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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 TONY DICKEY and PAUL PARMER,  
12 individually and on behalf of all others  
13 similarly situated,

14 *Plaintiffs,*

15 v.

16  
17 ADVANCED MICRO DEVICES, INC., a  
18 Delaware corporation,

19 *Defendant.*

Case No. 4:15-cv-04922-HSG

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR ATTORNEYS' FEES AND  
COSTS AND CLASS REPRESENTATIVE  
INCENTIVE AWARDS**

Judge: Hon. Haywood S. Gilliam, Jr.  
Date: February 20, 2020  
Time: 2:00 p.m.

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1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE** that on February 20, 2020, at 2:00 p.m., or at such other time  
3 as may be set by the Court, Plaintiffs Tony Dickey and Paul Parmer will appear, through counsel,  
4 before the Honorable Haywood S. Gilliam, Jr., or any Judge sitting in his stead, in Courtroom 2,  
5 4th Floor, 1301 Clay Street, Oakland, CA 94612, and then and there, respectfully move the Court,  
6 pursuant to Federal Rules of Civil Procedure 23(h), 52(a), and 54(d) to grant this motion for  
7 attorneys' fees and costs as well as named plaintiff incentive awards.

8 Plaintiffs' motion is based upon this Notice, the Memorandum of Points and Authorities  
9 filed herewith, the exhibits attached thereto, including the Parties' proposed class action settlement  
10 agreement, the Declarations of Rafey S. Balabanian, Tony Dickey, and Paul Parmer filed  
11 simultaneously herewith, and the record in this matter, along with any oral argument that may be  
12 presented to the Court and evidence submitted in connection therewith.

13 Respectfully Submitted,

14 **TONY DICKEY and PAUL PARMER,**  
15 individually and on behalf of all others similarly  
16 situated,

17 Dated: November 15, 2019

18 By: /s/ Rafey S. Balabanian  
19 One of Plaintiffs' Attorneys

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*Counsel for Plaintiffs and the Class*

1 **I. INTRODUCTION**

2 In 2015, Plaintiff Tony Dickey filed a class action complaint on behalf of purchasers of  
3 Advanced Micro Devices, Inc.’s (“AMD” or “Defendant”) Bulldozer line of central processing  
4 units (“CPUs”). Dickey alleged that while AMD had advertised its Bulldozer CPUs as containing  
5 eight processors, these CPUs—in reality—contained only four. Based on these alleged  
6 misrepresentations, and together with Plaintiff Paul Parmer, Plaintiffs filed a Second Amended  
7 Class Action Complaint in 2016 alleging that AMD violated California’s Consumers Legal  
8 Remedies Act (“CLRA”), Cal Civ. Code § 1750 *et seq.*, California’s Unfair Competition Law  
9 (“UCL”), Cal Bus. & Prof. Code § 17200 *et seq.*, California’s False Advertising Law, Cal. Bus.  
10 & Prof. Code § 17500 *et seq.*, and was further liable under various common law theories.

11 After nearly four years of hard-fought litigation, the Parties agreed to a class action  
12 settlement that makes available to the Class a **\$12.1 million, non-reversionary common fund**  
13 from which each eligible claiming class member will receive a *pro rata* share (on a per-  
14 purchased-CPU basis). Based on their experience in other similar consumer class actions, Class  
15 Counsel have estimated that claiming class members are likely to receive upwards of **50%** of the  
16 value of their certified claims had they prevailed at trial. As Plaintiffs explained in their  
17 preliminary approval papers, given the risks attendant with continued litigation, trial, and  
18 inevitable appeals, the proposed Settlement is an excellent result for the Class. The Court  
19 therefore granted preliminary approval to the parties’ proposed settlement. Dkt. 154.

20 Against this backdrop, Class Counsel seek an award of 25% of the common fund (*i.e.*,  
21 \$3,025,000) in attorneys’ fees, \$47,517.37 in reasonably expended litigation costs, and \$7,500  
22 incentive awards for each of the Class Representatives. While the requested fee percentage  
23 represents the “benchmark” for class action cases in this Circuit, Class Counsel respectfully  
24 submit that the request is particularly modest given the exceptional results achieved for the class,  
25 the extremely risky nature of this technically complex case, and the extent to which the case was  
26 skillfully litigated over the last four years. Plaintiffs’ requested incentive awards are similarly  
27 reasonable. While the requested fee awards represent a \$2,500 increase above the \$5,000 amount  
28 considered “presumptively reasonable” in this district, the Class Representatives in this case each

1 made greater-than-average sacrifices to assist in the prosecution of this case, including air travel  
2 and overnight trips to sit for their depositions, as well as giving up their personal computers  
3 (both of which ended up damaged) for purposes of Defendant’s technical inspections. The  
4 requested incentive awards should consequently be awarded.

## 5 **II. BACKGROUND AND PROCEDURAL HISTORY**

### 6 **A. Plaintiffs’ Allegations**

7 Defendant AMD is a global semiconductor manufacturer and the second largest supplier  
8 of CPUs found in personal computers. Second Amended Complaint (“SAC”) ¶ 20. For over forty  
9 years, AMD has been in a market share battle with Intel Corporation over these products. AMD,  
10 consequently, tailors its marketing to emphasize any edge its CPUs can possibly offer. *Id.* ¶ 21.  
11 Particularly in the last decade, the companies began to focus their advertising on the number of  
12 cores in their CPUs. *Id.* ¶ 22. In 2010, for example, AMD promised that “the power of four  
13 processor cores on a single chip delivers industry-leading multitasking performance.” *Id.* ¶ 26.  
14 Plaintiffs’ theory was that through this type of advertising, AMD signaled that the number of  
15 processors in a CPU equated with its performance, while reflecting the wide-spread (and AMD’s  
16 own) understanding that core count is an important factor for consumers. But according to  
17 Plaintiffs, when AMD debuted its Bulldozer line of CPUs, this marketing gambit went too far.

18 AMD’s Bulldozer CPU line was consistently advertised as having eight cores. *Id.* ¶ 37.  
19 This specification was prominent on both AMD’s online and on-packaging advertisements, and  
20 was the product line’s focal selling point. *Id.* ¶ 32. To promote the Bulldozer line and  
21 differentiate its product from competitors, AMD specifically announced that it was the “world’s  
22 first 8 core CPU”— a strategy that highlighted how its product outmatched those of its top  
23 competitor, which claimed only six cores. *Id.* ¶¶ 7, 30, 32. Plaintiffs alleged, however, that  
24 AMD’s Bulldozer CPUs do not actually contain eight cores. *See id.* ¶¶ 24-29. According to  
25 Plaintiffs, the “cores” in the Bulldozer line are actually sub-processors that cannot operate and  
26 simultaneously multitask as actual cores. *Id.* ¶ 38. This fundamental difference (among others),  
27 Plaintiffs alleged, amounted to deception. *Id.* ¶ 30.

1 In particular, Plaintiffs claimed that they had viewed and relied on AMD's allegedly false  
2 advertisements when they were enticed to purchase Defendant's CPUs. *Id.* ¶¶ 50-65. Plaintiff  
3 Dickey allegedly saw representations of AMD's CPUs that said they were "the industry's first  
4 and only native 8-core desktop processor for unmatched multitasking and pure core  
5 performance." *Id.* ¶ 51. However, according to Dickey, this CPU did not perform as well as a  
6 CPU would with eight independent cores. *Id.* ¶ 53. Plaintiff Parmer allegedly had a similar  
7 experience. Before Parmer purchased one of AMD's Bulldozer CPUs, he allegedly viewed  
8 advertising that led him to believe that the Bulldozer CPUs would have eight cores independent  
9 or capable of performing at full speed. *Id.* ¶ 59. Both Plaintiffs alleged that, had they known  
10 these CPUs did not truly have eight-core capabilities, they would not have purchased the  
11 products in the first place or paid as much for them as they did. *Id.* ¶¶ 55, 63.

#### 12 **B. The Procedural History of the Litigation**

13 To obtain relief from AMD's allegedly deceptive practices, on October 26, 2015,  
14 Plaintiff Dickey filed a putative class action against AMD in the United States District Court for  
15 the Northern District of California. Dkt. 1. Dickey alleged that Defendant's advertisements of  
16 Bulldozer CPUs violated California's Consumers Legal Remedies Act ("CLRA"), Cal Civ. Code  
17 § 1761(c), California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code § 17200 *et*  
18 *seq.*, California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*, and further  
19 amounted to common law fraud in the inducement, breach of express warranties, and negligent  
20 misrepresentation. *Id.*

21 AMD moved to dismiss this complaint on December 21, 2015, Dkt. 27, and after briefing  
22 and argument, the Court granted AMD's motion to dismiss on April 7, 2016, Dkt. 46. Dickey  
23 and Parmer, together, filed a First Amended Complaint (the "FAC") on May 5, 2016, which  
24 removed the claim for unjust enrichment, but realleged all other causes of action. Dkt. 50. AMD  
25 again moved to dismiss on May 26, 2016. Dkt. 52. After briefing and argument on October 31,  
26 2016, the Court again granted AMD's motion to dismiss with leave to amend. Dkt. 71. On  
27 November 21, 2016, Plaintiffs submitted their Second Amended Complaint, realleging all causes  
28

1 of action that were included in the FAC. Dkt. 76. On June 14, 2017, after briefing and argument,  
2 the Court granted in part, and denied in part, the motion to dismiss. Dkt. 96.

