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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH BELYEA, et al.,  
Plaintiffs,  
v.  
GREENSKY, INC., et al.,  
Defendants.

Case No. 20-cv-01693-JSC

**ORDER RE: GREENSKY’S MOTION  
TO DECERTIFY CLASS**

Re: Dkt. No. 402

Plaintiffs allege GreenSky, which partners with home improvement contractors (“merchants”) and banks to provide point-of-sale loans to consumers (“borrowers”), charges fees in violation of California consumer protection statutes. (Dkt. No. 216.)<sup>1</sup> The Court has certified a class of “[a]ll persons who secured in California, between January 9, 2016 and [January 2, 2025], a GreenSky Consumer Program loan for which the loan principal amount was \$500 or higher and the associated transaction fee was at least 1% of the loan principal amount.” (Dkt. No. 294 at 44; Dkt. No. 378 at 6.)<sup>2</sup> Now pending before the Court is GreenSky’s motion to decertify the class. (Dkt. No. 402.) Having carefully considered the parties’ submissions, and with the benefit of oral argument on May 12, 2026, the Court DENIES GreenSky’s motion to decertify. Despite GreenSky’s new merchant declarations and employee testimony, Plaintiffs have shown their case meets the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

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<sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.  
<sup>2</sup> The class definition has certain exclusions. (Dkt. No. 235-3 at 19 n.2.)

1 **BACKGROUND<sup>3</sup>**

2 **I. RELEVANT FACTS**

3 GreenSky collects two types of fees. (Dkt. No. 294 at 2.) First, merchants pay GreenSky  
4 “transaction fees,” a percentage of the loan amount each time a borrower uses the GreenSky  
5 program loan to pay the merchant. (*Id.*) Although GreenSky’s “Merchant Program Agreement,  
6 which every merchant must sign, states merchants shall not surcharge or otherwise pass through to  
7 their customers any part of the transaction fee,” the GreenSky Managing Director explained  
8 transaction fees ““should be effectively built into the sales process and contract price making it a  
9 homeowner expense,”” and GreenSky provides a tool for merchants to add the cost of the  
10 transaction fee into their margins. (*Id.* (quoting Dkt. No. 239-6 at 2).) Nonetheless, Reliable  
11 Home Improvement, Inc., the merchant Plaintiff Heidi Barnes contracted with, “attests the  
12 company has never ‘passed through[] any portion of the [transaction] fee to its customers that use  
13 a GreenSky[] Program loan to pay,”” and ““did not pass through, or surcharge, any portion of that  
14 [transaction] fee” to Ms. Barnes specifically. (*Id.* at 14 (quoting Dkt. No. 263-2 ¶¶ 7, 13).)

15 Second, banks pay GreenSky “performance fees,” which include the remainder of ““all  
16 amounts billed to the borrowers, fees and finance charges, less the fixed servicing fee, less all  
17 credit losses, [and] less the bank margin or the yield that . . . the servicing fee sets forth that is due  
18 to the lender.”” (*Id.* at 2 (quoting Dkt. No. 235-7 at 33).)

19 **A. Dr. Williams’s Report**

20 Plaintiffs retained Michael A. Williams as an expert to opine on how GreenSky’s  
21 transaction and performance fees affected putative class members. For transaction fees, Dr.  
22 Williams set out to determine “whether GreenSky transaction fees to merchants were passed  
23 through (partially or completely) to the Class Members” in the form of inflated project costs.  
24 (Dkt. No. 239-14 ¶ 39.) To do so, he “built an economic model to estimate the differences  
25 between (1) what Class Members paid for a project funded through a GreenSky-program loan and  
26 (2) what Class Members would have paid for the project in the but-for world where GreenSky did  
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28 <sup>3</sup> The Court’s January 2, 2025 order contains a detailed summary of the factual and procedural history in this case. (Dkt. No. 279 (sealed); Dkt. No. 294 (unsealed).)

1 not charge the allegedly unlawful GreenSky transaction fees.” (*Id.* ¶ 40.) Dr. Williams relied on  
2 GreenSky’s transaction data and “employ[ed] a multivariate pass-through regression” to “estimate  
3 the pass-through rate by merchants to Class Members.” (*Id.* ¶¶ 47-48.) Using his regression  
4 model, Dr. Williams concluded “the common pass-through rate to Class Members is 42.5%,” with  
5 “over a 95% chance to be correct in rejecting that the pass-through rate is lower than 38.0% or  
6 higher than 46.9%.” (*Id.* ¶¶ 49, 55.) This means, “all else equal, for a one dollar GreenSky  
7 transaction fee to a merchant, 42.5 cents are passed-through to the Class Members by the merchant  
8 to consumers using a GreenSky-program loan.” (*Id.* ¶ 56.) Dr. Williams also estimated “[t]otal  
9 Classwide damages from GreenSky transaction fees equal \$67.8 million, which is the product of  
10 (1) the total GreenSky transaction fee and (2) the pass-through rate.” (*Id.* ¶ 84.)

11 In addition, based on “five separate common-impact analyses,” Dr. Williams opined “at  
12 least a portion of the GreenSky transaction fees was passed through to all Class Members.” (*Id.* ¶  
13 57.) First, because the 42.5% pass through rate “is economically and statistically significant,” Dr.  
14 Williams observed “it is highly likely at least part of GreenSky’s transaction fees were passed  
15 through in at least one transaction to all Class Members during the Class Period.” (*Id.* ¶¶ 58-60.)  
16 Second, he “re-estim[ed] [his] pass-through regression for sub-groups of transactions based on  
17 categories of loan durations, two alternative definitions of groups of loan plans, and merchant  
18 size,” and found “positive and statistically significant pass-through rates” for each category. (*Id.*  
19 ¶¶ 61-64.) Third, Dr. Williams observed “[l]ong-established economic theory demonstrates that  
20 price increases in cost components . . . will be passed through to all consumers.” (*Id.* ¶ 65.)  
21 Fourth, he concluded the home improvement industry has the characteristics of a highly  
22 competitive market, and “[t]he more competitive an industry, the higher the pass-through rate”  
23 because “profit margins are small, leaving firms little to no room to absorb costs.” (*Id.* ¶ 69.) And  
24 fifth, he reviewed GreenSky’s communications encouraging merchants to pass the transaction fees  
25 on to consumers. (*Id.* ¶ 76.)

26 **II. RELEVANT PROCEDURAL HISTORY**

27 In January 2024, named Plaintiffs Heidi Barnes and David Ferguson, on behalf of a  
28 putative class, filed the now-operative third amended complaint alleging GreenSky’s business

1 practices violate California consumer protection statutes. (Dkt. No. 216.) Specifically, Plaintiffs  
2 allege (1) violations of the Credit Services Act of 1984 (“Credit Act”), Cal. Civ. Code § 1789.10;  
3 (2) violations of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200;  
4 and (3) unjust enrichment. (*Id.* ¶¶ 102-129.) First, Plaintiffs’ Credit Act claim alleges GreenSky,  
5 as a credit services organization subject to the Credit Act, violates the Act, including by collecting  
6 transaction and performance fees, failing to provide specific disclosures, and failing to register  
7 with the California Department of Justice. (*Id.* ¶¶ 102-112.) Second, Plaintiffs’ UCL claim  
8 alleges GreenSky’s predicate violations of the Credit Act, as well as the California Financing Law  
9 (“Financing Law”), Cal. Fin. Code § 22000, including because GreenSky acts as an unlicensed  
10 finance lender and charges excessive administrative fees. (*Id.* ¶¶ 113-122.) Third, Plaintiffs’  
11 unjust enrichment claim alleges it would be “inequitable and unjust for GreenSky to retain []  
12 wrongfully obtained profits.” (*Id.* ¶¶ 123-129.)

13 **A. The Court’s January 2, 2025 Order**

14 GreenSky moved to exclude Dr. Williams’s opinions and for summary judgment, and  
15 Plaintiffs moved for class certification. (Dkt. Nos. 241, 248, 254.) On January 2, 2025, the Court  
16 denied GreenSky’s *Daubert* motion, granted in part and denied in part GreenSky’s motion for  
17 summary judgment, and granted Plaintiffs’ motion for class certification as to the transaction fee  
18 claims. (Dkt. No. 279 (sealed); Dkt. No. 294 (unsealed).)

