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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MONICA RAEL and ALYSSA HEDRICK, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE CHILDREN'S PLACE, INC., a Delaware corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 3:16-cv-00370-GPC-LL

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD

Date: July 31, 2020
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Crtrm: 2D

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Plaintiffs Monica Rael and Alyssa Hedrick ("Plaintiffs") submit this memorandum in support of their unopposed motion for an award of attorneys' fees and costs of $1,080,000 and incentive awards to Plaintiffs of $2,500 each (the "Motion") to be considered by the Court at the Final Approval Hearing currently set for July 31, 2020, at 1:30 p.m. in Courtroom 2D of the above-referenced court before the Honorable Gonzalo P. Curiel.

I. INTRODUCTION

Plaintiffs request that the Court approve the Parties' agreed upon award of attorneys' fees of $1,080,000, inclusive of all costs, to be paid by Defendant The Children's Place, Inc. ("Defendant" or "TCP") as set forth in the Settlement Agreement.[1] The requested fee represents approximately 19.2 percent of the Settlement's total monetary value of $5,613,988, and is a reasonable request given the risks and results achieved and is well within the Ninth Circuit's 25% benchmark for such fee awards.[2] Plaintiffs also request that the Court approve a $2,500 service award to the Class Representatives, Plaintiff Rael and Plaintiff Hedrick, for their contributions in pursuing this litigation.

The Settlement provides real and immediate benefits to the Class. Under the Settlement, TCP will distribute 800,000 Vouchers to Class Members. *See* Settlement Agreement at § 1.33. Claimants who submit a valid, timely Claim Form will receive Voucher(s), which allow Class Members to elect to receive either (1) $6 off a purchase (no minimum purchase) or (2) 25% off a purchase (of the first $100), at any of Defendant's

[1] Capitalized terms herein, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement and Release. ECF No. 60-2, Ex. 1(the "Settlement Agreement" or "Settlement").

[2] This percent accounts for a minimum Voucher fund of $4,800,000 (presuming all 800,000 guaranteed Vouchers are used at $6 value rather than the more substantial 25% discount option) and the costs of Class notice and administration and recoverable litigation expenses, all of which TCP has agreed to pay under the Settlement and are properly considered benefits to the Class when computing overall Settlement value. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015). Notice and Claims costs were projected at $763,971 as of March 19, 2020, but may likely increase before the end of the Claims period, as the Settlement Agreement provides for an administration cost cap of $1,000,000 to be paid by Defendant. Segregating Notice costs and recoverable litigation expenses from the calculation, the requested fee award comprises 22.5% of the minimum Voucher fund ($4,800,000), still less than the 25% benchmark recognized by the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

stores in the United States or online. *Id.* at § 1.32. Claimants may receive multiple Vouchers under a tiered benefit structure based upon the total dollar amount of the qualifying purchases they made during the Class Period. *Id.* at § 2.1. For example, Claimants who spent less than $50 on Qualifying Purchases will receive 1 Voucher; those who spent between $50.01–150 can receive 2 Vouchers; and those who spent over $150 can receive 3 Vouchers. *Id.* at §§ 2.1–2.2.

Claimants may receive additional Vouchers (beyond their tiered benefit) if the Voucher Fund (800,000) is not exhausted in the first round of distribution. *Id.* at § 2.3. In this scenario, if the number of Vouchers remaining after the initial distribution exceeds the amount that was initially distributed, then all Claimants will receive additional Vouchers in the type and number they originally elected on their Claim Form. *Id*. In other words, each Claimant will receive the same individual benefit again. Alternatively, if the number of Vouchers remaining is less than the total number initially distributed, then the final distribution will allow Claimants to receive a pro rata portion of the remaining $6 Voucher value. Settlement Agreement at § 2.3

The Vouchers are an alternative to cash and are not "coupons" within the meaning of Class Action Fairness Act of 2005 ("CAFA"), 28 USC 1711, *et seq*, as this Court previously held in its Preliminary Approval Order. ECF No. 69 (the "Order") at 18. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 at 951.[3] The Vouchers are redeemable for a six-month period upon receipt, are fully transferrable, stackable (if used at the $6 value), and may be used in connection with any promotion or discount. Settlement Agreement at § 1.32. The Vouchers provide a real benefit to Class Members for use at TCP, which sells fashionable merchandise at value prices.

[3] The supplemental briefing provided by Plaintiffs in support of their motion for preliminary approval show the number and range of products available at TCP for less than $6, confirming that the Vouchers provide Class Members the ability to obtain TCP merchandise of their choice without expending their own funds. *See* ECF Nos. 66-67. TCP offers approximately 1,024 unique items for sale online and in its retail and outlet stores, of which approximately 760 items are offered for under $10.00 and 435 items are offered for under $6. ECF No. 66 at ¶ 4. Thus, approximately 42% of all items offered for sale by TCP could be purchased utilizing the $6.00 Voucher. *Id.*

The results achieved in this litigation and the efforts required support the requested fee award. Accordingly, Plaintiffs respectfully request the Court grant this unopposed Motion.

II. RELEVANT BACKGROUND

Plaintiffs' Counsel conducted a years-long investigation into TCP's sale discounting practices at its retail and outlet stores.[4] ¶¶ 22–23. The investigation revealed that TCP was engaged in the pervasive practice of continuously discounting merchandise from "original" or "regular" prices for a substantial period of time, and sometimes, without ever offering the merchandise at its regular price at all. ¶¶ 1, 22–28. Plaintiff Rael filed her initial complaint on February 11, 2016, and her first amended complaint on April 25, 2016. ECF Nos. 1, 9. Plaintiff Alyssa Hedrick joined the action in the second amended complaint filed on August 15, 2016. ECF No. 19. Plaintiffs' TAC was filed November 22, 2017 (ECF No. 37) as Exhibit B to Plaintiffs' Unopposed Motion for Leave to File Third Amended Complaint, which was granted November 27, 2017. ECF No. 38.