3         Shortly thereafter, discovery commenced. Over the next ten months, the Parties  
4 exchanged substantial fact and expert discovery, including the production of documents, the  
5 exchange of multiple sets of interrogatories, the depositions of Plaintiffs, and the disclosure of  
6 expert reports. *See* Declaration of Rafey Balabanian (“Balabanian Decl.”) ¶¶ 12. Specifically, the  
7 Parties collectively produced over 6,000 pages of documents, collectively responded to fifty-five  
8 (55) interrogatories, conducted full-day depositions of Tony Dickey and Paul Parmer on January  
9 8, 2018, and January 16, 2018, respectively, and Defendant disclosed the expert reports of Dr.  
10 Thomas Conte, Dr. Dominique Hanssens, Kishore Mulchandani, and Justin McCrary. *See* Dkt.  
11 122. The Parties also engaged in several discovery disputes, including motion practice related to  
12 the disclosure and filing of expert reports. *See* Dkts. 110, 111.

13         Following these discovery efforts, on March 27, 2018, Plaintiffs filed a Motion for Class  
14 Certification, which sought to certify a class of consumers under California’s Unfair Competition  
15 Law and False Advertising Law. Dkt. 118. Approximately nine months later, the Court granted  
16 Plaintiffs’ motion on January 17, 2019 and certified a class comprised of “[a]ll individuals who  
17 purchased one or more of the following AMD computer chips either (1) while residing in  
18 California or (2) after visiting the AMD.com website: FX-8120, FX-8150, FX-8320, FX-8350,  
19 FX-8370, FX-9370, and FX-9590.” Dkt. 135.

20         In the months following the Court’s ruling, the Parties began marching towards summary  
21 judgment briefing. Plaintiffs vetted more than a dozen potential technical experts and ultimately  
22 formally engaged two leading experts on CPU microarchitecture, Dr. Phillip Emma and Dr.  
23 Vojin Oklobdzija, who in total produced four preliminary written expert reports—two  
24 affirmative reports and two rebuttal reports. Balabanian Decl. ¶ 14. On March 28, 2019 and then  
25 on June 3, 2019, amended case schedules were entered, under which fact discovery would close  
26 in September 2019. Dkts. 143, 147.

1           **C. Settlement Discussions and Preliminary Approval**

2           The Parties first engaged in settlement discussions in August 2016. Balabanian Decl. ¶  
3 10. At that time, the Parties participated in a pre-mediation phone call with the Honorable  
4 Morton Denlow, a former Chief Magistrate Judge of the Northern District of Illinois. *Id.* That  
5 initial call quickly revealed, however, that any negotiations would be premature: the Parties had  
6 vastly divergent views of the merits of the case. Once this became apparent, and at Judge  
7 Denlow’s suggestion, the Parties agreed to cancel the mediation, but committed to revisiting  
8 settlement talks at a later date, if appropriate. *Id.*

9           After the extensive discovery and motion practice described in Section II.B, including  
10 Plaintiffs’ successful Motion for Class Certification, the Parties revisited settlement discussions  
11 in January 2019. *Id.* ¶ 15. The Parties ultimately agreed to attend a full-day mediation with the  
12 Honorable James F. Holderman. *Id.* On May 9, 2019, the Parties participated in a full-day  
13 mediation before Judge Holderman, ultimately resulting in the Settlement Agreement that is now  
14 before the Court. *Id.* ¶ 17; Dkt. 152, Class Action Settlement Agreement (“Agreement”).

15           On August 23, 2019, Plaintiffs filed a Motion for Preliminary Approval of the Parties’  
16 class action settlement agreement. Dkt. 153. On October 3, 2019, the Court heard oral argument  
17 on the motion (Dkt. 155) and then entered an Order granting it the next day. Dkt. 154.

18           **III. THE KEY TERMS OF THE SETTLEMENT AGREEMENT**

19           For the Court’s convenience, the key terms of the Agreement are briefly summarized as  
20 follows:

21           **A. Settlement Class Definition:** The Settlement Class is defined as follows: “All  
22 persons who purchased one or more of the following AMD computer chips either (1) while  
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1 residing in California or (2) after visiting the AMD.com website: FX-8120, FX-8150, FX-8320,  
2 FX-8350, FX-8370, FX-9370, and FX-9590.”<sup>1</sup> Agreement § 1.28.<sup>2</sup>

3 **B. Settlement Benefits:** Defendant has agreed to establish a **\$12,100,000.00**  
4 Settlement Fund from which each settlement class member with an approved claim shall be  
5 entitled to a *pro rata* portion (after deducting the Settlement Administration expenses, any Fee  
6 Award, any incentive award for the Class Representatives, and other amounts payable under the  
7 Agreement). *Id.* § 2.1. No portion of the Settlement Fund will revert to Defendant. *Id.* Any class  
8 member checks not cashed within 90 days of issuance will be either be placed in a Second  
9 Distribution Fund or donated to a Court-approved *cy pres* recipient. *Id.*

10 **C. Release:** In exchange for the monetary relief described above, AMD and any of  
11 its related entities will receive a release of all claims, “whether based on California’s Unfair  
12 Competition Law, California’s False Advertising Law, California’s Consumer Legal Remedies  
13 Act, or on claims of fraudulent inducement, breach of express warranty, or negligent  
14 misrepresentation, or other federal, state, local, statutory or common law or any other law, rule or  
15 regulation” that arise “out of any marketing materials, advertising, descriptions, facts,  
16 transactions, events, matters, occurrences, acts, disclosures, statements, representations,  
17 omissions or failures to act regarding the number of cores in AMD’s FX-8120, FX-8150, FX-  
18 8320, FX-8350, FX-8370, FX-9370, and FX-9590 processors, including all claims that were  
19 brought or could have been brought in the Action relating to representations about those CPUs.”  
20 *Id.* § 1.23.

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23 <sup>1</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this  
24 action and members of their families, (2) the defendant, defendant’s subsidiaries, parent  
25 companies, successors, predecessors, and any entity in which the defendant or its parents have a  
26 controlling interest and their current or former officers, directors, and employees, (3) persons  
27 who properly execute and file a timely request for exclusion from the class, and (4) the legal  
28 representatives, successors or assigns of any such excluded persons. *See* Agreement § 1.28.

<sup>2</sup> The sole difference between the Settlement Class definition and the class definition  
certified by the Court is that the Settlement Class is comprised of “**all persons**” instead of merely  
“all individuals.” This modest tweak allowed businesses, in addition to individuals, to participate  
in the settlement.

1 This release encompasses the claims, products, and conduct that Plaintiffs identified in  
2 this lawsuit. While Plaintiffs moved for class certification of only their UCL and FAL claims, the  
3 settlement releases all claims Plaintiffs alleged in their Second Amended Complaint, as well as  
4 any other “other federal, state, local, statutory or common law or any other law, rule or  
5 regulation.” The release is concededly broader than the specific claims certified by the Court, but  
6 it applies only to the alleged misconduct (and specific products) challenged in this lawsuit, and is  
7 the reasonable—indeed, nearly inevitable—result of arms-length negotiations underlying a  
8 nationwide class action resolution that delivers “global peace” to the Defendant in exchange for a  
9 substantial cash recovery in favor of the Class.

10 **D. Class Notice:** The Settlement Fund is being used to pay the costs of sending the  
11 notice set forth in the Agreement and any other notice as required by the Court, as well as all  
12 costs of administration of the Settlement. *Id.* § 2.1. Angeion Group, a third-party administrator,  
13 has sent class notices via U.S. Mail and/or email based on records subpoenaed from vendors. *Id.*  
14 § 1.27, 4.1(a)-(c). Angeion has also implemented a digital media campaign targeting potential  
15 class members. *Id.* § 4.1(e). In accordance with Rule 23, the notice has included: the nature of  
16 the action, a summary of the settlement terms, and instructions on how to object to and opt out of  
17 the settlement, including relevant deadlines. *Id.* § 4.2.

18 **E. Opt-Out Deadline:** Any class member who does not wish to participate in the  
19 settlement must submit a request for exclusion no later than forty-five (45) days after the Notice  
20 Date. *Id.* § 1.18.

21 **F. Incentive Award Requests:** With no consideration having been given or  
22 received, Plaintiffs unilaterally agreed to limit any requests for incentive awards to no more than  
23 seven thousand five hundred dollars (\$7,500) each. *Id.* § 8.3

24 **G. Attorneys’ Fees and Expenses Requests:** Without the Parties having discussed  
25 the issue of attorneys’ fees at any point in their negotiations, and with no consideration given or  
26 received, Class Counsel unilaterally agreed to limit any petition for attorneys’ fees to no more  
27 than 30 percent (30%) of the Settlement Fund. *Id.* § 8.1.

**IV. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE AWARDED**

In a certified class action, the Court “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). In cases—like this one—proceeding under state law, state law also governs the calculation of attorneys’ fees. *See Black v. T-Mobile USA, Inc.*, No. 17-CV-04151-HSG, 2019 WL 3323087, at \*5 (N.D. Cal. July 24, 2019); *accord Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Nevertheless, the Court may still look to federal authority for guidance in awarding attorneys’ fees. *See Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1264 n.4 (2005) (“California courts may look to federal authority for guidance on matters involving class action procedures.”).

