

1 Michael W. Sobol (SBN 194857)
msobol@lchb.com
2 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
3 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
4 Telephone: 415.956.1000

Ariana J. Tadler (*pro hac vice*)
atadler@milberg.com
MILBERG TADLER PHILLIPS
GROSSMAN LLP
One Pennsylvania Plaza, Suite 1920
New York, NY 10119
Telephone: 212.946.9453

5 Steven W. Tepler (*pro hac vice*)
steppler@abbottlawpa.com
6 ABBOTT LAW GROUP, P.A.
2929 Plummer Cove Road
7 Jacksonville, FL 32223
Telephone: 904.292.1111

Mark S. Goldman (*pro hac vice*)
goldman@lawgsp.com
8 GOLDMAN SCARLATO & PENNY, P.C.
8 Tower Bridge, Suite 1025
161 Washington Street
Conshohocken, PA 19428
Telephone: 484.342.0700

8 Joseph J. Siprut (*pro hac vice*)
jsiprut@siprut.com
9 SIPRUT PC
17 North State Street, Suite 1600
10 Chicago, IL 60602
11 Telephone: 312.236.0000

Class Counsel

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 IN RE INTUIT DATA LITIGATION

Master Docket No. 15-CV-1778-EJD-SVK

17
18 THIS DOCUMENT RELATES TO:

19 **ALL ACTIONS**

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

20 Date: February 7, 2019
21 Time: 10:00 a.m.
22 Judge: Honorable Edward J. Davila
23 Courtroom: 4, Fifth Floor

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 7, 2019, at 10:00 a.m., in the Courtroom of the Honorable Edward J. Davila, United States District Judge for the Northern District of California, 280 South 1st Street, San Jose, California 95113, Plaintiffs Richard Brown, Christine Diaz, Carol Knoch, James Lebinski, David Stock, and Marilyn Williams (“Plaintiffs”) will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23, for an Order granting final approval of the Class Action Settlement Agreement entered into between the Parties (ECF No. 171-1) and entering Final Judgment in this matter.

Plaintiffs’ motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declarations of Roger Heller, Mark Goldman, Steven Tepler, Joseph Siprut, Henry Kelston, Richard McCune, Julian Hammond, Richard Brown, Christine Diaz, Carol Knoch, James Lebinski, David Stock, Marilyn Williams, and Jennifer Keough, JND Legal Administration LLC, filed herewith, the papers filed in support of Plaintiffs’ motion for preliminary settlement approval, the papers filed in support of Class Counsel’s application for attorneys’ fees, costs, and service awards, the record in this case, and any additional argument and evidence the Court may consider.

Dated: December 17, 2018

Respectfully submitted,

/s/ Roger N. Heller

Michael W. Sobol (SBN 194857)
Roger N. Heller (SBN 215348)
Melissa A. Gardner (SBN 289096)
**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415.956.1000
msobol@lchb.com
rheller@lchb.com
mgardner@lchb.com

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Steven W. Teppler (FL SBN 14787)
ABBOTT LAW GROUP P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
Telephone: 904.292.1111
steppler@abbotlawpa.com

Mark S. Goldman (*pro hac vice*)
GOLDMAN SCARLATO & PENNY, P.C
8 Tower Bridge, Suite 1025
161 Washington Street
Conshohocken, PA 19428
Telephone: 484.342.0700
goldman@lawgsp.com

Ariana J. Tadler (*pro hac vice*)
**MILBERG TADLER PHILLIPS GROSSMAN
LLP**
One Penn Plaza, Suite 1920
New York, NY 10119
Telephone: 212.594.5300
atadler@milberg.com

Joseph J. Siprut (*pro hac vice*)
SIPRUT PC
17 North State Street, Suite 1600
Chicago, IL 60602
Telephone: 312.236.0000
jsiprut@siprut.com

Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and the Court's October 4, 2018 Order Granting Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"; ECF No. 173), Plaintiffs respectfully request that the Court grant final approval of the Class Action Settlement Agreement¹ reached between Plaintiffs and Defendant Intuit, Inc. ("Intuit") to resolve this case.

The Settlement is the product of extensive, arms-length negotiations between the parties and their experienced and well-informed counsel, and represents a strong result for the Class, particularly given the limited release that is provided and the parties' respective litigation risks.

The Settlement provides substantial relief to Class Members, without the Class Members releasing any claims they may have for monetary relief. Under the Settlement, all Class Members may enroll, at Intuit's expense, in two years of TransUnion credit monitoring and identity restoration services. Moreover, the Settlement includes important security changes and commitments by Intuit that are well-designed to help protect the Class Members and other taxpayers from being subjected to tax identity fraud through TurboTax going forward.

