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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL SHAHAR, individually and on behalf of all others similarly situated,

Plaintiff,

v.

Hotwire, Inc.,

Defendant.

Case No. 4:12-CV-06027-JSW

Date: July 25, 2014
Time: 9:00 a.m.
Place: Ronald V. Dellums Federal Building, Oakland

Before: Honorable Jeffrey S. White

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES AND SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES

PLEASE TAKE NOTICE that on Friday, July 25, 2014 at 9:00 a.m., or as soon thereafter as the matter may be heard in the Ronald V. Dellums Federal Building, 1301 Clay St., Oakland, California, the Honorable Jeffrey S. White presiding, Plaintiff will, and hereby does, move this Court to grant final approval of the settlement agreed by the parties in this matter, granting reasonable attorneys' fees and expenses in the total amount of $44,400, and granting a service award to the Representative Plaintiff in the amount of $500. (*See* Settlement Agreement, Doc. 71-2).[1]

Pursuant to the Court's April 21, 2014 Order preliminarily approving the Settlement and associated notice plan (Doc. 73, ¶ 7), notice of this Settlement was provided to potential members of the provisionally certified Class on or before May 1, 2014 by email. Plaintiffs now request that the Court enter an Order approving the Settlement and granting relief as follows:

1. Certifying, for settlement purposes only, a settlement class consisting of all entities and persons in the United States (including its territories and the District of Columbia) who, during the Class Period (November 27, 2008 to the present), made a reservation through Hotwire's website, while in the U.S. (including its territories and the District of Columbia), for a car rental in a foreign country and received a confirmation from Hotwire that included an estimated amount of taxes or fees of equal to or less than $0.00 as shown by records maintained by Hotwire and provided to Class Counsel on a spreadsheet (the "Spreadsheet"). Excluded from the Settlement Class are the following: (i) the Settlement Administrator, (ii) the Mediator, (iii) any respective parent, subsidiary, affiliate or control person of the Defendant or its officers, directors, agents, servants, or employees as of the date of filing of the Action, (iv) any judge presiding over the Action and the immediate family members of any such Person(s), (v) Persons who execute and submit a timely request for exclusion, and (vi) all Persons who have had their claims against Defendant fully and finally adjudicated or otherwise released.

2. Granting final approval of the Settlement Agreement as fair, reasonable, and adequate and directing its implementation according to its terms and provisions.

3. Granting attorneys' fees and costs in the amount of $44,400.

[1] Capitalized terms herein have the meanings defined in the Settlement Agreement.

4. Granting a service award to the Representative Plaintiff in the amount of $500.

5. Discharging and releasing Defendant and Released Parties on the terms and conditions set forth in the Settlement Agreement.

6. This Motion is based upon:

(a) this Notice of Motion and Motion;

(b) the Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement and for Attorneys' Fees and Service Award;

(c) the Declaration of Class Representative Daniel Shahar (Exhibit A);

(d) the Declaration of Class Counsel Cory S. Fein (Exhibit B);

(e) the Declaration of Epiq Systems, the Class Administrator (to be filed by July 18, 2014);

(g) the [Proposed] Final Order and Judgment Granting Final Approval of Class Action Settlement and Attorneys' Fees, Expenses, and Service Award, and Dismissing Case with Prejudice;

(h) the records, pleadings, and papers filed in this action; and such other evidence or argument as may be presented to the Court at the hearing.

Defendant does not oppose this Motion.

Dated: June 20, 2014

Respectfully submitted,

By: /s/ Cory S. Fein

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SUMMARY OF ARGUMENT

Plaintiff files this unopposed motion seeking certification, for settlement purposes only, of the Settlement Class; final approval of the Settlement; an award of reasonable attorneys' fees and expenses; and a service award to the Representative Plaintiff. Because the Settlement Agreement is fair, reasonable, and adequate, the requested attorneys' fees and expenses are reasonable, and the requested service award for the Representative Plaintiff is modest and appropriate in light of his role in this litigation, the motion should be granted.

This case involves allegations that the Defendant, Hotwire, Inc., misinformed a substantial number of its customers regarding the taxes and insurance fees they would have to pay when renting cars internationally. The Settlement was reached after sufficient motion practice and discovery to give the parties the information they needed to properly value the case so they could engage in an informed and serious mediation. The parties mediated through the Court's mediation program with the experienced Judge David Garcia, and negotiations were arms-length, noncollusive, and hard-fought. The Court granted preliminary approval of the Settlement and notice was disseminated as directed by the Court. Not a single objection or opt-out has been filed or served in the seven weeks since notice was disseminated.

The Settlement is an excellent result for the Class members, and clearly merits final approval. Even though Defendant has multiple arguments against class certification and substantive defenses that create substantial risk for Plaintiff going forward, the Settlement provides Class members payments greater than Defendant's revenues from the transactions at issue. Additionally the Settlement includes injunctive relief targeted at ensuring Class members in the future are adequately informed about the taxes and fees they will incur when renting cars through Hotwire's website for use internationally.

Class Counsel's request seeks reimbursement of necessary expenses and an award of attorneys' fees which constitutes a small fraction of their lodestar, and a reasonable percentage of the relief being awarded to the Class.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Daniel Shahar ("Shahar" or "Plaintiff") brought this action on behalf of himself and a putative class of persons who made a reservation after November 27, 2008 through Hotwire's website, while in the United States (including its Territories and the District of Colombia), for car rental in a foreign country and received a confirmation from Hotwire that included an estimated amount of taxes and fees of zero, and/or included an estimated price which failed to include an amount for insurance and/or taxes.[2]

Plaintiff alleges that members of the class, who number more than one thousand, were misled with an inaccurate estimate of their car rental fees. Defendant Hotwire, Inc. ("Hotwire") has disputed this claim.

The Settlement preliminarily approved by the Court squarely addresses the Settlement Class's concerns and provides to the Class Members remedies similar to what they could otherwise have expected to receive if the case were successfully tried, but without the delay and risks associated with trial and the appellate process. As described in more detail below, the Settlement Agreement includes injunctive relief requiring Hotwire to make revisions to its website to more clearly disclose the taxes and insurance fees its customers will have to pay, and monetary relief of $130,000 which represents payment of more than 50% of the total amount paid to the car rental companies for the car rentals at issue. Because Hotwire's average compensation on car rental transactions is less than 25%, this represents payment of more than double Hotwire's estimated fees from these car rentals.

On April 21, 2014 the Court entered an Order preliminarily approving the Settlement and associated notice plan (Doc. 73). Notice was emailed to all class members on or before May 1, 2014, which included links to the Settlement website and the toll-free phone number of Class Counsel.[3] A follow-up email was sent to class members who did not provide a mailing address in

[2] The class definition was narrowed from the definition in the Original Complaint after the Court granted Defendants' motion to dismiss. (Dkt. 34.) The Settlement Class defined herein has been clarified from the definition in the First Amended Complaint. (Dkt. 36 at 9.)

[3] Information regarding the Notice program will be provided in the Declaration of Epiq

response to the first notice, and whose mailing address is not in Hotwire's records. As of this filing, no opt-outs or objections have been filed or served.

II. SUMMARY OF THE LITIGATION AND PROPOSED SETTLEMENT

A. Plaintiffs' Pre-Suit Investigation

Prior to the filing of this case, Class Counsel investigated Plaintiff's claim and researched Hotwire's website and other complaints against Hotwire involving similar issues. (Fein Decl. ¶ 28.) These initial investigations permitted counsel to conclude that the filing of the suit against Hotwire was justified. (*Id.*)

B. The Litigation

1. The Allegations Against Hotwire

Plaintiff alleges that Hotwire misrepresented the price for international car rentals to certain customers, including Plaintiff, by providing an estimated price which omitted mandatory taxes and insurance fees that the customer would have to pay to rent the car; in fact, not only did Hotwire's agreement with these customers provide an "Estimated trip total" that excluded taxes and fees which Hotwire knows its customers will have to pay, Hotwire affirmatively informed these customers that the "estimated taxes and fees" which will be added to its customers' car rental charge will be "$0.00." (Dkt. No. 36 [FAC] ¶¶ 9–10.) These misrepresentations are material to a reasonable consumer in deciding whether to rent cars through Hotwire's website. (*Id.*) Plaintiffs alleged that Hotwire should pay damages caused by these misrepresentations and/or disgorge its revenues from these transactions. (*Id.* ¶¶ 61–62).[4]

2. The History of Motion Practice

The Plaintiff filed this action against Hotwire and Hotwire's parent company, Expedia, on November 27, 2012 (Dkt. No. 1). Hotwire and Expedia responded by filing Motions to Dismiss on January 25, 2013 (Dkt. Nos. 18 and 21, respectively). Plaintiff responded on March 29 (Dkt. No. 33). On April 15, 2013, the Court granted the Motion to Dismiss, giving Plaintiff leave to

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Systems, the Class Administrator (to be filed by July 18 in advance of the Final Approval hearing).

[4] Hotwire has denied all factual allegations in the case and does not admit any liability by this settlement.

amend. (Dkt. No. 34). On May 1, 2013, Plaintiff filed an Amended Complaint, narrowing the class and naming only Hotwire as Defendant. (Dkt. No. 36). Hotwire moved to dismiss the Amended Complaint on May 15, 2013. (Dkt. No. 37). Plaintiff responded (Dkt. No. 46), and Hotwire replied (Dkt. No. 48.)[5] The Court denied Hotwire's motion on July 25, 2013 (Dkt. 51), and Hotwire filed its Answer on August 8, 2013 (Dkt. 52.) On March 21, 2014, Plaintiff moved for Preliminary Approval (Dkt. 71.) On April 17, 2014, the parties filed a Stipulation to provide a revised Notice form to better ensure that Hotwire would have mailing addresses to use to send checks to the class members. (Dkt. 72.) On April 21, 2014, the Court entered an Order preliminarily approving the Settlement and directing the dissemination of the Class Notice. (Dkt. 73.)

3. The Parties' Discovery

After Plaintiff survived Hotwire's second Motion to Dismiss, the parties engaged in informal discovery, including Hotwire providing Plaintiff with information regarding its procedures for providing estimated car rental fees to customers, providing a spreadsheet listing all of its customers who received estimated fees or taxes of zero or less, and giving Plaintiff information regarding estimated revenues it earns from these transactions. (Fein Decl., Dkt. 71-1 ¶ 30.)

4. Mediation

The parties conferred regarding alternative dispute resolution and filed a stipulation agreeing to participate in mediation under ADR Local Rule 6. (Dkt. No. 64.) The Court assigned Judge David A. Garcia (retired) to mediate the case. (Dkt. 66.) The parties mediated the case with Judge Garcia in San Francisco on January 24, 2014. After a half day of mediation the parties were unable to agree on a settlement. (Fein Decl., Dkt. 71-1 ¶ 34.) Judge Garcia followed up with the parties and, over a series of phone calls, was able to broker a settlement in principle on February 13, 2014. (*Id.*) From February 13 through February 27, the parties negotiated a memorandum of understanding outlining the settlement. (*Id.*) From March 5 through March 12, the parties negotiated a settlement agreement, with associated documents (a

[5] Additional motion practice involved Requests for Judicial Notice and associated Responses and Replies, and motions and notices regarding an administratively related case.

proposed Plan of Allocation, the proposed notice, proposed preliminary approval order, and proposed final approval order.) (*Id.* ¶ 36) The final Settlement was signed on March 13, 2014. (*Id.*)

C. The Proposed Settlement Class

The Settlement Class is defined as all entities and persons in the United States (including its territories and the District of Columbia) who, during the Class Period (November 27, 2008 to the present), made a reservation through Hotwire's website, while in the U.S. (including its territories and the District of Columbia), for a car rental in a foreign country and received a confirmation from Hotwire that included an estimated amount of taxes or fees equal to or less than $0.00 as shown by records maintained by Hotwire and provided to Class Counsel on the Spreadsheet. (Settlement, Dkt. 71-2 ¶ 1.29.)

