

BLOOD HURST & O' REARDON, LLP

1 BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
2 LESLIE E. HURST (178432)
JAMES M. DAVIS (301636)
3 501 West Broadway, Suite 1490
San Diego, CA 92101
4 Tel: 619/338-1100
619/338-1101 (fax)
5 tblood@bholaw.com
lhurst@bholaw.com
6 jdavis@bholaw.com

7 LANGER GROGAN & DIVER, PC
IRV ACKELSBERG (*pro hac vice*)
8 JOHN J. GROGAN (*pro hac vice*)
DAVID A. NAGDEMAN (*pro hac vice*)
9 1717 Arch Street, Suite 4020
Philadelphia, PA 19103
10 Tel: 215/320-5660
215/320-5703 (fax)
11 iackelsberg@langergrogan.com
jgrogan@langergrogan.com
12 dnagdeman@langergrogan.com

13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 HEATHER TURREY, et al.,
17 Plaintiffs,
18 v.
19 VERVENT, INC., etc., et al.,
20 Defendants.

Case No. 3:20-cv-00697-DMS-AHG
CLASS ACTION

**MEMORANDUM OF LAW IN
SUPPORT OF JOINT MOTION FOR
ORDER APPROVING JOINT PLAN
OF ALLOCATION**

Date: October 23, 2026
Time: 1:30 p.m.

District Judge Dana M. Sabraw
Courtroom 13A, 13th Fl. (Carter-Keep)
Magistrate Judge Allison H. Goddard
Chambers Room 3B, (Schwartz)

Complaint Filed: April 10, 2020

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. BACKGROUND.....	1
A. Plaintiffs and the RICO Class Obtained a \$12 Million Judgment, Which the Ninth Circuit Affirmed.....	1
B. The Parties Have Agreed on a Plan for Distributing the Judgment Amount.....	2
III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION.....	3
A. The Plan Need Only Provide a Fair, Reasonable, and Adequate Method for Distributing the Class Judgment.....	3
B. The Plan Allocates the Class Fund According to Each Class Member’s Relative Injury	4
C. The Distribution Procedures Are Reasonable and Designed to Maximize Payment to the Class.....	5
D. The Plan Appropriately Prioritizes Additional Distributions to Class Members Before Any <i>Cy Pres</i> Distribution.....	5
IV. CONCLUSION	6

I. INTRODUCTION

After prevailing at trial, Plaintiffs and the certified RICO Class obtained a \$12 million judgment against Defendants, which the Ninth Circuit has now affirmed. With the mandate issued, the remaining task is to distribute the judgment proceeds to Class Members.

The parties have agreed to a straightforward Plan of Allocation. Using Defendants' own payment records, the claim administrator previously approved by the Court for notice of the pendency of the class action, Epiq, will calculate each Class Member's share of the Class Fund *pro rata* based on the amount that member paid on a PEAKS loan during the Class Period. The Plan also establishes procedures for payment, follow-up distributions, and distribution of any remaining amount that is not large enough to distribute to the Class. Because the Plan allocates the judgment according to the relative economic injuries suffered by Class Members and provides an efficient means of distribution, the parties respectfully request that the Court approve it.

II. BACKGROUND

A. Plaintiffs and the RICO Class Obtained a \$12 Million Judgment, Which the Ninth Circuit Affirmed

This class action concerns the PEAKS private student loan program offered to former students of the now-bankrupt ITT Technical Institute. Plaintiffs alleged that Defendants Vervent, Inc., Activate Financial, LLC, and David Johnson knowingly joined and facilitated a fraudulent RICO enterprise involving the PEAKS program and continued servicing and collecting payments on those loans from student borrowers. The Court certified a nationwide RICO Class consisting of PEAKS borrowers who, based on Defendants' records, made payments during the Class Period. Dkt. No. 151.

Trial began on June 8, 2023. On June 22, 2023, the jury returned a verdict for Plaintiffs and the Class on their RICO conspiracy claim against Vervent, Activate

1 Financial, and David Johnson. Dkt. No. 300. The jury found that Defendants
2 participated in the charged RICO conspiracy and that the conspiracy caused economic
3 injury to Plaintiffs and the Class. *Id.* It awarded \$4 million in damages. *Id.*

4 On July 16, 2024, the Court entered Final Judgment. Dkt. No. 360. Pursuant to
5 18 U.S.C. § 1964(c), the Court trebled the jury's \$4 million award to \$12 million and
6 awarded post-judgment interest under 28 U.S.C. § 1961. *Id.* at 4. The Final Judgment
7 is binding on Plaintiffs, Defendants, and all Class Members who did not opt out, and
8 the Court expressly retained continuing jurisdiction "to issue such further orders
9 pertaining to this action as may become necessary." *Id.*

10 Defendants appealed. On August 12, 2026, the Ninth Circuit affirmed. *Turrey*
11 *v. Vervent, Inc.*, __ F.4th __, (9th Cir. Aug. 12, 2026). The Ninth Circuit's mandate
12 issued on September 3, 2026. Dkt. No. 404.

