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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

21 In re SONY PS3 "OTHER OS" LITIGATION

Case No. 4:10-CV-01811-YGR

22 **PLAINTIFFS' RENEWED NOTICE OF**
23 **MOTION AND MOTION FOR AWARD OF**
24 **ATTORNEYS' FEES, COSTS, AND**
25 **INCENTIVE AWARDS; MEMORANDUM OF**
26 **POINTS AND AUTHORITIES IN SUPPORT**
27 **THEREOF**

26 Date: May 29, 2018
27 Time: 2:00 p.m.
28 Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

NOTICE OF MOTION AND MOTION

TO THE CLERK, AND ALL PARTIES AND THEIR COUNSEL OF RECORD, AND ALL INTERESTED PERSONS:

PLEASE TAKE NOTICE that on May 29, 2018 at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 1, 4th Floor, of the United States District Court, 1301 Clay Street, Oakland, California 94612, the Hon. Yvonne Gonzalez Rogers presiding, Plaintiffs Derrick Alba, Jason Baker, James Girardi, Jonathan Huber, and Anthony Ventura (“Plaintiffs”) will and hereby do move for an order granting Class Counsel an award of \$1,250,000.00 for attorney’s fees and reimbursement of costs, and granting incentive awards in the aggregate amount of \$17,500.00 (or \$3,500 for each named plaintiff) to Class Plaintiffs for their services in the case. Plaintiffs’ motion is based on this notice; the attached memorandum of points and authorities; the accompanying declarations of Gordon M. Fauth, Jr., James Pizzirusso, and Kathleen Fisher, and exhibits thereto; all documents and records on file in this matter; the argument and presentations of counsel at the hearing; and all other matters that the Court may deem to consider.

DATED: March 6, 2018

Respectfully Submitted,

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19 *Wilson v. Airborne, Inc.* (C.D. Cal. Aug. 13, 2008) 2008 U.S. Dist. LEXIS 11041123

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Broughton v. Cigna Healthplans (1999) 21 Cal. 4th 106615

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiffs seek an award of attorneys' fees and costs in the amount of \$1.25 million, or 33 1/3
4 percent of the \$3.75 million common fund settlement Plaintiffs' counsel obtained, an award that is
5 eminently reasonable given factors including the risks undertaken, the almost eight years of hard-fought
6 litigation, and the fact that Plaintiffs' counsel will be receiving a fraction (only 17.5%) of their total
7 aggregate lodestar. Plaintiffs also request incentive awards of \$3,500 for each of the five Class
8 Representatives, who provided valuable input and assisted Class Counsel throughout this litigation.¹

9 This action arose out of the marketing and sale of the Sony PlayStation®3 ("PS3") by Defendant
10 Sony Computer Entertainment America LLC, currently known as Sony Interactive Entertainment
11 America LLC (referred to herein as "Defendant" or "SCEA"). The PS3 is a video gaming console that,
12 unlike most competitor devices, in addition to its native game operating system, could also run another
13 operating system such as Linux ("Other OS") and then be used as a general purpose computer to run
14 thousands of available business and personal applications and programs. Plaintiffs allege that SCEA
15 marketed and sold the PS3 as having the ability to run the Other OS but then subsequently removed the
16 "Other OS" functionality via firmware update 3.21, depriving owners of the Other OS feature. Several
17 million PS3 units were sold in the United States and ranged in price from approximately \$400 to \$600.

18 Throughout the pendency of the case, SCEA has denied liability and vigorously disputed the
19 propriety of the litigation. Indeed, the case was initially dismissed with prejudice only to have dismissal
20 reversed in part by the Ninth Circuit Court of Appeals. Among other things, SCEA argued that it had the
21 right to remove the Other OS pursuant to its terms of service and other purported agreements, and that
22 the Other OS was not a core functionality of the PS3 that was material to the vast majority of purchasers.
23 While Plaintiffs disagreed with SCEA's positions, Plaintiffs acknowledged that the Other OS function
24 was geared more towards highly sophisticated computing specialists and was not widely advertised.

25 In spite of the difficulties of the case, Class Counsel have achieved a \$3.75 million settlement
26

27 _____
28 ¹ Unless otherwise defined herein, capitalized terms have the same meaning as in Plaintiffs' memorandum in support of preliminary approval.

1 that provides meaningful compensation to Class members, as embodied in the new Stipulation of Class
 2 Action Settlement & Release (“New Settlement,” or “Agreement”) (Fauth Decl. at Exhibit B),²
 3 preliminarily approved by the Court on December 21, 2017. Pursuant to the New Settlement, after
 4 settlement administration expenses and attorneys’ fees and costs and incentive awards are paid, each
 5 Class member claimant is entitled to a pro rata share not to exceed \$65 per claimant. As of this filing,
 6 over 52,399 class members have made claims (including those who previously made claims) although
 7 the time period to make such claims has not yet ended and Plaintiffs anticipate many more claimants
 8 will file. Assuming those claims made to date are valid and the Court awards the requested fees and
 9 costs, each claimant may receive approximately \$40.00.³ In addition to providing meaningful
 10 compensation to Class members, Class Counsel have also enforced important consumer protection
 11 statutes, including California’s Consumers Legal Remedies Act and the Unfair Competition Law. Had it
 12 not been for this lawsuit and Class Counsel’s efforts, including the appellate work that resulted in a
 13 favorable Ninth Circuit decision, Class members’ claims here, which are modest, would have likely
 14 gone without redress.

15 This is the second settlement to come before the Court. After the prior settlement, marked by an
 16 unexpectedly low claims rate, was denied final approval, the Parties went back to the drawing board and
 17 engaged in a third mediation in front of a new mediator, the Hon. James Lambden (Ret.), followed by
 18 months of additional negotiations with the mediator’s guidance. Class Counsel focused on obtaining a
 19 settlement structure that would greatly enhance the claims rate and give a guaranteed distribution of
 20 compensation to Class members without onerous proof requirements. They succeeded in this objective.
 21 Based on the robust response to date, there are already five times more claims submitted under the New
 22 Settlement (with the claims period still open) and there will be a nearly ten-fold increase in the amount
 23

24
 25 ² Class Counsels’ work on the case, including hours worked and expenses incurred, is detailed in the
 26 accompanying Declaration of Gordon M. Fauth in Support of Plaintiffs’ Renewed Motion for Award of
 27 Attorneys’ Fees, Costs, and Incentive Awards (“Fauth Decl.”); Declaration of James J. Pizzirusso in
 28 Support of Plaintiffs’ Motion for Award of Attorneys’ Fees, Costs, and Incentive Awards (“Pizzirusso
 Decl.”); Declaration of Kathleen Fisher in Support of Plaintiffs’ Motion for Award of Attorneys’ Fees,
 Costs, and Incentive Awards (“Fisher Decl.”).

³ This estimate may change depending on additional claims received and administration costs.

1 of the payout to the class.

2 For nearly eight years, Class Counsel have worked on this case on a purely contingency basis.
3 This work included extensive factual and legal investigation; motions practice on the pleadings followed
4 by an appeal in the Ninth Circuit; extensive discovery (including review of tens of thousands of
5 documents and taking and defending over a dozen depositions); two separate settlement conferences
6 overseen by the Hon. James Warren (Ret.) and later the Hon. Howard B. Weiner (Ret.); and, after the
7 denial of final approval of the prior settlement, a third mediation under the auspices of the Hon. James
8 Lambden (Ret.) to address the Court's concerns with the first settlement; and then months of further
9 vigorous negotiations. These most recent negotiations ultimately resulted in the settlement embodied in
10 the New Agreement. In negotiating the New Settlement, Class Counsel prioritized obtaining the best
11 possible notice and compensation for Class members that they could negotiate with SCEA, even at the
12 expense of Plaintiffs' attorneys' own compensation. Indeed, in the prior settlement which the Court
13 rejected, Class Counsel were seeking \$2.25 million in fees and costs (which was already much lower
14 than their collective lodestar). Here, despite the additional work that Counsel has undertaken, they are
15 asking for even less – a mere 17.5% of their collective lodestar.