Under California law, the “percentage of fund method” is proper in class actions. *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 506 (2016). Likewise, under federal law, the percentage method is the “primary basis” for fee awards in common fund cases. *Vizcaino*, 290 F.3d at 1050. In this Circuit, the “benchmark” fee percentage is 25% and the “usual range” is 20%-30%. *Black*, 2019 WL 3323087, at \*6 (quotations and citations omitted).

Trial courts also have discretion to conduct a lodestar cross-check on a percentage fee. *See id.*, at \*5. The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer. *Id.* That said, the Court need not conduct a lodestar cross-check: to the contrary, trial courts “retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.” *Laffitte*, 1 Cal. 5th at 506.

**A. A Percentage-Of-The-Fund Analysis Demonstrates that the Requested Fees are Reasonable and Should be Awarded.**

The requested fee award, which represents 25% of the common fund, constitutes the “benchmark” fee award under this Circuit’s federal law. *Vizcaino*, 290 F.3d at 1048. Given the exceptional results achieved for the class, the extremely risky nature of this technically complex

1 case, and the extent to which the case was aggressively litigated over the last four years, Class  
2 Counsel respectfully submit that the requested fee award is a particularly modest one.

3 First, the result achieved for the class—a \$12.1 million, non-reversionary-common  
4 fund—is nothing short of excellent. Assuming a 20% claims rate, which would be robust for  
5 consumer class actions of this nature, Class Counsel estimate that Class Members will recover in  
6 excess of \$30 per purchased processor. In other words, claiming Class Members stand to recover  
7 more than 50% of what they would have been entitled to had the Class prevailed at trial. In even  
8 in a routine consumer class action, this would undoubtedly be a good result. But this was no  
9 ordinary consumer class action. The core subject matter (CPU microarchitecture) was  
10 technologically sophisticated and expert intensive; the Parties litigated three rounds of Rule 12  
11 briefing before proceeding to the merits; Plaintiffs prevailed—in the face of a vigorous defense  
12 presented by sophisticated defense counsel—in certifying a nationwide class to pursue UCL and  
13 FAL claims; and as they marched toward summary judgment, Plaintiffs faced substantial risk on  
14 a variety of issues at summary judgment, trial, and (inevitably) appeal. In brief, the fee request is  
15 more than adequately supported by the results obtained. *See Vizcaino*, 290 F.3d at 1048–50; *see*  
16 *also In re Lenovo Adware Litig.*, No. 15-md-02624-HSG, 2019 WL 1791420, at \*8 (N.D. Cal.  
17 Apr. 24, 2019) (approving 30% fee request in case where settlement represented 24% of  
18 Plaintiffs’ estimated recoverable damages, based in part on class counsel having obtained  
19 “significant results for the class”).

20 Second, the extremely risky nature of this technically complex case supports the  
21 requested fee award. Unlike many consumer class actions, this was not a case where Class  
22 Counsel read a highly-publicized news story of obvious corporate misconduct, filed suit (along  
23 with many other firms), and then invested substantial attorney time and effort only once there  
24 was an all-but-inevitable payday. To the contrary, Class Counsel devoted substantial resources to  
25 proactively investigating the (highly disputed) technical theory of this case before filing suit, was  
26 the only firm in the country to step forward on behalf of consumers regarding the underlying  
27 issue, and invested substantial attorney time and money into this case from the outset—without  
28 any guarantee of success (and in the face of a vigorous defense). These risks borne by Class

1 Counsel support the requested fee award. *See Vizcaino*, 290 F.3d at 1048–50; *see also In re*  
2 *Lenovo Adware Litig.*, 2019 WL 1791420, at \*9 (approving fee request based in part on the  
3 “substantial risk” Class counsel incurred in litigating the action).

4 Third, the extent to which this case was skillfully litigated over the last four years  
5 supports the requested fee award. Class Counsel briefed and argued three successive motions to  
6 dismiss (prevailing past the pleadings on the Second Amended Complaint), engaged with  
7 thousands of pages of technically complex discovery, defended the depositions of the Class  
8 Representatives, analyzed four expert reports produced by Defendant, vetted more than a dozen  
9 technical and survey experts, engaged two technical experts for purposes of producing  
10 preliminary experts reports, and successfully briefed nationwide class certification. This level of  
11 skillful litigation activity further supports the requested fee award. *See Vizcaino*, 290 F.3d at  
12 1048–50; *see also In re Lenovo Adware Litig.*, 2019 WL 1791420, at \*8 (approving fee request  
13 based in part on the fact that the case had been “actively litigated for the past four years, and  
14 required complex legal and factual research and analysis by Class Counsel”).

15 Ultimately, Plaintiffs’ fee request for 25% of the common fund—a figure considered the  
16 benchmark in this Circuit—is reasonable and should be awarded.

17 **B. A Lodestar Cross-Check Confirms that the Requested Fees are Reasonable**  
18 **and Should be Awarded.**

19 Though the Court need not engage in a lodestar cross-check in this case, *see Laffitte*, 1  
20 Cal. 5th at 506, such a cross-check nevertheless confirms the reasonableness of Class Counsel’s  
21 requested fee award. Since this case was filed more than four years ago, Edelson attorneys have  
22 spent more than 1,981 hours prosecuting the case, at rates ranging between \$275-\$575 for  
23 associates and \$615-\$1,000 for partners, leading to a combined lodestar of \$982,159.10 and  
24 consequently a requested fee “multiplier” of 3.08. As discussed more fully below and in the  
25 Declaration of Rafey S. Balabanian, the hours worked were necessary to the prosecution of this  
26 case, Edelson’s billing rates are reasonable, and the requested multiplier falls well within the  
27 acceptable range.

1 First, the 1,981 hours expended by Edelson PC were reasonable and necessary to the  
2 prosecution of this case. *See* Balabanian Decl. ¶ 45. Over the last four years, attorneys from  
3 Edelson’s Chicago and San Francisco offices briefed and argued three motions to dismiss,  
4 exchanged multiple sets of written discovery with Defendant, reviewed thousands of pages of  
5 technically complex discovery, defended the depositions of the Class Representatives, analyzed  
6 four expert reports produced by Defendant, vetted more than a dozen technical and survey  
7 experts, engaged two technical experts for purposes of producing preliminary experts reports,  
8 successfully briefed nationwide class certification, and successfully defended against  
9 Defendant’s Rule 23(f) Petition for Permission to Appeal to the Ninth Circuit. *Id.* ¶¶ 12-13.  
10 Given the advanced posture of the case and the amount of litigation activity conducted, the  
11 number of hours expended by Edelson PC on this case is eminently reasonable. *Id.* ¶ 45; *see also*  
12 *Edenborough v. ADT, LLC*, No. 16-cv-02233-JST, 2019 WL 4164731, at \*4 (N.D. Cal. July 22,  
13 2019) (finding reasonable Class Counsel’s expenditure of 5,585 hours toward a three-year-old  
14 putative class action resulting in \$16 million common fund settlement); *In re Lenovo Adware*  
15 *Litig.*, 2019 WL 1791420, at \*9 (finding reasonable Class Counsel’s expenditure of 8,446 hours  
16 toward a four-year-old certified class action resulting in \$8.3 million common fund settlement);  
17 *Hendricks v. Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, at \*12 (N.D. Cal. Sept. 29,  
18 2016) (finding reasonable Class Counsel’s expenditure of 3,366 hours toward a three-year-old  
19 putative class action resulting in \$12 million common fund settlement).

20 Second, Edelson’s hourly rates are reasonable. The rates range \$275-\$575 for associates,  
21 \$615-\$1,000 for partners, and a flat rate of \$250 for all paralegals, in-house document review  
22 attorneys, and other staff (including staff members of Edelson’s digital forensics lab), leading to  
23 a “blended rate” in this case of \$495.66. Those rates are reasonable and in line with prevailing  
24 rates in this district for personnel of comparable experience, skill, and reputation. *See id.* ¶ 48;  
25 *see also In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672  
26 CRB (JSC), 2017 WL 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (approving rates between \$275-  
27 \$1,600 for partners, \$150-\$790 for associates, and \$80 to \$490 for paralegals, leading to a  
28 blended rate of \$529); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at \*9 (approving rates

1 between \$150-\$225 per hour for paralegals and \$365 to \$950 per hour for attorneys, leading to a  
2 blended rate of approximately \$575); *Hayes v. MagnaChip Semiconductor Corp.*, No. 14-CV-  
3 01160-JST, 2016 WL 6902856, at \*8 (N.D. Cal. Nov. 21, 2016) (applying blended rate of \$600  
4 per hour for all non-paralegal timekeepers at firm appointed as Lead Plaintiffs' Counsel).

5 Third, and finally, the requested fee multiplier of 3.08 falls well-within the acceptable  
6 range in the Ninth Circuit. *See Edenborough*, 2019 WL 4164731, at \*5 ("Percentage awards in  
7 the range of one to four times the lodestar are common."); *Vizcaino*, 290 F.3d at 1052-54  
8 (approving of 3.65 multiplier; finding that, even in "megafund" cases, 83 percent of fee  
9 multipliers fall between 1.0-4.0); *Fowler v. Wells Fargo Bank, N.A.*, No. 17-CV-02092-HSG,  
10 2019 WL 330910, at \*7 (N.D. Cal. Jan. 25, 2019) (benchmark award of 25% of settlement fund  
11 with lodestar multiplier of approximately 3.46 reasonable in light of length of case and  
12 procedural posture); *Lazarin v. Pro Unlimited, Inc.*, No. C11-03609 HRL, 2013 WL 3541217, at  
13 \*8 (N.D. Cal. July 11, 2013) (lodestar multiplier of 3.36 reasonable and did not warrant a  
14 downward departure from 25% benchmark); *Buccellato v. AT&T Operations, Inc.*, No. C10-  
15 00463-LHK, 2011 WL 3348055, at \*1-2 (N.D. Cal. June 30, 2011) (approving \$3,125,000 in  
16 fees, representing 25% of the settlement fund and a 4.3 multiplier, and collecting cases).