The TAC alleged that, prior to August 2015, TCP employed a systematic advertising scheme of continuously discounting its merchandise at sale prices that were significantly lower than the "regular" or "original" price tag prices for its exclusive branded merchandise at its retail and outlet stores. ¶¶ 1–7. Plaintiffs further alleged that the advertised discounts were phantom markdowns because the represented "original" price tag prices were false as Defendant rarely, if ever, offered for sale the merchandise at the purported "original" prices. ¶¶ 2, 6. Defendant's pricing practices misled consumers into believing they were receiving a significant discount on merchandise they would not have purchased absent the purported discount. ¶ 14. This pricing scheme was intended to increase sales and had the effect of depriving consumers of the benefit of their bargain. ¶ 4. Plaintiffs sought damages, restitution, and injunctive relief under California's Unfair Competition Law, CAL. BUS. & PROF. CODE §§ 17200, *et seq.*; California's False Advertising Law ("FAL"), CAL. BUS. &

[4] All subsequent citations to ¶ _ relate to the Third Amended Complaint (ECF No. 37) ("TAC") unless otherwise indicated.

PROF. CODE §§ 17500, *et seq.*; and California's Consumer Legal Remedies Act ("CLRA"), CAL. CIV. CODE §§ 1750, *et seq.*, on behalf of themselves and a nationwide class.

Before Settlement was reached, Class Counsel committed substantial time and effort to litigating this case, which is set forth in detail in the concurrently filed Declaration of Todd D. Carpenter In Support Of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Incentive Awards ("Carpenter Decl.") at ¶ 6, including, *inter alia*, multiple pleading amendments, discovery, vetting and engagement of experts, law and motion work, and preparing for two full-day mediations. After reaching a Settlement, Plaintiffs' filed an Unopposed Motion for Preliminary Approval of Settlement and Provisional Class Certification, which was heard on February 8, 2018. ECF Nos. 36, 42. At that time, the Court directed Plaintiffs to amend the motion to provide additional information regarding the Class Notice Plan. ECF No. 42. Shortly thereafter, the Parties jointly moved the Court to stay this case pending the Ninth Circuit's *en banc* rehearing and decision in *In Re Hyundai & Kia Fuel Economy Litig.*, 881 F.3d 679 (9th Cir. 2018), where the Ninth Circuit had formerly decertified a nationwide settlement class on choice of law grounds relevant to this Action. ECF No. 48. The Parties filed multiple Status Reports with the Court providing updates on the status of *Hyundai* in the Ninth Circuit and the Parties' intentions with regard to continuing the stay. ECF Nos. 50, 53. Following the Ninth Circuit's *en banc* majority opinion affirming the district court's order and judgment certifying the nationwide settlement class, the stay was lifted in this case on June 17, 2019. ECF No. 57.

On October 31, 2019, Plaintiffs filed an Amended Unopposed Motion for Preliminary Approval of Settlement and Provisional Class Certification, which was heard on December 6, 2019. ECF Nos. 60, 63. On December 10, 2019, the Court ordered the Parties to supplement the record with additional factual support, which was filed on January 3, 2020. *See* ECF Nos. 65-68. The Court then entered the Order, granting

preliminary approval of the Settlement and Notice plan, and certifying the provisional Settlement Class on January 28, 2020. Order (ECF No. 69).[5]

III. FEE AWARD STANDARDS

A. The Provision For Payment of Attorneys' Fes and Costs In The Settlement Is Appropriate And Should Be Enforced

The United States Supreme Court in *Evans v. Jeff D*, 475 U.S. 717, 738 n.30 (1986) held the parties to a class action properly may negotiate not only the settlement of the action itself, but also the payment of attorney fees. The Supreme Court further held that negotiated, agreed-upon attorney fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The Court stressed that the trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson*, 465 U.S. 886, 902 n.19 (1984).

Here, the agreed-upon fee of $1,080,000 was negotiated during adversarial bargaining only after the substantive terms of the Settlement had been negotiated. Carpenter Decl. ¶ 4. The fee fairly reflects the marketplace value of Class Counsel's services. As the United States Supreme Court instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives

[5] Since preliminary approval, the agreed-upon Notice plan has proceeded on schedule and has been largely well received. Settlement administrator Kurtzman Carson Consultants LLC ("KCC") has sent approximately 11,622,466 Email Notices to potential Class members for whom Defendant maintained contact information and, with approximately 30 days left in the claims period (expiring May 30, 2020), over 105,000 Vouchers have been claimed. KCC also developed and administered the dedicated Settlement Website, www.raeltcppricingsettlement.com, where relevant documents such as the Settlement Agreement and Full Notice (in English and Spanish) can be viewed and downloaded. The Settlement Website provides information about the Settlement, including a description of the Action, the Settlement relief, important dates and deadlines, and Class Members' legal rights. KCC also initiated on online media campaign to notify Class Members of the Settlement through the Google Display Network. Settlement Agreement at § 3.3(c). As of April 26, 2020, 174,594,723 online impressions had been generated from the campaign. KCC also implemented ads in USA Today noticing the Settlement and administered a toll-free telephone hotline where potential Class Members can obtain information about the Settlement in English and Spanish. The results of Notice and Claims Administration will be discussed in greater detail and supported by declaration in Plaintiffs' forthcoming final approval motion.

> roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326, 338 (1980).

Class Counsel is also entitled to fees under relevant statutory authority. The Settlement releases Defendant from all claims that were alleged in the Action, including violations of the CLRA, CAL. CIV. CODE §§ 1750, *et seq.*, which provides for recovery of attorneys' fees and costs to the prevailing party. *See* CAL. CIV. CODE § 1780(e) ("The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section"). While the CLRA does not define "prevailing plaintiff," the trend is toward a "pragmatic approach" that determines prevailing party status "based on which party succeeded on a practical level." *Graciano v. Robinson Ford Sales*, 144 Cal. App. 4th 140, 150 (2006). Based upon the preliminarily-approved Settlement, Plaintiffs qualify as the "prevailing plaintiff[s]" under the CLRA and are entitled to fees pursuant to that statute. Additionally, attorneys' fees may be awarded here under the substantial benefit and/or private attorney general doctrines pursuant to CAL. CIV. PROC. CODE § 1021.5.[6]

As for calculating the amount, the Ninth Circuit approves "two separate methods for determining attorneys' fees," the percentage method and the lodestar/multiplier method. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). However, federal courts, including the Ninth Circuit, have developed a strong preference for using a percentage of the recovery method. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Likewise, California state "[c]ourts recognize two methods for

[6] Under the private attorney general doctrine, attorneys' fees are awarded in cases that enforce rights affecting public policies. *See California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 741 (1987) ("The fundamental objective of section 1021.5 is to encourage suits effectuating a strong public policy by awarding substantial attorney's fees to those who successfully bring such suits.") Successful litigants are entitled to fees when they have: (1) enforced an important right affecting the public interest; (2) conferred a significant benefit on the public or a large class of persons; and (3) imposed a financial burden on the plaintiff out of proportion to his individual stake. *Baggett v. Gates*, 32 Cal.3d 128, 142 (1982). These criteria are easily met here. *See, e.g.*, *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1418 (Ct. App. 1991), disapproved by *Olson v. Auto. Club of S. California*, 42 Cal. 4th 1142, 179 P.3d 882 (2008) (Consumer protection litigation has "long been judicially recognized to be vital to the public interest.") (internal citations omitted).

calculating attorney fees in civil class actions: the lodestar/multiplier and the percentage of recovery method." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001). *See also Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 26 (2001) ("[p]ercentage fees have traditionally been allowed in such common fund cases"); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809 (1996) (recognizing that the percentage method is appropriate where "the amount was a 'certain or easily calculable sum of money'") (citing *Serrano v. Priest ("Serrano III")*, 20 Cal. 3d 25, 35 (1977)); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 65-66 (2008). The key advantage of the percentage method is that it focuses on the benefit conferred on the class resulting from the efforts of counsel. *Lealao*, 82 Cal. App. 4th at 48 (percentage of benefit method is result-oriented rather than process oriented). Using either standard, the requested fee award is fair and reasonable.

B. The Percentage Method Is the Appropriate Method for Calculating Attorneys' Fees in This Case

Where the benefit to the class is quantifiable, courts have discretion to employ the lodestar method or percentage-of-recovery method. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *In re Hydroxycut Mktg. & Sales Practices Litig.*, No. 09-2087 BTM(KSC), 2014 U.S. Dist. LEXIS 162106, at *188-89 (S.D. Cal. Nov. 18, 2014) (Moskowitz, C.J.) (utilizing percentage-of-recovery method where settlement value was based in part on free product option).

In quantifying the value of settlement consideration, courts generally calculate the full amount available under the settlement, regardless whether all Class members claim their payment. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-81 (1980); *Williams v. MGM-Pathe Communs. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (the district court abused its discretion by calculating attorneys' fees as one-third of the class members' claims rather than one-third of the entire settlement fund); *Lee v. Enterprise Leasing Company-West*, No. 3:10-CV-00326-LRH-WGC, 2015 U.S. Dist. LEXIS 64027, at *27-28 (D. Nev. May 15, 2015) ("the weight of precedent in this district and the Ninth Circuit favors considering the total amount available to the class").

As this Court previously held, the Settlement is not a coupon settlement within the meaning of CAFA. Order at 13-18. Accordingly, attorneys' fees are not evaluated here "on the value to class members of the coupons that are redeemed," (Order at 14 (citing 28 U.S.C. § 1712(a)), but, instead, on the full amount available under the Settlement. *Boeing Co.*, 444 U.S. at 480-81. Moreover, Class Notice, administration and litigation expenses are properly considered part of the total Class recovery in calculating attorneys' fees as a percent thereof. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 953 (basing fee award of 25% of entire settlement fund, including notice and administration costs, and litigation expenses); *see also Staton v. Boeing Co.*, 327 F.3d 938, 974-75 (9th Cir. 2003) (notice costs included).

Here, 800,000 Vouchers will be distributed following approval of the Settlement. The Voucher fund is worth $4,800,000 if used as the $6 value but has a maximum theoretical value of $20,000,000 if every Voucher were used to obtain the highest discount available.[7] Additionally, Defendant is paying the cost of Class Notice and administration—currently projected at $763,971[8]—and litigation expenses of $50,017. Thus, as stated above, a conservative total Settlement valuation is $5,613,988 (provided Vouchers used at $6 value).