16 Class Counsel have overseen the settlement administration process, including interviewing
17 settlement administrators and notice consultants, weighing proposed notice plans, overseeing the
18 development of the settlement website at www.otherossettlement.com, and monitoring the on-going
19 claims process to insure it is consumer friendly and functioning properly. Their lodestar will continue to
20 grow as Class Counsel continue to work with the claims administrator to complete the claims process
21 and throughout final distribution.

22 In light of these factors, the award of attorneys' fees requested is more than reasonable.

23 The incentive awards of \$3,500 requested for each named Plaintiff are also reasonable. These
24 Class Representatives provided valuable input and assistance throughout this litigation. They retained
25 counsel, reviewed and authorized the filing of the complaint, produced their PS3s for imaging, answered
26 discovery, produced other documents in their possession, appeared for deposition, stayed abreast of the
27 litigation, and communicated with their lawyers regarding settlement. Following the denial of final
28 approval of the first settlement, the named Plaintiffs continued to work with Class Counsel to achieve

1 the settlement now before the Court. These Class Representatives performed important and time
2 consuming work on behalf of the Class, and the incentive awards sought are amply justified.

3 As set forth in more detail below, the requested awards of attorneys' fees and expense
4 reimbursement, and incentive awards, are reasonable under applicable law and Plaintiffs' motion should
5 be granted in its entirety.

6 **II. SUMMARY OF THE BENEFITS PROVIDED BY THE NEW SETTLEMENT.**

7 Under the terms of the New Settlement, the Class is defined as: all persons in the United States
8 who purchased a Fat PS3 model⁴ in the United States between November 1, 2006, and April 1, 2010,
9 from an unauthorized retailer for family, personal, and/or household use and who: "(1) used the Other
10 OS functionality; (2) knew about the Other OS functionality; or (3) contends or believes that he or she
11 lost value or desired functionality or was otherwise injured as a consequence of Firmware Update 3.21
12 and/or the disablement of Other OS functionality in the Fat PS3." (Fauth Decl., Exh. B ¶ 12.)⁵

13 Under the New Settlement, SCEA will pay the sum of \$3,750,000 to create the Settlement Fund.
14 (*Id.* ¶ 71.) The Settlement Fund will be used to pay: (1) Class Notice and Administration Costs; (2)
15 Attorneys' Fees and Costs to Class Counsel; (3) Service Awards to the named Plaintiffs; and (4) Valid
16 Claims submitted by Settlement Class Members. (*Id.*)

17 To receive compensation from the Settlement Fund, each Settlement Class Member must submit
18 a timely and complete Claim Form, either by mail or electronically. (*Id.* ¶ 72.) To submit a valid claim,
19 claimants must attest, under penalty of perjury, that they: "(1) used the Other OS functionality; (2) knew
20 about the Other OS functionality; or (3) contend or believe that [they] lost value or desired functionality
21 or were otherwise injured as a consequence of Firmware Update 3.21 and/or the disablement of Other
22

23 ⁴ A "Fat PS3" means the Sony PlayStation®3 computer entertainment console that was manufactured
24 between approximately November 1, 2006 and September 2009 that included the Other OS
25 functionality. (Fauth Decl., Exh. B ¶ 19.)

26 ⁵ Excluded from the Class are: (a) any persons who are employees, directors, officers, and agents of
27 [Defendant] or its subsidiaries and affiliated companies; (b) any persons who timely and properly
28 exclude themselves from the Settlement; and (c) the Court, the Court's immediate family, and Court
staff. (Fauth Decl., Exh. B ¶ 19.)

1 OS functionality in the Fat PS3.” (Agreement, Ex. 1.) Claimants must also provide at least one of the
 2 following: (1) their PS3 serial number; (2) the PlayStation Network Sign-In ID (email address) they
 3 used to create a PlayStation account associated with their Fat PS3; or (3) the PlayStation Network
 4 Online ID (the handle they chose for communicating and game play on the PlayStation Network)
 5 associated with the PlayStation account they used with their Fat PS3. (*Id.*)

6 Claimants who previously submitted claims will not be required to submit new claims forms. (*Id.*
 7 ¶ 72.) Rather, they will automatically be deemed valid claimants under the revised settlement. (*Id.*)

8 Settlement benefits will be distributed to Valid Claimants on a pro rata basis up to and including
 9 the sum of \$65 per valid Claim. (*Id.*) To the extent there is any money remaining in the Settlement Fund
 10 after payment of the Settlement Administrator’s costs, and after accounting for any funds designated by
 11 the Court to pay the requested attorney’s fees and costs for Class Counsel and the requested service
 12 awards to the named Plaintiffs, the Parties will meet and confer as to how the leftover funds should be
 13 distributed and either party may move the Court for an order determining the most appropriate
 14 disposition of the leftover funds. (*Id.* ¶ 73.) The question of what do with the leftover funds, if any, will
 15 be resolved before any payment is mailed to the Class, so that under all circumstances only a single
 16 payment would be mailed to the Class. (*Id.*)⁶

17 The New Settlement provides for robust notice designed to reach as many class members as
 18 possible, through a combination of direct email to class members (including follow-up email notices
 19 where appropriate) and publication notice via the Internet and other media. (*See* Fauth Decl, Exh. B ¶¶
 20 79(A)(i), (ii), 80.)

21 **III. SUMMARY OF CLASS COUNSEL’S WORK ON THE CASE.**

22 **A. April 2010 – July 2010: Pre-Filing Investigation, Filing of the Complaints and** 23 **Consolidation of the Actions.**

24 In late March 2010, SCEA announced that it was going to remove the “Other OS” functionality
 25 from the PS3 via a firmware update issued April 1, 2010. (Fauth Decl. ¶ 7.) Several law firms filed suit,
 26 including Finkelstein Thompson LLP, Hausfeld LLP and Calvo & Clark LLP (now Calvo Fisher &

27 _____
 28 ⁶ Based on current claims rate statistics from the settlement administrator, there will likely not be any
 remainder in the Settlement Fund once valid claims are paid out as the pro rata cap will be exceeded.

1 Jacob LLP), among others, all of whom had independently and thoroughly investigated the facts and
 2 potential claims against Defendant, and prepared and filed class action complaints beginning on April 27,
 3 2010.⁷ At the request of the Plaintiffs, the Honorable Richard Seeborg eventually consolidated the
 4 various pending cases as *In re Sony PS3 "Other OS" Litigation* and appointed Finkelstein Thompson
 5 LLP, Hausfeld LLP and Calvo Fisher & Jacob LLP as Interim Co-Lead Counsel. (Fauth Decl. ¶ 11.)

