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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

IN RE WOODBRIDGE
INVESTMENTS LITIGATION

Case No. 2:18-CV-00103-DMG (MRWx)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION; MEMORANDUM
OF LAW IN SUPPORT THEREOF**

REDACTED VERSION FILED UNDER
SEAL PURSUANT TO ORDERS OF
OCTOBER 1 AND DECEMBER 5, 2019
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VERSION SOUGHT TO BE SEALED

Date: June 25, 2021

Time: 10:00 a.m.

Courtroom: 8C, Eighth Floor

Judge: Honorable Dolly M. Gee

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

NOTICE OF MOTION AND MOTION..... xviii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

A. Plaintiffs Invested in the Woodbridge Ponzi Scheme. 2

B. Comerica Knew of and Acted in Furtherance of the Woodbridge
Fraud. 3

III. PROCEDURAL BACKGROUND 10

IV. LEGAL STANDARD 12

V. ARGUMENT 12

A. The Prerequisites of Rule 23(a) Are Met. 13

1. The Class is Sufficiently Numerous to Make Joinder
Impracticable. 13

2. Plaintiffs’ Claims Involve Common Issues of Fact and
Law. 133

3. Plaintiffs’ Claims Are Typical of the Class. 144

4. Plaintiffs and Their Counsel Will Adequately Represent
the Class. 155

B. The Requirements of Rule 23(b)(3) Are Satisfied. 166

1. Common Issues Predominate in Plaintiffs’ Claims. 16

a. California Law Applies to Plaintiffs’ Claims
Against Comerica Arising Out of Its Relationship
with Woodbridge. 17

b. Common Questions Predominate. 20

c. Individual Damage Determinations Do Not Defeat
Predominance. 24

2. A Class Action Is the Superior Means of Resolving This
Controversy. 244

VI. CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Abogados v. AT&T, Inc.
 223 F.3d 932 (9th Cir. 2000)..... 18

Ades v. Omni Hotels Mgmt. Corp.
 2014 WL 4627271 (C.D. Cal. Sept. 8, 2014)..... 13

Aichele v. City of Los Angeles
 314 F.R.D. 478 (C.D. Cal. 2013)..... 25

Aifang v. Velocity VII Ltd. P’ship
 2015 WL 12745806 (C.D. Cal. Sept. 30, 2015)..... 7

Allen v. Hyland’s Inc.
 300 F.R.D. 643 (C.D. Cal. 2014)..... 17, 18

Am. Master Lease LLC v. Idanta Partners, Ltd.
 225 Cal. App. 4th 1451 (2014)..... 19

Amgen Inc. v. Conn. Ret. Plans & Tr. Funds
 568 U.S. 455 (2013) 12

Asian Am. Ent. Corp. v. Las Vegas Sands, Inc.
 324 F. App’x 567 (9th Cir. 2009)..... 17

Benson v. JPMorgan Chase Bank, N.A.
 2010 WL 1526394 (N.D. Cal. Apr. 15, 2010)..... 9, 23

Bentley v. United of Omaha Life Ins. Co.
 2018 WL 3357458 (C.D. Cal. May 1, 2018)..... 25

Billitteri v. Sec. Am., Inc.
 2011 WL 3586217 (N.D. Tex. Aug. 4, 2011) 15

Bowoto v. Chevron Corp.
 2006 WL 2455761 (N.D. Cal. Aug. 22, 2006) 19

Brickman v. Fitbit, Inc.
 2017 WL 5569827 (N.D. Cal. Nov. 20, 2017) 24

Brown v. DirecTV, LLC
 330 F.R.D. 260 (C.D. Cal. 2019)..... 13

1 *Bruhl v. Price Waterhousecoopers Int’l*
 2 257 F.R.D. 684 (S.D. Fla. 2008) 21

3 *Cabot E. Broward 2 LLC v. Cabot*
 4 2018 WL 2006762 (S.D. Fla. Mar. 21, 2018)..... 14

5 *Cal. Pac. Bank v. Fed. Deposit Ins. Corp.*
 6 885 F.3d 560 (9th Cir. 2018) 8

7 *Casey v. U.S. Bank, N.A.*
 8 127 Cal. App. 4th 1138 (2005) 14, 22

9 *Chang v. Wells Fargo Bank, N.A.*
 10 2020 WL 1694360 (N.D. Cal. Apr. 7, 2020)..... 21

11 *Clothesrigger, Inc. v. GTE Corp.*
 12 191 Cal. App. 3d 605 (1987)..... 19

13 *Cole v. Asurion Corp.*
 14 267 F.R.D. 322 (C.D. Cal. 2010)..... 24

15 *Commodity Futures Trading Comm’n v. Oasis Int’l Grp., Ltd.*
 16 2020 WL 8617638 (M.D. Fla. Jan. 28, 2020) 8

17 *Dickey v. Advanced Micro Devices, Inc.*
 18 2019 WL 251488 (N.D. Cal. Jan. 17, 2019)..... 24

19 *Doe v. Neopets, Inc.*
 20 2016 WL 7647684 (C.D. Cal. Feb. 22, 2016) 16

21 *Dow Chem. Co. v. Mahlum*
 22 970 P.2d 98 (Nev. 1998)..... 19

23 *Evans v. ZB, N.A.*
 24 779 F. App’x 443 (9th Cir. 2019)..... 21, 22

25 *Falco v. Nissan N. Am. Inc.*
 26 2016 WL 1327474 (C.D. Cal. Apr. 5, 2016)..... 25

27 *Flack v. Nutribullet, L.L.C.*
 28 2019 WL 1596652 (C.D. Cal. Apr. 12, 2019) 18

Future Grp., II v. Nationsbank
 478 S.E.2d 45 (S.C. 1996)..... 19

1 *Gonzales v. Lloyds TSB Bank*
 2 2007 WL 9711433 (C.D. Cal. May 2, 2007) 14, 20, 24
 3 *Hanlon v. Chrysler Corp.*
 4 150 F.3d 1011 (9th Cir. 1998)..... 15
 5 *Hanon v. Dataproducts Corp.*
 6 976 F.2d 497 (9th Cir. 2015)..... 15
 7 *HRANEC Sheet Metal, Inc. v. Metalico Pittsburgh, Inc.*
 8 107 A.3d 114 (Pa. Super. 2014) 19
 9 *Hurtado v. Super. Ct.*
 10 11 Cal. 3d 574 (1974) 19
 11 *In re Checking Acct. Overdraft Litig.*
 12 275 F.R.D. 666 (S.D. Fla. 2011) 19
 13 *In re ConAgra Foods, Inc.*
 14 90 F. Supp. 3d 919 (C.D. Cal. 2015)..... 15
 15 *In re First Alliance Mortg. Co.*
 16 471 F.3d 977 (9th Cir. 2006) 14, 23, 24
 17 *In re Korean Ramen Antitrust Litig.*
 18 2017 WL 235052 (N.D. Cal. Jan. 19, 2017)..... 20
 19 *In re Lendingclub Sec. Litig.*
 20 282 F. Supp. 3d 1171 (N.D. Cal. 2017)..... 15
 21 *In re Optical Disk Drive Antitrust Litig.*
 22 2016 WL 467444 (N.D. Cal. Feb. 8, 2016)..... 20
 23 *In re Shapiro*
 24 128 B.R. 328 (Bankr. E.D.N.Y. 1991) 5
 25 *Jenson v. Fiserv Tr. Co.*
 26 256 F. App'x 924 (9th Cir. 2007)..... 23
 27 *Jimenez v. Allstate Ins. Co.*
 28 765 F.3d 1161 (9th Cir. 2014) 13
Johnson v. Columbia Props. Anchorage, LP
 437 F.3d 894 (9th Cir. 2006) 19

1 *Joint Equity Comm. of Invs. of Real Est. Partners, Inc. v. Coldwell Banker*
 2 *Real Est. Corp.*
 3 281 F.R.D. 422 (C.D. Cal. 2012)..... 15, 23, 25

4 *Jordan v. Paul Fin., LLC*
 5 285 F.R.D. 435 (N.D. Cal. 2012) 22

6 *Just Film, Inc. v. Buono*
 7 847 F.3d 1108 (9th Cir. 2017)..... 24

8 *Kearney v. Salomon Smith Barney, Inc.*
 9 39 Cal. 4th 95 (2006)..... 18

10 *Klein v. Chevron U.S.A., Inc.*
 11 202 Cal. App. 4th 1342 (2012) 24

12 *Leyva v. Medline Indus. Inc.*
 13 716 F.3d 510 (9th Cir. 2013)..... 24

14 *Liquidation Tr. v. Grobstein, Horwath & Co., LLP*
 15 2011 WL 13217688 (C.D. Cal. May 2, 2011) 19

16 *Lorenz v. E. W. Bancorp, Inc.*
 17 2016 WL 199392 (C.D. Cal. Jan. 14, 2016)..... 21

18 *Martin v. Monsanto Co.*
 19 2017 WL 1115167 (C.D. Cal. Mar. 24, 2017) 25

20 *Menagerie Prods. v. Citysearch*
 21 2009 WL 3770668 (C.D. Cal. Nov. 9, 2009) 18

