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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HARLEY SEEGERT, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

LAMPS PLUS, INC.,

Defendant.

Case No: 17CV1602-BAS-JMA

CLASS ACTION

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION

Date: September 24, 2018
Time:
Judge: Hon. Cynthia Bashant
Courtroom: 4B 4th Floor Schwartz

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 23(e), Plaintiff Harley Seegert brings this unopposed motion, seeking an order from the Court to: (1) preliminarily approve the Settlement Agreement; (2) provisionally certify the Class for settlement purposes; (3) preliminarily approve the form, manner, and content of the proposed notices to the Class; (4) conditionally appoint named Plaintiff as Class Representative for settlement purposes; (5) conditionally appoint Carlson Lynch Sweet Kilpela & Carpenter, LLP as Class Counsel for settlement purposes; (6) set the date and time of the Final Fairness Hearing; (7) determine that Defendant has complied with the CAFA notice requirements; and (8) stay all proceedings in the Action until final approval of the settlement.

This unopposed motion is based upon this notice, the memorandum of points and authorities, the Declaration of Todd Carpenter, the Declaration of Clark Linstone, the settlement agreement and exhibits submitted therewith, upon all paper and pleadings on file herein and any oral argument the Court may choose to entertain at the preliminary approval hearing.

Date: August 24, 2018

Respectfully submitted,

/s/ Todd D. Carpenter

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HARLEY SEEGERT, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

LAMPS PLUS, INC.,

Defendant.

Case No: 17CV1602-BAS-JMA

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION

Date: September 24, 2018
Time:
Judge: Hon. Cynthia Bashant
Courtroom: 4B 4th Floor Schwartz

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff achieved an extraordinary Settlement wherein Lamps Plus has agreed to make available a total Settlement value of approximately ***$16,755,030*** to the Class[1]. Plaintiff's pursuit to protect consumer rights has resulted in a settlement that effectively deters retailers from eluding transparent price advertising. ***Approximately 930,835 Class Members (out of 1,001,788 total class members) will automatically receive a significant, usable benefit—$18 in Vouchers***—to spend at Lamps Plus retail stores. This benefit allows consumers to purchase high quality, stylish lighting accessories and fixtures without having to come out of pocket. Alternatively, at the Class Member's election, the Voucher may be used for 20% off any purchase up to $150 in value, or $30 in credit against the purchase of any item valued over $150. The Settlement also provides for changes to Lamps Plus policies which Plaintiff believes further the objective to deter false and deceptive discount pricing advertisements.

Plaintiff brings this unopposed motion, seeking an order from the Court to: (1) preliminarily approve the Settlement Agreement; (2) provisionally certify the Class for settlement purposes; (3) preliminarily approve the form, manner, and content of the proposed notices to the Class; (4) conditionally appoint named Plaintiff as Class Representative for settlement purposes; (5) conditionally appoint Carlson Lynch Sweet Kilpela & Carpenter, LLP as Class Counsel for settlement purposes; (6) set the date and time of the Final Fairness Hearing; (7) determine that Defendant has complied with the CAFA notice requirements; and (8) stay all proceedings in the Action until final approval of the settlement.

II. BACKGROUND OF THE LITIGATION

Plaintiff's Counsel investigated the pricing of Lamps Plus branded and/or trademarked merchandise for two separate periods of several months in San Diego County

[1] All capitalized terms have the same meaning as set forth in the Settlement Agreement.

and cross referenced their intensive investigation against more limited investigations performed elsewhere throughout California. Class Action Complaint ("CAC") at ¶¶ 26–29. Plaintiff alleges his Counsel's investigation revealed that Lamps Plus was engaged in the pervasive practice of continuously discounting its exclusive, Lamps Plus branded and/or trademarked merchandise from an original reference "Compare At" price for a substantial period time, and sometimes without ever offering the merchandise at its original price at all. *Id.* Plaintiff alleges this conduct squarely violates California law prohibiting retailers from discounting merchandise from a *bona fide*, original price for more than ninety (90) days. *Id.* ¶¶ 5–7, 66–67. On July 5, 2017, Plaintiff initiated this action in the Superior Court of California, County of San Diego (*Harley Seegert v. Lamps Plus, Inc.,* Case No. 37-2017-00024439-CU-BT-CTL). On August 9, 2017, Defendant removed the action to this Court, contending that the Complaint satisfied the jurisdictional requirements under the Class Action Fairness Act ("CAFA"). *See* Dkt. No. 1, Notice of Removal and Complaint. Plaintiff files the operative first amended complaint concurrently with this unopposed motion for preliminary approval.

Plaintiff Harley Seegert alleges that Lamps Plus routinely employs a uniform, deceptive advertising scheme by continuously discounting its Lamps Plus branded and/or trademarked merchandise at reduced sale prices that were significantly lower than the listed "Compare At" reference prices. CAC ¶¶ 1–5, 20–21. The Lamps Plus price tags communicate to consumers a higher "Compare At" price crossed out with a black "X" and is located immediately below the deeply discounted "sale" price. *Id.* ¶ 20. The "Compare At" price conveys to the customer the regular price of the item at which it previously sold and its perceived value. *Id.* ¶¶ 2, 20, 23–24. Plaintiff alleges, however, that the advertised discounts were nothing more than phantom markdowns because the advertised "Compare At" prices were fictitious reference prices, utilized merely to deceptively manufacture a deeply discounted sale price. *Id.* ¶ 21.

Lamps Plus is the nation's largest lighting retailer, operating approximately 27 locations in the State of California. *Id.* ¶ 18. Lamps Plus designs, manufactures, and sells

a variety of lighting, furniture, and home décor. *Id.* Lamps Plus sells its Lamps Plus branded and/or trademarked products exclusively at Lamps Plus and not anywhere else. *Id.* ¶¶ 4, 19, 30. Plaintiff's Counsel's investigation cataloged the pricing practices at three Lamps Plus retail stores in San Diego County and observed the discount-pricing scheme applicable to several items of Lamps Plus's exclusive merchandise. *Id.* ¶ 27. Plaintiff's Counsel's investigation revealed that the Lamps Plus branded and/or trademarked merchandise was never actually offered for sale at the "Compare At" prices in any relevant market, including during the 90-day "look-back" period set forth under California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.* *Id.* ¶¶ 5–6, 21, 26–29. Plaintiff alleges that Lamps Plus's deceptive pricing scheme has the effect of tricking consumers into believing they are receiving a significant deal by purchasing merchandise at a "steep discount," when in reality, they are simply paying for merchandise at its original retail price. *Id.* ¶ 5. Plaintiff alleges that consumers are susceptible to a bargain and are thus harmed by relying upon such misinformation and by subsequently purchasing merchandise that they might not have purchased absent the purported discount. *Id.* ¶¶ 1–2, 22–25, 35. Plaintiff alleges that this pricing scheme is intended to increase sales, but has the effect of depriving consumers of the benefit of the bargain. *Id.* ¶¶ 1–2.

The circumstances surrounding Plaintiff Seegert's Lamps Plus purchase is consistent with the fraudulent pricing practice that Plaintiff's Counsel alleges it had observed in the months preceding and subsequent to his purchase. *Id.* ¶¶ 26–29. Plaintiff alleges that the 55 Downing Street branded (a Lamps Plus brand and/or trademark) Josephine 3-Drawer Mirrored Accent Chest (the "Chest") he purchased on sale at a Lamps Plus retail store for $599.99 bore a price tag that listed the crossed-out original "Compare At" price as $899.99 and was continuously discounted for more than 90 days preceding his purchase. *Id.* ¶¶ 13–15. Based on Defendant's pricing representations, Plaintiff believed he was getting a good deal by purchasing the Chest that had a value significantly higher than the $599.99 purchase price, and would not have purchased the Chest but for such misrepresentations. *Id.* ¶¶ 14, 34.

Plaintiff seeks restitution and injunctive relief under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.* Plaintiff seek to represent the following California-only class:

> All Lamps Plus customers who purchased Lamps Plus branded or trademarked merchandise bearing a "Compare At" price tag in the State of California from July 5, 2013 to the date of preliminary approval. Excluded from the Class are Lamps Plus's Counsel, Lamps Plus's officers, directors and employees, and the judge presiding over the Action.

Settlement Agreement at ¶1.9.

III. THE SETTLEMENT

A. Settlement Negotiations

Since the onset of the litigation, the Parties engaged in arm's-length negotiations, both formal and informal, including attending a full day mediation session with the Honorable Carl J. West (Ret.) of JAMS, Inc. on May 10, 2018 in Los Angeles, California. Declaration of Todd D. Carpenter ("Carpenter Decl.") at ¶ 2 Prior to the mediation session, Counsel for the Parties engaged in informal pre-mediation discovery. *Id.* ¶ 3. For instance, Counsel discussed key issues such as the composition of Lamps Plus's product mixture and feasible settlement structures utilized in recent, comparable sale discount settlements in order to facilitate Plaintiff in formulating his initial demand. *Id.* ¶3.

1. Establishing Viable Damages and/or Restitution Methodologies

Additionally, in anticipation of mediation, Class Counsel retained an expert, Stephen Hamilton, Ph.D., Director of Graduate Studies in the Department of Economics at California Polytechnic State University, San Luis Obispo, and principle at OnPoint Analytics. *Id.* ¶5. Dr. Hamilton reviewed academic literature and economic studies regarding how, and to what degree, consumer decisions are influenced by reference prices and perceived bargains; Dr. Hamilton was tasked to evaluate whether feasible methodologies exist to calculate damages and/or restitution on a class-wide basis and to

provide the framework necessary to conduct a preliminary remedies analysis. *Id.* ¶6. In assessing the economic remedies related to the prices paid by consumers for the mislabeled products, Dr. Hamilton identified at least four methodologies that can be used to measure the extent that class members were overcharged by Lamps Plus's deceptive pricing scheme. Dr. Hamilton's proffered restitution models are briefly outlined below:

1. Advertised Discount Method: Calculating the overcharge based on the price consumers should have paid if the advertised discount was properly applied to the typical selling price of that item;
2. Replacement Cost Value Method: Calculating the overcharge based on the price paid by consumers and the replacement cost value of the contested product;
3. Regression Analysis to Measure Value Received ("Hedonic Regression Analysis Method"): Calculating the overcharge by identifying the effect of deceptive pricing on actual retail sale prices while controlling for other product attributes that influence retail prices; and
4. Regression Analysis to Measure Artificial Increase in Demand: Calculating the overcharge as the difference between the market price actually paid by consumers on the artificially increased demand curve and the market price consumers would have paid on the demand curve absent the deceptive practice.

Plaintiff is confident that the Hedonic Regression Analysis Method is particularly suitable for arriving at a proper measure of restitution because it represents a greater developed analysis than alternative restitution models proffered by consumers in prior cases and will prevail over any objection to the contrary. Specifically, this regression analysis will comprehensively assess the value derived from the transaction by considering the incremental value of each product feature. The model will then allow for a rigorous empirical comparison of the price paid by consumers and the value of the product received, and will ultimately identify the exact impact of the deceptive pricing by comparing similar products with varying degrees of deception. To illustrate, this method will calculate the relationship between a dependent variable (*i.e.,* sales price) and multiple independent variables (*i.e.,* apparel category, item description, location of purchase, etc.) to determine how the various product attributes influence retail prices. As a result, the model will

remove all of the identified value attributed to the product's various characteristics and detect the addition to price created by Defendant's deceptive pricing representations. Thus, the regression analysis will suffice to arrive at an accurate, measurable amount of loss to each consumer, directly tethered to the impact of Lamps Plus's false discount pricing practices, while also taking into account all benefits conferred upon the consumer. *See Colgan v. Leatherman Tool Group, Inc.,* 135 Cal. App. 4th 663, 697 (2006) (a plaintiff seeking to recover restitution must demonstrate a measurable loss supported by the evidence).

Dr. Hamilton concluded that once the overcharge is calculated under any of the above identified methodologies, that amount can be applied to Defendant's total net retail sales of the challenged products in the appropriate geographic region during the proposed Class Period to arrive at a damages/restitution amount. In using the Hedonic Regression Analysis Method, the more conservative and likely most viable methodology, the damages/restitution amount represents a miniscule percentage of the purchase price the consumer actually paid for the item. Accordingly, for the reasons discussed in Sections III.B.1 and IV.B. below, this Settlement provides Class Members with an exponentially greater benefit than they would have received at trial.

In sum, each aspect of this Settlement was heavily negotiated, including the direct distribution scheme of the Vouchers for known Class Members, the establishment of a Voucher value commensurate with the pricing point for thousands of SKUs available at Lamps Plus, and the intricacies of any proof of purchase requirements for unknown Class Members. Carpenter Decl. at ¶7. Importantly, the Parties did not discuss or negotiate proposed Class Counsel attorneys' fees and costs, or Plaintiff Seegert's proposed class representative incentive award, until after agreeing on all other material terms of the Settlement Agreement for the Class. *Id.* at ¶7. The Parties subsequently negotiated, drafted, and executed the Settlement Agreement currently before the Court. Class Counsel is confident that the terms of the Settlement are fair, adequate, and reasonable.

///

B. The Settlement Agreement

1. The Benefit to Class Members

Lamps Plus will automatically distribute a minimum value of approximately $16,755,030 in $18.00 Vouchers to approximately 930,835 known Class Members for whom they have email and/or mailing addresses. Carpenter Decl., Ex. 1 ("Settlement Agreement") at §2.1-2.2[2]. Claimants who do not receive direct notice will be required to submit a valid, timely Claim Form (*see* Settlement Agreement, Ex. F), in order to receive a Voucher. *Id.* at §1.2; 3.5. The Vouchers allow Class Members to elect to receive either (1) $18 off a purchase of any item (no minimum purchase required) or (2) 20% off the purchase of any item up to $150 in value, or $30 in credit against the purchase of any item valued at over $150 at any Lamps Plus's retail store or online. *Id.* at §2.1-2.2.

Class Members who do not receive direct notice are required to submit proof of Qualifying Purchase at the time of making a Claim. *Id.* at §3.5. Acceptable proof of Qualifying Purchase includes either (1) receipt(s) clearly showing the date of purchase(s), or (2) a declaration signed under penalty of perjury in which the Class Member identifies the month and year of purchase, the location of the store at which the purchase was made, and a description of the product purchased. *Id.* at §3.5. Copies of such documents must be attached to the Claim Form whether submitted electronically or by postal mail. *Id.* at § 3.5(b). The Claims Administrator and/or Lamps Plus reserves the right to review and verify all submitted Claim Forms and proof of Qualifying Purchase(s) for validity and accuracy and may request additional documentation from the Class Member to substantiate the same. *Id.* at §3.6. Class Members must submit Claim Forms and proof of Qualifying Purchase(s) by the Claim Response Deadline. *Id.* at §3.5(a).

Like the gift cards offered in the *In re Online DVD-Rental* settlement, the Vouchers offered in this Settlement are an alternative to cash and are not "coupons" within the

[2] All references to "Exhibit 1" refers to the Settlement Agreement attached to the Carpenter Declaration.

meaning of CAFA. *See In re Online DVD-Rental Antitrust Litigation,* 779 F.3d 934, 951 (9th Cir. 2015). The Vouchers have no expiration date and are fully transferrable. Ex. 1 at §1.34. Although the Vouchers are not stackable and cannot be combined with any other coupon or promotional offer, the Vouchers may be used on items that are on sale or otherwise discounted. *Id.* at §1.34. The Vouchers provide a real benefit to Class Members for use at Lamps Plus—Defendant has confirmed that there are presently over 5,791 items of Lamps Plus merchandise available for purchase at or below $18. *See* Declaration of Mr. Linstone, at ¶3. Moreover, as of the date of this Motion, Defendant's online store offers a wide variety of lighting merchandise, such as accent uplight and spotlights for $14.95–17.91, lightbulbs for $3.95–17.95, lampshades for $4.95, string party lights for $4.95–16.95, track lights for $9.95–14.95, LED deck light for $14.99–15.99, and clip-on accent lights for $9.95–16.94[3]. Thus, Class Members "need not spend any of his or her own money and can choose from a large number of potential items to purchase." *In re Online DVD-Rental*, 779 F.3d at 951.

Additionally, within 60 days of the Final Settlement Date, Lamps Plus will post notice in each of its California Lamps Plus retail stores that clarifies and explains to customers the meaning of the "Compare At" terminology on its price tags. Ex. 1 at §2.3 .

2. Notice Plan and Claims Process

The Parties, after soliciting competitive bids from multiple class action claims administrators jointly selected Epiq Class Action & Claims Solutions, Inc. to serve as the Claims Administrator. Ex. 1 at §1.7. Within fifteen (15) days after entry of preliminary approval, Defendant and EPIQ (1) will send Email and Mail Notice to all known Class Members for whom they maintain valid email addresses and for whom they maintain valid U.S. Postal addresses and (2) will implement an Online Media Notice program through the Google Display Network. *Id.* at §3.2(d). Defendant has confirmed that it presently has a valid email and/or mailing address for at least 930,835 potential Class Members. *See*

[3] *See generally,* Lamps Plus, www.lampsplus.com/products, last accessed May 15, 2018.

Declaration of Linstone, ¶3. Epiq will also establish and administer a Settlement Website from which Class Members can gather information about the Settlement and can: 1) view the Full Notice, Claim Form, Complaint, Settlement Agreement, Preliminary Approval Order, and Motion for Attorneys' Fees and Costs; and 2) electronically submit a Claim Form and valid proof of Qualifying Purchase if necessary. Ex. 1 at §§3.2(a)-3.2(d). Moreover, within ten (10) calendar days after this motion and executed Settlement Agreement is filed, Defendant will serve upon relevant government officials notice of the proposed settlement in accordance with the CAFA Notice provisions set forth 28 U.S.C. § 1715. *Id.* at §3.3.

No later than 120 days after Notice is issued to the Class, Class Members must submit valid Claim Forms via U.S. Mail or electronically on the Settlement Website. *Id.* at §1.4. Class Members who received direct notice are not required to submit a Claim Form and will automatically receive a Voucher within sixty (60) calendar days of the Final Settlement Date. *Id.* at §2.2. Alternatively, Class Members may request to be excluded from the Settlement or may object to the terms of the Settlement no later than the Objection or Exclusion Response Deadline. *Id.* at §3.8-3.9.

3. Notice and Administration Costs, Attorneys' Fees and Expenses, and Plaintiff's Incentive Award

Defendant agrees to bear the costs of administering notice to the Class and to pay Class Counsel's attorneys' fees, costs, and Plaintiff's incentive award. *Id.* at §2.5. In connection with final approval, Plaintiff will make an application for an incentive award not to exceed $5,000 and Class Counsel will make an application for a fee and costs award not to exceed $750,000 (representing under 5% of the amount of the benefit made available to the Class). *Id.* at §2.5. Unless otherwise ordered by the Court, Defendant will make such Court-approved payments within 10 days after the Final Settlement Date and upon receiving Plaintiff's and Class Counsel's W-9 forms. *Id.*

IV. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Ninth Circuit recognizes the "strong judicial policy that favors settlement, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1277 (9th Cir. 1992). The strong preference for class action settlements is precipitated by the overwhelming uncertainties of the outcome, expense, management, and difficulties in proof inherent in class action lawsuits. *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (noting that class action settlements are especially favorable in light of "an ever increasing burden to so many federal courts and which frequently present serious problems of management and expense.").

Approval of class action settlement "involves a two-step process in which the court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *In re Toys R Us-Delaware, Inc.—Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 295 F.R.D. 438, 448 (C.D. Cal. 2014) (internal citations and quotation marks omitted). At the preliminary approval stage, the focus is simply on whether the settlement is "within the range of possible judicial approval." *In re M.L. Stern Overtime Litigation*, No. 07-CV-0118-BTM (JMA), 2009 WL 995864 at *3 (S.D. Cal. Apr. 13, 2009) (citations and quotation marks omitted). Accordingly, the court need not scrutinize every detail of the settlement at this juncture, since "class members will subsequently receive notice and have an opportunity to be heard" at the time before final approval. *Id.*; *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.") (emphasis in original).

The standard inquiry the trial court explores is whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); Fed. R. Civ. P. 23(e). "It is the settlement taken as a whole, rather

than the individual component parts, that must be examined for overall fairness." *Hanlon*, 150 F.3d at 1026 (citing *Officers for Justice v. Civil Serv. Com'n of City and County of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982)); *see also Alberto v. GMRI, Inc.,* 252 F.R.D. 652, 665 (E.D. Cal. 2008) ("[A] full fairness analysis is unnecessary" at the preliminary approval stage). Accordingly, the court does not have "the ability to delete, modify or substitute certain provisions." *Id.* (citing *Officers for Justice*, 688 F.2d at 630). In other words, the "settlement must stand or fall in its entirety." *Id.*

"[P]reliminary approval and notice of the settlement terms to the proposed class are appropriate where '[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies; [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of *possible* approval . . . ." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation and citation omitted) (emphasis added). For the reasons set forth in detail below, the proposed Settlement is fundamentally fair, adequate, and reasonable—falling squarely into the range of preliminary approval.

A. The Settlement is a Product of Serious, Arms-Length Negotiations

The Ninth Circuit cautions that the trial court's evaluation of the parties' agreement "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 625). This Circuit "does ***not*** follow the approach of other circuits that requires district courts to 'specifically weigh[ ] the merits of the class's case against the settlement amount and quantif[y] the expected value of fully litigating the matter.'" *Spann v. JC Penney Corp. ("Spann II")*, 314 F.R.D. 312, 323–24 (C.D. Cal. 2016) (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

Rather, "[t]his circuit has long deferred to the private consensual decision of the parties." *Rodriguez,* 563 F.3d at 965. Perhaps the most critical inquiry to the assist the court is determining whether the settlement is "the product of an arms-length, non-collusive, negotiated resolution." *Id.* If the answer is yes, courts will presume the settlement is fair and reasonable. *Spann II*, 314 F.R.D. at 324. "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Federal Express Corp.*, Nos. C03-2659 SI, C03-2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007).

Here, there is no evidence that this Settlement was founded in collusion or fraud. Rather, agreement was reached after hosting informal settlement discussions that evaluated the strengths and weaknesses of the case, informal pre-mediation discovery, and a full-day mediation session facilitated by a highly-experienced mediator, Hon. Carl J. West (Ret.). Carpenter Decl., at ¶3. In addition, as discussed in III.A.1 above, Plaintiff also retained economist, Dr. Stephen Hamilton to analyze economic remedies related to prices paid by consumers for mislabeled products and to assess whether feasible methodologies exist to calculate damages and/or restitution owed to the Class as a result of Defendant's conduct. *Id.* at ¶5-6.

Moreover, both parties were represented by counsel highly-experienced in complex class litigation, which lent to the careful consideration of all strengths and weaknesses in order to achieve efficient resolution. Thus, the Parties were well-versed with the relevant law, the challenges present in calculating damages on a class-wide basis, and the risks of continued litigation and recovery. Accordingly, all evidence indicates that this Settlement was ***not*** "the product of fraud or overreaching by, or collusion between, the negotiating parties." *Spann II*, 314 F.R.D. at 324–25.

B. The Settlement Falls Within a Range of Possible Judicial Approval

This Settlement provides significant relief to the Class and clearly falls within the range of possible judicial approval. "To evaluate the range of possible approval criterion, which focuses on substantive fairness and adequacy, courts primarily consider plaintiff's

expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080. "As the Ninth Circuit has noted, 'the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.'" *Spann II*, 314 F.R.D. at 325 (quoting *Officers for Justice*, 688 F.2d at 624).

Here, the Settlement provides that Lamps Plus will directly distribute a *minimum* of 930,835 Vouchers to potential Class Members. Ex. 1 at §2.2. Vouchers allow Class Members to elect to receive either (1) $18 off a purchase of any item (no minimum purchase required; meaning: all items under $18.00 can be purchased without spending any additional money) or (2) 20% off the purchase of any item up to $150 in value, or $30 in credit against the purchase of any item valued at over $150 at any Lamps Plus's retail store or online. *Id.* at §2.1. At a minimum, if we calculate the total fund based on the election of the $18 Voucher, this creates a potential Settlement Fund of *at least $16,755,030*. This total amount could be significantly higher based on the amount of Class Members who submit a Claim in response to the Online Media Notice. If calculated based upon the discount feature of 20% off the purchase of any item up to $150 in value or $30 in credit against the purchase of any item over $150, this creates a potential Settlement Fund of at least $15 million[4]. This Settlement benefit is expected to provide Class Members with "sufficient compensation" to purchase at least one, if not a couple, items at Lamps Plus. *See Spann II*, 314 F.R.D. at 325.

This recovery is significant not only because of the valuable benefit obtained for the Class, but also because Plaintiff would have faced a significant risk in litigating this case through trial. "Even if plaintiff were to prevail at trial, there is a very real risk that plaintiff could recover nothing." *Spann II*, 314 F.R.D. at 326; *see e.g., In re Tobacco Cases II*, 2015 WL 5673070, at *5–9 (Cal. App. Sept. 28, 2015) (declining to award restitution because plaintiffs failed to establish a price/value differential despite prevailing on liability under

[4] This calculation is based upon the hypothetical that each known Class Member (at least 930,835) receives at a minimum, the $18.00 voucher.

the UCL and FAL); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted). While Plaintiff feels confident about the merits of his case, the state of the law regarding the appropriate method for calculating damages or restitution in these type of false pricing cases is in flux. *See e.g., Stathakos v. Columbia Sportswear Company*, No. 15-cv-4543-YGR, 2017 WL 1957063 (N.D. Cal. May 11, 2017) (granting summary judgment in favor of defendants with regard to plaintiffs' three proposed measures of restitution); *accord Jacobo v. Ross Stores, Inc*., 2017 WL 3382053, at *1 (C.D. Cal. Aug. 2, 2017); *Chowning v. Kohl's Dep't Stores, Inc*., 2016 WL 1072129, at *12 (C.D. Cal. Mar. 15, 2016), *appeal docketed,* No. 16-56272 (9th Cir. Sept. 2, 2016). In sum, in light of the risks presented by protracted litigation, the Settlement provides the Class a "guaranteed, fixed, immediate, and substantial recovery" and is thus, within the range of possible judicial approval. *See Spann II*, 314 F.R.D. at 327.

C. The Settlement Has No Obvious Deficiencies

"Beyond the value of the settlement, courts have rejected preliminary approval when the proposed settlement contains obvious substantive defects such as . . . overly broad releases of liability." *Newberg on Class Actions* § 13:15, at p. 326 (5th ed. 2014); *see e.g., Fraser v. Asus Computer Int'l*, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval where settlement provided "nationwide blanket release" in exchange for payment "only on a claims-made basis," without establishment of a settlement fund or any other benefit to the class).

Class Members who do not timely exclude themselves from the Settlement will be deemed to have released Defendant from claims related to the instant litigation. Ex. 1 at §2.9. Although these provisions release both known "Class Released Claims" and "Unknown Claims," the Release is limited to a universe of claims "arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged or

otherwise referred to in the Complaint, or any preceding version thereof filed in the Action, including, but not limited to, any and all claims related in any way to the advertisement of prices by Lamps Plus, Inc. or any of its subsidiaries or affiliates." *Id.* at §1.11. Since the Release is limited to the scope of the litigation, it is fair and adequate for preliminary approval. *See e.g., Spann II,* 314 F.R.D. at 327–28 ("With this understanding of the release, *i.e.*, that it does not apply to claims other than those related to the subject matter of the litigation, the court finds that the release adequately balances fairness to absent class members and recovery for plaintiffs with defendants' business interest in ending this litigation with finality."); *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1126 (E.D. Cal. 2009) ("These released claims appropriately track the breadth of Plaintiffs' allegations in the action and the settlement does not release unrelated claims that class members may have against defendants."); *Chester v. TJX Cos., Inc.,* No. 5:15-cv-01437-ODW (DTB), 2017 WL 6205788, at *7 (C.D. Cal. Dec. 5, 2017). Accordingly, the Settlement has no obvious defects.

D. The Settlement Does Not Grant Preferential Treatment Over Class Representative or Segments of Class Members

The Settlement Agreement authorizes Plaintiff Seegert to seek an Individual Settlement Award in an amount no greater than $5,000 for his service to the Class in bringing the lawsuit. Ex. 1 at §2.4. Importantly, Plaintiff's incentive award is to be paid separate and apart from the Class award, and any reduction of the incentive award by the Court shall not affect the rights and obligations under the Settlement. *Id.*, at §2.6.

The Ninth Circuit recognizes that service awards given to named plaintiffs are "fairly typical" in class actions. *Rodriguez*, 563 F.3d at 958. Incentive awards serve "to compensate class representatives for work done on behalf of the class, to make up for financial or reputation risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958–59. In evaluating whether the Settlement grants preferential treatment to Plaintiff, "the court must examine whether there is a 'significant disparity between the incentive awards and the payments to the rest

of the class members' such that it creates a conflict of interest." *Spann II*, 314 F.R.D. at 328 (citing *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013)). In arriving at such determination, courts will consider "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." *In re Online DVD-Rental*, 779 F.3d at 947 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).

Here, the requested award is unlikely to create a conflict of interest between Plaintiff Seegert and absent Class Members because the Settlement Agreement will remain in full force and effect, notwithstanding any reduction of the awards. *See Spann II*, 314 F.R.D. at 328–29. Mr. Seegert's award was not predicated on the existence of any special treatment. Carpenter Decl., at ¶8. The basis for such award is purely to compensate Plaintiff for his efforts in initiating the lawsuit, staying abreast of all aspects of the litigation, including attending the Early Neutral Evaluation Conference, and fairly and adequately protecting the interests of the absent class members. *Id.*, at ¶8. Thus, the award does not constitute preferential treatment over Plaintiff.

Most importantly, even though $5,000 represents more than the individual share that each absent Class Member will receive from the Settlement, it is also unlikely that this rises to the level of unduly preferential treatment. *See Spann II*, 314 F.R.D. at 329. The Class Representative will, at most, seek $5,000, representing only 0.0005% of the minimum $16.75 million total Class Settlement amount (if calculated based off the $18 Voucher election). This amount is undoubtedly reasonable considering its miniscule proportion to the overall settlement fund. *See e.g., id.* at 328–29 (approving a $10,000 plaintiff incentive award which made up only 0.02% of the total $50 million settlement fund); *In re Online DVD-Rental*, 779 F.3d at 947–48 (approving nine plaintiff incentive awards of $5,000 which made up only .17% of the total settlement fund); *Cf. Staton*, 327 F.3d 938 (reversing approval of incentive awards that made up roughly 6% of potential $14.8 million settlement fund). Accordingly, the Settlement does not grant preferential treatment of Plaintiff Seegert over the rest of the Class.

V. THE PROPOSED CLASS SHOULD BE PROVISIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

The Ninth Circuit recognizes the propriety of certifying a settlement class to resolve consumer lawsuits. *See Hanlon*, 150 F.3d at 1019. At the preliminary approval stage, the Court's threshold task is to determine whether the proposed class satisfies the Rule 23(a) requirements: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy, and the requirements set forth in Rule 23(b)(3). *Id.*, *citing Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997). Here, when ruling on class certification in the settlement context, the court need not explore the issue of manageability, "for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Here, provisional certification of the proposed Class for purposes of the Settlement is warranted because Plaintiff satisfies all requirements set forth in Rule 23.

A. The Proposed Settlement Class Satisfies Rule 23(a)

1. Numerosity

Numerosity is satisfied if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a); *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 664 (C.D. Cal. 2009); *see also Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) ("impracticability" exists where there is a "difficulty or inconvenience of joining all members of the class"). "In determining whether numerosity is satisfied, the court may consider reasonable inferences drawn from the facts before it." *Balasanyan v. Nordstrom, Inc.*, 294 F.R.D. 550, 558 (S.D. Cal. 2013.) "While no exact numerical cut-off is required for the numerosity requirement, numerosity is presumed where the plaintiff class contains forty or more members." *Chester,* 2017 WL 6205788, at *5 (internal quotation marks and citations omitted).

Numerosity is clearly established here. The Parties conducted pre-mediation discovery and investigation, wherein Defendant confirmed there were approximately 930,835 potential Class Members for purposes of settlement. *See* Declaration of Linstone,

¶4. Accordingly, because the Class Members are certainly too numerous to join as plaintiffs, the numerosity requirement is met.

2. Commonality

Commonality is satisfied if "there are any questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2); *see Mazza v. Am. Honda Motor Co.,* 666 F.3d 581, 589 (9th Cir. 2012) (noting all that is required is a "***single*** significant question of law or fact.") (emphasis added). The inquiry regarding commonality involves whether Plaintiff can show a common contention such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon*, 150 F.3d at 1019. "District courts in California routinely certify consumer class actions arising from alleged violations of the CLRA, FAL and UCL." *Spann v. J.C. Penney Corp. ("Spann I")*, 307 F.R.D. 508, 518 (C.D. Cal. 2015), *citing Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 480 (C.D. Cal. 2012).

Here, the proposed Class Members each suffered the same injury: they all purchased exclusive, branded and/or trademarked merchandise from Lamps Plus's California retail stores that was subjected to Defendant's alleged false price discounting scheme. *See* CAC at ¶37. Thus, Class Members' claims involve the same alleged misrepresentations (i.e. an advertised discount from an original "Compare At" price) as applied to items with the same common characteristics (i.e. Lamps Plus exclusive branded and/or trademarked merchandise). *See Spann I*, 307 F.R.D. at 518. Moreover, Class Members share several additional common questions of law and fact, including: (1) whether Defendant's deceptive discount pricing scheme violates the UCL, the FAL, and the CLRA; (2) whether Defendant used false "Compare At" price tags and falsely advertised price discounts on its Lamps Plus branded and/or trademarked products sold in its Lamps Plus retail store; (3) whether Defendant's advertised "Compare At" prices were the prevailing market prices for the

respective Lamps Plus branded and/or trademarked merchandise during the 90 days preceding dissemination and/or publication of the advertisement; and (4) whether Class Members are entitled to damages and/or restitution and the proper measure of such loss. CAC at ¶40; *see e.g., Spann I*, 307 F.R.D. at 518. These common questions regarding whether Lamps Plus's "Compare At" reference prices are false and misleading are undoubtedly susceptible to common proof which will drive common answers for each Class Member. *See e.g., Spann II*, 314 F.R.D. at 321; *Chester,* 2017 WL 6205788, at *5 (finding commonality met where defendant used similar "Compare At" price representations). Thus, the commonality requirement is readily satisfied.

3. Typicality

Typicality is satisfied if the class representative's claims or defenses are typical to those of the Class. Fed. R. Civ. P. 23(a)(3). The Ninth Circuit applies the typicality requirement liberally: "representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. The "typicality" requirement is essential to ensure that the claims of the class representative is aligned with those of the class as a whole. *Wolin v. Jaguar Land Rover North America, LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* As addressed immediately above, Plaintiff Seegert's claims are typical to those of the Class because they are based upon the same facts and the same legal and remedial theories as those of the Class. *See Spann I*, 307 F.R.D. at 519; *Chester*, 2017 WL 6205788, at *5.

4. Adequacy

Adequacy is satisfied if the class representative "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit utilizes two questions to determine legal adequacy: "(1) do the named plaintiffs and their counsel have any

conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

Plaintiff Seegert is an adequate class representative because he shares the common goal to pursue truthful advertising regarding retailer's sale discount pricing practices. *See Hoffman v. Dutch LLC*, 317 F.R.D. 566, 574–75 (S.D. Cal. 2016). There is no evidence in the record that Plaintiff harbors any interest antagonistic to the interests of the Class. Carpenter Decl., at ¶9. Plaintiff has stayed abreast of the proceedings thus far, including attending the Early Neutral Evaluation Conference, and if necessary, would sit for a deposition and participate in discovery. *Id.* Further, Class Counsel are experienced consumer class action attorneys, have litigated many cases involving UCL, FAL, and CLRA claims, and have vigorously investigated and prosecuted this case since its inception. Carpenter Decl., at ¶10. Therefore, the adequacy requirement is satisfied.

B. The Proposed Settlement Class Satisfies Rule 23(b)

Class actions under Rule 23(b)(3) must also satisfy the following two requirements, which are commonly referred to as "predominance" and "superiority," respectively: (1) "the questions of law and fact common to class members predominate over any questions affecting only individual members, and" (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Plaintiff has satisfied both of these requirements.

1. Common Questions Predominate

Predominance inquires "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, F.3d at 1022 (*citing Amchem*, 521 U.S. at 623). Although predominance is inherently related to commonality in that it assumes a prerequisite of common issues of law and fact, "Rule 23(b)(3) focuses on the *relationship* between the common and individual issues." *Id* (emphasis added). Where the core question driving the litigation "would require the separate adjudication of each class member's individual claim or defense, a Rule 23(b) action would be inappropriate." *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (internal citation omitted).

The Ninth Circuit makes clear that since California consumer protection laws apply a reasonable consumer standard, "relief under the UCL is available without individualized proof of deception, reliance and injury." *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1020 (9th Cir. 2011), *abrogated on other grounds*. "Similarly, because Plaintiff's other claims under the FAL and CLRA rely on the same objective test, that is, whether members of the public are likely to be deceived, these other claims also do not require individual analysis of class members' injury." *Beck-Ellman v. Kaz USA, Inc.*, 283 F.R.D. 558, 568 (S.D. Cal. 2012) (internal quotation marks and citation omitted). "For the purposes of class certification, it is sufficient that the alleged material omission was part of a common advertising scheme to which the entire class was exposed." *Id.* (finding predominance where the core of plaintiff's claims rested on the deceptive marketing of defendant's heating pads, which failed to include an injury warning despite any variations in packaging); *see also Spann I*, 307 F.R.D. at 521–22 (finding predominance where plaintiff claimed defendant's pricing practices are likely to deceive consumers because they do not reflect bona fide original prices). Where the "thrust of plaintiff's claim, which is that defendant operated a systematic and pervasive unlawful price comparison policy,… evidence of such a policy or scheme is common to all putative class members and predominates over any individual facts or questions." *Spann I*, 307 F.R.D. at 522; *see also Chester,* 2017 WL 6205788, at *5. Similar to *Spann*, Plaintiff's theory of liability is rooted in the allegation that Lamps Plus engaged in a scheme of deceptive discount pricing applied uniformly to all of Defendant's exclusive branded and/or trademarked merchandise. CAC at ¶18-29; 44. Plaintiff also alleges that each Class Member was exposed the same uniform pricing misrepresentations about the merchandise's "bona fide" regular price ("Compare At" price) and corresponding phantom discount, regardless of the product type or size of the discount. *Id*. "Further, for purposes of settlement, Class Members are not required to prove any evidentiary or factual issues that could arise in litigation." *Maxin v. RHG & Co., Inc.,* 2017 WL 748143, at *4 (S.D. Cal. Feb. 27, 2017). Here, similar to *Spann*, where "essential questions at the heart of plaintiff's claims [are] common", these issues "would

predominate over any other individualized issues, largely due to the fact that plaintiff would rely almost entirely on common evidence in the form of defendant's internal pricing guidelines . . . and California sales data." *Spann II*, 314 F.R.D. at 322.

2. A Class Action is the Superior Method to Settle this Controversy

Superiority examines whether the class action device "is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In evaluating superiority, courts consider the following factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.* "[T]he purpose of the superiority requirement is to assure that the class action is the most effective means for resolving the controversy. Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wollin*, 617 F.3d at 1175–76 (citation and internal quotation marks omitted). In the settlement context, manageability of the class action device is not a concern. *See Spann II*, 314 F.R.D. at 323 ("the other requirements of Rule 23(b)(3) such as the desirability or undesirability of concentrating the litigation of the claims in the particular forum and the likely difficulties in managing a class action, are rendered moot and irrelevant"); *see also Amchem Prods., Inc.*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.").