6 After those three firms were appointed to serve as interim lead counsel, they began research for a
 7 Consolidated Class Action Complaint, including locating and analyzing Defendant's representations
 8 regarding the Other OS on the Internet, on product packaging, and other sources. They also analyzed
 9 Defendant's terms of service, analyzed the potential claims and defenses, and interviewed a number of
 10 PS3 owners who complained about SCEA's removal of the Other OS functionality. Class Counsel then
 11 prepared and filed the Consolidated Class Action Complaint ("Consolidated Complaint") on July 30,
 12 2010, alleging causes of action for statutory violations of the Unfair Competition Law, Cal. Bus. &
 13 Prof. Code §§ 17200, *et seq.* ("UCL"); the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et*
 14 *seq.* ("CLRA"); the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"); the
 15 Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*; and the Magnuson-Moss Warranty Act, 15
 16 U.S.C. § 2301, *et seq.* (See Fauth Decl. ¶ 12.) Plaintiffs also alleged common law claims for breach of
 17 express warranty; breach of the implied warranty of merchantability; breach of the implied warranty of
 18 fitness for a particular purpose; and conversion and unjust enrichment. (*Id.*) Plaintiffs sought damages,
 19 restitution and injunctive relief. (*Id.*)

23 ⁷ Other firms also independently filed class action complaints. The names of all the cases filed in the
 24 Northern District are: *Ventura v. Sony Computer Entertainment America, Inc.*, Case No. CV-10-01811-
 25 RS; *Baker, et al. v. Sony Computer Entertainment America, LLC*, Case No. CV-10-01897-
 26 RS; *Densmore, et al. v. Sony Computer Entertainment America, Inc.*, Case No. CV-10-1945-RS; *Wright*
 27 *v. Sony Computer Entertainment America, Inc., et al.*, Case No. CV-10-01975-RS; *Huber v. Sony*
 28 *Computer Entertainment America, LLC*, Case No. CV-10-02213-RS; *Harper, et al. v. Sony Computer*
Entertainment America, Inc., Case No. CV-10-02197-RS; and *Benavides v. Sony Computer*
Entertainment America, Inc., Case No. CV-10-02612-RS.

1 **B. September 2010-January 2014: Motion Practice and Subsequent Appeal.**

2 On September 10, 2010, SCEA moved to dismiss the Consolidated Complaint on several
3 grounds, and moved to strike the class allegations. (*See* Fauth Decl. ¶ 13.) Plaintiffs researched and
4 drafted oppositions to SCEA’s motions which they filed on October 12, 2010, and SCEA filed its reply
5 briefs on October 21, 2010. (Dkt. Nos. 103-106.) Judge Seeborg heard the motions on November 4,
6 2010, and on February 17, 2011, entered an order granting in part, and denying in part, the motion to
7 dismiss (with leave to amend), and denied the motion to strike. (Fauth Decl. ¶¶ 15-20.) According to
8 Judge Seeborg, the Consolidated Complaint was deficient in the following respects: Plaintiffs had failed
9 to allege that SCEA made express representations as to the *continued* availability of the “Other OS”
10 functionality; Plaintiffs did not identify the particular representations on which they relied; Plaintiffs did
11 not allege how SCEA had been unjustly enriched; and Plaintiffs did not show that Sony had assumed
12 control or ownership of any of Plaintiffs’ property, among other things. (*Id.* ¶ 20.)

13 Plaintiffs invested additional significant time and effort in drafting the First Amended
14 Consolidated Class Action Complaint (“First Amended Complaint”) to address Judge Seeborg’s
15 concerns. Ultimately, Plaintiffs filed a detailed First Amended Consolidated Complaint consisting of
16 341 paragraphs and almost 100 pages. (*Id.* ¶ 21.) On April 28, 2011, SCEA moved to dismiss the First
17 Amended Complaint. (*Id.*) Plaintiffs researched and drafted an opposition brief that they filed on April
18 18, 2011, and SCEA filed its reply brief on April 28, 2011. (*Id.* ¶ 22.) Judge Seeborg heard SCEA’s
19 motion to dismiss on July 21, 2011. (*Id.* ¶ 23.) On December 8, 2011, Judge Seeborg entered an order
20 dismissing the entire action without leave to amend. (*Id.* ¶ 25.)

21 Plaintiffs filed a Notice of Appeal on December 22, 2011. (*Id.* ¶ 26.) They prepared the record
22 and filed their appellate brief. (*Id.* ¶ 27.) After full briefing by the Parties, the Ninth Circuit heard oral
23 argument on October 11, 2013. (*Id.* ¶ 29.) On January 6, 2014, the Ninth Circuit affirmed in part and
24 reversed in part the dismissal of Plaintiffs’ case. *See In re Sony PS3 “Other OS” Litig. v. Sony*
25 *Computer Entm’t Am., Inc.*, 551 Fed. Appx. 916 (9th Cir. 2014). Among other things, the Ninth Circuit
26 held that the district court erred in dismissing the UCL claims for violations of the unlawful, unfair and
27 fraudulent prongs, the FAL claim, and the CLRA claims for violations of Sections 1770(a)(5) and
28

1 (a)(7). The Ninth Circuit affirmed the district court's dismissal of the remaining claims and remanded
2 the case back to the district court. *Id.*

3 Plaintiffs filed the Second Consolidated Class Action Complaint on May 29, 2014, which
4 SCEA answered on June 27, 2014. (*Id.* ¶ 30.) The Parties then proceeded to resume active litigation
5 and discovery.

6 **C. October 2010 – December 2011 and January 2014 –August 2015: Plaintiffs**
7 **Conducted Extensive Discovery.**

8 The Parties engaged in extensive discovery both before and after the appeal. (*See* Fauth Decl.
9 ¶¶ 17, 21, 25, 31-33.) While SCEA's motions to dismiss and strike were pending, Plaintiffs served
10 written discovery, including document requests and interrogatories. (*Id.*) Having reached an impasse on
11 several discovery issues, such as whether Plaintiffs had to produce their PS3s and personal computers
12 for SCEA's inspection and whether SCEA had to produce documents from its corporate parent in
13 Japan, Plaintiffs researched, prepared and filed a motion for a protective order and a motion to compel
14 other discovery on December 15, 2010. (*Id.* ¶ 17.) SCEA opposed Plaintiffs' motions to compel and for
15 a protective order on January 18, 2011, and Plaintiffs researched, prepared and filed reply briefs on
16 January 26, 2011. (*Id.*) SCEA filed a motion to compel discovery on December 15, 2010. (*Id.*) Plaintiffs
17 researched, drafted and prepared an opposition brief that was filed on January 18, 2011, and SCEA filed
18 a reply brief on January 26, 2011. (*Id.*)

19 After holding a lengthy hearing, [then Magistrate] Judge Edward M. Chen issued an order
20 granting in part and denying in part Plaintiffs' motion to compel and motion for a protective order.
21 (Fauth Decl. ¶¶ 18-19.) Judge Chen ordered the Plaintiffs to produce their PS3s for imaging, but not
22 their personal computers as requested by SCEA, and that Plaintiffs could direct focused discovery at
23 SCEA's Japanese parent corporation. (*Id.*) Further discovery disputes arose, however, surrounding the
24 details of the PS3 imaging process, the depositions of the named plaintiffs, and the scope of discovery
25 to be served on SCEA's parent company. Both SCEA and Plaintiffs submitted carefully researched
26 letter briefs to Judge Chen arguing their positions. (Dkt. Nos. 169-171.) Judge Chen subsequently
27 issued an order regarding the disputes on April 11, 2011. (Dkt. No. 172.) SCEA also deposed two of the
28 named plaintiffs before the case was dismissed with prejudice by Judge Seeborg. (Fauth Decl. ¶ 19.)

