

1 **DOVEL & LUNER, LLP**  
 2 Simon Franzini (Cal. Bar No. 287631)  
 3 simon@dovel.com  
 4 Grace Bennett (Cal. Bar No. 345948)  
 5 grace@dovel.com  
 6 201 Santa Monica Blvd., Suite 600  
 7 Santa Monica, California 90401  
 8 Telephone: (310) 656-7066  
 9 Facsimile: (310) 656-7069  
 10 *Attorneys for Plaintiffs*

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ROGER BARR, ELISA MONTES DE  
 14 OCA, and GABRIELA FERNANDEZ,  
 15 each individually and on behalf of all others  
 16 similarly situated,

17 *Plaintiffs,*

18 v.

19 SELECTBLINDS LLC,

20 *Defendant.*

Case No. 2:22-cv-08326-SPG-PD

**Unopposed Notice of Motion and  
 Motion for Class Certification and  
 Preliminary Approval of Class Action  
 Settlement**

Date: October 25, 2023

Time: 1:30 p.m.

Dept: Courtroom 5C

Judge: Hon. Sherilyn Peace Garnett

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 25, 2023, at 1:30 p.m., in Courtroom  
3 5C of the United States District Court for the Central District of California, located at 350  
4 W. 1st Street, Los Angeles, California 90012, Plaintiffs Elisa Montes de Oca and Gabriela  
5 Fernandez will and hereby do move this Court for entry of an order:

6 1. Granting preliminary approval of the proposed class action settlement set  
7 forth in the Settlement Agreement (“Agreement”), attached as Exhibit 1;

8 2. Preliminarily certifying, for settlement purposes only, a settlement class in  
9 this matter that is comprised of:

10 All individual consumers who, during the Class Period, purchased one or more  
11 products from the SelectBlinds.com website for personal, family, or household  
12 purposes while residing in California.

13 3. Preliminarily appointing Plaintiffs Elisa Montes de Oca and Gabriela  
14 Fernandez as class representatives for settlement purposes;

15 4. Preliminarily appointing Dovel & Luner LLP as Class Counsel;

16 5. Preliminarily finding that the terms of the Settlement are fair, reasonable and  
17 adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure;

18 6. Approving that the proposed Notice Plan complies with the requirements of  
19 Rule 23 and due process, and that the Notice is to be sent to the Settlement Class  
20 Members as set forth in the Agreement and pursuant to the deadlines in the Agreement.

21 This Motion is based on this Notice of Motion and Motion for Class Certification  
22 and Preliminary Approval of Class Action Settlement; the Declarations of Simon Franzini,  
23 Elisa Montes de Oca, Gabriela Fernandez, and Steven Weisbrot (on behalf of Angeion  
24 Group), filed concurrently herewith, all supporting exhibits filed herewith, all other  
25 pleadings and papers filed in this action, and any argument or evidence that may be  
26 presented at the hearing in this matter. This Motion is unopposed by Defendant,  
27 SelectBlinds LLC.

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Dated: September 21, 2023

By: /s/ Simon Franzini  
Simon Franzini (Cal. Bar No. 287631)  
simon@dovel.com  
Grace Bennett (Cal. Bar No. 345948)  
grace@dovel.com  
DOVEL & LUNER, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, California 90401  
Telephone: (310) 656-7066  
Facsimile: (310) 656-7069  
*Attorneys for Plaintiffs*

**Table of Contents**

1

2 I. Introduction..... 1

3 II. Factual Background. .... 1

4 A. Plaintiffs’ allegations..... 1

5 B. Settlement negotiations and mediation..... 2

6 C. The Settlement. .... 3

7 1. Class Definition..... 3

8 2. Benefits to Settlement Class Members..... 4

9 3. Scope of the Release..... 6

10 4. Incentive Awards. .... 6

11 5. Attorneys’ Fees and Expenses..... 7

12 6. Notice and Administration. .... 7

13 III. The Settlement should be preliminarily approved..... 8

14 A. The Court should conditionally certify the Settlement Class..... 9

15 1. The Proposed Class is sufficiently numerous..... 9

16 2. There are questions of law and fact common to the class..... 9

17 3. Plaintiffs’ claims are typical to those of the Settlement Class. .... 11

18 4. Plaintiffs and proposed Class Counsel have fairly and

19 adequately represented the Class’s interests. .... 11

20 5. The conditional Class meets the requirements of Rule

21 23(b)(3)..... 13

22 B. The proposed Settlement is fundamentally fair, adequate, and

23 reasonable..... 15

24 1. The Agreement is the result of non-collusive arm’s length

25 negotiations..... 15

26 2. The Settlement provides excellent relief to the Settlement

27 Class, and falls well within the range of approval..... 17

28 3. The Settlement has no obvious deficiencies..... 21

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2  
3  
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16  
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19  
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23  
24  
25  
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27  
28

4. The Settlement Fund will be fairly distributed amongst  
Settlement Class Members.....23

C. The Court should approve the proposed notice plan.....24

IV. Conclusion.....25

**Table of Authorities**

**Cases**

*Abdullah v. U.S. Sec. Assocs., Inc.*,  
 731 F.3d 952 (9th Cir. 2013) ..... 10

*Abmed v. HSBC Bank USA*,  
 2019 U.S. Dist. LEXIS 104401 (C.D. Cal. June 21, 2019) ..... 24

*All Consumer & Reseller Actions (In re Volkswagen "Clean Diesel" Mktg., Sales Practices &  
 Prods. Liab. Litig.)*,  
 2016 U.S. Dist. LEXIS 99071 (N.D. Cal. July 26, 2016) ..... 15

*Allen v. Bedolla*,  
 787 F.3d 1218 (9th Cir. 2015) ..... 16

*Amchem Prods., Inc. v. Windsor*,  
 521 U.S. 591 (1997) ..... 9, 24

*Baker v. Seaworld Entm't, Inc.*,  
 2020 U.S. Dist. LEXIS 131109 (2020 WL 4260712) (S.D. Cal. July 24, 2020)..... 17

*Barbosa v. Cargill Meat Sols. Corp.*,  
 297 F.R.D. 431 (E.D. Cal. 2013) ..... 12, 14

*Bellinghausen v. Tractor Supply Co.*,  
 306 F.R.D. 245 (N.D. Cal. 2015) ..... 24

*Boyd v. Bechtel Corp.*,  
 485 F. Supp. 610 (N.D. Cal. 1979) ..... 21

*Briseño v. Henderson*,  
 998 F.3d 1014 (9th Cir. 2021) ..... 16

*Californians for Disability Rights, Inc. v. Cal. Dep't. of Transp.*,  
 249 F.R.D. 334 (N.D. Cal. 2008) ..... 12

*Chester v. TJX Cos.*,  
 2017 U.S. Dist. LEXIS 201121 (2017 WL 6205788) (C.D. Cal. Dec. 5, 2017) 10, 13, 18,  
 19

1 *Elder v. Hilton Worldwide Holdings, Inc.*,  
 2 2020 U.S. Dist. LEXIS 259476 (2020 WL 11762284) (N.D. Cal. Apr. 29, 2020)..... 19  
 3 *Hanlon v. Chrysler Corp.*,  
 4 150 F.3d 1011 (9th Cir. 1998) ..... 10, 11, 13  
 5 *Hesse v. Sprint Corp.*,  
 6 598 F.3d 581 (9th Cir. 2010) ..... 6  
 7 *In re Bluetooth Headset Prods. Liab. Litig.*,  
 8 654 F.3d 935 (9th Cir. 2011) ..... 22  
 9 *In re Hyundai and Kia Fuel Econ. Litig.*,  
 10 926 F.3d 539 (9th Cir. 2019) ..... 8  
 11 *In re MyFord Touch Consumer Litig.*,  
 12 2019 U.S. Dist. LEXIS 53356 (2019 WL 1411510) (N.D. Cal. Mar. 28, 2019)..... 16  
 13 *In re Omnivision Technologies, Inc.*,  
 14 559 F. Supp. 2d 1036 (N.D. Cal. 2007)..... 22  
 15 *In re Online DVD-Rental Antitrust Litig.*,  
 16 779 F.3d 934 (9th Cir. 2015) ..... 16, 23  
 17 *In re Tableware Antitrust Litig.*,  
 18 484 F. Supp. 2d 1078 (N.D. Cal. 2007)..... 8  
 19 *In re Wireless Facilities, Inc.*,  
 20 253 F.R.D. 607 (S.D. Cal. 2008) ..... 9  
 21 *Jacobo v. Ross Stores, Inc.*,  
 22 2018 U.S. Dist. LEXIS 248252 (2018 WL 11465299) (C.D. Cal. Dec. 7, 2018) ....10, 11,  
 23 14, 17, 18, 19  
 24 *Just Film Inc. v. Buono*,  
 25 847 F.3d 1108 (2017)..... 14  
 26 *Kouri v. Fed. Express Corp.*,  
 27 2023 U.S. Dist. LEXIS 84985 (C.D. Cal. Jan. 13, 2023)..... 8, 9, 22  
 28 *Larsen v. Trader Joe's Co.*,

