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11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14  
15 RACHEL CODY AND LINDSEY  
KNOWLES, individually and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 SOULCYCLE INC.,

20 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  
21 Ctrm: 5A

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**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.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rachel Cody and Lindsey Knowles (“Plaintiffs”), individually and  
4 as representatives of the proposed Settlement Class, submit this Memorandum in  
5 support of their unopposed motion for preliminary approval of the proposed  
6 Settlement Agreement (“Settlement”) with Defendant SoulCycle, Inc.  
7 (“SoulCycle”).<sup>1</sup> The proposed Settlement provides significant economic  
8 consideration to Settlement Class Members and meaningful changes to SoulCycle’s  
9 business practices. Specifically, Settlement Class Members will receive a  
10 minimum of one reinstated SoulCycle class and, in many instances, a second  
11 reinstated SoulCycle class or, alternatively, Settlement Class Members may elect a  
12 cash option where they can receive a payment of up to \$25 per reinstated SoulCycle  
13 class (up to a maximum of \$50).<sup>2</sup> The estimated monetary value of the economic  
14 consideration provided by the Settlement is between \$6.9-\$9.2 million.<sup>3</sup>  
15 Additionally, SoulCycle has revised its terms and conditions, disclaimers and  
16 various business practices to ensure that the Settlement Class and future consumers  
17 will understand that SoulCycle’s class offerings are not gift certificates or gift  
18 cards.

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

23 \_\_\_\_\_  
24 1 Unless otherwise noted, capitalized terms have the same meaning as in the  
proposed Settlement Agreement.

25 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.

26 3 The Settlement provides for up to 229,646 reinstated classes, depending upon the  
27 number of Settlement Class Members who elect the Cash Option. For example, if  
28 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/>.



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

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

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

15 **II. LITIGATION HISTORY**

16 **A. Factual Background**

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

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



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

7 SoulCycle agreed its classes were marketed and sold as classes with an  
8 associated cost, which varied depending upon the location or number of classes  
9 purchased. It countered that every good and service has an associated cost which  
10 does not render it issued in a specified value or a gift certificate. SoulCycle  
11 maintained that its classes were not gift certificates issued in a specified dollar  
12 amount. SoulCycle argued the term "Soul30" neither means the rider actually paid  
13 \$30 nor that she had an amount of money debited from her account when she  
14 purchased a class. Instead, riders' accounts tracked the number of classes remaining  
15 to be booked, not any outstanding specific dollar amount. For example, a  
16 SoulCycle customer purchasing 30 classes in the Hamptons, priced at \$40 each  
17 (\$1,020 in total) would have 30 classes, not a credit of \$1,020.

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

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

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

4 **B. Procedural History**

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

15 On February 10, 2016, Plaintiff Lindsey Knowles and Plaintiff Cody filed the  
16 SAC. (Dkt. 33). On April 22, 2016, the Court granted SoulCycle’s motion to  
17 dismiss as to Plaintiffs’ Gift Certificate Law claim. The Court otherwise permitted  
18 Plaintiffs to proceed on their EFTA and California Business and Professions Code  
19 §17200 *et seq.* (the “UCL”) claims, reserving the question whether the Complaint  
20 sufficiently alleged a UCL violation based on the Gift Certificate Law. (*Id.*, at 7).

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

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

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

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

17 **C. Discovery**

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

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

1 between SoulCycle personnel and the public, and SoulCycle’s records relating to  
2 Plaintiffs Cody and Knowles. *Id.*, ¶ 17. SoulCycle served 44 document requests on  
3 each Plaintiff. Plaintiffs’ counsel responded to these requests, producing over  
4 10,000 pages, including personal email messages. Plaintiffs’ counsel responded to  
5 11 interrogatories and 75 requests for admission (“RFAs”) served on Plaintiff  
6 Knowles, and 13 interrogatories and 63 RFAs served on Plaintiff Cody. *Id.*, ¶ 16.