22 *Morgan v. U.S. Soccer Fed’n, Inc.*
 23 2019 WL 7166978 (C.D. Cal. Nov. 8, 2019)..... 14

24 *Nguyen v. Radient Pharm. Corp.*
 25 287 F.R.D. 563 (C.D. Cal. 2012)..... 13

26 *Novoa v. GEO Grp., Inc.*
 27 2019 WL 7195331 (C.D. Cal. Nov. 26, 2019) 25

28 *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*
 2021 WL 1257845 (9th Cir. Apr. 6, 2021)..... 12

Phillips Petroleum Co. v. Shutts
 472 U.S. 797 (1985) 17

1 *PNC Multifamily Capital Institutional Fund XXVI Ltd. P’ship v. Bluff City*
 2 *Community Dev’t Corp.*
 3 387 S.W.3d 525 (Tenn. Ct. App. 2012)..... 19
 4 *Rilley v. MoneyMutual, LLC*
 5 329 F.R.D. 211 (D. Minn. 2019) 20
 6 *Robert McMullan & Son, Inc. v. United States Fid. & Guar. Co.*
 7 103 Cal. App. 3d 198 (1980) 18
 8 *Rodriguez v. Hayes*
 9 591 F.3d 1105 (9th Cir. 2010) 15
 10 *Roos v. Morrison*
 11 913 So. 2d 59 (Fla. Dist. Ct. App. 2005)..... 19
 12 *Sevilla v. Aaron’s, Inc.*
 13 2019 WL 2879874 (C.D. Cal. Mar. 25, 2019) 16
 14 *Staton v. Boeing Co.*
 15 327 F.3d 938 (9th Cir. 2003) 15
 16 *Stetser v. TAP Pharm. Prod., Inc.*
 17 598 S.E.2d 570 (N.C. 2004) 19
 18 *Takiguchi v. MRI Int’l, Inc.*
 19 2016 WL 1091090 (D. Nev. Mar. 21, 2016)..... 14, 20
 20 *Torres v. Mercer Canyons Inc.*
 21 835 F.3d 1125 (9th Cir. 2016) 16
 22 *True Health Chiropractic, Inc. v. McKesson Corp.*
 23 896 F.3d 923 (9th Cir. 2018) 16
 24 *Tyson Foods, Inc. v. Bouaphakeo*
 25 136 S. Ct. 1036 (2016) 16
 26 *Venture Gen. Agency, LLC v. Wells Fargo Bank, N.A.*
 27 2019 WL 3503109 (N.D. Cal. Aug. 1, 2019) 5
 28 *Wash. Mut. Bank v. Super. Ct.*
 24 Cal.4th 906 (2001) 17
ZP No. 54 Ltd. P’ship v. Fid. & Deposit Co. of Maryland
 917 So. 2d 368 (Fla. Dist. Ct. App. 2005)..... 19

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4 (May 11, 1993), 1993 WLNR 1380012..... 5

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6 Herald (Oct. 15, 2019)..... 11

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8 92 Tulane L. Rev. 1 (2017) 18

9 **Rules**

10 Fed. R. Civ. P. 23 *passim*

11 FINRA Rule 2090 5

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1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that at 10:00 a.m. on June 25, 2021, at 350 West 1st
3 Street, Los Angeles, CA, 90012, Courtroom 8C, before the Honorable Dolly M. Gee,
4 Plaintiffs Mark Baker, Jay Beynon Family Trust DTD 10/23/1998, Alan and Marlene
5 Gordon, Joseph C. Hull, Lloyd and Nancy Landman, and Lilly A. Shirley, will and do
6 hereby move the Court, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3),
7 for an order certifying a class of all persons who from July 1, 2012 through December 1,
8 2017 invested in Woodbridge FPCM promissory notes or Woodbridge units. Excluded
9 from the class are Comerica, its parents, subsidiaries, affiliates, officers and directors,
10 and any entity in which Comerica has a controlling interest or which has a controlling
11 interest in Comerica. Also excluded from the class are investors who recovered the
12 principal they invested in Woodbridge, and the judicial officers to whom this matter is
13 assigned and their staff and immediate family members.

14 Plaintiffs will also move the Court to appoint them as class representatives and to
15 appoint the law firm of Girard Sharp LLP as lead class counsel and a Plaintiffs’
16 executive committee consisting of the law firms Berger & Montague, P.C.; Cohen
17 Milstein Sellers & Toll PLLC; Kozyak Tropin & Throckmorton; Levine Kellogg
18 Lehman Schneider & Grossman LLP; Sonn Law Group P.A.; and Wolf Haldenstein
19 Adler Freeman & Herz LLP. This motion is based upon this Notice of Motion and
20 Motion; the incorporated Memorandum of Law that follows; the Declarations of Mark
21 Baker (“Baker Decl.”), Jay Beynon (“Beynon Decl.”), Alan and Marlene Gordon
22 (“Gordon Decl.”), Joseph C. Hull (“Hull Decl.”), Lloyd and Nancy Landman (“Landman
23 Decl.”), Lilly A. Shirley (“Shirley Decl.”), Michael I. Goldberg (“Goldberg Decl.”), and
24 Daniel C. Girard (“Girard Decl.”); Plaintiffs’ Trial Plan; the evidence submitted in
25 support of the motion; any additional evidence submitted on reply; and any argument
26 presented to the Court.

27 The motion follows the conference of counsel for Plaintiffs and Defendant
28 pursuant to Local Rule 7-3 on March 25, 2021.

1 **I. INTRODUCTION**

2 Plaintiffs’ aiding and abetting claims against Comerica Bank satisfy Rule 23’s
3 requirements for certification. Comerica served as the exclusive banker for the
4 Woodbridge Group of Companies, which raised \$1.2 billion in real estate investments
5 while running a Ponzi scheme. Woodbridge principal Robert H. Shapiro used new
6 investor funds to pay returns to earlier investors and to cover sales commissions and
7 overhead, and diverted the balance to his personal benefit. The money that Plaintiffs
8 and class members invested in Woodbridge was uniformly deposited in Woodbridge’s
9 Comerica accounts, and investors received returns out of these same Comerica accounts
10 until Woodbridge went bankrupt. Joinder of the many hundreds of investors is
11 impracticable, and the claims center on common questions such as whether Comerica
12 knew of and substantially assisted the fraud and breaches of fiduciary duty. Plaintiffs
13 assert claims that are typical of those of other Class members. They will fairly and
14 adequately represent the interests of the Class, and have retained experienced counsel to
15 prosecute the claims. Plaintiffs meet the requirements of Rule 23(a).

16 Plaintiffs’ claims will stand or fall based on common proof of Comerica’s aiding
17 and abetting the Woodbridge scheme. Common issues predominate as to these investor
18 claims—which are governed by California law because Woodbridge was based in the
19 San Fernando Valley and did its banking at Comerica’s Studio City branch, Comerica
20 employees visited Woodbridge at its office in Sherman Oaks, and Woodbridge investors
21 were instructed to send wires to Comerica Bank at a California address and were paid
22 returns on checks drawn from “Comerica Bank-California.” On the key elements of
23 knowledge and participation, the evidence shows that Comerica’s artificial intelligence
24 systems notified bank personnel hundreds of times of red-flagged, suspicious account
25 activity. Comerica processed over 10,000 internal transfers totaling \$1.6 billion among
26 related Woodbridge accounts and hundreds of millions of dollars in transfers to vaguely
27 denominated attorney trust accounts. Comerica went to great lengths to retain Shapiro’s
28 business even after Comerica received [REDACTED] subpoenas from January 2015 to

1 January 2018 from different federal and state regulators for its records associated with
2 the Woodbridge accounts, and even after learning that Woodbridge had been ordered by
3 the state regulators of several states to cease and desist its fraudulent investment
4 business. Though Woodbridge’s banking activity made no sense on any level, Comerica
5 had identified Shapiro as a “High End Client” and believed it was free to provide its
6 services to Woodbridge until confronted with “enough evidence to confirm that our
7 customer is involved in a criminal enterprise.”

8 No investor would have invested had they been told the true nature of the
9 Woodbridge investment, and no challenge Comerica might raise to class certification
10 will affect the common evidence that will drive the outcome of the litigation. Slightly
11 over half of the investors assigned their claims against Comerica to the Liquidation
12 Trustee in the Woodbridge bankruptcy proceeding, Michael I. Goldberg, who provides a
13 declaration in support of class certification. The investor claims he has been entrusted
14 with prosecuting against Comerica arise from the same course of conduct as all the other
15 class claims, raise no individual issues or conflicts among Class members, and can be
16 efficiently tried in the same proceeding. Accordingly, the Court should certify the
17 investor class.