IV. THE REQUESTED FEE IS FAIR AND REASONABLE

The Ninth Circuit "benchmark" for awarding fees is 25% of the total recovery. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). However, the ultimate inquiry is whether the end result is reasonable. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000). Focusing first on the percentages, Plaintiffs seek a fee award (including all reimbursable litigation costs) that is 19.2% of the Settlement's total monetary value of $5,613,988, which represents the conservative Voucher fund valuation of $4,800,000,

[7] $6 x 800,000 = $4,800,000; $25 x 800,000 = $20,000,000.

[8] Following the Order, the Parties agreed to implement a toll-free Settlement hotline through KCC available in English and Spanish, which brought the cost of Notice and Claims administration to approximately $763,971 according to KCC's March 19, 2020 estimate. Because the Settlement provides for a Notice and Claims administration cap of $1,000,000 to be paid by Defendant, this figure may likely increase before Plaintiffs move for final approval. *See* Settlement Agreement at § 2.10.

$763,971 in Notice and administration costs and $50,017 in recoverable litigation costs. Even excluding the latter two sums, the fee request represents 22.5% of the conservative $4,800,000 Voucher fund, still below the Ninth Circuit's 25% benchmark. Further, the fee request represents only 5.4% of the Voucher fund's maximum theoretical value ($20,000,000) and 5.2% of the maximum theoretical value plus notice, administration and litigation expenses ($20,000,000 plus $763,791 plus $50,017). At a modest multiplier of approximately 1.61 to Class Counsel's unadjusted lodestar of $639,211 (discussed below), the requested fee of $1,080,000 is fair and reasonable under any of these calculations.

Further, the requested fee award is fair and reasonable as a percentage of the total recovery given Class Counsel's efforts in this case. The Parties negotiated the agreed-upon fees and costs only after negotiating and agreeing to all other material terms of the Settlement. *See, e.g.*, Manual for Complex Litigation (4th ed. 2004) at ¶ 21.7 ("Separate negotiation of the class settlement before an agreement on fees is generally preferable."). By deferring the fee negotiation until that time, Class Counsel aligned their interests with the interests of the Class, and Defendant had every incentive to negotiate as low a fee as possible to decrease its overall costs. *See Lealao*, 82 Cal. App. 4th at 33 ("The award to the class and the agreement on attorney fees represent a package deal. Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class' recovery.").[9] The resulting agreed-upon fee award, which was proposed by Mediator Hon. Edward A. Infante (Ret.), was the product of a non-collusive adversarial negotiation considering Class Counsel's prior and future efforts and the excellent results achieved. In agreeing to pay $1,080,000 in the aggregate for fees and costs, Defendant also considered the possibility that Class Counsel might apply for and receive a much larger award, especially in the event of any objection or appeal of the Settlement, which would necessarily lead to additional protracted litigation and efforts by Class Counsel to defend

[9] Thus, if the entire $1,080,000 in attorneys' fees paid by Defendant is included in the denominator, along with the Voucher fund of $4,800,000 and notice costs of $763,971, the fee request represents approximately 16.3% of the total recovery. Note that in this calculation, reimbursable litigation costs are necessarily included in the $1,080,000 fee award.

the Settlement. Rather than take these risks, Defendant agreed to pay the requested award subject to Court approval.[10]

Although Plaintiff's fee request is below the acceptable threshold recognized by the Ninth Circuit, in determining whether the award is reasonable, the Ninth Circuit also directs district courts to consider several factors, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the quality of work; and (5) the contingent nature of the fee and the financial burden. *Vizcaino*, 290 F.3d at 1048-50. As discussed below, each of these factors supports the requested award.

A. Class Counsel Achieved Excellent Results for the Class

Courts consistently recognize the results achieved is the most important factor to consider in determining the reasonableness of a fee request. *Hensley*, 461 U.S. at 436 ("most critical factor is the degree of success obtained"). Class counsel achieved exceptional results in this case. The Parties reached an arms-length Settlement with the assistance of former federal chief magistrate judge after an extensive investigation into Defendant's practice and litigation of this case. *See* Carpenter Decl. ¶ 6.

Defendant denied liability and challenged Plaintiffs' ability to certify the Class. Continued litigation of this Action presented Plaintiffs with substantial legal risks of certifying the Class, proving liability, presenting a viable damages model, and defeating any appeals relating to these issues. In the face of these significant challenges, Plaintiffs secured real and valuable benefits for the Class. As a practical matter, it is uncertain whether this Court would certify a class for litigation purposes. Even if the Action were successfully tried as a Class action, the actual damages proven at trial would be less than the $6 Vouchers. Plaintiffs' own expert, Christian Tregillis, CPA, ABV, CFF, CLP, estimated that damages could be as low as $0.50 per item of clothing purchased at TCP. ECF No. 60-2, ¶ 7. Rather than attempt to resolve the case by compensating Class

[10] Further proof that fees did not in any way distract from the Class benefit negotiation is evidence by § 2.8 of the Settlement, which provides that any portion of the fee request not awarded by the Court, up to $1,080,000, will be awarded to the Class in the form of additional $6 Vouchers. Thus, Defendant's total payout under the Settlement remains the same.

Members for these nominal actual damages (should Plaintiffs succeed to that point), the Parties elected to utilize the Voucher structure to deliver something of greater tangible value sooner to Class Members motivated to make a Claim. The $6 Voucher accomplishes this objective. The Vouchers allow Class Members to purchase approximately 42% of merchandise sold by TCP. *See* Order (ECF No. 69) at 15 ("Of the 1,024 items available for purchase online in October 2019, 435 were listed for sale under $6 (i.e., 42%).") (citing ECF No. 66 at ¶ 4).

