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24 **UNITED STATES DISTRICT COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 MARLENE STEINBERG,
27
28 Plaintiff,
vs.
CORELOGIC CREDCO, LLC,
Defendant.

CASE NO. 3:22-cv-00498-H-SBC

**PLAINTIFF’S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: March 25, 2024
Time: 10:30 a.m.
Courtroom: 12A
Judge: Marilyn L. Huff

1 **MEMORANDUM**

2 On February 15, 2024, this Court entered an order directing the parties to file
3 supplemental briefing regarding the two *cy pres* recipients selected in this class
4 action Settlement, the Homeownership Preservation Foundation and Habitat for
5 Humanity. (ECF No. 58.) In response, Plaintiff Marlene Steinberg (“Plaintiff”)
6 submits this memorandum. While the Court set a deadline for Defendant
7 CoreLogic Credco, LLC (“Defendant”) to respond, the Parties have conferred and
8 Defendant supports the relief sought herein and the content of this submission, and
9 it therefore does not intend to file a separate response.

10 **A. Factual Background**

11 **i. The Settlement Structure Ensures that Class Members are the**
12 **Primary Recipients of Settlement Funds**

13 The Settlement puts the Class Members first by distributing the *entire* fund
14 to Class Members and then providing for a second round of distribution before any
15 money is donated to the *cy pres* recipients.¹ This structure ensures that the vast
16 majority of the Settlement Fund will go to the Class, and any *cy pres* distribution
17 will likely be *de minimus*. No portion of the Settlement Fund, once approved, will
18 revert to Defendant in any circumstance.

19 **ii. This Litigation Was Focused On Housing-Related Credit**

20 This case revolves around credit reports used for housing-related credit
21 decisions. The credit report leading to the filing of this matter, for example, was
22 generated in relation to Plaintiff Steinberg’s application to refinance her mortgage.
23 (See Complaint ¶¶ 55-56.) Nor was this an aberration: Defendant’s business focus
24 is on real estate. See, e.g., <https://www.corelogic.com/why-corelogic/> (“We partner

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26 ¹ Rather than simply providing for a single distribution to Class Members, the
27 Settlement requires a second distribution to Class Members so long as the amount
28 remaining in the Settlement Fund after the first-round checks have expired is
sufficient to send each Class Member an additional \$25. (See ECF No. 46-2,
Settlement ¶ 5.3.1.)

1 with millions of real estate professionals; tens of thousands of financial institutions;
2 thousands of lenders and servicers; hundreds of insurers and dozens of federal
3 agencies to construct a people-first perspective for the future of property industry.”)
4 (accessed Feb. 16, 2024). Indeed, Defendant’s credit reporting frequently involves
5 mortgage origination and mortgage refinancing.² Specifically, Defendant sells tri-
6 merge reports, which combine information from Experian, Equifax and Transunion.
7 Tri-merge reports are mostly used for mortgage underwriting – they are required
8 by both Fannie Mae and Freddie Mac and are ubiquitous in the context of mortgage
9 applications.

10 It stands to reason, therefore, that the reason Defendant issued credit reports
11 on the overwhelming majority of the Class Members was that Class Members were
12 in the process of buying, or refinancing, a home mortgage. Plaintiff alleges that
13 being reported as deceased by a credit reporting agency constituted a barrier in that
14 process.

15 **iii. The *Cy Pres* Recipients Are Focused on Ensuring Housing**
16 **Access**

17 The *cy pres* recipients proposed here, the Homeownership Preservation
18 Foundation (“HPF”) and Habitat for Humanity (“HH”), specialize in helping
19 consumers overcome the types of obstacles described above.

20 Specifically, the Homeownership Preservation Foundation “annually serves
21 200,000 homeowners who are seeking counseling for foreclosure mitigation or
22 homebuying.”³ HPF provides “access to certified housing counselors who offer
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25 ² See <https://www.corelogic.com/support/credco-consumer-assistance/> (“Credco is
26 a reseller of consumer reports and other information to its clients, which consist
27 of banks, mortgage companies and other lending institutions.”), last accessed
28 2/20/2024.

³ <https://www.hudexchange.info/programs/housing-counseling/the-bridge/2018-06/spotlight/>, last accessed 2/16/2024.