17 Ultimately, should the Court choose to exercise its discretion to conduct a lodestar cross-  
18 check, the cross-check demonstrates that Class Counsel's requested fee award is reasonable and  
19 should be granted.

20 **V. THE REQUESTED INCENTIVE AWARDS ARE REASONABLE AND SHOULD**  
21 **BE AWARDED.**

22 The Court should also approve incentive awards of \$7,500 to each Class Representative.  
23 "Incentive awards are fairly typical in class action cases [to] . . . compensate class representatives  
24 for work done on behalf of the class, to make up for financial or reputational risk undertaken in  
25 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney  
26 general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). While \$7,500 is  
27 concededly a larger figure than the \$5,000 figure considered "presumptively reasonable," the  
28

1 Class Representatives' contribution to this case has been extraordinary. *Fowler*, 2019 WL  
2 330910, at \*8.

3 As detailed more fully in the attached declarations of Paul Parmer and Tony Dickey, both  
4 Class Representatives made the typical contributions to class actions, including reviewing and  
5 approving every pleading and motion, producing documents responsive to requests for  
6 production, working with counsel to respond to written discovery, and participating in the  
7 settlement process. *See* Declaration of Paul Parmer ("Parmer Decl.") ¶ 2; Declaration of Tony  
8 Dickey ("Dickey Decl.") ¶ 2.

9 But they also did more: to sit for his deposition, which Defendant noticed in Los Angeles,  
10 Mr. Dickey had to fly from his hometown in southern Alabama, stay overnight in a hotel in Los  
11 Angeles, sit through his full-day deposition, and then begin the long journey home to Alabama.  
12 Dickey Decl. ¶ 2(b). Similarly, to sit for his deposition which Defendant noticed in San  
13 Francisco, Mr. Parmer had to fly from his hometown in southern California, stay overnight in a  
14 hotel in San Francisco, sit through his full-day deposition, and then travel home during the late  
15 evening. Parmer Decl. ¶ 2(b). Both Mr. Parmer and Mr. Dickey were forced to produce their  
16 computers to Defendant (for purposes of Defendant's expert's technical report), go without those  
17 computers for more than a week, and ultimately received back damaged machines that required  
18 replacement parts. Dickey Decl. ¶ 3; Parmer Decl. ¶ 2(d).

19 Overall, Mr. Dickey estimates that he devoted approximately 50 hours toward the  
20 prosecution of this case, and Mr. Parmer estimates that he devoted approximately 40 hours  
21 toward the prosecution of this case. Dickey Decl. ¶ 2; Parmer Decl. ¶ 2. Their substantial time  
22 (including overnight travel) invested into the case, paired with their temporary sacrifice of their  
23 computers and resulting damages to those machines, justifies the modestly-above-average  
24 incentive awards they seek. *See, e.g., Sandoval v. Tharaldson Empl. Mgmt., Inc.*, No. EDCV 08-  
25 482-VAP(OP), 2010 WL 2486346, at \*10 (C.D. Cal. Jun. 15, 2010) (granting \$7,500 incentive  
26 award); *Fowler*, 2019 WL 330910, at \*7 (same). Consequently, the requested incentive awards  
27 are reasonable and should be awarded. In addition, Mr. Dickey testifies that the process of  
28 producing his computers to AMD for the purposes of its experts' reviews resulted in substantial

1 damages to his computers, which will cost \$2,482.85 to fix, and requests the reimbursement of  
2 such costs. *See* Dickey Decl. ¶ 3-4. Class Counsel submits that this request is likewise reasonable  
3 and should be granted.

4 **VI. CONCLUSION**

5 Plaintiffs respectfully request that the Court (1) approve an award of attorneys' fees and  
6 expenses in the amount of \$3,025,000, (2) approve reimbursement of \$47,517.37 in litigation  
7 expenses, and (3) approve incentive awards of \$7,500 to each of the Class Representatives in this  
8 case, in addition to \$2,482.85 in Plaintiff Dickey's reasonably-expended litigation costs.

9  
10 Respectfully submitted,

11 **TONY DICKEY and PAUL PARMER,**  
12 individually and on behalf of all others similarly  
situated,

13 Dated: November 15, 2019

14 By: /s/ Rafey S. Balabanian  
One of Plaintiffs' Attorneys

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10 *Counsel for Plaintiffs and the Class*

11  
12 **UNITED STATES DISTRICT COURT**  
13  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15  
16 **OAKLAND DIVISION**

17 TONY DICKEY and PAUL PARMER,  
18 individually and on behalf of all others  
19 similarly situated,

20 *Plaintiffs,*

21 *v.*

22 ADVANCED MICRO DEVICES, INC., a  
23 Delaware corporation,

24 *Defendant.*

Case No. 4:15-cv-04922-HSG

**DECLARATION OF RAFEY S.  
BALABANIAN IN SUPPORT OF MOTION  
FOR ATTORNEYS' FEES AND COSTS  
AND CLASS REPRESENTATIVE  
INCENTIVE AWARDS AND COSTS**

Judge: Hon. Haywood S. Gilliam, Jr.  
Date: February 20, 2020  
Time: 2:00 p.m.

1 Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

2 1. I am an attorney admitted to practice in the United States District Court for the  
3 Northern District of California. I am entering this declaration in support of Plaintiffs' Motion for  
4 Attorneys' Fees and Costs and Class Representative Incentive Awards. This declaration is based  
5 upon my personal knowledge unless otherwise indicated. If called upon to testify as to the  
6 matters stated herein, I could and would competently do so.

7 2. I am the Managing Partner and the General Counsel of the law firm of Edelson  
8 PC, which was retained to represent Class Representatives Paul Parmer and Tony Dickey in this  
9 matter. I am a member in good standing in every court to which I have been admitted to practice,  
10 have been selected as a Super Lawyers "Rising Star" by Illinois and California Super Lawyers  
11 for six years running and recently received the distinction from Law360 of one of the top  
12 attorneys in the country under the age of 40. I also serve as an Advisor to the Executive  
13 Committee on Antitrust, Unfair Competition and Privacy for the California Lawyers Association,  
14 as well as a member of the Executive Committee for Privacy and Data Security for the Bar  
15 Association of San Francisco. I, along with an associate from my firm, Todd Logan, have been  
16 appointed Class Counsel in this matter.

17 3. Edelson PC is a preeminent consumer protection law firm. Edelson attorneys are  
18 consistently recognized as leaders in consumer protection issues by state and federal courts,  
19 legislatures, national and international media groups, and our peers. The firm's reputation has led  
20 state and federal courts across the country to appoint its attorneys lead counsel in many high-  
21 profile cases, including in consumer class actions against companies such as Facebook, Google,  
22 Twentieth Century Fox, JP Morgan Chase, Citibank, Wells Fargo, Microsoft, comScore, Netflix,  
23 Time, Simon & Schuster, Steve Madden, LinkedIn, Advocate Hospitals, AvMed, and Symantec.

24 **I. EDELSON PC'S WORK ON THE LITIGATION AND SETTLEMENT**

25 4. Edelson PC's work on this case began more than four (4) years ago, in 2015,  
26 when an internal investigation led the Firm to conclude that AMD had falsely represented the  
27 core count in its Bulldozer line of CPUs.

28

1           5.       From the outset of the case, I supervised the case at the partner-level, though over  
2 the years and at various stages of the litigation I have leaned on several other partners for certain  
3 contributions. Likewise, while Todd Logan has served as the lead associate for the bulk of the  
4 case, we have relied on a number of other associates to substantially assist in its prosecution. I  
5 have also supervised and assigned certain staff, law clerks, and paralegals from our Firm to assist  
6 with the prosecution of the case. In my opinion, we staffed the case efficiently and appropriately.

7           6.       Our investigation was prompted by a discovery by our Firm's internal  
8 investigation team that AMD's Bulldozer line of CPUs did not have eight cores, as AMD had  
9 been advertising extensively to consumers.

10          7.       Following this discovery, and at my direction, Christopher Dore, the Partner at  
11 my Firm in charge of case investigations, was tasked with vetting potential clients. Through that  
12 vetting process, my Firm concluded that Tony Dickey, and later Paul Parmer, were adequate  
13 class representatives.

14          8.       On October 20, 2015, my Firm filed suit on these issues in the Northern District  
15 of California, on behalf of Plaintiff Tony Dickey, captioned *Tony Dickey v. Advanced Micro*  
16 *Devices Inc.*, Case No. 4:15-cv-04922-RMW. Plaintiff Dickey alleged that AMD's  
17 advertisements violated California's Consumers Legal Remedies Act ("CLRA"), Cal Civ. Code  
18 § 1761(c), California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code §§ 17200, *et*  
19 *seq.*, California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, and also amounted to  
20 common law fraud in the inducement, breach of express warranties, and negligent  
21 misrepresentation.