At the preliminary approval stage, the Court reviewed the Settlement and found that certification of the Class was appropriate for settlement purposes and that the proposed Settlement appeared to be "fair, reasonable and adequate, entered into in good faith, free of collusion and within the range of possible judicial approval." Preliminary Approval Order, ¶ 8. The Court further directed that notice be disseminated to the Class pursuant to the proposed Notice Program set forth in the Agreement. *Id.*, ¶¶ 10-19.

As set forth in the accompanying declaration of Jennifer Keough, the Notice Program approved and directed by the Court has been implemented by the parties and the Court-appointed Settlement Administrator. Keough Decl., ¶¶ 4-18.

The reaction of the Class thus far has been very positive. Direct email or mail notice was

¹ The Class Action Settlement Agreement ("Agreement") is on the docket at ECF No. 171-1. Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Agreement.

1 sent to 846,816 Class Members. *Id.*, ¶ 7. As of the date of this filing, there have only been 3
 2 objections filed. By contrast, more than 7,600 claims for the credit monitoring services have
 3 already been filed.² *Id.* ¶ 19.

4 For the foregoing reasons and the others detailed below, the Settlement here readily
 5 satisfies the standards for final settlement approval and should be approved.

6 **II. RELEVANT BACKGROUND**

7 **A. Procedural History**

8 A detailed history of this litigation and the negotiations that led to the proposed Settlement
 9 was included in Plaintiffs' motion for preliminary settlement approval (ECF No. 171 at 3-5).
 10 Additional details regarding Class Counsel's work in the litigation are included in the
 11 accompanying counsel declarations and in Class Counsel's motion for attorneys' fees, costs, and
 12 service awards, filed herewith.

13 **B. Preliminary Settlement Approval**

14 Plaintiffs filed a motion for preliminary approval of the Settlement on August 23, 2018
 15 (ECF No. 171). On October 4, 2018, the Court held a hearing on that motion and entered the
 16 Preliminary Approval Order (ECF No. 173). On November 6, 2018, the Court entered a
 17 stipulated order continuing certain of the notice and related deadlines provided in the Preliminary
 18 Approval Order, which continuance was necessitated by unforeseen delays in Intuit compiling the
 19 Class List for purposes of disseminating notice (ECF No. 179).

20 Following the entry of the Preliminary Approval Order, the parties have worked closely
 21 with the Settlement Administrator regarding implementation of the Notice Program and other
 22 implementation matters. Heller Decl., ¶ 24.

23 **III. THE SETTLEMENT**

24 **A. The Class**

25 In the Preliminary Approval Order, the Court provisionally certified, for settlement
 26 _____

27 ² The deadline for Class Members to file objections is January 7, 2019. The deadline for Class
 28 Members to file claims for the credit monitoring services is January 22, 2019. Plaintiffs and/or
 the Settlement Administrator will update the Court regarding the final claims and objections
 numbers in advance of the Final Approval Hearing, which is scheduled for February 7, 2019.

1 purposes, the Class defined as follows:

2 All persons in the United States in whose identities fraudulent federal tax returns
3 for the Tax Years 2014, 2015, and/or 2016 were filed using TurboTax, as
4 determined by the United States Internal Revenue Service. Excluded from the
Class are all employees of Intuit, counsel for the Parties, the Judge presiding over
this Action, and Court staff.

5 Preliminary Approval Order, ¶ 3. According to Intuit's records, there are approximately
6 861,352 unique persons within the Class definition. Keough Decl., ¶ 7.³

7 **B. Benefits to the Class**

8 The Settlement provides relief that is well-tailored to address and protect against the
9 common harms and risks faced by the members of the Class.

10 **1. Credit Monitoring Services**

11 All Class Members may enroll, at Intuit's expense, in two (2) years of TransUnion's credit
12 monitoring and identity restoration services. These services provide, among other benefits,
13 unlimited access to the consumer's credit report, daily credit monitoring and fraud alerts, up to \$1
14 million in identity theft insurance, credit dispute and identity restoration services, unlimited toll-
15 free access to credit specialists, and access to educational resources regarding identity protection
16 and credit. (Agreement, ¶¶ 52-53, Ex. E).

17 The Settlement Website allows Class Members to enroll electronically in the TransUnion
18 services. Class Members may also choose to enroll by mail. The Settlement Website further
19 provides information about other resources available to Class Members who are victims of
20 identity theft or fraud. (Agreement, ¶ 52).

21 The deadline for Class Members to file claims for the TransUnion services is January 22,
22 2019. As of the date of this filing, more than 7,600 claims have been filed. Keough Decl., ¶ 19.

23 These credit monitoring and identity restoration services will be available to Class
24 Members who enroll, within 5 business days after the Court enters Final Judgment approving the
25 Settlement. (Agreement, ¶¶ 52-53, Ex. E).

26
27
28 ³ Following de-duplication of the data, this number is slightly less than the 915,715 originally
estimated by Intuit (*see* Agreement, p. 5, fn.1).

1 **2. Security Improvements and Commitments By Intuit**

2 The Settlement also includes important security changes and commitments by Intuit.
 3 Since this litigation commenced, Intuit has adopted numerous security measures to reduce the
 4 incidence of tax identity fraud occurring through TurboTax. These security measures are
 5 summarized in Exhibit B to the Agreement. In addition to having implemented these security
 6 measures, Intuit agreed to continue to participate in the IRS Security Summit until at least 2021,⁴
 7 or until the IRS Security Summit process ends, whichever is sooner. Intuit also agreed to follow
 8 the security criteria that come out of the IRS Security Summit process during that time.
 9 (Agreement, ¶ 55).

10 **C. Limited Release**

11 In exchange for the consideration provided under the Settlement, Class Members will
 12 release Intuit and related entities from any non-monetary claims they may have related to the
 13 issues in this action. The release provided under the Settlement extends solely to claims for
 14 declaratory, injunctive, and non-monetary equitable relief. Class Members will not release any
 15 claims for damages or other monetary relief. (Agreement, ¶ 72).

16 **D. Separate Payment of Administrative Costs**

17 All fees and costs of the Settlement Administrator will be paid by Intuit in addition to
 18 (that is, on top of) the other settlement benefits provided to the Class Members. (Agreement,
 19 ¶ 59).

20 **E. Separate Payment of Attorneys' Fees, Costs and Service Awards**

21 Concurrently with this motion, Class Counsel are filing an application for an award of
 22 reasonable attorneys' fees and costs. Class Counsel are requesting attorneys' fees in the amount
 23 of \$2,717,225.56, plus reimbursement of \$102,774.44 in litigation costs. Class Counsel's fee
 24 application also requests service awards of \$5,000 for each of the six Plaintiffs. Any such
 25 attorneys' fees, costs, and service awards that are granted by the Court will be paid by Intuit in
 26 addition to (i.e., on top of) settlement benefits provided to the Class Members (Agreement, ¶ 66).

27 _____
 28 ⁴ The IRS Security Summit is a collaboration between the IRS, state tax administrators, and other industry members to combat identity theft refund fraud to protect the nation's taxpayers.

1 **IV. NOTICE HAS BEEN DISSEMINATED TO THE CLASS PURSUANT TO THE**
2 **COURT-APPROVED NOTICE PROGRAM**

3 The Notice Program approved and directed by the Court in its Preliminary Approval
4 Order has been implemented by the Settlement Administrator and the parties. *See generally*
5 Keough Decl, filed herewith. This program—which includes direct email/mail notice to the
6 Class, a dedicated Settlement Website, and an informational Toll-Free Number—was well-
7 designed to notify the Class about the case and the Settlement.

8 **A. Direct Notice to Class Members**

9 As directed by the Preliminary Approval Order, Intuit provided the Settlement
10 Administrator with a “Class List” with the pertinent identifying/contact information for Class
11 Members, which the Settlement Administrator used to disseminate direct notice to Class
12 Members via email and mail. Keough Decl., ¶¶ 4-7.

13 For Class Members who, according to Intuit’s records, were current or former TurboTax
14 customers, the Settlement Administrator emailed them notice in the form approved by the Court.
15 Keough Decl., ¶ 12.

16 For Class Members who, according to Intuit’s records, have never been TurboTax
17 customers, an experienced Skip-Trace Provider conducted a reverse look-up (i.e., skip trace) to
18 attempt to identify a mailing address, using the name and Social Security numbers for them in the
19 Class List, and provided the results to the Settlement Administrator. Through this process,
20 mailing addresses were found for more than 96% of these non-customer Class Members, and they
21 were mailed notice in the form approved by the Court. Keough Decl., ¶ 6.

22 **B. Settlement Website and Toll-Free Number**

23 As directed by the Preliminary Approval Order, prior to sending the notices, the
24 Settlement Administrator established a Settlement Website, at the URL
25 www.IntuitDataLitigation.com, where Class Members can obtain further information about the
26 case and the Settlement and enroll electronically in the credit monitoring services. The
27 Settlement Website is optimized for display on mobile devices, and includes key case documents,
28 including a copy of the Agreement, the operative complaint; a detailed Long-Form Notice in the

1 form approved by the Court; and a printable credit monitoring enrollment form. The Settlement
2 Administrator also established a toll-free telephone number that Class Members can call to
3 receive additional information about the Settlement. Keough Decl., ¶¶ 17-18.

4 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

5 The Ninth Circuit has identified “an overriding public interest in settling and quieting
6 litigation” and has noted that “[t]his is particularly true in class action suits.” *Van Bronkhorst v.*
7 *Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also In re Netflix Privacy Litig.*, No. 11-379,
8 2013 WL 1120801, at *3 (N.D. Cal. Mar. 18, 2013). In evaluating a proposed class action
9 settlement under Federal Rule of Civil Procedure 23(e), the court’s ultimate inquiry is whether the
10 settlement “is fundamentally fair, adequate, and reasonable.” *Officers for Justice v. Civil Serv.*
11 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (citations omitted); *accord Torrissi v. Tucson Elec.*
12 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

13 Under Ninth Circuit precedent, a district court should generally consider the following
14 factors when making this determination: (1) the strength of the plaintiff’s case; (2) the risk,
15 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
16 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
17 completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the
18 presence of a governmental participant; and (8) the reaction of the class members of the proposed
19 settlement. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)
20 (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). Where, as here,
21 a proposed settlement is negotiated prior to formal class certification, courts must also scrutinize
22 the agreement for “evidence of collusion or other conflicts of interest.” *Id.*

23 Moreover, under the recently-amended Rule 23(e)(2), a court must also consider whether:
24 (A) the class representatives and class counsel have adequately represented the class; (B) the
25 proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate; and
26 (D) the proposal treats class members equitably relative to each other.

27 Application of the relevant factors here demonstrates that the Settlement here is absolutely
28 fair, reasonable, and adequate and should be approved.

1 **A. The strength of plaintiffs' case, the litigation risks, expenses, complexity, and**
2 **likely duration of further litigation, and the risk of maintaining class action**
3 **status throughout the trial all favor approval (Churchill factors 1, 2, 3)**

4 The Settlement provides substantial relief that is well-tailored to address the alleged
5 misconduct and to protect against the common harms and risks faced by the members of the
6 Class. These benefits will help Class Members avoid and mitigate the harms associated with the
7 misuse of their identities and personal information, and will help reduce the incidence of tax
8 identity fraud through TurboTax going forward. Moreover, the Settlement only releases non-
9 monetary claims—notwithstanding that it provides valuable benefits to Class Members beyond
10 injunctive relief—meaning that Class Members who experienced particular monetary damages
11 resulting from the tax fraud that occurred in their names will still be able to pursue monetary
12 relief claims if they choose.

13 These benefits speak directly to the shared experiences and risks faced by the Class. All
14 Class Members have been subjected to identity theft. All of them had their personal information
15 misused by fraudsters who filed fraudulent tax returns in their names through Turbo Tax.
16 Moreover, all of them face continuing risks of identity theft and PII misuse going forward. The
17 TransUnion services provided under the Settlement will help protect Class Members from
18 identity theft and the misuse of their information in the future, as well as to mitigate the
19 corresponding harms associated with the past misuse of their information. Moreover, the security
20 changes and commitments by Intuit will benefit Class Members (and other taxpayers) by helping
21 to shore up Intuit's security and thereby reduce the incidence of tax identity fraud through
22 TurboTax. Indeed, this is the very type of injunctive relief that Plaintiffs sought in pursuing this
23 litigation and that would have been available had the litigation proceeded.

24 Plaintiffs originally pursued damages as part of this litigation. It has become apparent,
25 through discovery and the litigation, however, that there would be significant challenges in
26 pursuing monetary relief on a class-wide basis under the circumstances of this case. It bears
27 mentioning here, that the Class Members in this case were not deprived of their legitimate tax
28 refunds due to the fraud, though in many cases those who were due a refund were delayed in
 receiving it. And some Class Members suffered out-of-pocket losses, such as for amounts paid to

1 accountants to help understand and deal with the fraud that occurred.

2 Plaintiffs and Class Counsel were careful to negotiate a Settlement that does not deprive
3 Class Members who suffered particular monetary damages the ability to pursue those claims.
4 Thus, although the Settlement does provide valuable benefits beyond the injunctive relief (the
5 TransUnion services), the Settlement does *not* release any damages or other monetary relief
6 claims Class Members may have.

7 The relief obtained for Class Members represents a strong result, particularly given the
8 risks and challenges of ongoing litigation. Among other arguments that Intuit has made and/or
9 indicated it would make if the litigation proceeded are: (a) third party fraudsters, and not Intuit,
10 are responsible for the tax identify fraud that occurred in the Class Members' names; (b) Intuit
11 took reasonable steps to prevent the fraud; (c) Intuit is obligated to file suspicious returns
12 prepared through TurboTax, and it is up to the IRS, not Intuit, to catch the fraud; and (d) most
13 attempts at tax fraud through TurboTax are caught. Moreover, as the Court is aware, Intuit
14 succeeded in obtaining dismissal of some claims, and the Court has ordered that the issue of
15 whether certain Plaintiffs' claims are subject to arbitration must be decided by an arbitrator.

