

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT BARR, ELISA MONTES DE
OCA, and GABRIELA FERNANDEZ,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

SELECTBLINDS LLC,

Defendant.

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

**ORDER GRANTING PLAINTIFF’S
MOTIONS FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND FOR ATTORNEYS’ FEES AND
COSTS [ECF NOS. 53, 54]**

Before the Court are Plaintiffs Elisa Montes de Oca and Gabriela Fernandez unopposed motions for final approval of class action settlement and for attorneys’ fees and costs. (ECF Nos. 53, 54). Having considered the submissions of the parties, the relevant law, the record in this case, and the arguments of counsel during the final fairness hearing, the Court hereby **GRANTS** Plaintiffs’ Motions.

1 **I. BACKGROUND**

2 The Court previously set forth Plaintiffs’ allegations in its order granting preliminary
3 approval of the class action settlement, which this Court incorporates by reference (the
4 “Preliminary Approval Order”). (ECF No. 52 (“Prelim. Order”) at 2).

5 The First Amended Complaint (“FAC”) alleges that Plaintiffs both purchased blinds
6 from Defendant’s website, which advertised that the products they purchased were on sale
7 for a limited-time. (ECF No. 31 (“FAC”) ¶¶ 52–53)). In this advertising, the website listed
8 a “regular price” alongside the “discounted price.” (*Id.*). Plaintiffs allege that they, along
9 with other reasonable customers, understood Defendant’s advertising to mean that
10 Plaintiffs were receiving a special discount and that, without that discount, the Products
11 would cost the “regular price.” (*Id.* ¶¶ 51–54). However, Plaintiffs learned that
12 Defendant’s products are always advertised as on sale. (*Id.* ¶ 55). Therefore, the “regular”
13 prices are never charged and are not accurate. (*Id.* ¶ 23). Plaintiffs claim that, “[b]y listing
14 fake regular prices and fake discounts, Defendant misleads consumers into believing that
15 they are getting a good deal.” (*Id.* ¶ 41)

16 On October 4, 2022, Plaintiff Roger Barr filed this case in the Superior Court of the
17 State of California, County of Ventura. (ECF No. 1-2). On November 14, 2022, Defendant
18 removed the case to federal court. (ECF No. 1). On January 4, 2023, the parties stipulated
19 that the Court stay the case while the parties engaged in mediation, which the Court granted
20 on January 5, 2023. (ECF Nos. 23, 24). On June 16, 2023, Defendant agreed to the filing
21 of an amended complaint, in which Plaintiffs Fernandez and Montes de Oca were added as
22 Plaintiffs. (ECF Nos. 31, 33). The FAC asserts six causes of action against Defendant: (1)
23 violation of California’s False Advertising Law, (FAC ¶¶ 77–88); (2) violation of
24 California’s Consumer Legal Remedies Act, (*id.* ¶¶ 89–106); (3) violation of California’s
25 Unfair Competition Law, (*id.* ¶¶ 107–22); (4) breach of contract, (*id.* ¶¶ 123–31); (5) breach
26 of express warranty, (*id.* ¶¶ 132–41); and (6) quasi-contract/unjust enrichment, (*id.* ¶¶ 142–
27 46).

28

1 The parties first began discussing settlement in December 2022 and attended a full
2 day mediation before JAMS mediator Bruce Friedman on June 20, 2023. (ECF No. 54-1
3 ¶¶ 12, 14). The parties ultimately filed their notice of settlement with the Court on July 28,
4 2023. (ECF No. 41). On September 21, 2023, Plaintiffs¹ submitted an unopposed motion
5 to certify the class for the purposes of settlement and to preliminarily approve the class
6 action settlement, (ECF Nos. 42, 45), which the Court granted in full on October 25, 2023,
7 (ECF No. 52). Specifically, the Court granted Plaintiffs' motion to: (1) conditionally
8 certify the class as defined in the settlement agreement; (2) preliminarily approve the
9 parties' Settlement; (3) appoint Angeion Group as the Settlement Administrator; (4)
10 appoint Plaintiffs' counsel, Dovel & Luner, as class counsel ("Class Counsel"); and (5)
11 appoint Plaintiffs Elisa Montes De Oca and Gabriela Fernandez as class representatives.
12 *See (id. at 16)*. On December 11, 2023, Plaintiffs submitted an unopposed motion for
13 attorneys' fees and costs, and incentive awards. (ECF No. 53 ("Mot. Fees")). On January
14 8, 2024, Plaintiffs submitted an unopposed motion for final approval of the class action
15 settlement. (ECF No. 54 ("Mot.")).

16 **A. The Settlement Agreement**

17 The parties have not re-submitted the Settlement Agreement or represented that the
18 Settlement Agreement changed in any respect. While the Court's Order granting
19 preliminary approval set forth the relevant terms of the Settlement Agreement, (Prelim.
20 Order at 2–4), the Court reiterates the key provisions here.

21 1. Class Definition

22 The Settlement Agreement defines the putative class as "all individual consumers
23 who, during the Class Period, purchased one or more products from the SelectBlinds.com
24 website for personal, family, or household purposes while residing in California." (ECF
25

26 ¹ On September 29, 2023, Plaintiffs filed a notice of dismissal as to Roger Barr pursuant to
27 a settlement he reached on an individual basis with Defendant. (ECF No. 44). The notice
28 of dismissal represented that the claims dismissed with prejudice on behalf of Plaintiff Barr
"were not released in the Class Settlement because Mr. Barr is not a class member." (*Id.*
at 2).

1 No. 42-1 (“Settlement Agreement”) § I(DD)). The Settlement Agreement defines the
2 “Class Period” as “October 4, 2019, through December 31, 2022.” (*Id.* § I(I)).

3 2. Requested Relief

4 The Settlement Agreement directs Defendant to pay approximately \$10,000,000.00
5 total, inclusive of benefits, to the Settlement Class; notice and administrative costs;
6 incentive awards to the named Plaintiffs if approved by the Court; and any award of
7 attorneys’ fees, costs, and expenses approved by the Court. (Mot. at 10; Settlement
8 Agreement §§ III(E)(1), III(H)(1)). Of that total amount, approximately \$8,500,000.00
9 will be paid to the class members as direct benefits. (*Id.* § III(E)(1)-(4)). Class members
10 will receive their portion of the benefits in one of two ways. (*Id.*). If a class member
11 chooses to file a claim, they will receive a cash payment equal to 12% of the total amount
12 of purchases from SelectBlinds.com while they were a California resident during the Class
13 Period. (*Id.*). Alternatively, if the class member chooses not to file a claim, they will
14 automatically receive the 12% of total qualifying purchases in the form of store credit that
15 will not expire. (*Id.*). On average, each Class Member will receive approximately \$75 in
16 cash or credit, though the number will vary depending on the total value of their earlier
17 purchases. (ECF No. 42-2 ¶ 14). The remaining \$1,497,500.00 will be paid by Defendant
18 to cover notice and administrative costs, incentive awards, and attorneys’ fees and costs.
19 (Settlement Agreement § III(H)(1)).