22          9.       In response to the lawsuit, AMD moved to dismiss this complaint on December  
23 21, 2015, and after briefing and argument, the Court granted AMD's motion to dismiss on April  
24 7, 2016. On May 5, 2016, after adding Paul Parmer as a second class representative, Dickey and  
25 Parmer together filed a First Amended Complaint, which removed the claim for unjust  
26 enrichment, but realleged all other causes of action. AMD again moved to dismiss on May 26,  
27 2016.

1           10.     Before fully-briefing and arguing AMD’s second motion to dismiss, the Parties  
2 decided to engage for the first time in settlement discussions. In August 2016, the Parties  
3 participated in a pre-mediation phone call with the Honorable Morton Denlow, a former Chief  
4 Magistrate Judge of the Northern District of Illinois. But that call quickly revealed that the  
5 Parties held vastly divergent views of the merits of the case, and that any serious negotiations  
6 would be premature. With that information in hand, the Parties agreed to cancel the mediation,  
7 but committed to revisiting settlement talks, if it made sense down the road.

8           11.     Litigation resumed, and after briefing and argument on October 31, 2016, the  
9 Court again granted AMD’s motion to dismiss with leave to amend. On November 21, 2016,  
10 Plaintiffs submitted their Second Amended Complaint, realleging all causes of action that were  
11 included in the FAC. On June 14, 2017, after briefing and argument, the Court granted in part,  
12 and denied in part, the motion to dismiss.

13           12.     Shortly thereafter, discovery commenced. Over the next ten months, the Parties  
14 exchanged substantial fact and expert discovery, including the production of documents, the  
15 exchange of multiple sets of interrogatories, the depositions of Plaintiffs, and the disclosure of  
16 expert reports. The Parties collectively produced over 6,000 pages of documents, collectively  
17 responded to fifty-five (55) interrogatories, and participated in the depositions of Tony Dickey  
18 and Paul Parmer on January 8, 2018 and January 16, 2018, respectively. The Parties also  
19 engaged in several discovery disputes, including motion practice related to the disclosure and  
20 filing of expert reports.

21           13.     Following these discovery efforts, on March 27, 2018, Plaintiffs filed a Motion  
22 for Class Certification, which sought to certify a class of consumers under California’s Unfair  
23 Competition Law and False Advertising Law. Argument was held on May 10, 2018 and on  
24 January 17, 2019 the Court granted Plaintiffs’ motion.

25           14.     The Parties then proceeded towards summary judgment briefing. In due course,  
26 my Firm vetted more than a dozen potential experts, including survey experts, consumer  
27 confusion experts, and CPU Microarchitecture experts, and ultimately engaged two experts on  
28

1 CPU microarchitecture, Dr. Phillip Emma and Dr. Vojin Oklobdzija, who in total produced four  
2 (4) preliminary expert reports: two affirmative reports and two rebuttal reports.

3 15. While my Firm, Mr. Parmer, and Mr. Dickey continued to vigorously prosecute  
4 the case on behalf of the now-certified class, the Parties revisited settlement discussions in  
5 January 2019. Through these talks, the Parties agreed to attend a full-day mediation with the  
6 Honorable James F. Holderman in May.

7 16. My Firm did considerable work leading up to and during the mediation. Leading  
8 up to the mediation, we continued our factual investigation, which we incorporated, in large part,  
9 into our mediation statement, which was lengthy and laid out our theory of the case and  
10 evidentiary support. With the help of the Firm's founder, Jay Edelson, Todd Logan and I also  
11 developed and strategized about various settlement models.

12 17. On May 9, 2019, the Parties participated in a full-day mediation before Judge  
13 Holderman. At the end of the day, after several rounds of arms-length negotiations, the Parties  
14 ultimately reached a class action settlement that, if approved, would completely resolve this  
15 dispute. Since this settlement in principle was reached at mediation, the Parties needed several  
16 additional months to negotiate the details of the agreement and formally executed the written  
17 Settlement Agreement now before the court.

18 18. Attorneys' fees were not discussed at any point in the Parties' negotiations.  
19 Likewise, incentive awards were not discussed as part of the class relief, and at no time during  
20 settlement negotiations were Plaintiffs promised any incentive awards or any additional relief.

21 19. There was no collusion between us and defense counsel during the course of the  
22 litigation or in the negotiation of the Settlement and I have no doubt that, if called upon, Judge  
23 Holderman would attest to that fact.

24 20. On August 9, 2019 the Parties executed the formal Settlement Agreement.

25 **II. LITIGATION RISKS**

26 21. Had litigation continued, the Parties would have had to prepare full affirmative  
27 and rebuttal expert reports, engage in additional expert discovery, brief competing Daubert  
28

1 motions (if necessary), and engage in costly summary judgment briefing, wherein the Class  
2 would have risked a potentially adverse dispositive ruling.

3 22. Moreover, if the case proceeded to trial, other roadblocks would have stood  
4 between the class and any ultimate recovery, such as the need for expert testimony to potentially  
5 establish class-wide damages. And, given the amounts at stake, regardless of the outcome at trial,  
6 the losing party would be almost guaranteed to appeal, thus further delaying and potentially  
7 foreclosing any relief to the class.

8 23. While aware of these defenses and risks, my Firm nonetheless accepted  
9 representation of this case on a contingency basis and aggressively prosecuted the claims in the  
10 face of substantial opposition by experienced defense counsel, investing nearly one million  
11 dollars in attorney time. In all, we spent nearly 2,000 hours litigating and settling the case, which  
12 necessarily required us to forego other opportunities.

### 13 **III. THE SETTLEMENT**

#### 14 **A. Settlement Benefits**

15 24. AMD has agreed to establish a **\$12,100,000.00** Settlement Fund from which each  
16 settlement class member with an approved claim shall be entitled to a *pro rata* portion (after  
17 deducting the Settlement Administration expenses, any Fee Award, any incentive award for the  
18 Class Representatives, and other amounts payable under the Agreement).

19 25. The Settlement Class is defined as follows: “All persons who purchased one or  
20 more of the following AMD computer chips either (1) while residing in California or (2) after  
21 visiting the AMD.com website: FX-8120, FX-8150, FX-8320, FX-8350, FX-8370, FX-9370, and  
22 FX-9590.”<sup>1</sup>

#### 23 **B. Settlement Administration**

24  
25 <sup>1</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members  
26 of their families, (2) the defendant, defendant’s subsidiaries, parent companies, successors, predecessors, and any  
27 entity in which the defendant or its parents have a controlling interest and their current or former officers, directors,  
28 and employees, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the  
legal representatives, successors or assigns of any such excluded persons.

1                   **1.     Class Notice Program**

2           26.     The Settlement Fund is being used to pay the costs of notice and administration.  
3     Angeion Group, a third-party administrator, is sending class notices via U.S. Mail and/or email  
4     based on records subpoenaed vendors. Angeion is also implementing a digital media campaign  
5     targeting potential class members. In accordance with Rule 23, the notice includes: the nature of  
6     the action, a summary of the settlement terms, and instructions on how to object to and opt out of  
7     the settlement, including relevant deadlines.

8           27.     Any class member who wishes to file a claim for payment must timely submit a  
9     signed claim form, either online or by mail. Along with their contact information, the claim form  
10    requires that a class member verifies they are a member of the settlement class and indicate the  
11    number of at-issue AMD CPUs that they purchased.

12          28.     If the claim is accepted, the class member will be mailed a check for a *pro rata*  
13    share of the settlement fund, depending on the number of valid claim forms submitted.

14          29.     Based on my own experience, and after consulting with Angeion, I believe that  
15    this notice program is the best approach to fairly and effectively inform the class and distribute  
16    settlement funds.

17                   **2.     Estimated Settlement Recovery for Class Members**

18          30.     Had the class prevailed at trial, I believe that each class member would have been  
19    entitled to approximately \$60 based on their certified claims. Plaintiffs' class certification motion  
20    argued that each class member would be entitled to nearly \$70 in this case. But AMD's  
21    opposition brief, combined with subsequent discussions between counsel leading up to mediation  
22    (specifically regarding how to interpret certain AMD sales data produced in discovery), revealed  
23    that a more accurate figure of the measure of damages available under the certified claims is  
24    approximately \$60. Indeed, \$60 was the baseline per-class-member damages award that the  
25    Parties used as a theoretical maximum recovery during their full-day mediation before Judge  
26    Holderman.

27          31.     Based on AMD sales data produced in discovery, discussions with counsel for  
28

1 AMD, and data subpoenaed by third-party vendors, the proposed Settlement Class purchased  
2 approximately 1 million at-issue “Bulldozer” CPUs.

3 32. Consequently, the claims of the certified class, had the class prevailed at trial,  
4 would have been worth a maximum of approximately \$60 million. That means that if claim  
5 forms are submitted for 20% of the at-issue CPUs (*i.e.*, approximately 200,000 claims are made),  
6 and the Common Fund totals at least \$7.5 million after the deduction of attorneys’ fees and  
7 expenses, notice and administration costs, and incentive awards, which in my experience is a  
8 reasonable estimate, then each claimant will receive \$37.50 per purchased CPU.

9 **3. Incentive Awards and Attorneys’ Fees**

10 33. The Settlement Fund will be used to pay any attorneys’ fees and costs, as well as  
11 any incentive awards approved by the Court.