The definition of the Settlement Class has been refined from the Class definition in the most recent complaint. (Dkt. 36 at 9.) The Class has been limited to a specific list of 1,089 transactions by 1,076 persons, listed on a Spreadsheet which was generated by searching Hotwire's computer system to identify those persons who received a confirmation from Hotwire that included an estimated amount of taxes or fees equal to or less than $0.00. (Settlement, Dkt. 71-2 at 6–7, ¶ 1.29.) The Class definition also removed the requirement that the entity have actually paid the tax or fee, which information is not available on the Spreadsheet. (*Id.*)

Excluded from the Settlement Class are the following: (i) the Settlement Administrator, (ii) the Mediator, (iii) any respective parent, subsidiary, affiliate or control person of the Defendant or its officers, directors, agents, servants, or employees as of the date of filing of the Action, (iv) any judge presiding over the Action and the immediate family members of any such Person(s), (v) Persons who execute and submit a timely request for exclusion, and (vi) all Persons who have had their claims against Defendant fully and finally adjudicated or otherwise released. (*Id.*)

D. Terms of the Proposed Settlement

1. Relief to the Class

The Settlement[6] features the following relief:

Injunctive Relief: The settlement requires Hotwire to make certain revisions to its website to more clearly disclose that consumers may have to pay foreign taxes and insurance directly to the rental car company when they pick up a rental car. (Settlement, Dkt. 71-2 ¶ 2.1.)

Monetary Relief: The Settlement requires Hotwire to pay any administration costs exceeding $10,000, plus a total of $130,000 (the "Settlement Amount") which shall be distributed to Class members (after being reduced by the amount awarded by the Court for Class Counsel's attorneys fees/costs, administrative costs/fees of the Settlement Administrator up to a maximum of $10,000, and any service award awarded to the Class Representative by the Court) pursuant to a Plan of Allocation, attached as Exhibit B to the Settlement, which takes into account the length (number of days) of each Class member's relevant car rental, as shown in Hotwire's records. (*Id.* ¶ 1.28, 2.2.) The total amount of estimated car rental fees for the 1,089 transactions on the Spreadsheet is $256,027.85,[7] and the total number of rental days is 7,510. (Fein Decl., Dkt. 71-1 ¶ 38.) The amount distributed to Class members will be at least $10 per day of the car rental because Plaintiff's counsel's requested fee leaves $75,100 to be distributed to Class members. (*Id.*) The $75,100 minimum amount that will be paid to Class members represents 29% of the $256,027.85 in total estimated car rental fees (not including taxes or fees) paid to the car rental companies (such as Dollar or Hertz). This 29% exceeds Hotwire's average compensation on the car rental transactions at issue, meaning that Class members will receive payment greater than Hotwire's revenues from these transactions. (*Id.*)

If the settlement receives final approval from the Court, the payments will be sent to each Class member at the address as shown in Hotwire's records. (Settlement, Dkt. 71-2 ¶ 2.2.) The revised Notice informed Class members to provide their addresses to the Settlement Administrator by clicking a link. (Dkt. 72, Exhibit A at p. 1, 4, and 8, ¶¶ 7, 8, 23.) The checks

[6] Unless indicated otherwise, capitalized terms used herein have the same meaning as those referenced in the Settlement Agreement (Dkt. 71-2).

[7] This is the amount paid to the car rental companies, not to Hotwire.

expire 120 days from issuance and any funds remaining after any checks expire will be donated to a charitable or public interest organization selected by the parties and approved by the Court. (Dkt. 71-2 ¶ 2.2.)

Automatic Payment with no Claim Process: To be eligible for reimbursement, a Settlement Class Member need take no action. Each Class member who does not opt-out of the case will automatically be mailed a check upon final approval of the Settlement. (Dkt. 72.)

2. The Proposed Notice to the Class of the Settlement

The Class Notice, in a form agreed upon by the Parties and approved by the Court, was mailed on or before May 1, which was within 10 days of the Court's April 21, 2014 Preliminary Approval Order. (Settlement Agreement ¶¶ 1.13–1.15 & 4.1.) The Class Notice, as amended, was filed with the Court on April 17. (Dkt. 72, Exhibit A).

3. Releases

As part of the consideration for this Settlement Agreement, upon the Effective Date, the Representative Plaintiff and Settlement Class Members will release Hotwire and related entities from all claims arising from the same factual predicate as those in the Complaint involving a Hotwire confirmation that included an estimated amount of taxes or fees of equal to or less than $0.00. (Settlement Agreement, Dkt. 71-2 ¶¶ 1.22, 3.) Notably the release is limited to those persons identified on a spreadsheet who are entitled to a payment. (*Id.*)

4. Attorneys' Fees and Expenses

The time and expense incurred by Plaintiffs' Counsel to secure the relief on behalf of the Settlement Class will be paid by Hotwire, in an amount determined by the Court. (*Id.* ¶¶ 1.8, 9.1.) As described in Section III (D) of this Motion, Class Counsel seek attorneys' fees and costs totaling $44,400, which represents less than 23% of their lodestar and expenses to date, and a Class Representative Service award of only $500, to ensure that at least $75,100 remains for distribution to the class members, which will result in a minimum payment of $10 per day, based on the 7,510 rental days at issue in this case. (Dkt. 71-2 ¶ 38, and Exhibit B, Plan of Allocation.) Moreover, as described above, $75,100 is more than 29% of the $256,027.85 in total estimated

car rental fees and this 29% exceeds Hotwire's average compensation on the car rental transactions at issue.

5. Service Awards

Plaintiff requests that the Court approve a $500 Service Award to him on account of his time and effort expended in the Litigation. (Dkt. 72, Exh. A, Notice § 15.)

III. ARGUMENT

A. The Court Should Approval the Settlement as Fair, Reasonable, and Adequate.

To approve a class action settlement under FED. R. CIV. P. 23(e), the Court must find that the settlement is "fair, reasonable, and adequate," recognizing that "it is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). "[T]he 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." *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

In evaluating the fairness of the settlement, the Court should balance "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a government participant, and the reaction of the class members to the proposed settlement." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (quoting *Officers for Justice*, 688 F.2d at 625.) The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claims advanced, the types of relief sought, and the unique facts and circumstances of each case. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citing *Officers for Justice*, 688 F.2d at 625).

In affirming the settlement approved by the trial court in *Class Plaintiffs*, the Ninth Circuit noted that it "need not reach any ultimate conclusions on the connected issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Class Plaintiffs*, 955 F.2d at 1291 (internal quotation and citation omitted). Where, as here, the settlement is the product of arm's length negotiations conducted by capable counsel with extensive experience in complex class action litigation, the court begins its analysis with a presumption that the settlement is fair and should be approved. *See* 4 NEWBERG ON CLASS ACTIONS (4th ed.) § 11.41. As discussed in greater detail below, the settlement presented here is entitled to a presumption of fairness. First, the settlement was reached only after extensive arm's-length negotiations via an experienced mediator. (*See* Fein Decl., Doc. 71-1 ¶¶ 32–33.) Thus, there is no indication of collusion. Second, Class Counsel and counsel for Hotwire are experienced in class action litigation, acted in good faith, and represented their clients' best interests in reaching the settlement. (*Id.* ¶¶ 3–30.) In addition, the Class Representative, Daniel Shahar favors approval (*See* Declaration of Daniel Shahar, attached hereto as Exhibit A).

1. The value of the Settlement and the substantial benefits it provides to the Class support final approval.

The settlement represents an excellent result for the Settlement Class. Despite the fact that Hotwire has several defenses to Plaintiff's claims and the risk that Hotwire would prevail on one of its defenses and/or that Plaintiff would not prevail in having a class certified, Hotwire has agreed to a settlement whereby it pays class members more than the estimated revenue it earned from the car rentals at issue in this case. (Fein Decl., Dkt. 71-1 at ¶ 38.)

Additionally, the Settlement does not require Class members to file a claim, but rather provides automatic payment to each Class member. It also provides an easy process for providing a mailing address to facilitate the automatic payment, for those Class members whose mailing addresses are not already in Hotwire's database. (Dkt. 72.) The settlement provides remedies similar to what Class Members could expect after a successful trial, but without the risk or delay associated with continued litigation. This factor therefore strongly supports settlement approval. *See Hopson v. Hanesbrands Inc.*, Case No. 08-0844 EDL, 2009 WL 928133 at *8

(N.D. Cal. Apr. 3, 2009) (holding that benefits of settlement supported approval where recovery "appear[ed] to be a reasonable compromise"); *Harris v. Vector Marketing Corp.*, No. 08-cv-5198, 2011 WL 1627973, at *8 (N.D. Cal. April 29, 2011) (to evaluate the reasonableness of a settlement, courts primarily consider the value provided by the settlement against the claims' expected recovery if tried.)

2. The risks inherent in continued litigation and trial support final approval.

This factor weighs in favor of approval. There is risk that Plaintiff could be unsuccessful in certifying a class and/or unsuccessful on the merits. Taking this case through class certification and trial would be complex, expensive and could take years. Settlement will conserve the resources of the parties and the Court and guarantees a substantial and certain recovery for the Settlement Class now while obviating the need for a lengthy, complex, and uncertain trial.

3. The risk of maintaining class action status throughout the trial

A litigation class has not been certified, and the Settlement was reached before Plaintiff moved for class certification. Defendant would have contested class certification absent a settlement agreement and, although Plaintiff is confident he would have been successful in certifying a class, there is certainly a risk that Defendant would have been successful in defeating class certification.

4. The extent of discovery completed and the stage of proceedings

This Settlement is the product of adequate discovery regarding Hotwire's alleged misrepresentations. Before filing the Complaint, Plaintiff's counsel did research to develop the theory behind Plaintiff's case. (Fein Decl., Doc. 71-1 ¶ 26.) More than eighteen months ago, on November 27, 2012, Plaintiff Daniel Shahar filed this action on behalf of himself and a nationwide class of Hotwire customers who were similarly misinformed about taxes and insurance fees. (Dkt. 1.) In the Complaint, Plaintiff alleged that Hotwire improperly misrepresented the price its customers would have to pay for the travel services purchased through Hotwire's website. (Dkt. 1 ¶¶ 7–20.) Plaintiff brought a claim for breach of contract, deceptive acts in violation of the Consumer Legal Remedies Act ("CLRA"), False Advertising

Law ("FAL"), and Unfair Competition Law ("UCL") against Hotwire, alleging that Hotwire misrepresented the costs of the services provided to its customers. (Dkt. 1 ¶¶ 30–57.)

5. The experience and views of counsel

Plaintiffs' Class Counsel have substantial experience serving as class counsel in numerous cases, including class action litigation, and we fully endorse the Settlement as fair, reasonable, and adequate. (Dkt. 71-1 ¶¶ 1–22; 40).