19 **1. GreenSky’s *Daubert* Motion**

20 GreenSky sought to exclude Dr. Williams’s opinion as to transaction fees as unreliable and  
21 incapable of demonstrating class-wide impact, but the Court denied GreenSky’s motion. (Dkt.  
22 No. 294 at 7-11.) The Court also denied GreenSky’s motion to exclude Dr. Williams’s separate  
23 opinion on performance fees. (*Id.* at 11-12.)

24 **2. GreenSky’s Summary Judgment Motion**

25 GreenSky first moved for summary judgment on each of Plaintiffs’ claims on the ground  
26 Plaintiffs presented no evidence of injury; specifically, GreenSky argued Plaintiffs had no  
27 evidence (1) “GreenSky Program merchants passed through to them any portion of the transaction  
28 fee, or (2) “Plaintiffs paid any part of the performance fee.” (*Id.* at 13.) After agreeing Plaintiffs’

1 Credit Act, UCL, and unjust enrichment claims all required proof of injury, the Court held  
2 “Plaintiffs presented evidence creating a dispute of fact as to injury resulting from transaction fees,  
3 but Plaintiffs [did] not present[] evidence creating a dispute of fact as to performance fees.” (*Id.*)  
4 As to the transaction fees, despite Ms. Barnes’s, Mr. Ferguson’s, and Ms. Barnes’s merchant’s  
5 testimony, Dr. Williams’s “conclu[sion] every class member paid transaction fees in the form of  
6 inflated project costs” preserved a genuine dispute Ms. Barnes and Mr. Ferguson “paid a portion  
7 of the transaction fee and thus suffered an economic injury.” (*Id.* at 13-14 (citing Dkt. No. 239-14  
8 ¶ 57).) However, Plaintiffs agreed to dismiss Mr. Ferguson’s claims related to performance fees  
9 and presented no evidence from which a reasonable juror could find Ms. Barnes was injured by  
10 performance fees. (*Id.* at 15-19.) So, the Court denied GreenSky’s motion for summary judgment  
11 on the transaction fee claims but granted GreenSky’s motion for summary judgment on the  
12 performance fee claims. (*Id.* at 19.)

13 The Court also granted GreenSky summary judgment on Ms. Barnes’s UCL claim  
14 predicated on California Financial Code § 22305, and both Mr. Ferguson’s and Ms. Barnes’s UCL  
15 claims predicated on California Financial Code § 22400. (*Id.* at 20, 22.) In addition, as to  
16 Plaintiffs’ claims for injunctive relief, the Court granted GreenSky’s motion for summary  
17 judgment for Mr. Ferguson’s claim but denied the motion for Ms. Barnes’s claim because she had  
18 “established a real threat of repeated injury.” (*Id.* at 25-28.) The Court otherwise denied  
19 GreenSky’s motion for summary judgment. (*Id.* at 28.)

### 20 3. Plaintiffs’ Motion for Class Certification

21 The Court then considered Plaintiffs’ motion to certify a class under Federal Rules of Civil  
22 Procedure 23(b)(2) and 23(b)(3). (*Id.* at 28-44.) Because Plaintiffs satisfied each requirement of  
23 Rules 23(a), 23(b)(2), and 23(b)(3), the Court granted Plaintiffs’ motion and certified Plaintiffs’  
24 claims as to a class including:

25 All persons who secured in California, between January 9, 2016, and  
26 the present, a GreenSky Consumer Program loan for which the loan  
27 principal amount was \$500 or higher and the associated transaction  
28 fee was at least 1% of the loan principal amount.

(*Id.* at 44.) As GreenSky now moves to decertify, the Court summarizes its prior reasoning when

1 it considers each requirement of Rules 23(a), 23(b)(2), and 23(b)(3) below.

2 **B. Subsequent History**

3 GreenSky petitioned for permission to appeal the Court’s class certification decision.  
4 (Dkt. No. 285.) Over the following months, the parties negotiated a class notice plan and trial  
5 schedule, but the Court held class notice in abeyance pending the Ninth Circuit’s ruling on  
6 GreenSky’s class certification appeal. (Dkt. Nos. 296, 299, 301, 304, 316.) In response to  
7 Plaintiffs’ motion, the Court also clarified its summary judgment order. (Dkt. Nos. 305, 320.)  
8 The Ninth Circuit denied GreenSky’s petition for permission to appeal on May 2, 2025. (Dkt. No.  
9 314.)

10 GreenSky then moved to compel individual arbitration for all class members whose loan  
11 agreements contain an arbitration provision. (Dkt. No. 326.) The Court found “[w]hether the loan  
12 agreements form valid arbitration agreements between GreenSky and class members depends on  
13 whether GreenSky is a credit services organization (‘CSO’)” under the Credit Act. (Dkt. No. 371  
14 at 1.) However, as the Court had recognized at summary judgment, “there remained a genuine  
15 dispute of material fact regarding whether merchants pass through all or part of their transaction  
16 fees to borrowers.” (*Id.* at 14 (citing Dkt. No. 294 at 13-15); *see also id.* at 19.) Because this  
17 factual dispute created a “genuine dispute of fact regarding whether borrowers purchase or are  
18 solicited to purchase GreenSky’s services,” the Court could not “conclude as a matter of law  
19 whether borrowers are ‘consumers’ under the Credit Act and therefore whether GreenSky is a  
20 CSO.” (*Id.* at 1.) So, as “neither party [was] entitled to a ruling an agreement to arbitrate was or  
21 was not formed as a matter of law,” the Court determined “the motion to compel [arbitration] must  
22 be held in abeyance pending trial on the arbitration formation question, specifically, whether  
23 GreenSky is a credit services organization under the Credit Act.” (*Id.* at 22.)

24 GreenSky also sought partial summary judgment regarding performance fee recoveries.  
25 (Dkt. No. 338.) After the Court’s summary judgment order concluded GreenSky was entitled to  
26 summary judgment on all performance-fee related claims, Plaintiffs had asserted the Credit Act  
27 nonetheless allowed them to “recoup the money they paid toward performance fees—even if those  
28 fees did not injure Plaintiffs.” (Dkt. No. 341 at 7.) The Court granted GreenSky’s motion because

1 “[t]he Credit Act does not permit recovery of amounts paid that did not result in injury and are  
2 unrelated to the injury conferring statutory standing to sue.” (Dkt. No. 368 at 1.)

3 In addition, following a case management conference, the Court clarified because  
4 “[w]hether GreenSky is a CSO under the Credit Act is a material issue both precluding the Court’s  
5 [] ruling on GreenSky’s motion to compel arbitration and going to the merits of Plaintiff’s claims  
6 against GreenSky,” “the Court will try the issue whether GreenSky is a CSO at one time for both  
7 arbitrability and liability purposes.” (Dkt. No. 378 at 3, 5.) The Court also “clarifie[d] the class  
8 includes an end date of January 2, 2025, the date the Court adopted Plaintiffs’ definition and  
9 certified the class.” (*Id.* at 6.)

10 GreenSky now moves to decertify the class. (Dkt. No. 402.)

### 11 **III. GREENSKY’S NEW EVIDENCE**

12 To support its motion to decertify, GreenSky presents two types of new evidence. First,  
13 GreenSky attaches declarations from “175 separate merchants who performed projects for over  
14 51,000 class members . . . showing that they treated transaction fees in a wide variety of ways.”  
15 (Dkt. No. 402 at 8.) To gather these declarations, GreenSky drafted form declarations containing  
16 the attestation: “In accordance with the obligations of Merchant under the GreenSky® Merchant  
17 Program Agreement, for any customer who has used a GreenSky® Program loan to pay for their  
18 project, Merchant has not surcharged (or otherwise passed through to) that customer any portion  
19 of any GreenSky® Program fees charged to Merchant” (the “General Statement”). (Dkt. No. 402-  
20 1 ¶¶ 15-16, 21-23.) The form declaration also included an “attestation regarding how the  
21 Merchant treats or has treated transaction fees, with several options to select and an instruction for  
22 the merchant to check any or all boxes that apply.” (*Id.* ¶¶ 17, 23.) Specifically, the form  
23 declaration stated:

24 Merchant treats or has treated the GreenSky® Program fees charged  
25 to it as follows:

*(check any or all that apply)*

- 26  Absorbs those fees without increasing its overall pricing for  
customers.  
27  Does nothing regarding those fees because it does not incur any net  
incremental added costs, as it is able to save other costs by  
28 participating in the GreenSky® Program (e.g., by spending less on  
marketing, sales, credit card acceptance fees, etc.).