1 After the appeal was resolved in 2014, the Parties restarted discovery. (*Id.* ¶¶ 30-31.) SCEA
 2 deposed the remaining three named plaintiffs and imaged the PS3s of all of the named plaintiffs. (*Id.*)
 3 Plaintiffs also responded to interrogatories and document requests propounded by SCEA. (*Id.*)
 4 Plaintiffs deposed six SCEA witnesses, three of whom were designated to testify on behalf of SCEA
 5 pursuant to Fed. R. Civ. P. 30(b)(6). (*Id.* ¶ 32.) Plaintiffs also reviewed tens of thousands of pages of
 6 documents produced by SCEA, as well as SCEA’s responses to their interrogatories, and engaged in
 7 several meet and confers with SCEA about those responses. (*Id.* ¶ 33.) In addition, in anticipation of
 8 class certification, Plaintiffs interviewed, retained, and worked extensively with several experts who
 9 were preparing to conduct surveys and provide other evidence in support of Plaintiffs’ class
 10 certification motion. (*Id.* ¶ 34.)

11 **D. July 2011 and August 2015—May 2016: The Prior Settlement.**

12 While SCEA’s second motion to dismiss was pending in 2011, the Parties participated in an
 13 initial private mediation before the Honorable James L. Warren (Ret.) of JAMS on July 7, 2011. (Fauth
 14 Decl. ¶ 23.) The Parties were unable to reach a settlement that day and, once the case was dismissed, the
 15 Parties ended settlement discussions. (*See id.* ¶¶ 23-25.)

16 After Plaintiffs’ successful appeal and after additional discovery was completed, the Parties
 17 renewed their settlement efforts. (*Id.* ¶¶ 30-35.) The Parties participated in a second mediation before the
 18 Honorable Howard Weiner (Ret.) on August 20, 2015. (*Id.* ¶ 35.) In preparation for the mediation, the
 19 Parties again prepared detailed mediation briefs that took into account the Ninth Circuit’s decision from
 20 2014 as well as key evidence that had been discovered in the case in support of the Parties’ respective
 21 positions. (*Id.*) While the Parties were unable to reach an agreement on all terms that day, they did make
 22 substantial progress and continued to engage in discussions. (*Id.*)

23 Over the next five months, the Parties had numerous teleconferences until they finally signed a
 24 Memorandum of Understanding (“MOU”) in January 2016. (*Id.* ¶ 36.) Once the MOU was fully
 25 executed, the Parties proceeded to draft the Prior Agreement and ancillary documents--a difficult
 26 process as the details of many key terms still needed to be negotiated. (*Id.*) Indeed, it took nearly five
 27 months for the Parties to negotiate and execute the Prior Settlement Agreement. (*Id.* ¶ 39.)
 28

1 Under the Prior Settlement, there were two levels of compensation. SCEA agreed to pay \$55 to
2 each Class Member who utilized the Other OS functionality (Consumer Class A) and submitted a valid
3 claim. (Fauth Decl. ¶ 40.) Consumer Class A claimants were required to attest under oath to their
4 installation of Linux and submit proof of their use of the Other OS functionality. (*Id.*) Under the Prior
5 Settlement, claimants were also required to provide proof of their purchase or their PS3 unit's serial
6 number and PlayStation Network Sign-in ID. (*Id.*) The Prior Settlement set forth a list of acceptable
7 proofs. (*Id.*) At the second level of compensation, SCEA agreed to pay \$9.00 to each Class Member
8 who, at the time of purchase, knew about the Other OS, relied upon the Other OS functionality, and
9 intended to use the Other OS functionality (Consumer Class B) and submitted a valid claim. (*Id.*)
10 Alternatively, a member of Consumer Class B could attest that he or she lost value and/or desired
11 functionality or was otherwise injured as a consequence of Firmware Update 3.21. (*Id.*) To present a
12 valid claim, Consumer Class B claimants were also required to attest to their purchases and provide
13 proof of purchase or a PS3 serial number and PlayStation Network Sign-in ID. (*Id.*)

14 After reaching the Prior Settlement, Plaintiffs filed a Motion for Preliminary Approval, which
15 this Court heard on July 19, 2016. (Fauth Decl. ¶¶ 40-41.) On September 8, 2016, the Court issued its
16 Order preliminarily approving the Prior Settlement, appointing class representatives and class counsel,
17 and ordering notice to the Class. (*Id.* ¶ 43.) The Parties thereafter moved forward with providing notice
18 and implementing the claims process.

19 **E. September 2016—December 2016: Prior Claims Process.**

20 The prior notice program was generally successful in reaching the target audience. The
21 settlement administrator, Garden City Group, LLC (“GCG”), determined that the measured portion of
22 the Notice Program reached approximately 86% of the target audience of people 18 years of age or older
23 who own a PlayStation or web-enabled console. (Fauth Decl. ¶ 46.)

24 The rate of valid claims, however, was low. During the claims process it became clear that some
25 Class Members had no proof of purchase and no longer had their PS3 units from which to obtain serial
26 numbers. (*Id.* ¶ 45.) The Parties created a procedure whereby Class Members who no longer had their
27 PS3 units could obtain a temporary ID number from the claims administrator which SCEA would then
28 use to cross check against its own records to verify that Class Members had purchased a PS3. (*Id.*) This

1 procedure was implemented during the claims process and communicated to the Class via the second
2 round of email notice and the Settlement Website.

3 Class Members were required to submit a completed Claim Form to GCG by December 7, 2016.
4 GCG received 2,346 timely Consumer Class A Claim Forms and 8,970 timely Consumer Class B Claim
5 Forms. (Fauth Decl. ¶ 46.) With respect to Consumer Class A claims, some 589 of 2,346 claims (or
6 approximately 25% of Consumer Class A) had potentially insufficient proof as to whether they used the
7 Other OS functionality. (*Id.*) As to Consumer Class B, approximately 107 of 8,970 claims had problems
8 (1.2%). (*Id.*) At the time that the Prior Settlement was rejected, the Parties were preparing to send letters
9 to those with rejected claims to allow consumers an opportunity to cure, but those efforts were stopped
10 when the Court denied final approval. (*Id.*)

11 The Prior Settlement resulted in a low number of opt-outs: the settlement administrator received
12 only 27 requests to be excluded from the Class. (*Id.*) GCG also received 7 objections to the Prior
13 Settlement, of which three were filed by “serial objectors” asserting boilerplate objections that are
14 usually summarily rejected by courts. (*Id.*)

15 **F. January 2017: Court’s Rejection of Prior Settlement.**

16 On January 31, 2017, after the claims process was completed and the Court held a fairness
17 hearing, the Court issued an Order Denying Plaintiffs’ Motion for Final Approval of Class Action
18 Settlement Without Prejudice. (Dkt. No. 300.) The Order identified numerous concerns with “how the
19 notice and claims process proceeded, the results it produced, and the disproportionality of the attorneys’
20 fees versus the class recovery.” (*Id.* at 1:13-14.) “Most significantly” to the Court, the claims rate
21 appeared “quite low”: 11,300 claims out of approximately 10 million PS3 units sold (*Id.* at 7:10-11); the
22 claims process was too burdensome, given the proofs claimants were required to submit with their
23 claims and “the relatively small amount” the B-class claimants would receive for a valid claim (*Id.* at
24 6:17-19). The Court also expressed concern that Plaintiffs’ counsel had not provided more detail to
25 support their fee application. (*Id.* at 1:13-15, 8.)