6. The presence of a governmental participant

Defendant's counsel provided notice of the settlement to the Attorney General of the United States as well as the appropriate officials in each state in which Class Members potentially reside, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. None of these governmental entities have objected to the settlement, and this factor therefore also favors approval. *Browning v. YahooA Inc.*, Case No. 04-01463 HRL, 2007 WL 4105971 at *12 (N.D. Cal. Nov. 16, 2007)2007 WL 4105971 at *12 (holding that where governmental agencies were given notice of the settlement and did not object, factor weighed in favor of settlement).

7. The reaction of the Class members to the proposed Settlement

The Representative Plaintiff supports the settlement. (Declaration of Daniel Shahar, attached as Exhibit A.) While the deadline for opt-outs and objections has not yet passed, as of the date of this filing, none of the more than 1 thousand class members have opted out or objected.[8] Plaintiff will respond to any objections by the Court-ordered deadline of July 18, 2014. (*See* Dkt. 72.) While the deadline has not yet passed, the lack of any objections or opt-outs to date indicates that the class supports the settlement, weighing in favor of approval. *See Hanlon*, 150 F.3d at 1027 ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *In re Netflix Privacy Litig.*, No. 11-cv-00379, 2013 WL 1120801, at *8 (N.D. Cal. March 18, 2013) (holding that low rates of opt-outs and objections weighed in favor of settlement approval).

[8] The deadline for opt-outs and objections is June 30. (Dkt. 73 ¶¶ 10, 12.)

8. The proposed Settlement is the result of arduous, arm's-length negotiations conducted by highly experienced counsel

The Court assigned Judge David A. Garcia (Ret.) from JAMS in San Francisco to serve as mediator in this case (Dkt. 66). The parties mediated the case with Judge Garcia on January 24, 2014. (Fein Dec., Dkt. 71-1 ¶ 32.) At all times the settlement negotiations were noncollusive, adversarial, serious and informed. (*Id.* at ¶ 32.) After a half day of mediation the parties were unable to agree on a settlement. (*Id*.) Judge Garcia followed up with the parties and, over a series of phone calls, was able to broker a settlement in principle on February 13, 2014. (*Id*.) At all times, these settlement negotiations were conducted at arm's length, through Judge Garcia, and without regard to any agreement regarding attorneys' fees and expenses. (*Id*. at ¶ 33.) From February 13 through February 27, the parties negotiated a memorandum of understanding outlining the settlement; from March 5 through March 12, the parties negotiated a settlement agreement, with associated documents (a proposed Plan of Allocation, the proposed notice, proposed preliminary approval order, and proposed final approval order.) (*Id*. at ¶ 34.) The final Settlement was signed on March 13, 2014. (*Id*.) The settlement represents an excellent result for the Class, requiring Hotwire to pay more than 100% of its revenues earned through the transactions at issue to Class members without the need to litigate this matter further to achieve what would likely be the same or a similar result.

B. The Court-Ordered Notice Program Meets Due Process Standards and Has Been Fully Implemented

"Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.'" MANUAL FOR COMPLEX LITIGATION, § 21.312 (4th ed. 2004); *see Hanlon*, 150 F.3d at 1026 ("Adequate notice is critical to court approval of a class settlement under Rule 23(e)."). In order to protect the rights of absent class members, the Court must provide the best notice practicable under the circumstances. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985).

Notice here squarely met these requirements. The Court already preliminarily approved the form of class notice. (Dkt. 73 at ¶ 7.) Notice by email, following up undeliverable email with additional email attempts and first class mail has been deemed adequate in other cases involving

websites which deal with customers via the internet and email. *See Keirsey v. eBay, Inc*, Case No. 12-01200-JST, 2014 WL 644697 at *1 (N.D. Cal. Feb. 14, 2014) (finding notice primarily by email to be proper); *Custom LED, LLC v. eBay, Inc*, Case No. 12-CV-00350-JST, 2013 WL 6114379 at *4 (N.D. Cal. Nov. 20, 2013) (approving notice by email with mailed notice for class members whose email notice is returned as undeliverable); *Otey v. CrowdFlower, Inc*., Case No. 12-CV-05524-JST, 2013 WL 4552493 at *5 (N.D. Cal. Aug. 27, 2013) (stating "the Court is persuaded that notice by email and online postings, as opposed to notice via U.S. mail, is the most appropriate method for effectuating notice in this case given that the claims at issue involve conduct that takes place exclusively online.")

The form of the notice, attached as an exhibit to the parties Stipulation (Dkt. 72), contained all of the content required by Rule 23(c)(2)(B), including a definition of the Settlement Class (*id.* at ¶ 5), a description of the action and the claims (*id.* at ¶ 2); notice of the Settlement Class members' right to opt out of the proposed settlement (*id.* at ¶ 11); and notice of their right to object to or comment on the settlement and any application for attorneys' fees, costs, and service awards (*id.* at ¶ 16). Adequate notice has therefore been provided. *Hanlon*, 150 F.3d at 1011 (holding notice requirements met where the notice provided class members "with the opportunity to opt-out and individually pursue any state law remedies that might provide a better opportunity for recovery").

Pursuant to the Notice Plan, the Epiq Systems emailed the Notice to all class members on May 1, 2014.[9] Epiq received only 57 bounce-backs and had mailing addresses for 37 of those 57 persons and mailed notices to them, with only 3 of those returned as undeliverable. Additionally, 41 class members have provided an updated mailing address through the settlement website so far. On June 16, 2014 a reminder email was sent to 380 class members for whom Hotwire does not have a mailing address. Class members have begun to respond to this reminder by submitting their mailing addresses on the settlement website and by emailing their mailing addresses to Plaintiffs' counsel.

[9] Information regarding the implementation of the notice program is discussed in the Fein Declaration at ¶ 42, and will be supplemented with a Declaration by the Class Administrator, Epiq Systems by the July 18 deadline.

C. Class Certification is Appropriate for Settlement Purposes.

In its Preliminary Approval Order dated April 21, 2014, the Court provisionally certified the Settlement Class. (Dkt. 73 at ¶ 3.) All required criteria for class certification remain satisfied. For the same reasons that the Court conditionally certified the Settlement Class before, the Court should find that the Settlement Class meets the requirements of Rule 23 for purposes of final approval. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 622 (1997); MANUAL FOR COMPLEX LITIGATION (4th ed.), § 21.632.

D. The Court Should Award the Requested Attorneys' Fees.

Plaintiffs request an award of attorneys' fees and costs in the amount of $44,400. This request is less than 23% of Class Counsel's lodestar and expenses of $193,563.43. Because this amount is reasonable and well within Ninth Circuit standards, this Court should award the requested attorneys' fees.

1. The Requested Fee Is Reasonable According to Lodestar Principles.

Awards of attorneys' fees are guided by the principle that fee awards should be "reasonable under the circumstances." *In re Wash. Public Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994). A district court has discretion to award attorneys' fees under either the percentage of the fund or the lodestar method. *Evans v. Linden Research, Inc*., Case No. 11-01078 DMR, 2014 WL 1724891 at *5 (N.D. Cal. Apr. 29, 2014) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)).

a. Class Counsel's hourly rates are reasonable.

Courts calculate the lodestar by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Staton*, 327 F.3d at 965. "A reasonable hourly rate is determined pursuant to the prevailing market rates in the relevant community." *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011) *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012). Plaintiff requests that the Court award fees based on Class Counsel's current hourly rates, which reflect the market value of their skill and experience. (Exh. B, Fein Decl. ¶¶ 48–49); *see Young v. Polo Retail, LLC*, No. 02-cv-4546, 2007 WL 951821, at *6 (N.D. Cal. March 28, 2007) (holding that using current hourly rates "simplifies the calculation and accounts for the time value of

money in that counsel has not been paid contemporaneously with their work in this case"). In addition, Class Counsel's declarations submitted in support of this motion show that the specific rates charged by each firm have been accepted in other class action cases and are comparable to rates approved by other district courts in class action litigation. (Exh. B, Fein Decl. ¶¶ 48–51); *see* Jennifer Smith, *Biggest Lawyers Grab Fee Bounty*, Wall Street Journal, April 15, 2011[10] (finding that at Skadden, Arps, Slate, Meagher & Flom LLP, the top disclosed partner billing rate was $1,095 and the lowest disclosed partner rate was $790.00); Vanessa O'Connell, *Big Law's $1,000-Plus an Hour Club*,[11] Wall Street Journal, Feb. 23, 2011 (finding that more than 120 lawyers for whom information was available had hourly rates exceeding $1,000); *see also Hartless*, 273 F.R.D. at 644 (holding that rates were reasonable where they were similar to those charged in the community and approved by other courts).

b. The submitted hours are reasonable.

With this motion, Class Counsel submit evidence of the hours reasonably expended in this litigation. (Exh. B, Fein Decl. ¶¶ 52–54.)[12] Class Counsel have undertaken substantial work since August 2012 to achieve success for the Class in this complex, nationwide class action. (*Id.*) Prosecuting this action on behalf of the class demanded high levels of effort and skill from Class Counsel. Class Counsel engaged in motion practice, discovery, and attended formal mediation sessions, in-person and telephonic, and multiple settlement conferences in order to achieve a resolution of this matter. (*Id.* ¶ 53.)

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[10] *Available at* http://online.wsj.com/article/SBI10001424052702304818405773460338235560 86.htm

[11] *Available at* http://online.wsj.com/article/SB10001424052748704071304576160362028728234.html

[12] *See Winterrowd v. American General Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) (accepting testimony of an attorney as to the number of hours worked on a particular case as sufficient evidence to support an award of attorney fees, without submission of detailed time records); and *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1169 (C.D. Cal. 2010) (same). Detailed and contemporaneous records of attorneys' time will of course be made available to the Court on request.

Class Counsel's work will continue, as counsel will prepare responses to any objections, continue to respond to inquiries from class members regarding the case, and handle appeals from final approval, if any. (*Id.* ¶ 54.) For work performed up to the time of this filing, based on the contemporaneous time records kept by Class Counsel, Class Counsel's lodestar is $190,365.00. (*Id*.)

c. The requested fee is reasonable in light of the risk counsel faced in undertaking this litigation and the results achieved.

The requested amount of $44,400 for Class Counsel's fees and expenses represents only 22.9% of Class Counsel's lodestar and expenses of $193,563.43. A much larger fee would be justified by the risk of non-recovery that counsel faced at the outset of this litigation and the excellent result achieved for the Class. However, Class Counsel has decided only to request reimbursement of expenses and fees totaling $44,400. The requested fee is thus more than justified in light of the risk counsel undertook in pursuing this case and the result achieved.

2. The Result Achieved by Class Counsel.

The valuable benefits secured for the Class also confirm that the requested fee is reasonable. In valuing the settlement, the Court should consider not just the $130,000 in cash being paid by Hotwire and the administrative costs that Hotwire may have to pay in excess of $10,000, but also the value of the injunctive relief. *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479, 2014 WL 2465049 at *2 (9th Cir. June 3, 2014) (finding valuation of settlement that gave no value to the injunctive terms of the settlement to be "clearly incorrect".) In *Laguna*, the Ninth Circuit found that:

> the district court reasonably surmised that even if the value of the settlement was $4 million—only a part of the amount claimed by Plaintiffs—the attorneys' fee award would still be within the normal bounds of reasonableness. The district court was within its discretion to find the attorneys' fee award to be fair, reasonable, and adequate because it was both significantly below the lodestar amount and represented an unobjectionable percentage of recovery once the value of injunctive relief was considered. . . . Moreover, the district court acted within its proper discretion when it found that the settlement contains significant benefits for Plaintiffs beyond the cash recovery, and thus that the award, at about a third of the lodestar amount, was reasonable.