- Deducts those fees from the sales commissions or other compensation paid to its employees or representatives.
- Treats some of those fees as overhead that it factors into its overall pricing for all of its customers, similar to other business expenses such as credit card acceptance fees, other vendor fees, insurance or advertising.
- Treats all of those fees as overhead that it factors into its overall pricing for all of its customers, similar to other business expenses such as credit card acceptance fees, other vendor fees, insurance or advertising.
- Our treatment of GreenSky® Program fees has changed from time to time over the years of our participation in the GreenSky® Program.

(*Id.* ¶ 23.) In December 2025 and January 2026, GreenSky conducted targeted outreach and obtained two sworn declarations from the merchant 3 Day Blinds, LLC (“3 Day Blinds”), which “account[s] for approximately 14,637 Program loans to class members,” and Lasting Legacy Plumbing Heating and Air (“Lasting Legacy”), which “account[s] for some 162 Program loans to class members.” (*Id.* ¶¶ 15, 18-20 (citing Dkt. No. 402-7 at 2, 5).) Both 3 Day Blinds and Lasting Legacy attested to the General Statement, but while 3 Day Blinds attested it “[a]bsorbs those fees without increasing its overall pricing for customers,” Lasting Legacy attested it “[t]reats all of those fees as overhead that it factors into its overall pricing for all of its customers, similar to other business expenses such as credit card acceptance fees, other vendor fees, insurance or advertising.” (Dkt. No. 402-3 at 2-3.)

GreenSky then initiated more general outreach to 1,230 merchants which had performed or potentially had performed projects for class members. (Dkt. No. 402-1 ¶¶ 24-27.) To do so, GreenSky emailed these merchants about an “Important Compliance Request” and asked them to “complete this declaration regarding how your company has treated the GreenSky® Program transaction fees.” (Dkt. No. 402-5 at 2, 4.) Through this outreach, GreenSky received an additional 172 merchant declarations. (Dkt. No. 402-1 ¶ 32 (citing Dkt. No. 402-6).)

So, including the earlier declaration from Ms. Barnes’s merchant, GreenSky received declarations from “175 merchants who performed projects for 51,645 class members.” (Dkt. No. 402-1 ¶ 33.) To summarize these declarations, GreenSky states:

- a. . . . 80 merchants (46% of responding merchants) that serviced 28,880 class members (65% of class members covered by the merchant declarations) stated that they did not pass through transaction fees in any way. Within this set of 80 merchants:
  - i. 77 attested that they absorbed the transaction fees without

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increasing their overall pricing for customers (i.e., they took the fees out of their own profits).

ii. 6 attested that they deduct transaction fees from the sales commissions or other compensation paid to its employees or representatives.

iii. 9 attested that they do nothing regarding transaction fees because they do not incur any net incremental added costs, as they are able to save other costs by participating in the GreenSky® Program (e.g., by spending less on marketing, sales, credit card acceptance fees, etc.).

iv. 12 checked one or more of the above three boxes.

b. 90 merchants (51% of responding merchants) that serviced 19,768 class members (38% of class members covered by the merchant declarations) treated transaction fees as overhead to at least some extent, at least some of the time. Within that set of 90 merchants:

i. 27 attested that they treated only some fees as overhead, while 68 attested that they treated all fees as overhead.

ii. 5 attested that they treated some fees as overhead and all fees as overhead.

iii. 47 also checked one or more of the boxes indicating that they absorbed fees, deducted fees from employees' sales commissions, or did nothing regarding fees since they do not incur net incremental costs from being in the Program.

c.  15 Program merchants representing 7,338 class members attested that they changed the way they treated transaction fees over time, with 12 that checked boxes indicating that they treated some or all fees as overhead and one or more of the three boxes indicating they absorbed fees, deducted fees from employees' sales commissions, or did nothing regarding fees because they do not incur net incremental costs from participating in the Program. To the extent those 12 treated transaction fees as overhead at some point in time, they did not treat those fees as overhead at other points in time.

d. Additionally, 59 of the 175 responding merchants that serviced 14,174 class members checked more than one box describing how they treated transaction fees.

e. 5 merchants did not select any boxes indicating how they treated transaction fees.

(*Id.*; see also Dkt. No. 402-6 (individual declarations); Dkt. No. 402-7 (summary spreadsheet).)

Second, GreenSky presents deposition testimony from current and former GreenSky employees. The employees testified “it was against the rules [for a merchant] to surcharge [a customer] specifically for using the program,” and “if [merchants] were to charge additional funds to cover the [transaction] fee on top of the project cost, that would be prohibited.” (Dkt. No. 402-10 at 3; Dkt. No. 402-11 at 3; see also Dkt. No. 402-12 at 92-95.). However, because “[e]verything [GreenSky] did was options based,” “[t]he [merchant],” rather than GreenSky, was

1 “the decision maker in this entire instance.” (Dkt. No. 402-10 at 4-5.) So, while GreenSky  
 2 “would coach and give options to the [merchant] from an informational perspective,” “GreenSky  
 3 wasn’t responsible for how merchants handled any of their costs.” (*Id.* at 6; Dkt. No. 402-12.)  
 4 For this reason, “how [merchants] accounted for the overall cost of the program varied from  
 5 merchant to merchant,” and “GreenSky [never] require[d] its merchants to treat transaction or  
 6 merchant fees as overhead.” (Dkt. No. 402-12 at 4, 6-7; *see also* Dkt. No. 402-1 ¶ 34 (“GreenSky  
 7 has never dictated merchants’ pricing strategies and has never mandated that merchants treat  
 8 transaction fees in a particular way (e.g., as overhead), aside from the Program’s prohibition on  
 9 surcharging for transaction fees.”).) And GreenSky did not “punish[]” or take “disciplinary  
 10 measure[s]” against merchants unless they surcharged borrowers. (Dkt. No. 402-10 at 7-8.)

11 **DISCUSSION**

12 An order certifying a class “may be altered or amended before final judgment.” *See* Fed.  
 13 R. Civ. P. 23(c)(1)(C). On a motion to decertify, “the standard of review is the same as a motion  
 14 for class certification: whether the Rule 23 requirements are met.” *Ridgeway v. Wal-Mart Stores,*  
 15 *Inc.*, No. 08-CV-05221-SI, 2016 WL 4529430, at \*12 (N.D. Cal. Aug. 30, 2016) (citing *O’Connor*  
 16 *v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 410 (C.D. Cal. 2000)), *aff’d sub nom. Ridgeway v.*  
 17 *Walmart Inc.*, 946 F.3d 1066 (9th Cir. 2020). Specifically, “plaintiff[s] [must] demonstrate[] that  
 18 all of the prerequisites of Federal Rule of Civil Procedure 23(a) have been met, and that at least  
 19 one of the requirements of Rule 23(b) have been met.” *Id.* at \*11 (citing *Valentino v. Carter-*  
 20 *Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)). “The plaintiffs bear ‘the burden of  
 21 establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence.’”  
 22 *Lytle v. Nutramax Lab’ys, Inc.*, 114 F.4th 1011, 1023 (9th Cir. 2024) (quoting *Olean Wholesale*  
 23 *Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 665 (9th Cir. 2022) (en banc)), *cert.*  
 24 *denied*, 145 S. Ct. 1308 (2025) (cleaned up); *see also Marlo v. United Parcel Serv., Inc.*, 639 F.3d  
 25 942, 947 (9th Cir. 2011) (explaining on a decertification motion, “the party seeking class  
 26 certification, [still] bears the burden of demonstrating that the requirements of Rules 23(a) and (b)  
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1 are met” (cleaned up)).<sup>4</sup>

2 “Although . . . a court’s class-certification analysis must be ‘rigorous’ and may ‘entail  
3 some overlap with the merits of the plaintiff’s underlying claim,’ . . . Rule 23 grants courts no  
4 license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v.*  
5 *Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 465-66 (2013) (citation omitted). “Merits  
6 questions may be considered to the extent—but only to the extent—that they are relevant to  
7 determining whether the Rule 23 prerequisites for class certification are satisfied.” *Id.* at 466  
8 (citations omitted). In addition, “a district court is not limited to considering only admissible  
9 evidence in evaluating whether Rule 23’s requirements are met.” *Sali v. Corona Reg’l Med. Ctr.*,  
10 909 F.3d 996, 1005 (9th Cir. 2018) (citation omitted).

