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THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

LISA KIM, individually on behalf of herself and all others similarly situated,

Plaintiff,

vs.

TINDER, INC., a Delaware corporation; MATCH GROUP, LLC, a Delaware limited liability company; MATCH GROUP, INC., a Delaware corporation; and DOES 1 through 10, inclusive, and each of them,

Defendants.

Case No.: 2-18-cv-03093-JFW-AS

PLAINTIFF LISA KIM'S AMENDED NOTICE OF MOTION & MOTION FOR ATTORNEYS' FEES COSTS AND INCENTIVE AWARDS

Date: January 10, 2022
Time: 1:30 p.m.
Courtroom: 7A
Hon. John F. Walter

Filed and Served Concurrently with Declaration of Todd Friedman; Declaration of John Kristensen; Declaration of Lisa Kim; [Proposed] Order]

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TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 10, 2022, at 1:30 p.m., in Department 7A of the United States District Court for the Central District of California, located at 350 West First Street, Los Angeles, California 90012, Plaintiff Lisa Kim ("Plaintiff"), for herself and other similarly situated, will move this Court for an order granting Plaintiff's Amended Motion for Attorney's Fees Court Costs and Incentive award, as detailed in Plaintiff's memorandum of points and authorities.

This Motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the declaration and exhibits thereto, the Complaint, all other pleadings and papers on file in this action, and upon such other evidence and arguments as may be presented at the hearing on this matter.

Dated: November 29, 2021 Respectfully submitted,

By: */s/ Todd M. Friedman*

Todd M. Friedman (SBN 216752)
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John P. Kristensen (SBN 224132))
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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7-3

Plaintiff's counsel certifies that prior to filing the instant motion, the parties, through counsel, met and conferred pertaining to the subject matter of the instant motion. Specifically, Plaintiff's counsel Todd m Friedman and Defendant's counsel Donald Brown met and conferred telephonically regarding the subject and content of the Motion on November 15, 2021, in fulfillment of Local Rule 7-3. Defendant indicated that it would timely respond to Plaintiff's Motion.

Dated: November 29, 2021

Respectfully submitted,

By: */s/ Todd M. Friedman*

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
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John P. Kristensen (SBN 224132)
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Attorneys for Plaintiff and all others similarly situated.

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TABLE OF AUTHORITIES

Cases

In re Washington Pub. Power Supply Sys. Sec. Litig.,
19 F.3d 1291, 1299 (9th Cir. 1994) 24

Bellinghausen v. Tractor Supply Co.,
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Blum v. Stevenson,
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Carter v. City of Los Angeles,
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Davis v. City and County of San Francisco,
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Dennis v. Kellogg Co.,
697 F.3d 858, 862-63 (9th Cir. 2012) 19

Di Giacomo v. Plains All Am. Pipeline,
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Dukes v. Wal-Mart Stores, Inc.,
603 F.3d 571 (9th Cir. 2010) 20

Fischel v. Equit. Life Assurance Soc'y,
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Glass v. UBS Fin. Servs.,
2007 U.S. Dist. LEXIS 8476, at *48 (N.D. Cal. Jan. 26, 2007) 25, 26

Hanlon v. Chrysler Corp.,
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Hartless v. Clorox Co.,
273 F.R.D. 630 (S.D. Cal. 2011) 29

Hensley v. Eckerhart,
461 U.S. 424 (1983) 18

In re Activision Sec. Litig.,
723 F. Supp. 1373 (N.D. Cal. 1998) 17

In re Beverly Hills Fire Litigation,
639 F. Supp. 915 (E.D. Ky. 1986) 29

In re Bluetooth Headset Prods. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011) 14

In re EasySaver Rewards Litig.,
921 F. Supp. 2d 1040 (S.D. Cal. 2013) 19, 20

In re Global Crossing Sec. and ERISA Litig.,
225 F.R.D. 436 (E.D. Pa. 2000) 20, 21

In re Immune Response Sec. Litig.,
497 F. Supp. 2d 1166 (S.D. Cal. 2007) 30

In re Media Vision Tech. Sec. Litig.,
913 F. Supp. 1362 (N.D. Cal. 1996) 30

In re Mego Fin'l Corp. Sec. Litig.,
213 F. 3d 454 (9th Cir. 2000) 21

In re Mercury Interactive Corp.,
618 F.3d 988 (9th Cir. 2010) 14

In re Omnivision Tech., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) 17, 18, 21, 23, 25

In re Online DVD-Rental Antitrust Litigation,
779 F.3d 934 (9th Cir. Feb. 27, 2015) 31

In re Toys R Us – Delaware, Inc. – Fair and Accurate Credit Transactions Act (FACTA) Litigation,
295 F.R.D. 438 (C.D. Cal. Jan. 17, 2014) 31

In re Washington Pub. Power Supply Sys. Sec. Litig.,
19 F.3d 1291 (9th Cir. 1994) 24

Kerr v. Screen Extras Guild, Inc.,
526 F.2d 67 (9th Cir. 1975) 26, 27

Lane v. Facebook, Inc.,
709 F.3d 791, 793 (9th Cir. 2013) 19

Lundell v. Dell, Inc.,
CIVA C05-3970 JWRS, 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006) 15

McGill v. Citibank,
N.A, 2 Cal.5th 945 (2017) 9, 28

Mills v. Electric Auto-Lite Co.,
396 U.S. 375, 391-392 (1970) 30

Molski v. Gleich,
318 F.3d 937, 954-55 (9th Cir. 2003) 20

Nachshin v. AOL, LLC,
663 F.3d 1034, 1038 (9th Cir. 2011) 20

National Rural Tele. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523, 527 (C.D. Cal. 2004) 20

O'Connor v. Uber Technologies, Inc.,
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Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco,
688 F.2d 615, 625 (9th Cir. 1982)....................15

POM Wonderful, LLC v. Purely Juice, Inc.,
2008 WL 4351842 (C.D. Cal 2008)....................30

Serrano v. Unruh,
32 Cal. 3d 621 (1982) 29

Staton v. Boeing Co.,
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Van Vranken v. Atlantic Richfield Co.,
901 F. Supp. 294 (N.D. Cal. 1995) 29

Vizcaino v. Microsoft Corp.,
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Statutes

Cal. Bus. & Prof. Code §§ 17200, et seq. 5, 6, 14, 15, 16, 17, 22

Cal. Civ. Code §§ 51, et seq. 5, 14, 15, 16, 17

Other Authorities

2 McLaughlin on Class Actions (8th ed.) 11

Federal Judicial Center, Manual for Complex Litigation (4th Ed. 2004) 13

Federal Judicial Center, Manual for Complex Litigation, § 27.71 13

Rules

Fed. R. Civ. P. 23 ....2, 6, 10, 13

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff moves the Court for an award of attorneys' fees, costs and incentive payment as part of this preliminarily approved class action settlement (see Dkt. No. 140) between Plaintiff Lisa Kim ("Plaintiff") and Defendants Tinder, Inc., Match Group, LLC and Match Group, Inc., (hereinafter referred to as "Defendants" or "Tinder"). Defendant has reserved the right to oppose the Motion.

The Settlement resulted from the Parties' participation in a Second all-day mediation session before the Honorable Louis M. Meisinger (Ret.) of Signature Resolution and subsequent settlement discussions, after the Ninth Circuit rejected the parties' previous class action settlement approved by this Court. *See* Dkt. No. 109. The Settlement provides for a substantial financial benefit to each Settlement Class Member ("Member"). The Settlement Class consists of:

> *Every person in California who subscribed to Tinder Plus or Tinder Gold during the Class Period and at the time of the subscription was at least 29 years old and was charged a higher rate than younger subscribers, except those who choose to opt out of the Settlement Class.*[1] (Agreement § 2.21.)

The compromise Settlement reached with the guidance of Judge Meisinger will create a Settlement Fund to be established by Defendants in the amount of $5,200,000. (Agreement § 3.3.) In addition to the common fund monetary relief, Tinder will deposit (i) 70 free Super Likes), and (ii) one Boost into the Tinder account of every Settlement Class Member who at that time has a Tinder account, so long as the email address associated with the account is the same as when the Member purchased Tinder Plus or Tinder Gold during the Class Period.[2]

[1] The Class Period is from March 2, 2015 through March 1, 2019. (Agreement § 2.6.)

[2] Settlement Class members who no longer have active accounts will be able to

Defendants shall advise Settlement Class Members via the Class Notice that they must have an account in place in order to receive the deposit of Super Likes and Boost. (Agreement § 3.2.) This robust Settlement on behalf of hundreds of thousands of consumers was achieved after hard-fought litigation, arm's length negotiations, and the careful and skilled efforts of Class Counsel.

On November 3, 2021, the Court granted preliminary approval of the Settlement and its terms enumerated above, observing, that the Settlement appeared reasonable and disclosed no grounds to doubt its fairness. Dkt. No. 140. The Court preliminarily approved the fairness of the anticipated fees, taking particular note of the fact that the so called "clear-sailing" provision had been eliminated, and that Class Counsel would not request fees for the additional work the performed in connection with the revised settlement, despite the increased value of the revised settlement and the additional hours spent since the Court's June 19, 2019 Order granting Plaintiff's Motion for final Approval of Class Settlement, Plaintiff's Motion for Attorney's Fees Costs and Incentive Awards. Dkt. No. 140, Pg 7.

Federal Rules of Civil Procedure provide that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23. As noted by Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class, which was approved by this Court (Dkt. 140), the Settlement Agreement in this action resulted from extensive arm's length negotiations, including a second full-day mediation session before Hon. Judge Louis M. Meisinger (Ret.). Friedman Decl ¶ 17. The arm's length negotiations, especially those before Judge Meisinger, serve as "independent confirmation" of the reasonableness of the Settlement's terms including the attorneys' fees, costs,

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activate their accounts and these benefits will be made available to them as well.

1 and incentive award sought by this Motion. *See Hanlon v. Chrysler Corp*., 150
2 F.3d 1011, 1029 (9th Cir. 1998). Under these circumstances, the Court may give
3 deference to the judgment of the parties regarding the reasonableness of the
4 requested fees.

5 The reasonableness of the requested fees is also supported by the
6 "percentage of-the-fund" and "lodestar" approach. The $1,200,000 in attorneys'
7 fees sought equates to approximately 23% of the estimated $5,200,000 in the **cash**
8 settlement benefit provided to the Class, alone. Additionally, Defendants have
9 agreed to provide a total of 70 Super likes and one Boost to each Member of the
10 Settlement Class who meets the criteria for receiving automatic benefits. The value
11 of those benefits for each Member who qualifies is $118.30. For the portion of the
12 Settlement Class who already have an active Tinder account (25%), the collective
13 value of those benefits would be $7.1M. Accordingly, adding both the cash and
14 non-monetary components together, the $1,200,000 in attorneys' fees sought
15 would equate to **less than 10% of the total value of the settlement**. Regardless,
16 both are less than the Ninth Circuit's benchmark percentage of 25% for attorneys'
17 fee awards.

18 Additionally, Class Counsel have now incurred a combined lodestar of
19 $1,072,448.75, but are **not** seeking additional sums for attorney's fees, as a result
20 of the appeal of the previous settlement, and any work done to effectuate the
21 revised settlement recently approved by this Court. Friedman Decl ¶ 64.
22 Furthermore, Class Counsel estimate that they will spend approximately another
23 120-160 hours working on the case including overseeing the administration of class
24 settlement benefits, communicating with class members, moving for final
25 approval, preparing for, and attending the final approval hearing, and ensuring the
26 final distribution of settlement benefits are carried out in full. However, Plaintiff's
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1 counsel is not seeking additional fees for any of the new hours expended, as they
2 have capped their fee request to the fees requested in the prior settlement.
3 This estimate assumes there are no further objections to the settlement from
4 Allan Candelore, Rich Allison Steve Frye, or any other Class Members, and no
5 further appeals. Without taking into account these additional anticipated hours, the
6 fee request currently represents a reasonable lodestar multiplier of 1.12, which
7 serves as an independent cross check as to the reasonableness of the fee request.
8 Through this fee brief, which Defendant has the contractual right to oppose,
9 Plaintiff seeks Court approval of the agreed-upon costs and fees as follows: (1)
10 attorneys' fees in the amount of $1,200,000; (2) litigation costs in an amount of
11 $29,633.76; and (3) an incentive award of $5,000 to Plaintiff Lisa Kim. As more
12 thoroughly stated herein and as detailed in the supporting declaration filed
13 herewith, these sums are fair and reasonable as they resulted from extensive arm's
14 length negotiations and are further supported by the percentage-of-the-fund and
15 loadstar methodologies. Friedman Decl. ¶¶ 35-61.

16 **II. STATEMENT OF FACTS**

17 **A. Factual Background**

18 Tinder is a smartphone-based dating application that is used by consumers
19 throughout the world, including California. The core functionality of the app
20 enables users to view profiles of other users in the same geographic locale and to
21 either indicate an interest in (i.e., to "like") another user or, alternatively, indicate
22 a lack of interest. If two users indicate an interest in each other's profile, they can
23 then communicate with each other through the app. The app also allows a user to
24 indicate a heightened degree of interest in another user through a feature known as
25 a "Super Like." The app may be downloaded and used for free, but certain
26 additional or premium features can only be accessed by purchasing a subscription
27 to Tinder Plus or Tinder Gold. Such features include, among other things,
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unlimited likes (whereas the free version has a daily limit), no paid advertisements, the ability to undo dislikes, the ability to view profiles in other locales, and to ability to exert more control over other variables involved in using the app. Also, subscribers receive more free Super Likes than non-subscribers, but any user of the app may purchase additional Super Likes for a typical price of 99 cents each.

Plaintiff, a female user over the age of 29, alleges that when she and Class Members purchased Tinder premium services (Plus or Gold), Defendants discriminated against such consumers based on age, by charging more money for the same service for consumers age 29 and older. Plaintiff claims that Defendants' widespread and uniform conduct is in direct violation of the Unruh Civil Rights Act, *Cal. Civ. Code* §§ 51, et seq. ("Unruh Act"), which generally outlaws age discrimination by businesses operating in California. In addition, Plaintiff alleges that Defendants' pricing scheme violates the Unfair Competition Law, *Cal. Bus. & Prof. Code* §§ 17200, et seq. ("UCL"). Plaintiff sought three categories of relief: 1) monetary relief under the Unruh Act in the form of statutory penalties; 2) restitutionary relief, i.e. a refund of the unlawful premiums charged to users age 29 or older ($10 per month per user); and 3) public injunctive relief putting a halt to Defendants' unlawful age-based price discrimination scheme. Defendants vigorously dispute Plaintiff's claims, dispute that Plaintiff will prevail on her appeal of the Court's Order granting Defendants' motion to compel arbitration, and deny all charges of wrongdoing or liability asserted against them in the Litigation.

B. Proceedings to Date

On April 12, 2018, Plaintiff filed her class action lawsuit against Defendants, alleging that Defendants violated the Unruh Act. Defendants responded on June 11, 2018 by filing filed a Motion to Compel Arbitration or Stay Under the Colorado Abstention Doctrine. On June 22, 2018, Plaintiff filed her First Amended Complaint, adding the UCL cause of action for public injunctive relief. In their

Motion, Defendants claimed that Plaintiff had entered into an arbitration agreement based on her alleged assent to the arbitration provision in Tinder app's Term of Use through the use of "sign-up wrap" consent in order to access the app. Defendants' Motion to Compel Arbitration was granted on July 5, 2018, and the Court compelled Plaintiff's claims to arbitration.

On July 16, 2018, Plaintiff filed her appeal of the Court's decision on the Motion, based on her position that the Court did not appropriately consider California Supreme Court precedent interpreting substantive California law in *McGill v. Citibank, N.A,* 2 Cal.5th 945 (2017), which states that claims for public injunctive relief, such as the one brought in Plaintiff's case under the UCL, cannot be compelled to arbitration. In addition, Plaintiff would argue that the Court disregarded recent relevant appellate case law, *Cullinane v. Uber Technology, Inc.* 893 F.3d 53 (1st Cir. 2018), which bore directly on whether there was appropriate assent by Plaintiff and the Class Members to the Tinder app's Term of Use.

A mediation was scheduled for November 29, 2018, and the Parties stipulated to continue the initial briefing deadlines in the appeal. The Parties attended a mediation with Judge Meisinger on November 29, 2018. The Parties did not resolve the case at the mediation, but engaged in subsequent discussions with Judge Meisinger. With his guidance, this Settlement was reached on December 1, 2018. On March 1, 2019, the Honorable Court granted Plaintiff's Motion for Preliminary Approval, finding that the requirements of Rule 23(e) were preliminarily satisfied. Dkt. No. 60. The Court requested that counsel file a revised proposed notice, and lodge a revised proposed order granting preliminary approval. Dkt. No. 60 Pg. 13. Counsel did so. Dkt. No. 61. The Court thereafter granted preliminary approval. Dkt. No. 62, and subsequently granted Final Approval on June 19, 2019, over an objection made by Rich Allison and Steve Frye (*see* Dkt. No.90), who subsequently appealed the decision.

On August 17, 2021, in a narrow 2-1 Decision with a strong and lengthy Dissent, the 9th Circuit Court of Appeals reversed the order granting Final Approval and For Attorneys' Fees, primarily taking issue with the clear sailing provision on the latter. (*See* Dkt. No. 109.) Following remand to this Court, the Parties attended another all-day mediation with Judge Meisinger on September 3, 2021, in order to improve upon the settlement, based on the concerns outlined by the Ninth Circuit. Although the case did not settle on that day, after subsequent discussions, with the guidance of the mediator, the Parties agreed to resolve this matter further and entered into a second settlement agreement. (*Friedman Decl.*, Ex A.)

Upon learning that the Kim case had again settled, but before knowing any of the proposed settlement terms, Counsel for Fye, Allison and Allen Candelore ("Candelore Obejectors") indicated their intention to yet again, intervene in this matter. Specifically, the sole purpose of Candelore Objectors' proposed intervention was "protecting those of **his** interests that may be impaired or impeded by disposition of the *Kim* action through any proposed class action settlement." Friedman Decl., ¶ 23.

On October 4, 2021, Plaintiff filed her Second Motion for Preliminary Approval,(*See* Dkt. No. 118). Subsequent to the filing of Plaintiff's Motion for Preliminary Approval, Candelore Objectors filed three briefs in another attempt to interfere with the settlement process: (1 An Ex Parte Motion to Continue the Hearing on Plaintiff's Motion for Preliminary Approval for the Purposes of their upcoming Intervention Motion (*see* Dkt. No.119); (2 A Motion to Intervene for the Purposes of Objecting to the Settlement, (*see* Dkt. No.128); and (3 An Opposition to the Proposed Settlement; (*see* Dkt. No.129). Plaintiff's Counsel was forced to incur substantial hours of time responding to these attempts to interfere in the settlement; which were all summarily denied by this Honorable Court. (*See* Dkt. Nos. 127, 140 and 143).

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C. Class Notice Was Successfully Disseminated

On November 15, 2021, Epiq disseminated the Class Notice to Class Members via email, as was approved as the best notice practicable by This Honorable Court. The email campaign was highly successful at delivering targeted notice directly to the hands of Class Members, who almost certainly all used smartphone devices hooked to these same email accounts as part of their everyday life. Friedman Decl. ¶¶ 29-34. Epiq reported that approximately 84% of the Class Members received direct notice, much higher than the 70% threshold that the Rule 23 guidelines specify for due process purposes. Epic was able to send 240,390 emails to Class Members, with 220,332 of those emails delivered. Since that time, neither Plaintiffs' counsel nor Defense counsel have received any objections from absent Class Members. *Id.*

III. THE SETTLEMENT

A. The Settlement Class.

The "Settlement Class" *Every person in California who subscribed to Tinder Plus or Tinder Gold during the Class Period and at the time of the subscription was at least 29 years old and was charged a higher rate than younger subscribers, except those who choose to opt out of the Settlement Class.*[3] (Agreement § 2.21.)

The Class Period is from March 2, 2015 through March 1, 2019. (*Id.* § 2.6.) Defendants maintain email addresses for the vast majority of users of the app, and based on data provided by Defendants and their counsel, the Class contains approximately 230,000 Members.

I. B. SETTLEMENT BENEFITS.

Under the Settlement, Defendants agree to create a Settlement Fund in the amount of $5,200,000. (Agreement § 3.3.) In addition to the common fund monetary relief, Defendant will deposit (i) 70 free Super Likes, and (ii) one Boost

[3] The Class Period is from March 2, 2015 through March 1, 2019. (Agreement § 2.6.)

into the Tinder account of every Settlement Class Member who at that time has a Tinder account, so long as the email address associated with the account is the same as when the Member purchased Tinder Plus or Tinder Gold during the Class Period. The value of those benefits for each Member who qualifies is $118.30 (Collectively $7.1 Million). Defendants have represented that 25% of Class Members still have a Tinder account, and Class Counsel intends to serve an interrogatory on Defendants to confirm. Class Members without active accounts will still be eligible for the automatic benefits, upon reactivation of their account. The proposed Class Notice advises Settlement Class Members that they must have an account in place in order to receive the deposit of Super Likes and Boost. (Agreement § 3.2.)

Furthermore, Defendants have agreed to pay the costs of Notice and Settlement administration out of the Settlement Fund, and, subject to Court approval, a proposed award of attorneys' fees. Class Counsel will be requesting an award of $1,200,000 in fees plus a reasonable cost reimbursement, out of the $5,200,000 Settlement Fund. (Agreement §§ 5.5, 7.1-7.4.) However, the Settlement agreement contains no clear sailing provision and is subject to Court approval and the final approval stage. Plaintiff's counsel will NOT be asking for any additional fees beyond those which were requested under the prior Settlement, despite additional benefits having been negotiated and substantial additional work having been performed. (Agreement at §7.1.) Defendants have also agreed to pay the proposed $5,000.00 Incentive Payment to the Plaintiff (Agreement § 7.2).

IV. ARGUMENT

A. The Requested Fee Award Is Fair, Reasonable And Justified

Class Counsel respectfully assert that (A) the requested fee award of $1,200,000 is fair, reasonable, and justified; and (B) the payment of $29,633.76 in costs is fair and reasonable. Friedman Decl., ¶¶ 35-61. The Federal Rules of Civil

Procedure provide that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties agreement." Fed. R. Civ. P. 23(h) (emphasis added). As explained by the Ninth Circuit, "[a]ttorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co*., 327 F.3d 938, 963 (9th Cir. 2003). In common fund cases, Courts within the Ninth Circuit have discretion to use one of two methods to determine whether the fee request is reasonable: (1) percentage-of-the-fund; or, (2) lodestar plus a risk multiplier. *Staton*, 327 F.3d at 967-68. *See also In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010). "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 942 (9th Cir. 2011).

Class Counsel maintain the request for attorneys' fees is reasonable based solely upon the arm's length formal negotiations that serve as independent confirmation of the fairness of the settlement, including attorneys' fees. *See Hanlon*, 150 F.3d at 1029. However, the requested fees are also fully supported under the percentage-of-the-fund and lodestar approach, which Class Counsel offer as an additional and optional means of cross-checking the requested fees.

1. The Requested Fees Resulted from Arm's Length Negotiations

While attorneys' fee provisions included in class action settlements are subject to the determination of whether the provision is fundamentally fair, adequate and reasonable, the Ninth Circuit has opined that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or

collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)) (emphasis added). *See also Lundell v. Dell, Inc*., CIVA C05-3970 JWRS, 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006).

Here and as previously stated in Plaintiff's Motion For Preliminary Approval of Class Action Settlement and Certification of Settlement Class, which this Court has approved (Dkt. No. 118 and 140), the Settlement Agreement resulted from extensive arm's length negotiations. Friedman Decl. ¶¶ 17-19. More specifically, the Parties attended a second full-day mediation session with the Honorable Louis M. Meisinger (Ret.), where the parties were able to agree on the terms of a settlement agreement. *Id.* Additionally, and as noted by The Court in its Order Granting Preliminary Approval, the so-called clear sailing provision with which the Ninth Circuit previously took issue has been eliminated. Dkt. No. 140, P6. This was the sole issue the Ninth Circuit had with the Previous Attorney's Fees Request by Plaintiff.

It should also be reiterated, that Plaintiff is not seeking any additional fees under the terms of the new settlement, despite the improvements in the settlement itself and the hundreds additional hours spent since the initial settlement went up on appeal. Regardless, the requested fee is also wholly supported by the both the percentage-of-the-fund and lodestar methods, which the Court may employ as a means of assessing the reasonableness of the requested fee.

2. The Requested Fees are Reasonable, Fair, and Justified Under the Percentage-of-the-Fund Method

Courts consider a number of factors to determine the appropriate percentage of the fund to awarding as attorneys' fees in a common fund case including: (a) the results achieved; (b) the risk of litigation; (c) the skill required and the quality of work; (d) the contingent nature of the fee; and, (e) awards made in similar cases.

Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047, 1048-1050 (9th Cir. 2002). The "benchmark" percentage for attorney's fees in the Ninth Circuit is 25% of the common fund with costs and expenses awarded in addition to this amount. *Vizcaino*, 290 F.3d at 1047. "However, in most common fund cases, the award exceeds that [25%] benchmark." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007) (citing *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1998)). Both the *Omnivision* and *Activision* Courts concluded that "Absent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate should be set at 30%." *Omnivision*, 559 F. Supp. 2d at 1048.

Class Counsel's request for attorneys' fees in the amount of $1,200,000 equates to only approximately 23% of the Cash Settlement Benefits negotiated as part of the Settlement Agreement. This falls below the Ninth Circuit's benchmark.

In most cases, the benchmark 25% in attorneys' fees are considered presumptively reasonable. Here, the fee request is fully supported by the factors enunciated in *Vizcaino*. As Class Counsel described in the contemporaneous declarations, there was a great deal of risk and skill involved in achieving this result for the Class. As some of the most active consumer class action attorneys in the country, Class Counsel were able to efficiently cut to the meat of the disputes in this case, and apply their experience to achieve a highly favorable outcome for the Class without the need for years of risky litigation. Such an approach, under Ninth Circuit precedent, is deserving of a reasonable fee award with a modest multiplier.[4]

[4] It is important to note that the stated position of Objectors was that they were only interested in litigating the claims on behalf of a minority of approximately 5% of the Class. Thus, had Class Counsel not persevered on behalf of the Class, over 95% of Class Members, and perhaps 100% of Class Members, could likely have recovered nothing. This was a very high risk case, with an excellent outcome for the Class, and this happened because of the efforts of Class Counsel.

a. Class Counsel Obtained Excellent Results for the Class

The results obtained for the class are generally considered to be the most important factor in determining the appropriate fee award in a common fund case. *See Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983); *Omnivision*, 559 F. Supp. 2d at 1046. *See also* Federal Judicial Center, Manual for Complex Litigation, § 27.71, p. 336 (4th Ed. 2004) (the "fundamental focus is on the result actually achieved for class members") (citing Fed. R. Civ. P. 23(h) committee note). Standing alone, this factor supports Class Counsel's fee request. The settlement secured by Plaintiff and Class Counsel provides an excellent recovery for Class Members.

The settlement secured by Plaintiff and Class Counsel provides an excellent recovery for Class Members as compared to similar Unruh Act cases, despite the uncertainty of recovery in TCPA class actions. The Settlement Agreement provides for $5,200,000 in Cash recovery for the Class, in addition to $7,100,000 in non-cash components. Every Class Member who submits a Valid Claim Form will be entitled to a pro rata distribution of the Settlement Fund

This Settlement intentionally avoids providing significant benefits to a *cy pres* recipient at the expense of the class. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 862-63 (9th Cir. 2012) (the amount of a *cy pres* award "must be examined with great care to eliminate the possibility that it serves only the 'self-interests' of the attorneys and the parties, and not the class"); *Lane v. Facebook, Inc.*, 709 F.3d 791, 793 (9th Cir. 2013) ("We require district judges to be reasonably certain that class members will benefit before approving a cy pres settlement."); *In re EasySaver Rewards Litig.*, 921 F. Supp. 2d 1040, 1049 (S.D. Cal. 2013).[5]

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[5] Courts favor payment to class members over *cy pres*. *See Molski v. Gleich*, 318 F.3d 937, 954-55 (9th Cir. 2003) *overruled on other grounds by Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010) (*cy pres* provision is a disfavored substitute for distribution of benefits directly to class members); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) ("[T]he cy pres doctrine—unbridled by

The settlement award that each Settlement Class Member will receive is fair, appropriate, and reasonable given the purposes of the Unruh Act and UCL and in light of the anticipated risk, expense, and uncertainty of continued litigation. Although the Unruh Act provides for statutory damages of $4,000.00 per violation, it is well-settled that a proposed settlement may be acceptable even though it amounts to a percentage of the potential recovery that might be available to the class members at trial.[6] Indeed, California Appellate Courts have upheld the reasonableness of Unruh Act class action settlements which provided for no monetary relief, but rather only injunctive relief. *See Carter v. City of Los Angeles*, 224 Cal.App.4th 808 (2014) (injunction only class settlement under Unruh Act upheld as fair and reasonable, however overturning district court order based solely on the fact that non-opt out provision violated due process). The case at bar not only provides meaningful injunctive relief, but also provides a strong common fund monetary component of $5.2 million dollars as well as universal participation component via the automatic provision of Super Likes to Class Members. As such, the benefits to Class Members far exceed the result achieved in other Unruh Act and UCL actions.

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a driving nexus between the plaintiff class and the cy pres beneficiaries—poses many nascent dangers to the fairness of the distribution process.").

[6] *See e.g., National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather, the percentage should be considered in light of the strength of the claims"); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) (court-approved settlement amount that was small fraction of the maximum potential recovery); *In re Mego Fin'l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).

b. The Risks of Litigation Support the Requested Fees

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *Omnivision*, 559 F. Supp. 2d at 1046-47. *See also Vizcaino*, 290 F.3d at 1048 (risk of dismissal or loss on class certification is relevant to evaluation of a requested fee). Throughout litigation and mediation, Defendants have vigorously contested the claims asserted by Plaintiff. While both sides strongly believe in the merits of their respective cases, there are risks to both sides in continuing the Litigation. If the Litigation were to continue, the primary initial challenge for Plaintiff would be overcoming the pending appeal. Defendants represented that over 95% of the Class Members entered into arbitration agreements such as the one entered into by Plaintiff. The Ninth Circuit has recently held that such agreements can be a bar to class certification under the right circumstances. *See O'Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9th Cir. 2018). Even if Plaintiff won her appeal, Defendants would likely challenge any class certification motion made by Plaintiff, thereby placing in doubt whether certification of a class could be obtained and/or maintained in the Litigation. Also, additional substantive challenges to the claims might be raised, including a challenge on summary judgment. In considering the Settlement, Plaintiff and Class Counsel carefully balanced the risks of continuing to engage in protracted and contentious litigation, against the benefits to the Class.

Similarly, Defendants believe that they have strong and meritorious defenses not only in the Litigation as a whole, as well as on the appeal, but also as to class certification and the amount of damages sought. However, Defendants recognize that if a class were certified, there is some risk of a damages award substantially higher than the value of the Settlement. The negotiated Settlement reflects a compromise between avoiding that risk and the risk that the Class might not recover. These risks put the strength of the settlement achieved by Class Counsel

into context. Because of the costs, risks to both sides, and delays of continued litigation, the Settlement presents a fair and reasonable alternative to continuing to pursue the Litigation.

In considering the Settlement, Plaintiff and Class Counsel carefully balanced the risks of continuing to engage in protracted and contentious litigation against the benefits to the Class including the significant benefit and the deterrent effects it would have. As a result, Class Counsel supports the Settlement and seeks its Approval. *Id*. The negotiated Settlement is a compromise avoiding the risk that the class might not recover and presents a fair and reasonable alternative to continuing to pursue the Action as a class action for alleged violations of the Unruh Act and UCL. Furthermore, Judge Meisienger, who is intimately familiar with the instant litigation as well as the current climate of UCL and Unruh Act litigation as a whole, agrees with the parties. The Honorable Court agreed with this reasoning in preliminarily approving the settlement. Thus, the risks of continued litigation not only depicts the high degree of results obtained for the Class, but also further support the reasonableness of the requested fees.

c. The Skill Required and Quality of Work Performed Support the Requested Fees

The "prosecution and management of a complex [] class action requires unique legal skills and abilities" that are to be considered when evaluating fees. *Omnivision*, 559 F. Supp. 2d at 1047. Class Counsel are experienced class action litigators who have been appointed "class counsel" in numerous UCL and related consumer protection class actions. Class Counsel have successfully prosecuted numerous complex consumer class actions, and secured noteworthy recoveries for those classes. Class Counsel's proven track record demonstrates not only the quality of work performed, but also the skill required to successfully prosecute large complex class actions. Friedman Decl. ¶¶ 35-43; Kristensen Decl. ¶¶ 4-21.

Class Counsel performed significant factual investigation prior to bringing the action, going back five years to a prior action where the Unruh Act claims at issue in this litigation were first alleged by Class Counsel. Friedman Decl. ¶¶ 4-8. Class Counsel conducted extensive discovery into the scope of the violations as well as the legal and procedural challenges in the case. Nobody could say that this case was not fully investigated, or thoroughly and vigorously litigated. Class Counsel requested and was provided with all necessary information necessary to make a meaningful settlement decision on behalf of the Class, and vigorously negotiated for and secured this robust and highly favorable result during a full-day mediations session. Thus, Class Counsels' skill and expertise, reflected in the prompt and significant Settlement, supports the requested fees.

d. Class Counsels' Undertaking of this Action on a Contingency-Fee Basis Supports the Requested Fees

The Ninth Circuit has long recognized that the public interest is served by rewarding attorneys who undertake representation on a contingent basis by compensating them for the risk that they might never be paid for their work. *In re Washington Pub. Power Supply Sys. Sec. Litig*., 19 F.3d 1291, 1299 (9th Cir. 1994) ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for Plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose"); *Vizcaino*, 290 F.3d at 1051 (courts reward successful class counsel in contingency cases "for taking risk of nonpayment by paying them a premium over their normal hourly rates").

Class Counsel prosecuted this matter on a purely contingent basis while agreeing to advance all necessary expenses knowing that Class Counsel would only receive a fee if there were a recovery. *See* Friedman Decl., ¶¶ 44-67. In pursuit of this litigation, Class Counsel have spent considerable outlays of time and money by, among other things, (1) investigating the actions; (2) conducting discovery on

1 Defendant; (3) opposing motions; (4) filing an appeal; (5) negotiating the
2 Settlement in private mediation; (6) Class counsel will also be required to oversee
3 administration of the Settlement; and, (7) respond to Class Member inquiries.
4 Class Counsel expended these resources despite the risk that Class Counsel may
5 never be compensated especially in light of the fluctuating interpretations of the
6 merits issues, certification issues, and arbitration issues, and the difficulty in
7 securing class certification.

8 Class Counsel here incurred $29,633.76 in costs) and spent over 1400 hours
9 litigating this action. Friedman Decl., ¶¶ 44-61 and Ex. C; Kristensen Decl ¶ 23-
10 27; Ex 1. There were no guarantees of victory, and there were numerous risks
11 raised by Defendant. Thus, Class Counsels' "substantial outlay, when there is a
12 risk that none of it will be recovered, further supports the award of the requested
13 fees" in this matter. *Omnivision*, 559 F. Supp. 2d at 1047. As articulated above,
14 the percentage-of-the-fund method is the preferred and most widely used method
15 for determining attorneys' fees. The requested fees are fully supported by the
16 factors enunciated by *Vizcaino* and is commensurate with the excellent results
17 obtained for the Class. While the requested fees are fully supported by the
18 percentage-of-the-fund method, it should again be noted that the application of the
19 percentage-of-the-fund method is optional and may be applied at the Court's
20 discretion. In addition, the Court may also apply the lodestar method as another
21 optional means of cross- checking the requested fees.

22 **3. The Requested Fee is Reasonable, Fair, and Justified Under**
23 **the Lodestar Method**

24 A court applying the percentage-of-the-fund method may use the lodestar
25 method as a "cross-check on the reasonableness of a percentage figure." *Vizcaino*,
26 290 F.3d at 1050. However, a cross-check is optional. *See Glass v. UBS Fin.*
27 *Servs*., 2007 U.S. Dist. LEXIS 8476, at *48 (N.D. Cal. Jan. 26, 2007) (finding that
28 "where the early settlement resulted in a significant benefit to the class," there is

1 no need "to conduct a lodestar cross-check"). If the Court chooses to perform such
2 a cross-check in this matter, it will confirm that an approximately 23% fee award
3 of $1,200,000 is reasonable. The first step in the lodestar-multiplier approach is
4 to multiply the number of hours counsel reasonably expended by a reasonable
5 hourly rate. *Hanlon*, 150 F.3d at 1029. Once this raw lodestar figure is determined,
6 the Court may then adjust that figure based upon its consideration of many of the
7 same "enhancement" factors considered in the percentage-of-the-fund analysis,
8 such as: (1) the results obtained; (2) whether fee is fixed or contingent; (3) the
9 complexity of the issues involved; (4) the preclusion of the other employment due
10 to acceptance of the case; and, (5) the experience, reputation, and ability of the
11 attorneys. *See Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67, 70 (9th Cir. 1975).[7]

12 **a. Class Counsels' Lodestar is Reasonable**

13 The accompanying declaration of Class Counsel set forth the hours of work
14 and billing rates used to calculate their lodestar. Plaintiff's attorneys' work is
15 summarized as follows:

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18 **THE LAW OFFICES OF TODD M. FRIEDMAN - LODESTAR**

Name	Number of Hours	Rate/Hr	Total
Todd M. Friedman	419.1	$750.00	$314,325.00
Adrian R. Bacon	827.4	$650.00	$537,810.00
Thomas E. Wheeler	7.7	$425.00	$3,272.50
Lauren Walker	2	$225.00	$450.00
Bianca Zinnanti	2.2	$225.00	$495.00
TOTAL	**1,258.40**		**$856,352.50**

19 20 21 22 23 24 25 26 27 28

[7] The risk inherent in contingency representation is a critical factor. The Ninth Circuit stresses that "[i]t is an abuse of discretion to fail to apply a risk multiplier when...there is evidence that the case was risky." *Fischel v. Equit. Life Assurance Soc'y*, 307 F.3d 997, 1008 (9th Cir. 2002); *see also Glass v. UBS Fin. Servs., Inc*., 2007 WL 221862, at *16 (N.D. Cal. 2007).

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2 **KRISTENSEN/CARPETNER ZUCKERMAN - LODESTAR**

Name	No. of Hours	Rate/Hr	Total
John Kristensen	111.9	$725.00	$81,127.50
David Weisberg	34.6	$725.00	$25,085.00
Christina Le	137.2	$625.00	$85,750.00
Jesenia A. Martinez (pre 2021)	37.3	$350.00	$13,055.00
Jesenia A. Martinez (2021)	12.9	$375.00	$4,837.50
Justin Farzadkish	25.3	$175.00	$4,430.00
Vanessa Brahm	10.35	$175.00	$1,811.25
TOTAL	369.55		$216,096.25

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11 Friedman Decl. ¶¶ 64-66; Ex C; Kristensen Decl. ¶¶ 23-27. As described in the
12 accompanying declarations, Plaintiff's attorneys have devoted a total of 1,627.95
13 hours to this litigation to date, and have a total lodestar to date of 1,072,448.75,
14 which represents approximately a 1.2 multiplier. *See* Friedman Decl. ¶¶ 64-67. It
15 is estimated that the lodestar multiplier will actually fall into the negative, by the
16 time administration is completed. *Id.*
17 Thus, Class Counsel's lodestar is reasonable. Class Counsel prosecuted the
18 claims at issue efficiently and effectively, making every effort to prevent the
19 duplication of work that might have resulted from having multiple firms working
20 on this case. In this regard, tasks were reasonably divided among attorneys to
21 ensure avoiding the replication of work. Further, tasks were delegated
22 appropriately among partners, associate attorneys, paralegals, and other staff
23 according to their complexity such that the attorneys with higher billing rates billed
24 time only where necessary. The reality is that the complexity of this matter was
25 high, and required senior attorneys to handle to majority of tasks. In addition,
26 Class Counsels' contemporaneous time records were carefully reviewed.
27 Friedman Decl., ¶ 64-67, Ex C; Kristensen Decl. ¶¶ 23-27.
28

b. A Modest Lodestar Multiplier Is Warranted

A lodestar multiplier in this case is appropriate given the various factors outlined under prevailing Ninth Circuit jurisprudence. *Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67, 70 (9th Cir. 1975). There can be no doubt that the result achieved was robust, widespread in scope, and meaningful. Class Counsel set out to hold Defendant accountable for its price discrimination, and successfully achieved a settlement which provides for an over 12 million in combined monetary and non-monetary class-wide relief, and put an end to the very practices that were the subject of this litigation. The first Ninth Circuit factor heavily supports a reasonable enhancement.

Second, the fees earned in this matter were entirely contingent. Class Counsel have been paid nothing to date, and would have been paid nothing had they not been able to achieve the robust settlement that has been approved preliminarily by The Court. Indeed, This Court's order granting Defendant's Motion to Compel Arbitration, which sparked the subsequent Ninth Circuit appeal by Plaintiff, and eventually resulted in a settlement dialogue between the Parties, shows the high stakes at issue for Class Members – Class Members could have received nothing if the Court's Order was upheld on appeal, or if Class Counsel had not continued to vigorously fight on behalf of Class Members' rights. This is the very definition of risk that the Ninth Circuit has held would be improper to ignore when considering whether and to what extent to grant a lodestar multiplier. *Fischel v. Equit. Life Assurance Soc'y*, 307 F.3d 997, 1008 (9th Cir. 2002).

Third, this matter is a complex class action involving complicated and novel procedural and legal issues which are actively in flux, including the legality of the alleged conduct by Defendant under applicable law, the arbitrability of public injunctive relief claims under the UCL, as guided by the recent *McGill v Citibank* matter, and the enforceability of Defendants' arbitration agreements generally, among other complex and evolving issues. Navigating these waters required a deft

hand, and experienced Class Counsel who would be able to ensure that the rights of Class Members were advanced effectively.

Fourth, Class Counsel are seasoned litigators with heavy active caseloads, as can be seen by a brief docket search, as well as by the Accompanying Declarations of Class Counsel. The Law Offices of Todd M. Friedman for instance, is currently appointed class counsel on dozens of class actions, and is actively litigating well over 100 cases. Time spent working on this case was time that could not be spent on other cases. Accordingly the fourth factor is satisfied.

Finally, the experience and reputation of Class Counsel warrants a multiplier. "Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation." *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995).[8] For these reasons, the modest multiplier requested by Class Counsel is appropriate and warranted.

c. Class Counsels' Hourly Rates are Reasonable

Similarly, Class Counsels' hourly rates are also reasonable. In assessing the reasonableness of an attorney's hourly rate, courts consider whether the claimed rate is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stevenson*, 465 U.S. 886, 895, n.11 (1994). *See also Davis v. City and County of San Francisco*, 976 F.3d 1536, 1546 (9th Cir. 1992); *Serrano v. Unruh*, 32 Cal. 3d 621, 643 (1982). Class Counsel here are experienced, highly regarded members of the bar with extensive expertise in the area of class actions and complex litigation involving consumer claims like those at issue here. *See* Friedman Decl., ¶¶ 31-37. Mr. Friedman and Mr. Bacon are also very experienced in litigating

[8] *See In re Beverly Hills Fire Litigation*, 639 F. Supp. 915 (E.D. Ky. 1986) (awarding multiplier of 5 for lead counsel); *Di Giacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532 (S.D. Tex. Dec. 18, 2001) (approving 5.3 multiplier)

UCL and other consumer protection cases, including class actions, and serve as class counsel in multiple certified UCL class actions. *Id*.

According to the well-respected Laffey Matrix, reasonable rates for a Partner of a law firm practicing 11-19 years are calculated at $742 per hour. Friedman Decl. Ex D. Mr. Friedman has dedicated his career to consumer protection, including class action litigation. He has secured eight figure class-wide settlements on behalf of millions of consumers. Thus, the billing rate for Mr. Friedman of $750 per hour is well within the normal range of fees charged by firms in Southern California for partner work.[9] Additionally, Adrian R Bacon, who has contributed much to this litigation, has significant experience in litigating consumer class actions, including UCL class actions, which justifies his hourly rate of $650. Friedman Decl. ¶¶ 56-61. Mr. Bacon is a Partner at The Law Offices of Todd M. Friedman, P.C., and has secured class certification status in numerous cases by contested motion, as well as worked on dozens of actions which settled on a class-wide basis. Hence, Class Counsels' combined lodestar of $1,072,448.75 is reasonable and supports the requested fees.

B. <u>The Requested Costs Are Fair And Reasonable</u>

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig*., 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970)). The significant litigation expenses Class Counsel incurred in this case were necessary to secure the resolution of this litigation. *See In re*

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[9] See *Hartless v. Clorox Co*., 273 F.R.D. 630, 643-44 (S.D. Cal. 2011), aff'd in part, 473 F. Appx. 716 (9th Cir. 2012) (approving hourly rates of $675-795 for partners, up to $410 for associates, and up to $345 for paralegals); *see also POM Wonderful, LLC v. Purely Juice, Inc.*, 2008 WL 4351842 at *4 (C.D. Cal 2008) (finding partner rates of $750 and associate rates of $425 reasonable).

Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007). Based upon the discussion herein, Class Counsel believe that the costs incurred in this matter are fair and reasonable.

Throughout the course of this litigation, Class Counsel had to incur costs, totaling $29,633.76. *See* Friedman Decl., ¶¶ 51-52; Kristensen Decl. ¶ 26. These costs were necessary to secure the resolution of this litigation and Class Counsel put forward said costs without assurance that Class Counsel would ever be repaid. Class Counsel will likely incur additional costs as this case moves to the final approval stage, which final approval hearing is set for January 10, 2022.[10]

V. KIM'S APPLICATION FOR INCENTIVE AWARD

The proposed Settlement contemplates that Class Counsel will request an Incentive Award in the amount of $5,000 to be distributed to the Class Representative, subject to Court approval. District Courts in California have opined that in many cases, an incentive award of $5,000 is presumptively reasonable.[11] Plaintiff played an active role in litigation, providing documents and information to Class Counsel necessary to litigate the case. Plaintiff participated in mediation and settlement discussions on behalf of the Class, as well as in informal discovery, and in the drafting of the Complaint. Had she not done so, the

[10] It is worth noting that the Court previously approved a $1.2M fee request under the lodestar cross check method as fair and reasonable, and also held that it was fair and reasonable under the percentage of the benefits doctrine. Thus, it stands to reason that the fees remain fair and reasonable. The only concern of the Ninth Circuit regarding fees was that there was a clear sailing provision which has since been removed from the Settlement.

[11] *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-*67 (N.D. Cal. Mar. 20, 2015); *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 942-*43 (9th Cir. Feb. 27, 2015); *In re Toys R Us – Delaware, Inc. – Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 295 F.R.D. 438, 472 (C.D. Cal. Jan. 17, 2014).

class members would have received nothing, unless another consumer came forward to bring the case and was successful and achieving a settlement or judgment on behalf of the other 230,000 Class Members. Plaintiff acted dutifully in her role as a class representative, and should be awarded this reasonable sum of $5,000 for her part in the litigation.

VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Plaintiff's motion for an award of attorneys' fees in the total amount of $1,200,000, litigation costs of $29,633.76; and a Class Representative Incentive Award of $5,000.

Dated: November 29, 2021 Respectfully submitted,

By: */s/ Todd M. Friedman*
Todd M. Friedman (SBN 216752)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

John P. Kristensen (SBN 224132)
CARPENTER ZUCKERMAN
Attorneys for Plaintiff and all others similarly situated.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business Address is 21031 Ventura Blvd., Suite 340, Woodland Hills, CA 91364.

On November 29, 2021, I served the following document(s) described as: **PLAINTIFF LISA KIM'S AMENDED NOTICE OF MOTION & MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS; DECLARATION OF TODD M. FRIEDMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS**; **DECLARATION OF JOHN P. KRISTENSEN IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS; DECLARATION OF LISA KIM IN SUPPORT OF AMENDED MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS; PROPOSED ORDER**, on all interested parties in this action by placing:

[X] a true copy

Donald R. Brown
dbrown@manatt.com
Robert H. Platt
rplatt@manatt.com
Manatt Phelps and Phillips LLP
Attorneys for Defendant

[X] **BY CM/ECF:** I transmitted the document(s) listed above electronically to the e-mail addresses listed above. I am readily familiar with the Court's CM/ECF system and the transmission was reported as complete, without error.

[X] STATE – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 29, 2021, at Woodland Hills, California.

By: _/s/ Todd M. Friedman
Todd M. Friedman