13 **B. The Parties Have Agreed on a Plan for Distributing the Judgment**
14 **Amount**

15 The parties have jointly proposed a Plan of Allocation for distributing the Class
16 Fund. *See* Declaration of Timothy G. Blood, Ex. A¹ (Joint Proposed Plan of
17 Allocation ("Plan")).

18 The Plan relies on spreadsheet reports produced by Defendants during
19 discovery that identify PEAKS borrowers who made payments during the Class
20 Period and the amounts of those payments. Ex. A, ¶ 5. Epiq will calculate each Class
21 Member's "Total Payments," consisting of the payments that person made during the
22 applicable Class Period. *Id.*, ¶ 4. Each Class Member's gross award will then equal
23 that person's Total Payments divided by the aggregate Total Payments of all Plaintiffs
24 and RICO Class Members, multiplied by the Class Fund. *Id.*, ¶ 6.

25 Epiq will distribute payments electronically or by physical check. Class
26 Members with valid email addresses will be offered payment by ACH, PayPal,

27 ¹ All "Ex." References are to the Declaration of Timothy G. Blood unless noted
28 otherwise.

1 Venmo, Zelle, digital MasterCard, or physical check. Those who do not select a
2 payment method, or for whom Epiq does not have a valid email address, will receive
3 a physical check by First-Class Mail. *Id.*, ¶¶ 7–10.

4 Epiq’s administration costs will be paid from the Class Fund, with \$50,000
5 withheld from the initial distributions to cover anticipated administration costs. Ex.
6 A, ¶ 14.

7 The Plan also provides procedures for unclaimed funds. Epiq will reissue
8 initially unclaimed payments as physical checks and undertake reasonable efforts to
9 locate Class Members whose checks remain uncashed. If \$100,000 or more remains
10 after those efforts, Epiq will conduct additional *pro rata* distributions to Class
11 Members who successfully received prior payments until the residual falls below
12 \$100,000. Only then will the remaining funds be distributed to a *cy pres* recipient,
13 subject to further approval by the Court. *Id.*, ¶¶ 11–13.

14 **III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION**

15 **A. The Plan Need Only Provide a Fair, Reasonable, and Adequate** 16 **Method for Distributing the Class Judgment**

17 While Rule 23(e)’s settlement-approval procedures govern a proposed
18 “settlement, voluntary dismissal, or compromise” of certified class claims, this case
19 presents a different posture. The Class litigated its RICO claim through trial,
20 judgment, and appeal. Plaintiffs are therefore asking the Court to administer and
21 distribute an adjudicated class judgment, not to approve a settlement.

22 Courts reviewing plans for distributing adjudicated class judgments
23 nevertheless apply the familiar fairness standard used to assess allocation of class
24 settlement funds. *Rodman v. Safeway Inc.*, No. 11-cv-03003-JST, 2018 U.S. Dist.
25 LEXIS 143867, at *4 (N.D. Cal. Aug. 22, 2018) (“the plan of distribution in [an]
26 adjudicated class action is subject to the same standards that apply to the allocation
27 of a class settlement fund,” such that the plan “must be fair, reasonable and
28

adequate.”). A “plan of allocation that reimburses class members based on the type and extent of their injuries is generally reasonable.” *Id.*

B. The Plan Allocates the Class Fund According to Each Class Member’s Relative Injury

The Plan’s allocation formula follows directly from the injury adjudicated at trial. The jury found that Defendants’ RICO conspiracy caused economic injury to Plaintiffs and the Class and awarded damages arising from Class Members’ payments on the PEAKS loans. Dkt. No. 300.

The Plan uses those same payments to determine each Class Member’s share of the recovery. Epiq will calculate each Class Member’s Total Payments from Defendants’ own records. The Class Member will then receive the same percentage of the Class Fund as his or her qualifying payments represent of the Class’s aggregate qualifying payments. Ex. A, ¶¶ 4–6.

That methodology treats similarly situated Class Members alike while accounting for differences in the amount of their economic injuries. A Class Member who paid twice as much during the Class Period will receive twice the allocation of a Class Member who paid half as much. The formula requires no subjective assessment of individual claims and no new determination of liability. The formula requires no subjective assessment of individual claims and no new determination of liability. It simply allocates the Class Fund according to the relative magnitude of the payments that formed the basis of the Class’s injury.