18 **II. STATEMENT OF FACTS**

19 **A. Plaintiffs Invested in the Woodbridge Ponzi Scheme.**

20 From around July 2012 through December 4, 2017, Robert Shapiro ran a
21 nationwide investment scheme, raising money from over 8,400 investors nationwide.
22 Goldberg Decl., ¶ 8 & Ex. B (Declaration of Soneet R. Kapila (“Kapila Decl.”), ¶ 85).
23 Woodbridge raised money by selling promissory notes and subscription arrangements
24 under which investors purchased units in Woodbridge funds. Goldberg Decl., Ex. B
25 (Kapila Decl., ¶¶ 22-59). Woodbridge promised to lend the money raised from investors
26 for a short term, and for only about two-thirds of the value of the real estate securing the
27 transaction, such that the “properties that secure the mortgages are worth considerably
28 more than the loans themselves at closing.” Girard Decl., Exs. 1, 2 (WGC IM_0368701;

1 WBPLAINTIFF_GORDON_000001 at -10). Shapiro never lent the money to
2 independent borrowers, however. He lent the money to LLCs he controlled and
3 Woodbridge took in virtually no interest income from borrowers. Goldberg Decl., Ex. B
4 (Kapila Decl., ¶¶ 92-94).

5 Although Woodbridge raised at least \$1.22 billion from Plaintiffs and other
6 investors, it issued only around \$675 million in nominal “loans” for real estate
7 purportedly securing the investments. Goldberg Decl., Ex. B (Kapila Decl., ¶¶ 85, 91-
8 94). Almost all the proceeds went to purchase properties in the name of Shapiro’s
9 nominees. *Id.* ¶¶ 92-94. Instead of generating the promised 11-15% interest, the loans
10 generated only \$13.7 million from third-party borrowers—far less than needed to cover
11 Woodbridge’s overhead and pay returns to investors. *Id.* ¶¶ 19, 86. Despite the shortfall,
12 Woodbridge paid investors over \$368 million and spent another \$172 million on
13 operating expenses. *Id.* ¶¶ 108-10 & Exs. F, F1. Shapiro and his wife diverted another
14 \$21.2 million to lavish personal expenditures. *Id.* ¶¶ 104-06.

15 Each of the Class Representatives purchased notes or units in a Woodbridge fund
16 believing Woodbridge was a legitimate investment enterprise.¹ Baker Decl., ¶ 2,
17 Beynon Decl., ¶ 2, Gordon Decl., ¶ 2, Hull Decl., ¶ 2, Landman Decl., ¶ 2; Shirley
18 Decl., ¶ 2. Investors have received some of their money back from interim distributions
19 in the Woodbridge bankruptcy, but the remaining assets will not make up the shortfall,
20 and the investors—mostly seniors, as represented by six of the class representatives—
21 face substantial losses on their investments. *E.g.*, Shirley Decl., ¶¶ 2, 3 (Plaintiff, a
22 retired South Carolina special education teacher, is 71); Gordon Decl., ¶¶ 2, 3.

23 **B. Comerica Knew of and Acted in Furtherance of the Woodbridge Fraud.**

24 To sustain the Woodbridge scheme, Shapiro needed a continuous infusion of new
25 investments and a compliant financial institution to handle the money, no questions
26 asked. Shapiro ran the Woodbridge scheme in plain view of Comerica. Despite the

27
28 ¹ Plaintiffs Albert and Freda Lynch elected to dismiss their claims without prejudice due to Mr. Lynch’s worsening health. Robert Prince dismissed his claims without prejudice due to personal commitments precluding him from serving as a named plaintiff.

1 alerts triggered by Woodbridge’s frenzied related-party transfers—a known marker of
2 fraud—Comerica executives, motivated to retain Shapiro as a highly profitable
3 customer, continued catering to Shapiro even after the Woodbridge scheme began to
4 unravel. Even though Comerica compliance personnel were notified again and again by
5 its internal monitoring systems of suspicious banking activity, [REDACTED]

6 [REDACTED]
7 [REDACTED]. Girard Decl., Ex. F (Deposition of [REDACTED]
8 (“[REDACTED] Dep.”) at 128-29); Ex. 3 (COM0236196 at -205) (Comerica recognizing
9 [REDACTED]); Ex. 4 (COM0233012 at -23).

10 Comerica’s employees worked closely with Shapiro for years, knew his history of
11 financial wrongdoing, actively monitored his transactions, saw the pattern of circular
12 transfers between accounts, were informed by state authorities of his ongoing illegal
13 conduct, and flagged suspect activity in the Woodbridge accounts more than a hundred
14 times with its internal fraud monitoring systems—in 2016 and 2017 alone. Comerica
15 simply chose to align itself with Woodbridge at the investors’ expense.

16 ***Comerica’s close relationship with Shapiro and Woodbridge.*** Comerica was
17 highly motivated to keep Shapiro’s business because he was a highly profitable
18 customer—approximately \$1.66 billion flowed through Comerica accounts over the
19 course of nearly 11,000 transactions. Goldberg Decl., ¶ 8 & Ex. B (Kapila Decl., ¶ 89).
20 Comerica profited from fees and from investing the funds on deposit; Comerica
21 employees emphasized that Shapiro was a “High End Client with a large relationship”
22 with the bank. Girard Decl., Ex. 6 (COM0228118 at -19).

23 Employees at Comerica’s Studio City branch, where Shapiro opened 23 accounts,
24 afforded him special treatment. *E.g.*, Girard Decl., Ex. 6 (COM0229119). Comerica
25 personnel knew the nature of Woodbridge’s business and regularly visited its offices in
26 Sherman Oaks, in the San Fernando Valley. [REDACTED]

27 [REDACTED]
28 [REDACTED]. *Id.*;

1 *see also id.*, Exs. 8, G (WGC IM_0720311; Deposition of [REDACTED] (“[REDACTED]
2 Dep.”) at 80-83:7). In addition, Comerica’s corporate officers gave Shapiro special
3 treatment. *E.g., id.*, Ex. 9 (COM0236450 at -65).

4 Comerica was also familiar with Shapiro’s history of fraudulent conduct. In 2011
5 Comerica obtained a report on Shapiro (Girard Decl., Ex. 10 (COM0236076 at -85))
6 revealing his involvement in an earlier scheme, “Dunewood,” a real-estate investment
7 scam similar to Woodbridge, launched in 1990. Shapiro stole the investors’ money.
8 *See* Charles Elmore, *State Names Receiver for Dunewood Funding*, Palm Beach Post
9 (May 11, 1993), 1993 WLNR 1380012. Shapiro filed for bankruptcy and admitted to
10 diverting money for personal use and transferring money overseas to hide it from
11 creditors. *In re Shapiro*, 128 B.R. 328, 332 (Bankr. E.D.N.Y. 1991) (“Robert Shapiro,
12 having filed no answer, admitted the well pleaded allegations of the petition”). The
13 investors sued, judgments were entered against Shapiro, and, between 1995 and 2004,
14 federal and state tax authorities placed at least a dozen liens on Shapiro properties. *See*
15 *id.*; Girard Decl., Ex. 10 (COM0236076 at -85-87). The 2011 report Comerica reviewed
16 had records of judgments and liens imposed by the IRS and by California, Florida, and
17 New York authorities from 1992 to 2010. *Id.* at -85-87. Comerica [REDACTED]
18 [REDACTED], even as Shapiro was operating the sequel to Dunewood before its eyes.

19 ***Banking activity inconsistent with Woodbridge’s stated business model.*** Both
20 federal law (the Bank Secrecy Act) and the Financial Industry Regulatory Authority
21 (FINRA) require banks to know their customers and understand their customers’
22 banking behavior.² Comerica knew Woodbridge was intaking investments in “hard-
23 money” real estate loans, and had previously trafficked in structured settlements,
24 annuities, and lottery winnings. Girard Decl., Ex. G ([REDACTED] Dep. at 51-52).

25
26 ² *See Venture Gen. Agency, LLC v. Wells Fargo Bank, N.A.*, 2019 WL 3503109, at *6
27 (N.D. Cal. Aug. 1, 2019) (discussing BSA obligations); Compl., ¶¶ 33-43; FINRA Rule
28 2090, *Know Your Customer* (“Every member shall use reasonable diligence, in regard to
the opening and maintenance of every account, to know (and retain) the essential facts
concerning every customer and concerning the authority of each person acting on behalf
of such customer.”), <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2090>.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 [REDACTED]. *Id.*, Ex. H (Deposition of [REDACTED] (“[REDACTED] Dep.”) at 113-115, 121-126).

10 [REDACTED]
11 [REDACTED]
12 [REDACTED].

13 *Id.*, Ex. 7 (COM0229119); Ex. F ([REDACTED] Dep. at 128-129). Rather than raising money
14 from investors, using that money to make real estate loans to borrowers, and earning
15 money on the difference, Comerica saw Woodbridge raise \$1.22 billion from retail
16 investors and [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED]. *Id.*, Ex. H ([REDACTED] Dep. at 126-128, 147-153); Goldberg Decl.,
21 ¶ 8 & Ex. B (Kapila Decl., ¶¶ 104-106).