26 After issuance of the Order Denying Final Approval, and a case management conference
27 on February 13, 2017, at which the Court indicated that it was not willing to reconsider approval of the
28 Prior Settlement, counsel for the Parties agreed that any revised settlement needed to be entirely re-

1 structured to address the Court’s concerns. (Fauth Decl. ¶ 48.) Among other things, the Parties discussed
 2 the need for an additional round of mediation under the auspices of a new mediator. (*Id.*)

3 **G. April 2017--August 1, 2017: Third Mediation, Negotiation of New Settlement.**

4 On April 6, 2017, the Parties attended a day-long mediation session with the Hon. James
 5 Lambden, Ret., of ADR Services, Inc. (*See id.* ¶ 49.) Although the Parties did not reach an agreement
 6 that day, they did make substantial progress and thereafter continued to negotiate with Justice
 7 Lambden’s assistance. (*Id.*) It took numerous teleconferences and continuing negotiations over the
 8 course of months, but the Parties eventually reached an agreement in principle on a settlement that they
 9 believed would address the Court’s concerns and achieve a much higher claims rate, although certain
 10 outstanding issues required further negotiation and assistance from Justice Lambden. (*See* ¶ 50.) One
 11 lingering dispute related to the cap on individual recovery. (*Id.*) Finally, to resolve the issue, Justice
 12 Lambden made a mediator’s proposal that the cap should be set at \$65 and the Parties accepted his
 13 decision. (*Id.*) The New Settlement Agreement was executed on or about August 24, 2017. (*Id.* ¶ 52.)

14 On September 7, 2017, Plaintiffs filed a Renewed Motion for Preliminary Approval of Class
 15 Settlement and Certification of Settlement Class, which this Court heard on November 7, 2017. (*Id.* ¶
 16 53.) On December 21, 2017, the Court issued its Order preliminarily approving the New Settlement.
 17 (*See id.*)

18 By its Order, the Court provisionally certified a Settlement Class and found that the requirements
 19 of Rule 23(a) and Rule 23(b)(3) were provisionally satisfied for that purpose. (*Id.* ¶ 53.) The Court
 20 appointed as Class Counsel: James J. Pizzirusso of Hausfeld LLP, Gordon M. Fauth of Finkelstein
 21 Thompson LLP, and Kathleen V. Fisher of Calvo Fisher & Jacob LLP. (*Id.*) Named Plaintiffs Anthony
 22 Ventura, Jason Baker, James Girardi, Derek Alba, and Jonathan Huber were appointed as Class
 23 Representatives. (*Id.*)

24 The Court ordered the Parties to engage a settlement administrator and ordered notice to the
 25 Class. (*Id.* ¶ 53.) The Court approved the proposed program for providing notice of the Settlement to
 26 the Class (the “Notice Program”), finding that “the Notice Program, including the proposed forms of
 27 notice, constitutes the best notice practicable under the circumstances . . .” (*Id.*)

1 **H. Supervision of the Notice Program and Claims Administration Process.**

2 Given its familiarity with the case, the Parties again selected Garden City Group, LLC (“GCG”) as the claims administrator. (Fauth Decl. ¶ 54.) Class Counsel worked closely with GCG to implement the court-ordered notice program, including reviewing and editing notice documents, ensuring that notice was provided as ordered via electronic mail and Internet and print advertising, and that key documents were posted on the settlement website. (*Id.* ¶ 55.) Thereafter, Class Counsel worked with GCG to oversee the claims administration process closely, including ensuring that the claims intake procedures were consumer friendly and functioned properly, and dealing with class members’ queries and issues and other matters. (*Id.*) Class Counsel received and analyzed regular reports from GCG.⁸ Class Counsel will continue to work with GCG through the end of the claims process and distribution of settlement funds to Class members, assuming the Court grants final approval to the New Settlement.

12 **IV. PLAINTIFFS’ COUNSELS’ TIME AND EXPENSES.**

13 To date, lead Class Counsel have expended 6,275.00 hours in professional time and incurred \$138,944.72 in expenses since their investigation began in the spring of 2010. Class Counsels’ hours, lodestars and expenses are as follows:

Firm	Hours	Lodestar Amount	Expenses
Finkelstein Thompson LLP	1,989.60	\$1,051,987.00	\$45,027.82
Calvo Fisher & Jacob LLP	2,334.40	\$999,518.00	\$35,324.17
Hausfeld LLP	1,951.00	\$1,275,585.50	\$58,592.73
Total	6,275.00	\$3,327,090.50	\$138,944.72

23 See Fauth Decl., Exhs. C, D; Pizzirusso Decl., Exhs. 1, 2; Fisher Decl., Attachments 1, 2. In addition, Class Counsel directed work to other firms that have been involved in the case, many of which had

26 ⁸ To date, GCG has received 42,107 claims under the New Settlement. This is in addition to the 11,328 claims that were received from the prior settlement, for a total of 52,399 claims under the New Settlement--that is, there are already some five times the number of claims that were received under the Prior Settlement, and the claims period is still open. (Fauth Dec. ¶ 56.)

1 clients who remained as class representatives. Class Counsel oversaw their work, directed their efforts,
 2 and periodically asked for and reviewed their time and expenses. Non-lead counsel have expended
 3 4,305.03 hours in professional time for a lodestar of \$2,335,561.75, and have incurred \$128,339.81 in
 4 expenses since the case began. A breakdown of these firm's hours, lodestars and expenses are set forth
 5 in Exhibit E attached to the Fauth Declaration. The combined total lodestar of all firms is therefore
 6 \$5,662,652.25. And combined total expenses are \$267,284.53.

7
 8 **V. THE REQUESTED AWARD OF ATTORNEYS' FEES AND COSTS AND INCENTIVE**
AWARDS ARE REASONABLE AND APPROPRIATE.

9 **A. Applicable Standards for an Appropriate Fee.**

10 At the conclusion of a successful class action, plaintiffs' counsel may move for an award of
 11 reasonable attorney fees. *See* Fed. R. Civ. P. 23(h). The first issue in assessing any such motion is to
 12 identify the applicable law, as both eligibility for a fee award and the method of calculating that award
 13 vary depending on whether state or federal law applies. The Court's jurisdiction in this case arises
 14 under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d), which means the Court is
 15 sitting in diversity. *See Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 571 (2005)
 16 ("CAFA confers federal diversity jurisdiction over class actions . . . [.]"). In diversity actions,
 17 "state law governs both the right to recover attorney's fees and the computation of their amount."
 18 *Collado v. Toyota Motor Sales, U.S.A., Inc.*, 550 Fed. Appx. 368, 369 (9th Cir. 2013); *Champion*
 19 *Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1024 (9th Cir. 2003) ("An award of
 20 attorneys' fees incurred in a suit based on state substantive law is generally governed by state
 21 law."); *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995) ("Existing Ninth
 22 Circuit precedent has applied state law in determining not only the right to fees, but also in the method
 23 of calculating the fees.").

24 To determine the amount of the fees to be awarded under the fee-shifting statutes at issue here,
 25 California courts generally utilize the lodestar/multiplier method. *See Roos v. Honeywell Internat., Inc.*,
 26 241 Cal. App. 4th 1472, 1490 (2015) ("In fee-shifting cases, requests for attorney fees are typically
 27 measured under the lodestar method.") In the Ninth Circuit, where the common fund approach
 28 predominates, district courts may "choose either the percentage-of-the-fund or the lodestar

1 method” in determining the appropriate amount of attorney’s fees. *See Vizcaino v. Microsoft*
 2 *Corp.*, 290 F.3d 1043, 1046 (9th Cir. 2002). “Regardless of whether the court uses the percentage
 3 approach or the lodestar approach, the main inquiry is whether the end result is reasonable.”
 4 *Singer v. Becton Dickinson and Co.*, 2010 WL 219610, at *8 (S.D. Cal. June 1, 2010). “The
 5 lodestar method better accounts for the amount of work done, while the percentage of the fund
 6 method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache Properties,*
 7 *Inc.* 9 F.3d 513, 516. (6th Cir. 1993).