Thus, the Settlement provides Class Members with prompt, relatively high-value benefits while avoiding the risks attendant to proving liability and (admittedly lower) actual damages.

B. Class Counsel Assumed Significant Risks

The requested fee award is reasonable in light of the risks incurred by Class Counsel. From the outset, Plaintiffs faced significant risks, including failure to certify the putative Class (or having it subsequently decertified), failing to prove liability and/or damages. These risks were not merely hypothetical. If litigation proceeded, under current California law, it is possible that Plaintiffs would be unable to prove that the Class is entitled to any amount in restitution. Indeed, this risk is significant in light of the Ninth Circuit's decision in *Chowning*, where it affirmed the district court's grant of summary judgment to a defendant facing similar deceptive pricing allegations. *Chowning v. Kohl's Dep't Stores, Inc.*, 2016 WL 1072129 (C.D. Cal. Mar. 15, 2016) aff'd, 735 F. App'x 924, amended on denial of reh'g, 733 F. App'x 404, aff'd, 733 F. App'x 404 (9th Cir. 2018). The district court found that the plaintiff had failed to submit a viable measure of restitution and that such a measure was unlikely under current California law. *Id.* at *5–13; *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) ("*Spann II*") ("Even if plaintiff were to prevail at trial, there is a very real risk that plaintiff could recover nothing."); *In re Tobacco Cases II*, 240 Cal. App. 4th 779, 801-02 (Sept. 28, 2015) (declining to award restitution because plaintiffs failed to establish a price/value differential despite prevailing on liability under the UCL and FAL).

Furthermore, Class Counsel assumed the risk of Plaintiffs' ability to certify a nationwide Class nationwide being vitiated by the Ninth Circuit's *en banc* decision of *Hyundai*, *supra*. Had that opinion come down differently, Plaintiffs would have lost the ability to certify a nationwide Class for Settlement or litigation purposes and all of Class Counsel's expenses in time and money related to doing so would have been in vain.

Given these considerations, Class Counsel incurred 100% of the risk, including all litigation costs, devoting substantial time and labor into investigating Defendant's wrongdoing, becoming retained by clients in other states, including New York and Florida (ECF No. 60-2, ¶ 9), evaluating Defendant's liability, analyzing potential legal theories, drafting the complaints, engaging in significant research and additional investigation, and attending mediations. Class Counsel forewent other employment in order to devote the time necessary to pursue this litigation. Carpenter Decl. ¶ 3. Throughout this time, there was no assurance of success or compensation. Therefore, the requested fee award is reasonable in light of the risks incurred by Class Counsel.

C. Class Counsel's Skill and The Complexity of the Litigation

Litigating this class action through trial would be time-consuming and expensive due to the complexities of proving liability and damages. Defendant would oppose Plaintiff's motion for class certification, the Parties would likely each move for summary adjudication, and would each retain numerous experts to analyze the issues such as determining the effect of Defendant's pricing practices on consumers and the price premium attributable to Defendant's purported sale discounts. To this last point, Class Counsel retained economics expert Christian Tregillis to substantiate Plaintiffs' damages theory and provide an opinion regarding available methodologies to calculate lass-wide damages. ECF No. 60-2, ¶ 5. Using a discount compression model, Mr. Tregillis opined on the amount that consumers overpaid as a result of the false representations Defendant made about its advertised reference prices as compared to a prices that would have put consumers in an equally well off position had known the true reference price (if any) of purchased product. ECF No. 60-2, Ex. 2 at ¶ 53. For instance, using an average discount

of 20% and a 50% discount compression, Mr. Tregillis projected that consumers' individual damages were thus 10% of the respective purchase price. Mr. Tregillis generated a comprehensive expert report outlining his proposed damages theory, which effectively assisted the Parties in continuing Settlement discussions and in contemplating a subsequent round of mediation. ECF No. 60-2 at ¶ 6. Class Counsel analyzed Mr. Tregillis' opinions against recent case law rejecting restitution-based damages theories in similar deceptive discount pricing cases. *See, e.g.*, *Chowning*, 733 Fed. Appx. 404 (affirming district court's grant of summary judgment that rejected each of plaintiff's proposed measures of restitution); *Stathakos v. Columbia Sportswear Company*, 2017 WL 1957063 (N.D. Cal. May 11, 2017) (granting summary judgment and rejecting each of plaintiff's proposed measures of restitution). By reaching this Settlement, the Parties avoid protracted litigation of these complex issues and avoided incurring significant expert fees.

Even after the Parties concluded the first mediation, Class Counsel continued to investigate Defendant's practices in stores outside of California to confirm that the deceptive pricing scheme was likely occurring nationwide. ECF No. 60-2, ¶ 9. Though the second full day of mediation with Judge Infante concluded with the Parties ultimately agreeing to all material terms of the Settlement and executing a Memorandum of Understanding thereafter (*Id.* at ¶ 10), each aspect of this Settlement was heavily negotiated in the weeks that followed, including the distribution scheme of the Vouchers, and their specifications, such as expiration date and proof of purchase requirements. Throughout this process, both sides were represented by counsel highly experienced in complex class litigation, which lent to the careful consideration of all strengths and weaknesses in order to achieve efficient resolution. *Id.* at ¶ 13.

D. Class Counsel Provided High Quality Work

Class Counsel are experienced complex class litigation attorneys who have a thorough understanding of the issues presented by false sale discounting cases, and through their skill and reputation, Class Counsel obtained a Settlement that provides an outstanding result for the Class. This result would not have been reasonably possible were it not for the

experience and reputation of Class Counsel in this area of law. *See generally* Carpenter Decl. ¶¶ 9-14. Throughout this Action, Class Counsel remained well-versed in the relevant law, the challenges presented in calculating damages on a Class-wide basis, and the risks of continued litigation and recovery.