22 Comerica’s compliance staff and the Studio City branch management were
23 repeatedly confronted with suspicious transfers inconsistent with Woodbridge’s
24 fiduciary role, including extensive commingling of funds. Girard Decl., Ex. G ([REDACTED]
25 Dep. at 149-151). Comerica’s Studio City personnel often communicated with Shapiro
26 about the need to cover payments to investors. Girard Decl., Ex. 8 (WGC IM_0720311)
27 (Shapiro asking two branch managers whether he needed to “move any funds around”
28 to make sure no checks were returned due to holds). Yet, instead of loaning them out to

1 borrowers, Woodbridge swept these funds into operating accounts. Goldberg Decl., ¶ 8
2 & Ex. B. (Kapila Decl., ¶¶ 9, 89). Then from the operating accounts, Woodbridge paid
3 employees and sales agents—and it made large, unexplained transfers to attorney trust
4 accounts. Girard Decl., Ex. 4 (COM0233012 at -024-25); Goldberg Decl., Ex. B
5 (Kapila Decl., ¶ 78). Woodbridge’s unusual account activity using commingled funds
6 occurred at a high volume on a monthly basis, throughout all investment accounts,
7 throughout the class period, a pattern incompatible with any legitimate business model.
8 *Id.* ¶ 89.

9 ***Disbursements and personal expenditures from investor funds.*** Comerica
10 personnel regularly processed transfers from Woodbridge’s Comerica accounts for
11 Shapiro’s own benefit, including over \$2 million on expensive sports cars, wine,
12 jewelry and home furnishings, \$1.4 million for retail purchases at high-end stores like
13 Chanel and Louis Vuitton, and satisfying his wife’s credit card balance. Goldberg Decl.,
14 Ex. B. (Kapila Decl., ¶¶ 104-06 & Ex. H thereto). Shapiro diverted investor funds to
15 pay off approximately \$9 million in credit-card debt, and his wife and her company also
16 received diverted investor proceeds out of Woodbridge’s Comerica accounts. *Id.*
17 Shapiro was ultimately ordered to pay more than \$20 million in disgorgement.

18 ***Large and manifold transactions with attorney trust accounts.*** Ponzi schemes
19 commonly rely on attorney trust accounts to evade scrutiny while commingling and
20 misappropriating investor funds.³ Woodbridge was no different. Goldberg Decl., Ex. B
21 (Kapila Decl., ¶ 78). Comerica processed numerous unusual transactions involving
22 attorney trust accounts without seriously questioning the activity. *Id.* For example, in
23 2017, Comerica analysts [REDACTED]
24 [REDACTED]. Girard Decl., Ex. 4 (COM0233012 at -23-25). In a February 28, 2017 review
25 of the Woodbridge operating account [REDACTED] triggered
26 Comerica’s fraud monitoring systems, the analyst noted that [REDACTED]

27
28 ³ *Aifang v. Velocity VII Ltd. P’ship*, 2015 WL 12745806, at *5 (C.D. Cal. Sept. 30, 2015)
(bank’s awareness that investor money was being put into an attorney trust account
supported claim of aiding and abetting in case arising out of a Ponzi scheme).

1 [REDACTED]. *Id.* Six
2 months later, a Comerica analyst noted [REDACTED]
3 [REDACTED]. *Id.*, Ex. 11 (COM0234042 at -53-54).

4 ***Pass-through accounts.*** Another Ponzi hallmark is a “pass-through” operating
5 account, which begins and ends the month with a similar balance but sees millions or tens
6 of millions of dollars in banking activity during the month.⁴ Despite internal monitoring
7 systems repeatedly warning Comerica of Woodbridge’s circular transfers between
8 accounts, Comerica [REDACTED]
9 [REDACTED]. *E.g.*, Girard Decl., Ex. 12 (COM0236178). In July 2014, for
10 example, a Woodbridge operating account began the month with a balance of around
11 \$517,000. Even though nearly \$23 million in credits came in, the month-end balance was
12 only \$555,126. In February 2016, the account began the month with less than \$600,000,
13 had nearly \$48 million pass through it, and ended with under \$800,000. Girard Decl., ¶
14 10. Comerica maintains [REDACTED] (Girard Decl., Ex. H ([REDACTED] Dep. at
15 122-23)) despite the fact that Shapiro was *the only signatory* on the accounts and he was
16 *personally signing* checks. Girard Decl., Ex. 12 (COM0236178 at -87).

17 ***Large, round dollar transactions.*** Transfers in large, round dollar amounts are
18 another recognized marker of potentially fraudulent activity.⁵ [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]. Girard Decl., Ex. H ([REDACTED]
22 Decl. at 113-15). A high percentage of the \$1.3 billion in transfers from investment fund
23 accounts to operating accounts were made in round numbers ending in “000.00” and
24

25 ⁴ *Commodity Futures Trading Comm’n v. Oasis Int’l Grp., Ltd.*, 2020 WL 8617638, at
26 *1 (M.D. Fla. Jan. 28, 2020) (in the Ponzi scheme, bank accounts “acted as pass-through
27 accounts from which investor funds were then transferred . . .”).

28 ⁵ *California Pac. Bank v. Fed. Deposit Ins. Corp.*, 885 F.3d 560, 581 (9th Cir. 2018)
(evidence of “several red flags, including ‘large dollar’ and ‘round dollar’ amounts”
supported FDIC’s determination that a suspicious activity report should have been filed).

1 averaging more than \$550,000. Girard Decl., ¶ 9.

2 ***Shapiro and Woodbridge were unlicensed and had been sanctioned.*** Comerica
3 knew that, while Woodbridge’s core business was selling investment securities, the
4 SEC had never licensed Shapiro and Woodbridge to sell securities and state authorities
5 had sanctioned them for securities fraud and were continuing to investigate. Non-
6 licensure is an indication of a Ponzi scheme, suggesting efforts to evade regulatory
7 scrutiny.⁶

8 ***Alerts and reviews.*** Comerica used a range of sophisticated investigative and
9 monitoring tools to detect fraudulent activity. Girard Decl. Ex. F (██████████ Dep. at 49-
10 50). Comerica’s systems operated as intended—and alerted bank personnel to
11 fraudulent activity in Woodbridge accounts hundreds of times. *E.g.*, Girard Decl., Exs.
12 4, 5, 11, 13, 18 (COM0233012; COM0233822; COM0234042; COM0233050;
13 COM0233166). Comerica ██████████ activity
14 characteristic of a Ponzi scheme, such as ██████████

15 ██████████
16 ██████████
17 ██████████. *E.g., id.*, Ex. 4 (COM0233012 at -024-25). Even
18 as they acknowledged seeing classic Ponzi indicators, Comerica analysts brushed off
19 what they saw, or their efforts to escalate were overruled by Comerica executives. *E.g.*,
20 *id.*, Ex. 13 (COM0233050 at -61).

21 ***Legal Proceedings.*** Beginning in 2015 Comerica was served with ██████████
22 subpoenas from state and federal regulators and law enforcement officials in connection
23 with the Woodbridge accounts. Comerica received subpoenas from the SEC, the
24 ██████████, the IRS, California, Massachusetts, Florida and Wisconsin.
25 Girard Decl., Ex. E (Comerica RFA Resps. at 20-24). The focus of these subpoenas was
26 apparent. Numerous Florida subpoenas were issued by the state’s “Economic Crimes”

27
28 ⁶ *Benson v. JPMorgan Chase Bank, N.A.*, 2010 WL 1526394, at *3 (N.D. Cal. Apr. 15, 2010) (Chase’s knowledge that neither its client nor “his associates, nor [his entities] were registered to sell securities” suggested Chase knew its client was running a Ponzi scheme).

1 unit. *Id.*, Ex. 15 (COM0474606). Further, regulators in Texas, Massachusetts, Arizona,
2 Pennsylvania, and Michigan issued cease-and-desist or consent orders concerning
3 Woodbridge’s securities fraud and sales of unregistered securities. Goldberg Decl., Ex.
4 B (Kapila Decl., ¶ 103); Girard Decl., Ex. 15 (COM0236558); Ex. 16 (COM0233768).
5 According to Comerica’s documents, the Texas cease-and-desist order was [REDACTED]
6 [REDACTED].” Ex. 19 (COM0236424). But, even after the Texas State Securities
7 Board, in 2015, emailed a news release announcing it had sanctioned Woodbridge for
8 securities violations *directly to* a Comerica assistant vice president for compliance, and
9 even after reviewing a cease-and-desist order that found “Respondents Woodbridge and
10 Shapiro are engaging in fraud in connection with the offer and sale of securities,”
11 Comerica continued servicing the Woodbridge accounts. *E.g.*, Girard Decl., Exs. 17, 18,
12 15, 19 (COM0229789; COM0233166; COM0236558; COM0236424 at -36-37).

13 Comerica subsequently learned in November 2016 that the SEC was investigating
14 Woodbridge. Girard Decl., Ex. E (Comerica RFA Resps. at 20-24). In [REDACTED],
15 Comerica [REDACTED]
16 [REDACTED]. *Id.* In September 2017, a compliance
17 executive at the bank began receiving multiple SEC email bulletins announcing that the
18 SEC had obtained a court order compelling Woodbridge to comply with a subpoena,
19 and that a second proceeding was underway because Woodbridge was refusing to
20 comply and turn over the information. *Id.*, Exs. 23, 24 (COM0231150; COM0231160).
21 Days later, two Comerica executives exchanged emails about negative news articles
22 about Woodbridge but concluded that Comerica *could keep servicing* its Woodbridge
23 accounts—the articles were “not enough evidence to confirm that our customer is
24 involved in a criminal enterprise.” *Id.*, Ex. 25 (COM0231037).

25 **III. PROCEDURAL BACKGROUND**

26 The Woodbridge entities declared bankruptcy on December 4, 2017. *See In re*
27 *Woodbridge Grp. of Cos.*, No. 17-12560-BLS (Bankr. D. Del.) (“Bankruptcy”). On
28 December 20, 2017, the SEC filed a civil complaint in the Southern District of Florida

1 charging that Shapiro ran a “massive Ponzi scheme” and had misappropriated millions of
2 dollars. *SEC v. Shapiro*, No. 1:17-cv-24624-MGC (S.D. Fla. filed Dec. 20, 2017). On
3 December 27, 2018, the district court entered final judgments against the Woodbridge
4 entities and Shapiro. Bankruptcy [Doc. # 159, 160 (ordering Woodbridge to pay \$892
5 million in disgorgement, Shapiro to pay \$120 million)]. On August 5, 2019, Shapiro
6 pleaded guilty to mail and wire fraud and tax evasion. *See United States v. Shapiro*, No.
7 1:19-cr-20178-CMA [Doc. # 139] (S.D. Fla. filed Aug. 7, 2019). In October 2019, U.S.
8 District Judge Cecilia Altonaga sentenced Shapiro to the maximum sentence of 25 years,
9 explaining in part that his crimes “destroyed thousands of lives of elderly folks and
10 retired military who were specifically targeted” and “we need to punish [him] severely
11 because the harm was so severe.”⁷

12 Plaintiff Jay Beynon brought the first of a series of lawsuits against Comerica in
13 this district on January 4, 2018, for aiding and abetting the Woodbridge scheme. *See*
14 Class Action Compl., *In re Woodbridge Invs. Litig.*, No. 18-cv-00103-DMG-MRW (C.D.
15 Cal. Jan. 4, 2018) [Doc. # 1]. Comerica sued the class representatives in the Bankruptcy
16 Court, seeking an injunction barring them from prosecuting their claims in this Court. *See*
17 Compl., No. 18-50382-BLS (Bankr. D. Del. Apr. 4, 2018) (“Adversary Proceeding”)
18 [Doc. # 1]. The parties negotiated an agreement to stay the injunction proceeding (and in
19 turn the class action) pending confirmation of the Bankruptcy plan, and this Court
20 approved the stay. [Docs. # 51, 52].

21 On October 26, 2018, the Bankruptcy Court confirmed the bankruptcy plan.
22 Bankruptcy [Doc. # 2903]. The Woodbridge Liquidation Trust was formed to pursue the
23 liquidation trust assets and distribute the proceeds to the Trust beneficiaries. As part of the
24 plan, former Woodbridge investors were offered the option of assigning their claims
25 against third parties, including Comerica, to a Liquidation Trust (“Contributed Claims”).

26
27 ⁷ *See id.* [Doc. # 175]; Jay Weaver, *Judge gives 12-year max to Ponzi schemer who stole*
28 *millions from Florida to California*, Miami Herald (Oct. 15, 2019),
<https://www.miamiherald.com/news/local/article236215238.html#:~:text=After%20several%20victims%20of%20his,investment%20fraud%20and%20tax%20evasion.>

1 Michael I. Goldberg, the Liquidation Trustee, is authorized to pursue avoidance claims and
2 causes of action held by the Bankruptcy debtors (including certain Woodbridge entities) as
3 well as the Contributed Claims assigned by Woodbridge investors. On August 15, 2019,
4 the Bankruptcy Court granted Plaintiffs’ motion that it abstain from hearing the Adversary
5 Proceeding, so that the class action could proceed. Adversary Proceeding [Doc. # 36].

6 On August 22, 2019, this Court lifted the stay of proceedings. [Doc. # 81]. On
7 August 5, 2020, the Court denied Comerica’s motion to dismiss the aiding and abetting
8 claims. [Doc. # 144]. The Court noted Plaintiffs’ allegations of Comerica’s “close business
9 relationship with Shapiro, its awareness of banking activity inconsistent with
10 Woodbridge’s stated business model, and Shapiro’s disbursements and personal
11 expenditures from investor funds” and that “a bank’s decision to ignore suspicious activity
12 or red flags is sufficient to demonstrate actual knowledge” under California law. *Id.* at 8-9.

13 **IV. LEGAL STANDARD**

14 Plaintiffs must prove by the preponderance of evidence that the Rule 23(a)
15 requirements and at least one of the Rule 23(b) requirements are satisfied. *See Olean*
16 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, — F.3d —, 2021 WL
17 1257845, at *4 (9th Cir. Apr. 6, 2021). “Merits questions may be considered to the
18 extent—but only to the extent—that they are relevant to determining whether the Rule
19 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans &*
20 *Tr. Funds*, 568 U.S. 455, 466 (2013).

21 **V. ARGUMENT**

22 Plaintiffs’ evidence satisfies all requirements for class certification under Rule
23 23(a) and 23(b)(3). Plaintiffs and all class members invested in Woodbridge securities
24 believing that Woodbridge operated as a legitimate real-estate investment company, and
25 none was aware that Shapiro was perpetrating a Ponzi scheme. Plaintiffs’ aiding and
26 abetting claims arise from Comerica’s common course of conduct and not the individual
27 experiences of class members. Consistent with their Trial Plan, submitted herewith,
28 Plaintiffs move to certify the following class with respect to their claims against

1 Comerica for (1) aiding and abetting fraud and (2) aiding and abetting breach of
2 fiduciary duty:

3 All persons in the United States who from July 1, 2012 through
4 December 1, 2017 invested in Woodbridge FPCM promissory
5 notes or Woodbridge units.

6 Excluded from the class are Comerica, its parents, subsidiaries,
7 affiliates, officers and directors, and any entity in which Comerica
8 has a controlling interest or which has a controlling interest in
9 Comerica. Also excluded from the class are investors who
10 recovered the principal they invested in Woodbridge, and the
11 judicial officers to whom this matter is assigned and their staff and
12 immediate family members.

13 This definition properly “describes a set of common characteristics sufficient to allow [a
14 class member] to identify himself or herself as having a right to recover based on the
15 description.” *Ades v. Omni Hotels Mgmt. Corp.*, 2014 WL 4627271, at *7 (C.D. Cal.
16 Sept. 8, 2014) (citation omitted). The class is adequately “defined using objective
17 criteria[.]” *Brown v. DirecTV, LLC*, 330 F.R.D. 260, 268 (C.D. Cal. 2019). In addition,
18 the Liquidation Trust acquired Woodbridge’s records and has verified the identity and
19 contact information of all Woodbridge investors, so there will be no difficulty
20 identifying Class members or giving them notice. Goldberg Decl., ¶¶ 30, 31.

21 **A. The Prerequisites of Rule 23(a) Are Met.**

22 **1. The Class is Sufficiently Numerous to Make Joinder
23 Impracticable.**

24 Numerosity under Rule 23(a)(1) is met in this case because the class consists of
25 thousands of investors. Goldberg Decl., ¶ 27; see *Nguyen v. Radiant Pharm. Corp.*, 287
26 F.R.D. 563, 569 (C.D. Cal. 2012) (a class of at least 40 is presumptively numerous).

27 **2. Plaintiffs’ Claims Involve Common Issues of Fact and Law.**

28 Plaintiffs satisfy the commonality requirement because class members’ claims
“depend upon a common contention such that determination of its truth or falsity will
resolve an issue that is central the validity of each claim in one stroke.” *Jimenez v.*
Allstate Ins. Co., 765 F.3d 1161, 1165 (9th Cir. 2014) (quotation marks and citation

1 omitted); *see Morgan v. U.S. Soccer Fed’n, Inc.*, 2019 WL 7166978, at *7 (C.D. Cal.
2 Nov. 8, 2019). Comerica’s liability for aiding and abetting turns on (1) whether it knew
3 that Shapiro was engaging in fraud or breaching a fiduciary duty; and (2) whether it
4 provided substantial assistance to Shapiro in carrying out this unlawful conduct. *See In*
5 *re First Alliance Mortg. Co.*, 471 F.3d 977, 994 (9th Cir. 2006) (citing *Casey v. U.S.*
6 *Bank, N.A.*, 127 Cal. App. 4th 1138 (2005)). The answers to these questions—up or
7 down—will be the same for all class members.

8 Common evidence shows, among other things, Comerica’s close relationship with
9 Shapiro, [REDACTED]
10 [REDACTED]. Girard Decl., Ex. 6 (COM0228118);
11 Ex. 7 (COM0229119); Ex. 8 (WGC IM_0720311); Ex. G ([REDACTED] Dep. at 80-81); Ex.
12 H ([REDACTED] Dep. at 126-28, 147-53). Moreover, Comerica received [REDACTED]
13 subpoenas for its Woodbridge-related records from government officials and knew of the
14 SEC’s investigation of and several states’ cease-and-desist orders against Woodbridge.
15 *Id.*, Ex. E (Comerica RFA Resps. at 20-24). This and other common evidence goes to the
16 heart of Plaintiffs’ claims for abetting the fraud, satisfying commonality. *See In re First*
17 *Alliance*, 471 F.3d at 990 (Ninth Circuit “follow[s] an approach that favors class
18 treatment of fraud claims stemming from a common course of conduct.”) (quotation
19 marks and citation omitted); *Gonzales v. Lloyds TSB Bank*, 2007 WL 9711433, at *4
20 (C.D. Cal. May 2, 2007) (commonality satisfied as to aiding and abetting claims against
21 bank); *Takiguchi v. MRI Int’l, Inc.*, 2016 WL 1091090, at *4 (D. Nev. Mar. 21, 2016)
22 (common issues included whether defendants aided and abetted fraud); *Cabot E.*
23 *Broward 2 LLC v. Cabot*, 2018 WL 2006762, at *6 (S.D. Fla. Mar. 21, 2018)
24 (“[W]hether Defendants aided and abetted each other in perpetrating the fraud, are all
25 common questions involving common proof, which may be resolved efficiently”).

26 **3. Plaintiffs’ Claims Are Typical of the Class.**

27 Rule 23(a)(3)’s typicality requirement—also satisfied here—is “‘permissive’ and
28 requires only that the representative’s claims are ‘reasonably co-extensive with those of

1 absent class members; they need not be substantially identical.” *Rodriguez v. Hayes*,
2 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
3 1020 (9th Cir. 1998)). Typicality is satisfied where the plaintiffs and class members
4 “have the same or similar injury” arising from the “same course of conduct.” *In re*
5 *ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 973 (C.D. Cal. 2015) (quoting *Hanon v.*
6 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

7 In this case, the claims stem from Comerica’s common conduct and seek redress
8 for the same injury in the form of lost investments. The investors who assigned their
9 claims to the Liquidation Trust and those who did not have the same interest in holding
10 Comerica accountable for its role in the scheme; the Liquidation Trustee elects to be
11 represented by the Plaintiff investors and their counsel. Thus, because the claims of all
12 class members are substantially identical, Plaintiffs’ claims are typical of the class. *See*
13 *Joint Equity Comm. of Invs. of Real Est. Partners, Inc. v. Coldwell Banker Real Est.*
14 *Corp.*, 281 F.R.D. 422, 436 (C.D. Cal. 2012) (all investors suffering loss of investment
15 funds hold claims arising from the same conduct based on the same legal theories).

16 **4. Plaintiffs and Their Counsel Will Adequately Represent the Class.**

17 Courts ask two questions to evaluate adequacy: “(1) Do the representative
18 plaintiffs and their counsel have any conflicts of interest with other class members, and
19 (2) will the representative plaintiffs and their counsel prosecute the action vigorously on
20 behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Plaintiffs
21 meet the “modest burden” of Rule 23(a)(4). *In re Lendingclub Sec. Litig.*, 282 F. Supp.
22 3d 1171, 1182 (N.D. Cal. 2017). They have already made significant contributions to
23 the litigation, and appeared for lengthy depositions. Baker Decl., ¶ 5, Beynon Decl., ¶ 5,
24 Hull Decl., ¶ 6, Gordon Decl., ¶ 5, Shirley Decl., ¶ 5, Landman Decl., ¶ 5. Plaintiffs
25 have no conflicts of interest with the other class members and will fairly and adequately
26 protect their rights and interests. *See, e.g., Billitteri v. Sec. Am., Inc.*, 2011 WL
27 3586217, at *5, *14 (N.D. Tex. Aug. 4, 2011) (approving class settlement as fair,
28 reasonable, and adequate where Liquidating Trustee participated as a class member).

1 Proposed class counsel have similarly demonstrated their adequacy. The
2 attorneys working on this case are experienced in prosecuting complex class actions
3 involving investment fraud. Girard Decl., ¶¶ 3-4, 6; *see Doe v. Neopets, Inc.*, No. CV-
4 15-8395-DMG, 2016 WL 7647684, at *4 (C.D. Cal. Feb. 22, 2016) (Gee, J.) (“highly
5 experienced class action attorney” would adequately represent the class). Among other
6 work in this case, class counsel have asserted the class claims and extricated them from
7 the Woodbridge bankruptcy, prepared complaints against and discovery requests to
8 Comerica, briefed the motion to dismiss, and worked diligently to prepare this case for
9 trial. Girard Decl., ¶ 7. Counsel will continue to devote the necessary resources to
10 prosecute this litigation. *Id.* ¶ 9. As such, Plaintiffs respectfully request that the Court
11 appoint Girard Sharp LLP as lead class counsel, to be supported by the experienced
12 executive committee firms.

13 **B. The Requirements of Rule 23(b)(3) Are Satisfied.**

14 **1. Common Issues Predominate in Plaintiffs’ Claims.**

15 The predominance inquiry turns on whether “common questions present a
16 significant aspect of the case and they can be resolved for all members of the class in a
17 single adjudication.” *True Health Chiropractic, Inc. v. McKesson Corp.*, 896 F.3d 923,
18 931 (9th Cir. 2018) (citations omitted). Predominance does not focus on the number of
19 common questions, but whether common “questions [are] apt to drive the resolution of
20 the litigation[.]” *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016)
21 (citation omitted). Thus “if ‘one or more of the central issues in the action are common
22 to the class and can be said to predominate, the action may be considered proper under
23 Rule 23(b)(3) even though other important matters will have to be tried separately, such
24 as damages or some affirmative defenses peculiar to some individual class members.’”
25 *Sevilla v. Aaron’s, Inc.*, 2019 WL 2879874, at *5 (C.D. Cal. Mar. 25, 2019) (quoting
26 *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

27 Common questions of law and fact predominate here. California law governs
28 Plaintiffs’ claims because the tortious conduct giving rise to Plaintiffs’ injuries occurred

1 in California and California’s interests would be the most impaired if its laws are not
2 applied. The overarching liability questions are common to the class—whether
3 Comerica knew of Shapiro’s investment fraud and breaches of fiduciary duty, and
4 provided substantial assistance—and will drive the resolution of the case.

5 **a. California Law Applies to Plaintiffs’ Claims Against**
6 **Comerica Arising Out of Its Relationship with Woodbridge.**

7 Applying California choice-of-law rules in this diversity suit, *see Asian Am. Ent.*
8 *Corp. v. Las Vegas Sands, Inc.*, 324 F. App’x 567, 568 (9th Cir. 2009), Plaintiffs have
9 the initial burden to show California’s sufficient contacts to the claims of each class
10 member. *See Wash. Mut. Bank v. Super. Ct.*, 24 Cal.4th 906, 921 (2001). Plaintiffs meet
11 that burden, as the evidence reflects that Woodbridge was headquartered in California,
12 Comerica’s banking services were pivotal in facilitating Shapiro’s scheme, and Shapiro
13 conducted his Woodbridge banking activities at Comerica’s Studio City, California
14 branch with the close assistance of senior Comerica branch managers and employees.

15 Woodbridge’s main office was at 14225 Ventura Blvd. in Sherman Oaks, CA.
16 Comerica’s Studio City branch maintained and serviced the Woodbridge accounts.
17 Goldberg Decl., ¶¶ 5, 8. Shapiro had a close relationship with the manager and assistant
18 manager at the Studio City branch, and branch employees visited Woodbridge’s office
19 in Sherman Oaks. Girard Decl., Ex. G (██████████ Dep. at 43). Plaintiffs sent wires to
20 Comerica Bank with an address listed in California, and they received Woodbridge
21 “interest” checks drawn on “Comerica Bank-California.” *E.g.*, Beynon Decl., Ex. A;
22 Hull Decl., Exs. D & E. The nexus of Plaintiffs’ claims with California is therefore
23 sufficient: “the application of California law to non-California residents would not
24 offend the class members’ due process rights where the defendant engaged in a
25 substantial amount of business in California.” *Allen v. Hyland’s Inc.*, 300 F.R.D. 643
26 (C.D. Cal. 2014); *see Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 816 (1985)
27 (holding that the court may apply law of forum state to claims of class members in all
28

1 states).⁸

2 California’s governmental interest test calls for applying California law because the
3 interest of other states does not outweigh California’s interest in having its law applied, as
4 wrongdoing largely occurred in California. *See Allen*, 300 F.R.D. at 656. California has a
5 strong interest in deterring tortious conduct within its borders, including conduct that
6 harms both residents and non-residents.⁹ Plaintiffs’ claims against Comerica principally
7 arise out of its California-based activities, and Comerica’s non-resident status does not
8 defeat California’s strong interest given that “a company’s contacts with a state that are
9 not significantly related to the cause of action at issue are an insufficient basis for the
10 application of that state’s law.” *Abogados v. AT&T, Inc.*, 223 F.3d 932, 936 (9th Cir.
11 2000).¹⁰

12 No other state has a significant interest in having its laws applied—most of the
13 relevant conduct occurred in California—and applying California law to the aiding and
14 abetting claims of all class members will not contravene the established policy of any
15 other state. *Kearney*, 39 Cal. 4th at 127-28 (California’s interest would be more impaired
16 when the defendant “could comply with California law without violating any provision of
17 Georgia law.”). No state has adopted a policy promoting the assistance of fraud or breach
18 of fiduciary duty. No state has an “interest in denying full recovery to its residents” for
19

20 _____
21 ⁸ Likewise under the draft Restatement (Third) of Conflict of Laws, “[w]hen the relevant
22 parties have central [personal] links to different states [based on domicile], and conduct
23 and injury occur in different states, the law of the state of conduct will presumptively
24 govern an issue of loss allocation,” unless the plaintiff seeks application of the law of the
25 state where injury occurred. Symeon Symeonides, *The Third Conflicts Restatement’s First*
Draft on Tort Conflicts, 92 Tulane L. Rev. 1, 17, 41 (2017) (second alteration added).