11 Because the Court has certified classes under Rules 23(b)(2) and 23(b)(3), Plaintiffs must  
12 show their class meets all the requirements of Rules 23(a), 23(b)(2), and 23(b)(3). *See Ridgeway*,  
13 2016 WL 4529430, at \*11. Although GreenSky’s motion to decertify contests several of these  
14 requirements, GreenSky’s strongest arguments relate to whether Plaintiffs have shown  
15 predominance as required by Rule 23(b)(3). The Court therefore begins with the requirements of  
16 Rule 23(b)(3) before addressing the requirements of Rule 23(b)(2) and Rule 23(a).

17 **I. RULE 23(B)(3)**

18 To certify a Rule 23(b)(3) class, the court must find (1) “the questions of law or fact  
19 common to class members predominate over any questions affecting only individual members,”  
20 and (2) “a class action is superior to other available methods for fairly and efficiently adjudicating  
21 the controversy.” Fed. R. Civ. P. 23(b)(3).

22 **A. Predominance**

23 “The predominance inquiry asks whether the common, aggregation-enabling, issues in the  
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25 <sup>4</sup> Relying on district court cases, Plaintiffs argue GreenSky first “must show that the class no  
26 longer meets Rule 23’s certification requirements,” *see In re Apple iPod iTunes Antitrust Litig.*,  
27 No. 05-CV-0037-YGR, 2014 WL 6783763, at \*5 (N.D. Cal. Nov. 25, 2014) (quotation marks and  
28 citations omitted), or at least “show[] why [the Court] should consider decertification” before the  
burden shifts to Plaintiff, *see In re Korean Ramen Antitrust Litig.*, No. 13-CV-04115-WHO, 2018  
WL 1456618, at \*2 (N.D. Cal. Mar. 23, 2018) (citations omitted). Because Plaintiffs do not cite  
any Ninth Circuit precedent for imposing this burden on GreenSky, the Court will not do so.

1 case are more prevalent or important than the non-common, aggregation-defeating, individual  
2 issues.” *Olean*, 31 F.4th at 664 (quotation marks and citation omitted). “An individual question is  
3 one where members of a proposed class will need to present evidence that varies from member to  
4 member, while a common question is one where the same evidence will suffice for each member  
5 to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.”  
6 *White v. Symetra Assigned Benefits Serv. Co.*, 104 F.4th 1182, 1191 (9th Cir. 2024) (quoting  
7 *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)). “Considering whether questions of  
8 law or fact common to the class predominate begins, of course, with the elements of the  
9 underlying cause of action.” *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809  
10 (2011) (cleaned up). “[T]he Court identifies the substantive issues related to plaintiff’s claims  
11 (both the causes of action and affirmative defenses); then considers the proof necessary to  
12 establish each element of the claim or defense; and considers how these issues would be tried.”  
13 *Gaudin v. Saxon Mortg. Servs., Inc.*, 297 F.R.D. 417, 426 (N.D. Cal. 2013) (citation omitted).

14 The Court previously held common issues predominated as to each element of Plaintiffs’  
15 Credit Act, UCL, and unjust enrichment claims. (*See* Dkt. No. 294 at 33-43.) GreenSky now  
16 argues individual issues predominate in proving Plaintiffs’ injury for all three claims and  
17 GreenSky’s liability under the Credit Act. (Dkt. No. 402 at 21 & n.7.) However, the parties agree  
18 whether Plaintiffs can prove injury depends on whether Plaintiffs can prove every Class Member  
19 paid some pass-through transaction fee. (*Id.*; Dkt. No. 421 at 22; *see also* Dkt. No. 294 at 13-15.)  
20 And as to its liability under the Credit Act, GreenSky argues “the question of whether GreenSky is  
21 even subject to the [Credit Act]” also depends on whether each Class Member paid pass-through  
22 transaction fees. (Dkt. No. 402 at 22-23.)<sup>5</sup> Assuming without deciding GreenSky’s interpretation

23 \_\_\_\_\_  
24 <sup>5</sup> GreenSky relies on the Court’s order regarding GreenSky’s most recent motion to compel  
25 arbitration, which found whether GreenSky is a credit services organization (“CSO”) and therefore  
26 subject to the Credit Act depends on whether GreenSky provides assistance to “consumers.” (Dkt.  
27 No. 371.) *See* Cal. Civ. Code § 1789.12(d). But whether borrowers are “consumers” depends on  
28 whether borrowers are “solicited to purchase or [] purchase[]” GreenSky’s services. (Dkt. No. 371  
at 14.) *See* Cal. Civ. Code § 1789.12(b). And the Court held “factual disputes as to whether  
borrowers purchase GreenSky’s services through merchant pass-through fees . . . prevent the  
Court from determining whether the borrowers are ‘consumers’ and, by extension, whether  
GreenSky is a CSO under the Credit Act.” (Dkt. No. 371 at 19.) So, GreenSky now argues “if a  
merchant *did not* pass through transaction fees to customers, then GreenSky indisputably could

1 is correct, whether Plaintiffs can prove GreenSky’s liability under the Credit Act depends on  
2 whether Plaintiffs can prove every Class Member paid some pass-through transaction fee. So, all  
3 GreenSky’s predominance arguments arise from the same question: did every Class Member pay  
4 pass-through transaction fees? The Court therefore must determine whether, in light of  
5 GreenSky’s new evidence, this is a common or individualized question.

6 **1. Transaction Fees Issue**

7 In opposing class certification, GreenSky also argued “individualized evidence will be  
8 required to establish . . . injury.” (Dkt. No. 294 at 35, 41-42.) However, the Court found  
9 “Plaintiffs have presented common evidence of injury through Dr. Williams’s report, which  
10 concludes *every* class member paid transaction fees in the form of inflated project costs.” (*Id.* at  
11 35 (citing Dkt. No. 239-14 ¶ 57).) So, “[b]ecause every class member can rely on Dr. Williams’s  
12 report to establish injury, common questions predominate as to injury.” (*Id.* (citing *Olean*, 31  
13 F.4th at 667).) The Court further explained:

14 Dr. Williams’s report can resolve the injury issue “in a single stroke.”  
15 *See Olean*, 31 F.4th at 682. If a jury decides Dr. Williams’s report is  
16 not persuasive, then the class members have not proved injury and the  
17 Credit Act claim fails—in a single stroke. Conversely, if a jury  
18 decides Dr. Williams’s report is persuasive, then every class member  
19 has established injury—again in a single stroke. *See Tyson*, 577 U.S.  
at 457 (the question whether the expert’s “study was unrepresentative  
or inaccurate” was “itself common to the claims made by all class  
members”). At oral argument, Plaintiffs acknowledged that if the fact  
finder does not believe Dr. Williams’s report, GreenSky prevails on  
every class member’s claims. (Dkt. No. 276 at 42.).

20 (*Id.* at 36.)