20 3. Attorneys’ Fees and Costs

21 The Court appointed Dovel & Luner, LLP as Class Counsel in its order granting
22 preliminary approval (“Preliminary Approval Order”). *See* (Settlement Agreement § I(H)).
23 The Settlement Agreement allows Class Counsel to apply to the Court for reasonable
24 attorneys’ fees and expenses not to exceed \$1,497,500. (Settlement Agreement
25 § III(H)(1)). This amounts to less than 15% of the total settlement value, however, it
26 amounts to the full portion of the settlement allotted for fees and costs, as well as notice
27 and administrative costs. In Plaintiffs’ Motion seeking attorneys’ fees, Plaintiffs seek
28 \$1,415,790.00 in attorneys’ fees and \$11,719.00 in costs. (Mot. Fees at 2).

1 4. Release of Claims

2 The Settlement Agreement requires class members to release:
3 all claims, demands, actions, and causes of action of any kind or nature
4 whatsoever, whether at law or equity, arising under federal, state, or local law,
5 that Plaintiffs or Settlement Class Members ever had, now have, or may have
6 . . . on the basis of or arising from the Discharged Parties' representations,
7 advertising, marketing and/or sales on the Defendant's website,
8 www.SelectBlinds.com, during the Class Period, which were alleged in the
9 operative complaint, or which arise from the same facts and claims alleged in
10 the operative complaint in the Action.

11 (Settlement Agreement § III(D)(1)). The released claims also include "all claims that have
12 or could have been asserted by any or on behalf of any Settlement Class Member in this
13 Action and that are based on or arise out of the same factual predicate as the Action." (*Id.*).

14 **II. LEGAL STANDARD**

15 **A. Final Approval of Class Certification**

16 Parties seeking class certification for settlement purposes must satisfy the
17 requirements of Federal Rule of Civil Procedure 23. *Amchem Prods., Inc. v. Windsor*, 521
18 U.S. 591, 620–21 (1997). The threshold task when deciding whether to grant final approval
19 of a class action settlement is to "ascertain whether the proposed settlement satisfies the
20 requirements of Fed. R. Civ. P. 23(a)," which are: "(1) numerosity, (2) commonality, (3)
21 typicality, and (4) adequacy of representation." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
22 1019 (9th Cir. 1998). In considering such a request, the court must give the Rule 23
23 certification factors "undiluted, even heightened, attention in the settlement context."
24 *Amchem Prods*, 521 U.S. at 620.

25 **B. Final Approval of Class Settlement**

26 Once a class is certified, Rule 23(e) provides that "[t]he claims, issues, or defenses
27 of a certified class—or a class proposed to be certified for purposes of settlement—may be
28 settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Courts reviewing class

1 action settlements must ensure that unnamed class members are protected from unjust or
2 unfair settlements affecting their rights, while also accounting for the strong judicial policy
3 that favors settlements[.]” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir.
4 2020) (internal quotation, alteration marks, and citation omitted). A district court must
5 examine the settlement for “overall fairness[.]” *In re Hyundai and Kia Fuel Economy*
6 *Litig.*, 926 F.3d 539, 569 (9th Cir. 2019) (en banc). Accordingly, before approving a class
7 action settlement under Rule 23, a district court must conclude that the settlement is
8 “fundamentally fair, adequate, and reasonable.” *Id.*; *Hanlon*, 150 F.3d at 1026. In the
9 Ninth Circuit, there is a “strong judicial policy that favors settlements[.]” *Allen v. Bedolla*,
10 787 F.3d 1218, 1223 (9th Cir. 2015) (quoting *In re Syncor ERISA Litig.*, 516 F.3d 1095,
11 1101 (9th Cir.2008)).

12 **III. CLASS CERTIFICATION**

13 Final approval of a class action settlement requires an assessment of whether the
14 class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b). *Hanlon*,
15 150 F.3d at 1019–22. Because no facts that would affect these requirements have changed
16 since the Court preliminarily approved the class on October 25, 2023, this order
17 incorporates by reference the Court’s prior analysis under Rules 23(a) and (b) as set forth
18 in the order granting preliminary approval. *See* (Prelim. Order at 5–9); *see also Smith v.*
19 *Keurig Green Mountain, Inc.*, No. 18-CV-06690-HSG, 2023 WL 2250264, at *4 (N.D.
20 Cal. Feb. 27, 2023).

21 **IV. FAIRNESS DETERMINATION**

22 Rule 23(e) provides that “[t]he claims, issues, or defenses of a certified class—or a
23 class proposed to be certified for purposes of settlement—may be settled, voluntarily
24 dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e).
25 “Approval under [Rule] 23(e) involves a two-step process in which the Court first
26 determines whether a proposed class action settlement deserves preliminary approval and
27 then, after notice is given to class members, whether final approval is warranted.” *Nat’l*
28 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). Final

1 approval of a class action settlement may only be granted if the Court, after “evaluat[ing]
2 the fairness of a settlement as a whole,” finds that the settlement is “fair, reasonable, and
3 adequate” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818–20 (9th Cir. 2012) (quoting
4 Fed. R. Civ. P. 23(e)(2)).

5 Congress and the Supreme Court amended Rule 23(e) in 2018 “to set forth specific
6 factors to consider in determining whether a settlement is ‘fair, reasonable, and adequate.’”
7 *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021). Specifically, Rule 23(e)(2)
8 provides the following:

9 If the proposal would bind class members, the court may approve it only after
10 a hearing and only on finding that it is fair, reasonable, and adequate after
11 considering whether:

12 (A) the class representatives and class counsel have adequately
13 represented the class;

14 (B) the proposal was negotiated at arm’s length;

15 (C) the relief provided for the class is adequate, taking into account:

16 (i) the costs, risks, and delay of trial and appeal;

17 (ii) the effectiveness of any proposed method of distributing
18 relief to the class, including the method of processing class-
19 member claims;

20 (iii) the terms of any proposed award of attorney’s fees, including
21 timing of payment; and

22 (iv) any agreement required to be identified under Rule 23(e)(3);
23 and

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

25 Fed. R. Civ. P. 23(e)(2); *see also Briseño*, 998 F.3d at 1023–24. Additionally, in the Ninth
26 Circuit, “a district court examining whether a proposed settlement comports with Rule
27 23(e)(2) is guided by the following non-exhaustive list of factors, “the relative degree of
28 importance” of which will depend on the “unique circumstances presented by each

1 individual case.” *Officers for Just. v. Civil Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d
2 615, 625 (9th Cir. 1982). These factors are:

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

9 *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (quoting *In re Bluetooth Headset Prods.*
10 *Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)) (the “Churchill factors”); *see also*
11 *Briseño*, 998 F.3d at 1025–26 (recognizing that while most factors “fall within the ambit
12 of the revised Rule 23(e),” “Congress provided district courts with new instructions—such
13 as analyzing the ‘terms of the settlement’ and ‘terms of any proposed award of attorney’s
14 fees’—that require them to go beyond our precedent” (citation omitted)).

15 Additionally, particularly when there is a settlement prior to formal class
16 certification, a court must ensure that the parties reached their settlement through arms-
17 length negotiation and that “the agreement is not the product of fraud or overreaching by,
18 or collusion between, the negotiating parties” *Officers for Just.*, 688 F.2d at 625; *see*
19 *also In re Bluetooth*, 654 F.3d at 948.