The source data are also particularly reliable for this purpose. The Class itself was defined by reference to Defendants’ records, Dkt. No. 151 at 6, and at certification the Court specifically recognized evidence that Defendants could identify “precisely the amount” of payments attributable to individual Class Members. *Id.* at 21.

1 The proposed allocation therefore has a direct and rational connection to the
2 injury adjudicated at trial and distributes the judgment equitably among Class
3 Members.

4 **C. The Distribution Procedures Are Reasonable and Designed to**
5 **Maximize Payment to the Class**

6 The Plan also provides an efficient mechanism for delivering payments.
7 Because Defendants' records identify the Class Members and the amounts they paid
8 during the Class Period, the Plan does not require Class Members to submit claims
9 before receiving their shares. Epiq can calculate the distributions from existing
10 records and issue payment directly.

11 The Plan gives Class Members several options for receiving payment. Those
12 with valid email addresses may elect among commonly used electronic methods or
13 request a physical check, while everyone else will automatically receive a check by
14 First-Class Mail. Ex. A, ¶¶ 7–10. These procedures make payment readily accessible
15 without conditioning recovery on a Class Member's submission of a claim.

16 Nor does the Plan treat an initially unclaimed payment as forfeited. Epiq will
17 reissue unclaimed payments as physical checks and undertake reasonable efforts to
18 locate Class Members whose checks remain uncashed before residual funds are put
19 to any other use. *Id.*, ¶¶ 11–12. Those procedures further the central objective of
20 placing the judgment proceeds directly in the hands of the Class.

21 **D. The Plan Appropriately Prioritizes Additional Distributions to Class**
22 **Members Before Any *Cy Pres* Distribution**

23 The Plan likewise provides a reasonable procedure for any funds that remain
24 after the initial distribution and follow-up efforts.

25 Federal courts possess broad discretion in determining how to distribute
26 unclaimed class-action funds. *Six Mexican Workers v. Arizona Citrus Growers*, 904
27 F.2d 1301, 1307 (9th Cir. 1990). That discretion should be exercised with reference
28 to “the objectives of the underlying statute and the interests of the silent class

members.” *Id.* The Ninth Circuit has identified *pro rata* redistribution and *cy pres* distribution among the potential methods for addressing residual funds. *Id.*

The proposed Plan prioritizes direct compensation of Class Members. If at least \$100,000 remains after Epiq completes its follow-up efforts, the residual will be redistributed *pro rata* to Class Members who successfully received payment. Ex. A, ¶ 13. Epiq will continue such redistributions until the residual falls below \$100,000. *Id.* Only after the remaining balance falls below \$100,000 will the residual be distributed to a *cy pres* recipient. And the Plan does not ask the Court to approve a *cy pres* recipient now; any recipient will be established later and will remain subject to Court approval. *Id.*

That sequencing prioritizes direct distributions to Class Members while providing a mechanism for disposition of any small residual balance.

IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court approve the proposed Joint Plan of Allocation and authorize distribution of the judgment proceeds in accordance with its terms.

Respectfully submitted,

Dated: September 23, 2026

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
LESLIE E. HURST (178432)
JAMES M. DAVIS (301636)

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com
lhurst@bholaw.com
jdavis@bholaw.com

1 LANGER GROGAN & DIVER, PC
2 IRV ACKELSBERG (*pro hac vice*)
3 JOHN J. GROGAN (*pro hac vice*)
4 DAVID A. NAGDEMAN (*pro hac vice*)
5 1717 Arch Street, Suite 4020
6 Philadelphia, PA 19103
7 Tel: 215/320-5660
8 215/320-5703 (fax)
9 iackelsberg@langergrogan.com
10 jgrogan@langergrogan.com
11 dnagdeman@langergrogan.com

Attorneys for Plaintiffs

8
9 Dated: September 23, 2026

TROUTMAN PEPPER LOCKE LLP
MATTHEW H. LADNER (284594)

10
11 By: s/ Matthew H. Ladner

MATTHEW H. LADNER

12 350 South Grand Avenue, Suite 3400
13 Los Angeles, CA 90071
14 Tel: 213/928-9800
15 matthew.ladner@troutman.com

Attorneys for Defendants

BLOOD HURST & O' REARDON, LLP

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury that the foregoing is true and correct. Executed on September 23, 2026.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

BLOOD HURST & O'REARDON, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com

BLOOD HURST & O' REARDON, LLP