee Holiday. (SA § IV.3(b).) Defendants have agreed to pay up to \$2 million to
 3 satisfy valid Tier 2 claims. (SA § IV.3(c).) If the amount of valid Claims exceeds
 4 \$2,000,000, all Tier 2 payments will be reduced on a *pro rata* basis. (*Id.*) If the
 5 amount of valid Claims is less than \$2,000,000, the difference between the claimed
 6 amount and the Tier 2 Maximum shall be made available to expand the Tier 3
 7 Maximum as described below. (SA § IV.3(a).)

8 **Tier 3 Claims – Payment for Substantiated Losses: Settlement Class**

9 Members who were unable to use their Prepaid Cards to access or spend their account
 10 funds as a result of the Service Disruption and suffered loss may submit a Claim Form
 11 with documents to substantiate their losses to receive a payment of up to \$750. (SA §
 12 IV.4(a).) Tier 3 payments will be reduced by any prior payments Settlement Class
 13 Members already received from Green Dot as restitution for the Service Disruption,
 14 other than the Fee Holiday. (SA § IV.4(b).) Defendants have agreed to pay up to \$1.5
 15 million to satisfy valid Tier 3 claims. (SA § IV.4(c).) Should the total value of valid
 16 Tier 3 claims exceed \$1.5 million plus the rollover from Tier 2, then all payments will
 17 be reduced on a *pro rata* basis. (*Id.*)

18 **Minimum Contribution:** If the total value of valid Tier 2 and Tier 3 claims
 19 combined is less than \$1.5 million, then the difference between the Minimum
 20 Payment and the amounts to be paid to Settlement Class Members for Tier 2 and Tier
 21 3 claims shall be distributed to one or more *cy pres* recipients approved by the Court.

22 **Claims Verification Process:** These Tier 2 and Tier 3 Claims will be subject
 23 to a two-part verification process described below. (SA § IV.4(a).) Any Tier 3 Claims

24 ³ In the wake of the Service Disruption, some Settlement Class Members reached out
 25 to Green Dot seeking compensation for their losses. Green Dot reviewed and resolved
 26 those claims on an individual basis. Green Dot paid approximately \$1.1 million
 27 through these individualized courtesy credits to Settlement Class Members. *See*,
 28 Supp. Decl. of Teresa Watkins, Exhibit 3. Any such payments received by Settlement
 Class Members will be offset against a Tier 2 or Tier 3 claim made pursuant to the
 Settlement.

1 that are not supported by sufficient documentation will be reclassified and processed
2 as Tier 2 Claims. (SA § IV.5(a).)

3 Settlement Class Members do not have to submit any Claim Form or
4 documents to receive benefits under Tier 1. (SA § IV.6(a).) To receive cash payment
5 under Tiers 2 and 3, however, Settlement Class Members must submit a valid Claim
6 Form by the Claims Deadline. (SA § IV.6(b).) Under both Tiers, Settlement Class
7 Members must submit, under penalty of perjury, an explanation as to what losses they
8 incurred as a result of the Service Disruption. (*Id.*) Green Dot will confirm,
9 according to its business records, that the Settlement Class Member held a Prepaid
10 Card at the time of the Service Disruption, attempted to and was unable to access or
11 spend their account funds as a direct result of the Service Disruption, and was issued
12 notice of this Settlement. (*Id.*) To receive payment under Tier 3, Settlement Class
13 Members must also submit Reasonable Documentation to support their losses. (SA §
14 IV.6(d).) Any Tier 3 Claim submitted without Reasonable Documentation shall be
15 processed as a Tier 2 Claim. The on-line Claim Form will be coded such that a Claim
16 cannot be submitted electronically without all of the required information in order to
17 reduce deficiencies in submissions.

18 **3. Notice to the Class**

19 The Settlement provides a comprehensive notice program developed with the
20 assistance of Epiq Systems, a firm that specializes in settlement administration and
21 development of class action notice plans The Notice Program has two components: (1)
22 Mail Notice and (2) Notice on the Settlement Website. The proposed Notices are
23 reasonably calculated to inform potential Class members of the Settlement, and are the
24 best practicable methods under the circumstances. Green Dot, through its business
25 records, is able to identify which holders of accounts included in the Wave Three
26 Conversion experienced a disruption in service.

27 The Notices, jointly drafted and approved by the Parties, provide Settlement
28 Class Members with all required information so that each member may make an

1 informed decision regarding participation in the Settlement. The Notices will include,
2 among other information: information regarding the nature of the lawsuit; a
3 description of the material terms of the Settlement; the class definition; the deadline
4 by which Settlement Class Members must submit Request for Exclusion Forms or
5 objections; the date upon which the Final Approval Hearing will occur; the address of
6 the Settlement Website at which Settlement Class Members may access this
7 Agreement; the telephone number of the Settlement Administrator if additional
8 information is needed; and other related documents and information. The Notices will
9 also advise that the Claim Form will be available online for electronic submission or
10 download or by contacting the Settlement Administrator for a paper copy.

11 **Direct Mail Notice.** Within 30 days after the Court preliminarily approves the
12 Settlement (the “Notice Deadline”), the Settlement Administrator will mail notice of
13 the Settlement to all Settlement Class Members at the address on file in Green Dot’s
14 business records. For any mailed notices that are returned undeliverable and where a
15 forwarding address is available, the Settlement Administrator will re-mail the notice to
16 the forwarding address. For any mailed notices that are returned undeliverable
17 without a forwarding address, the Settlement Administrator will use reasonable efforts
18 to identify updated mailing addresses, such as running the mailing address through the
19 National Change of Address Database, and re-mail the notice to the extent updated
20 addresses are identified. The Settlement Administrator will make one attempt to re-
21 mail any Mail Notices that are returned as undeliverable. This method was negotiated
22 by the Parties to maximize the Settlement Class Member response rate while ensuring
23 cost effective administration of the Settlement.