20 **A. Procedural Fairness**

21 When, as here, a settlement agreement has been negotiated before a class has been
22 certified, the court must also “undertake an additional search for ‘more subtle signs that
23 class counsel have allowed pursuit of their own self-interests and that of certain class
24 members to infect the negotiations.’” *In re Volkswagen*, 895 F.3d 597, 610–11 (9th Cir.
25 2018) (quoting *In Re Bluetooth*, 654 F.3d at 946–47). Three “oft-cited ‘red flags’” of unfair
26 settlements are: (1) class counsel receiving a disproportionate amount of the settlement or
27 being “amply rewarded” when class members receive no monetary relief; (2) “when the
28 parties negotiate a ‘clear sailing’ arrangement providing for the payment of attorneys' fees

1 separate and apart from class funds”; and (3) “when the parties arrange for fees not awarded
2 to revert to defendants rather than be added to the class fund.” *Botonis v. Bimbo Bakeries*
3 *USA, Inc.*, No. 2:22-CV-01453-DJC-DB, 2024 WL 100545, at *7 (E.D. Cal. Jan. 9, 2024);
4 *see also In re Bluetooth*, 654 F.3d at 947.

5 Considering the Settlement Agreement, the Court finds Settlement Agreement is
6 procedurally fair. First, the Settlement Agreement does not provide a disproportionate
7 distribution of the settlement. The Settlement Agreement provides for Class Counsel to
8 seek up to \$1,497,500.00 in fees, which amounts to less than 15% of the total settlement
9 value. (Settlement Agreement § III(H)(1)); ECF No. 42-2 ¶ 16). “The typical range of
10 acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement
11 value, with 25% considered the benchmark.” *Razo v. AT&T Mobility Servs., LLC*, No.
12 1:20-CV-0172 JLT HBK, 2022 WL 4586229, at *10 (E.D. Cal. Sept. 29, 2022) (citing
13 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)); *cf. Lim v. Transforce, Inc.*, No.
14 LA CV19-04390 JAK (AGRx), 2022 WL 17253907, at *12 (C.D. Cal. Nov. 15, 2022)
15 (“The amount of attorney’s fees and costs permitted in the Settlement Agreement – 33.33%
16 of the Gross Settlement Amount – is substantial but not so disproportionate as to suggest
17 collusion.”). Because the proportion of the Settlement reserved for attorneys’ fees falls
18 below the lower end of the “typical range of acceptable attorneys’ fees in the Ninth
19 Circuit,” the first *Bluetooth* factor weighs against a finding of collusion. *See Razo*, 2022
20 WL 4586229, at *10.

21 However, the Settlement Agreement contains a form of a “clear sailing”
22 arrangement. A settlement agreement contains a “clear-sailing arrangement” when “the
23 defendant agrees not to challenge a request for an agreed-upon attorney’s fee,” but the
24 “mere presence of such an agreement is not ‘an independent basis for withholding
25 settlement approval.’” *Martinez v. Helzberg’s Diamond Shops*, Case No. ED CV 20-1085
26 PSG (SHKx), 2021 WL 9181893, at *7 (C.D. Cal. Sept. 24, 2021) (quoting *Briseño v.*
27 *Henderson*, 998 F.3d at 1027). Here, the Settlement Agreement provides:
28

1 [Defendant] will not dispute that under this [Settlement] Agreement, Class
2 Counsel is entitled to receive up to \$1,497,500 in attorneys’ fees, costs, and
3 expenses if approved by the Court . . . [but] Defendant *may* challenge or
4 oppose the amount of fees requested by Class Counsel, (i.e., may ask the Court
5 to award Class Counsel less than the amount requested)

6 (Settlement Agreement § III(H)(1) (emphasis added)). Because Defendant reserved the
7 right to challenge the fees requested by Class Counsel, this arrangement does not imply the
8 full collusive effect of when defendants agree to forego opposing any challenge to an
9 attorneys’ fee request. *See Briseño*, 998 F.3d at 1022–23, 1027–28.

10 Finally, the Settlement Agreement provides that “any remaining amounts after
11 payment of Settlement Costs shall be divided and distributed to Settlement Class Members
12 in proportion to the Settlement Award due to them under this Agreement, and *will not*
13 *revert* to Defendant.” (Settlement Agreement § III(H)(4) (emphasis added)). When a
14 settlement agreement contains a “kicker” or “reverter” clause that returns unawarded fees
15 to the defendant, rather than the class, it could indicate that the settlement is a result of
16 collusive unfair conduct by class counsel. *See Briseño*, 998 F.3d at 1023. Thus, because
17 this Agreement does not contain any kicker or reverter clauses, this factor weighs in favor
18 of finding that the settlement is the result of serious, informed, and non-collusive
19 negotiations.

20 Based on the above factors, the Court finds that the proposed settlement appears to
21 be the product of serious, informed, non-collusive negotiations. This finding weighs in
22 favor of final approval of the Settlement.

23 **B. Substantive Fairness**

24 In determining whether the proposed Settlement Agreement is fair, reasonable, and
25 adequate, the Court addresses each of the factors set forth by Rule 23(e)(2) and Ninth
26 Circuit precedent. *See Briseño*, 998 F.3d at 1025–26 (recognizing that while most Ninth
27 Circuit factors “fall within the ambit of the revised Rule 23(e),” “Congress provided district
28

1 courts with new instructions—such as analyzing the ‘terms of the settlement’ and ‘terms
2 of any proposed award of attorney’s fees’—that require them to go beyond our precedent”).

3 1. Rule 23(e)(2)(A): Adequacy of Representation by Class
4 Representatives and Class Counsel

5 The first Rule 23(e) factor requires that the class representatives and class counsel
6 have adequately represented the class. Fed. R. Civ. P. 23(e)(2)(A). Class representatives
7 are adequate if the named plaintiff and counsel do not have any conflicts of interest with
8 other class members and will prosecute the action vigorously on behalf of the class.
9 *Hanlon*, 150 F.3d at 1020; *see also Kim*, 8 F.4th at 1178 (listing “the experience and views
10 of counsel” as a *Churchill* factor)..

11 In the Preliminary Approval Order, this Court concluded that Plaintiffs satisfied the
12 adequacy requirement under Rule 23(a)(4), (Prelim. Order at 7), and appointed Dovel &
13 Luner, LLP, as Class Counsel and Plaintiffs as representatives of the Class. (*Id.* at 7–9);
14 *see Hilsley v. Ocean Spray Cranberries, Inc.*, No. 3:17-CV-2335-GPC-MDD, 2020 WL
15 520616, at *5 (S.D. Cal. Jan. 31, 2020) (“Because the Court found that adequacy under
16 Rule 23(a)(4) has been satisfied above, due to the similarity, the adequacy factor under
17 Rule 23(e)(2)(A) is also met.”). Additionally, Class Counsel has “particular expertise and
18 substantial experience” with “fake discount” class actions, like the one alleged in this case,
19 that involve online retailers advertising purportedly time-limited discounts, when in fact,
20 their products are always discounted. (ECF No. 54-1 ¶¶ 7–9); *see also* (Prelim. Order at
21 7); *see also Kim*, 8 F.4th at 1178. Accordingly, the Settlement Class is adequately
22 represented, which weighs in favor of approval of the proposed settlement.