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

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

#### 19 **D. Settlement Negotiations**

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

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

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

3 **III. SUMMARY OF THE SETTLEMENT TERMS**

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

7 **A. Settlement Class**

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

12 For purposes of settlement only, upon the express terms and conditions set  
13 forth in the Settlement Agreement, SoulCycle agrees to the certification of a  
14 Settlement Class. The Settlement Class is comprised of:<sup>4</sup>

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

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

24 **B. Settlement Consideration**

25 In settling the claims against it, SoulCycle has agreed to provide both  
26

---

27 <sup>4</sup> SoulCycle agreed in the Settlement Agreement not to contest certification of the  
28 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. Non-Economic Consideration**

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. Economic Consideration**

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



1 class that expired unused during the Class Period will receive one new class  
2 automatically placed in his or her electronic SoulCycle account (“Reinstated  
3 Class”).<sup>5</sup> Those Settlement Class Members who purchased more than one  
4 SoulCycle class that expired unused during the Class Period will automatically  
5 receive two Reinstated Classes.<sup>6</sup> Ex. 1 to Hipskind Decl., ¶¶ IV.A.1-5.

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

#### 14 **C. Proposed Notice Plan**

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

23 The proposed Notice Plan has the following key components:

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

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26 <sup>5</sup> The automatic placement of Reinstated Classes will occur over no more than the  
27 course of one year from the Effective Date. Ex. 1 to Hipskind Decl., ¶IV.A.3.

28 <sup>6</sup> 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

1 Economic Consideration to the Settlement Class. Ex. 1, Hipkind Decl., ¶¶ VI.B.7-  
2 8.

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

7 **D. Settlement Release**

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

1 also agree to dismissal of the action with prejudice.

2 **IV. The Court Should Preliminarily Approve the Settlement**

3 “[T]here is an overriding public interest in settling and quieting litigation ...  
4 particularly ... in class action suits.” *Van Bronkjurst v. Safeco Corp.*, 529 F.2d 943,  
5 950 (9th Cir. 1976); *see also Churchill Village, L.L.C. v. Gen. Elec. Co.*, 361 F.3d  
6 566, 576 (9th Cir. 2004). Courts recognize as a matter of sound policy settlements  
7 of disputed claims are encouraged and settlement approval hearings should not  
8 “reach any ultimate conclusions on the contested issues of fact and law which  
9 underlie the merits of the dispute.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,  
10 964 (9th Cir. 2009) (internal quotes and citation omitted).

11 **A. Standard for Preliminary Settlement Approval**

12 Proposed class action settlements require Court approval. Fed. R. Civ. P  
13 23(e). The Court must ensure that “the agreement is not the product of fraud or  
14 overreaching by, or collusion between, the negotiating parties.” *Officers for Justice*  
15 *v. Civil Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d. 615, 625 (9th  
16 Cir. 1982). “At the preliminary approval stage, a court determines whether a  
17 proposed settlement is ‘within the range of possible approval’ and whether or not  
18 notice should be sent to class members.” *Carter v. Anderson Merchs., LP*, Nos. 08-  
19 0025, 09-0216, 2010 WL 1946784, at \*4 (C.D. Cal. May 11, 2010). The Court also  
20 determines “whether or not notice should be sent to class members.” *Id.*

21 Preliminary settlement approval is appropriate where the proposed settlement (1)  
22 “appears to be the product of serious, informed, non-collusive negotiations,” (2)  
23 “has no obvious deficiencies,” (3) “does not improperly grant preferential treatment  
24 to class representatives or segments of the class,” and (4) “falls with[in] the range  
25 of possible approval.” *Eddings v. Health Net, Inc.*, No. 10-1744, 2013 WL  
26 169895, at \*2 (C.D. Cal. Jan. 16, 2013) (quoting *In re Tableware Antitrust Litig.*,  
27 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); Rubenstein, *Newberg on Class*  
28 *Actions* § 13:10 (5<sup>th</sup> ed. 2015) (“Newberg”). (“The general rule is that a court will

1 grant preliminary approval where the proposed settlement ‘is neither illegal nor  
2 collusive and is within the range of possible approval.’”). The Settlement  
3 Agreement readily meets these standards and the Parties respectfully submit the  
4 Settlement Agreement should be preliminarily approved so notice can be provided  
5 to the Settlement Class.

