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HSBC CARD SERVICES INC. and
HSBC TECHNOLOGY & SERVICES (USA) INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GAIL MEDEIROS, et al.,

Plaintiffs,

vs.

HSBC CARD SERVICES INC., et al.,

Defendants.

TERRY J. FANNING,

Plaintiff,

vs.

HSBC CARD SERVICES INC., et al.,

Defendants.

STEFAN O. LINDGREN, et al.,

Plaintiffs,

vs.

HSBC CARD & RETAIL SERVICES, INC., et al.,

Defendants

Case No. 2:15-cv-09093-JVS (AFMx)
Case No. 8:12-cv-00885-JVS (RNBx)

Relates to Medeiros, Fanning and Lindgren

RESPONSE OF DEFENDANTS HSBC CARD SERVICES INC. AND HSBC TECHNOLOGY & SERVICES (USA) INC. TO OBJECTION OF CHRISTINE CHAVEZ TO CLASS ACTION SETTLEMENT

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I. INTRODUCTION

The objections posited by Christine Chavez ("Chavez")[1] to this proposed class action Settlement (Objection of Christine Chavez to Class Action Settlement and Attorney's Fees (the "Objection"), Dkt. No. 95) are meritless.[2] The Settlement satisfies all requirements of Federal Rule of Civil Procedure 23(e)(2), including that it is "fair, reasonable, and adequate[,]" and should be approved.

First, the Settlement resolves claims that have been pending in various cases across California since 2010. Thus, the Settlement provides actual, monetary relief to the Settlement Class whereas over seven years of litigation has, to date, provided no relief. Second, the Settlement is fair, reasonable and adequate because it, as it must, accounts for the significant hurdles Plaintiffs face at class certification and on the merits. Tellingly, Chavez fails to meaningfully address these hurdles in her Objection. Finally, the Objection's boiler plate assertion that the Settlement was a product of collusion finds no support in the facts or the law. As this Court knows, these actions have been litigated vigorously by all parties. Indeed, the Settlement was not achieved until an early neutral evaluation before a United States Magistrate Judge and a series of mediations with two separate neutrals over the course of multiple sessions.[3]

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[1] Chavez is represented by Christopher Bandas. Bandas is a "professional" or "serial" objector who is "well-known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the [c]lass." Chambers v. Whirlpool Corp., 214 F. Supp. 3d 877, 890 (C.D. Cal. 2016). See also Garber v. Office of Comm'r of Baseball, No. 12-CV-03704 (VEC), 2017 WL 752183, at *4 (S.D.N.Y. Feb. 27, 2017) ("This Court joins the other courts throughout the country in finding that Bandas has orchestrated the filing of a frivolous objection in an attempt to throw a monkey wrench into the settlement process and to extort a pay-off."); In re Cathode Ray Tube (CRT) Antitrust Litig., 281 F.R.D. 531, 533 (N.D. Cal. 2012) ("Bandas routinely represents objectors purporting to challenge class action settlements, and does not do so to effectuate changes to settlements, but does so for his own personal financial gain; he has been excoriated by Courts for this conduct.").

[2] Unless otherwise defined, terms are used herein as defined in the Settlement Agreement.

[3] Chavez asserts other meritless objections that are addressed by Plaintiffs. HSBC responds only to these arguments.

As amply demonstrated in the Motion for Final Approval and below, this Court should reject the Objection and finally approve the Settlement.

II. BACKGROUND

A. The Claims

These actions arise out of alleged violations of California's Invasion of Privacy Act, Cal. Penal Code Section 632 et seq. ("CIPA"). Plaintiffs assert two claims: (1) for alleged violations of Section 632; and (2) for alleged violations of Section 637.2. Section 632 prohibits the intentional recording of a "confidential communication" without the consent of all parties. Id. "Confidential communication" is defined as:

> any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering … or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

Id., Section 632(c) (emphasis added). Whether a party has a reasonable expectation that the conversation may be recorded is an objective standard. Flanagan v. Flanagan, 27 Cal. 4th 766, 777 (2002); Coulter v. Bank of Am., 28 Cal. App. 4th 923, 929 (Cal. Ct. App. 1994); see also Deteresa v. Am. Broad. Cos., Inc., 121 F.3d 460, 463 (9th Cir. 1997). To determine whether a party had an objectively reasonable expectation that the call would be recorded depends upon the particular factual circumstances surrounding the call. Faulkner v. ADT Sec. Servs., Inc., 706 F.3d 1017, 1020 (9th Cir. 2013) (holding that "courts have looked to the circumstances surrounding the call to divine whether the standard has been met, including the nature of [the defendant's] business and the character of the communications.") (internal citation omitted). While a Section 637.2 claim does not require the content of the call to be "confidential," it requires proof of a call

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involving a cellular or cordless phone that was intentionally recorded without the consent of at least one party. See Cal. Penal Code Section 637.2 (a).