21 Seeking to decertify the class, GreenSky argues its new evidence—including that  
22 merchants claim to not pass through and take various approaches to transaction fees—  
23 “demonstrate[s] that individualized adjudications of liability and injury will unquestionably be  
24 required.” (Dkt. No. 402 at 21.) But when considering whether common issues predominate, “the  
25 court must make a rigorous assessment of the available evidence and the method or methods by  
26 which *plaintiffs* propose to use the class-wide evidence to prove the common question in one

27  
28 not have acted as a CSO with respect to such customers.” (Dkt. No. 402 at 22-23.)

1 stroke,” and “find that this common question . . . predominates over individual issues.” *See*  
 2 *Olean*, 31 F.4th at 666 (emphasis added) (cleaned up). “[A] district court is limited to resolving  
 3 whether the evidence establishes that a common question is *capable* of class-wide resolution, not  
 4 whether the evidence in fact establishes that plaintiffs would win at trial.” *Id.* at 666-67 (emphasis  
 5 in original).

6 GreenSky’s new evidence does not show Plaintiffs’ proposed method—i.e., Dr. Williams’s  
 7 report—is incapable of resolving, on a class-wide basis, the question whether every Class Member  
 8 paid pass-through transaction fees. Although merchants’ attestations they never “surcharged (or  
 9 otherwise passed through [ ])” fees, (Dkt. No. 402-6), might make Dr. Williams’s report less  
 10 persuasive, they do not show the report is incapable of resolving the question. As the Court  
 11 explained when rejecting GreenSky’s similar argument based on Ms. Barnes’s merchant  
 12 declaration at class certification, “the merchant may say it and the merchant may believe it, but  
 13 what Dr. Williams would say is when you look at the numbers, they are, because you can’t help  
 14 but spread it around when you’re doing it.” (Dkt. No. 276 at 43 (noting Plaintiffs’ “evidence is  
 15 different, [but] the question is whether it’s capable”).) For similar reasons, merchant declarations  
 16 suggesting they treat transaction fees differently also do not show Dr. Williams’s report is  
 17 incapable of proving the question on a class-wide basis. According to Dr. Williams, the “effect”  
 18 of merchants’ varying treatment of transaction fees “would be reflected in the class transaction  
 19 data [he] used” and “[i]n turn, . . . in the results of [his] pass-through regression and robustness  
 20 checks.” (Dkt. No. 421-2 ¶ 12.) So, absent some “reason to disregard Dr. Williams’s attestation,”  
 21 evidence merchants treat transaction fees differently does not weaken the capability of Dr.  
 22 Williams’s report to show every Class Member paid pass-through transaction fees. (Dkt. No. 294  
 23 at 8 (reaching similar conclusion when GreenSky presented evidence many merchants took the  
 24 fees out of the salesperson’s commission).)

25 Ultimately, GreenSky’s new evidence may make Dr. Williams’s report less persuasive,  
 26 and therefore make it less likely Plaintiffs will persuade a jury every Class Member paid  
 27 transaction fees. Those implications, however, are not grounds for finding a lack of predominance  
 28 and decertifying a class. *See Olean*, 31 F.4th at 667 (“[A] district court cannot decline

1 certification merely because it considers plaintiffs’ evidence relating to the common question to be  
 2 unpersuasive and unlikely to succeed in carrying the plaintiffs’ burden of proof on that issue.”  
 3 (citing *Amgen*, 568 U.S. at 459-60)).

4           Instead, the Court must assess whether Plaintiffs’ proposed method can resolve the  
 5 question on a class-wide basis. Under *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016), “if  
 6 ‘each class member could have relied on [the plaintiffs’ evidence] to establish liability if he or she  
 7 had brought an individual action,’ and the evidence ‘could have sustained a reasonable jury  
 8 finding’ on the merits of a common question, . . . then a district court may conclude that the  
 9 plaintiffs have carried their burden of satisfying Rule 23(b)(3) as to that common question of law  
 10 or fact.” See *Olean*, 31 F.4th at 667 (quoting *Tyson*, 577 U.S. at 455). Because each Class  
 11 Member could reasonably rely on Dr. Williams’s report—specifically, its conclusion “every class  
 12 member paid transaction fees in the form of inflated transaction costs”—Plaintiffs have carried  
 13 their burden as to predominance. (Dkt. No. 294 at 35-36 (citing Dkt. No. 239-14 ¶ 57; *Olean*, 31  
 14 F.4th at 667).) GreenSky’s reliance on *Wright v. Greensky Mgmt. Co., LLC*, No. 20-CV-62441,  
 15 2022 WL 17250331 (S.D. Fla. Nov. 28, 2022), to argue otherwise is unavailing. There, the court  
 16 refused to certify a similar class because the court determined it was “impossible to adequately  
 17 ascertain whether the potential class of borrowers were affected in the same or a similar manner by  
 18 [GreenSky’s] policies,” so Dr. Williams’s report was “[in]sufficient to establish common proof  
 19 that all class members were impacted by [GreenSky’s] transaction fees.” *Id.* at \*8. But unlike the  
 20 *Wright* court, this Court has already determined Dr. Williams’s report is capable of proving  
 21 common impact, and has rejected GreenSky’s arguments his “methodology to determine common  
 22 impact was [un]reliable.” (Dkt. No. 294 at 11, 35-38.) GreenSky’s arguments therefore go to the  
 23 report’s persuasiveness, rather than its capacity, and are not reason to decertify.

24           To distinguish its decertification motion from its prior opposition to class certification,  
 25 GreenSky relies on language in *Van v. LLR, Inc.*, 61 F.4th 1053 (9th Cir. 2023). There, the Ninth  
 26 Circuit explained while “a plaintiff need not rebut every individualized issue that could possibly  
 27 be raised,” a defendant may “invoke individualized issues and provide sufficient evidence that the  
 28 individualized issues bar recovery on at least some claims, thus raising the spectre of class-

1 member-by-class-member adjudication of the issue.” *Id.* at 1066-67 (citations omitted).  
 2 According to GreenSky, its merchant declarations suffice as such evidence. But given Dr.  
 3 Williams’s report contradicts those declarations, the merchant declarations are not dispositive  
 4 “evidence that individualized issues bar recovery on [any] claim[.]” *See id.* at 1066. Furthermore,  
 5 *Van* makes clear “[i]f the defendant provides evidence that a valid defense . . . will bar recovery on  
 6 some claims, then the district court must determine, based on the particular facts of the case,  
 7 ‘whether individualized questions . . . will overwhelm common ones and render class certification  
 8 inappropriate under Rule 23(b)(3).” *Id.* at 1067 (quoting *Olean*, 31 F.4th at 669). Here, as the  
 9 Court has previously explained, “Dr. Williams’s report can resolve [at least] the injury issue ‘in a  
 10 single stroke.’” (Dkt. No. 296 at 36.) In particular, Plaintiffs have acknowledged GreenSky will  
 11 prevail on every class member’s claims simply by persuading a jury Dr. Williams’s report is not  
 12 persuasive. (*Id.* (citing Dkt. No. 276 at 42).) So, given the facts of this case, individualized  
 13 questions do not overwhelm common ones.

