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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**SUPPLEMENTAL BRIEF IN SUPPORT  
OF PLAINTIFF'S MOTION FOR  
APPROVAL OF CLASS SETTLEMENT**

Judge: Hon. Donna M. Ryu

1 Plaintiff Joseph Carlotti (“Plaintiff”), by and through Plaintiff’s Counsel,<sup>1</sup> respectfully  
 2 submits this supplemental memorandum in support of his Motion for Approval of Class Action  
 3 Settlement, which was filed on July 8, 2019 (Dkt. #59) (the “Motion”). The Settlement Agreement  
 4 and its exhibits were attached as Exhibit 1 to the Declaration of Adam Gutride (the “Gutride Decl.”).  
 5 (Dkt. #61). The Amended Settlement Agreement and its exhibits are attached as Exhibit A to the  
 6 Supplemental Declaration of Adam Gutride (the “Supp. Gutride Decl.”), filed concurrently hereto  
 7 (hereinafter, “Amended Settlement”).  
 8

9 Following the August 22, 2019 hearing on the Motion, the Court issued an order requesting  
 10 that: (1) the parties investigate and report on three specified issues relating to notice to the class and  
 11 the claims administration process; (2) Plaintiff’s Counsel provide additional specified evidence in  
 12 support of the requested Attorneys’ Fees and Expenses Award; and (3) Plaintiff’s Counsel provide  
 13 additional information regarding comparable past class settlements. (Dkt. #65.) The Parties  
 14 addressed each of these topics, as explained below, and entered into the Amended Settlement  
 15 Agreement. *See* Supp. Gutride Decl., Ex. A.<sup>2</sup>  
 16

17 **I. STREAMLINED CLASS NOTICE AND THE CLAIMS ADMINISTRATION**  
 18 **PROCESS**

19 **A. The Parties Simplified the Claim Form for Group B Class Members to Request**  
 20 **a Cash Benefit.**

21 Pursuant to the Court’s guidance, the parties streamlined the process for Class Members who  
 22 previously complained to Defendants about the Power Defect or Overheating Issue (i.e., those who  
 23 are in Group B) to claim a Cash Payment in lieu of a Credit Certificate. These Class Members will  
 24

25 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the same definitions as set out in the  
 Amended Settlement Agreement.

26 <sup>2</sup> A redlined copy of the Amended Settlement Agreement showing the changes made to the  
 27 Settlement Agreement and the exhibits is attached as Exhibit M to the Supp. Gutride Decl. for the  
 28 Court’s convenience.

1 receive Direct Notice of the Settlement and will automatically receive a \$210 Credit Certificate  
2 unless they submit a simplified claim form. Since Defendants' records show that Group B Class  
3 Members previously reported the defects to ASUS, the Group B claim form no longer requires  
4 claimants to swear under penalty of perjury that their Laptops suffered from the alleged defects.  
5 Additionally, since Defendants have no right to inspect Group B Class Members' Laptops, the  
6 Group B claim form does not mention the inspection. A copy of the simplified Claim Form for  
7 Group B is attached to the Amended Settlement as Exhibit A1.  
8

9 **B. The Parties Improved the Laptop Inspection Provisions in the Notice**  
10 **Documents.**

11 Pursuant to the Court's guidance, the parties modified the Settlement Agreement and notice  
12 documents' language concerning the potential inspection of Laptops for members of Group A.  
13 Amended Settlement, Ex. A, A1, B1, B2, and B4. The revised notice documents clarify that the  
14 purpose of Defendants' right to request a Laptop inspection is to confirm the validity of Claims  
15 made under Group A and to protect Defendants against the filing of fraudulent Claims. (Id.) The  
16 revised notice documents also provide that a Class Member requesting Group A benefits may reject  
17 any inspection request by Defendants, which will automatically convert the class member's claim  
18 under Group A to a Valid Claim entitled to Group C benefits. (Id.) The notice documents also  
19 explain that the Laptop inspection must be conducted at the home or business of the Settlement Class  
20 Member, or at an alternative inspection site, in which case, Defendants must cover the Laptop's  
21 shipping costs. (Id.) Finally, the notice documents have been revised to make clear that the  
22 inspection must be conducted within twenty (20) days (rather than thirty (30) days as originally  
23 provided) of Defendants' demand for an inspection. (Id.)  
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1           **C.       Class Members Will Receive Direct Notice by Email and First-Class Mail.**

2           Pursuant to the Court’s guidance, the parties have agreed to send direct Class Notice using  
3 both First-Class mail and email to all Class Members for whom Defendants have both a mailing  
4 address and an email address. The Amended Settlement Agreement reflects this change. Amended  
5 Settlement at ¶ 7.2.

7           **II.       ADDITIONAL ARGUMENT AND EVIDENCE IN SUPPORT OF PLAINTIFF’S  
8           REQUEST FOR ATTORNEYS’ FEES AND EXPENSES**

9           As explained in the Motion, Plaintiff requests the payment of Attorneys’ Fees and Expenses in  
10 the amount of \$787,500.00. This request stands separate and apart from the monetary Settlement  
11 Benefits and Extended Warranty program being made available to Class Members and from the  
12 funding of notice and administration expenses. Under Ninth Circuit standards, it is appropriate for a  
13 District Court to analyze an attorneys’ fee request and issue an award in a class actions settlement  
14 *either* based on (1) the amount of the attorneys’ “lodestar” determined by multiplying the number of  
15 hours reasonably expended by counsel by a reasonable hourly rate; or (2) a percentage of the total  
16 monetary and non-monetary benefits made available to the settlement class. *See e.g., Bluetooth*  
17 *Headset Prods. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *Nwabueze v. AT&T, Inc.*, No. C  
18 09-01529 SI, 2014 WL 324262, at \*2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v. Youngblood*, No. CV-F-  
19 07-0474 DLB, 2011 WL 10483569, at \*11-12 (E.D. Cal. Sept. 2, 2011).<sup>3</sup> Though Plaintiff’s Counsel  
20 requests that the Court analyze their requested attorneys’ fee award under the lodestar approach, the  
21 requested fee award is also reasonable when evaluated as a percentage of the total benefits made  
22 available to the Settlement Class.

25 \_\_\_\_\_  
26 <sup>3</sup> Further, an attorney is entitled to “recover as part of the award of attorney’s fees those out-of-  
27 pocket that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19  
28 (9th Cir. 1994) (internal quotation marks and citation omitted). To support an expense award,  
plaintiff should file an itemized list of their expenses by category, listing the total amount advanced

1                   **1. Plaintiff’s Counsel’s Requested Fee Is Reasonable Under The Lodestar**  
 2                   **Approach.**

3                   As further described in the Motion and the declarations previously filed in support, Plaintiff’s  
 4 Counsel expended a reasonable amount of hours working on this litigation and obtaining the  
 5 Settlement, and the regular hourly billing rates charged by Plaintiff’s Counsel are reasonable and  
 6 commensurate with the rates charged by other attorneys practicing before this Court with similar  
 7 experience. As requested, Plaintiff’s Counsel has supplemented the evidence presented in support of  
 8 their fee request by submitting for *in camera* review detailed timesheets describing the work  
 9 performed and the hours expended. *See* Supp. Gutride Decl., ¶ 5; Joint Supplemental Declaration of  
 10 Nicholas Migliaccio and Esfand Nafisi (“Supp. M&R Decl.”) ¶ 6.

11  
 12                   Further, as explained in the Motion, Plaintiff’s Counsel applied their regular billing rates,  
 13 which ranged between \$550 to \$1025 per hour for attorneys and \$207 to \$275 per hour for  
 14 paralegals and legal assistants, to their work on this matter. Supp. Gutride Decl., ¶ 4; Supp. M&R  
 15 Decl., ¶ 7. Further, as explained in the Motion, the rates charged by Plaintiff’s Counsel have been  
 16 deemed reasonable and awarded to them by Courts in both state and federal court in recent matters.  
 17 Supp. Gutride Decl., ¶¶ 7-14; Exs. B-I; Supp. M&R Decl. ¶¶ 7-15. As requested by the Court,  
 18 Plaintiff’s Counsel’s supplemental declarations provide more information about their hourly billing  
 19 rates requested and approved in each of the following cases:  
 20

21                   **Gutride Safier LLP (“GSLLP”):**

- 22                   • *In re Arctic Sentinel, Inc., et al.*, Case No. 15-12465 (Bankr. Del.) (Dkt. #1331) (Judge  
 23                   Sontchi approved of GSLLP’s regular 2018 hourly billing rates as “reasonable and  
 24

25  
 26                   for each category, allowing the Court to assess whether the expenses are reasonable. *See Wren v.*  
 27 *RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at \*30 (N.D. Cal. Apr. 1,  
 28 2011); N.D. Cal. Guidelines ¶ 6.

1 commensurate with market rates charged by others with similar skills and experience”)  
2 (Gutride Decl., Ex. B);

- 3 • *Fitzhenry-Russell et al. v. Dr Pepper Snapple Group, Inc. et al.*, 5:17-cv-00564 (N.D.  
4 Cal. April 10, 2019) (Dkt. #350) (Judge Cousins approved of GSLLP’s regular 2018  
5 hourly billing rates) (Gutride Supp. Decl., Ex. C);
- 6 • *Pettit et al. v. Procter & Gamble Co.*, Case No. 3:15-cv-02150 (N.D. Cal. March 29,  
7 2019) (Dkt. # 135) (Judge Richard Seeborg approved GSLLP’s regular 2018 hourly  
8 billing rates as “reasonable and commensurate with those charged by attorneys with  
9 similar experience who appear in this Court”) (Gutride Supp. Decl., Ex. D);
- 10 • *Koller et al. v. Med Foods, Inc., et al.*, Case No. 3:14-CV-2400 (N.D. Cal. August 29,  
11 2018) (Dkt. # 169) (Judge Richard Seeborg approved of GSLLP’s regular 2018 hourly  
12 billing rates as reasonable) (Gutride Supp. Decl., Ex. E);
- 13 • *Kumar v. Safeway, Inc.*, Case No. RG 14726707 (Alameda County Superior Court  
14 March 16, 2018) (Judge Winifred Smith approved of GSLLP’s regular 2017 hourly  
15 billing rates as “on par with those of other attorneys of [GSSP’s] skill and experience  
16 in the San Francisco Bay Area”) (Gutride Supp. Decl., Ex. F);
- 17 • *Kumar v. Salov North America Corp.*, Case No. 14-cv-2411 (N.D. Cal. July 7, 2017)  
18 (Dkt. # 173) (Judge Gonzales Rogers approved of GSLLP’s regular 2017 hourly  
19 billing rates and finding that “the rates charged are reasonable and commensurate with  
20 those charged by attorneys with similar experience in the market”) (Gutride Supp.  
21 Decl., Ex. G);
- 22 • *Rainbow Business Solutions v. MBF Leasing*, Case No. 10-cv-1993 (N.D. Cal.  
23 December 5, 2017) (Dkt. #729) (Judge Claudia Wilken approved of GSLLP’s regular  
24 2017 hourly billing rates as “reasonable and commensurate with those charged by  
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attorneys with similar experience who appear in this Court”) (Gutride Supp. Decl., Ex. H); and

- *Miller, et al. v. Ghirardelli Chocolate Company*, Case No. 12-cv-04936-LB (N.D. Cal. Feb. 20, 2015) (Dkt. #170) (Judge Laurel Beeler approved of GSLLP’s 2014 hourly billing rates as reasonable) (Gutride Supp. Decl., Ex. I).

**Migliaccio & Rathod LLP (“M&R”)**

- *Singer, et al. v. Postmates*, No. 4:15-cv-01284-JSW (N.D. Cal. April 25, 2018) (Dkt. 98) (M&R Supp. Decl., ¶ 8);
- *Matthews, et al. v. TCL*, 3:17-cv-95 (W.D.N.C.) (Dkts. 37 and 38) (M&R Supp. Decl., ¶ 9);
- *Nelson et al. v. Sabre Companies LLC*, Case No. 1:15-cv-00314 (N.D.N.Y.) (Dkts. 183-2 and 189) (M&R Supp. Decl., ¶ 10);
- *Corbin v. CFRA, LLC*, Case No. 1:15-cv-00405 (M.D.N.C.) (Dkts. 92-3 and 93) (M&R Supp. Decl., ¶ 11);
- *Snodgrass v. Bob Evans*, Civil No. 12-cv-768 (S.D. Ohio) (Dkts. 216-3 and 219) (M&R Supp. Decl., ¶ 12); and
- *Bland v. Calfrac*, Civil No. 2:12-cv-1407 (W.D. Pa.) (Dkts. 93-1, 93-2 and 95) (M&R Supp. Decl., ¶ 13).

Plaintiff’s Counsel current lodestar through the date of the filing of this supplemental brief is approximately \$648,373.71. (Supp. Gutride Decl., ¶¶ 4-6; M&R Supp. Decl. ¶ 6.) The requested fee currently equates to a modest 1.19 multiplier, and possibly lower, depending on how much work Plaintiff’s Counsel performs prior to obtaining final settlement approval. As explained in the Motion, this Court has discretion to apply a multiplier to increase the fee award above the lodestar, where, as here: (i) Plaintiff’s Counsel bore considerable risk in litigating this case wholly on a

1 contingent basis and advancing all costs; (ii) Plaintiff’s Counsel efficiently reached a settlement  
 2 before class certification; (iii) Plaintiff’s Counsel achieved an excellent settlement in this Litigation,  
 3 which provides meaningful monetary benefits and a comprehensive repair program; and (iv)  
 4 Plaintiff’s Counsel will have to perform more work before the Settlement will become final,  
 5 including, communicating with Class Members, supervising the Claim Administrator, responding to  
 6 objections, and opposing any appeals. *See, e.g., Serrano III*, 20 Cal. 3d at 49; *Ketchum v. Moses*, 24  
 7 Cal. 4th 1122, 1132 (2001); *City of Oakland*, 203 Cal. App. 3d at 78; *Downey Cares v. Downey*  
 8 *Community Dev. Comm’n*, 196 Cal. App. 3d 983 (1987), 995 n11; *see also Maria P. v. Riles*, 43 Cal.  
 9 3d 1281, 1294 n8 (1987); *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, (1983), 322; *Serrano v. Unruh*,  
 10 32 Cal.3d 621, 625 n6 (1982). Thus, the Court should award Plaintiff’s requested attorneys’ fee  
 11 amount of \$773,494.99 (which is \$787,500 less \$14,005.01 in costs, discussed *infra*).  
 12

13  
 14 **2. Plaintiff’s Counsel’s Request for Attorneys’ Fees Is A Reasonable  
 Percentage of the Total Benefit Made Available To the Class.**

15 The Court may make its fee award based entirely on Plaintiff’s Counsel’s lodestar. *Yamada*,  
 16 825 F.3d at 547–48 (explaining that *Bluetooth* stated that courts are “encouraged” but not required to  
 17 cross-check a lodestar award). However, the Court may utilize the percentage-of-recovery method as  
 18 a cross-check to verify that Plaintiff’s attorneys’ fee request is reasonable. *See e.g., Nwabueze*, 2014  
 19 WL 324262, at \*2-3. If “classwide benefits are not easily monetized, a cross-check is entirely  
 20 discretionary.” *Yamada*, 825 F.3d at 547–48. Ninth Circuit precedent requires courts utilizing the  
 21 percentage-of-recovery method to consider the total benefits being made available to class members  
 22 rather than the amount actually claimed. *See, e.g., Young v. Polo Retail, LLC*, No. C-02-4546 WRW,  
 23 2007 WL 951821, at \*8 (N.D. Cal. Mar. 28, 2007) (citing *Williams v. MGM-Pathe Commc’ns Co.*,  
 24 129 F.3d 1026 (9th Cir. 1997) (“district court abused its discretion in basing attorney fee award on  
 25 actual distribution to class” instead of amount being made available)); *see also Dennings v.*  
 26 *Clearwire Corp.*, No. C10-1859JLR, 2013 WL 1858797, at \*7 (W.D. Wash. May 3, 2013) (“Under  
 27  
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1 Ninth Circuit law, there is strong support that, when a court conducts a percentage fee analysis, it is  
2 the amount or value made available to the class, not the amount actually claimed, that is relevant.”).  
3 Moreover, “[t]he Ninth Circuit has repeatedly held that 25% of the gross settlement amount is the  
4 benchmark for attorneys’ fees awarded under the percentage method . . . .” *Glass*, 2007 WL 221862,  
5 at \*14; *see also Six Mexican Workers v. Arizona Citrus Workers*, 904 F.2d 1301, 1311 (9th Cir.  
6 1990).

8 As explained in the Motion, the Settlement makes both substantial monetary and non-  
9 monetary benefits available to Class Members. In particular, Class Members who provide a Proof of  
10 Purchase with a Valid Claim under Group A, and the approximately 330 Class Members who  
11 previously complained about the Power Defect and/or Overheating Issue and thus qualify for  
12 benefits under Group B, may choose between a transferable and stackable \$210 Credit Certificate or  
13 a \$110 Cash Payment. Thus, the value of the monetary portion of the benefits made available to the  
14 Settlement Class is between \$2.77 million (if all Class Members request a Cash Payment) and \$5.20  
15 million (if all Class Members request a Credit Certificate). Dkt. #62, ¶ 19. Thus, the requested  
16 attorneys’ fee of \$773,494.99 represents only 14.8% of the monetary value of the Settlement, which  
17 is well below the 25% benchmark.

19 Plaintiff conservatively estimated in the Motion that the value of the non-monetary portion of  
20 the Settlement, e.g., the Extended Warranty, is worth up to \$6.7 million by multiplying the available  
21 retail cost of the replacement parts offered under the Extended Warranty by the number of ASUS  
22 ROG Strix GL502VS Laptops sold. Dkt. #62, ¶ 18. Following the August 22, 2019 hearing,  
23 Defendants’ Counsel contacted ACI’s Service Department to determine how much it would cost a  
24 consumer to obtain the Extended Warranty benefits absent this Settlement. According to ACI’s  
25 Senior Manager of Service, Ms. Morquecho, the current cost to a consumer who requests that ACI’s  
26 Service Department replace the original motherboard included in the ASUS ROG Strix GL502VS  
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1 laptop with an upgraded motherboard outside the warranty period would be \$1,153.63. (Morquecho  
2 Decl., ¶ 2.) The price of a VS Laptop-compatible 250-watt power adapter through ACI's Service  
3 Department is \$39.72. (Id. ¶ 3.) Using the actual prices ACI's Service Department would charge  
4 consumers for service outside the warranty for motherboard and power adapter upgrades, the  
5 aggregate value of the Extended Warranty to the 13,500 VS Laptop purchasers in the Settlement  
6 Class is equal to  $13,500 * (\$1,153.63 + \$39.72)$ , which amounts to \$16,1103,225. Thus, the actual  
7 value of the Extended Warranty made available to the Class is more than twice the initial  
8 conservative estimate of \$6.7 million provided in the Motion. (See Dkt. 62 ¶ 8). Although the  
9 number of Settlement Class Members that will request Qualifying Repairs under the Extended  
10 Warranty program is unknown such that the value of the injunctive relief here is difficult to  
11 "accurately ascertain[]," the district court still "should consider the value of the injunctive relief as a  
12 'relevant circumstance'" in its fee determination. *Staton*, 327 F.3d at 974 (quoting *Vizcaino*, 290  
13 F.3d at 1049). Thus, since the requested fee award is only 14% of the monetary portion of the  
14 settlement only, after including the value of the non-monetary portion of the Settlement, Plaintiff's  
15 Counsel's request is well below the benchmark and thus reasonable.

16  
17  
18 Finally, as requested in the Motion, Plaintiff's Counsel requests that, in addition to reasonable  
19 attorneys' fees, the Court grant its application for reimbursement of \$14,005.01 in out-of-pocket  
20 expenses incurred by them in connection with the prosecution of this litigation. Dkt. #61, ¶¶ 32-33  
21 and Ex. 13; Dkt. #62, ¶ 34; Supp. Gutride Decl., ¶¶ 15-16 and Ex. L. Here, since the requested sum  
22 of Attorneys' Fees and Expenses of \$787,500 includes attorneys' fees *and* costs, should the Court  
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1 choose to calculate the two totals separately, Plaintiff notes that fee request included \$14,005.01 in  
 2 costs and \$773,494.99 in attorneys' fees.<sup>4</sup>

### 3 III. EVIDENCE REGARDING COMPARABLE CLASS SETTLEMENTS

4 Pursuant to the Court's request and the N.D. Cal. Guide to Class Action Settlements ¶11,  
 5 Plaintiff's Counsel provides the following additional information regarding comparable class  
 6 settlements. In *In re: Arctic Sentinel, Inc. [f/k/a Fuhu, Inc.], et al.*, Case No. 15-12465-CSS (Bankr.  
 7 Del.) (the "*Fuhu* case"), Plaintiff Scott Miller, represented by GSLLP, claimed that the Nabi tablet  
 8 computers were falsely represented as being "rechargeable" and suitable and appropriate for use by  
 9 children, despite the fact that they were designed and manufactured with defective, substandard  
 10 charging systems that were prone to failure and that did not allow the tablets to be reliably  
 11 recharged. (*Fuhu* case, Dkt. #1295.) Pursuant to the Settlement obtained in the *Fuhu* case, all Class  
 12 Members were entitled to a pro-rata share of the available monetary benefits subject to the following  
 13 maximums: (i) \$30.00 per Defect Valid Claim (i.e., the Claimant reported that his/her tablet was  
 14 defective); and (ii) \$10.00 per other Valid Claim (i.e., the Claimant did not report that his/her tablet  
 15 was defective). (Id.) The Court approved of a notice plan that utilized both direct notice and  
 16 published notice and was designed to reach at least 70 percent of the Class Members with  
 17 approximately two impressions each. (*Fuhu* case, Dkt. #1301 and Dkt. #1295-2 at 53-55.) In  
 18 particular, email notice was sent to all available email addresses for potential Class Members and  
 19 notice was published in magazines and on online. (Id.) The claims period closed on August 20, 2019.  
 20 (Supp. Gutride Decl., Ex. J (*Fuhu* case, Dkt. 1337 at ¶ 15).)

21 On September 3, 2019, Jay Geraci, a Senior Project Manager with the *Fuhu* claims  
 22 administrator, filed a declaration regarding the class notice and administration of the *Fuhu*  
 23 settlement, which contained the following information described in N.D. Cal. Guide ¶11:  
 24  
 25

26 \_\_\_\_\_  
 27 <sup>4</sup> Should the Court deem any of the requested costs to not be reimbursable, Plaintiff requests that the  
 28 Court increase the attorneys' fee award such that the net amount of \$787,500 in Attorneys' Fees and  
 Costs provided via the Settlement Agreement is awarded.

<b><i>Fuhu</i> Case Settlement</b>	
Total value of the settlement fund	The Settlement was a claims-made structure.
Number of people in the class	292,900 known class members; approximately 2.2 million Nabi tablets were sold during the class period
Number of people sent direct email notice	244,347 valid email addresses were sent notice; 226,274 e-mail notices were delivered without a bounce notification
Number of online notice impressions	134,954,537
Number of claims submitted	19,580 timely-filed claim forms for 21,153 tablets; a total of 13,850 claims for 20,058 tablets have been preliminarily determined to be valid. Of the Valid Claims, 19,702 tablets were reported defective, and 356 tablets were not reported defective.
Number of claims submitted by class members that were sent direct notice	At least 14,129 (6.2% of delivered emails)
Total value of claims	Final data not ready; estimate is \$594,620.00
Average recovery per claimant	Final data not ready; estimate is \$29.64 per tablet
Administrative costs	Estimated costs is \$309,748.21
Attorneys' fees and costs	\$1,500,000.00 in fees, plus \$232,281.85 in expenses, for a total of \$1,732,281.85

(Id.)

Plaintiff's Counsel anticipate that the claims rate in this case will be higher than the *Fuhu* claims rate for the following reasons. First, less than fifteen (15) percent of the class received direct notice in the *Fuhu* case because Defendant did not have records of the majority of the purchasers. Here, Defendant has the contact information of approximately 12,755 class members. As a result, more than fifty (50) percent of the Laptop purchasers will receive direct notice. Second, Defendant will also notify class members about the Settlement on its website, which has an active forum visited by Laptop purchasers. Notice was not provided in this manner in the *Fuhu* case because there was not an active website frequented by tablet purchasers available to do so. Third, the *Fuhu* case was filed in 2014 and nearly all the Nabi tablet sales occurred more than five years before the settlement

1 was reached. Thus, it is likely that most class members were no longer using the tablets. In contrast,  
2 all of the Laptop sales here occurred more recently in 2016 and 2017. Class members are more likely  
3 to be using their Laptops and thus will likely be more motivated to file a claim. Fourth, the tablets at  
4 issue in the *Fuhu* case retailed at a much lower price (approximately \$199) than the Laptops at issue  
5 here (approximately \$1600) and the cash benefit available to claimants in the *Fuhu* case (up to \$30)  
6 was significantly smaller than the cash benefit available to claimants here (up \$110 cash or \$210 in  
7 credit). Consumers are more likely to file claim forms when the benefit to them is larger.

8 In preparing the anticipated claims rate provided in the Motion, Plaintiff's Counsel reviewed  
9 information provided by Angeion Group, LLC ("Angeion") regarding its administration of the  
10 settlement in the *In re Lenovo Adware Litigation*, Case No. 4:15-md-02624-HSG (N.D. Cal.) (the  
11 "*Lenovo*" case).<sup>5</sup> In the *Lenovo* case, plaintiffs alleged that software called VisualDiscovery was  
12 installed on 800,000 Lenovo laptops sold during the class period. (*Lenovo* case, Dkt. #231 at p. 2.)  
13 The VisualDiscovery software operated continuously in the background of the computers on which  
14 it was installed, analyzing and injecting ads into visited webpages, which Plaintiffs alleged  
15 jeopardized the security of consumer information and degraded the computers' performance. (*Id.*)  
16 Under the *Lenovo* case settlement, class members could choose to submit either a "short claim form"  
17 or "long claim form" to obtain the following: (1) class members who submitted the short claim form  
18 could obtain a \$40 cash payment; and (2) class members who submitted the long claim form could  
19 claim up to \$750 in documented out of pocket expenses related to the software issues alleged in the  
20 litigation. (*Id.*, at p. 7.) Thus, the *Lenovo* case provided a smaller benefit than the benefit available to  
21 Class Members here but claimants were not required to provide proof they were harmed by the  
22 software (unless they submitted a long claim form). The following information about class notice  
23 and claims administration of the *Lenovo* settlement was contained in the declaration of Steven  
24 Weisbrot of Angeion:

25 \_\_\_\_\_  
26  
27 <sup>5</sup> Plaintiff's Counsel was not involved in the *Lenovo* case. All information provided is from filings in  
28 that case.

<b><i>Lenovo Case Settlement</i></b>	
Total value of the settlement fund	The Settlement was a claims-made structure.
Number of people in the class	Approximately 800,000 laptops were affected
Number of people sent direct notice	Approximately 500,000
Number of people sent direct email notice	686,112 email addresses were sent email notice (note: there were records with more than one email address, resulting in the higher count than the 500,000 referenced above); 440,275 email notices were delivered without a bounce notification
Number of people sent direct mail notice	204,186 addresses were sent mailed notice; approximately 180,000 notices were successfully delivered
Number of online notice impressions	7,192,779 impressions
Number of claims submitted	Class members submitted 87,873 Claim Forms, including 86,922 Short Form claims and 951 Long Form claims (claims rate: 10% classwide, and 17% of class members that received direct notice)

(Supp. Gutride Decl., Ex. K (*Lenovo* case, Dkt. #248-1).)

Plaintiff's Counsel initially estimated that the claims rate here would be slightly higher than the claims rate in the *Lenovo* case since the potential monetary benefit to claimants is much larger than the *Lenovo* benefit. Accordingly, Plaintiff Counsel's original estimate of the claims here (between 3,000-4,000 claims) equated to a claims rate of 12% to 16% of all class members and 23% to 30% of the class members that will receive direct notice. Plaintiff's Counsel now believes, after reviewing the claims rate data from the *Fuhu* case (which was unavailable at the time of the filing of the Motion), that the claims rate here will be lower (between 1,000 and 2,000 claims), which equates to a claims rate of approximately 4% to 8% of all class members and approximately 7% to 15% of all class members that will receive direct notice. (Supp. Gutride Decl., ¶ 17.) In particular, although Plaintiff's Counsel believes that the claims rate here will be higher than that in *Fuhu* for the reasons explained above, the claim form (like the claim form in *Fuhu*) requires class members to swear under penalty of perjury that their product suffered from the defect(s). Defendants in the *Fuhu* case claimed that the product had an 8% defect rate and they had already provided replacement tablets to

1 most purchasers. Here, Defendants claim that that the VS Laptop had a 2% defect rate and the VSK  
2 Laptop had a .05% defect rate and that Defendants provided warranty service to VSK Laptop  
3 purchasers experiencing the defects. If Defendants are correct about the defect rate, the claims rate  
4 will be lower than *Lenovo* (which did not require class members to aver defects) as consumers will  
5 not submit claims if their Laptop suffered no defect.

6 **IV. CONCLUSION**

7 For the foregoing reasons, and those provided in Plaintiff's Motion, Plaintiff and Plaintiff's  
8 Counsel respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2)  
9 conditionally certify the Class for settlement purposes only, designate Plaintiff as Class  
10 Representative, and appoint Migliaccio & Rathod LLP and Gutride Safier LLP as Plaintiff's  
11 Counsel; (3) appoint Angeion Group as the Claim Administrator and establish procedures for giving  
12 Class Notice to members of the Class; (4) approve forms of notice to Class Members; (5) mandate  
13 procedures and deadlines for exclusion requests and objections; and (6) set a date, time and place for  
14 the Final Approval Hearing.

15  
16 Dated: September 12, 2019

Respectfully submitted,

17  
18  
19 /s/ Marie A. McCrary \_\_\_\_\_ /

20 **GUTRIDE SAFIER LLP**

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28  
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**MIGLIACCIO & RATHOD LLP**  
Esfand Nafisi (State Bar No. 320119)  
Nicholas Migliaccio, (appearing *pro hac vice*)  
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412 H Street NE, Suite 302  
Washington, D.C. 20002

Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**SUPPLEMENTAL DECLARATION OF  
ADAM GUTRIDE IN SUPPORT OF  
PLAINTIFF’S MOTION FOR  
APPROVAL OF CLASS SETTLEMENT,**

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1 I, Adam Gutride, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and in this Court,  
3 and a partner in Gutride Safier LLP (“GSLLP”). My firm, along with the firm of Migliaccio &  
4 Rathod LLP (“M&R”), is counsel of record for Plaintiff Joseph Carlotti in the above captioned  
5 matter against Defendant ASUSTeK Computer Inc. (“ASUSTeK”) and ASUS Computer  
6 International (“ACI”) (collectively, “ASUS” or “Defendants”). Unless otherwise noted, I have  
7 personal knowledge of the facts set forth in this declaration and could and would testify  
8 competently to them if called upon to do so.

9 2. On July 8, 2019, I previously submitted a declaration in support of Plaintiff’s Motion  
10 for Preliminary Approval. I now submit this supplemental declaration in further support of  
11 Plaintiff’s Motion for Approval of Class Settlement. This declaration provides GSLLP’s updated  
12 lodestar, additional evidence in support of the reasonableness of GSLLP’s requested hourly rate,  
13 updated costs, and updated anticipated claims rate information.

14 3. Attached hereto as **Exhibit A** is a true and correct copy of the Amended Settlement  
15 Agreement. Counsel for Defendants represented in writing that his clients have agreed to the terms  
16 of the Amended Settlement Agreement, but that it was not possible to secure a signatory by today  
17 and that a signature will be provided in the next two weeks. Plaintiff will file an errata to this  
18 declaration attaching the final signature page after it is received. Attached hereto as **Exhibit M** is a  
19 true and correct redlined copied of the Amended Settlement Agreement showing the changes made  
20 to the Settlement Agreements and its exhibits.

21 **A. Updated Lodestar for GSLLP**

22 4. As explained in my July 8, 2019 declaration filed in support of Plaintiff’s Motion for  
23 Preliminary Approval, throughout the duration of this litigation, GSLLP has maintained  
24 contemporaneous billing records for this case. Based on GSLLP’s time records, GSLLP has spent  
25 approximately 418.4 hours prosecuting this litigation, although some timekeepers have not yet input  
26 time for August 2019 and most have not yet input time for the current month of September 2019.  
27 Thus, this total does not include all work finalizing the supplemental settlement papers. The total  
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1 number of hours, as well as the lodestar computed at our 2019 rates, is shown in the following chart.  
 2 The persons shown below are all attorneys, except for Ashley Garcia and Jennifer Gardner, who are  
 3 legal assistants.

<b>GSLLP's Lodestar on This Case</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Adam Gutride	21.7	\$1025	\$22,242.50
Seth Safier	53	\$1025	\$54,325.00
Marie McCrary	112.4	\$900	\$101,160.00
Todd Kennedy	5.1	\$850	\$4,335.00
Anthony Patek	20.2	\$825	\$16,665.00
Stephen Raab	173.7	\$825	\$143,302.50
Kristen Simplicio	0.2	\$825	\$165.00
Jessica Kagansky	9.4	\$550	\$5,170.00
Kyle Wilson	2	\$450	\$900.00
Ashley Garcia	17.5	\$275	\$4,812.50
Jennifer Gardner	3.2	\$225	\$720.00
<b>TOTAL</b>	<b>418.4</b>		<b>\$353,797.50</b>

5. I have reviewed timesheets describing the work performed by GSLLP attorneys and  
 legal assistants in this litigation and the hours GSLLP expended. A copy of the timesheets has been  
 submitted to the Court for *in camera* review contemporaneously hereto. Based on my review of the  
 timesheets and of summary information provided by each of the timekeepers, I estimate that  
 GSLLP's time can be divided as follows:

- Adam Gutride: **case initiation** (examining case theories and discussing in light of prior case law; reviewing and commenting on draft complaint) (4.3 hours); **case management and strategy** (including communicating with team and co-counsel regarding case strategy;

1 supervising performance of junior attorneys) (3.3 hours); **discovery** (discussing high level  
2 findings) (1.2 hours); **settlement** (revising draft term sheets; discuss mediator  
3 selection; revise draft settlement agreement and supporting exhibits, including proposed  
4 class notice, claim form, and proposed orders; revise motion for approval of settlement and  
5 supporting documents; revising this declaration (12.9 hours). **Grand Total: 21.7 hours.**

6  
7 • Seth Safier: **case initiation** (assisting in drafting the complaint; supervising filing of service  
8 of complaint and supporting documents) (6.6 hours); **case management and strategy**  
9 (including, assisting in drafting case management statements, attending case management  
10 conference, communicating with co-counsel regarding case strategy, deadlines, and tasks,  
11 communicating with opposing counsel regarding case management issues; supervising  
12 performance of case management tasks; reviewing removal papers; participating in calls  
13 regarding case strategy) (9.3 hours); **discovery** (assisting in drafting amended 30(b)(6)  
14 deposition notice) (.2 hours); **motion practice** (assisting in drafting of motion for alternative  
15 service) (.3 hours); **settlement** (assisting in drafting terms sheet and mediation statement;  
16 assist in selecting mediator; attending mediation; assisting in draft settlement agreement and  
17 supporting exhibits, including proposed class notice, claim form, and proposed orders;  
18 assisting in drafting motion for approval of settlement and supporting documents; attending  
19 hearing on preliminary approval (36.6 hours). **Grand Total: 53 hours.**

20 • Marie McCrary: **case initiation** (assisting in drafting the complaint and CLRA letter) (8.8  
21 hours); **case management and strategy** (including, assisting in drafting case management  
22 statements; communicating with co-counsel regarding case strategy, deadlines, and tasks;  
23 communicating with opposing counsel regarding case management issues; supervising  
24 performance of case management tasks; participating in calls regarding case strategy) (9.9  
25 hours); **discovery** (drafting protective order and affidavit in support of protective order;  
26 drafting electronically stored information (“ESI”) order; assisting in drafting ESI search  
27 terms and letter regarding the same; communicating with opposing counsel regarding  
28 protective order, ESI order, scheduling depositions, and other discovery issues; assisting in

1 drafting initial disclosures; assisting in drafting electronic service agreement; assisting in  
 2 drafting discovery responses; reviewing Plaintiff's deposition transcript and assisting in  
 3 drafting Plaintiff's errata to his deposition transcript; and assisting in drafting initial and  
 4 amended 30(b)(6) deposition notices) (21.1 hours); *motion practice* (assisting in drafting of  
 5 motion for alternative service) (.7 hours); *expert work* (consulting with potential experts;  
 6 assisting with preparation of expert engagement agreement) (.3 hours); *miscellaneous tasks*  
 7 (.2 hours); *settlement* (assisting in drafting terms sheet and mediation statement; assisting in  
 8 drafting settlement agreement and supporting exhibits, including proposed class notice,  
 9 claim form, and proposed orders; assisting in drafting motion for approval of settlement and  
 10 supporting documents; drafting supplemental brief in support of motion for approval of  
 11 settlement and supplemental documents (71.4 hours). **Grand Total: 112.4 hours.**

12 • Todd Kennedy: *case initiation* (assisting with drafting complaint and investigation) (2  
 13 hours); *case management and strategy* (assisting with service issues) (.1 hours); *discovery*  
 14 (assisting with drafting document requests) (2.2 hours); *settlement* (participating in calls  
 15 regarding mediation and settlement agreement) (.8 hours). **Grand Total: 5.1 hours.**

16 • Kristen Simplicio: *case management and strategy* (participating in calls regarding case  
 17 strategy) (.2 hours). **Grand Total: .2 hours.**

18 • Anthony Patek: *case initiation* (researching legal issues for drafting complaint; assisting  
 19 with drafting CLRA letter) (5.4 hours); *case management and strategy* (drafting document  
 20 preservation letter; drafting case management statement; communicating with co-counsel  
 21 regarding case strategy, deadlines, and tasks) (6.2 hours); *discovery* (assisting with drafting  
 22 document requests; reviewing document production; preparing electronic service agreement)  
 23 (8.6 hours). **Grand Total: 20.2 hours.**

24 • Stephen Raab: *case management and strategy* (including, assisting in drafting case  
 25 management statements; communicating with co-counsel regarding case strategy, deadlines,  
 26 and tasks; communicating with opposing counsel regarding case management issues  
 27 including negotiating stipulations; participating in calls regarding case strategy) (14.6  
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1 hours); *discovery* (assisting in drafting ESI search terms and letter regarding the same;  
 2 communicating with opposing counsel regarding scheduling depositions, and other  
 3 discovery issues; assisting in drafting discovery responses; assisting in the preparation of  
 4 Plaintiff for his deposition; attending Plaintiff's deposition; assisting in drafting amended  
 5 30(b)(6) deposition notice) (39 hours); *motion practice* (researching, including Taiwanese  
 6 law regarding service requirements, and drafting of motion for alternative service and  
 7 documents in support of the same) (28.2 hours); *expert work* (consulting with potential  
 8 expert; assisting with preparation of expert engagement agreement) (1 hours);  
 9 *miscellaneous tasks* (including, supervising alternative service on ASUSTek) (8.2 hours);  
 10 *settlement* (assisting in drafting terms sheet and mediation statement; communicating with  
 11 opposing counsel regarding documents produced in response to informal discovery for  
 12 mediation and analyzing the same; traveling to and attending mediation; assisting in drafting  
 13 settlement agreement and supporting exhibits, including proposed class notice, claim form,  
 14 and proposed orders; assisting in drafting motion for approval of settlement and supporting  
 15 documents (82.7 hours). **Grand Total: 173.7 hours.**

- 16 • Jessica Kagansky: *case management and strategy* (participating in calls regarding case  
 17 strategy) (.4 hours); *discovery* (assisting with drafting electronic search terms and letter  
 18 regarding the same) (9 hours). **Grand Total: 9.4 hours.**

- 19 • Kyle Wilson: *settlement* (assisting with drafting exhibits to settlement agreement) (2 hours).  
 20 **Grand Total: 2 hours.**

- 21 • Ashley Garcia: *case management and strategy* (participating in calls regarding case  
 22 strategy; assisting in preparing case management statement) (.4 hours); *discovery* (assisting  
 23 with preparing discovery requests, ESI stipulation, protective order, and document  
 24 production) (8.3 hours); *settlement* (assisting with preparing exhibits to settlement  
 25 agreement) (3.4 hour); and *miscellaneous tasks* (maintaining case file with documents;  
 26 serving documents per Court order and preparing declaration in support of the same) (5.4)  
 27 **Grand Total: 17.5 hours.**

- Jennifer Gardner: *discovery* (assisting with drafting deposition notice and affidavit to protective order) (3.2 hours). **Grand Total: 3.2 hours.**

6. Based on the facts above and those set forth in the supplemental declaration of Nicholas Migliaccio and Esfand Nafisi filed herewith, the total lodestar incurred by Plaintiff’s Counsel is as follows:

Firm	Hours	Lodestar
GSLLP	418.4	\$353,797.50
M&R	435.4	\$294,576.21.
<b>TOTAL</b>	<b>853.8</b>	<b>\$648,373.71</b>

**B. Additional Evidence in Support of the Reasonableness of GSLLP’s Billing Rates**

7. The hourly rates shown for the attorneys and paralegals at GSLLP are the same as the regular rates charged in 2019 for their services in other litigation. The hourly rates charged by my firm have been deemed reasonable in connection with the approval of my firm’s fee applications in at least eight recent matters.

8. Most recently, on September 5, 2018, Judge Sontchi in *In re Arctic Sentinel, Inc., et al.*, Case No. 15-12465 (Bankr. Del.) (Dkt. #1331) entered an order approving of GSLLP’s 2018 billing rates as “reasonable and commensurate with market rates charged by others with similar skills and experience.” A true and correct copy of the order is attached hereto as **Exhibit B**.

9. On April 10, 2019, Judge Cousins in *Fitzhenry-Russell et al. v. Dr Pepper Snapple Group, Inc. et al.* 5:17-cv-00564 entered an order approving of GSLLP’s regular 2018 billing rates. A true and correct copy of the order is attached hereto as **Exhibit C**.

10. On March 29, 2019, in *Pettit et al. v. Procter & Gamble Co.*, Case No. 3:15-cv-02150-RS, and on August 29, 2018, in *Koller et al. v. Med Foods, Inc., et al.*, Case No. 3:14-CV-2400-RS, Judge Richard Seeborg entered orders approving of GSLLP’s regular 2018 billing rates as “reasonable” and as “commensurate with those charged by attorneys with similar experience who appear in this Court”. True and correct copies of those orders are attached hereto as **Exhibits D and E**.

1           11.     On March 16, 2018, Judge Winifred Smith of the Alameda County Superior Court  
2 entered an order approving of GSSLP’s regular 2017 hourly billing rates as “on par with those of  
3 other attorneys of [GSSP’s] skill and experience in the San Francisco Bay Area.” A true and correct  
4 copy of the order is attached hereto as **Exhibit F**.

5           12.     GSSLP’s regular 2017 hourly billing rates were also approved on July 7, 2017 by  
6 Judge Gonzales Rogers in *Kumar v. Salov North America Corp.*, Case No. 14-cv-2411 (N.D.Cal.)  
7 (Dkt. #173) and on December 5, 2017 by Judge Claudia Wilken in *Rainbow Business Solutions v.*  
8 *MBF Leasing*, Case No. 10-cv-1993 (N.D.Cal.) (Dkt. #729). True and correct copies of those orders  
9 are attached hereto as **Exhibits G and H**.

10           13.     On February 20, 2015, Judge Laurel Beeler entered an order approving of GSSLP’s  
11 2014 rates as reasonable in *Miller, et al. v. Ghirardelli Chocolate Company*, Case No. 12-cv-04936-  
12 LB (N.D. Cal. Feb. 20, 2015) (Dkt. #170). A true and correct copy of the order is attached hereto as  
13 **Exhibit I**.

14           14.     The regular billing rates charged by GSSLP are shown in the tables below. These  
15 rates show a slight increase in the billing rates each year for each timekeeper to reflect his or her  
16 additional experience and expertise as well as changing market conditions including increased labor  
17 costs.

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<b>GSLLP 2019 Billing Rates</b>		
<b>Timekeeper and Position</b>	<b>Graduation Year</b>	<b>Rate</b>
Adam Gutride (Partner)	1994	\$1025
Seth Safier (Partner)	1998	\$1025
Marie McCrary (Partner)	2008	\$900
Todd Kennedy (Of Counsel)	2003	\$850
Anthony Patek	2003	\$825
Stephen Raab	2005	\$825
Kristen Simplicio	2007	\$825
Jessica Kagansky	2016	\$550
Kyle Wilson	2018	\$450
Ashley Garcia (Legal Assistant)	N/A	\$275
Jennifer Gardner (Legal Assistant)	N/A	\$225

<b>GSLLP 2018 Billing Rates</b>		
<b>Timekeeper and Position</b>	<b>Graduation Year</b>	<b>Rate</b>
Adam Gutride (Partner)	1994	\$975
Seth Safier (Partner)	1998	\$950
Marie McCrary (Partner)	2008	\$850
Todd Kennedy (Of Counsel)	2003	\$800-\$850
Anthony Patek	2003	\$800
Kate Manka	1995	\$800
Kristen Simplicio	2007	\$800
Matthew McCrary	2009	\$775
Rajiv Patek	2013	\$550
Jessica Kagansky	2016	\$500
Ashley Garcia (Legal Assistant)	N/A	\$200-\$260
Jennifer Gardner (Legal Assistant)	N/A	\$200-\$250

<b>GSLLP 2017 Billing Rates</b>		
<b>Timekeeper and Position</b>	<b>Graduation Year</b>	<b>Rate</b>
Adam Gutride (Partner)	1994	\$950
Seth Safier (Partner)	1998	\$925
Todd Kennedy (Partner)	2003	\$850
Jay Kuo	1994	\$775
Anthony Patek	2003	\$775
Kristen Simplicio	2007	\$775
Marie McCrary	2008	\$750
Matthew McCrary	2009	\$725
Ashley Garcia (Legal Assistant)	N/A	\$250

GSLLP 2014 Billing Rates		
Timekeeper	Graduation Year and Title	Rate
Adam Gutride (Partner)	1994	\$750
Seth Safier (Partner)	1998	\$725
Jay Kuo	1994	\$700
Anthony Patek	2003	\$700
Kristen Simplicio	2007	\$500
Marie McCrary	2008	\$450

**C. Updated Cost Information**

15. As explained in my July 8, 2019 declaration filed in support of Plaintiff's Motion for Preliminary Approval, expenses are accounted for and billed separately and are not duplicated in GSLLPs professional billing rates. GSLLP has not received reimbursement for expenses incurred in connection with this litigation. In my July 8, 2019 declaration, I stated that as of June 10, 2019, GSLLP had incurred a total of \$7,888.74 in unreimbursed actual third-party expenses in connection with the prosecution of this case. Since then, my bookkeeping staff has updated our accounting records, and determined that GSLLP has incurred an additional \$233.68 in unreimbursed actual third-party expenses in connection with the prosecution of this case (for a total of \$8,122.42 in expenses). The actual expenses incurred in the prosecution of this case are reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all actual expenses incurred. A complete breakdown of all the supplemental expenses is attached as **Exhibit L**.

16. Based on the facts above and those set forth in the supplemental declaration of Esfand Nafisi filed herewith, the total expenses incurred by Plaintiff's counsel is as follows:

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Firm	Expenses
GSLLP	\$8,122.42
M&R	\$5,882.59
<b>TOTAL</b>	<b>\$14,005.01</b>

**D. Updated Anticipated Claims Rate**

17. Pursuant to N.D. Cal. Procedural Guidance for Class Action Settlements (“N.D. Cal. Guide”) ¶1(g), GSLLP currently estimates, based on recent settlements in consumer fraud cases, including its experience in *In re: Arctic Sentinel, Inc. [f/k/a Fuhu, Inc.]*, et al., Case No. 15-12465-CSS (Bankr. Del.) and its knowledge of *In re Lenovo Adware Litigation*, Case No. 4:15-md-02624-HSG (N.D. Cal.), and the input of the claims administrator, there will be between 1,000 and 2,000 claims filed. A true and correct copy of the declaration of Jay Geraci describing class notices and the claims administration process in the *Fuhu* case is attached hereto as **Exhibit J**. A true and correct copy of the declaration of Steven Weisbrot describing class notice and the claims administration process in the *Lenovo* case is attached hereto as **Exhibit K**.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true of my own personal knowledge.

Executed at Berkeley, California, this 12th day of September, 2019.

/s/ Adam J. Gutride  
 Adam J. Gutride, Esq.

# **Exhibit A**

## AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement is entered into this \_\_\_th day of September, 2019, between Plaintiff, individually and on behalf of the Class he seeks to represent, on the one hand, and Defendants, on the other hand, subject to both the terms and conditions hereof and the approval of the Court.

### **I. RECITALS**

1.1. On May 4, 2018, Plaintiff through his counsel Gutride Safier LLP and Migliaccio & Rathod LLP filed a Class Action Complaint in Alameda County Superior Court against Defendants alleging claims for violations of the California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*; the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, *et seq.*; the Song-Beverly Consumer Warranty Act, California Civil Code § 1790, *et seq.*; false advertising under California Business and Professions Code § 17500, *et seq.*; and unfair business practices under California Business and Professions Code § 17200 *et seq.*; breach of express warranty; breach of implied warranty of merchantability; deceit and fraudulent concealment; and unjust enrichment, and seeking damages, an injunction and other relief. Plaintiff sought to pursue these claims on behalf of himself and all purchasers of the Laptops in the United States.

1.2. On June 7, 2018, Defendant ASUS Computer International (“ACI”) timely removed the Litigation to the United States District Court for the Northern District of California and answered the Complaint, denying Plaintiff’s allegations and asserting several affirmative defenses. The Litigation was assigned to the Honorable Magistrate Donna Ryu.