24 **Settlement Website.** The Settlement Administrator will also create a website
25 dedicated to this Settlement, which will be public by the Notice Deadline, for the
26 purposes of disseminating information and details on the Settlement, filing a Claim,
27 opting out of the Settlement, objecting to the Settlement, deadlines related to the
28 Settlement, pleadings, and other information relevant to Settlement Class Members.

1 The website will make available to Settlement Class Members the Short Form Notice,
2 Long Form Notice, Claim Form, and opt-out form approved by the Court. Settlement
3 Class Members will be able to file Tier 2 and Tier 3 claims electronically on the
4 website. Settlement Class Members will also be able to download and print a Claim
5 Form from the website. Further, the Settlement Administrator will maintain a toll-free
6 number where Settlement Class Members can obtain additional information and
7 request mailed claim forms.

8 **4. Opt-Out and Objection Procedures**

9 Settlement Class Members may exclude themselves from the Settlement by
10 completing and mailing the proposed opt-out form to the Settlement Administrator,
11 postmarked no later than 75 days after the Notice Deadline. (SA § VII.3.) Settlement
12 Class Members may also object to the Settlement, and Class Counsel's request for
13 attorneys' fees, costs and expenses, and Service Awards. To do so, a Settlement Class
14 Member cannot opt out of the Settlement, and must submit the objection in writing
15 electronically or by mail to Court as identified in the notice, postmarked no later than
16 75 days after the Notice Deadline. (*Id.* § VII.4.) The objection must set forth, among
17 other things, (a) the case name; (b) the objector's name, address, Prepaid Card account
18 number, and telephone number; (c) explanation of membership in Settlement Class;
19 (d) grounds for objection; and (e) identity of representing counsel, if any. (*Id.*)

20 **5. Administrative Costs**

21 Defendants will pay the costs associated with providing notice to the Settlement
22 Class and costs associated with administering the Settlement, including the costs of
23 the Settlement Administrator. (SA §§ VI.3, VII.8.) The parties estimate such costs to
24 be approximately \$145,350, which will be paid separately by Defendants and will not
25 reduce the relief provided for the Settlement Class. (*Id.*)

26 **6. Attorney Fees, Costs, and Service Awards**

27 After reaching initial agreement on benefits to Settlement Class Members, the
28 parties separately negotiated Class counsel's claims for attorney fees, costs and

1 reimbursement of litigation expenses, as well as the Class Representatives' service
2 awards. (SA § I.M.) Class Counsel will apply to the Court for an award of no more
3 than \$750,000 in attorneys' fees, costs and expenses. Defendants have agreed to pay
4 any attorneys' fees, costs and expenses awarded by the Court, not to exceed \$750,000,
5 separately from the relief obtained for the Settlement Class. Class Counsel will also
6 apply for service awards of no more than \$500 for each of the Named Plaintiffs in
7 recognition of the commitment and effort they have contributed to the litigation for
8 the benefit of the Settlement Class. Defendants have also agreed to pay any service
9 awards approved by the Court, not to exceed \$500 per Named Plaintiff, separate from
10 the relief for the Settlement Class. In sum, any award of attorneys' fees, costs and
11 expenses and service awards will not reduce the benefits secured for the Class. (*Id.* at
12 § X.1-2.). By no later than 21 days before the deadline to object to the Settlement,
13 Class Counsel will submit to the Court a detailed memorandum seeking attorneys'
14 fees, costs and expenses pursuant to Section X of the Settlement Agreement.

15 **7. Release**

16 In exchange for the benefits provided under the Settlement, Settlement Class
17 Members will release Defendants and related entities from all known claims related to
18 the alleged claims or events in the Actions, the Amended Consolidated Complaint or
19 the Service Disruption as more fully described in the Settlement Agreement. (SA §
20 IX.) Under the guidance of the Court, the parties have narrowed the Release,
21 removing the California Section 1542 waiver. The Released Claims do not include
22 any claims arising from or relating to any conduct by Defendants after the date the
23 Settlement Agreement is executed. (*Id.*)

24
25 //
26 //
27 //
28 //

1 **IV. ARGUMENT**

2 **A. The Settlement Merits Preliminary Approval**

3
4 Federal Rule of Civil Procedure 23(e) requires that any compromise of claims
5 brought on a class basis be subject to judicial review and approval. The approval
6 process typically takes place in two stages. For the first stage, a court preliminarily
7 approves the settlement pending a fairness hearing, certifies the class for settlement
8 purposes and authorizes notice to be given to the settlement class. *Manual for*
9 *Complex Litigation (Fourth)* §21.632 at 320 (2004). Once the class has received
10 notice and has an opportunity to comment on the settlement, the court then holds a
11 final settlement hearing. *Id.* §21.633 at 321-22.

12 The purpose of preliminary approval is to afford the Court an opportunity to
13 review the proposed settlement before the parties engage in the costly and time-
14 consuming process of disseminating class notice. *See Newberg on Class Actions*
15 §13:10 (5th ed.). Preliminary approval affords the proposed settlement a presumption
16 of fairness at the final approval stage. *In re Tableware Antitrust Litig.*, 484 F. Supp.
17 2d 1078, 1080 (N.D. Cal. 2007). Courts within the Ninth Circuit use a “two-step
18 process in which the Court first determines whether a proposed class action settlement
19 deserves preliminary approval and then, after notice is given to class members,
20 whether final approval is warranted.” *Nat’l Rural Telecomms. Coop. v. DirecTV, Inc.*,
21 221 F.R.D. 523, 525 (C.D. Cal. 2004).

22 At the preliminary approval stage, a court determines whether a proposed
23 settlement “(1) appears to be the product of serious, informed, non-collusive
24 negotiations; (2) falls within the range of possible approval; (3) does not improperly
25 grant preferential treatment to class representatives or segments of the class; and (4)
26 has no obvious deficiencies.” *Spann v. J.C. Penney Corp.* (“*Spann I*”), 314 F.R.D.
27 312, 319 (C.D. Cal. 2016) (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198
28 EMC, 2011 WL 1627973, at *7 (N.D. Cal. 2011)). The Named Plaintiffs respectfully

1 submit that each of these requirements are met here and that the proposed Settlement
2 merits Court approval.

3 **1. The Settlement is the Product of Serious, Informed, and Non-**
4 **Collusive Negotiations Between Experienced Counsel**

5 As a starting point, the Court should assure itself the settlement was not the
6 product of collusion among the negotiating parties. *Churchill Vill., L.L.C. v. Gen.*
7 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *In re Bluetooth Headset Products Liab.*
8 *Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). When a settlement is “the product of an
9 arms-length, non-collusive, negotiated resolution . . . courts afford the parties the
10 presumption that the settlement is fair and reasonable.” *Spann I*, 314 F.R.D. at 324
11 (internal quotations and citation omitted). However, as noted in *In re Bluetooth*,
12 where a settlement is negotiated before formal class certification, the Court must
13 consider whether there is evidence of collusion or other conflicts of interest. *In re*
14 *Bluetooth*, 654 F.3d at 947. Courts must be “particularly vigilant not only for explicit
15 collusion, but also for more subtle signs that class counsel have allowed pursuit of
16 their own self-interests and that of certain class members to infect the negotiations.”
17 *Id.* In this instance, neither the process in negotiating the settlement nor the settlement
18 terms indicate a collusive deal.

19 Counsel for the Named Plaintiffs are greatly experienced in litigating and
20 resolving consumer class actions, and have developed a strong understanding of the
21 strengths and weaknesses present in such cases and what type of settlement might be
22 fair, reasonable, and adequate under the circumstances. (Supplemental Declaration of
23 John A. Yanchunis, attached hereto as Exhibit 2.) This experience includes achieving
24 final approval of a class action settlement involving a similar service disruption
25 experienced by RushCard prepaid debit cardholders in *Fuentes v. UniRush, LLC*,
26 Final Approval Order, No. 1:15-cv-08372 (S.D.N.Y. Sept. 12, 2016), ECF No. 49.
27 The “involvement of experienced class action counsel” supports the presumption that
28 a settlement is fair. *Linney v. Cellular Alaska P’ship*, Nos. C-96-3008 DLJ, *et al.*,

1 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997) (citations omitted); *see also In re*
2 *Am. Apparel, Inc. S'holder Litig.*, No. CV 10-06352 MMM (JCGx), 2014 WL
3 10212865, at *8 (C.D. Cal. July 28, 2014).

4 Although formal discovery did not occur, the Parties exchanged a substantial
5 amount of information through an informal process. As reflected in the Supplemental
6 Declaration of Teresa Watkins, attached as Exhibit 3, Defendants were forthcoming
7 with information related to the preparation for the processor conversion, the technical
8 issues arising from the conversion and the identification of Class members. The
9 auditing conducted by Defendants during the conversion allowed Defendants to
10 quickly identify which individual accounts were affected and how. The information
11 shared through this informal process provided a sound basis that allowed the Parties to
12 weigh the terms of the Settlement against the risks of continued litigation.

13 In addition, the settlement terms are favorable to the Class and meet the
14 demands in the Consolidated Complaint. (ECF No. 70 at 22-23.) In contrast to
15 *Bluetooth* where the class received no monetary award, here all Class members will
16 receive monetary relief. All Class members will receive monetary benefits under Tier
17 1 of the Settlement and Class members with losses may elect to file a claim under Tier
18 2 or Tier 3 for additional monetary relief. (SA § IV.2(a) – 4(a).) These terms strongly
19 suggest that Class benefits were not traded for individual benefits. *See Hendricks v.*
20 *Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, at *10 (N.D. Cal. Sept. 29,
21 2016) (“the favorable nature of the settlement . . . negates any collusion concerns.”).

22
23 **2. The Settlement has no Obvious Deficiencies and Falls Within
the Range of Possible Approval.**

24 In determining whether a settlement falls within the range of possible judicial
25 approval, courts “consider plaintiffs’ expected recovery balanced against the value of
26 the settlement offer.” *Tableware*, 484 F. Supp. 2d at 1080. “Of course, the very
27 essence of a settlement is compromise, a yielding of absolutes and an abandoning of
28 highest hopes.” *Officers for Justice v. Civil Serv. Comm’n of the City & Cnty. Of S.F.*,

1 688 F.2d 615, 624 (9th Cir. 1982) (internal quotations omitted). “Nevertheless, there
2 exists the risk that the interests of some class members may be sacrificed in the effort
3 to achieve the greatest good for the greatest number.” *Id.* (internal quotations
4 omitted).

5 The proposed Settlement provides immediate and significant benefits for
6 Settlement Class Members that they otherwise may not receive. The proposed
7 Settlement would provide Settlement Class members with virtually everything
8 Plaintiffs asked for in the Consolidated Complaint. Settlement Class Members with
9 active Green Dot accounts at the time of these disbursements already received more
10 than \$3,300,000 through a two-month fee holiday and a \$50.00 courtesy credit to their
11 Green Dot accounts; moreover, some cardholders who contacted Green Dot regarding
12 their specific losses received individualized courtesy credits totaling up to \$1,100,000.
13 If approved by the Court, Settlement Class Members will automatically receive a one-
14 month period during which they will not be assessed any fees on their Prepaid Card,
15 and up to \$3.5 million for reimbursement of actual losses arising from the Service
16 Disruption. (SA § IV.3-4.).

17 In evaluating the Settlement, it is of course relevant to consider that amount that
18 Settlement Class Members will recover individually. Settlement Class Members with
19 an active Green Dot account previously received a two-month Fee Holiday, during
20 which they were not assessed any monthly maintenance fees. Settlement Class
21 Members now will be entitled to an additional one-month Fee Holiday. The monthly
22 maintenance fee for the affected Prepaid Cards fell between a range of \$3.00 - \$7.95.
23 Additionally, Settlement Class Members who had an active Green Dot account from
24 the end of May 2016 through mid-June 2016 each received a credit to their account in
25 the amount of \$50.00. If approved by the Court, Settlement Class Members may file a
26 claim for reimbursement of financial or other losses suffered as a result of the Service
27 Disruption. Settlement Class Members who do not wish to submit supporting
28 documentation but only to attest to having losses will be eligible for a payment of up

1 to \$100.00 subject to the offsets described above and in the Settlement Agreement.
2 Settlement Class Members who provide reasonable documentation of such losses will
3 be eligible for a payment of up to \$750.00 subject to the offsets described above and
4 in the Settlement Agreement.

5 The forms of “discernible benefits” provided under the Settlement to Class
6 Members “achieve the primary objective of the lawsuit” and weighs in favor of
7 approving the settlement. *See Ko v. Natura Pet Prods., Inc.*, No. C 09-02619 SBA,
8 2012 WL 3945541, at *4 (N.D. Cal. Sept. 10, 2012); *see also Stern v. Superior Court*,
9 129 Cal. Rptr. 2d 275, 282 (Cal. Ct. App. 2003).

10 If the parties had been unable to resolve this case through settlement, the
11 litigation would likely have been protracted and costly. Although the Named
12 Plaintiffs and Class Counsel believe that the claims asserted are meritorious,
13 continued litigation against Defendants posed significant risks that made any recovery
14 uncertain. At the outset, continued litigation of this matter would require the Court to
15 resolve two separate threshold questions concerning the viability of certifying the
16 proposed Class. First, the Court would have to decide the question of the arbitrability
17 of the Plaintiffs’ claims. Defendants have maintained that this provision should be
18 enforced and that all claims should be submitted to individual arbitration proceedings.
19 A victory by Defendants would have likely ended any relief being made available to
20 any one class member as it is highly improbable that any class member would have
21 pursued their claims in arbitration based on the amount of any one class member’s
22 claim and the costs of the arbitration. Second, should this Court find that Plaintiffs’
23 claims are not subject to arbitration, the Court would have to turn to the question of
24 class certification and Defendants’ contention that individualized factual inquiries and
25 damages and legal variation among the laws of the states would preclude class
26 certification. “Even if plaintiff[s] were to prevail at trial, there is a real risk that
27 plaintiff[s] could recover nothing.” *Spann I*, 314 F.R.D. at 327.

28

1 In light of these difficult issues, the monetary benefits of the Settlement are
2 appropriate and the timing in which the benefits will be provided is significant. Class
3 members will receive benefits without taking any action; Defendants have paid or will
4 pay those benefits automatically and immediately. Further, Settlement Class
5 Members can receive compensation for losses without having the burden of providing
6 any documentation to support their damages. Settlement Class Members with more
7 significant losses may file supporting documentation to seek greater relief.

8 The proposed Settlement is also well within the range of settlements approved
9 in other consumer class actions. In *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15-
10 cv-08372 (S.D.N.Y), the court granted final approval of a settlement that is
11 substantially similar to the proposed Settlement here. The *Fuentes* matter involved
12 similar claims arising from a service disruption of RushCard prepaid debit card
13 services during a processing conversion to MasterCard. In granting final approval of
14 the RushCard settlement, the court found that the “[s]ettlement reflects an outstanding
15 result for the Class in a case with a high level of risk.” Final Approval Order 5, ECF
16 No. 49 (S.D.N.Y. Sept. 12, 2016).

17 While there are striking similarities between *Fuentes* and the present matter,
18 there are stark differences that highlight the more favorable benefits that Class
19 members are receiving under the presently proposed Settlement. The RushCard
20 service disruption was the result of technical issues during a system-wide conversion
21 that led to all RushCard account holders losing account access for different lengths of
22 time. In the present matter, the Service Disruption, which was much more limited than
23 what occurred in *Fuentes*, was due to various technical issues arising during one wave
24 of conversion that had varying effects on a minority percentage of Green Dot
25 cardholders.

26 Similar to the presently proposed settlement, the RushCard settlement provided
27 class members with tiered reimbursements for losses related to the service disruption.
28 Class members who submitted reasonable documentation were eligible to receive

1 payment of up to \$500, and class members who did not submit documentation were
2 eligible to receive payment of up to \$100. The proposed Settlement in the present
3 matter increases the maximum limit for documented losses to \$750 per Class member.

4 In *Fuentes*, the parties negotiated a \$6,500,000 maximum settlement
5 contribution to resolve claims for approximately 400,000 class members. In
6 comparison, the parties in the present matter have negotiated a \$3,500,000 maximum
7 settlement contribution to resolve claims for approximately 58,600 class members.

8 Additionally, the proposed Settlement provides a minimum settlement
9 contribution of \$1,500,000 for Tier 2 and 3 claims combined, a term that was not part
10 of the RushCard settlement. This minimum is additional to the amounts already paid
11 to Settlement Class Members and the amount to be paid under Tier 1 of the proposed
12 Settlement. In evaluating the adequacy and reasonableness of this minimum
13 contribution, the Parties had the benefit of the claims information from the RushCard
14 settlement. For the Tier 2 and 3 benefits in that settlement, 35,334 claims were paid
15 for a total of \$3,439,768.64. (Declaration of John A. Yanchunis.) Based upon that
16 claims rate (approximately 8.3%) and average claim value, the guaranteed minimum
17 of \$1,500,000 is well above any reasonable projection for the total of Tier 2 and 3
18 claims to be made in the presently proposed settlement. Indeed, the parties were
19 guided by their experiences in the *Fuentes* case in determining Tier 2 and Tier 3 caps
20 that were adequate, fair, and reasonable. Moreover, settlements with the structure of
21 this proposed settlement—a minimum guaranteed payment, together with a maximum
22 payment—have been approved by courts in this Circuit. *See, e.g.,* Order, *Vanwagoner*
23 *v. Siemens Indus., Inc.*, No. 2:13-cv-01303-KJM-EFB, Dkt. No. 38 (E.D. Cal. Dec.
24 17, 2014) (approving a settlement agreement that contained both a cap and a de facto
25 floor on total class member payments); Order Granting Plaintiffs’ Motion for Final
26 Settlement Approval, *Vandervort v. Balboa Capital Corp.*, No. SACV 11-1578-JLS
27 (JPRx), Dkt. No. 126 (C.D. Cal. Mar. 27, 2014) (approving an agreement that
28 provided for a maximum and minimum total payout).

1 The proposed total Settlement value of up to \$8,100,000 (including the more
2 than \$3.3 million already provided through the Fee Holiday and Courtesy Credit, the
3 additional \$1.1 million in individualized courtesy credits (understanding that a portion
4 of these monies went to individuals represented by counsel and, thus, fall outside the
5 class definition), the expected \$250,000 value for Tier 1 awards, and the range of
6 \$1.5–3.5 million for Tier 2 and Tier 3 claims) is substantial by any measure and
7 certainly falls within a range of possible approval. This is particularly true given the
8 real and substantial risk that Plaintiffs could have recovered nothing if litigation had
9 continued due to the arbitration provision in the Cardholder Agreement and the proof
10 of damages that could be recovered in this case not being certain.

11
12 **3. The Settlement Does Not Improperly Grant Preferential
13 Treatment to Class Representatives or Segments of the Class.**

14 Next, the Court should examine whether the Settlement Agreement provides
15 preferential treatment to any class member. This analysis turns, among other things,
16 on whether there is any disparity among what Class members are poised to receive
17 and, if so, whether the settlement “compensates class members in a manner generally
18 proportionate to the harm they suffered on account of [the] alleged misconduct.”
19 *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8
20 (N.D. Cal. July 24, 2015); *accord G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ,
21 2015 WL 4606078, at *14 (N.D. Cal. July 30, 2015) (analyzing whether the
22 settlement singles out particular class members or whether it instead “appears
23 uniform”).

24 Here, Plaintiffs are seeking certification of a single class and all members of the
25 proposed class are entitled to the same benefits. All Settlement Class Members who
26 do not exclude themselves from the Settlement will be automatically provided the Fee
27 Holiday Extension. All Settlement Class Members will additionally be eligible to
28 submit claims for payment under Tier 2 or Tier 3. The dollar amounts of these
reimbursements may vary, but those differences reflect the differing amounts of losses

1 that Settlement Class Members incurred as a result of the Service Disruption. Thus,
2 each Settlement Class Member who submits a valid claim will be paid proportionate
3 to the harm they suffered.

4 The Settlement Agreement authorizes a Service Award for each Named
5 Plaintiff, in an amount to be determined by the Court but not to exceed \$500, in
6 recognition for the services they performed on behalf of the entire class that resulted
7 in the Settlement. (SA § I.M.) If approved by the Court, these Service Awards will
8 be paid by Defendants separately from the relief obtained for the Settlement Class.
9 Thus, the Service Awards will have no bearing on Class Relief.

10 In evaluating whether the Settlement grants preferential treatment to Plaintiffs,
11 the Court may consider whether there is a “significant disparity between the incentive
12 award[] and the payments to the rest of the class members” such that it creates a
13 conflict of interest. *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165
14 (9th Cir. 2013). More important considerations, however, are “the number of class
15 representatives, the average incentive award amount, and the proportion of the total
16 settlement that is spent on incentive awards.” *Staton v. Boeing, Co.*, 327 F.3d 938, 977
17 (9th Cir. 2003).

18 Any Service Awards requested for the Named Plaintiffs will not be
19 “unreasonably large and thus unfair.” *In re Online DVD-Rental Antitrust Litig.*, 779
20 F.3d 934, 947 (9th Cir. 2015). Rather, the Service Awards contemplated here are
21 much lower than “typical incentive awards in the Ninth Circuit, where \$5,000 is
22 presumptively reasonable.” *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST,
23 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016); *see also Online DVD-Rental*, 779
24 F.3d at 947-48 (affirming incentive awards of \$5,000 to each of nine class
25 representatives). The amount requested is appropriate given the time, effort and risk
26 of each Named Plaintiff’s participation in this action. *See*, Declarations of Named
27 Plaintiffs, attached hereto as composite Exhibit 4.

28

1 Critically, the Settlement is not conditioned on the Court’s approval of the
2 Service Awards. *See Spann I*, 314 F.R.D. at 328-29 (“because the parties agree that
3 the Settlement Agreement shall remain in force regardless of any service awards, the
4 awards here are unlikely to create a conflict of interest between the named plaintiffs
5 and absent class members.”). Accordingly, the Named Plaintiffs’ interests did not
6 conflict with or diverge from the interests of the Settlement Class. *Radcliffe*, 715 F.3d
7 at 1161.

8
9 **C. The Court Should Certify the Settlement Class**

10 **1. The Settlement Class Meets The Requirements of Rule 23(a).**

11 In connection with granting preliminary approval, the Court should also
12 confirm that the proposed settlement class meets the requirements of Rule 23. *See*
13 *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex
14 Litigation, § 21.632. The prerequisites for class certification under Rule 23(a) are (1)
15 numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation, each
16 of which is satisfied here. Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.*, 150 F.3d
17 1011, 1019 (9th Cir. 1998).

18 The proposed Settlement Class, set forth above, encompasses thousands of
19 Settlement Class Members and thus readily satisfies the numerosity requirement. *See*
20 *Hanlon*, 150 F.3d at 1019 (“The prerequisite of numerosity is discharged if ‘the class
21 is so numerous that joinder is impracticable.’”); *Nguyen v. Radiant Pharm. Corp.*, 287
22 F.R.D. 563, 569 (C.D. Cal. 2012) (finding that a “class of at least forty members
23 presumptively satisfies the numerosity requirement”).

24 The proposed Settlement Class also satisfies the commonality requirement of
25 Rule 23(a), which requires that class members’ situations “share a common issue of
26 law or fact, and [be] sufficiently parallel to insure a vigorous and full presentation of
27 all claims for relief.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172
28 (9th Cir. 2010). Each of the Settlement Class Members held Prepaid Cards during the

1 Service Disruption, and their legal claims involve the same Service Disruption. The
2 common issues that their claims share include, but are not limited to, (i) whether
3 Defendants breached their contracts with Plaintiffs and the Settlement Class, (ii)
4 whether Defendants owed duties to Plaintiffs and the Settlement Class Members and
5 whether those duties were breached, (iii) whether Defendants’ conduct was unfair or
6 unlawful; and (iv) whether Plaintiffs and the Settlement Class Members suffered
7 damages as a result of the Service Disruption. *See* ECF No. 70, ¶ 60.

8 The final requirements of Rule 23(a)—typicality and adequacy—are satisfied
9 by the proposed representative Plaintiffs. Like the other members of the Class,
10 Named Plaintiffs each had Prepaid Cards during the Service Disruption, and suffered
11 the same or similar alleged injury—namely, they were denied access to their funds.
12 *See Wolin*, 617 F.3d at 1175 (“Typicality can be satisfied despite different factual
13 circumstances surrounding the manifestation of the defect.”). In addition, Named
14 Plaintiffs are adequate class representatives with no conflicts of interest and are
15 represented by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020.

16 **2. The Settlement Class Meets The Requirements Of Rule**
17 **23(b)(3).**

18 “In addition to meeting the conditions imposed by Rule 23(a), the parties
19 seeking class certification must also show that the action is maintainable under Fed. R.
20 Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, the proposed class is
21 maintainable under Rule 23(b)(3), as common questions predominate over any
22 questions affecting only individual members and class resolution is superior to other
23 available methods for a fair resolution of the controversy. *Id.* Settlement Class
24 Members’ claims depend primarily on whether Defendants are liable for the Service
25 Disruption, and thus raise just the sort of predominantly common questions courts
26 have found to justify class treatment. *See, e.g., Spann I*, 314 F.R.D. at 322 (finding
27 predominance met when conduct at issue is focused primarily on defendant’s actions
28 and not on individual plaintiffs); *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 650-51
(C.D. Cal. 1996) (observing “defendant’s argument ignores the fact that plaintiffs’

1 claims actually focus on defendant’s liability and defendant’s conduct with regard to
2 the leads . . . Thus, because defendant’s conduct with regard to the leads—and, hence,
3 with regard to the plaintiffs themselves—involves questions of common fact
4 primarily, the Court finds that this factor alone does not destroy the predominance of
5 common questions.”).

6 Similarly, there can be little doubt that resolving all Settlement Class Members’
7 claims through a single class action is superior to a series of individual lawsuits.
8 “From either a judicial or litigant viewpoint, there is no advantage in individual
9 members controlling the prosecution of separate actions. There would be less
10 litigation or settlement leverage, significantly reduced resources and no greater
11 prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Finally, class proceedings here
12 would not present the sort of intractable management problems that sometimes
13 override the collective benefits of class actions, “for the proposal is that there be no
14 trial.” *Amchem*, 521 U.S. at 620.

15 **3. The Court Should Appoint Class Counsel.**

16 Plaintiffs request that the Court appoint John A. Yanchunis of Morgan &
17 Morgan Complex Litigation Group as Lead Class Counsel, and as Class Counsel,
18 Richard D. McCune and Joseph G. Sauder of McCune Wright Arevalo LLP; Jean
19 Sutton Martin of Law Office of Jean Sutton Martin PLLC; and Daniel C. Girard and
20 Linh G. Vuong of Girard Gibbs LLP. In evaluating the appointment of class counsel,
21 courts must consider (i) counsel’s work in identifying or investigating claims; (ii)
22 counsel’s experience in handling the types of claims asserted; (iii) counsel’s
23 knowledge of the applicable law; and (iv) the resources counsel will commit to
24 representing the class. Fed. R. Civ. P. 23(g)(1)(A).

25 With respect to the adequacy of Class Counsel, they have invested considerable
26 time and resources into the investigation of the facts underlying the claims, including
27 the interviews of numerous class members who contacted Class Counsel, and the
28 prosecution of this action. Since the outset of this litigation, the firms have

1 cooperatively and effectively collaborated to prosecute, and ultimately resolve, this
2 case on behalf of their clients and the Class. They have performed work critical to
3 achieving benefits for the Class, including by investigating the facts surrounding the
4 Service Disruption, researching and analyzing legal claims under state and federal law
5 and common law, preparing and filing a Consolidated Complaint, participating in
6 meetings with defense counsel to discuss the parties' respective positions, negotiating
7 the proposed Settlement, and drafting this motion for preliminary approval. The
8 proposed Class Counsel firms have significant experience in similar class actions,
9 such as Mr. Yanchunis and Ms. Martin who served as co-Lead Counsel and Mr.
10 Sauder who served as Class Counsel in *Fuentes*. The firms have the experience to
11 ensure the implementation of the Settlement and the resources to resume their
12 representation of the Settlement Class. The respective firm resumes for each of the
13 attorneys seeking to be appointed Class Counsel is attached as Exhibit C to the
14 Declaration of John Yanchunis submitted herewith (as Exhibit 2).

15 **D. The Court Should Order Dissemination of Class Notice As Proposed**
16 **By the Parties**

17 **1. The Settlement Provides the Best Method of Notice Practicable**
18 **Under the Circumstances.**

19 The federal rules require that before finally approving a class settlement, “[t]he
20 court must direct notice in a reasonable manner to all class members who would be
21 bound by the proposal.” Fed. R. Civ. P. 23(e). Where the settlement class is certified
22 pursuant to Rule 23(b)(3), the notice must also be the “best notice practicable under
23 the circumstances, including individual notice to all members who can be identified
24 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

25 Notice will be directly provided by U.S. Mail to the address on file in Green
26 Dot’s business records for each Settlement Class Member. (SA § VII.2.) Appropriate
27 steps will also be taken to re-mail notices that are returned undeliverable and to locate
28 current address information through the National Change of Address Database. (*Id.*)
This proposed notice plan is designed to reach as many of the Settlement Class

1 Members as possible, and fully comports with due process under the circumstances of
2 this case. The proposed notice plan thus provides the best method of notice practicable
3 for the Class. *See, e.g., Spann I*, 314 F.R.D. at 331 (approving substantially similar
4 notice plan); *Rannis v. Recchia*, 380 F. App'x. 646, 650 (9th Cir. 2010) (finding best
5 notice practicable where reasonable efforts were taken to ascertain class members
6 addresses).

7
8 **2. The Proposed Form of Notice Adequately Informs Settlement**
9 **Class Members of Their Rights in Connection with the**
10 **Settlement.**

11 The notice provided to class members should “clearly and concisely state in
12 plain, easily understood language” the nature of the action; the class definition; the
13 class claims, issues, or defenses; that the class member may appear through counsel;
14 that the court will exclude from the class any member who requests exclusion; the
15 time and manner for requesting exclusion; and the binding effect of a class judgment
16 on class members. Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e) requires that a notice
17 describe “the terms of the settlement in sufficient detail to alert those with adverse
18 viewpoints to investigate and to come forward and be heard.” *In re DVD-Rental*, 779
19 F.3d at 946 (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Circ. 2012)).

20 The forms of notice proposed by the parties—the Mail Notice, Short Form
21 Notice and Long Form Notice—clearly comply with those requirements. Each notice
22 provides simple and straightforward information about the nature of the action, the
23 terms of the Settlement, the class definition, the underlying litigation, Defendants’
24 defenses, the fact that Settlement Class Members may appear through counsel, the
25 process for requesting exclusion from the Settlement, and the binding effect of the
26 Settlement on Settlement Class Members if they do not request exclusion from the
27 Court. (*See SA, Ex. B-D.*) Each of the notices also direct Settlement Class Members
28 to the Settlement Website for more information. While the three Notices contain

1 substantially similar information to comply with the requirements of Rule 23(e), they
2 each vary in the level of detail provided.

3 The Mail Notice is a two-page letter that will be mailed to Settlement Class
4 Members. The Mail Notice will advise the recipient that he or she has been identified
5 as a potential Class Member through Green Dot's business records. The Mail Notice
6 will also provide the Settlement Class Member a unique Claim Number to use for
7 filing a claim. This Claim Number is not required for filing a claim, but will assist the
8 Settlement Administrator in the matching of a Claim Form to the list of Settlement
9 Class Members for verification purposes.

10 The Long Form Notice is a ten-page document that provides the most detail
11 regarding the Settlement, the benefits thereunder, and the rights and options of Class
12 members. The Long Form Notice contains a three-page summary of the settlement,
13 but then provides greater detail broken down into twenty-three separate sections
14 written in question and answer format.

15 In three pages, the Short Form Notice provides a little more detail than the
16 summary found at the beginning of the Long Form Notice. The Short Form Notice is
17 written in question and answer format similar to the Long Form Notice. By both the
18 Short Form and Long Form Notices being posted on the Settlement Website,
19 Settlement Class Members will have multiple options for gathering the necessary
20 information to make an informed decision regarding participation in the Settlement.

21 Accordingly, the proposed notice program complies with the standards of
22 fairness and completeness required of a settlement notice disseminated under authority
23 of the Court.

24
25 **3. Notice of the Settlement Will Be Provided to Appropriate**
26 **Federal and State Officials.**

27 Notice of the proposed settlement will also be provided to the appropriate
28 federal and state officials as required by the Class Action Fairness Act, 28 U.S.C.

1 § 1715. (SA § V.2.) Defendants will provide these government officials with copies
 2 of all required materials so that the states and federal government may make an
 3 independent evaluation of the settlement and bring any concerns to the Court’s
 4 attention prior to final approval.

5 **E. The Selected Cy Pres Recipient Is Appropriate**

6 The Settlement provides that if an insufficient number of valid and timely
 7 claims are submitted and paid to exhaust the minimum guaranteed amount of \$1.5
 8 million, then the Defendants shall pay the difference of the Minimum Payment (\$1.5
 9 million minus the total value of valid claims filed across Tier 2 and Tier 3), to
 10 Consumer Action, subject to Court approval. (S.A. § IV.5.) The *cy pres* doctrine
 11 allows for unclaimed or non-distributable portions of a class action settlement to be
 12 distributed in a manner that still indirectly benefits the class. *See, e.g., Nachshin v.*
 13 *AOL, LLC*, 663 F.3d 1034, 1038-39 (9th Cir. 2011); *Six Mexican Workers v. Ariz.*
 14 *Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990)). A *cy pres* award must qualify
 15 as “the next best distribution” to settlement fund flowing directly to class members.
 16 *Six Mexican Workers*, 904 F.2d at 1305. Accordingly, there must be “a driving
 17 nexus” between the class and the *cy pres* recipient. *Nachshin*, 663 F.3d at 1038.

18 Consumer Action is a non-profit organization with a stated mission to
 19 “empower[] low- and moderate-income, limited-English-speaking, and other
 20 underrepresented consumers nationwide to financially prosper through education and
 21 advocacy.”⁴ For more than 40 years, Consumer Action has helped to educate and
 22 advocate for consumers in a variety of areas, including banking, credit, lending and
 23 financial services.

24 Through programs focused on financial literacy, Consumer Action has worked
 25 to educate unbanked and underbanked consumers about how to establish and use
 26 traditional banking services and make wiser banking and financial decisions.

27 _____
 28 ⁴ See, <http://www.consumer-action.org/about/articles/mission/> (last visited February
 13, 2017).

1 According to the FDIC, in 2015, 7% of U.S. households were considered “unbanked,”
 2 meaning that they are without bank accounts, and another 19.9% are “underbanked,”
 3 meaning they have bank accounts but also rely upon non-traditional banking services.⁵
 4 Additionally, between 2013 and 2015, the percentage of households that used a
 5 reloadable prepaid payment card increased from 7.9% to 9.8%.⁶ Use of prepaid
 6 payment cards is most prevalent amount underbanked households (an estimated
 7 27.1%).⁷ Thus, the Settlement Class Members are the targeted audience for the
 8 efforts of Consumer Action, making the organization an appropriate *cy pres* recipient.

9 **F. The Court Should Set a Schedule for Final Approval**

10 The next steps in the settlement approval process are to schedule a final
 11 approval hearing, notify the class of the Settlement and hearing, allow Settlement
 12 Class Members an opportunity to file any objections or comments regarding the
 13 Settlement, and allow Plaintiffs to conduct appropriate objector discovery if
 14 necessary. *See, e.g.*, Final Order and Judgment, *Milano v. Interstate Battery Sys. of*
 15 *Am., Inc.*, No. 4:10-DV-02125 (N.D. Cal. July 5, 2012) (noting that objector
 16 repudiated his objection in deposition testimony); *In Re: MagSafe Apple Power*
 17 *Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *2 (N.D. Cal. May 29,
 18 2012) (objector depositions authorized to inquire into objectors’ membership in the
 19 class and ability to post an appellate bond).

20 Toward these ends, the parties have provided the Court with a proposed order
 21 that provides for the following schedule:

22
 23 //

24
 25 ⁵ 2015 FDIC National Survey of Unbanked and Underbanked Households, available
 26 at: <https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf>, at 1 (last visited
 27 February 13, 2017).

28 ⁶ *Id.* at 6.

⁷ *Id.*

Settlement Administrator to complete mailing of class notice:	Later of 30 days after entry of a Preliminary Approval order
Deadline to file affidavit attesting that notice was disseminated as ordered:	7 days after Notice Deadline
Deadline to object to the settlement, or opt-out of the settlement	75 days after Notice Deadline
Deadline to submit a claim:	30 days after the Effective Date
Plaintiffs to file a fee and service awards application:	21 days prior to Objection Deadline
Plaintiffs to file papers in support of final approval of the settlement	21 days prior to Objection Deadline
Final Approval hearing:	90 days, or shortly thereafter, after amended CAFA notices mailed

III. CONCLUSION

Because there are no “obvious deficiencies” in the proposed Settlement, the Settlement is well within the range of possible approval, and there are sufficient grounds to submit it to Settlement Class Members, the standards for granting preliminary approval are readily satisfied here. Plaintiffs respectfully submit that this settlement is fair, adequate, and reasonable; that the requirements for final approval will be satisfied; and that Settlement Class Members will be provided with notice in a manner that satisfies the requirements of due process and Fed. R. Civ. P. 23(e).

As discussed above, Named Plaintiffs and Class Counsel submit that the proposed Settlement is in the best interest of the Class and represents a fair, reasonable and adequate recovery particularly in light of the risks and costs of litigation, the arbitration provision contained in customer agreements, and the swiftness of the Settlement and the immediate recovery provided in the proposed plan of distribution to the Class.

1 For the foregoing reasons, the parties respectfully request that the Court enter
2 the accompanying Proposed Order granting preliminary approval of the proposed
3 Settlement, certifying the settlement class, appointing Plaintiffs' attorneys as Class
4 Counsel, directing dissemination of class notice, and setting a hearing for the purpose
5 of deciding whether to grant final approval of the Settlement.

6
7 DATED: February 13, 2017

Respectfully submitted,

8
9 **MORGAN & MORGAN**
10 **COMPLEX LITIGATION GROUP**

11 BY: /s/ John A. Yanchunis
12 John A. Yanchunis (*pro hac vice*)
13 201 North Franklin Street 7th Floor
14 Tampa, Florida 33602
15 (813) 223-5505
16 (813) 223-5402 (fax)

17 **MCCUNE•WRIGHT•AREVALO, LLP**

18 Richard D. McCune
19 State Bar No. 132124
20 rdm@mccunewright.com
21 3281 East Guasti Road, Suite 100
22 Ontario, California 91761
23 Telephone: (909) 557-1250
24 Facsimile: (909) 557-1275

25 **MCCUNE•WRIGHT•AREVALO, LLP**

26 Joseph G. Sauder (*pro hac vice*)
27 Matthew D. Schelkopf (*pro hac vice*)
28 Joseph B. Kenney (*pro hac vice*)
555 Lancaster Ave
Berwyn, PA 19312
Telephone: (610) 200-0580

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**LAW OFFICE OF JEAN SUTTON
MARTIN PLLC**

Jean Sutton Martin(*pro hac vice*)
2018 Eastwood Road, Suite 225
Wilmington, North Carolina 28403
(910) 292-6676
(888) 316-3489 (fax)

GIRARD GIBBS LLP

Daniel C. Girard
State Bar No. 114826
601 California Street, 14th Floor
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

*Attorneys for Plaintiffs and the
Proposed Settlement Class*