1 both immediate and long-term guidance.”⁴ These services include housing-related
2 financial education and advice. Among other services, HPF is equipped to view
3 consumers’ tri-merge reports and help them correct errors therein.⁵

4 Similarly, Habitat for Humanity also works to lower barriers to
5 homeownership and shelter. While Habitat for Humanity is primarily known for
6 its home construction projects, it also supports financial education and policy
7 advocacy projects directed at removing barriers to home ownership, and towards
8 ensuring that home owners are sufficiently financially educated to make decisions
9 that will preserve the investments they have made in their homes.⁶ For example,
10 Habitat for Humanity’s local affiliates conduct homebuyer education classes, which
11 are focused, in part, on “understanding your credit score.”⁷ One of these courses,
12 attended by 650 people, assisted 78% of them in improving their credit scores.⁸
13 Habitat for Humanity’s advocacy also includes the housing-related goal of ensuring
14 access to home ownership by seeking “affordable credit for all.”⁹

15 **B. Argument**

16 The Settlement in this case complies with the law by (1) ensuring that the
17 vast majority of the Settlement Fund goes to Class Members, and (2) designating
18 appropriate *cy pres* recipients for any residual funds.

19 Importantly, courts in this Circuit have recognized that distribution to class
20 members is the best and highest use of a common fund. Accordingly, courts have

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22 ⁴ https://www.greenpath.com/wp-content/uploads/2023/04/GreenPath_Annual-Report_2022.pdf at 12, last accessed 2/16/2024.

23 ⁵ <https://www.hud.gov/sites/dfiles/Housing/images/HCFACMinutesMay2017.pdf>,
24 at 8, last accessed 2/16/2024.

25 ⁶ See <https://www.habitat.org/our-work/financial-education>, last accessed
26 2/16/2024; <https://www.habitat.org/costofhome>, last accessed 2/16/2024.

27 ⁷ See, e.g., <https://home.tchabitat.org/>, last accessed 2/20/2024 (Twin Cities),)

28 ⁸ <https://www.habitat.org/stories/financial-coaching-habitat-helps-residents-reach-goals>, last accessed 2/20/2024.

⁹ <https://www.habitat.org/sites/default/files/documents/National-Advocacy-Agenda.pdf>, last accessed 2/16/2024.

1 ordered funds to be redistributed to class members before any residuals are released
2 to *cy pres*. *Connor v. JPMorgan Chase Bank, N.A.*, No. 3:10-CV-1284-GPC-BGS,
3 2021 WL 1238862, at *2 (S.D. Cal. Apr. 2, 2021) (“Ninth Circuit precedent
4 regarding *cy pres* distributions affirms the Court’s view that a second distribution
5 to class members, where possible and not contrary to the aims of the settlement
6 agreement, is often preferable to a *cy pres* distribution.”); *In re Hydroxycut Mktg.*
7 *& Sales Pracs. Litig.*, No. 09-CV-1088 BTM KSC, 2013 WL 6086933, at *4 (S.D.
8 Cal. Nov. 19, 2013) (“where a settlement involves individual distributions to class
9 members and there are funds remaining after the distributions, ‘the settlement
10 should presumptively provide for further distributions to participating class
11 members unless the amounts involved are too small to make individual distributions
12 economically viable or other specific reasons exist that would make such further
13 distributions impossible or unfair.’”) (quoting ALI Principles § 3.07(b) (2010));
14 *Hester v. Vision Airlines, Inc.*, No. 2:09-CV-00117-RLH, 2017 WL 4227928, at *2
15 (D. Nev. Sept. 22, 2017).

16 By ensuring that the entire Fund will be distributed to Class Members, and
17 providing for a redistribution if feasible, the Settlement here meets this requirement,
18 and appropriately minimizes the amount which might go to *cy pres*.

19 With respect to *cy pres*, as the Court correctly noted in its Order, in class
20 actions, *cy pres* distributions must be “guided by (1) the objectives of the underlying
21 statute(s) and (2) the interests of the silent class members.” (ECF No. 58 (quoting
22 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011) (citing *Six Mexican*
23 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990))).)

24 However, as the name suggests, a *cy pres* award does not need to be perfectly
25 aligned with the subject of the case. Instead, it should be as near as possible.
26 Counsel are unaware of any non-profit focused on the specific reporting practices
27 at issue in this case. However, the *cy pres* recipients selected here come as near as
28 possible to assisting such individuals, as they provide assistance—in the form of

1 education, counseling, and advocacy—to individuals who are facing obstacles to
2 home ownership, including credit-related barriers.

3 The substantial nexus between the Class and the designated recipients is
4 sufficient. “While the *cy pres* recipient need not be ideal, it must bear ‘a substantial
5 nexus to the interests of the class members.’” *Beaver v. Tarsadia Hotels*, No. 11-
6 CV-01842-GPC-KSC, 2020 WL 1139662, at *1 (S.D. Cal. Mar. 9, 2020) (quoting
7 *Lane v. Facebook, Inc.*, 696 F.3d 811, 821 (9th Cir. 2012)). “A *cy pres* award meets
8 the objectives of the underlying statute when the *cy pres* recipient's mission and the
9 statute's goals have a non-tenuous connection.” *Hofmann v. Dutch LLC*, CV 14-
10 02418 GPC JLB, 2017 WL 840646, at *3 (S.D. Cal. Mar. 2, 2017). Given the close
11 proximity between the basis for this lawsuit and the services provided by the
12 designated *cy pres* recipients, the Court should use its “broad discretionary powers”
13 to approve the designated *cy pres* recipients. *In re Easysaver Rewards Litig.*, 906
14 F.3d 747, 761 (9th Cir. 2018).

15 The proposed recipients here have both a nexus with the interests of Class
16 Members and are aligned with the purpose of the statute. The recipients’ work on
17 homeownership and financial education and advocacy is sufficiently close to the
18 interests of the Class Members here. *See, e.g., In re Midland Credit Mgmt. Inc.,*
19 *Tel. Consumer Prot. Act Litig.*, No. 10CV2261-MMA (MDD), 2018 WL 4927982,
20 at *3 (S.D. Cal. Oct. 10, 2018) (in TCPA action, non-profit focusing on “personal
21 financial literacy regarding credit and debt” approved); *Beaver v. Tarsadia Hotels*,
22 No. 11-CV-01842-GPC-KSC, 2020 WL 1139662, at *2 (S.D. Cal. Mar. 9, 2020)
23 (in class action under the Interstate Land Sales Full Disclosure Act, “the Court
24 concludes that there is a nexus between the *cy pres* recipient[], whose work protects
25 and educates homebuyers, and ILSA’s objective of protecting homebuyers from
26 unscrupulous developers.”).

27 The proposed *cy pres* recipients also have a sufficient nexus to the statute at
28 issue. The Ninth Circuit has held that the specific Fair Credit Reporting Act

1 provision at issue in this case was enacted “to protect consumers’ concrete interests
2 in avoiding the very real-world harms that result from inaccurate credit reporting—
3 such as the inability to obtain credit.” *Ramirez v. TransUnion LLC*, 951 F.3d 1008,
4 1025 (9th Cir. 2020), *rev'd on other grounds*, 594 U.S. 413 (2021). *Cy pres*
5 recipients who would help individuals receive housing related credit are in line with
6 the goals of the statute. In previous FCRA class action settlements, courts have
7 approved *cy pres* recipient organizations that promote consumer protection and
8 financial literacy. *See Patel v. Trans Union, LLC*, No. 14-CV-00522-LB, 2018 WL
9 1258194, at *3 (N.D. Cal. Mar. 11, 2018); *Carter v. McDonald's Rests.*, No. EDCV-
10 15-01531-MWF-(JCx), 2017 WL 5634300, at *5 (C.D. Cal. Mar. 15, 2017)
11 (approving Consumer Federation of California, “which advocates for consumer
12 protection interests with state and federal agencies,” as *cy pres* recipient in FCRA
13 class action settlement).

14 Because the Settlement ensures that the vast majority of the Settlement Fund
15 will go directly to Class Members, including a redistribution if feasible, and because
16 the *cy pres* recipients are aligned with the interests of the Class Members and the
17 purpose of the statute, the Settlement should be approved.

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Respectfully submitted,

Dated: March 1, 2024

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By: /s/E. Michelle Drake
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