8 **B. Plaintiffs Are Entitled To A Fee Award Under The Consumers Legal Remedies Act**
 9 **and the Private Attorney General Statute.**

10 **1. The Consumers Legal Remedies Act, Cal. Civ. Code § 1780(e).**

11 Under the CLRA, “[t]he court shall award court costs and attorney’s fees to a prevailing plaintiff
 12 in litigation filed pursuant to [the CLRA].” Cal. Civ. Code § 1780(e). As the California Supreme Court
 13 has observed, “the availability of costs and attorneys fees to prevailing plaintiffs is integral to making
 14 the CLRA an effective piece of consumer legislation, increasing the financial feasibility of bringing suits
 15 under the statute.” *Broughton v. Cigna Healthplans*, 21 Cal. 4th 1066, 1085 (1999); *see also Hayward*
 16 *v. Ventura Volvo*, 108 Cal. App. 4th 509 (2003) (“The provision for recovery of attorney’s fees allows
 17 consumers to pursue remedies in cases as here, where the compensatory damages are relatively
 18 modest.”). “Accordingly, an award of attorney fees to ‘a prevailing plaintiff’ in an action brought
 19 pursuant to the CLRA is mandatory, even where the litigation is resolved by a pre-trial settlement
 20 agreement.” *Kim v. Euromotors West/The Auto Gallery*, 149 Cal. App. 4th 170, 178-79 (2007).

21 California courts have adopted two approaches to determining when a party is a “prevailing
 22 plaintiff” entitled to a fee award under the CLRA. The first approach borrows from Section 1032 of the
 23 California Code of Civil Procedure and determines that a plaintiff is the prevailing party if he or she
 24 obtained a “net monetary recovery.” *Kim*, 149 Cal. App. 4th at 179. The second approach determines
 25 prevailing party status based on whether a party succeeded on a practical level. *Id.*; *see also Graciano v.*
 26 *Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 150-51 (2006). Under this pragmatic approach,
 27 plaintiffs are considered prevailing Parties “if they succeed on *any significant* issue in litigation which
 28

1 achieves *some of the benefit* the Parties sought in bringing suit.” *Graciano*, 144 Cal. App. 4th at 154
 2 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (emphasis added in *Graciano*).

3 Under either approach for determining prevailing party status, Plaintiffs qualify for an attorneys’
 4 fee award. They alleged that SCEA violated the CLRA by advertising the PS3’s Other OS function and
 5 then later removing that function. They requested that SCEA compensate Class members for the loss of
 6 the function. Now, after some eight years of litigation, they have achieved a settlement in which each
 7 valid claimant may receive up to \$65—a significant portion of the original purchase price of the PS3.
 8 Having provided monetary compensation for Class members through the Settlement, Plaintiffs have
 9 accomplished their primary litigation objective and thus are prevailing Parties under both the “net
 10 monetary recovery” approach and *Graciano’s* pragmatic approach.

11 **2. The Private Attorney General Statute, Cal. Code Civ. P. § 1021.5.**

12 Plaintiffs are also entitled to a fee award under Code of Civil Procedure § 1021.5, which
 13 the California Legislature enacted to codify the private attorney general doctrine previously
 14 developed by the courts. *See Vasquez v. State of California*, 45 Cal. 4th 243, 250 (2008). The
 15 fundamental objective of the private attorney general doctrine is “to encourage suits enforcing
 16 public policies by providing substantial attorney fees to successful litigants in such cases.” *Id.*
 17 Accordingly, Section 1021.5 authorizes an award of attorney fees to a “successful party” in any
 18 action that “has resulted in the enforcement of an important right affecting the public interest if:
 19 (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general
 20 public or a large class of persons, (b) the necessity and financial burden of private enforcement are
 21 such as to make the award appropriate, and (c) such fees should not in the interest of justice be
 22 paid out of the recovery, if any.” Code of Civ. Proc. § 1021.5; *see also Lyons v. Chinese Hosp.*
 23 *Ass’n*, 136 Cal. App. 4th 1331, 1344 (2006) (“Although section 1021.5 is phrased in permissive
 24 terms (the court ‘may’ award), the discretion to deny fees to a party that meets its terms is quite
 25 limited.”).

26 Plaintiffs satisfy all requirements for an award of attorney fees under Section 1021.5:

27 • Plaintiffs qualify as a “successful party” under the statute for the same reasons they
 28 qualify as a “prevailing plaintiff” under the CLRA—they have achieved one of the primary benefits

1 sought in bringing the lawsuit. *See Lyons*, 136 Cal. App. 4th at 1346 (“A ‘successful’ party means a
2 ‘prevailing’ party.’”).

3 • Plaintiffs’ case has conferred a significant benefit on a large class of persons by providing
4 monetary relief to thousands of consumers who bought a PS3. They have also conferred a significant
5 benefit on the public by enforcing important consumer protection rights and discouraging similarly
6 unfair and deceptive treatment of consumers to that alleged here. *See Graham v. Daimler Chrysler*
7 *Corp.*, 34 Cal.4th 553, 578 (2004) (“It is well settled that attorney fees under section 1021.5 may be
8 awarded for consumer class action suits benefiting a large number of people.”).

9 • Without the incentive of an award of attorney fees, Plaintiffs could not have afforded
10 lawyers to litigate this case; their out-of-pocket losses were not significant enough to hire a lawyer and
11 litigate an individual suit. *See Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033,
12 1044 (2001) (“As to the necessity and financial burden of private enforcement, an award *is appropriate*
13 *where the cost of the legal victory transcends the claimant’s personal interest; in other words, where the*
14 *burden of pursuing the litigation is out of proportion to the plaintiffs individual stake in the matter.”).*

15
16 **C. The Requested Attorney’s Fee is Reasonable Under Both the Common**
17 **Fund Method and Lodestar/Multiple Method of Calculating a Reasonable**
18 **Attorneys’ Fee.**

19 **1. Using the Common Fund Method, the Requested Attorneys’ Fee is Reasonable.**

20 Class Counsel’s efforts have resulted in a common settlement fund of \$3.75 million, and
21 the \$1,250,000 fee and costs award they now request is reasonable using the common fund
22 method of calculating fees. Attorneys who recover a fund for the benefit of a class are “entitled
23 to a reasonable attorney’s fee from the fund as a whole.’ *Boeing Co. v. Van Gernert*, 444 U.S.
24 472, 478 (1980); *see In re Omnivision Technologies*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal.
25 2008).

26 Plaintiffs request an award of 33 1/3 percent of the common fund. The Ninth Circuit’s
27 “benchmark” for common fund awards is twenty-five percent of the fund obtained for the class,
28 but that is merely “a starting point for analysis.” *Vizcaino*, 290 F.3d at 1048. *See Omnivision*,
559 F. Supp. 23 at 104 (“in most common fund cases, the award exceeds that benchmark.”) The

1 relevant factors courts consider include: (1) the risks undertaken in the litigation, including the
2 complexity and duration of the case; (2) the skill and quality of the work performed; (3) the
3 contingent nature of the fee and the financial burden carried by Plaintiffs; (4) awards in similar
4 cases; (5) a cross-check using the lodestar-multiplier calculation; and, most important of all, (6)
5 the results achieved for the class. *See Omnivision*, 559 F. Supp. 2d at 1046. Here, these factors
6 support the fee requested.