23 2. Rule 23(e)(2)(B): Arm’s-Length Negotiation

24 The second Rule 23(e)(2) factor requires that the proposed settlement have been
25 negotiated at “arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). As this Court previously
26 observed, the Settlement Agreement is the result of informed, arm’s-length negotiations
27
28

1 that appear to have occurred over several months with an experienced mediator.²
 2 (Preliminary Approval Order at 10–11 (citing ECF No. 42-2 ¶¶ 9, 11)); Fed. R. Civ. P.
 3 23(e) advisory committee’s note to 2018 amendment (“the involvement of a neutral or
 4 court-affiliated mediator or facilitator . . . may bear on whether [negotiations] were
 5 conducted in a manner that would protect and further the class interests”); *see also Hanlon*,
 6 150 F.3d at 1027 (affirming approval of settlement after finding “no evidence to suggest
 7 that the settlement was negotiated in haste or in the absence of information illuminating
 8 the value of plaintiffs’ claims”); *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th
 9 Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive,
 10 negotiated resolution . . .”). This factor thus weighs in favor of approval of the proposed
 11 settlement.

12 3. Rule 23(e)(2)(C): Adequacy of the Relief

13 The third Rule 23(e)(2) factor requires the court to consider: “(i) the costs, risks, and
 14 delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief
 15 to the class, including the method of processing class-member claims; (iii) the terms of any

16 ² In its Preliminary Approval Order, the Court stated: “When the settlement is ‘the product
 17 of an arms-length, non-collusive, negotiated resolution[,]’ courts afford the parties the
 18 presumption that the settlement is fair and reasonable.” (Prelim. Order at 10 (citing
 19 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *Spann v. J.C. Penney*
 20 *Corp.*, 307 F.R.D. 508, 518 (C.D. Cal. 2015)). However, the Ninth Circuit has expressly
 21 held that “such a presumption of fairness is not supported by our precedent” for settlements
 22 occurring prior to class certification. *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035,
 23 1049 (9th Cir. 2019); *see also Saucillo v. Peck*, 25 F.4th 1118, 1131–32 (9th Cir. 2022)
 24 (reversing a district court’s approval of a class action settlement when it “applied the same
 25 presumption that we reversed in *Roes*,” and “[t]he district court never applied *Bluetooth*
 26 because it did not utilize the heightened standard for pre-class certification settlements,”
 27 and, even though the district court “stated that the presumption was a ‘factor,’ our
 28 precedent is clear that district courts must apply a more searching review for a pre-class
 certification settlement.”). Notwithstanding its prior statements in the Preliminary
 Approval Order, the Court’s finding that the Settlement Agreement is fair is supported both
 by its analysis in the Preliminary Approval Order, which did apply the three factors of
 collusion reserved for pre-certification settlements, *see* (Prelim. Order at 13–14), and as set
 forth in this Order, which does not apply any presumptions.

1 proposed award of attorneys’ fees, including timing of payment; and (iv) any agreement
2 required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C); *see also Kim*,
3 8 F.4th at 1178 (listing the *Churchill* factors). In this consideration, district courts in the
4 Ninth Circuit must compare the settlement amount to what the parties estimate would be
5 the maximum recovery in a successful litigation. *See Litty v. Merrill Lynch & Co.*, No. CV
6 14–0425 PA (PJWx), 2015 WL 4698475, at *9 (C.D. Cal. Apr. 27, 2015) (citing *In re*
7 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)).

8 *a) Costs, Risks, and Delay of Trial and Appeal*

9 When considering “the costs, risks, and delay of trial and appeal,” Fed. R. Civ. P.
10 23(e)(2)(C)(i), courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the
11 risk, expense, complexity, and likely duration of further litigation; [and] the risk of
12 maintaining class action status throughout the trial” *Hanlon*, 150 F.3d at 1026; *Kim*,
13 8 F.4th at 1179 (listing “the risk, expense, complexity, and likely duration of further
14 litigation” as a *Churchill* factor). “[T]he Court shall consider the vagaries of litigation and
15 compare the significance of immediate recovery by way of the compromise to the mere
16 possibility of relief in the future, after protracted and expensive litigation.” *Martinelli v.*
17 *Johnson & Johnson*, No. 2:15-CV-01733-MCE-DB, 2022 WL 4123874, at *4 (E.D. Cal.
18 Sept. 9, 2022).

19 Here, continued litigation would likely be costly and result in a substantial delay of
20 whatever potential relief might be obtained in the absence of a settlement. *See id.* at *5
21 (“[P]rotracted litigation would likely come at considerable expense to both parties.”). For
22 example, while “Class Counsel remains confident in the strength of [Plaintiffs’] claims,”
23 Defendant also maintains the strength of its position and raised “several substantive
24 arguments” that would make continued litigation “complex and risky.” (Mot. at 18–19);
25 *see also* (ECF No. 42 at 20). In particular, Defendant argues that Plaintiffs would be unable
26 to prove damages on a class-wide basis, notwithstanding Class Counsel’s “significant
27 time” spent developing viable damages models. (Mot. at 19; ECF No. 42 at 20). Class
28 Counsel also took into consideration similar “fake discount” cases that were disposed of at

1 various points of litigation. (Mot. at 18–19 (citing cases)). In reaching a settlement,
2 Plaintiffs have ensured a favorable recovery for the class. *See Rodriguez*, 563 F.3d at 964
3 (litigation risks weigh in favor of approving class settlement). Accordingly, these factors
4 also weigh in favor of approving the settlement. *See Testone v. Barlean’s Organic Oils,*
5 *LLC*, No. 3:19-cv-00169-RBM-BGS, 2023 WL 2375246, at *3 (S.D. Cal. Mar. 6, 2023)
6 (finding as a basis for approving the settlement that the “[p]laintiffs face significant risks
7 if this case proceeded to trial, while the parties’ settlement achieves a definite result”).

8 *b) Effectiveness of Proposed Method of Relief Distribution*

9 Rule 23(e) directs the court to consider the “effectiveness of any proposed method
10 of distributing relief to the class[.]” Fed. R. Civ. P. 23(e)(2)(C)(ii). “[T]he goal of any
11 distribution method is to get as much of the available damages remedy to class members
12 as possible and in as simple and expedient a manner as possible.” *Musgrove*, 2022 WL
13 18231364, at *6 (quoting 4 Newberg on Class Actions, § 13:53 (5th ed.)). Further, “[o]ften
14 it will be important for the court to scrutinize the method of claims processing to ensure
15 that it facilitates filing legitimate claims.” Fed. R. Civ. P. 23(e) advisory committee’s note
16 to 2018 amendment.

