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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLICE ARNOLD, on behalf of
herself, all similarly situated and the
general public,

Plaintiffs,

v.

FITFLOP USA, LLC,

Defendant.

CASE No. 11-CV-0973 W (KSC)

**ORDER GRANTING FINAL
APPROVAL FOR CLASS ACTION
SETTLEMENT [DOC.107]**

[Fairness Hearing: April 28, 2014 at
10:30 a.m.]

Pending before the Court is the parties' joint motion for final approval of a proposed class action settlement. There has been one objection to the settlement filed by Michael Narkin.

Having considered the papers submitted in support of the motion, Mr. Narkin's objection, and the arguments at the hearing held on Monday, April 28, 2014, the Court **GRANTS** the motion for the following reasons.

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1 **I. BACKGROUND**

2 Defendant Fitflop USA, LLC (“Fitflop”) manufactures, markets, and sells a line
3 of women’s and men’s sandals, known as FitFlop Footwear. (*Second Amended Complaint*
4 (“SAC”) ¶¶ 3, 11 [Doc. 97].) According to the Second Amended Complaint, since 2007,
5 Defendant has claimed in its advertising and on product packaging labels that FitFlop
6 Footwear provides a variety of health benefits including improved posture, increased
7 muscle activation and toning, and reduced joint strain. (*Id.* ¶¶ 3, 17-19, 21-31.)
8 Defendant claims that these health benefits are the result of FitFlop Footwear’s patent
9 pending “Microwobbleboard Technology” midsole. (*Id.*) Because of these claimed
10 benefits, Fitflop Footwear is sold at a premium price. (*Id.*)

11 Plaintiffs assert that Defendant’s health benefit claims are deceptive, and that
12 FitFlop Footwear is not proven to provide any of the claimed benefits. (SAC ¶¶ 3, 32-
13 46.) Plaintiffs contend that consumers have purchased FitFlop Footwear at a significant
14 price premium over other comparable traditional footwear products, and that they would
15 not have purchased FitFlop Footwear if they knew the claimed health benefits were
16 untrue. (*Id.* at ¶¶ 9-10.)

17 On May 4, 2011, Ariana Rosales filed this action against Defendant FitFlop
18 Footwear alleging violations of California Business & Professions Code § 17200 *et seq.*
19 (“UCL”), violations of California Civil Code § 1750 *et seq.*, the Consumer Legal Remedy
20 Act (“CLRA”), and breach of express warranty. The complaint asserted that Defendant’s
21 deceptive claims affect a broad class of individuals who have purchased FitFlop Footwear,
22 and she brought this putative class action on behalf of herself and other class members.
23 (*Compl.* [Doc. 1], ¶¶ 7-8.)

24 On July 15, 2011, a first amended complaint was filed, adding Plaintiff Charlice
25 Arnold as a named plaintiff and damage claims related to Defendant’s alleged CLRA
26 violations. (*FAC* ¶ 74.) Plaintiff Rosales, thereafter, withdrew as a named plaintiff. On
27 June 26, 2013, Plaintiff Arnold filed the operative second amended complaint, which
28

1 adds certain evidentiary allegations and clarifies that Arnold is not seeking recovery for
2 personal injury on behalf of herself or the proposed class.

3 On or about August 16, 2013, the parties reached a tentative settlement agreement.
4 The agreement was finalized on December 12, 2013 and the parties then filed for
5 preliminary approval. By order dated December 19, 2013, the Court preliminarily
6 approved the proposed settlement and set a fairness hearing for April 28, 2014. (*See Prelim.*
7 *Approval Order* [Doc. 110], ¶¶ 5, 7.) On April 28, 2014, the final approval hearing was held.
8

9 **II. LEGAL STANDARD**

10 A class action lawsuit cannot be compromised without court approval. See
11 Fed.R.Civ.P. 23(e). The primary purpose of Rule 23(e) is to protect class members,
12 including the named plaintiffs, whose rights may not have been given due regard by the
13 negotiating parties. Officers for Justice v. Civil Service Comm'n, 688 F.2d 615, 624 (9th
14 Cir. 1982). Consequently, courts must conduct a fairness hearing to determine whether
15 to approve the class action settlement. See, e.g., In re Mego Financial Corp. Sec. Litig.,
16 213 F.3d 454, 458 (9th Cir. 2000); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.
17 1998).

18 “Although Rule 23(e) is silent respecting the standard by which a proposed
19 settlement is to be evaluated, the universally applied standard is whether the settlement is
20 fundamentally fair, adequate and reasonable.” Officers for Justice, 688 F.2d at 625; see
21 also Torrasi v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993). The Court
22 must balance several factors, which may include:

23 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity and
24 likely duration of further litigation; (3) the risk of maintaining class action
25 status throughout the trial; (4) the settlement amount; (5) the extent to which
26 discovery has been completed; (6) whether one of the parties is a
27 governmental entity; (7) the experience and views of counsel and (8) the
28 class members’ reaction to the proposed settlement.

1 Torrisi, 8 F.3d at 1375; Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1242 (9th Cir.
2 1998). Further, the court must examine each factor to survive appellate review. See
3 Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson,
4 390 U.S. 414, 434 (1968); Hanlon, 150 F.3d at 1026. Finally, “the settlement may not be
5 the product of collusion among the negotiating parties.” Mego, 213 F.3d at 458 (citing
6 Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1290 (9th Cir. 1992)).

7 8 **III. DISCUSSION**

9 **A. Class Certification**

10 As a preliminary matter, the parties have stipulated to settlement class certification.
11 According to the proposed settlement, “Class” or “Class Member” means “all persons or
12 entities that, during the Class Period, purchased in the United States any Eligible
13 Footwear.” (*Stipulation of Settlement* [Doc. 106], ¶ 10.) Having read and considered the
14 papers submitted, the Court finds that the four Rule 23(a) requirements—numerosity,
15 commonality, typicality and adequacy of representation—have been met for settlement
16 class certification.

17 First, with respect to the numerosity requirement, based on the amount of FitFlop
18 Footwear sold, the Court finds that the numerosity requirement is easily met.¹ See In
19 re Kirschner Medical Corp. Sec. Litig., 139 F.R.D. 60, 62 (D. Md. 1991) (noting that a
20 class of more than 25 to 30 members “raises the presumption that joinder would be
21 impracticable.”).

22 Second, the questions of law and fact in this case are common to the entire class.
23 The Class Members’ claims stem from the same salient issue: whether the FitFlop
24 Footwear provides the toning and strengthening health benefits promised in the
25 advertising and labeling.

26
27
28 ¹ Sales and revenue information regarding FitFlop Footwear was filed under seal in
connection with Plaintiff’s motion for class certification. (*See Class Cert. Mt.* [Doc. 76-1],
15:18–25, Ex. 48 [Doc. 76-18].)

1 Third, the named Plaintiff's claims or defenses are typical of the Class's claims or
2 defenses. Specifically, Plaintiff Arnold claims that she purchased Defendant's products
3 to provide the strengthening and toning benefits. Plaintiff Arnold further claims that she
4 purchased the product based on Defendant's misrepresentations. Thus, Plaintiff's claims
5 are typical of the claims of other purchasers of FitFlop Footwear.

6 Finally, Plaintiff Arnold has fairly and adequately protected the interests of the
7 Class by negotiating a settlement sufficient to compensate the members for their injury.
8 Additionally, Plaintiff and Class Counsel do not have any interests antagonistic to the
9 Class. Accordingly, the Court finds the proposed Class meets Rule 23(a)'s requirements,
10 and hereby certify the Class for settlement purposes.

11 In addition to certifying a class, Rule 23(b)(3) requires the court to find that the
12 common questions of law or fact predominate over any questions affecting only
13 individual members, and a class action is the superior method for the fair and efficient
14 adjudication of this controversy. Both factors are present in this case.