B. The Proposed Settlement

HSBC has agreed to pay $13,000,000 into a non-reversionary Settlement Fund for the benefit of the proposed Settlement Class. (See Settlement Agreement, Dkt. No. 86-1, at ¶ 2.34.) For purposes of settlement only, the Court preliminarily approved the Settlement. (See Order (1) Conditionally Certifying a Settlement Class, (2) Preliminarily Approving Class Action Settlement, (3) Approving Notice Plan and (4) Setting Final Approval hearing ("Preliminary Approval Order") ¶ 25.) The Court thereafter granted the parties' request to continue certain deadlines and scheduled a final approval hearing for October 16, 2017, and set August 28, 2017 as the deadline for Settlement Class members to file objections to the proposed Settlement. (See Order Granting Joint Motion to Continue Class Notice and Final Approval Hearing, Dkt. No. 92.) The Settlement Class conditionally certified by this Court includes: "[A]ll persons in California who received a call [between March 23, 2009 and May 1, 2012] from or on behalf of HSBC Card Services Inc. and whose call was recorded or monitored by or on behalf of HSBC." (Preliminary Approval Order, at ¶ 5.) Pursuant to the terms of the Settlement, the parties provided notice to 1.7 million potential persons included within the Settlement Class but believe the actual size of the Settlement Class to be smaller. (See Declaration of Michael Rubin in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Costs and Expenses and Service Awards to Named Plaintiffs, Dkt. No. 94-2, ¶ 28.)

III. ARGUMENT

A. The Settlement Provides Substantial Relief To The Settlement Class.

Chavez incorrectly asserts that the Settlement does not provide adequate relief to the Settlement Class in light of the $5,000 statutory penalty available.[4] However,

[4] A recent amendment to Section 637.2 confirms that damages are available on a per action basis, not a per call basis. See Lal v. Capital One Fin. Corp., No. 5:16-cv-06674-BLF, 2017 WL 1345636, at *7 (N.D. Cal. Apr. 4, 2017) (holding that the

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"[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982). "In assessing the amount offered in settlement, it is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness." Estrada v. iYogi, Inc., No. CV21301989WBSCKD, 2016 WL 310279, at *4 (E.D. Cal. Jan. 26, 2016) (finding that "[w]hile the TCPA provides for damages of $500 'for each such violation' of the statute or, at most, $1,500 if defendant's conduct was willful, [a $40 payment per claiming class member] is fair given the risks and costs of further litigation in this case") (internal citation omitted).

While the precise amount of each class member's recovery is being calculated by the Settlement Administrator and will vary, eligible Settlement Class members will receive a tangible, real recovery, as compared to the prolonged and uncertain prospects of recovery through litigation. In re Critical Path, Inc. Secs. Litig. v. Critical Path, Inc., No. C 01-00551 WHA, 2002 U.S. Dist. LEXIS 26399, at *20 (N.D. Cal. June 18, 2002) ("Through protracted litigation, the settlement class could conceivably extract more, but at a plausible risk of getting nothing"). Moreover, the Settlement, which provides for payment of $13,000,000, and includes, at most, 1.7 million settlement class members, compares favorably to nearly every other known all-cash call recording settlement. See, e.g., Nader v. Capital One Bank, USA, N.A., No. 2:12-cv-1265 (C.D. Cal.) (approving class action settlement with an estimated class size of 1,896,044 for $3,000,000); Knell v. Encore Receivable Management, Inc., No. 3:12-cv-426 (S.D. Cal.) (approving class action settlement with an estimated class size of 3,655,577 for $2,750,000); Cohorst v. BRE Properties, Inc.,

"'plain and commonsense' reading" of the prior version of Section 637.2 mandated that the Court "not [] read 'per violation' into Section 637.2(a)" and the "January 2017 amendment changed the law and did not merely clarify it"); Ramos v. Capital One, N.A., No. 17-cv-00435-BLF, 2017 WL 3232488 (N.D. Cal. July 27, 2017) (same).