17 Here, as outlined above, Class Members will receive their portion of the benefits in
18 one of two ways. If a class member chooses to file a claim, they will receive their
19 settlement amount in cash (which is approximately equal to 12% of the total amount of
20 qualifying purchases), and if a class member chooses not to file a claim, they will
21 *automatically* receive the 12% of total qualifying purchases in the form of store credit that
22 will not expire. (Settlement Agreement § III(E)(1)-(4).). The Settlement Administrator
23 sent notice to Class Members after receiving a spreadsheet containing the class member’s
24 names, last known mailing address, email address, User ID, number of orders purchased,
25 and total purchase amount. (ECF No. 54-3 ¶ 5). The Settlement Administrator also
26 effected several checks to be sure that notice was actually received by Class Members,
27 including by tracking invalid email addresses and/or undeliverable emails due to a “hard
28 bounce” and mailing each of those Class Members the notice, and updating addresses for

1 the 75 Class Members whose notices were returned by USPS. (*Id.* ¶¶ 7–12). The
2 Settlement Administrator also has a case-specific website and hotline for Class Members
3 to utilize. (*Id.* ¶¶ 13–17).

4 Because the proposed method of distributing relief to Class Members is based on
5 each Member’s personal records and requires no actions from Participating Class Members
6 to receive their share, the method effectively distributes relief to Class Members and
7 weights in favor of final approval.

8 *c) Proposed Award of Attorneys’ Fees*

9 The Court must consider the “terms of any proposed award of attorney’s fees,
10 including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, Defendant has agreed
11 to not dispute that Class Counsel is “entitled to receive up to \$1,497,500 in attorneys’ fees,
12 costs, and expenses if approved by the Court,” which is approximately 15% of the total
13 settlement amount. (Settlement Agreement § III(H)(1)). As outlined above and discussed
14 more thoroughly below, this amount is reasonable because it does not exceed the Ninth
15 Circuit “benchmark” of acceptable attorneys’ fees and does not evidence any signs of self
16 interest by Class Counsel. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953
17 (9th Cir.2015) (approving fee award of 25%); *Razo*, 2022 WL 4586229, at *10 (“The
18 typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of the
19 total settlement value, with 25% considered the benchmark.”). This weighs in favor of
20 final approval.

21 *d) Settlement Agreement with Lead Plaintiff*

22 The Court must also evaluate any agreement made in connection with the proposed
23 Settlement Agreement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). The Settlement
24 Agreement provides a \$2,500 incentive award to each named Plaintiff as compensation for
25 their work on behalf of the Class. *See* (Mot. Fees at 11; Settlement Agreement § III(H)(2)).
26 The Court preliminarily held that the incentive award to the named Plaintiffs fell within
27 the range of possible approval and appeared fair and reasonable. (Prelim. Order at 13–14).
28 Though the Ninth Circuit has not set a benchmark, incentive awards in this Circuit typically

1 range from \$2,000 to \$10,000 with courts treating \$5,000 payments as presumptively
2 reasonable. *See, e.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267–68 (N.D.
3 Cal. 2015) (citing cases). Plaintiffs’ requested \$2,500 incentive awards fall within the low
4 range of typical incentive awards. Therefore, this weighs in favor of final approval.

5 4. Rule 23(e)(2)(D): Equitable Treatment Among Class Members

6 The final Rule 23(e)(2) factor requires that the “proposal treats class members
7 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of concern could
8 include whether the apportionment of relief among class members takes appropriate
9 account of differences among their claims, and whether the scope of the release may affect
10 class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P.
11 23(e)(2)(D) advisory committee’s note to 2018 amendment.

12 Here, the amount of relief given to each member of the Settlement Class will be
13 determined using the same formula for each Class Member—12% of past purchases—but
14 will result in different payments because the formula is based on how much Class Members
15 spent on SelectBlinds.com during the Class Period. (Settlement Agreement § III(E)(1)).
16 The Court agrees with Plaintiffs that this calculation treats the Class Members equitably
17 because the formula “ties Class Members’ recovery to their potential damages” (ECF
18 No. 42 at 33); *see also Perks v. Activehours, Inc.*, No. 5:19-CV-05543-BLF, 2021 WL
19 1146038, at *6 (N.D. Cal. Mar. 25, 2021) (“[P]ro rata distribution is inherently equitable
20 because it treats Class Members fairly based on the amount of each member’s potential
21 damages.”). Furthermore, as outlined above and discussed more thoroughly below, the
22 incentive awards for the named Plaintiffs are reasonable and “do not constitute inequitable
23 treatment of class members.” *Id.* (citing *Rodriguez*, 563 F.3d at 958–59). The Court finds
24 that this factor weighs in favor of approval. *See* Fed. R. Civ. P. 23(e)(2)(D).

25 5. Remaining Churchill Factors

26 As discussed above through the Rule 23(e)(2) factors, the Court finds that the
27 following *Churchill* factors weigh in favor of final approval: “the strength of the plaintiff’s
28 case;” “the risk, expense, complexity, and likely duration of further litigation;” “the risk of

1 maintaining class action status throughout the trial; and “the experience and views of
2 counsel.” *See In re Bluetooth*, 654 F.3d at 946. For the reasons that follow, the remaining
3 *Churchill* factors, on balance, weigh in favor of final approval.

4 a) *Amount Offered in Settlement*

5 As the Ninth Circuit has stated, “it is the very uncertainty of outcome in litigation
6 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
7 proposed settlement is [thus] not to be judged against a hypothetical or speculative measure
8 of what might have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at
9 625. Therefore, the fact that a proposed settlement may “only amount to a fraction of the
10 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
11 inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership*, 151 F.3d
12 1234, 1242 (9th Cir. 1998) (citation omitted).

13 Here, the \$10 million settlement results in approximately \$8.5 million in direct
14 benefits to the Class Members, with the average award amounting to \$75 in cash or store
15 credit per Class Member, though the number will vary depending on the total value of their
16 earlier purchases. (ECF No. 42-2 ¶ 14; Settlement Agreement § III(E)). As the Court
17 discussed in the Preliminary Approval Order, the amount of the settlement, when
18 considered against the hurdles to recovery posed by continued litigation, as well as the fact
19 that Defendant’s website offers many items that cost between \$25 and \$35, weighed in
20 favor of preliminary approval. *See* (Prelim. Order at 12–13). Class Counsel also
21 characterizes the relief provided as “excellent” because it provides an average amount “far
22 more than consumers typically recover in similar cases,” and because the Class Members
23 receive relief automatically. (ECF No. 42 at 26); *see also Knapp v. Art.com, Inc.*, 283 F.
24 Supp. 3d 823, 833 (N.D. Cal. 2017) (finding a \$10 recover fair). Based on the ability for
25 Class Members to easily recover their relief offered without having to necessarily “hand
26 over more of their own money,” and that the average award is within the range of individual
27 awards in consumer class actions, this factor weighs in favor of final approval. *See, e.g.,*
28 *Online DVD*, 779 F.3d at 951 (affirming a settlement resulting in \$12 gift cards).