The concurrently filed Carpenter Declaration discusses at length the extent of Class Counsel's work in this case. Class Counsel spent significant time, before and after commencing litigation, investigating Defendant's pricing practices and working with Plaintiffs' damages expert to assess Defendant's liability against potential economic remedies. The Parties engaged in informal discovery and eventually participated in multiple mediations with former federal chief magistrate judge and highly regarded mediator and, Hon. Edward A. Infante (Ret.), that ultimately resulted in a mutually satisfactory Settlement and Notice plan providing an excellent benefit to the Class.

The high quality of the Plaintiffs' opposition is a further testament to the quality of Plaintiff's representation. Defendant is a large corporation, represented by skilled counsel from a law firm with significant resources and skilled in class action defense. Lead defense counsel has a well-deserved reputation in class action litigation in general. Courts have repeatedly recognized that the caliber of opposing counsel should be taken into consideration. *See, e.g.*, *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, No. 04 CIV. 8144 (CM), 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23, 2009) (reasonableness of fee was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations.").

E. Class Counsel Took This Case on a Contingent Basis

"The risk that an attorney takes in the underlying public interest litigation has two components: the risk of not being a 'successful party,' i.e., not prevailing on the merits, and the risk of not establishing eligibility for an attorney fee award." *Graham v. Daimler Chrysler Corp.*, 34 Cal.4th 553, 583 (2004). Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Nevertheless, Class Counsel demonstrated to Defendant that it faced significant exposure, compelling it to enter into the

Settlement Agreement and provide a significant benefit to the Class. *See Downey Cares v. Downey Community Dev. Comm'n*., 196 Cal. App. 3d 983, 997 (1987) (enhanced fees in contingent fee cases recognize the delay in receipt of full payment of fees); Posner, Economic Analysis of Law (4th ed. 1992) at 534, 567 ("A contingent fee must be higher than a fee for the same legal services paid as they are performed.").

F. No Class Members Have Objected to the Requested Fees

Plaintiffs' intention to request payment of Class Counsel's attorneys' fees was clearly disclosed to each Class Member in the Court-approved Full Class Notice, Email Notice, and in information found on the Settlement Website. *See* ECF No. 60-2, Ex. 1 (Settlement Agreement), Exs. B (Full Notice) and C (Email Notice). As of the filing of this brief, there have been no objections to the request for attorneys' fees. The lack of objection signifies the Class Members' approval of the requested attorneys' fees. *See In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *70 (C.D. Cal. June 10, 2005) ("The existence or absence of objectors to the requested attorneys' fee is a factor in determining the appropriate fee award.").

G. The Lodestar/Multiplier Cross-Check Supports The Reasonableness Of The Requested Fee Award

Courts may "cross-check" the proposed fee award against the counsel's lodestar to ensure its reasonableness. *Vizcaino*, 290 F.3d at 1050. The goal of both the lodestar and percentage of the recovery methodologies is the determination of a reasonable fee that is consistent with market rates. *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig*., 109 F.3d 602, 607 (9th Cir. 1997) ("Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion.").

A "lodestar" calculation multiplies the number of hours reasonably expended on the litigation by counsel's reasonable hourly rates. *In re Bluetooth*, 654 F.3d at 941. That figure is then augmented or multiplied to reflect additional "reasonableness" factors that must be considered, including: (1) the quality of the representation; (2) the benefit obtained for the

class; (3) the complexity and novelty of the issues presented; and (4) the risk of non-payment. *Id.* at 942 (citing *Hanlon*, 150 F.3d at 1029); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also Ketchum v. Moses,* 24 Cal. 4th 1122, 1138 (2001) ("the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider") (emphasis original).

The requested fee award, inclusive of costs, of $1,080,000 is fair and reasonable given Class Counsel's actual lodestar of $639,211 and costs of $50,017. *See* Carpenter Decl. ¶¶ 5-6. Class Counsel spent a total of 837.4 hours in partner and associate time[11] plus 1195.2 hours of paralegal time in the investigation and prosecution of this action. *Id.* at ¶ 6. Todd D. Carpenter, Esq., a shareholder in the law firm of Carlson Lynch LLP, was the lead partner responsible for handling the case. *Id.* at ¶ 2. Mr. Carpenter's hourly rate for complex class action litigation is $750. *Id.* at ¶¶ 5, 6, 9. Associate attorneys spent a total of 389.4 hours on the case to date at an hourly rate of $395. *Id.* at ¶¶ 5, 6. The hourly rates for these attorneys are reasonable for consumer class action attorneys with similar experience and have been approved by various California State and Federal Courts. *See Id.* at ¶¶ 5, 9-11.

The $1,080,000 fee requested represents a modest multiplier of 1.61 to Class Counsel's unadjusted lodestar.[12] Given Class Counsel's reasonable hourly rates and reasonable hours worked, in addition to the substantial benefits obtained for the Class, the quality of representation, complexity of the issues, the risk of non-payment, and the lack of objections to the attorneys' fee request, the fee request is reasonable under the crosscheck analysis.

[11] Not including prospective time preparing for and attending the final approval hearing, communications with potential objectors, or handling other post-settlement issues.

[12] $1,080,000 (fee award inclusive of costs) *less* $50,017 (reimbursable costs) *equals* adjusted lodestar of $1,029,983. $1,029,983 *divided by* $639,211 (unadjusted lodestar) *equals* 1.61.