Id. at **2–3.

Even if the Court assumes that Hotwire will not have to pay any administrative costs, and that the injunctive relief is only worth $35,000, the settlement would be valued at $165,000, making Plaintiffs' fee request of $41,201.57 (breaking down the $44,400 request as a request for reimbursement of $3,198.43 in expenses and a fee of $41,201.57), a request for 25% of the settlement's value, in line with the 25% benchmark accepted by the Ninth Circuit. "In common fund cases in the Ninth Circuit, the 'benchmark' award is 25% of the recovery obtained, with 20–30% as the usual range. *Evans v. Linden Research, Inc.*, Case No. 11-01078 DMR, 2014 WL 1724891 at * 5 (N.D. Cal. Apr. 29, 2014) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002)).

Even if the Court were to give the injunctive relief a much lower valuation, it would not be reasonable to award Class Counsel less than the $44,400 requested in light of Class Counsel's lodestar of $190,365.00 and expenses of $3,198.43.[13] "Lodestar calculations may be required under circumstances in which a percentage recovery would be either too small or too large in light of the hours devoted to the case." *In re Chiron Corp. Sec. Litig.*, Case No. 04-4293 VRW, 2007 WL 4249902 (N.D. Cal. Nov. 30, 2007) (citing *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1312 (9th Cir.1990)). By requesting only $44,400 for fees and expenses, Class Counsel seeks only 22.9% of their total $193,563.43 lodestar and expenses. An award of less than $44,400 would be too small in light of the hours devoted to the case. *See Laguna*, 2014 WL 2465049 at **1–2 (where the Ninth Circuit affirmed the district court's fee award, although the cash paid by the defendant did not justify a fee that large, because the fee awarded was only one-third of class counsel's lodestar and because the settlement included non-cash injunctive relief in addition to cash.)

B. The Court Should Award the Requested Expenses.

Class Counsel kept records of their expenses on a contemporaneous basis, including expenses for filings, printing and copying, travel, meals, postage and shipping, computerized

[13] For example, were the Court to assume zero additional administrative costs and value the injunctive relief at only $10,000, a $41,201.57 fee would only constitute 29.4% of the total $140,000 settlement value which is still within the 20–30% range, and would be reasonable in light of the fact that the fee and expenses would be so much less (only 22.9%) than their total $193,563.43 lodestar and expenses.

research, staff overtime, long-distance telephone charges, and other expenses reasonably incurred in litigating this action on behalf of the Class. (Exh. B, Fein Decl. ¶ 45 and Ex. 1 thereto.) Class Counsel's current expenses total $3,198.43. (*Id.*) The Court should therefore award the requested expenses. *Hartless*, 273 F.R.D. at 646 (awarding reasonable costs and expenses).

C. The Court Should Award the Requested Service Award to the Class Representative.

An award to the Class Representative is proper to compensate him for the service he performed, including the actions he has taken on behalf of the class, the benefits to the class as a result of his actions, and the time and effort he expended pursuing this litigation. *Staton*, 327 F.3d 938, 977 (9th Cir. 2003) (holding that relevant factors in evaluating service awards include the time and effort expended and the benefit conferred on the class). Daniel Shahar has expended time and effort on behalf of the class in this litigation. (*See* Exhibit A.)

Plaintiff is requesting an award of $500 to the Class Representative. (Notice, Doc. 72 §15.) This amount is very modest compared to other Class Representative awards in the Ninth Circuit. *See In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming $5,000 award to class representative); *see also Hopson*, 2009 WL 928133 at *10 ("In general, courts have found that $5,000 incentive payments are reasonable."); *Knight v. Red Door Salons, Inc.*, No. 08-cv-01520, 2009 WL 248367, at *7 (N.D. Cal. Feb. 2, 2009) (approving $5,000 awards to class representatives). This award is appropriate to compensate the Representative Plaintiff for the effort he undertook on behalf of the Class, without which the recovery achieved here would not have been possible. *Mego*, 213 F.3d at 463.

II. CONCLUSION

For the forgoing reasons, Plaintiff respectfully requests that the Court grant final approval of the settlement, award attorneys' fees and expenses in the amount of $44,400, and grant Class Representative Daniel Shahar a service award in the amount of $500.

Dated: June 20, 2014

Respectfully submitted,

By: /s/ Cory S. Fein
Michael A. Caddell
Cynthia B. Chapman
Cory S. Fein
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Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

On June 20, 2014, I conferred with counsel for Hotwire, who indicated that Hotwire is not opposed to the relief requested in this Motion.

/s/ Cory S. Fein
Cory S. Fein

CERTIFICATE OF SERVICE

I hereby certify that this document was filed via the Court's ECF system and thereby served on all counsel of record on June 20, 2014.

/s/ Cory S. Fein
Cory S. Fein

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL SHAHAR, individually and on behalf of all others similarly situated, Plaintiff, v. Hotwire, Inc., Defendant.	Case 4:12-CV-06027-JSW **DECLARATION OF DANIEL SHAHAR IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES AND SERVICE AWARD** Date: July 25, 2014 Time: 9:00 a.m. Place: Ronald V. Dellums Federal Building, Oakland Before: Honorable Jeffrey S. White

I, Daniel Shahar, declare as follows:

1. My name is Daniel Shahar. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. This declaration is based on my personal knowledge and, if called as a witness, I could and would testify competently thereto.

3. I am named as the class representative in this case, and I am generally familiar with the work involved in prosecuting the class action against Hotwire relating to the misleading information regarding taxes and insurance costs for renting vehicles through Hotwire for use in outside of the United States.

4. I am a class member because I rented a vehicle through Hotwire for use in Israel and received a rental confirmation which falsely estimated that taxes and fees would be zero.

5. My wife and I decided to pursue litigation over this misrepresentation and retained Caddell & Chapman to represent me and others in my similar position.

6. My wife and I provided my attorneys with relevant and helpful information for this lawsuit regarding my experience with my vehicle rental including my rental confirmation from Hotwire, the documents associated with my rental from Dollar Rent A Car in Israel, my discussions with Hotwire and Dollar regarding the undisclosed taxes and fees, and my damages resulting from same.

7. My wife and I have been in regular email and phone contact with Caddell & Chapman throughout my involvement in the prosecution of this case and we have been kept apprised of key developments in the litigation. I am generally familiar with the factual and legal issues in this case through my correspondence and communications with my attorneys and their staff. I have also been informed about the terms of the proposed settlement which is before the Court.

8. After reviewing and discussing the terms of the proposed settlement with my attorneys and considering the issues in the case, I have concluded that the proposed settlement obtained on behalf of the Class is fair and reasonable to the Class members in light of the circumstances. I also believe that the attorneys' request for fees is reasonable and appropriate.

9. I believe that I have fairly represented the absent Class members and herein request that the Court finally approve this settlement, confirm me as a Class Representative, and grant the request for attorneys' fees and costs in this case.

10. I am not aware of any conflicts of interest that prevent me from being confirmed as Class Representative in this lawsuit. I am not related in any way to my attorneys or to any other member of the firm that is representing me. I have no business dealings or other involvement beyond this lawsuit and this representation. I have not been promised any money or inducement to serve as Class Representative in this action.

11. I request that the Court award me a fair and reasonable service award to compensate me for the work that I have performed in my role as Class Representative, as well as the disruption to my business and personal life that has resulted from my service as a Class Representative.

12. As Class Representative, I actively participated in the litigation and have always maintained the best interests of the Class while performing my Class Representative duties.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

DATED: June 18, 2014, Lucerne, Switzerland.

/s/ Daniel Shahar
Daniel Shahar

EXHIBIT B

Cory S. Fein (State Bar No. 250758)
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL SHAHAR, individually and on behalf of all others similarly situated, Plaintiff, v. Hotwire, Inc., Defendant.	Case 4:12-CV-06027-JSW **DECLARATION OF CORY S. FEIN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES AND SERVICE AWARD** Date: July 25, 2014 Time: 9:00 a.m. Place: Ronald V. Dellums Federal Building, Oakland Before: Honorable Jeffrey S. White

I, Cory S. Fein, declare as follows:

1. My name is Cory S. Fein. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am working on behalf of the Plaintiff and the putative Class in the above-styled litigation, and I am an attorney and partner of the law firm of Caddell & Chapman.

Caddell & Chapman

3. Caddell & Chapman has an outstanding record representing primarily plaintiffs in complex litigation across the United States.

4. I am a class action litigation attorney with more than twenty years of experience and have been part of the Caddell & Chapman team in multiple national class actions. I am a 1991 graduate of the University of Texas Law School, with honors, and a 1988 graduate of the University of Texas with high honors. I am licensed to practice law in Texas and California, and am admitted to practice in multiple federal district and appellate courts, as well as the United States Supreme Court. I have been named a "Texas Rising Star" by Texas Monthly magazine on multiple occasions.

5. Michael Caddell is a past co-recipient of the Public Interest Award from The Trial Lawyers for Public Justice Foundation and has been named "Impact Lawyer of the Year" by *Texas Lawyer* magazine. Caddell & Chapman's other named partner, Cynthia Chapman, who is also working on behalf of the Class in this matter, has been named by the *National Law Journal* as one of the "Top 40 Lawyers under 40 in America" and one of the "Top 50 Women Litigators in America." Both Cynthia Chapman and Michael Caddell have been named by *LawDragon* as two of the "500 Leading Plaintiffs' Lawyers in America."

6. Caddell & Chapman has worked hard to attain a strong reputation for integrity and excellence,[1] even while pursuing difficult and sometimes controversial cases. As Federal District

[1] Texas Monthly has named three of the Caddell & Chapman lawyers who worked on this matter either Texas Super Lawyers or Texas Rising Stars. Both Cynthia Chapman and Michael Caddell have been named Texas Super Lawyers in 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

Judge Royal Ferguson noted during a remand hearing in 2002, "Mr. Caddell, you and your office have a gold-plated reputation as good and thorough and thoughtful lawyers."[2] As United States Bankruptcy Judge Alan H. W. Shiff in Connecticut noted in 2003 during a contested motion to appoint Michael Caddell as Special Counsel to the Britestarr Bankruptcy Estate, "I think he's got a national reputation he's competent . . . . Mr. Caddell appeared before the Court and my recollection is that he comported himself very well."[3] As Steven Mackey from the Office of the United States Trustee, Region 2, for the District of Connecticut commented in the same hearing, "Mr. Caddell is more than competent, he is a pugnacious bulldog and where there is [sic] grounds to make a recovery he usually does."[4] "Where the fire is the hottest people tend to get scorched once in a while, and Mr. Caddell takes cases where the fire is as hot as it gets."[5]

7. Even while representing its clients zealously, however, Caddell & Chapman have maintained an excellent reputation as ethical lawyers. Ethics author and Professor Geoffrey Hazard recently noted that, having "worked with lawyers" at "Caddell & Chapman . . . over the years in various matters," Caddell & Chapman's lawyers "have consistently demonstrated the most proper ethical standards, including those applicable in class suit litigation," and their conduct "exemplifies . . . high ethical concern."[6]

Caddell & Chapman's Class Action Experience

8. Caddell & Chapman's typical role in class action litigation is as either lead or co-lead counsel (or in another leadership position). For example, past cases in which Caddell &

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[2] *Bellorin v. Bridgestone/Firestone, Inc.*, Cause No. P-01-CA-034, United States District Court, Western District of Texas, Pecos Division, Transcript of March 5, 2002 at 9, ll. 22–23. Instead of burdening the Court with copies of the transcripts and orders referenced in this personal statement, copies or excerpts of these documents will be provided upon request.