1 2014 U.S. Dist. LEXIS 95538 (2014 WL 3404531) (N.D. Cal. July 11, 2014) .....21  
 2 *Martinez v. Knight Transp., Inc.*,  
 3 2023 U.S. Dist. LEXIS 51757 (2023 WL 2655541) (E.D. Cal. Mar. 24, 2023) .....22  
 4 *Maxin v. RHG & Co.*,  
 5 2018 U.S. Dist. LEXIS 26795 (2018 WL 9540503) (S.D. Cal. Feb. 16, 2018).....21  
 6 *McKnight v. Uber Techs.*,  
 7 2021 U.S. Dist. LEXIS 177957 (2021 WL 4205055) (N.D. Cal. Sep. 1, 2021)..... 19  
 8 *Morales v. Stevco, Inc.*,  
 9 2011 U.S. Dist. LEXIS 130604 (2011 WL 5511767) (E.D. Cal. Nov. 10, 2011)..... 16  
 10 *National Rural Tele. Coop. v. DIRECTV, Inc.*,  
 11 221 F.R.D. 523 (C.D. Cal. 2004)..... 17  
 12 *Navarrete v. Sprint United Mgmt. Co.*,  
 13 2021 U.S. Dist. LEXIS 40398 (2021 WL 4352903) (C.D. Cal. Mar. 2, 2021).....21  
 14 *Perks v. ActiveHours, Inc.*,  
 15 2021 U.S. Dist. LEXIS 57272 (N.D. Cal. Mar. 25, 2021)..... 15, 23, 24  
 16 *Rael v. Children's Place, Inc.*,  
 17 2020 U.S. Dist. LEXIS 13970 (2020 WL 434482) (S.D. Cal. Jan. 28, 2020)..... 11, 13, 20  
 18 *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*,  
 19 442 F.3d 741 (9th Cir. 2006) .....21  
 20 *Rodriguez v. W. Publishing*,  
 21 563 F.3d 948 (9th Cir. 2009) ..... 16  
 22 *Sanders v. LoanCare, LLC*,  
 23 2019 U.S. Dist. LEXIS 238757 (2019 WL 12340195) (C.D. Cal. Sept. 16, 2019).....22  
 24 *Satchell v. Fed. Express Corp.*,  
 25 2007 U.S. Dist. LEXIS 99066 (N.D. Cal. Apr. 13, 2007)..... 15  
 26 *SEB Inv. Mgmt. AB v. Symantec Corp.*,  
 27 335 F.R.D. 276 (N.D. Cal. 2020)..... 11  
 28 *Spann v. J.C. Penney Corp.*,



1 307 F.R.D. 508 (C.D. Cal. 2015)..... 10, 13, 14, 18, 22, 23

2 *Staton v. Boeing Co.*,

3 327 F.3d 938 (9th Cir. 2003) .....8, 12

4 *Stearns v. Ticketmaster Corp.*,

5 655 F.3d 1013 (9th Cir. 2011) ..... 13

6 *Villafan v. Broadspectrum Downstream Servs.*,

7 2021 U.S. Dist. LEXIS 249763 (N.D. Cal. Apr. 8, 2021).....9

8 *Wal-Mart Stores, Inc. v. Dukes*,

9 564 U.S. 338 (2011) ..... 10

10 *Williamson v. McAfee, Inc.*,

11 2017 U.S. Dist. LEXIS 15838 (N.D. Cal. Feb. 3, 2017) ..... 19

12 *Wolin v. Jaguar Land Rover N. Am., LLC*,

13 617 F.3d 1168 (9th Cir. 2010) ..... 11

14 *Xinfang Situ v. Leavitt*,

15 240 F.R.D. 551 (N.D. Cal. 2007)..... 10

16 **Statutes**

17 28 U.S.C. §§ 1712-1714..... 8

18 **Rules**

19 Fed. R. Civ. P. 23(a)(1)..... 9

20 Fed. R. Civ. P. 23(a)(2)..... 9

21 Fed. R. Civ. P. 23(a)(3)..... 11

22 Fed. R. Civ. P. 23(a)(4)..... 11

23 Fed. R. Civ. P. 23(b)(3) ..... 13, 14

24 Fed. R. Civ. P. 23(c)(2)(B) ..... 24

25 Fed. R. Civ. P. 23(c)(2)(B)(v)..... 14

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

27 **Treatises**

28 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, §11.27 (4th ed. 2002)..... 9

**Memorandum of Points and Authorities**

**I. Introduction.**

The Parties have reached a hard-fought class-wide resolution. The Settlement will provide approximately \$10 million in value to Settlement Class Members. And as discussed below, it meets all the criteria for preliminary approval under Rule 23(e)(1) and Ninth Circuit precedent. The Parties request that the Court preliminarily approve the Settlement, approve the proposed notice, preliminarily certify the Settlement Class, appoint Class Counsel and the Class Representatives, and schedule a Fairness Hearing.

**II. Factual Background.**

**A. Plaintiffs' allegations.**

Defendant, SelectBlinds LLC, sells custom blinds and shades through its website, SelectBlinds.com. First Amended Complaint (“Complaint” or “FAC”) ¶7. Plaintiffs Elisa Montes de Oca and Gabriela Fernandez are California residents who both purchased blinds from Defendant’s website for use in their homes. *Id.* ¶¶52-53. Plaintiffs allege that when they made their purchases, Defendant’s website advertised that the products had specific “regular” prices, but were advertised as on sale for a limited-time at a discount. *Id.* For example, Ms. Montes de Oca bought 13 sets of Classic Roman Shades that were advertised as being on sale—30% off, plus 20% off for orders over \$2,000—for a limited time. *Id.* ¶52. Similarly, Ms. Fernandez purchased six sets of 2” SelectWave Cordless Faux Wood Blinds that were advertised with at 30% off, plus another 15% off, and an additional 5% off. *Id.* ¶53. For both Plaintiffs, Defendant’s website published a regular price for the products alongside the discounted price. *Id.* ¶¶52-53. Plaintiffs allege that they, like other reasonable consumers, understood Defendant’s advertising to mean that “the Products had the published regular price, and that they were receiving a discount as compared to the regular price.” *Id.* ¶54.

Plaintiffs allege that these advertised prices and discounts were false and misleading. They allege that the sales were fake because Defendant’s products “are always advertised as on sale (at a purported discounted price) for a limited time.” *Id.* ¶34. And they allege

1 these “discounts always offer at least 30% off the ‘regular’ prices off all Products.” *Id.* ¶23.  
2 As a result, Plaintiffs allege, Defendant never actually sells its products at the listed regular  
3 prices, and consumers are not getting the advertised discounts. *Id.* ¶¶21-41, 46. In short,  
4 Plaintiffs allege that “[b]y listing fake regular prices and fake discounts, Defendant  
5 misleads consumers into believing that they are getting a good deal.” *Id.* ¶41.

6 Based on these allegations, this Action was filed on October 4, 2022.<sup>1</sup> Plaintiffs  
7 filed a First Amended Complaint on June 16, 2023. Plaintiffs allege violations of  
8 California’s False Advertising Law, Unfair Competition Law, and Consumer Legal  
9 Remedies Act, and state additional claims for breach of contract, breach of express  
10 warranty, and quasi-contract / unjust enrichment. *Id.* ¶¶77-146; Agreement §II(A).

11 Defendant has disputed, and continues to dispute, all material allegations of the  
12 Complaint. Agreement §§II(B), XI. Defendant expressly denies any liability or  
13 wrongdoing of any kind, and maintains that its advertising was accurate and lawful. *Id.*

#### 14 **B. Settlement negotiations and mediation.**

15 Settlement negotiations were arduous, contentious, and well-informed. Franzini  
16 Decl. ¶9; Agreement §II(C). The Parties began discussing early resolution of the case in  
17 December 2022, and agreed to a private mediation. Franzini Decl. ¶9. The Parties selected  
18 JAMS mediator Bruce Friedman and scheduled a mediation for April 19, 2023. *Id.*;  
19 Agreement §II(C). Prior to the mediation, the Parties negotiated and agreed to a stipulated  
20 protective order to facilitate the productive exchange of confidential materials before  
21 mediation. Franzini Decl. ¶9. The Parties then exchanged pertinent information regarding  
22 the allegations, and other information necessary for useful settlement discussions,  
23 including detailed sales records. Agreement §II(C). Plaintiffs’ counsel performed an  
24 extensive analysis of Defendant’s sales records, which were voluminous, and put together  
25 several damages models and financial analyses that it shared with Defendant. Franzini

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26 <sup>1</sup> This action was first filed by a different consumer, Roger Barr. Mr. Barr’s  
27 purchases are outside of the Class Period covered by the Settlement, and so he is not a  
28 member of the proposed Settlement Class. Mr. Barr’s claims will be dismissed in  
accordance with a separate individual settlement between Defendant and Mr. Barr.