12 34. Without the Parties having discussed the issue of attorneys’ fees at any point in  
13 their negotiations, and with no consideration given or received, Class Counsel unilaterally agreed  
14 to limit any petition for attorneys’ fees to no more than 30 percent (30%) of the Settlement Fund.

15 35. Plaintiffs have ultimately applied for an award of 25% of the Settlement Fund, or  
16 \$3,025,000, in attorneys’ fees.

17 36. Plaintiffs have also applied for reimbursement of \$47,517.37 in litigation  
18 expenses, and for incentive awards in the amount of \$7,500 for each of the two class  
19 representatives.

20 37. In exchange for the foregoing consideration, and subject to Court approval, the  
21 Final Judgment will be entered upon final approval of the Settlement, and class members will  
22 thereby release all claims which have or could have been asserted against AMD in this litigation.

23 **IV. PRELIMINARY APPROVAL**

24 38. On August 23, 2019 Plaintiffs filed their motion for preliminary approval of the  
25 Settlement. The Court heard argument on the motion on October 3, 2019 and granted preliminary  
26 approval of the Settlement on October 4, 2019.

27 39. In the Order granting preliminary approval of the Settlement, the Court also  
28

1 approved the proposed class notice plan.

2 **V. CLASS NOTICE AND SETTLEMENT ADMINISTRATION**

3 40. The notice program proposed by Plaintiffs in their motion for preliminary  
4 approval of the Settlement and approved by the Court in the preliminary approval has been  
5 implemented by Angeion Group, the claims administrator.

6 41. While it is early in the claims period, initial data from Angeion indicates that the  
7 claims rate will be robust in this case and that the notice campaign has proven successful.

8 **VI. ATTORNEYS' FEES, LITIGATION EXPENSES AND INCENTIVE AWARDS**

9 42. As noted above, Plaintiffs have applied for an award of \$3,025,000 in attorneys'  
10 fees, reimbursement of \$47,517.37 in litigation expenses, and for incentive awards in the amount  
11 of \$7,500 to Tony Dickey and Paul Parmer.

12 43. The attorneys' fees requested amount to 25% of the settlement fund, or 5% *less*  
13 than the amount Class Counsel agreed it would limit its petition to in Plaintiffs' motion for  
14 preliminary approval. The requested incentive awards are consistent with information disclosed  
15 in Plaintiffs' motion for preliminary approval.

16 **A. Lodestar Figure**

17 44. As described above and as is reflected in the Court docket, for the past four years,  
18 Class Counsel have taken the lead in prosecuting this litigation on a completely contingent basis  
19 to a successful conclusion on behalf of Plaintiffs and the class.

20 45. As detailed more fully in **Exhibit A**, which is attached hereto beneath my  
21 signature, Edelson PC has logged a total of 1981.52 hours in uncompensated time in order to  
22 achieve the Settlement reached in this case, leading to a present lodestar of \$982,159.10 in  
23 attorneys' fees. I believe these hours were reasonable and necessary to the prosecution of this  
24 case. In compliance with the Northern District of California's Procedural Guidance on Class  
25 Action Settlements, Exhibit A includes detailed lodestar information regarding the number of  
26 hours spent on various categories of activities related to the action by each biller, together with  
27 each biller's hourly billing rate.

1           46.     My firm's policies require all professionals to contemporaneously record their  
2 time with detailed descriptions of each task performed. To track our time, we use a billing  
3 application known as "Freshbooks." Our billing protocol is promulgated to all attorneys and staff  
4 at the firm through our onboarding process, and employees must acknowledge and accept the  
5 protocol upon starting at the firm.

6           47.     Prior to the filing of this declaration, I reviewed the detailed time entries and  
7 removed any entries that were mistakenly entered in this case or that I deemed duplicative or  
8 unnecessary.

9           48.     Based on my knowledge and experience, my firm's billing rates as reflected in the  
10 above chart are reasonable and within the range of market rates charged by attorneys of  
11 equivalent experience, skill, and expertise in the Bay Area and in Chicago. For more than a  
12 decade, courts across the country, including in this District, have routinely approved my Firm's  
13 hourly rates as reasonable. Hence, we set our rates based on a number of factors, all of which  
14 confirm that our rates are consistent with the relevant legal market.

15           49.     Class Counsel's request for an award of \$3.025 million in fees and expenses  
16 results in a 3.08 multiplier. Because we have incurred additional time through the preparation  
17 and filing of the instant motion for fees, and will continue to incur substantial additional time and  
18 expense in this case through final approval and supervising the claims process, I expect that the  
19 requested fees will amount to a multiplier below 3.

20           **B.     Unreimbursed Costs and Litigation Expenses**

21           50.     My firm also incurred \$47,517.37 in expenses in connection with the prosecution  
22 of this case. These expenses include more than \$11,000 to JAMS for mediation-related costs,  
23 more than \$15,000 for expert fees, more than \$5,000 in deposition-related costs, and thousands  
24 of dollars in travel and filing-related costs. The expenses are reflected in the books and records  
25 of my firm, which are kept in the ordinary course and prepared from expense vouchers, check  
26 records, and other documents. If ordered to do so, I could and would file invoices for each of  
27 these expenses on the docket.  
28

1           51.     These expenses were reasonable and necessary to ensure proper prosecution of  
2 class members' claims, are of the type that have been previously approved by courts in  
3 connection with class actions we have prosecuted, and are of the type that would normally be  
4 charged to fee-paying clients. To date, we have not received any reimbursements for these  
5 expenses.

6           **C.     Incentive Awards to the Settlement Class Representatives**

7           52.     Tony Dickey and Paul Parmer have served as plaintiffs throughout the litigation  
8 (Dickey since 2015, Parmer since 2016) and have made significant contributions to the  
9 prosecution of this case and to the benefit of the class.

10          53.     Both Mr. Dickey and Mr. Parmer have remained in regular communication with  
11 my Firm, from our initial investigation of the case through the approval process, including  
12 exchanging emails, participating in phone calls, timely responding to numerous requests for  
13 information, and reviewing and signing papers. They both worked with my Firm to answer  
14 written discovery requests, and provided documents in their possession (as well as their  
15 computers) to aid my Firm in the prosecution of this case.

16          54.     Both Mr. Dickey and Mr. Parmer were also deposed during full-day depositions,  
17 and had to travel overnight to do so.

18          55.     Mr. Dickey and Mr. Parmer were consulted throughout the settlement process and  
19 approved the terms of the Settlement before it was finalized by counsel. They performed their  
20 class representative duties willingly and ably for the benefit of class members, and they did so  
21 without any guarantee of reimbursement or compensation for the worked they performed on  
22 behalf of the class.

23          56.     In my opinion, both Mr. Dickey and Mr. Parmer are deserving of an incentive  
24 award of \$7,500 in recognition of the contributions they made to the litigation over several years,  
25 and the benefits ultimately obtained for the class.

26  
27 //

1 I declare under penalty of perjury that the foregoing is true and correct.

2  
3 Executed November 15, 2019 at San Francisco, California.

4  
5 /s/ Rafey S. Balabanian

6  
7 **[See Exhibit A Below]**

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# Exhibit A

**DICKEY V. AMD**  
**Categorical Timekeeper Report– November 15, 2019**

**Time Categories**

1. Communications, Meetings, and Court
2. Discovery
3. Factual Research
4. Legal Research
5. Other
6. Pleadings, Motion Practice, and Settlement

Timekeeper	Time Category						Hourly Rate	Total Hours	Total Lodestar
	1	2	3	4	5	6			
Jay Edelson – Founder and CEO						11.0	\$1,000	11.0	\$11,000.00
Rafey S. Balabanian - Managing Partner	24.2	42.5			26.6	134.1	\$850	227.4	\$193,290.00
Ryan Andrews - Partner	.2			.2	2.8	33.8	\$725	37.0	\$26,825.00
Roger Perlstadt - Partner					1.5	2.27	\$725	3.77	\$2,733.25
Christopher Dore - Partner	6.1		31.5	8.7		9.8	\$700	56.1	\$39,270.00
Benjamin Thomassen – Associate	67.7	27.5		14.7	11.8	151.6	\$575	273.3	\$157,147.50
J. Aaron Lawson - Associate	12.6		7.6	6.9		93.8	\$525	120.9	\$48,360.00
Eli Wade-Scott - Associate	.4			5.5	.3	18	\$500	24.2	\$12,100.00
Todd Logan - Associate	75.25	141.75	7.75	36.0	51.5	184.25	\$475	496.5	\$235,837.50
Sydney Janzen - Associate	.5	9.66	6.6			7.3	\$450	24.06	\$10,827.00
Lily Hough - Associate			2.82	3.87		18.7	\$425	25.39	\$10,790.75
Dan Schneider - Associate	1.5	38.1	3.4	.3	.9		\$400	44.2	\$17,680.00
Michael Ovca - Associate	40.94	28.83	2.1	2.23	6.7	9.2	\$400	90.00	\$36,000.00

Albert Plawinski - Associate				4.2		7.06	\$400	11.26	\$4,504.00
Brandt Silver-Korn - Associate	15.1	12.90	6.40	.4	45.7	54.3	\$350	134.80	\$47,180.00
Alex Nyugen – Former Partner	.3	2.48		7.39		19.27	\$615	29.44	\$18,105.60
Amir Missaghi – Former Associate	13.4	4	6.5	2.8	6.5	54.6	\$400	87.80	\$35,120.00
Elizabeth Winkowski – Former Associate	.8			5.2	.2	32.3	\$335	38.50	\$12,897.50
Kelly Singleton – Former Associate		29.2					\$275	29.2	\$8,030.00
David Walchak – Former Summer Associate	2.3			8.4		53.9	\$275	64.6	\$17,765.00
Paralegals, Doc Reviewers, and Staff (Blended)	19.62	29.7	45		3	6.9	\$250	104.22	\$26,055.00
<b>Totals</b>	280.91	382.02	113.07	117.21	157.50	930.81	\$495.66	1,981.52	\$982,159.10

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 2 Todd Logan (SBN 305912)  
 tlogan@edelson.com  
 3 EDELSON PC  
 4 123 Townsend Street, Suite 100  
 San Francisco, California 94107  
 5 Tel: 415.212.9300  
 Fax: 415.373.9435

6 *Counsel for Plaintiffs and the Class*

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **OAKLAND DIVISION**

11  
 12 TONY DICKEY and PAUL PARMER,  
 individually and on behalf of all others  
 13 similarly situated,

14 *Plaintiffs,*

15  
 16 v.