[3] *In re: Britestarr Homes, Inc.*, Cause No. 02-50811, United States Bankruptcy Court, District of Connecticut, Transcript of June 3, 2003 at 9, 14.

[4] *Id.* at 12–13.

[5] *Id.* at 12.

[6] Hazard Declaration, filed in *White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070 DOC; In the U.S. Dist. Ct., Central Div. California, ECF Dkt. No. 605-6, Jan. 4, 2010.

Chapman attorneys have served in such a role include the Polybutylene National Class Action Litigation in Tennessee, Texas, and California (Cox v. Shell)[7], in which over $1 billion was recovered for the class (Michael Caddell was Co-Lead Counsel and served throughout the settlement process as Chairman of the Board of the Consumer Plumbing Recovery Center, the entity responsible for administering the settlement, which completely replumbed over 320,000 homes across America at no cost to individual homeowners); *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigations*[8] in Ohio, another $1 billion recovery for a national class (Michael Caddell was Special Counsel to the Plaintiffs' Steering Committee and part of the six-lawyer team which negotiated the initial $750 million class settlement with Sulzer); *Hotchkiss v. Little Caesar Enterprises*,[9] a national class action in Texas and Michigan which resulted in a settlement valued at $350 million and the complete restructuring of the Little Caesar's franchise (Michael Caddell was Lead Counsel); and *In re Hyundai and Kia Horsepower Litigation*,[10] a national class action in California that made available to the class roughly $125 million in cash and/or debit cards (Michael Caddell was Co-Lead Counsel).

9. In the last several years alone Michael Caddell, Cynthia Chapman and/or I served as Class Counsel in multiple cases, including *Elihu, et al. v. Toshiba*, a national class action settlement in California which provided extended warranties and other relief for over 860,000 purchasers of Toshiba laptop computers. In that case, Caddell & Chapman was characterized by Toshiba's expert, Harvard Professor William Rubenstein (frequent class-action commentator and sole author of *Newberg on Class Actions*), as "experienced" and "skilled class action attorneys," and Mr. Caddell was acknowledged as a "nationally-known plaintiffs' attorney."[11] In May 2013,

[7] Civil No. 18,844, Obion County Chancery Court, Tennessee.

[8] Cause No. 1:01-CV-9000 (MDL Docket No. 1401), United States District Court, Northern District of Ohio, Eastern Division.

[9] C.A. No. 99-CI-16042, District Court of Bexar County, Texas.

[10] Case No. 02CC00287, Superior Court of Orange County, California.

[11] Rubenstein Declaration, Dec. 4, 2009, *Elihu v. Toshiba Am. Info. Sys., Inc.*, Case No. BC328556; in the Superior Ct of Calif., Los Angeles County–Central District.

in conjunction with his analysis of the work done by Caddell & Chapman in the *In re Navistar Diesel Engine Products Liability Litigation MDL No.* 2223 pending in Chicago (where Michael Caddell served as Lead Counsel, I chaired the Discovery Committee and Cynthia Chapman chaired the Law Committee), prominent class-action expert Professor Geoffrey Miller attested: "I am familiar with the Lead Counsel, Caddell & Chapman, and consider the attorneys at that firm to be among the finest class action attorneys I have encountered in more than a quarter century of work in this area," "I know Counsel to be highly ethical attorneys," and "Lead Counsel, with the assistance of the Court, performed admirably."[12] In that same case, Harvard Professor William Rubenstein (frequent class-action commentator and sole author of *Newberg on Class Actions*) described the settlement my firm negotiated with Ford as "a terrific settlement providing significant value to the class easily warrant[ing] . . . final approval."[13]

10. Ms. Chapman was also named as Co-Lead Counsel in a national class action settlement in California involving some 80,000 purchasers of Nissan's 350Z.

11. Caddell & Chapman attorneys have been named Lead or Co-Lead Counsel in multiple national class action settlements:

a. *In re Navistar Diesel Engine Products Liability Litigation MDL No.* 2223, pending in the Northern District of Illinois (where Michael Caddell served as Lead Counsel and Cynthia Chapman and I chaired key committees), involving over 1 million class members, settlement approved in July 2013, and attorneys' fees of $12.8 million awarded in August 2013;

b. *Rodriguez v. Farmers Ins. Co.*, nationwide class action settlement valued at over $10 million, final approval granted in the Central District of California, January 13, 2014;

c. *Zeller v. [Two major beverage manufacturers]*; Settlement for a nationwide class of consumers obtained final approval on August 31, 2012, in Los Angeles Superior Court;

[12] Miller Declaration, filed in *In re: Navistar 6.0 L Diesel Engine Products Liability* Litigation, No. 1:11-cv-02496 (N.D. Ill.), ECF Dkt. No. 278-10, May 15, 2013.

[13] Rubenstein Declaration, filed in *In re: Navistar 6.0 L Diesel Engine Products Liability Litigation*, No. 1:11-cv-02496 (N.D. Ill.), ECF Dkt. No. 278-7 at 2, May 15, 2013

d. *Keegan v. American Honda Motor Co.;* Settlement for a nationwide class of consumers valued at more than $11 million, obtained final approval on January 21, 2014, in Central District of California;

e. *Williams v. LexisNexis Risk Management*, a $22 million FCRA settlement approved June 25, 2008, by Federal District Judge Robert Payne in Richmond, Virginia;

f. *Hardy v. Hartford*, a settlement providing injunctive and monetary relief to a nationwide class of Hartford insureds with respect to the payment of General Contractor's overhead and profit on property damage claims, approved by Judge Bury of the Federal District Court of Arizona on June 18, 2008;

g. *In re Trans Union Corp. Privacy Litigation*, Case 1:00-cv-04729, MDL Docket No. 1350, N.D. Illinois, one of the largest class actions in history including more than 190 million class members, where the settlement was approved by Judge Robert Gettleman on September 17, 2008, and prominent class action expert Professor Geoffrey Miller stated "[h]aving worked closely with [Caddell & Chapman], I can also attest that they are among the finest class action attorneys I have been privileged to know during my two decades of experience in this field of law. They not only possess excellent analytical and rhetorical skills, but—more importantly—displayed remarkable qualities of judgment, imagination and persistence;" and

h. *Williams Ambulance et al. v. Ford Motor Co.*, a settlement that obtained final approval from Federal District Judge Marcia Crone on July 2, 2009 in the Eastern District of Texas, in which the owners of some 20,000 defective ambulances were eligible to obtain substantial compensation from Ford in the form of extended warranties, reimbursements for repairs, and enhanced service.

12. My partner Cynthia Chapman has also served on the Plaintiffs' Steering Committee and as a Co-Chair Liaison of the Law Committee in *In re: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation*, an MDL proceeding (Case No. MDL-1726) in the United States District Court for the District of Minnesota, in which a settlement of over $100 million was approved.

13. Caddell & Chapman's current docket includes several national and state class actions around the United States. In most cases, Caddell & Chapman is either Lead or Co-Lead Counsel.

14. Caddell & Chapman is co-counsel representing a class of bank account holders in a case involving improper overdraft charges, and on August 10, 2012, Caddell & Chapman and its co-counsel prevailed in their efforts to certify a class in that case, and were successful in defeating a subsequent Rule 23(f) interlocutory appeal to the Eleventh Circuit; a $14.58 million settlement received final approval on June 10, 2014. In re: Checking Account Overdraft Litig., Case No. 1:09-md-02036-JLK, *Simmons, et al. v. Comerica Bank*, S.D.Fla. No. 1:10-cv-22958.

15. Michael Caddell and I also served as Lead Counsel in *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, an MDL proceeding (Case No. MDL-1718) pending in the Eastern District of Michigan, where I took the lead role in facilitating a double-tracked, multi-party mediation that resulted in more than 100 settlements of cases involving vehicle fires. Michael Caddell, Cynthia Chapman and/or I are also lead or co-lead counsel in numerous other national or state class actions against, among others, State Farm, Nissan, Honda, Acxiom, Corelogic, and Toshiba.

16. While Caddell & Chapman's primary focus in the area of class actions has been as lead counsel for a putative or certified class, it has on occasion represented objectors with respect to proposed settlements that appeared abusive or defective. Since 2001, Caddell & Chapman has represented objectors in nine matters with respect to proposed settlements. In several cases, Caddell & Chapman was lead or co-lead counsel for most or all of the objectors' counsel. In *Clark v. Equifax Information Services, Inc.*,[14] the district court refused to approve a proposed settlement after a two-day contested hearing in which Mr. Caddell presented an expert and cross-examined several witnesses, including experts, advanced by the settlement proponents. Ultimately, after the settlement was modified with Caddell & Chapman's participation and

[14] *Franklin E. Clark, et al. v. Equifax Information Services, Inc.*, No.8:00-1218-22, United States District Court for the District of South Carolina, Anderson Division. There were two other related cases as well, Case Nos. 8:00-1217-22 and 8:00-1219-22.

assistance, the court approved the modified settlement and noted that "the involvement of Objectors' Counsel [which were led by Caddell & Chapman] aided in improving the final settlement terms," "the value to the class has . . . clearly been improved through the modifications to the Stipulation[s] of Settlement," and "Objectors' Counsel [for whom I served as Lead Counsel] . . . contributed to the final successful settlements."[15]

17. Similarly, in *In re Hyundai and Kia Horsepower Litigation*, Caddell & Chapman, joined by many firms across the country, successfully objected to a proposed coupon settlement and convinced a state district court in Texas to *withdraw* preliminary approval for that settlement.[16] Ultimately, Caddell & Chapman, as Co-Lead Counsel, obtained a vastly improved settlement which was submitted to and approved by the Superior Court in Orange County, California, Judge Stephen J. Sundvold, presiding. In approving the settlement, Judge Sundvold commented that it was "a tremendous accomplishment," "you've done a terrific job," and the settlement "is as fair and reasonable as could have been arrived at."[17] In four of the other cases in which Caddell & Chapman has represented objectors, settlement modifications were ultimately approved by the trial court and either affirmed on appeal or became final without appeal. In several of those as well, the court or opposing counsel specifically noted the contributions of the objectors led or represented by Caddell & Chapman.[18]

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[15] *Id.*, Order of April 20, 2004, at 33 nn.34–35; 34.

[16] *Hermie Bundick, et al. v. Hyundai Motor Am.*, Cause No. B-168,410, 60th Judicial District of Jefferson County, Beaumont, Texas.

[17] *In re Hyundai and Kia Horsepower Litigation*, Case No. 02CC00287, Superior Court of Orange County, California, Transcript of June 16, 2004 at 33-34, 43. The court's comments were premised on a claims rate of 15% to 20%, and the final claims rate was 19.2%.

[18] *See, e.g., In re Wireless Tel. Federal Cost Recovery Fees Litig.*, Case No. MDL 1559, Master Case No. 4:03-md-01559, United States District Court for the Western District of Missouri, Western Division, Order dated July 8, 2004 at 4 (objectors represented by Michael Caddell, Cory Fein and Ken Nelson "contributed significantly more to the settlement [than another group of objectors] and several of the suggestions [they] made were incorporated into the final settlement."); *Terri Shields, on Behalf of Herself and All Others Similarly Situated v. Bridgestone/Firestone, Inc.*, Cause No. B-170,462, 172nd Judicial District Court of Jefferson County, Texas, Plaintiff's Unopposed Motion for Entry of Order Supplementing Record, dated March 31, 2005, at 2 ("Plaintiff recognizes that the resolution of the objections to the original settlement is due to the efforts of many counsel for objectors, including, but not limited to, Mitchell A. Toups, Mike Caddell . . . . Many objector counsel, including the aforementioned, worked constructively with class counsel and counsel for Defendants to achieve the above-stated results.") Caddell & Chapman's fees in *Shields* were all donated to charity.