1 Decl. ¶10. This process helped the Parties to prepare and exchange substantive mediation  
2 briefs setting forth the Parties' positions on liability and damages calculations. *Id.*;  
3 Agreement §II(C).

4 After exchanging mediation briefs and conducting separate pre-mediation  
5 conferences with the mediator, the Parties decided to postpone the mediation to allow for  
6 more information exchange. Franzini Decl. ¶10. The Parties rescheduled the mediation  
7 for June 20, 2023. *Id.* ¶9. Prior to the rescheduled mediation, the Parties conducted further  
8 informal discovery. This culminated in a pre-mediation presentation about Defendant's  
9 financials and sales records to the mediator and to Plaintiffs' counsel. *Id.* ¶10.

10 On June 20, 2023, the Parties participated in a full-day, in-person mediation in Los  
11 Angeles before Mr. Friedman. No settlement was reached at the mediation. In the weeks  
12 that followed, the Parties continued their negotiations with the help of the mediator.  
13 Those follow-up negotiations spanned five weeks. Franzini Decl. ¶11; Agreement §II(C).  
14 These negotiations ultimately resulted in a mediator's proposal which both sides accepted  
15 on July 26, 2023. Franzini Decl. ¶12. After the mediator's proposal was accepted, the  
16 Parties negotiated a long-form agreement. *Id.* The negotiation involved several back-and-  
17 forth redline drafts, which ultimately concluded on September 12, 2023. *Id.* The  
18 Agreement is attached this Motion as Exhibit 1.

19 The Parties did not reach agreement on attorneys' fees, costs, and service awards to  
20 the Plaintiffs (through the mediator) until after their negotiations regarding the direct  
21 benefits to the Settlement Class (again through the mediator) were completed. *Id.* ¶11. And  
22 at no point did the Parties negotiate any clear sailing provision—as discussed below,  
23 Defendant is free to challenge the amount of proposed Class Counsel's fee request. *Id.*;  
24 Agreement §III(H)(1).

## 25 **C. The Settlement.**

### 26 **1. Class Definition.**

27 The Settlement Class consists of all individual consumers who purchased one or  
28 more products from the SelectBlinds.com website for personal, family, or household

1 purposes while residing in California, during the Class Period. Agreement §1(DD).

2 **2. Benefits to Settlement Class Members.**

3 The Agreement requires SelectBlinds to pay approximately \$10,000,000 in direct  
4 benefits to the Settlement Class, notice and administration costs, incentive awards to the  
5 Plaintiffs as approved by the Court, and any award of attorneys' fees, costs, and expenses  
6 as approved by the Court. Agreement §§ III(E)(1), III(H)(1). Under the Agreement, the  
7 Settlement Class will receive approximately \$8,500,000 in direct benefits. *Id.* §III(E)(1). In  
8 addition, SelectBlinds will pay \$1,497,500 on top of those direct benefits to cover notice  
9 and administration costs; incentive awards; and attorneys' fees and costs. *Id.* §III(H)(1).

10 Cash and Credit Benefits. The Agreement requires SelectBlinds to make payments  
11 to each Settlement Class Member in one of two ways, at the Class Member's election. *Id.*  
12 §III(E)(1). Settlement Class Members can either: (1) file a claim and receive a cash  
13 payment equal to 12% of the total amount of purchases from SelectBlinds.com while a  
14 California resident during the Class Period; or (2) do nothing, and automatically receive  
15 the same amount (12% of the value of their total purchases) in the form of store credit  
16 that does not expire and can be used on any purchase on SelectBlinds.com. *Id.* §III(E)(1-  
17 4). In other words, Settlement Class Members can choose to receive payment in cash, or  
18 as SelectBlinds credit, but the value will be the same no matter the form. Defendant's  
19 purchase records show that the value of these benefits is approximately \$8,500,000. And  
20 the average amount each Class Member will receive is approximately \$75 (in cash or  
21 credit, depending on what they chose). *Id.* §III(E)(1); Franzini Decl. ¶14.

22 To receive their payment in cash, Settlement Class Members will fill out and submit  
23 a claim form online, or, if they prefer, mail the form to the Settlement Administrator.  
24 Agreement §III(F)(2). The Claim Form, which is attached as Exhibit C to the Agreement,  
25 will be conveniently available on the Settlement website. *Id.*; *id.* §IV(C). Settlement Class  
26 Members can choose to receive cash payments through an online service like PayPal, via a  
27 pre-paid Mastercard, or in the form of a physical check delivered by the Settlement  
28 Administrator. *Id.* §III(G)(3), Exhibit C (claim form explaining these payment options).

1           SelectBlinds credits will be automatically distributed to any Settlement Class  
2 Member who does not file a claim form. *Id.* §III(E)(2). To ensure that Settlement Class  
3 Members receive their credits promptly, Defendant will distribute the credits directly into  
4 users' SelectBlinds accounts. *Id.* If a Class Member does not have an active account, the  
5 Class Member will receive instructions to create an account via email, or, if the email is  
6 undeliverable, by first class mail. *Id.* Once a Class Member has created an account, the  
7 credit will be automatically deposited. *Id.* After the credit benefits have been deposited,  
8 SelectBlinds will send each Class Member an email to the email address associated with  
9 the account providing instructions on how to use it. *Id.*

10           Settlement credits do not expire and can be used toward any purchase on  
11 SelectBlinds' website (including any shipping and handling fees or taxes). *Id.* §III(E)(3).  
12 The credits can be combined with any other discount or offer. *Id.* Plus, if a Class  
13 Member's credit exceeds the total amount of their order, then any unused credit can be  
14 applied toward future purchases. *Id.* This ensures that each Class Member will be able to  
15 use their full benefit, whenever they want, including split across multiple transactions.

16           SelectBlinds will inform Class Members by email when their credit benefit is  
17 received. (This is on top of the formal notice that Class Members will receive from the  
18 Claims Administrator). *Id.* §III(E)(2). In addition, the credit will be applied automatically  
19 to the Class Member's account. This will ensure that Class Members know they received  
20 the benefit, and know how (and won't forget) to use it.

21           There are many items on SelectBlinds' website that cost far less than the average  
22 amount each Class Member will receive. Franzini Decl. ¶20. This means that Settlement  
23 Class Members who elect to receive credits will be able to use their credits without having  
24 to make any additional purchase. Plus, Class Members can elect to receive their benefit in  
25 cash, and the cash will be the same amount as the credit. So, no Class Member will be  
26 forced to make any purchase they don't want to receive their Settlement benefits.

27           Settlement Costs Fund. In addition to providing \$8,500,000 in Cash and Credit  
28 Benefits to the Settlement Class, SelectBlinds will make available \$1,497,500 to cover



1 notice and administration costs, incentive awards to the Plaintiffs as approved by the  
2 Court, and any award of attorneys' fees, costs, and expenses to proposed Class Counsel as  
3 approved by the Court. *Id.* §§III(E)(3), I(GG). This fund will be separate from and on top  
4 of the \$8,500,000 in benefits to Settlement Class Members. *Id.* §III(E)(1). So, the benefits  
5 received by Class Members under the Settlement will not be reduced to pay for attorneys'  
6 fees or costs.

### 7 **3. Scope of the Release.**

8 The Agreement calls for a narrowly tailored release of only those claims that "arise  
9 from the same facts and claims alleged" in the First Amended Complaint. *Id.* §III(D).  
10 Under the Agreement, Settlement Class Members retain their rights against Defendant to  
11 bring any claims disconnected from the facts and allegations in this lawsuit. This avoids  
12 inefficient and duplicative litigation while complying with Ninth Circuit precedent  
13 requiring that released claims be based on the "identical factual predicate." *Hesse v. Sprint*  
14 *Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).

### 15 **4. Incentive Awards.**

16 Plaintiffs' counsel intends to request modest service awards of \$2,500 for each of  
17 Ms. Montes de Oca and Ms. Fernandez, to compensate them for their service as class  
18 representatives. Agreement §III(H)(2); Montes de Oca Decl. ¶9; Fernandez Decl. ¶9;  
19 Franzini Decl. ¶17. Plaintiffs have both spent substantial time on this action. They both  
20 consulted on the drafting of, and reviewed, the First Amended Complaint. They both  
21 gathered and provided information, and responded to requests for information, during  
22 informal discovery. They provided information to proposed Class Counsel in the lead up  
23 to mediation, made themselves available by telephone during mediation, discussed the  
24 mediation and follow-up negotiations with counsel. And they have been diligent in  
25 responding to counsel, and have stayed informed of the status of the action, including  
26 settlement. Montes de Oca Decl. ¶8; Fernandez Decl. ¶8. The incentive awards will be  
27 paid from the Settlement Costs Fund and are subject to the Court's approval. Agreement  
28 §III(H)(2). The Settlement is not contingent on the Court granting the requested awards.