1.3. On February 27, 2019, Plaintiff served the Complaint on ASUSTeK Computer Inc. (“ASUSTeK”).

1.4. Plaintiff alleges in the Complaint that Defendants marketed the Laptops as powerful, portable machines ideal for gaming and video editing and represented that the Laptops' independent cooling system "maximizes cooling efficiency" to give the Laptops "stability required for intense gaming sessions." Plaintiff further alleges that the Laptops are not suitable for their ordinary and advertised purpose of gaming and video editing because they uniformly suffer from a defect that causes the Laptops' batteries to drain even when the Laptops are connected to, and drawing power from, electrical outlets. Plaintiff also alleges that contrary to Defendants' marketing representations, the Laptops' cooling system uses a unitary set of heatsinks to dissipate heat from the graphics processing unit ("GPU") and computational processing unit ("CPU"). Plaintiff alleges that heat generated by computationally or graphically demanding programs overloads the unitary cooling system's ability to dissipate heat from the CPU and GPU and causes the Laptop to overheat to the point of causing physical discomfort and/or diminishing the Laptops' performance and durability. Plaintiff additionally alleges that Defendants failed to honor their warranties for the Laptops because Defendants responded to requests for warranty repairs by replacing the Laptops' defective components with identical and equally defective components.

1.5. Plaintiff's Counsel and Defendants' Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation. Such investigation and discovery included the retention and consultation of an electrical engineering expert by Plaintiff's Counsel, requesting and receiving written discovery responses by Plaintiff from ACI, Plaintiff examining Defendants' documents, Plaintiff questioning Defendants about their documents, and Defendants deposing Plaintiff.

1.6. On March 19, 2019, the Parties participated in an all-day mediation conducted by Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in a term sheet and the settlement memorialized in this Agreement. This Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties, and is supported by Plaintiff. The Parties did not discuss or negotiate Attorneys' Fees and Costs until after relief had been fashioned for the Settlement Class.

1.7. Defendants deny all of Plaintiff's Allegations and charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also deny that Plaintiff, the Class, any Class Members, the Settlement Class, or any Settlement Class Member have suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendants. Defendants further deny that the Litigation meets the requisites for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability on any of Plaintiff's claims in the Litigation.

1.8. Plaintiff's Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing: (1) that all the Laptops uniformly experienced the Power Defect and Overheating Issues, (2) that Defendants' marketing materials were likely to deceive reasonable consumers, (3) that omissions in the marketing materials were material to reasonable consumers, (4) the amount of damages or restitution due to the class or to any class member, and (5) that common questions predominate

over individual issues such that a class may be certified. Plaintiff and Plaintiff's Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Class are in the best interest of the Class Members.

1.9. Defendants agree that the Settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendants consider it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, uncertainty, inconvenience, and interference with its ongoing business operations in defending the Litigation and put to rest the Released Claims. Therefore, Defendants and Defendants' Counsel have determined that settlement of this Litigation on the terms set forth herein is in Defendants' best interests.

1.10. This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendants, and all such Allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.11. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiff, on the one hand, and Defendants, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement

1.12. This Agreement modifies, amends, and supersedes the Class Action Settlement Agreement dated June 21, 2019.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Settlement, subject to Court approval, under the following terms and conditions.

## **II. DEFINITIONS**

A. Capitalized terms in this Agreement shall be defined as follows:

2.1. “Administration Costs” means the actual and direct costs reasonably charged by the Claim Administrator for its services as provided for in this Agreement or as otherwise agreed to by the Parties and the Claim Administrator or as ordered by the Court.

2.2. “Agreement” means this Amended Class Action Settlement Agreement, including all exhibits thereto.

2.3. “Allegations” means the allegations described in Sections 1.1 and 1.4 above and claims that could be pursued under the laws of the United States or any state on the basis of one or more of those allegations.

2.4. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiff’s Counsel as determined by the Court and described more particularly in Section 8 of this Agreement. Any such award will also include a reimbursement of costs and expenses incurred by Plaintiff’s Counsel, arising from their representation in the Litigation, as determined and awarded by the Court. In no event shall the Attorneys’ Fees and Expenses exceed Seven Hundred Eighty Seven Thousand Five Hundred Dollars (\$787,500.00).

2.5. “Cash Payment” means a check, which shall be made payable and delivered to a Claimant, as required by this Agreement.

2.6. “Claim” means a request for relief pursuant to this Settlement submitted on a Claim Form by a Class Member to the Claim Administrator in accordance with the terms of this Settlement.

2.7. “Claimant” means a Class Member who submits a Claim seeking a Settlement Benefit under this Agreement.

2.8. “Claim Administrator” means the independent third-party administrator to be retained by Defendants to provide services in the administration of this Settlement, including providing Class Notice to the Class Members, the processing and evaluation of Claims, and the processing of other documents or tasks as provided for in this Agreement or as otherwise agreed to by the Parties or as ordered by the Court.

2.9. “Claim Filing Deadline” means sixty (60) days after the Notice Date.

2.10. “Claim Form” means a claim form in substantially the same form as Exhibit A and/or Exhibit A1.

2.11. “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.12. “Class” or “Class Members” means all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered. Excluded from the Class are (a) the Honorable Magistrate Donna Ryu and any member of her immediate family; (b) any government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e) any entity in which

Defendants have a controlling interest; (f) any of Defendants' parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from the Power Defect or Overheating Issue; and (k) any person who signed a release regarding their Laptop.

2.13. "Class Notice" means all types of notice that will be provided to Class Members pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), the Preliminary Approval Order, and this Agreement, including Email Notice, Postcard Notice, Long Form Notice, Published Notice, Online Notice, the Settlement Website, and any additional notice the Court may order.

2.14. "Class Period" means the period between May 4, 2014 and the date Preliminary Approval is entered.

2.15. "Class Representative" means Plaintiff Joseph Carlotti.

2.16. "Court" means the United States District Court for the Northern District of California.

2.17. "Credit Certificate" means a certificate that a Class Member who submits a timely and proper Claim can elect to receive via email from the Claim Administrator, and a certificate that a member of Group B can automatically receive without the need to file a Claim, that can be redeemed towards the purchase of any one or more products at <https://store.asus.com/us>, not including shipping costs or taxes, consistent with the terms and

conditions of this Agreement. Credit Certificates are fully transferrable and are stackable, meaning that more than one Credit Certificate may be used towards any purchase. No minimum purchase is required to redeem a Credit Certificate. If the total amount of the purchase (before shipping and taxes) is less than the amount of the Credit Certificate(s) redeemed during the purchase transaction, the Credit Certificates shall have no residual value. The Credit Certificate shall be capable of being combined with any other credit, voucher, coupon, sale, or other discount of any kind and shall expire no less than two (2) years after issuance. Credit Certificates have no cash value and cannot be used for any purpose other than as stated in this Agreement.

2.18. “Defendants” means ACI and ASUSTeK, collectively.

2.19. “Defendants’ Counsel” means the law firm of Sacks, Ricketts & Case LLP.

2.20. “Defendants’ Website” means all digital content and webpages hosted by Defendants at the domain name, <https://www.asus.com>.

2.21. “Effective Date” means the latest of the following: (a) thirty-one (31) days after the entry of the Final Approval Order and Judgment if no objections are filed or if objections are filed and overruled and no appeal is taken from the Final Approval Order and Judgment; or (2) if a timely appeal is made, three (3) business days after the date of the final resolution of that appeal (i.e., the issuance of remittitur) and any subsequent appeals or petitions for certiorari from Final Approval of the Settlement.

2.22. “Email Notice” means a notice by email in substantially the same form as Exhibit B2.

2.23. “Extended Warranty” means the warranty extension as further described in Section 5 of this Agreement.

2.24. “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to Class Members in accordance with this Settlement, and where the Court will: (a) determine whether to grant Final Approval to the Settlement and enter the Final Approval Order and Judgment; (b) determine whether to approve an Incentive Award and in what amount; (c) rule on Plaintiff’s Counsel’s application for Attorneys’ Fees and Expenses; and (d) consider the merits of any objections to this Agreement and/or any aspect of the Settlement itself.

2.25. “Final Approval” or “Final Approval Order” means an order, substantially in the form of Exhibit D, granting final approval of this Settlement as binding upon the Parties.

2.26. “Group A Valid Claim” means a claim in compliance with Section 6.1(a) of this Agreement.

2.27. “Group B Valid Claim” means a claim in compliance with Section 6.1(b) of this Agreement.

2.28. “Group C Valid Claim” means a claim in compliance with Section 6.1(c) of this Agreement.

2.29. “Incentive Award” means any award sought by application to and approval by the Court that is payable to Plaintiff to compensate him for his efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Section 8. In no event shall the Incentive Award exceed Five Thousand Dollars (\$5,000.00).

2.30. “Judgment” means the final judgment dismissing the Litigation against Defendants with prejudice.

2.31. “Laptop” and “Laptops” means the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK laptop computers at issue in the Litigation.

2.32. “Laptop Proof of Purchase” means a receipt or other documentation from any Defendant or a third-party commercial source that reasonably establishes the fact and date of purchase of a Laptop by a Class Member during the Class Period in the United States.

2.33. “Litigation” means *Carlotti v. Asus Computer International Inc., et al.*, United States District Court for the Northern District of California, Case No. 4:18-cv-03369-DMR.

2.34. “Long Form Notice” means a notice in substantially the same form as Exhibit B1 that the Claim Administrator shall make available on the Settlement Website.

2.35. “Notice Date” means the day on which the Claim Administrator initiates the Notice Plan, which shall be no later than forty-five (45) days following provision of the information required under Section 7.2 by Defendants to the Claim Administrator.

2.36. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Section 7.

2.37. “Objection/Exclusion Deadline” means the deadline by which Class Members must submit objections to the Settlement or requests to be excluded from the Settlement, subject to the terms set forth in the Preliminary Approval Order, which is the date sixty (60) days after the Notice Date or such date otherwise ordered by the Court.

2.38. “Online Notice” means notice to Class Members in substantially the same form as Exhibit B3.

2.39. “Overheating Issue” refers to Plaintiff’s allegations in the Litigation that the Laptops produce excessive heat such that the Laptop becomes hot to the touch during use.

2.40. “Parties” means the Class Representative and Defendants, collectively.

2.41. “Party” means either the Class Representative or Defendants.

2.42. “Plaintiff” means Joseph Carlotti.

2.43. “Plaintiff’s Counsel,” “Class Counsel” or “Settlement Class Counsel” mean the law firms of Gutride Safier LLP and Migliaccio & Rathod LLP who are counsel for the Class Representative and who seek to be appointed as counsel for the Class Members in this Litigation.

2.44. “Power Defect” refers to Plaintiff’s allegations in the Litigation that the Laptops’ power supply unit does not provide sufficient power to the Laptops such that the Laptops’ batteries drain during use even when the Laptops are plugged into electric outlets; the Laptops experience reductions in computational performance when they are low on battery power or when the battery is removed, even when the Laptops are connected to an electrical outlet; and that there is accelerated degradation of the Laptops’ batteries.

2.45. “Postcard Notice” means a notice substantially in the form of Exhibit B5.

2.46. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court, substantially in the form of Exhibit C, preliminarily approving the terms and conditions of this Agreement and the Settlement.

2.47. “Published Notice” means the public notice of this Settlement that is contemplated by this Agreement, substantially in the form of Exhibit B4.

2.48. “Qualifying Repairs” means repairs to and/or replacement of the motherboard and/or AC power adaptors to resolve the Power Defect.

2.49. “Released Claims” include each Settlement Class Member’s release of Defendants and the Released Parties from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, liens, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of the Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the Laptops arising out of relating in any way to the Allegations that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that Defendants engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; (c) for breach of contract and breach of the covenant of good faith and fair dealing arising out of relating in any way to the Allegations; (d) for breach of express warranty and breach of implied warranty arising out of relating in any way to the Allegations; and/or, without limiting the foregoing, (e) are based, in any way, on which the facts and claims asserted in the Litigation are based upon and depend upon. The Released Claims shall not release any Settlement Class Member’s claims for personal injury allegedly arising out of use of the Laptops or rights to enforce this Agreement. The Released Claims shall be accorded the broadest preclusive scope and effect permitted by law against the Settlement Class Members and this definition of Released Claims is a material term of this Agreement.

2.50. “Released Parties” include Defendants and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated

individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and future, and all persons acting under, by, through, or in concert with any of them.

2.51. “Serial Number” means the serial number of the Laptop; the following webpage on Defendants’ Website provides information about how to determine the Laptop’s Serial Number: <https://www.asus.com/us/support/article/566/>.

2.52. “Settlement” means the terms and conditions of this Agreement.

2.53. “Settlement Benefit” means a Credit Certificate or Cash Payment, as further described in Section 6 of this Agreement.

2.54. “Settlement Class” or “Settlement Class Members” means all Class Members excepting persons who properly excluded themselves from the Settlement pursuant to the terms of this Agreement and the Preliminary Approval Order.

2.55. “Settlement Fund” means the total of (a) Administration Costs, in an amount not to exceed \$200,000.00; (b) any Incentive Award the Court approves to be paid to Plaintiff, in an amount not to exceed \$5,000.00; (c) any Attorneys’ Fees and Expenses the Court approves to be paid to Class Counsel, in an amount not to exceed \$787,500.00; and (d) the total of Cash Payments to be made to Settlement Class Members who submit a Valid Claim for Cash Payments.

2.56. “Settlement Website” means an internet website created and maintained by the Claim Administrator consistent with the entry of the Preliminary Approval Order to

provide information regarding the Settlement and where Class Members can obtain information concerning requesting exclusion from or objecting to the Settlement and/or can submit a Claim. The URL of the Settlement Website shall be agreed to by the Parties.

2.57. “Valid Claim” means Group A Valid Claims, Group B Valid Claims, and Group C Valid Claims.

B. Conventions. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

### **III. CONSIDERATION FROM DEFENDANTS**

3.1. In full, complete and final settlement and satisfaction of the Litigation, and all Released Claims, and subject always to all of the terms, conditions and provisions of this Agreement, including Court approval, Defendants agree to provide the following consideration:

(a) Within ten (10) days after the Effective Date, Defendants shall fund the Settlement Fund. The Settlement Fund shall be established by the Claim Administrator as a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code, and all regulations promulgated thereunder for the purpose of administering the Settlement.

(b) In the event the Settlement is cancelled pursuant to this Agreement, the Court denies Final Approval, or an appeal leaves the Settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement, and all

funds in the Settlement Fund provided for in this Section shall be returned to Defendants, with the exception of amounts paid or owing to the Claim Administrator for Administration Costs actually incurred for services already performed.

#### **IV. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

4.1. The Parties reached this Agreement before Plaintiff filed a motion for class certification. Accordingly, Plaintiff shall include a request for conditional certification as part of his motion for Preliminary Approval that seeks certification of the Class for settlement purposes only.

4.2. As a material part of this Settlement, Defendants, while reserving all defenses if this Agreement is not finally approved, hereby stipulate and consent, solely for purposes of and in consideration of the Settlement, to provisional certification of the Class. Defendants' stipulation and consent to class certification is expressly conditioned upon the entry of a Preliminary Approval Order, a Final Approval Order and Judgment, and as otherwise set forth in this Agreement. As part of their provisional stipulation, Defendants further consent to the appointment of Class Counsel and the Class Representative to represent the Class. The provisional certification of the Class, the appointment of the Class Representative, and the appointment of Class Counsel shall be binding only with respect to this Settlement and this Agreement. If the Court fails to enter a Preliminary Approval Order or a Final Approval Order and Judgment, or if this Agreement and the Settlement proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, or the Court enters any order that increases the cost or burden of the Settlement on Defendants beyond what is set forth in this Agreement, the class certification, to which the Parties have stipulated solely for the purposes of

this Settlement, this Agreement, and all of the provisions of any Preliminary Approval Order or any Final Approval Order shall be vacated by their own terms and the Litigation will revert to its status as it existed prior to the date of this Agreement with respect to class certification, the appointment of the Class Representative, and the appointment of Class Counsel. In that event, Defendants shall retain all rights they had immediately preceding the execution of this Agreement to object to the maintenance of the Litigation as a class action, the appointment of the Class Representative, and the appointment of Class Counsel and, in that event, nothing in this Agreement or other papers or proceedings related to this Settlement shall be used as evidence or argument by any of the Parties concerning whether the Litigation may properly be maintained as a class action under applicable law, whether the Class Representative is an adequate or typical class representative, or whether Class Counsel is adequate or may be appointed to represent the Class or any Class Members.

## **V. EXTENDED WARRANTY FOR QUALIFYING REPAIRS**

5.1. Defendants will extend the warranty on all ASUS Rog Strix GL502VS laptops to cover all Qualifying Repairs until the later of: (i) three (3) years from the date of purchase; (ii) ninety (90) days from Final Approval and Judgment; or (iii) one-hundred eighty (180) days from the date of a prior replacement of the internal power supply and/or AC power adaptor by Defendants. This extended warranty shall not apply to the ASUS Rog Strix GL502VSK laptops.

5.2. To obtain a Qualifying Repair, the Class Member must contact Defendants' technical support toll free number to be stated in the Class Notice, and follow Defendants' protocol for shipping the ASUS Rog Strix GL502VS laptop to a repair facility for repairs. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility to be entitled

to a Qualifying Repair, Defendants will repair the laptop at no charge. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility not to be entitled to a Qualifying Repair, and the laptop is not eligible for other repairs under any existing warranty, Defendants will offer to repair the laptop at the Class Member's expense.

5.3. A Class Member shall be entitled to the Extended Warranty as described in this Section 5 whether or not the Class Member files a Claim as set forth in Section 6.

## **VI. SETTLEMENT BENEFITS**

6.1. In full, complete, and final settlement and satisfaction of the Litigation and all Released Claims, and subject always to all of the terms, conditions, and provisions of this Agreement, including Court approval, Defendants agree to cause the following settlement benefits to be provided as follows:

(a) **Group A.** A Claimant who submits a Group A Valid Claim shall have the option to select either a \$210 Credit Certificate or a \$110 Cash Payment. In order to submit a Group A Valid Claim, Claimant must comply with the requirements in Section 6.6 and must either: (1) provide the Laptop's Serial Number and have registered the Laptop with Defendants prior to the Notice Date, as reflected by Defendants' records; (2) provide the Laptop's Serial Number and have purchased the Laptop from the ASUS Website; or (3) submit a Laptop Proof of Purchase.

(b) **Group B.** Class Members who submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department and for whom Defendants possess contact information shall automatically receive a \$210 Credit Certificate, without the necessity of filing a Claim. If such a Class Member prefers a \$110 Cash Payment instead of a \$210 Credit Certificate, then they must submit a Group B Valid

Claim using the Claim Form attached as Exhibit A1. A Claimant who submits a Group B Valid Claim shall receive a \$110 Cash Payment. In order to submit a Group B Valid Claim, the Claimant must comply with the requirements in Section 6.6 except as otherwise stated.

(c) **Group C.** A Claimant who submits a Group C Valid Claim shall have the option to select either a \$105 Credit Certificate or a \$55 Cash Payment. In order to submit a Group C Valid Claim, Claimant must comply with the requirements in Section 6.6 and must provide the Laptop's Serial Number.

6.2. Any Class Member who submits an otherwise Valid Claim without electing a Settlement Benefit will receive the applicable Credit Certificate. Any Class Member who does not meet the requirements for a Group A Valid Claim, but does meet the requirements for a Group C Valid Claim will receive the Group C Settlement Benefit.

6.3. For Group A Valid Claims only, Defendants have the right to demand inspection of the Laptop to verify whether it suffers from the Power Defect and/or Overheating Issue. No inspection may be demanded by Defendants if Claimant made a posting on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 and submits a copy of such Postings with the Claim Form.

(a) The inspection referred to in Section 6.3 must be conducted by Defendants, unless both Defendants and the Claimant agree to a third-party to conduct the inspection.

(b) At the election of Defendants, the inspection shall be conducted either (1) at the home or business of the Claimant or (2) at an alternative inspection site, so long as Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless otherwise agreed by Claimant.

(d) Any demand for inspection must be accompanied by instructions informing the Claimant of the conditions set forth herein and of the right to refuse the inspection entirely. If the Claimant refuses the request for inspection, the Claim will be treated as a Group C Valid Claim.

6.4. If a Class Member does not timely submit a Valid Claim to the Claim Administrator, the Class Member is not entitled to any Settlement Benefit, except as otherwise provided in Sections 6.1(b).

6.5. A Claim shall be deemed to be a Valid Claim only if submitted on the Claim Form pursuant to the procedures set forth herein. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms to be mailed must be postmarked, and Claim Forms to be submitted online through the Settlement Website must be submitted, no later than the Claim Filing Deadline. Claim Forms that are postmarked or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Laptop Proof of Purchase and Postings image files (e.g. jpg, tif, pdf).

6.6. On the Claim Form, the Class Member must certify the truth and accuracy of each of the following under the penalty of perjury, unless otherwise stated, including by signing the Claim Form physically or by e-signature, or the claim will not be considered a Valid Claim by the Claim Administrator:

(a) The Class Member's name and mailing address;

- (b) The Class Member's email address, if the Class Member selects a Credit Certificate or otherwise elects to provide the information;
- (c) That the claimed purchase was not made for the purpose of resale;
- (d) That the Laptop suffered from the Power Defect and/or experienced the Overheating Issue (except for members of Group B that choose a Cash Payment);
- (e) That any additional information provided by the Claimant to demonstrate membership in Group A, as set forth above in this Section, is true and correct; and
- (f) That any documentation provided by the Claimant, i.e., Laptop Proof of Purchase or Postings, is a true and correct copy of the original.

6.7. Cash Payment. The Claim Administrator shall mail a check sixty (60) days after the Effective Date to the mailing address provided for each Settlement Class Member who timely submits a Valid Claim for a Cash Payment. Any check issued to any Settlement Class Member shall remain valid and negotiable for ninety (90) days from the date of its issuance, but will thereafter automatically be canceled if not cashed by the Settlement Class Member within that time, in which case the Settlement Class Member's claim will be deemed null and void and of no further force and effect and the funds represented by such check shall be returned to Defendants.

6.8. Credit Certificate. The Claim Administrator shall email the Credit Certificate sixty (60) days after the Effective Date to the email address provided for each Class Member who timely submits a Valid Claim for a Credit Certificate and to Group B Settlement

Class Members who do not file a Claim to receive a Cash Payment. Any Credit Certificate shall conspicuously state its expiration date.

6.9. No Settlement Class Member shall have any claim against Defendants, Defendants' Counsel, the Class Representative, Class Counsel, or the Claim Administrator based on the mailings, distributions, or process of awarding a Settlement Benefit made in accordance with this Agreement or any order of the Court.

6.10. Each Settlement Class Member is solely responsible for any tax consequence, including but not limited to penalties and interest, relating to or arising out of the receipt of any benefit under this Settlement.

## **VII. CLASS NOTICE AND SETTLEMENT ADMINISTRATION**

7.1. Subject to Court approval, the Parties have agreed that providing Long Form Notice, Email Notice, Postcard Notice, Published Notice and Online Notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances. Class Counsel will not of their own initiative advocate for content or methods of Class Notice beyond that to which the Parties have agreed in this Section 7 of the Agreement.

7.2. The Parties agree to the following procedures for giving notice of this Settlement to the Class Members:

(a) Within thirty (30) days of entry of the Preliminary Approval Order or on such date otherwise ordered by the Court, Defendants shall provide the Claim Administrator with an electronic list that includes the following information with respect to each Class Member for which Defendants have information: (i) first and last name; (ii) email address; (iii) last known mailing address (if available); (iv) phone number (if available); (v) whether the

Class Member registered the Laptop with Defendants prior to the Notice Date; (vi) whether the Class Member purchased the Laptop from the ASUS Website; and (vii) whether the Class Member submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department. Defendants agree to utilize reasonable efforts to provide accurate data to the Claim Administrator, which the Claim Administrator will rely upon in sending Class Notice and administering this Settlement as described herein and will provide a sworn declaration with the motion for Final Approval of the Settlement that Defendants utilized reasonable efforts to provide accurate data (and a description of those efforts) to the Claim Administrator.

(b) No later than the Notice Date, the Claim Administrator shall send Direct Notice to Class Members as follows: the Claim Administrator shall send: (i) a copy of the Email Notice in the form approved by the Court to those Class Members for whom an email address is available, and (ii) a copy of the Postcard Notice in the form approved by the Court to those Class Members for whom a physical mailing address is available.

(c) The Claim Administrator shall utilize the national change of address database to update the mailing list of the Class Members for whom a mailing address is available prior to sending Postcard Notice via First Class U.S. Mail.

(d) If no physical address is available in the list provided to the Claim Administrator, the Claim Administrator shall perform a single skip trace using information identifying the Class Member, as necessary, to identify the Class Member's mailing address to allow Postcard Notice to be sent using an industry-accepted source such as Accurant, and shall send the Postcard Notices to the mailing address identified by the skip tracing.

(e) Any mailed Postcard Notices returned to the Claim Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Claim Administrator within five (5) business days following receipt of the returned mail. Further, if no forwarding address is available, the Claim Administrator shall perform a single skip trace using an industry-accepted source such as Accurint, to conduct an address update and send the Postcard Notices to the mailing addresses identified by the skip-tracing.

(f) No later than the Notice Date, the Claim Administrator also shall launch the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiff's Counsel and Defendants' Counsel; the Agreement; the signed Preliminary Approval Order and the publicly filed motion papers and declarations in support thereof; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Class Members may exclude themselves from the Settlement Class; and (when they become available) the publicly filed motion for Final Approval of the Settlement, Plaintiff's request for Attorneys' Fees and Expenses and Incentive Award, and supporting declarations. The Claim Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with the opportunity to review the Settlement Website at least five (5) days prior to the scheduled launch date and the Claim Administrator will make any revisions requested by counsel. The Settlement Website shall remain accessible until one-hundred eighty (180) days after all Settlement Benefits are distributed. When the Settlement Website is taken down, the Claim Administrator shall immediately transfer ownership of the URL for the

Settlement Website to Defendants. Defendants will not thereafter add any content or otherwise revise the Settlement Website or use the URL for the Settlement Website for any other purposes.

(g) No later than the Notice Date, the Claim Administrator also shall distribute the Online Notice. The Online Notice shall be distributed utilizing methods such as internet banner advertising, social media sponsored posts, and/or paid search placements and shall be designed to reach 80% of the Class consistent with other effective court-approved notice programs and the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language guide.

(h) No later than the Notice Date, Defendants shall post the Online Notice on Defendants' Website, social media accounts, and the ASUS ROG online forms. The online Notice shall link to the Settlement Website.

(i) On the Notice Date, the Claim Administrator shall cause the Published Notice to be published in the manner ordered by the Court.

(j) CAFA Notice. The Claim Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Claim Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.

(k) The Claim Administrator shall provide any information or declaration requested by the Parties to assist with seeking Preliminary Approval and Final Approval.

(l) The Parties each represent that he or it does not and will not have any financial interest in the Claim Administrator ultimately appointed and otherwise will not

have a relationship with the Claim Administrator ultimately appointed that could create a conflict of interest.

(m) The Parties acknowledge and agree that the Claim Administrator is not an agent of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel and that the Claim Administrator is not authorized by this Agreement or otherwise to act on behalf of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel.

(n) If a Class Member requests that the Claim Administrator and/or its agent or employee refer him/her to Class Counsel, or if a Class Member requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a Claim Form or other Settlement-related forms for which the Claim Administrator does not have an approved response, then the Claim Administrator and/or its agent or employee shall promptly refer the inquiry to Class Counsel and Defendants' Counsel.

- (o) The Claim Administrator is responsible for:
- (1) Sending the Email Notice approved by the Court;
  - (2) Printing and distributing the Postcard Notice approved by the Court;
  - (3) Causing the Published Notice to the Class Members approved by the Court to be published;
  - (4) Causing the Online Notice to the Class Members approved by the Court to be published;
  - (5) Performing physical mailing address and email address updates and verifications prior to the distribution of the Postcard Notice;

- (6) Performing a single skip trace to identify Class Members' addresses and to follow up on any returned Postcard Notices;
- (7) Creating and maintaining the Settlement Website and a toll-free number that Class Members can contact to request a copy of this Agreement, a Long Form Notice, and/or a Claim Form, and/or to obtain any other information concerning this Settlement or this Agreement;
- (8) Consulting with Defendants' Counsel and/or Class Counsel concerning any relevant issues, including (without limitation) distribution of the Class Notice and processing of Claim Forms;
- (9) Processing and recording timely and proper requests for exclusion from or objections to the Settlement;
- (10) Processing and recording Claim Forms;
- (11) Preparing, drafting, and serving the CAFA Notice;
- (12) Emailing Credit Certificates to Class Members who submit a timely and proper Claim Form requesting a Credit Certificate;
- (13) Emailing Credit Certificates to Class Members in Group B that do not file a Claim for a Cash Payment;

(14) Mailing Cash Payments to Class Members who submit a timely and proper Claim Form requesting a Cash Payment; and

(15) Such other tasks as the Parties mutually agree or the Court orders the Claim Administrator to perform in connection with this Agreement.

(p) The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section.

(q) At least fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

(r) Defendants shall be responsible for paying all reasonable costs of notice as set forth in this Section and all costs of the Claim Administrator in processing objections and exclusion requests in an amount not to exceed \$200,000.00.

(s) Within two hundred and ten (210) days after the Effective Date, the Claim Administrator shall destroy all Class Member's identifying information received from Defendants and otherwise in connection with the implementation and administration of this Settlement.

(t) Upon completion of the implementation and administration of the Settlement, the Claim Administrator shall provide written certification of such completion to Class Counsel and Defendants' Counsel.

## VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

8.1. Plaintiff's Counsel may make application to the Court for an award of Attorneys' Fees and Expenses as compensation for the time and effort, undertaken in and risks of pursuing this Litigation, but agree that, combined, the requested Attorneys' Fees and Expense Award shall not aggregately exceed \$787,500.00. Plaintiff's Counsel shall not be permitted to petition the Court for any additional payments for fees, costs or expenses from Defendants. Attorneys' Fees and Expenses shall be for all claims for attorneys' fees, costs and expenses, past, present, and future incurred in the Litigation in connection with claims against Defendants.

8.2. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for Attorneys' Fees and Expenses is consistent with Section 8.1 and does not collectively exceed \$787,500.00, they and the Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; or (c) encourage or assist any person to appeal from an order awarding Attorneys' Fees and Expenses.

8.3. Any Attorneys' Fees and Expenses awarded by the Court which does not exceed \$787,500.00 shall be paid by the Claim Administrator to Class Counsel within ten (10) days after Defendants fund the Settlement Fund.

8.4. Payment of any Attorneys' Fees and Expenses to Plaintiff's Counsel shall constitute full satisfaction by Defendants of any objection to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses, or costs in the Litigation incurred by any attorney on behalf of Plaintiff, the Class, or the Settlement Class, and shall relieve Defendants

and Defendants' Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff, the Class, and/or the Settlement Class.

8.5. Any Attorneys' Fees and Expenses paid to Plaintiff and Plaintiff's Counsel under this Section shall be paid separate and apart from the Valid Claims and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class.

8.6. Plaintiff's Counsel may also make application to the Court for an Incentive Award for Plaintiff in an amount not to exceed \$5,000.00, as compensation for Plaintiff's time and effort undertaken in and risks of pursuing this Litigation, including preparing for and participating in a nearly 7-hour deposition.

8.7. The Incentive Award shall be the total obligation of Defendants to pay money to Plaintiff, in connection with the Litigation and this Settlement, other than amounts due to Plaintiff for any Valid Claim he submits pursuant to Section 6 of this Agreement.

8.8. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for an Incentive Award is consistent with Section 8.6, they and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; or (c) encourage or assist any person to appeal from an order making an Incentive Award.

8.9. Any Incentive Award awarded by the Court which does not exceed \$5,000.00 shall be paid by the Claim Administrator to Plaintiff within ten (10) days after

Defendants fund the Settlement Fund provided Plaintiff has executed the General Release substantially in the form attached as Exhibit E.

8.10. Plaintiff's Counsel and Plaintiff agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Incentive Award shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

8.11. Except as set forth in this Agreement, each Party shall bear his or its own fees, costs, and expenses.

## **IX. CLASS SETTLEMENT PROCEDURES**

9.1. Preliminary Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall move, with the support of Defendants, solely for purposes of this Settlement, for a Preliminary Approval Order, substantially in the form of Exhibit C. The Parties shall seek to schedule a Final Approval Hearing to occur four (4) weeks after the Objection Deadline.

9.2. Exclusions and Objections. The Preliminary Approval Order and Class Notice shall advise prospective Class Members of their rights to exclude themselves from the Settlement, forego the benefits of this Settlement and reserve the right to pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the Final Approval Hearing.

(a) Exclusions. Class Members and persons purporting to act on their behalf who decide to be excluded from this Settlement must submit to the Claim Administrator a written statement requesting exclusion from the Settlement by the Objection/Exclusion Deadline or by such date otherwise ordered by the Court. Such written request for exclusion must (i)

contain the name and address of the person requesting exclusion, (ii) be made by submitting the online form on the Settlement Website or by mailing a valid exclusion request by First Class U.S. Mail to the Claim Administrator at the specified address as described in the Class Notice, and (iii) be submitted online or postmarked on or before the Objection/Exclusion Deadline in order to be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

(b) Class Members who fail to submit a timely and valid written request for exclusion consistent with this Section shall be deemed to be a member of the Settlement Class and as such shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(c) A Class Member who is excluded from this Settlement shall not be bound by this Settlement or any Final Approval Order entered by the Court approving this Settlement, shall not be permitted to object to this Settlement, and shall not be entitled to receive any of the benefits of the Settlement.

(d) If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

(e) Within fifteen (15) days following the Objection/Exclusion Deadline, the Claim Administrator shall provide in writing to Defendants' Counsel and Class Counsel the names of those Class Members who have requested exclusion from the Settlement in

a valid and timely manner, and Plaintiff's Counsel shall file that list with the Court, with service on Defendants' Counsel.

(f) The Class Representative acknowledges and agrees that he will not exclude himself from this Settlement.

9.3. Objections. Class Members and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the Settlement or this Agreement, any request for Attorneys' Fees and Expenses, or any request for an Incentive Award shall submit a written notice of objection in accordance with the following procedures:

(a) Class Members who wish to object must submit a written statement of objection to the Class Action Clerk, United States District Court for the Northern District of California, postmarked on or before the Objection/Exclusion Deadline.

(b) To be valid, an Objection must include: (a) a reference at the beginning to this case, *Carlotti v. Asus Computer International Inc., et al.*, Case No. 4:18-cv-03369-DMR, and the name of the presiding judge, the Hon. Donna Ryu, United States District Court for the Northern District of California; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any

court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. Failure to include this information and documentation may be grounds for overruling and rejecting the Objection.

(c) Subject to the Court's approval, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why this Settlement and this Agreement should not be approved as fair, adequate, and reasonable or to object to any request for a Attorneys' Fees and Expenses or Incentive Award. To appear in person or by counsel at the Final Approval Hearing, fourteen (14) days prior to the Final Approval Hearing, the objecting Class Member must file with the Court and serve upon Class Counsel and Defendants' Counsel a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing.

(d) Any Class Member who fails to submit a proper Notice of Intention to Appear prior to fourteen (14) days before the Final Approval Hearing, along with copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing, will not be heard during the Final Approval Hearing.

(e) Any Class Member who fails to timely submit a written objection prior to the Objection/Exclusion Deadline will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and will not be considered by the Court.

(f) Any Class Member who submits a timely written request for exclusion from the Settlement shall not be permitted to object to the Settlement. Any written

objection submitted by a Class Member who has submitted a timely written request for exclusion from the Settlement will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and shall not be considered by the Court at the Final Approval Hearing.

(g) The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice in accordance with each Class Member's due process rights. Such procedures are designed to identify whether any person making an objection has standing to do so and to identify "professional objectors."

(h) Any Class Member who submits a written objection in accordance with this Section shall be entitled to all of the benefits of the Settlement and this Agreement, provided the objecting Class Member complies with all the requirements set forth in this Agreement for submitting a timely and valid Claim, and shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(i) Class Counsel shall serve on Defendants' Counsel and file with the Court any written objections to the Settlement received within fifteen (15) days following the Objection/Exclusion Deadline.

#### 9.4. Conditions Impacting Finality of Settlement.

(a) If more than 1,000 Class Members submit a timely and valid request to exclude themselves from the Settlement, Defendants shall have the unilateral right to terminate and withdraw from the Settlement in its entirety; provided, however, that Defendants must notify Class Counsel and the Court that it is exercising such option within seven (7)

business days of the filing with the Court of the opt-out list described in Section 9.2 of this Agreement. Furthermore, except for changes to the time periods set forth in Section 6.3, all other terms and limitations set forth in this Agreement and in the documents referred to or incorporated herein (including but not limited to the Long Form Notice, the Published Notice, the Online Notice and the Claim Form) shall be deemed material to the Parties' agreement, and in the event any such other term is altered or amended by the Court (including if the Court refuses to certify the Settlement Class and/or modifies the definition of the class), or any other court, or if any federal or state authority objects to or requires modifications to the Agreement, any Party whose rights or obligations are affected by the alteration or amendment may terminate this Agreement upon written notice to the other Party.

(b) The Parties expressly agree that in the event of any of the following conditions: (i) the Court does not preliminarily approve the Settlement; (ii) the Court does not finally approve the Settlement; (iii) the Court does not enter the Final Approval Order and Judgment; (iv) Defendants withdraw and cancel the Settlement pursuant to Section 9.4(a); and/or (v) this Settlement does not become final for any reason; then this Agreement shall be null and void *ab initio* and any order entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties (subject to Court approval) and Defendants shall have no further obligation under this Agreement; provided, however, that in the event of the denial of Preliminary Approval or Final Approval, the Class Representative and/or Defendants may seek appellate review through a writ or pursue any other available appellate remedy in support of the Settlement or this Agreement. Nothing herein is intended to restrict or limit the rights of either Defendants or the Class Representative to appeal any order of this Court in the event the Settlement is not finally approved for any reason. During the pendency of any

appeal of the denial of Preliminary Approval or Final Approval, this Agreement shall remain valid and binding.

(c) If any of the conditions outlined in Section 9.4(b) occur such that this Settlement does not become final, the Parties shall proceed in all respects as if this Agreement had not been executed; provided, however, that Defendants shall be responsible for the payment of reasonable Administration Costs actually incurred for services already incurred up to such time. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fees and Expenses or Incentive Award shall constitute grounds for cancellation or termination of this Agreement.

(d) If Preliminary Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events (i) the thirty-first (31st) day following the denial of Preliminary Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Preliminary Approval. In either of these events, within thirty (30) days, the Parties will jointly file a stipulation regarding a revised proposed schedule for briefing Plaintiffs' motion for class certification and for class-related discovery.

(e) If Final Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events: (i) the thirty-first (31st) day following the denial of Final Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Final Approval. In either of these events, within thirty (30) days, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on Plaintiffs' motion for class certification and for class-related discovery.

9.5. Effect if Settlement Not Approved or Agreement is Terminated. This Agreement is entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this Agreement does not occur for any reason, including without limitation termination of this Agreement pursuant to Section 9.4, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding; the Litigation may continue as if the Settlement had not occurred; and any orders conditionally certifying or approving certification of the Settlement Class shall be vacated, and the Parties returned to their pre-Settlement litigation posture. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation.

9.6. Final Approval and Judgment. After Preliminary Approval, Class Notice is provided to the Class Members, and the expiration of the Objection/Exclusion Deadline, a Final Approval Hearing shall be held on a date set by the Court. The Parties shall request that the Court enter the Final Approval Order, substantially in the form of Exhibit D.

## X. RELEASES

### 10.1. Releases Regarding Settlement Class Members and Released Parties.

As of the Effective Date, the Class Representative and Settlement Class Members hereby expressly fully release and forever discharge the Released Parties and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the Released Parties, either directly or indirectly, on their own behalf or on behalf of any class or other person or entity, in any action, regulatory action, arbitration, or court or other proceeding of any kind, any causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights, or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the Released Parties, whether based on federal, state, or local law, statute, ordinance, regulation, constitution, contract, common law, or any other source, that relate to the Released Claims.

(a) The Class Representative and Settlement Class Members expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the Released Parties. It is the intention of the Class Representative in executing this release on behalf of himself and the Settlement Class to fully, finally, and forever settle and release all matters and all claims relating to the Released Claims in every way.

(b) Without limiting the foregoing, nothing in this Agreement shall release, preclude, or limit any claim or action by the Parties to enforce the terms of this Agreement.

(c) To the fullest extent permitted by law, the Class Representative and the Settlement Class Members agree not to commence or participate in any claim, demand, grievance, action, or other proceeding against any of the Released Parties based on, concerning, or arising out of any of the Released Claims.

10.2. Waiver of Provisions of California Civil Code Section 1542. The Class Representative and Defendants shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth Section 10.1 above. Section 1542 provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

10.3. Effectuation of Settlement. None of the above releases include releases of claims to enforce the terms of the Settlement provided for in this Agreement.

10.4. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the Allegations. Neither this Agreement, nor the fact of

settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

## **XI. ADDITIONAL PROVISIONS**

11.1. Defendants' Representation. Defendants represent and warrant that they ceased sales and distribution of the Laptops prior to the Settlement in the ordinary course of business because the Laptops reached the end of their life.

11.2. Non-Disparagement. The Parties, Plaintiffs' Counsel, and Defendants' Counsel agree that they will not make or cause to be made any statements that disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. The Parties, Plaintiffs' Counsel, and Defendants' Counsel also agree that they will not encourage any person to disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. Disparagement includes, but is not limited to, statements made by any internet posting or use of social media. Disparagement does not include statements that recite or refer to the Allegations of the Lawsuit or terms of the Agreement, nor does it include any good faith claim or allegation of a legal violation in the future.

11.3. Cooperation. All of the Parties, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain Court approval of this Agreement and to effectuate the Settlement, and to provide declarations to facilitate the Court's Preliminary Approval and Final Approval of the Settlement. The Parties further agree to

cooperate in the Settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

11.4. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendants' Counsel, without notice to Class Members.

11.5. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

11.6. Governing Law. This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

11.7. Entire Agreement. The terms and conditions set forth in this Agreement and its exhibits constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this Agreement. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge

and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement. All exhibits to this Agreement as set forth herein are integrated herein and are to be considered terms of this Agreement as if fully set forth herein.

11.8. Modifications. Any amendment or modification of the Agreement must be in writing signed by all of the Parties to this Agreement or their counsel. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval. If the Court indicates, prior to Preliminary Approval or Final Approval, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) days after the Court indicates that the Settlement will not be approved unless certain changes are made, then the Class Representative or Defendants may terminate and withdraw from this Agreement. If this Agreement is terminated under such circumstances, the Class Representative, Defendants, and the Class Members shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by Defendants and the Class Representative into this Agreement and any and all other understandings and agreements between the Parties and their respective counsel relating to the Settlement shall be deemed to be null and void and of no force and effect. Upon termination under this Section of the Agreement, within thirty (30) days of the Agreement's termination, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on the Plaintiffs' motion for class certification and for class-related discovery. Without further order of the Court, the Parties may agree in writing to reasonable

extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

11.9. No Admissions. If this Agreement does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Litigation or any proceedings between the Parties or in any other action related to the Released Claims or otherwise involving the Parties or any Released Party. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representative that any of his claims are without merit. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendants of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. Defendants continue to affirmatively deny all liability and all of the claims, contentions, Released Claims, and each and every allegation made by the Class Representative in the Litigation.

11.10. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after extensive arm's-length, bilateral negotiations, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

11.11. No Tax Advice. Neither Class Counsel nor Defendants' Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

11.12. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

11.13. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

11.14. Warranties. Each signatory to this Agreement hereby warrants that he/it has the authority to execute this Agreement and thereby bind the respective Party. The Class Representative warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

11.15. Binding Effect of the Agreement. This Agreement shall be valid and binding as to the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon signing by all Parties.

11.16. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

11.17. Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

11.18. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiff or Plaintiff's Counsel:

Seth Safier, Esq.  
Gutride Safier LLP  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Telephone: (415) 639-9090  
Fax: (415) 449-6469  
Email: asuspower@gutridesafier.com

If to Defendants or Defendants' Counsel:

Luanne Sacks  
Sacks, Ricketts & Case LLP  
177 Post Street, Suite 650  
San Francisco, CA 94108  
Telephone: (415) 549-0581  
Fax: (415) 549-0640  
Email: lsacks@srclaw.com

11.19. Confidentiality. The Parties, Plaintiff's Counsel, and Defendants' Counsel agree to keep the existence and contents of the term sheet, Agreement, and all related settlement communications confidential until the filing of the motion for Preliminary Approval. This provision will not prevent the disclosure of such information prior to the filing of the motion for Preliminary Approval with the Court to: (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, co-counsel, the Released Parties, any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Claims Administrator as may reasonably be required to effectuate the Settlement, and/or as otherwise required to comply with any applicable law or regulation; (2) any person or entity to whom the Parties agree in writing disclosure must be made

to effectuate the Settlement; and/or (3) Defendants or any of the Released Parties as necessary for any reasonable commercial purpose.

(a) If contacted by a Class Member, Class Counsel may provide advice or assistance regarding any aspect of the Settlement requested by the Class Member. At no time shall any of the Parties or their counsel or their agents seek to solicit Class Members or any other persons to submit written objections to the Settlement, requests for exclusion from the Settlement, or to encourage Class Members or any persons to appeal from the Preliminary Approval Order and/or the Final Approval Order and Judgment.

(b) The Class Representative and Class Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties (other than experts or consultants retained by the Class Counsel in connection with the Litigation), that they not be the subject of public comment, and that they not be publicly disclosed or used by the Class Representative or Class Counsel in any way in the Litigation should it not settle or in any other proceeding.

11.20. Confidential Documents. All of the Parties agree to cooperate and to work with one another to protect any confidential materials produced in discovery in the Action. This includes, but is not limited to, promptly complying with all aspects of the Stipulated Protective Order (Dkt. 24) regarding such information and stipulating that any confidential information submitted, whether in the past or in the future, to any court in the Litigation will be sealed. Class Counsel are entitled to retain an archival copy of the entire file (paper and/or electronic), including all pleadings, motion papers, transcripts, legal memoranda, correspondence, discovery, expert reports and exhibits thereto, or attorney work product, even if such materials contain

material designated as confidential, provided Class Counsel complies with all aspects of the Stipulated Protective Order (Dkt. 24). Said archival copy will not be used or disclosed for any purpose other than: (1) in this Litigation (including the Settlement approval process and/or Settlement administration), (2) in responding to or defending against any objection or complaint by or on behalf of any Class Member as to the adequacy of Class Counsel's representation of the Settlement Class, or (3) in response to a court order or legal process requiring disclosure of such materials. Prior to disclosing any such materials to any third party, Class Counsel will provide written notice to Defendants' Counsel as early as feasible, and no later than three (3) business days after receipt of such order or legal process, so as to permit Defendants to seek appropriate relief and otherwise comply with all aspects of the Stipulated Protective Order (Dkt. 24). Class Counsel shall destroy the foregoing electronic and paper archival copy on the date six (6) years after the Effective Date, unless during that time period a Settlement Class Member or other person entitled to or potentially entitled to relief under this Settlement, or a legally authorized representative acting on their behalf, asserts any claim of malpractice or otherwise challenges the adequacy of Class Counsel's representation of the Settlement Class in this Litigation, in a lawsuit, or otherwise. If such a claim is asserted, Class Counsel may retain an archival copy until the date (i) six (6) years after the Effective Date, (ii) such claim is finally resolved, or (iii) five (5) years after the assertion of such a claim, whichever is latest, provided Class Counsel otherwise complies with all aspects of the Stipulated Protective Order (Dkt. 24). The Parties agree that if there is anything inconsistent in this Section and the Stipulated Protective Order (Dkt. 24), the provisions of the Stipulated Protective Order (Dkt. 24) shall control.

11.21. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

11.22. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

**APPROVED AND AGREED:**

DATED: September \_\_, 2019  
9/12/2019

JOSEPH CARLOTTI

DocuSigned by:  
  
Joseph Carlotti

DATED: September \_\_, 2019

ASUS COMPUTER INTERNATIONAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: September \_\_, 2019

ASUSTEK COMPUTER, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

DATED: September 12, 2019

GUTRIDE SAFIER LLP



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Adam Gutride, Esq.  
Seth Safier, Esq.  
Attorneys for Plaintiff

DATED: September \_\_\_, 2019

MIGLIACCIO & RATHOD LLP

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Jason Rathod, Esq.  
Nicholas A. Migliaccio, Esq.  
Esfand Nafisi, Esq.  
Attorneys for Plaintiff

DATED: September \_\_\_, 2019

SACKS, RICKETTS & CASE LLP

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Luanne Sacks, Esq.  
Michele Floyd, Esq.  
Robert B. Bader, Esq.  
Jacqueline Young, Esq.  
Attorneys for Defendants

**APPROVED AS TO FORM:**

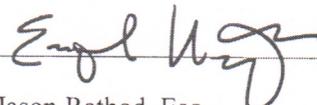
DATED: September 12, 2019

GUTRIDE SAFIER LLP

  
\_\_\_\_\_  
Adam Gutride, Esq.  
Seth Safier, Esq.  
Attorneys for Plaintiff

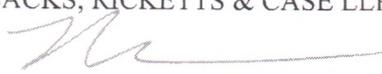
DATED: September 12, 2019

MIGLIACCIO & RATHOD LLP

  
\_\_\_\_\_  
Jason Rathod, Esq.  
Nicholas A. Migliaccio, Esq.  
Esfand Nafisi, Esq.  
Attorneys for Plaintiff

DATED: September 12, 2019

SACKS, RICKETTS & CASE LLP

  
\_\_\_\_\_  
Luanne Sacks, Esq.  
Michele Floyd, Esq.  
Robert B. Bader, Esq.  
Jacqueline Young, Esq.  
Attorneys for Defendants

Your claim must be  
submitted online or  
postmarked by:  
XXXXX XX, 2020

*Carlotti v. ASUS Computer International,*  
Case No. 4:14-cv-03369

**ASU**

### **ELIGIBILITY AND GENERAL INSTRUCTIONS FOR SUBMITTING A CLAIM**

**PLEASE READ THIS ENTIRE CLAIM FORM CAREFULLY. To obtain financial benefits from the Settlement, you are required to complete and return this Claim Form.** Your completed Claim Form can be mailed to the Claim Administrator at ASUS Laptop, Settlement Administrator, PO Box xxx, Philadelphia, PA 19103 or submitted electronically via the **Settlement Website, at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).** **Your Claim Form must be POSTMARKED BY [DATE] or SUBMITTED ONLINE NO LATER THAN [DATE] at 11:59 p.m., Pacific Time.**

You are eligible to submit a Claim to receive a Cash Payment or Credit Certificate under this Settlement if you have purchased any new ASUS Rog Strix GL502VS or GL502VSK laptop (the “Laptops”) from ASUS Computer International or ASUSTeK Computer Inc. (collectively, “Defendants” or “ASUS”) or an authorized ASUS retailer in the United States after May 4, 2014. If you purchased more than one Laptop, you can submit more than one claim but you must submit a separate Claim Form for each purchase.