14 GreenSky’s reliance on other Ninth Circuit cases is unavailing because in each of those  
 15 cases the plaintiffs had no common method of proving class-wide liability. In *Bowerman v. Field*  
 16 *Asset Services, Inc.*, 60 F.4th 459 (9th Cir. 2023), the plaintiffs argued the defendant, by  
 17 misclassifying them as independent contractors, failed to pay overtime compensation and  
 18 indemnify them for business expenses. *See id.* at 464-65. Because the plaintiffs had withdrawn  
 19 their expert’s aggregate damages model, they “were left relying on individual testimony to  
 20 establish the existence of an injury and the amount of damages.” *Id.* at 469. The plaintiffs  
 21 therefore “relied on [individual class members’] unaided memories as the primary or sole evidence  
 22 of the work schedules,” which “resulted in a series of mini-trials concerning the work history and  
 23 credibility of each individual class member.” *Id.* at 470 (noting the district court had already  
 24 “taken eight days to determine damages for only eleven of the 156 class members”). So, the Ninth  
 25 Circuit observed “[t]he ‘individualized mini-trials’ required to establish liability and damages  
 26 plainly distinguish this case from *Olean*, where the proposal for calculating damages for each class  
 27 member—though individualized—was ‘straightforward.’” *Id.* (quoting *Olean*, 31 F.4th at 682  
 28 n.31). The Ninth Circuit therefore reversed class certification because “any common question as

1 to misclassification [was] outweighed by the individual questions going to injury and damages.”  
2 *Id.* at 469. Unlike the *Bowerman* plaintiffs, Plaintiffs have proposed a method for proving injury  
3 and liability and calculating damages which will not require individualized testimony. So, as the  
4 Court explained when distinguishing *Bowerman* in its class certification order, “this case more  
5 closely resembles *Olean* than *Bowerman*, [and] individualized issues . . . do not preclude class  
6 certification.” (Dkt. No. 294 at 40.)<sup>6</sup>

7 GreenSky’s reliance on *Ambrosio v. Progressive Preferred Insurance Co.*, 154 F.4th 1107  
8 (9th Cir. 2025), is similarly unavailing. In *Ambrosio*, former Progressive customers alleged  
9 Progressive undervalued their property damage claims for the total loss of their vehicles. *Id.* at  
10 1108. To pay the plaintiffs their vehicles’ actual cash value (“ACV”), Progressive relied on a  
11 system incorporating a projected sold adjustment (“PSA”) which, according to the plaintiffs,  
12 “always resulted in an inherently flawed negative line-adjustment.” *Id.* at 1108-09. At class  
13 certification, Progressive “provided evidence that at least two members of the proposed class  
14 received a higher ‘market value’ valuation from [Progressive’s approach] than they would have  
15 from other sources.” *Id.* at 1112. The Ninth Circuit therefore concluded “each individual  
16 [plaintiff] would need to compare their flawed ‘market value’ with a correct one to win on the  
17 merits,” and affirmed the district court’s holding common issues did not predominate. *Id.* at 1112-  
18 13. So, like in *Bowerman* and unlike here, the *Ambrosio* court’s finding individual issues  
19 predominated relied on plaintiffs’ lack of a common method to prove liability.

20 In its reply brief, GreenSky argues the *Ambrosio* plaintiffs did in fact “possess and plan on  
21 presenting various expert testimony regarding data that Progressive excludes certain data to reach  
22 ACV, and empirical list/sell data discounting the use of a PSA for valuation.” *See Ambrosio v.*

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24 <sup>6</sup> GreenSky also misconstrues the Court’s reasoning when it argues the Court previously “rejected  
25 GreenSky’s reliance on . . . *Bowerman* . . . because the Court determined that, other than for Ms.  
26 Barnes, such ‘individualized testimony will not be required.’” (Dkt. No. 402 at 26 (citing Dkt.  
27 No. 294 at 40-41 (quoting *Bowerman*, 60 F.4th at 470)).) The Court instead stated, “under  
28 Plaintiffs’ proposed methodology for calculating damages, individualized testimony will not be  
required.” (Dkt. No. 294 at 40.) So, the Court previously rejected GreenSky’s reliance on  
*Bowerman* for the same reason it does so now: unlike Plaintiffs, the *Bowerman* plaintiffs had no  
proposed method of proving liability or damages which did not depend on individualized  
testimony.

1 *Progressive Preferred Ins. Co.*, No. CV-22-00342-PHX-SMB, 2024 WL 915184, at \*7 (D. Ariz.  
 2 Mar. 4, 2024) (citation omitted), *aff'd*, 154 F.4th 1107 (9th Cir. 2025). However, the *Ambrosio*  
 3 district court held because “the PSA is only part of one method of ACV calculations,” the  
 4 plaintiffs would still require “individual calculations [which] overwhelm[ed] the common question  
 5 of whether a PSA was in breach of the policy.” *Id.* at \*7-8. So, even if the *Ambrosio* plaintiffs  
 6 had expert testimony, the expert testimony was not capable of resolving the issue on a class-wide  
 7 basis.

8 Ultimately, GreenSky extrapolates from *Ambrosio* “a ‘due process’ right to introduce  
 9 individualized evidence as to ‘each individual plaintiff’” which justifies decertification. (Dkt. No.  
 10 402 at 19 (quoting *Ambrosio*, 154 F.4th at 1112).) GreenSky specifically relies on the Ninth  
 11 Circuit’s note “denying Progressive this defense”—i.e., the defense individualized issues barred  
 12 recovery of some class members’ claims—“*altogether* would seem to violate due process.” *See*  
 13 *Ambrosio*, 154 F.4th at 1112 (emphasis added) (citations omitted). However, the Court is not  
 14 denying GreenSky its defense by proceeding with a certified class. At trial, GreenSky will have  
 15 the opportunity to challenge Plaintiffs’ case, including by cross-examining Dr. Williams about his  
 16 opinions, and to present its own case through merchant testimony. As Plaintiffs acknowledged at  
 17 class certification and confirmed at oral argument on GreenSky’s decertification motion, “if the  
 18 fact finder does not believe Dr. Williams’s report, GreenSky will prevail on every class member’s  
 19 claims.” (Dkt. No. 294 at 36 (citing Dkt. No. 276 at 42).) So to prevail, GreenSky need only  
 20 convince the jury a single Class Member did not pay transaction fees passed through from their  
 21 merchant. GreenSky’s contention due process requires “thousands of [merchants] . . . to testify at  
 22 trial for GreenSky to have a full and fair adjudication of whether pass-throughs occurred in their  
 23 individual transactions with class members” is unavailing. (Dkt. No. 402 at 24.) Given Plaintiffs  
 24 have presented a method of demonstrating GreenSky’s liability on a class-wide basis  
 25 notwithstanding some merchants’ disavowal of such pass through, and GreenSky may defeat  
 26 Plaintiffs’ claims without individualized evidence from every Class Member, GreenSky’s due  
 27 process rights are not violated merely because this case is proceeding as a class action.  
 28

\* \* \*

By demonstrating a common method of proving each Class Member paid pass-through transaction fees, Plaintiffs have shown common issues predominate on that issue. As explained above, this issue is the basis for GreenSky’s arguments individual issues predominate as to Plaintiffs’ injury and GreenSky’s liability under the Credit Act. Ultimately, the conflict between Dr. Williams’s report and the merchant declarations creates a factual dispute for the jury, rather than grounds for decertifying the class. So, the Court denies GreenSky’s motion to decertify the class on predominance grounds.<sup>7</sup>

**B. Superiority**

To certify, a class action must be “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Courts consider the following factors:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

*Id.* “[T]hese factors require[] the court to focus on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis.” *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001) (cleaned up).

The Court previously held a class action was superior “[b]ecause ‘recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis.’” (Dkt. No. 294

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<sup>7</sup> In passing, GreenSky contends “Plaintiffs have never explained how an independent merchant’s decision to treat a vendor’s fees as overhead subjects *the vendor* to statutory requirements that would not otherwise apply.” (Dkt. No. 402 at 21.) Although Dr. Williams’s report does not distinguish between transaction fees passed through as surcharges as opposed to as overhead, GreenSky’s exclusive reliance on a Georgia district court’s finding “Plaintiffs have produced no precedent in support of their remarkable supposition that business charges for overhead violate federal law” does not justify decertification. *See Price v. Landsafe Credit, Inc.*, No. CV-205-156, 2006 WL 3791391, at \*1-2 (S.D. Ga. Dec. 22, 2006) (discussing Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601-2617 claim), *aff’d sub nom. Krupa v. Landsafe, Inc.*, 514 F.3d 1153 (11th Cir. 2008).