1 Agreement §III(H)(2).

2 **5. Attorneys’ Fees and Expenses.**

3 The Settlement Agreement permits Class Counsel to apply to the Court for its  
4 reasonable attorneys’ fees and expenses in an amount not to exceed \$1,497,500.  
5 Agreement §III(H)(1). This is less than 15% of the total settlement value (approximately  
6 \$10 million). As discussed below, this is much lower than the Ninth Circuit’s 25%  
7 benchmark for attorneys’ fees in class actions. Moreover, Class Counsel expects to  
8 request less than the full \$1,497,500 available, as those amounts must also cover notice  
9 and administration costs (estimated to be between \$63,990-74,000), as well as incentive  
10 awards to the Plaintiffs (\$5,000, if approved by the Court). Franzini Decl. ¶16; Agreement  
11 §III(H)(1). Proposed Class Counsel will apply for fees and costs in a separate motion.

12 **6. Notice and Administration.**

13 The Parties request that the Court appoint Angeion Group (“Angeion”) as  
14 Settlement Administrator. Franzini Decl. ¶23. The Parties selected Angeion after Plaintiffs  
15 solicited bids from multiple settlement administration services. *Id.* Angeion anticipates that  
16 administration will cost between \$63,990-74,000. Franzini Decl. ¶16; Weisbrot Decl. ¶30.

17 To effectuate the best possible notice, Defendant will provide Angeion with a Class  
18 List consisting of: (1) Class Members’ most recent email addresses associated with their  
19 SelectBlinds account or purchases; (2) the California shipping address associated with each  
20 Settlement Class Member’s most recent purchase to a California address; and (3) list of the  
21 purchases the Settlement Class Member made on SelectBlinds.com. Agreement §III(C).  
22 The Settlement Administrator will provide direct notice to all Settlement Class Members.  
23 *Id.* §IV(A-C); Weisbrot Decl. ¶31. Defendant has a recent email address for each Class  
24 Member, so the Parties anticipate that the vast majority of Class Members will receive  
25 notice via email. Franzini Decl. ¶25. For Class Members whose email notices returned as  
26 undeliverable, the Settlement Administrator will provide direct notice by via first class U.S.  
27 mail. Agreement §III(B); Weisbrot Decl. ¶24. In sum, the Parties anticipate that virtually  
28 all Settlement Class Members will receive direct notice. Franzini Decl. ¶25.



1 The Settlement Administrator will also create a Settlement Website, through which  
2 Settlement Class Members can submit a Claim Form electronically, and which will include  
3 detailed information concerning the Settlement. Agreement §III(C); Weisbrot Decl. ¶26.

4 Pursuant to CAFA and the Agreement, the Settlement Administrator will also serve  
5 notice in accordance with the requirements of 28 U.S.C. § 1715(b) within ten (10) days of  
6 the filing of this motion. Agreement §IV(E); Weisbrot Decl. ¶29. This Court has  
7 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) and CAFA, and the  
8 Settlement fully complies with CAFA (it does not provide for a recovery of coupons, does  
9 not result in a new loss to any Class Member, and does not provide greater relief to some  
10 Class Members on the basis of proximity to the Court). 28 U.S.C. §§ 1712-1714.

### 11 **III. The Settlement should be preliminarily approved.**

12 The Ninth Circuit recognizes a “strong judicial policy that favors settlements,  
13 particularly where complex class action litigation is concerned.” *In re Hyundai and Kia Fuel*  
14 *Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019). Under Rule 23(e), approving a class action  
15 settlement “requires a two-step process—a preliminary approval followed by a later final  
16 approval.” *Kouri v. Fed. Express Corp.*, 2023 U.S. Dist. LEXIS 84985 (2023 WL 3431288), at  
17 \*8 (C.D. Cal. Jan. 13, 2023) (Peace Garnett, J.). In the first stage here, the Court must  
18 determine whether a Rule 23 settlement class may be conditionally certified. *See Staton v.*  
19 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). And in the second, the Court considers  
20 whether a proposed settlement is “fundamentally fair, adequate, and reasonable.” *Id.* at  
21 959.

22 In making this second determination, courts consider whether a proposed  
23 settlement “appears to be the product of serious, informed, non-collusive negotiations,  
24 has no obvious deficiencies, does not improperly grant preferential treatment to class  
25 representatives or segments of the class, and falls within the range of possible approval.”  
26 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). But, a “court  
27 need not ask whether the proposed settlement is ideal or the best possible; it determines  
28 only whether the settlement is fair, free of collusion, and consistent with the named

1 plaintiffs' fiduciary obligations to the class." *Villafan v. Broadpectrum Downstream Servs.*,  
 2 2021 U.S. Dist. LEXIS 249763, at \*14 (N.D. Cal. Apr. 8, 2021). And, at the preliminary  
 3 approval stage, "the 'settlement need only be *potentially* fair, as the Court will make a final  
 4 determination of its adequacy at the hearing on Final Approval." *Kouri*, 2023 U.S. Dist.  
 5 LEXIS 84985 (2023 WL 3431288), at \*8 (Peace Garnett, J.) (emphasis in original).

6 Here, as explained below: (1) the proposed Settlement Class is cohesive and is fit  
 7 for conditional approval, and (2) the Settlement is fundamentally fair, adequate, and  
 8 reasonable. Thus, the Settlement warrants preliminary approval.

9 **A. The Court should conditionally certify the Settlement Class.**

10 "Parties may settle a class action before class certification and stipulate that a  
 11 defined class be conditionally certified for settlement purposes." *In re Wireless Facilities, Inc.*,  
 12 253 F.R.D. 607, 610 (S.D. Cal. 2008); see Herbert B. Newberg & Alba Conte, *Newberg on*  
 13 *Class Actions* ("Newberg"), §11.27 (4th ed. 2002). To conditionally certify a class, a court  
 14 must determine that the proposed Settlement Class satisfies the requirements of Rule  
 15 23(a) and at least one of the subsections of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521  
 16 U.S. 591, 620 (1997). Here, the proposed class meets all the requirements of Rule 23, and  
 17 the Court should conditionally certify the Settlement Class.

18 **1. The Proposed Class is sufficiently numerous.**

19 Rule 23(a)(1) is satisfied when the class is "so numerous that joinder of all members  
 20 is impracticable." Fed. R. Civ. P. 23(a)(1). "Although there 'is no numerical cutoff for  
 21 sufficient numerosity,' generally 40 or more members will satisfy the numerosity  
 22 requirement." *Kouri*, 2023 U.S. Dist. LEXIS 84985, at \*9. Here, the Settlement Class  
 23 consists of approximately 113,377 members. Franzini Decl. ¶15; Agreement §IV(A). This  
 24 more than satisfies Fed. R. Civ. P. 23(a)(1).

25 **2. There are questions of law and fact common to the class.**

26 Rule 23(a)(2) requires questions of law or fact common to the class. Fed. R. Civ. P.  
 27 23(a)(2). "This does not, however, mean that every question of law or fact must be  
 28 common to the class; all that Rule 23(a)(2) requires is a single significant question of law

1 or fact.” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013).

2 Common questions must be “capable of classwide resolution.” *Wal-Mart Stores, Inc.*  
3 *v. Dukes*, 564 U.S. 338, 359 (2011). In other words, common questions must have a  
4 common answer that “will resolve an issue that is central to the validity of each one of the  
5 claims in one stroke.” *Id.* Thus, commonality is “easily satisf[ied]” where class members  
6 “all base their claims on the same legal theory.” *Xinfang Situ v. Leavitt*, 240 F.R.D. 551, 560  
7 (N.D. Cal. 2007); *see Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 518 (C.D. Cal. 2015).

8 Here, Settlement Class Members’ claims all stem from the same factual  
9 circumstances and legal theories: all Class Members purchased purportedly discounted  
10 products from SelectBlinds.com for personal, family, or household purposes, while  
11 residing in California. FAC ¶¶77-146 (asserting uniform legal claims on behalf of all class  
12 members); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). As a result,  
13 there are numerous common questions of law and fact that will generate common  
14 answers for all Settlement Class Members. These include, but are not limited to: (1)  
15 whether Defendant’s advertising of sales and discount prices “was false or misleading  
16 within the meaning of the UCL, FAL or CLRA; (2) whether defendant made false  
17 statements in its advertisements; (3) whether defendant’s advertisements were likely to  
18 deceive a reasonable consumer; (4) whether defendant’s statements regarding its pricing  
19 were material to plaintiffs’ purchasing decisions; (5) how to calculate prevailing market  
20 price; (6) whether the regular price equaled the prevailing market price for the preceding  
21 90 days in defendant’s price-comparison advertising scheme,” and (7) “whether plaintiffs  
22 have suffered damages as a result of defendant's conduct.” *Spann*, 307 F.R.D. 508, 518  
23 (certifying class in fake discount case); *see Chester v. TJX Cos.*, 2017 U.S. Dist. LEXIS  
24 201121 (2017 WL 6205788), at \*14 (C.D. Cal. Dec. 5, 2017) (holding, in a fake discount  
25 case, “there is a common question of whether Defendants’ price comparison advertising  
26 resulted in deceptive price comparisons that were likely to deceive a reasonable  
27 consumer.”); *Jacobo v. Ross Stores, Inc.*, 2018 U.S. Dist. LEXIS 248252 (2018 WL 11465299),  
28 at \*18 (C.D. Cal. Dec. 7, 2018) (same).