Please read the Settlement Notice (“Notice”) before you complete and submit this Claim Form. The Notice is available on the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Defined terms (with initial capitals) used in the Notice have the same meaning as set forth in the Settlement Agreement, which is also available on the Settlement Website. By submitting this Claim Form, you acknowledge that you have read and understand the Notice and the Settlement Agreement. To receive the most current information and regular updates, please visit the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

If you fail to timely submit a Claim Form, you may be precluded from receiving settlement benefits. If you are a member of the Class and you do not timely and validly seek to Opt Out of the Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form.

The information you provide on this Claim Form will not be disclosed to anyone other than the Court, the Claim Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

### **BENEFIT INFORMATION**

***Cash Payment or Credit Certificate.*** You may file a claim to receive a Cash Payment or Credit Certificate under Group A, B, or C as described below. You do not have to submit a Claim Form to obtain repairs under the Extended Warranty. Information regarding the Extended Warranty is provided on the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

**Group A:** Group A Class Members may receive a Credit Certificate for \$210.00 **or** a Cash Payment of \$110.00. To submit a Group A Claim, you must either (1) provide your Laptop’s Serial Number and have registered your Laptop with Defendants prior to [Notice Date], as reflected by Defendants’ records; (2) provide your Laptop’s Serial Number and have purchased your Laptop from the ASUS website; or (3) submit a Proof of Purchase, which is a receipt or other documentation from ASUS or a third-party commercial source that reasonably establishes the fact

and date of purchase of your Laptop during the Class Period in the United States. You must also complete and submit the information on the Claim Form below.

**Group B:** Group B includes those Class Members who submitted a complaint about the Power Defect and/or Overheating Issue with their Laptop prior to March 19, 2019 to Defendants' customer service department and for whom Defendants possess contact information. Group B Class Members were sent a separate claim form and should not complete the Claim Form below.

**Group C:** Group C Class Members include all Class Members that are not included in Group A and Group B. Group C Class Members may receive a Credit Certificate for \$105.00 **or** a Cash Payment of \$55.00. To submit a Group C Claim, you must provide your Laptop's Serial Number. You must also complete and submit the information on the Claim Form below.

**Serial Number.** "Serial Number" means the serial number of the Laptop. The following webpage on Defendants' Website provides information about how to determine the Laptop's Serial Number: <https://www.asus.com/us/support/article/566/>.

**Inspection.** In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants' have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

(a) Defendants must conduct the inspection, unless both Defendants and you agree to another party to conduct the inspection.

(b) At the election of Defendants, the inspection must be conducted (1) at your home or business; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless otherwise agreed by you.

(d) Any demand for inspection must be accompanied by instructions informing you of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Claim.

Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on the ASUS website, forums, or chat room prior to March 19, 2019 (collectively, "**Postings**") and you submit a copy of such Postings with your Claim Form.

**Claim Administrator's Discretion.** Claims will be paid only if deemed valid and only after the Court finally approves the Settlement. The Claim Administrator has discretion that will be exercised in good faith to determine whether your Claim Form is complete and valid and whether the Proof of Purchase you submit, where required, is sufficient.

**Change of Residence.** You are responsible for keeping your contact information up to date with the Claim Administrator. The Claim Administrator will use the email address that you provide on this Claim Form to communicate with you if communication is necessary. If you move, or if your email address or other contact information changes after you submit this Claim Form, please contact the Claim Administrator at: [INFO].

**CLAIM FORM**

**CLASS MEMBER INFORMATION**

FIRST NAME	LAST NAME	
STREET ADDRESS 1		
STREET ADDRESS 2		
CITY	STATE	ZIP CODE
PHONE NUMBER	EMAIL ADDRESS	

1. Please select the Class Member Group you belong to.

**Group A:** If you are submitting a Claim under Group A, you must provide Proof of Purchase, unless you provide your Laptop’s Serial Number below and either registered your Laptop with Defendants before [Notice Date] or purchased your Laptop from the ASUS website. **To provide Laptop Proof of Purchase, if required, attach it to this form (if mailed) or upload it to the Settlement Website (if submitted online).**

If you are submitting a Claim under Group A, your Claim to receive a Settlement Benefit is subject to Defendants’ right to demand inspection of your Laptop at their cost to verify whether it suffers from the Power Defect and/or Overheating Issue. By selecting to submit a Claim under Group A, you are agreeing to provide your Laptop to Defendants for inspection per the terms discussed above, unless you submit Postings. **To provide Postings, print and attach them to this form (if mailed) or upload them to the Settlement Website (if submitted online).**

**Group C:** If you are submitting a Claim under Group C, you must provide the Serial Number for your Laptop below.

If you received a Notice by email or a postcard from the Claim Administrator, please provide your Claim Number:

CLAIM NUMBER

*The Claim Number is located on the top of the email or in the address block of the postcard.*

2. If you purchased an ASUS Rog Strix GL502VS or GL502VSK laptop from Defendants or an authorized ASUS retailer since May 4, 2014 in the United States, which model Laptop did you purchase and what is the Serial Number? You are not required to provide a Serial Number if you a Group A Class Member and are providing Proof of Purchase.

ASUS Rog Strix GL502VS

ASUS Rog Strix GL502VSK

SERIAL NUMBER

**Benefit Election**

3. Do you wish to receive a Cash Payment or a Credit Certificate good toward the future purchase of Defendants' products?

Credit Certificate

Cash Payment

**Certification under Penalty of Perjury**

**By signing below, you are signing under penalty of perjury. Signing under penalty of perjury means that the information you have provided in the Claim Form is true and correct to the best of your knowledge. It is a crime to submit a false Claim Form and sign under penalty of perjury.**

**I hereby certify under penalty of perjury that:**

1. My Laptop suffered from the Power Defect and/or the Overheating Issue;
2. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
3. The additional documentation information provided to the Claim Administrator to support my Claim is original or else a complete and true copy of the original(s);
4. I am not (a) a Person who purchased or acquired the Laptop for resale purposes; (b) an employee, principal, legal representative, successor, or and assign of Defendants or their affiliated entities; (c) a government entity; (d) the mediator in this case or any member of his immediate family; nor (e) a judge to whom this Action is assigned, or any member of the judge's immediate family;
5. I have not submitted any other Claim for the same purchase and have not authorized any other Person or entity to do so, and know of no other Person or entity having done so on my behalf;
6. I understand that by not opting out of the Settlement, I have given a complete Release of all Released Claims; and
7. I understand that Claims will be audited for veracity, accuracy, and fraud. Claims Forms that are not valid and/or illegible can be rejected.

Signature: \_\_\_\_\_ Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

Your claim must be submitted online or postmarked by: XXXXX XX, 2020

*Carlotti v. ASUS Computer International,*  
Case No. 4:14-cv-03369

**ASU**

**ELIGIBILITY AND GENERAL INSTRUCTIONS FOR SUBMITTING A CLAIM**

**PLEASE READ THIS ENTIRE CLAIM FORM CAREFULLY.** You are automatically eligible to receive a \$210 Credit Certificate under this Settlement because you purchased a new ASUS Rog Strix GL502VS or GL502VSK laptop (the “Laptops”) from ASUS Computer International or ASUSTeK Computer Inc. (collectively, “Defendants” or “ASUS”) or an authorized ASUS retailer in the United States after May 4, 2014, and you submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants’ customer service department.

**If you want to receive a \$110 Cash Payment, rather than a \$210 Credit Certificate, then you are required to complete and return the Claim Form below. If you want to receive the \$210 Credit Certificate, which is good toward the future purchase of Defendants’ products, you do not need to complete this Claim Form.** Your completed Claim Form can be mailed to the Claim Administrator at ASUS Laptop, Settlement Administrator, PO Box xxx, Philadelphia, PA 19103 or submitted electronically via the **Settlement Website, at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com)**. **Your Claim Form must be POSTMARKED BY [DATE] or SUBMITTED ONLINE NO LATER THAN [DATE] at 11:59 p.m., Pacific Time.**

You do not have to submit a Claim Form to obtain repairs under the Extended Warranty. Information regarding the Extended Warranty is provided on the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

Please read the Settlement Notice (“Notice”) before you complete and submit the Claim Form. The Notice is available on the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Defined terms (with initial capitals) used in the Notice have the same meaning as set forth in the Settlement Agreement, which is also available on the Settlement Website. By submitting this Claim Form, you acknowledge that you have read and understand the Notice and the Settlement Agreement. To receive the most current information and regular updates, please visit the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

If you fail to timely submit a Claim Form, you may be precluded from receiving a Cash Payment. If you are a member of the Class and you do not timely and validly seek to Opt Out of the Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form.

The information you provide on the Claim Form will not be disclosed to anyone other than the Court, the Claim Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

**Claim Administrator’s Discretion.** Claims will be paid only if deemed valid and only after the Court finally approves the Settlement. The Claim Administrator has discretion that will be exercised in good faith to determine whether your Claim Form is complete and valid.

**Change of Residence.** You are responsible for keeping your contact information up to date with the Claim Administrator. The Claim Administrator will use the email address that you provide on this Claim Form to communicate with you if communication is necessary. If you move, or if your email address or other contact

information changes after you submit this Claim Form, please contact the Claim Administrator at: [INFO].



**EXHIBIT B1 – LONG FORM NOTICE**

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**Attention purchasers of ASUS Rog Stix GL502VS and GL502VSK  
Laptops In the United States After May 4, 2014**

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**This notice may affect your rights. Please read it carefully.**

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

- The notice concerns a lawsuit called *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, pending in the United States District Court for the Northern District of California (the “Lawsuit”).
- A class action Settlement will resolve the Lawsuit against ASUS Computer International (“ACI”) and ASUSTeK Inc. (collectively, “Defendants”). The Settlement affects all Persons who purchased an ASUS Rog Stix GL502VS or GL502VSK laptop (the “Laptops”) in the United States from Defendants or an authorized ASUS retailer after May 4, 2019.
- The Lawsuit contends that the Laptops were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”).
- Defendants deny any wrongdoing. They contend that the Laptops have always been truthfully marketed and labeled and do not suffer from any common defects.
- To settle the case, Defendants will extend the warranty on the ASUS Rog Strix GL502VS laptops that experienced the Power Defect. In addition, Defendants will provide all eligible Class Members a Cash Payment or Credit Certificate. Class Members who are eligible for Qualifying Repairs under the Extended Warranty can also obtain either a Cash Payment or a Credit Certificate by filing a Claim (unless they qualify for an Automatic Credit Certificate as discussed below). Instructions are set forth below.
- Defendants have the right to terminate the Settlement if more than 1,000 Class Members submit a timely and valid request to exclude themselves from the Settlement. If the Settlement is terminated, then the Lawsuit will proceed to trial.
- Plaintiff’s lawyers will ask the Court for an Attorneys’ Fee and Expense award of up to \$787,500 which will be paid by Defendants. The Attorneys’ Fees and Expenses award is compensation for investigating the facts, litigating the case, and negotiating the Settlement. They will also ask for \$5,000 to be awarded to Plaintiff for bringing this Lawsuit. This payment is called an “Incentive Award.”
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

This notice contains a summary of proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or contact the Claim Administrator at [address] and [phone number].

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

**EXHIBIT B1 – LONG FORM NOTICE**

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO  
INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

**EXHIBIT B1 – LONG FORM NOTICE**

<b>YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		<b>DEADLINE</b>
<b>Obtain Repairs Under the Extended Warranty</b>	<p>If your ASUS Rog Strix GL502VS model laptop suffered from the Power Defect, you can contact ACI technical support using the following toll free number ([NUMBER]) for repairs.</p> <p>You can use the Extended Warranty regardless of whether you file a claim form for the Cash Payment or Credit Certificate, or whether you qualify for an Automatic Credit Certificate.</p>	The later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS.
<b>Submit a Claim Form</b>	<p>You can receive a Cash Payment or a Credit Certificate for a future purchase from ASUS. To get these benefits, you must submit a Claim Form (unless you qualify for an Automatic Credit Certificate as explained in the next paragraph).</p> <p>If you already sent a customer service request to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, as reflected by Defendants' records, you will get an Automatic Credit Certificate, and you are not required to submit a Claim Form. You must still submit a Claim Form under Group B if you want to receive a Cash Payment instead.</p>	[60 days after the Notice Date]
<b>Opt Out</b>	Get out of the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against the Defendants. You will receive no Cash Payment or Credit Certificate under this Settlement, and no right to obtain a Qualifying Repair under the Extended Warranty.	[60 days after the Notice Date]
<b>File Objection</b>	Write to the Court about any aspect of the Settlement you don't like or you don't think is fair, adequate, or reasonable. (If you object to any aspect of the Settlement, you must submit a written Objection by the Objection Deadline noted above. Your objection must follow all the procedures stated in the body of this notice under "How Do I Object To the Settlement?")	[60 days after the Notice Date]
<b>Go to a Hearing</b>	Speak in Court about the Settlement. (If you object to any aspect of the Settlement, you <b>must</b> submit a written Objection by the Objection Deadline noted above.)	[Final Approval Hearing Date]
<b>Do Nothing</b>	You will not receive any payment; also, you will have no right to sue later for the claims released by the Settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this notice.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

**EXHIBIT B1 – LONG FORM NOTICE**

- The Court in charge of this case still has to decide whether to approve the Settlement. Cash Payments and Credit Certificates will be sent to Settlement Class Members only if the Court approves the Settlement. If there are appeals, payments will not be made until the appeals are resolved and the Settlement becomes effective. Please be patient.
- **Final Approval Hearing**  
 On [DATE], the Court will hold a hearing to determine: (1) whether the proposed Settlement should be approved as fair, reasonable, and adequate and should receive final approval; (2) whether Plaintiff’s Counsel’s application for an award of Attorneys’ Fees and Expenses should be granted; and (3) whether Plaintiff’s application for an Incentive Award payment should be granted. The hearing will be held in the United States District Court of the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. This hearing date may change without further notice to you. Consult the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or the Court docket in this case available through Public Access to Court Electronic Records (“PACER”) (<http://www.pacer.gov>), for updated information on the hearing date and time.

**Important Dates**

[60 days after the Notice Date]	Claims Deadline
[60 days after the Notice Date]	Objection Deadline
[60 days after the Notice Date]	Opt-Out Deadline
[DATE]	Final Approval Hearing

**Table of Contents**

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1. How Do I Know If I Am Affected by the Settlement? .....	1
2. What Is the Lawsuit About? .....	1
3. Why Is There a Lawsuit? .....	1
4. Why Is This Case Being Settled?.....	2
5. What Can I Get In the Settlement? .....	2
6. How Do I Make A Claim?.....	5
7. When Do I Get My Benefits? .....	5
8. What Do Plaintiff and His Lawyers Get? .....	6
9. What Happens If I Do Not Opt-Out of the Settlement?.....	6
10. How Do I Opt-Out From the Settlement?.....	7
11. Can I Object To the Settlement?.....	8
12. When Will The Court Decide If the Settlement Is Approved?.....	8
13. How Do I Get More Information? .....	9

## **1. How Do I Know If I Am Affected by the Settlement?**

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This case involves the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK laptop computers (the “Laptops”) purchased in the United States since May 4, 2014.

The Parties will ask the Court to certify a Settlement Class defined as “all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered.” Excluded from the Class are: (i) the Honorable Magistrate Ryu and any member of her immediate family; (ii) any government entity; (iii) Martin Quinn and any member of his immediate family; (iv) Defendants; (v) any entity in which Defendants have a controlling interest; (vi) any of Defendants’ parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (vii) any persons who timely opt out of the Settlement Class; (viii) any Person who received a full refund of the entire purchase price from ASUS or a retailer in connection with the Power Defect or Overheating Issue alleged in the Lawsuit; (ix) any Person who received a full refund of the Laptop’s entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues alleged in the Lawsuit; and (x) Any Person who signed a release regarding their Laptop.

If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this litigation will continue.

## **2. What Is the Lawsuit About?**

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A lawsuit was brought by Plaintiff against Defendants for marketing the Laptops as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose of gaming and video editing because they uniformly suffer from a defect that causes the Laptops’ batteries to drain even when the Laptops are connected to, and drawing power from, electrical outlets (the “Power Defect”). Plaintiff also alleges that contrary to Defendants’ marketing representations, the Laptops’ cooling system uses a unitary set of heatsinks to dissipate heat from the graphics processing unit (“GPU”) and computational processing unit (“CPU”). Plaintiff alleges that heat generated by computationally or graphically demanding programs overloads the unitary cooling system’s ability to dissipate heat from the CPU and GPU and causes the Laptop to overheat to the point of causing physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). Plaintiff additionally alleges that Defendants failed to honor their warranties for the Laptops because Defendants responded to requests for warranty repairs by replacing the Laptops’ defective components with identical and equally defective components. Defendants deny that there is any factual or legal basis for Plaintiff’s allegations. Defendants contend that its Laptops do not suffer from the Power Defect or Overheating Issue, deny making any misrepresentations and, therefore, deny any liability. They also deny that Plaintiff or any other members of the Settlement Class have suffered any injury or are entitled to monetary or other relief. The Court has not determined whether Plaintiff or Defendants are correct.

## **3. Why Is There a Lawsuit?**

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While Defendants deny that there is any legal entitlement to a refund or any other monetary relief, Plaintiff contends that the Defendants caused consumers to purchase the Laptops when they

would not otherwise have done so and/or the Defendants caused consumers to pay more for the Laptops as a result of Defendants' failure to disclose the Power Defect or Overheating Issues. The lawsuit seeks to recover, on behalf of all Settlement Class Members, monetary damages as a result of the alleged misrepresentations.

#### **4. Why Is This Case Being Settled?**

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Plaintiff filed his original lawsuit on May 4, 2018 in Alameda Superior Court. This lawsuit was removed to the United States District Court of the Northern District of California on June 7, 2018.

Plaintiff's Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive formal and informal discovery, the retention and consultation of an electrical engineering expert, requesting and receiving written discovery responses from ACI, examining Defendants' documents, and questioning Defendants about their documents.

On March 19, 2019, the Parties participated in an all-day mediation conducted by Honorable Martin Quinn at JAMS in San Francisco, California.

Counsel for both Plaintiff and Defendants have determined that there is significant risk in continuing the litigation. In particular, Plaintiff may have substantial difficulty establishing: (1) that all the Laptops uniformly experienced the Power Defect and Overheating Issues, (2) that Defendants' marketing materials were likely to deceive reasonable consumers, (3) that omissions in the marketing materials were material to reasonable consumers, (4) the amount of damages or restitution due to the class or to any class member, and (5) that common questions predominate over individual issues such that a class may be certified. After considering the risks and costs of further litigation, the Parties have concluded that it is desirable that the Plaintiff's claims be settled and dismissed on the terms of the Settlement Agreement.

Plaintiff and his counsel believe that the terms and conditions of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Settlement Class Members.

#### **5. What Can I Get In The Settlement?**

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##### ***Extended Warranty***

ACI agreed to extend the warranty on all ASUS Rog Strix GL502VS laptops to cover all "Qualifying Repairs" until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS ("Extended Warranty"). The "Qualifying Repairs" are replacements of the motherboard and/or AC power adapters as necessary to resolve the Power Defect.

To obtain a Qualifying Repair, the you must contact ACI technical support using the following toll free number ([NUMBER]), and follow ACI's instructions for shipping your ASUS Rog Strix GL502VS to a repair facility for repairs. If ASUS determines that your Rog Strix GL502VS Laptop is entitled to a Qualifying Repair, then ACI will repair it at no charge to you. If ASUS determines that your Rog Strix GL502VS Laptop is not entitled to a Qualifying Repair, and the laptop is not eligible for other repairs under its existing warranty, then ACI will offer to repair the laptop at your expense.

You are entitled to Extended Warranty repairs without filing a Claim Form. Additionally, you can also choose to use the Extended Warranty and separately obtain the Cash Payment or Credit Certificate by filing a Claim Form (or if you qualify for an Automatic Credit Certificate) as set forth below.

***Cash Payment or Credit Certificate***

You may receive an Automatic Credit Certificate if you qualify or file a claim to receive a Cash Payment or Credit Certificate regardless of whether you opt to receive Qualifying Repairs under the Extended Warranty described above.

**To receive a Cash Payment, you must fill out and submit a Claim Form.** Cash Payments will be paid by check sent via first-class mail to the mailing address you provide on the Claim Form or by direct deposit into your bank account, or another form of electronic transfer (such as Paypal, Venmo, Google Wallet, or Square Cash). Instructions are provided on the Claim Form.

**Credit Certificates can be redeemed towards the purchase of any one or more ASUS products** at <https://store.asus.com/us>, not including shipping costs or taxes. Credit Certificates are fully transferrable and are stackable, meaning that more than one Credit Certificate may be used towards a single purchase. No minimum purchase is required to redeem a Credit Certificate. If the total amount of the purchase (before shipping and taxes) is less than the amount of the Credit Certificate(s) redeemed during the purchase transaction, the Credit Certificates shall have no residual value. The Credit Certificate can be combined with any other credit, voucher, coupon, sale, or other discount of any kind and will not expire for two years after issuance. Credit Certificates have no cash value and cannot be used for any purpose other than as stated in this section.

The amount and type of Settlement Benefit that Settlement Class Members are entitled to receive depends on whether you are a member of Group A, B, or C.

**Group A:** You are in Group A if you are a Settlement Class Member and you (1) have a Laptop Proof of Purchase; or (2) purchased a Laptop directly from the ASUS Website; or (3) registered a Laptop with ASUS prior to the Notice Date, as reflected by ASUS' records. Members of Group A can choose between a \$210 Credit Certificate or a \$110 Cash Payment. To submit a Group A Claim, you must provide the Laptop's Serial Number and, if the you did not purchase the Laptop directly from the ASUS website or register the Laptop with ASUS prior to the Notice Date, then you must also provide a Laptop Proof of Purchase. In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants have the right to demand inspection of your Laptop to verify whether it suffers from the Power Defect and/or Overheating Issue. However, Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 and you submit a copy of such Postings with your Claim Form.

**Group B:** You are in Group B if you submitted a complaint about the Power Defect and/or Overheating Issue to Defendants' customer service department prior to March 19, 2019. If Defendants have your contact information, then you will automatically receive a \$210 Credit Certificate. You do not need to submit a Claim Form. You may opt to receive a \$110 Cash Payment instead, but if you want the Cash Payment, then you have to submit a Claim Form for Group B.

**Group C:** You are in Group C if you are a Class Member but you are not in Group A or B. Members of Group C can receive either a \$105 Credit Certificate or a \$55 Cash Payment. You must fill out a Claim Form and you must provide your Laptop's Serial Number.

<b>Summary of Group Membership</b>			
<b>Group</b>	<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
<b>How do I know if I am included?</b>	If you (1) have the Laptop Proof of Purchase; (2) purchased the Laptop from the ASUS Website; or (3) registered the Laptop with ASUS prior to the Notice Date, as reflected by ASUS' records.	If you sent a customer service request to Defendants about the Power Defect and/or the Overheating Issue prior to March 19, 2019.	All other purchasers of the Laptop.
<b>What can I receive?</b>	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$105 Credit Certificate <i>or</i> \$55 Cash Payment
<b>Do I need to submit a Claim Form to receive benefits?</b>	Yes	No, <b>unless</b> you choose to receive a Cash Payment instead of the Automatic Credit Certificate.	Yes
<b>Am I required to swear that my Laptop had the Power Defect and/or Overheating Issue?</b>	Yes	No	Yes
<b>What information must I provide with my Claim?</b>	You must provide your Laptop Serial Number and, if you did not purchase your Laptop directly from the ASUS website or register your Laptop with ASUS prior to the Notice Date, you must also provide a Laptop Proof of Purchase.	None	You must provide your Laptop Serial Number.
<b>Can ASUS inspect my Laptop?</b>	Yes, subject to certain conditions, unless you submit a copy of a posting you made on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019.	No	No

"Serial Number" means the serial number of the Laptop. The following webpage on Defendants' Website provides information about how to determine the Laptop's Serial Number: <https://www.asus.com/us/support/article/566/>.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants' have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

(a) The inspection must be conducted by ACI, unless both Defendants and the Settlement Class Member agree otherwise.

(b) At the election of the Defendants, the inspection must be conducted (1) at the home or business of the Settlement Class Member; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless otherwise agreed by Settlement Class Member.

(d) Any demand for inspection must be accompanied by instructions informing the Settlement Class Member of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Valid Claim.

Defendants may not demand to inspect your Laptop if you made a Posting regarding the Power Defect or Overheating Issue online prior to March 19, 2019 and you submit a copy of such Postings with your Claim Form.

Claims will be paid only if deemed valid and only after the Court finally approves the Settlement.

## **6. How Do I Make A Claim?**

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To make a Claim for a Group A or Group C Cash Payment or Credit Certificate, you must fill out a Claim Form. Claim Forms are available on the Settlement Website at [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/).

To obtain the Group B Cash Payment, you must fill out the Claim Form for a Group B Cash Payment, which is available on the Settlement Website at: [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/). You do not need to complete a Claim Form to obtain the Automatic Credit Certificate.

You can submit the Claim Form online, or you can print it and mail it to the Claim Administrator at: [address]. Claim Forms must be submitted online or postmarked by [DATE]. Cash Payments and Credit Certificates will be issued only if the Court gives final approval to the proposed Settlement and after the Final Approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

## **7. When Do I Get My Benefits?**

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The Court will decide whether to approve the settlement at a Final Approval Hearing. That hearing is currently scheduled for [DATE].

Extended Warranty: If the Court approves the Settlement, the Extended Warranty will be made available beginning on the date of Final Approval. The Extended Warranty will continue to be honored unless the approval of the Settlement is reversed on appeal.

Cash Payments and Credit Certificates: If the Court approves the Settlement and there are no appeals, then Cash Payments and Credit Certificates will be distributed approximately 45 days after the

Settlement is no longer subject to appeal or review, unless otherwise ordered by the Court. If the Court does not approve the Settlement, or if the Settlement is overturned on appeal, no benefit checks or credit certificates will be issued.

#### **8. What Do Plaintiff and His Lawyers Get?**

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To date, Plaintiff's Counsel has not been compensated for any of their work on this case. As part of the Settlement, Plaintiff's Counsel may apply to the Court for an award of up to \$787,500 from Defendants to pay their Attorneys' Fees and Expenses. An award to Plaintiff's Counsel does not affect the funds available to pay Valid Claims.

In addition, the Plaintiff in this case may apply to the Court for an Incentive Award up to \$5,000. This payment is designed to compensate Plaintiff for the time, effort, and risks he undertook in pursuing this litigation.

A copy of Plaintiff's Counsel's request for an award of Attorneys' Fees and Expenses and an Incentive Award is available on the Settlement Website. The Court will determine the amount of Attorneys' Fees and Expenses as well as the amount of the Incentive Award.

#### **9. What Happens If I Do Not Opt Out of the Settlement?**

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If you are a Settlement Class Member and you do not Opt Out of the Settlement, you will be legally bound by all orders and judgments of the Court, and you will also be legally bound to the Releases of the claims in the Settlement. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against ASUS Computer International Inc., ASUSTeK Inc., and/or any of the Released Parties that involves the same legal allegations as those resolved through this Settlement.

**You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Settlement Class.**

Staying in the Settlement Class means that you give up the following legal claims:

- a) Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Settlement Class Members (except any such Person who has filed a proper any timely request for exclusion from the Settlement Class), including any Person claiming derivative rights of the Settlement Class Member as the Settlement Class Member's parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate, shall release and forever discharge the Released Parties from any and all actions, causes of actions, claims, administrative claims, demands, rights, damages, obligations, suits, debts, liens, penalties, fines, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature and description, whether known or unknown, suspected or unsuspected, existing now or arising in the future that were or could have been asserted in the Action regarding the labeling, advertising, or formulation of the Products (the "Released Claims").

- b) With respect to the released claims set forth in the preceding paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

- c) The Parties shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims.
- d) Nothing in this release shall operate to bar or release any claim for personal injury or property damage arising out of the use of the Product, nor shall anything in this release operate to bar any defense, cross-claim or counter-claim in any action initiated by any of the Released Parties against any Settlement Class Member.

## 10. How Do I Opt Out of the Settlement?

You can Opt Out of the Settlement Class if you wish to retain the right to sue Defendants separately for the Released Claims. If you Opt Out, you cannot file a Claim or Objection to the Settlement.

To Opt Out, you must complete the online form at the Settlement Website or mail an Opt-Out request to the Claim Administrator at [info], with copies mailed to Plaintiff's Counsel and counsel for Defendants. If mailed, the Opt-Out request must be signed by you, contain your full name, address, and phone number(s), and the following statement: "I/We request to Opt Out from the settlement in the ASUS Action." The Opt-Out request must be submitted online or postmarked by the Opt-Out Deadline set forth above.

## 11. **Can I Object to the Settlement?**

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You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court. You can't ask the Court to change the terms of the Settlement or order a larger Settlement Benefits; the Court can only approve or disallow the Settlement as it is written. If the Court does not approve the Settlement, then no Cash Payments or Credit Certificates will be sent out, and the Lawsuit will continue.

You can also ask the Court to deny Plaintiff's request for Attorneys' Fees and Expenses and the Incentive Award. If the Court does not approve those payments, then Plaintiff and/or his counsel will not get paid. Denying Plaintiff's motion for Attorneys' Fees and Expenses and Incentive Award will not increase the amount of money paid to the Settlement Class.

You may appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an objection to the Settlement at the Final Approval Hearing, you must first submit that objection in writing to the Clerk of the Court as set forth below. **Your objection must be postmarked and received on or before the Objection Deadline.**

Your objection must be mailed to: Class Action Clerk, United States District Court for the Northern District of California, Oakland Courthouse, Suite 400 S, 1301 Clay Street, Oakland, CA 94612, by the Objection Deadline set forth above. Your Objection must include the following information: (a) a reference at the beginning to this case, *Carlotti v. ASUS Computer International et al.*, Case No. 4:18-cv-03369, and the name of the presiding judge, the Magistrate Judge Donna M. Ryu, United States District Court for the Northern District of California; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any federal or state court in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. If you fail to include this information, then your objection may be rejected and/or overruled.

You can file a Claim even if you object to the Settlement. If you want to receive benefits in the event that the Court approves the Settlement, then you must submit a Claim Form according to the instructions described above.

## 12. **When Will The Court Decide If the Settlement Is Approved?**

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The Court will hold a hearing on [DATE], to consider whether to approve the Settlement. The hearing will be held in the United States District Court of the Northern District of California, before the Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court.

The hearing is open to the public. This hearing date may change without further notice to you.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

Consult the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or the Court docket in this case available through Public Access to Court Electronic Records PACER (<http://www.pacer.gov>), for updated information on the hearing date and time.

**13. How Do I Get More Information?**

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You can inspect many of the court documents connected with this case on the Settlement Website. Other papers filed in this lawsuit are available by accessing the Court docket in this case available through PACER (<http://www.pacer.gov>).

You can contact the Claim Administrator at [info] or by telephone at [info].

You can also obtain additional information by contacting Plaintiff's Counsel:

Seth A. Safier  
GUTRIDE SAFIER LLP  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Tel: 415-639-9090  
[www.gutridesafier.com](http://www.gutridesafier.com)

**DO NOT CONTACT THE ATTORNEYS FOR THE DEFENDANTS.**

To: [Class member email address]  
From: ASUS Class Action Claim Administrator  
Subject: Notice of Class Action Settlement

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<<Class Member ID>>

**IF YOU BOUGHT A NEW ASUS ROG STRIX GL502VS OR  
GL502VSK LAPTOP AFTER MAY 4, 2014 IN THE UNITED  
STATES, THIS CLASS ACTION SETTLEMENT MAY AFFECT  
YOUR RIGHTS.**

*A federal court authorized this notice. This is not a solicitation from a lawyer and you  
aren't being sued.*

- A proposed Settlement has been reached in a class action lawsuit against ASUS Computer International (“ACI”) and ASUSTek Computer, Inc. (collectively “Defendants”). As explained in greater detail below, the lawsuit challenged the marketing of ASUS ROG Strix GL502VS and GL502VSK laptops (collectively referred to as the “Laptops”). ASUS denies that it did anything wrong. The Court has not decided who is right in the lawsuit.
- If you purchased a Laptop in the United States after May 4, 2014 from ASUS or one of its authorized retailers, then you are a Class Member and may be eligible to submit a claim to receive your choice of a Cash Payment (in the amount of either \$110 or \$55) or a Credit Certificate (in the amount of either \$210 or \$105), unless you qualify for an Automatic Credit Certificate as discussed below. In addition, all Class Members who purchased a ROG Strix GL502VS model Laptop will be entitled to obtain Qualifying Repairs under an Extended Warranty. The Extended Warranty is explained in greater detail below.
- Your legal rights are affected whether you act or do not act. Read this Notice and the information on this Settlement Website carefully. Your rights and options, and the deadlines to exercise them, are explained in this Notice.
- The Court will decide whether to approve the Settlement. Proposed payments to Class Members who do not exclude themselves from the Settlement will be made if the Court approves the Settlement. Please be patient and check this Settlement Website ([www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com)) to find out when the Cash Payments and Credit Certificates may be available.
- The following chart summarizes your rights and options under the Settlement. Your rights and options under the Settlement are more fully explained in the remainder of this Notice, so please read it in its entirety.

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>Obtain Repairs Under the Extended Warranty</b>	<p>If your ASUS Rog Strix GL502VS model laptop suffered from the Power Defect, you can contact ACI technical support using the following toll free number ([NUMBER]) for repairs.</p> <p>You can use the Extended Warranty regardless of whether you file a claim form for the Cash Payment or Credit Certificate, or whether you qualify for an Automatic Credit Certificate.</p> <p><b>NOTE: The Extended Warranty applies only to model GL502VS Laptops.</b></p>	<p>The later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS.</p>
<b>Submit a Claim Form</b>	<p>You can receive a Credit Certificate for a future purchase from ASUS or a Cash Payment. To get these benefits, you must submit a Claim Form (unless you qualify for an Automatic Credit Certificate as explained in the next paragraph).</p> <p>If you already sent a customer service request to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, as reflected by Defendants' records, you will receive an Automatic Credit Certificate, without submitting a Claim Form. You must still submit a Claim Form under Group B if you want a Cash Payment instead of the Credit Certificate.</p>	<p>[60 days after the Notice Date]</p>
<b>Opt Out</b>	<p>Get out of the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against the Defendants. You will receive no Cash Payment or Credit Certificate under this Settlement, and no right to obtain a Qualifying Repair under the Extended Warranty.</p>	<p>[60 days after the Notice Date]</p>
<b>File Objection</b>	<p>Write to the Court about any aspect of the Settlement you don't like or you don't think is fair, adequate, or reasonable. If you object to any aspect of the Settlement, you must submit a written Objection by the Objection Deadline noted above. Your Objection must follow all the procedures stated in the body of this notice under "How Do I Object To the Settlement?"</p>	<p>[60 days after the Notice Date]</p>
<b>Go to a Hearing</b>	<p>Speak in Court about the Settlement. If you object to any aspect of the Settlement, you <b>must</b> submit a written Objection by the Objection Deadline noted above.</p>	<p>[Final Approval Hearing Date]</p>
<b>Do Nothing</b>	<p>You will not receive a Cash Payment, but you may receive a Credit Certificate if you previously sent a customer service request to Defendants regarding the Power Defect or the Overheating Issue. You will have no right to sue later for the claims released by the Settlement.</p>	

## EXHIBIT B2 – EMAIL NOTICE

### Why Am I Receiving This Notice?

You are receiving this notice because, according to our records, you may have purchased an ASUS Rog Strix GL502VS or GL502VSK laptop (collectively, the “Laptops”) in the United States after May 4, 2014. This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or contact the Claim Administrator at [address] and [phone number].

### What’s This Litigation About?

A proposed class action Settlement has been reached in a case against ASUS Computer International and ASUSTeK Computer Inc. entitled *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, filed in the United States District Court for the Northern District of California. Plaintiff alleges that the Laptops were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). Defendants deny any wrongdoing. If the Settlement is approved by the Court, then you may be eligible to receive either a Credit Certificate or Cash Payment. In addition, Defendants will provide eligible purchasers of the ASUS Rog Strix GL502VS model laptops that experienced the Power Defect an Extended Warranty for Qualifying Repairs.

### Am I A Class Member?

You are a Class Member if you purchased a new Laptop in the United States from Defendants or an authorized ASUS retailer after May 4, 2014 and you did not make your purchase for the purpose of resale.

### What are the Settlement Benefits?

There are three different types of settlement benefits: the Extended Warranty, a Cash Payment, and a Credit Certificate. The type and amount of benefits that you are eligible to receive depends on the model of the Laptop that you purchased and whether you have proof that you purchased the Laptop.

**Extended Warranty.** If you purchased an ASUS Rog Strix GL502VS laptop, then you are automatically eligible for extended warranty service for Qualifying Repairs. The Extended Warranty will remain in effect until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS (“Extended Warranty”). The Qualifying Repairs are repairs to and/or replacements of the motherboard and/or AC power adapters as necessary to resolve the Power Defect.

To obtain a Qualifying Repair, you must contact Defendants’ technical support using the following toll free number ([NUMBER]), and follow Defendants’ procedure for shipping your ASUS Rog Strix GL502VS laptop to a repair facility for repairs.

You do not need to file a Claim Form to obtain Qualifying Repairs under the Extended Warranty. However, you may still file a Claim Form to receive a Cash Payment or a Credit Certificate regardless of whether you obtain Qualifying Repairs under the Extended Warranty.

**Cash Payment or Credit Certificate.** You can receive a Cash Payment or a Credit Certificate that can be redeemed towards the purchase of any one or more products from Defendants at <https://store.asus.com/us>, not including shipping or taxes, consistent with the terms of the

**EXHIBIT B2 – EMAIL NOTICE**

Settlement. As explained in the chart below, you must submit a Claim to receive a Cash Payment. If you choose a Credit Certificate instead, then you still must submit a Claim Form *unless* you submitted a complaint to Defendants regarding the Power Defect or Overheating issue before March 19, 2019. If you submitted a complaint to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, and that complaint is reflected in Defendants' records, then you will get an Automatic Credit Certificate and need not submit a Claim Form unless you want the Cash Payment instead. The following chart summarizes eligibility for a Cash Payment or Credit Certificate for Class Members:

<b>Summary of Group Membership</b>			
<b>Group</b>	<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
<b>Am I included?</b>	If there is proof that you purchased the Laptop. The following are acceptable forms of proof of purchase: (1) Proof of Purchase, such as a receipt; or (2) you purchased the Laptop from the ASUS Website; or (3) you registered the Laptop with Defendants prior to the Notice Date, as reflected by Defendants' records.	If you submitted a complaint to Defendants about the Power Defect and/or the Overheating Issue prior to March 19, 2019.	All other purchasers of the Laptop.
<b>What can I receive?</b>	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$105 Credit Certificate <i>or</i> \$55 Cash Payment
<b>Do I need to submit a Claim Form to receive benefits?</b>	Yes	No, <b>unless</b> you choose to receive a Cash Payment instead of the Automatic Credit Certificate.	Yes
<b>Am I required to state under penalty of perjury that my Laptop had the Power Defect and/or Overheating Issue?</b>	Yes	No	Yes
<b>What information must I provide with my Claim?</b>	You must provide your Laptop Serial Number and, if you did not purchase your Laptop directly from the ASUS website or register your Laptop with Defendants prior to the Notice Date,	None	You must provide your Laptop Serial Number.

**EXHIBIT B2 – EMAIL NOTICE**

	you must also provide a Laptop Proof of Purchase.		
<b>Can ASUS inspect my Laptop?</b>	Yes, subject to certain conditions, unless you submit a copy of a posting you made on Defendants' Website, forums, or chat room complaining about the Power Defect and/or the Overheating Issue (collectively, "Postings") prior to March 19, 2019.	No	No

**Serial Number.** "Serial Number" means the serial number of the Laptop. The following webpage on Defendants' Website provides information about how to determine the Laptop's Serial Number: <https://www.asus.com/us/support/article/566/>.

**Inspection.** In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

(a) Defendants must conduct the inspection, unless both Defendants and you agree to another party to conduct the inspection.

(b) At the election of Defendants, the inspection must be conducted (1) at your home or business; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless you agree otherwise.

(d) Defendants' demand for inspection must be accompanied by instructions informing you of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Claim (see chart above for details).

Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 and you submit a copy of such Postings with your Claim Form.

Valid claims will be paid only after the Court finally approves the Settlement.

**How Do I Make A Claim for a Cash Payment or Credit Certificate?**

To obtain any benefit other than the Group B Cash Payment or the Automatic Credit Certificate, you must fill out the Claim Form which is available on the Settlement Website at: [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/)\_\_\_\_\_.

To obtain the Group B Cash Payment, you must fill out the Group B Cash Payment Claim Form which is available on the Settlement Website at: [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/)\_\_\_\_\_. You do not need to complete a Claim Form to obtain the Automatic Credit Certificate.

You can submit the Claim Form online, or you can print it and mail it to the Claim Administrator

## EXHIBIT B2 – EMAIL NOTICE

at: [address]. Claim Forms that are submitted online must be received by the Claim Administrator by 11:59 p.m. Pacific Time on [DATE], and Claim Forms that are mailed must be postmarked by [DATE]. Cash Payments and Credit Certificates will be issued only if the Court grants Final Approval to the proposed Settlement and after Final Approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

### What are my rights?

Depending on whether you are a member of Group A, B or C, you may make a Claim or receive an Automatic Credit Certificate. All Class Members may receive Qualifying Repairs under the Extended Warranty, Object, Opt Out, or do nothing. **To receive a Cash Payment or Credit Certificate**, you must <link>submit a Claim</link>, online or by mail, by [DATE] (unless you qualify for an Automatic Credit Certificate). **To receive a Qualifying Repair under the Extended Warranty**, you must contact Defendants' technical support using the following toll free number ([NUMBER]), and follow Defendants' instructions for shipping the laptop to a repair facility. If you **Opt Out of the Settlement**, you may pursue a separate lawsuit, but you will receive no payment. Your Opt-Out request must be submitted online or postmarked by [DATE]. If you do not Opt Out, you give up your right to bring a separate lawsuit. **To Object**, you must submit a written Objection that complies with the requirements in the applicable Settlement Notice available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Your Objection must be filed with the Court by [DATE]. **Do nothing**, and you will not receive a Cash Payment or Credit Certificate (unless you qualify for an Automatic Credit Certificate) and you will release claims against Defendants that relate to the Allegations in the lawsuit. Please see the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) for more details for submitting an objection or opt-out request.

### What Will Happen Next?

The Court will hold a Final Approval Hearing on [DATE] to consider whether to approve the Settlement. The hearing will be held in the United States District Court for the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. The date may change without further notice to you. You are advised to check the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or the Court's Public Access to Court Electronic Records ("PACER") system at <https://ecf.uscourts.gov> site to confirm that the date has not been changed. The Court will decide whether to approve the Settlement and whether to award Attorneys' Fees and Expenses of up to \$787,500 and an Incentive Award of up to \$5,000 to Plaintiff. The motion for Attorneys' Fees and Expenses and an Incentive Award will be posted on [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) after it is filed. You may, but don't have to, attend the hearing. Cash Payments and Credit Certificates will be issued to Settlement Class Members only if the Settlement is approved and after any Objections are resolved. Please be patient.

### How Can I Get More Information?

For more information, visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or contact the Claim Administrator at [info] or by telephone at [info]. You can access the Court docket in this case, for a fee, through the Court's PACER, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also obtain additional information by contacting Class Counsel at: Seth A. Safier, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111/Tel: 415-639-9090.

**PLEASE DO NOT CONTACT DEFENDANTS OR TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIMS PROCESS.**

**EXHIBIT B3 – ONLINE NOTICE**

**Online Banner Ad**

**ASUS Rog Strix GL502VS or GL502VSK Model Laptop Purchasers  
After May 4, 2014.**

**You May Be Entitled to a Cash Payment or Credit Certificate  
from a Class Action Settlement.**

**Learn more**

**Mobile Banner Ad**

**ASUS Rog Strix GL502VS or GL502VSK Model Laptop Purchasers  
After May 4, 2014:**

**You May Be Entitled to a Cash Payment or Credit Certificate from a  
Class Action Settlement.**

**Social Media Ad**

**Text:** ASUS Rog Strix GL502VS or GL502VSK Model Laptop  
Purchasers after May 4, 2014 - You May Be Entitled to a Cash Payment  
or Credit Certificate from a Class Action Settlement.

**Headline:** ASUS Rog Strix Laptop Settlement

**Website:** [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com)

**Description:** Court Authorized Notice

## EXHIBIT B4 – PUBLICATION NOTICE

### **IF YOU PURCHASED AN ASUS ROG STRIX GL502VS OR GL502VSK LAPTOP AFTER MAY 4, 2014, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

A proposed class action settlement has been reached in a case entitled *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, filed in the United States District Court for the Northern District of California. In the lawsuit, Plaintiff alleges that the ASUS Rog Strix GL502VS and GL502VSK laptops (the “Laptops”) were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). ASUS Computer International and ASUSTeK Computer Inc. are the defendants (“Defendants”) and deny any wrongdoing.

If the settlement is approved and you are a Class Member, you may be eligible to receive a Cash Payment in the amount of either \$110 or \$55 or a Credit Certificate in the amount of either \$210 or \$105 at your option. You are a Class Member if you purchased a new ASUS Rog Strix GL502VS or GL502VSK laptop from Defendants or an authorized ASUS retailer after May 4, 2014 in the United States. Additionally, Defendants have extended the warranty for GL502VS laptops that suffered from the Power Defect. Call Defendants’ technical support at ([NUMBER]) to receive instructions for obtaining Extended Warranty service. You may receive a Cash Payment or Credit Certificate even if you obtain Extended Warranty service.

To obtain a Cash Payment, you must submit a valid Claim Form. To obtain a Credit Certificate, you must submit a valid Claim Form unless you complained to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019. If your complaint is reflected in Defendants’ records, then you will automatically receive a \$210 Credit Certificate (“Automatic Credit Certificate”). If you prefer a Cash Payment, then you must submit a Claim Form. Claim Forms are available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Depending on the benefit you request, Defendants may have the right to demand an inspection of your Laptop to confirm that your Claim is valid and you may have to provide proof of purchase. Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) for more information about the inspection process and conditions.

You may make a Claim and/or receive Qualifying Repairs under the Extended Warranty, Object, Opt Out, or do nothing. **To receive a Cash Payment or Credit Certificate**, you must submit a Claim (unless you qualify for an Automatic Credit Certificate), online or by mail, by [DATE]. **To receive a Qualifying Repair under the Extended Warranty**, you must contact Defendants at [NUMBER], and follow their instructions. If you **Opt Out of the Settlement**, you may pursue a separate lawsuit, but you will receive no settlement benefit. Your Opt-Out request must be submitted online or postmarked by [DATE]. If you do not Opt Out, you give up your right to bring a separate lawsuit. **To Object**, you must submit a written Objection that complies with the requirements set forth in the Settlement Notice available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Your Objection must be filed with the Court by [DATE]. **Do nothing**, and you will not receive a settlement benefit (unless you qualify for an Automatic Credit Certificate) and you will release claims against Defendants that relate to the Allegations in the lawsuit. You may still obtain repairs under the Extended Warranty, if applicable.

The Court will hold a Final Approval Hearing on [DATE], to consider whether to approve the Settlement. The hearing will be held in the United States District Court for the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. The Court will decide whether to approve the Settlement and whether to award Attorneys’ Fees and Expenses of up to \$787,500 and an

**EXHIBIT B4 – PUBLICATION NOTICE**

Incentive Award of up to \$5,000 to Plaintiff. The motion seeking Attorneys' Fees and Expenses and an Incentive Award will be posted on [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) after it is filed. You may, but don't have to, attend the hearing. Cash Payments and Credit Certificates will be issued to the Settlement Class Members only if the Settlement is approved and after any Objections are resolved. Please be patient.

For more information, visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or contact the Claim Administrator at [info]. You can also obtain additional information by contacting Class Counsel at: Seth A. Safier, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111/Tel: 415-639-9090.

**PLEASE DO NOT CONTACT DEFENDANTS OR THE COURT TO INQUIRE ABOUT THE SETTLEMENT.**

# NOTICE OF CLASS ACTION

Class Administrator  
*Carlotti v. ASUS Computer  
International, et al.*,  
[Address]  
[Phone]

First-Class  
Mail  
US Postage  
Paid  
Permit #\_\_

**To purchasers of ASUS  
Rog Strix GL502VS and  
GL502VSK Laptops  
since May 4, 2014**



Postal Service: Please do not mark barcode

«Class Member ID»  
«First1» «Last1»  
«C/O»  
«Addr1» «Addr2»  
«City», «St» «Zip»

You may be entitled to  
benefits from a class  
action settlement.