26 ⁹ *See Flack v. Nutribullet, L.L.C.*, 2019 WL 1596652, at *4 (C.D. Cal. Apr. 12, 2019)
27 (“California’s interest in deterring tortious conduct within its borders is significant.”);
28 *Menagerie Prods. v. Citysearch*, 2009 WL 3770668, at *15 (C.D. Cal. Nov. 9, 2009).

¹⁰ *See Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 126 (2006); *see also*
Robert McMullan & Son, Inc. v. United States Fid. & Guar. Co., 103 Cal. App. 3d 198,
206 (1980) (that the defendant was not a California corporation did not mean California
lacked an interest in applying its law).

1 aiding and abetting violations, and if California’s laws were *not* applied in this case, its
2 interests would be the most impaired. *Hurtado v. Super. Ct.*, 11 Cal. 3d 574, 581 (1974).¹¹

3 Even if the Court decides that California law should not be applied to the claims
4 of all Woodbridge investors, the Court can certify a multistate class where the state laws
5 at issue are “the same in functional content.” *In re Checking Acct. Overdraft Litig.*, 275
6 F.R.D. 666, 679 (S.D. Fla. 2011) (citing ALI *Principles of the Law: Aggregate*
7 *Litigation* § 2.05(b) (2010)). Here, as detailed in Plaintiffs’ 44-Jurisdiction Appendix of
8 Aiding and Abetting Law, submitted herewith, California law may apply to the aiding-
9 and-abetting claims of class members—including all Plaintiffs¹² and the Liquidation
10 Trustee¹³—in the 43 states (and D.C.)¹⁴ that follow the standard in section 876 of the
11 Restatement (Second) of Torts for aiding and abetting liability.¹⁵ Because aiding and
12

13 ¹¹ See also *Bowoto v. Chevron Corp.*, 2006 WL 2455761, at *9 (N.D. Cal. Aug. 22, 2006);
14 *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 615 (1987) (“California’s more
15 favorable laws may properly apply to benefit nonresident plaintiffs when their home states
16 have no identifiable interest in denying such persons full recovery.”).

17 ¹² See, e.g., *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451,
18 1476 (2014); *Roos v. Morrison*, 913 So. 2d 59, 68 n.1 (Fla. Dist. Ct. App. 2005); *Dow*
19 *Chem. Co. v. Mahlum*, 970 P.2d 98, 112 (Nev. 1998); *Stetser v. TAP Pharm. Prod., Inc.*,
20 598 S.E.2d 570, 583 (N.C. 2004); *HRANEC Sheet Metal, Inc. v. Metalico Pittsburgh,*
21 *Inc.*, 107 A.3d 114, 120 (Pa. Super. 2014); *Future Grp., II v. Nationsbank*, 478 S.E.2d
22 45, 50 (S.C. 1996); *PNC Multifamily Capital Institutional Fund XXVI Ltd. P’ship v.*
23 *Bluff City Community Dev’t Corp.*, 387 S.W.3d 525 (Tenn. Ct. App. 2012).

24 ¹³ The Liquidation Trust is considered a citizen of Florida because its trustee is a Florida
25 citizen. Goldberg Decl., ¶ 2; *Liquidation Tr. v. Grobstein, Horwath & Co., LLP*, 2011
26 WL 13217688, at *4 (C.D. Cal. May 2, 2011) (treating a liquidation trust as a California
27 citizen “because” the trustee “[wa]s a California citizen.”) (citing *Johnson v. Columbia*
28 *Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)).

¹⁴ Under their alternative proposal, Plaintiffs do not seek to apply California law to the
claims of class members in the seven states—AL, LA, OH, ND, OK, TX, WY—that do
not recognize the aiding and abetting tort. See Plaintiffs’ 44-Jurisdiction Appendix.

¹⁵ See *Am. Master Lease*, 225 Cal. App. 4th at 1476; *ZP No. 54 Ltd. P’ship v. Fid. &*
Deposit Co. of Maryland, 917 So. 2d 368, 372 (Fla. Dist. Ct. App. 2005) (“Virtually all
courts that have acknowledged the existence of aiding and abetting a fraud state that the
following are the elements that must be established by the plaintiff: 1. There existed an

1 abetting claims in these states embrace the identical elements of actual knowledge and
2 substantial assistance, the same evidence will determine Comerica’s liability, making a
3 multistate class proceeding efficient. *See In re Korean Ramen Antitrust Litig.*, 2017 WL
4 235052, at *22 (N.D. Cal. Jan. 19, 2017) (certifying California Cartwright Act claims as
5 to purchasers in states with substantially similar antitrust laws); *In re Optical Disk*
6 *Drive Antitrust Litig.*, 2016 WL 467444, at *14 (N.D. Cal. Feb. 8, 2016) (same).

7 **b. Common Questions Predominate.**

8 As other courts in this district have concluded, aiding and abetting claims are
9 well-suited for class treatment because they focus on the defendant’s conduct and not
10 the individual experiences of class members. *See Joint Equity Comm. of Inv’rs of Real*
11 *Estate Partners, Inc. v. Coldwell Banker Real Estate Corp.*, 281 F.R.D. 422, 434 (C.D.
12 Cal. 2012) (“Predominance is satisfied on Plaintiffs’ claim for aiding and abetting
13 because questions of assistance and knowledge focus on Coldwell, not the alleged
14 victims.”); *Gonzales*, 2007 WL 9711433, at *10 (common issues predominated as to
15 claims for aiding and abetting fraud and breach of fiduciary duty). The evidence in this
16 case similarly shows that Comerica’s liability will turn on common questions related to
17 its conduct.

18 **First**, Comerica’s knowledge of the Woodbridge fraud presents an entirely
19 common issue that predominates in Plaintiffs’ aiding and abetting claims. *See, e.g.*,
20 *Takiguchi*, 2016 WL 1091090, at *11 (“Whether Sterling Escrow was aware of its role
21 in promoting a fraud and knowingly assisted the other defendants in committing the
22 fraud are clearly common questions subject to class certification.”); *Rilley v.*
23 *MoneyMutual, LLC*, 329 F.R.D. 211, 219 (D. Minn. 2019) (“Defendants’ liability
24 hinges on whether Defendants knew about and substantially assisted the unlicensed
25 lenders in making illegal loans to class members. For both claims, these common
26 questions predominate and can be answered on a class-wide basis.”).

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underlying fraud; 2. The defendant had knowledge of the fraud; 3. The defendant
provided substantial assistance to advance the commission of the fraud.”).

1 The evidence of Comerica’s knowledge does not vary by class member. As early
2 as [REDACTED] 2015, Comerica began receiving subpoenas from federal or state regulators
3 concerning Woodbridge or Shapiro—all told, at least [REDACTED] subpoenas [REDACTED]
4 [REDACTED]. See Girard Decl., Ex. E (Comerica RFA Resps. at 20-24).
5 Comerica also received and reviewed a Texas Cease and Desist Order concluding that
6 “Respondents Woodbridge and Shapiro are engaging in fraud in connection with the
7 offer and sale of securities.” *Id.*; Ex. 15 (COM0236558). Comerica’s various fraud
8 detection software programs alerted Comerica’s Anti-Money Laundering investigators
9 to Woodbridge’s suspicious banking activity over 100 times. *E.g., id.*, Exs. 4, 5, 13
10 (COM0233012; COM0233822; COM0233050). See *Chang v. Wells Fargo Bank, N.A.*,
11 2020 WL 1694360, at *5 (N.D. Cal. Apr. 7, 2020) (defendant bank “processed all
12 transactions and reviewed the accounts as part of its due diligence” and processed wire
13 transfers “that on their face indicated that they deposited investor proceeds”) (citation
14 omitted).

15 **Second**, the same common conduct that shows Comerica aided and abetted fraud
16 also shows that it aided and abetted breach of fiduciary duty. See *id.* at *7; *Bruhl v.*
17 *Price Waterhousecoopers Int’l*, 257 F.R.D. 684, 698 (S.D. Fla. 2008) (“certification of
18 the claims for aiding and abetting a breach of a fiduciary duty is appropriate because
19 none of the claim’s elements requires reliance or any other factor unique to each class
20 member.”). Having obtained total control of investor funds, Shapiro had a duty to
21 investors to act honestly and in good faith, but he breached his duty by misappropriating
22 the funds. *Lorenz v. E. W. Bancorp, Inc.*, 2016 WL 199392, at *10 (C.D. Cal. Jan. 14,
23 2016) (noting fiduciary duty to invest deposited money “as promised”); *Evans v. ZB,*
24 *N.A.*, 779 F. App’x 443, 446-47 (9th Cir. 2019).