1                   **3. Plaintiffs' claims are typical to those of the Settlement Class.**

2                   Rule 23(a)(3) requires the class representative's claims or defenses be "typical of the  
3 claims or defenses of the class[.]" Fed. R. Civ. P. 23(a)(3); see *Wolin v. Jaguar Land Rover N.*  
4 *Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). And this standard is "permissive,"—  
5 claims are typical if they are "reasonably co-extensive with those of absent class members;  
6 they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.

7                   Here, Plaintiffs' claims are typical of the Settlement Class. Both Ms. Montes de Oca  
8 and Ms. Fernandez allege that they, like all other Settlement Class Members, purchased  
9 products from Defendant's website and believed, based on Defendant's advertising, that  
10 they were receiving a discount and paying less than Defendant's regular prices. FAC ¶¶52-  
11 55. And, "[a]s with the other Members, Plaintiffs raise claims under UCL, FAL, and  
12 CLRA pertaining to [Defendant]'s pricing scheme." *Rael v. Children's Place, Inc.*, 2020 U.S.  
13 Dist. LEXIS 13970 (2020 WL 434482), at \*15 (S.D. Cal. Jan. 28, 2020) (finding typicality  
14 satisfied in a fake discount case where plaintiffs made similar allegations). Plus, "like other  
15 Class Members, Plaintiffs' primary injury is the loss of income from purchases made at  
16 [Defendant's website] as a result of [Defendant]'s false discounts." *Id.*; FAC ¶54.

17                   So, Plaintiffs' claims "arose from the same ... course of conduct that gave rise to  
18 the claims of other class members, thus satisfying the typicality requirement." *SEB Inv.*  
19 *Mgmt. AB v. Symantec Corp.*, 335 F.R.D. 276, 284 (N.D. Cal. 2020); see *Jacobo*, 2018 U.S.  
20 Dist. LEXIS 248252, at \*19 (typicality satisfied in fake discount case because the "named  
21 Plaintiffs' claims are premised on exactly the same practice as those of the absent  
22 Settlement Class Members: [Defendant]'s allegedly deceptive advertising in its U.S.  
23 stores.").

24                   **4. Plaintiffs and proposed Class Counsel have fairly and adequately**  
25 **represented the Class's interests.**

26                   Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately  
27 protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Courts measure adequacy using  
28 two standards: "(1) Do the representative plaintiffs and their counsel have any conflicts of

1 interest with other class members, and (2) will the representative plaintiffs and their  
2 counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327  
3 F.3d 938, 957 (9th Cir. 2003). “Adequate representation is usually presumed in the  
4 absence of contrary evidence.” *Californians for Disability Rights, Inc. v. Cal. Dep’t. of Transp.*,  
5 249 F.R.D. 334, 349 (N.D. Cal. 2008).

6 Here, as explained above, Plaintiffs have the same claims as all Settlement Class  
7 Members. *See* §III(A)(3). They have no separate or antagonistic interests to those of the  
8 Settlement Class, and have the same interest in recovering all available damages. Montes  
9 de Oca Decl. ¶7; Fernandez Decl. ¶7; *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 442  
10 (E.D. Cal. 2013). Plus, Ms. Montes de Oca and Ms. Fernandez have diligently assisted  
11 their counsel in litigating this dispute. Montes de Oca Decl. ¶8; Fernandez Decl. ¶8;  
12 Franzini Decl. ¶17. They both assisted counsel in the factual investigation necessary to file  
13 the Complaint, and provided facts concerning their own purchases; reviewed the  
14 Complaint and consulted with counsel on their experiences with SelectBlinds; consulted  
15 with counsel in the lead up to mediation; gathered information in response informal  
16 discovery requests prior to mediation; made themselves available during the mediation for  
17 any questions that might arise; discussed the mediation and potential classwide resolution  
18 with counsel; evaluated and agreed to the resolution; and reviewed and agreed with the  
19 terms of the Agreement. Montes de Oca Decl. ¶8; Fernandez Decl. ¶8. In short, both  
20 Plaintiffs took their roles seriously, and will continue vigorously pursuing relief on behalf  
21 of the Settlement Class. Thus, they should be appointed class representatives.

22 Plaintiffs’ counsel—Dovel & Luner LLP—has also diligently investigated and  
23 litigated this case, and achieved an excellent result for the Settlement Class. Counsel has  
24 significant experience litigating and settling complex cases, including class actions, and is  
25 well-versed in the applicable statutes and causes of action at issue here. Franzini Decl.  
26 ¶¶4-7. Plus, counsel has dedicated substantial time and resources to this case on a  
27 contingency basis while facing a real risk of recovering nothing. In sum, proposed Class  
28 Counsel has vigorously prosecuted this case and will continue to do so.



1           **5. The conditional Class meets the requirements of Rule 23(b)(3).**

2           Under Rule 23(b)(3), conditional certification is proper “whenever the actual  
3 interests of the parties can be served best by settling their differences in a single action.”  
4 *Hanlon*, 150 F.3d at 1022. Rule 23(b)(3) asks whether (1) “questions of law or fact  
5 common to the members of the class predominate over any questions affecting only  
6 individual members”; and (2) “a class action is superior to other available methods for  
7 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Here, the  
8 proposed Settlement Class meets both requirements.

9           Common questions predominate in the Settlement Class. “The predominance  
10 inquiry ... asks whether proposed classes are sufficiently cohesive to warrant adjudication  
11 by representation.” *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011). Thus,  
12 where “common questions present a significant aspect of the case and they can be  
13 resolved for all members of the class in a single adjudication, there is clear justification for  
14 handling the dispute on a representative rather than on an individual basis.” *Hanlon*, 150  
15 F.3d at 1022.

16           Here, Plaintiffs allege that—by advertising false sales, discounts, and prices that  
17 deceived consumers—SelectBlinds acted unlawfully towards all Settlement Class Members  
18 in the same way. And, this “basic common question — whether defendant’s price  
19 comparison scheme generated false advertisements that deceived consumers —  
20 predominates.” *Spann*, 314 F.R.D. at 322; see *Chester*, 2017 U.S. Dist. LEXIS 201121 (2017  
21 WL 6205788), at \*15 (same). Indeed, “regardless of the volume, price, timing, or location  
22 for any [Class Member’s] qualifying purchase, all claims will require the Court to analyze  
23 whether Defendant’s pricing scheme and pattern of discounting prices was lawful under  
24 California law.” *Rael*, 2020 U.S. Dist. LEXIS 13970 (2020 WL 434482), at \*18-19. Thus,  
25 “common questions predominate over individual questions.” *Id.* at 18.

26           A class action is the superior mechanism for resolution of this dispute. The  
27 superiority requirement asks whether a class action is “superior to other available methods  
28 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Class

1 actions are superior where the “risks, small recovery, and relatively high costs of litigation”  
2 make it unlikely that plaintiffs would individually pursue their claims.” *Just Film Inc. v.*  
3 *Buono*, 847 F.3d 1108, 1123 (2017).

4 Here, Defendant’s products sometimes sell for as little as \$20, and even Class  
5 Members who purchased blinds for their entire homes, like Plaintiff Montes de Oca, are  
6 unlikely to have spent more than a few thousand dollars. *See* FAC, Exhibit 2. So, were  
7 Class Members to litigate their claims on an individual basis, they would quickly spend  
8 more on litigating than they could hope to recover. *See Jacobo*, 2018 U.S. Dist. LEXIS  
9 248252 (2018 WL 11465299), at \*22 (finding a class action was superior in a fake discount  
10 case).

11 Plus, importantly, “the claims of all putative class members are virtually identical.”  
12 *Id* at \*23. So, “there is no reason that any given class member should need to pursue his or  
13 her claims individually.” *Id*. Without a class action, “each plaintiff would have to litigate  
14 defendant’s liability separately even though it could be established by common evidence  
15 (*e.g.*, policies, guidelines, [Price Pacing Flow Charts], and sales data) using objective  
16 standards (the reasonable consumer and prevailing market price).” *Spann*, 307 F.R.D. at  
17 531-32. And, the filing of separate suits by tens of thousands of class members “would  
18 create an unnecessary burden on judicial resources.” *Barbosa*, 297 F.R.D. at 445. In short,  
19 settling the case as a class action protects judicial resources and aids the Settlement Class,  
20 while still allowing any Class Member who want to bring their own litigation to opt out.  
21 *See* Fed. R. Civ. P. 23(c)(2)(B)(v); Agreement §V(B) (opt-out process).

22 As an additional matter, there is no indication here that any individual litigation  
23 related to Plaintiffs’ claims is currently pending in other forums, nor is there reason to  
24 believe this particular forum is undesirable. Fed. R. Civ. P. 23(b)(3)(A)-(D). So, there is no  
25 reason to believe that class treatment is unwarranted.