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L1 Holdings, Inc. and Level One, LLC, No. 3:10-cv-2666-JM-BGS (S.D. Cal.) (approving class action settlement with an estimated class size of 1,170,000 for $5,500,000); Batmanghelich v. Sirius XM Radio, Inc., No. 2:09-cv-09190-VBF-JC (C.D. Cal.) (approving class action settlement with an estimated class size of 1,700,000 for $9,480,000). As a result, Chavez's argument that the Settlement does not provide adequate relief should be overruled. See Roberts v. Electrolux Home Prod., Inc., No. 13-cv-02339-CAS (VBKx), 2014 WL 4568632, at *11 (C.D. Cal. Sept. 11, 2014) (rejecting objections filed by "serial objectors" and holding that an objection seeking full value for the alleged claim "not only ignores the allegations of the case and the positions of the [p]arties, but is meritless and demonstrates a failure to appreciate the fact that settlements are by necessity compromises.").

B. Continued Litigation Will Not Benefit The Proposed Settlement Class.

Underpinning the Objection is that further litigation would somehow benefit the putative class. However, the history of these cases, as well as the governing law, suggests otherwise. Plaintiffs and their counsel have been litigating their cases since 2010 with no resolution or relief for putative class members. As this Court is well aware, Fanning and Lindgren have been contentiously litigated since July 2012. There is no reason to conclude that continued litigation will yield success since HSBC has significant defenses to both class certification and the claims on the merits.

1. Should Litigation Proceed, No Class Will Be Certified.

To certify a class under Rule 23(b)(3), a plaintiff must prove that "questions of law or fact common to class members predominate over any questions affecting only individual members," and that a class action is superior to other available methods of fair and efficient adjudication and manageable. See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). This is a "demanding" test imposed upon the proponents of the class. Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013) ("If anything, Rule 23(b)(3)'s predominance criterion is even more demanding than Rule

23(a).”). Class certification is proper only if a “rigorous analysis” shows that all Rule 23 elements are satisfied. Id. (citing Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350-351 (2011)); Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186, as amended, 273 F.3d 1266 (9th Cir. 2001) (“Before certifying a class, the trial court must conduct a ‘rigorous analysis’ to determine whether the party seeking certification has met the prerequisites of Rule 23.”) (internal citation omitted). Should litigation proceed, these requirements cannot be satisfied here.

When pursuing a Section 632 claim, “the three elements that [p]laintiff must prove are (1) an electronic recording of (or eavesdropping on); (2) a ‘confidential’ communication; and (3) all parties did not consent.” Weiner v. ARS Nat’l Servs., Inc., 887 F.Supp. 2d 1029, 1032 (S.D. Cal. 2012) (citing Flanagan, 27 Cal. 4th at 774-776). Here, Plaintiffs will not be able to establish that each call between HSBC and the putative class was a “confidential” communication absent individualized inquiries into the circumstances of each call. Should litigation proceed, this individual analysis plainly defeats class certification. See Kight v. CashCall, Inc., 231 Cal. App. 4th 112, 129-31 (2014), review denied (Jan. 14, 2015) (finding that class certification of a CIPA violation is improper because “[t]he determination [of] whether an individual plaintiff had an objectively reasonable belief that his or her conversation with [the defendant] would not be recorded will require individualized proof of, among other things, the length of the customer-business relationship [and] the [plaintiff’s] prior experiences with business communications . . .”) (quoting Hataishi v. First Am. Home Buyers Prot. Corp., 223 Cal. App. 4th 1454, 1460 (2014)); Thomasson v. GC Servs. Ltd. P’ship, 539 Fed. App’x. 809, 809-810 (9th Cir. 2013) (reversing district court’s grant of class certification in an action that alleged violations of CIPA “[b]ecause this class would necessarily require an individualized inquiry into each telephone call with Defendant, it does not generate a common contention, let alone one that predominates”); Coleman v. First Am. Home Buyers Prot. Corp., No. BC420436 (Cal. Super. Ct. Aug. 27, 2012) (denying class

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certification in action alleging violations of CIPA, in part, due to plaintiff's failure to establish commonality because establishing whether the communication was confidential "would be extremely costly and time-consuming"). Importantly, HSBC is unaware of a single court that has certified claims arising under Section 632 in the litigation context.