7 The risks Class Counsel assumed in representing PS3 owners were considerable. In almost
8 eight years of litigation, including a reversal of the Motion to Dismiss decision in the Ninth
9 Circuit, Class Counsel expended thousands of hours of attorney time and incurred significant out-
10 of-pocket litigation costs, including for experts, depositions and other necessary expenses. They
11 worked the case entirely on contingency. The considerable risk of failure undertaken in this
12 litigation with complex legal and technical issues is amply shown by the record. SCEA defended
13 itself vigorously and raised serious arguments, including that consumers could only reasonably
14 expect a product's functionality, including of the Other OS capability, to last for the life of the
15 warranty (for the PS3, one year). At one point in the litigation, Judge Seeborg dismissed the
16 entire action with prejudice. Plaintiffs nonetheless persevered, obtained a partial reversal of the
17 dismissal in the Ninth Circuit, and have now succeeded in obtaining a settlement that will
18 provide class members with a meaningful monetary recovery.

19 The fee award of 33 1/3 per cent sought by Plaintiffs is within the parameters of similar
20 awards in other cases. *See e.g., Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir. 2003)
21 (affirming 33% fee award); *In re: Pacific Enterprises Securities Litigation*, 47 F.3d 373, 379 (9th
22 Cir. 1995) (33 1/3% fee award); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 487 (2016)
23 (33 1/3% fee award); *In re Wachovia Corp. "Pick-A-Payment" Mortg. Mktg and Sales Practices*
24 *Litig.*, No. 5:09-md-02015, 2011 U.S. Dist. LEXIS 55351, at *24 (N.D. Cal. May 17, 2011) (33
25 1/3 % fee award); *In re Nuvelo, Inc. Secs. Litig.*, No. C 07-04056, 2011 U.S. Dist. LEXIS 72260,
26 at *10 (N.D. Cal. July 6, 2011) (30% fee award); *Singer v. Becton Dickinson & Co.*, No. 08-CV-
27 821-IEG (BLM), 2010 WL 2196104, at *9 (S.D. Cal. June 1, 2010) (33 1/3% fee award). Also, as
28 shown by a cross-check using the lodestar method, *see infra*, the situation here is far from a
situation in which the percentage requested would give Plaintiffs' counsel an unearned windfall.

1 Therefore, under the common fund method of calculation, the requested fee is reasonable.

2 **2. The Fee is Reasonable When Cross-Checked Using the Lodestar Method.**

3 California's lodestar/multiplier method involves a two-step process of fee calculation under
4 which the Court first determines the lodestar (or touchstone) by “multiplying the number of hours
5 reasonably expended by counsel by a reasonable hourly rate.” *In re Consumer Privacy Cases*, 175 Cal.
6 App. 4th 545, 556 (2009). The Court may then enhance or reduce the lodestar by applying a multiplier
7 to take into account the contingent nature and risk associated with the action, as well as other factors
8 such as the degree of skill required and the ultimate success achieved. *Id.* Courts may adjust the
9 lodestar figures, if appropriate, but should also clearly explain the basis for any adjustment. *See*
10 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111-12 (9th Cir. 2008).

11 To assist the Court in evaluating the reasonableness of the time spent on this case, Class Counsel
12 have presented detailed, sworn summaries of their work, and can provide their daily time records if the
13 Court believes it helpful. *See Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir.
14 2009) (when awarding fees under a California fee-shifting statute, “[t]estimony of an attorney as to the
15 number of hours worked on a particular case is sufficient evidence to support an award of attorney
16 fees”); *Goldberger v. Integrated Resources, Inc.*, 209 F. 3d 43, 50 (2d Cir. 2000) (“Of course, where
17 used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by
18 the district court.”). Addressing the Court’s concern that with the Prior Settlement (where, unlike here,
19 there was no common fund and counsel had sought an award based on their lodestar), counsel had not
20 submitted sufficient detail regarding their time spent, Class Counsel have provided declarations breaking
21 their time down into the categories of work applicable to the case. *See Procedural Guidance for Class*
22 *Action Settlements* (available at <http://www.cand.uscourts.gov/ClassActionSettlementGuidance>)
23 (“Declarations of class counsel as to hours spent on various categories of activities related to the action,
24 together with hourly billing rate information may be sufficient, provided that the declarations are
adequately detailed.”).

25 Class Counsel have also provided their current hourly rates, as well as decisions of other
26 courts approving those same or similar rates in past cases. *See McIntosh v. McAfee, Inc.*, 2009
27 WL 673976, *2 (N.D. Cal. Mar. 13, 2009) (“Courts may find hourly rates reasonable based on
28 evidence of other courts approving similar rates or other attorneys who are engaged in similar

litigation charging similar rates.”).⁹ The reported rates are current rather than historical, which is appropriate to compensate Class Counsel for the delay in receiving payment for past services. *Coles v. City of Oakland*, 2007 WL 39304, *6 (N.D. Cal. Jan. 4, 2007) (“Under [California] state fee-shifting statutes, however, a fee applicant may be awarded a lodestar amount reflecting their present hourly rate . . . to compensate a fee applicant for delay in receiving payment.”).

3. The Negative Multiplier.

“Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative multiplier to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556. Although all of these factors are important and can be considered, “the purpose of a fee enhancement is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class.” *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001) (emphasis added). Thus, in wholly-contingent consumer class actions like this one, California courts have approved fee awards with multipliers of 2 and even higher. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 (2008) (same). These cases recognize that a “lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Ketchum*, 24 Cal. 4th at 1333 (quoting Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)).

Here, the risks taken, the skill exhibited in litigating this case, and the results achieved for Class members in the Settlement would support a request for a fee multiplier. Instead, Plaintiffs’ requested fee award represents a significant reduction in their lodestar, given that the requested

⁹ *See also G.F. v. Contra Costa Cty.*, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25, 2015) (court found that hourly rates of between \$475-\$975 for partners, \$300-\$490 for associates, and \$150-\$430 for litigation support and paralegals were reasonable); *Californians for Disability Rights, Inc., et al. v. California Department of Transportation, et al.*, 2010 U.S. Dist. LEXIS 141030, at *39 (N.D. Cal. Dec. 13, 2010) (rates of up to \$835 per hour reasonable).

1 fee (after costs) is approximately \$983,000 -- only some 17.5% of the aggregate lodestar of \$5.66
 2 million, for an effective multiplier (or divider) of -5.75. Thus, the requested fee, which represents
 3 a negative multiplier, is most reasonable. *See, e.g., Tait v. BSH Home Appliances Corp.*, 2015
 4 U.S. Dist. LEXIS 98546, at *45 (C.D. Cal. July 27, 2015) (finding that fees were reasonable
 5 where they constituted a negative multiplier of approximately .50 of the unadjusted lodestar).

6 Therefore, under both the common fund method and the lodestar-multiplier method of
 7 calculating fees, Plaintiffs' requested award of attorneys' fees is reasonable.

8 **D. Plaintiffs' Request for Reimbursement of Expenses is Reasonable.**

9 The CLRA provides for an award of court costs to Plaintiffs in addition to an award of attorney
 10 fees. Cal. Civ. Code § 1780(e) (“[t]he court shall award court costs and attorney’s fees to a prevailing
 11 plaintiff.”). Because Plaintiffs' request for reimbursement of costs arises under California substantive
 12 law, the Court applies California law on costs rather than Local Rule 54-4. *Clausen v. M/V New Carissa*,
 13 339 F.3d 1049, 1064 (9th Cir. 2003).