1. Class Counsel's Hourly Rates Are Reasonable

Under the lodestar method, courts should apply rates commensurate with hourly rates for private attorneys conducting non-contingent litigation of the same type. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Ordinarily, reasonable hourly rates are based on each attorney's current hourly rates. *Vizcaino*, 290 F.3d at 1051 ("calculating fees at [current hourly rates] . . . compensate[s] for delay in receipt of payment"). Rate determinations from other cases are satisfactory evidence of the prevailing market rate. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Class Counsel's hourly rates are summarized in the Carpenter Declaration filed concurrently herewith. *See* Carpenter Decl. ¶¶ 5, 9. Class Counsel's hourly rates are well within the range of those found permissible for attorneys practicing class action litigation in Southern California and Class Counsel's rates have been approved by courts in consumer class actions, including in similar false and deceptive sale discounting cases (s*ee, e.g., Rael v. RTW Retailwinds, Inc., et al*, No. 37-2019-00003850-CU-MC-CTL (Super. Ct. San Diego Cnty.) (sale discount class settlement); *Dennis v. Ralph Lauren Corp., et al.*, No. 37-2018-00058462-CU-MC-CTL (Super. Ct. San Diego Cnty.) (same); *Mocek, et al., v. AllSaints USA Ltd.*, No. 2016-CH-10056 (Cir. Ct. Cook Cnty. Ch. Div.) ($8,000,000 all-cash FACTA settlement). Id. at ¶ 9.

Class Counsel specialize in complex class actions and regularly litigate cases in California federal and state courts. Carpenter Decl. ¶¶ 9-12, 15, Ex. 1 (Carlson Lynch LLP Firm Resume). The lodestar rates are calculated using rates that have been accepted in numerous other class action cases and are in line with the billing rates for firms across the country, including Defendants' counsel, Cooley LLP. *Id.* at ¶ 6, Ex. 2 (2014 National Law Journal Bill Rate Survey).

2. Class Counsel's Hours Are Reasonable

Class Counsel must demonstrate that their hours were reasonable and necessary to the litigation. *Concepcion v. Amscan Holdings, Inc*., 223 Cal.App.4th 1309, 1320 (2014). Hours are reasonable if they were "reasonably expended in pursuit of the ultimate result

achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter. *Hensley*, 461 U.S. at 431. In addition to time spent during litigation, reasonable hours include time spent before the action was filed, including to interview clients, prepare the initial pleadings, and, as particularly relevant here, investigate facts and the law. *Webb v. Board of Educ.*, 471 U.S. 234, 250 (1985). Additionally, the fee award should include time spent to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982).

Class Counsel spent approximately 837.4 hours in attorney time and 1195.2 hours in paralegal time investigating and litigating this case to date. Carpenter Decl. ¶ 6. The concurrently filed Carpenter Declaration outlines the extensive work hours performed by Class Counsel and its staff, including, *inter alia*, the multi-state, months-long investigation of Defendant's retail and outlet store sales practices, which entailed a near-daily tracking of the Defendant's core products (i.e., children's pajamas, shorts, shirts, dresses, tee shirts, and pants) by photographing price tags and discount signage in the Defendant's stores throughout California as well as select stores in Illinois, New Jersey, Pennsylvania, Arizona, Nevada, New Mexico, New York and Florida. This investigation continued after the filing of the lawsuit and was initially discontinued after a Class-wide Settlement was reached; however, Plaintiffs reinitiated the investigation in October of 2019 and tracked Defendant's pricing practices through the holiday season to demonstrate the actual purchasing power of the $6 Voucher offered as the minimum Settlement benefit. *Id.*; ECF No. 66, ¶¶ 2- 3. The hours expended were eminently reasonable given the complex nature of the action and, specifically, the need for long-term monitoring of Defendant's pricing practices.

Finally, Class Counsel still needs to prepare for and attend the final approval hearing, oversee the remainder of the Class response period, oversee and address any Claim review issues during Voucher distribution, respond to potential objectors, and handle potential appeals, all tasks which are unincluded in the present lodestar. For instance, if there is an appeal, hundreds of hours of attorney time may be incurred in post-judgment motions and

in defending the Settlement before the Ninth Circuit. None of this additional time will be compensated.

3. The Requested Multiplier Is Justified And Confirms the Reasonableness of the Requested Fee

The requested fee represents a modest multiplier of approximately 1.61, which is justified and further confirms the reasonableness of the requested fee. The objective of any multiplier is to provide lawyers involved in public interest litigation with a financial incentive. *Ketchum*, 24 Cal.4th at 1123. "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *In re Washington Public Power Supply System Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). Only when courts properly compensate experienced counsel for successful results can they assure the continuing effectiveness of class actions. To accomplish this objective, the fee award must be large enough "to entice counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Soc'y v. San Bernardino*, 155 Cal. App. 3d 738, 755 (1984); *see also Lealao*, 82 Cal. App. 4th at 50 (adjusted lodestar should not be significantly different from the percentage fee freely negotiated in comparable litigation). Typically, only specialized firms equipped to handle class cases take on such obligations and risk.

In determining the reasonableness of a multiplier, courts have considered a range of relevant factors, including (1) the quality of the representation; (2) the benefit obtained for the class; (3) the complexity and novelty of the issues presented; and (4) the risk of non-payment. *In re Bluetooth*, 654 F.3d at 941-42 (citing *Hanlon*, 150 F.3d at 1029); *Lealao*, 82 Cal. App. 4th at 40.