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

17 **1. The Settlement Is the Product of Arm’s Length and**  
18 **Informed Negotiations.**

19 Where, as here, a settlement is the product of arm’s-length negotiations  
20 conducted by capable and experienced counsel, the settlement is presumptively fair  
21 and reasonable. *See* Newberg § 13:14; *In re Heritage Bond Litig.*, No. 02-ml-  
22 01475, 2005 WL 1594403, at \*9 (C.D. Cal. June 10, 2005) (“A presumption of  
23 correctness is said to ‘attach to a class settlement reached in arm’s-length  
24 negotiations between experienced capable counsel after meaningful discovery.’”) (quoting  
25 *Manual for Complex Litigation (Third)* § 30.42 (1995)); *In re Toys “R”*  
26 *Us-Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D.  
27 438, 450 (C.D. Cal. 2014) (“the settlement is a product of informed, arms-length  
28 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

1 interests of the Settlement Class. *See Nat'l Rural Telecomm. Coop. v. DirecTV*,  
2 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“Great weight is accorded to the  
3 recommendation of counsel, who are most closely acquainted with the facts of the  
4 underlying litigation.”) (internal quotations and citations omitted). An overview of  
5 Class Counsel’s qualifications is described at Hipskind Decl. ¶¶ 11-13

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

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

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

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

28 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



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

3 (a) *Liability Risks*

4 This case involved litigating a claim with little legal precedent; there is not a  
5 vast body of EFTA law. That many of the issues here were not the subject of  
6 significant precedent makes the outcome of the case less certain and thus  
7 strengthens the benefits provided by the Settlement. For example, in its Motion to  
8 Dismiss, SoulCycle relied heavily on *Hughes v. CorePower Yoga*, No. 12-cv-  
9 00905, 2013 WL 1314456 (D. Minn. Mar. 28, 2013). In *Hughes*, the Court held  
10 that yoga classes were not covered by the EFTA because, in part, they were “not  
11 issued in a ‘specified amount.’” Dkt. 40 at 12. Further, “[t]he Official Staff  
12 Interpretations of Regulation E specifically provides that cards redeemable for a  
13 specific good, service, or experience such as a spa treatment, hotel stay, or airline  
14 flight are not store gift cards under the EFTA.” *Id* at 12-13. Here, the Court  
15 initially found that “Defendant’s class purchases are sold for a specified value, and  
16 can only be used for classes equal to or less than that value,” (Dkt. 30 at 5) thereby  
17 falling under the EFTA. However, had this litigation progressed, there was  
18 significant risk that the Court or a jury would determine that SoulCycle’s classes  
19 were akin to those in *Hughes*, resulting in no benefits at all to the Settlement Class.

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



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

12 (b) *Certification Risks*

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

18 SoulCycle asserted individual issues would render a class-action trial  
19 unmanageable and inappropriate for Rule 23(b)(3) certification. For example,  
20 SoulCycle argued an EFTA claim can only be brought on behalf of consumers  
21 defined as “natural person[s].” 15 U.S.C. § 1693a; *see also Kashanchi v. Texas*  
22 *Commerce Med. Bank, N.A.*, 703 F.2d 936, 939-42 (5th Cir. 1983)(citing 15 U.S.C.  
23 § 1693a(5)). Yet, Plaintiffs sought to certify a litigation class including businesses.  
24 A “gift certificate” is defined as “[i]ssued on a prepaid basis primarily for personal,  
25 family or household purposes to a consumer”, and whether a gift certificate is so  
26 issued “will depend on the facts and circumstances”, 12 C.F.R. § 1005.20(a)(1)(i);  
27 12 C.F.R. § 1005, Supp. I. SoulCycle argued that determining whether it sold a  
28 Class that is a “gift certificate” would thus require individualized analyses, based

1 upon the facts and circumstances of the purchase.

2 Similarly, SoulCycle argued evidence suggests that riders with a California  
3 billing address may have been resident elsewhere, or purchased classes for use  
4 outside of California, and thus were not subject to the UCL. As a result, fact-  
5 specific analysis would be required to determine whether each member of the  
6 California class was properly included in a litigated class, precluding certification.  
7 *See, e.g., Moore v. Apple, Inc.*, 309 F.R.D. 532, 548-49 (N.D. Cal. 2015).

8 SoulCycle also argued that affirmative defenses, such as mitigation of damages and  
9 the voluntary payment doctrine would “likely involve individualized  
10 determinations, weigh[ing] against the certification” and could defeat predominance  
11 if there were a trial on the merits. *Monaco v. Bear Stearns Cos., Inc.*, No. CV 09-  
12 05438, 2012 WL 10006987, at \*9-10 (C.D. Cal. Dec. 10, 2012).