26 In short, the proposed Settlement Class satisfies the requirements of Rule 23 and  
27 should be conditionally certified.

28

1           **B. The proposed Settlement is fundamentally fair, adequate, and**  
2           **reasonable.**

3           **1. The Agreement is the result of non-collusive arm's length**  
4           **negotiations.**

5           To determine if a settlement warrants preliminary approval, a court “first considers  
6           ‘the means by which the parties arrived at settlement.’” *All Consumer & Reseller Actions*,  
7           2016 U.S. Dist. LEXIS 99071, at \*639 (N.D. Cal. July 26, 2016). “Preliminary approval is  
8           appropriate if the proposed settlement is the product of serious, informed, non-collusive  
9           negotiations.” *Id.*

10           Here, the Parties were represented by knowledgeable, competent counsel with  
11           significant experience with complex litigation and class actions. Franzini Decl. ¶¶4-7.  
12           Counsel was well-informed in all negotiations and attended mediation only after  
13           significant analysis of the case. After scheduling a mediation, the Parties negotiated and  
14           filed a stipulated protective order to allow for the exchange of all necessary information.  
15           *Id.* ¶9. As a result, in the lead up to the mediation, counsel was able to exchange crucial  
16           and sensitive information, including financial data and sales records. *Id.* ¶10; Agreement  
17           §II(C); see *Perks v. ActiveHours, Inc.*, 2021 U.S. Dist. LEXIS 57272, at \*13 (N.D. Cal. Mar.  
18           25, 2021) (“Despite the relatively early stage of the litigation, Class Counsel obtained  
19           sufficient information to make an informed decision about the Settlement and about the  
20           legal and factual risks of the case”). Indeed, after pre-mediation discussions with the  
21           mediator, counsel delayed the mediation to allow for the exchange of further information  
22           and ensure that both Parties had all necessary information to responsibly evaluate a  
23           possible settlement. Franzini Decl. ¶9. Counsel also exchanged substantive and detailed  
24           mediation briefs addressing relevant issues. *Id.* ¶10; Agreement §II(C).

25           Counsel enlisted the services of an experienced mediator to guide settlement  
26           discussions. Agreement §II(C); Franzini Decl. ¶9; *Satchell v. Fed. Express Corp.*, 2007 U.S.  
27           Dist. LEXIS 99066, at \*17 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced  
28           mediator in the settlement process confirms that the settlement is non-collusive.”). After



1 the June 20, 2023, full day mediation was unsuccessful, the Parties continued to negotiate  
 2 through the mediator and eventually both agreed to a mediator’s proposal. Agreement  
 3 §II(C); Franzini Decl. ¶11; see *In re MyFord Touch Consumer Litig.*, 2019 U.S. Dist. LEXIS  
 4 53356 (2019 WL 1411510), at \*25 (N.D. Cal. Mar. 28, 2019) (proposed settlement was  
 5 “the product of arm’s-length bargaining” where it was based on a mediator’s proposal);  
 6 *Morales v. Stevco, Inc.*, 2011 U.S. Dist. LEXIS 130604 (2011 WL 5511767), at \*32 (E.D. Cal.  
 7 Nov. 10, 2011) (settlement by means of a mediator’s proposal non-collusive). In short, the  
 8 Agreement was the result of non-collusive and contentious negotiations, and should be  
 9 approved. See *Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good  
 10 deal of stock in the product of an arms-length, non-collusive, negotiated resolution.”).

11 The Ninth Circuit has identified “red flags” that may suggest potential collusion.  
 12 *Briseño v. Henderson*, 998 F.3d 1014, 1018 (9th Cir. 2021). These “subtle signs that class  
 13 counsel have allowed pursuit of their own self-interests ... to infect the negotiations”  
 14 include “(1) ‘when counsel receive a disproportionate distribution of the settlement’; (2)  
 15 ‘when the parties negotiate a ‘clear sailing’ arrangement’ (i.e., an arrangement where  
 16 defendant will not object to a certain fee request by class counsel); and (3) when the  
 17 parties create a reverter that returns unclaimed fees to the defendant.” *Allen v. Bedolla*, 787  
 18 F.3d 1218, 1224 (9th Cir. 2015). None of these are present here. To the contrary,  
 19 Plaintiffs’ counsel will seek a fee award of less than 15% of the total Settlement value—  
 20 significantly less the benchmark. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949  
 21 (9th Cir. 2015) (establishing a 25% benchmark for fees in common fund cases). The  
 22 Parties did not negotiate a clear sailing provision, and SelectBlinds is free to challenge or  
 23 oppose the amount of fees requested by Class Counsel. Agreement §III(H)(1).<sup>2</sup> And, the  
 24 Settlement is non-reversionary—under no circumstances will any funds revert back to  
 25 SelectBlinds. Credit Benefits never expire, and the value of any un-cashed checks will be  
 26

27 \_\_\_\_\_  
 28 <sup>2</sup> Defendant may not, however, dispute that the Agreement makes available up to  
 \$1,497,500 to pay for attorneys’ fees and other settlement costs, i.e., that it must actually  
 pay any fees and costs up to that amount if awarded by the Court. Agreement §III(H)(1).

1 sent by the Settlement Administrator to the National Consumer Law Center. *Id.* §VIII.  
 2 And, any funds remaining in the Settlement Costs Fund after payment of notice and  
 3 administration costs, incentive awards, and attorneys' fees and costs approved by the  
 4 Court, will be distributed directly to Settlement Class Members. *Id.* §III(H)(4).<sup>3</sup>

5 **2. The Settlement provides excellent relief to the Settlement Class,**  
 6 **and falls well within the range of approval.**

7 Excellent Relief. As described above, the Agreement requires that SelectBlinds pay  
 8 approximately \$10,000,000 in total benefits, and provide \$8,500,000 in direct Cash and  
 9 Credit Benefits to Settlement Class Members. Agreement §III(E)(1).

10 Under the Agreement, every Class Member will get 12% of their purchase price  
 11 back, and the average payment will be approximately \$75. Franzini Decl. ¶14. This is an  
 12 outstanding recovery for Class Members, and is far more than consumers typically recover  
 13 in similar cases. *See, e.g., Baker v. Seaworld Entm't, Inc.*, 2020 U.S. Dist. LEXIS 131109 (2020  
 14 WL 4260712), at \*32 (S.D. Cal. July 24, 2020) (noting that a recovery amounting to "14%  
 15 of the maximum amount the Class could have recovered" is "higher than 'the typical  
 16 recovery in similar court-approved settlements by considerable margin'"); *Chester*, 2017  
 17 U.S. Dist. LEXIS 201121 (2017 WL 6205788), at \*21 (preliminarily approving an  
 18 \$8,500,000 settlement in a fake discount case with an average award of approximately  
 19 \$37.00, assuming a 2% claims rate); *Jacobo*, 2018 U.S. Dist. LEXIS 248252 (2018 WL  
 20 11465299), at \*25 (approving an \$4,854,000 settlement in a fake discount case with an  
 21 average award of approximately \$16.70, assuming a 2% claims rate). It is also well within  
 22 the range of reasonable outcomes. *See National Rural Tele. Coop. v. DIRECTV, Inc.*, 221  
 23 F.R.D. 523, 527 (C.D. Cal. 2004) (It is "well-settled law that a proposed settlement may be  
 24 acceptable even though it amounts to only a fraction of the potential recovery.").

25 The relief provided by the Settlement is especially meaningful in that it provides  
 26 value to each and every class member *automatically*, in the form of website credit, without

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27  
 28 <sup>3</sup> Neither the Parties nor their counsel have any relationship to the National  
 Consumer Law Center. Franzini Decl. ¶16.

1 the need for them to even make a claim. Thus, the Settlement provides for more  
2 comprehensive relief than the vast majority of similar class action settlements, which  
3 require Class Members had to file a claim to receive any relief. *See e.g., Spann*, 314 F.R.D. at  
4 317 (preliminarily approving a fake discount settlement where consumers had to file a  
5 claim form to receive a settlement benefit); *Chester*, 2017 U.S. Dist. LEXIS 201121 (2017  
6 WL 6205788), at \*21 (same); *Jacobo*, 2018 U.S. Dist. LEXIS 248252 (2018 WL 11465299),  
7 at \*25 (same). And, as explained in greater detail below, it provides the option for Class  
8 Members who do not wish to receive credit to receive their settlement benefit in cash in  
9 the same amount, without any penalty for choosing to receive cash instead of credit.