1 b) *Stage of Proceedings and Extent of Discovery*

2 A court’s consideration of the stage of the proceedings and extent of discovery
3 essentially “evaluates whether ‘the parties have sufficient information to make an informed
4 decision about settlement.’” *Knapp*, 283 F. Supp. 3d at 833 (quoting *Linney v. Cellular*
5 *Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)). Here, the parties began discussing
6 early resolution of the case in December 2022, a few months after the complaint was filed.
7 (ECF No. 42-2 ¶ 9). The parties also engaged in formal mediation with JAMS mediator,
8 Bruce Friedman, on June 20, 2023. However, prior to the mediation, the parties exchanged
9 “information crucial to early resolution of the case,” including “substantive and thorough
10 mediation briefs,” and Defendant’s “extensive financial and sales data” that permitted
11 Class Counsel to “put together several detailed damages models. . . .” (*Id.* ¶¶ 9–10).
12 Defendant also “hosted a pre-mediation presentation on its financials and sales data for the
13 mediator” and Class Counsel. (*Id.* ¶ 10). After mediation, the parties had not reached a
14 resolution and continued to negotiate for several weeks with the assistance of the mediator.
15 (*Id.* ¶ 11).

16 The exchange of crucial sales documents and the presence of an experienced
17 mediator lend support to the conclusion that the parties had sufficient information to make
18 an informed decision about settlement. *See Knapp*, 283 F. Supp. at 833. Furthermore, as
19 discussed above, the settlement appears to be the result of arm’s length negotiations.
20 However, because discovery was not extensive prior to mediation and there was no motion
21 practice, this factor weighs only slightly in favor of final approval. *Cf. Martinelli*, 2022
22 WL 4123874, at *7 (“[A]fter seven years of litigation and extensive discovery, the parties
23 have gained a clear view of the strengths and weaknesses of their cases, thus enabling them
24 to engage in meaningful settlement negotiations.”).

25
26
27 c) *Presence of a Governmental Participant*

1 The parties have not asserted that any governmental entity participated in the
2 Settlement. However, the Settlement Administrator served notice of the proposed
3 Settlement to state and federal officials, as required by CAFA. *See* (ECF No. 54-3 ¶ 4).
4 There have been no objections from the governmental officials served in response to the
5 notice. *See* (Mot. at 16). Therefore, this factor weighs slightly in favor of final approval.
6 *See In Re Nucoa Real Margarine Litig.*, No. CV 10-00927 MMM (AJWx), 2012 WL
7 12854896, at *14 (C.D. Cal. June 12, 2012) (finding this factor weighed in favor of final
8 approval when non-participant governmental officials “were notified of the terms of the
9 settlement, . . . and none indicated an intention to object”).

10 *d) Class Member’s Reactions*

11 Among the *Churchill* factors for district courts to consider is the reaction of the class
12 to the settlement. *See In re Bluetooth.*, 654 F.3d at 946. District courts find “that the
13 absence of a large number of objections to a proposed class action settlement raises a strong
14 presumption that the terms of a proposed class settlement action are favorable to the class
15 members.” *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1257 (C.D. Cal. 2016).
16 Here, direct notice was successful for “approximately 99.9% of the Class.” (Mot. at 14;
17 ECF No. 54-3 ¶¶ 10–12). According to the Settlement Administrator, after receiving
18 notice, 8,440 Class Members have filed a claim to elect receiving their settlement amount
19 in cash, amounting to a cash claim rate of approximately 7.5% (as of January 4, 2024).
20 (ECF No. 54-1 ¶ 21). Class Counsel represents that the “preliminary response to the notice
21 program shows that [the program] was robust and effective.” (*Id.*). Furthermore, there
22 have been no objections or exclusions filed as of January 4, 2024. *See (id.* ¶¶ 19–20).

23 The Court finds that the absence of objections and the claim rate weigh in favor of
24 final approval. *See Online DVD*, 779 F.3d at 941 (upholding settlement in which the parties
25 sent direct notice to 35,000,000 class members and received 1,183,444 claims, which
26 represents a 3.4% claim rate); *Briseno*, 844 F.3d at 1130 (“It is not unusual for only 10 or
27 15% of the class members to bother filing claims.” (quoting Christopher R. Leslie, *The*
28 *Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 Fla.

1 L. Rev. 71, 119 (2007)); *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit*
2 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 468 n.134 (C.D. Cal. 2014) (3% claim
3 filing rate reasonable).

4 6. Sufficiency of Notice

5 Under Federal Rule of Civil Procedure 23(e), the Court “must direct notice in a
6 reasonable manner to all Settlement Class members who would be bound by the proposal.”
7 Fed. R. Civ. P. 23(e)(1). Although Rule 23 requires that reasonable efforts be made to
8 reach all Settlement Class members, it does not require that each Settlement Class member
9 actually receive notice. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (noting
10 that the standard for class notice is “best practicable” notice, not “actually received”
11 notice).

12 The notice plan previously approved has been implemented. (ECF No. 54-1 ¶¶ 20–
13 21; Prelim. Order at 14–15). The notice plan provided: (1) Defendant would provide a
14 Class List including all Class Members and their emails and addresses, to the Settlement
15 Administrator, (Settlement Agreement § III(C)); (2) all Class Members would be sent
16 emails with notice, or, if email failed, a notice in the mail, that provided information about
17 the nature of the claims in the suit, the Settlement, and the Settlement Class Members’
18 options, including the choice to either receive the settlement amount in store credit or file
19 a claim to receive it in cash, (*id.* § IV(A–B)); (3) the notices would also inform Class
20 Members of their right to opt out or object to the Settlement, (*id.*); (4) the notices would
21 direct Class Members that they can obtain further information at a Settlement Website or
22 via a hotline, both of which would be set up by the Court-appointed Settlement
23 Administrator, Angeion Group, (*id.* § IV(C–D)). As outlined above, Class Counsel
24 represents that notice was successful for approximately 99.9% of the Class. *See* (Mot. at
25 14; ECF No. 54-3 ¶¶ 10–12). Accordingly, because the notice plan is consistent with the
26 plan the Court previously approved and because Class Counsel has submitted evidence that
27 Class Members have actually received and understood the notice, the Court finds that
28 notice is satisfied under Rule 23(c)(2)(B) and Rule 23(e)(1).

1 **V. INCENTIVE AWARDS AND ATTORNEYS' FEES AND COSTS**

2 **A. Incentive Awards**

3 “[N]amed plaintiffs, as opposed to designated class members who are not named
4 plaintiffs, are eligible for reasonable incentive payments.” *Staton v. Boeing Co.*, 327 F.3d
5 938, 977 (9th Cir. 2003). “Courts have discretion to issue incentive awards to class
6 representatives.” *Ochinero v. Ladera Lending, Inc.*, Case No. SACV 19-1136 JVS
7 (ADSx), 2021 WL 4460334, at *9 (C.D. Cal. July 19, 2021) (citing *Rodriguez*, 563 F.3d at
8 958–59). Incentive or service awards intend to compensate class representatives for “work
9 done on behalf of the class, to make up for financial or reputational risk undertaken in
10 bringing the action, and, sometimes, to recognize their willingness to act as a private
11 attorney general.” *Rodriguez*, 563 F.3d at 958–59. District courts evaluate these awards
12 relative to the plaintiff’s efforts, considering the financial or reputation risk involved, any
13 personal difficulties encountered by the plaintiff, the amount of time spent, the duration of
14 the litigation, and any personal benefit (or lack thereof) enjoyed by the plaintiff. *See In re*
15 *Apple Inc. Device Performance Litig.*, 50 F.4th 769, 786 (9th Cir. 2022); *Knapp*, 283 F.
16 Supp. 3d at 838 (approving a \$5,000 incentive award in a false advertising case that
17 involved deceptive discounts on a retail website). District courts also consider the
18 “proportionality between the incentive payment and the range of class members’ settlement
19 awards.” *See Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395, at
20 *10 (N.D. Cal. Jan. 29, 2016).