14 Plaintiffs' counsel have incurred \$267,284.53 in unreimbursed costs and expenses prosecuting
 15 this case on behalf of the class. Fauth Decl., Exhs. D, E and ¶ 69; Pizzirusso Decl., Exh. 2; Fisher Decl.,
 16 Attachment 2. As explained below and detailed in the accompanying declarations, \$34,308.09 are
 17 recoverable as mandatory costs and \$86,025.37 as discretionary costs, for a total recovery of
 18 \$120,033.46 in costs. The remaining \$146,951.07 are not taxable costs under California law, but may be
 19 considered by the Court in evaluating the fee to be awarded.

20 **1. Mandatory Costs.**

21 California Code of Civil Procedure §§1033.5(a)(1), (3)-(4),(7) and (13) state that the Court must
 22 award costs for filing fees, deposition transcripts, service-of-process fees, witness fees and photocopies
 23 of exhibits to assist the court. Plaintiffs seek reimbursement of such costs in the amount of \$34,308.09.
 24 Fauth Decl., Exhs. D, E and ¶ 69; Pizzirusso Decl., Exh. 2; Fisher Decl., Attachment 2.

25 **2. Discretionary Costs.**

26 California Code of Civil Procedure section 1033.5(c) gives the Court discretion to award costs
 27 for “[i]tems not mentioned in this section” if the costs are “reasonably necessary to the conduct of the
 28 litigation, rather than merely convenient or beneficial to its preparation.” *Science App. Int'l Corp. v.*

1 *Superior Court*, 39 Cal. App. 4th 1095, 1103 (1995). Plaintiffs seek recovery of the following expenses,
2 which were reasonably necessary to the conduct of the litigation:

3 Travel costs. With Court-appointed Class Counsel located in California and Washington, D.C.,
4 and plaintiffs located across the country including Tennessee and Illinois, attorney and plaintiff travel
5 was required to attend proceedings in San Francisco, including the case management conference, oral
6 arguments on the motions, and to attend the Plaintiffs' depositions. *Page v. Something Weird Video*, 960
7 F. Supp. 1438, 1447 (C.D. Cal. 1996) (travel costs necessary to attend hearings found recoverable under
8 section 1033.5(c)). Class Counsel seek recovery of \$68,311.73 in travel costs. Fauth Decl., Exhs. D, E;
9 Pizzirusso Decl., Exh. 2; Fisher Decl., Attachment 2.

10 Delivery Charges. Class Counsel also incurred \$3,598.64 for delivery of courtesy copies to the
11 Court. *Id.*; *see also Ladas v. California State Auto. Assn.*, 19 Cal. App. 4th 761, 776 (Cal. Ct. App.
12 1993) (messenger charges related to filing documents with the court approved).

13 Mediation Fees. Lastly, in connection with the July 2011, August 2015 and April 2017
14 mediations, which ultimately led to a successful class settlement (assuming the Settlement is granted
15 final approval), Plaintiffs incurred \$14,115.00 in mediation fees. *See* Fauth Decl., ¶ 69; *see also, e.g.,*
16 *Gibson v. Bobroff*, 49 Cal. App. 4th 1202, 1209 (1996) (awarding the costs of court-ordered mediation).

16 **3. Prohibited Costs.**

17 California Code of Civil Procedure § 1033.5(b) states that the Court is not to award certain
18 categories of costs. *Science Appl. Int'l. Corp. v. Superior Court*, 39 Cal. App. 4th 243, 1103 (1995).
19 Plaintiffs nevertheless identify these costs because the Court should be aware of the non-recoverable
20 costs when the Court evaluates Plaintiffs' requested attorney fees.

21 Expert Fees. Plaintiffs' counsel spent \$43,648.25 on expert consultants to help them develop
22 damages models in anticipation of filing a motion for class certification. *See* Fauth Decl., ¶ 69.

23 Other Expenses. Plaintiffs also incurred other expenses related to postage, telephone, copying,
24 transcripts of court proceedings, factual and legal research, and other miscellaneous charges. *See* Fauth
25 Decl., Exhs. D, E and ¶ 69; Pizzirusso Decl., Exh. 2; Fisher Decl., Attachment 2.

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1 **E. The Class Representatives Should Each Receive a \$3,500 Incentive Award for Their**
 2 **Efforts Helping to Secure the Settlement Benefits for the Class.**

3 Finally, Class Counsel seek an incentive award in the amount of \$3,500 for each of the five Class
 4 Representatives, for a total of \$17,500. “Incentive awards are fairly typical in class action cases.”
 5 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (2009) (citing 4 ALBA CONTE ET AL.,
 6 NEWBERG ON CLASS ACTIONS § 11:38 (4th ed. 2008)). These awards, generally sought after a
 7 settlement has been reached, “compensate class representatives for work done on behalf of the class, to
 8 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
 9 recognize their willingness to act as a private attorney general.” *Id.* at 958-59. The Court has discretion
 10 to approve incentive awards, and its consideration includes factors such as the amount of time and effort
 11 spent by the class representatives, the duration of the litigation, and the personal benefit (or lack thereof)
 12 enjoyed by the class representatives as a result of the litigation. *Wilson v. Airborne, Inc.*, 2008 U.S. Dist.
 LEXIS 110411, at *37 (C.D. Cal. Aug. 13, 2008).

13 The Class Representatives should be granted the requested awards. They engaged counsel and
 14 assisted counsel with their investigation, analysis, and prosecution of the claims; the preparation of
 15 pleadings (including the complaints filed in this matter and declarations); participated in discovery,
 16 including responding to written discovery, producing their PS3s and documents for inspection, and
 17 appearing for deposition; settlement negotiations; and review and analysis of the Parties’ settlement
 18 papers. (See Fauth Decl. ¶¶ 72-73.) Moreover, the time the Class Representatives spent on this case
 meant time spent away from family, friends, work, and various other activities.

19 The \$3,500 incentive awards requested are lower than what is presumptively reasonable in the
 20 Ninth Circuit district courts,¹⁰ even where, unlike here, there is the prospect of minimal damages
 21 recoveries by individual class members. See *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
 22 947-48 (9th Cir. 2015) (approving \$5,000 incentive awards where class members would receive \$12);
 23 *Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at *143 (C.D. Cal. Nov. 23, 2011) (approving
 24 incentive awards of \$5,000 per named plaintiff, where settlement provided for the recovery by class
 25 members of \$5 per box of cereal purchased during the class period, up to a maximum of \$15 per class
 26

27 ¹⁰ See *Camberis v. Ocwen Loan Serv. LLC*, 2015 U.S. Dist. LEXIS 163826, at *9 (N.D. Cal. Dec. 7,
 28 2015) (“As this Court has recognized, . . . as a general matter, ‘\$5,000 is a reasonable amount’ [for
 service awards.]” (citation omitted)).

1 member, all subject to proportional reduction if all eligible claims exceeded the settlement fund); *see*
2 *also Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, at *109 (N.D. Cal. Apr. 1,
3 2011) (making \$5,000 service awards to 20 named plaintiffs where “average award to class members
4 was \$207.69”). Also, the awards sought are modest compared with incentive awards in other cases. *See*,
5 *e.g., Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, at *23 (S.D. Cal. June 1, 2010)
6 (\$25,000 award); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (\$300,000 award).
7 Here, given the valuable and time-consuming aid rendered to the Class by the named Plaintiffs in this
8 case, Class Counsel respectfully submit that the requested incentive awards are fair and reasonable, and
9 should be awarded.

10 **VI. CONCLUSION.**

11 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
12 for attorneys’ fees and costs, and for incentive awards.

13 DATED: March 6, 2018

Respectfully Submitted,

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Filer's Attestation

I, Gordon M. Fauth, Jr., hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

DATED: March 6, 2018

Respectfully Submitted,

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