BERGER & HIPSKIND LLP
Daniel P. Hipskind, CA State Bar No. 266763
Dorian S. Berger, CA State Bar No. 264424
1880 Century Park East, Ste. 815
Los Angeles, California 90025
Telephone: 323-886-3430
Facsimile: 323-978-5508
Email: dph@bergerhipskind.com
Email: dsb@bergerhipskind.com

LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
Nicholas Diamand (*pro hac vice*)
250 Hudson St, 8th Flr.
New York, NY 10013
Tel: 212-355-9500
Fax: 212-355-9592
Email: ndiamand@lchb.com

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RACHEL CODY AND LINDSEY KNOWLES, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SOULCYCLE INC.,

Defendant.

Case No. 15-cv-6457-MWF-JEM

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: June 19, 2017
Time: 11:00 a.m.
Judge: Hon. Michael W. Fitzgerald
Ctrm: 5A

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 19 at 11:00 a.m., in the Courtroom of the Honorable Michael W. Fitzgerald, United States District Judge for the Central District of California, located at the First Street Courthouse, 350 West First Street, Courtroom 5A, Los Angeles, California 90012, Plaintiffs Rachel Cody and Lindsey Knowles, on behalf of themselves and all others similarly situated, will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for an Order preliminarily approving a proposed Settlement Agreement, and for other related relief.

By this unopposed motion, Plaintiffs move the Court for an Order:

1. Preliminarily approving the Settlement in this action pursuant to Federal Rule of Civil Procedure 23(e);
2. Preliminarily certifying a Settlement Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3);
3. Appointing Class Counsel;
4. Appointing Class Representatives;
5. Approving the parties' proposed forms of notice and notice program, and directing that notice be disseminated pursuant to this program; and
6. Setting a Fairness Hearing and certain other dates in connection with the final approval of the Settlement.

This Motion is based on the accompanying Memorandum of Points and Authorities and all exhibits thereto, any papers filed in reply, the argument of counsel, and all papers and records on file in this matter.

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

TABLE OF CONTENTS

Page

I. INTRODUCTION 1
II. LITIGATION HISTORY 2
  A. Factual Background 2
  B. Procedural History 4
  C. Discovery 5
  D. Settlement Negotiations 6
III. SUMMARY OF THE SETTLEMENT TERMS 7
  A. Settlement Class 7
  B. Settlement Consideration 7
    1. Non-Economic Consideration 8
    2. Economic Consideration 8
  C. Proposed Notice Plan 9
  D. Settlement Release 11
IV. The Court Should Preliminarily Approve the Settlement 12
  A. Standard for Preliminary Settlement Approval 12
    1. The Settlement Is the Product of Arm's Length and Informed Negotiations. 13
    2. The Settlement Does Not Grant Preferential Treatment to Plaintiffs or Segments of the Settlement Class. 15
    3. The Settlement Is Within the Range of Possible Approval. 15
V. The Court Should Certify the Settlement Class for Settlement Purposes 19
  A. The Settlement Class Satisfies the Requirements of Rule 23(a) 20
    1. Numerosity 20
    2. Commonality 21
    3. Typicality 21
    4. Adequacy 22
  B. The Settlement Class Satisfies the Requirements of Rule 23(b)(3) 23
  C. The Court Should Appoint Class Counsel 23
VI. The Court Should Approve the Notice Program and Direct That Notice Be Disseminated to the Settlement Class 24
VII. The Final Approval Hearing Should Be Scheduled. 25
VIII. CONCLUSION 25

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

TABLE OF AUTHORITIES

Page

CASES

Aarons v. BMW of N. Am., LLC,
No. CV 11–7667, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014) 18

Abdullah v. U.S. Sec. Assocs., Inc.,
731 F.3d 952 (9th Cir. 2013) 21

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997).. 18, 23, 25

Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.,
211 F.R.D. 457 (S.D. Fla. 2002).. 18, 23

Brown v. Bank of Am., N.A.,
457 F. Supp. 2d 82 (D. Mass. 2006).. 16

Carter v. Anderson Merchs., LP,
Nos. 08-0025, 09-0216, 2010 WL 1946784 (C.D. Cal. May 11, 2010)......... 12, 14

Castillo v. ADT, LLC,
Civ. No. 2:15-383, 2017 WL 363108 (E.D. Cal. Jan. 25, 2017).......................... 18

Churchill Village, L.L.C. v. Gen. Elec. Co.,
361 F.3d 566 (9th Cir. 2004) 12

Downey Surgical Clinic, Inc. v. Optuminsight, Inc.,
No. CV09-5457, 2016 WL 5938722 (C.D. Cal. May 16, 2016).................... 17, 22

Eddings v. Health Net, Inc.,
No. 10-1744, 2013 WL 169895 (C.D. Cal. Jan. 16, 2013).................................. 12

Eisen v. Porsche Cars N. Am., Inc.,
No. 2:11-CV-09405-CAS, 2014 WL 439006 (C.D. Cal. Jan. 30, 2014) 14

Ellis v. Costco Wholesale Corp.,
657 F.3d 970 (9th Cir. 2011) 21, 22

Hanlon v. Chrysler Corp.,
150 F. 3d 1011 (9th Cir. 1998) 20, 21, 22

Hanon v. Dataproducts Corp.,
976 F.2d 497 (9th Cir. 1992) 22

Hughes v. CorePower Yoga,
No. 12-cv-00905, 2013 WL 1314456 (D. Minn. Mar. 28, 2013)......................... 16

In re Am. Apparel, Inc. S'holder Litig.,
No. CV 10-06352, 2014 WL 10212865 (C.D. Cal. July 28, 2014)...................... 14

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

TABLE OF AUTHORITIES
(continued)

Page

In re Heritage Bond Litig.,
No. 02-ml-01475, 2005 WL 1594403 (C.D. Cal. June 10, 2005) 13

In re LivingSocial Mktg. & Sales Practice Litig.,
298 F.R.D. 1 (D.D.C. 2013) 23

In re Tableware Antitrust Litig.,
484 F. Supp. 2d 1078 (N.D. Cal. 2007) 12, 15

In re Toys "R" Us-Del., Inc.
Fair & Accurate Credit Transactions Act (FACTA) Litig.,
295 F.R.D. 438 (C.D. Cal. 2014) 13

In re Wireless Facilities, Inc. Sec. Litig. II,
253 F.R.D. 607 (S.D. Cal. 2008) 20

Kashanchi v. Texas Commerce Med. Bank, N.A.,
703 F.2d 936 (5th Cir. 1983) 17

Linney v. Cellular Alaska P'ship,
No. C-96-3008, 1997 WL 450064 (N.D. Cal. Jul. 18, 1997) 14

Lipuma v. Am. Express,
406 F. Supp. 2d 1298 (S.D. Fla. 2005) 20

Monaco v. Bear Stearns Cos., Inc.,
No. CV 09-05438, 2012 WL 10006987 (C.D. Cal. Dec. 10, 2012) 18