21 Here, Plaintiffs each request a \$2,500 incentive payment, which together amount to
22 0.05% of the total settlement value. (Mot. Fees at 35). Plaintiffs represent that they both
23 took an “active role” in the litigation and “diligently consulted” with Class Counsel,
24 including by: consulting about their own experiences with Defendant to help draft the FAC,
25 reviewing documents prior to filing, gathering documents requested by Defendant,
26 consulting with Class Counsel before mediation, making themselves available by
27 telephone on the day of mediation, and reviewing and agreeing to the terms of the
28

1 Settlement Agreement. (ECF No. 42-3 ¶ 8; ECF No. 42-4 ¶ 8). Plaintiffs do not represent
2 how many hours they spent accomplishing these tasks.

3 The Court finds the requested incentive awards to be reasonable and proportional to
4 the effort expended by Plaintiffs in this Action. Though the Ninth Circuit has not set a
5 benchmark for the amount of incentive awards, awards ranging from \$2,000 and \$10,000
6 have found to be reasonable, with many district courts treating \$5,000 as “presumptively
7 reasonable.” *See, e.g., Jacobo v. Ross Stores, Inc.*, No. CV 15-4701-MWF (AGRx), 2019
8 WL 13245093, at *7 (C.D. Cal. Aug. 6, 2019) (approving a \$5,000 incentive award for a
9 \$4.854 million class action settlement in a deceptive pricing suit); *Knapp*, 283 F. Supp. 3d
10 at 839 (same); *Hale v. Manna Pro Prod., LLC*, No. 2:18-CV-00209-KJM-DB, 2021 WL
11 4993036, at *8 (E.D. Cal. Oct. 27, 2021) (approving a \$7,500 incentive award in a false
12 advertising class action); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
13 928133, at *27–28 (N.D. Cal. Apr. 3, 2009) (awarding \$5,000 incentive payment,
14 constituting 1.25% of the settlement fund, and finding that, “in general, courts have found
15 that \$5,000 incentive payments are reasonable”). Here, the incentive awards are on the
16 low end of the range of awards approved by courts in this district and represent a very small
17 fraction of the total settlement value. The Court therefore approves the incentive awards
18 for each Plaintiff.

19 **B. Attorneys’ Fees**

20 Awards of attorneys’ fees in class action cases are governed by Federal Rule of Civil
21 Procedure 23(h), which provides that, after a class has been certified, the court may award
22 reasonable attorneys’ fees and nontaxable costs. Attorney’s fees and costs “may be
23 awarded in a certified class action where so authorized by law or the parties’ agreement
24” *In re Bluetooth*, 654 F.3d at 941. In the Ninth Circuit, there are two primary methods
25 to calculate attorney’s fees: the percentage-of-recovery method and the lodestar method.
26 *Online DVD*, 779 F.3d at 949 (citation omitted). Under the percentage-of-recovery
27 method, the attorneys’ fees equal some percentage of the common settlement fund; in this
28 circuit, the benchmark percentage is 25%.” *Id.* By contrast, the lodestar method requires

1 “multiplying the number of hours the prevailing party reasonably expended on the
2 litigation (as supported by adequate documentation) by a reasonable hourly rate for the
3 region and for the experience of the lawyer.” *Id.* (citation omitted). Selection of the
4 benchmark or any other rate must be supported by findings that “take into account all the
5 circumstances of the case.” *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048
6 (9th Cir. 2002).

7 Here, the Settlement Agreement allows Plaintiffs’ counsel to seek an award of
8 attorneys’ fees and costs up to approximately 15% of the Settlement’s total value. In its
9 Motion, Class Counsel actually seeks \$1,416,790 in attorneys’ fees and \$11,719 in costs,
10 amounting to about 14% of the total benefit. (Mot. Fees at 11). Class Counsel’s request
11 is well below the 25% benchmark set by the Ninth Circuit. *See Online DVD*, 779 F.3d at
12 949; *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (“We have . . . established
13 twenty-five percent of the recovery as a ‘benchmark’ for attorneys’ fees calculations under
14 the percentage-of-recovery approach.”). Furthermore, as stated in the Preliminary
15 Approval Order, *see* (Prelim. Order at 12), the settlement relief is not merely providing
16 “coupons” to Class Members,³ and the additional requirements imposed by CAFA on
17

18 ³ “CAFA requires courts (1) to apply ‘heightened scrutiny’ to settlements that award
19 ‘coupons’ to class members, and (2) to base fee awards on the redemption value of the
20 coupons, rather than on their face value.” *McKinney-Drobnis v. Oreshack*, 16 F.4th 594,
21 602 (9th Cir. 2021) (quoting *In re EasySaver Rewards Litig.*, 906 F.3d 747, 754–55 (9th
22 Cir. 2018)); *see also* 28 U.S.C. § 1712. The Ninth Circuit has held that Congress intended
23 the CAFA restrictions to apply to settlements that “involve a discount—frequently a small
24 one—on class members’ purchases from the settling defendant.” *Online DVD*, 779 F.3d
25 at 950. In so holding, the Ninth Circuit has set forth three factors to consider whether relief
26 should be considered a coupon: “(1) whether class members have ‘to hand over more of
27 their own money before they can take advantage of’ a credit, (2) whether the credit is valid
28 only ‘for select products or services,’ and (3) how much flexibility the credit provides,
including whether it expires or is freely transferrable.” *McKinney-Drobnis*, 16 F.4th at
602–03 (citing cases). Here, the Settlement Agreement allows Class Members to redeem
their settlement relief in cash if desired, and even if the relief is provided in store credit,
the credit is available for any sort of purchase, does not expire, and, because Defendant’s
website provides several products listed at prices below the average award amount, does

1 coupon settlements do not apply here; therefore, Class Counsel’s use of one of the two
2 methods accepted by the Ninth Circuit is appropriate.

3 The Ninth Circuit has identified a number of factors that may be relevant in
4 determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation;
5 (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the
6 burdens carried by class counsel; and (6) the awards made in similar cases. *Vizcaino*, 290
7 F.3d at 1048–50. District courts also have the discretion to perform a “cross-check” on
8 counsel’s calculation of fees using the opposing method: here, for instance, using the
9 lodestar method to cross check Class Counsel’s request for an award using the percentage
10 method. *See Farrell v. Bank of Am. Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020)
11 (“This Court has consistently refused to adopt a crosscheck requirement, and we do so once
12 more.” (citing cases)).