1 at 43 (quoting *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).)  
2 Rather than dispute the Court’s prior conclusion, GreenSky argues because “proof of liability and  
3 injury depends on many independent third-parties’ testimony regarding their own individual  
4 actions, manageability concerns outweigh the benefits of resolving any common issues through a  
5 class action.” (Dkt. No. 402 at 29.) However, unlike in the cases GreenSky cites, Plaintiffs do not  
6 rely on independent third parties’ testimony to prove liability or injury. *See, e.g., Zinser*, 253 F.3d  
7 at 1192 (“If each **class member** has to litigate numerous and substantial separate issues to establish  
8 his or her right to recover individually, a class action is not ‘superior.’” (emphasis added)); *In re:*  
9 *First Am. Home Buyers Prot. Corp. Class Action Litig.*, 313 F.R.D. 578, 611 (S.D. Cal. 2016)  
10 (finding no superiority given the “manageability” concerns of plaintiffs’ obtaining records from  
11 many contractors to prove their case), *aff’d sub nom. Carrera v. First Am. Home Buyers Prot. Co.*,  
12 702 F. App’x 614 (9th Cir. 2017). Furthermore, were the Court to decertify the class, GreenSky  
13 would need to provide the exact same—if not more—individual testimony to defend against these  
14 cases on an individual basis. *Cf. Wolin*, 617 F.3d at 1175. So, a class action is superior. *See*  
15 *Ridgeway*, 2016 WL 4529430, at \*17 (finding a class action superior when the plaintiffs presented  
16 a plan for proving damages, and it remains “within Wal-Mart’s rights to bring in individuals,  
17 whether its own experts or individual class members, in an attempt to disprove” the plaintiffs’  
18 evidence).

19 That the parties have not yet agreed on a verdict form is not evidence a class action is not  
20 superior. In briefing and at oral argument, GreenSky relied on *Hale v. Brinker Int’l, Inc.*, 765 F.  
21 Supp. 3d 904 (N.D. Cal. 2025), but there, the proposed verdict form merely “underscor[ed]” the  
22 court’s conclusion “individualized questions will predominate.” *Id.* at 918. Specifically, the  
23 district court explained because the plaintiffs’ Labor Code claims may have relied on a rebuttable  
24 presumption, the defendant could not defend against the plaintiffs’ case without individualized  
25 rebuttal evidence “specific to particular restaurants, particular categories of workers, and particular  
26 workers within each category.” *Id.* at 915-16. Here, in contrast, regardless of Plaintiffs’ proposed  
27 verdict form, GreenSky can defeat Plaintiffs’ claims without individualized evidence about every  
28 Class Member. Because GreenSky need only persuade the jury a single Class Member did not pay

1 transaction fees, *Hale* is not analogous.

2 So, Plaintiffs have shown a class action is superior. Plaintiffs have therefore satisfied their  
3 burden of proof as to Rule 23(b)(3).

4 **II. RULE 23(B)(2)**

5 To satisfy the requirements of a Rule 23(b)(2) class, the plaintiffs must show the defendant  
6 “has acted or refused to act on grounds that apply generally to the class, so that final injunctive  
7 relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]” Fed. R.  
8 Civ. P. 23(b)(2). “In a class action, standing is satisfied if at least one named plaintiff meets the  
9 requirements.” *See Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (9th Cir. 2007).

10 In opposing class certification, GreenSky argued “neither named Plaintiff has standing to  
11 seek injunctive relief[,] so certification of the (b)(2) class is inappropriate.” (Dkt. No. 294 at 44.)

12 However, on summary judgment, the Court found “[d]rawing inferences in Plaintiffs’ favor, the  
13 evidence that Ms. Barnes will likely seek financing from GreenSky for a future home repair  
14 project creates a genuine dispute as to Ms. Barnes’s threat of future harm.” (*Id.* at 27.)

15 Specifically, Plaintiffs’ evidence “Ms. Barnes owns a home where repair projects tend to arise,  
16 ‘would like to obtain financing if available,’ and ‘would like to be able to finance [the] projects  
17 using a Gree[n]Sky loan’ . . . establish[ed] a genuine dispute as to her ‘real and immediate threat  
18 of repeated injury.’” (*Id.* at 28 (citing Dkt. No. 267-6 ¶¶ 6-9; *Bates*, 511 F.3d at 985).) And  
19 because the Court had “denied GreenSky’s motion for summary judgment as to Ms. Barnes’s  
20 claim for injunctive relief,” “Ms. Barnes ha[d] standing to pursue injunctive relief,” and Plaintiffs  
21 met Rule 23(b)(2)’s requirements. (*Id.* at 44.)

22 GreenSky now renews its argument Ms. Barnes lacks standing to pursue injunctive relief  
23 based on her February 17, 2026 interrogatory response stating she has “undertaken no [GreenSky-  
24 funded] Projects since January 1, 2023.” (Dkt. No. 402-14 at 3-4.) In response, Plaintiffs present  
25 Ms. Barnes’s April 1, 2026 declaration she has “hired contractors to perform [five] home-  
26 improvement projects” since January 1, 2023. (Dkt. No. 421-3 ¶ 5.) Although “[n]one of these  
27 projects were financed with GreenSky,” Ms. Barnes declares she “would like to be able to use a  
28 GreenSky-program loan again to finance future home-improvement projects if [she] could trust

1 that GreenSky was complying with the law.” (*Id.* ¶¶ 5, 7.) So, there remains a factual dispute  
2 regarding Ms. Barnes’s threat of future harm and therefore her standing to seek injunctive relief.  
3 *See Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 971-72 (9th Cir. 2018) (finding injunctive  
4 relief standing when the plaintiff “faces the similar injury of being unable to rely on [the  
5 defendant’s] representations of its product in deciding whether or not she should purchase the  
6 product in the future” (citations omitted)).

7 The Court is also not persuaded by GreenSky’s argument its new evidence shows “[t]here  
8 is no common policy or practice that affected all class members.” (Dkt. No. 402 at 31.) Unlike  
9 the cases GreenSky cites, GreenSky has not presented dispositive evidence any Class Member was  
10 not harmed or would not want the injunctive relief Plaintiffs seek. *See Small v. Allianz Life Ins.*  
11 *Co. of N. Am.*, 122 F.4th 1182, 1200-01 (9th Cir. 2024) (reversing 23(b)(2) class certification  
12 because the defendant showed relief would “reinstat[e] policies for Insureds who intentionally  
13 cancelled and who cannot show that the inadvertent policy lapse caused harm”), *cert. denied*, 145  
14 S. Ct. 2852 (2025); *see also Black Lives Matter Los Angeles v. City of Los Angeles*, 113 F.4th  
15 1249, 1265-66 (9th Cir. 2024) (remanding because the district court had not found commonality  
16 under Rule 23(a)).

17 So, Plaintiffs have met their burden of showing the Rule 23(b)(2) requirements are met.

18 **III. RULE 23(A)**

19 Under Federal Rule of Civil Procedure 23(a), a case is appropriate for certification if:

- 20 (1) the class is so numerous that joinder of all members is  
21 impracticable;  
22 (2) there are questions of law or fact common to the class;  
23 (3) the claims or defenses of the representative parties are typical of  
the claims or defenses of the class; and  
24 (4) the representative parties will fairly and adequately protect the  
interests of the class.

25 Fed. R. Civ. P. 23(a).

26 **A. Numerosity**

27 The Court previously held Plaintiffs had satisfied the numerosity prerequisite because they  
28 stated the GreenSky Consumer Program included thousands of individuals, and GreenSky did not  
“dispute this number or contest numerosity.” (Dkt. No. 294 at 29.) As neither party argues any

1 new evidence or law affects the numerosity factor, Plaintiffs have satisfied numerosity.

2 **B. Commonality**

3 “To show commonality, Plaintiffs must demonstrate that there are questions of fact and  
4 law that are common to the class.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir.  
5 2011) (citing Fed. R. Civ. P. 23(a)(2)). “What matters to class certification . . . is not the raising of  
6 common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to  
7 generate common *answers* apt to drive the resolution of the litigation.” *Ruiz Torres v. Mercer*  
8 *Canyons Inc.*, 835 F.3d 1125, 1133 (9th Cir. 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564  
9 U.S. 338, 350 (2011)). To satisfy Rule 23(a)(2)’s commonality requirement, “even a single  
10 common question” is sufficient. *Dukes*, 564 U.S. at 359 (cleaned up).