Moore v. Apple, Inc.,
309 F.R.D. 532 (N.D. Cal. 2015) 18

Nat'l Rural Telecomm. Coop. v. DirecTV,
221 F.R.D. 523 (C.D. Cal. 2004) 14

Nguyen v. Radient Pharm. Corp.,
287 F.R.D. 563 (C.D. Cal. 2012) 21

Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco,
688 F.2d. 615 (9th Cir. 1982) 12

Reynolds v. Philip Morris USA, Inc.,
332 F. App'x 397 (9th Cir. 2009) 17

Rodriguez v. W. Publ'g Corp.,
563 F.3d 948 (9th Cir. 2009) 12, 21

Rosenburg v. I.B.M.,
2007 WL 128232 (N.D. Cal. Jan. 11, 2007) 19, 20, 23

Staton v. Boeing Co.,
327 F.3d 938 (9th Cir. 2003) 13, 20

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

TABLE OF AUTHORITIES
(continued)

Page

Torres v. Mercer Canyons, Inc.,
835 F.3d 1125 (9th Cir. 2016) 22

Van Bronkjurst v. Safeco Corp.,
529 F.2d 943 (9th Cir. 1976) 12

Wolin v. Jaguar Land Rover N. Am.,
617 F.3d 1168 (9th Cir. 2010) 21

STATUTES

15 U.S.C. § 1693a 17

15 U.S.C. § 1693a(5) 17

15 U.S.C. § 1693l-1(c)(1) 21

15 U.S.C. § 1693m(a)(1) 16

RULES

12 C.F.R. § 1005, Supp. I 17

12 C.F.R. § 1005.20(a)(1)(i) 17

Fed. R. Civ. P 23(a)(1) 20

Fed. R. Civ. P 23(e) 12

Fed. R. Civ. P. 23(a)(4) 22

Fed. R. Civ. P. 23(c)(2)(B) 25

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

OTHER AUTHORITIES

Manual for Complex Litigation (Third) § 30.42 (1995) 13, 19

Rubenstein, Newberg on Class Actions § 13:10 (5th ed. 2015) .... *passim*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Rachel Cody and Lindsey Knowles ("Plaintiffs"), individually and as representatives of the proposed Settlement Class, submit this Memorandum in support of their unopposed motion for preliminary approval of the proposed Settlement Agreement ("Settlement") with Defendant SoulCycle, Inc. ("SoulCycle").[1] The proposed Settlement provides significant economic consideration to Settlement Class Members and meaningful changes to SoulCycle's business practices. Specifically, Settlement Class Members will receive a minimum of one reinstated SoulCycle class and, in many instances, a second reinstated SoulCycle class or, alternatively, Settlement Class Members may elect a cash option where they can receive a payment of up to $25 per reinstated SoulCycle class (up to a maximum of $50).[2] The estimated monetary value of the economic consideration provided by the Settlement is between $6.9-$9.2 million.[3] Additionally, SoulCycle has revised its terms and conditions, disclaimers and various business practices to ensure that the Settlement Class and future consumers will understand that SoulCycle's class offerings are not gift certificates or gift cards.

This comprehensive Settlement is the result of two mediation sessions supervised by seasoned mediators, in addition to direct negotiations. The hard-fought and arm's-length negotiations concluded following the close of thorough fact and expert discovery, and after extensive motions practice, including Plaintiffs'

---

1 Unless otherwise noted, capitalized terms have the same meaning as in the proposed Settlement Agreement.

2 As explained further below, the actual amount received will depend upon the number of Settlement Class Members who elect to request the Cash Option.

3 The Settlement provides for up to 229,646 reinstated classes, depending upon the number of Settlement Class Members who elect the Cash Option. For example, if Settlement Class Members elect the cash option for 10,000 classes, those 10,000 classes will be exchanged pursuant to the Cash Option terms and 219,646 classes would be reinstated. The price for comparable SoulCycle classes are $30-$40, depending upon location. *See* https://www.soul-cycle.com/series/.

class certification motion, which had been briefed, argued, but had not been adjudicated at the time the parties reached the Settlement.

The Settlement is well within the range of reasonableness given the significant changes in SoulCycle's business practices, as well as the consideration offered to the Settlement Class, especially in light of the risks of ongoing litigation, such as the final outcome of the pending class certification motion and anticipated summary judgment motions, the risks of trial, and appeal. Preliminary approval of this Settlement is appropriate and should be granted.

Plaintiffs respectfully seek an Order preliminarily approving the Settlement, certifying the Settlement Class for settlement purposes, appointing Class Counsel and Settlement Class Representatives, ordering dissemination of notice to the Settlement Class, and setting deadlines for Settlement Class Members to opt out of or object to the Settlement, and a Final Approval Hearing to consider objections, if any, and a separate motion for attorneys' fees, costs and service awards.

II. LITIGATION HISTORY

A. Factual Background

Defendant SoulCycle is a corporation that operates indoor cycling studios in various locations throughout the country. SoulCycle offers indoor, stationary-bike fitness classes taught and led by SoulCycle instructors. To attend a class, customers must purchase classes that can thereafter be used to book a specific bike in a specific SoulCycle class at a specified date and time.

SoulCycle sells classes in groups of one to fifty classes; the price of each class depends upon its location and how many classes are purchased at once. (Second Amended Complaint ("SAC") (Dkt. 33), ¶ 35). SoulCycle classes have associated expiration dates. (*Id.*, ¶ 51). The more classes riders purchase at once, the longer the time period before expiration – so, for example, a single class sold for $30 expires after 30 days, whereas a series of 30 classes sold for $780 expires after a year. (*Id.; see also id.* ¶ 39, fig. 1).

Plaintiffs allege that, prior to February 2017, SoulCycle marketed its classes by indicating they were issued in a specified dollar amount. SoulCycle disputes this characterization. Plaintiffs allege SoulCycle listed on receipts and in riders' accounts the phrases "SOUL30" and "SOUL34." (*Id.*, ¶ 63). Thus, Plaintiffs contend that SoulCycle customers provided an amount of money that was then debited from the customer's balance each time she or he booked a class. (*Id.*, ¶ 37).

SoulCycle agreed its classes were marketed and sold as classes with an associated cost, which varied depending upon the location or number of classes purchased. It countered that every good and service has an associated cost which does not render it issued in a specified value or a gift certificate. SoulCycle maintained that its classes were not gift certificates issued in a specified dollar amount. SoulCycle argued the term "Soul30" neither means the rider actually paid $30 nor that she had an amount of money debited from her account when she purchased a class. Instead, riders' accounts tracked the number of classes remaining to be booked, not any outstanding specific dollar amount. For example, a SoulCycle customer purchasing 30 classes in the Hamptons, priced at $40 each ($1,020 in total) would have 30 classes, not a credit of $1,020.