18. In addition to my leadership roles in various class actions, Caddell & Chapman attorneys have also written about class action issues and have been invited to speak at class action and other CLE seminars. For example, I have co-authored articles on Underground Storage Tank Cost Recovery and Litigation, and Effective Motion Practice in Texas, and co-authored an article on Computer-Based Discovery, and presented the article at University of Houston Advanced Business Litigation seminars, and bar association CLE's in Houston, Austin, San Antonio, Dallas, and Beaumont. Mr. Caddell and Craig Marchiando co-authored: "Issues Particular to Consumer Finance Class-Action Settlements," in *The Review of Banking & Financial Services*, Vol. 25, No. 9, September 2009; "Effective Approaches to Class Action Settlements," in the 14th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B-1728, March 2009; and "Recent Developments in Class Action Certification and Settlement," in the 15th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B-1789, February 2010. Mr. Caddell also served as a panelist on class action issues at both the 14th and 15th Annual Consumer Financial Services Institutes sponsored by the Practicing Law Institute in New York and Chicago in 2009 and 2010.

Caddell & Chapman's Trial and Complex Litigation Experience

19. Caddell & Chapman's trial experience, which includes more than 50 jury trials and hundreds of evidentiary hearings, is germane to the appointment of Class Counsel in this matter. It is important for the Defendants to know that Plaintiffs' Counsel has extensive trial experience and can competently try a case. Indeed, Caddell & Chapman has tried numerous complex cases (and evidentiary hearings) against the Nation's top defense firms to a successful conclusion. In March 2006, Ms. Chapman and Mr. Caddell completed a complex, hotly contested five-week trial against ExxonMobil in which the jury awarded Caddell & Chapman's client $33.6 million[19]—ultimately, rather than pursuing an appeal, Exxon Mobil settled the matter. Notably, ExxonMobil's trial counsel at the time of trial was President-Elect of the American College of Trial Lawyers.

[19] *Tetco v. ExxonMobil Corp.*, Cause No. 2003-Cl-04424, 73rd Judicial District of Bexar County, Texas.

20. In August 2008 we recovered $9 million in consent judgments after trial commenced in federal district court in McAllen, Texas, which judgments were paid in full plus interest at 8.25% following a contested evidentiary bankruptcy hearing in Jackson, Mississippi, in January 2010 (the total recovery was $10,084,000).[20] In July 2009, Mr. Caddell served as lead counsel for the Park Memorial Homeowners' Association against Lexington Insurance Company, seeking compensation for a 105-unit condominium project that had been declared uninhabitable by the City of Houston due to structural concerns. The case settled for a confidential amount—but only after we had successfully argued and prevailed over some 15 motions for summary judgment, *Daubert* motions, and motions in limine, and only one day before jury selection was to commence.[21]

21. In 2011 Caddell & Chapman settled claims against the soils engineer for a $100 million, 31-story condominium tower on South Padre Island that earned the unenviable world record for the tallest reinforced-concrete structure ever imploded when, shortly after the building was "topped-out," it began differentially settling into the sand, causing columns to blow out, severe structural cracking, and enormous floor deflection.[22] Again, the settlement occurred after Cynthia Chapman's successful appellate briefing at the Texas Supreme Court and Mr. Caddell's voir dire and jury selection at trial.[23]

22. In 2012, Caddell & Chapman led a group of four firms pursuing False Claims Act claims in a *qui tam* case against DaVita, the nation's second-largest dialysis-treatment provider. During the course of the case, Caddell & Chapman took more than 40 depositions, reviewed

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[20] *Ezequiel Reyna et al v. Michael J. Miller, et al.;* Case No. M-05-006; In the United States District Court for the Southern District of Texas, McAllen Division.

[21] *Park Memorial Condominium Ass'n, Inc. v. Lexington Ins. Co.*; Cause No. 2007-38187, 133rd Judicial District Court of Harris County, Texas.

[22] *Ocean Tower, L.P., et al. v. Raba-Kistner Consultants, Inc. et al.*; Cause No.2008-06-3619-E; 357th District Court of Cameron County, Texas.

[23] While the terms of various settlements are confidential, public records reflect there has been a complete release of $75 million in lenders' liens on the property, and Caddell & Chapman's client retains ownership of the property after the demolished tower has been removed.

hundreds of thousands of pages of documents, and briefed dozens of motions—from discovery to four dispositive motions—and was victorious every time. The case settled for $55 million paid to the United States and a confidential amount for attorneys' fees (which was disclosed to and approved by the U.S. Department of Justice).

Caddell & Chapman's Past Recoveries

23. Since 1996, Caddell & Chapman has obtained more than 70 recoveries valued at $1 million or more, and more than 25 recoveries that exceeded $10 million. The value of the Firm's total recoveries in that time total more than $3.0 billion. To further illustrate the depth and breadth of Caddell & Chapman's experience and versatility, the following is a list of some of the cases in which Caddell & Chapman served as lead counsel and the recoveries made in each of these cases (some of which are identified by case type[24] and others of which are identified by case style): (1) C.A. No. 05-0227, *United States ex rel. Woodard v. Fresenius Medical Care*, $55 million settlement (plus confidential recovery of attorneys fees)—*qui tam*—non-intervened case (one of the largest recoveries in history in a non-intervened *qui tam* case); (2) C.A. No. 2000-CI-17169; *Maria Dolores Rodriguez-Olvera v. Salant Corporation, et al.*, $30 million settlement during trial—negligence—forum non conveniens—choice of law—federal jurisdiction—bankruptcy—bus accident in Mexico—14 deaths—Maquiladora workers; (3) C.A. No. 2003-CI-04424; *Tetco, et al. v. ExxonMobil, et al*, $33.6 million jury verdict—breach of contract, fraud; (4) C.A. No. —95-245; *Anthony R. Alvarez, et al. v. Little Caesar Enterprises, Inc., et al.*, $14.9 million jury verdict—breach of contract, tortious interference—restaurant franchisee versus national franchisor; (5) No. 95-27280; *Douglas E. Moore and Toyota Town, Inc. v. Gulf States Toyota, Inc., Toyota Motor Sales, U.S.A., Inc., Jerry Pyle, & John Bishop*, $7.5 million verdict—fraud, breach of contract/franchise agreement—automobile dealership; (6) $23.4 million—product liability—*forum non conveniens*; (7) No. 93-062030; *Thomas E. Meadors, et al. v. Gen. Motors, et al.*, $7 million—product liability—motor vehicle—death, personal injury; (8) *Sierra Club v. Crown Central Petroleum*, $2.5 million—first private citizen suit in Texas under Clean

[24] Due to confidentiality provisions in the settlement agreements.

Air Act; settlement achieved after successful appeal to Fifth Circuit Court of Appeals; (9) *PB/Class*, $1.091 billion—national class action—products liability—DTPA—polybutylene pipe and fittings; (10) *Dow Chemical Co., et al v. Miller Pipeline Services*, successfully defended Miller Pipeline Services Co. at jury trial against a $7 million suit filed by Dow Chemical Co. and Dow Pipeline Co. that alleged price-fixing, patent misuse and attempted monopolization; (11) $14.0 million—breach of fiduciary duty and legal malpractice—major New York law firm; (12) $15.7 million—industrial accident—injured workers; (13) $78.4 million subordination of secured debt plus $3.8 million in payments—special counsel to bankruptcy trustee—fraud, lender liability, equitable subordination—conspiracy—international bank; (14) $18.2 million debt/claims withdrawn and released plus $500,00 payment—special counsel to bankruptcy trustee—breach of contract, bailment, theft—oil terminalling facility; (15) $20 million subordination of secured debt plus payments totaling $1.0 million—special counsel to bankruptcy trustee—fraud, lender liability, breach of fiduciary duty, director's liability, D&O coverage—foreign bank, director, D&O insurer; (16) $1.7 million—national class action—price fixing conspiracy—metal building insulation industry; (17) $22.5 million subordination of secured debt plus $8.0 million payment—breach of fiduciary duty, director's liability—oil company; (18) $107.5 million subordination of secured debt plus $2.5 million payment—fraud, lender liability—conspiracy—foreign banks; (19) $2.0 million—product liability—helicopter crash—Mexico; (20) $8.0 million elimination of priority debt plus 40% of Texas corporation—national class action—securities fraud, breach of fiduciary duty; (21) $2.6 million—trade secrets—commercial defamation; (22) $5 million—toxic tort—sulphur dioxide, asbestos; (23) $13.1 million—products liability—DTPA—1500 homes—polybutylene pipe and fittings; (24) $6.25 million—product liability—motor vehicle—single death; (25) $2.85 million—breach of contract—account mismanagement—national banks; (26) $4.3 million—commercial litigation—intellectual property—fraud, trade secrets, misappropriation; (27) $12.1 million—national class action—consumer fraud; (28) $22.5 million—insurance bad faith—CGL policy; (29) $7 million—insurance bad faith—crime bond; (30) $12 million—insurance bad faith—CGL policies—(underlying case: toxic exposure); (31)

$5 million—insurance bad faith—CGL policies—(underlying case: toxic exposure); (32) $10.0 million—breach of fiduciary duty, director's liability, family trusts; (33) $5.1 million—trucking accident; (34) $2.125 million—toxic exposure—2,4-d, dioxins; (35) $5.05 million (including $1.05 million in post-judgment interest) after $4.0 million jury verdict upheld on appeal—closed head injury; (36) $3.5 million—trucking accident; (37) $6 million—toxic exposure—chlordane; (38) $2.5 million—national class action—consumer fraud; (39) $4.15 million—product liability—vehicle fire; (40) $1.5 million—Trident submarine base—government contracts claim; (41) $4 million settlement one day after $6.25 million jury verdict—commercial litigation—deceptive trade practices; and (42) $3.25 million claim successfully defended at trial—take-nothing judgment entered—$600,000 judgment awarded firm's client on counterclaim—commercial litigation—lender liability.

Pro Bono Litigation

24. Caddell & Chapman is also proud of our *pro bono* litigation efforts, including class litigation. For example, on a *pro bono* basis, Caddell & Chapman represented, as Lead Counsel for a coalition of public interest groups, Hurricanes Katrina and Rita victims in a national class action lawsuit against the Federal Emergency Management Agency (FEMA). The lawsuit, in federal district court in Houston, alleged that FEMA's mishandling of its housing assistance programs violated federal laws and regulations. In a contested evidentiary hearing involving several witnesses, lawyers from Caddell & Chapman persuaded the court to issue a preliminary injunction against FEMA compelling the agency to provide assistance with hurricane victims' utilities as well as base rent. In what lawyers from the Public Interest Law Project of Oakland, California, termed "a significant victory for evacuees," the district court found a "clear entitlement" that FEMA was required to provide assistance with utilities under applicable statutes and regulations, and FEMA's failure to comply with these mandates endangered the victims' ability to remain in livable housing. While the district court's injunction was subsequently overturned by the Fifth Circuit Court of Appeals, FEMA made several concessions to the Hurricane victims in the interim, essentially conceding the relief sought by the lawsuit, as noted

by Houston's then-Mayor, Bill White, who stated that Caddell & Chapman "was of tremendous help to the Katrina evacuees in battling with FEMA."[25]

25. For further information concerning our firm's experience and expertise, the Court is referred to our website (www.caddellchapman.com).