**WHAT IS THIS NOTICE ABOUT?** This is a court-approved notice that summarizes a proposed class action settlement against Defendants ASUS Computer International and ASUSTeK Computer Inc. (collectively, “Defendants”) entitled *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369 pending in the United States District Court, Northern District of California. The Lawsuit affects all purchasers of a new ASUS Rog Strix GL502VS or GL502VSK laptop (the “Laptops”) from ASUS or from an authorized ASUS retailer in the U.S. after May 4, 2014.

**WHAT IS THE CASE ABOUT?** Plaintiff alleges that the Laptops’ batteries drain even when the Laptops are plugged into electric outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent as advertised and they overheat which causes physical discomfort and/or diminished performance (the “Overheating Issue”). Defendants deny Plaintiff’s claims. The Court has not decided who is correct.

**WHAT CAN YOU GET IN THE SETTLEMENT?** If the Court approves the Settlement, Class Members may be eligible for a Cash Payment (in the amount of either \$110 or \$55) or a Credit Certificate (in the amount of either \$210 or \$105) for a future purchase from ASUS. To get these benefits, you may be required to submit a Claim Form. Depending on the benefit you request, you may be required to provide the Laptop’s Serial Number, Proof of Purchase, or make your Laptop available for inspection.

Additionally, Defendants are offering Qualifying Repairs under an Extended Warranty for ASUS Rog Strix GL502VS model laptops experiencing the Power Defect. For more information on obtaining repairs, call ASUS at (\_\_\_\_). Class Member can use the Extended Warranty regardless of whether they file a Claim.

**WHAT ARE YOUR RIGHTS?** You may make a Claim and/or receive Qualifying Repairs under the Extended Warranty, Object, Opt Out, or do nothing. To receive a Cash Payment or Credit Certificate, you must submit a Claim, either online by [DATE] or by mail, postmarked by [DATE]. To obtain Qualifying Repairs under the Extended Warranty, you must contact ASUS technical support at ( \_\_). If you **Opt Out of the Settlement**, you may pursue a separate lawsuit, but you will receive no payment and your opt out request must be submitted online or postmarked by [DATE]. If you do not Opt Out, you give up your right to bring a separate lawsuit. **To Object**, you must submit a written Objection to the Court by [DATE]. **Do nothing**, and you will not receive a Cash Payment and you will release claims against Defendants that relate to the Allegations in the Lawsuit.

For more information visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call the claims administrator at [phone number].

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; PROVISIONALLY  
CERTIFYING THE NATIONWIDE  
SETTLEMENT CLASS; AND  
DIRECTING DISSEMINATION OF  
CLASS NOTICE**

The Parties to the above-captioned action have entered into a Settlement Agreement (submitted to the Court concurrently with the Declaration of Adam J. Gutride) to settle the above-captioned putative class action in its entirety, and Plaintiff Joseph Carlotti (“Plaintiff”) has filed an unopposed Motion for Approval of Class Settlement Provisional Certification of Nationwide Settlement Class, and Approval of Procedure For and Form of Notice to Settlement Class, and a supporting memorandum (“Motion”). All capitalized terms used in this Order have the meaning as defined in the Settlement Agreement.

**RECITALS**

This case concerns Defendant ASUSTeK Computer Inc. (“ASUSTeK”) and ASUS Computer International (“ACI”) (collectively, “ASUS” or “Defendants”) marketing, selling, and warranting of the ASUS Rog Strix GL502VS laptop and the ASUS Rog Strix GL502VSK laptop (“Laptop” or “Laptops”) from May 4, 2014 to the date of this order (“Class Period”).

Plaintiff contends that Defendants deceptively advertised the suitability of the Laptops as

1 portable gaming computers. In particular, Plaintiff alleges that the Laptop he purchased suffered  
2 from the following two defects: (1) the Laptop's power supply unit did not provide sufficient power  
3 to the Laptop such that the Laptop's battery drained during use even when the Laptop was plugged  
4 into an electrical outlet; the Laptop experienced reductions in computational performance when it  
5 was low on battery power or when the battery was removed, even when the Laptop was connected  
6 to an electrical outlet; and there was accelerated degradation of the Laptop's battery (the "Power  
7 Defect"); and (2) the Laptop's cooling systems inadequately dissipated heat generated by the  
8 Laptop during computationally demanding tasks such that the Laptop became hot to the touch  
9 during use (the "Overheating Issue"). Plaintiff alleges that all the Laptops experienced the Power  
10 Defect and Overheating Issue. Plaintiff alleged claims for violations of the breach of express  
11 warranty; breach of implied warranty; violation of the Magnuson-Moss Warranty Act; deceit and  
12 fraudulent concealment; unjust enrichment; violations of the California Consumer Legal Remedies  
13 Act, Civil Code § 1750, *et seq.*; false advertising under Bus. and Prof. Code § 17500, *et seq.*; and  
14 unfair business practices under Cal. and Prof. Code § 17200, *et seq.* He sought to pursue these  
15 claims on behalf of himself and a nationwide class of purchasers of the Laptops and sought money  
16 damages and an injunction.

17 Defendants deny Plaintiff's allegations. They contend that the advertising of the Laptops is,  
18 and has always been, truthful and not misleading. Defendants also dispute that the Laptops suffered  
19 from the Power Defect or the Overheating Issue. Defendants deny that the written warranty covers  
20 any alleged design defects. Defendants also dispute that Laptop purchasers suffered any damages  
21 because they claim that the Laptops performed as good as, or better than, other laptops in the  
22 market. Defendants therefore deny any liability, and deny that Plaintiff or any class members have  
23 suffered injury. Defendants further deny that this case meets the requirements for class certification  
24 under Fed. R. Civ. P. 23, except for purposes of settlement.

25 The history of this litigation is summarized in Part 1 of the Settlement Agreement. In brief,  
26 this case was filed on May 4, 2018 in California Superior Court, and ACI removed the case to this  
27 Court on June 7, 2018. Plaintiff moved for, and the Court entered, an order authorizing service on  
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1 Defendant ASUSTeK, a Taiwanese corporation, using alternative means. The Parties engaged in  
2 significant discovery. Plaintiff served ACI with discovery requests and noticed its deposition under  
3 Rule 30(b)(6) of Federal Rule of Civil Procedure. ACI produced documents in response to  
4 Plaintiff's discovery requests, including documents providing sales and warranty data and hardware  
5 and software engineering reports. ACI deposed Plaintiff.

6 On March 19, 2019, the Parties to this case participated in an all-day mediation conducted  
7 by the Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in the  
8 Settlement that is the subject of this Order.

9 On July 8, 2019, Plaintiff filed a Motion for Preliminary Approval of Settlement. (Dkt. #  
10 59.) After the August 22, 2019 hearing on Plaintiff's Motion for Preliminary Approval, the Court  
11 issued an order requesting additional information regarding the Settlement. (Dkt. # 65.) Plaintiff  
12 filed a supplemental brief in support of Plaintiff's Motion for Preliminary Approval and supporting  
13 declarations on September 12, 2019. The parties entered into an Amended Settlement Agreement.

14 The terms of the Settlement are summarized in the proposed Long Form Notice to  
15 Settlement Class Members, which is attached as Exhibit B1 to the Amended Settlement Agreement.  
16 Defendants have agreed to provide an extended warranty on all ASUS Rog Strix GL502VS laptops  
17 to cover Qualifying Repairs, which includes a motherboard replacement and new power adaptor,  
18 until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii)  
19 180 days from the date of a prior replacement of the internal power supply and/or AC power  
20 adaptor by ASUS.

21 Defendants have also agreed to make up to approximately \$5.2 million in cash benefits  
22 available to Class Members as follows. All Class Members who previously complained of the  
23 Power Defect or Overheating Issue to Defendants will automatically receive a \$210 Credit  
24 Certificate without the necessity of filing a claim (or a \$110 Cash Payment if the Class Member  
25 files a claim). Class Members can receive a \$210 Credit Certificate or a \$110 Cash Payment if they:  
26 (a) registered their Laptop with ASUS; (b) purchased their Laptop from ASUS's website; or (c)  
27 submit Proof of Purchase of the Laptop with their Claim Form. Class Members who cannot meet  
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1 any of these proof requirements can obtain a \$105 Credit Certificate or \$55 Cash Payment as long  
2 as they provide the Laptop's Serial Number with the Claim Form.

3 As part of the Settlement, Class Counsel may apply to this Court for an award of attorneys'  
4 fee and expenses of up to \$787,500.00, as well as up to \$5,000 as an Incentive Award to Plaintiff.  
5 Such amounts must be approved by the Court, and the Court will defer any ruling on the  
6 appropriateness of such awards until the Final Approval Hearing.

7 Class Notice is to be provided as described in the Amended Settlement Agreement  
8 consistent with a notice plan designed by Angeion Group, the Claim Administrator, a well-known  
9 and experienced class action administrator. The Claim Administrator also will receive and process  
10 Claim Forms. In brief, Class Notice will be provided via: (1) direct Email Notice to those Class  
11 Members for whom an email address is available; (2) direct Postcard Notice mailed to those Class  
12 Members for whom a physical mailing address is available; (3) Publication Notice in *People*  
13 magazine and the California regional edition of *USA Today*; (4) publication of Online Notice  
14 targeted at likely Class Members served across relevant internet websites and social media  
15 platforms; (5) publication of Online Notice on Defendant's websites and social media platforms;  
16 and (6) publication on a Settlement Website, located at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

17 All of the notices will link or point to the Settlement Website, which will contain a detailed  
18 class notice, including the procedures for class members to exclude themselves from the Settlement  
19 or object, as well as a copy of the Amended Settlement Agreement and motion papers filed in  
20 connection with the Settlement.  
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**FINDINGS AND CONCLUSIONS**

The Court has read and considered the Motion and all of the supporting documents, including the Settlement Agreement, the Amended Settlement, and their Exhibits, including the proposed Class Notice. The Court finds that there is a sufficient basis for granting preliminary approval of the Amended Settlement Agreement, authorizing dissemination of the Class Notice, and authorizing the steps needed to determine whether the Amended Settlement Agreement should be finally approved and the Litigation dismissed.

Accordingly, it is HEREBY ORDERED that:

1. The Amended Settlement Agreement, filed on September 12, 2019, is preliminarily approved as likely to be approved under Federal Rule of Civil Procedure (“Rule”) 23(e)(2) and as meriting notice to the Class for its consideration. Considering the factors set forth in Rule 23(e)(2), the Court preliminarily finds as follows:

- a. Class Representatives and Class Counsel have adequately represented the Class.
- b. The Settlement was negotiated at arm’s length with the assistance of a well-respected and experienced private mediator.
- c. The relief provided to the Class in the form of injunctive and monetary relief is adequate given the risks and uncertainty of trial.
- d. The proposal treats all Class Members equally relative to each other.

2. Based upon the submissions of the Parties, and for the purposes of this Settlement only, the Court conditionally makes the following findings:

- a. Members of the Class are so numerous as to make joinder impracticable.
- b. There are questions of law and fact common to the Class, and such questions predominate over any questions affecting only individual Class Members for purposes of the Settlement.
- c. Plaintiff’s claims and the defenses thereto are typical of the claims of the Class Members and the defenses thereto for purposes of the Settlement.

- 1 d. Plaintiff and his counsel have, and will continue to, fairly and adequately protect  
2 the interests of the Class Members in this action with respect to the Settlement.  
3 e. The proposed Settlement is superior to all other available methods for fairly and  
4 efficiently resolving this action.

5 Accordingly, for settlement purposes only, the Court conditionally certifies a Class  
6 comprised of all persons who purchased a new ASUS ROG Strix GL502VS or GL502VSK laptop  
7 computer in the United States from Defendants or an authorized retailer of Defendants between  
8 May 4, 2014 and the date Preliminary Approval is entered.

9 3. The Court finds it appropriate to establish the following exclusions from the  
10 Settlement Class: the undersigned judge and any member of her immediate family; (b) any  
11 government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e)  
12 any entity in which Defendants have a controlling interest; (f) any of Defendants' parents, affiliates,  
13 and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person  
14 whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the  
15 Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from  
16 ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues  
17 alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from  
18 the Power Defect or Overheating Issue; (k) any person who signed a release regarding their Laptop;  
19 and (l) all persons who file a timely request for exclusion from the Class.

20 4. The Court appoints Plaintiff Joseph Carlotti to serve as Class Representative for the  
21 Class.

22 5. The Court appoints the law firms of Gutride Safier LLP and Miglaccio & Rathod  
23 LLP to serve as Class Counsel.

24 6. The Court finds that the terms of the Amended Settlement Agreement are  
25 sufficiently fair, reasonable, and adequate to allow dissemination of the Class Notice to members of  
26 the Class. This determination is not a final finding that the Settlement is fair, reasonable and  
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1 adequate, but it is a determination that probable cause exists to disseminate Class Notice to the  
2 Class Members and hold a hearing on final approval of the proposed Settlement.

3 7. The Court appoints and designates Angeion Group as the Claim Administrator.

4 8. The Court approves, as to form and content, the Claim Forms and the Class Notice,  
5 substantially similar to the forms attached as Exhibits A – B5 to the Amended Settlement  
6 Agreement. The Claim Forms and the Class Notice are written in plain English, are easy to  
7 comprehend, and fully comply with the requirements of the Due Process Clause of the United States  
8 Constitution, Rule 23, and any other applicable law. The Parties shall have discretion to jointly  
9 make non-material minor revisions to the Claim Forms or the Class Notice. Responsibility  
10 regarding settlement administration, including, but not limited to, notice and related procedures,  
11 shall be performed by the Claim Administrator, subject to the oversight of the Parties and this Court  
12 as described in the Amended Settlement Agreement. The costs of providing Class Notice to the  
13 Class Members shall be borne by ASUS.

14 9. ASUS shall pay the Claim Administrator’s reasonable costs associated with the  
15 administration of the Settlement up to \$200,000, distribution of Class Notice pursuant to the  
16 Amended Settlement Agreement, and any other tasks assigned to the Claim Administrator under the  
17 Amended Settlement Agreement, by ASUS’s and the Class Representative’s mutual written  
18 agreement, or as this Court may order.

19 10. Pursuant to Rule 23(e)(2) and 28 U.S.C. § 1715(d), a Final Approval Hearing shall  
20 be held on \_\_\_\_\_, at \_\_\_\_:00 a.m. / p.m. before the undersigned at the Ronald V.  
21 Dellums Federal Building and U.S. Courthouse, 1301 Clay St., Oakland, California, for the purpose  
22 of finally determining whether (a) this action meets each of the prerequisites for class certification  
23 set forth in Federal Rule of Civil Procedure 23(a) and may properly be maintained as a class action  
24 on behalf of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the Amended  
25 Settlement Agreement should receive final approval as fair, reasonable, adequate, and is in the best  
26 interests of the Settlement Class in light of any objections presented by Class Members and the  
27 Parties’ responses to any such objections; (c) the Court should grant final approval of the Amended  
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1 Settlement Agreement, entering final judgment and dismissing the Class Action Complaint,  
2 including dismissing the claims concerning the Laptops identified in the Amended Settlement  
3 Agreement to be dismissed with prejudice), as provided in the Amended Settlement Agreement; and  
4 (d) the applications of Class Counsel for the payment of Attorneys' Fees and Expenses to Class  
5 Counsel and the payment of an Incentive Award to Plaintiff are reasonable and should be approved.  
6 The Final Approval Hearing may be postponed, adjourned, or continued by further order of this  
7 Court, without further notice to the Parties or the members of the Settlement Class.

8         11. The Claim Administrator shall provide a declaration attesting to its compliance with  
9 the Notice obligations set forth herein and the Amended Settlement Agreement not less than seven  
10 (7) days prior to the Final Approval Hearing. The declaration shall include: the total number of  
11 Class Members; a sample copy of the Class Notice; the process by which ASUS provided a list of  
12 Class Member information to the Claim Administrator for sending Email Notice and Postcard  
13 Notice; the number of Email Notices emailed and Postcard Notices mailed and the range of dates  
14 within which such Notices were sent; and the number of Postcard Notices returned to the Claim  
15 Administrator by the United States Postal Service.

16         12. Each Class Member who wishes to be excluded from the Settlement must submit to  
17 the Claim Administrator a written statement requesting exclusion from the Settlement. Such  
18 requests for exclusion must be made by submitting the online form on the Settlement Website or by  
19 mailing a valid exclusion request by First Class U.S. Mail to the address specified in the Class  
20 Notice. Such requests for exclusion must be submitted online or postmarked on or before . To  
21 be effective, the request for exclusion must:

- 22             a. Include the Class Member's full name and address;
- 23             b. Explicitly and unambiguously state his or her desire to be excluded from the  
24 Settlement; and
- 25             c. Be individually and personally signed by the Class Member (if the Class Member  
26 is represented by counsel, it must also be signed by such counsel).



- a. The case name and number (*Carlotti v. Asus Computer Intl.*, Case No. 18-cv-03699-DMR);
- b. The objecting Class Member's full name, address, and telephone number, and, if available, email address;
- c. An attestation that the objector is a member of the Class;
- d. The model and serial number of the objecting Class Member's Laptop, along with proof of membership in the Class;
- e. A written statement of all grounds for the Objection, accompanied by any legal support for the Objection;
- f. Copies of any papers, briefs, or other documents upon which the Objection is based;
- g. The name, address, email address, and telephone number of every attorney representing the objector;
- h. A list of all cases in which the Class Member and/or his or her counsel filed or in any way participated—financially or otherwise—objecting to a class settlement in any court in the United States during the preceding five (5) years;
- i. If the Class Member or his or her counsel has not objected to any other class settlement in any court in the United States in the previous five (5) years, he or she shall affirmatively state; and
- j. A statement indicating whether the objector and/or his or her counsel intends to appear at the Final Approval Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the Objection.

18. Any Class Member wishing to make a claim must submit a Claim Form to the Claim Administrator, pursuant to the instructions set forth in the Class Notice. Claim Forms to be mailed must be postmarked, and Claims Forms to be submitted online through the Settlement Website must be submitted, no later than [DATE].

19. Objecting Class Members or their counsel who wish to appear at the Final Approval Hearing must make such request by filing with the Court and serving upon Class Counsel and Defendants' Counsel at the following addresses a Notice of Intention to Appear at least fourteen (14) days prior to the Final Approval Hearing:

Settlement Class Counsel

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Adam Gutride  
Gutride Safier LLP  
100 Pine St., Suite 1250  
San Francisco, California 94111

ASUS's Counsel

Luanne Sacks  
Michele Floyd  
Robert Bader  
Sacks Ricketts & Case LLP  
177 Post Street  
Suite 650  
San Francisco, CA 94108

20. The Parties to this Litigation and to the Settlement Agreement shall file any memoranda or other materials in support of Final Approval of the Settlement Agreement, including in response to any timely and valid objection to the Settlement Agreement, no later than seven (7) days prior to the Final Approval Hearing. Such materials shall be served on Class Counsel, Defendants' Counsel, and on any member of the Settlement Classes (or their counsel, if represented by counsel) to whose objection to the Settlement Agreement the memoranda or other materials respond.

21. Following the Final Approval Hearing, and based upon the entire record in this matter, the Court will decide whether the Amended Settlement Agreement should be finally approved and, if so, whether an award of Attorneys' Fees and Expenses of up to \$787,500 should be awarded to Class Counsel, and whether an Incentive Award of up to \$5,000 should be awarded to Plaintiff.

22. If the Court determines the Settlement is reasonable, fair, and adequate, the Court will issue a Final Order and Judgment memorializing its decision in the form contemplated by Exhibit D of the Amended Settlement Agreement. The Court will also issue an Order awarding reasonable fees and expenses to Class Counsel in an amount determined by the Court but in no event more than \$787,500.

23. Plaintiff's claims against Defendants are hereby stayed.



1 **GUTRIDE SAFIER LLP**

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15 Nicholas Migliaccio, (appearing *pro hac vice*)  
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18 412 H Street NE, Suite 302  
19 Washington, D.C. 20002

20 Counsel for Plaintiff

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 JOSEPH CARLOTTI, individually and on behalf of  
24 all others similarly situated,

25 Plaintiff,

26 v.

27 ASUS COMPUTER INTERNATIONAL; ASUSTEK  
28 COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date:

Time:

Courtroom: 7, 19<sup>th</sup> Floor

Judge: Hon. Donna M. Ryu

1 Plaintiff Joseph Carlotti (“Plaintiff” or “Class Representative”) has moved the Court for  
2 final approval of a proposed class action settlement with Defendants ASUSTeK Computer Inc.  
3 (“ASUSTeK”) and ASUS Computer International (“ACI”) (collectively, “ASUS” or “Defendants”),  
4 the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on  
5 July 8, 2019 (“Settlement Agreement”) (Dkt. \_\_\_\_). For the reasons described more fully below,  
6 the Court GRANTS final approval of the Settlement. All capitalized terms used in this Order have  
7 the meaning as defined in the Settlement Agreement.

## 8 RECITALS

### 9 A. Procedural History

10 This case concerns Defendants ASUSTeK Computer Inc.’s (“ASUSTeK”) and ASUS  
11 Computer International’s (“ACI”) (collectively, “ASUS” or “Defendants”) marketing, selling, and  
12 warranting of the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK (“Laptop” or  
13 “Laptops”) from May 4, 2014 to the date of this order (“Class Period”).

14 Plaintiff contends that Defendants deceptively advertised the suitability of the Laptops as  
15 portable gaming computers. In particular, Plaintiff alleges that the Laptop he purchased suffered  
16 from the following two defects: (1) the Laptop’s power supply unit did not provide sufficient power  
17 to the Laptop such that the Laptop’s battery drained during use even when the Laptop was plugged  
18 into an electrical outlet; the Laptop experienced reductions in computational performance when it  
19 was low on battery power or when the battery was removed, even when the Laptop was connected  
20 to an electrical outlet; and there was accelerated degradation of the Laptop’s battery (the “Power  
21 Defect”); and (2) the Laptop’s cooling systems inadequately dissipated heat generated by the  
22 Laptop during computationally demanding tasks such that the Laptop became hot to the touch  
23 during use (the “Overheating Issue”). Plaintiff alleges that all the Laptops experienced the Power  
24 Defect and Overheating Issue. Plaintiff alleged claims for violations of the breach of express  
25 warranty; breach of implied warranty; violation of the Magnuson-Moss Warranty Act; deceit and  
26 fraudulent concealment; unjust enrichment; violations of the California Consumer Legal Remedies  
27 Act, Civil Code § 1750, *et seq.*; false advertising under Bus. and Prof. Code § 17500, *et seq.*; and  
28

1 unfair business practices under Cal. and Prof. Code § 17200, *et seq.* Plaintiff sought to pursue these  
2 claims on behalf of himself and a nationwide class of purchasers of the Laptops. Plaintiff seeks  
3 money damages and an injunction.

4 Defendants deny Plaintiff's allegations. They contend that the advertising of the Laptops is,  
5 and has always been, truthful and not misleading. Defendants also dispute that the Laptops suffered  
6 from the Power Defect or Overheating Issue. Defendants deny that the written warranty covers any  
7 alleged design defects. Defendants also dispute that Laptop purchasers suffered any damages  
8 because they claim that the Laptops performed as well as, or better than, other laptops in the market.  
9 Defendants therefore deny any liability, and deny that Plaintiff or any class members have suffered  
10 injury. Defendants further deny that this case meets the requirements for class certification under  
11 Federal Rule of Civil Procedure ("Rule") 23, except for purposes of settlement.

12 The history of this litigation is summarized in Section I of the Settlement Agreement. In  
13 brief, this case was filed on May 4, 2018 in California Superior Court, and removed to this Court on  
14 June 7, 2018. Plaintiff moved for, and the Court entered, an order authorizing service on Defendant  
15 ASUSTeK, a Taiwanese corporation, using alternative means. The parties engaged in significant  
16 discovery. Plaintiff served ACI with discovery requests and noticed its deposition under Rule  
17 30(b)(6). ACI produced documents in response to Plaintiff's discovery requests, including  
18 documents providing sales and warranty data and hardware and software engineering reports. ACI  
19 deposed Plaintiff.

#### 20 **B. Summary of Settlement Terms**

21 The terms of the settlement are summarized in the Long Form Notice to Class Members,  
22 which is attached as Exhibit B1 to the Settlement Agreement. Under the Settlement, Defendants  
23 have agreed to provide an extended warranty on all ASUS Rog Strix GL502VS laptops to cover  
24 Qualifying Repairs, which includes repairs to and/or replacement of the motherboard and/or AC  
25 power adapter to resolve the Power Defect, until the later of: (i) three years from the date of  
26 purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of  
27 the internal power supply and/or AC power adapter by ASUS. The Extended Warranty has an

1 estimated value of up to \$6.7 million.

2 Defendants have agreed to make up to \$5.2 million in cash benefits available to Settlement  
3 Class members as follows. All Class Members who previously complained of the Power Defect or  
4 Overheating Issue to Defendants will receive a \$210 Credit Certificate without the necessity of  
5 filing a claim (or a \$110 Cash Payment if the Class Member files a claim). Class Members can  
6 receive a \$210 Credit Certificate or a \$110 Cash Payment if they: (a) registered their Laptop with  
7 ASUS; (b) purchased their Laptop from ASUS's website; or (c) submit Proof of Purchase of the  
8 Laptop with their Claim Form. Class Members who cannot meet any of these proof requirements  
9 can obtain a \$105 Credit Certificate or \$55 Cash Payment as long as they provide the Laptop's  
10 Serial Number with the Claim Form. Eligible Class Members are permitted to both obtain  
11 Qualifying Repairs under the Extended Warranty and file a claim for a Cash Payment or Credit  
12 Certificate.

13 Finally, the settlement provides that Plaintiff may seek an award of up to \$787,500.00 in  
14 attorneys' fees and costs, and up to \$5,000 as an incentive award for Plaintiff.

15 **C. Notice and Administration**

16 The Settlement Agreement is being administered by a well-known, independent claims  
17 administrator, Angeion Group. Following the Court's Preliminary Approval Order, Angeion Group  
18 established the Settlement Website at <http://www.asuslaptopsettlement.com>, which contained the  
19 Class Notice, including the procedures for Class Members to submit claims or exclude themselves,  
20 a contact information page that includes address and telephone numbers for the Claim  
21 Administrator and the parties, the Settlement Agreement, the signed Preliminary Approval Order,  
22 online and printable versions of the Claim Form and the opt out forms, and answers to frequently  
23 asked questions. In addition, the papers in support of final approval and Plaintiff's application for  
24 Attorneys' Fees and Expenses and Incentive Award were placed on the Settlement Website after  
25 they were filed. The Claim Administrator also operated a toll-free number for Class Member  
26 inquiries.

27 Class Notice was provided via direct notice and publication in multiple media, all of which  
28

1 referred Class Members to the Settlement Website. ([record citations]) In particular, Class Notice  
 2 was provided via: (1) direct Email Notice to those Class Members for whom an email address was  
 3 available; (2) direct Postcard Notice mailed to those Class Members for whom a physical mailing  
 4 address was available but an email address was not available; (3) Publication Notice in People  
 5 magazine and USA Today; (4) publication of Online Notice, which compromised \_\_\_\_\_  
 6 impressions, targeted at likely class members served across relevant internet websites and social  
 7 media platforms; (5) publication of Online Notice on Defendants' websites and social media  
 8 platforms; and (6) publication on a Settlement Website, located at www.asuslaptopsettlement.com.

9 In total, the notice program is estimated to have reached at least [ ]% of Class Members an  
 10 average of [2] times each. ([record cite]).

11 Class Members were given until [\_\_\_\_\_] to object to or exclude themselves from the  
 12 proposed Settlement. A total of \_\_\_\_\_ Claims were received by the Claim Administrator. Of these,  
 13 \_\_\_\_\_ Claims were deemed valid. A total number of \_\_\_\_\_ Cash Payments were paid (total value  
 14 \_\_\_\_\_) and a total number of \_\_\_\_\_ Credit Certificates were sent to Class Members (total value  
 15 \_\_\_\_\_).

## 16 ANALYSIS

### 17 A. Jurisdiction

18 This court has jurisdiction under 28 U.S.C. § 1332(d)(2).

### 19 B. Certification of the Settlement Class

20 The Court finds that the prerequisites of Rule 23 have been satisfied for certification of the  
 21 Settlement Class for settlement purposes because: Settlement Class Members are so numerous that  
 22 joinder of all members is impracticable; there are questions of law and fact common to the  
 23 Settlement Class; the claims and defenses of the Class Representative are typical of the claims and  
 24 defenses of the Settlement Class he represents; the Class Representative has fairly and adequately  
 25 protected the interests of the Settlement Class with regard to the claims of the Settlement Class he  
 26 represents; common questions of law and fact predominate over questions affecting only individual  
 27 Settlement Class Members, rendering the Settlement Class sufficiently cohesive to warrant a class  
 28

1 settlement; and the certification of the Settlement Class is superior to individual litigation and/or  
2 settlement as a method for the fair and efficient resolution of this matter.

3 For purposes of the Settlement and this Final Approval Order and Judgment, the Court  
4 hereby finally certifies the following Settlement Class: All persons who purchased a new ASUS  
5 Rog Strix GL502VS or GL502VSK laptop computer in the United States from Defendants or an  
6 authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is  
7 entered. . Excluded from the Class are (a) the undersigned judge and any member of her immediate  
8 family; (b) any government entity; (c) Martin Quinn and any member of his immediate family; (d)  
9 Defendants; (e) any entity in which Defendants have a controlling interest; (f) any of Defendants'  
10 parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or  
11 assigns; (g) any person whose purchase of a Laptop was for resale purposes; (h) any person who  
12 timely opts out of the Settlement; (i) any person who received a full refund of a Laptop's entire  
13 purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or  
14 heat-related issues alleged in the Lawsuit; (j) any person who received a replacement Laptop that  
15 did not suffer from the Power Defect or Overheating Issue; (k) any person who signed a release  
16 regarding their Laptop; and (l) all persons who have filed a timely Request for Exclusion from the  
17 Class.

18 For the purpose of this Settlement, the Court hereby finally approves Plaintiff as the Class  
19 Representative and the law firms of Gutride Safier LLP and Migliaccio & Rathod LLP as Class  
20 Counsel.

### 21 **C. Notice and Claims Administration**

22 Notice to Class Members was provided directly to those Class Members for whom  
23 Defendants possessed an email address or mailing address, and for all other Class Members, by  
24 Publication Notice and Online Notice. Publication Notice and Online Notice was appropriate here  
25 because the evidence is undisputed that the parties do not know the names or contact information  
26 for the majority of Class Members that purchased the Laptops at retail from third parties. Under  
27 these circumstances, individualized notice to all Class Members was not required or reasonably  
28

1 practicable. *See, e.g., Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017)  
2 (recognizing that Rule 23 “does not insist on actual notice to all class members;” and “courts have  
3 routinely held that notice by publication in a periodical, on a website, or even at an appropriate  
4 physical location is sufficient to satisfy due process”); *In re Toys R Us-Delaware, Inc. FACTA*  
5 *Litigation*, 295 F.R.D. 438, 449 (C.D. Cal. 2014) (“When the court certifies a nationwide class of  
6 persons whose addresses are unknown, notice by publication is reasonable.”). The Court reaffirms  
7 the finding it made in the Preliminary Approval Order that the notice plan provided the best  
8 practicable notice to the members of the Class and satisfied the requirements of due process. The  
9 Court also finds, based on the evidence described above, that the notice plan reached at least [ ] of  
10 the Class Members an estimated average of at least [ ] times each. ([record cite]) This notice  
11 comports with due process. *See, e.g., Ellison v. Steven Madden, Ltd.*, No. CV115935PSGAGR, X,  
12 2013 WL 12124432, at \*3 (C.D. Cal. May 7, 2013) (approving a notice plan reaching 77%); *In re:*  
13 *Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012,  
14 at \*9 (N.D. Ohio Sept. 23, 2016) (approving notice plan reaching approximately 77.5 percent of  
15 Class Members).

#### 16 **D. Final Approval of Settlement**

17 A court may approve a proposed class action settlement of a certified class only “after a  
18 hearing and on finding that it is fair, reasonable, and adequate after considering whether: (A) the  
19 class representatives and class counsel have adequately represented the class; (B) the proposal was  
20 negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i)  
21 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of  
22 distributing relief to the class, including the method of processing class-member claims; (iii) the  
23 terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement  
24 required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably  
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1 relative to each other.” Fed. R. Civ. P. 23(e)(2).<sup>1</sup> In reviewing the proposed settlement, the Court  
2 need not address whether the settlement is ideal or the best outcome, but only whether the  
3 settlement is fair, free of collusion, and consistent with plaintiff’s fiduciary obligations to the class.  
4 *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1027.

5 For the reasons further detailed below and discussed at oral argument, the Court finds that the  
6 proposed settlement is fair and appropriate under the Rule 23(e)(2) factors. Plaintiff’s claims are  
7 based on the marketing, selling, and warranting of the Laptops. There would be a battle of the  
8 experts regarding the presence and prevalence of the alleged Power Defect and Overheating Issue,  
9 consumer understanding, materiality of the representations, and the computation of damages, if any.  
10 Proceeding to trial would have been costly; recovery was not guaranteed; and there was the  
11 possibility of protracted appeals. Counsel for both Parties were highly experienced; they provided  
12 detailed declarations explaining why they supported the Settlement, and there is no factual basis to  
13 support any allegation of collusion or self-dealing.

14 **1. Class Representative and Class Counsel Have Adequately**  
15 **Represented the Class.**

16 In the Preliminary Approval Order, this Court found that the Class Representative and Class  
17 Counsel adequately represented the interests of the Class. This Court has seen no evidence to  
18 contradict my previous finding, and reconfirm it here. Class Counsel has vigorously prosecuted this  
19 action through discovery and formal mediation. Counsel therefore “possessed sufficient information  
20

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21 <sup>1</sup> Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had enumerated  
22 a similar list of factors to consider in evaluating a proposed class settlement. *See Churchill Vill., L.L.C. v.*  
23 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following factors: “(1) the strength of the  
24 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of  
25 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of  
26 discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the  
27 presence of a governmental participant; and (8) the reaction of the class members to the proposed  
28 settlement”). In the notes accompanying the Rule 23 amendments, the Advisory Committee explained that the  
amendments were not designed “to displace any factor, but rather to focus the court and the lawyers on the  
core concerns of procedure and substance that should guide the decision whether to approve the proposal.”  
Accordingly, this Court applies the framework of Rule 23 while “continuing to draw guidance from the Ninth  
Circuit’s factors and relevant precedent.” *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 U.S. Dist.  
LEXIS 213045 \*13 (N.D. Cal. Dec. 17, 2018).

1 to make an informed decision about settlement.” *Hefler*, 2018 U.S. Dist. LEXIS 213045 \*18.

2 **2. The Settlement Was Negotiated at Arm’s Length.**

3  
4 This Court finds that the Settlement is the product of serious, non-collusive, arms’ length  
5 negotiations by experienced counsel with the assistance of a well-respected and experienced  
6 mediator, Martin Quinn, Esq. at JAMS. *See, e.g., G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at  
7 \*13 (N.D. Cal. July 30, 2015) (noting that “[t]he assistance of an experienced mediator in the  
8 settlement process confirms that the settlement is non-collusive”); *Hefler*, 2018 U.S. Dist. LEXIS  
9 213045 \*19 (“[T]he Settlement was the product of arm's length negotiations through two full-day  
10 mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn  
11 Phillips.”). Further, before agreeing upon the terms of the Settlement, the Parties engaged in  
12 extensive factual investigation, which included a deposition, document production, interrogatories,  
13 and informal discovery. The record was thus sufficiently developed that the parties were fully  
14 informed as to the viability of the claims and able to adequately evaluate the strengths and  
15 weaknesses of their respective positions and risks to both sides if the case did not settle.

16 The Court has independently and carefully reviewed the record for any signs of collusion and  
17 self-dealing, and finds that no collusion or self-dealing occurred. Specifically, the Court finds that  
18 Class Counsel did not compromise the claims of the Settlement Class in exchange for higher fees.

19 **3. The Relief to the Class is Adequate Recovery to the Class**

20 Although not articulated as a separate factor in Rule 23(e), “[t]he relief that the settlement is  
21 expected to provide to class members is a central concern.” Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory  
22 committee’s note to 2018 amendment. “The Court therefore examines ‘the amount offered in  
23 settlement.’” *Hefler*, 2018 U.S. Dist. LEXIS 213045 \*18 (quoting *Hanlon*, 150 F.3d at 1026).

24 The Settlement requires Defendants to provide an extended warranty on all ASUS Rog Strix  
25 GL502VS laptops to cover Qualifying Repairs, which includes a repair to and/or replacement of the  
26 motherboard and/or AC power adapter, until the later of: (i) three years from the date of purchase;  
27 (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the

1 internal power supply and/or AC power adapter by ASUS. The value of the Extended Warranty is  
2 estimated at up to \$6.7 million. ([record cite]) It is appropriate for the Court to consider the equitable  
3 relief in assessing the benefit to the class. *See Allen*, 787 F.3d at 1225 (citing *Bluetooth*) (“As a  
4 whole, the settlement appears to afford valuable relief, much by injunction, that will benefit the  
5 class;” remanding to allow district court opportunity to make express findings about value of that  
6 relief.

7 Defendants also agreed to provide monetary benefits to Class Members. In particular, Class  
8 Members who previously complained of the Power Defect or Overheating Issue to Defendants will  
9 automatically receive a \$210 Credit Certificate without the necessity of filing a claim (or a \$110  
10 Cash Payment if the Class Member files a claim). Class Members can receive a \$210 Credit  
11 Certificate or a \$110 Cash Payment if they: (a) registered their Laptop with ASUS; (b) purchased  
12 their Laptop from ASUS’s website; or (c) submit Proof of Purchase of the Laptop with their Claim  
13 Form. Class Members who cannot meet any of these proof requirements can obtain a \$105 Credit  
14 Certificate or \$55 Cash Payment as long as they provide the Laptop’s Serial Number with the Claim  
15 Form. Eligible Class Members are permitted to both obtain Qualifying Repairs under the Extended  
16 Warranty and file a claim for a Cash Payment or Credit Certificate.

17 Based on the record evidence and argument the parties submitted in connection with the  
18 Settlement, as well as the familiarity the Court has developed with this case, the Court finds that this  
19 monetary recovery is fair, reasonable and adequate, particularly given the overall claimed actual  
20 damages amount, risks of proceeding to trial, and the amount made available to claimants.

#### 21 **4. The Strength of Plaintiff’s Case and Risk of Continuing Litigation**

22 No class had been certified prior to the Settlement. Plaintiff faced serious risk at the  
23 certification stage, and if he prevailed, at trial. Both class certification and trial likely would have  
24 required expert analysis to establish, among other things, that the marketing and advertising of the  
25 Laptops was misleading and material to consumer purchasing decisions, the Laptops universally  
26 suffered from the alleged Power Defect and Overheating Issue, Defendants failed to fulfill their  
27 warranty obligations, and that the Class Members were damaged, namely that they paid a price  
28

1 premium for the allegedly defective Laptops.

2 **5. Effectiveness of Distribution Method**

3 As noted above, the Court concludes that the distribution method and claims process is  
4 reasonable. Class Members who seek benefits under the Settlement must only submit a relatively  
5 simple claim form with basic questions about class membership. The process would be no different  
6 than that required after trial, as Defendants have no means of directly identifying Class Members  
7 who neither purchased from ASUS directly nor complained directly to ASUS about the Power  
8 Defect or Overheating Issue.

9 **6. The Terms of the Proposed Award of Attorneys' Fees and**  
10 **Expenses.**

11 As noted in section E below, the Court finds the proposed award of Attorneys' Fees and  
12 Expenses is reasonable.

13 **7. Other Agreements**

14 The Court is required to consider "any agreements required to be identified under Rule  
15 23(e)(3). The Parties are not aware of any such agreements.

16 **8. The Proposal Treats Class Members Equitably Relative to Each**  
17 **Other**

18 Although the Settlement divides Class Members into groups, all Class Members are entitled  
19 to obtain relief under the group that he or she qualifies. Membership in the groups is determined by:  
20 (i) whether the Class Member previously complained to Defendant about the Power Defect or an  
21 Overheating Issue (in which case he or she is a member of Group B); and (ii) the proof relating to  
22 the Class Member's Laptop purchase. In particular, Class Members are qualified to submit a Claim  
23 under Group A if they (1) provide the Laptop's Serial Number and have registered the Laptop with  
24 Defendants prior to the Notice Date, as reflected by Defendants' records; (2) provide Serial Number  
25 and have purchased the Laptop from the ASUS Website; or (3) submit Laptop Proof of Purchase.

26 This allocation plan treats all Class Members fairly based on the strength of their claims. The  
27 plan fairly protects the interest of all parties by directing relief to the Class Members who provide

1 sufficient proof of their Laptop purchases, while also providing lesser settlement benefits to Class  
2 Members who submit a Claim without documentation. *See In re MyFord Touch Consumer Litig.*,  
3 No. 13-cv-03072-EMC (N.D. Cal. Mar. 28, 2019), ECF No. 526 at 4-5 (granting approval of  
4 settlement plan that pays a lower dollar amount in relation to the comparative weakness of certain  
5 claims). This plan will thus deter fraudulent claims and treat class members equitable relative to each  
6 other. In addition, the Incentive Award to Plaintiff is appropriate for the reasons stated below.

### 7 **9. The Response of Class Members**

8 Out of an estimated \_\_\_\_ class members, there were \_\_ opt-outs and \_\_ objections. In  
9 comparison, there were \_\_\_\_ Valid Claims, according to the report of the Claim Administrator. This  
10 is an overwhelmingly positive response. *See Churchill Village, LLC v. General Electric*, 361 F.3d  
11 566, 577 (9th Cir. 2004) (explaining that a court may infer appropriately that a class action  
12 settlement is fair, adequate, and reasonable when few class members object to it); *Zepeda v. PayPal,*  
13 *Inc.*, 2017 WL 1113293, at \*16 (N.D. Cal. Mar. 24, 2017) (holding “the indisputably low number of  
14 objections and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude  
15 that the reaction to settlement by the class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL  
16 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action  
17 settlement is fair, adequate, and reasonable when few class members object to it.”); *see also, e.g., In*  
18 *re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at \*4 (N.D. Cal. Aug. 25, 2016)  
19 (stating that, “[i]n an analysis of settlements where notice relied on media notice exclusively, the  
20 claims rate ranged between 0.002% and 9.378%, **with a median rate of 0.023%**”) (emphasis added).

### 21 **10. Costs of Administering the Settlement**

22 The Claim Administrator has submitted an invoice for its expenses incurred to date and  
23 expected to be incurred through the completion of its work, in the amount of \$ \_\_\_\_\_. Included in  
24 this invoice is the amount for all taxes due. The Court finds that such amounts are reasonable.  
25

### 26 **E. Attorneys’ Fees and Expenses**

27 Class Counsel requests an award of \$787,500.00 in attorneys’ fees and expenses. Defendants  
28

1 do not oppose this request. *See, e.g., In re Volkswagen “Clean Diesel” Marketing, Sales Practices,*  
2 *and Products Liability Litigation*, 2017 WL 1047834, at \*4 (N.D. Cal., Mar. 17, 2017  
3 (“Volkswagen’s agreement not to oppose the application does not evidence collusion and was not  
4 obtained by Class Counsel to Class Members’ detriment.”) The record is undisputed that the  
5 settlement negotiation was overseen by an experienced mediator and that the attorneys’ fees and  
6 expenses requested do not diminish the amount of monetary relief available to Class Members. *See,*  
7 *e.g., G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at \*13 (N.D. Cal. July 30, 2015) (noting that  
8 “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is  
9 non-collusive”).

10 Class Counsel are entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R.  
11 Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may  
12 recover reasonable expenses that would typically be billed to paying clients in non-contingency  
13 matters.); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving  
14 reasonable costs in class action settlement). Costs compensable under Rule 23(h) include  
15 “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

16 Here, Class Counsel seeks reimbursement of \$ \_\_\_\_\_ in litigation expenses and provide  
17 records that document their claim. (Gutride Decl. Ex. \_\_). No objection has been made to any cost  
18 item or amount. Accordingly, the Court finds that these submissions support an award \$ \_\_\_\_\_  
19 in costs.

20 Class Counsel also seeks \$ \_\_\_\_\_ in attorneys’ fees (\$787,500.00 less costs awarded  
21 of \$ \_\_\_\_\_). Under Ninth Circuit standards, it is appropriate for a District Court to analyze an  
22 attorneys’ fee request and issue an award either based on (1) the “lodestar” method or (2) by making  
23 an award as a percentage of the total benefit made available to the settlement class, including costs,  
24 fees, and injunctive relief. *See e.g., Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 941  
25 (9th Cir. 2011); *Nwabueze v. AT&T, Inc.*, No. C 09-01529 SI, 2014 WL 324262, at \*2-3 (N.D. Cal.  
26 Jan. 29, 2014); *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at \*11-12  
27 (E.D. Cal. Sept. 2, 2011). Plaintiff’s fee request is reasonable under either of these approaches.

1 Under the lodestar approach, “[t]he lodestar (or touchstone) is produced by multiplying the  
2 number of hours reasonably expended by counsel by a reasonable hourly rate.” *Lealao v. Beneficial*  
3 *California, Inc.*, 82 Cal. App. 4th 19, 26 (2000); *see also Kelly v. Wengler*, 822 F.3d 1085, 1099  
4 (9th Cir. 2016) (“[A] court calculates the lodestar figure by multiplying the number of hours  
5 reasonably expended on a case by a reasonable hourly rate. A reasonable hourly rate is ordinarily  
6 the ‘prevailing market rate [] in the relevant community.’”) (alteration in original) (internal citation  
7 omitted) (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010)). Once the court has  
8 fixed the lodestar, it may increase or decrease that amount by applying a positive or negative  
9 “multiplier to take into account a variety of other factors, including the quality of the representation,  
10 the novelty and complexity of the issues, the results obtained and the contingent risk presented.”  
11 *Lealao*, 82 Cal. App. 4th at 26; *see also Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (1977); *Ramos v.*  
12 *Countrywide Home Loans, Inc.* 82 Cal. App. 4th 615, 622 (2000); *Beasley v. Wells Fargo Bank*, 235  
13 Cal. App. 3d 1407, 1418 (1991) (multipliers are used to compensate counsel for the risk of loss, and  
14 to encourage counsel to undertake actions that benefit the public interest).

15 Plaintiff’s Counsel’s lodestar through the date of this application is approximately \$ \_\_\_\_.  
16 (Gutride Decl. ¶ \_\_\_\_). This includes, without limitation, Plaintiff’s Counsel’s efforts in  
17 investigating and filing the complaint; case management; discovery, including written discovery  
18 requests, document review, and defending Plaintiff’s deposition; negotiating the Settlement and  
19 preparing the necessary papers to have the settlement reviewed by this Court. (Gutride Decl. ¶¶  
20 \_\_\_\_).

21 Plaintiff’s Counsel calculated their lodestar using their regular billing rates, which for the  
22 attorneys involved range from \$ \_\_\_\_ to \$ \_\_\_\_ per hour. (Gutride Decl., ¶¶ \_\_\_\_). “Affidavits of the  
23 plaintiff[’s] attorney and other attorneys regarding prevailing fees in the community, and rate  
24 determinations in other cases, particularly those setting a rate for the plaintiff[’s] attorney, are  
25 satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge*  
26 *Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). For attorneys and staff at the Gutride Safier firm, these  
27 hourly rates are equal to market rates in San Francisco for attorneys of Plaintiff’s Counsel’s  
28

1 background and experience. (Gutride Decl., ¶¶ \_\_). Likewise, for attorneys and staff at the  
2 Migliaccio & Rathod firm, these hourly rates are equal to market rates in Washington D.C. for  
3 attorneys of Plaintiff's Counsel's background and experience. (\_\_\_\_ Decl., ¶¶ \_\_). *See also In re*  
4 *Optical Disk Drive Prod. Antitrust Litig.*, 2016 WL 7364803, at \*8 (N.D. Cal. Dec. 19, 2016)  
5 (approving hourly rates of \$205 to \$950); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274,  
6 at \*5 (N.D. Cal. May 21, 2015) (approving hourly rates of \$475 to \$975).

7 Plaintiff's Counsel's current combined lodestar is \$ \_\_\_\_\_. Plaintiff's Counsel's  
8 requested \$ \_\_\_\_\_ fee thus includes a slight lodestar multiplier of \_\_\_\_\_. This small multiplier is  
9 well deserved and at the low end of what courts in this Circuit routinely award. *See, e.g., Vizcaino*,  
10 290 F.3d at 1051 (granting a multiple of 3.65 and noting that multipliers of one to four are  
11 frequently awarded); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D. Cal. 2015) (listing multipliers as  
12 high as 5.2 among "the range of acceptable lodestar multipliers"); *Dyer v. Wells Fargo Bank, N.A.*,  
13 303 F.R.D. 326, 334 (N.D. Cal. 2014) ("A 2.83 multiplier falls within the Ninth Circuit's  
14 presumptively acceptable range of 1.0–4.0."); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,  
15 298 (N.D. Cal. 1995) ("Multipliers in the 3–4 range are common in lodestar awards for lengthy and  
16 complex class action litigation.").

17 Multipliers are appropriate in contingent-fee class action cases like this one. That is because  
18 law firms that focus on contingent-fee class action cases do not get paid in every case. Frequently,  
19 they get nothing or are awarded fees equal to only a small percentage of the amount worked. Where  
20 a plaintiff's firm does succeed, therefore, a multiplier serves to compensate for the risks the firm  
21 regularly undertakes. This Court has discretion to apply a multiplier to account for various factors,  
22 including, *inter alia*, the contingent nature of the fee award (both from the point of view of eventual  
23 victory on the merits and the point of view of establishing eligibility for an award), the novelty and  
24 complexity of the questions involved, the value of class benefits obtained, the efficiency and skill  
25 displayed by class counsel, and the importance of other injunctive relief obtained. *See Serrano III*,  
26 20 Cal. 3d at 49; *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001); *City of Oakland*, 203 Cal. App.  
27 3d at 78; *Downey Cares v. Downey Community Dev. Comm'n*, 196 Cal. App. 3d 983 (1987), 995

1 n11; *see also Maria P. v. Riles*, 43 Cal. 3d 1281, 1294 n8 (1987); *Press v. Lucky Stores, Inc.*, 34  
2 Cal. 3d 311, (1983), 322; *Serrano v. Unruh* (“*Serrano IV*”), 32 Cal.3d 621, 625 n6 (1982). Each of  
3 these factors exists here. Here, Plaintiff’s Counsel reached an excellent settlement securing both the  
4 Extended Warranty and monetary benefits to all Class Members before class certification and thus  
5 should be rewarded for its efficiency (and the concomitant savings to the judicial system).