While a Section 637.2 claim does not require that a communication be "confidential" to be actionable, it requires that: (1) the telephone call involved a cellular telephone; and (2) all parties did not consent to the recording. See NEI Contracting & Eng'g, Inc. v. Hanson Aggregates Pac. Sw., Inc., No. 12-CV-01685-BAS JLB, 2015 WL 1309938, at *3 (S.D. Cal. Mar. 24, 2015), rev'd 2015 WL 4923510, at *6 (S.D. Cal. Aug. 18, 2015). The element of consent, like the element of confidentiality in a Section 623 claim, precludes class certification. Indeed, in NEI Contracting, 2015 WL 1309938, at *7, the Court denied class certification of a Section 637.2 claim on the basis of lack of predominance where defendants presented evidence that at least two class members had actual knowledge that their calls were being recorded and continued to place calls despite this knowledge, holding that "[d]efendants are entitled to litigate the issue of consent as to each person who has a potential claim." Id. at *6.[5]

Thus, and for multiple additional reasons, including the absence of ascertainability, superiority and manageability, Plaintiffs cannot certify a class should this litigation proceed.

2. Even If A Class Were To Be Certified, Which It Would Not, Plaintiffs' Claims Will Fail On The Merits.

Even if Plaintiffs were to certify a class, which they will not, their claims fail

[5] On reconsideration, the Court reversed based on new facts, having learned that "[t]here is no evidence that a single putative class member actually consented to a call being recorded during the Class Period" and the evidence it had relied upon was from after the class period. NEI Contracting & Eng'g, Inc., 2015 WL 4923510, at *6. However, there is evidence in these actions showing that at least some of the putative class members had actual knowledge that their calls were recorded.

on the merits. While HSBC acknowledges that some legal arguments were rejected by the Court, HSBC fully intends to pursue these arguments at trial and on appeal, if necessary.

a. The Claims Are Preempted By The National Bank Act.

The United States Supreme Court has "held federal law supreme over state law with respect to national banking." Watters v. Wachovia Bank, N.A., 550 U.S. 1, 10, 127 S. Ct. 1559, 167 L. Ed. 2d 389 (2007); see also Rose v. Chase Bank USA, N.A., 513 F.3d 1032, 1037 (9th Cir. 2008) (same). To facilitate the operation of a national bank system, the NBA protects national banks from "inconsistent or intrusive state regulation." Watters, 550 U.S. at 11. "States are permitted to regulate the activities of national banks where doing so does not prevent or significantly interfere with the national bank's or the national bank regulator's exercise of its powers. But when state prescriptions significantly impair the exercise of authority, enumerated or incidental under the NBA, the State's regulations must give way." Watters, 550 U.S. at 11-12; Parks v. MBNA Am. Bank, N.A., 54 Cal. 4th 376, 383 (2012) (quoting Watters).

The NBA grants the OCC explicit authority to promulgate rules and regulations to carry out its responsibility as the prudential regulator of national banks. See 12 U.S.C. § 93a. Importantly, the OCC is charged with establishing standards and exercising its examination and supervision authority to ensure the safety and soundness of national banks. See 12 U.S.C. § 1831p-1; 12 C.F.R. § 30. The OCC's regulations and examination guidelines form an integral part of this mandate. See 12 U.S.C. § 1831p(d). In carrying out such responsibilities, the OCC repeatedly has stressed that internal controls through quality assurance and self-monitoring are critical components of a national bank's safety and soundness protocols. See, e.g., In the Matter of J.P. Morgan Chase Bank, N.A., OCC Case No. AA-EC-13-04 (2013) (finding significant internal quality-control deficiencies; requiring changes in quality assurance processes going forward); OCC,

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Comptroller's Handbook: Large Bank Supervision, at 8, 10, 34-35 (Jan. 2010) (discussing importance of adequate quality assurance and control systems to identify, monitor and control risks); OCC, Comptroller's Handbook: Retail Lending Examination Procedures, at App'x B (Dec. 2004) (banks are examined on quality assurance efforts in retail lending).