17  
 18 ADVANCED MICRO DEVICES, INC., a  
 Delaware corporation,

19  
 20 *Defendant.*

Case No. 4:15-cv-04922-HSG

**DECLARATION OF TONY DICKEY IN  
 SUPPORT OF MOTION FOR  
 ATTORNEYS' FEES AND COSTS AND  
 CLASS REPRESENTATIVE INCENTIVE  
 AWARDS AND COSTS**

Judge: Hon. Haywood S. Gilliam, Jr.  
 Date: February 20, 2020  
 Time: 2:00 p.m.

1 I, Tony Dickey, declare under penalty of perjury that the following is true and correct:

2 1. I am a class representative in this case and reside in southern Alabama.

3 2. For more than four years, I have actively represented the class in every sense, and  
4 in various ways. The time and energy that I expended in my role as an advocate for the class is at  
5 the expense of my work, time with my family, and my personal property. In order to aid the Court,  
6 I attest that I have spent an estimated 50 hours of my time on the following activities:

7 a. I have remained in regular communication with my attorneys, from their  
8 initial investigation of my case through the approval process, including  
9 exchanging emails, participating in phone calls, timely responding to  
10 numerous requests for information, and reviewing and signing papers.

11 b. I was deposed during a full-day deposition and spent much time preparing  
12 for my deposition, including time spent reviewing the complaints and  
13 relevant motions in the case, as well as meeting with my attorney. In order  
14 to attend my deposition, I had to fly from Alabama to Los Angeles and stay  
15 overnight in Los Angeles, away from my home.

16 c. I worked with my attorneys to answer written discovery requests, and  
17 provided documents in my possession to aid my attorneys in the prosecution  
18 of the case. In doing so, I searched for relevant case documents, including  
19 emails and other hard copy documents, and provided this information to my  
20 attorneys.

21 d. I was also required to turn over my two at-issue computers to AMD. When  
22 I got my computers back, I found out that they had been damaged (either  
23 during shipping or during Defendant’s testing of my computer).

24 e. While I did not fly to Chicago for the mediation in which a settlement was  
25 reached, I was available to participate by phone and have always stayed in  
26 close contact with my attorneys regarding the settlement.

27

28

1 f. I reviewed the terms of the Settlement, discussed it with my attorney, and  
2 signed it. I approved the proposed Settlement because I believe it is fair and  
3 in the best interests of the class.

4 3. When I received my computers back after producing them to AMD’s experts, the  
5 computers came back damaged and in multiple pieces. More specifically, the computers came back  
6 with damaged cases and metal parts loose and rolling around inside the case which seemed to have  
7 caused damage to and apparently shorted interior components. I managed to get one computer  
8 operational by combining pieces from both computers. But the other, which has now just been  
9 sitting collecting dust for more than 18 months, requires a total rebuild. To the best of my  
10 knowledge, getting the second computer working will require the replacement parts identified in  
11 the three Figures produced in the following three pages, which, if purchased from newegg.com (a  
12 cost-competitive website for computer parts, and from which I regularly purchase) would come to  
13 a total cost of **\$2,482.85**.

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[Continue to following pages for **Figures**]

**Figure 1**

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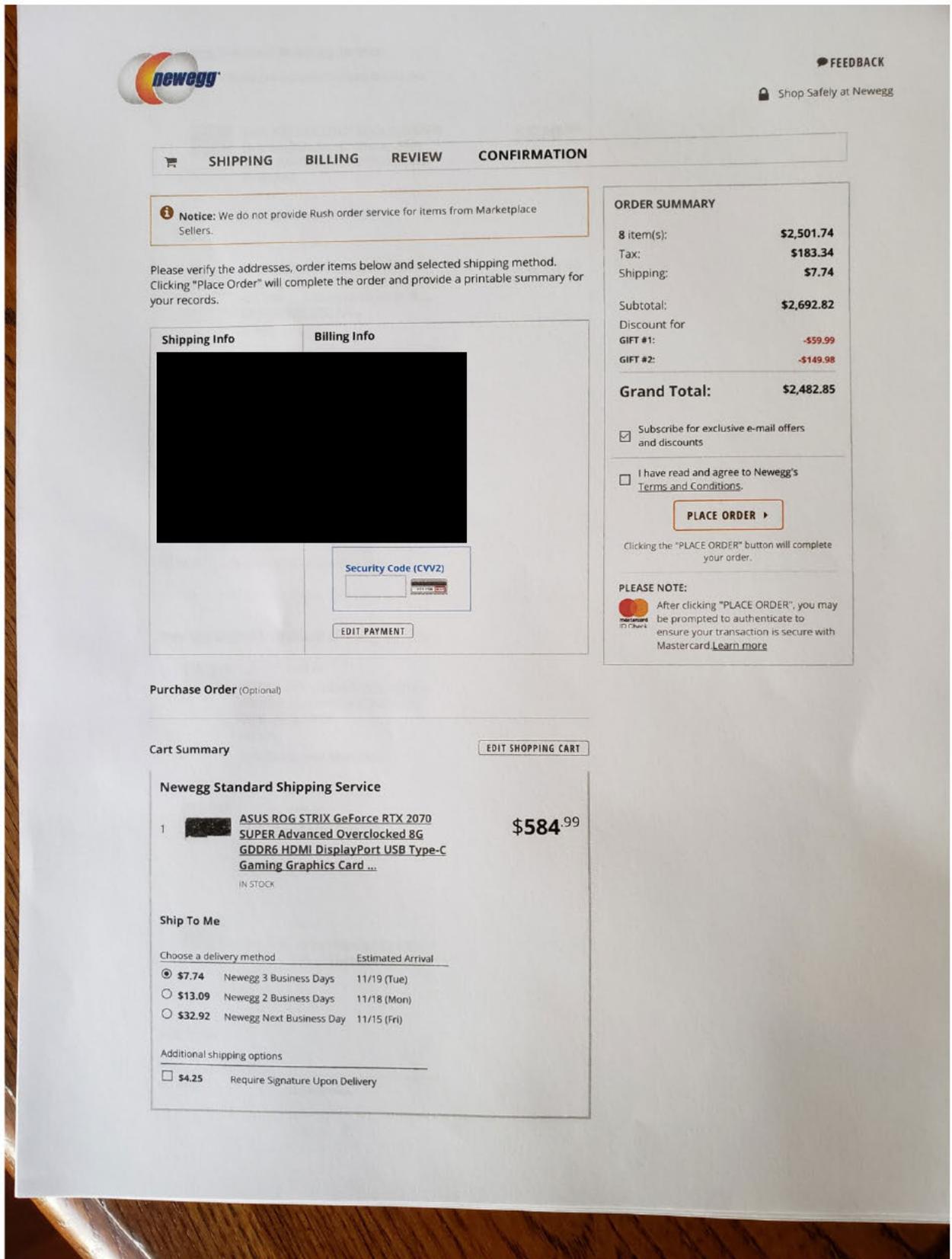


Figure 2

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**Newegg Standard Shipping Service**

Extended Holiday Replacement-Only Return Policy

1  **AMD RYZEN 9 3900X 12-Core 3.8 GHz (4.6 GHz Max Boost) Socket AM4 105W 100-10000023BOX Desktop Processor** **\$529<sup>99</sup>**  
IN STOCK  
Extended Holiday Return Policy

1  **ASUS AMD AM4 ROG Strix X570-E Gaming ATX Motherboard with PCIe 4.0, WiFi 6, 2.5Gbps LAN, Dual M.2, SATA 6Gb/s, USB 3.2...** **\$329<sup>99</sup>**  
IN STOCK  
Extended Holiday Replacement-Only Return Policy

**Ship To Me**

Choose a delivery method Estimated Arrival  
 **\$7.74** Newegg 3 Business Days 11/19 (Tue)  
 **\$13.09** Newegg 2 Business Days 11/18 (Mon)  
 **\$32.92** Newegg Next Business Day 11/15 (Fri)

Additional shipping options  
 **\$4.25** Require Signature Upon Delivery

**Newegg Digital Download Delivery Service**

1  **GIFT #1**  
**NVIDIA Gift - Call of Duty: Modern Warfare (Redemption Expiration Date 12/18/2019)**  
IN STOCK  
Consumable Product Return Policy