10 For Settlement Class members who elect to receive credit, the credit does not  
11 expire, can be used in conjunction with any voucher or discount, will be applied  
12 automatically to any order on SelectBlinds.com, and will maintain a running balance that  
13 will be depleted based only on use until the balance is zero. Agreement §III(E)(1); *see*  
14 *Spann*, 314 F.R.D. at 317 (approving fake discount settlement where Class Members could  
15 “elect to receive cash or JCPenney store credit, which will not expire and can be used with  
16 any other promotion, discount, or coupon.”). Consumers will be informed once the  
17 credits are added to their SelectBlinds’ accounts, and provided with easy-to-follow  
18 instructions. *Id.* §III(E)(2). And, because numerous items on SelectBlinds’ website  
19 routinely sell for less than \$75—with many selling for between \$20-35, or even less—  
20 Settlement Class Members will be able to redeem credits to purchase items, potentially  
21 two or more, without having to spend any additional money. Franzini Decl. ¶20 (items  
22 routinely sell for between \$20-35, and more than 4,000 items sold for between \$5-20  
23 during the Class Period); *see Spann*, 314 F.R.D. at 326 (approving fake discount settlement  
24 where it was “expected to provide the average claimant with sufficient compensation to  
25 purchase at least two, if not several, items”). Plus, the credits never expire, allowing  
26 consumers to hold on to them until they’re in need of new window or door coverings.

27 The Credit Benefits are a beneficial form of automatic relief in part because  
28 consumers are used to receiving website credits when something goes wrong in an e-

1 commerce transaction, for example when they return an item or when a company has  
2 made a mistake with an order. Moreover, receiving credit benefits is tied to Plaintiffs’  
3 theory of liability. Plaintiffs do not allege that there are problems with the products that  
4 they received or that they were charged more than they agreed to pay. Instead, Plaintiffs  
5 allege that SelectBlinds falsely advertised that the products Class Members received were  
6 worth more than they truly were. In other words, Plaintiffs allege that they thought they  
7 were getting blinds worth \$X when instead they got blind worth a lower amount \$Y.  
8 Providing credits directly remedies this alleged deception by offering consumers exactly  
9 what the lawsuit alleges they were deprived of—more value in the form of blinds.

10 In addition, the Settlement also allows consumers to elect to receive their benefit in  
11 cash instead of credit without penalty (i.e., without decreasing the amount received). *Cf.*  
12 *Jacobo*, 2018 U.S. Dist. LEXIS 248252 (2018 WL 11465299), at \*16 (preliminarily  
13 approving a settlement in a fake discount case that allowed class members to redeem  
14 settlement vouchers for 75% of their value in cash); *Chester*, 2017 U.S. Dist. LEXIS  
15 201121 (2017 WL 6205788), at \*6 (same). So, it does not require any Settlement Class  
16 Member to do business with SelectBlinds again to get their benefits, if they elect not to.  
17 *See McKnight v. Uber Techs.*, 2021 U.S. Dist. LEXIS 177957 (2021 WL 4205055), at \*13-14  
18 (N.D. Cal. Sep. 1, 2021) (“[W]hen class members receive cash, as they have the option of  
19 doing here, there is no risk of their being forced to spend ‘more’ of their own money at  
20 all, much less on the defendant's product.”). Plus, because the average cash payment in  
21 this case is approximately \$75, there is a significant incentive for Class Members to fill out  
22 the easily accessible Claim Form if they prefer to get cash rather than credits. *See Elder v.*  
23 *Hilton Worldwide Holdings, Inc.*, 2020 U.S. Dist. LEXIS 259476 (2020 WL 11762284), at \*13  
24 (N.D. Cal. Apr. 29, 2020) (explaining that a “\$25 or \$50 cash option is much more likely  
25 to justify the transaction costs of filing a claim” than a smaller cash option).

26 In short, the Settlement provides real value to *every* Class Member, and is not a  
27 coupon settlement. *See Williamson v. McAfee, Inc.*, 2017 U.S. Dist. LEXIS 15838, at \*4  
28 (N.D. Cal. Feb. 3, 2017) (settlement was “not a coupon settlement,” because “class

1 members had the option to receive cash instead of value certificates, even though they  
2 received certificates by default.”); *McKnight*, 2021 U.S. Dist. LEXIS 177957, at \*24 n.9  
3 (holding that settlement was not a coupon settlement because cash members could elect  
4 to receive cash rather than a voucher); *Taylor v. Shutterfly, Inc.*, 2021 U.S. Dist. LEXIS  
5 237069 (2021 WL 5810294), at \*31 (N.D. Cal. Dec. 7, 2021) (settlement was “not a  
6 coupon settlement” because the “majority of the Class [could] obtain cash instead of the  
7 promotional and shipping codes.”) (cleaned up).

8 Risks of Continued Litigation. The outcome here is particularly excellent given the  
9 risks and challenges presented by continued litigation. While Plaintiffs’ counsel is very  
10 confident in the strength of the case, SelectBlinds raised multiple arguments regarding  
11 both liability and damages and whether a class could be certified.

12 SelectBlinds contested its liability to Plaintiffs and Settlement Class Members.  
13 Among other arguments, it asserted that: (1) SelectBlinds’ advertising and sales are not  
14 deceptive or unlawful because the website’s listed prices refer to Manufacturer’s Suggested  
15 Retail Prices, not former prices; (2) Plaintiffs lack standing to seek injunctive relief and  
16 their equitable claims will fail because they have adequate remedies at law; (3) Plaintiffs’  
17 breach of contract claim will fail because the Defendant did not promise specific  
18 discounts off of former prices, but rather displayed MSRPs; and (4) Plaintiffs’ express  
19 warranty claim will fail because it is premised on price and perceived value. Franzini Decl.  
20 ¶19. SelectBlinds also argued that Plaintiffs would be unable to certify a class for several  
21 reasons, including that Plaintiffs could not calculate classwide damages or restitution. *Id.*;  
22 *see Rael*, 2020 U.S. Dist. LEXIS 13970 (2020 WL 434482), at \*30 (preliminarily approving  
23 fake discount settlement and acknowledging risk of continued litigation where the “state  
24 of the law regarding the appropriate method for calculating damages or restitution in these  
25 types of false pricing cases is in flux.”). While Plaintiffs disagree with these arguments,  
26 counsel recognizes that to succeed on their claims, Plaintiffs would have to beat a number  
27 of substantive arguments, successfully certify a class despite SelectBlinds’ objections, and  
28 win at trial. And even then, there is the possibility of appeal. *See Larsen v. Trader Joe’s Co.*,



1 2014 U.S. Dist. LEXIS 95538 (2014 WL 3404531), at \*12 (N.D. Cal. July 11, 2014)  
2 (“[S]ettlement is favored where, as here, significant procedural hurdles remain, including  
3 class certification and an anticipated appeal.”).

4 **3. The Settlement has no obvious deficiencies.**

5 As detailed above, the Agreement provides superb relief for Settlement Class  
6 Members. In addition, there are no obvious deficiencies in the Settlement.

7 Proposed Class Counsel recommends this settlement. “[R]epresentation by  
8 competent counsel familiar with the law in the relevant area and with ‘the strengths and  
9 weaknesses of [the parties]’ respective positions, suggests the reasonableness of the  
10 settlement.” *Navarrete v. Sprint United Mgmt. Co.*, 2021 U.S. Dist. LEXIS 40398 (2021 WL  
11 4352903), at \*30 (C.D. Cal. Mar. 2, 2021). “The recommendations of plaintiffs’ counsel  
12 should be given a presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,  
13 622 (N.D. Cal. 1979).

14 Here, proposed Class Counsel recommends the Agreement, and believes that it  
15 represents an exceptional outcome for the Class. Franzini Decl. ¶¶18, 21. And proposed  
16 Class Counsel has significant experience in complex litigation, including in consumer class  
17 actions. *Id.* ¶¶4-7; *see Maxin v. RHG & Co.*, 2018 U.S. Dist. LEXIS 26795 (2018 WL  
18 9540503), at \*12 (S.D. Cal. Feb. 16, 2018). Plus, proposed Class Counsel has dedicated  
19 substantial time to this litigation, including a thorough legal and factual investigation.  
20 Franzini Decl. ¶¶9-11. As a result, counsel is highly qualified and well-informed. So this  
21 recommendation indicates that that the Agreement is reasonable.

22 The release is narrowly tailored. “[A] federal court may release not only those  
23 claims alleged in the complaint, but also a claim ‘based on the identical factual predicate as  
24 that underlying the claims in the settled class action.’” *Reyn’s Pasta Bella, LLC v. Visa USA,*  
25 *Inc.*, 442 F.3d 741, 748 (9th Cir. 2006). Here, the Agreement calls for a narrow release on  
26 behalf of Settlement Class Members of claims which were “alleged in the operative  
27 complaint, or which arise from the same facts and claims alleged in the operative  
28 complaint.” Agreement §III(D)(1); *see Sanders v. LoanCare, LLC*, 2019 U.S. Dist. LEXIS

1 238757 (2019 WL 12340195), at \*36 (C.D. Cal. Sept. 16, 2019) (finding releases  
2 sufficiently fair and reasonable “because they are limited to causes of action based on facts  
3 alleged in the [complaint]”). Class Members maintain all rights to sue SelectBlinds for  
4 reasons unrelated to the facts and allegations in this case (for example, because  
5 SelectBlinds’ advertising misled them about the color or quality of products).