SoulCycle prices vary according to geographic region. (*Id.* ¶ 56). A class in San Francisco may cost $30, while one class in New York is $34. (*Id.*). Under SoulCycle's "Class Transfer" program, which SoulCycle has since eliminated in response to this case, riders could use purchased classes to book a bike in another region where a class was priced at an equal or lesser value. (*Id.*). If a rider booked a bike where classes cost less, she forfeited any price differential. (*Id.* ¶ 58). However, a rider could not book a bike in a more expensive class, or apply a less expensive class toward the purchase of a higher priced class. (*Id.* ¶¶ 56-58). For example, a customer could not use a class in New York for which she paid $34 to book a bike in the Hamptons, where classes cost $40. (*Id.* ¶ 57, fig.8).

SoulCycle also sells gift cards, which do not expire. SoulCycle argued gift

cards are a different product from classes, and it discloses this difference on its website and App, and that it was unreasonable for Plaintiffs to claim they thought they were buying gift certificates instead of classes.

B. Procedural History

Plaintiff Rachel Cody filed this action on August 25, 2015 (Dkt. 1) and filed the First Amended Complaint ("FAC") on October 9, 2015 (Dkt. 12), asserting seven claims including violations of the Electronic Funds Transfer Act ("EFTA") as amended by the Credit Card Accountability and Disclosure Act ("CARD"), violations of the California gift certificate law, California Civil Code, §1749.5 ("Gift Certificate Law") and claims under the Consumer Legal Remedies Act, Cal. Civil Code § 1750 et seq. ("CLRA"). On January 11, 2016, the Court denied SoulCycle's motion to dismiss in part, finding the FAC sufficiently alleged that the sale of SoulCycle's classes fell within the definition of gift certificates, per EFTA and California law but dismissed the CLRA claim (Dkt. 30).

On February 10, 2016, Plaintiff Lindsey Knowles and Plaintiff Cody filed the SAC. (Dkt. 33). On April 22, 2016, the Court granted SoulCycle's motion to dismiss as to Plaintiffs' Gift Certificate Law claim. The Court otherwise permitted Plaintiffs to proceed on their EFTA and California Business and Professions Code §17200 *et seq*. (the "UCL") claims, reserving the question whether the Complaint sufficiently alleged a UCL violation based on the Gift Certificate Law. (*Id.*, at 7).

Plaintiffs moved for certification of a national and California class on October 31, 2016. (Dkt. 71). Plaintiffs' class claims against SoulCycle are on behalf of (i) SoulCycle customers nationwide who purchased SoulCycle classes on or after August 25, 2014, whose classes expired unused; and (ii) SoulCycle customers with a California billing address who purchased a SoulCycle class on or after August 25, 2011 whose class expired unused. (SAC, ¶ 74).

SoulCycle opposed the certification motion on December 23, 2016 (Dkt. 105). SoulCycle argued *inter alia* that the named Plaintiffs lacked standing to sue

and were inadequate and atypical class representatives due to alleged individualized issues that predominated as to the adjudication of affirmative defenses; that individualized issues regarding whether proposed class members' purchase of classes were primarily for personal, family or household purposes, as required by the EFTA, predominated over common issues; that individualized issues whether proposed class members were California residents and thus subject to the UCL predominated; and that affirmative defenses demanded individualized adjudication. (Dkt. 105). Plaintiffs replied on January 27, 2017. (Dkt. 145). Though the Court heard oral argument on Plaintiffs' motion on March 13, 2017, (Dkt. 190), it had not ruled on the motion as the parties entered into the Settlement.

Following the Parties' April 21, 2017 Joint Report of Mediation and Notice of Settlement in Principle (Dkt. 217), the Court vacated and stayed all pending deadlines (Dkt. 218), denied as moot, without prejudice, Plaintiffs' certification motion, Defendant's motion for leave to file amended answer (Dkt. 193) and Plaintiffs' motion for relief from deadline to respond to discovery and admissions (Dkt. 215).

C. Discovery

Discovery in this matter was extensive and contentious. Prior to reaching a resolution, through almost two years of hard-fought litigation, Class Counsel closely examined the underlying facts and law, and engaged in thousands of hours of litigation in support of the putative class's case. The Parties vigorously contested their respective discovery obligations, resulting in extensive discovery motion practice. (*See, e.g.*, Dkts. 60, 62, 85, 89, 90, 91, 156, 164, 167, 197, 200, 215).

Plaintiffs propounded multiple sets of document requests and interrogatories. Declaration of Daniel P. Hipskind In Support Of Plaintiffs' Preliminary Approval Motion ("Hipskind Decl.."), ¶ 15. In response, SoulCycle produced and Plaintiffs' counsel reviewed over 97,000 pages of documents, including extensive financial and accounting records, internal SoulCycle email correspondence, correspondence

between SoulCycle personnel and the public, and SoulCycle's records relating to Plaintiffs Cody and Knowles. *Id.*, ¶ 17. SoulCycle served 44 document requests on each Plaintiff. Plaintiffs' counsel responded to these requests, producing over 10,000 pages, including personal email messages. Plaintiffs' counsel responded to 11 interrogatories and 75 requests for admission ("RFAs") served on Plaintiff Knowles, and 13 interrogatories and 63 RFAs served on Plaintiff Cody. *Id.*, ¶ 16.

The parties took 11 fact depositions in Los Angeles, New York and Dublin, Ireland. SoulCycle deposed Plaintiffs Knowles and Cody. Plaintiffs' counsel deposed eight Fed. R. Civ. P. 30(b)(6) witnesses and key executives, including SoulCycle CEO Melanie Whelan, CFO Sunder Reddy, Co-Founder and Board member Elizabeth Cutler and Chief Accounting Officer Arthur Curcuru. *Id.*, ¶ 15.

Expert discovery was thorough and extensive. Plaintiffs' counsel engaged a damages expert who analyzed voluminous accounting materials produced by SoulCycle. The ensuing report included over 6,600 pages of underlying analysis. SoulCycle produced two separate expert reports: one from a consumer behavioral expert who opined that expiration dates did not cause the Plaintiffs' alleged damages, and may have actually benefited certain riders; and a rebuttal report addressing Plaintiffs' expert's findings. All three experts were deposed.

D. Settlement Negotiations

The Parties first mediated their dispute on September 23, 2016 with Antonio Piazza of Mediated Negotiations in San Francisco, California. At that stage, prior to the meaningful commencement of discovery or briefing of Plaintiffs' class certification motion, the case did not settle. Nevertheless, following this mediation, the parties engaged in continued settlement discussions through December 2016.

Pursuant to the Court's Scheduling Order dated July 25, 2016, as amended, on April 19, 2017, the Parties mediated again, this time with Randall W. Wulff, of Wulff Quinby & Sochynsky. At the conclusion of the mediation session, the Parties reached a settlement agreement in principle and executed a settlement term

sheet. Shortly thereafter, the Parties filed their Joint Report of Mediation and Notice of Settlement in Principle. (Dkt. 217).