6 Whether as a cross-check or as an independent methodology, the Court can utilize the  
7 percentage-of-recovery method to verify that Plaintiff’s attorneys’ fee request is reasonable. *See*  
8 *e.g., Nwabueze*, 2014 WL 324262, at \*2-3. If “classwide benefits are not easily monetized, a cross-  
9 check is entirely discretionary,” and the district court may make its award based entirely on the  
10 lodestar. *Yamada*, 825 F.3d at 547–48 (explaining that *Bluetooth* stated that courts are “encouraged”  
11 but not required to cross-check a lodestar award).

12 Here, the value of the monetary portion of the Settlement Benefits made available to the  
13 Settlement Class is between \$1.36 million and \$5.20 million. (\_\_\_ Decl., ¶ \_\_\_.) In addition,  
14 Plaintiff estimates that the value of the injunctive relief portion of the Settlement, *e.g.*, the Extended  
15 Warranty, is up to \$6.77 million. (\_\_\_ Decl., ¶ \_\_\_.) Thus, the requested fee of \$[ ] is only  
16 \_\_\_% of the total settlement value estimated at between \$8.13 million and \$11.97 million. And  
17 even examining solely the potential monetary relief made available to the Class of \$5.20 million,  
18 the requested fee still comes in well below the benchmark, at [ ]%. It is entirely appropriate to  
19 award the requested fees where, as here, Plaintiff’s Counsel is seeking fees well below the 25%  
20 benchmark, no matter how it is calculated. *See Six Mexican Workers v. Arizona Citrus Workers*, 904  
21 F.2d 1301, 1311 (9th Cir. 1990); *see also Glass*, 2007 WL 221862, at \*14 (“The Ninth Circuit has  
22 repeatedly held that 25% of the gross settlement amount is the benchmark for attorneys’ fees  
23 awarded under the percentage method . . .”).

24 The Court finds that the hours Class Counsel claimed were reasonably worked and that the  
25 rates charged are reasonable and commensurate with those charged by attorneys with similar  
26 experience who appear in this Court, and that the slight multiplier is warranted. The Court also finds  
27 that Plaintiff’s counsel represented their clients with skill and diligence and obtained an excellent  
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1 result for the class, taking into account the possible outcomes at, and risks of proceeding to, trial.  
2 Accordingly, the following amount shall be paid to Class Counsel by Defendants as attorneys' fees  
3 and expenses pursuant to the terms of the Settlement Agreement: \$787,500.00.

#### 4 **G. Class Representative Incentive Award**

5 The district court must evaluate named plaintiffs' awards individually, using relevant factors  
6 including "the actions the plaintiff has taken to protect the interests of the class, the degree to which  
7 the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff  
8 expended in pursuing the litigation." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). "Such  
9 awards are discretionary . . . and are intended to compensate class representatives for work done on  
10 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,  
11 and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v.*  
12 *West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit recently  
13 emphasized that district courts must "scrutiniz[e] all incentive awards to determine whether they  
14 destroy the adequacy of the class representatives." *Radcliffe v. Experian Info. Solutions*, 715 F.3d  
15 1157, 1163 (9th Cir. 2013). Here Plaintiff is seeking an Incentive Award of \$5,000.

16 Plaintiff took on substantial risk, most importantly the risk of bearing Defendants' costs.  
17 (Gutride Decl., ¶ \_\_.) Plaintiff also worked with Class Counsel to provide information throughout  
18 the litigation and appeared for deposition. (Id. ¶ \_\_.) And Plaintiff remained actively involved in the  
19 litigation after the Settlement was reached. (Id., ¶ \_\_.)

20 Accordingly, the Court approves an Incentive Award of \$5,000 to Plaintiff.

#### 21 **H. Compliance with Class Action Fairness Act**

22 The record establishes that the Claim Administrator served the required notices under the  
23 Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28 U.S.C.  
24 § 1715(b)(1-8).

#### 25 **I. Releases and Effect of This Order**

##### 26 **1. Releases by Plaintiff**

27 By operation of this Order and Judgment, and pursuant to Exhibit E of the Settlement

1 Agreement, Plaintiff Carlotti releases and forever discharges the Released Parties from any and all  
2 injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits,  
3 causes of action, obligations, rights, liens, and liabilities of any nature, type, or description, whether  
4 known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability,  
5 and regardless of legal theory, which Carlotti has, may now have, or has ever had, against the  
6 Released Parties, or any of them, that: (a) relate to, are based on, concern, or arise out of the  
7 Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide  
8 basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or  
9 Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the Laptops that  
10 was brought or could have been brought on or prior to the date hereof including, but not limited to,  
11 claims that Defendants engaged in unfair and/or deceptive business practices and/or violated  
12 applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and  
13 the United States; (c) are for breach of contract and breach of the covenant of good faith and fair  
14 dealing; (d) are for breach of express warranty and breach of implied warranty; and/or, without  
15 limiting the foregoing, (e) are based, in any way, on which the facts and claims asserted in the  
16 Litigation. Carlotti shall not release his right to enforce the Agreement.

## 17 **2. Releases by Settlement Class Members**

18 By operation of this Order and Judgment, Settlement Class Members shall have  
19 unconditionally, completely, and irrevocably released and discharged the Released Parties from any  
20 and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims,  
21 suits, causes of action, obligations, rights, liens, and liabilities of any nature, type, or description,  
22 whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious  
23 liability, and regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of the  
24 Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide  
25 basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or  
26 Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the Laptops  
27 arising out of relating in any way to the Allegations that were brought or could have been brought  
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1 on or prior to the date hereof including, but not limited to, claims that Defendants engaged in unfair  
2 and/or deceptive business practices and/or violated applicable consumer protection statutes or other  
3 common laws or statutes of all fifty (50) states and the United States; (c) for breach of contract and  
4 breach of the covenant of good faith and fair dealing arising out of relating in any way to the  
5 Allegations; (d) for breach of express warranty and breach of implied warranty arising out of  
6 relating in any way to the Allegations; and/or, without limiting the foregoing, (e) are based upon  
7 and depend upon, in any way, the facts and claims asserted in the Litigation. Settlement Class  
8 Members shall not release any claims for personal injury allegedly arising out of use of the Laptops  
9 or rights to enforce the Settlement.

10 **3. Waiver of Provisions of California Civil Code § 1542**

11 By operation of this Order and Judgment, with respect to the released claims set forth above,  
12 Plaintiff, Defendants, and Settlement Class Members shall be deemed to have waived and  
13 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits conferred by  
14 any law of any state of the United States, or principle of common law or otherwise, which is similar,  
15 comparable, or equivalent to section 1542 of the California Civil Code, which provides:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
17 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM  
19 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
20 THE DEBTOR OR RELEASED PARTY.

21 Plaintiff, Defendants and Settlement Class Members understand and acknowledge the  
22 significance of these waivers of California Civil Code section 1542 and any other applicable federal  
23 or state statute, case law, rule or regulation relating to limitations on releases.

24 **4. Other Effects of This Order**

25 No action taken by the Parties, either previously or in connection with the negotiations or  
26 proceedings connected with the Settlement Agreement, shall be deemed or construed to be an  
27 admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment  
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Dated: \_\_\_\_\_, 2019

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Hon. Donna M. Ryu  
U.S. Magistrate Judge

**GENERAL RELEASE OF ALL CLAIMS  
BY  
PLAINTIFF JOSEPH CARLOTTI**

1. All capitalized terms not otherwise defined in this General Release shall have the same meaning ascribed to them in the Class Action Settlement Agreement (“Agreement”).

2. In consideration of the payment of any Incentive Award approved by the Court, which sum shall not exceed Five Thousand Dollars (\$5,000.00), Plaintiff Joseph Carlotti (“Carlotti”), on his own behalf and on behalf of his heirs, executors, administrators, legal representatives, successors, and assigns, hereby completely releases and forever discharges ASUS Computer International and ASUSTeK Computer Inc., and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and future, and all persons acting under, by, through, or in concert with any of them (collectively, the “Released Parties”), from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, liens, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, which Carlotti has, may now have, or has ever had, against the Released Parties, or any of them, that: (a) relate to, are based on, concern, or arise out of the Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the

Laptops that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that Defendants engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; (c) are for breach of contract and breach of the covenant of good faith and fair dealing; (d) are for breach of express warranty and breach of implied warranty; and/or, without limiting the foregoing, (e) are based, in any way, on which the facts and claims asserted in the Litigation (collectively, the “Released Claims”). The Released Claims shall not release Carlotti’s right to enforce the Agreement, of which this General Release is a material part. The General Release shall be accorded the broadest preclusive scope and effect permitted by law against Carlotti and this definition of Released Claims is a material term of this General Release and the Agreement.

2. Waiver of Unknown Claims. Carlotti has read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Carlotti hereby voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, whether known or unknown, against the Released Parties. Accordingly, this General Release includes within its effect claims and causes of action which Carlotti does not know or suspect to exist in his favor at the time of his execution hereof concerning the Released Claims.

3. Carlotti warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

**EXHIBIT E**

3. Carlotti warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the claims described above and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity such claims or any part or portion thereof.

4. Carlotti agrees that he alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of any Incentive Award.

5. Carlotti and the Released Parties expressly agree that any and all force and effectiveness of this General Release is entirely contingent upon final approval of the Agreement. If the Agreement does not become final for any reason, then this General Release shall be null and void *ab initio*. Neither a modification of nor a reversal on appeal of any Incentive Award shall constitute grounds for cancellation or termination of this General Release, however.

Dated: Jul 8, 2019, 2019

JOSEPH CARLOTTI

Signature: Joseph Hiroki Carlotti  
Joseph Hiroki Carlotti (Jul 8, 2019)

Email: carlottij@gmail.com

# **Exhibit B**



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Dated: September 5th, 2019  
Wilmington, Delaware

CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit C**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JACKIE FITZHENRY-RUSSELL, et al.,

Plaintiffs,

v.

KEURIG DR PEPPER INC., et al.,

Defendants.

Case No.17-cv-00564-NC

**ORDER GRANTING FINAL  
APPROVAL OF CLASS  
ACTION SETTLEMENT**

United States District Court  
Northern District of California

**INTRODUCTION**

Plaintiffs Jackie Fitzhenry-Russell and Gegham Margaryan (“Class Representatives”) move for final approval of a proposed class action settlement with Defendants Keurig Dr Pepper Inc., f/k/a Dr Pepper Snapple Group, Inc., and Dr Pepper/Seven Up, Inc. (“Defendants”), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on January 4, 2019 (“Settlement Agreement”). Dkt. No. 327. The Court granted preliminary approval of the Settlement Agreement on January 10, 2019. Dkt. No. 335. On April 10, 2019, the Court held a final approval hearing on the Parties’ Settlement Agreement. *See* Dkt. No. 348.

This case concerns the marketing and labeling of Canada Dry ginger ale (“Products”) from December 28, 2012 to June 26, 2018 (“Class Period”), and it has been vigorously litigated for more than two years. As detailed below, the proposed settlement follows a Missouri state court’s preliminary approval of a similar settlement in a similar class action.<sup>1</sup> A brief summary of the case history is as follows.

This case was filed in California Superior Court in December 2016, and then removed to federal court. Defendants filed two motions to dismiss that Plaintiffs opposed. When the second was lost, Defendants filed a motion to take an interlocutory appeal, which Plaintiffs opposed and the Court denied. During the same time period, two similar cases were filed by other law firms in California causing motion practice consolidating those actions with this one.

After the cases were consolidated, substantial discovery was taken by both parties. Defendants produced to Plaintiffs’ counsel over 200,000 pages of documents. Plaintiffs also conducted three depositions of Defendants’ employees, requested and received written discovery responses from Defendants and several third parties, and conducted expert discovery from five experts on both sides. The parties filed several discovery disputes that led to multiple re-depositions on both sides. *See* Dkt. Nos. 238, 260.

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<sup>1</sup> Final approval of that settlement was granted on April 8, 2019. *See* Dkt. Nos. 346, 347.

United States District Court  
Northern District of California

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1 On June 26, 2018, the Court certified a class to pursue the Made from Real Ginger  
2 Allegations, of “All persons who between December 28, 2012 and [June 26, 2018]  
3 purchased any Canada Dry Ginger Ale products in the state of California” (the “California  
4 Class”). Dkt. No. 199. Plaintiffs’ counsel filed additional cases in Massachusetts and New  
5 York to cover remaining states. The Parties then agreed to mediation with Robert A.  
6 Meyer, Esq., of JAMS in Los Angeles, California. Thereafter, on November 2, 2018, the  
7 Court granted in part and denied in part Defendants’ motion for summary judgment,  
8 finding that the Canada Dry Ginger Ale was literally “Made from Real Ginger.” *See* Dkt.  
9 No. 261. The parties have since been preparing for a jury trial in January 2019, on the  
10 remaining theories of liability: (1) whether Defendants’ “Made from Real Ginger” label  
11 falsely or misleadingly implies that its Products are made from ginger root; and (2)  
12 whether Defendants’ “Made from Real Ginger” label falsely or misleadingly implies that  
13 its Products have health benefits.

14 On the eve of trial in this case, Defendants engaged in mediation with other counsel  
15 who had brought later-filed cases in various state courts, using another JAMS mediator,  
16 retired United States District Judge Wayne Andersen. Once settlement was reached, those  
17 plaintiffs filed a 49-state class action (all states except California) in state court in Missouri  
18 on December 11, and obtained an order finally approving a 49-state settlement on April 8,  
19 2019. *See* Dkt. Nos. 346, 347. In that settlement, Defendants agreed to change the label of  
20 Canada Dry Ginger Ale to remove the challenged “Made from Real Ginger” claim  
21 consistent with the proposal Plaintiffs in this case claim they made during the August  
22 2018, mediation in California. Defendants also agreed to provide refunds to class  
23 members of 40 cents per product unit, up to \$5.20 (or 13 purchases) without proof of  
24 purchase, or \$40.00 (or 100 purchases) with proof of purchase. *See* Dkt. No. 321, Ex. B  
25 ¶ 4.4.

26 After learning of the Missouri Settlement, Plaintiffs communicated with the two  
27 JAMS mediators, Robert Meyer and Wayne Andersen. A series of mediated negotiations  
28 followed, leading to this proposed settlement.

1 Plaintiffs in this action have indicated throughout the case that the primary relief  
2 they sought was an injunction requiring Defendants to change their “Made from Real  
3 Ginger” label. In this Settlement, Defendants are stipulating to a California injunction  
4 requiring that change. Specifically, the Parties agree that Defendants must cease using the  
5 phrase “Made from Real Ginger” in any labeling of any Canada Dry Ginger Ale. *See* Dkt.  
6 No. 325 ¶ 3.1. Defendants must also include on the labels the words “taste,” “extract,” or  
7 “flavor” if they continue to use references to “ginger,” “real ginger,” or “natural ginger” on  
8 their label claims. *See id.* ¶¶ 3.2, 3.3.

9 Plaintiffs also sought to recover on behalf of the California class restitution of the  
10 “premium” price that is attributable solely to the “Made from Real Ginger” claim.  
11 Plaintiffs contended this premium was \$10,778,477.16 for the California Class during the  
12 Class Period, representing an average of \$.09 per product. Plaintiffs’ price premium  
13 calculations were based on a methodology called “conjoint analysis,” which uses a survey  
14 and market simulator to determine the value that consumers place on various product  
15 attributes. Defendants’ experts criticized the analysis on several grounds, offered  
16 competing evidence of the absence of a price premium and suggesting “line pricing” of  
17 soft drinks, and concluded that Plaintiffs suffered no damage.

18 In the Settlement, Defendants agree to pay \$0.40 per Unit purchased, with a  
19 guaranteed minimum payment of \$2.00 for valid Claims. Dkt. No. 325 ¶ 4.4. No Proof of  
20 Purchase is required to obtain a payment for up to 13 Units purchased (*i.e.*, payments up to  
21 \$5.20 per household); while Proof of Purchase is required to obtain a payment of more  
22 than \$5.20 (*i.e.*, for more than 13 Units purchased per household), up to a maximum of 100  
23 Units (*i.e.*, \$40.00 per household). *Id.* Every claim will be paid at least \$2.00 even if there  
24 were fewer than 5 purchases. *Id.* Even if Plaintiffs won at trial, class members would still  
25 need to make a claim in order to receive compensation. Under the Settlement, class  
26 members were required to submit their claims by March 19, 2019. *See* Dkt. No. 335 at 9.

27 As part of the Settlement, Plaintiffs’ attorneys move for an award of up to  
28 \$2,250,000.00 inclusive of fees and costs from Defendant to pay their attorneys’ fees and

1 expenses, plus up to \$5,000 from Defendant as a payment to the Class Representatives.  
 2 *See* Dkt. No. 345 at 17, Dkt. No. 345-2 (“Gutride Decl.”). Plaintiffs’ attorneys will receive  
 3 an additional \$750,000 under a separate agreement if the 49-State Settlement is approved  
 4 and upon dismissal of the Massachusetts and New York cases. *See* Dkt. No. 325, Ex. G at  
 5 4. The total amount of attorneys’ fees and costs (\$3 million) will cover less than 60% of  
 6 Class Counsel’s asserted lodestar, which Class Counsel estimates is \$4,354,524.98. *See*  
 7 Gutride Decl. at 5.

8 Notice was provided as described in the Settlement Agreement and approved in the  
 9 Court’s January 10, 2019, order granting preliminary approval consistent with a notice  
 10 plan designed by Heffler Claims Group, a well-known and experienced class action  
 11 administrator. To provide notice, Heffler directly mailed 953 notices to California  
 12 addresses and emailed 1,989 notices to email addresses provided by the Parties. *See* Dkt.  
 13 No. 345-1 (“Finegan Decl.”) ¶ 16. Heffler also provided the notice of the Settlement as  
 14 required under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b). *Id.* ¶ 17; *see*  
 15 *also id.*, Ex. A. Notice was also published multiple media, including *People Magazine* and  
 16 *Good Housekeeping*, referring Class Members to the settlement website. *Id.* ¶¶ 18–19.  
 17 Heffler advertised the Settlement and claims process on multiple third-part websites (both  
 18 desktop and mobile), including Facebook and Instagram, resulting in approximately 145  
 19 million advertisement impressions targeted at likely members of the Class based on  
 20 demographic data. *Id.* ¶ 20. A press release regarding the Settlement was issued over PR  
 21 Newswire’s US1 Newslines and published by 159 news outlets. *Id.* ¶ 22. Heffler also  
 22 created a dedicated website for the Settlement at [www.cdgasettlement.com](http://www.cdgasettlement.com), which  
 23 received over 1,145,000 page views from 494,994 users. *Id.* ¶¶ 23–24. Finally, Heffler  
 24 engaged in a claim stimulation program to target likely Class Members by featuring the  
 25 settlement in an email sent to [topclassactions.com](http://topclassactions.com)’s subscribers, two broadcast interviews,  
 26 and targeting social media advertisements on health and cooking websites. *Id.* ¶¶ 26–29.

27 Out of an estimated 2,380,000 million California purchasers of the Products, Heffler  
 28 reports that 91,254 claims were filed in connection with the Settlement in this case for a

1 claim rate of approximately 4%.<sup>2</sup> *See id.* ¶¶ 4, 30–33. Heffler also received 318 timely  
 2 opt-out requests from the Settlement. *Id.* ¶ 36. Defendant alone will pay the notice and  
 3 administration costs associated with the Settlement.

4 Defendants deny that there is any factual or legal basis for Plaintiffs' allegations.  
 5 They contend that the labeling of the Products was truthful and non-misleading, and that  
 6 purchasers did not pay a “premium” for the Products as the result of any  
 7 misrepresentations. As explained above, they also challenge the methodology and  
 8 conclusions of Plaintiffs' experts. They also deny that Plaintiffs or any other purchasers  
 9 have suffered injury as a result of the “Made from Real Ginger” representation or are  
 10 entitled to monetary or other relief.

## 11 FINDINGS AND CONCLUSIONS

12 As a threshold matter, this Court has subject matter jurisdiction over Plaintiffs'  
 13 claims under 28 U.S.C. §§ 1332(d) and 1453. All parties have consented to the  
 14 jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). *See* Dkt. Nos. 15, 19.

15 The Court will first discuss final approval of the proposed Settlement. Then, the  
 16 Court will address Class Counsel's request for attorneys' fees, costs, and whether service  
 17 awards should be granted to the named plaintiffs. Finally, the Court will address the  
 18 objections to the Settlement.

### 19 I. Final Approval

20 Federal Rule of Civil Procedure 23(e)(2) requires courts to “approve [class  
 21 settlements] only after a hearing and only on finding that it is fair, reasonable, and  
 22 adequate . . .” *See also Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San*  
 23 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (“the universally applied standard is whether  
 24 the settlement is fundamentally fair, adequate, and reasonable”). To make this evaluation,  
 25 courts in the Ninth Circuit look to the eight *Churchill* factors:

26 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and  
 27

28 <sup>2</sup> 71,016 claims were submitted in connection with the 49-State Settlement. *Id.* ¶ 4.

1 likely duration of further litigation; (3) the risk of maintaining class action  
2 status throughout the trial; (4) the amount offered in settlement; (5) the extent  
3 of discovery completed and the stage of the proceedings; (6) the experience  
4 and view of counsel; (7) the presence of a government participant; and (8) the  
5 reaction of the class members of the proposed settlement.

6 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see also In re Online*  
7 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015). However, the “relative  
8 degree of importance to be attached to any particular factor will depend upon and be  
9 dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique  
10 facts and circumstances presented by each individual case.” *Officers for Justice*, 688 F.2d  
11 at 625. The determination of whether a proposed settlement is fair falls within the sound  
12 discretion of the district court. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th  
13 Cir. 1992).

14 Here, considering the *Churchill* factors, the Court finds that the Settlement is fair,  
15 reasonable, and adequate. First, as to the strength of Plaintiffs’ case, Plaintiffs have  
16 achieved their stated goal in this litigation: alter Defendants’ allegedly misleading Product  
17 label and recover damages for the price premium attributed to that label. Although this  
18 case did not present particularly novel or complex issues, the Court had previously granted  
19 in part and denied in part summary judgment on Plaintiffs’ claims, finding that reasonable  
20 consumers could disagree as to whether Defendants’ label was misleading. *See* Dkt. No.  
21 261. Legal uncertainty tends to favor approval of settlement. *See, e.g., In re Yahoo Mail*  
22 *Litig.*, No. 13-cv-4980-LHK, 2016 WL 4474612, at \*6 (N.D. Cal. Aug. 25, 2016) (citing  
23 *Browning v. Yahoo! Inc.*, No. 04-cv-01463-HRL, 2007 WL 4105971, at \*10 (N.D. Cal.  
24 Nov. 16, 2007)). Thus, this factor weighs in favor of approval.

25 Second, the risk, expense, and duration of further litigation also weighs in favor of  
26 final approval. Although the Settlement was reached on the eve of trial, trial was  
27 anticipated to last over a week. *See* Dkt. No. 271 at 5. The parties would likely have  
28 incurred significant costs to try the case before a jury. *See, e.g.,* Dkt. No. 308 (order

1 appointing additional class counsel for trial purposes). Even after trial, there was a strong  
2 possibility of expensive and time-consuming post-trial motion practice or appeals given  
3 the vigorous litigation history of this case.

4 Third, although there was little risk of maintaining class action status throughout the  
5 trial as the Class consists of a fixed group of consumers, Plaintiffs acknowledge that they  
6 may face “substantial challenges in establishing the amount of class-wide damages.” *See*  
7 *Dkt. No. 327 at 26*. Thus, this factor weighs against approval.

8 Fourth, the Settlement provided both significant injunctive relief and monetary  
9 relief to the Class. At summary judgment, Plaintiffs’ expert opined that the “Made from  
10 Real Ginger” label commanded a price premium of \$0.14 to \$0.28 per unit. *See Dkt. No.*  
11 *237-25 (“Dennis Report”)* ¶¶ 65, 66. The Settlement provides monetary recovery of \$0.40  
12 per Unit with a guaranteed minimum payment of \$2.00 per claim. *See Dkt. No. 325 ¶ 4.4*.  
13 The Settlement also requires Defendants to cease using the allegedly misleading label and  
14 clarify that its Products are made with ginger “taste,” “extract,” or “flavor.” *See id.* ¶¶ 3.2,  
15 3.3. Thus, this factor weighs in favor of approval.

16 Fifth, substantial discovery had been completed and, as stated above, this lawsuit  
17 was on the eve of trial prior to the Settlement. The parties have engaged in two motions to  
18 dismiss, a motion for class certification, a motion to certify the case for interlocutory  
19 appeal, a motion for summary judgment, motions in limine, and numerous discovery  
20 disputes. This factor weighs in favor of approval.

21 Sixth, Class Counsel and Defendants’ counsel are experienced in class action  
22 litigation. Both parties’ counsel have expressed favorable views of the Settlement. Thus,  
23 this factor also weighs in favor of approval.

24 The seventh factor—the presence of a government participant—is inapplicable.  
25 There is no government participant in this lawsuit.

26 Eighth, the reaction of class members to the proposed Settlement is overall positive.  
27 The parties anticipated that 100,000 claims would be filed under the Settlement (*see Dkt.*  
28 *No. 327-5 ¶ 36*)—91,254 claims were actually filed (*see Finegan Decl ¶ 4*). The 4% claim

1 rate was reasonable in light of Class Counsel and Heffler’s efforts to ensure that notice was  
2 adequately provided to the Class. Likewise, the claim rate is within the range of response  
3 rates approved by the Ninth Circuit. *See, e.g., Online DVD-Rental Antitrust*, 779 F.3d at  
4 941 (approving settlement with 3.4% claim rate). Furthermore, Heffler only received 318  
5 requests to opt out of the Settlement and only two objections were made. Thus, the overall  
6 positive reaction of the Class weighs in favor of approval. In sum, the *Churchill* factors  
7 overall weigh in favor of approving the Settlement.

8 Finally, the Court has found no evidence of collusion between Plaintiffs and  
9 Defendants. The Settlement resulted from extensive arms-length, adversarial negotiation  
10 leading up to the eve of trial in a vigorously litigated case. In short, the Court finds that  
11 there was no collusion between the parties. *See In re Bluetooth Headset Prods. Liab.*  
12 *Litig.*, 654 F.3d 935, 947 (9th Cir.2011) (the three factors to determine whether a  
13 settlement is collusive are: “(1) when counsel receive a disproportionate distribution of the  
14 settlement, . . . (2) when the parties negotiate a ‘clear sailing’ arrangement providing for  
15 the payment of attorneys’ fees separate and apart from class funds, . . . and (3) when the  
16 parties arrange for fees not awarded to revert to defendants . . .”).

17 Accordingly, the Court finds that the Settlement is fair, reasonable, and adequate  
18 and GRANTS final approval of the Settlement.

## 19 **II. Attorneys’ Fees and Service Awards**

20 Class Counsel requests \$2,250,000 in attorneys’ fees and costs.<sup>3</sup> *See* Dkt. No. 327 at  
21 34. Of that amount, \$424,879.69 are costs, while the remainder of the requested award  
22 constitute attorneys’ fees. *See* Gutride Decl. ¶ 5. Class Counsel also requests \$5,000 in  
23 service awards to the two named plaintiffs: Jackie Fitzhenry-Russell and Gegham  
24 Margaryan. Dkt. No. 327 at 38. The Court will address each award in turn.

25  
26  
27 <sup>3</sup> As noted previously, Class Counsel are also entitled to \$750,000 in the 49-State  
28 Settlement. *See* Dkt. No. 325, Ex. G at 4. Although this amount is not subject to this  
Court’s approval, the Court will consider that amount in its analysis of the reasonableness  
of the requested attorney’s fees.

1           **A. Attorneys’ Fees and Costs**

2           “[I]n class actions brought under fee-shifting statutes . . . where the relief sought—  
3 and obtained—is often primarily injunctive in nature[,]” courts employ the “lodestar  
4 method” to determine the reasonableness of attorneys’ fees. *Bluetooth Headset Prods.*  
5 *Liab.*, 654 F.3d at 941. The lodestar is calculated by multiplying the number of hours  
6 reasonably expended by the prevailing party by a reasonable hourly rate. *Id.* Then, the  
7 district court may adjust the lodestar by an appropriate multiplier to reflect “reasonableness  
8 factors, including the quality of representation, the benefit obtained for the class, the  
9 complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* at 941–  
10 42 (internal quotation marks and citation omitted).

11           Here, Class Counsel seek \$2,250,000, inclusive of \$424,879.69 in costs. *See*  
12 Gutride Decl. ¶ 5. The Court finds that the requested \$2,250,000 award is reasonable, even  
13 when considered in combination with the potential \$750,000 award under the 49-State  
14 Settlement. Less litigation costs, the total requested attorneys’ fees award equals  
15 \$1,825,120.31. If the \$750,000 award from the 49-State Settlement is included, the total  
16 attorneys’ fee award will equal \$2,575,120.31. Class Counsel estimates their lodestar at  
17 \$4,354,524.98. Gutride Decl. ¶ 5. The lodestar was estimated by multiplying the total  
18 number of hours expended over two years of litigation—5,741.8—by hourly rates ranging  
19 from \$202 for paralegals and clerks to \$894 for the most senior attorneys with 20 years of  
20 experience. *See id.* ¶ 3; *see also* Dkt. No. 327-1 ¶¶ 69–70. This amounts to a downward  
21 lodestar multiplier of 0.42 if the potential award under the 49-State Settlement is  
22 disregarded and a multiplier of 0.59 if it is included. This result is reasonable, particularly  
23 given that the attorneys’ fees award is separate from the monetary relief provided to the  
24 Class. *See, e.g., Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 690–91  
25 (N.D. Cal. 2016) (approving lodestar multiplier of 0.68); *In re Optical Disk Drive Prods.*  
26 *Antitrust Litig.*, No. 10-md-02143-RS, 2016 WL 7364803, at \*9 (N.D. Cal. Dec. 19, 2016)  
27 (approving lodestar multiplier of 1.29); *Covillo v. Specialty’s Café*, No. 11-cv-00594-DMR,  
28 2014 WL 954516, at \*7 (N.D. Cal. Mar. 6, 2014) (approving lodestar multiplier of 0.65).

1           Furthermore, as noted above, Class Counsel achieved a strong result through  
2 skillful litigation and settlement negotiation. Class Counsel successfully navigated two  
3 motions to dismiss, a motion for class certification, a motion for summary judgment, and  
4 numerous discovery disputes. The Settlement provides monetary relief in excess of the  
5 damages estimated by their expert at summary judgment, and also provides injunctive  
6 relief directly targeted at the alleged misconduct at the core of this lawsuit. In short, the  
7 Settlement was a favorable outcome for the Class. Furthermore, although the issues  
8 presented in this lawsuit were not particularly novel or complex, the litigation and  
9 Settlement appear to be the work of experienced attorneys with significant expertise in  
10 consumer class actions.

11           Further supporting the reasonableness of the request, Class Counsels' litigation  
12 expenses are subsumed within the \$2,250,000 award. Class Counsel provided its litigation  
13 costs in an itemized breakdown. *See* Gutride Decl., Ex. A. The Court finds that Class  
14 Counsel's expenditure of \$424,879.69 in litigation costs was reasonable and necessary for  
15 effective representation of the class. *See* Fed. R. Civ. P. 23(h); *Theriot v. Celtic Ins. Co.*,  
16 No. 10-cv-04462-LB, 2011 WL 1522385, at \*7 (N.D. Cal. Apr. 21, 2011) ("Class counsel  
17 are entitled to reimbursement of reasonable out-of-pocket expenses.").

18           Accordingly, the Court approves the requested attorneys' fees and costs award of  
19 \$2,250,000.

#### 20           **B. Service Awards**

21           Class representative awards or service awards "are discretionary . . . and are  
22 intended to compensate class representatives for work done on behalf of the class, to make  
23 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
24 recognize their willingness to act as a private attorney general." *Rodriguez v. West*  
25 *Publishing Corp.*, 563 F.3d 948, 958–959 (9th Cir. 2009). In making the discretionary  
26 determination whether to grant such an award, the district court considers relevant factors  
27 including "the actions the plaintiff has taken to protect the interests of the class, the degree  
28 to which the class has benefitted from those actions, . . . [and] the amount of time and

1 effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d  
2 938, 977 (9th Cir. 2003).

3 Here, Plaintiffs request a service award of \$5,000 for each of the two named  
4 plaintiffs: Jackie Fitzhenry-Russell and Gegham Margaryan. *See* Dkt. No. 327 at 38.  
5 Class Counsel attested to Fitzhenry-Russell and Margaryan’s cooperation and work in this  
6 case, averring that both Plaintiffs responded to discovery requests, preparing for trial, and  
7 actively participating in the litigation. *See* Dkt. No. 327-1 ¶¶ 59–60. Plaintiffs also  
8 entered into a broader release of their claims than other class members. *Id.* ¶ 59.

9 The Court agrees with Class Counsel that Plaintiffs’ efforts merits a service award,  
10 and finds that \$5,000 is reasonable and appropriate compensation for the work and risk  
11 undertaken by spearheading this litigation as class representatives. *See, e.g., In re Mego*  
12 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving \$5,000 to two plaintiff  
13 representatives of 5,400 potential class members in \$1.75 million settlement); *Hopson v.*  
14 *Hanesbrands, Inc.*, No. 08-cv-0844-EDL, 2009 WL 928133, at \*10 (N.D. Cal. Apr. 3,  
15 2009) (approving \$5,000 award to one member of 217-member class from \$408,420  
16 settlement amount).

### 17 **III. Objections to the Settlement**

18 Only two objections were made to the Settlement. *See* Finegan Decl. ¶ 36; *see also*  
19 Dkt. No. 344. One objection was submitted to Heffler by Patrick Sweeney. *See* Finegan  
20 Decl. ¶ 36; *see also id.*, Ex. G (“Sweeney Obj.”). The other objection was filed with the  
21 Court by David Greenstein. *See* Dkt. No. 344 (“Greenstein Obj.”). The Court will address  
22 each objection below.

#### 23 **A. Sweeney Objection**

24 Sweeney timely submitted his objection to Heffler by March 18, 2019. *See*  
25 Sweeney Obj. Sweeney objects on four grounds:

- 26 1. The claims administration process is unreliable;
- 27 2. No timeframe for completing the administration of monetary relief for the  
28 class;

United States District Court  
Northern District of California

- 1           3. Some amount of attorneys’ fees should be withheld to ensure Class
- 2           Counsel’s continued oversight with the settlement; and
- 3           4. Class Counsel’s attorneys’ fees are unreasonably high.

4 *Id.* at 85–87. Sweeney’s objections are procedurally defective and fail on the merits.

5           First, as recognized by other courts in this District, the Court notes that Sweeney is  
6 a serial objector. *See, e.g., In re Yahoo Mail Litig.*, 2016 WL 4474612, at \*8 (“Sweeney is  
7 a serial objector. During Sweeney’s deposition, Sweeney revealed that he had objected in  
8 25 federal cases across the country.”); *In re Carrier IQ, Inc. Consumer Privacy Litig.*, No.  
9 12-md-02330-EMC, 2016 WL 4474366, at \*5 (N.D. Cal. Aug. 25, 2016) (“Mr. Sweeney is  
10 a serial objector, and apparently, he lacks standing as well . . .”); *Brown v. Hain Celestial*  
11 *Grp., Inc.*, No. 11-cv-03082-LB, 2016 WL 631880, at \*10 (N.D. Cal. Feb. 17, 2016)  
12 (noting that Sweeney is a “‘professional’ objector”); *Larsen v. Trader Joe’s Co.*, No. 11-  
13 cv-05188-WHO, 2014 WL 3404531, at \*7 n.4 (N.D. Cal. July 11, 2014) (“[A]ttorney  
14 Patrick Sweeney also has a long history of representing objectors in class action  
15 proceedings.”).

16           In addition, Sweeney’s objections did not follow the proper procedure. In the  
17 Court’s January 10, 2019, order granting preliminary approval of the class settlement, the  
18 Court stated that objections “must satisfy the requirements set forth in the Long Form  
19 Notice and *must be filed with the Clerk of the Court . . . no later than March 19, 2019, or it*  
20 *will be rejected.*” Dkt. No. 335 at 8 (emphasis added). Although Sweeney’s objection  
21 purports to have been filed with the Clerk of the Court (*see* Sweeney Obj. at 88), it was not  
22 filed with the Clerk.

23           Turning to the merits, Sweeney’s objections are unavailing. Sweeney presents no  
24 evidence that the claim administration process is unreliable. Moreover, the Court retains  
25 jurisdiction over this case to ensure that the claims administrations process proceeds as  
26 required. Finally, as explained above, Class Counsel’s requested attorneys’ fees are  
27 reasonable. Accordingly, the Court **OVERRULES** Sweeney’s objections.

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United States District Court  
Northern District of California

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**B. Greenstein Objection**

Greenstein filed his objections with the Court on March 25, 2019. *See* Greenstein Obj. Greenstein objects on three grounds:

- 1. Class Counsel’s attorneys fees are unreasonably high;
- 2. Whether there is a limit on the settlement; and
- 3. Who gets the money left over from the settlement.

*See* Greenstein Obj. at 1. Greenstein’s objections, however, were untimely. The deadline for submitting objections was March 19, 2019. *See* Dkt. No. 335 at 9. Greenstein did not file his objections until March 25, 2019. *See* Greenstein Obj.

On the merits, Greenstein’s objections are also unavailing. As explained above, Class Counsel’s requested attorneys’ fees are reasonable and the fees and costs award represents a significant negative multiplier to Counsel’s lodestar. As for Greenstein’s second objection, the Settlement provides that Defendants may terminate the agreement if more than 1 million valid claims were submitted. *See* Dkt. No. 325 § 13.1. That limit was not reached. *See* Finegan Decl. ¶ 4. Finally, the structure of the Settlement leaves no possibility of leftover money. The Settlement does not create a settlement fund; rather, Defendants agreed to pay out individual claims subject to a cap on total claims. *See* Dkt. No. 325 §§ 4.4, 13.1. Accordingly, the Court **OVERRULES** Sweeney’s objections.

**IV. Conclusion**

**A. Final Approval of Settlement**

For the foregoing reasons, the Court **GRANTS** Plaintiffs’ Motion for Approval of Settlement. The Court **GRANTS** Plaintiffs’ motion for attorneys’ fees, costs, and service awards. Class Counsel is awarded \$2,250,000 in attorneys’ fees and costs, and plaintiffs Jackie Fitzhenry-Russell and Gegham Margaryan are each awarded \$5,000. All valid Claims must be paid according to the terms of and by the deadlines set forth in the Settlement.

**B. Release by Named Plaintiffs**

Named Plaintiffs Jackie Fitzhenry-Russell and Gegham Margaryan, including any

United States District Court  
Northern District of California

1 person claiming rights derivative of named Plaintiffs as their parent, child, heir, guardian,  
2 associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor,  
3 successor, assignee, assigns, representative of any kind, shareholder, partner, director,  
4 employee or affiliate, on the one hand, and Defendants on the other hand, shall mutually  
5 release and forever discharge each other from and shall be forever barred from instituting,  
6 maintaining, or prosecuting:

7 (1) any and all actions, causes of actions, claims, administrative claims,  
8 demands, rights, damages, obligations, suits, debts, liens, penalties, fines, contracts,  
9 agreements, judgments, expenses, costs, liabilities, and causes of action of every nature  
10 and description, whether known or unknown, suspected or unsuspected, existing now or  
11 arising in the future, that actually were, or could have been, asserted in the Action, that (i)  
12 is or are based on any or any alleged act, omission, inadequacy, misstatement,  
13 representation, misrepresentation, fraud, deception, harm, matter, cause, or event  
14 pertaining to the Products that has occurred at any time from the beginning of time up to  
15 and including the entry of the January 10, 2019, order granting preliminary approval (Dkt.  
16 No. 335), (ii) arise from or are related in any way to this case, the Products or the design,  
17 manufacturing, testing, packaging, marketing, advertising, promoting, labeling, or sale of  
18 the Products, or (iii) includes any Canada Dry branded products which contain the terms  
19 “Made From Real Ginger,” including, but not limited to, those listed in the second  
20 amended complaint (Dkt. No. 97) and all Products (the “Released Claims”);

21 (2) without limiting the foregoing, the release specifically extends to any  
22 claims related to the permitted sell-through of existing stock, as provided in the Settlement,  
23 as well as claims that named Plaintiffs do not know or suspect to exist in their favor at the  
24 time that the Settlement, and the release contained herein, becomes effective. Named  
25 Plaintiffs shall, by operation of this Order and Judgment, be deemed to have waived any  
26 and all provisions, rights, and benefits conferred by any law of any state of the United  
27 States, or principle of common law or otherwise, which is similar, comparable, or  
28 equivalent to section 1542 of the California Civil Code, which provides:

United States District Court  
Northern District of California

1           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
2           **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**  
3           **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
4           **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
5           **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

6           Named Plaintiffs understand and acknowledge the significance of these waivers of  
7 California Civil Code section 1542 and any other applicable federal or state statute, case  
8 law, rule or regulation relating to limitations on releases. In connection with such waivers  
9 and relinquishment, named Plaintiffs acknowledge that they are aware that they may  
10 hereafter discover facts in addition to, or different from, those facts that they now know or  
11 believe to be true with respect to the subject matter of the Settlement, but that it is their  
12 intention to release fully, finally, and forever all Released Claims with respect to the  
13 Defendants, and in furtherance of such intention, the release of the Released Claims will be  
14 and remain in effect notwithstanding the discovery or existence of any such additional or  
15 different facts.

16           **C. Release by Class Members**

17           Class Members (except any such person who has filed a proper any timely request  
18 for exclusion from the Class), including any person claiming derivative rights of the Class  
19 Member as the Class Member’s parent, child, heir, guardian, associate, co-owner, attorney,  
20 agent, administrator, executor, devisee, predecessor, successor, assignee, assigns,  
21 representative of any kind, shareholder, partner, director, employee or affiliate, shall  
22 release and forever discharge the Defendants from any and all actions, causes of actions,  
23 claims, administrative claims, demands, rights, damages, obligations, suits, debts, liens,  
24 penalties, fines, contracts, agreements, judgments, expenses, costs, liabilities, and causes of  
25 action of every nature and description, whether known or unknown, suspected or  
26 unsuspected, existing now or arising in the future that were or could have been asserted in  
27 this case regarding the labeling, advertising, or formulation of the Products (the “Released  
28 Claims”).

1 With respect to the released claims set forth above, Class Members shall be deemed  
2 to have waived and relinquished, to the fullest extent permitted by law, the provisions,  
3 rights and benefits conferred by any law of any state of the United States, or principle of  
4 common law or otherwise, which is similar, comparable, or equivalent to section 1542 of  
5 the California Civil Code, which provides:

6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
7 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**  
8 **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
9 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
10 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

11 The Class Members understand and acknowledge the significance of these waivers  
12 of California Civil Code section 1542 and any other applicable federal or state statute, case  
13 law, rule or regulation relating to limitations on releases. In connection with such waivers  
14 and relinquishment, the Class Members acknowledge that they are aware that they may  
15 hereafter discover facts in addition to, or different from, those facts that they now know or  
16 believe to be true with respect to the subject matter of the Settlement, but that it is their  
17 intention to release fully, finally, and forever all Released Claims with respect to the  
18 Defendants, and in furtherance of such intention, the release of the Released Claims will be  
19 and remain in effect notwithstanding the discovery or existence of any such additional or  
20 different facts.

21 The Parties shall be deemed to have agreed that the release set forth herein will be  
22 and may be raised as a complete defense to and will preclude any action or proceeding  
23 based on the Released Claims.

24 However, this order and judgment in this case does not bar or release any claim for  
25 personal injury or property damage arising out of the use of the Products, nor shall  
26 anything in this order and judgment in this case bar any defense, cross-claim, or counter-  
27 claim in any action initiated by any of the Defendants against any Class Member.  
28

**D. Permanent Injunction**

Defendants are hereby ENJOINED AND RESTRAINED beginning on the Effective Date of the Settlement from using the phrase “Made from Real Ginger” in any labeling of any Canada Dry Ginger Ale. Defendants may use any of the following words and phrases: “ginger,” “real ginger,” or “natural ginger,” in combination with one of the following three words: “taste,” “extract,” or “flavor.” Defendants may also use the phrases “ginger extract,” “natural ginger flavor extract,” “natural ginger extract,” “natural ginger flavor,” or “ginger flavor” in the label ingredient line. This injunction does not limit other usages and combinations of other words or phrases.

Defendants and their packaging suppliers, bottlers, distributors, wholesalers and retailers of Canada Dry Ginger Ale Products may sell-through all remaining stock of the existing label and introduce the new label as they sell through existing stock. The sell-through shall not require the withdrawal or destruction of any existing labels or recall of Product. Instead, the new label must begin to be phased into the market on or about the later of 120 days after the Effective Date of the Settlement or June 1, 2019, and the transition to new labels must be completed no later than the later of 120 days after the Effective Date of the Settlement or January 1, 2020 (or any further extension of the United States Food and Drug Administration’s deadline for new nutrition fact panel changes); provided, however, that because Defendants cannot control all sources of old stock in the market, neither Defendants nor any bottler, distributor, wholesaler or retailer would be penalized or be liable for *de minimis* sales of old stock after that date.

**E. Post-Distribution Accounting**

Within 21 days of the distribution of the settlement funds and attorneys’ fees, and not later than 120 days from the date of this order, Class Counsel must file a Post-Distribution Accounting report indicating whether Defendants have complied with the Settlement’s injunctive terms and accounting for the distribution of settlement funds to class members, named plaintiffs, counsel, and the claims administrator.

United States District Court  
Northern District of California

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**F. Retention of Jurisdiction**

The Court retains subject matter jurisdiction over the claims in this action and personal jurisdiction over Defendants and the class members for purposes of enforcing this Court’s final approval order and the terms of the Settlement. This retention of jurisdiction does not affect the finality of the Court’s judgment.

**IT IS SO ORDERED.**

Dated: April 10, 2019

  
\_\_\_\_\_  
NATHANAEL M. COUSINS  
United States Magistrate Judge

# **Exhibit D**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMIE PETTIT, *et al.*,

Plaintiffs,

v.

PROCTER & GAMBLE CO.,

Defendant.

CASE NO: 15-cv-02150-RS

**CLASS ACTION**

~~[PROPOSED]~~ ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND JUDGMENT

DATE:

TIME:

CTRM: 3

JUDGE: Hon. Richard Seeborg

**As Amended by the Court**

1 On April 6, 2015, Jamie Pettit filed a class action complaint against Defendant The  
2 Procter & Gamble Company (“P&G”) in the Superior Court of the State of California, County of  
3 San Francisco, Case No. CGC-15-545175, which was removed to the United States District  
4 Court, Northern District of California, by P&G on May 13, 2015 and assigned case number 3:15-  
5 cv-02150-RS. Pettit alleges in her complaint that P&G marketed and sold its Charmin  
6 Freshmates Flushable Wipes with the representation that they were “flushable,” “septic safe,” and  
7 “safe for sewer and septic systems,” although she alleges the wipes are not suitable for disposal  
8 by flushing down a toilet, are not regarded as flushable by municipal sewage system operators, do  
9 not disperse upon flushing, and routinely damage or clog plumbing pipes, septic systems, and  
10 sewage lines and pumps. Pettit alleges that P&G is liable for (a) violations of the California  
11 Consumers Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*, (b) false advertising in violation  
12 of California Business and Professions Code § 17500 *et seq.*, (c) fraud, deceit, and/or  
13 misrepresentation, (d) negligent misrepresentation, and (e) unfair, unlawful and deceptive trade  
14 practices in violation of California Business and Professions Code § 17200 *et seq.*

15 On July 10, 2015, Plaintiff Karla Ramcharitar filed a class action complaint against P&G  
16 in the United States District Court, Southern District of Ohio, Case No. 1:15-cv-00457-MRB.  
17 Ramcharitar filed an amended complaint, adding new plaintiffs Gloria Wiltrakis and Cheryl  
18 Senko, on January 8, 2016. In their complaint, these plaintiffs make similar allegations as Pettit  
19 about the Charmin Freshmates Flushable Wipes and allege that P&G is liable for (a) breach of  
20 express warranty, (b) negligent design, (c) negligent misrepresentation, (d) failure to warn, (e)  
21 violations of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201 *et*  
22 *seq.*, (f) unjust enrichment, (g) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301  
23 *et seq.*, (h) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, § 805  
24 Ill. Comp. Stat. § 505 (2007), (i) tortious breach of warranty, and (j) fraud.

25 On December 6, 2018, the *Ramcharitar* action was stayed pending resolution of this  
26 settlement. On November 5, 2018, via the agreed filing of an amended complaint, the three  
27 Plaintiffs from the *Ramcharitar* action were added as named Plaintiffs to the *Pettit* case before  
28 this Court, along with thirteen other individuals: Debra Jewell, Susan Hartzfel, Kenneth Luke,

1 Linda Feiges, Willie Perez, Dian Cotton, Marlana Hinkle, Phyllis Jones, Glenn Katz, Eilene  
2 Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance.

3 P&G denies that there is any factual or legal basis for Plaintiffs’ allegations. It contends  
4 that the labeling of the Charmin Freshmates product is truthful and non-misleading, and that  
5 purchasers did not pay a “premium” for the wipes as the result of any misrepresentations. P&G  
6 therefore denies any liability. P&G also denies that Plaintiffs or any other members of the  
7 settlement class have suffered injury or are entitled to monetary or other relief. P&G denies that  
8 this case should have been certified as a class action, except for purposes of settlement.

9 On November 26, 2018, this Court granted preliminary approval of a proposed settlement  
10 between the parties. In the Preliminary Approval Order, *see* Dkt. No. 129, the Court  
11 provisionally certified a Settlement Class of all Persons, other than Excluded Persons, who  
12 purchased the Product in the United States between April 6, 2011 and November 26, 2018,  
13 excluding purchases in the State of New York and purchases for purposes of resale. “Products”  
14 means Charmin Freshmates Flushable Wipes and any other pre-moistened wipes sold under the  
15 Charmin brand name bearing the word “flushable” on the package label. The Court also  
16 approved the procedures for giving notice and the forms of notice. Additionally, in the  
17 Preliminary Approval Order, the Court concluded that the parties’ proposed settlement, as set  
18 forth in the Settlement Agreement, was within the range of possible final approval.

19 Now pending before the Court is Plaintiffs’ Motion for Final Approval of Class Action  
20 Settlement and Application for Attorneys’ Fees, Costs, and Class Representative Payments. In  
21 accordance with the Preliminary Approval Order and the Settlement Agreement, on March 28,  
22 2019, the Court held a duly noticed Fairness Hearing for purposes of: (a) determining the fairness,  
23 adequacy, and reasonableness of the settlement; and (b) ruling upon an application by Class  
24 Counsel for an award of fees, costs, and expenses.

25 The parties and the claim administrator have submitted evidence, which the Court accepts,  
26 showing the following. Approximately 101 million online impressions of the notice were  
27 displayed on a variety of websites (both mobile and desktop) targeted at likely members of the  
28 Settlement Class. These notices appeared on pre-vetted websites and on the social media

1 platforms Facebook and Instagram. Notice also was published in the January 7, 2019 issue of  
2 *People Magazine*, the February 2019 issue of *Good Housekeeping*, and the February 2019 issue  
3 of *National Geographic*. These print publications have a combined circulation of over 10 million  
4 and a combined readership of 90 million. A press release was issued in both English and Spanish  
5 through the PR Newswire network, and articles about the settlement appeared in at least 294  
6 publications. All of the online notices linked to, and the printed notices referred to, the  
7 Settlement Website, which contains a detailed class notice, including the procedures for class  
8 members to exclude themselves or object to the settlement, as well as a copy of the Settlement  
9 Agreement and motion papers filed in connection with the settlement.

10 Approximately 180,000 timely claims were received after excluding claims for purchases  
11 of the Product in the State of New York, which are not covered by this settlement. The claims  
12 administrator is validating the claims that were received.

13 A total of 58 persons filed timely requests to opt out of the Settlement Class.

14 No class members filed objections to the settlement.

15 Having considered all matters submitted to it at the hearing on the motion and otherwise,  
16 including the complete record of this action, and good cause appearing therefore, the Court  
17 hereby grants the Motion for Final Approval of the Settlement and Application for Attorneys'  
18 Fees, Costs, and Class Representative Payments, and finds and concludes as follows:

19 1. The capitalized terms used in this Final Approval Order and Judgment shall have the  
20 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

21 2. The Court has jurisdiction over these cases and over all claims raised therein and all  
22 Parties thereto.

23 **The Settlement Class**

24 3. The Court reaffirms its findings at preliminary approval that the prerequisites of Rule  
25 23 of the Federal Rules of Civil Procedure have been satisfied for certification of the Settlement  
26 Class for settlement purposes because: Settlement Class Members are ascertainable and are so  
27 numerous that joinder of all members is impracticable; there are questions of law and fact  
28 common to the Settlement Class; the claims and defenses of the Class Representatives are typical

1 of the claims and defenses of the Settlement Class they represent; the Class Representatives have  
 2 fairly and adequately protected the interests of the Settlement Class with regard to the claims of  
 3 the Settlement Class they represent; common questions of law and fact predominate over  
 4 questions affecting only individual Settlement Class Members, rendering the Settlement Class  
 5 sufficiently cohesive to warrant a class settlement; and the certification of the Settlement Class is  
 6 superior to individual litigation and/or settlement as a method for the fair and efficient resolution  
 7 of this matter. The Court additionally finds, for the reasons set forth in the motions for  
 8 preliminary and final approval, that despite any differences among the laws of the various states,  
 9 common issues of law and fact predominate, making certification of a nationwide (except New  
 10 York) class appropriate under *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679 (9th Cir.  
 11 2018).<sup>1</sup> In particular, the identical challenged marketing and labeling was provided to all class  
 12 members; the various states require similar elements of proof with respect to the asserted claims  
 13 in the complaints and common issues under those laws predominate; to the extent there are  
 14 differences among the states, the plaintiffs, who are from seventeen different states,<sup>2</sup> have  
 15 demonstrated that similarly situated states can be combined into subclasses and there exist named  
 16 plaintiffs who can prove all elements of all claims for all variations of the state laws.

17 4. For purposes of the settlement and this Final Approval Order and Judgment, the Court  
 18 hereby finally certifies the following Settlement Class: All Persons who purchased the Product in  
 19 the United States between April 6, 2011 and November 26, 2018, excluding purchases in the  
 20 State of New York and purchases for purposes of resale.

21 \_\_\_\_\_  
 22 <sup>1</sup> While the panel concluded in *Hyundai* that district courts must conduct “a rigorous  
 23 predominance analysis under Rule 23(b)(3) to determine whether variations in state consumer  
 24 protection laws” permit or preclude certification of a nationwide class, even in the settlement  
 25 context, that holding is not currently precedential because the Ninth Circuit granted en banc  
 26 review of the panel opinion. *See In re Hyundai & Kia Fuel Econ. Litig.*, 897 F.3d 1003, 1007  
 (9th Cir. 2018). The Court nonetheless concludes that analysis is satisfied here for the reasons  
 that follow.

27 <sup>2</sup> The states of residence are as follows: Alabama (Jewell), Arizona (Hartzfeld), California (Pettit)  
 28 Colorado (Luke), Florida (Ramcharitar), Illinois (Senko), Maryland (Feiges), Massachusetts  
 (Perez), Michigan (Cotton), Missouri (Hinkle), Mississippi (Jones), New Jersey (Katz), Ohio  
 (Wiltrakis), Pennsylvania (Shaffer), Rhode Island (Tippe), Texas (Flores), and West Virginia  
 (Vance).

1           5.     Excluded from the class are (1) Honorable Richard Seeborg, Honorable Sallie Kim  
2 (Mag.), Honorable Timothy S. Black, Robert A. Meyer, and any member of their immediate  
3 families; (2) any government entity; (3) P&G; (4) any entity in which P&G has a controlling  
4 interest; (5) any of P&G’s subsidiaries, parents, affiliates, and officers, directors, employees, legal  
5 representatives, heirs, successors, or assigns; and (6) any persons who timely excluded  
6 themselves from the Settlement Class. The persons listed in Exhibit A to this Order timely  
7 submitted requests to exclude themselves and shall be excluded from the settlement class.

8           6.     For the purpose of this settlement, the Court hereby finally certifies Plaintiffs Jamie  
9 Pettit, Karla Ramcharitar, Gloria Wiltraki, Cheryl Senko, Debra Jewell, Susan Hartzfel, Kenneth  
10 Luke, Linda Feiges, Willie Perez, Dian Cotton, Marlena Hinkle, Phyllis Jones, Glenn  
11 Katz, Eilene Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance as Class Representatives,  
12 and Gutride Safier LLP; Spangenberg, Shibley & Liber, LLP; and Tycko & Zavareei LLP as  
13 Settlement Class Counsel.

14 **Notice Plan**

15           7.     The Parties complied in all material respects with the Notice Plan set forth in the  
16 Settlement Agreement. The Notice Plan provided notice to class members by publication, rather  
17 than directly, but this is appropriate here where the evidence is undisputed that the parties do not  
18 know the names or contact information for class members, as the purchases were made at retail  
19 and P&G is a wholesaler. Under these circumstances, individualized notice was not required or  
20 reasonably practicable. *See, e.g., Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir.  
21 2017) (recognizing that Rule 23 “does not insist on actual notice to all class members;” and  
22 “courts have routinely held that notice by publication in a periodical, on a website, or even at an  
23 appropriate physical location is sufficient to satisfy due process”); *In re Toys R Us-Delaware, Inc.*  
24 *FACTA Litigation*, 295 F.R.D. 438, 449 (C.D. Cal. 2014) (“When the court certifies a nationwide  
25 class of persons whose addresses are unknown, notice by publication is reasonable.”).  
26 Accordingly, the Court finds that the Notice Plan set forth in the Settlement Agreement, and  
27 effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable  
28 under the circumstances and constituted due and sufficient notice to the Settlement Class of the

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pendency of the litigation; the existence and terms of the Settlement Agreement; their rights to make claims, exclude themselves, or object; and the matters to be decided at the Final Approval Hearing. The Court also finds, based on the evidence described above, that the notice plan reached at least 72% of the settlement class members an estimated average of 2.6 times each. Dkt. 130-4, Finegan Decl. ¶ 4. This Notice Plan satisfied the requirements of the United States and California Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law. *See, e.g., Ellison v. Steven Madden, Ltd.*, No. CV115935PSGAGR, 2013 WL 12124432, at \*3 (C.D. Cal. May 7, 2013) (approving a notice plan reaching 77%); *In re: Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at \*9 (N.D. Ohio Sept. 23, 2016) (approving notice plan reaching approximately 77.5 percent of Class Members); *see also Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB, 2015 WL 758094, at \*3 (N.D. Cal. Feb. 20, 2015) (approving similar publication notice plan in class action regarding grocery store item); *Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W KSC, 2014 WL 1670133, at \*5 (S.D. Cal. Apr. 28, 2014) (same for class action regarding shoes).

8. The Court has determined that full opportunity has been given to the members of the Settlement Class to exclude themselves from the settlement, object to the terms of the settlement or to Class Counsel’s request for attorneys’ fees, costs, and expenses and for payments to the Class Representatives, and otherwise participate in the Final Approval Hearing held on March 28, 2019. The Court notes that no Class Member made any submissions or appeared at the final approval hearing for the purpose of objecting to the settlement. Out of an estimated 3.9 million class members, there were 58 opt-outs and no objections. Dkt. # 130-4, Finegan Decl., ¶ 5 n. 3; Dkt. # 132-2, Shaffer Decl. ¶¶ 14-15. In comparison, more than 180,000 timely claims were received, according to the report of the Settlement Administrator. *Id.* ¶ 16. While the Settlement Administrator is still validating the claims received and compiling the precise number of valid claims, the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in

1 comparable settlements.<sup>3</sup> See *Churchill Village, LLC v. General Electric*, 361 F.3d 566, 577 (9th  
2 Cir. 2004) (explaining that a court may infer appropriately that a class action settlement is fair,  
3 adequate, and reasonable when few class members object to it); *Zepeda v. PayPal, Inc.*, 2017 WL  
4 1113293, at \*16 (N.D. Cal. Mar. 24, 2017) (holding “the indisputably low number of objections  
5 and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude that the  
6 reaction to settlement by the class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL  
7 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action  
8 settlement is fair, adequate, and reasonable when few class members object to it.”); see also, e.g.,  
9 *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at \*4 (N.D. Cal. Aug. 25,  
10 2016) (stating that, “[i]n an analysis of settlements where notice relied on media notice  
11 exclusively, the claims rate ranged between 0.002% and 9.378%, **with a median rate of 0.023%**”)  
12 (emphasis added).

13 **Attorneys’ Fees and Costs**

14 9. Class counsel requests a fee award of \$2,150,000 in attorneys’ fees and costs, to be  
15 paid directly by P&G. P&G does not oppose the fee request. The record is undisputed that the  
16 settlement negotiation was overseen by an experienced mediator and that no discussion of fees  
17 began until after all other terms of the settlement had been agreed. See, e.g., *In re Volkswagen*  
18 *“Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, 2017 WL  
19 1047834, at \*4 (N.D. Cal., Mar. 17, 2017 (“Volkswagen’s agreement not to oppose the  
20 application does not evidence collusion and was not obtained by Class Counsel to Class  
21 Members’ detriment.”); *G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at \*13 (N.D. Cal. July 30,  
22 2015) (noting that “[t]he assistance of an experienced mediator in the settlement process confirms  
23 that the settlement is non-collusive”). Thus, the Court finds that the negotiations about fees, costs,  
24 and payments to the Class Representatives could not have had any negative impact on the benefits  
25 made available to class members.

26  
27 \_\_\_\_\_  
28 <sup>3</sup> Class counsel has submitted evidence of the claims rates in similar, small-dollar product labeling cases in this District; in those cases, the rate of claims was less than one percent and 2.8%. Dkt. # 130-1, Ex. 1.

1           10. This Court is required to analyze an attorneys’ fee request based on either (1) the  
2 “lodestar” method or (2) a percentage of the total benefit made available to the settlement class,  
3 including costs, fees, and injunctive relief. *See e.g., Nwabueze v. AT&T, Inc.*, No. C 09-01529 SI,  
4 2014 WL 324262, at \*2-3 (N.D. Cal. Jan. 29, 2014); *Lopez v. Youngblood*, No. CV-F-07-0474  
5 DLB, 2011 WL 10483569, at \*11-12 (E.D. Cal. Sept. 2, 2011); *Browning v. Yahoo! Inc.*, No.  
6 C04-01463 HRL, 2007 WL 4105971, at \*13-14 (N.D. Cal. Nov. 16, 2007). It is not appropriate to  
7 base attorneys’ fees based only on the amount paid to Class Members who submitted claims. *See*  
8 *Williams v. MGM-Pathe Commc’ns, Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (“We conclude that  
9 the district court abused its discretion by basing the fee on the class members’ claims against the  
10 fund rather than on a percentage of the entire fund or on the lodestar.”); *accord Ellsworth v. U.S.*  
11 *Bank, N.A.*, 2015 WL 12952698, at \*4 (N.D. Cal. Sept. 24, 2015) (“precedent requires courts to  
12 award class counsel fees based on the total benefits being made available to class members rather  
13 than the actual amount that is ultimately claimed”) (emphasis added); *Miller v. Ghirardelli*  
14 *Chocolate Co.*, 2015 WL 758094, at \*5 (N.D. Cal. Feb. 20, 2015) (same); *Miller v. Sw. Airlines*  
15 *Co.*, 2014 WL 11369764, at \*2 (N.D. Cal. Mar. 21, 2014) (same). The Court concludes that the  
16 lodestar approach is appropriate for this case, particularly since the primary form of relief is  
17 injunctive. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016) (“The  
18 “lodestar method” is appropriate in class actions where the relief sought and obtained is not easily  
19 monetized, ensuring compensation for counsel who undertake socially beneficial litigation.”).

20           11. Under the lodestar approach, “[t]he lodestar (or touchstone) is produced by  
21 multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate.”  
22 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000); *see also Kelly v. Wengler*,  
23 822 F.3d 1085, 1099 (9th Cir. 2016) (“[A] court calculates the lodestar figure by multiplying the  
24 number of hours reasonably expended on a case by a reasonable hourly rate. A reasonable hourly  
25 rate is ordinarily the ‘prevailing market rate [] in the relevant community.’”) (alteration in  
26 original) (internal citation omitted) (quoting *Perdue v/ Kenny A. ex rel. Winn*, 559 U.S. 542, 551  
27 (2010)). Once the court has fixed the lodestar, it may increase or decrease that amount by  
28 applying a positive or negative “multiplier to take into account a variety of other factors,

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including the quality of the representation, the novelty and complexity of the issues, the results obtained and the contingent risk presented.” *Id.*; *see also Serrano v. Priest* (“*Serrano III*”), 20 Cal. 3d 25, 48-49 (1977); *Ramos v. Countrywide Home Loans, Inc.* 82 Cal. App. 4th 615, 622 (2000); *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1418 (1991) (multipliers are used to compensate counsel for the risk of loss, and to encourage counsel to undertake actions that benefit the public interest). The Court should take into account the value of injunctive relief when assessing fees under the lodestar approach, but need not determine a specific monetary value associated with that relief. *See Hohenberg v. Drey (In re Ferrero Litig.)*, 583 F. App'x 665, 668 (9th Cir. 2014) (“Under the lodestar method, a court need not determine the 'value' of particular injunctive relief because fees are calculated through an assessment of time expended on the litigation . . . the injunctive relief in this case is meaningful and consistent with the relief requested in plaintiffs’ complaint. . . The district court did not abuse its discretion in approving a settlement that compensated counsel under the lodestar method for procuring such relief.”); *Laguna v. Coverall N. Am., Inc.*, 753 F.3d 918, 924 (9th Cir. 2014) *vacated on other grounds*, 772 F.3d 608 (9th Cir. 2014) (“[W]e have never required a district court to assign a monetary value to purely injunctive relief. To the contrary, we have stated that courts cannot ‘judge with confidence the value of the terms of a settlement agreement, especially one in which, as here, the settlement provides for injunctive relief.’”); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (a district court still “should consider the value of the injunctive relief as a ‘relevant circumstance’” in its fee determination).

12. Class Counsel has provided detailed declarations showing that it incurred a lodestar of \$2,574,041.83. Having overseen this litigation for two years, the Court finds that the hours claimed were reasonably worked and that the rates charged are reasonable and commensurate with those charged by attorneys with similar experience who appear in this Court. The Court also finds that Plaintiffs’ counsel represented their clients with skill and diligence and obtained an excellent result for the class, taking into account the possible outcomes at, and risks of proceeding to, trial.

13. Class counsel requests a fee award of \$1,888,388.89 (\$2,150,000 less costs and

1 expenses of \$261,611.11, discussed in the next paragraph) which equals approximately 73% of its  
2 lodestar. Thus, far from any “upward” multiplier, Class Counsel’s requested fee actually results  
3 in a “negative” (more accurately, a “fractional”) multiplier of 0.73. The fact that Plaintiffs’  
4 counsel are seeking substantially less in fees than they reasonably incurred further demonstrates  
5 the reasonableness of the fee award. *See, e.g., Schuchardt v. Law Office of Rory W. Clark*, 314  
6 F.R.D. 673, 690-91 (N.D. Cal. 2016) (holding fractional lodestar multiplier to be indication of  
7 reasonableness of fee request); *Johnson v. Triple Leaf Tea Inc.*, at \*6 (N.D. Cal. Nov. 16, 2015)  
8 (finding where “Class Counsel’s lodestar exceeded the negotiated award” to be “well within the  
9 range courts have allowed in the Ninth Circuit”); *Lusby v. GameStop Inc.*, No. C12-03783 HRL,  
10 2015 WL 1501095, at \*4 (N.D. Cal. Mar. 31, 2015) (“Class Counsel's lodestar . . . result[s] in  
11 a negative multiplier of approximately .54. This is below the range found reasonable by other  
12 courts in California.”); *Covillo v. Specialtys Café*, No. C-11-00594 DMR, 2014 WL 954516, at \*7  
13 (N.D. Cal. Mar. 6, 2014) (“Plaintiffs' requested fee award is approximately 65% of the lodestar,  
14 which means that the requested fee award results in a so-called negative multiplier, suggesting  
15 that the percentage of the fund is reasonable and fair.”); *Walsh v. Kindred Healthcare*, No. C 11-  
16 00050 JSW, 2013 WL 6623224, at \*3 (N.D. Cal. Dec. 16, 2013) (“The Court concludes that, on  
17 the facts of this case, the lodestar is reasonable, especially in light of the fact that Settlement Class  
18 Counsel have applied a negative multiplier, and seek an award that is less than their  
19 base lodestar.”); *Wehlage v. Evergreen at Arvin LLC*, No. 4:10-CV-05839-CW, 2012 WL  
20 4755371, at \*1 (N.D. Cal. Oct. 4, 2012) (“Class Counsel do not seek a multiplier on  
21 their lodestar, and in fact the requested fee is a negative multiplier (-.79). The Court finds that this  
22 award is appropriate here.”); *Lymburner v. U.S. Fin. Funding, Inc.*, No. C-08-00325 EDL, 2012  
23 WL 398816, at \*6 (N.D. Cal. Feb. 7, 2012) (“[T]he negative multiplier in this case supports the  
24 reasonableness of the fee request.”); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW,  
25 2007 WL 4171201, at \*16 (N.D. Cal. Nov. 26, 2007) (“Even if the court accepted the  
26 unadjusted lodestar from plaintiffs' counsel (\$922,884.75), the correlating multiplier of 0.74  
27 would still reflect a negative multiplier, further suggesting that the requested percentage based fee  
28

1 is fair and reasonable.”<sup>4</sup>

2 14. Class counsel also are entitled to reimbursement of reasonable out-of-pocket  
3 expenses. Fed. R. Civ. P. 23(h); see *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding  
4 that attorneys may recover reasonable expenses that would typically be billed to paying clients in  
5 non-contingency matters.); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal.  
6 1995) (approving reasonable costs in class action settlement). Costs compensable under Rule  
7 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R.  
8 Civ. P. 23(h). Here, class counsel seeks reimbursement of \$261,611.11 in litigation expenses and  
9 provide records that document their claim. (Gutride Decl. Ex. 2; Zavareei Decl. Ex. 1; Scott Decl.  
10 Ex. A.) The costs will be paid separately from amounts paid to class members who made valid  
11 claims and will not in any way reduce what is paid to them. No objection has been made to any  
12 cost item or amount. Accordingly, the Court finds that these submissions support an award  
13 \$261,611.11 in costs.

14 **Class Representative Payments**

15 15. The district court must evaluate named plaintiffs’ payments individually, using  
16 relevant factors including “the actions the plaintiff has taken to protect the interests of the class,  
17 the degree to which the class has benefitted from those actions, . . . [and] the amount of time and  
18 effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977  
19 (9th Cir. 2003). “Such awards are discretionary . . . and are intended to compensate class  
20 representatives for work done on behalf of the class, to make up for financial or reputational risk  
21 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a  
22 private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir.  
23 2009). The Ninth Circuit recently emphasized that district courts must “scrutiniz[e] all incentive  
24 awards to determine whether they destroy the adequacy of the class representatives.” *Radcliffe v.*  
25

26 \_\_\_\_\_  
27 <sup>4</sup> The Court is not required to perform a percentage based cross-check and finds it inappropriate  
28 to do so here as the value of a permanent injunction requiring a label change is difficult to value  
monetarily. See *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016)  
(holding that if “classwide benefits are not easily monetized, a cross-check is entirely  
discretionary,” and the district court may make its award based entirely on the lodestar).

1 *Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013). Here, the Plaintiffs came forward  
2 to represent the interests of millions of others, with very little personally to gain, as their  
3 individual alleged damages were very small. Plaintiff Jamie Pettit was deposed and had her home  
4 plumbing inspected, compiled documents, and answered interrogatories in response to discovery  
5 requests, regularly corresponded with counsel telephonically and by email, and took the  
6 substantial risk of litigation which, at a minimum, involves a risk of losing and paying the other  
7 side's costs. And she is signing a broader release than the rest of the class, including releasing her  
8 claims for plumbing damage. Gutride Decl. ¶ 44. Thus, the Court approves a \$5,000 award for  
9 Ms. Pettit.

10         16. Karla Ramcharitar, Gloria Wiltrakis, and Cheryl Senko were responsible for filing the  
11 Ramcharitar action, and each alleges that they incurred expensive home repairs as a result of  
12 using the Wipes. They took the substantial risk of litigation which, at a minimum, involves a risk  
13 of losing and paying the other side's costs, and are signing a broader release than the rest of the  
14 class, including releasing their claims for plumbing damage. This Court approves a \$3,000 award  
15 for these three Plaintiffs.

16         17. Many of the remaining Plaintiffs allege they incurred expensive home repairs as a  
17 result of using the Wipes. All are signing a broader release than the rest of the class, including  
18 releasing their claims for plumbing damage. This Court approves a \$1,000 award for Debra  
19 Jewell, Susan Hartzfel, Kenneth Luke, Linda Feiges, Willie Perez, Dian Cotton, Marlena Hinkle,  
20 Phyllis Jones, Glenn Katz, Eilene Shaffer, Charles Tippe, Sandra Flores, and Roxy Vance.

21 **Final Approval of the Settlement**

22         18. The Court finds that the settlement is in all respects fair, reasonable, and adequate.  
23 The Court therefore finally approves the settlement for all the reasons set forth in the Motion for  
24 Final Approval including, but not limited to, the fact that the Settlement Agreement was the  
25 product of informed, arms-length negotiations between competent, able counsel and conducted  
26 with the oversight and involvement of an independent, well respected, and experienced mediator;  
27 the record was sufficiently developed and complete through meaningful discovery and motion  
28 proceedings to have enabled counsel for the Parties to have adequately evaluated and considered

1 the strengths and weaknesses of their respective positions; the cases involved disputed claims,  
2 and these disputes underscore the uncertainty and risks of the outcome in this matter; the  
3 settlement provides meaningful remedial and monetary benefits for the disputed claims; and the  
4 Parties were represented by highly qualified counsel who, throughout this case, vigorously and  
5 adequately represented their respective parties' interests.

6 19. The Settlement is in the best interests of the Settlement Class in light of the degree of  
7 recovery obtained in relation to the risks faced by the Settlement Class in litigating the class  
8 claims. The relief provided to the Settlement Class Members under the Settlement Agreement is  
9 appropriate as to the individual members of the Settlement Class and to the Settlement Class as a  
10 whole. All requirements of statute, rule, and Constitution necessary to effectuate the settlement  
11 have been met and satisfied. The Parties shall continue to effectuate the Settlement Agreement in  
12 accordance with its terms.

13 20. P&G is enjoined as follows for two years from the Effective Date, as defined in the  
14 Settlement Agreement:

15 (a) On or before 90 days after the Effective Date, P&G will modify the  
16 packaging of the Product to include a statement that "Your satisfaction is  
17 guaranteed. For details of our refund program go to our website at  
18 www.\_\_\_\_\_.com/\_\_\_\_\_." P&G will provide details  
19 regarding the satisfaction guarantee on the Charmin website, including  
20 reasonable purchase price refunds to consumers who are dissatisfied with  
21 the product;

22 (b) On or before 90 days after the Effective Date, P&G will modify the  
23 packaging of the Product to include the statement: "Use only in well-  
24 maintained plumbing systems";

25 (c) As of the Effective Date, the Product will comply with current and  
26 future versions of the INDA Guidelines, including the slosh box test,  
27 provided P&G is a member of INDA and the organization maintains the  
28 same purpose and mission, with a similar membership composition, as of  
the date of the Agreement;

(d) The Product marketed by P&G on or after June 13, 2018, will  
comply with the May 2018 more stringent INDA GD4 test protocols which  
(1) decrease the slosh box test duration from 180 minutes to 60 minutes,  
(2) increase the slosh box test pass-through percentage requirement from  
25% to 60%, and (3) decrease the municipal pump test average power  
increase over baseline from 15% to 5%.

21. For avoidance of doubt, the distribution or sales by P&G of residual Product

1 manufactured prior to the implementation of the labeling changes described in paragraph 20; or  
2 the distribution or sales by third parties of residual Product manufactured prior to the  
3 implementation of the labeling changes described in paragraph 20, shall not constitute a violation  
4 of the injunction issued herein.

5         22. All Valid Claims shall be paid according to the terms of and by the deadlines set forth  
6 in the Settlement Agreement.

7         23. By operation of this Final Approval Order and Judgment, Plaintiffs on the one hand,  
8 and the Released Parties on the other hand, shall have unconditionally, completely, and  
9 irrevocably released and forever discharged each other from and shall be forever barred from  
10 instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of  
11 action, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or  
12 otherwise, known or unknown, that actually were, or could have been, asserted in the Included  
13 Actions, based upon any violation of any state or federal statutory or common law or regulation,  
14 and any claim arising directly or indirectly out of, or in any way relating to, the claims that  
15 actually were, or could have been, asserted in the Included Actions, that Plaintiffs, on the one  
16 hand, and P&G, on the other hand, have had in the past, or now have, related in any manner to the  
17 Released Parties' products, services or business affairs; and (2) any and all other claims, liens,  
18 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,  
19 whether legal or equitable or otherwise, known or unknown, that Plaintiffs, on the one hand, and  
20 P&G, on the other hand, have had in the past or now have, related in any manner to any and all  
21 Released Parties' products, services or business affairs, or otherwise.

22         24. By operation of this Final Approval Order and Judgment, Settlement Class Members  
23 shall have released and forever discharged the Released Parties from any and all claims, liens,  
24 demands, actions, causes of action, obligations, damages or liabilities of any nature whatsoever,  
25 known or unknown, whether arising under any international, federal, state or local statute,  
26 ordinance, common law, regulation, principle of equity or otherwise, that were, or could have  
27 been, asserted in the Included Actions regarding (i) the flushability or (ii) the safety for sewer and  
28 septic of the Product and statements concerning the Product's (i) flushability or (ii) safety for

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sewer and septic, except that there shall be no release of claims for personal injury or property damage allegedly caused by use of the Product, nor any release of claims for purchases made in New York.

25. Plaintiffs and P&G shall, by operation of this Final Approval Order and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of this Final Approval Order and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth in paragraph 15 of this Order.

Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

26. Nothing herein shall bar any action or claim to enforce the terms of the Settlement Agreement.

27. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with the Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or entities released under this Final Approval Order and Judgment and the Settlement Agreement, or (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any of the persons or entities released under this Final Approval Order and Judgment and the Settlement Agreement, in any proceeding in any court, administrative agency, or other

1 tribunal. P&G’s agreement not to oppose the entry of this Final Approval Order and Judgment  
2 shall not be construed as an admission or concession by P&G that class certification was  
3 appropriate in the cases or would be appropriate in any other action.

4 28. For the reasons stated ~~in the separate Order on Class Counsel’s application for an~~  
5 ~~award of attorneys’ fees, costs, expenses and class representative payments,~~ the following  
6 amounts shall be paid by P&G:

- 7 a. Fees, costs, and expenses to Class Counsel: \$2,150,000.00
- 8 b. Class representative payments
  - 9 i. to Plaintiff Jamie Pettit: \$5,000.00
  - 10 ii. to Plaintiff Karla Ramcharitar: \$3,000.00
  - 11 iii. to Plaintiff Gloria Wiltrakis: \$3,000.00
  - 12 iv. to Plaintiff Cheryl Senko: \$3,000.00
  - 13 v. to Plaintiff Debra Jewell: \$1,000.00
  - 14 vi. to Plaintiff Susan Hartzfel: \$1,000.00
  - 15 vii. to Plaintiff Kenneth Luke: \$1,000.00
  - 16 viii. to Plaintiff Linda Feiges: \$1,000.00
  - 17 ix. to Plaintiff Willie Perez: \$1,000.00
  - 18 x. to Plaintiff Dian Cotton: \$1,000.00
  - 19 xi. to Plaintiff Marlana Hinkle: \$1,000.00
  - 20 xii. to Plaintiff Phyllis Jones: \$1,000.00
  - 21 xiii. to Plaintiff Glen Katz: \$1,000.00
  - 22 xiv. to Plaintiff Eilene Shaffer: \$1,000.00
  - 23 xv. to Plaintiff Charles Tippe: \$1,000.00
  - 24 xvi. to Plaintiff Sandra Flores: \$1,000.00
  - 25 xvii. to Plaintiff Roxy Vance: \$1,000.00

26 Such amounts shall be paid according to the terms of the Settlement Agreement.

27 29. The Court also has reviewed this District’s Procedural Guidance for Class Action  
28 Settlements, which were adopted after the settlement was reached but with which the parties have

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nevertheless substantially complied. In particular, the Court finds that the information provided with respect to notice and the claims rate as well as the injunctive relief is sufficient to assure this Court that there has been no disproportional benefit to the attorneys. The Court further finds that Class Counsel has provided all the necessary information to support their fee award, including detailed declarations describing the work performed by the various attorneys and firms involved. Finally, the Class Representative Payments are supported by the fact that the plaintiffs were involved in the litigation and executed broader releases, including releases for personal property damage.

30. In accordance with the District’s Procedural Guidance for Class Action Settlements, the parties shall file a Post-Distribution Accounting report within 21 days of the distribution of the settlement funds and attorneys’ fees, and not later than 120 days from the date of this order.

31. This order shall constitute a final judgment binding the parties with respect to this case.

32. Without affecting the finality of the judgment hereby entered, the Court reserves jurisdiction over the interpretation, implementation and enforcement of the Settlement Agreement. In the event the Effective Date does not occur in accordance with the terms of the Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null and void and shall be vacated, and in such event, all orders and judgments entered and releases delivered in connection herewith shall be null and void and the Parties shall be returned to their respective positions *ex ante*.

33. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

There is no just reason for delay in the entry of this Judgment, and immediate entry by the Clerk of the Court is expressly directed.

**IT IS SO ORDERED** this 28th day of March, 2019.



Honorable Richard Seeborg  
United States District Court Judge

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# **Exhibit E**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

SCOTT KOLLER, CAROLYN  
BISSONETTE, CECE CASTORO,  
STEPHEN FREIMAN, DIANE GIBBS,  
DARLENE WILLIAMS, and ROBERT  
GLIDEWELL, on behalf of themselves, the  
general public and those similarly situated,

Plaintiffs,

v.

MED FOODS, INC., and DEOLEO USA,  
INC.

Defendants.

CASE NO. 3:14-CV-2400-RS

ORDER GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND  
JUDGMENT

Hon. Judge Richard Seeborg

1 In this case, Plaintiffs alleged that Defendant had marketed and sold its Bertolli brand of  
2 olive oil with the representation “Imported from Italy,” although most of the oil was extracted  
3 from olives grown in countries other than Italy. Plaintiffs also alleged that Defendant had  
4 marketed and sold a subset of the Bertolli brand olive oil with the representation “Extra Virgin,”  
5 even though Defendant’s procurement, bottling, and distribution practices did not adequately  
6 ensure that the oil would meet the “extra virgin” standard through the date of retail sale or the  
7 “best by” date on the bottles. Plaintiffs alleged that Defendant’s labeling and marketing of the oil  
8 violated the Tariff Act of 1930, as amended, 19 U.S.C. § 1304, and its implementing regulations,  
9 19 C.F.R. § 134.46; the Food Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, and its  
10 implementing regulations, 21 C.F.R. § 101.18 *et seq.*; the U.S. Department of Agriculture  
11 regulations regarding Olive Oil and Olive-Pomace Oil, 75 Fed. Reg. 22363 (Apr. 28, 2010).  
12 Plaintiffs, who are residents of Arkansas, California, Florida, New Jersey, New York, and North  
13 Carolina, alleged that these federal violations also violated various state laws, including health  
14 and safety codes and consumer laws, and constituted false advertising, unfair business practices,  
15 breach of contract, breach of the covenant of good faith and fair dealing, and fraud, deceit, and/or  
16 misrepresentation. The allegations in this paragraph are referred to as the “Allegations.”

17 Defendant denies that there is any factual or legal basis for Plaintiffs’ Allegations. It  
18 contends that the labeling of the Products was truthful and non-misleading, and that purchasers  
19 did not pay a “premium” for the Products as the result of any misrepresentations. Defendant  
20 therefore denies any liability. It also denies that Plaintiffs or any other members of the settlement  
21 class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that  
22 this case should have been certified as a nationwide class action, except for purposes of  
23 settlement.

24 On April 16, 2018 (Dkt. 152) (as further set forth in an additional order on April 24, 2018  
25 (Dkt. 155)), this Court granted preliminary approval of a proposed class action settlement  
26 between the parties. In the Preliminary Approval Order, the Court provisionally certified a  
27 Settlement Class of all persons, other than Excluded Persons, who, (i) between May 23, 2010 and  
28 April 16, 2018, purchased, in the United States, any of the Extra Virgin Olive Oil Products and/or

1 (ii) between May 23, 2010 and December 31, 2015, purchased, in the United States, any of the  
2 Other Olive Oil Products. The Court also approved the procedures for giving notice and the forms  
3 of notice. Additionally, in the Preliminary Approval Order, the Court concluded that the parties'  
4 proposed settlement, as set forth in the Stipulation of Settlement, was within the range of possible  
5 final approval.

6 Now pending before the Court is the parties' Motion for Final Approval of Class Action  
7 Settlement, and Plaintiffs' Motion for an Award of Attorneys' Fees, Costs, and Incentive Awards.  
8 In accordance with the Preliminary Approval Order and the Settlement Agreement, on August 9,  
9 2018, the Court held a duly noticed Fairness Hearing for purposes of: (a) determining the fairness,  
10 adequacy, and reasonableness of the settlement; and (b) ruling upon an application by Class  
11 Counsel for a Fee and Expense Award and Plaintiffs' Incentive Awards.

12 The parties and the claim administrator have submitted evidence, which the Court accepts,  
13 showing the following. Over 58 million advertisement impressions were displayed on a variety of  
14 websites (both mobile and desktop) targeted at likely members of the Settlement Class. Notice  
15 also was published once a week for four successive weeks in the San Francisco Chronicle and  
16 was published once in People Magazine. These print publications have a combined circulation of  
17 over 3.6 million, and because of the high reader-per-copy ratio of People Magazine, over 7.3  
18 million members of the Target Audience were exposed to the publication notice in People  
19 Magazine. A press release was issued through the PR News Wire's network, which is distributed  
20 to more than 10,000 media outlets, and articles about the settlement appeared in at least 228  
21 publications. All of the online notices linked to, and the printed notices referred to, the Settlement  
22 Website, which contains a detailed class notice, including the procedures for class members to  
23 exclude themselves or object to the settlement, as well as a copy of the Settlement Agreement and  
24 motion papers filed in connection with the settlement.

25 A total of 60 persons filed timely requests to opt out of the Settlement Class.

26 In addition, two persons filed objections to the settlement.

27 Having considered all matters submitted to the Court at the hearing on the motion and  
28 otherwise, including the complete record of this action, and good cause appearing therefore, the

1 Court hereby grants Plaintiffs' Motion for Final Approval and Motion for an Award of Attorney's  
2 Fees, Costs, and Incentive Awards, and finds and concludes as follows:

3 1. The capitalized terms used in this Final Approval Order and Judgment shall have the  
4 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

5 2. The Court has jurisdiction over this case and over all claims raised therein and all  
6 Parties thereto.

7 3. The Court finds that the prerequisites of Rule 23 of the Federal Rules of Civil  
8 Procedure have been satisfied for certification of the Settlement Class for settlement purposes  
9 because: Settlement Class Members are ascertainable and are so numerous that joinder of all  
10 members is impracticable; there are questions of law and fact common to the Settlement Class;  
11 the claims and defenses of the Class Representatives are typical of the claims and defenses of the  
12 Settlement Class they represent; the Class Representatives have fairly and adequately protected  
13 the interests of the Settlement Class with regard to the claims of the Settlement Class they  
14 represent; common questions of law and fact predominate over questions affecting only  
15 individual Settlement Class Members, rendering the Settlement Class sufficiently cohesive to  
16 warrant a class settlement; and the certification of the Settlement Class is superior to individual  
17 litigation and/or settlement as a method for the fair and efficient resolution of this matter. The  
18 Court additionally finds, for the reasons set forth in the parties' motions for preliminary and final  
19 approval, that despite any differences among the laws of the various states, common issues of law  
20 and fact predominate, making certification of a nationwide class appropriate. In particular, the  
21 identical challenged marketing and labelling was provided to all class members; the various states  
22 require similar elements of proof with respect to the asserted claims in the Second Amended  
23 Complaint and common issues under those laws predominate; to the extent there are differences  
24 among the states, plaintiffs have demonstrated that similarly situated states can be combined into  
25 subclasses and there exist named plaintiffs in the Second Amended Complaint who can represent  
26 each such subclass.

27 4. For purposes of the settlement and this Final Approval Order and Judgment, the Court  
28 hereby finally certifies the following Settlement Class: All persons who (i) between May 23, 2010

1 and April 16, 2018, purchased, in the United States, any of the Extra Virgin Olive Oil Products  
2 and/or (ii) between May 23, 2010 and December 31, 2015, purchased, in the United States, any of  
3 the Other Olive Oil Products. Purchases for purposes of resale are excluded. “Extra Virgin Olive  
4 Oil Product” means bottles of Bertolli Extra Virgin olive oil, except for those bearing labels  
5 “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil Product” means the liquid  
6 Bertolli Extra Light or Classico olive oil products.

7 5. Excluded from the class are (1) the Honorable Richard Seeborg; the Honorable Joseph  
8 C. Spero; the Honorable Edward Infante (ret.); (2) any member of their immediate families;  
9 (3) any government entity, (4) Defendant; (5) any entity in which Defendant has a controlling  
10 interest; (6) any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees,  
11 legal representatives, heirs, successors, or assigns; and (7) counsel for the Parties. The persons  
12 listed in Exhibit A to this Order timely submitted requests to exclude themselves and shall be  
13 excluded from the settlement class.

14 6. For the purpose of this settlement, the Court hereby finally certifies Plaintiffs Scott  
15 Koller, Carolyn Bissonnette, Cece Castoro, Diane Gibbs, Darlene Williams, Robert Glidewell,  
16 and Stephen Freiman as Class Representatives, and Gutride Safier LLP and Tycko & Zavareei  
17 LLP as Settlement Class Counsel.

18 7. The Parties complied in all material respects with the Notice Plan set forth in the  
19 Settlement Agreement. The Court finds that the Notice Plan set forth in the Settlement  
20 Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best  
21 notice practicable under the circumstances and constituted due and sufficient notice to the  
22 Settlement Class of the pendency of the Litigation; the existence and terms of the Settlement  
23 Agreement; their rights to make claims, exclude themselves, or object; and the matters to be  
24 decided at the Final Approval Hearing. Further, the Notice Plan satisfied the requirements of the  
25 United States and California Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and  
26 any other applicable law.

27 8. The Court has determined that full opportunity has been given to the members of the  
28 Settlement Class to exclude themselves from the settlement, object to the terms of the settlement

1 or to Class Counsel’s request for attorneys’ fees and expenses and the Class Representatives’  
2 incentive payments, and/or otherwise participate in the Final Approval Hearing held on August 9,  
3 2018.

4 9. The Court finds that the settlement is in all respects fair, reasonable, and adequate.  
5 The Court therefore finally approves the settlement for all the reasons set forth in the Motion for  
6 Final Approval including, but not limited to, the fact that the Settlement Agreement was the  
7 product of informed, arms-length negotiations between competent, able counsel and conducted  
8 with the oversight and involvement of an independent, well respected, and experienced mediator;  
9 the record was sufficiently developed and complete through meaningful discovery and motion  
10 proceedings to have enabled counsel for the Parties to have adequately evaluated and considered  
11 the strengths and weaknesses of their respective positions; the Litigation involved disputed  
12 claims, and this dispute underscores the uncertainty and risks of the outcome in this matter; the  
13 settlement provides meaningful remedial and monetary benefits for the disputed claims; and the  
14 Parties were represented by highly qualified counsel who, throughout this case, vigorously and  
15 adequately represented their respective parties’ interests.

16 10. The Settlement is in the best interests of the Settlement Class in light of the degree of  
17 recovery obtained in relation to the risks faced by the Settlement Class in litigating the class  
18 claims. The relief provided to the Settlement Class Members under the Settlement Agreement is  
19 appropriate as to the individual members of the Settlement Class and to the Settlement Class as a  
20 whole. All requirements of statute, rule, and Constitution necessary to effectuate the settlement  
21 have been met and satisfied. The Parties shall continue to effectuate the Settlement Agreement in  
22 accordance with its terms.

23 11. For a period beginning on the Effective Date and continuing for three years thereafter,  
24 Deoleo USA, Inc. is enjoined as follows:

- 25 a. Not to use the phrases “Imported from Italy,” “Made in Italy,” “Product of  
26 Italy,” or a phrase suggesting that olive oil in a bottle originates exclusively  
27 from olives grown in Italy on the labeling of any olive oil product sold in the  
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United States, unless the product so labeled is composed entirely of oil from olives grown and pressed in Italy.

- b. If Defendant uses the phrase “Extra Virgin” or the term “EVOO” on the product label of any olive oil, it must do all of the following: (i) package the olive oil in a non-transparent (UV filtering) container, e.g., a green or brown glass container; (ii) include a “best by” or “use by” date not later than sixteen months after the date of bottling; (iii) include the date(s) of harvest of the olives used to manufacture the olive oil in proximity to the “best by” date; and (iv) implement the following chemical parameter testing requirements set forth under “Target Limit” at the time of bottling (which are stricter than the current limits set forth in the preceding column under “IOC Limit”):

Parameter	IOC Limit	Target Limit
Acidity (%)	≤ 0.8	≤ 0.5
Peroxide value (mEq )2/kg)	≤ 20	≤ 10
K270	≤ 0.22	≤ 0.15
K232	≤ 2.50	≤ 2.1
Delta-K	≤ 0.01	≤ 0.005

12. By operation of this Final Approval Order and Judgment, Plaintiffs on the one hand, and the Released Parties on the other hand, shall have unconditionally, completely, and irrevocably released and forever discharged each other from and shall be forever barred from instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation, whether based upon any violation of any state or federal statute or common law or regulation or otherwise, or arise directly or indirectly out of, or in any way relate to, the allegations, claims, or contentions that Plaintiffs, on the one hand, and Defendant, on the other hand, have had in the past, or now have, related in any manner to the Defendant’s products, services or business affairs; and (2) any and all other claims, liens, demands, actions, causes of

1 action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal  
2 or equitable or otherwise, known or unknown, that Plaintiffs, on the one hand, and Defendant, on  
3 the other hand, have had in the past or now have, related in any manner to any and all Released  
4 Parties' products, services or business affairs, or otherwise.

5 13. By operation of this Final Approval Order and Judgment, Settlement Class Members  
6 shall have unconditionally, completely, and irrevocably released and discharged the Released  
7 Parties from the Released Claims, including any and all claims, liens, demands, actions, causes of  
8 action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal  
9 or equitable or otherwise, known or unknown, whether arising under any international, federal,  
10 state or local statute, ordinance, common law, regulation, principle of equity or otherwise, that  
11 that were, or could have been, asserted in the Litigation and that arise out of or relate to the  
12 allegations or claims that the Products were marketed or labeled as "Imported From Italy" and/or  
13 "Extra Virgin," except that there shall be no release of (1) claims for personal injury allegedly  
14 arising out of use of the Products or (2) any defense, cross-claim or counter-claim in any action  
15 initiated by any of the Released Parties against any Settlement Class Member.

16 14. Plaintiffs and Defendant shall, by operation of this Final Approval Order and  
17 Judgment, be deemed to have waived the provisions, rights, and benefits of California Civil Code  
18 § 1542, and any similar law of any state or territory of the United States or principle of common  
19 law. In addition, Settlement Class Members shall, by operation of this Final Approval Order and  
20 Judgment, be deemed to have waived the provisions, rights, and benefits of California Civil Code  
21 § 1542, and any similar law of any state or territory of the United States or principle of common  
22 law, but only with respect to the matters released as set forth in paragraph 13 of this Order.

23 Section 1542 provides:

24 A general release does not extend to claims which the creditor does not know or suspect to  
25 exist in his or her favor at the time of executing the release, which if known by him or her  
26 must have materially affected his or her settlement with the debtor.

27 15. Nothing herein shall bar any action or claim to enforce the terms of the Settlement  
28 Agreement.

1           16. No action taken by the Parties, either previously or in connection with the  
2 negotiations or proceedings connected with the Settlement Agreement, shall be deemed or  
3 construed to be an admission of the truth or falsity of any claims or defenses heretofore made or  
4 an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind  
5 whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or  
6 document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be  
7 or may be used as an admission of, or evidence of, the validity of any claim made by the  
8 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or  
9 entities released under this Final Approval Order and Judgment and the Settlement Agreement, or  
10 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or  
11 omission of any of the persons or entities released under this Final Approval Order and Judgment  
12 and the Settlement Agreement, in any proceeding in any court, administrative agency, or other  
13 tribunal. Defendant's agreement not to oppose the entry of this Final Approval Order and  
14 Judgment shall not be construed as an admission or concession by Defendant that class  
15 certification was appropriate in the Litigation or would be appropriate in any other action.

16           17. The Claim Administrator has submitted a declaration with its expenses incurred as of  
17 July 26, 2018, in the amount of \$432,700, subject to supplementation of any expenses incurred  
18 through the completion of its work. The Court finds that such amounts are reasonable and  
19 authorizes payment, in full, from the Settlement Fund.

20           18. For the reasons stated herein, the following amounts shall also be paid by from the  
21 Settlement Fund, subject to additional supplementation and approval by this Court of any  
22 expenses incurred by Class Counsel not included in declarations filed with the Court to date:

- 23           a. Fees and expenses to Class Counsel: \$2,100,000
- 24           b. Expenses to Class Counsel: \$150,319.73
- 25           c. Class representative payments
  - 26               i. to Plaintiff Scott Koller: \$5,000
  - 27               ii. to Plaintiff Carolyn Bissonnette: \$1,000
  - 28               iii. to Plaintiff Cece Castoro: \$1,000

- iv. to Plaintiff Diane Gibbs: \$1,000
- v. to Plaintiff Darlene Williams: \$1,000
- vi. to Plaintiff Robert Glidewell: \$1,000
- vii. to Plaintiff Stephen Freiman: \$1,000.

Such amounts shall be paid according to the terms of the Settlement Agreement. Except as provided in this Order, Plaintiffs shall take nothing against Defendant by their Complaint.

19. If after payment of the amounts set forth in paragraphs 17 and 18, as well as the payment of Valid Claims (including pro-rata increase of such payment) as set forth in Part III of the Settlement Agreement, money remains in the Settlement Fund, that remainder shall be paid, pursuant to the *cy pres* doctrine, in equal shares to Consumers Union, Yonkers, NY; and Center for Food Safety, Washington, DC. The *cy pres* doctrine is appropriate for a case like this one, where class members who did not make claims cannot be easily located or identified, in order to “put the unclaimed fund to its next best compensation use, *e.g.*, for the aggregate, indirect, prospective benefit of the class.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) (citing *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir.2007)). A *cy pres* remedy must “bear[] a substantial nexus to the interests of class members.” *Lane v. Facebook*, 696 F.3d 811, 821 (9th Cir. 2012) *cert. denied*, 134 S. Ct. 8 (U.S. 2013). In evaluating a *cy pres* component of a class action settlement, courts look to factors set forth in *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). Specifically, the *cy pres* remedy “must account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the interests of the silent class members.” 663 F.3d at 1036 (citing *Six Mexican Workers*, 904 F.2d at 1307). The parties have submitted evidence, which the Court accepts, showing the *cy pres* recipients to be appropriate for the following reasons:

a. Consumers Union is a non-profit organization with a mission “to work for a fair, just and safe marketplace for all consumers and to empower consumers to protect themselves.” It publishes Consumer Reports magazine and website ([www.consumerreports.org](http://www.consumerreports.org)), as well as The Consumerist Blog ([www.consumerist.com](http://www.consumerist.com)), both of which provide information of interest to consumers, such as product reviews and information about false advertising scams.

1 Consumers Union is also active in educating consumers about food labeling. It operates the  
2 website Not In My Food ([www.notinmyfood.org](http://www.notinmyfood.org)), which provides information to consumers  
3 about the presence of genetically modified organisms (GMOs) and other controversial ingredients  
4 in food, and it lobbies for better food labeling laws. In addition, in September 2012, Consumer  
5 Union published an article in Consumer Reports entitled “How to Find the Best Extra-Virgin  
6 Olive Oil.” (See [https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-](https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-extra-virgin-olive-oil/index.htm)  
7 [extra-virgin-olive-oil/index.htm](https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-extra-virgin-olive-oil/index.htm), last accessed March 5, 2018.) Consumers Union has also been  
8 approved as a *cy pres* recipient in numerous false advertising lawsuits.

9           b. The Center for Food Safety is a non-profit organization that states it “is a  
10 national non-profit public interest and environmental advocacy organization working to protect  
11 human health and the environment by curbing the use of harmful food production technologies  
12 and by promoting organic and other forms of sustainable agriculture. CFS also educates  
13 consumers concerning the definition of organic food and products.

14           20. The Court has considered the objections of Justin Ference and Wanda Cochran to the  
15 Settlement, and finds that neither objection is well taken, nor does either objection affect the  
16 Court’s analysis or alter the Court’s final approval determination.

17           21. Ference references the class certification analysis in *In re Hyundai and Kia Fuel*  
18 *Econ. Litig.*, 881 F.3d 679, 690-691 (9th Cir. 2018), but this Court previously addressed the  
19 impact of that case in its order granting preliminary approval (Dkt. 155 at 3), and Ference offers  
20 no explanation for why that decision was incorrect. Moreover, as Ference asserts that a  
21 nationwide class cannot be certified, it is his burden to identify the material variations in state  
22 laws that “make a difference in this litigation.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581,  
23 591 (9th Cir. 2012). Ference has not done so. Thus, final certification of the Settlement Classes  
24 remains appropriate, and his objection on those grounds is overruled.

25           22. The Court additionally rejects Ference’s arguments regarding the propriety of  
26 distributing funds via *cy pres*. As discussed above, the proposed *cy pres* recipients are  
27 appropriate, and a *cy pres* distribution consisting of funds from uncashed checks is proper. See  
28 *Zepeda*, 2015 WL 6746913, at \*3 (approving *cy pres* distribution of leftover funds from uncashed

1 checks); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 679 (N.D. Cal. 2016)  
2 (same); *McCabe v. Six Continents Hotels, Inc.*, No. 12-cv-04818-NC, 2016 WL 491332, at \*3  
3 (N.D. Cal. Feb. 8, 2016) (same). Ference offers no evidence to support his assertion that the  
4 “proposed cy pres beneficiaries are not aligned with the underlying claims of the class action.”

5 23. Ference and Cochran’s objections to the fee request are rejected. Upward adjustment  
6 to the 25% “benchmark” is fully warranted here, where plaintiffs’ obtained class certification and  
7 where there is injunctive relief that provides substantial benefits to the class, even though the  
8 monetary value of that relief may not be easily quantified. *See Lane v. Facebook, Inc.*, 696 F.3d  
9 811, 826 (9th Cir. 2012) (noting that plaintiffs’ attorneys should be compensated for having  
10 obtained a “judicially-enforceable agreement” requiring the defendant to change its practices).  
11 Additionally, review of plaintiffs’ claimed lodestar as a “cross-check” on the reasonableness of  
12 the percentage-based fee award supports the 30% figure.

13 24. In addition, the Court rejects Ference’s argument that Class Counsel has not provided  
14 sufficient information regarding its billing records. The level of information provided by Class  
15 Counsel with respect to their work performed in this case and commensurate hourly rates is  
16 sufficiently detailed in order for the Court to evaluate their reasonableness for purposes of  
17 performing the “cross-check.” In sum, the fee request is reasonable under all the circumstances,  
18 including the contingent nature of this case, the risks taken by Class Counsel, and the results  
19 obtained.

20 25. Ference’s objection that the value of notice and settlement administration costs should  
21 not be included in the value of relief to the class is overruled. While the Court likely has  
22 discretion to exclude those costs, it is not obliged to do so. *See In re Online DVD-Rental Antitrust*  
23 *Litigation*, 779 F.3d 934, 953 (9th Cir. 2015). Here, the fee award is reasonable without  
24 excluding those costs from the percentage of recovery calculation.

25 26. Finally, Ference’s claim of collusion between Class Counsel and counsel for  
26 Defendant is supported by no facts that even suggest the appearance of collusion. The record  
27 supports the opposite conclusion.

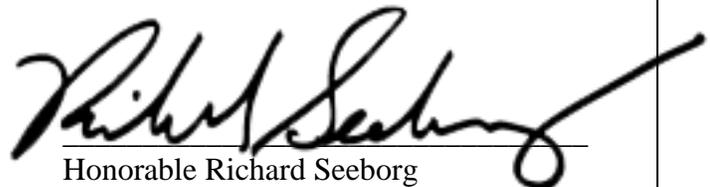
1           27. This order shall constitute a final judgment binding the parties with respect to this  
2 Litigation.

3           28. Without affecting the finality of the judgment hereby entered, the Court reserves  
4 jurisdiction over the interpretation, implementation, and enforcement of the Settlement  
5 Agreement. In the event the Effective Date does not occur in accordance with the terms of the  
6 Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null  
7 and void and shall be vacated, and in such event, all orders and judgments entered and releases  
8 delivered in connection herewith shall be null and void and the Parties shall be returned to their  
9 respective positions *ex ante*.

10           29. Without further order of the Court, the parties may agree to reasonable extensions of  
11 time to carry out any provisions of the Settlement Agreement.

12           There is no just reason for delay in the entry of this Judgment, and immediate entry by the  
13 Clerk of the Court is expressly directed.

14           **IT IS SO ORDERED** this 29<sup>th</sup> day of August, 2018.

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19           Honorable Richard Seeborg  
20           United States District Court Judge  
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# **Exhibit F**



\*14109202\*

**FILED**  
ALAMEDA COUNTY

MAR 16 2018

CLERK OF THE SUPERIOR COURT

By *C. J. [Signature]* Deputy

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MAR - 2 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ROHINI KUMAR, an individual, on behalf of  
herself, the general public and those similarly  
situated;

Plaintiff,

v.

SAFEWAY, INC.

Defendant.

CASE NO. RG 14726707

UNLIMITED CIVIL CASE

~~PROPOSED~~ ORDER GRANTING  
APPLICATION FOR ATTORNEYS' FEES,  
COSTS AND INCENTIVE AWARD

DATE: March 16, 2018

TIME: 10:00 a.m.

CTRM: 21

Hon. Judge Winifred Smith

1 The Court has granted final approval to the proposed class action settlement in the above  
 2 captioned matter. Plaintiff Rohini Kumar and her law firms, Gutride Safier LLP and Tykco &  
 3 Zavareei LLP, appointed by this Court as class counsel, have applied for an award of  
 4 \$1,307,174.55 in attorneys' fees, \$119,325.45 in reimbursement of expenses, and an incentive  
 5 award of \$6,490 for Ms. Kumar. Defendants do not oppose Plaintiff's application. The  
 6 application is supported by declarations from Adam Gutride and Hassan Zavareei. No objections  
 7 to the application were received from any settlement class members.

8 For **GOOD CAUSE** shown, and for each of the reasons stated at the hearing on Final  
 9 Approval, and for the additional reasons stated herein, Plaintiff's application for awards of  
 10 attorneys' fees, expenses and an incentive award is **GRANTED**.

11 Where fees are available under statute, the "lodestar" method should be used to determine  
 12 a statutory attorneys' fee award unless the statutory authorization for the award provides for  
 13 another method. In this case, fees are available by statute, and the statute—i.e., Civil Code section  
 14 1780(d)—does not provide for a method of computing fees, so the lodestar method is appropriate.  
 15 See *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 448–449; see also  
 16 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (stating "In determining the amount of  
 17 reasonable attorney fees to be awarded under a statutory attorney fees provision, the trial court  
 18 begins by calculating the 'lodestar' amount" and that the "California Supreme Court has further  
 19 instructed that attorney fees awards 'should be fully compensatory.'")

20 The hourly rate(s) of Class Counsel set forth in the table below are on par with those of  
 21 other attorneys of Class Counsel's skill and experience in the San Francisco Bay Area, where  
 22 Gutride Safier is based, and District of Columbia, where Tykco & Zavareei is based.<sup>1</sup> *Tait v. BSH*  
 23 *Home Appliances Corp.*, No. SACV100711DOCANX, 2015 WL 4537463, at \*12 (C.D. Cal. July  
 24 \_\_\_\_\_

25 <sup>1</sup> These rates are 2017 rates charged by Plaintiff's counsel, which is appropriate given the  
 26 deferred (and contingent) nature of counsel's compensation. See *LeBlanc-Sternberg v. Fletcher*  
 27 (2nd Cir. 1998) 143 F.3d 748, 764 ("[C]urrent rates, rather than historical rates, should be applied  
 28 in order to compensate for the delay in payment....") (citing *Missouri v. Jenkins* (1989) 491 U.S.  
 274, 283-84); *In re Washington Pub. Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291,  
 1305 ("The district court has discretion to compensate delay in payment in one of two ways: (1)  
 by applying the attorneys' current rates to all hours billed during the course of litigation; or (2) by  
 using the attorneys' historical rates and adding a prime rate enhancement.").

1 27, 2015) (approving as reasonable \$800 per hour for partners, associate time to a maximum of  
 2 \$550 per hour, and paralegal time to a maximum of \$225 per hour); *Vinh Nguyen v. Radiant*  
 3 *Pharm. Corp.*, 2014 WL 1802293, at \*11 (C.D. Cal. May 6, 2014) (approving 2014 rates up to  
 4 \$750 per hour for partners, \$550 per hour for associates, and \$225 per hour for paralegals); *see*  
 5 *also Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667 (N.D. Cal. Apr. 1, 2011)  
 6 (finding as reasonable \$650 per hour for a 1993 graduate); *Californians for Disability Rights v.*  
 7 *Cal. DOT*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. Dec. 13, 2010) (finding as reasonable \$570  
 8 per hour for a 2000 graduate, \$350 per hour for a 2007 graduate, and \$475 per hour for a 2005  
 9 graduate); *Suzuki v. Hitachi*, 2010 U.S. Dist. LEXIS 22908, 2010 WL 956896 \*3 (N.D. Cal.  
 10 March 12, 2010) (finding as reasonable attorneys fees rates of \$650 for partner services, \$500 for  
 11 associate attorney services and \$150 for paralegal services).

12 The Court credits the declarations submitted by Adam Gutride and Hassan Zavareei and  
 13 finds that as of February 28, 2018, Class Counsel had spent approximately 2,360 hours litigating  
 14 this matter. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 225 (declarations  
 15 as to time spent, even if only estimates, are sufficient to support a fee award); *see also Dunk v.*  
 16 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810. The amount of time spent on this case since  
 17 then has increased and may continue to increase following final approval. Based on its experience  
 18 in supervising this case, the Court finds that the tasks performed by counsel, as set forth in the  
 19 Gutride and Zavareei declarations, as well as the total amount of time spent by Class Counsel,  
 20 have been reasonably necessary to the prosecution of this litigation to its successful settlement.  
 21 *See, e.g., Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19. Thus the Court finds that Class  
 22 Counsel's reasonable lodestar of \$1,792,602.80, as described on the charts below.

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24 Timekeeper 25 (Position)	Hours	Rate	Total
26 Adam J. Gutride 27 (Partner)	376.2	\$950	\$357,390.00

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Seth A. Safier (Partner)	386.8	\$925	\$357,790.00
Kristen Simplicio (Associate)	770.8	\$775	\$597,370.00
Marie McCrary (Associate)	35.4	\$750	\$26,550.00
Matt McCrary (Associate)	13.9	\$725	\$10,077.50
Ashley Garcia (Legal Assistant)	5.5	\$250	\$1,375.00
<b>TOTAL</b>	1588.6		\$1,350,552.50

Timekeeper (Position)	Hours	Rate	Total
Hassan Zavareei (Partner)	114.9	\$864.00	\$99,273.60
Jeffrey Kaliel (Partner)	114.3	\$717.00	\$81,953.10
Anna Haac (Partner)	147.6	\$717.00	\$105,829.20
Andrew Silver (Associate)	292.1	\$440.00	\$128,524.00
Lauren Kelleher (Fellow)	38.9	\$343.00	\$13,342.70
Kyra Taylor (Fellow)	3.1	\$359.00	\$1,112.90

Timekeeper (Position)	Hours	Rate	Total
Nathan Laporte (Paralegal)	18.8	\$196.00	\$3,684.80
Sydney Teng (Paralegal)	13.1	\$196.00	\$2,567.60
Amy Berkowitz (Paralegal)	23.7	\$196.00	\$4,645.20
Audrey Abate (Paralegal)	5.0	\$196.00	\$980.00
Natasha Fletcher (Paralegal)	0.7	\$196.00	\$137.20
<b>TOTAL</b>	<b>772.20</b>		<b>\$442,050.30</b>

Because Class Counsel's requested fee of \$1,307,174.55 represents approximately 73% of its lodestar, no multiplier is necessary. Even if this Court were inclined to reduce the lodestar below \$1,307,174.55, by, for example, disallowing certain hours or reducing rates, the requested fees would still be fair and reasonable by applying a very modest multiplier, which the Court finds would be fair and reasonable in light of the contingent nature of Class Counsel's representation of the Class (both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award), the novelty and complexity of the questions involved in this case, the value of class benefits obtained, the importance of other changed practices obtained by Class Counsel, and the special skill and experience of counsel. The Court also finds that Class Counsel bore a substantial amount of risk that it would receive no compensation for its work or reimbursement for its expenses. *See Serrano v. Priest* (Serrano III) (1977) 20 Cal.3d 25, 48-49; *see also Meister v. Regents of Univ. of Calif.* (1998) 67 Cal. App. 4th

1 437, 449; *Melnyk v. Robledo* (1976) 64 Cal. App. 3d 618; *Clejan v. Reisman* (1970) 5 Cal. App.  
2 3d 224, 241; *Fed-Mart Corp. v. Pell Enterprises* (1980) 111 Cal. App. 3d 215, 22.

3 The Court is permitted but not required to “cross-check” the reasonableness of the  
4 lodestar-based fee under the percentage-of-recovery (or percentage-of-benefit) approach. *See*  
5 *Lealao*, 82 Cal. App. 4th at 39-40 (“in cases in which the value of the class recovery can be  
6 monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court  
7 has discretion to adjust the basic lodestar through the application of a positive or negative  
8 multiplier where necessary to ensure that the fee awarded is within the range of fees freely  
9 negotiated in the legal marketplace in comparable litigation”); *see also Glendora*, 155 Cal. App.  
10 3d at 474. Because there were approximately 17.8 million bottles sold during the class period  
11 (Prelim Gutride Decl. at ¶ 10), class members are able to obtain approximately \$8.8 million in  
12 cash benefits (and an even higher amount of vouchers for future Safeway purchases). In addition,  
13 Safeway is making changes to its representations and bottling practices. (Id. at ¶¶ 12, Ex. 1, § III.)  
14 Plaintiff’s expert Mr. Weir has estimated that the value of the removal of the phrase “Imported  
15 from Italy” to be worth \$5,279,450 to class members as the removal of the phrase is likely to lead  
16 to a lower average selling price for the products. (Weir Decl. at ¶ 90.) Thus, Plaintiff is making, at  
17 a minimum, nearly \$13 million available to the class. The requested fee of \$1,307,174.55 is only  
18 10% of this amount, which is far below the usual range for contingent fee litigation. The Court  
19 further credits the declarations of Mr. Gutride and Mr. Zavareei in establishing that Class Counsel  
20 incurred \$119,325.45 in expenses in connection with the Litigation. The Court finds that these  
21 expenses are reasonable and they should be reimbursed.

22 The Court also finds that an incentive award of \$6,490.00 for the Class Representative is  
23 appropriate in light of the time he spent and risk she incurred in pursuing this Litigation and  
24 settlement, and is fair and reasonable. Ms. Kumar has spent many hours working on this case,  
25 including preparing for and attending her deposition; responding to numerous discovery requests;  
26 communicating with counsel about motions, and settlement; and reviewing settlement  
27 documentation. The award is justified in light of: “(1) the risk to the class representative in  
28 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulty

1 encountered by the class representative; (3) the amount of time and effort spent by the class  
2 representative; (4) the duration of the litigation and; (5) the personal benefit (of lack thereof)  
3 enjoyed by the class representative as a result of the litigation.” *In re Cellphone Fee Termination*  
4 *Cases*, 186 Cal. App. 4th 1380, 1394 (2010), *as modified* (July 27, 2010) (internal citations and  
5 quotations omitted). The Court finds that these factors favor approval of the incentive award.

6 For the foregoing reasons, Defendants are ordered to pay \$1,426,500 in fees and costs to  
7 Class Counsel and \$6,490 to Rohini Kumar in accordance with the terms and conditions set forth  
8 in the Settlement Agreement.

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IT IS SO ORDERED this 16 day of March, 2018.

  
HON. WINIFRED SMITH  
SUPERIOR COURT JUDGE

# **Exhibit G**







































# **Exhibit H**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RAINBOW BUSINESS SOLUTIONS,  
D/B/A PRECISION TUNE AUTO CARE;  
DIETZ TOWING, INC.; THE ROSE DRESS,  
INC.; VOLKER VON GLASENAPP; JERRY  
SU; VERENA BAUMGARTNER; TERRY  
JORDAN; ERIN CAMPBELL; AND LEWIS  
BAE on behalf of themselves, the general  
public and those similarly situated,

Plaintiffs,

v.

MBF LEASING LLC; NORTHERN  
LEASING SYSTEMS, INC.; JAY COHEN;  
LEONARD MEZEI; SARA KRIEGER; SAM  
BUONO; AND SKS ASSOCIATES, LLC,

Defendants.

CASE NO. 10-cv-01993-CW

ORDER GRANTING FINAL APPROVAL OF  
APPLICATION FOR ATTORNEYS' FEES,  
COSTS AND INCENTIVE AWARDS

DATE: November 28, 2017

TIME: 2:30 p.m.

JUDGE: Hon. Claudia Wilken

1 Class counsel have applied for an award of \$1,600,000 in attorneys' fees and expenses  
2 and for an incentive award of \$5,000 to each named plaintiff. Defendants do not oppose the  
3 application, and no objections to the application were received from settlement class members.  
4 For GOOD CAUSE shown, the Court finds and concludes as follows.

5 Class counsel have submitted detailed evidence that they incurred \$117,571.65 in  
6 expenses and that prior counsel incurred \$7890.69 in expenses, the recovery of which has been  
7 assigned to them. Of the total \$125,462.34 in expenses, Class counsel were reimbursed  
8 \$52,000.00 in connection with the settlement with the Merchant Services Defendants (Dkt. #  
9 579), leaving a balance of \$73,462.34. The Court finds that these expenses were reasonably  
10 incurred.

11 Class counsel also has submitted a detailed declaration summarizing the work performed  
12 during the more than seven years of investigation and litigation, totaling 7088.86 hours through  
13 August 31, 2017. Prior counsel has submitted declarations summarizing the work performed,  
14 totaling an additional 1499.80 hours of work. The hourly rates of all counsel range from \$275 to  
15 \$950 per hour, and \$100 to \$150 for support staff. Class counsel has computed the total lodestar  
16 as \$5,062,299.50 through August 31. Additional work has been performed since that date. Class  
17 counsel previously received \$871,000.00 in attorneys' fees in connection with the previous  
18 settlement with the Merchant Services Defendants, leaving a balance of \$4,191,299.50. The fee  
19 request of \$1,526,537.66 is only 30% of the total lodestar and 36% of the unreimbursed lodestar,  
20 meaning that counsel requests a "negative" or "fractional" multiplier of approximately 0.36.

21 The settlement negotiation was overseen by experienced mediators and no discussion of  
22 fees began until after all other terms of the settlement had been agreed. (Dkt. # 684, Safier Decl. ¶  
23 7.) *See, e.g., In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*  
24 *Litigation*, 2017 WL 1047834, at \*4 (N.D. Cal., Mar. 17, 2017) ("Volkswagen's agreement not to  
25 oppose the application does not evidence collusion and was not obtained by Class Counsel to  
26 Class Members' detriment."); *G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at \*13 (N.D. Cal.  
27 July 30, 2015) (noting that "[t]he assistance of an experienced mediator in the settlement process  
28 confirms that the settlement is non-collusive"). Thus, the Court finds that the negotiations about

1 fees, costs, and an incentive award could not have had any negative impact on the benefits made  
2 available to class members.

3 The requested fee award is paid pursuant to the statutory fee shifting provisions in the  
4 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1964(c), and section  
5 1021.5 of the California Code of Civil Procedure. This Court is required to analyze an attorneys’  
6 fee request based on either (1) the “lodestar” method or (2) a percentage of the total benefit made  
7 available to the settlement class, including costs, fees, and injunctive relief. *See e.g., Nwabueze v.*  
8 *AT&T, Inc.*, No. C 09-01529 SI, 2014 WL 324262, at \*2-3 (N.D. Cal. Jan. 29, 2014; *Lopez v.*  
9 *Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at \*11-12 (E.D. Cal. Sept. 2, 2011);  
10 *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at \*13-14 (N.D. Cal. Nov. 16,  
11 2007).

12 Under the lodestar approach, “[t]he lodestar (or touchstone) is produced by multiplying  
13 the number of hours reasonably expended by counsel by a reasonable hourly rate.” *Lealao v.*  
14 *Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000); *see also Kelly v. Wengler*, 822 F.3d  
15 1085, 1099 (9th Cir. 2016) (“[A] court calculates the lodestar figure by multiplying the number of  
16 hours reasonably expended on a case by a reasonable hourly rate. A reasonable hourly rate is  
17 ordinarily the ‘prevailing market rate [] in the relevant community.’”) (alteration in original)  
18 (internal citation omitted) (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010)).  
19 Once the court has fixed the lodestar, it may increase or decrease that amount by applying a  
20 positive or negative “multiplier to take into account a variety of other factors, including the  
21 quality of the representation, the novelty and complexity of the issues, the results obtained and the  
22 contingent risk presented.” *Id.*; *see also Serrano v. Priest* (“*Serrano III*”), 20 Cal. 3d 25, 48-49  
23 (1977); *Ramos v. Countrywide Home Loans, Inc.* 82 Cal. App. 4th 615, 622 (2000); *Beasley v.*  
24 *Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1418 (1991) (multipliers are used to compensate  
25 counsel for the risk of loss, and to encourage counsel to undertake actions that benefit the public  
26 interest).

27 Having overseen this litigation for over seven years, the Court finds that the hours claimed  
28 were reasonably worked and that the rates charged are reasonable and commensurate with those

1 charged by attorneys with similar experience who appear in this Court. The Court also finds that  
2 Plaintiff's counsel represented their clients with skill and diligence and obtained an excellent  
3 result for the class, taking into account the possible outcomes at, and risks of proceeding to, trial.  
4 The fact that Plaintiffs' counsel are seeking substantially less in fees than they reasonably  
5 incurred further suggests there has been no collusion or self-dealing.

6 The fee award is also fair when cross-checked against the funds made available to the  
7 class, which is the standard used by the Ninth Circuit. *See, e.g., Williams v. MGM Pathe*  
8 *Communications Corp.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Lopez v. Youngblood*, 2011 WL  
9 10483569, \*12 (E.D. Cal. Sept. 2, 2011) ("It is well established that, in claims made or class  
10 reversion cases where there is a maximum fund, and unclaimed funds revert to the defendant, it is  
11 appropriate to award class fund attorneys' fees based on the gross settlement fund") (citing  
12 Herbert B. Newberg and Alba Conte, *Newberg on Class Actions* § 14.6 (4th Ed.2007)).<sup>1</sup> The  
13 settlement makes available \$5.6 million to the SKS Class and \$3.6 million to the Property Tax  
14 Class. (Dkt. # 684, Safier Decl., ¶ 8; Dkt. # 693, p. 1-2.) The settlement also reaffirms the  
15 temporary restraining order and preliminary injunction that prevented the Defendants from  
16 debiting class members' accounts, saving class members another at least \$7 million or more,  
17 perhaps as much as \$12.3 million. (Dkt. # 668, p. 2, n. 2)<sup>2</sup> In addition, Defendants have agreed to  
18 pay costs of notice and claim administration, estimated at \$800,000. (Dkt. # 724, Schachter  
19 Decl., ¶ 23), plus the fees and expenses of \$1.6 million. Thus the grand total value of the  
20 settlement is at least \$18.6 million. The requested fee award of just over \$1.5 million equates to  
21 approximately 8% of this total. That amount is well below the 25-30% benchmark that the Ninth  
22

23 <sup>1</sup> Fairness of the fee should be determined by the amount made available to the class, not the  
24 amount actually paid in claims. *Williams*, 129 F.3d at 1027 ("We conclude that the district court  
25 abused its discretion by basing the fee on the class members' claims against the fund rather than  
26 on a percentage of the entire fund or on the lodestar."); *accord Ellsworth v. U.S. Bank, N.A.*, 2015  
27 WL 12952698, at \*4 (N.D. Cal. Sept. 24, 2015) ("precedent requires courts to award class  
28 counsel fees based on the total benefits being made available to class members rather than the  
actual amount that is ultimately claimed"); *Miller v. Ghirardelli Chocolate Co.*, 2015 WL  
758094, at \*5 (N.D. Cal. Feb. 20, 2015) (same); *Miller v. Sw. Airlines Co.*, 2014 WL 11369764,  
at \*2 (N.D. Cal. Mar. 21, 2014) (same).

<sup>2</sup> *Cf. Watson v. City of Riverside*, 300 F.3d 1092, 1096 (9th Cir. 2002) (awarding attorneys fees;  
finding that the plaintiff prevailed where "the preliminary injunction had done its job").

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Circuit has adopted. *See Paul, Johnson, Alston & Hunt v. Graultry*, 886 F.2d 268, 273 (9th Cir. 1989).

Plaintiffs have also requested an incentive award to each named plaintiff of \$5,000. Incentive awards may be made to class representatives based on “(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulty encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and (5) the personal benefit (of lack thereof) enjoyed by the class representative as a result of the litigation.” *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). This Court finds that all the named plaintiffs remained involved for many years, and incurred risks of liability for Defendants’ costs for the lengthy litigation. Further, the named plaintiffs assumed responsibility for searching both personal and business records, and provided several years of banking records and other sensitive, private financial documents for inspection and questioning. They each responded to dozens of interrogatories and more than a hundred document requests. They participated in mediation, appeared for lengthy depositions, and submitted multiple declarations. They had little to personally gain from the litigation. In addition, they are releasing numerous claims beyond those released by members of the settlement classes, including claims relating to alleged fraud in the procurement of their leases and other unconscionable conduct. See Sett. Agt. ¶¶ 1.5, 8.2.<sup>3</sup> Accordingly, the incentive awards are approved.

For the foregoing reasons, the Court approves Class counsel's application for an award of \$1,600,000 in attorneys’ fees and expenses and an \$5,000 incentive to each named plaintiff.

**IT IS SO ORDERED** this 5th day of December, 2017.

  
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HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

<sup>3</sup> The named plaintiffs who are not class members are receiving \$2500 each for the release of these individual claims.

# **Exhibit I**

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

SCOTT MILLER, et al.,  
Plaintiffs,

v.

GHIRARDELLI CHOCOLATE  
COMPANY,  
Defendant.

Case No. [12-cv-04936-LB](#)

**FINAL ORDER APPROVING CLASS  
SETTLEMENT**

[ECF No. 148]

**INTRODUCTION**

The parties have agreed to settle this class action. This lawsuit challenges defendant Ghirardell Chocolate Company’s labeling of some of its products. (See 3d Am. Compl. – ECF No. 43.)<sup>1</sup> The court previously approved the settlement preliminarily and conditionally certified a settlement class. (ECF No. 141.) The court has scrutinized the parties’ proposed settlement under the controlling law. The court finds the settlement fair, adequate, and reasonable. The court therefore certifies a Rule 23(b)(3) class and approves the parties’ settlement. The court maintains its previous appointment of class counsel and representatives, awards the plaintiffs \$5000 each in incentives, and awards their attorneys \$1,575,000 in fees and \$87,572.15 in litigation costs.

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<sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the tops of the documents.

**FACTS**

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2 This is a food-labeling case. The plaintiffs claim that defendant Ghirardelli Chocolate  
3 Company falsely labeled a number of its products. Plaintiffs Scott Miller and Steve Leyton sue for  
4 themselves and for a nationwide consumer class. They make two basic claims. They first contend  
5 that Ghirardelli mislabeled its “White Chips” and several other products in a way that would  
6 mislead consumers into believing that the products contained white chocolate. They also claim  
7 that Ghirardelli sold products as “all natural,” even though (according to the plaintiffs) “they  
8 contained genetically modified, hormone-treated . . . or chemically extracted ingredients.” (ECF  
9 No. 148 at 8-9; *see* ECF No. 143 at 2, ¶ 1.) Ghirardelli denies the plaintiffs’ allegations. (*See, e.g.*,  
10 ECF No. 166 at 9.) The products at issue are listed in Appendix A to this order.

11 For more than two years, the parties conducted discovery and vied over substantive motions.  
12 Late 2013 brought them to mediation before the Honorable Edward Infante. Their first all-day  
13 session ended without resolution; but from a second effort in June 2014, and ultimately after  
14 “many rounds” of discussion, the parties crafted the settlement that they now propose. (ECF No.  
15 148 at 9-10.)

16 The full settlement agreement appears at ECF No. 129-2. Its essential terms are as follows.  
17 Ghirardelli will pay \$5.25 million into a common fund. The fund will be used to pay the  
18 following: all costs of notice and administration; any fees and costs awarded to Plaintiffs’ counsel;  
19 any incentive award to the named Plaintiffs; and class members’ claims. (ECF No. 129-2 at 11,  
20 § 3.3.) Each class member who makes a claim will obtain \$1.50 per purchase of the White Chips  
21 and \$0.75 per purchase of any of the other products labeled “All Natural.” There will be no cap on  
22 the total amount paid to a claimant for purchases that are corroborated by a Proof of Purchase. (*Id.*  
23 at 12-13, § 3.7.) (A “Proof of Purchase” is an itemized retail sales receipt showing, at a minimum,  
24 the purchase of a Product, the purchase price, and the date and place of the purchase. (*Id.* at 9 §  
25 2.26.)) For claims that are not corroborated by a Proof of Purchase, a maximum of \$24.00 will be  
26 paid to any Household. (*Id.* at 12-13, § 3.7.) (“Household” means any number of persons  
27 occupying the same dwelling unit. *Id.* at 8, § 2.14.) Awards may be reduced *pro rata* if the total  
28 value of claims exceeds the amount of the common fund after payment of notice and

1 administration costs, fees, costs, and incentive awards. (*Id.* at 11, § 3.3.) If money remains in the  
2 common fund after paying all claims, incentive awards, and fees and costs, the money will be  
3 donated *cy pres*, in equal amounts, to four charitable organizations. (*Id.*, § 3.4.) Finally,  
4 Ghirardelli has agreed to maintain for three years certain labeling changes to all the products at  
5 issue, changes that it implemented during this lawsuit. (*Id.* at 14, § 3.10.) These changes will more  
6 specifically consist of Ghirardelli’s agreement:

- 7 a) not to use the phrase “all natural”;
- 8 b) not to use the phrase “Classic White” with respect to the White Chips except as part of the  
9 phrase “Classic White Chips”; and
- 10 c) not to use the phrases “baking chocolate” or “chocolate indulgence” on the packaging for  
11 the White Chips, even in referring to other products.

12 (*Id.*)

13 The court preliminarily approved this settlement in early October 2014. (ECF No. 141.) It  
14 formed a conditional settlement class, appointed Messrs. Miller and Leyton as class  
15 representatives, named their attorneys as class counsel, and approved a class-notice plan. (ECF  
16 No. 141 at 9-11 (describing notice plan).

17 Three people filed objections to the settlement. (ECF Nos. 146, 153, 159.) The parties  
18 responded to the objections. (ECF Nos. 160, 164.) The Plaintiffs also moved to strike two of the  
19 objections — by Brittany Ference (ECF No. 153) and Michael Narkin (ECF No. 159) — for  
20 failure to demonstrate class membership. (ECF No. 165. ) One of the objections challenged the  
21 lawsuit essentially on the defendant’s behalf, urging the court to dismiss the case entirely. (ECF  
22 No. 146.)

23 The court held a hearing on February 19, 2015. (*See* ECF No. 168.) No objector attended.  
24 Having considered the parties’ arguments, the evidence, and the settlement itself, the court  
25 approves the settlement as follows.

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**ANALYSIS**

**I. JURISDICTION**

This court has jurisdiction under 28 U.S.C. § 1132(d)(2).

**II. CLASS CERTIFICATION**

For the reasons and under the law set out in the court’s preliminary-approval order (ECF No. 141 at 3-6), the court holds that the proposed settlement class meets all the requirements of procedural Rules 23(a) and 23(b)(3). The settlement class is hereby formed and is defined as: All persons (other than Excluded Persons) who, between August 17, 2008 and October 2, 2014, purchased, in the United States, except for purposes of resale, any of the Products listed in Appendix A to this order.

Excluded Persons means: (1) the Honorable Laurel Beeler and any member of her immediate family; (2) the Honorable Edward Infante and any member of his immediate family; (3) any government entity; (4) any of the Released Parties; and (5) any persons who timely opted out of the Settlement Class — a complete list of whom appears as Appendix B to this order.

The court appoints plaintiffs Scott Miller and Steve Leyton as class representatives, and Gutride Safier LLP as class counsel. This, too, is for the reasons given in the preliminary-approval order. (*See* ECF No. 141 at 4-6.)

**III. NOTICE**

The parties complied in all material respects with the notice plan contained in the settlement agreement and preliminarily approved by the court. The declaration of the claim administrator (The Garden City Group) confirms this. (*See* ECF No. 148-3 at 1-8.)

Following the court’s preliminary approval and conditional certification of the settlement class, the claim administrator established a settlement website that contained: the settlement notices; a contact-information page that includes address and telephone numbers for the claim administrator and the parties; the settlement agreement; the signed order of preliminary approval; online and printable versions of the claim form and the opt-out forms; answers to frequently asked questions; and a list of the affected products. The motion for final approval and application for attorney’s fees, costs, and incentive awards were also placed on the website. Notice was published

1 in several places, all of which referred class members to the settlement website. (Dowd Decl. –  
2 ECF No. 148-3, ¶¶ 8, 17 & Ex. A-E.) One half-page ad was published in the November 10, 2014,  
3 print version of *People* magazine. (*Id.* ¶ 5.) An additional eighth-page ad was published in the  
4 *Oakland Tribune* on October 22 and 29 and November 5 and 12, 2014. (*Id.* ¶ 6.) Online notice was  
5 published for a total of 316 million impressions on various websites, including Facebook, Yahoo!  
6 network, MSN network, and a website group that include cooking and baking websites. (*Id.* ¶ 7.)  
7 The ad also appeared more than 2 million times through an MSN mobile service. (*Id.* ¶ 9.)

8 The claim administrator sent direct notice to each of the approximately 21,358 settlement class  
9 members for whom Ghirardelli had names and addresses because they purchased through the  
10 Ghirardelli website or phone system. The email notice described the settlement and provided a  
11 link to the settlement website. Clicking on the link provided in the email brought class members to  
12 a pre-populated claim form with the records of their purchases and informed them that Proof of  
13 Purchase for those items had been submitted. The email notice was sent twice. In cases where  
14 Ghirardelli did not have an email address for a buyer (approximately 133 persons), or the initial  
15 email notice was returned as undeliverable (approximately 2040 persons), the claim administrator  
16 sent postcard notice by first-class mail to the settlement class member's address based on  
17 Ghirardelli's records as updated through the National Change of Address Database. (*Id.* ¶¶ 10-14.)  
18 Just over 200 postcards were returned as undeliverable, and the claims administrator undertook a  
19 more detailed search for new addresses and re-mailed 110 of the cards. (*Id.* ¶ 15.)

20 The court finds that this delivered absent class members the best notice practicable under the  
21 circumstances, sufficiently advised class members of this action and the terms of the proposed  
22 settlement, and informed unnamed members of their right to opt out of the class and object to the  
23 settlement. The notice plan, in short, met all legal requisites.

#### 24 **IV. COMPLIANCE WITH CLASS ACTION FAIRNESS ACT**

25 The class-notice plan has met the requirements of 28 U.S.C. § 1715. The Claims Administrator  
26 notified the appropriate state and federal officials of the settlement and filed proof of compliance  
27 with § 1715. (*See* ECF No. 139.) The notices contained the documents required by 28 U.S.C.  
28 § 1715(b)(1)-(8). (*Id.*) The claims administrator mailed the § 1715 notices on August 27, 2014,

1 and filed its certificate of compliance (ECF No. 139) on October 1, 2014. This final approval of  
 2 the parties' settlement thus follows the § 1715 service by more than 90 days. *See* 28 U.S.C.  
 3 § 1715(d).

#### 4 **V. FINAL APPROVAL OF SETTLEMENT**

5 Settlement is a strongly favored method for resolving disputes, particularly "where  
 6 complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,  
 7 1276 (9th Cir. 1992); *see, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir.  
 8 1995). A court may approve a proposed class-action settlement only "after a hearing and on  
 9 finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The court need not ask  
 10 whether the proposed settlement is ideal or the best possible; it determines only whether the  
 11 settlement is fair, free of collusion, and consistent with the named plaintiffs' fiduciary obligations  
 12 to the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In *Hanlon*, the Ninth  
 13 Circuit identified factors relevant to assessing a settlement proposal: (1) the strength of the  
 14 plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the  
 15 risk of maintaining class-action status throughout trial; (4) the amount offered in settlement; (5)  
 16 the extent of discovery completed and the stage of the proceeding; (6) the experience and views of  
 17 counsel; (7) the presence of a government participant; and (8) the reaction of class members to the  
 18 proposed settlement. *Id.* at 1026 (citation omitted).

19 "Where a settlement is the product of arms-length negotiations conducted by capable and  
 20 experienced counsel, the court begins its analysis with a presumption that the settlement is fair and  
 21 reasonable." *Garner v. State Farm Mut. Auto Ins. Co.*, 2010 WL 1687832, \*13 (N.D. Cal. Apr. 22,  
 22 2010); *see, e.g., Rodriguez v. West Pub'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a  
 23 good deal of stock in the product of an arms-length, non-collusive, negotiated resolution . . .  
 24 ."); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

25 The court finds the proposed settlement fair, adequate, and reasonable under the *Hanlon*  
 26 factors. The settlement itself is the product of non-collusive, arm's-length negotiations conducted  
 27 by experienced counsel with the help of a private mediator. (*See* Gutride Decl. – ECF No. 148-1,  
 28 ¶¶ 47-52, 55-56.)

1 The court has overseen this case since its beginning and has no difficulty confirming that this  
2 has been a hard-fought affair. The parties engaged in substantial discovery and litigated numerous  
3 motions. On the plaintiffs’ side, for example, class counsel propounded substantial written  
4 discovery on Ghirardelli; was in the process of obtaining third-party discovery from Ghirardelli’s  
5 retailers and suppliers; obtained and reviewed more than 20,000 pages of documents; and took  
6 depositions of the six 30(b)(6) witnesses that Ghirardelli designated. (*Id.* ¶¶ 30-41.)

7 Considering the strength of the plaintiffs’ case, the risk, expense, complexity, and likely  
8 duration of further litigation — including the risk of maintaining class action status throughout the  
9 trial, to say nothing of successfully proving liability — the court finds that these factors all weigh  
10 in favor of approving the settlement. Ghirardelli has always maintained that its products were not  
11 mislabeled or misleading and denies any liability for the class members’ claims. Ghirardelli  
12 asserts that had litigation proceeded, the plaintiffs would have faced an uphill battle in certifying  
13 any class — let alone a nationwide one; could not have proved that the company’s labels were  
14 deceptive or violated any law; and would have failed to establish damages (specifically,  
15 Ghirardelli maintains that no premium exists for either the white chips or the All Natural products  
16 because, among other things, sales at the same price *rose* after the allegedly deceptive information  
17 on labels was changed or removed). Ghirardelli calls the settlement a “win for the class.” (ECF  
18 No. 166 at 15.) The defendant writes: “This case is not and was never . . . even a \$5.25 million  
19 case. Ghirardelli settled to buy peace . . . .” (*Id.*)

20 Absent settlement, the plaintiffs faced the real possibility of failing to certify a class or  
21 establish liability. This case presents numerous complex and novel issues, which almost certainly  
22 would have proved costly to litigate and could have easily lead to protracted appellate litigation.  
23 The settlement represents a substantial benefit to the class. A \$5.25-million common fund has  
24 been established for the class’s benefit, and Ghirardelli has agreed to adhere to labeling changes  
25 for three years. Taking all this into consideration, the court concludes that the settlement is “fair,  
26 free of collusion, and consistent with the named plaintiffs’ fiduciary obligations to the class.”  
27 *Hanlon*, 150 F.3d at 1027. The court addresses objections to the settlement below (Part X, *infra*)  
28 because they implicate (among other issues) the *cy pres* distribution and the award of attorney’s

1 fees.

2 **VI. ATTORNEY'S FEES**

3 Class counsel requests an award of \$1,575,000 in attorney's fees and \$87,572.15 in costs. (*See*  
4 ECF No. 148 at 20-28.) This Part VI addresses fees; Part VII, *infra*, addresses costs.

5 Rule 23(h) of the Federal Rules of Civil Procedure provides: "In a certified class action, the  
6 court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by  
7 the parties' agreement." Fee provisions included in proposed class-action settlements must be  
8 "fundamentally fair, adequate and reasonable." *In re Bluetooth Headset Prods. Liab. Litig.*, 654  
9 F.3d 935, 941 (9th Cir. 2011). The court is not bound by the parties' settlement agreement as to  
10 the amount of attorneys' fees. *Id.* at 943. The Ninth Circuit has instructed district courts to review  
11 class fee awards with special rigor:

12 Because in common fund cases the relationship between  
13 plaintiffs and their attorneys turns adversarial at the fee-setting  
14 stage, courts have stressed that when awarding attorneys' fees from  
15 a common fund, the district court must assume the role of fiduciary  
for the class plaintiffs. Accordingly, fee applications must be closely  
scrutinized. Rubber-stamp approval, even in the absence of  
objections, is improper.

16 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (quotation omitted).

17 In the Ninth Circuit, the benchmark for an attorney's-fee award is 25% of the total settlement  
18 value. *See Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.  
19 1990). The requested fee here is 8.9% of the total settlement value.

20 In common-fund cases, the Ninth Circuit requires district courts to assess proposed fee awards  
21 under either the "lodestar" method or the "percentage of the fund" method. *Fischel v. Equitable*  
22 *Life Ass. Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *Hanlon*, 150 F.3d at 1029. This  
23 court finds that the fee request here is reasonable under both approaches.

24 Where the settlement involves a common fund, courts typically award attorney's fees based on  
25 a percentage of the total settlement. The Ninth Circuit has established a "benchmark" that fees  
26 should equal 25% of the settlement, although courts diverge from the benchmark based on a  
27 variety of factors, including "the results obtained, risk undertaken by counsel, complexity of the  
28 issues, length of the professional relationship, the market rate, and awards in similar cases."

1 *Morales v. Stevco, Inc.*, 2013 WL 1222058, at \*2 (E.D. Cal. Mar. 25, 2013); *see also Six Mexican*  
 2 *Workers*, 904 F.2d at 1311; *State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *In re Pac.*  
 3 *Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award of 33% of the  
 4 recovery); *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming 33% fee  
 5 award).

6 When determining the value of a settlement, courts consider both the monetary and non-  
 7 monetary benefits that the settlement confers. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 972-  
 8 74 (9th Cir. 2003); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 645 (S.D. Cal. 2011), *aff'd*, 473 F.  
 9 App'x 716 (9th Cir. 2012); *Pokorny v. Quixtar, Inc.*, 2013 WL 3790896, \*1 (N.D. Cal. July 18,  
 10 2013), *appeal dismissed* (Sept. 13, 2013) (“The court may properly consider the value of  
 11 injunctive relief obtained as a result of settlement in determining the appropriate fee.”); *In re*  
 12 *Netflix Privacy Litig.*, 2013 WL 1120801, at \*7 (N.D. Cal. Mar. 18, 2013) (settlement value  
 13 “includes the size of the cash distribution, the *cy pres* method of distribution, and the injunctive  
 14 relief”), *appeal dismissed* (Dec. 19, 2013).

15 Finally, Ninth Circuit precedent requires courts to award class counsel fees based on the total  
 16 benefits being made available to class members rather than the actual amount that is ultimately  
 17 claimed. *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269, \*23 (N.D. Cal. Mar. 28, 2007  
 18 (citing *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (“district court  
 19 abused its discretion in basing attorney fee award on actual distribution to class” instead of amount  
 20 being made available)).<sup>2</sup>

21 To support their request for fees, the plaintiffs have proffered the declaration of Colin Weir,  
 22 whose expert testimony on the analysis of pricing differences arising from various consumer-label  
 23 claims has been accepted by other courts. (ECF No. 149-3 at 13-17.) Mr. Weir opines that the  
 24 changed practices required by the settlement for the next three years can be expected to eliminate  
 25 various premiums associated with “white chocolate” and “all natural” labeling and save class  
 26

27 <sup>2</sup> To the extent that Ms. Ference’s objection suggests that fees should be based on amounts  
 28 claimed, that objection is therefore overruled. (*See* ECF No. 153 at 3.)

1 members at least at \$13.46 million. (ECF No. 148-2.) The plaintiffs argue that taking into account  
2 the \$5.25-million cash payment and value of the injunctive relief, the requested fee is 8.9% of the  
3 total settlement value, almost 16 percentage points below the Ninth Circuit benchmark. Ghirardelli  
4 dispute the plaintiffs' estimate of the settlement's overall value (*see* ECF No. 166 at 2) — but the  
5 court finds that the requested fee is appropriate even if Mr. Weir's estimate is deeply discounted.  
6 Even if the value of the changed practices is only half of what Mr. Weir opines, for instance, the  
7 requested fee represents 13% of the total settlement value; if the changed practices are worth only  
8 10% of what he opines, the requested fee is less than 24% — still below the Ninth Circuit  
9 benchmark. Even if the court considers only the monetary relief of \$5.25 million, the requested fee  
10 reflects 30% of that benefit; this remains consistent with awards that have been approved in  
11 similar cases: Where a common fund is under \$10 million, a fee award of this amount is often held  
12 appropriate, and the court finds it appropriate here. *See Van Vranken v. Atl. Richfield Co.*, 901 F.  
13 Supp. 294, 297-98 (N.D. Cal. 1995) (collecting cases); *see also Johnson v. Gen. Mills, Inc.*, 2013  
14 WL 3213832, at \*6 (C.D. Cal. June 17, 2013) (awarding a fee of 30% of settlement fund in food-  
15 labeling class action).

16 Finally, after applying the percentage method, courts typically roughly calculate the lodestar as  
17 a “cross-check to assess the reasonableness of the percentage award.” *E.g., Weeks v. Kellogg Co.*,  
18 2013 WL 6531177, \*25 (C.D. Cal. Nov. 23, 2013); *see also Serrano v. Priest*, 20 Cal. 3d 25, 48-  
19 49 (1977) *Melnyk v. Robledo*, 64 Cal. App. 3d 618, 624-25 (1976); *Clejan v. Reisman*, 5 Cal. App.  
20 3d 224, 241 (1970); *Fed-Mart Corp. v. Pell Enterprises*, 111 Cal. App. 3d 215 (1980). “The  
21 lodestar . . . is produced by multiplying the number of hours reasonably expended by counsel by a  
22 reasonable hourly rate.” *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000).  
23 Once the court has fixed the lodestar, it may increase or decrease that amount by applying a  
24 positive or negative “multiplier to take into account a variety of other factors, including the quality  
25 of the representation, the novelty and complexity of the issues, the results obtained and the  
26 contingent risk presented.” *Id.*

27 Based on the detailed declarations submitted by the plaintiffs' counsel, the court finds that  
28 lodestar is approximately \$1,711,710. (*See* Gutride Decl. – ECF No. 148-1, ¶ 70 (table of hours

1 worked by timekeeper); Safier Decl. – ECF No. 164-1, ¶ 5.) The plaintiffs’ attorneys have detailed  
 2 their efforts to date extensively, and, again, the court is familiar with the hard-fought nature of this  
 3 litigation. (See ECF No. 148-1, ¶¶ 4-61.) The rates they have used are their 2014 rates; this is  
 4 appropriate given the deferred and contingent nature of counsel’s compensation. See *LeBlanc-*  
 5 *Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998) (“[C]urrent rates, rather than historical  
 6 rates, should be applied in order to compensate for the delay in payment . . . .”) (citing *Missouri v.*  
 7 *Jenkins*, 491 U.S. 274, 283-84 (1989)); *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19  
 8 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has discretion to compensate delay in  
 9 payment in one of two ways: (1) by applying the attorneys’ current rates to all hours billed during  
 10 the course of litigation; or (2) by using the attorneys’ historical rates and adding a prime rate  
 11 enhancement.”).<sup>3</sup>

12 Counsels’ lodestar of \$1,711,710 exceeds the requested fee award of \$1,575,000. Were it in  
 13 question, the court notes that other factors here, “including the quality of the representation, the  
 14 novelty and complexity of the issues, the results obtained, and the contingent risk presented”  
 15 would likely support awarding a multiplier. *Lealao*, 82 Cal. App. at 26; see also *Walsh v. Kindred*  
 16 *Healthcare*, 2013 WL 6623224, \*3 (N.D. Cal. Dec. 16, 2013) (citing *Lealao* method with  
 17 approval). Thus, the court finds the fee request reasonable under both the “percentage of the fund”  
 18 approach and the lodestar cross-check.