13 Each of these factors weighs in favor of the reasonableness of the attorneys’ fee
14 request. As outlined above, the \$10 million settlement is a significant achievement and
15 provides immediate relief to Class Members instead of having to await uncertain litigation.
16 As Class Counsel has represented, “fake discount” cases, similar to the allegations in this
17 case, have been dismissed at “every stage of litigation.” (Mot. at 18 (citing cases)); *see*
18 *also Farrell*, 827 F. App’x at 630 (finding fees reasonable based in part on finding that that
19 litigation was risky because “no court has ever ruled for bank accountholders on the
20 controlling legal issue”). Despite this legal landscape, Class Counsel took on this litigation
21 on a contingency fee basis, taking on the risk that they may not receive any compensation
22 for their work and the hold-over financial risk of not getting paid until resolution. (ECF

23 _____
24 not require Class Members to “hand over more of their own money before they can take
25 advantage of a credit.” *See Online DVD*, 779 F.3d at 951; (Prelim. Order at 12).
26 Furthermore, the type of store credit provided as relief here is directly analogous to the
27 store credit that the Ninth Circuit explicitly held was not a coupon in *Online DVD*. 779
28 F.3d at 950 (affirming a \$12 store credit to Walmart was not a coupon under CAFA in part
because “the settlement gives class members \$12 to spend on any item carried on the
website of a giant, low-cost retailer” “[i]nstead of merely offering class members the
chance to receive a percentage discount on a purchase of a specific item”).

1 No. 53-1 ¶ 26); *see Russell v. Kohl's Dep't Stores, Inc.*, No. 5:15-CV-01143-RGK-SP,
2 2019 WL 13109706, at *2 (C.D. Cal. Feb. 22, 2019) (finding fees reasonable when
3 “counsel achieved an enormous settlement for the class after high-risk contingency
4 litigation that could have resulted in no recovery,” and, in a “nearly-identical class action
5 filed . . . the same defendant, the Ninth Circuit affirmed . . . summary judgment for [the
6 defendants] for alleged advertising misrepresentations” and because plaintiffs “still request
7 below the benchmark percentage”). Class Counsel also has specific expertise in litigating
8 “fake discounts,” which “go[] relatively unchecked in the e-commerce space.” (ECF No.
9 53-1 ¶¶ 7–9). Class Counsel also explains, in depth and with particularity, the firm’s
10 approach to such litigation, (*id.*), and the efforts undertaken in this case, (*id.* ¶¶ 14–19).
11 Finally, the fees sought in this case are similar to awards in similar cases. *See Jacobo*,
12 2019 WL 13245093, at *5 (approving fees “in the amount of \$1,213,500, or 25% of the
13 \$4,854,000 settlement fund” in a false advertising case focused on misleading pricing at a
14 department store); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 609 (N.D. Cal. 2015) (approving a
15 \$1.6 million fees award, 25% of the settlement, in a false advertising case); *Spann*, 211 F.
16 Supp. at 1261–62 (approving fees in the amount of \$13.5 million, or 27% of the settlement,
17 in a fake discounting class action when the action had been heavily litigated, including
18 dispositive motion practice); *Russell*, 2019 WL 13109706, at *2–3 (approving a 23.8%
19 fees award, in the amount of \$1,462,500, in a price-comparison advertising policy class
20 action).⁴

21 Furthermore, as also outlined above, there is no evidence of collusion to Class
22 Counsel’s benefit. Therefore, the Court finds that the requested fees are reasonable and
23 grants Plaintiffs’ request as to the requested attorneys’ fees.⁵

24
25 ⁴ The Court also notes that while Defendant reserved the right to dispute the amount of
26 attorneys’ fees sought, it has not opposed this request.

27 ⁵ Given the *Vizcaino* factors analysis, the Court exercises its discretion to decline a lodestar
28 cross check for a fees award requesting only 14% of the total settlement value. *See Farrell*,
827 F. App’x at 630 (finding no abuse of discretion in “using the percentage-of-recovery
method to calculate fees and refusing to conduct a lodestar crosscheck” when district court

1 C. Costs and Expenses

2 In class action settlements, “[a]ttorneys may recover their reasonable expenses that
3 would typically be billed to paying clients in non-contingency matters.” *See In re*
4 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (citing *Harris v.*
5 *Marhoefer*, 24 F.3d 16, 19 (9th Cir.1994)). “There is no doubt that an attorney who has
6 created a common fund for the benefit of the class is entitled to reimbursement of
7 reasonable litigation expenses from that fund.” *In re Heritage Bond Litig.*, No. 02-ML-
8 1475 DT, 2005 WL 1594403, at *23 (C.D. Cal. June 10, 2005) (citation omitted).

9 Class Counsel has submitted an itemized list of costs amounting to \$11,719.12.
10 (ECF No. 53-1 ¶ 35; ECF No. 53-5). These costs include travel costs associated with
11 mediation, postage, cost for the mediator and court reporters, and copying expenses. (ECF
12 No. 53-5 at 2). These costs appear reasonable and typical of other similar actions. *See,*
13 *e.g., Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (approving costs,
14 including mediator, court fees, depositions in a wage and hour class action); *Barbosa v.*
15 *Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 454 (E.D. Cal. 2013) (noting that frequently

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considered the reasonableness factors). The Court agrees with Plaintiffs, and various other courts, that performing such cross check, in these circumstances, could discourage early resolution of cases. *See Vizcaino*, 290 F.3d at 1050 n.5 (“We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief . . . it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.” (emphasis added)); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *49 (N.D. Cal. Jan. 26, 2007) (“Under the circumstances presented here, where the early settlement resulted in a significant benefit to the class, the Court finds no need to conduct a lodestar cross-check.”); *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *10 n.63 (N.D. Cal. Dec. 6, 2017) (“[Counsel] may do unnecessary work or delay settlement to make sure that the multiplier needed to get to their percentage fee does not appear to be out of line.”), *aff’d*, 768 F. App’x 651 (9th Cir. 2019).

1 reimbursed costs include items like mail charges and mediation fees). Thus, the Court
2 GRANTS Class Counsel's request for costs.

3 **VI. CONCLUSION**

4 For the foregoing reasons, the Court:

- 5 1. **GRANTS** Plaintiffs' Unopposed Motion for Final Approval and approves
6 settlement of the action between Plaintiffs and Defendant, as set forth in the
7 Settlement Agreement, as fair, just, reasonable, and adequate and directs the Parties
8 to perform their settlement in accordance with the terms set forth in the Settlement
9 Agreement;
- 10 2. **GRANTS** an award to Class Counsel for \$1,416,790 in attorneys' fees and
11 \$11,719.12 in costs to be paid to Class Counsel;
- 12 3. **GRANTS** an award to Plaintiffs Elisa Montes de Oca and Gabriella Fernandez in
13 the amount of \$2,500, each, in exchange for a general release of their individual
14 claims and finds that this amount is warranted and reasonable; and
- 15 4. **DISMISSES** Plaintiffs' case with prejudice, in accordance with the terms of the
16 Settlement Agreement.

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18 **IT IS SO ORDERED.**

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20 DATED: March 4, 2024



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22 HON. SHERILYN PEACE GARNETT
23 UNITED STATES DISTRICT JUDGE
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