The Work Performed in This Litigation

26. As described above, my firm and I have the experience and ability required to zealously and competently pursue this litigation on a classwide basis.

27. Prior to the filing of this case, Class Counsel investigated Plaintiff's claim and researched Hotwire's website and other complaints against Hotwire involving similar issues. These initial investigations permitted counsel to conclude that the filing of this suit against Hotwire was justified.

28. The litigation involved multiple motions to dismiss and amendment of the pleadings in response to the Court's ruling on the first motion to dismiss.

29. After Plaintiff survived Hotwire's second Motion to Dismiss, I engaged in informal discovery with Hotwire's counsel, including Hotwire providing me with information regarding its procedures for providing estimated car rental fees to customers, a spreadsheet listing all of its customers who received estimated fees or taxes of zero or less, and information regarding estimated revenues it earns from these transactions.

30. This Settlement is the product of sufficient discovery regarding the identity of Hotwire customers who received the misrepresentations regarding fees and taxes and the background of how Hotwire conveyed this incorrect information to the Class members.

31. As a result of the motion practice and informal discovery, I have a clear view of the strengths and weaknesses of the case. Sufficient discovery has been conducted in this matter to allow counsel to fairly investigate the pertinent legal and factual issues and fully recommend the Settlement.

[25] October 22, 2009 email from Mayor Bill White to Michael A. Caddell and Houston City Attorney Arturo Michel.

32. My firm has substantial experience serving as class counsel in numerous cases, including class action litigation, and we fully endorse the Settlement as fair, reasonable, and adequate.

The Settlement

33. Before beginning settlement negotiations, the parties engaged in informal discovery over the merits and value of Plaintiff's claims and Defendant's defenses, so that the settlement negotiations were serious and informed. I mediated the case with Hotwire's counsel in San Francisco on January 24, 2014. Judge David A. Garcia served as our mediator. At all times the settlement negotiations were noncollusive, adversarial, serious and informed. After a half day of mediation the parties were unable to agree on a settlement. Because the negotiations were conducted at arm's length by counsel I served Hotwire with discovery on February 7, 2014. Judge Garcia followed up with the parties and, over a series of phone calls, was able to broker a settlement in principle on February 13, 2014.

34. At all times, these settlement negotiations were conducted at arm's length, through Judge Garcia, and without regard to any agreement regarding attorneys' fees and expenses.

35. From February 13 through February 27, the parties negotiated a memorandum of understanding outlining the settlement. From March 5 through March 12, the parties negotiated a settlement agreement, with associated documents (a proposed Plan of Allocation, the proposed notice, proposed preliminary approval order, and proposed final approval order.) The final Settlement was signed on March 13, 2014 and was filed in this case at Docket No. 71-2.

36. The settlement represents an excellent result for the Class, requiring Hotwire to pay more than 100% of its revenues earned through the transactions at issue to Class members. The settlement thus provides a substantial recovery to the Class and eliminates the need to litigate this matter further to achieve what would likely be the same or a similar result.

37. During informal discovery, Hotwire produced a spreadsheet listing 1,089 rentals arranged through Hotwire where the estimated taxes and fees were zero or less. The total amount of rental days for these rentals is 7,510. The class is limited to these rentals, and the total of the

estimated rental costs for all of these transactions is $256,027.85. Hotwire's estimated total revenue from all of these rentals is less than $75,000. The amount distributed to Class members will be at least $10 per day of the car rental because Plaintiff's counsel will not request a fee that leaves less than $75,100 to be distributed to Class members. Class Counsel seeks attorneys' fees and costs in the amount of $44,400 (which represents less than 23% of their lodestar to date) and a Class Representative service award of $500, to ensure that at least $75,100 remains for distribution to the Class, which will result in a payment of $10 per day, based on the 7,510 rental days at issue in this case. Accordingly, Hotwire's payment of $130,000, including payment of at least $75,100 to the Class members, who need not even file a claim in order to be paid, constitutes an excellent settlement for the Class.

38. I have worked with the Class Representative, Mr. Shahar, as well as his wife, from the pre-Complaint investigation, through the motion practice, discovery, settlement negotiations, and finalization of the settlement agreement, and they have never indicated any individual interests in the litigation that conflict with the best interests of the Class. To the contrary, they have at all times advocated the best interests of the Class.

39. Litigation of this case to its final conclusion (up to and including trial and any appeals) would be time-consuming, expensive, and serve no purpose in light of the Settlement providing more than full disgorgement.

40. Were the parties to continue to litigate this case, there is of course the possibility that Defendant would prevail on one of its defenses or Plaintiff would fail to succeed in certifying a class. The Settlement allows the Class to recover a sum certain now, rather than facing costly and time-consuming litigation that is unlikely to provide a recovery significantly better than the recovery in the proposed Settlement.

Notice and Class Support

41. Defense counsel has reported that he has provided notice of the settlement to the Attorney General of the United States as well as the appropriate officials each state in which

Class Members potentially reside, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. None of these governmental entities have objected to the settlement.

42. Additionally, the Class Administrator, Epiq Systems, has reported that it sent email notices to all 1076 class members on May 1, 2014, and received only 57 bounce-backs. Epiq had mailing addresses for 37 of those 57 persons and mailed notices to them, with only 3 of those returned as undeliverable. Additionally, 41 class members have provided an updated mailing address through the settlement website so far. On June 16, 2014 a reminder email was sent to 380 class members for whom Hotwire does not have a mailing address. Class members have begun to respond to this reminder by submitting their mailing addresses on the settlement website and by emailing their mailing addresses to Plaintiffs' counsel.

43. To date there has not been a single objection nor opt-out filed. Additionally, I have not received any communication from a class member expressing dissatisfaction with the settlement.

44. This Settlement falls within the bounds of fairness, reasonableness, and adequacy, and I view it as an excellent result for the Class.

Caddell & Chapman's Lodestar and Expenses

45. Caddell & Chapman tracked its expenses incurred in this litigation, including printing and copying, travel, postage and shipping, computerized research, and other expenses reasonably incurred in litigating this action on behalf of the Class. These expenses were tracked on a contemporaneous basis, as is our normal practice. My staff created a spreadsheet summary based on these records showing all expenses incurred through the filing of the motion for final approval, which I reviewed. (Exhibit 1, attached.) The expenses total $3,198.43.

46. Caddell & Chapman contemporaneously tracked our time expended working for the Class in this matter, as is our normal practice. In order to avoid overbilling for simple tasks that required little time to complete, all time was billed in increments of one-tenth of an hour.

47. I reviewed a compilation of my firm's billing records and tabulated Caddell & Chapman's total lodestar for all work performed as of the filing of this Declaration as

$190,365.00. The following is a summary listing each Caddell & Chapman lawyer and legal assistant for which Class Counsel is seeking compensation for legal services in connection with the Settlement:

INDIVIDUAL	TITLE	YEARS EXPERIENCE	HOURLY RATE
Michael A. Caddell	Senior Partner	34	$875
Cynthia B. Chapman	Senior Partner	21	$675
Cory S. Fein	Senior Partner	20	$650
Amy E. Tabor	Senior Associate	10	$450
Kathy E. Kersh	Paralegal	26	$250
Sylvia Z. Vargas	Paralegal	28	$250
Felicia D. Labbe	Paralegal	15	$175

48. Caddell & Chapman's current rates, which were used for purposes of calculating the lodestar here, are based on prevailing fees for national class-action work.

49. On January 12, 2014, District Court Judge Margaret M. Morrow specifically approved Caddell & Chapman's current rates, including:

a. $875 per hour for senior partner Michael A. Caddell (graduate of the University of Virginia Law School with 34 years of experience);

b. $675 per hour for senior partner Cynthia B. Chapman (cum laude graduate of the University of San Diego School of Law with 21 years of experience);

c. $650 per hour for senior partner Cory S. Fein (honors graduate of the University of Texas Law School with18 years of experience);

d. $450 per hour for senior associates Amy E. Tabor (high honors graduate of University of Texas Law School with 10 years of experience) and Aron L. Gregg (13 years of experience);

e. $425 per hour for senior associate Craig C. Marchiando (cum laude graduate of South Texas College of Law with 9 years of experience);

f. $250 per hour for paralegals Kathy E. Kersh (26 years of experience), and Sylvia Z. Vargas (28 years of experience); and

g. $175 per hour for paralegal Felicia D. Labbe (15 years of experience).

Jan. 12, 2014 Order Granting Final Approval and Attorneys' Fees, *Keegan, et al., v. American Honda Motor Co., Inc.*, United States District Court for the Central District of California, Case No. 10-09508 MMM, Dkt. No. 171 at 44-51.

50. In December 2012, after resolving a high profile and complicated *qui tam* action (*United* States *of America, ex. rel. Ivey Woodard v. DaVita Inc.*, United States District Court for the Eastern District of Texas, Civil Case No. 1:05-CV-00227-MAC-ZJH), the Department of Justice approved attorneys' fees that were based on Caddell & Chapman's current rates. In *DaVita*, the Department of Justice approved the entire requested fee, which was based on the following rates: Michael Caddell $875; Cynthia Chapman $675; Cory Fein $650; Dana Levy $500; Craig Marchiando $425; Aron Greg $450; *Kathy* Kersh $250; Sylvia Zuniga Vargas $250.

51. Caddell & Chapman's historical rates have been approved by multiple courts across the country. Most recently, Caddell & Chapman's rates for attorneys and staff were approved in the following cases: *In re Navistar 6.0L Diesel Engine Products Liability Litig.*, No. 1:11-cv-02496 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Amy Tabor $450; Dana Levy $500; Clay Morton $370); *Weltonia Harris v. U.S. Physical Therapy, Inc.*, United States District Court, District of Nevada, Civil Action No. 2:10cv1508-JCM-VCF (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Craig Marchiando $425; Kathy Kersh $250); *Bradford L. Jackson v. Metscheck, Inc. and First Communities Management, Inc.*, United States District for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:11-CV-2735 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Amy Tabor $450; Craig Marchiando $425; Kathy Kersh $250); and *Mark Zeller v. [Unnamed National Beverage Companies]*, Superior Court of the State of California, for the County of Los Angeles (Central Civil West), Case No. BC432711 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Craig Marchiando $425; Aron Gregg $400; Kathy Kersh $250; John Dessalet $250.)