15 First, Plaintiff alleges that she and all Class Members are entitled to the same legal
16 remedies premised on the same alleged wrongdoing. Again, the central issue for all Class
17 Members is whether Defendant's claim that FitFlop Footwear, with its
18 "Mircrowobbleboard Technology," provided the strengthening and toning benefits, and
19 whether that representation was false or deceptive to the reasonable consumer. This
20 commonality and typicality ensures that individual Class Members do not need to
21 prosecute separate actions.

22 Second, the Court also finds that class treatment is the superior means to
23 adjudicate the claims. Based on the amount of damages per Class Member, the existence
24 of the settlement fund, and the clear instructions provided to Class Members regarding
25 how payments will be distributed, the Court anticipates no difficulties in managing this
26 class action, particularly given that the action is in the settlement phase and no trial will
27 occur.

28

1 **B. Notice to Class Members**

2 The next issue is notice to the Class. The Ninth Circuit has summarized the
3 Court's procedural obligations as follows:

4 [T]he class must be notified of a proposed settlement in a manner that does
5 not systematically leave any group without notice; the notice must indicate
6 that a dissident can object to the settlement and to the definition of the
7 class; each objection must be made a part of the record; those members
8 raising substantial objections must be afforded an opportunity to be heard
9 with the assistance of privately retained counsel if so desired, and a
reasoned response by the court on the record; and objections without
substance and which are frivolous require only a statement on the record
of the reasons for so considering the objection.

10 Officers for Justice v. Civil Serv. Comm'n of the City & County of San Francisco, 688
11 F.2d 615, 624 (9th Cir. 1982) (footnote and citations omitted)

12 Here, because FitFlop Footwear was primarily sold over the counter at retail stores,
13 Defendant does not have contact information for most Class Members. Accordingly, the
14 Class Notice Program was aimed at reaching as many Class Members as possible by
15 publicizing the settlement through the Publication Notice in targeted periodicals and
16 hyper-linked "banner advertisements" across numerous Internet sites. Specifically,
17 Publication Notice was published once in the February 3, 2014 issue of *People Magazine*,
18 a general interest magazine with a circulation of approximately 3.5 million. (*Keough Dec.*
19 [Doc. 114-9], ¶ 5.) In addition, beginning January 13, 2014 and continuing through
20 February 11, 2014, banner advertisements were also published on the internet sites of
21 Facebook.com, Living.msn.com, People.com, and Prevention.com, as well as via the
22 online newspaper networks of Microsoft Media Network on the Lifestyle & Fitness
23 channel, Xaxis on the Health & Fitness channel, and Gannett Digital Media. (*Id.*, ¶ 6.)
24 The banner advertisements allowed website visitors to self-identify themselves as potential
25 Class Members and then click on a link that would take them to the Settlement Website.
26 (*Id.*, ¶ 7.) The banner-advertisement campaign delivered over 673 million impressions
27 or opportunities for potential Class Members to click on the banner advertisement and
28 view the Settlement Website. (*Id.*)

1 Notice was also provided through mobile phone advertisements that ran for a four-
2 week period beginning on January 13, 2014, using MSN Mobile's Run of Site network.
3 (*Keough Dec.*, ¶ 8.) Also, on January 13, 2014, a press release was distributed over PR
4 Newswire's *US1 Newswire* and *National Hispanic Newswire*, which announced the
5 settlement in English and Spanish to media outlets across the country. (*Id.*, ¶ 9.) The
6 press release was also delivered to a variety of PR Newswire's social network presences
7 including Twitter, LinkedIn, and Facebook. (*Id.*)

8 Furthermore, on December 23, 2013, notice under the Class Action Fairness Act,
9 28 U.S.C. § 1715(b) ("CAFA Notice") was served to the Attorney General of the United
10 States, and to state Attorneys General. (*Keough Dec.*, ¶ 4.)

11 On January 8, 2014, a settlement website was also set-up, which contains various
12 material relating to the Settlement, including the Stipulation of Settlement, and provides
13 additional information including an overview of the Settlement, important dates and
14 deadlines, and a list of answers to frequently asked questions. (*Keough Dec.*, ¶ 10.)
15 Through the website, Class Members can also download a paper copy of the Claim Form
16 or submit a claim online. (*Id.*) Additionally, a toll-free telephone number was set-up on
17 January 8, 2014, to provide information regarding the settlement. (*Id.* ¶ 11.)

18 The notice further notified Class Members that the final approval hearing would
19 be held on April 28, 2013 at 10:30 a.m., that the purpose of the hearing was to
20 determine whether the settlement should be approved, and that all objections were to
21 be filed with the Court by March 29, 2014. (*Keough Dec.*, Ex. G at pp. 6-7.)

22 The Court finds that the notice provided to Class Members constitutes the best
23 notice practicable under the circumstances, is sufficient notice for all purposes to all
24 persons entitled to such notice, and fully complies with due-process requirements and
25 applicable law.

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1 C. Fairness Factors

2 1. **The Strength of Plaintiffs' Case, and Risk, Expense, Complexity**
3 **and Duration of Further Litigation.**

4 The settlement represents a significant achievement in that it successfully resolves
5 what has been a voluminous and complex lawsuit that the parties have been waging for
6 nearly three years. Although Plaintiffs believe they would have prevailed at trial,
7 Defendant disputes that its advertising claims are deceptive, and designated five experts
8 to discuss research and science supporting the health benefit claims. Defendant also
9 disputes the appropriate measures of restitution or damages, and asserts that the Class
10 consists of many satisfied, uninjured persons. Defendant further contends that the
11 request for injunctive relief is moot.

12 Also, because most of the Defendants are British citizens and corporations, and
13 none are publicly held corporations, Plaintiffs have acknowledged that, in the event they
14 prevailed at trial, collecting the judgement could be a lengthy and time consuming
15 process with no guarantee of success.

16 For these reasons, the benefits to the Class Members as a result of the settlement
17 outweigh an uncertain result that would have taken several more years of litigation. This
18 factor, therefore, favors settlement.

19
20 2. The Risk of Maintaining Class Action Status.

21 While the parties agreed to class certification for purposes of this settlement,
22 Defendant has vigorously opposed Plaintiff's class-certification motion. Specifically,
23 Defendant has argued that class certification should be denied because Plaintiff Arnold
24 is not an adequate or typical class representative, that she fails to meet the standards set
25 forth in Comcast Corp. v. Behrend, - U.S.-, 133 S.Ct. 1426 (2013), and because
26 common issues of fact do not predominate. Accordingly, this factor favors settlement.

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1 3. Settlement Amount.

2 The proposed settlement creates a \$5.3 million non-reversionary Settlement Fund
3 to provide monetary relief to Class Members for their purchases of FitFlop Footwear and
4 pay for attorneys' fees and expenses, and notice and administration costs. (*See Stip. of*
5 *Settlement*, ¶ IV.A.1.) The Settlement Fund was reached after the parties engaged in
6 settlement discussions at the early neutral evaluation conference held before the
7 Honorable Karen S. Crawford, and attended two private mediations with Martin Quinn
8 of JAMS San Francisco on October 9, 2012 and June 19, 2013.

9 Following the parties' last mediation session, they continued to engage in
10 numerous telephonic conferences until a tentative settlement was reached at the end of
11 July 2013. On August 16, 2013, the parties executed a detailed term sheet, whose terms
12 are reflected in the Settlement Stipulation. And unlike disfavored coupon settlements,
13 the settlement provides cash recoveries for Class Members. Additionally, if the
14 Settlement Fund is not exhausted, the remainder will go to Consumers Union of the
15 United States, a non-profit group dedicated to fighting false advertising, and Consumer
16 Watchdog, a nonprofit civic entity that fights to expose, confront, and change deceptive
17 corporate practices through policy research, investigation, public education, and
18 advocacy.

19 Defendant has also agreed that for a period of five years from the settlement's
20 Effective Date, it will not make the alleged false and deceptive representations, including
21 that FitFlop Footwear is effective in strengthening, toning, burning calories, or assisting
22 in weight loss unless, at the time of making such representation, it possesses and relies
23 upon competent and reliable scientific evidence that substantiates the representations.(
24 *See Stip. of Settlement*, ¶ IV.B.2.)

25 The Court also finds Plaintiff Arnold's request for a \$5,000 service award is fair
26 and reasonable given her participation in this litigation and the results achieved.
27 Plaintiffs also requests a \$1,500 service award to Barbara Glaberson and Angie Ojeda.
28

1 For the following reasons, the Court finds these service awards are also fair and
2 reasonable.

3 Barbara Glaberson agreed to serve as the named plaintiff in a related federal action
4 pending in New Jersey against Defendant FitFlop, among others, entitled Glaberson v.
5 FitFlop USA, LLC, Case No. 13-cv-02051-NLH-AMD (D.N.J.). The Settlement
6 Stipulation provides that upon final approval of the settlement in this case, Glaberson
7 will also be dismissed with prejudice. (See *Stip. of Settlement*, ¶ III.B.) Ms. Glaberson
8 reviewed relevant pleadings, and met with Plaintiff's counsel to provide information
9 regarding her purchase, and exposure and understanding of FitFlop's advertising at issue.
10 With respect to Angie Ojeda, Plaintiffs sought to add her as a named plaintiff in this case
11 before filing the second amended complaint. The request was denied as untimely, not
12 because of any finding related to Ms. Ojeda's ability to act as a class representative. (See
13 *Order Re. Mt. to Amend.* [Doc. 95], 5:12-7:6.) Additionally, similar Ms. Glaberson, Ms.
14 Ojeda reviewed relevant pleadings, and met with Plaintiff's counsel to provide
15 information regarding her purchase, and exposure and understanding of FitFlop's
16 advertising at issue. Therefore, like Ms. Arnold, Ms. Glaberson and Ms. Ojeda also
17 actively participated and assisted in prosecuting the claims against Defendant.

18 Finally, the Court finds Class counsels' request for \$1.325 million in attorneys'
19 fees and \$180,000 in expenses fair and reasonable. The attorneys' fee request is 25% of
20 the Settlement Fund and represents a fractional multiplier of 0.44 of Plaintiffs' counsel's
21 lodestar of \$2,995,336. Under either measure, the attorneys' fee request is fair and
22 reasonable given the substantial amount of work involved in prosecuting this case, the
23 legal and scientific issues presented, and the benefit to the Class that was achieved. See
24 In re Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 491 (E.D. Cal. 2010)
25 (acknowledging that the "typical range of acceptable attorneys' fees in the Ninth Circuit
26 is 20% to 33 1/3% of the total settlement value"); Vizcaino v. Microsoft Corp., 290 F.3d
27 1043, 1051 (9th Cir. 2002) (approving multiplier of 3.65).

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1 In summary, the Court finds that the settlement amount, taking into account the
2 attorneys' fee and service awards, is facially fair and reasonable.

3
4 **4. Discovery Completed Prior to Settlement.**

5 Class counsel began investigating the veracity of Defendant's advertising claims in
6 September 2010, approximately nine months before this lawsuit was filed. (*Blood Prelim.*
7 *Approval Dec.* [Doc. 107-2], ¶ 4.) The investigations included the review and research of
8 Defendant's advertising, pricing and components used in FitFlop Footwear and its
9 competitors' products, and gathering scientific studies and industry statements regarding
10 the ability of FitFlop Footwear and other toning shoe products to provide the advertised
11 benefits. (*Id.*) They also researched and analyzed financial and sales information about
12 FitFlop Footwear. (*Id.*)

13 Since this lawsuit was filed, the parties have engaged in a substantial amount of
14 discovery. Plaintiffs propounded three sets of written interrogatories, one set of
15 document requests, and two sets of requests for admission, and conducted seven
16 depositions. (*Blood Prelim. Approval Dec.*, ¶¶ 10, 13.) The discovery requests resulted in
17 Defendant's production of approximately 473,022 pages of documents. (*Id.*) Plaintiffs
18 also conducted discovery in London, England related to FitFlop's parent corporation,
19 as well as third-party researches hired by FitFlop. (*Id.*, ¶ 20.)

20 Class counsel has also taken non-party depositions and issued approximately 17
21 third-party subpoenas that were served on Defendant's retail partners, the American
22 Podiatric Medical Association, the QVC television network, and one of Defendant's
23 former executives. (*Blood Prelim. Approval Dec.*, ¶ 10.)

24 The discovery efforts have also entailed a negotiated protective order, and
25 significant discovery-related motion practice. (*Blood Prelim. Approval Dec.*, ¶ 10.) In total,
26 Plaintiffs filed five motions to compel further discovery responses from Defendant. (*Id.*)
27 Plaintiff Arnold was also deposed, provided documents and written discovery responses,
28 and was the subject of a motion to compel by Defendant. (*Id.*)

1 Based on the above investigation and discovery, the Court finds that in entering
2 into the settlement, the parties fully understood the legal and factual issues surrounding
3 the case. This factor, therefore, also favors approval of the settlement.

4
5 **5. Involvement of a Government Entity.**

6 This lawsuit did not involve any governmental participants. However, as stated
7 above, on December 23, 2013, CAFA Notice was served to the Attorney General of the
8 United States, and to state Attorneys General. (*Keough Dec.*, ¶ 4.) None of these parties
9 have filed an objection to the settlement.

10
11 **6. Counsel's Experience and Views.**

12 Both parties are represented by experienced counsel and their mutual desire to
13 adopt the proposed settlement's terms, while not conclusive, "is entitled to significant
14 weight." *Fisher Bros. v. Cambridge Lee Indus., Inc.*, 630 F. Supp. 482, 488 (E.D. Pa.
15 1985). Class counsel has extensive experience in litigating complex class actions, as well
16 as the expertise necessary to prosecute this case. Defense counsel is a well-respected law
17 firm and is also very experienced in this type of litigation.

18 The parties' negotiation and adoption of the settlement terms, particularly in light
19 of counsels' familiarity with the law in this practice area, and the strengths and
20 weaknesses of their respective cases, strengthens this Court's decision to approve the
21 settlement.

22
23 **7. The Class Members' Reaction to the Proposed Settlement.**

24 This factor presents the most compelling argument favoring settlement. By order
25 dated December 19, 2013, this Court afforded any person legally entitled to object to the
26 settlement an opportunity to file written objections and appear at the fairness hearing.
27 Parties wishing to object were to file written objections by March 29, 2014.

1 To date, only one objections has been filed, indicating that the vast majority of
2 Class Members and other concerned parties are likely satisfied with the resolution of this
3 case as set forth in the proposed settlement.

4
5 **8. Mr. Narkin's objection.**

6 The sole objection was filed by Michael Narkin. (*See Objection* [Doc. 119].) Mr.
7 Narkin raises three objections to the settlement: (1) the proposed settlement bears no
8 relationship to the alleged damages inflicted by Defendants on Plaintiffs; (2) Class
9 counsels' actions are indicia of a consciousness of unfairness and collusion; and (3) the
10 amount of attorney's fees and expenses constitutes over reaching, represents unjust
11 enrichment, and shocks the conscience. (*Id.*, p. 1.) The Court finds each of these
12 objections lack merit.

13 First, the Court finds that the settlement bears a close relationship to the Class
14 Members' damages. This litigation involves claims of false advertising that resulted in
15 Class Members paying a premium for benefits that the FitFlop Footwear allegedly did not
16 provide. The settlement enjoins Defendant from continuing with this conduct for five
17 years, unless Defendant possess and relies upon competent and reliable scientific
18 evidence that substantiates the claims. (*Stip. of Settlement*, ¶ IV.B.2.) Additionally, Class
19 Members are entitled to refunds that represent the difference in price between the
20 subject footwear and regular footwear, and includes the possibility of receiving up to a
21 complete refund.

22 With respect to Mr. Narkin's second and third objections, the Court finds the
23 objections lack merit for the reasons stated in sections III. C.3 and C.9 of this order. In
24 short, as demonstrated by the substantial investigation, discovery and motion practice
25 that has occurred, the complex legal and scientific issues raised by the claims and
26 defenses at issue, and the substantial benefit achieved both in terms of the Settlement
27 Fund and injunctive relief, the Court finds that the attorneys' fee, which represents 25%
28 of the Settlement Fund and represents a fractional multiplier of 0.44 of Class counsel's

1 lodestar of \$2,995,336 constitutes a fair and reasonable fee award. See In re Vasquez,
2 266 F.R.D. at 491 (acknowledging that the “typical range of acceptable attorneys’ fees in
3 the Ninth Circuit is 20% to 33 1/3% of the total settlement value”); Vizcaino, 290 F.3d
4 at 1051 (approving multiplier of 3.65). Additionally, taking into account the extended
5 settlement negotiations required to resolve the case, the Court finds Mr. Narkin’s claim
6 of an indicia of a consciousness of unfairness and collusion without merit.

7 For these reasons, the Court overrules Mr. Narkin’s objections.
8

9 **9. The Settlement did not Involve Collusion or Fraud.**

10 Another strong indication that the proposed settlement is fundamentally fair and
11 did not involve collusion is that the parties reached the settlement after substantial
12 negotiations. Those negotiations began when the parties engaged in settlement
13 discussions at the early neutral evaluation conference held before the Honorable Karen
14 S. Crawford. Thereafter, the parties attended two private mediations with Martin Quinn
15 of JAMS San Francisco on October 9, 2012 and June 19, 2013. Following the parties’
16 last mediation session, they continued to engage in numerous telephonic conferences
17 until the tentative settlement was reached at the end of July 2013. Negotiations then
18 continued until the parties agreed to all the terms of the settlement.

19 The settlement was, therefore, the product of continuous, arms-length
20 negotiations, indicating that the settlement was not entered into lightly or without much
21 consideration, and that those representing the Class have acted in accord with their
22 responsibilities to the Class in securing both monetary and injunctive relief which
23 adequately compensates the Class. The Court finds that the settlement did not involve
24 collusion or fraud.
25

26 **IV. CONCLUSION**

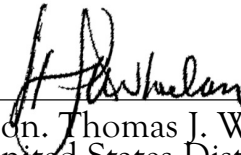
27 For the reasons set forth above, the Court finds that the parties’ settlement is a fair
28 and reasonable outcome given the presence of skilled counsel for all parties, the

1 litigation's complexity and expense if it were to continue and eventually reach trial, the
2 settlement's significant present benefit to all Class Members, and the arms-length
3 negotiations that resulted in the settlement itself. The Court, therefor, approves the
4 settlement as fair, reasonable and adequate to the Class, **OVERRULES** Mr. Narkin's
5 objections to the settlement, and **GRANTS** the motion for final approval [Doc. 114].

6 The Court also approves the \$5,000 service award to Plaintiff Arnold, the \$1,500
7 service awards to Ms. Glaberson and Ms. Ojeda, and Class Counsel's request for \$1.325
8 million in attorneys' fees and \$180,000 in expenses.

9 **IT IS SO ORDERED.**

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11 DATED: April 28, 2014

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15 Hon. Thomas J. Whelan
16 United States District Judge
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