Call recording and monitoring provide an important means through which a bank can monitor the bank-customer relationship. As such, they are fundamental components of a national bank's internal control and quality assurance programs in support of its lending powers. See, e.g., In the Matter of Capital One Bank (USA), N.A., OCC Case No. AA-EC-2012-62 (2012) (identifying deficiencies in call monitoring and requiring independent call monitoring as part of risk management program). Applying CIPA or other state laws to a national bank's call-monitoring activities for quality-control purposes improperly interferes with HSBC's lending powers as well as the OCC's exercise of its examination and supervisory authority over national banks. Accordingly, Plaintiffs' claims are defeated by federal preemption.

b. CIPA Does Not Govern Call Monitoring For Quality Control Purposes.

When construing the meaning of a statute, a court's "fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." Estate of Griswold, 25 Cal. 4th 904, 910-11 (2001). Here, CIPA's legislative history makes clear that the California Legislature did not intend CIPA to govern the common business practice, like that employed by HSBC here, of monitoring or recording calls for quality-control purposes.[6] Rather, the Legislature enacted CIPA

[6] "[A court may] look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, [the court will] select [ ] the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid [ ] an interpretation that would lead to absurd consequences." Estate of Griswold, 25 Cal. 4th at 911.

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in 1967 to prevent abuses that could arise as a result of "advances in science and technology [that] have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications[.]" Cal. Penal Code § 630; see also Ribas v. Clark, 38 Cal. 3d 355, 359 (1985).

The primary drafter of the bill, then-Speaker of the Assembly Jesse M. Unruh, repeatedly made clear that the anti-eavesdropping focus of the bill did not extend to legitimate business telephone monitoring. For example, the May 2, 1967 Digest of Assembly Bill 860, written by Mr. Unruh, states plainly that "telephone subscribers are excluded from coverage with respect to their use of 'service-observing equipment[.]'" Similarly, in response to a June 29, 1967 San Francisco Examiner editorial expressing concern that the bill "could be interpreted to extend to monitoring done in the business world to protect consumers," Mr. Unruh responded by letter stating that "[u]nder my bill, it would continue to be perfectly legal to monitor business calls, to insure proper service of customers by employees." Finally, in a July 31, 1967 letter to then-governor Ronald Reagan urging approval of CIPA, Mr. Unruh confirmed:

> [W]e have exempted from coverage under the measure normal business telephone monitoring, known as 'service-observing', which is essential in modern business practice to insure employee efficiency. As written, [the bill] is carefully directed only at clandestine wiretapping and eavesdropping, much of which now takes place in California for a number of unjustifiable reasons.

As the foregoing makes clear, CIPA was intended to prevent wiretapping and eavesdropping, not the legitimate recording of customer-service calls for business quality-control purposes. Indeed, numerous courts in California have agreed that service-observing practices such as those at issue here are exempt from coverage under CIPA. See Turner v. W. Dental Servs., Inc., No. BC478188 (Cal. Super. Ct. Dec. 31, 2012) (sustaining demurrer without leave to amend because the legislative history shows that CIPA does not apply to the business practice of recording calls

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solely for customer-service purposes); Sajfr v. BBG Commc'ns, Inc., No. 10CV2341 AJB NLS, 2012 WL 398991, at *6 (S.D. Cal. Jan. 10, 2012) (granting summary judgment against plaintiff as "the legislative history of [CIPA] reflects that it was not intended to prohibit 'service-observing' because the legislature deemed that practice to be in the public's best interest"); Shin v. Digi-Key Corp., No. CV 12-5415-PA-JCGx, 2012 WL 5503847, at *3 (C.D. Cal. Sept. 17, 2012) (granting motion to dismiss because "[the] legislative history . . . makes clear that the Legislature did not intend to limit the ability of businesses to record or monitor calls between their employees and customers for quality assurance purposes").

Here, calls made to putative class members were recorded in the ordinary course of business solely for quality-control purposes. Because CIPA's legislative history makes clear that CIPA was not intended to apply to such "service-observing" practices, Plaintiffs' CIPA claims ultimately will fail.