52. A summary of Caddell & Chapman's time is below:

INDIVIDUAL	HOURLY RATE	HOURS	TOTAL
Michael A. Caddell	$875	31.20	$27,300.00

INDIVIDUAL	HOURLY RATE	HOURS	TOTAL
Cynthia B. Chapman	$675	26.00	$17,550.00
Cory S. Fein	$650	120.70	$78,455.00
Amy E. Tabor	$450	137.00	$61,650.00
Kathy E. Kersh	$250	10.10	$2,525.00
Sylvia Z. Vargas	$250	0.20	$50.00
Felicia D. Labbe	$175	16.20	$2,835.00
TOTAL		**341.40**	**$190,365.00**

53. The time expended began in August 2012, continues through the present, and includes time spent on:

a. conferring with client regarding issues throughout the litigation;

b. pre-complaint legal research including choice-of-law, statutory and common-law claims, standing, venue, and class certification issues;

c. pre-complaint factual research regarding Defendant's business model and relationship with car rental companies, fees and taxes charged for car rental in various companies, reports of complaints from other customers of Defendant regarding client's issues;

d. drafting and filing complaint;

e. reviewing Judge's procedures and rules;

f. conferring with Defense counsel regarding deadline to answer complaint;

g. draft CLRA demand letter;

h. confer with defense counsel and draft Joint Report

i. review Defendant's Motion to Dismiss and consideration of responding or amending Complaint in response;

j. consider and comply with Court's ADR rules;

k. draft venue declaration;

l. draft initial disclosures;

m. draft discovery requests;

n. draft response to Motion to Dismiss and research for same;

o. draft response to Request for Judicial Notice and research re same;

p. review and analyze Order on Motion to Dismiss;

q. draft Amended Complaint; research for same;

r. review and analyze Second Motion to Dismiss;

s. draft responses to Second Motion to Dismiss and request for Judicial Notice, and research for same;

t. draft stipulations regarding various scheduling matters and deadline extensions;

u. review Defendant's reply brief and research regarding same;

v. review Court's Order on Second Motion to Dismiss;

w. revise discovery requests;

x. confer with defense counsel regarding ADR;

y. confer with Defendant's counsel and counsel for plaintiff in related *Moretti* case against Defendant and various car rental companies; review multiple filings regarding relating other case to this case and phone calls with Moretti's counsel and Defendant's counsel regarding impact of related case; analyze overlap and differences with *Moretti* case;

z. discussions regarding parameters of informal discovery in advance of settlement discussions;

aa. review information provided by Defendant via informal discovery and conferences with Defense counsel to clarify information provided;

bb. conferences and emails regarding choosing mediator;

cc. draft mediation brief;

dd. communication with mediator regarding case issues;

ee. mediation of case;

ff. post-mediation settlement discussions;

gg. draft and negotiation memorandum of understanding;

hh. draft and negotiate settlement agreement;

ii. draft preliminary approval motion and associated documents;

jj. confer regarding additional notice to class members;

kk. review preliminary approval order;

ll. draft motion for final approval and for attorneys' fees and costs, and class representative service award, and research for same.

54. Class Counsel's work will continue, as counsel will prepare responses to any objections, continue to respond to inquiries from class members regarding the case, and handle appeals from final approval, if any.

55. Based upon my experience with other class action matters and given my firm's lead role in this litigation, I believe that the time expended by Caddell & Chapman in connection with this litigation, when compared to the result achieved for the Class, is reasonable in amount and was necessary to ensure the successful relief obtained on behalf of the Class.

56. Plaintiffs' Counsel endeavored to avoid duplicative billing and believes the hours logged in representing the Class were reasonable and necessary.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

DATED: June 20, 2014, Houston, Texas.

/s/ Cory S. Fein
Cory S. Fein

EXHIBIT 1

CADDELL & CHAPMAN
1331 Lamar, Suite 1070
Houston TX 77010
713-751-0400 (tel) 713-751-0906 (fax)
TIN: 38-3744631

June 19, 2014

Hotwire

H27-121
Invoice number 4832

Name of matter: Class Action

Date	Costs	Amount
11/30/12	Deliveries	97.89
11/30/12	Filing Fees	350.00
11/30/12	Postage	3.82
11/30/12	Reproduction	657.40
12/20/12	Outside Professional Services	441.50
12/31/12	Research Materials	710.42
04/19/13	Telephone/Fascimile	0.49
01/31/14	Meals	79.96
01/31/14	Travel	835.09
02/28/14	Staff Services	21.86
	Total costs	$3,198.43
	Total fees and costs	$3,198.43
		$3,198.43

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DANIEL SHAHAR, individually and on behalf of all others similarly situated, Plaintiff, v. HOTWIRE, INC., and EXPEDIA, INC., Defendants.	Case No.: 12-cv-06027-JSW **[PROPOSED] FINAL ORDER AND JUDGMENT REGARDING CLASS ACTION SETTLEMENT** Before: Hon. Jeffrey S. White

On April 21, 2014, the Court entered an Order Granting Preliminary Approval of Proposed Settlement and Directing Dissemination of Notice to the Class (the "Preliminary Approval Order," Dkt. No. 73) that preliminarily approved the proposed Settlement of this Action and specified the manner in which defendant Hotwire, Inc. ("Hotwire") was to provide Notice to the Settlement Class. All capitalized terms used in this Order have the meaning as defined in the Settlement Agreement, which is incorporated herein by reference.

Within ten (10) days of the filing of the Preliminary Approval Order, Hotwire caused the class notice to be disseminated as required by the Settlement Agreement and the Preliminary Approval Order. Following the dissemination of Notice, Class Members were given an opportunity to (a) request exclusion from the Class, or (b) object to or comment on the Settlement Agreement and/or to Class Counsel's request for fees and expenses and/or the Class Representative's application for a service award.

A Fairness Hearing was held on July 25, 2014, at which time all interested persons were given a full opportunity to state any objections to the Settlement Agreement. The Fairness Hearing was held more than 65 days after Hotwire provided notice as required by the Preliminary Approval Order.

Having read and fully considered the terms of the Settlement Agreement, and all submissions made in connection with it, including any objections, the Court finds that the Settlement Agreement should be finally approved and the Action dismissed with prejudice as to all Class Members who have not excluded themselves from the Class, and without prejudice as to all persons who timely and validly excluded themselves from the Class.

For these reasons, IT IS HEREBY ORDERED that Plaintiff's motion for final approval is GRANTED and, further:

1. This Court has jurisdiction over the subject matter of this action and over all Parties to the Action, including all Settlement Class Members.

2. The prior provisional certification of the Class for settlement purposes is hereby confirmed for purposes of the Settlement Agreement approved by this Order. The Class is defined as:

> All entities and persons in the United States (including its territories and the District of Columbia) who, during the Class Period (November 27, 2008 to the present), made a reservation through Hotwire's website, while in the U.S. (including its territories and the District of Columbia), for a car rental in a foreign country and received a confirmation from Hotwire that included an estimated amount of taxes or fees of equal to or less than $0.00 as shown by records maintained by Hotwire and provided to Class Counsel on a spreadsheet (the "Spreadsheet").
>
> Excluded from the Settlement Class are the following: (i) the Settlement Administrator, (ii) the Mediator, (iii) any respective parent, subsidiary, affiliate or control person of the Defendant or its officers, directors, agents, servants, or employees as of the date of filing of the Action, (iv) any judge presiding over the Action and the immediate family members of any such Person(s), (v) Persons who execute and submit a timely request for exclusion, and (vi) all Persons who have had their claims against Defendant fully and finally adjudicated or otherwise released.

3. The Court hereby approves the terms of the Settlement Agreement as fair, reasonable, and adequate as it applies to the Class, and directs consummation of all its terms and provisions.

4. The Notice, as set forth in the Preliminary Approval Order, was the best notice practicable under the circumstances and included comprehensive direct e-mail notice. The Notice Plan has been successfully implemented and satisfies the requirements of Federal Rule of Civil Procedure 23 and Due Process.

5. The Court finds that the Hotwire properly and timely notified the appropriate state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Hotwire's notice and accompanying materials, and finds that they complied with all applicable requirements of CAFA.

6. Hotwire is hereby ordered to implement and comply with Sections 2.1 and 2.2 of the Settlement Agreement regarding the injunctive relief and monetary benefit for the Settlement Class Members.

7. The Settlement Agreement shall be binding on Hotwire, Plaintiff, and all members of the Class who have not been excluded pursuant to the Settlement Agreement. The complex legal and factual posture of this case, and the fact that the Settlement Agreement is the result of arms' length negotiations presided over by a neutral mediator support this finding.

8. The Court dismisses the Action with prejudice. Upon the Effective Date, and by operation of the Final Order and Judgment, the Releasing Parties, and each of them, shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. All Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or any comparable statutory or common law provision of any other jurisdiction with respect to the released claims. The Settlement Agreement will be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members.

9. All members of the Class who did not duly request exclusion from the Class in the time and manner provided in the Class Notice are hereby barred, permanently enjoined, and restrained from commencing or prosecuting any action, suit, proceeding, claim, or cause of action in any jurisdiction or court against Hotwire or any of the other entities or persons who are to be discharged as noticed above in Section 8, based upon, relating to, or arising out of, any of the matters which are discharged and released pursuant to Section 8 hereof. Attached hereto and incorporated into this Order as Appendix A is a schedule of all persons who have timely and validly requested to be excluded from the Settlement Class.

10. The Court dismisses without prejudice the claims of Class Members who have properly and timely excluded themselves in full accordance with the procedures set forth in the Settlement Agreement.

11. Having reviewed Class Counsel's Fee and Expense Application, and all documents (including any oppositions, responses and replies), objections, and arguments filed or made in relation thereto, the Court concludes that the amount of $_____ shall be awarded from the Settlement Amount to Class Counsel for fees and expenses related to the prosecution of this Action. The Court finds that Class Counsel has expended substantial and skilled time and efforts to bring this action to conclusion. These efforts included, but were not limited to, engaging in independent, factual investigation and informal discovery, successfully litigating the sufficiency of the complaint, preparing complete mediation briefs, and engaging in

numerous arms-length settlement discussions and meetings with Hotwire, and posturing the case for an efficient and speedy recovery for the Class. The Court finds that the number of hours expended and the billable rates reported by Class Counsel are reasonable. Additionally, the Court finds that this award is commensurate with the level of skill displayed by Class Counsel throughout the prosecution of this Action. And finally, the Court finds this award appropriate in the light of the contingent nature of Class Counsel's fees and reimbursement of their expenses and the risk associated with these types of cases. Given all these factors, and after a review of the complete record, the Court finds the amount awarded to be reasonable and fair. Within ___ business days of this Order, the Settlement Administrator is directed to wire transfer this amount from the Settlement Amount to a bank account identified by Class Counsel.

12. The Court finds that the Class Representative should be awarded $____ from the Settlement Amount as a service award for his efforts and expenses and the risks undertaken for his service as Class Representative. The Court concludes that this amount is just and reasonable under Ninth Circuit precedent and in accordance with California law. Within __ business days of this Order, the Settlement Administrator is directed to wire transfer this amount from the Settlement Amount to a bank account identified by Class Counsel for the Class Representative.

13. Other than as set forth in the Settlement Agreement and Sections 11 and 12 above, the Parties shall bear their own costs and attorneys' fees.

14. This Final Judgment and order of dismissal with prejudice, the Settlement Agreement, the settlement that it reflects, and any and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, or used as an admission or concession by or against the Parties with respect to any fault, wrongdoing, or liability, or of the validity of any claim or defense, or of the existence or amount of damages, or that the consideration to be given under the Settlement Agreement represents an amount equal to, less than or greater than the amount that could have or would have been recovered after trial.

15. If the Settlement Agreement becomes null and void pursuant to the terms of the

Settlement Agreement, this Final Order and Judgment shall be deemed vacated and shall have no force or effect whatsoever.

16. Without affecting the finality of the Final Order and Judgment in any way, the Court reserves continuing and exclusive jurisdiction over the parties, including all Class Members as defined above, and the execution, consummation, administration, and enforcement of the terms of the Settlement Agreement.

17. The Clerk is directed to enter this Final Order and Judgment forthwith.

IT IS SO ORDERED.

Dated this _____ day of _____, 2014.

_____

HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE