

United States District Court  
Northern District of California

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Case No. 17-cv-01027-BLF

THEODORE BROOMFIELD, et al.,  
Plaintiffs,  
v.  
CRAFT BREW ALLIANCE, INC.,  
Defendant.

**ORDER (1) GRANTING PLAINTIFFS’  
MOTION FOR ATTORNEYS’ FEES  
AND COSTS AND CLASS  
REPRESENTATIVE SERVICE  
AWARDS AND (2) GRANTING  
PLAINTIFFS’ MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

[Re: ECF 121,136]

In this putative class action, Plaintiffs Theodore Broomfield and Simone Zimmer (together, “Plaintiffs”) allege that the packaging of certain Kona Brewing Co., Inc. (“Kona”) brand beer (sold in six- and twelve-packs) deceived consumers into believing that Kona beer is brewed in Hawaii. *See generally* First Am. Consol. Class Action Compl. (“FACC”), ECF 65. Plaintiffs sued Defendant Craft Brew Alliance, Inc., the producer, marketer, and seller of Kona beer, and bring seven causes of action for violation of common law and California law.

Two motions are before the Court: (1) Plaintiffs’ Motion for Attorneys’ Fees and Costs and Class Representative Service Awards, *see* Fees Mot., ECF 121; and (2) Plaintiffs’ Motion for Final Approval of Class Action Settlement, *see* Appr. Mot., ECF 136. The Court heard argument on December 19, 2019. For the reasons discussed below and those stated on the record at the hearing, the motions are GRANTED.

**I. BACKGROUND**

**A. Facts**

Defendant Craft Brew Alliance, Inc. (“CBA”) is the sixth largest craft brewing company in

1 the United States and, in 2010, CBA acquired Kona. FACC ¶¶ 16, 18. Prior to being acquired by  
2 CBA, Kona began brewing beer in Hawaii in 1994. FACC ¶ 16. The Kona brand includes a  
3 variety of beers that reference Kona’s Hawaiian origins, including the following products at issue  
4 in the FACC: Longboard Island Lager, Big Wave Golden Ale, Fire Rock Pale Ale, Wailua Wheat  
5 Ale, Hanalei Island IPA, Castaway IPA, Lemongrass Luau, and Pipeline Porter. FACC ¶¶ 22, 26-  
6 73.

7 Although Kona has a Hawaii-based brewery that makes and sells draft beer in Hawaii, all  
8 of Kona’s bottled and canned beer, as well as its draft beer sold outside of Hawaii, is brewed in  
9 Oregon, Washington, New Hampshire, Tennessee, and Colorado. FACC ¶¶ 1, 3, 19-20. The  
10 packaging for each variety of Kona branded beer is adorned with its own Hawaii-related images,  
11 including a map of Hawaii, Hawaiian words, orchid flowers, volcanoes, palm trees, surfers,  
12 canoes, waterfalls, and hula dancers to match the theme of the beer being marketed and sold. *See*  
13 FACC ¶¶ 26-73. Each type of beer has its own slogan printed on the handle of the six-pack, such  
14 as “Thirst’s Up!” for Long Board Island Lager, “Catch a Wave!” for Big Wave Golden Ale, “Go  
15 with the Flow” for Fire Rock Pale Ale, and “Paradise Found” for Wailua Wheat Ale. FACC  
16 ¶¶ 30, 35, 40, 45. Each bottle has “Liquid Aloha” embossed on the front as well as an image of  
17 the Hawaiian Islands. FACC ¶ 26. Furthermore, each twelve-pack has an image of the Hawaiian  
18 Islands with a mark on the location of the Kona Brewing Company Brewery on the Big Island.  
19 FACC ¶ 26. Plaintiffs also allege that CBA acknowledged through public statements and  
20 documents that CBA intended to create the impression that Kona beers are brewed in Hawaii and  
21 imported to the continental United States. FACC ¶ 74; *see* FACC ¶¶ 75-78.

## 22 **B. Procedural History**

23 This putative class action was commenced on February 28, 2017. ECF 1. On April 7,  
24 2017, the Consolidated Class Action Complaint (the “Consolidated Complaint”) was filed against  
25 CBA; the Consolidated Complaint consolidated two cases: *Cilloni v. Craft Brew Alliance, Inc.*,  
26 No. 5:17-cv-01027-BLF (N.D. Cal. filed Feb. 8, 2017), and *Broomfield v. Kona Brewing Co.*, No.  
27 3:17-cv-01159-MEJ (N.D. Cal. filed Mar. 6, 2017). ECF 15. On April 28, 2017, CBA moved to  
28 dismiss the Consolidated Complaint. ECF 16. On September 1, 2017, the Court granted in part

1 and denied in part CBA's motion to dismiss, and Plaintiffs were given leave to amend certain  
2 claims the Court dismissed. ECF 44.

3 On December 15, 2017, Plaintiffs filed the First Amended Consolidated Class Action  
4 Complaint (the "FACC"). ECF 65. The FACC asserts seven causes of action for: (1) violation of  
5 California Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*; (2) violation of  
6 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (3) violation of  
7 California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*; (4) common law  
8 fraud; (5) intentional misrepresentation; (6) negligent misrepresentation; (7) and unjust enrichment  
9 and common law restitution. FACC ¶¶ 110-89.

10 On September 25, 2018, the Court granted Plaintiffs' Motion for Class Certification and  
11 certified the action for Rule 23(b)(2) and 23(b)(3) purchasers of any six- or twelve-pack of  
12 Longboard Island Lager, Hanalei IPA, Castaway IPA, Big Wave Golden Ale, Lemongrass Luau,  
13 Wailua Wheat, Fire Rock Pale Ale, and Pipeline Porter. Class Cert. Order, at 36-37, ECF 94. In  
14 addition, the Court also appointed Theodore Broomfield and Simone Zimmer as class  
15 representatives, and appointed Faruqi & Faruqi, LLP and The Wand Firm, P.C. as Class Counsel.  
16 Class Cert. Order, at 37.

17 On October 22, 2018, CBA filed a Rule 23(f) petition for permission to appeal the Court's  
18 Class Certification Order. ECF 102. Plaintiffs opposed. Decl. of Timothy J. Peter ("Peter Decl.")  
19 ¶ 6, ECF 137. On January 24, 2019, the parties participated in a day-long mediation session with  
20 Bruce A. Edwards of JAMS. Peter Decl. ¶ 7. The parties did not reach settlement during this  
21 mediation, but they continued outside settlement discussions. Peter Decl. ¶ 8. On February 1,  
22 2019, the Ninth Circuit denied CBA's Rule 23(f) petition. ECF 104. On February 15, 2019, CBA  
23 filed a petition for a hearing *en banc* of the Ninth Circuit's denial of its Rule 23(f) petition. Peter  
24 Decl. ¶ 6. The parties agreed to stay reconsideration of CBA's petition for rehearing *en banc*  
25 pending the settlement approval process. Peter Decl. ¶ 6. The parties participated in a second,  
26 twelve-hour mediation session with Mr. Edwards on March 6, 2019, and reached a settlement in  
27 principle during this session and executed the Settlement Agreement on May 23, 2019. Peter  
28 Decl. ¶ 8; *see* Peter Decl., Ex. A, Settlement Agr., ECF 137-1.

1 On June 14, 2019, the Court granted Plaintiffs' Motion for Preliminary Approval of Class  
2 Action Settlement. Order Granting Prelim. Appr. ("Prelim. Appr. Order"), ECF 120. On  
3 September 2, 2019, Plaintiffs filed a Motion for Attorney Fees and Costs and Class Representative  
4 Service Awards. *See* Fees Mot., ECF 121. On October 28, 2019, Plaintiffs filed their Motion for  
5 Final Approval of Class Action Settlement. *See* Appr. Mot., ECF 136.

6 **C. Settlement Agreement, Allocation Plan, and Notice Plan**

7 In its order preliminarily approving the Settlement Agreement, the Court approved the  
8 Settlement Class, for settlement purposes only, which is defined as: "All Persons who purchased  
9 any four-pack, six-pack, twelve-pack or twenty-four-pack of Kona Beers in the United States, its  
10 territories, or at any United States military facility, during the Class Period." Prelim. Appr.  
11 Order 3. The Class Period is from February 28, 2013, through June 14, 2019, *see* Settlement Agr.  
12 ¶ 40, and Kona Beers is defined as:

13 [A]ll 4-pack, 6-pack, 12-pack, or 24-pack of Longboard Island  
14 Lager, Hanalei IPA, Castaway IPA, Big Wave Golden Ale,  
15 Lemongrass Luau, Wailua Wheat, Fire Rock Pale Ale, Pipeline  
16 Porter, Lavaman Red Ale, Koko Brown Ale, Kua Bay IPA, Gold  
17 Cliff IPA, Kanaha Blonde Ale, Liquid Aloha Variety Pack, Island  
18 Hopper Variety Pack, Happy Mahalo Variety Pack, and Wave Rider  
Tandem Pack. Excluded from this definition are all Kona Beers that  
are sold without packaging (i.e., loose bottles, loose cans, and draft  
beer).

19 Prelim. Appr. Order 3-4.

20 Under the Settlement Agreement, CBA agreed to provide monetary relief to members of  
21 the Settlement Class that submitted a timely and valid Claim Form as follows: \$1.25 per unit for  
22 four-pack Kona Beers; \$1.25 per unit for six-pack Kona Beers; \$2.00 per unit for twelve-pack  
23 Kona Beers; and \$2.75 per unit for twenty-four-pack Kona Beers. Settlement Agr. ¶ 77(a).  
24 Claimants who submit sufficient proof of purchase and verification that he or she was over 21  
25 years old at the time of purchase may claim a maximum recovery of \$20 per Settlement Class  
26 Member. Settlement Agr. ¶¶ 77(b), 82. Claimants who verify that he or she was over the age of  
27 21 years old at time of purchase and attest to his or her purchase of Kona Beers under penalty of  
28 perjury, but do not submit sufficient proof of purchase, may claim a maximum recovery of \$10 per

1 Settlement Class Member. Settlement Agr. ¶¶ 77(c), 82. In addition, Settlement Class Members  
2 residing in the same household who each submit a Claim Form are only entitled to a collective  
3 maximum payment of \$10 or \$20 per household, depending on whether sufficient proof of  
4 purchase was submitted. Settlement Agr. ¶ 77.

5 Additionally, under the Settlement Agreement, CBA agreed to provide certain injunctive  
6 relief. *See* Settlement Agr. ¶ 78. Namely, no later than March 2020 or 30 days after the Court  
7 enters an order and final judgment (if no appeal is taken) (the “Effective Date”), CBA agreed to  
8 change its business practices by including “a conspicuous statement on all consumer-facing Kona  
9 Beer packaging on a panel other than the bottom of the package that lists each location where  
10 Kona Beers are brewed or lists the location or locations at which a particular Kona Beer is brewed,  
11 for a minimum of four years after the Effective Date.” Settlement Agr. ¶ 78(a). Moreover, for at  
12 least four years after the Effective Date, CBA’s General Counsel or other designee agreed to meet  
13 annually with CBA’s marketing department to ensure CBA’s compliance with the Settlement  
14 Agreement. Settlement Agr. ¶ 77(b).

15 The Settlement Agreement also contains a class-wide release. Specifically, the Settlement  
16 Agreement states that Plaintiffs, each Settlement Class Member that does not submit a valid and  
17 timely request for exclusion, and any person claiming by or through such Settlement Class  
18 Member releases any claim “that is, has been, could reasonably have been, or in the future might  
19 reasonably be asserted . . . against the Released Parties arising out of the allegations in the  
20 complaint.” Settlement Agr. ¶¶ 66-68, 124. Released Parties includes, among other things, CBA,  
21 its affiliates, and its employees. Settlement Agr. ¶ 67.

22 The Court preliminarily approved, and the Settlement Administrator CPT Group, Inc.  
23 (“CPT”) and the parties complied with, the following notice process: settlement website notice,  
24 toll-free telephone support, direct notice via email or mail, print publication notice, and internet  
25 publication notice. Settlement Agr. ¶ 93; *see* Decl. of Ani S. Sarich (“Sarich Decl.”), ECF 138.  
26 Of the approximately 7,800,000 potential Settlement Class Members, Plaintiffs estimate that the  
27 notice plan reached an estimated 91.43% of the targeted Class Members. Sarich Decl. ¶¶ 21, 34.  
28 The deadline to submit a Claim Form or objection was October 7, 2019: two persons timely and

1 validly excluded themselves from the Settlement Class, two objections were timely filed, and  
2 159,065 Class Members submitted a Claim Form. Sarich Decl. ¶ 24.

3 After CPT removed fraudulent and duplicative claim forms, there were 143,078 valid  
4 Claim Forms. Supp. Decl. of Ani S. Sarich (“Supp. Sarich Decl.”) ¶ 3, ECF 142. Of those valid  
5 forms, 142,879 Settlement Class Members submitted Claim Forms without sufficient proof of  
6 purchase and 199 submitted Claim Forms with sufficient proof of purchase. Supp. Sarich Decl.  
7 ¶ 11. After grouping valid claims by physical address (because all individuals living in the same  
8 household are deemed to be a single Settlement Class Member), the total amount to be paid by  
9 CBA to the Settlement Class Members is \$1,332,386.25. Supp. Sarich Decl. ¶ 12.

10 On December 19, 2019, the Court held a hearing on the motions. There were two timely  
11 objections: one by Eric Michael Lindberg (the “Lindberg Objection”), *see* Lindberg Obj.,  
12 ECF 130, and the other by Edward W. Orr (the “Orr Objection”), *see* Orr Obj., ECF 134. Both  
13 objectors, or their representatives, appeared at the hearing.

## 14 **II. MOTION FOR FINAL APPROVAL OF SETTLEMENT**

15 To grant final approval of the class action settlement, the Court must determine that (1) the  
16 class meets the requirements for certification under Federal Rule of Civil Procedure 23, and (2) the  
17 settlement reached on behalf of the class is fair, reasonable, and adequate.

### 18 **A. The Class Meets the Requirements for Certification under Rule 23**

#### 19 **i. Applicable law**

20 A class action is maintainable only if it meets the four requirements of Rule 23(a):

- 21 (1) the class is so numerous that joinder of all members is  
22 impracticable;
- 23 (2) there are questions of law or fact common to the class;
- 24 (3) the claims or defenses of the representative parties are  
25 typical of the claims or defenses of the class; and
- 26 (4) the representative parties will fairly and adequately protect  
the interests of the class.

27 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule –  
28 those designed to protect absentees by blocking unwarranted or overbroad class definitions –

1 demand undiluted, even heightened, attention.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,  
2 620 (1997).

3 In addition to satisfying the Rule 23(a) requirements, “parties seeking class certification  
4 must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Id.* at 614. Plaintiffs  
5 seek certification under Rule 23(b)(3), *see* Appr. Mot. 20, which requires that (1) “questions of  
6 law or fact common to class members predominate over any questions affecting only individual  
7 members” and (2) “a class action is superior to other available methods for fairly and efficiently  
8 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

9 **ii. Discussion**

10 The Court concluded that these requirements were satisfied when it granted preliminary  
11 approval of the class action settlement. *See generally* Prelim. Order. The Court is not aware of  
12 any new facts which would alter that conclusion. However, the Court reviews the Rule 23  
13 requirements again briefly, as follows.

14 First, as to the Rule 23(a) prerequisites, the Court has no difficulty in concluding that the  
15 proposed class is too numerous because the nationwide class consists of approximately 7,800,000  
16 Settlement Class Members. *See* Sarich Decl. ¶¶ 21; *Littlejohn v. Ferrara Candy Co.*, No.  
17 318CV00658AJBWVG, 2019 WL 2514720, at \*3 (S.D. Cal. June 17, 2019) (finding numerosity  
18 satisfied where defendants sales numbered in the “hundreds of thousands”). The commonality  
19 requirement is also met because questions of law and fact common to the Settlement Class  
20 predominate over individualized questions. For example, Plaintiffs allege that all Settlement Class  
21 Members were exposed to CBA’s representations on the packaging of Kona Beers, which  
22 Plaintiffs allege are deceptive and material. Appr. Mot. 21. Numerous courts have recognized  
23 that a claim alleging that all consumers were exposed to misrepresentations on a product’s  
24 packaging is sufficient to satisfy the commonality requirement because it raises a common  
25 question of whether the packaging would mislead a reasonable consumer. *See e.g., In re NJOY,*  
26 *Inc. Consumer Class Action Litig.*, 120 F. Supp. 3d 1050, 1096-97 (C.D. Cal. 2015) (“There is no  
27 question that all class members were exposed to the product packaging; this suffices to show  
28 commonality.”); *In re ConAgra Foods, Inc.*, 302 F.R.D. 537, 569 (C.D. Cal. 2014) (“Because all

1 class members were exposed to the statement and purchased Wesson Oil products, there is a  
2 common core of salient facts.”).

3 Plaintiffs’ claims are also typical of the claims of the Settlement Class because all claims  
4 arise from the same alleged misrepresentations on the packing of Kona Beers. *See Hanlon v.*  
5 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (concluding that typicality requires only that  
6 claims of class representatives be “reasonably co-extensive with those of absent class members”).  
7 Finally, to determine Plaintiffs’ adequacy, the Court “must resolve two questions: (1) do the  
8 named plaintiffs and their counsel have any conflicts of interest with other class members and (2)  
9 will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”  
10 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (internal quotation marks and  
11 citation omitted). The Court has no reservations regarding the abilities of Class Counsel or their  
12 zeal in representing the class, and the record discloses no conflict of interest that would preclude  
13 Plaintiffs from acting as class representatives. Peter Decl. ¶¶ 3-6, 8; *see* Appr. Mot. 10-11.

14 Second, with respect to Rule 23(b)(3), the “predominance inquiry tests whether proposed  
15 classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at  
16 623. Here, all Settlement Class Members were exposed to the alleged misrepresentations on the  
17 packaging of Kona Beers and issues of reliance, materiality, and state of mind are common to the  
18 Settlement Class. *See Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1095 (N.D. Cal. 2018)  
19 (“[C]laims under the UCL, FAL, and CLRA [are] ideal for class certification because they will not  
20 require the court to investigate class members’ individual interaction with the product.”);  
21 *Brickman v. Fitbit, Inc.*, No. 3:15-CV-02077-JD, 2017 WL 5569827, at \*6 (N.D. Cal. Nov. 20,  
22 2017) (finding “common law claims [for fraud, negligent misrepresentation, and quasi-  
23 contract/unjust enrichment] are also good candidates for class treatment in that they focus in  
24 significant part on the falsity of the defendant’s statements, and the defendant’s knowledge of  
25 falsity or assertion of a falsehood without reasonable grounds”); *see also* Class Cert. Order 15-22.  
26 Moreover, given this commonality, and the number of potential class members, the Court  
27 concludes that a class action is a superior mechanism for adjudicating the claims at issue.  
28



1                    **iii. Conclusion**

2                    Accordingly, the Court concludes that the requirements of Rule 23 are met and that  
3 certification of the Settlement Class for settlement purposes is appropriate.

4                    **B. The Settlement is Fundamentally Fair, Adequate, and Reasonable**

5                    Federal Rule of Civil Procedure 23(e) “requires the district court to determine whether a  
6 proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026.  
7 In the Ninth Circuit, courts use a multi-factor balancing test to analyze whether a given settlement  
8 is fair, adequate, and reasonable. That test includes the following factors, known as the *Churchill*  
9 factors:

- 10                    (1) the strength of the plaintiff’s case; (2) the risk, expense,  
11 complexity, and likely duration of further litigation; (3) the risk of  
12 maintaining class action status throughout the trial; (4) the amount  
13 offered in settlement; (5) the extent of discovery completed and the  
14 stage of the proceedings; (6) the experience and view of counsel; (7)  
15 the presence of a governmental participant; and (8) the reaction of  
16 the class members of the proposed settlement

17                    *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill*  
18 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *see also Hanlon*, 150 F.3d at 1026-  
19 27 (listing same factors).

20                    Recent amendments to Rule 23 require the district court to consider a similar list of factors  
21 before approving a settlement, including whether:

- 22                    (A) the class representatives and class counsel have adequately represented the class;  
23                    (B) the proposal was negotiated at arm’s length;  
24                    (C) the relief provided for the class is adequate, taking into account:  
25                    (i) the costs, risks, and delay of trial and appeal;  
26                    (ii) the effectiveness of any proposed method of distributing relief to the  
27 class, including the method of processing class-member claims;  
28                    (iii) the terms of any proposed award of attorney’s fees, including timing of  
                         payment; and  
                         (iv) any agreement required to be identified under Rule 23(e)(3);

1 (D) the proposal treats class members equitably relative to each other.

2 Fed. R. Civ. P. 23(e)(2).

3 In the Advisory Committee notes to the amendment, the Advisory Committee states that  
4 “[c]ourts have generated lists of factors to shed light” on whether a proposed class-action  
5 settlement is “fair, reasonable, and adequate.” Advisory Committee Notes to 2018 Amendments,  
6 Fed. R. Civ. P. 23(e)(2) (“2018 Advisory Notes”). The notes of the Advisory Committee explain  
7 that the enumerated, specific factors added to Rule 23(e)(2) are not intended to “displace” any  
8 factors currently used by the courts, but instead aim to focus the court and attorneys on “the core  
9 concerns of procedure and substance that should guide the decision whether to approve the  
10 proposal.” *Id.*; cf. *United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (“[T]he Advisory Committee  
11 Notes provide a reliable source of insight into the meaning of a rule . . .”). Accordingly, the  
12 Court applies the framework set forth in Rule 23 with guidance from the Ninth Circuit’s  
13 precedent, bearing in mind the Advisory Committee’s instruction not to let “[t]he sheer number of  
14 factors” distract the Court and parties from the “central concerns” underlying Rule 23(e)(2).

15 “[A]n even higher level of scrutiny for evidence of collusion or other conflicts of interest  
16 than is ordinarily required under Rule 23(e)” if approval is sought “[p]rior to formal class  
17 certification.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).  
18 The Court determines that *Bluetooth* does not apply to this case because the Court previously  
19 certified a class. *See generally* Class Cert. Order. Thus, the Court need not subject the Settlement  
20 Agreement to a higher level of scrutiny as required by *In re Bluetooth*. *See Allen v. Bedolla*, 787  
21 F.3d 1218, 1224 (9th Cir. 2015) (“That procedural burden is more strict when a settlement is  
22 negotiated absent class certification.”).

23 **i. Adequacy of Notice**

24 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).  
25 *Hanlon*, 150 F.3d at 1025. For the Court to approve a settlement, “[t]he class must be notified of a  
26 proposed settlement in a manner that does not systematically leave any group without notice.”  
27 *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 624  
28 (9th Cir. 1982) (citation omitted).

1 The Court previously approved the parties' proposed notice procedures, *see* Prelim. Appr.  
2 Order ¶¶ 9-12, and in its motion for final approval, Plaintiffs state that the notice plan was  
3 successfully implemented, *see* Appr. Mot. 6-7. Through direct notice, and digital, social, and  
4 mobile media, Plaintiffs represent that their notice plan resulted in approximately 91.43% of  
5 Settlement Class Members receiving notice, and courts have found that such a rate complies with  
6 Rule 23. *See Free Range Content, Inc. v. Google, LLC*, No. 14-CV-02329-BLF, 2019 WL  
7 1299504, at \*6 (N.D. Cal. Mar. 21, 2019) ("Notice plans estimated to reach a minimum of 70  
8 percent are constitutional and comply with Rule 23." (brackets and internal quotation marks  
9 omitted)); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 586 (N.D. Cal. 2015) (finding  
10 notice plan consistent with Rule 23 where at least 96% of class received notice). Indeed, this  
11 notice plan was effective enough to reach two individuals incarcerated in Texas state prison. *See*  
12 ECF 126, 127, 135.

13 Class Counsel has also represented that this notice plan resulted in 143,078 valid Claim  
14 Forms being filed, Supp. Sarich Decl. ¶ 3, which is a claims rate of about two percent, *see* Appr.  
15 Mot. 18. While such a claims rate may seem low, "[s]ettlements of large class action suits have  
16 been approved even where less than five percent of the class files claims." *Six (6) Mexican*  
17 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1306 (9th Cir. 1990); *see Moore v. Verizon*  
18 *Commc'ns Inc.*, No. C 09-1823 SBA, 2013 WL 4610764, at \*8 (N.D. Cal. Aug. 28, 2013)  
19 (approving consumer class action settlement with 3% claims rate).

20 In light of these actions and the Court's prior order granting preliminary approval, the  
21 Court finds that the parties have provided sufficient notice to the Settlement Class Members.

22 **ii. Rule 23(e)/Churchill Factors**

23 *a. Adequate representation, arm's length negotiation, extent of completed*  
24 *discovery, and stage of proceedings*

25 Turning to the Rule 23(e) factors, the Court first considers whether "the class  
26 representatives and class counsel have adequately represented the class" and whether "the  
27 proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)-(B). These considerations  
28 overlap with certain *Churchill* factors, such as the non-collusive nature of negotiations, the extent

1 of discovery completed, and the stage of proceedings. *See Churchill*, 361 F.3d at 575.

2 As discussed above when certifying the class, the Court finds that Plaintiffs and Class  
3 Counsel have adequately represented the class. In its Preliminary Approval Order, the Court  
4 found no evidence of a conflict between class representatives or Class Counsel and the rest of the  
5 Settlement Class. Prelim. Appr. Order ¶ 7. No evidence to the contrary has emerged. Similarly,  
6 the Court found that Class Counsel has vigorously prosecuted this action through extensive motion  
7 practice – including a motion to dismiss, a motion for class certification, a petition for permission  
8 to appeal the Class Certification Order, and an *en banc* petition for rehearing before the Ninth  
9 Circuit that is currently stayed. Appr. Mot. 2, 15. After their initial, day-long mediation session,  
10 the parties also exchanged documents and information regarding their respective positions. *See*  
11 Peter Decl. ¶ 7. Furthermore, in its Motion for Final Approval, Class Counsel included  
12 information regarding settlement outcomes of analogous cases, *see* Appr. Mot 13-24; Peter Decl.  
13 ¶¶ 16-21, further indicating that Class Counsel had adequate information from which to negotiate  
14 the settlement, *see* 2018 Advisory Notes. Lastly, the Court finds that Class Counsel has continued  
15 to represent the class diligently by complying with the notice plan and settlement procedures.

16 Plaintiffs likewise have actively participated in the prosecution of this case. For example,  
17 Plaintiffs provided information for the complaints and other pleadings, communicated regularly  
18 with counsel, reviewed and responded to written discovery, produced documents, prepared and sat  
19 for depositions, and reviewed and approved the proposed settlement. *See* Fees Mot. 16-17; Fees  
20 Mot., Decl. of Theodore Broomfield (“Broomfield Decl.”) ¶¶ 5-6, ECF 121-7; Fees Mot., Decl. of  
21 Simone Zimmer (“Zimmer Decl.”) ¶¶ 5-6, ECF 121-8. The Court, therefore, finds the adequacy  
22 of representation weighs in favor of approval.

23 Additionally, settlement in this case took place after the initiation of discovery and was the  
24 product of arm’s-length negotiations between experienced counsel with the aid of a respected  
25 mediator. Appr. Mot. 10-11. “[T]he Court notes that a presumption of correctness is said to  
26 attach to a class settlement reached in arm’s-length negotiations between experienced capable  
27 counsel after meaningful discovery.” *Free Range Content, Inc.*, 2019 WL 1299504, at \*6  
28 (brackets and internal quotation marks omitted).

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*b. Strength of Plaintiffs' case, and costs, risks, and delay of trial and appeal*

In assessing “the costs, risks, and delay of trial and appeal,” Fed R. Civ. P. 23(e)(2)(C)(i), courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class action status throughout the trial.” *Hanlon*, 150 F.3d at 1026. “Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case.” *Hendricks v. Starkist Co*, No. 13-CV-00729-HSG, 2016 WL 5462423, at \*4 (N.D. Cal. Sept. 29, 2016). “Additionally, difficulties and risks in litigating weigh in favor of approving a class settlement,” and “[g]enerally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Id.*

Here, Plaintiffs faced significant obstacles in this case, including needing to survive a motion to dismiss and a Rule 23(f) petition for permission to appeal the Court’s Class Certification Order. Plaintiffs would have faced similar risks at trial. As Plaintiffs explain in their motion, these obstacles include maintaining class certification, prevailing on summary judgment, surviving *Daubert* motions, establishing liability, proving damages, and prevailing at trial and on appeal. Appr. Mot. 14; *see Hendricks*, 2016 WL 5462423, at \*4-5 (finding factor weighs in favor of approval where “[p]laintiff would be required to successfully move for class certification, survive summary judgment, and receive a favorable verdict capable of withstanding a potential appeal.”). Furthermore, throughout the course of this litigation, CBA has vigorously defended against Plaintiffs claims, and the Court has narrowed the claims through the motion to dismiss phase. Appr. Mot. 2, 14-15; ECF 44.

Accordingly, the Court finds that this factor weighs in favor of approval.

*c. Effectiveness of any proposed distribution method, terms of attorneys' fees, and supplemental agreements*

Next, the Court must consider “the effectiveness of any proposed method of distributing relief to the class,” “the terms of any proposed award of attorney’s fees,” and “any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). As discussed

1 in more detail below, the Court finds that the proposed award of attorneys' fees is reasonable. In  
2 addition, there are no supplemental agreements, Appr. Mot. 16, and, as the Court preliminarily  
3 approved, the proposed distribution method is effective because it is "fair, reasonable and  
4 adequate," *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at \*12 (N.D.  
5 Cal. Dec. 18, 2018) (finding "[a]pproval of plan of allocation of settlement proceeds in class  
6 action [to be] governed by the same standards of review applicable to approval of the settlement as  
7 a whole."); *see* Prelim. Appr. Order ¶ 9.

8 Here, under the proposed distribution method, Settlement Class Members could receive  
9 monetary compensation by only submitting a Claim Form with answers to basic questions about  
10 class membership, and their purchase of Kona Beer, and verification that they were at least 21  
11 years old at the time of purchase. Appr. Mot. 15; Settlement Agr. ¶ 77. Proof of purchase is not  
12 required for Settlement Class Members to recover. Settlement Agr. ¶ 77. Additionally,  
13 Settlement Class Members can decide whether to receive payment in the form of a check,  
14 electronic payment, or direct deposit. Appr. Mot. 15. "The Court finds that 'it is reasonable to  
15 allocate the settlement funds to class members based on the extent of their injuries or the strength  
16 of their claims on the merits.'" *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2019  
17 WL 6894075, at \*8 (S.D. Cal. Dec. 18, 2019) (brackets omitted) (quoting *In re Omnivision Techs.,*  
18 *Inc.*, 559 F.Supp.2d 1036, 1045 (N.D. Cal. 2008)).

19 This factor, therefore, weighs in favor of approval.

20 *d. Equitable treatment of class members relative to each other*

21 Rule 23 also requires consideration of whether "the proposal treats class members  
22 equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Consistent with this instruction, the  
23 Court considers whether the proposal "improperly grant[s] preferential treatment to class  
24 representatives or segments of the class." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,  
25 1079 (N.D. Cal. 2007) (citation omitted).

26 Under the Settlement Agreement, all Class Members who submit timely and valid claims  
27 will receive payments based on their alleged claims and whether they submit sufficient proof of  
28 purchase and age verification. Settlement Agr. ¶ 77. The Court finds that the method of

1 distribution is equitable and class representatives do not receive preferential treatment. Although  
2 the class representatives seek service awards, the service awards (as discussed below) are  
3 reasonable and do not constitute inequitable treatment of class members. *See Rodriguez v. W.*  
4 *Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

5 This factor weighs in favor of approval.

6 *e. Settlement amount*

7 “The relief that the settlement is expected to provide to class members is a central  
8 concern,” though it is not enumerated among the factors of Rule 23(e). 2018 Advisory Notes.  
9 Thus, the Court considers “the amount offered in the settlement.” *Hanlon*, 150 F.3d at 1026.  
10 “Crucial to the determination of adequacy is the ratio of ‘plaintiffs’ expected recovery balanced  
11 against the value of the settlement offer.” *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-  
12 04883-BLF, 2019 WL 3290770, at \*9 (N.D. Cal. July 22, 2019) (quoting *In re Tableware*, 484 F.  
13 Supp. 2d at 1080). However, “[i]t is well-settled law that a cash settlement amounting to only a  
14 fraction of the potential recovery does not per se render the settlement inadequate or unfair.”  
15 *Officers for Justice*, 688 F.2d at 628.

16 Here, Class Members can receive between \$1.25 to \$2.75 per unit purchased, for a  
17 maximum of \$10 without proof of purchase or \$20 with proof of purchase. Settlement Agr. ¶ 77.  
18 This per-unit monetary relief represents a 12.7% price premium per-product that Plaintiffs argue  
19 could have been obtained at trial. Appr. Mot. 12. “And while monetary relief was available to  
20 only those class members who submitted [valid] claims, the use of a claims process is not  
21 inherently suspect.” *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015); *see* 4  
22 William B. Rubenstein, *Newberg on Class Actions* § 12:18 (5th ed. 2011) (noting that “a claiming  
23 process is inevitable” in certain settlements such as those involving “defective consumer products  
24 sold over the counter”). Moreover, Class Members are able to participate in the settlement  
25 without proof that they purchased any Kona Beers. *See also Johnson v. Gen. Mills, Inc.*, No.  
26 SACV 10-00061-CJC, 2013 WL 3213832, at \*3 (C.D. Cal. June 17, 2013) (finding settlement that  
27 allowed recovery without proof of purchase to be “a good result for the class”). Other courts have  
28 found similar recoveries to be fair and reasonable. *See, e.g., Marty v. Anheuser-Busch Cos.*, No.

1 13-CV-23656-JJO, 2015 WL 10858371, at \*2 (S.D. Fla. Oct. 22, 2015) (approving settlement  
2 providing for \$.50 to \$1.75 per unit for multi-bottle packs of beer, capped at \$50 per Settlement  
3 Class Household with proof of purchase or \$12 without proof of purchase). Furthermore, the  
4 Settlement Agreement also provides for injunctive relief. Settlement Agr. ¶¶ 78-79. Specifically,  
5 CBA has agreed to change the packaging on Kona Beers for at least four years to list where Kona  
6 Beers are brewed or list where a particular Kona Beer is brewed. Settlement Agr. ¶ 78. In  
7 addition, CBA’s general counsel, or a designee, will meet with CBA’s marketing department each  
8 year to review and comply with the terms of the Settlement. Settlement Agr. ¶ 78.

9 Accordingly, this factor weighs in favor of approval.

10 *f. Counsel’s experience*

11 The Court also considers “the experience and views of counsel.” *Hanlon*, 150 F.3d at  
12 1026. Class Counsel has extensive experience representing plaintiffs and classes in complex  
13 litigation and consumer class actions. Appr. Mot. at 17; *see* Peter Decl. ¶¶ 22-24. That Class  
14 Counsel advocate in favor of settlement weighs in favor of approval. *See Free Range Content,*  
15 *Inc.*, 2019 WL 1299504, at \*7 (“Class counsel’s views that the settlement is a good one is entitled  
16 to significant weight.”).

17 **C. Objections**

18 “[T]he absence of a large number of objections to a proposed class action settlement raises  
19 a strong presumption that the terms of a proposed class settlement action are favorable to the class  
20 members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation  
21 omitted). After receiving notice of the proposed settlement, the Settlement Class in this suit has  
22 been nearly silent. Of the more than 7 million potential Settlement Class Members who are  
23 estimated to have received notice, only two filed objections. The lack of objections here favors  
24 approval of the Settlement. *See, e.g., Churchill Village*, 361 F.3d at 577 (affirming settlement  
25 approval with 45 objections out of 90,000 notices); *Rodriguez v. W. Pub’g Corp.*, 563 F.3d 948  
26 (9th Cir. 2009) (affirming settlement approval with 54 objections out of 376,000 notices); *In re*  
27 *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043 (approving settlement with 3 objections out of  
28 57,630 notices).



1                   **D. Conclusion**

2                   For the foregoing reasons, and after considering the record as a whole, the Court finds that  
3 the notice of the proposed settlement was adequate, and the settlement is fair, adequate, and  
4 reasonable. Accordingly, Plaintiffs’ Motion for Final Approval of Settlement is GRANTED.

5                   **III. MOTION FOR ATTORNEYS’ FEES AND COSTS AND CLASS  
6 REPRESENTATIVE SERVICE AWARDS**

7                   Plaintiffs seek an award of attorney’s fees in the amount of \$2,570,026.41 pursuant to the  
8 California Consumers Legal Remedies Act (“CLRA”) and Cal Civ. Code § 1021.5, reimbursement  
9 of litigation expenses in the amount of \$329,973.59, and a service award of \$5,000 for each of the  
10 two class representatives. Fees Mot. 3-17. The Court also considers the reasonableness of the  
11 Settlement Administrator’s requested costs.

12                   **A. Attorneys’ Fees**

13                   **i. Legal Standard**

14                   “While attorneys’ fees and costs may be awarded in a certified class action where so  
15 authorized by law or the parties’ agreement, courts have an independent obligation to ensure that  
16 the award, like the settlement itself, is reasonable, even if the parties have already agreed to an  
17 amount.” *In re Bluetooth*, 654 F.3d at 941 (internal citations omitted). Courts utilize two methods  
18 for evaluating attorney fees: (1) the lodestar method; and (2) the percentage of recovery method.  
19 *See Hanlon*, 150 F.3d at 1029.

20                   Under the lodestar method, attorneys’ fees are “calculated by multiplying the number of  
21 hours the prevailing party reasonably expended on the litigation (as supported by adequate  
22 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”  
23 *In re Bluetooth*, 654 F.3d at 941. The lodestar figure is “presumptively reasonable” and may be  
24 increased or decreased by a multiplier that reflects factors such as “the quality of representation,  
25 the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk  
26 of nonpayment.” *Id.* at 942 (internal quotation marks omitted). The foremost consideration is the  
27 benefit obtained for the class. *Id.* “Thus, where the plaintiff has achieved ‘only limited success,’  
28 counting all hours expended on the litigation – even those reasonably spent – may produce an  
‘excessive amount,’ and the Supreme Court has instructed district courts to instead ‘award only

1 that amount of fees that is reasonable in relation to the results obtained.” *Id.* (quoting *Hensley v.*  
2 *Eckerhart*, 461 U.S. 424, 434-36 (1983)).

3 Under the percentage-of-recovery method, attorneys are awarded fees in the amount of a  
4 percentage of the common fund recovered for the class. *Id.* Courts applying this method  
5 “typically calculate 25% of the fund as the benchmark for a reasonable fee award, providing  
6 adequate explanation in the record of any special circumstances justifying a departure,” *id.*  
7 (internal quotation marks omitted), and “20-30% [i]s the usual range,” *Vizcaino v. Microsoft*  
8 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

9 **ii. Discussion**

10 “[W]here the authorization for fees is statutory, a lodestar and multiplier analysis with a  
11 percentage-of-the-fund cross-check is appropriate.” *Edwards v. Nat’l Milk Producers Fed’n*, No.  
12 11-CV-04766-JSW, 2017 WL 3616638, at \*7 (N.D. Cal. June 26, 2017); *see In re Online DVD-*  
13 *Rental Antitrust Litig.*, 779 F.3d at 949 (“One way that a court may demonstrate that its use of a  
14 particular method or the amount awarded is reasonable is by conducting a cross-check using the  
15 other method.”). The lodestar method is therefore appropriate here because the Settlement does  
16 not establish a common fund and consumer statutes at issue provide a basis in the law for an  
17 award of attorneys’ fees. *See In re Bluetooth*, 654 F.3d at 941 (“The ‘lodestar method’ is  
18 appropriate in class actions . . . , where the relief sought – and obtained – is often primarily  
19 injunctive in nature and thus not easily monetized.”).

20 Here, Plaintiffs seek \$2,570,026.41 in attorneys’ fees for 3,298.45 hours of work and a  
21 1.42 multiplier. Fees Mot. 1, 8-11. The Court addresses the reasonableness of Plaintiffs’ request  
22 below.

23 **a. Hourly rate**

24 When determining an attorney’s reasonable hourly rate, courts weigh the “experience,  
25 skill, and reputation of the attorney requesting fees,” and compare the requested rates to prevailing  
26 market rates of the relevant community. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11  
27 (9th Cir. 1986), *op. am. on denial of reh’g*, 808 F.2d 1373 (9th Cir. 1987); *see also Blum v.*  
28 *Stenson*, 465 U.S. 886, 895 n.11 (1984). The relevant community is typically the forum in which

1 the district court sits. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Here,  
 2 the relevant community is the Northern District of California. To determine the prevailing market  
 3 rate, courts may rely on attorney affidavits as well as “decisions by other courts awarding similar  
 4 rates for work in the same geographical area by attorneys with comparable levels of experience.”  
 5 *Trujillo v. Orozco*, No. 5:17-cv-00566-EJD, 2018 WL 1142311, at \*2 (N.D. Cal. Mar. 2, 2018);  
 6 *see also United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

7 Class Counsel submitted a detailed itemization of attorneys’ fees and costs. *See* Decl. of  
 8 Timothy J. Peter for Fees Mot. (“Peter Fees Decl.”) ¶¶ 17-22, ECF 121-1; Decl. of Aubry Wand  
 9 for Fees Mot. (“Wand Fees Decl.”) ¶¶ 14-23, ECF 121-6. Class Counsel’s hourly rates for  
 10 attorneys at Farqui & Faruqi LLP (“Farqui & Faruqi”) range from \$375 to \$400 per hour for  
 11 paralegals, \$400 to \$450 per hour for associates, and \$475 to \$825 per hour for partners, Peter  
 12 Fees Decl. ¶ 22; and Class Counsel’s hourly rate for the sole practitioner at The Wand Firm, P.C.  
 13 is \$600 per hour, Wand Fees Decl. ¶ 18. Class Counsel’s rates for the attorneys are reasonable  
 14 and comparable to the fees generally charged by attorneys with similar experience, ability, and  
 15 reputation for work on similar matters in this judicial district. *See, e.g., Superior Consulting*  
 16 *Servs., Inc. v. Steeves-Kiss*, No. 17-cv-06059-EMC, 2018 WL 2183295, at \*5 (N.D. Cal. May 11,  
 17 2018) (“[D]istrict courts in Northern California have found that rates of \$475 to \$975 per hour for  
 18 partners and \$300 to \$490 per hour for associates are reasonable.”); *Gutierrez v. Wells Fargo*  
 19 *Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at \*5 (N.D. Cal. May 21, 2015) (finding  
 20 reasonable rates for Bay Area attorneys of \$475 to \$975 for partners and \$300 to \$490 for  
 21 associates); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (finding no  
 22 abuse of discretion in awarding fees at 2008 hourly rates of \$875 for a partner and \$425 for a fifth-  
 23 year associate).

24 The Court finds, however, that Plaintiffs have not demonstrated that the hourly rates for  
 25 paralegals are reasonable. In the Northern District of California, the hourly rate for paralegals  
 26 ranges from \$80 to \$490 per hour. *See Hefler*, 2018 WL 6619983, at \*14 (finding hourly rate  
 27 ranging from \$245 to \$350 reasonable for paralegals, given blended hourly rate of \$406); *In re*  
 28 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC),

1 2017 WL 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (finding hourly rate of \$80 to \$490 for  
 2 paralegals reasonable, given blended hourly rate of \$529). Courts that award rates toward the  
 3 higher end of this range do so based on the experience of the paralegals. *See, e.g., Wilson v. Red*  
 4 *Robin Int'l, Inc.*, No. 17-CV-00685-BLF, 2018 WL 5982868, at \*3 (N.D. Cal. Nov. 14, 2018)  
 5 (finding hourly rates of \$120 to \$175 reasonable where paralegals had 5 to 13 years of paralegal  
 6 experience); *700 Valencia St. LLC v. Farina Focaccia & Cucina Italiana, LLC*, No. 15-CV-  
 7 04931-JCS, 2018 WL 783930, at \*4 (N.D. Cal. Feb. 8, 2018) (finding hourly rate of \$335 to \$350  
 8 per hour for paralegals with over 20 years of legal assistance reasonable, and \$335 reasonable for  
 9 paralegal with 10 years of experience); *Rodriguez v. Barrita*, 53 F. Supp. 3d 1268, 1279 (N.D.  
 10 Cal. 2014) (awarding \$175 for paralegal with “over a decade” of experience, and fees of \$135 for  
 11 a paralegal “with far less experience”); *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1085 (N.D. Cal.  
 12 2010) (awarding \$165 for paralegal with five years’ experience). Plaintiffs have not offered an  
 13 explanation for the paralegals’ requested rate. The Court, therefore, reduces the hourly rate for  
 14 paralegals to \$250. *See In re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2019 WL 1791420,  
 15 at \*9 (N.D. Cal. Apr. 24, 2019) (finding rate of \$150 and \$225 per hour for paralegals reasonable  
 16 given complexity of multi-district litigation); *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-  
 17 CV-04062-LHK, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017) (finding rate of \$290 per hour  
 18 for paralegal reasonable).

19 Plaintiffs seek compensation for 276.5 hours of paralegal hours committed to this case. At  
 20 the requested rates of \$375 and \$400 per hour, Plaintiffs seek \$103,800 in attorneys’ fees for the  
 21 work of paralegals. *See Peter Fees Decl.* ¶ 22. At the reduced rate of \$250 per hour, the lodestar  
 22 is \$69,125 in attorneys’ fees for the work of paralegals. Accordingly, the Court will reduce the  
 23 lodestar by \$34,675 – the difference between the fees requested based on the requested rates and  
 24 reduced rate.

25 *b. Reasonableness of hours*

26 The Court next considers the reasonableness of the hours expended. A court cannot  
 27 “uncritically” accept a plaintiff’s representations; rather, it must assess the reasonableness of the  
 28 hours requested. *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378, 1385 (9th Cir. 1984). In making

1 this determination, a court can reduce hours when documentation is inadequate, or when the  
 2 requested hours are redundant, excessive, or unnecessary. *Hensley*, 461 U.S. at 433-34. The  
 3 moving party bears the burden of providing relevant documentation. *Id.* at 433. Upon examining  
 4 the documentation, a court should then exclude from the initial lodestar calculation any hours that  
 5 are not reasonably expended. *Id.* at 434.

6 A court may adjust the lodestar amount upon consideration of twelve factors set forth in  
 7 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975), *abrogated on other grounds*  
 8 *by City of Burlington v. Dague*, 505 U.S. 557 (1992). These factors include the following:

9 (1) the time and labor required, (2) the novelty and difficulty of the question  
 10 involved, (3) the skill requisite to perform the legal service properly, (4) the  
 11 preclusion of other employment by the attorney due to acceptance of the case, (5)  
 12 the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations  
 13 imposed by the client or the circumstances, (8) the amount involved and the results  
 14 obtained, (9) the experience, reputation, and ability of the attorneys, (10) the  
 15 “undesirability” of the case, (11) the nature and length of the professional  
 16 relationship with the client, and (12) awards in similar cases.

17 *Delta City Drywall*, 2011 WL 13243837, at \*5 (citing *Kerr*, 526 F.2d at 69). When determining  
 18 whether to adjust fees, “[t]he district court should discuss only those *Kerr* factors that are relevant  
 19 to the court’s decision.” *Id.* (quoting *D’Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379,  
 20 1386 (9th Cir. 1990)) (internal quotation marks omitted).

21 Here, Class Counsel has submitted an itemized list of the attorney and paralegal hours  
 22 spent on investigating, prosecuting, and settling the Class’s claims, *see* Wand Fees Decl. ¶ 18;  
 23 Peter Fees Decl. ¶ 22; Peter Fees Decl., Ex. D (“Faruqi Fee Chart”), ECF 121-5, and Class  
 24 Counsel, after a request from the Court, supplemented this information for attorneys Benjamin  
 25 Heikali, Timothy Peter, and Aubry Wand, *see* Supp. Decl. of Aubry Wand (“Supp. Wand Decl.”),  
 26 ECF 148; Supp. Decl. of Timothy J. Peter (“Supp. Peter Decl.”), ECF 149; Supp. Decl. of  
 27 Benjamin Heikali (“Supp. Heikali Decl.”), ECF 150. Class Counsel seeks compensation for  
 28 3,558.55 hours of attorney and paralegal time committed to this case. Wand Fees Decl. ¶ 14; Peter  
 Fees Decl. ¶ 19; Supp Wand Decl. ¶ 11; Supp. Peter Decl. at 12-13; Supp. Heikali Decl. at 11-12.  
 The Court has independently reviewed these hours and finds them generally to be reasonable with  
 the following noted exceptions.

1 The billing records submitted by Plaintiffs show that three partner-level attorneys (Heikali,  
2 Peter, and Wand) performed most of the work on this case. The Court recognizes that Wand is a  
3 solo practitioner, but also that Faruqi & Faruqi has associates and paralegals. The Court makes  
4 the following reductions based on the reasonable time requested for tasks and based on the  
5 duplication of efforts among Heikali, Peter, and Wand.

6 Plaintiffs request fees for Heikali, Peter, and Wand based on the hours they spent on the  
7 following categories of work:

<u>Category of Work</u>	<u>Timothy Peter</u>	<u>Benjamin Heikali</u>	<u>Aubry Wand</u>
(1) Per-complaint investigations and complaints	49.4	59.5	79.5
(2) Case management documents and work	18	37.3	37.5
(3) Written discovery, document production and review, depositions, and expert work	144.6	110.7	446.6 <sup>1</sup>
(4) Opposition to motion to dismiss and reconsideration of motion to dismiss order	77.6	59.8	67.2
(5) Motion for class certification	30.5	78.5	177.9
(6) Opposition to Rule 23(f) petition	23.9	52.6	42.1
(7) Motion for preliminary approval of settlement	29.1	52.3	41.1
(8) Motion for attorney's fees and costs and service awards	10.6	14.3	23.3
(9) Motion for final approval of settlement	0	4.2	21.2
(10) Settlement efforts	68.5	106	81.8
(11) Communication with opposing counsel and third parties	6.5	16.4	40.5
(12) Client communication	1.2	8.5	38.2
(13) Travel time	24	30	28

1 In his summary chart, Wand states that he expended 451.6 hours on the third category; however, in his detailed chart Wand states that he only expended 446.6 hours on the third category. Supp. Wand Decl. ¶¶ 6, 8(c). The Court uses the total from the detailed chart as the hours Wand states he spent on each sub-category add up to 446.6 hours.

1	(14) Miscellaneous	2.7	3.5	67.9
2	(15) Post-September 2, 2019 work	75.5	89.5	95.1
3	<b>Total Hours per Attorney</b>	<b>568.1</b>	<b>723.1</b>	<b>1292.9</b>

4 See Supp. Peter Decl. ¶ 5; Supp. Heikali Decl. ¶ 5; Supp. Wand Decl. ¶ 6.

5 1. Category 1

6 For the first category of work (pre-complaint investigations and complaints), the Court  
7 finds that Plaintiffs seek an unreasonable amount of hours for Peter, Heikali, and Wand for routine  
8 tasks. Indeed, of the 232.4 hours spent on the pre-complaint investigations and complaints  
9 category of work, only 12% of those hours were expended by associates and paralegals. The  
10 Court, therefore, reduces the hours for these attorneys by 10 hours for Peter, by 15 hours for  
11 Heikali, and by 15 hours for Wand. Thus, the reduced hours for Peter is 39.4 hours, for Heikali is  
12 44.5 hours, and for Wand is 64.5 hours. Based on the requested hours of 49.4 hours for Peter,  
13 59.5 hours for Heikali, and 79.5 hours for Wand and the requested rates, Plaintiffs seek  
14 \$116,492.50 in fees for Peter, Heikali, and Wand. With the reduced hours of 39.4 hours for Peter,  
15 44.5 hours for Heikali, and 64.5 hours for Wand and the requested rates, the Court awards  
16 \$91,867.50 in fees for Peter, Heikali, and Wand. Accordingly, the Court reduces the lodestar by  
17 \$24,625 – the difference between the requested fees and the awarded fees.

18 2. Category 2

19 For the second category of work (case management documents and work), the Court finds  
20 that Plaintiffs seek compensation for a duplication of work. The Court, therefore, reduces the  
21 number of hours by 5 hours for Wand and 8 hours for Heikali. Thus, the reduced hours for  
22 Heikali is 29.3 hours and for Wand is 32.5 hours. Based on the requested hours of 18 hours for  
23 Peter, 37.3 hours for Heikali, and 37.5 hours for Wand and the requested rates, Plaintiffs seek  
24 \$56,547.50 in fees for Peter, Heikali, and Wand. Based on the reduced hours of 18 hours for  
25 Peter, 29.3 hours for Heikali, and 32.5 hours for Wand and the requested rates, the Court awards  
26 \$48,947.50 in fees for Peter, Heikali, and Wand. Accordingly, the Court reduces the lodestar by  
27 \$7,600 – the difference between the requested fees and the awarded fees.

## 3. Category 3

1 For the third category of work (written discovery, document production and review,  
2 depositions, and expert work), the Court finds that Plaintiffs seek compensation for an  
3 unreasonable amount of hours and for a duplication of work. For example, Peter, Heikali, and  
4 Wand together spent 706.9 hours of the 964.65 hours attorneys and paralegals spent on this  
5 category of work. Plaintiffs request 67.9 hours for Wand and 21.9 hours for Peter for time spent  
6 each attorney spent on document review. The Court finds that this amount is unreasonable and  
7 reduces this amount by 17.9 hours for Wand and 6.9 hours for Peter. Therefore, for document  
8 review, the Court will award Wand for 60 hours of work and Peter for 15 hours of work.

9 The Court also reduces the hours for Peter and Heikali for time they spent on Plaintiffs'  
10 depositions and expert depositions as it appears to be duplicative work. For Peter, Plaintiffs  
11 request 24.2 hours for time spent on Plaintiffs' depositions and 66.3 hours for time spent on expert  
12 depositions. The Court reduces this request by 12 hours for Plaintiffs' depositions and 26.3 hours  
13 for expert depositions. Thus, the Court will award Peter for 12.2 hours spent on Plaintiffs'  
14 depositions and for 40 hours spent on expert depositions. For Heikali, Plaintiffs request 25.2  
15 hours for time spent on Plaintiffs' depositions and 37.3 hours for time spent on expert depositions.  
16 The Court reduces this request by 12 hours for Plaintiffs' depositions and 17.3 hours for expert  
17 depositions. Thus, the Court will award Heikali for 13.2 hours spent on Plaintiffs' depositions and  
18 20 hours spent on expert depositions.

19 Accordingly, the reduced hours for the third category of work is as follows: 99.4 hours for  
20 Peter, 81.4 hours for Heikali, and 428.7 hours for Wand.

21 Based on the requested hours of 144.6 hours for Peter, 110.7 hours for Heikali, and 446.6  
22 hours for Wand and the requested rates, Plaintiffs seek \$432,832.50 in fees for Peter, Heikali, and  
23 Wand. Based on the reduced hours of 99.4 hours for Peter, 81.4 hours for Heikali, and 428.7  
24 hours for Wand and the requested rates, the Court awards \$373,605 in fees for Peter, Heikali, and  
25 Wand. Accordingly, the Court reduces the lodestar by \$59,227.50 – the difference between the  
26 requested fees and the awarded fees.  
27  
28



4. Category 4

1 For the fourth category of work (opposition to motion to dismiss and reconsideration of  
2 motion to dismiss order), the Court finds that the hours requested by Peter and Heikali are  
3 unreasonable. It appears that Wand spent 55.6 hours drafting the opposition to the motion to  
4 dismiss, while Peter spent 38.5 hours and Heikali spent 24 hours editing the opposition to the  
5 motion to dismiss. There is no need for two editors from Faruqi & Faruqi to spend a combined  
6 62.5 hours editing the draft opposition to the motion to dismiss, which is more time than Wand  
7 spent drafting the opposition brief. The Court, therefore, reduces the hours spent by Peter and  
8 Heikali on editing by 18 hours for Peter and by 24 hours for Heikali. Thus, the hours requested  
9 for the fourth category of work for Peter is 59.6 hours and for Heikali is 35.8 hours. Based on the  
10 requested hours of 77.6 hours for Peter, 59.8 hours for Heikali, and 67.2 hours for Wand and the  
11 requested rates, Plaintiffs seek \$129,025 in fees for Peter, Heikali, and Wand. Based on the  
12 reduced hours of 59.6 hours for Peter, 35.8 hours for Heikali, and 67.2 hours for Wand and the  
13 requested rates, the Court awards \$102,625 in fees for Peter, Heikali, and Wand. Accordingly, the  
14 Court reduces the lodestar by \$26,400 – the difference between the requested fees and the awarded  
15 fees.

5. Categories 5 through 14

16  
17 The Court has reviewed the hours expended on tasks listed in categories 5 through 14, and  
18 finds the number of hours spent on these categories of work to be reasonable. The Court awards  
19 the amounts requested in those categories based on the requested hours.

6. Category 15

20  
21 In their supplemental declarations, Peter, Heikali, and Wand also request fees for time  
22 spent on this case after September 2, 2019 – when Plaintiffs submitted their initial request for  
23 attorney fees and costs. *See* ECF 121. Peter seeks compensation for an additional 75.5 hours for  
24 an additional lodestar of \$52,850. Supp. Peter Decl. at 12-13. Heikali seeks compensation for an  
25 additional 89.5 hours for an additional lodestar of \$51,462. Supp. Heikali Decl. at 11-12. Wand  
26 seeks compensation for an additional 96.6 hours for an additional lodestar of \$57,060. Supp.  
27 Wand Decl. ¶¶ 11-13.  
28

1 The Court recognizes that Plaintiffs' counsel is required to attend to many final details in  
2 fully responding to the last controversies that arise in a class action settlement, but the hours  
3 requested appear duplicative and unnecessary given the descriptions of tasks performed. The  
4 Court, therefore, reduces the requested hours for work after September 2, 2019, by 25 hours for  
5 Peter, by 35 hours for Heikali, and by 40 hours for Wand. Thus, the reduced hours for work  
6 completed after September 2, 2019, is as follows: 50.5 hours for Peter, 54.5 hours for Heikali, and  
7 55.1 hours for Wand.

8 Based on the requested hours of 75.5 hours for Peter, 89.5 hours for Heikali, and 95.1  
9 hours for Wand and the requested rates, Plaintiffs seek \$161,372.50 in fees for Peter, Heikali, and  
10 Wand. Based on the reduced hours of 50.5 hours for Peter, 54.5 hours for Heikali, and 55.1 hours  
11 for Wand and the requested rates, the Court awards \$99,747.50 in fees for Peter, Heikali, and  
12 Wand. Accordingly, the Court reduces the lodestar by \$61,625 – the difference between the  
13 requested fees and the awarded fees.

14 *c. Lodestar calculation*

15 Based on the requested rates and hours, including the hours added in the supplemental  
16 declarations of Peter, Heikali, and Wand, Plaintiffs request a lodestar of \$2,025,176.25. Supp.  
17 Wand Decl. ¶ 13; *see* Fees Mot. 1; Supp. Peter Decl. at 12-13; Supp. Heikali Decl. at 11-12. The  
18 Court reduces the lodestar by \$34,675 based on the reduced hourly rate for paralegals; by \$24,625  
19 based on the reduced hours for the first category of work; by \$7,600 based on the reduced hours  
20 for the second category of work; by \$59,227.50 based on the reduced hours for the third category  
21 of work; by \$26,400 based on the reduced hours for the fourth category of work, and by \$61,625  
22 based on the fifteenth category of work. In total, then, the Court reduces the requested lodestar by  
23 \$214,152.50. The adjusted total lodestar is therefore \$1,811,023.75.

24 *d. Lodestar multiplier*

25 Plaintiffs request a 1.42 multiplier of their lodestar. At the outset, the Court notes that  
26 “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class  
27 action litigation.” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. Aug. 15,  
28 1995). Nevertheless, a multiplier of 1.42 is not appropriate here where partner-level attorneys

1 completed a substantial amount of the work on the case, and Class Counsel is already being  
2 overcompensated for their work – even with the reductions in hours this Court has already made.  
3 While Class Counsel displayed skill in achieving a significant benefit for the Class in this case,  
4 their skill has already been factored into their hourly rates. *See Quevedo v. New Albertsons, Inc.*,  
5 No. SACV131160JLSJPRX, 2015 WL 10939716, at \*6 (C.D. Cal. May 27, 2015) (“[W]hile [the]  
6 attorneys displayed skill in presenting this case, their skill is already factored into their hourly  
7 rates.”). Class Counsel is entitled to some multiplier, however, given the contingent nature of the  
8 fee award, the benefit they achieved for the Class, and financial resources they committed to  
9 prosecuting this case without any guarantee or reimbursement. Fees Mot. 15; Peter Fees Decl.  
10 ¶¶ 26-27; Wand Fees Decl. ¶¶ 24, 26. “It is an established practice in the private legal market to  
11 reward attorneys for taking the risk of non-payment by paying them a premium over their normal  
12 hourly rates for winning contingency cases.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19  
13 F.3d 1291, 1299 (9th Cir. 1994). Having considered the foregoing factors, the Court concludes  
14 that a 1.25 multiplier is sufficient to compensate Class Counsel for the risks they incurred and  
15 results they achieved.

16 The Court then multiplies the adjusted total lodestar of \$1,811,023.75 by the 1.25  
17 multiplier for a total fee award of \$2,263,779.69.

18 *e. Percentage cross-check*

19 Finally, as a cross-check, the percentage of recovery analysis confirms the reasonableness  
20 of the requested attorneys’ fees. Courts applying this method “typically calculate 25% of the fund  
21 as the benchmark for a reasonable fee award, providing adequate explanation in the record of any  
22 special circumstances justifying a departure.” *In re Bluetooth*, 654 F.3d at 942 (internal quotation  
23 marks omitted). The constructive fund to conduct this cross-check may include settlement  
24 administration costs, litigation expenses, and the allotment for attorneys’ fees in its valuation of a  
25 constructive fund for its percentage of recovery cross-check analysis because this is the “total  
26 amount defendants were willing to spend to settle the case.” *In re Bluetooth*, 654 F.3d at 945  
27 (including allotment for attorneys’ fees, incentive awards, *cypres* award, and other fees in  
28 constructive common fund for percentage of recovery cross-check); *see Corzine v. Whirlpool*

1 *Corp.*, No. 15-CV-05764-BLF, 2019 WL 7372275, at \*12 (N.D. Cal. Dec. 31, 2019) (including  
2 attorneys' fees, costs, and incentive award in valuation of settlement for cross-check purposes); *In*  
3 *re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 953 ("The district court did not abuse its  
4 discretion in calculating the fee award as a percentage of the total settlement fund, including notice  
5 and administrative costs, and litigation expense.").

6 Moreover, "Ninth Circuit precedent requires courts to award class counsel fees based on  
7 the total benefits being made available to class members rather than the actual amount that is  
8 ultimately claimed." *Patel v. Trans Union, LLC*, No. 14-CV-00522-LB, 2018 WL 1258194, at \*6  
9 (N.D. Cal. Mar. 11, 2018); *accord Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB,  
10 2015 WL 758094, at \*5 (N.D. Cal. Feb. 20, 2015); *see Stern v. Gambello*, 480 F. App'x 867, 870  
11 (9th Cir. 2012) ("[N]or was it error to consider, in cross-checking the fees against the recovery, the  
12 potential recovery rather than the claims actually made."); *Williams v. MGM-Pathe Commc 'ns*  
13 *Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) ("We conclude that the district court abused its  
14 discretion by basing the fee on the class members' claims against the fund rather than on a  
15 percentage of the entire fund or on the lodestar."). *But see Reyes v. Bakery & Confectionery*  
16 *Union & Indus. Int'l Pension Fund*, 281 F. Supp. 3d 833, 860 (N.D. Cal. 2017) (basing fee award  
17 on "the actual value of the common fund"). That is, the amount of the constructive fund against  
18 which the Court compares the lodestar method is based on the gross value of the settlement – not  
19 the net value.

20 The Ninth Circuit has made clear, however, that "because of the danger that parties will  
21 overestimate the value of injunctive relief in order to inflate fees, courts must be particularly  
22 careful when ascribing value to injunctive relief for purposes of determining attorneys' fees, and  
23 avoid doing so altogether if the value of the injunctive relief is not easily measurable." *Roes, I-2*  
24 *v. SFBSMgmt., LLC*, 944 F.3d 1035, 1055 (9th Cir. 2019); *see Staton v. Boeing Co.*, 327 F.3d  
25 938, 974 (9th Cir. 2003) ("Precisely because the value of injunctive relief is difficult to quantify,  
26 its value is also easily manipulable by overreaching lawyers seeking to increase the value assigned  
27 to a common fund."). Indeed, the Ninth Circuit has held "that only in the unusual instance where  
28 the value to individual class members of benefits deriving from injunctive relief can be accurately

1 ascertained may courts include such relief as part of the value of a common fund for purposes of  
2 applying the percentage method of determining fees.” *Staton*, 327 F.3d at 974. Here, because the  
3 value of injunctive relief is not easy to quantify, the Court does not consider the estimated value of  
4 injunctive relief, which is estimated to be between \$24 and \$52 million, in its percentage of  
5 recovery analysis. Boedeker Decl. ¶ 18.

6 Thus, in conducting this percentage of recovery cross-check, the Court will compare the  
7 requested fees to the sum of the amount of potential recovery, settlement administration costs,  
8 litigation expenses, and allotment for attorneys’ fees. Because of the uncapped nature of the  
9 claims process, it is difficult to estimate the amount of potential recovery. A conservative estimate  
10 for cross-check purposes is \$10 million: CBA had the “unconditional right, but not the obligation,  
11 to terminate th[e] Settlement Agreement” if more than 1 million claims were filed and the  
12 maximum recovery for those Claim Forms without proof of purchase was \$10. Settlement Agr.  
13 ¶ 77(d). The total constructive fund is thus \$13,295,000, which includes \$10 million in potential  
14 recovery, \$395,000 for settlement administration costs, and \$2,900,000 in attorneys’ fees and  
15 litigation costs. Fees Mot. 12-13. The Court’s award of \$2,263,779.69 in attorneys’ fees  
16 represents 17% of the value of the Settlement. As this is less than the Ninth Circuit’s 25%  
17 benchmark, *see In re Bluetooth*, 654 F.3d at 942, the Court finds that Plaintiffs’ request for  
18 attorneys’ fees in the amount of \$2,263,779.69 is reasonable. Even if the Court were to consider  
19 the claims to be valued only at \$7 million, the fee request would still fall within the Ninth Circuit  
20 benchmark.

21 *f.* Conclusion

22 Based on the record, the Court approves an award of attorneys’ fees in the amount of  
23 \$2,263,779.69.

24 **B. Litigation Expenses**

25 Plaintiffs seek \$329,973.59 in litigation expenses, and the Court is satisfied with Plaintiffs’  
26 request for litigation expenses. An attorney is also entitled to “recover as part of the award of  
27 attorney’s fees those out-of-pocket expenses that would normally be charged to a fee paying  
28 client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation

1 omitted). Class Counsel have submitted an itemized list of expenses by category of expenses  
2 incurred. *See* Wand Fees Decl. ¶ 26; Peter Fees Decl. ¶ 27; Fees Mot. 14-15. The Court has  
3 reviewed the list and finds the expenses to be reasonable. Accordingly, the Court approves an  
4 award in the requested amount of \$329,973.59.

### 5 C. Service Award

6 Plaintiffs request a service award in the amount of \$5,000 for each of the two class  
7 representatives. Service or incentive awards “are discretionary . . . and are intended to compensate  
8 class representatives for work done on behalf of the class, to make up for financial or reputational  
9 risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a  
10 private attorney general.” *Rodriguez*, 563 F.3d at 958-59 (internal citation omitted). “Incentive  
11 awards typically range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D.  
12 245, 267 (N.D. Cal. 2015). Service awards as high as \$5,000 are presumptively reasonable in this  
13 district. *See, e.g., Camberis v. Ocwen Loan Serv. LLC*, Case No. 14-cv-02970-EMC2015 WL  
14 7995534, at \*3 (N.D. Cal. Dec. 7, 2015).

15 Here, each class representative expended considerable effort on behalf of the class. For  
16 example, the class representatives actively participated in the litigation over the past two years,  
17 provided information for the complaints and other pleadings, regularly communicated with Class  
18 Counsel for two years to obtain a settlement, reviewed and responded to written discovery,  
19 produced documents, prepared and sat for depositions, and reviewed and approved the proposed  
20 settlement. *See* Fees Mot. 16-17; Broomfield Decl. ¶¶ 5-6; Zimmer Decl. ¶¶ 5-6. Moreover, each  
21 class representative put their name on the complaint, which received media coverage. Fees  
22 Mot. 16; Peter Fees Decl. ¶ 30. Given the time and assistance the class representatives put into the  
23 case and the success of the recovery, a service award in the amount of \$5,000 is reasonable. *See*  
24 *Hayes v. MagnaChip Semiconductor Corp.*, No.14-cv-01160-JST, 2016 WL 6902856 at \*10 (N.D.  
25 Cal. Nov. 21, 2016) (noting \$5,000 service awards are presumptively reasonable in the Ninth  
26 Circuit); *In re Am. Apparel S’holder Litig.*, No. CV 10-06352 MMM, 2014 WL 10212865, at \*34  
27 (C.D. Cal. July 28, 2014) (awarding service award of \$6,600 in securities class action).

28 The Court concludes that the requested \$5,000 award for each of the two class

1 representatives is appropriate in this case.

2 **D. Settlement Administrator Costs**

3 The Court also holds that it is appropriate to award CPT its costs. The Agreement  
4 contemplates that “CBA shall pay the Settlement Notice and Administration Costs, which are  
5 currently estimated to be \$395,000.” Settlement Agr. ¶ 72. As of October 25, 2019, CPT’s costs  
6 total \$407,601.89, Sarich Decl., Ex. J, ECF 138-10; Appr. Mot. 8, and CBA has already paid CPT  
7 \$180,950, *see* Sarich Decl. ¶ 33. Given the somewhat complex nature of the allocation plan, the  
8 Court approves the awarding of costs to CPT in an amount not to exceed \$395,000.

9 **IV. OBJECTIONS**

10 Two objections were filed. “An objector to a proposed settlement agreement bears the  
11 burden of proving any assertions they raise challenging the reasonableness of a class action  
12 settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 583 (N.D. Cal. 2015) (citing  
13 *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990). The Court address each objection in  
14 turn.

15 **A. The Orr Objection**

16 Mr. Orr filed his objection on October 7, 2019, and argues that the Settlement Agreement  
17 should not be approved because the settlement website is not compliant with the Americans with  
18 Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and therefore “the settlement prevent[ed]  
19 numerous handicapped people from proper access.” Orr Obj. ¶¶ 2, 7, 24, ECF 134. Specifically,  
20 Mr. Orr argues that he is visually impaired and uses screen reader software to read and navigate  
21 websites. Orr. Obj. ¶ 1. Mr. Orr argues that the settlement website was not compatible with his  
22 screen reader software, or other access-related technologies, and therefore he was not able to  
23 submit a claim online. Orr Obj. ¶¶ 3-5. He was, however, able to submit a claim via mail with  
24 “extensive help from non-handicapped persons.” Orr. Obj. ¶ 8. Mr. Orr, furthermore, argues that  
25 he sent a letter to the Settlement Administrator regarding these accessibility problems, and the  
26 Settlement Administrator neither responded nor corrected the problems.<sup>2</sup> Orr Obj. ¶¶ 20-23.

27 \_\_\_\_\_  
28 <sup>2</sup> Class Counsel and CPT have both represented that they have no record of communications from  
Mr. Orr. *See* Orr Resp. 3-4.

1 Plaintiffs submitted a response to the Orr Objection, arguing that the settlement website  
2 does not fall within the purview of the ADA, the settlement website implements reasonable  
3 modifications to provide effective communication with visually impaired persons, and, even if the  
4 settlement website needed to comply with the ADA and assuming it did not, the Settlement  
5 Agreement should still be finally approved. Pls.’ Resp. to Orr Obj. (“Orr Resp.”) 1-5, ECF 141.

6 “The ADA as a whole is intended to provide a clear and comprehensive national mandate  
7 for the elimination of discrimination against individuals with disabilities.” *Robles v. Domino’s*  
8 *Pizza, LLC*, 913 F.3d 898, 904 (9th Cir. 2019) (internal quotation marks omitted). Accordingly,  
9 the ADA provides that “[n]o individual shall be discriminated against on the basis of disability in  
10 the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or  
11 accommodations of any place of public accommodation by any person who owns, leases (or leases  
12 to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). The ADA goes on to  
13 list “private entities [that] are considered public accommodations . . . if the operations of such  
14 entities affect commerce.” *Id.* § 12181(7) (listing, for example, inns, motels, restaurants,  
15 museums, places of education, sales or rental establishments, and places of exercise or recreation  
16 as places of public accommodation). In addition, “the ADA mandates that places of public  
17 accommodation . . . provide auxiliary aids and services to make visual materials available to  
18 individuals who are blind.” *Robles*, 913 F.3d at 905. Therefore, websites of places of public  
19 accommodations must comply with the ADA because the “inaccessibility of [a place’s] website  
20 . . . impedes access to the goods and services of [the place of public accommodation].” *Id.*  
21 (holding that website for Domino’s pizza must comply with ADA).

22 First, the settlement website is operated by CPT, and CPT, a settlement administration  
23 company, *see* Prelim. Appr. Order ¶ 10, is not an entity that is an enumerated place of public  
24 accommodation under the ADA.

25 Second, “the ADA only covers ‘actual, physical places where goods or services are open to  
26 the public, and places where the public gets those goods or services,’ [so] there ha[s] to be ‘some  
27 connection between the good or service complained of and an actual physical place.’” *Robles*, 913  
28 F.3d at 905 (quoting *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 113-14 (9th Cir.



1 2000). Here, CPT does not have a physical place that offers goods or services. Even if CPT has a  
2 physical office, Mr. Orr does not contest the accessibility of that physical office and the  
3 complained of website was not a good or service offered by CPT's physical office. *See Weyer*,  
4 198 F.3d at 114-15 (holding insurance company administering disability policy is not place of  
5 public accommodation under ADA because there was no nexus between the policy and insurance  
6 company's physical office); *id.* (finding context of ADA's definition of public accommodation  
7 "suggests that some connection between the good or service complaint of an actual physical  
8 place is required").

9 The Court notes that, even if the website were required to comply with the ADA, it likely  
10 met these requirements as the website contains a UserWay Website Accessibility Widget, which  
11 was implemented to increase compliance with the Web Content Accessibility Guidelines, the  
12 Authoring Tool Accessibility Guidelines, and the ADA. Orr Resp., Sarich Decl. ¶ 8, ECF 141-2.

13 Accordingly, the Court OVERRULES the Orr Objection.

#### 14 **B. The Lindberg Objection**

15 Mr. Lindberg filed his objection on October 7, 2019, and he states that he purchased at  
16 least 5 twelve-packs of Kona Beers during the Class Period, for which he submitted a Claim Form  
17 online. Lindberg Obj. 1. Mr. Lindberg appeared at the December 19, 2019 hearing by and  
18 through his counsel. Lindberg Obj. 1. Mr. Lindberg argues that the Court should not approve the  
19 Settlement Agreement based on the following objections: (1) the Settlement Agreement is not fair,  
20 reasonable or adequate because it does not permit Class Members residing in the same household  
21 to submit independent claims and because it releases the claims of persons in the same household  
22 who did not individually submit a claim; (2) the claims-made process requires an age certification  
23 that is incongruent with the Settlement Agreement's release of claims; (3) *Bluetooth* applies and  
24 all the *Bluetooth* factors are present; (4) Class Counsel and Plaintiffs cannot adequately represent  
25 the Settlement Class as required by Federal Rules of Civil Procedure 23(a)(4) and (g)(4); (5) Class  
26 Counsel have not provided unredacted evidence of the Settlement Agreement's value when  
27 compared to the Settlement Class's potential recovery at trial; (6) Plaintiffs are the primary  
28 beneficiaries of the settlement; (7) Class Counsel's attorneys fee request is excessive; (8) Class

1 Counsel requests costs to which they are not entitled; and (9) the Settlement Agreement violates  
2 Federal Rule of Civil Procedure 23(h). Lindberg Obj. 3-24. Mr. Lindberg also “requests the  
3 opportunity to depose and cross-examine any witness presenting evidence in support of the  
4 Settlement Agreement.” Lindberg Obj. 1.

5 Plaintiffs responded to the Lindberg Objection, contesting each reason Mr. Lindberg has  
6 put forth as to why the Court should not approve the Settlement Agreement. *See* Pls.’ Resp. to  
7 Lindberg Obj. (“Lindberg Resp.”), ECF 140.

8 At the outset, the Court notes that Mr. Lindberg’s objections raise questions that the Court  
9 would ordinarily raise itself. The Court never just accepts settlements and, in granting final  
10 approval of a settlement, the Court will put the settlement at issue through a rigorous analysis.  
11 Mr. Lindberg will not be rewarded for simply picking the low hanging fruit.

12 The Court now addresses each of Mr. Lindberg’s objections below.

13 **i. The household limit**

14 The Settlement Agreement states that “Settlement Class Members residing in the same  
15 household (i.e., the same mailing address) who each submit a Claim Form shall only be entitled to  
16 a collective payment of \$10 or \$20 per household, depending on whether Proof of Purchase is  
17 submitted.” Settlement Agr. ¶ 77. In addition, the Settlement Agreement provides that Releasing  
18 Parties (defined as “Plaintiffs, each Settlement Class Member that does not submit a timely and  
19 valid Request for Exclusion, and any Person claiming by or through such Settlement Class  
20 Member”) release CBA and other “Released Parties” from the “Released Claims.” Settlement  
21 Agr. ¶¶ 66-68, 120, 124-26.

22 Mr. Lindberg argues that the Settlement Agreement’s release is overbroad because the  
23 Settlement Agreement prevents two co-habiting class members from submitting independent  
24 claims – even though a household’s composition may change between the time of injury and  
25 submission of a Claim Form (up to six years later) – so a Class Member’s claims may be released  
26 even if they do not submit a claim. Lindberg Obj. 3. Plaintiffs respond that Mr. Lindberg does  
27 not have standing to object to the household limit because he is not harmed by household limit, all  
28 Class Members can submit a Claim Form regardless of whether they reside in the same household

1 as another Class Member, and the household limit is necessary and appropriate to deter fraud.  
2 Lindberg Resp. 1-3.

3 Mr. Lindberg does not have standing to object to the household limit. Objectors must  
4 establish Article III standing to object, which requires an injury, caused by the defendant, that is  
5 redressable. *See Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir. 2011). In the  
6 class action context, “the objecting class member must be ‘aggrieved’ by the [settlement  
7 provision].” *Id.* “If modifying the [settlement provision] would not ‘actually benefit the objecting  
8 class member,’ the class member lacks standing because his challenge to the [settlement  
9 provision] cannot result in redressing any injury.” *Id.* (quoting *Knisley v. Network Assocs., Inc.*,  
10 312 F.3d 1123, 1126 (9th Cir.2002)) (finding objector challenge fee award did not have standing);  
11 *see Wolford v. Gaekle (In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.)*, 33 F.3d 29, 30  
12 (9th Cir. 1994) (“Simply being a member of a class is not enough to establish standing. One must  
13 be an aggrieved class member.”).

14 While Mr. Lindberg has shown that he is a class member because he has been harmed by  
15 CBA’s conduct, he has not shown that he has been injured by the Settlement Agreement’s  
16 household limit provision such that modifying the household limit provision would redress any  
17 injury. *See Lindberg Obj.* at 3 (failing to explain how he was injured by household limit  
18 provision); *see also Custom LED, LLC v. eBay, Inc.*, No. 12-CV-00350-JST, 2014 WL 2916871, at  
19 \*6 (N.D. Cal. June 24, 2014) (“[T]o be an aggrieved class member, an individual must fall within  
20 the class definition and also must have been injured by the defendant’s conduct.”). In *Low v.*  
21 *Trump Univ., LLC*, the objector challenged the lack of opportunity to opt out at the settlement  
22 stage. 246 F. Supp. 3d 1295, 1305 (S.D. Cal. 2017), *aff’d*, 881 F.3d 1111 (9th Cir. 2018). The  
23 Court found that the objector did not have standing because the objector “ha[d] not shown how  
24 allowing for a further opportunity to opt out would redress any injury.” *Id.* As in *Low*, Mr.  
25 Lindberg has not shown how changing the household limit provision would address any injury.  
26 Indeed, it is not clear how Mr. Lindberg was injured by the household limit provision because Mr.  
27 Lindberg submitted a valid Claim Form and no other Claim Forms were submitted from the same  
28 address as Mr. Lindberg. Lindberg Resp., Decl. of Ani S. Sarich (“Sarich Obj. Decl.”) ¶¶ 3-4,

1 ECF 140-10; *see Glasser*, 645 F.3d at 1088 (“If modifying the fee award would not actually  
2 benefit the objecting class member, the class member lacks standing because his challenge to the  
3 fee award cannot result in redressing any injury.”); *Low*, 246 F. Supp. 3d at 1305; *Brown v. Hain*  
4 *Celestial Grp., Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880, at \*10 (N.D. Cal. Feb. 17, 2016)  
5 (finding objector lacks standing to challenge monetary relief element of settlement because  
6 objector has not showed how he was aggrieved by this element or how he would actually benefit  
7 from changing this part of the settlement). Mr. Lindberg, therefore, lacks standing to challenge  
8 the household limit provision.

9 Even if Mr. Lindberg had standing, the household limit provision does not mean that the  
10 Settlement Agreement is not fair, reasonable, or adequate. First, the household limit does not  
11 prevent co-habiting Class Members from submitting independent Claim Forms; rather, the  
12 provision only limits their amount of recovery. *See* Settlement Agr. ¶ 77 (“Settlement Class  
13 Members residing in the same household (i.e., the same mailing address) *who each submit a Claim*  
14 *Form* shall only be entitled to a collective maximum payment of \$10 or \$20 per household,  
15 depending on whether Proof of Purchase is submitted . . . .” (emphasis added)). Second, courts in  
16 this circuit have approved settlements with household caps as a means to prevent fraud. *See, e.g.,*  
17 *Woodard v. Labrada*, No. EDCV1600189JGBSPX, 2019 WL 6998775, at \*9 (C.D. Cal. Oct. 7,  
18 2019) (approving settlement with household limit provision); *Eashoo v. Iovate Health Scis.*  
19 *U.S.A., Inc.*, No. CV1501726BROPJWX, 2016 WL 6205785, at \*8 (C.D. Cal. Apr. 5, 2016)  
20 (same); *Fulford v. Logitech, Inc.*, Case No. 08-cv-2041-MMC (N.D. Cal. Mar. 5, 2010) at 10  
21 (overruling objection to household limit); *see also* Sarich Obj. Decl. ¶ 5.

22 Accordingly, the Court OVERRULES Mr. Lindberg’s objection as to the household limit  
23 provision.

24 **ii. Age certification requirement**

25 For a Claim Form to be valid, the Settlement Agreement requires claimants to “bear an  
26 attestation by the Settlement Class Member . . . that he/she was over 21 years old at the time of  
27 purchase(s) of the claimed Kona Beers.” Settlement Agr. ¶¶ 77(b), (c), 82. Because members of  
28 the Settlement Class are bound by the Settlement Agreement’s release regardless of age, Mr.

1 Lindberg argues that some claimants are unable to benefit from the Settlement Agreement because  
2 they must release their claims against CBA but are not able to submit a valid Claims Form, even if  
3 they were misled. Lindberg Obj. 4. In particular, Mr. Lindberg points to individuals who can  
4 legally purchase alcohol under the age of 21, such as those living in the U.S. Virgin Islands and  
5 Puerto Rico. Lindberg Obj. 4. Plaintiffs respond that the age certification requirement is  
6 necessary because the legal drinking age in all 50 states is 21, Mr. Lindberg lacks standing to  
7 challenge this provision, and no person in the U.S. Virgin Islands or Puerto Rico objected to this  
8 provision. Lindberg Resp. 4.

9 The Court agrees that Mr. Lindberg has not established that he has standing to challenge  
10 the age verification provision. Mr. Lindberg has not argued that he was under 21 years old at the  
11 time of purchase, nor has he argued that he was from the U.S. Virgin Islands or Puerto Rico.  
12 Therefore, it is not clear how Mr. Lindberg was harmed by the provision. Moreover, even if he  
13 was harmed, Mr. Lindberg has not shown that modifying the age certification provision will  
14 redress any such harm. *See Glasser*, 645 F.3d at 1088 (“If modifying the fee award would not  
15 actually benefit the objecting class member, the class member lacks standing because his  
16 challenge to the fee award cannot result in redressing any injury.”); *Low*, 246 F. Supp. 3d at 1305.

17 Even if Mr. Lindberg had standing, the Court finds that the Settlement Agreement is still  
18 fair, adequate, and reasonable. First, the age certification provision is necessary to ensure that  
19 only those who are legally allowed to purchase Kona Beers received compensation under the  
20 Settlement Agreement. *See Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 589 (2001) (“[E]very  
21 State prohibits the sale of alcohol to those under age 21.”)

22 Second, “the question whether a settlement is fundamentally fair within the meaning of  
23 Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the  
24 reviewing court.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012)); *see Mendoza v.*  
25 *Hyundai Motor Co., Ltd*, No. 15-CV-01685-BLF, 2017 WL 342059, at \*10 (N.D. Cal. Jan. 23,  
26 2017) (“It would not be fair to the class as a whole to set aside an otherwise fair settlement  
27 because it does not address unique and difficult to prove hardships suffered by only a few  
28 members of the class.”); *Hendricks*, 2016 WL 5462423, at \*6 (“That a more favorable result for

1 some Class Members could potentially have been reached is not a sufficient reason to reject an  
2 otherwise fair and reasonable settlement.” (internal quotation marks omitted)).

3 According to Plaintiffs, only 12 six-packs were sold in the U.S. Virgin Islands during the  
4 Class Period and only 17,253 six-packs were sold in Puerto Rico. Lindberg Resp. 4. Using U.S.  
5 census data, Plaintiffs estimated that only one 18- to 20-year-old in the U.S. Virgin Islands and  
6 five 18- to 20-year-olds in Puerto Rico were prevented from submitting valid Claim Forms due to  
7 the age certification requirement. Lindberg Resp. 4. Such an effect is therefore de minimis, and  
8 just because the Settlement Agreement does not provide a payout for every conceivable purchaser  
9 of Kona Beers does not make the Settlement Agreement unfair, inadequate, or unreasonable. *See*  
10 *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at \*9 (N.D.  
11 Cal. Sept. 13, 2011) (“The possibility that the Settlement does not provide for a payout to every  
12 conceivable accountholder who in some way may have been affected by the data breach does not  
13 establish that the Settlement is unfair or unreasonable.”).

14 The Court, therefore, OVERRULES Mr. Lindberg’s objection as to the age certification  
15 requirement.

16 **iii. Application of *Bluetooth* and the *Bluetooth* factors**

17 In *In re Bluetooth Headset Prod. Liab. Litig.*, the Ninth Circuit stated that “a settlement  
18 agreement . . . negotiated *prior* to formal class certification . . . must withstand an even higher  
19 level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required  
20 under Rule 23(e) before securing the court’s approval as fair.” 654 F.3d 935, 946 (9th Cir. 2011).  
21 “[C]ourts therefore must be particularly vigilant not only for explicit collusion, but also for more  
22 subtle signs,” such as when counsel receives a disproportionate amount of the settlement, the  
23 agreement has a clear sailing provision, or the fees not awarded revert back to defendants. *Id.*

24 Mr. Lindberg argues that all three *Bluetooth* factors are present, and therefore the Court  
25 should not approve the Settlement Agreement. Lindberg Obj. 5-10. First, Mr. Lindberg argues  
26 that Class Counsel receives a disproportionate amount of the total constructive settlement fund  
27 because Class Counsel is seeking \$2,570,026.41 in attorneys’ fees and CBA is only paying the  
28 Settlement Class a total of \$1,332,386.25. Lindberg Obj. 6-7; *see* Fees Mot. 1; Sarich Supp. Decl.

1 ¶ 12. Second, Mr. Lindberg argues that the Settlement Agreement contains a “clear sailing  
2 provision because CBA agrees not to object to Class Counsel’s request for attorneys’ fees if it is  
3 less than \$2,900,000. Lindberg Obj. 7-9. Lastly, Mr. Lindberg argues that the Settlement  
4 Agreement contains a “kicker clause” because any reduction in attorneys’ fees, costs, or incentive  
5 awards reverts back to CBA. Lindberg Obj. 9-10.

6 Plaintiffs counter that the *Bluetooth* analysis does not apply here because the Court already  
7 granted class certification and, in any event, the Settlement Agreement is not unfair or collusive  
8 under *Bluetooth*. Lindberg Resp. 6-9.

9 The Court agrees with Plaintiffs that it need not go through the *Bluetooth* analysis. As the  
10 Ninth Circuit has made clear, the “procedural burden” under Rule 23(e) “is more strict when a  
11 settlement is negotiated *absent* class certification.” *Allen*, 787 F.3d at 1224 (emphasis added); *see*  
12 *Bluetooth*, 654 F.3d at 946 (describing higher level of scrutiny for “settlement agreement . . .  
13 negotiated *prior* to formal class certification”). This is true even if the class certified prior to  
14 settlement is narrower than the class certified for settlement purposes. For example, in *Kumar v.*  
15 *Salov N. Am. Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898, at \*4 (N.D. Cal. July 7, 2017),  
16 *aff’d*, 737 F. App’x 341 (9th Cir. 2018), the settlement agreement was negotiated after the court  
17 certified a California class. For settlement purposes, the court certified a nationwide class. *Id.*  
18 The court, in overruling an objection that it should go through the *Bluetooth* analysis, stated that  
19 the analysis was not necessary because the California class was already certified, the court  
20 “undertook a thorough analysis of the evidence and claims in the context of the class certification  
21 motion,” and “[t]he nature of the claims and class certification factors do[] not differ significantly  
22 as between the California Class certified and the Nationwide Class in the settlement.” *Id.*

23 The same is true here. The Court previously certified two California classes prior to the  
24 Settlement Agreement: one for purchasers of any six-pack of Kona Beer during the Class Period,  
25 and the other for purchasers of any twelve-pack of Kona Beer during the Class Period. Class Cert.  
26 Order 36-37. In certifying these classes, the Court undertook a thorough analysis of the evidence  
27 and claims. *See* Class Cert. Order 7-36. The nature of the claims and the class certification  
28 factors, furthermore, do not differ significantly between the certified California classes and the

1 nationwide class in the Settlement. Therefore, the Court need not conduct a *Bluetooth* analysis.

2 Accordingly, the Court OVERRULES Mr. Lindberg's objection that the Settlement  
3 Agreement is unfair and collusive under *Bluetooth*.

4 **iv. Class Counsel's and Class Representatives' representation of the Settlement**  
5 **Class**

6 Mr. Lindberg argues that Class Counsel "rendered itself unable to adequately represent the  
7 Class as required by Federal Rule of Civil Procedure 23(g)(4)" by agreeing to the Settlement  
8 Agreement. Lindberg Obj. 10. Moreover, Mr. Lindberg argues that Plaintiffs "have shown  
9 themselves not to be trustworthy Class Representatives as required by Rule 23(a)(4)" and are  
10 inadequate representatives of the Settlement Class because they "allowed this money-grab to  
11 occur" and "[p]resumably . . . agreed to the collusive Settlement Agreement because they hope to  
12 be paid \$5,000 each." Lindberg Obj. 11. Mr. Lindberg then states that the Court "should  
13 reconsider its prior order granting certification of the California Class, deny final approval of the  
14 Settlement Agreement, and consider dismissing the case unless new class members *and new*  
15 *lawyers* seek to continue representing the Class in the fair manner that Rule 23 requires."  
16 Lindberg Obj. 11. Plaintiffs respond that Mr. Lindberg provides no authority to support his  
17 position and argue that the Court should dismiss "Mr. Lindberg's frivolous attempt to replace  
18 Plaintiffs and Class Counsel." Lindberg Resp. 10.

19 The Federal Rules of Civil Procedure require that class representatives "fairly and  
20 adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4), and that class counsel "fairly  
21 and adequately represent the interests of the class," Fed. R. Civ. P. 23(g)(4). Mr. Lindberg has  
22 not proved that either rule has been violated. *See In re LinkedIn*, 309 F.R.D. at 583 (placing  
23 burden on objector to prove any challenge to class action settlement). Mr. Lindberg relies on the  
24 *Bluetooth* factors for the proposition that the Settlement Agreement has "obvious indicia of self-  
25 dealing." Lindberg Obj. 10. As stated above, the *Bluetooth* analysis does not apply here and  
26 therefore those factors are not indicia of self-dealing as Mr. Lindberg argues, and Mr. Lindberg  
27 does not provide any additional evidence or support for his challenge to the adequacy of Class  
28 Counsel or Plaintiffs' representation.



1           Furthermore, Mr. Lindberg does not offer any legal support for his arguments, and the  
2 cases he cites are either inapposite or do not stand for the stated proposition. For example, Mr.  
3 Lindberg cites *Lobatz v. U.S. W. Cellular of Cal., Inc.*, for the proposition that “class counsel  
4 breached their fiduciary duty to the class when they ‘agreed to accept excessive fees and costs to  
5 the detriment of class plaintiffs.’” Lindberg Obj. 10 (quoting *Lobatz v. U.S. W. Cellular of Cal.,*  
6 *Inc.*, 222 F.3d 1142, 1147 (9th Cir. 2000)). The quote, however, is a summary of an objector’s  
7 argument, and the court concluded from this argument only that the objector had standing.  
8 *Lobatz*, 222 F.3d at 1147. Mr. Lindberg’s other cases are equally inapplicable, and Mr. Lindberg  
9 has not shown how they apply to the instant case. *See* Lindberg Obj. 10-12 (citing one Second  
10 Circuit case, one case from the Southern District of New York, and two cases from the Ninth  
11 Circuit without analysis); *see, e.g., Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir.  
12 2016) (in assessing whether Rule 23(b)(3)’s superiority requirement was met, stating that “[d]enial  
13 of certification was within the range of permissible decisions where it appeared that the intended  
14 result of the settlement was mass indifference, a few profiteers, and a quick fee to clever lawyers”  
15 (internal quotation marks omitted)).

16           Accordingly, the Court OVERRULES Mr. Lindberg’s objection as to the adequacy of  
17 Class Counsel and Plaintiffs’ representation.

18           **v. Evidence in support of Settlement Agreement**

19           Mr. Lindberg next argues that Class Members cannot make “an informed decision about  
20 whether they agree with [Class Counsel’s] estimate” that compensation from the Settlement  
21 Agreement exceeds the damages the Settlement Class may have received at trial because the  
22 evidence is “excessively redacted.” Lindberg Obj. 11. Specifically, Mr. Lindberg argues that Mr.  
23 Peter has not stated that “he has personal knowledge of [the] evidence” included in his declaration  
24 and it is “unlikely” his statements would be admissible at trial. Lindberg Obj. 11. In addition, Mr.  
25 Lindberg argues that Class Counsel is deceptive by not stating that the total recovery under the  
26 Settlement Agreement exceeds the likely recovery at trial. Lindberg Obj. 12. Therefore, Mr.  
27 Lindberg argues, Plaintiffs have not met their burden of proof that the Settlement is good for the  
28 Class because “they have not presented *any* evidence bearing on that consideration.” Lindberg

1 Obj. 12.

2 Plaintiffs oppose, arguing that Mr. Lindberg does not object to the compensation the  
3 Settlement provides, “Mr. Peter made his declaration under oath and swore to having personal  
4 knowledge of its contents,” Mr. Lindberg only speculates as to the size of total recovery, and Mr.  
5 Lindberg ignores how fairness of the settlement amount is evaluated and that the fact-finder could  
6 have determined that there was no price premium (thereby eliminating recovery at trial). Lindberg  
7 Resp. 10-11.

8 Mr. Lindberg only challenges the evidence used to support the value of the Settlement, and  
9 not the Settlement amount itself. The Court finds these challenges are without merit. First, Class  
10 Counsel submitted the declaration of economic expert Stefan Boedeker to support their valuation  
11 of the Settlement. *See* Decl. of Stefan Boedeker (“Boedeker Decl.”), ECF 121-9. In his  
12 declaration, Mr. Boedeker explains his analysis and methodology for calculating the average  
13 economic loss to consumers nationwide who purchased Kona Beer. Boedeker Decl. ¶ 8. Sales  
14 data, such as CBA’s actual and projected annual revenue, was redacted from the Boedeker  
15 Declaration. *See generally* Boedeker Decl. The Court allowed these narrowly tailored redactions  
16 because the “confidential and competitively sensitive information could be used to the  
17 disadvantage of [CBA].” ECF 124, at 2. As the Court previously found, these redactions are not  
18 excessive, as Mr. Lindberg argues, and the Settlement Class can make an informed decision about  
19 whether they agree with this estimate based on the publicly filed version of the Boedeker  
20 Declaration.

21 Second, Mr. Peter declared that he had personal knowledge of the information contained in  
22 his declaration and that he would be prepared to competently testify under oath if called as a  
23 witness. Peter Decl. ¶ 1; *see* Decl. of Timothy Peter for Prelim. Appr. of Settlement, ¶ 1,  
24 ECF 116; *see also* *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999, 1018 (9th Cir. 1990) (“That  
25 Rule 56(e)’s requirements of personal knowledge and competence to testify have been met may be  
26 inferred from the affidavits themselves.”).

27 Lastly, Mr. Lindberg speculates that the Settlement only provides for a fraction of the  
28 damages alleged in the First Amended Consolidated Class Action Complaint. Whether a

1 settlement is fair, however, does not depend on whether the Settlement exceeds the amount of  
 2 damages alleged in a complaint. Indeed, “[i]t is well-settled law that a cash settlement amounting  
 3 to only a fraction of the potential recovery will not per se render the settlement inadequate or  
 4 unfair.” *Officers for Justice*, 688 F.2d at 628; *accord Linney v. Cellular Alaska P’ship*, 151 F.3d  
 5 1234, 1242 (9th Cir. 1998); *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
 6 523, 527 (C.D. Cal. 2004).

7 Accordingly, the Court OVERRULES Mr. Lindberg’s objection as to the evidence  
 8 available to support the Settlement’s value.

9 **vi. Plaintiffs’ representation of Settlement Class**

10 The Settlement proposes that each Class Representative receive a \$5,000 service award.  
 11 Mr. Lindberg objects to these service awards because it allows Plaintiffs to receive more than 500  
 12 times what absent Class Members receive, and because the service awards are conditional in that  
 13 they are only paid if the Settlement is approved. Lindberg Obj. 12-13. Plaintiffs oppose, arguing  
 14 that \$5,000 service awards are presumptively reasonable in this district, there is no conflict  
 15 because the service awards are not conditioned on Plaintiffs’ approval of the Settlement, and Mr.  
 16 Lindberg’s challenge is misplaced because the relevant inquiry focuses on facts such as Plaintiffs’  
 17 time and effort devoted to the litigation and settlement. Lindberg Resp. 11-14.

18 The Court agrees with Plaintiffs. First, the service awards are not conditional as in  
 19 *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163-66 (9th Cir. 2013), and do not create a  
 20 conflict of interest. In *Radcliffe*, the service awards were conditioned on the representatives’  
 21 approval of the Settlement. *Id.* That is not the case here. *See* Settlement Agr. ¶¶ 113-14; *Sheikh*  
 22 *v. Tesla, Inc.*, No. 17-CV-02193-BLF, 2018 WL 5794532, at \*6 (N.D. Cal. Nov. 2, 2018) (finding  
 23 no *Radcliffe* conflict of interest where settlement contained no provision conditioning service  
 24 award on class representatives approving settlement). The payment of service awards is only  
 25 conditioned on the Court’s approval, Settlement Agr., ¶ 114, and therefore there is no conflict of  
 26 interest in providing Plaintiffs with service awards.

27 Second, the Ninth Circuit has approved settlements with service awards of \$5,000 where  
 28 the recovery of the individual class members is comparable or even less than is at issue here. *See*,

1 e.g., *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 942-43, 947-48 (approving \$5,000  
2 incentive awards where class members would receive roughly \$12 in gift cards or cash); *Sheikh*,  
3 2018 WL 5794532, at \*6 (overruling objection to service award because individual class members  
4 received only 0.5% to 5% of class representatives' \$4,800 incentive award). And, as stated above,  
5 Plaintiffs have devoted considerable time and effort to the litigation and settlement. *See*  
6 *Broomfield Decl.* ¶¶ 5-6; *Zimmer Decl.* ¶¶ 5-6.

7 Accordingly, the Court OVERRULES Mr. Lindberg's objection as to the service awards.

8 **vii. Attorneys' fees**

9 Next, Mr. Lindberg objects to the requested attorneys' fees. He argues for a net-based  
10 analysis; that is, Mr. Lindberg argues that Class Counsel should only receive 25% of the actual  
11 amount that the Settlement Class receives from the Settlement. Lindberg Obj. 14-16. In addition,  
12 Mr. Lindberg argues that "Class Counsel seeks a very large lodestar with minimal documentation"  
13 and that the injunctive relief is illusory. Lindberg Obj. 16-21.

14 Plaintiffs oppose and contend that the requested attorneys' fees are reasonable under the  
15 lodestar and percentage methods. Lindberg Resp. 13-18. Specifically, Plaintiffs argue that they  
16 have provided sufficient documentation, consideration of gross settlement is appropriate,  
17 consideration of the value of injunctive relief is appropriate, and, even if injunctive relief is not  
18 considered, the Settlement is still appropriate. Lindberg Resp. 13-18.

19 First, Mr. Lindberg argues that, in conducting the percentage of recovery cross-check, the  
20 Court should only consider the amount of money the Settlement Class actually receives – that is,  
21 Mr. Lindberg argues for a net-based analysis. Lindberg Obj. 14-16. Additionally, Mr. Lindberg  
22 argues that litigation expenses and Settlement Administrator fees should not be included in this  
23 analysis. Lindberg Obj. 14-16. According to Mr. Lindberg, using a gross analysis would  
24 encourage Class Counsel and CPT to inflate their costs and fees, which are not a benefit to the  
25 Settlement Class. Lindberg Obj. 15-16. The Court disagrees.

26 As stated above, the Ninth Circuit requires the Court to award attorneys' fees "based on  
27 total benefits being made available to class members rather than the actual amount that is  
28 ultimately claimed." *Patel*, 2018 WL 1258194, at \*6; *see Zepeda v. PayPal, Inc.*, No. C 10-1668

1 SBA, 2017 WL 1113293, at \*22 (N.D. Cal. Mar. 24, 2017) (“[T]here is no bright-line rule  
2 requiring that a court calculate a fee award based on a net settlement fund.”); *In re Carrier IQ,*  
3 *Inc., Consumer Privacy Litig.*, No. 12-MD-02330-EMC, 2016 WL 4474366, at \*6 (N.D. Cal. Aug.  
4 25, 2016) (“[T]he Ninth Circuit clearly allows basing the percentage method on the gross  
5 settlement fund.”). In calculating a constructive fund for percentage of recovery cross-check  
6 purposes, the Ninth Circuit and courts in this district have included attorneys’ fees, settlement  
7 administration costs, and litigation expenses. *See In re Online DVD-Rental Antitrust Litig.*, 779  
8 F.3d at 953; *In re Bluetooth*, 654 F.3d at 945. The Ninth Circuit, furthermore, has “repeatedly  
9 held ‘that the reasonableness of attorneys’ fees is not measured by the choice of the  
10 denominator.’” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 953 (quoting *Powers v.*  
11 *Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)).

12 Mr. Lindberg cites no authority for his argument that attorneys’ fees should not be  
13 included in the constructive fund, and the Court is not persuaded by Mr. Lindberg’s authority for  
14 excluding settlement administration costs. Lindberg Obj. 15-16. Mr. Lindberg only cites one case  
15 from this district, and he otherwise relies on cases from other circuits. In the case from this  
16 district, *Myles v. AlliedBarton Sec. Servs., LLC*, the district court relied on a Seventh Circuit case  
17 to conclude that the fees paid to the settlement administrator did not constitute a benefit to the  
18 class members. No. 12-CV-05761-JD, 2014 WL 6065602, at \*5 (N.D. Cal. Nov. 12, 2014). But,  
19 as Mr. Lindberg recognizes, “the Seventh Circuit *requires* a net-based analysis.” Fees Mot. 15.  
20 And, as the Seventh Circuit recognized, its position that settlement administrator costs should not  
21 be included conflicts with the position of the Ninth Circuit. *See Redman v. RadioShack Corp.*,  
22 768 F.3d 622, 630 (7th Cir. 2014). Accordingly, because the Court is bound by the Ninth Circuit,  
23 it does not follow the Seventh Circuit and includes settlement administration costs in its  
24 constructive fund valuation. *See Staton*, 327 F.3d at 975 (“We conclude that where the defendant  
25 pays the justifiable cost of notice to the class – but not, as here, an excessive cost – it is reasonable  
26 (although certainly not required) to include that cost in a putative common fund benefiting the  
27 plaintiffs for all purposes, including the calculation of attorneys’ fees.”). The Court, furthermore,  
28 does not find that Class Counsel inflated their litigation costs to increase their fees. Indeed, the

1 Court found that the requested attorneys' fees were reasonable under the lodestar method, which  
2 does not take into account litigation expenses.

3 Second, Mr. Lindberg argues that Class Counsel's lodestar is excessive, and any multiplier  
4 is not justified. Lindberg Obj. 16-18. Specifically, Mr. Lindberg argues that Class Counsel has  
5 not provided an explanation to justify the hours billed, Class Counsel cannot justify their rates and  
6 so the U.S. Attorney's Office Fee Matrix (the "Laffey Matrix") should be used, and Plaintiffs  
7 have not justified the application of a multiplier. Lindberg Obj. 16-18.

8 The Court disagrees. Per the Court's standing orders, Plaintiffs have provided charts  
9 summarizing the hours expended on the major tasks of the case, and, at the Court's request, Class  
10 Counsel also supplemented these charts with additional information. *See, e.g.* Peter Fees Decl.  
11 ¶¶ 17-22; Wand Fees Decl. ¶¶ 14-23; Supp. Wand Decl. ¶¶ 5-12; Supp. Peter Decl. at 2-13; Supp.  
12 Heikali Decl. at 2-12.<sup>3</sup> In addition, "[t]he Ninth Circuit has questioned the reliability of the Laffey  
13 matrix, describing it as an unreliable measure of fees, particularly for legal markets on the west  
14 coast." *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 899-900 (C.D. Cal. 2016); *see Prison*  
15 *Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010) ("[J]ust because the Laffey  
16 matrix has been accepted in the District of Columbia does not mean that it is a sound basis for  
17 determining rates elsewhere, let alone in a legal market 3,000 miles away. It is questionable  
18 whether the matrix is a reliable measure of rates even in Alexandria, Virginia, just across the river  
19 from the nation's capital.").

20 The Court, furthermore, finds that the multiplier of 1.25 in this case is fair and reasonable,  
21 as Class Counsel achieved a significant benefit for the class, litigated on a purely contingent basis,  
22 and committed substantial financial resources to prosecuting this case without a guarantee of  
23 reimbursement. Importantly, Class Counsel vigorously prosecuted this case through extensive  
24 motion practice, including a motion to dismiss, motion for class certification, a petition for  
25 permission to appeal the Class Certification Order, and an *en banc* petition for rehearing before the  
26 Ninth Circuit, which is currently stayed. Moreover, a multiplier of 1.25 is modest compared to

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27  
28 <sup>3</sup> The type of supplementation requested here is common and not made in response to or in  
consideration of Mr. Lindberg's objection.

1 other approved multipliers in similar cases in the Ninth Circuit that are often in the range of 2.0 to  
2 4.0.

3 Lastly, the Court does not address Mr. Lindberg's argument that injunctive relief is illusory  
4 because the Court did not consider the value of the injunctive relief in finding that Class Counsel's  
5 requested attorneys' fees are reasonable.

6 Accordingly, the Court OVERRULES Mr. Lindberg's objections as to Class Counsel's  
7 attorneys' fees.

8 **viii. Costs**

9 Next, Mr. Lindberg argues that Class Counsel seeks reimbursement for costs that are  
10 prohibited by California Code of Civil Procedure § 1033.5, and Mr. Lindberg argues that Mr.  
11 Boedeker's expenses for his declaration included in the Fees Motion are not reimbursable.  
12 Lindberg Obj. 21-22. Specifically, Mr. Lindberg argues that a \$6,757.73 expense from Farqui &  
13 Farqui and a \$630 expense from The Wand Law Firm are prohibited by § 1033.5(b). Lindberg  
14 Obj. 21. Plaintiffs oppose, arguing that they do not seek reimbursement for Mr. Boedeker's  
15 declaration, § 1003.5(b) does not apply, and, even if § 1033.5(b) does apply, the Court has the  
16 discretion to allow these costs. Lindberg Resp. 18-19.

17 First, Class Counsel do not seek reimbursement for any costs related to Mr. Boedeker's  
18 declaration in support of the Fees Motion. *See* Decl. of Timothy J. Peter for Lindberg Resp.  
19 ("Lindberg Peter Decl.") ¶ 8, ECF 140-1. Therefore, Mr. Lindberg's objection as to this expense  
20 is without merit.

21 Second, it appears that § 1033.5(b) does not apply, and Mr. Lindberg has provided no  
22 evidence to the contrary. "Since the awarding of costs here is procedural, not substantive, federal  
23 law governs." *Drumm v. Morningstar, Inc.*, 695 F. Supp. 2d 1014, 1027 (N.D. Cal. 2010); *see*  
24 *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1022 (9th Cir. 2003) ("An award  
25 of standard costs in federal district court is normally governed by Federal Rule of Civil Procedure  
26 54, even in diversity cases."); *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 984 (S.D. Cal. 2014)  
27 (same). Under Rule 23(h), the Court "may award reasonable attorney's fees and nontaxable costs  
28 that are authorized by law or the parties' agreement." And, under the Settlement Agreement, CBA

1 has agreed to pay “an award of attorneys’ fees and costs, including expert fees and costs, in an  
2 amount not to exceed \$2,900,000.00.” Settlement Agr. ¶¶ 106-10.

3 Accordingly, Plaintiffs may seek the requested costs. Therefore, the Court OVERRULES  
4 Mr. Lindberg’s objections to Plaintiffs’ request for costs.

5 **ix. Compliance with Rule 23(h)**

6 Finally, Mr. Lindberg argues that the Settlement Agreement “violates Federal Rules of  
7 Civil Procedure 23(h) by impermissibly delegating distribution of attorneys’ fees to the attorneys  
8 themselves without review by the Court or the Class.” Lindberg Obj. 22. Specifically, Mr.  
9 Lindberg relies on a Fifth Circuit case, *In re High Sulfar Content Gasoline Prods. Liabs. Litig.*,  
10 517 F.3d 220 (5th Cir. 2008), and a Third Circuit case, *Diet Drugs Prods. Liab. Litig.*, 401 F.3d  
11 143 (3d Cir. 2005), for his argument that the Settlement “relieves the Court of its responsibility to  
12 determine attorneys’ fees and allocates it to a group of attorneys who themselves have a large  
13 stake in the outcome of those proceedings.” Lindberg Obj. 22-23. Mr. Lindberg also argues that  
14 Class Counsel violates Rule 23(e) because Class Counsel has failed to disclose any fee splitting  
15 agreement as required by Rule 23(e). Lindberg Obj. 23.

16 Plaintiffs, on the other hand, argue that they do not violate Rule 23(e) or Rule 23(h)  
17 because neither requires the disclosure of a fee splitting arrangement between Class Counsel.  
18 Lindberg Resp. 19. Plaintiffs also distinguish the instant case from *In re High Sulfur* and *Diet*  
19 *Drugs*, and argue that they have complied with the requirements of Rule 23(e). Lindberg  
20 Resp. 19-20.

21 “In a certified class action, the court may award reasonable attorney’s fees and nontaxable  
22 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Rule 23(h)  
23 requires the following procedure for the award of attorneys’ fees:

- 24
- 25 (1) A claim for an award must be made by motion under Rule 54(d)(2),  
26 subject to the provisions of this subdivision (h), at a time the court  
27 sets. Notice of the motion must be served on all parties and, for  
28 motions by class counsel, directed to class members in a reasonable  
manner.
  - (2) A class member, or a party from whom payment is sought, may



1 object to the motion.

2 (3) The court may hold a hearing and must find the facts and state its  
3 legal conclusions under Rule 52(a).

4 (4) The court may refer issues related to the amount of the award to a  
5 special master or a magistrate judge, as provided in Rule  
6 54(d)(2)(D).

7 Fed. R. Civ. P. 23(h). In addition, under Rule 23(e)(3), “[t]he parties seeking approval must file a  
8 statement identifying any agreements made in connection with the proposal.” Fed. R. Civ.  
9 P. 23(e)(3).

10 In addition, “[f]ormal fee allocation is unnecessary . . . where a limited number of firms are  
11 involved and there is no indication of any disagreement among the firms regarding fee allocation.”  
12 *Edwards*, 2017 WL 3616638, at \*10; *see* Newberg on Class Actions § 15:23 (5th ed. 2019) (“Fee  
13 allocation procedures . . . may be unused in many cases involving but a few class counsel. It is  
14 typical in such cases that the lawyers can decide among themselves how to split the aggregate fee.  
15 If so, courts will tend to defer to that self-allocation and there is no need for formal judicial  
16 involvement.”).

17 Here, formal fee allocation is unnecessary as there are only two law firms involved, the  
18 amount of fees requested by each firm is well documented, and there is no indication of any  
19 disagreement between those firms regarding fee allocation. *See also Edwards*, 2017 WL 3616638,  
20 at \*10 (overruling objection “to an award of fees without an order allocating those fees among  
21 Plaintiffs’ counsel” for same reasons); *Presley v. Carter Hawley Hale Profit Sharing Plan*, No.  
22 C9704316SC, 2000 WL 16437, at \*2 (N.D. Cal. Jan. 7, 2000) (awarding aggregate fees to “be  
23 paid to [lead counsel] for distribution among Class Counsel in accordance with the terms of their  
24 agreement and the terms of the Agreement”).

25 This case is distinguishable from *In re High Sulfur*. In that case, the district court  
26 appointed a five-member Fee Committee to allocate the fee award among approximately 32 law  
27 firms and 79 attorneys. *In re High Sulfur*, 517 F.3d at 224. The Fifth Circuit found that “[f]or all  
28 practical purposes the five-member Fee Committee controlled the allocation of attorneys’ fees in  
this case,” and “the district court abdicated its responsibility to ensure that the individual awards

1 recommended by the Fee Committee were fair and reasonable.” *Id.* at 227. “Instead of closely  
2 scrutinizing the Fee Committee’s allocation, the court rubber-stamped the committee’s  
3 recommendation.” *Id.* at 229. In particular, the Fifth Circuit was concerned because the record  
4 offered little substantiation that the court actually reviewed the individual fee awards, the court set  
5 forth no factual findings to support its awards of individual attorneys’ fees, and the district court  
6 sealed the record for the ex parte hearing reviewing the fees. *Id.* at 229-30. The Fifth Circuit  
7 stated that “[i]t is one thing for all attorneys to come to an agreement about dividing up fees, and  
8 quite another for five attorneys to declare how an award will cover themselves and seventy-four  
9 other attorneys with no meaningful judicial supervision or review.” *Id.* at 234.

10 By contrast, the instant case involves only two law firms and a public record of each firm’s  
11 hours and billing rates. The Court’s hearing to review the requested fees was open to the public  
12 and on the record, and, unlike in *In re High Sulfur*, the hearing was not an ex parte hearing –  
13 which is “plainly unauthorized” – and objectors and attorneys were given notice and an  
14 opportunity to be heard. *Id.* at 231 (stating that Rule 23(h) permits, but does not require a hearing,  
15 and because a hearing was held, non-Fee Committee members were entitled to notice and an  
16 opportunity to be heard). The Court, furthermore, has closely scrutinized the motion for attorneys’  
17 fees. *See id.* (noting that Fifth Circuit has allowed allocation of fee award for distribution by  
18 counsel where court scrutinizes allocation of fee award); *Longden v. Sunderman*, 979 F.2d 1095,  
19 1099 (5th Cir. 1992) (“The district court acted well within its discretion in awarding an aggregate  
20 sum to the Susman Attorneys that was based on their collective efforts, leaving apportionment of  
21 that sum up to the Susman Attorneys themselves.”).

22 Mr. Lindberg’s reliance on Judge Ambro’s concurring opinion in *Diet Drugs*, a Third  
23 Circuit case, is similarly unavailing as that case dealt with 27 different law firms in a multi-district  
24 litigation case, and some of the law firms contested the fee distribution. *See* 401 F.3d at 167-68,  
25 172-73. As stated above, this case only involves two law firms and neither law firm objects to the  
26 fee distribution.

27 Lastly, Mr. Lindberg argues that there is a “probable violation” of Rule 23(e) because it is  
28 “unimaginable that the firms . . . do not have an agreement about whether and how much they

1 would be paid.” Lindberg Obj. 23. Mr. Lindberg, however, has not provided any evidence of an  
 2 agreement, *see In re LinkedIn User Privacy Litig.*, 309 F.R.D. at 583 (“An objector to a proposed  
 3 settlement agreement bears the burden of proving any assertions they raise challenging the  
 4 reasonableness of a class action settlement.” (internal quotation marks omitted)); he merely  
 5 speculates that such an agreement exists. Indeed, Class Counsel has stated that there are no other  
 6 agreements between Plaintiffs or Class Counsel and CBA. Peter Decl. ¶ 25.

7 Accordingly, the Court OVERRULES Mr. Lindberg’s objection as to the allocation of  
 8 attorneys’ fees. The Court will retain jurisdiction to adjudicate disputes relating to attorneys’ fees  
 9 that are raised within 90 days after the claims administrator provides the final report regarding the  
 10 disbursement of the settlement funds, by which time Class Counsel should have reached  
 11 agreement or realized that disputes exist and brought them before the Court.

12 **V. ORDER**

13 For the reasons discussed above,

- 14 (1) Plaintiff’s Motion for Final Approval of Class Action Settlement is GRANTED;  
 15 and  
 16 (2) Plaintiffs’ Motion for an Award of Attorneys’ Fees and Costs and Class  
 17 Representative Service Awards is GRANTED. Plaintiffs are awarded attorneys’  
 18 fees in the amount of \$2,263,779.69, costs and expenses in the amount of  
 19 \$329,973.59, and service awards for each of the two class representatives in the  
 20 amount of \$5,000.  
 21 (3) The Settlement Administrator costs are APPROVED in an amount not to exceed  
 22 \$395,000.

23 Without affecting the finality of this Order and accompanying Judgment in any way, the  
 24 Court retains jurisdiction over (1) implementation and enforcement of the Settlement Agreement  
 25 until each and every act agreed to be performed by the parties pursuant to the Settlement  
 26 Agreement has been performed; (2) any other actions necessary to conclude the Settlement and to  
 27 administer, effectuate, interpret, and monitor compliance with the provisions of the Settlement  
 28 Agreement; (3) all parties to this action and Settlement Class members for the purpose of

1 implementing and enforcing the Settlement Agreement; and (4) disputes relating to attorneys' fees  
2 that are raised within 90 days after the claims administrator provides the final report regarding the  
3 disbursement of the settlement funds.

4           Within 21 days after the distribution of the settlement funds and payment of attorneys'  
5 fees, the parties shall file a Post-Distribution Accounting in accordance with this District's  
6 Procedural Guidance for Class Action Settlements.

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8           **IT IS SO ORDERED.**

9 Dated: February 5, 2020



BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California

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