6 In short, because the release “does not apply to claims other than those related to  
7 the subject matter of the litigation ... the release adequately balances fairness to absent  
8 class members and recovery for plaintiffs with defendant[‘s] business interest in ending  
9 this litigation with finality.” *Spann*, 314 F.R.D. at 327-28; *see Martinez v. Knight Transp., Inc.*,  
10 2023 U.S. Dist. LEXIS 51757 (2023 WL 2655541), at \*47 (E.D. Cal. Mar. 24, 2023)  
11 (release satisfactory because “the settlement does not release unrelated claims that Class  
12 Members may have against Defendant.”); *cf. Kouri*, 2023 U.S. Dist. LEXIS 84985 (2023  
13 WL 3431288), at \*17-18 (C.D. Cal. Jan. 13, 2023) (settlement improperly released claims  
14 “relating to the subject matter of the lawsuit”) (emphasis added).

15 The fee award the Settlement provides for is more than reasonable, and the  
16 Settlement is not contingent on a particular fee award. The Agreement allows Class  
17 Counsel to seek an award of attorneys’ fees and costs of up to \$1,497,500—or less than  
18 15% of the Settlement’s total value. This is presumptively reasonable. *See In re Online*  
19 *DVD-Rental Antitrust Litig.*, 779 F.3d at 953 (approving a fee award of 25% of the total  
20 settlement value, and noting that “[t]he district court did not err in calculating the  
21 attorneys’ fees award by calculating it as a percentage of the total settlement fund,  
22 including notice and administrative costs, and litigation expenses.”). This is significantly  
23 less than the 25% attorneys’ fees benchmark followed in the Ninth Circuit. *See id.* at 949  
24 (holding that “in this circuit, the benchmark percentage [for attorneys’ fees] is 25%”); *In re*  
25 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“[C]ourts typically  
26 calculate 25% of the fund as the ‘benchmark’ for a reason-able fee award”). In fact, courts  
27 in this Circuit routinely award fees higher than the 25% benchmark. *See In re Omnivision*  
28 *Technologies, Inc.*, 559 F. Supp. 2d 1036, 1047-48 (N.D. Cal. 2007) (“[N]early all common

1 fund awards range around 30%” and generally “the rate should be set at 30%."); *Spann v.*  
 2 *J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. 2016) (granting fee award of 27%  
 3 of the settlement amount in a fake discounts case). Moreover, proposed Class Counsel  
 4 expects to seek less—approximately \$1,425,000—as notice and administration costs, as  
 5 well as incentive awards to the Plaintiffs will come out of the fund available to pay for fees  
 6 and costs. Franzini Decl. ¶16; Agreement §III(H)(1).

7 The Settlement is not contingent on the Court granting counsel’s request for fees.  
 8 Agreement §III(H)(1). And, the Agreement does not include a “clear sailing” provision,  
 9 and Defendant is free to oppose the amount of fees requested by Class Counsel. *Id.* If the  
 10 Court awards less than the full amount of attorneys’ fees requested, any remaining funds  
 11 will be shall be divided and distributed to Settlement Class Members. *Id.* §III(H)(4). Under  
 12 no circumstances will funds revert to Defendant. *Id.*

13 **4. The Settlement Fund will be fairly distributed amongst**  
 14 **Settlement Class Members.**

15 In determining whether to grant preliminary approval, courts consider “whether the  
 16 proposal ‘improperly grant[s] preferential treatment to class representatives or segments of  
 17 the class.’” *Perks v. ActiveHours, Inc.*, 2021 U.S. Dist. LEXIS 57272 (2021 WL 1146038), at  
 18 \*18 (N.D. Cal. Mar. 25, 2021); *see* Fed. R. Civ. P. 23(e)(2)(D). Here, as explained below,  
 19 the Settlement does not improperly prioritize the named Plaintiffs, and it provides  
 20 equitable relief to Settlement Class Members.

21 First, as the Ninth Circuit has explained, service awards are justified “to  
 22 compensate class representatives for work undertaken on behalf of a class,” and are “fairly  
 23 typical in class action cases.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 943.  
 24 Here, Plaintiffs’ counsel will seek only reasonable and proportionate service awards—  
 25 \$2,500—on behalf of Ms. Montes de Oca and Ms. Fernandez. Agreement §III(H)(2).  
 26 Given both Plaintiffs’ diligence and commitment to the case, discussed above, a \$2,500  
 27 service award—which together represents roughly 0.05%, or one twentieth of one  
 28 percent, of the Settlement’s total value—is more than justified. *Ahmed v. HSBC Bank*



1 USA, 2019 U.S. Dist. LEXIS 104401, at \*35 (C.D. Cal. June 21, 2019) (a service award  
2 “amounting to less than one percent of the settlement fund” was “warranted given the  
3 substantial efforts plaintiffs [had] undertaken on behalf of the class.”). Indeed, courts  
4 routinely allow higher service awards. *See, e.g., Ahmed*, 2019 U.S. Dist. LEXIS 104401 at  
5 \*34 (explaining that a \$5,000 service award is “presumptively reasonable.”); *Bellinghausen v.*  
6 *Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (“Incentive awards typically range  
7 from \$2,000 to \$10,000.”). The incentive awards will come out the Settlement Costs Fund  
8 and do not detract from Class Members’ Cash or Credit Benefits. And the Settlement is  
9 not contingent on the Court approving incentive awards, and so there is no risk of a  
10 conflict of interest with absent Class Members. Agreement §III(H)(2); Montes de Oca  
11 Decl. ¶9; Fernandez Decl. ¶9; *see Ahmed*, 2019 U.S. Dist. LEXIS 104401 at \*34  
12 (“Moreover, because the parties agree that the Agreement shall remain in force regardless  
13 of any incentive award, the awards here are unlikely to create a conflict of interest between  
14 the named plaintiffs and absent class members”).

15 In addition, the Settlement does not grant preferential treatment to any one  
16 segment of the Settlement Class. Class Members will receive different payments  
17 depending on how much they spent on SelectBlinds.com during the Class Period, but  
18 based on the same formula—12% of their past purchases. Agreement §III(E)(1). This ties  
19 Class Members’ recovery to their potential damages and is an equitable means of  
20 allocating the funds. *See Perks*, 2021 U.S. Dist. LEXIS 57272 (2021 WL 1146038), at \*18  
21 (N.D. Cal. Mar. 25, 2021) (“This pro rata distribution is inherently equitable because it  
22 treats Class Members fairly based on the amount of each member's potential damages.”).

23 In short, the Settlement treats all Settlement Class Members fairly.

### 24 **C. The Court should approve the proposed notice plan.**

25 Under Rule 23(e)(1) “[t]he court must direct notice in a reasonable manner to all  
26 class members who would be bound by” a proposed settlement. Here, the proposed  
27 notice plan is the “best notice that is practicable under the circumstances” and should be  
28 approved. Fed. R. Civ. P. 23(c)(2)(B); *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997).

1           The Parties have devised a multi-step notice plan designed to provide all necessary  
 2 information to Settlement Class Members to enable them to make a well-informed  
 3 decision about their participation in the Settlement. First, Defendant will provide a Class  
 4 List identifying Class Members, as well as their emails and relevant addresses, to the  
 5 Settlement Administrator. Agreement §III(C). Then, as discussed above, all Settlement  
 6 Class Members will receive direct notice by email—or by mail, if email notice fails. *Id.*  
 7 §IV(A-B); Weisbrot Decl. ¶¶ 19, 24. The notices are drafted in plain English and provide  
 8 all relevant information about the case, the Settlement, and Settlement Class Members’  
 9 rights. Agreement, Exhibits A, B, D. In particular, the notices provide information about  
 10 the nature of the claims asserted in the lawsuit, a summary of the Settlement terms,  
 11 relevant deadlines, and a statement about the release of claims. *Id.* The notices also inform  
 12 Class Members about their ability to file a claim for a cash payment and their right to opt-  
 13 out or object to the Settlement. *Id.*

14           In addition, the Settlement Administrator will establish a Settlement Website, where  
 15 Class Members can review relevant documents, important dates and deadlines. Agreement  
 16 §IV(C); Weisbrot Decl. ¶26. And, the Settlement Administrator will create a toll-free  
 17 hotline—that runs 24 hours a day, 7 days a week—devoted to the case. *Id.* ¶28.

18           In light of this comprehensive plan, the Court should approve the notice plan and  
 19 appoint Angeion Group as the Settlement Administrator. Angeion has significant  
 20 experience administering class action settlements and anticipates that the proposed plan  
 21 will provide the best notice practicable. *Id.* ¶¶ 16, 32.

#### 22 **IV. Conclusion.**

23           For the foregoing reasons, the Motion should be granted.

25 Dated: September 21, 2023

Respectfully submitted,

By: /s/ Simon Franzini

Simon Franzini (Cal. Bar No. 287631)

simon@dovel.com

Grace Bennett (Cal. Bar No. 345948)

grace@dovel.com

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DOVEL & LUNER, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, California 90401  
Telephone: (310) 656-7066  
Facsimile: (310) 656-7069  
*Attorneys for Plaintiffs*