Accordingly, because each Class Members' claim is common to the class and relatively small in amount, a class action is the superior method for efficiently adjudicating Plaintiff's claims.

VI. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED

Rule 23(e) requires the trial court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). This requirement contemplates that class notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Toys R Us*, 295 F.R.D. at 448 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A class action settlement notice is deemed "satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). "However, Rule 23(e) 'does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims.'" *In re Online DVD-Rental*, 779 F.3d at 946 (citing *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012)).

The content of the Full Notice, Email Notice, Mail Notice, and Online Media Notice provides sufficient information to satisfy these standards. *See* Exhibits B, C, D, and E to the Settlement Agreement. Each Notice clearly and conspicuously: identifies who is a Class Member; describes the factual background of the litigation and the Parties to the action; outlines Class Members' legal rights, including the right to either participate in the Settlement, exclude themselves, or object, and deadlines to pursue each available course of action; provides the amount of the benefit and details of the relief; states the amount of attorneys' fees and Plaintiff's incentive award requested by Class Counsel; and sets forth the contact information of the Claims Administrator. *See generally*, *id*. The Full Notice includes a table of contents modeled in a "frequently asked questions" format and includes answers to questions such as, "How do I know if I am part of the Settlement," "What is the difference between excluding myself and objecting to the Settlement," and "How can I get a Voucher?" *See* Settlement Agreement, Exhibit B. This format constitutes adequate notice in that it is conducive to providing essential Settlement information to the Class. *See 4*

Newberg on Class Actions § 11:53, at p. 167 (4th ed. 2013) ("[N]otice is adequate if it may be understood by the average class member.").

Moreover, the method of providing notice to Class Members is adequate and reasonably likely to ensure all Claimants are apprised of the Settlement terms and given an opportunity to be heard. Within fifteen (15) calendar days after entry of this Order, the following Notice will disseminate to the Class: EPIQ will post the Full Notice on the Settlement Website where it will remain until at least the Final Settlement Date; EPIQ or Defendant will provide Email Notice and Mail Notice to those Class Members for whom it has valid email and mail addresses and will provide the Settlement Website address, along with EPIQ's contact information; and EPIQ will implement the Online Media Notice program through Google Display Network. Ex. 1 at §3.2. These forms of Notice constitute "the best notice practicable" under the circumstances. *See e.g., Keirsey v. eBay, Inc.*, No. 12-cv-1200-JST, 2014 WL 644697, at *1–2 (N.D. Cal. Feb. 14, 2014) (finding that disseminating notice primarily through email, and supplemented with information on the class website and through internet news sources constituted a proper form and method of notice); *Chester,* 2017 WL 6205788, at *7 (finding email and postcard notice, supplemented with publication in magazines and in Defendant's stores was sufficiently aimed to reach a California-based class.").

Accordingly, both "the procedure of providing notice and the content of the class notice constitute the best practicable notice to class members." *Spann II,* 314 F.R.D. at 332; *see also In re Online DVD-Rental*, 779 F.3d at 946 (describing adequate notice).

VII. PLAINTIFF SHOULD BE APPOINTED CLASS REPRESENTATIVE AND CLASS COUNSEL SHOULD BE APPOINTED FOR THE CLASS FOR SETTLEMENT PURPOSES

Plaintiff also requests that the Court designate Plaintiff Harley Seegert as Class Representative to implement the terms of the Settlement. As detailed above, Plaintiff will fairly and adequately represent and protect the interests of the Class.

Plaintiff also seeks to appoint Todd D. Carpenter of the law firm of Carlson Lynch Sweet Kilpela & Carpenter, LLP ("Carlson Lynch") as Class Counsel for the Class. In

appointing Class Counsel pursuant to Rule 23(g), the Court "must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). As set forth above, Carlson Lynch is highly experienced and knowledgeable in complex consumer class action litigation and well-equipped to vigorously and efficiently represent the proposed Class. *See* Carpenter Decl., at ¶10. Moreover, Class Counsel has expended a substantial amount of time investigating Lamps Plus's fraudulent sale discounting practices and researching the viability of Plaintiff's claims for liability and damages, including the seeking the retention of Dr. Hamilton to formulate viable class-wide restitution methodologies. *Id.* Accordingly, the Court should appoint Todd Carpenter of Carlson Lynch as Class Counsel for the Class.

VIII. THE PROPOSED SCHEDULE OF EVENTS

Based on the date of entry of the Preliminary Approval Order and the date the Court sets for the Final Fairness Hearing, the following represents certain Settlement-related dates:

Event	Timing
Unopposed Motion for Preliminary Approval Filed	August 24, 2018
Hearing on Unopposed Motion for Preliminary Approval	September 24, 2018
Last day for Defendant, through EPIQ, to send Email Notice, Mail Notice, start operating Settlement Website, and begin to provide Online Media Notice	15 days after entry of the Preliminary Approval Order.
Last day for Plaintiff to file fee petition	60 days after entry of the Preliminary Approval Order.

Last day for Class Members to request exclusion or object to the Settlement	105 days after entry of the Preliminary Approval Order.
Last day for Parties to file briefs in support of the Final Order and Judgment	120 days after entry of the Preliminary Approval Order.
First day Final Fairness Hearing can be set	No earlier than 135 calendar days after entry of the Preliminary Approval Order.
Last day for Class Members to file a Claim to the Settlement	135 days after entry of the Preliminary Approval Order.

IX. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant the instant unopposed motion for preliminary approval of class action settlement and all related requests therein.

Date: August 24, 2018

Respectfully submitted,

/s/ Todd D. Carpenter

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