III. SUMMARY OF THE SETTLEMENT TERMS

The Settlement Agreement resolves all claims of Plaintiffs and the Settlement Class. Attached as Exhibit 1, to Hipskind Decl., the Agreement is summarized below.

A. Settlement Class

The Settlement requires SoulCycle to maintain alterations that it has made to its business practices in response to this litigation for at least two years and provide reinstated classes or, if elected, cash payments to the Settlement Class as described below. These changes brought SoulCycle's practices in compliance with the EFTA.

For purposes of settlement only, upon the express terms and conditions set forth in the Settlement Agreement, SoulCycle agrees to the certification of a Settlement Class. The Settlement Class is comprised of:[4]

- SoulCycle customers nationwide who purchased, during the period commencing on August 25, 2014 and ending on February 10, 2017, a SoulCycle Class that expired unused; and
- SoulCycle customers with a California billing address who purchased, during the period commencing on February 1, 2012 and ending on February 10, 2017, a SoulCycle Class that expired unused.

Excluded from the Settlement Class are (1) federal judges and members of their immediate families; (2) officers and directors of SoulCycle; and (3) persons who timely and validly opt to exclude themselves from the Settlement Class. *Id.*

B. Settlement Consideration

In settling the claims against it, SoulCycle has agreed to provide both

[4] SoulCycle agreed in the Settlement Agreement not to contest certification of the Settlement Class but reserves its rights to contest any litigation class motion and it notes that the standards for class certification differ for litigation classes.

1 economic and non-economic consideration.

2 **1. <u>Non-Economic Consideration</u>**

3 This Settlement provides important non-economic consideration from
4 SoulCycle regarding its business practices. This relief is designed to ensure that
5 consumers fully understand that purchasing a class or series of SoulCycle classes
6 does not constitute the purchase of a gift certificate or gift card.

7 SoulCycle has clarified that its classes are not sold in specified values and
8 will no longer refer to classes as "SOUL30" or "SOUL34." Instead, classes will be
9 denoted by geographical region, as follows: SOUL-NYC (usable in New York
10 City); SOUL-DC (Washington, D.C.); SOUL-CT (Connecticut); SOUL-WA
11 (Washington); SOUL-NORCAL (Northern California); SOUL-HAMPTONS (The
12 Hamptons); SOUL-NYS-NJ (NON-NYC) (New York and New Jersey, excluding
13 New York City); and SOUL-FL-IL-TX-MA-MD-PA-SOCAL (Florida, Illinois,
14 Texas, Massachusetts, Maryland, Pennsylvania and Southern California).
15 SoulCycle also eliminated its class transfer features. Thus, classes purchased in a
16 more expensive region will no longer be transferrable to less expensive regions.

17 SoulCycle has also revised its Terms and Conditions and Frequently Asked
18 Questions on its Website and smartphone App, among other things, to reinforce
19 that: (i) SoulCycle classes and SoulCycle gift cards are not the same product; (ii) its
20 gift cards never expire, though classes do; and (iii) although its classes have an
21 expiration date, if a rider cannot make the class in time and needs an extension, she
22 may contact SoulCycle to address having the class reinstated. Attached as Exhibit
23 2 to Hipskind Decl. is the full text of the revised Terms and Condition and FAQs.

24 **2. <u>Economic Consideration</u>**

25 SoulCycle will also provide economic consideration to the Settlement Class
26 in addition to the non-economic relief, discussed above. SoulCycle will reinstate
27 up to two expired classes, *unless the Settlement Class Member elects a Cash*
28 *Option*. Specifically, each Settlement Class Member who purchased one SoulCycle

class that expired unused during the Class Period will receive one new class automatically placed in his or her electronic SoulCycle account ("Reinstated Class").[5] Those Settlement Class Members who purchased more than one SoulCycle class that expired unused during the Class Period will automatically receive two Reinstated Classes.[6] Ex. 1 to Hipskind Decl., ¶¶ IV.A.1-5.

Instead of Reinstated Classes, each Settlement Class Member can elect a Cash Option, which is a payment of a maximum of $25 per Reinstated Class to which the Settlement Class Member would otherwise be entitled (the "Cash Option") up to a maximum of $50 per Settlement Class Member. SoulCycle has agreed to pay up to $500,000 in aggregate claims under the Cash Option. The cash amount paid per Reinstated Class will be reduced *pro rata* if the Cash Option claims exceed $500,000 in total. *Id.*, ¶¶ IV.A.6-9. Settlement Class Members can elect the Cash Option by submitting a Cash Claim Form.

C. <u>Proposed Notice Plan</u>

The proposed Notice Plan incorporates well-established best practices, and provides clear information regarding the Settlement terms, the Fairness Hearing, Settlement Class Members' rights to object to or opt out of the Settlement, and the request for attorneys' fees and costs. *Id.*, ¶¶VI.B. Dahl Administration LLC ("Dahl"), is a leading class administration firm that will provide settlement notice and administration. Dahl's notice expert attests to the quality of the notice plan, which is expected to reach at least 91% of the Settlement Class. Declaration of Kelly Kratz Re. Settlement Notice Plan ("Kratz Decl."), Hipskind Decl., Ex. 4.

The proposed Notice Plan has the following key components:

1. Upon Preliminary Approval of the Settlement Agreement, Dahl will

---

[5] The automatic placement of Reinstated Classes will occur over no more than the course of one year from the Effective Date. Ex. 1 to Hipskind Decl., ¶IV.A.3.

[6] Reinstated Classes will not expire for one year and will be available for reserving a bike for a day during the upcoming week at 3pm local time on Monday(s). Ex. 1 to Hipskind Decl., ¶¶IV.A.4,5.

1 disseminate Class Notice to Settlement Class Members via email. The Class Notice
2 shall conform substantially with the notice attached to the Settlement Agreement as
3 Exhibits A and B. The Class Notice is designed to provide clear and concise notice
4 of the terms of the Settlement Agreement in plain, easily understood language.
5 2. SoulCycle shall provide Dahl with the e-mail addresses of the
6 Settlement Class Members for purposes of disseminating the Class Notice and Cash
7 Claim Form. SoulCycle gathers and maintains the e-mail addresses of all its riders
8 and email communication is the principal and most effective means of
9 communication between SoulCycle and its riders. Ex. 1 to Hipskind Decl., ¶
10 VI.B.3.
11 3. Dahl will send first-class mail service of postcard Summary Notice to
12 those Settlement Class Members for whom e-mail notice has been undeliverable.
13 Summary Notice will summarize key features of the Settlement, including the
14 website and toll-free number. Ex. 4 to Hipskind Decl., ¶¶5-7.
15 4. A Settlement website created and maintained by Dahl activated within
16 five days following the entry of the Court's Preliminary Approval Order. The
17 website will contain the Preliminary Approval Order, the Class Notice, the
18 Settlement Agreement, and other relevant information regarding the Court-approval
19 process. The Class Settlement Website will include a section for frequently asked
20 questions and procedural information regarding the status of the Court-approval
21 process, including the final approval hearing date, copies of the Final Order and
22 Judgment, and the timeframe of the Settlement's Effective Date. *Id.*, ¶¶9-11.
23 5. Dahl will establish a toll-free telephone number providing pre-
24 recorded information addressing the Settlement Agreement. *Id.*, ¶¶12-13.
25 6. Ten days from this filing of the Settlement Agreement, SoulCycle will
26 mail federal and state officials the requisite settlement notice in compliance with
27 the Class Action Fairness Act, 28 U.S.C. §1715 ("CAFA Notice"). SoulCycle shall
28 cover the costs of the Notice Plan and CAFA Notice without diminishing the

Economic Consideration to the Settlement Class. Ex. 1, Hipskind Decl., ¶¶ VI.B.7-8.

7. The Settlement Claims Administrator shall cause the Cash Claim Form to be disseminated to Settlement Class Members via e-mail, along with the Class Notice, by the Class Notice Date. The Cash Claim Form shall conform substantially to the form attached as Exhibit E to the Settlement Agreement.

D. Settlement Release

In exchange for the Settlement consideration, the Settlement Class agrees to an appropriately tailored release of Defendants from liability. *Id.*, VIII. The Released Claims are "any and all causes of action, claims, damages, equitable relief, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any contract, statute, regulations, or common law that have been, could have been, may be or could be alleged or asserted now or in the future, all demands, rights, damages, obligations, suits, debts, liens, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims as of the notice date, by Plaintiffs and all Settlement Class Members against the Released Parties, (including SoulCycle and its subsidiaries, affiliates, successors and assigns) in the Litigation or in any other court action or before any administrative body, tribunal or arbitration panel arising out of or related to the claims asserted by Plaintiffs and the Settlement Class Members in the Litigation or arising from the purchase of a SoulCycle class that expired unused during the Class Period, against the Released Parties under federal, state, or any other law or regulation, including but not limited to the EFTA, the UCL, the CLRA or the California Gift Card Statute." *Id.* ¶ II.22. Plaintiffs and all Settlement Class Members also waive and release all rights regarding unknown claims arising from the allegations of Plaintiffs' complaint they may have under California Civil Code Section 1542 and any similar state or federal law. Plaintiffs

also agree to dismissal of the action with prejudice.

IV. The Court Should Preliminarily Approve the Settlement

"[T]here is an overriding public interest in settling and quieting litigation … particularly … in class action suits." *Van Bronkjurst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Churchill Village, L.L.C. v. Gen. Elec. Co.*, 361 F.3d 566, 576 (9th Cir. 2004). Courts recognize as a matter of sound policy settlements of disputed claims are encouraged and settlement approval hearings should not "reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) (internal quotes and citation omitted).

A. Standard for Preliminary Settlement Approval

Proposed class action settlements require Court approval. Fed. R. Civ. P 23(e). The Court must ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F2d. 615, 625 (9th Cir. 1982). "At the preliminary approval stage, a court determines whether a proposed settlement is 'within the range of possible approval' and whether or not notice should be sent to class members." *Carter v. Anderson Merchs., LP*, Nos. 08-0025, 09-0216, 2010 WL 1946784, at *4 (C.D. Cal. May 11, 2010). The Court also determines "whether or not notice should be sent to class members." *Id.* Preliminary settlement approval is appropriate where the proposed settlement (1) "appears to be the product of serious, informed, non-collusive negotiations," (2) "has no obvious deficiencies," (3) "does not improperly grant preferential treatment to class representatives or segments of the class," and (4) "falls with[in] the range of possible approval.'" *Eddings v. Health Net, Inc.*, No. 10-1744, 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); Rubenstein, Newberg on Class Actions § 13:10 (5th ed. 2015) ("Newberg"). ("The general rule is that a court will

grant preliminary approval where the proposed settlement 'is neither illegal nor collusive and is within the range of possible approval.'"). The Settlement Agreement readily meets these standards and the Parties respectfully submit the Settlement Agreement should be preliminarily approved so notice can be provided to the Settlement Class.

Upon receipt of notice of the proposed settlement, Settlement Class Members will have an opportunity to comment on the Settlement, in writing and in person at the fairness hearing. *See* Newberg § 13:10. At that time, the Court determines if the Settlement is fair, adequate and reasonable and warrants final approval by applying the Ninth Circuit's multi-factor analysis. *See Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (factors include "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." (citation omitted)).

1. The Settlement Is the Product of Arm's Length and Informed Negotiations.

Where, as here, a settlement is the product of arm's-length negotiations conducted by capable and experienced counsel, the settlement is presumptively fair and reasonable. *See* Newberg § 13:14; *In re Heritage Bond Litig.*, No. 02-ml-01475, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) ("A presumption of correctness is said to 'attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery.'") (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)); *In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014) ("the settlement is a product of informed, arms-length negotiations, and is therefore entitled to a presumption of fairness.").

The proposed Settlement results from hard-fought, arm's length negotiations

1 between experienced counsel. The parties engaged in adversarial motion practice
2 and substantial discovery leading to a comprehensive evaluation of the case's
3 strengths and weaknesses and to well-informed settlement discussions. Courts
4 recognize that "[t]he involvement of experienced class action counsel and the fact
5 that the settlement agreement was reached in arm's length negotiations, after
6 relevant discovery had taken place create a presumption that the agreement is fair."
7 *Linney v. Cellular Alaska P'ship*, No. C-96-3008, 1997 WL 450064, at *5 (N.D.
8 Cal. Jul. 18, 1997) (citations omitted); *see also In re Am. Apparel, Inc. S'holder*
9 *Litig.*, No. CV 10-06352, 2014 WL 10212865, at *8 (C.D. Cal. July 28, 2014).

10 The settlement negotiations were supervised serially by two experienced,
11 respected mediators: Randall W. Wulff, who presided over the April 2017 formal
12 mediation session leading to the settlement agreement in principle and, prior to that,
13 Antonio Piazza, before whom the Parties held an initial September 2016 mediation
14 session, following which the Parties continued their negotiations for several weeks.

15 Input and participation of experienced mediators further supports the fairness
16 of the process and settlement. *See Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-
17 CV-09405-CAS, 2014 WL 439006, at *5 (C.D. Cal. Jan. 30, 2014) ("where the
18 services of a private mediator are engaged, this fact tends to support a finding that
19 the settlement valuation by the parties was not collusive.") (citing cases). *See also*
20 *Anderson Merchs.*, 2010 WL 144067, at *6 ("'The assistance of an experienced
21 mediator in the settlement process confirms that the settlement is non-collusive.'")

22 In addition to their extensive investigation and discovery, Plaintiffs' counsel
23 had the benefit of the Court's rulings on SoulCycle's two motions to dismiss, which
24 further informed their negotiations. Moreover, the parties did not discuss attorneys'
25 fees, costs, and expenses until after reaching an agreement in principle on the
26 benefits for the Settlement Class, subject to preparation and execution of a written
27 settlement agreement. Plaintiffs' counsel, who have years of experience litigating
28 and settling complex class actions, view this settlement as fair and in the best

interests of the Settlement Class. *See Nat'l Rural Telecomm. Coop. v. DirecTV*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.") (internal quotations and citations omitted). An overview of Class Counsel's qualifications is described at Hipskind Decl. ¶¶ 11-13

2. The Settlement Does Not Grant Preferential Treatment to Plaintiffs or Segments of the Settlement Class.

The proposed Settlement does not grant preferential treatment to the Plaintiffs or to any segment of the Settlement Class. The Settlement requires SoulCycle to maintain significant business changes that take SoulCycle's offerings clearly outside the ambit of the EFTA. Further, all Settlement Class Members who do not elect the Cash Option will receive up to two Reinstated Classes, or they may elect the Cash Option providing a payment of up to $25 for each Reinstated Class to which they otherwise are entitled, up to a maximum of $50. Plaintiffs' counsel reserve the right at the Fairness Hearing to request modest service awards for Plaintiffs, in recognition of their commitment and contributions to the litigation.

3. The Settlement Is Within the Range of Possible Approval.

To determine whether a settlement falls within the range of possible approval, courts "consider plaintiffs' expected recovery balanced against the value of the settlement offer." *Tableware*, 484 F. Supp. 2d at 1080. The proposed Settlement delivers valuable changes to SoulCycle's business practices, as well as providing the Settlement Class monetary and in-kind benefits that they might not recover through continued litigation. The changes to SoulCycle's business practices enhance consumer awareness of how its classes are sold, and take those classes clearly outside the ambit of the EFTA. Further, the Reinstated Classes and the Cash Option are appropriately tied to the alleged harm. This consideration represents millions of dollars in value for the Settlement Class.

The result achieved for the Settlement Class is strong, particularly given the significant risk of ongoing litigation. While Plaintiffs are confident in the merits of

their case, continued litigation presents challenges including the risk that Plaintiffs and the Settlement Class would recover ***nothing*** if the litigation were to continue.

(a) Liability Risks

This case involved litigating a claim with little legal precedent; there is not a vast body of EFTA law. That many of the issues here were not the subject of significant precedent makes the outcome of the case less certain and thus strengthens the benefits provided by the Settlement. For example, in its Motion to Dismiss, SoulCycle relied heavily on *Hughes v. CorePower Yoga*, No. 12-cv-00905, 2013 WL 1314456 (D. Minn. Mar. 28, 2013). In *Hughes*, the Court held that yoga classes were not covered by the EFTA because, in part, they were "not issued in a 'specified amount.'" Dkt. 40 at 12. Further, "[t]he Official Staff Interpretations of Regulation E specifically provides that cards redeemable for a specific good, service, or experience such as a spa treatment, hotel stay, or airline flight are not store gift cards under the EFTA." *Id* at 12-13. Here, the Court initially found that "Defendant's class purchases are sold for a specified value, and can only be used for classes equal to or less than that value," (Dkt. 30 at 5) thereby falling under the EFTA. However, had this litigation progressed, there was significant risk that the Court or a jury would determine that SoulCycle's classes were akin to those in *Hughes*, resulting in no benefits at all to the Settlement Class.

SoulCycle advanced other strong counter-arguments and defenses. For example, under the EFTA, Plaintiffs bear the burden of showing their alleged harm occurred as "a result of" the EFTA violation. *See* 15 U.S.C. § 1693m(a)(1); *see Brown v. Bank of Am., N.A.*, 457 F. Supp. 2d 82, 90 (D. Mass. 2006). SoulCycle, relying on its expert, argued that Plaintiffs could not prove that every unused expired SoulCycle Class was the result of expiration dates. According to their expert, it was not possible to assume that all consumers who failed to use their SoulCycle classes did so due to expiration dates. Establishing causation was, therefore, a risk as to both liability and class certification.

The Court dismissed Plaintiffs' California's Gift Certificate Law claim holding it does not provide a private right of action. (*See* Dkt. 37 at 25; Dkt. 40 at 7.) The Court allowed Plaintiffs to raise the issue later in the proceedings (Dkt. 40 at 7, n.8), but SoulCycle argued were the claim reinstated, the ordinary meaning of "gift certificate" contemplates something purchased intended as a gift for someone else. *See, e.g.*, *Reynolds v. Philip Morris USA, Inc*., 332 F. App'x 397, 398 (9th Cir. 2009) (quoting Am. Heritage Dictionary of the English Language 742 (4th ed. 2000) ("gift certificate" is a "certificate, usually presented as a gift, that entitles the recipient to select merchandise of an indicated cash value at a commercial establishment")). SoulCycle argued Plaintiffs testified they did not buy their class to give away, and when riders want to buy a gift, they buy gift cards, not classes.

(b) Certification Risks

The Court has not issued a class certification order for trial purposes under Rule 23 and it is unclear whether a class action would have been certified for trial. *See Downey Surgical Clinic, Inc. v. Optuminsight, Inc*., No. CV09-5457, 2016 WL 5938722, at *6 (C.D. Cal. May 16, 2016) (finding "uncertainty of both obtaining and maintaining class action status . . . weighs in favor of final approval").

SoulCycle asserted individual issues would render a class-action trial unmanageable and inappropriate for Rule 23(b)(3) certification. For example, SoulCycle argued an EFTA claim can only be brought on behalf of consumers defined as "natural person[s]." 15 U.S.C. § 1693a; *see also Kashanchi v. Texas Commerce Med. Bank, N.A.,* 703 F.2d 936, 939-42 (5th Cir. 1983)(citing 15 U.S.C. § 1693a(5)). Yet, Plaintiffs sought to certify a litigation class including businesses. A "gift certificate" is defined as "[i]ssued on a prepaid basis primarily for personal, family or household purposes to a consumer", and whether a gift certificate is so issued "will depend on the facts and circumstances", 12 C.F.R. § 1005.20(a)(1)(i); 12 C.F.R. § 1005, Supp. I. SoulCycle argued that determining whether it sold a Class that is a "gift certificate" would thus require individualized analyses, based

upon the facts and circumstances of the purchase.

Similarly, SoulCycle argued evidence suggests that riders with a California billing address may have been resident elsewhere, or purchased classes for use outside of California, and thus were not subject to the UCL. As a result, fact-specific analysis would be required to determine whether each member of the California class was properly included in a litigated class, precluding certification. *See, e.g.*, *Moore v. Apple, Inc.*, 309 F.R.D. 532, 548-49 (N.D. Cal. 2015). SoulCycle also argued that affirmative defenses, such as mitigation of damages and the voluntary payment doctrine would "likely involve individualized determinations, weigh[ing] against the certification" and could defeat predominance if there were a trial on the merits. *Monaco v. Bear Stearns Cos., Inc.*, No. CV 09-05438, 2012 WL 10006987, at *9-10 (C.D. Cal. Dec. 10, 2012).