16 While Plaintiffs believe that these obstacles are not insurmountable, they are indicative of
17 the risks that Plaintiffs and the proposed Class would face if the litigation were to continue. The
18 proposed Settlement provides well-tailored relief while allowing Class Members to avoid the
19 risks of unfavorable, and in some cases dispositive, rulings on these and other issues.

20 The Settlement also provides another significant benefit that would not be available if the
21 litigation were to go to trial—prompt relief. Proceeding to trial could add years to the resolution
22 of this litigation, given the legal and factual issues raised and likelihood of appeals.

23 In contrast to the tangible, immediate benefits of the Settlement, the outcome of continued
24 litigation, trial and likely appeals is uncertain and could add years to this litigation, or could result
25 in no benefits to the Class. Class Counsel strongly believe in the merits of this case, but
26 recognize that unsettled legal and factual questions would have been tested on a motion for class
27 certification, a motion for summary judgment, at trial, and/or on appeal. Had this litigation
28 reached trial on behalf of a certified litigation class, it would have presented a costly, expert-

1 intensive and technically complicated trial that could have spanned weeks and necessitated
 2 extensive and costly trial preparation. Appeals would likely have followed the trial, resulting in
 3 further delay, added costs, and further uncertainty for the Class regarding the result.

4 The substantial relief obtained through this Settlement, balanced against the length,
 5 expense, and uncertainty of further litigation, weighs in favor of final approval. *See Johnson v.*
 6 *Quantum Learning Network, Inc.*, No. 15-5013, 2017 WL 747462, at *1 (N.D. Cal. Feb. 27,
 7 2017) (“Courts have noted that uncertainty favors approval of a settlement.”); *Rodriguez v. West*
 8 *Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Nat’l Rural Telecomms. Coop. v. DIRECTV,*
 9 *Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The Court shall consider the vagaries of litigation
 10 and compare the significance of immediate recovery by way of the compromise to the mere
 11 possibility of relief in the future, after protracted and expensive litigation.”) (citation omitted).

12 **B. The amount offered in settlement favors approval (Churchill factor 4)**

13 Even though this Settlement would release only non-monetary claims (damages and other
 14 monetary relief claims would not be released), the Settlement still provides valuable benefits to
 15 Class Members beyond injunctive relief. All Class Members may enroll in two (2) years of
 16 TransUnion’s credit monitoring service, which provides several valuable features including:
 17 unlimited access to the consumer’s credit report, daily credit monitoring and fraud alerts, up to \$1
 18 million in identity theft insurance, and credit dispute and identity restoration services.

19 Based on a comparison to other similar services available on the market, a reasonable
 20 estimate of the retail value of the TransUnion services is between approximately \$10 and \$20 per
 21 month, for a total value per enrollee of approximately \$240 to \$480 for the two years of service
 22 provided by the Settlement.⁵

23 The Settlement also includes important security practice changes and commitments by
 24 Intuit that have helped reduce tax fraud through TurboTax and will continue to do so going
 25 forward. While it is not possible assign a precise monetary value to this relief, there is no
 26 question that it provides very significant benefits and cost savings to Class Members and to other
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28 ⁵ *See* David Gewirtz, *Best Identity monitoring services for 2018*, CNET (Mar. 2, 2018),
<https://www.cnet.com/news/best-identity-monitoring-services/>.

1 taxpayers throughout the United States who otherwise would have faced a greater risk of being
2 victimized by tax identity fraud in the future.

3 The settlement relief here weighs strongly in favor of final approval.

4 C. **The extent of discovery and stage of proceedings favor approval (Churchill**
5 **factor 5)**

6 Class Counsel here negotiated on behalf of the Class armed with significant information
7 about the case and after years of investigation, discovery, and litigation. This factor favors final
8 approval. *See Slezak v. City of Palo Alto*, No. 16-3224, 2017 WL 2688224, at *4 (N.D. Cal. June
9 22, 2017) (“So long as the parties have ‘sufficient information to make an informed decision
10 about settlement,’ this factor will weigh in favor of approval.”) (quoting *Linney v. Cellular*
11 *Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)); *Bellinghausen v. Tractor Supply Co.*, 306
12 F.R.D. 245, 257 (N.D. Cal. 2015) (“[T]he court’s focus is on whether the parties carefully
13 investigated the claims before reaching a resolution.”).