3. The Disproportion Of Damages To Actual Harm Presents Due Process Concerns.

Even if Plaintiffs were able to certify a class, which they cannot, and even if they were to prevail on the merits, which they cannot, given the $5,000 statutory penalty, the putative class claims here present significant due process concerns.[7] A statutory penalty violates due process rights "where the penalty prescribed is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." United States v. Citrin, 972 F.2d 1044, 1051 (9th Cir. 1992) (quoting St. Louis, Iron Mt. & S. Ry. Co. v. Williams, 251 U.S. 63, 66-67, 40 S. Ct. 71, 64 L. Ed. 139 (1919)). Accordingly, due process concerns arise where aggregated statutory damages would be wholly disproportionate to the alleged violations. See In re N. Dist. of Cal. Dalkon Shield IUD Prods. Liab. Litig., 526 F. Supp. 887, 899-900 (N.D. Cal. 1981), rev'd on other grounds, 693 F.2d 847 (9th Cir. 1982), cert. denied,

[7] As discussed in footnote 3, above, even if Plaintiffs were able to establish a violation of Section 637.2, which HSBC denies, recovery would be limited to a per action basis.

459 U.S. 1171 (1983) ("A defendant has a due process right to be protected against unlimited multiple punishment for the same act . . . [c]ommon sense dictates that a defendant should not be subjected to multiple civil punishment for a single act or unified course of conduct which causes injury to multiple plaintiffs."). Simply put, a penalty of $5,000 for each of the maximum estimated number of purported class members, 1.7 million, would result in a potential award that could not survive due process scrutiny (assuming that each purported class member had only one call recorded, potential liability for these recordings would exceed $8.3 billion). See Kearny v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 128-31 (2006) (finding that although defendant, an out of state defendant, was subject to CIPA's prohibitions for calls involving California residents, plaintiff and the putative class were entitled to injunctive relief only as "ascribing a monetary value to the invasion of privacy resulting from the secret recording of a telephone conversation is difficult in any event, and that the deterrent value of such a potential monetary recovery cannot affect conduct that already has occurred").

C. The Settlement Was Negotiated At Arm's Length.

Chavez's argument that the Settlement is a product of collusion is baseless. To satisfy her burden, Chavez must show that "class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 947 (9th Cir. 2011). Under Ninth Circuit authority, signs of collusion include: (1) "when counsel receive a disproportionate distribution of the settlement;" (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds;" and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." Id.; In re LinkedIn User Privacy Litig., 309 F.R.D. 573, 589 (N.D. Cal. 2015) (same). Because none of these signs exist, there is no absolutely evidence of collusion here.

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First, counsel for Plaintiffs seek no more than thirty-three (33%) of the Settlement Fund. (See, e.g., Plaintiffs' Memorandum of Law In Support Of Motion For An Award Of Attorneys' Fees And Costs, Dkt. No. 94-1 at 10:1-17 (collecting cases).) Second, and as the Objection concedes, there is no clear sailing provision. While HSBC elected not to file a response to Plaintiffs' request for attorneys' fees, it certainly was permitted to do so pursuant to the terms of the Settlement. Finally, there is no reversion.

Aside from these factors, it should be noted that the Settlement was the product of extensive, multiple mediations between the parties. Initially, the parties in Medeiros participated in an ENE Conference before United States Magistrate Judge Mitchell D. Dembin in the Southern District of California and then mediated before the Hon. Judge Leo Papas (Ret.). Through those efforts, the parties were able to negotiate a resolution of Medeiros. Thereafter, all parties attended multiple mediation sessions before the Hon. Judge Infante (Ret.) and were able to globally resolve these actions. Participation in private mediation "tends to support the conclusion that the settlement process was not collusive." Lusby v. Gamestop Inc., 297 F.R.D. 400, 413 (N.D. Cal. 2013) (internal citation omitted). The involvement of multiple neutrals spanning a number of day-long mediations confirms that the Settlement was hard fought and not the product of any alleged collusion.

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IV. CONCLUSION

HSBC submits that the Settlement is fair, adequate and reasonable and should be finally approved.

Dated: September 18, 2017

Respectfully submitted,

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By: */s/ Julia B. Strickland*
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2017, a copy of the foregoing **RESPONSE OF DEFENDANTS HSBC CARD SERVICES INC. AND HSBC TECHNOLOGY & SERVICES (USA) INC. TO OBJECTION OF CHRISTINE CHAVEZ TO CLASS ACTION SETTLEMENT** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's EM/ECF System.

/s/ Julia B. Strickland
Julia B. Strickland