13 Certification risk weighs in favor of approval of the settlement. *See Aarons*  
14 *v. BMW of N. Am., LLC*, No. CV 11–7667, 2014 WL 4090564, at \*11 (C.D. Cal.  
15 Apr. 29, 2014) (“Plaintiffs recognize that they would face significant risks in  
16 attempting to certify a litigation class for trial, and would bear the risk of defending  
17 certification through trial. Among other things, BMW’s argument [regarding]  
18 individualized reasons could pose a continuing threat to certification. . . .

19 Accordingly, the Court finds that this factor weighs in favor of approval of the  
20 settlement.”); *Castillo v. ADT, LLC*, Civ. No. 2:15-383, 2017 WL 363108, at \*4-5  
21 (E.D. Cal. Jan. 25, 2017) (“If the parties had not settled, defendant would have  
22 opposed plaintiff’s request for class certification, contested the merits of his  
23 claims . . . [and i]n doing so, defendant would have asserted some twenty-three  
24 defenses against plaintiff’s claims . . .”).

25 The Proposed Settlement, however, has the benefit of providing benefits to  
26 the Settlement Class without the Court having to resolve these management  
27 problems that it would have confronted in a litigated class. *See, e.g., Amchem*  
28 *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. The Court Should Certify the Settlement Class for Settlement Purposes**

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,

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

6 Plaintiffs request that the Court take the first step toward settlement approval  
7 by granting preliminary approval to the Settlement and certifying a 23(b)(3)  
8 settlement class.<sup>7</sup> When settlement is reached before class certification, “courts  
9 must peruse the proposed compromise to ratify both the propriety of the  
10 certification and the fairness of the settlement.” *Staton*, 327 F.3d 938, 952.

11 “A class may be certified ‘solely for purposes of settlement where a  
12 settlement is reached before a litigated determination of the class certification  
13 issue.’” *Lipuma v. Am. Express*, 406 F. Supp. 2d 1298, 1313-14 (S.D. Fla. 2005)  
14 (citation omitted); *see also In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D.  
15 607, 610 (S.D. Cal. 2008) (“Parties may settle a class action before class  
16 certification and stipulate that a defined class be conditionally certified for  
17 settlement purposes.”); *Rosenburg*, 2007 WL 128232, at \*3 (certifying conditional  
18 settlement class but ordering that, in the event the settlement did not become  
19 effective, the certification would be vacated, and the defendant would retain the  
20 right to object to the certification of a litigated class).

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

23 **A. The Settlement Class Satisfies the Requirements of Rule 23(a)**  
24 **1. Numerosity**

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

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27 <sup>7</sup> SoulCycle does not contest certification of the Settlement Class, but specifically  
28 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. Radiant*  
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. § 16931-1(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

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

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

#### 17 **4. Adequacy**

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



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

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

4 Rule 23(b)(3) requires “questions of law or fact common to class members  
5 predominate over any questions affecting only individual members.”

6 Predominance “tests whether proposed classes are sufficiently cohesive to warrant  
7 adjudication by representation.” *Amchem*, 521 U.S. at 594.

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

21 **C. The Court Should Appoint Class Counsel**

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



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

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

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

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

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

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

7 **VII. The Final Approval Hearing Should Be Scheduled.**

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

|   |   |
|---|---|
| 12 Deadline for Class Counsel to file their fee application and motion for final approval.  | 35 days before the Final Fairness Hearing.    |
| 13 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.    |
| 14 Deadline for Class Counsel to submit their responses to any objections.  | 7 days before the Final Fairness Hearing.     |
| 15 Final Fairness Hearing.  | 91 days (13 weeks) following the Notice Date. |

16 **VIII. CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully submit that the Court  
18 should: (1) grant preliminary approval to the Settlement; (2) certify the Settlement  
19 Class; (3) appoint as Class Counsel Berger & Hipkind, LLP; and Lief Cabraser  
20 Heimann & Bernstein, LLP as Lead Class Counsel; (4) appoint Plaintiffs Rachel  
21 Cody and Lindsey Knowles as Settlement Class Representatives; (5) approve the  
22 proposed Notice Program and order notice to be disseminated; and (6) schedule a  
23 hearing for considering final approval of the Settlement and the motion for  
24 attorneys’ fees and costs and service awards.  
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Dated: June 16, 2017

Respectfully submitted,

/s/ Daniel P. Hipskind

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**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