14 Indeed, the Settlement is informed by Class Counsel’s substantial investigation and
15 discovery regarding the legal and factual issues in the litigation. Before filing, Class Counsel
16 conducted an extensive investigation into the factual underpinnings of the practices challenged
17 and the applicable law. Throughout the course of the litigation, Class Counsel engaged in an
18 ongoing factual and legal investigation, including reviewing publicly available information about
19 the filing of fraudulent tax returns through TurboTax and through other services, identifying and
20 speaking with potential pertinent witnesses and experts, and speaking with numerous affected
21 consumers about their experiences. Heller Decl., ¶¶ 7, 11-19, 32-39; Goldman Decl., ¶¶ 7-12;
22 Kelston Decl. ¶¶ 2-3, 6-9; Siprut Decl., ¶¶ 4-8; Tepler Decl., ¶¶ 15, 18.

23 Moreover, the Parties engaged in extensive formal discovery, making them well-informed
24 about the relative strengths and weaknesses of their respective positions, and providing them with
25 information needed to negotiate the proposed Settlement. Among other things, Class Counsel
26 reviewed and analyzed more than 100,000 pages of pertinent documents produced by Intuit, and
27 propounded and responded to numerous written discovery requests. The Parties held frequent,
28 often lengthy, meet and confer sessions regarding their written discovery requests and objections

1 thereto, electronically stored data and documents, and to resolve various discovery disputes.
2 Heller Decl., ¶¶ 13-15.

3 Through those efforts they were able to resolve most disputes without the Court's
4 assistance, however the parties litigated one important discovery dispute before Magistrate Judge
5 van Keulen. Class Counsel also engaged in third-party discovery, including with the U.S.
6 Internal Revenue Service and Santa Barbara Bank, a financial institution that processed certain
7 tax refunds for returns filed through TurboTax, to identify additional potentially relevant
8 documents and information. Heller Decl., ¶ 17.

9 Further, as the Court is aware, there was significant litigation and motion practice in this
10 case, including two fully briefed motions to dismiss filed by Intuit, Intuit's arbitration motion, and
11 Plaintiffs' motion for interlocutory review pursuant to 28 U.S.C. § 1292(b). In negotiating the
12 Settlement, Plaintiffs and their counsel were significantly informed by their work in briefing these
13 motions and, of course, by the Court's rulings on these motions.

14 As a result of this discovery and investigation, both parties were able to negotiate the
15 Settlement on a fully informed basis and with a thorough understanding of the merits and value of
16 the parties' respective claims and defenses. Accordingly, the extent of discovery completed and
17 the stage of the proceedings weigh strongly in favor of final approval of the Settlement. *See*
18 *DIRECTV*, 221 F.R.D. at 528 ("the proposed settlement was reached only after the parties had
19 exhaustively examined the factual and legal bases of the disputed claims" and "[t]his fact strongly
20 militates in favor of the Court's approval of the settlement.").

21 **D. The recommendation of experienced counsel favors approval (Churchill**
22 **factor 6)**

23 The judgment of experienced counsel that final approval is appropriate "should be given
24 considerable weight." *Slezak*, 2017 WL 2688224, at *5 (quoting *Larsen v. Trader Joe's Co.*, No.
25 11-05188, 2014 WL 3404531, at *5 (N.D. Cal. July 11, 2014)). *See also Bellinghausen*, 306
26 F.R.D. at 257 (citation omitted) ("The trial court is entitled to, and should, rely upon the judgment
27 of experienced counsel for the parties.") "The recommendations of plaintiffs' counsel should be
28 given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.

1 1979).

2 Class Counsel have extensive experience litigating and settling consumer class actions and
3 other complex matters,⁶ and have conducted an extensive investigation into the factual and legal
4 issues raised in this litigation. Based on their experience and knowledge about this case, Class
5 Counsel weighed the benefits of the Settlement against the inherent risks and expense of
6 continued litigation, and believe that the proposed Settlement is fair, reasonable, and adequate.⁷
7 That qualified and well-informed counsel endorse the Settlement as being fair, reasonable, and
8 adequate supports approving the Settlement.

9 **E. The Class response to date favors approval (Churchill factor 8)**

10 A court may appropriately infer that a class settlement is fair, reasonable, and adequate
11 when few class members object to it. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
12 1043 (N.D. Cal. 2008) (“[T]he absence of a large number of objections to a proposed class action
13 settlement raises a strong presumption that the terms of a proposed class settlement are favorable
14 to the class members.”) (quotation marks and citation omitted).

15 Direct email or mail notice was sent to 846,816 Class Members. Keough Decl., ¶ 7. The
16 deadline for Class Members to object to the Settlement is January 7, 2019, and the deadline for
17 Class Members to submit claims for the credit monitoring benefit is January 22, 2019. To date,
18 only 3 objections have been filed.⁸ By contrast, more than 7,600 claims for the credit monitoring
19 benefit have already been submitted. Keough Decl., ¶ 19.⁹

20 A relatively small number of objections compared to the overall size of the Class would
21 certainly weigh in favor of the proposed Settlement. *See Tadepalli v. Uber Techs., Inc.*, No. 15-
22 04348, 2016 WL 1622881, at *8 (N.D. Cal. Apr. 25, 2016) (quoting *Omnivision Techs.*, 559 F.

23 _____
24 ⁶ Heller Decl., ¶¶ 2-4; Goldman Decl., ¶¶ 2-6, 9; Kelston Decl. ¶¶ 4-9, Ex. A; Siprut Decl., ¶¶ 2-
3; Tepler Decl., ¶¶ 2-14; McCune Decl., ¶¶ 2-5; Hammond Decl., ¶¶ 3-8, Ex. 1.

25 ⁷ Heller Decl., ¶ 52; Goldman Decl., ¶ 17; Kelston Decl. ¶ 17; Siprut Decl., ¶ 13; Tepler Decl., ¶
15.

26 ⁸ Pursuant to the schedule entered by the Court, Plaintiffs will address these objections, and any
27 additional objections that may be filed before the deadline, in advance of the February 7, 2019
Final Approval Hearing. *See* ECF No. 179 at 3.

28 ⁹ Plaintiffs and/or the Settlement Administrator will update the Court regarding the final claims
and objections numbers in advance of the Final Approval Hearing.

1 Supp. 2d at 1043) (observing “the absence of a large number of objections to a proposed class
2 action settlement raises a strong presumption that the terms of a proposed class settlement action
3 are favorable to the class members”); *see also In re Rambus Inc. Derivative Litig.*, No. 06- 3513,
4 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009).¹⁰

5 **F. The Parties’ non-collusive, arms-length negotiations favor approval**

6 The Court “must reach a reasoned judgment that the proposed agreement is not the
7 product of fraud or overreaching by, or collusion among, the negotiating parties.” *Class Plaintiffs*
8 *v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992) (citations omitted). *See also* Fed. R. Civ.
9 P. 23(e)(2)(B). Particular scrutiny of this factor is applied where, as here, a settlement is
10 negotiated before formal class certification. *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at
11 946. The present Settlement, and the hard-fought process by which it was reached, absolutely
12 withstand such scrutiny.

13 Where, as here, a settlement is the product of arm’s-length negotiations conducted by
14 capable and experienced counsel, the court begins its analysis with a presumption that the
15 settlement is fair and reasonable. *See* 4 William B. Rubenstein, Alba Conte & Herbert Newberg,
16 Newberg on Class Actions § 13.45 (5th ed. 2014); *Slezak*, 2017 WL 2688224, at *5; *Wakefield v.*
17 *Wells Fargo & Co.*, No. 13-05053, 2015 WL 3430240, at *4 (N.D. Cal. May 28, 2015); *In re*
18 *Heritage Bond Litig.*, No. 02-1475, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005).

19 The Settlement submitted for the Court’s consideration is the product of hard-fought,
20 arm’s-length negotiations between the parties and their qualified and informed counsel. The
21 parties participated in two full-day mediation sessions and ongoing negotiations through an
22 experienced and well-respected mediator—Hon. Edward A. Infante (Ret.) of JAMS—and were
23 able to reach an agreement with the help of Judge Infante. Throughout these negotiations, the
24 parties were represented by counsel experienced in the prosecution, defense and settlement of
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26 ¹⁰ In addition, while there is no governmental entity party to this action (*Churchill* factor 7),
27 neither state nor federal officials have lodged any objection, to date, after receiving the required
28 notice of the Agreement pursuant to 28 U.S.C. § 1715. *See generally Schuchardt v. Law Office of*
Rory W. Clark, 314 F.R.D. 673, 685 (N.D. Cal. 2016) (finding that failure of governmental entity
to file objection favored settlement approval).

1 complex class actions. The participation of respected and neutral mediator Judge Infante across
 2 two mediation sessions and ongoing negotiations shows that the proposed Settlement here is not
 3 the product of collusion. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1171 (S.D.
 4 Cal. 2007) (involvement of mediator was “highly indicative of fairness”); *Satchell v. Fed.*
 5 *Express Corp.*, No. 03-2659, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (“The assistance
 6 of an experienced mediator in the settlement process confirms that the settlement is non-
 7 collusive.”), *aff’d sub nom. Satchell v. Wallace*, 439 F. App’x 644 (9th Cir. 2011). This factor
 8 weighs in support of final approval.

9 **G. The Rule 23(e)(2) considerations favor approval**

10 Under the recently-amended Rule 23(e)(2), a court considering whether to grant final
 11 approval of a class settlement must also consider whether: (A) the class representatives and class
 12 counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length;
 13 (C) the relief provided for the class is adequate; and (D) the proposal treats class members
 14 equitably relative to each other. These factors overlap substantially with the *Churchill* factors
 15 discussed above, and likewise support approving the Settlement here.

16 **1. The Class Representatives and Class Counsel have adequately**
 17 **represented the Class**

18 Plaintiffs’ interests are aligned with and are not antagonistic to the interests of the Class.
 19 Plaintiffs and the Class Members share an interest in ensuring that Intuit’s policies and practices
 20 are appropriately designed to protect against fraudulent tax filings through TurboTax, and in
 21 obtaining relief to protect against the harms that flow from such identity misuse as well as to
 22 mitigate the effects from past fraudulent filings. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
 23 1021 (9th Cir. 1998) (adequacy satisfied where “each . . . plaintiff has the same problem”).
 24 Moreover, Plaintiffs each committed substantial time to this case, and each reviewed and
 25 approved of the proposed Settlement upon finding it was fair, reasonable, and adequate for the
 26 Class.¹¹ Plaintiffs have fairly and adequately protected the interests of the Class.

27 Moreover, as discussed above (*supra* section V.D), Class Counsel have extensive

28 ¹¹ Brown Decl. ¶¶ 4-9; Diaz Decl. ¶¶ 3-5; Knoch Decl. ¶¶ 3-5; Lebinski Decl. ¶¶ 3-5; Stock Decl. ¶¶ 7-9; Williams Decl. ¶¶ 3-5.

1 experience litigating and settling class actions, including consumer cases throughout the United
2 States. Class Counsel are well qualified to represent the Class and have and will continue to
3 fairly and adequately protect the interests of the Class.

4 This consideration supports granting approval of the Settlement.

5 **2. The Settlement was negotiated at arm's length**

6 As discussed above (*supra* section V.F), the Settlement here is the product of hard-fought,
7 arm's-length negotiations between the parties and their qualified and informed counsel, with the
8 assistance of Judge Infante, an experienced and well-respected mediator. The parties participated
9 in two full-day mediation sessions and continued negotiations through Judge Infante before
10 reaching this Settlement. This consideration weighs in favor of granting approval.

11 **3. The relief provided for the Class is adequate**

12 As discussed above, this consideration is satisfied. The Settlement provides substantial,
13 well-tailored relief for Class Members, and represents a particularly strong result given the
14 limited release provided (no monetary relief claims are released) and the parties' respective
15 litigation risks. *See supra* section V.A-B.

16 **4. The proposal treats Class Members equitably**

17 The proposed Settlement does not grant preferential treatment to any segment of the
18 Class. All Class Members may enroll, at Intuit's expense, in the TransUnion credit monitoring
19 services provided by the Settlement, and all Class Members (and other taxpayers) stand to benefit
20 from Intuit's security changes and commitments, in the form of reduced risk of being victimized
21 by tax identity fraud in the future. Moreover, plaintiff service awards, such as those requested for
22 the six Plaintiffs here, are commonly awarded in class actions, are well-justified under the
23 circumstances here, and are appropriate in amount given precedent and the Plaintiffs'
24 commitment and effort in the litigation.

25 **VI. CONCLUSION**

26 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
27 approval of the Settlement and enter Final Judgment in this matter.
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Respectfully submitted,

/s/ Roger N. Heller

Michael W. Sobol (SBN 194857)
Roger N. Heller (SBN 215348)
Melissa A. Gardner (SBN 289096)
**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415.956.1000
msobol@lchb.com
rheller@lchb.com
mgardner@lchb.com

Steven W. Teppler (FL SBN 14787)
ABBOTT LAW GROUP P.A.
2929 Plummer Cove Road
Jacksonville, FL 32223
Telephone: 904.292.1111
steppler@abbotlawpa.com

Mark S. Goldman (*pro hac vice*)
GOLDMAN SCARLATO & PENNY, P.C
8 Tower Bridge, Suite 1025
161 Washington Street
Conshohocken, PA 19428
Telephone: 484.342.0700
goldman@lawgsp.com

Ariana J. Tadler (*pro hac vice*)
**MILBERG TADLER PHILLIPS GROSSMAN
LLP**
One Penn Plaza, Suite 1920
New York, NY 10119
Telephone: 212.594.5300
atadler@milberg.com

Joseph J. Siprut (*pro hac vice*)
SIPRUT PC
17 North State Street, Suite 1600
Chicago, IL 60602
Telephone: 312.236.0000
jsiprut@siprut.com

Class Counsel