1  **GIFT #2**  
**AMD Xbox Game Pass Gift**  
IN STOCK  
Extended Holiday Return Policy

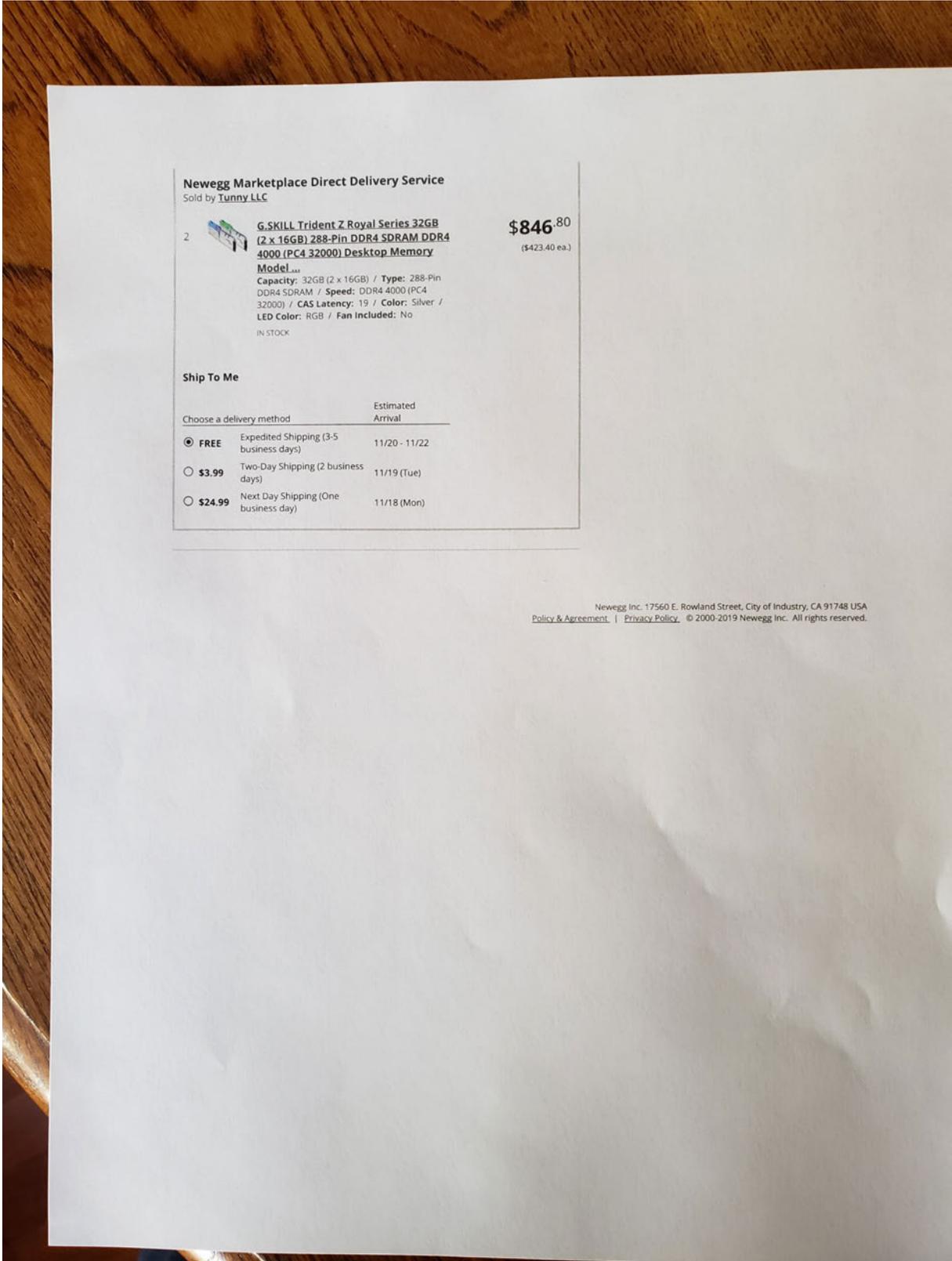
1  **GIFT #2**  
**AMD Gift - Ryzen Equipped to Win 2 Game Bundle, Redemption Expires: 12/31**  
IN STOCK

**Ship To Me**

Choose a delivery method  
 **FREE** Online Services

**Figure 3**

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4. I understand that under the Settlement, my lawyers may seek incentive payments or service awards for myself and the other class representative. I understand that the Court will have to approve any incentive payment, that there is no assurance that I will receive an incentive payment, and that the Court may approve of the Settlement but deny any incentive award.

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15 day of November 2019 at Daphne, Alabama.

DocuSigned by:  
*Tony Dickey*  
20FC4049335C457...  
Tony Dickey  
11/15/2019

1 Rafey S. Balabanian (SBN 315962)  
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6 *Counsel for Plaintiffs and the Class*  
7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 TONY DICKEY and PAUL PARMER,  
12 individually and on behalf of all others  
13 similarly situated,

14 *Plaintiffs,*

15  
16 v.

17 ADVANCED MICRO DEVICES, INC., a  
18 Delaware corporation,

19 *Defendant.*  
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Case No. 4:15-cv-04922-HSG

**DECLARATION OF PAUL PARMER IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND COSTS AND  
CLASS REPRESENTATIVE INCENTIVE  
AWARDS**

Judge: Hon. Haywood S. Gilliam, Jr.  
Date: February 20, 2020  
Time: 2:00 p.m.

1 I, Paul Parmer, declare under penalty of perjury that the following is true and correct:

2 1. I am a Class Representative in this case and reside in southern California.

3 2. For nearly three years, I have actively represented the class in every sense, and in  
4 various ways. The time and energy that I expended in my role as an advocate for the class is at the  
5 expense of my work, time with my family, and my personal property. In order to aid the Court, I  
6 attest that I have spent an estimated 40 hours of my time on the following activities:

7 a. I have remained in regular communication with my attorneys, from their  
8 initial investigation of my case through the approval process, including  
9 exchanging emails, participating in phone calls, timely responding to  
10 numerous requests for information, and reviewing and signing papers.

11 b. I was deposed during a full-day deposition and spent much time preparing  
12 for my deposition, including time spent reviewing the complaints and  
13 relevant motions in the case, as well as meeting with my attorney. In order  
14 to attend my deposition, I had to fly from Los Angeles to San Francisco and  
15 stay overnight in San Francisco, away from my home.

16 c. I worked with my attorneys to answer written discovery requests, and  
17 provided documents in my possession to aid my attorneys in the prosecution  
18 of the case. In doing so, I searched for relevant case documents, including  
19 emails and other hard copy documents, and provided this information to my  
20 attorneys.

21 d. I was also required to turn over my computer to AMD, which left me  
22 without my computer for more than a week. When I got my computer back,  
23 I found out that it had been damaged (either during shipping or during  
24 Defendant's testing of my computer) and required a replacement part. I  
25 didn't make a big deal about this at the time, but—combined with other  
26 sacrifices related to being a Class Representative in this case—that was  
27 upsetting.

1 e. While I did not fly to Chicago for the mediation in which a settlement was  
2 reached, I was available to participate by phone and have always stayed in  
3 close contact with my attorneys regarding the settlement.

4 f. I reviewed the terms of the Settlement, discussed it with my attorney, and  
5 signed it. I approved the proposed Settlement because I believe it is fair and  
6 in the best interests of the class.

7 3. I understand that under the Settlement, my lawyers may seek incentive payments  
8 or service awards for myself and the other class representative. I understand that the Court will  
9 have to approve any incentive payment, that there is no assurance that I will receive an incentive  
10 payment, and that the Court may approve of the Settlement but deny any incentive award.

11 \* \* \*

12  
13 I declare under penalty of perjury that the foregoing is true and correct.

14  
15 Executed this 14 day of November 2019 at 02:29 pm.

16  
17 

18 \_\_\_\_\_  
19 Paul Parmer

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7 *Counsel for Plaintiffs and the Class*

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 **OAKLAND DIVISION**

11 TONY DICKEY and PAUL PARMER,  
12 individually and on behalf of all others  
13 similarly situated,

14 *Plaintiffs,*

15 v.

16 ADVANCED MICRO DEVICES, INC., a  
17 Delaware corporation,

18 *Defendant.*

Case No. 5:15-cv-04922-HSG

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR ATTORNEYS'  
FEES AND COSTS AND CLASS  
REPRESENTATIVE AWARDS**

Judge: Hon. Haywood S. Gilliam, Jr.  
Date: February 20, 2020  
Time: 2:00 p.m.

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**[PROPOSED] ORDER**

The Court, having considered Plaintiffs Tony Dickey and Paul Parmer’s Motion for Attorneys’ Fees and Costs and Class Representative Incentive Awards, hereby GRANTS the motion.

Consequently, it is ORDERED that: (1) Class Counsel’s request for an award of attorneys’ fees and expenses in the amount of \$3,025,000 is approved, (2) Class Counsel’s request for reimbursement of \$47,517.37 in litigation expenses is approved, and (3) the incentive awards of \$7,500 to each of the Class Representatives in this case, in addition to \$2,482.85 in Plaintiff Dickey’s litigation costs, are approved.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Haywood S. Gilliam, Jr.  
United States District Judge