11 The Court previously held Plaintiffs satisfied the commonality requirement because one  
12 “central issue in the case is whether GreenSky’s business falls within the purview of the Credit  
13 Act and Financing Law.” (Dkt. No. 294 at 30.) Because “even a single question” is sufficient for  
14 commonality, and the answer to this question “will resolve an issue that is central to the validity  
15 of each one of the claims in one stroke,” Plaintiffs had met their burden on commonality. (*Id.*  
16 (quoting *Dukes*, 564 U.S. at 350, 359).)

17 GreenSky now argues the merchant declarations demonstrate a lack of commonality.  
18 However, GreenSky relies on Ninth Circuit cases discussing the predominance requirement under  
19 Rule 23(b)(3) rather than Rule 23(a)’s commonality requirement. *See, e.g., Bowerman*, 60 F.4th at  
20 469 (“[I]ndividual inquiries clearly predominate over the common questions in the case, and the  
21 district court abused its discretion in holding otherwise.”); *Lara v. First Nat’l Ins. Co. of Am.*, 25  
22 F.4th 1134, 1138 (9th Cir. 2022) (“[T]he district court did not abuse its discretion in finding that  
23 common questions do not predominate.”); *Van*, 61 F.4th at 1067-68 (finding the defendant’s  
24 “scant evidence . . . is not sufficient to defeat predominance”); *Ambrosio*, 154 F.4th at 1112-13  
25 (“[I]t cannot be said that common issues ‘predominate over any questions affecting only  
26 individual members.’”). Although “[t]he requirements of Rule 23(b)(3) overlap with the  
27 requirements of Rule 23(a),” a plaintiff’s failure to prove predominance does not mean the  
28

1 plaintiff cannot show commonality. *See Olean*, 31 F.4th at 664 (explaining commonality is  
2 necessary to prove predominance); *see also Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013)  
3 (“Rule 23(b)(3)’s predominance criterion is [] more demanding than Rule 23(a).”). So,  
4 GreenSky’s argument is unavailing.

5 Here, there remains a common question whether GreenSky’s business falls within the  
6 purview of the Credit Act and Financing Law. Specifically, whether GreenSky is a credit services  
7 organization and therefore falls within the purview of Credit Act will “resolve an issue that is  
8 central to the validity of each one of the [Class Members’ Credit Act] claims in one stroke.” *See*  
9 *Dukes*, 564 U.S. at 350. GreenSky’s contentions regarding how Plaintiffs will prove or GreenSky  
10 will disprove this common question go to predominance, not commonality.

11 So, Plaintiffs have shown commonality.

12 **C. Typicality**

13 The typicality requirement is satisfied if “the claims or defenses of the representative  
14 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The test of  
15 typicality serves to ensure that the interest of the named representative aligns with the interests of  
16 the class.” *Ruiz Torres*, 835 F.3d at 1141 (quotations and citations omitted). “Under the Rule’s  
17 permissive standards, representative claims are ‘typical’ if they are reasonably coextensive with  
18 those of absent class members; they need not be substantially identical.” *Id.* (cleaned up).  
19 “Measures of typicality include ‘whether other members have the same or similar injury, whether  
20 the action is based on conduct which is not unique to the named plaintiffs, and whether other class  
21 members have been injured by the same course of conduct.’” *Id.* (quoting *Hanon v. Dataproducts*  
22 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

23 The Court previously held the Plaintiffs had established typicality because Ms. Barnes and  
24 Mr. Ferguson sought to represent a class of California consumers subject to the same course of  
25 conduct: overpayment on their GreenSky-financed home-improvement projects due to GreenSky’s  
26 allegedly unlawful fee collection. (Dkt. No. 294 at 31.) GreenSky now argues its merchant  
27 declarations defeat typicality because “[e]ven if Ms. Barnes and Mr. Ferguson succeeded in  
28 proving that *their* merchants passed through fees to *them* in *their* transactions . . . that would say

1 nothing about whether thousands of *other* merchants passed through fees to *other* class members.”  
 2 (Dkt. No. 402 at 29.) But Plaintiffs plan to prove Ms. Barnes and Mr. Ferguson paid pass-through  
 3 fees in the same way they plan to prove every other Class Member paid pass-through fees: Dr.  
 4 Williams’s report. So, contrary to GreenSky’s assertion, this remains a case in which ““as goes  
 5 the claim of the named plaintiff, so go the claims of the class.”” *See O’Connor*, 197 F.R.D. at 412  
 6 (quoting *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998) (en banc)). And unlike  
 7 in *Gartin v. S & M NuTec LLC*, 245 F.R.D. 429 (C.D. Cal. 2007), where the plaintiff sought  
 8 different relief from the absent class members, Ms. Barnes and Mr. Ferguson seek the same relief  
 9 as the absent class members. *See id.* at 435 (finding no typicality because the named plaintiff  
 10 “seek[s] relief for her dog’s existing injuries, but other class members [] seek costs for monitoring  
 11 their dogs’ health to ensure no injuries arise in the future”).

12 So, Plaintiffs have shown typicality.

13 **D. Adequacy**

14 Like typicality, adequacy of representation ultimately concerns whether the class action  
 15 device will protect the interests of absent class members. *See Dukes*, 564 U.S. at 349 n.5. Courts  
 16 ask, “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class  
 17 members and (2) will the named plaintiffs and their counsel prosecute the actions vigorously on  
 18 behalf of the class?” *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012)  
 19 (cleaned up); *see also Brown v. Ticor Title Ins.*, 982 F.2d 386, 390 (9th Cir. 1992) (noting  
 20 adequacy of representation “depends on the qualifications of counsel for the representatives, an  
 21 absence of antagonism, a sharing of interests between representatives and absentees, and the  
 22 unlikelihood that the suit is collusive.” (cleaned up)); Fed. R. Civ. P. 23(g)(1).

23 The Court previously held “[g]iven no conflicts are apparent between the named plaintiffs  
 24 and other class members, and class counsel is experienced in class action employment litigation,  
 25 the adequacy requirement is met.” (Dkt. No. 294 at 33 (citing Dkt. No. 235-4 ¶¶ 3-7; Dkt. No.  
 26 241-3 ¶¶ 3-9; Dkt. No. 241-4 ¶¶ 3-7).) In a footnote, GreenSky now argues the named “Plaintiffs’  
 27 prosecution of their own claims will not advance the claims of the vast swaths of the class, given  
 28 the variability in facts shown by the merchant declarations.” (Dkt. No. 402 at 29 n.11.) But that

1 GreenSky may present different rebuttal evidence for each Class Member does not mean named  
2 Plaintiffs are inadequate. To the contrary, as explained above, Ms. Barnes and Mr. Ferguson plan  
3 to prosecute their claims by persuading the jury of Dr. Williams’s report, which concludes, among  
4 other things, every Class Member was injured.

5 So, there remain no conflicts between named Plaintiffs and absent Class Members, and  
6 Plaintiffs have shown adequacy.

7 **CONCLUSION**

8 For the reasons stated above, Plaintiffs have shown, despite GreenSky’s new evidence, the  
9 requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) are met. The Court  
10 therefore DENIES GreenSky’s motion to decertify Plaintiffs’ 23(b)(2) and 23(b)(3) classes.

11 The parties have agreed on the proposed long and short form notices. (Dkt. No. 388.)  
12 However, in light of GreenSky’s impending motion to decertify the class, the Court on March 5,  
13 2026 declined to order class notice. (Dkt. No. 396.) Having denied GreenSky’s motion to  
14 decertify, the Court orders class notice in accordance with the class notice plan granted at Docket  
15 No. 304. The parties shall file a copy of the class notice, once issued, on the docket.

16 The Court sets a further case management conference for September 23, 2026 at 2:00 p.m.  
17 via Zoom video. An updated joint case management conference statement is due one week in  
18 advance. Plaintiffs shall also file a proposed verdict form by September 9, 2026.

19 This Order disposes of Docket No. 402.

20 **IT IS SO ORDERED.**

21 Dated:

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JACQUELINE SCOTT CORLEY  
United States District Judge