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]. *E.g.*, Girard Decl., Ex. H ([REDACTED] Dep. at 118, 130-31, 140); Ex. 28

1 (COM1238149). Comerica's [REDACTED]
2 [REDACTED] recording Shapiro's monthly transfers of tens of thousands of dollars from
3 various investment funds to his personal credit card account, wife, ex-wife, and private
4 jet charters. *Id.*, Ex. 3 (COM0236196 (attaching COM1238149)). [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] *Id.*, Ex. J ([REDACTED] Dep. at 27:9-14).

8 **Third**, common evidence will determine whether Comerica substantially aided
9 Shapiro's fraud and breach of fiduciary duty by carrying out the banking transactions
10 that made the Ponzi scheme possible. *See Casey*, 127 Cal. App. 4th at 1145; *Evans*, 779
11 F. App'x at 447 (bank's "ordinary business transactions" met the substantial assistance
12 element); *Jordan v. Paul Fin., LLC*, 285 F.R.D. 435, 454 (N.D. Cal. 2012) (jury could
13 reasonably find bank provided substantial assistance where "hundreds of millions of
14 dollars, if not billions, flowed through Paul Financial because of RBS' involvement.").

15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Girard Decl., Ex. 11 (COM0236450 at -65); Ex. H ([REDACTED] Dep. at 192-
18 93). Unlike the investors, Comerica analysts and executives saw what Woodbridge did
19 with investor money, and allowed it to continue the misuse without ever closing any
20 Woodbridge account. Comerica condoned the fraud despite being faced, time and again,
21 with explicit evidence (including orders from state securities regulators) that
22 Woodbridge was selling fraudulent investment securities. *Id.*, Ex. E (Comerica RFA
23 Resps. at 20-26). Instead of demanding answers, Comerica accommodated Shapiro's
24 requests to "move funds around," recognizing his status as a "High End client." *Id.*,
25 Exs. 6, 8 (COM0228118 at -19; WGC IM_0720311).

26 In spite of Comerica's [REDACTED]
27 [REDACTED] (*id.*, Ex. I ([REDACTED] Dep. at 30-32, 89-90)), an
28 employee in Comerica's legal department conferred with Woodbridge's lawyers about

1 the bank’s receipt of and response to a subpoena received in late 2016 from California’s
2 Department of Business Oversight. *Id.*, Ex. 21 (COM0475528). Lawyers for
3 Woodbridge contacted Comerica’s Executive Vice President and General Counsel for
4 California operations for information about this subpoena. The bank’s lawyer responded
5 that Comerica would inform Woodbridge’s attorneys when the subpoena arrived and
6 would seek to provide them with advance copies of the documents to be produced. *Id.*,
7 Ex. 20 (COM0231694 at -96-98). Woodbridge’s lawyers then continued to “check in”
8 with Comerica, which allowed Shapiro to monitor the investigatory activities of
9 regulators. *Id.*, Ex. 22 (GDC-0008524).

10 With respect “to causation and proximate cause, the sum of the allegations establish
11 that [the bank’s] actions played a critical role in the facilitation of the Ponzi scheme.”
12 *Benson*, 2010 WL 1526394, at *5. Without Comerica’s banking services Shapiro could
13 not have carried out his scheme—and, “[o]nce [Comerica] had actual knowledge of the
14 Ponzi scheme, [it] could reasonably foresee that its actions would have the effect of
15 injuring investors.” *Id.*; see *Coldwell Banker*, 281 F.R.D. at 434 (rejecting contention that
16 individual issues predominated as to whether bank caused plaintiffs’ injuries). Comerica
17 is free to argue that its liability will turn on the individualized experiences of class
18 members, such as their reasons for investing in Woodbridge securities or their knowledge
19 of the underlying fraud, but this argument “falls short, because” Comerica “either knew
20 of [Shapiro]’s scheme to defraud and took steps substantially to advance the scheme or it
21 didn’t. Either way, its knowledge and assistance (if any) predominates as a common
22 issue.” *Jenson v. Fiserv Tr. Co.*, 256 F. App’x 924, 926 (9th Cir. 2007); see also *First*
23 *Alliance*, 471 F.3d at 991. Moreover, Plaintiffs and the other Woodbridge investors had
24 no reasonable way of knowing about the Ponzi scheme, and there is no evidence that any
25 class member was aware of Shapiro’s wrongdoing. Goldberg Decl., ¶¶ 6-7. Instead, “[a]ll
26 Plaintiffs have alleged that they invested in reliance on the basic representation that the
27 [enterprise was] a legitimate investment, and not a Ponzi scheme.” *Gonzales*, 2007 WL
28 9711433, at *9. Class Plaintiffs allege that the underlying fraud was Woodbridge’s failure

1 to disclose the true, predatory nature of the investment. Consol. Compl. [Doc. # 150,
2 151], ¶ 242. Comerica’s involvement as a secondary tortfeasor raises common issues of
3 proof, and the uniform fraudulent omissions that led class members to invest do not raise
4 any individual issues.¹⁶

5 **c. Individual Damage Determinations Do Not Defeat Predominance.**

6 “At this stage, Plaintiffs need only show that such damages can be determined
7 without excessive difficulty and attributed to their theory of liability[.]” *Just Film, Inc.*
8 *v. Buono*, 847 F.3d 1108, 1121 (9th Cir. 2017). There is no need for expert testimony to
9 establish damages. *See, e.g., Dickey v. Advanced Micro Devices, Inc.*, 2019 WL
10 251488, at *6 (N.D. Cal. Jan. 17, 2019) (citing *Brickman v. Fitbit, Inc.*, 2017 WL
11 5569827, at *7 (N.D. Cal. Nov. 20, 2017)).

12 Plaintiffs propose that the jury determine the total class-wide harm (*see* Plaintiffs’
13 Trial Plan), and “the presence of individualized damages cannot, by itself, defeat class
14 certification under Rule 23(b)(3).” *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th
15 Cir. 2013). If Plaintiffs establish Comerica’s liability, damages to return the money each
16 class member invested in Woodbridge, regardless of whether they bought notes or units,
17 can be readily determined based on investor records. These records show the amount of
18 each investor’s investment and their net out-of-pocket losses taking into account any
19 “returns” they received from Woodbridge and any distributions they received from the
20 Liquidation Trust. Goldberg Decl., ¶ 30; *see Just Film*, 847 F.3d at 1120 (noting that
21 damages could be determined based on amounts deducted from bank accounts using the
22 defendants’ “own records”).

23 **2. A Class Action Is the Superior Means of Resolving This Controversy.**

24 A class action is superior, as it represents the only realistic means of recovery for
25

26 ¹⁶ *See Cole v. Asurion Corp.*, 267 F.R.D. 322, 329 (C.D. Cal. 2010) (common issues
27 predominated with respect to a common law fraud claim primarily based on omissions);
28 *First Alliance*, 471 F.3d at 992; *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342,
1382 (2012) (California law prohibits “failure to disclose a material fact that is misleading
in light of other facts . . . the defendant did disclose.”) (alterations and citation omitted).

1 most class members here. A large number of class members are seniors who invested
2 their savings in Woodbridge and would find it hard to retain counsel and pursue their
3 own lawsuit. *See Novoa v. GEO Grp., Inc.*, 2019 WL 7195331, at *19 (C.D. Cal. Nov.
4 26, 2019) (explaining that the “vulnerable position” of class members weighed in favor
5 of class mechanism); *Coldwell Banker*, 281 F.R.D. at 436 (finding class action superior
6 where the average class member invested tens of thousands of dollars). Comerica’s
7 vigorous defense confirms that individual “class members would have a substantial
8 disincentive to expend resources pursuing their individual claims[.]” *Bentley v. United*
9 *of Omaha Life Ins. Co.*, 2018 WL 3357458, at *11 (C.D. Cal. May 1, 2018) (Gee, J.);
10 *Aichele v. City of Los Angeles*, 314 F.R.D. 478, 496 (C.D. Cal. 2013) (“[T]he cost of
11 prosecuting nearly 300 individual civil rights cases based on the same set of facts would
12 likely far exceed individual damages awards.”). While the Liquidation Trust could have
13 pursued its own separate action, it has elected to participate as a class member in this
14 case because the Trustee believes this case represents the most efficient and promising
15 means of obtaining recoveries from Comerica for its role in the Woodbridge scheme.
16 Goldberg Decl., ¶¶ 29, 34. A class action poses “no particular difficulties” in terms of
17 manageability. *Falco v. Nissan N. Am. Inc.*, 2016 WL 1327474, at *13 (C.D. Cal. Apr.
18 5, 2016); *Martin v. Monsanto Co.*, 2017 WL 1115167, at *9 (C.D. Cal. Mar. 24, 2017).

19 For these reasons, the superiority requirement is satisfied.

20 **VI. CONCLUSION**

21 Plaintiffs therefore respectfully request that the Court certify the class as defined,
22 appoint them to represent the class, appoint Girard Sharp LLP to serve as class counsel,
23 and direct the parties to submit a proposed plan of notice under Rule 23(c)(2).

24
25 Respectfully submitted,

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27 Dated: April 16, 2021

By: /s/ Daniel C. Girard

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CERTIFICATE OF SERVICE

I, Daniel C. Girard, hereby certify that on April 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document upon confirmation of e-filing.

I also certify that I caused the under-seal document to be emailed to counsel for Defendant.

By: /s/ Daniel C. Girard

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