As discussed above in Sections IV.A and IV.D, Class Counsel provided high quality, experienced representation to the Class and achieved a Settlement that provides an immediate and *tangible* benefit to the Class beyond the actual damages Class Members could hope to achieve at trial. Moreover, given the present uncertainties in the law,

Plaintiffs would face tremendous difficulties in proving liability and then (if successful) *any* acceptable measure damages. *Spann II*, 314 F.R.D. at 326 ("Even if plaintiff were to prevail at trial, there is a very real risk that plaintiff could recover nothing."). The requested multiplier is further warranted given the complexity of this Action and the skill Class Counsel displayed in effectively prosecuting it (to the forbearance of other work), as well as the true contingent nature of the fee award, the work performed to date, and the additional work Class Counsel will undertake through the conclusion of this Action, including potentials Claims issues, objections and/or appeals.

Finally, the requested multiplier of 1.61 is well within the accepted range for class action cases. "Multipliers can range from 2 to 4, or even higher." *Wershba*, 91 Cal. App. 4th at 255. *See, e.g.*, *Steiner v. American Broad. Co., Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) ("this multiplier [6.85] . . . falls well within the range of multipliers that courts have allowed"); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (case remanded with directions "to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper"); *Vizcaino*, 290 F.3d at 1051 (multiplier of 3.65); *Keith v. Volpe*, 501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011 U.S. Dist. LEXIS 85699, at *5 (N.D. Cal. June 30, 2011) (collecting cases and approving multiplier of 4.3). *See also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* 4th § 14.6 (4th ed. 2002) ("[m]ultiples ranging from one to four frequently are awarded in common fund when the lodestar method is applied."). Accordingly, the requested multiplier is justified and the lodestar cross-check confirms the reasonableness of the requested fee award.

V. THE REQUESTED LITIGATION COSTS ARE REASONABLE

Plaintiffs also request reimbursement for the expenses advanced by Class Counsel to prosecute this Action. The Ninth Circuit allows recovery of litigation costs in the context of class action settlements. *See Staton*, 327 F.3d at 974; *see also Serrano III*, 20 Cal. 3d at 35; *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 519 (W.D. Pa. 2003) ("'There is no

doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of . . . reasonable litigation expenses from that fund.'") (citation omitted). "Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2007); *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

The requested reimbursement of $50,017 in litigation costs (included in the gross fee award of $1,080,000) is reasonable. These costs include (1) two mediation fees, (2) court filing fees, (3) electronic legal research fees, (4) scanning, photocopying, printing, and extraneous office-related expenses (waived), (5) travel (waived), and (6) expert costs. Carpenter Decl. ¶ 5. These expenses were reasonably necessary to conduct the litigation and are typical of the expenses billed by attorneys to paying clients in the marketplace. *See Beasley*, 235 Cal. App. 3d at 1421; *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (awarding as reasonable and necessary reimbursement for "1) meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and investigators; and 9) mediation fees").

VI. THE REQUESTED INCENTIVE AWARDS ARE REASONABLE

Plaintiffs request reasonable incentive awards of $2,500 each in recognition of their contributions and risks they assumed in this case. "[I]ncentive awards are fairly typical in class action cases" and are "designed" to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *see also Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 412 (2010) ("[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk that they have incurred in conferring a benefit on other members to the class."); *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380,

1395 (2010) (incentive award appropriate "if it is necessary to induce an individual to participate in the suit.").

Here, Plaintiffs maintained continued involvement in the litigation which has been ongoing since 2016, including reviewing initial pleadings and continuously communicating with Class Counsel. Carpenter Decl. ¶ 7. Prior to becoming parties to the Action, Plaintiffs provided substantive information to Class Counsel regarding the circumstances surrounding their TCP transactions. *Id.* In agreeing to serve as Class Representatives, Plaintiffs undertook risks to their reputation in the public domain and thrust themselves into active litigation to enforce an important right for the benefit of the general public (transparency in pricing). Moreover, Plaintiffs risked potential judgment if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party liable for the prevailing party's costs. *Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1433–34 (2000). Few individuals are willing to undertake that risk, particularly since courts have entered judgments against class representatives. *See Tobacco Cases II*, 240 Cal. App. 4th at 805–07 (upholding cost award in favor of defendant against class representative in her personal capacity in the amount of $764,552.73). Accordingly, Plaintiffs' efforts and involvement have significantly benefitted the Class.

Moreover, incentive awards of $2,500 are eminently reasonable when compared to those awarded in other class cases. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming approval of $5,000 incentive award in securities case settle for $1.725 million); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L WMC, 2013 WL 6055326, at *9 (S.D. Cal. Nov. 14, 2013) ("the amount of the incentive payments requested, $5,000, is well within if not below the range awarded in similar cases") (compiling cases); *Williams v. Costco Wholesale Corp.*, 2010 WL 2721452, at *7 (S.D. Cal. July 7, 2010) ($5,000 award approved in antitrust case settled for $440,000); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (award of $20,000 was "well justified"); *Morey v. Louis Vuitton North America, Inc.*, 2014 WL 109194 (S.D. Cal. Jan. 9, 2014) ($5,000 award in Song-

Beverly settlement); *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1393–94 ($10,000 awards to each of four class representatives affirmed in early termination fee class action). Accordingly, the requested incentive awards of $2,500 each are warranted and appropriate.

VII. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant Plaintiffs' unopposed Motion for attorneys' fees and costs in the amount of $1,080,000, and incentive awards in the amount of $2,500 each to Plaintiffs Monica Rael and Alyssa Hedrick.

Respectfully submitted,

Date: April 30, 2020

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