Certification risk weighs in favor of approval of the settlement. *See Aarons v. BMW of N. Am., LLC*, No. CV 11–7667, 2014 WL 4090564, at *11 (C.D. Cal. Apr. 29, 2014) ("Plaintiffs recognize that they would face significant risks in attempting to certify a litigation class for trial, and would bear the risk of defending certification through trial. Among other things, BMW's argument [regarding] individualized reasons could pose a continuing threat to certification. . . . Accordingly, the Court finds that this factor weighs in favor of approval of the settlement."); *Castillo v. ADT, LLC*, Civ. No. 2:15-383, 2017 WL 363108, at *4-5 (E.D. Cal. Jan. 25, 2017) ("If the parties had not settled, defendant would have opposed plaintiff's request for class certification, contested the merits of his claims . . . [and i]n doing so, defendant would have asserted some twenty-three defenses against plaintiff's claims . . .").

The Proposed Settlement, however, has the benefit of providing benefits to the Settlement Class without the Court having to resolve these management problems that it would have confronted in a litigated class. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997) ("Confronted with a request for a

1 settlement-only class certification, a district court need not inquire whether the case,
2 if tried, would present intractable management problems . . . for the proposal is that
3 there be no trial."); *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D.
4 457, 468 (S.D. Fla. 2002) (settlement is favored where "[d]efendant would
5 [otherwise] oppose class certification due to the intractable management problems
6 this national class action poses"); *Rosenburg v. I.B.M.*, 2007 WL 128232, at *3
7 (N.D. Cal. Jan. 11, 2007) (discussing "the elimination of the need, on account of the
8 Settlement, for the Court to consider any potential trial manageability issues that
9 might otherwise bear on the propriety of class certification").
10 The results achieved by the Settlement are benefits that far outweigh the
11 uncertainty posed by continued litigation. *See W. Publ'g*, 563 F.3d at 966; *Nat'l*
12 *Rural Telecomms.*, 221 F.R.D. at 526 ("The Court shall consider the vagaries of
13 litigation and compare the significance of immediate recovery by way of the
14 compromise to the mere possibility of relief in the future, after protracted and
15 expensive litigation." (citation omitted)). Here, the Settlement Class will receive
16 significant non-economic and economic benefits, without ambiguity for consumers
17 as to whether SoulCycle's class offerings are gift cards. SoulCycle's classes are no
18 longer transferable from one region to another. While proceeding to trial could add
19 years to the resolution of this case, given the legal and factual issues raised and the
20 likelihood of appeals, the Settlement provides prompt and concrete relief.
21 Each of these factors strongly favors preliminary approval of the Settlement.
22 **V. <u>The Court Should Certify the Settlement Class for Settlement Purposes</u>**
23 Judicial proceedings under Federal Rule of Civil Procedure 23 follow a
24 three-step procedure for approval of class action settlements: (1) certification of a
25 settlement class and preliminary approval of the proposed settlement upon written
26 motion to the trial court; (2) dissemination of notice of the proposed settlement to
27 the affected class members; and (3) a formal fairness hearing, or final settlement
28 approval hearing, at which class members may be heard regarding the settlement,

and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement are presented. Federal Judicial Center, Manual for Complex Litigation, §§ 21.63, et seq. (4th ed. 2004) ("Manual"). This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* Newberg, § 13:1, et seq.

Plaintiffs request that the Court take the first step toward settlement approval by granting preliminary approval to the Settlement and certifying a 23(b)(3) settlement class.[7] When settlement is reached before class certification, "courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." *Staton*, 327 F.3d 938, 952.

"A class may be certified 'solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.'" *Lipuma v. Am. Express*, 406 F. Supp. 2d 1298, 1313-14 (S.D. Fla. 2005) (citation omitted); *see also In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) ("Parties may settle a class action before class certification and stipulate that a defined class be conditionally certified for settlement purposes."); *Rosenburg*, 2007 WL 128232, at *3 (certifying conditional settlement class but ordering that, in the event the settlement did not become effective, the certification would be vacated, and the defendant would retain the right to object to the certification of a litigated class).

Plaintiffs request that the Court certify, under Federal Rule of Civil Procedure 23(b)(3), a Settlement Class, for purposes of settlement only.

A. The Settlement Class Satisfies the Requirements of Rule 23(a)

1. Numerosity

Numerosity is satisfied "if 'the class is so large that joinder of all members is impracticable.'" *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019 (9th Cir. 1998)

---

[7] SoulCycle does not contest certification of the Settlement Class, but specifically reserves its right to contest any litigation class motion, and it notes that the standards for class certification differ for litigation classes.

1 (quoting Fed. R. Civ. P 23(a)(1)). Courts recognize that a "class of at least forty
2 members presumptively satisfies the numerosity requirement." *Nguyen v. Radient*
3 *Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012). The Settlement Class
4 includes over 146,000 individuals, satisfying numerosity.

5 **2. Commonality**

6 Rule 23(a)(2) requires that there be "questions of law or fact common to the
7 class." The commonality requirement has "'been construed permissively' and '[a]ll
8 questions of fact and law need not be common to satisfy the rule.'" *Ellis v. Costco*
9 *Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (alteration in original) (quoting
10 *Hanlon*, 150 F.3d at 1019). "[A]ll that Rule 23(a)(2) requires is 'a single
11 *significant* question of law or fact.'" *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d
12 952, 957 (9th Cir. 2013) (citation omitted). Plaintiffs sought to present common
13 factual questions, including whether SoulCycle classes are issued in a specified
14 amount that may not be increased or reloaded; whether the sale of SoulCycle's
15 classes constituted electronic promises or devices; and whether SoulCycle's classes
16 contained expiration dates of less than five years. *See* 15 U.S.C. § 1693l-1(c)(1).
17 The commonality requirement is thus satisfied for settlement purposes.

18 **3. Typicality**

19 Rule 23(a)(3) directs that "the claims or defenses of the representative parties
20 [be] typical of the claims or defenses of the class." Like commonality, the
21 typicality requirement is construed permissively "and requires only that the
22 representative's claims are 'reasonably co-extensive with those of absent class
23 members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d
24 1105, 1122, 1124 (9th Cir. 2009) (quoting *Hanlon*, 150 F.3d at 1020). "The
25 purpose of the typicality requirement is to assure that the interest of the named
26 representative aligns with the interests of the class." *Wolin v. Jaguar Land Rover*
27 *N. Am.* 617 F.3d 1168, 1175 (9th Cir. 2010) (internal quotations omitted).
28 Plaintiffs argued that their claims are typical of those of the Settlement Class

because they are predicated on the same policy: the imposition of expiration dates. Plaintiffs contend SoulCycle's previous practices violated the EFTA, and, as to the California Class, violated the California Gift Certificate Law and California's UCL. "Measures of typicality include 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125,1141 (9th Cir. 2016) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

SoulCycle argued that the named Plaintiffs were atypical and subject to affirmative defenses, if the case were tried. Those arguments are not controlling in the settlement context and, thus, typicality is satisfied for settlement purposes. *See, e.g., Downey Surgical*, 2016 WL 5938722, at *6 ("Defendants have stated that they would assert individualized defenses to payment as to particular class members, which could necessitate that the certified Class be de-certified later if individual issues were found to predominate. Because of the uncertainty of both obtaining and maintaining class action status, this factor weighs in favor of final approval.").

4. Adequacy

The adequacy requirement is satisfied when the class representatives will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To make this determination, "courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020). Plaintiffs' interests are aligned with those of the Settlement Class as their claims all arise from the same course of conduct. Moreover, Plaintiffs have demonstrated a commitment to vigorously prosecute this case on behalf of the Settlement Class, and have retained counsel experienced in litigating consumer claims and class actions. SoulCycle challenged Plaintiffs' adequacy contending their inadequacy at

trial, but its arguments are not controlling in the context of a settlement class and, thus, the adequacy requirement is also satisfied here for settlement purposes.

B. The Settlement Class Satisfies the Requirements of Rule 23(b)(3)

Rule 23(b)(3) requires "questions of law or fact common to class members predominate over any questions affecting only individual members." Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 594.

The predominance inquiry in the settlement context is relaxed because approval of the proposed Settlement Agreement removes the need for a trial and the consideration of the manageability of the class for trial. *See id*. at 620 (when a court is "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."); *In re LivingSocial Mktg. & Sales Practice Litig*., 298 F.R.D. 1, 12 (D.D.C. 2013) (approving certification of settlement class for EFTA claim where "[i]f the litigation had progressed, defendants would have also contended that individual issues predominate over common issues"). *Rosenburg*, 2007 WL 128232, at *3 (same); *Ass'n for Disabled Ams*, 211 F.R.D. at 468. SoulCycle's arguments regarding alleged management problems focus on if the case were to be tried; those concerns are not present in the context of the request to certify a settlement class.

C. The Court Should Appoint Class Counsel

In evaluating the appointment of class counsel, courts must consider (i) counsel's work in identifying or investigating claims; (ii) counsel's experience in handling the types of claims asserted; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Berger & Hipskind, LLP ("Berger & Hipskind") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") have worked cooperatively and effectively to litigate this case, including (i) investigating the underlying facts,

researching and evaluating legal claims, and filing the initial and subsequent First and Second Amended Complaints; (ii) opposing both of SoulCycle's motions to dismiss; (iii) propounding multiple sets of document requests and interrogatories; (iv) reviewing over 97,000 pages of responsive documents; (v) responding to SoulCycle's requests for production and interrogatories; (vi) conducting extensive meet and confer sessions regarding discovery issues; (vii) working with experts and preparing expert reports; (viii) taking depositions of SoulCycle's Rule 30(b)(6) witnesses and experts; (ix) moving for class certification; (x) participating in two mediation sessions; (xi) negotiating the proposed settlement and settlement papers; and (xii) drafting this motion for preliminary approval.

The two proposed Class Counsel firms have considerable experience in successfully prosecuting class actions and other complex litigation, including in consumer actions around the country. The firms have committed the resources necessary to represent the Settlement Class, and will continue to manage the case efficiently and diligently work to obtain settlement approval and, if approved, implementation of the Settlement. Plaintiffs therefore request that the appointment of Berger & Hipskind, and Lieff Cabraser as Settlement Class Counsel.

VI. The Court Should Approve the Notice Program and Direct That Notice Be Disseminated to the Settlement Class

Under Rule 23(e)(1), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed "settlement, voluntary dismissal, or compromise." Notice of a proposed settlement must inform class members (1) of the nature of the pending litigation, (2) of the general terms of the proposed settlement, (3) that more complete information is available on the docket, and (4) that any class member may appear and be heard at the fairness hearing. *See* Newberg § 8:17. The notice also must indicate that the court will exclude from the class any member who requests exclusion, that the judgment will bind all class members who do not opt out, and that any member who does not opt out may

appear through counsel. *See* Fed. R. Civ. P. 23(c)(2)(B).

The form of notice is "adequate if it may be understood by the average class member." *Newberg* § 8:17. The notice must be "the best . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem*, 521 U.S. at 617. The proposed Notice program described above meets all of these requirements.

VII. The Final Approval Hearing Should Be Scheduled.

The last step in the approval process is a Fairness Hearing at which this Court may hear all evidence and argument necessary to determine whether to grant final approval to the Settlement. Plaintiffs respectfully request that the Court set the following schedule for further Settlement-related proceedings:

Deadline for Class Counsel to file their fee application and motion for final approval.	35 days before the Final Fairness Hearing.
Deadline for Class Members to opt out of the Settlement Class or submit objections to the proposed Settlement and/or to Class Counsel's fee application.	21 days before the Final Fairness Hearing.
Deadline for Class Counsel to submit their responses to any objections.	7 days before the Final Fairness Hearing.
Final Fairness Hearing.	91 days (13 weeks) following the Notice Date.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the Court should: (1) grant preliminary approval to the Settlement; (2) certify the Settlement Class; (3) appoint as Class Counsel Berger & Hipskind, LLP; and Lieff Cabraser Heimann & Bernstein, LLP as Lead Class Counsel; (4) appoint Plaintiffs Rachel Cody and Lindsey Knowles as Settlement Class Representatives; (5) approve the proposed Notice Program and order notice to be disseminated; and (6) schedule a hearing for considering final approval of the Settlement and the motion for attorneys' fees and costs and service awards.

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

Dated: June 16, 2017

Respectfully submitted,

/s/ Daniel P. Hipskind

Daniel P. Hipskind (CA SB No. 266763)
Dorian S. Berger (CA SB No. 264424)
BERGER & HIPSKIND LLP
1880 Century Park East, Ste. 815
Los Angeles, CA 90067
Telephone: 323-886-3430
Facsimile: 323-978-5508
E-mail: dph@bergerhipskind.com
E-mail: dsb@bergerhipskind.com

Nicholas R. Diamand (*pro hac vice*)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson St, 8th Flr.
New York, NY 10013
Tel: 212-355-9500
Fax: 212-355-9592
Email: ndiamand@lchb.com

Attorneys for Plaintiffs and the Proposed Class

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

CERTIFICATE OF SERVICE

The undersigned certifies that, on June 16, 2017, I caused the foregoing document to be served on all counsel of record by the Court's CM/ECF electronic filing system.

/s/ Daniel P. Hipskind
Daniel P. Hipskind