## 19 VII. LITIGATION COSTS

20 Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ.  
 21 P. 23(h); see *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may

22  
 23  
 24 <sup>3</sup> Plaintiff’s counsel calculated their lodestar using their regular billing rates, which for the  
 25 attorneys involved range from \$450 to \$750 per hour. (Gutride Decl. – ECF No. 148-1, ¶ 70.)  
 26 These hourly rates are equal to market rates in San Francisco for attorneys of plaintiff’s counsel’s  
 27 background and experience. (*Id.*, ¶¶ 72); see also *Wren v. RGIS Inventory Specialists*, 2011 U.S.  
 28 Dist. LEXIS 38667 (N.D. Cal. Apr. 1, 2011) (finding as reasonable \$650 per hour for a 1993  
 graduate); *Californians for Disability Rights v. Cal. DOT*, 2010 U.S. Dist. LEXIS 141030 (N.D.  
 Cal. Dec. 13, 2010) (finding as reasonable \$570 per hour for a 2000 graduate, \$350 per hour for a  
 2007 graduate, and \$475 per hour for a 2005 graduate); *Suzuki v. Hitachi*, 2010 U.S. Dist. LEXIS  
 22908, 2010 WL 956896 \*3 (N.D. Cal. March 12, 2010) (finding as reasonable rates of \$650 for  
 partner services, \$500 for associate services and \$150 for paralegal services).

1 recover reasonable expenses that would typically be billed to paying clients in non-contingency  
 2 matters.); *Van Vranken*, 901 F. Supp. at 299 (approving reasonable costs in class action  
 3 settlement). Costs compensable under Rule 23(h) include “nontaxable costs that are authorized by  
 4 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

5 Here, class counsel seeks reimbursement of \$87,572.15 in litigation expenses. They have  
 6 provided records that document their claim. (*See* Gutride Decl. – ECF No. 148-1, ¶ 75.) The costs  
 7 will be paid from the common fund and will not reduce the amounts paid to class members who  
 8 made valid claims. The court therefore finds that these submissions support an award of  
 9 \$87,572.15 in costs.

### 10 **VIII. INCENTIVE AWARDS**

11 The settlement would also award each named plaintiff \$5000 in incentives. District courts  
 12 must evaluate proposed incentive awards individually, using relevant factors that include, “the  
 13 actions the plaintiff has taken to protect the interests of the class, the degree to which the class has  
 14 benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in  
 15 pursuing the litigation.” *Staton*, 327 F.3d at 977. “Such awards are discretionary . . . and are  
 16 intended to compensate class representatives for work done on behalf of the class, to make up for  
 17 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
 18 willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958-959.

19 The Ninth Circuit has “noted that in some cases incentive awards may be proper but [has]  
 20 cautioned that awarding them should not become routine practice.” *Radcliffe v. Experian Info.*  
 21 *Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013) (discussing *Staton*, 327 F.3d at 975). The Ninth  
 22 Circuit has also emphasized that district courts “must be vigilant in scrutinizing all incentive  
 23 awards to determine whether they destroy the adequacy of the class representatives.” *Radcliffe*,  
 24 715 F.3d at 1164.

25 The incentives proposed here are within the range of such awards that the Ninth Circuit has  
 26 either affirmed or cited with approval. *See In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 463  
 27 (9th Cir. 2000) (approving \$5000 incentive to each named representative of potentially 5400-  
 28 member class in settlement of \$1.725 million); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th

1 Cir. 2002) (approving \$2000 incentive award to five named plaintiffs; class numbered potentially  
2 more than 4 million; settlement value of \$3 million) (cited in *Staton*). The purported absent class  
3 members who have objected to the proposed settlement did not include the incentive among their  
4 concerns. (*See* ECF Nos. 146, 153, 159.)

5 The named plaintiffs merit this incentive. Their lawyer has explained the efforts they  
6 personally made in pursuing this lawsuit. (*See* Gutride Decl. – ECF No. 148-1.) They both worked  
7 with counsel to provide declarations and other information throughout the litigation. They  
8 conducted “lengthy” searches of their personal records. They spent time preparing for and being  
9 deposed. They both responded to interrogatories and requests for production. They either attended  
10 the mediation sessions or remained available for consultation, and were consulted. According to  
11 their lawyer, both plaintiffs stayed actively involved in this case before and after the settlement.  
12 (*See id.* at 12, ¶¶ 65-66.) In principle, too, and though the risk may have been small, the plaintiffs  
13 did take on the risk of potentially bearing Ghirardelli’s costs in a losing effort.

#### 14 **IX. CY PRES AWARD**

15 The settlement agreement provides that if, after payment of notice, administration, fees, costs,  
16 incentives and valid claims, there remains a balance in the common fund, the plaintiffs will ask the  
17 court to approve a list of charitable organizations to receive any balance remaining in the  
18 settlement fund. The parties have selected the following organizations: Consumers Union,  
19 Yonkers, NY; National Consumer Law Center, Washington, DC; University of California, Davis,  
20 Food Science & Technology Department; and Florida State University, Food & Nutrition Science  
21 Department. The parties argue that these entities are reasonably connected to this litigation, in that  
22 they work on advancing the rights of consumers and the information available to food consumers.

23 The *cy pres* doctrine is appropriate for a case like this one, where class members who did not  
24 make claims cannot be easily located or identified, in order to “put the unclaimed fund to its next  
25 best compensation use, *e.g.*, for the aggregate, indirect, prospective benefit of the class.” *Nachshin*  
26 *v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) (citing *Masters v. Wilhelmina Model Agency,*  
27 *Inc.*, 473 F.3d 423, 436 (2d Cir.2007)). A *cy pres* remedy must “bear[] a substantial nexus to the  
28 interests of class members.” *Lane v. Facebook*, 696 F.3d 811, 821 (9th Cir. 2012) *cert. denied*,

1 134 S. Ct. 8 (2013). In evaluating the *cy pres* component of a class settlement, courts look to  
 2 factors set forth in *Six Mexican Workers*, 904 F.2d at 1305. Specifically, the *cy pres* remedy “must  
 3 account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the  
 4 interests of the silent class members . . . .” *Nachshin*, 663 F.3d at 1036 (citing *Six Mexican*  
 5 *Workers*, 904 F.2d at 1307).

6 The *cy pres* plan in this case would distribute equal sums to the following organizations:

7 **Consumers Union** (Yonkers, NY). Consumers Union is a non-profit organization with a  
 8 mission “to work for a fair, just and safe marketplace for all consumers and to empower  
 9 consumers to protect themselves.” (Gutride Decl. – ECF No. 148-1, ¶ 79.) It publishes *Consumer*  
 10 *Reports* magazine and website (www.consumerreports.org), as well as *The Consumerist Blog*  
 11 (www.consumerist.com), both of which provide information of interest to consumers, such as  
 12 product reviews and information about false-advertising scams. Consumers Union is also active in  
 13 educating consumers about food labeling. It operates the website Not In My Food  
 14 (www.notinmyfood.org), which provides information to consumers about the presence of  
 15 genetically modified organisms (GMOs) and other controversial ingredients in food. It also  
 16 lobbies for better food-labeling laws. In October 2014, Consumer Union published an article in  
 17 *Consumers Reports* entitled, “GMOs and Food: Do you know what you’re eating?” (See  
 18 [http://www.consumerreports.org/cro/news/2014/10/gmos-and-food-do-you-know-what-you-are-](http://www.consumerreports.org/cro/news/2014/10/gmos-and-food-do-you-know-what-you-are-eating/index.htm)  
 19 [eating/index.htm](http://www.consumerreports.org/cro/news/2014/10/gmos-and-food-do-you-know-what-you-are-eating/index.htm), last accessed December 20, 2014.) Consumers Union has been approved as a *cy*  
 20 *pres* recipient in numerous false-advertising lawsuits. See, e.g. *Nigh v. Humphreys Pharmacal,*  
 21 *Inc.*, 2013 WL 5995382, \*9 (S.D. Cal. Oct. 23, 2013) (“the Court finds that this *cy pres*  
 22 distribution to Consumers Union reflects the objectives of the UCL and CLRA; reflects the  
 23 interests of silent Class Members; and benefits the Plaintiff Class, who are consumers that  
 24 purchased Products based on false and misleading representations”); *Dennis v. Kellogg Co.*, 2013  
 25 WL 6055326, \*1 (S.D. Cal. Nov. 14, 2013), *appeal dismissed* (May 15, 2014) (approving  
 26 Consumers Union as a *cy pres* recipient in food-labeling class action).

27 **National Consumer Law Center** (Washington, DC). The National Consumer Law Center  
 28 (NCLC) advocates on behalf of consumers, providing legal services and aid, and representing

1 them on matters of interest before Congress and state legislatures and by filing amicus briefs in  
 2 courts. (Gutride Decl. – ECF No. 148-1, ¶ 80.) In 2009, it published “Consumer Protection in the  
 3 States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes,” which analyzed  
 4 and summarized the unfair-and-deceptive-acts-and-practices (UDAP) laws that protect consumers  
 5 in each state and the District of Columbia, spotlighted limitations in these laws and in their  
 6 enforcement, and made proposals for reform. It also provides help to litigation counsel  
 7 representing persons with incomes below 200% of the federal poverty line in matters involving  
 8 consumer sales and services. NCLC has been approved as a *cy pres* recipient in other consumer  
 9 class actions, including recent food-labeling cases. *See, e.g., Johnson*, 2013 WL 3213832, at \*1  
 10 (N.D. Cal.); *Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, \*10 (N.D. Cal. June 24, 2014).

11 **University of California, Davis – Food Science & Technology Department.** The Food  
 12 Science & Technology Department of UC Davis is an internationally recognized program that  
 13 researches food safety and quality. Its scientists work on food chemistry, food processing, and  
 14 food microbiology. It also operates the August A. Busch III Brewing and Food Science  
 15 Laboratory, where research is performed into issues relating to the processing of many fruits,  
 16 dairy, and beverage products. For example, the department has conducted studies into the presence  
 17 of GMOs and hormones in food. UC Davis is part of the publicly funded University of California  
 18 system. (Gutride Decl. – ECF No. 148-1, ¶ 81.)

19 **Florida State University – Nutrition, Food & Exercise Science Department.** Florida State  
 20 University’s Department of Nutrition, Food and Exercise Sciences offers undergraduate and  
 21 graduate degrees in Dietetics and Food & Nutrition and conducts research in human nutrition and  
 22 food science, as well as sports nutrition, sports sciences, and exercise physiology. The department  
 23 facilitates integrative studies on diet and physical activity in the maintenance of health and the  
 24 prevention and treatment of selected chronic disease states, as well as studies on the quality and  
 25 safety of food and on optimal human performance. The department’s Nutrition and Food  
 26 Instrument Laboratory provides a setting for chemical, analytical, and microbiology testing.  
 27 Florida State University is publicly funded. (*Id.*, ¶ 82.)

28 There is the required geographic nexus between these organizations and the nationwide class.

1 *See Nachshin*, 663 F.3d at 1039-40 (*cy pres* award in nationwide class suit must serve  
 2 “geographically diverse” area). The organizations were chosen to meet the legal needs of  
 3 consumers nationwide. All four organizations serve consumers nationally. The University of  
 4 California and Florida State University were chosen because of their geographic diversity and  
 5 impact, which will benefit class members nationwide. *Cf. In re EasySaver Rewards Litig.*, 921 F.  
 6 Supp. 2d 1040, 1052 (S.D. Cal. 2013) (finding that donations to Los Angeles-based organizations  
 7 for the creation of educational materials will benefit a nationwide class because “the internet is not  
 8 limited by geographic boundaries, and the educational impact of the funded academic programs  
 9 will have a nation-wide impact”).

## 10 **X. OBJECTIONS TO THE SETTLEMENT**

### 11 **A. Preliminary Questions: The Objectors Lack Standing**

12 The first objector, Carol Dierkes, urges the court to “dismiss” the case as “frivolous” because  
 13 no physical injury befell plaintiffs. (ECF No. 146.) Physical injury is not required where the harm  
 14 complained of is economic. *See, e.g., Kosta v. Del Monte Corp.*, 2013 WL 2147413, \*11-12 (N.D.  
 15 Cal. May 15, 2013) (“Plaintiffs allege that Del Monte has created misleading labeling and  
 16 advertising . . . that . . . caused them to purchase products or pay premiums they would not have  
 17 otherwise.”). Because Ms. Dierkes does not complain about the terms of the settlement itself, there  
 18 is nothing more in her objection for the court to consider.

19 The plaintiffs have asked the court to strike the remaining two objections, those by Michael  
 20 Narkin (ECF No. 159; *in pro per*) and Brittany Ference (ECF No. 153; represented by Matthew  
 21 Kurlich). The plaintiffs argue that Mr. Narkin and Ms. Ference have not complied with the stated  
 22 procedures for establishing membership in the class. In the preliminary approval order, which was  
 23 posted on the Settlement Website, this court ordered:

24 Each such objection must include the following: (1) the name,  
 25 address, and telephone number of the Settlement Class Member; (2)  
 26 documents or testimony sufficient to establish membership in the  
 27 Settlement Class; and (3) a detailed statement of any objection  
 28 asserted, including the grounds therefor and reasons, if any, and for  
 requesting the opportunity to appear and be heard at the fairness  
 hearing. Failure to include the foregoing information will constitute  
 grounds for striking an objection.

1 (ECF No. 141, at 14.) The court finds that, in fact, all three objectors have failed to establish their  
2 standing to challenge the settlement. Ms. Ference and Mr. Narkin have not complied with these  
3 procedures and so have not established that they are class members. Ms. Ference did not provide  
4 her address, nor did she provide any documents or testimony to establish that she is a class  
5 member. Nothing in her objection states that she bought any Ghirardelli products.<sup>4</sup> Nothing in Ms.  
6 Diereke's short letter states that she bought a Ghirardelli product. (ECF No.146.) While Mr.  
7 Narkin, a former California-licensed attorney, did state, "I declare that I purchased, in the United  
8 States, at least one of the covered Ghirardelli products during the class period," he does not  
9 identify which product he bought, or when, nor does he make the statement under penalty of  
10 perjury, so it does not constitute "testimony." *See* Fed. R. Evid. 603 (requiring oath or  
11 affirmation); 28 U.S.C. § 1746 (allowing substitute testimony by declaration under penalty of  
12 perjury). It is therefore proper for the court to strike their objections. *See, e.g., In re Hydroxycut*  
13 *Mktg. & Sales Practices Litig.*, 2013 WL 5275618, at \*2 (S.D. Cal. Sept.17, 2013) (striking  
14 objection because objector had not "carried his burden of proving standing as a class member"); *In*  
15 *re Korean Air Lines Co. Antitrust Litig.*, 2013 WL 7985367, at \*2 (C.D. Cal. Dec. 23, 2013)  
16 (finding objectors lack standing for failure to show class membership); *Kent v. Hewlett-Packard*  
17 *Co.*, 2011 U.S. Dist. LEXIS 106825 \*7 (N.D. Cal. Sept. 20, 2011) ("Because they are not  
18 members of the class, the Ziegenfelders lack standing to object."); *San Francisco NAACP v. San*  
19 *Francisco Unified School Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) ("nonclass members  
20 have no standing to object to the settlement of a class action"); *Tarlecki v. Bebe Stores, Inc.*, 2009  
21 U.S. Dist. LEXIS 102531 (N.D. Cal. Nov. 3, 2009) ("Since she is not a class member, she has no  
22 standing to object to the settlement."); *Glass v. UBS Fin. Servs., Inc.*, 2007 U.S. Dist. LEXIS  
23 8476, 2007 WL 221862, at \*8 (N.D. Cal. Jan. 26, 2007) (same); *see also Feder v. Elec. Data Sys.*  
24 *Corp.*, 248 Fed. Appx. 579 \*2 (5th Cir. 2007) (objectors have burden of proving standing;

25 \_\_\_\_\_  
26 <sup>4</sup> Her attorney has provided this type of information in support of other objections. *See, e.g., Roos,*  
27 *et al. v. Honeywell International, Inc.*, CGC-04-436205 (S.F. Superior Court), available at  
28 [file:///Documents/Plaintiffs%20Response%20to%20Objections%20\(00042458-3\).PDF](file:///Documents/Plaintiffs%20Response%20to%20Objections%20(00042458-3).PDF); *Stanley*  
*Nader v. Capital One Bank USA, N.A. et al*, Case No., 2:12-cv-01265-DSF (C.D. Cal) Dkt.# 160,  
filed Sept. 2, 2014).

1 “unsupported assertions of class membership” do not suffice).

2 The court therefore finds that all three objectors lack standing and strikes their objections.

3 **B. The Objections Lack Merit**

4 Even if the objectors had proven their membership in the class, the challenges they raise do not  
5 persuade the court that the settlement should not be approved as “fair, adequate, and reasonable.”  
6 Their objections touch on three topics.

7 **1. Collusion**

8 First, both objectors refer to perceived collusion, but this court finds no evidence of collusion.  
9 Ms. Ference’s objection about collusion is too unspecific to impugn the settlement. Mr. Narkin  
10 contends that the entry of the protective order governing confidential documents indicates  
11 unfairness and collusion and deprives him of his purported right as a class member to view all the  
12 documents submitted in the litigation. (ECF No. 159 at 1-3.) There is no evidence that Mr. Narkin  
13 has ever asked to see any particular document. And objectors do not have an unfettered right to  
14 discovery. *See In re Wachovia Corp. Pick-A-Payment Mortgage Mktg. & Sales Practices Litig.*,  
15 2011 WL 1496342, \*1 (N.D. Cal. Apr. 20, 2011) (“While objectors are entitled to meaningful  
16 participation in the settlement proceedings, and leave to be heard, they are not automatically  
17 entitled to discovery or to question and debate every provision of the proposed compromise.”).  
18 The court finds no indication of collusion anywhere in this lawsuit and cannot accept these  
19 objections.

20 **2. Cy pres distribution**

21 Ms. Ference and Mr. Narkin raise several objections to the *cy pres* distributions, but they are  
22 not well taken. For example, Ms. Ference objects that *cy pres* is inappropriate because the  
23 remainder could instead be distributed as a “pro-rata increase” to class members who made claims.  
24 No authority is provided for the argument, which would not only give claimants a windfall  
25 (perhaps entitling them to refunds exceeding their purchase price), but would also disadvantage  
26 the large majority of the class members who did not make claims. Instead, the *cy pres* awards  
27 ensure that non-claiming class members also receive benefits through the services provided by the  
28 named organizations, such as advocacy, enforcement, representation, information, education and

1 research. *See Hayes v. Arthur Young & Co.*, 1994 WL 463493, at \*17 (9th Cir. 1994)  
2 (“Distributing the unclaimed funds pro rata would thus give the claiming class members a windfall  
3 . . . . Thus, any excess unclaimed damages should not be distributed among the claiming  
4 plaintiffs.”); *In re EasySaver Rewards Litig.*, 921 F. Supp. 2d 1040, 1053 (S.D. Cal. 2013)  
5 (approving *cy pres* award because absent class members would not benefit from further  
6 distribution to claimants).

7 Ms. Ference next argues that the *cy pres* payments might reduce Ghirardelli’s preexisting  
8 charitable contributions or obligations. Ghirardelli has stated that it has not donated money to  
9 these organizations in recent years. (Isip Decl. – ECF No. 161 at 2-3, ¶ 5.) And Ms. Ference’s  
10 argument does not logically apply to a non-reverting common-fund settlement, where no one  
11 knows at the outset how much money might be left unclaimed. Furthermore, this court is unaware  
12 of any authority that suggests that a defendant’s preexisting charitable contributions should be a  
13 factor in analyzing a *cy pres* portion of a common-fund settlement.

14 Finally, Mr. Narkin contends, without explanation, that the *cy pres* provision is inappropriate,  
15 because the charities that would receive the money were not injured, and the *cy pres* distribution  
16 “may violate the rule against perpetuities.” The court finds these objections unconvincing.

### 17 **3. Attorney’s fees**

18 Mr. Narkin and Ms. Ference object to the proposed fee award. First, Mr. Narkin objects that  
19 “the amount of the proposed attorney fees of up to \$1,575,000 constitutes over reaching [*sic*] and  
20 represents unjust enrichment.” (ECF No. 159 at 1.) He offers no further explanation or analysis.  
21 Such “[c]onclusory and unsubstantiated objections are not sufficient to warrant a reduction in  
22 fees.” *Lucas v. White*, 63 F. Supp. 2d 1046, 1057 (N.D. Cal.1999) (holding that “The party  
23 opposing the fee application has a burden of rebuttal that requires submission of evidence to the  
24 district court challenging the accuracy and reasonableness of the hours charged or the facts  
25 asserted by the prevailing party in its submitted affidavits.”); *accord In re Toyota Unintended*  
26 *Acceleration*, 2013 WL 8541175 (C.D. Cal. July 24, 2013) (rejecting unsupported objections to a  
27  
28

1 proposed fee award); *EnPalm, LLC v. Teitler*, 162 Cal.App.4th 770, 775 (2008) (same).<sup>5</sup>

2 Ms. Ference makes two comments on the value of the changed labeling practices. First, she  
3 claims that the labeling changes have no value because they will only be maintained for three  
4 years. The court finds that three years is significant. As Ghirardelli asserts, there is currently a lack  
5 of regulatory guidance as to the definition of the term “all natural,” and Ghirardelli is bound to  
6 keep the label changes in place for the next three years regardless of changes in the regulatory  
7 environment during that time — even if those regulatory changes make clear that Ghirardelli’s use  
8 of the term was correct. (ECF No. 149-3, ¶¶3, 13.)

9 Ms. Ference then claims that, if after three years Ghirardelli reverts to the old packaging, class  
10 members will have released claims for subsequent purchases. That argument evinces a  
11 misunderstanding of the law and the terms of the release, as there is no release of claims about  
12 future conduct or injuries that have not yet occurred. *See Ball v. Johanns*, 2007 WL 3124962, at  
13 \*4 (E.D. Cal. Oct. 24, 2007) (full release under Civil Code section 1542 did not bar claims based  
14 on subsequent injury, as statute “relates only to those claims that ‘exist ... at the time of executing  
15 the release’”). Instead, the settlement agreement expressly releases only claims that actually were,  
16 or could have been, asserted in this lawsuit. (ECF No. 129-2, § 8.2.) Accordingly, the objections  
17 are overruled.

## 18 **XI. RELEASES AND EFFECT OF THIS ORDER**

19 By operation of this Final Approval Order and entry of judgment, Plaintiffs on the one hand,  
20 and the Released Parties<sup>6</sup> on the other hand, shall have unconditionally, completely, and  
21 irrevocably released and forever discharged each other from and shall be forever barred from  
22 instituting, maintaining, or prosecuting:

23  
24 <sup>5</sup> Mr. Narkin has made the same, identically phrased objection in the past, where it was also  
25 overruled. *Arnold v. Fitflop USA, LLC*, 2014 WL 1670133, \*8 (S.D. Cal. Apr. 28, 2014) (finding  
26 “claim of an indicia of a consciousness of unfairness and collusion” without merit), *appeal*  
*dismissed* (Oct. 20, 2014).

27 <sup>6</sup> “Released Parties” means Defendant and its present and former subsidiaries, parents, affiliates,  
28 divisions, officers, directors, members, managers, shareholders, insurers, suppliers (including, but  
not limited to, Kerry, Inc.), manufacturers, re-sellers, distributors, brokers, service providers,  
employees, agents, legal representatives, heirs, predecessors, successors, or assigns.

- 1           1) any and all claims, liens, demands, actions, causes of action, obligations, damages or  
2           liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or  
3           unknown, that actually were, or could have been, asserted in this litigation, based upon any  
4           violation of any state or federal statutory or common law or regulation, and any claim  
5           arising directly or indirectly out of, or in any way relating to, the claims that actually were,  
6           or could have been, asserted in this litigation, that Plaintiffs on the one hand, and  
7           Defendant on the other hand, have had in the past, or now have, related in any manner to  
8           the Released Parties’ products, services or business affairs; and  
9           2) any and all other claims, liens, demands, actions, causes of action, obligations, damages or  
10          liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or  
11          unknown, that Plaintiffs on the one hand, and Defendant on the other hand, have had in the  
12          past or now have, related in any manner to any and all Released Parties’ products, services  
13          or business affairs, or otherwise.

14           By operation of this Final Approval Order and entry of judgment, Settlement Class Members  
15          shall have unconditionally, completely, and irrevocably released and discharged the Released  
16          Parties from any and all claims, rights, demands, actions, causes of action, suits, debts, liens,  
17          contracts, liabilities, agreements, costs, expenses, or losses of any kind whatsoever, including any  
18          known or unknown claims, which actually were, or could have been, asserted in the Litigation or  
19          that relate to: (1) the Romance Language; (2) allegations that the names Ghirardelli has used for its  
20          White Chips, including “Premium Baking Chips- Classic White” and “Classic White Chips” are  
21          confusing or misleading, or violate any FDA regulations or applicable laws; (3) allegations that  
22          the White Chips are marketed in a manner that suggests or indicates that they are white chocolate  
23          or chocolate, or that the White Chips contain white chocolate, chocolate, or cocoa butter; (4)  
24          inaccuracies in the ingredient list on the White Chips labels; (5) allegations that the Products  
25          contain ingredients that are not “natural” or “all natural” or that that Products themselves are not  
26          “natural” or “all natural;” or (6) allegations that the manufacturing process used in the Products or  
27          ingredients for the Products renders the Products not “natural” or not “all natural.”

28          ///

1 Plaintiffs and Settlement Class Members shall, by operation of this Final Approval Order and  
2 entry of judgment, be deemed to have waived the provisions, rights and benefits of California  
3 Civil Code § 1542, and any similar law of any state or territory of the United States or principle of  
4 common law. Section 1542 provides:

5 A general release does not extend to claims which the creditor does  
6 not know or suspect to exist in his or her favor at the time of  
7 executing the release, which if known by him or her must have  
8 materially affected his or her settlement with the debtor.

9 Nothing herein shall bar any action or claim to enforce the terms of the Settlement Agreement.

10 No action taken by the Parties, either previously or in connection with the negotiations or  
11 proceedings connected with the Settlement Agreement, shall be deemed or construed to be an  
12 admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment  
13 or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever to any  
14 other Party. Neither the Settlement Agreement nor any act performed or document executed  
15 pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an  
16 admission of, or evidence of, the validity of any claim made by the Settlement Class Members or  
17 Class Counsel, or of any wrongdoing or liability of the persons or entities released under this  
18 Order and the Settlement Agreement, or (b) is or may be deemed to be, or may be used as an  
19 admission of, or evidence of, any fault or omission of any of the persons or entities released under  
20 this Order and the Settlement Agreement, in any proceeding in any court, administrative agency,  
21 or other tribunal. Defendant's agreement not to oppose the entry of this Final Approval Order shall  
22 not be construed as an admission or concession by Defendant that class certification was  
23 appropriate in the Litigation or would be appropriate in any other action.

24 Except as provided in this Order, Plaintiffs shall take nothing against Defendant by their  
25 Complaint. This lawsuit is hereby dismissed on the merits and with prejudice and final judgment  
26 shall be entered thereon, as set forth in this Order.

27 Without affecting the finality of the judgment hereby entered, the Court reserves jurisdiction  
28 over the implementation of the Settlement Agreement.

**CONCLUSION**

The court hereby confirms its provisional appointments of class representatives and class counsel as reflected in its preliminary approval order, grants final approval of the settlement and directs the parties and the claim administrator to comply with the terms of the settlement and to distribute the common fund as reflected in the settlement and this order.

This disposes of ECF No. 148.

**IT IS SO ORDERED.**

Dated: February 20, 2015



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LAUREL BEELER  
United States Magistrate Judge

United States District Court  
Northern District of California

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**APPENDIX A - List of Products**

The following products are covered by this settlement:

<b>PRODUCT</b>	<b>TYPE</b>	<b>SIZE</b>
Gourmet 100% Unsweetened Baking Chocolate Chips	Chips	10 oz
Gourmet 58% Semisweet Chocolate for Baking Chips	Chips	10 oz
Gourmet 72% Extra Bittersweet Baking Chocolate Chips	Chips	10 oz
Gourmet Milk 32% Creamy Devotion	Bag	5.25 oz; 6 oz
Gourmet Milk 32% Creamy Devotion	Bar	3.5 oz
Gourmet Milk 32% Creamy Devotion	Square	Bulk
Gourmet Milk 32% Creamy Devotion	Square	Bulk
Gourmet Milk Assorted	Bar	Mixed (72 ct)
Gourmet Milk Sea Salt & Almonds	Bar	3.5 oz
Gourmet Milk Sea Salt Escape	Bag	4.5 oz; 5.25 oz
Gourmet Milk Toasted Coconut	Bar	3.5 oz
Intense Dark Assorted	Bag	6.38 oz; 4.5 oz; 19.14 oz; 15.01 oz
Intense Dark Cabernet Matinee	Bar	3.5 oz
Intense Dark Cherry Tango	Bar	3.5 oz
Intense Dark Espresso Escape	Bag	4.87 oz
Intense Dark Espresso Escape	Bar	3.5 oz
Intense Dark Evening Dream 60%	Bar	3.5 oz
Intense Dark Evening Dream 60%	Squares	Bulk
Intense Dark Hazelnut Heaven	Bar	3.5 oz
Intense Dark Holiday Assorted	Bag	7.13 oz
Intense Dark Midnight Reverie 86%	Bag	4.12 oz; 4.87 oz
Intense Dark Midnight Reverie 86%	Bar	3.17 oz
Intense Dark Midnight Reverie 86%	Squares	Bulk
Intense Dark Mint Bliss	Bag	4.87 oz
Intense Dark Mint Bliss	Bar	3.5 oz
Intense Dark Sea Salt Soiree	Bag	4.12 oz; 4.87 oz
Intense Dark Sea Salt Soiree	Bar	3.5 oz
Intense Dark Sea Salt Soiree	Squares	Bulk
Intense Dark Toffee Interlude	Bar	3.5 oz
Intense Dark Twilight Citrus Sunset	Bar	3.5 oz
Intense Dark Twilight Delight 72%	Bag	4.87 oz; 5.62 oz
Intense Dark Twilight Delight 72%	Bar	3.5 oz
Intense Dark Twilight Delight 72%	Squares	Bulk

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PRODUCT	TYPE	SIZE
Intense Dark Valentines Assorted	Bag	7.13 oz; 4.5 oz
Luxe Milk	Bag	5.25 oz
Luxe Milk	Bar	3 oz; 3.5 oz
Luxe Milk	Squares	Bulk
Luxe Milk Almond	Bag	4.75 oz
Luxe Milk Almond	Bar	3 oz; 3.5 oz
Luxe Milk Almond	Squares	Bulk
Luxe Milk Assorted	Bag	22.38 oz; 8.11 oz; 8.28 oz
Luxe Milk Crisp	Bag	4.69 oz
Luxe Milk Crisp	Bar	2.81 oz
Luxe Milk Crisp	Squares	Bulk
Luxe Milk Dark Duet	Bar	3 oz
Luxe Milk Hazelnut	Bag	4.75 oz
Luxe Milk Hazelnut	Bar	3 oz
Luxe Milk Hazelnut	Squares	Bulk
Luxe Milk Holiday Assorted	Bag	8.44 oz
Luxe Milk Holiday Assorted (Premium)	Bag	8.64 oz; 9.64 oz; 10.64 oz
Luxe Milk Toffee	Bar	3 oz; 3.5 oz
Luxe Milk Valentine's Heart	Squares	6.17 oz; 8.28 oz ; Mixed 6.1 oz
Luxe Milk Valentines Assorted	Bag	8.44 oz
Luxe Milk Valentines Assorted (Premium)	Bag	8.64 oz
Premium Baking Bar - 100% Cacao Unsweetened	Bar	4 oz
Premium Baking Bar - 60% Cacao Bittersweet Chocolate	Bar	4 oz
Premium Baking Bar - 70% Cacao Extra Bittersweet Baking Bar	Bar	4 oz
Premium Baking Bar - Milk Chocolate	Bar	4 oz
Premium Baking Bar - Semi Sweet Chocolate	Bar	4 oz
Premium Baking Bar - White Chocolate	Bar	4 oz
Premium Baking Chips - 60% Cacao	Chips	11.5 oz; 8.8 oz; 11 oz; 10 oz
Premium Baking Chips - 60% Cacao Bittersweet Chocolate	Chips	3.5 lb; 3.0 lb; 30 oz
Premium Baking Chips - Classic White	Chips	11 oz
Premium Baking Chips - Classic White Chips	Chips	11 oz
Premium Baking Chips - Double Chocolate Bittersweet Chips	Chips	3.0 lb; 3.5 lb
Premium Baking Chips - Milk Chocolate	Chips	32 oz; 11.5 oz

<b>PRODUCT</b>	<b>TYPE</b>	<b>SIZE</b>
Premium Baking Chips - Semi Sweet Chocolate	Chips	36 oz; 12 oz; 11.5 oz; 10 oz
Premium Baking Chips – Semi Sweet Mini	Mini chips	10 oz
Premium Baking Cocoa - Sweet Ground Chocolate		16 oz
Premium Baking Cocoa - Unsweetened Cocoa		10 oz
Sublime White Cookies Jubilee	Bar	3.17 oz
Sublime White Vanilla Dream	Bag	4.12 oz
Sublime White Vanilla Dream	Bar	3.17 oz
Sublime White Vanilla Dream	Squares	Bulk

United States District Court  
Northern District of California

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## APPENDIX B

## Requests for Exclusion Received Timely as of February 18, 2015

#	Name	City	State	GCG ID#
1	Ada Diane Rico	Chicago	IL	L01044741
2	Adam Roberts	Indianapolis	IN	Y32682D678
3	Alex Morrow	Fresno	CA	YEE195C746
4	Amy K. Lawther	Manchester	MI	L01002353
5	Andrea Bunch	Roseville	CA	L01003424
6	Anne B. Young	Arroyo Grande	CA	L01008957
7	Ashley Holland	Olive Branch	MS	Y813393180
8	Belinda Willis	Forrest City	AR	YC4DE8EE4E
9	Brandy Spry	Yakima	WA	771E1027AF
10	Cheryl A. Borrelli	Trappe	PA	L01020765
11	Christine Sellard	Denver	CO	2988570F2D
12	Dale W. Johnson	Edinboro	PA	L01033652
13	David Henry Shanken	Millsboro	DE	Y99153A05C
14	Freder Lockett	Schererville	IN	Y9B6FE82D2
15	Gregory Andrews	Belfry	KY	Y02C7A51E0
16	Henry Padilla	San Tan Vly	AZ	L01003000
17	Isaac C. Sparks	Reisterstown	MD	Y9F6940DB1
18	Janice Lovekamp	Jackson	MO	Y8805AAFCC
19	Jason Pampena	Pittsburgh	PA	Y0C609E053

1	20	Jerald Wesley Depew	Levittown	PA	Y30325D129
2	21	John Seales	Ponca City	OK	L01001150
3	22	Jose Aguirre	Loveland	CO	Y0DD88BA90
4	23	Joseph Christopher Pianta	Erie	PA	YC461E62FF
5	24	Joseph P. Best	Nashville	IN	Y561C111D4
6	25	Justin Silverman	Johns Island	SC	L01035063
7	26	Kallyne Jeffries	Albany	NY	YA6CDACFCF
8	27	Katie McGuire	Palm Bay	FL	Y60D76EE97
9	28	Kevin Beck	Broken Arrow	OK	L01024888
10	29	Lakeitha Bradshaw-Macias	Suisun City	CA	Y2F10D0D33
11	30	Landy Willis	Madison Ark	AR	YC2EC6271D
12	31	Larry Hodges	Forrest City	AR	Y3E6C7228D
13	32	Linda Eller	Reno	NV	YFE1280E5A
14	33	Lisa M. Lacey	Euclid	OH	Y0D9E214A1
15	34	Lisa McDonald	Independence	MO	L01012253
16	35	Loren Jones	Snohomish	WA	YC567915BC
17	36	Marc Sidoti	Temperance	MI	YCBEAD423D
18	37	Marcella Ray	Charlotte	NC	Y6823FD4A4
19	38	Mary Wadulack Rodriguez	Clermont	FL	2B375E984D
20	39	Michelle Patterson	Los Angeles	CA	Y8E4CE7C56
21	40	Mikhail Nesterovich	Elizabeth	NJ	L01002595
22	41	Norton Richards	Pine Ridge	SD	Y8AE0050AA
23	42	Philip Buonadonna	San Francisco	CA	L01014591
24	43	Porcia Hopkins	Southaven	MS	YB3F834200
25	44	Robyn Darbyshire	Beaverton	OR	L01028872
26	45	Sandra Chidester	Baden	PA	Y99F3C153F
27	46	Sara James	Manhattan Beach	CA	Y5D4CFEF0D
28	47	Shawn Bowersock	Des Moines	IA	YA46EA92AE

United States District Court  
Northern District of California

1	48	Sheila Byrns	Laredo	TX	YBEACA1435
2	49	Suzanne Mackillop	Hemet	CA	Y3E18B44E1

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United States District Court  
Northern District of California

# **Exhibit J**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
ARCTIC SENTINEL, INC., formerly	)	Case No. 15-12465 (CSS)
Known as FUHU, INC., <i>et al.</i> ,	)	
	)	Jointly Administered
Debtors,	)	
	)	Re: D.I. 9
	)	
	)	
	)	
	)	
	)	
	)	

**DECLARATION OF JAY GERACI RE: NOTICE PROCEDURES**

I, Jay Geraci declare and state as follows:

1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”), located at 3301 Kerner Blvd., San Rafael, California. KCC was appointed as the Claim Administrator in this matter and is not party to this action. I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

**CAFA NOTIFICATION**

2. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. Section 1715, KCC compiled a CD-ROM containing the following documents:

- Second Amended Class Action Complaint for Violation of the California Consumers Legal Remedies Act; False Advertising; Unfair Business Practices Breach of Express and Implied Warranty; and Fraud, Deceit, and/or Misrepresentation
- Voluntary Petition for Non-Individuals Filing for Bankruptcy with Creditor Matrix
- Objection by Unsecured Creditor Scott Miller, on Behalf of Himself and Similarly

Situated Persons, to the Proposed Sale of Substantially All of the Debtors' Assets

- Order Approving Stipulation Resolving Motion of Scott Miller for Limited Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(D) to Renew his Motion for Class Certification in the District Court or, in the Alternative, For an Order Applying Fed. R. Bankr. Proc. 7023, Pursuant to Fed. R. Bankr. Proc. 9014(C), to Permit the Filing of a Renewed Motion for Class Certification in this Court and Related Relief
- Order Authorizing and Preliminarily Approving Stipulation Resolving (1) Class Claim of Scott Miller and James E. Griffin, (Claim No. 177), (2) Claim of D&H Distributing Co. (Claim No. 153), (3) Claim of Wistron Corporation and Wistron Infocomm Technology (America) Corporation (Claim No. 162), (4) Claims of North Haven Expansion Capital Co-Investment Vehicle LP, formerly known as MS Expansion Capital Co-Investment Vehicle, LP, and North Haven Expansion Capital LP, formerly known as Morgan Stanley Expansion Capital, LP (Claim Nos. 137 and 140), (5) Certain Additional Claims Among the Parties, and (6) Disallowing and Expunging Claims of Gutride Safier LLP (Claim Nos. 165, 166, 167 and 168) (“Preliminary Approval Order”)
- Long Form Notice
- Summary Email Notice
- Summary Publication Notice
- Claim Form
- Stipulation Resolving (1) Class Claim of Scott Miller and James E. Griffin, (Claim No. 177), (2) Claim of D&H Distributing Co. (Claim No. 153), (3) Claim of Wistron Corporation and Wistron Infocomm Technology (America) Corporation (Claim No. 162), (4) Claims of North Haven Expansion Capital Co-Investment Vehicle LP, formerly known as MS Expansion Capital Co-Investment Vehicle, LP, and North Haven Expansion Capital LP, formerly known as Morgan Stanley Expansion Capital, LP (Claim Nos. 137 and 140), (5) Certain Additional Claims Among the Parties, and (6) Disallowing and Expunging Claims of Gutride Safier LLP (Claim Nos. 165, 166, 167 and

168)

- Intercreditor Agreement

all of which were accompanied by a cover letter (collectively, the “CAFA Notice Packet”). A copy of the cover letter is attached hereto as Exhibit A.

3. On May 31, 2019, KCC caused sixty-two (62) CAFA Notice Packets to be mailed via Priority Mail from the U.S. Post Office in Memphis, Tennessee to the parties listed on Exhibit B, *i.e.*, the U.S. Attorney General, the Attorneys General of each of the 50 States and the District of Columbia, the Attorneys General of the 5 recognized U.S. Territories, as well as parties of interest to this Action.

4. As of the date of this Declaration, KCC has received no response to the CAFA Notice Packet from any of the recipients identified in paragraph 3 above.

#### **CLASS LIST**

5. On May 14, 2019, KCC received two data files which contained a list of 292,900 records of persons believed to be members of the class, because they had previously contacted Fuhu customer service about a problem with their Fuhu tablet (“Class List”). The Class List included names and e-mail addresses. KCC formatted the list for e-mailing purposes, removed duplicate records, and removed invalid e-mail addresses. A total of 244,347 valid e-mail addresses were found and 48,553 e-mail addresses were found to be invalid or duplicative.

#### **E-MAILING OF THE NOTICE**

6. On June 4, 2019, KCC caused the E-mail Notice to be e-mailed to the 244,347 e-mail addresses in the Class List that were considered valid. A true and correct copy of the E-mail Notice is attached hereto as Exhibit C.

7. On June 7, 2019, KCC reported that 226,274 e-mail notices were delivered without a bounce notification and 18,073 e-mails bounced or failed to be received.

**REMINDER E-MAIL NOTICES**

8. On July 15, 2019, KCC caused the E-mail Reminder Notice to be e-mailed to 221,363 e-mail addresses in the Class List corresponding to e-mails that were successfully delivered on June 4, 2019 whose recipients had yet to submit a claim form to KCC. A true and correct copy of the Email Reminder Notice is attached hereto as Exhibit D.

9. On August 8, 2019, KCC caused a second E-mail Reminder Notice to be e-mailed to 215,671 e-mail addresses in the Class List corresponding to the e-mails that were successfully delivered on June 4, 2019 whose recipients had yet to submit a claim form to KCC.

**PUBLICATION OF THE SUMMARY NOTICE**

10. KCC caused the Summary Notice to be published in *People* and *Time* magazines. The Summary Notice appeared on page 52 of the July 1, 2019 issue (on-sale June 21, 2019) in *People* and on page 57 of the July 1, 2019 issue (on-sale June 21, 2019) in *Time* magazine. Copies of the Summary Notice as it appeared in each publication are attached as Exhibits E and F.

11. In addition to the consumer magazines above, KCC purchased 133,400,000 impressions via Google Display Network (GDN) and Facebook. The impressions targeted to adults 18-54 years of age nationwide. The impressions appeared on both mobile and desktop devices from June 4, 2019 through August 3, 2019. A total of 134,954,537 impressions were delivered, resulting in an additional 1,554,537 impressions at no extra charge. Screenshots of the internet banner notices as they appeared on various websites are attached as Exhibit G.

**SETTLEMENT WEBSITE**

12. On or about May 31, 2019, KCC established a website [www.tabletsettlement.com](http://www.tabletsettlement.com) dedicated to this matter to provide information to the Class Members and to answer frequently

asked questions. The website URL was set forth in the Notice, and Claim Form. Visitors of the website can download copies of the Summary Notice, Summary Spanish Notice, Claim Form, Exclusion Request Form, and other case-related documents. Visitors can also submit claims online and request exclusion. As of the date of this declaration, the website has received 163,363 visits. A true and correct copy of the Summary Notice, Summary Spanish Notice, Claim Form, and Exclusion Request Form are attached hereto as Exhibits H, I, J, and K.

### **TELEPHONE HOTLINE**

13. KCC established and continues to maintain a toll-free telephone number 1-844-269-3030 for potential Class Members to call and obtain information about the Settlement, request a Notice Packet, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on May 30, 2019 and is accessible 24 hours a day, 7 days a week. As of date of this declaration, KCC has received a total of 111 calls to the telephone hotline.

### **EMAIL INQUIRIES**

14. The Settlement Website included contact information for class counsel, Gutride Safer LLP. Class Counsel contacted KCC about and/or forwarded to KCC more than 30 inquiries from potential Class Members regarding the Settlement Website and/or operation of the claim form. KCC responded individually to each potential Class Member.

### **CLAIM FORMS**

15. The received by deadline for Class Members to file claims in this matter was August 20, 2019. To date, KCC has received 19,580 timely-filed claim forms for 21,153 tablets. A total of 13,850 claims for 20,058 tablets have been preliminarily determined to be valid. The other claims were rejected either because (a) the purchases were made outside of the proposed class period or (b) the claimants were not shown in the Class List and they did not submit any other proof of purchase as required by the settlement agreement. Of those valid claims, 19,702 tablets were reported defective, and 356 tablets were not reported defective.<sup>1</sup>

16. Under the settlement, claimants for defective tablets will receive \$30 and claimants for non-defective tablets will receive \$10, with each amount subject to pro-rata reductions if the value of claims exceeds the funds to be distributed.

### **REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE**

17. The Notice informs Class Members that requests for exclusion from the Class must be received no later than August 20, 2019. As of the date of this declaration, KCC has received seven requests for exclusion. A list of the Class Members requesting to be excluded is attached hereto as Exhibit L.

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<sup>1</sup> The numbers in this paragraph are based on KCC's completion of two rounds of claim review and validation. The third and final round of claim review and validation is expected to be completed by September 6, 2019. The numbers may change slightly after that third and final review.

**OBJECTIONS TO THE SETTLEMENT**

18. The deadline for Class Members to object to the settlement was August 20, 2019. As of the date of this declaration, KCC has received no objections to the settlement.

**ADMINISTRATION COSTS**

19. As of date of this declaration, KCC has incurred \$260,494.74 in costs of notice and administration. KCC estimates its remaining cost of administration to be \$49,253.47, for a grand total of \$309,748.21 through the completion of this matter.

20. KCC's estimated remaining fees and charges are based on certain information provided to KCC by the parties as well as significant assumptions. Accordingly, the estimate is not intended to limit KCC's actual fees and charges, which may be less or more than estimated due to the scope of actual services or changes to the underlying facts or assumptions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 3, 2019 at San Rafael, California.

  
\_\_\_\_\_  
JAY GERACI





3301 Kerner Boulevard  
San Rafael, CA 94901  
415.798.5900 PHONE  
415.892.7354 FAX  
kccllc.com

May 31, 2019

VIA PRIORITY MAIL

«First» «Last»  
«Company»  
«Address\_1»  
«Address\_2»  
«City», «State» «Zip»

Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear «First» «Last»:

Arctic Sentinel, Inc. [formerly known as Fuhu, Inc.] hereby provides notice pursuant to 28 U.S.C. § 1715 (codified by the Class Action Fairness Act of 2005 (“CAFA”) that a Motion to Approve Compromise under Rule 9019 was filed on April 18, 2019 in the bankruptcy proceeding entitled *In re Arctic Sentinel, Inc. [formerly known as Fuhu, Inc.], et al.*, Case No. 15-12465-CSS.

**Case Name:** *In re Arctic Sentinel, Inc. [formerly known as Fuhu, Inc.], et al.*

**Case Number:** 15-12465-CSS

**Jurisdiction:** United States Bankruptcy Court,  
District of Delaware

**Related Case:** *Scott Miller v. Fuhu, Inc., et al.*  
Case No. 2:14-cv-06119-CAS-AS  
United States District Court, Central District of California

In accordance with 28 U.S.C. § 1715(b), Arctic Sentinel, Inc. hereby provides notice of the proposed settlement and states as follows:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Related Materials:** A copy of the operative *Second Amended Class Action Complaint for Violation of the California Consumers Legal Remedies Act; False Advertising; Unfair Business Practices Breach of Express and Implied Warranty; and Fraud, Deceit, and/or Misrepresentation*, as filed in the United States District Court for the Central District of California, Western Division is included on the enclosed CD. In light of the filing of the bankruptcy matter, the civil action was stayed on December 7, 2015. Copies of the *Voluntary Petition for Non-Individuals Filing for*



«First» «Last»

May 31, 2019

Page 2

*Bankruptcy with Creditor Matrix, Objection by Unsecured Creditor Scott Miller, on Behalf of Himself and Similarly Situated Persons, to the Proposed Sale of Substantially All of the Debtors' Assets, and Order Approving Stipulation Resolving Motion of Scott Miller for Limited Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(D) to Renew his Motion for Class Certification in the District Court or, in the Alternative, For an Order Applying Fed. R. Bankr. Proc. 7023, Pursuant to Fed. R. Bankr. Proc. 9014(C), to Permit the Filing of a Renewed Motion for Class Certification in this Court and Related Relief* are also included on the enclosed CD for your convenience.

2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** Pursuant to the Court's *Order Authorizing and Preliminarily Approving Stipulation Resolving (1) Class Claim of Scott Miller and James E. Griffin, (Claim No. 177), (2) Claim of D&H Distributing Co. (Claim No. 153), (3) Claim of Wistron Corporation and Wistron Infocomm Technology (America) Corporation (Claim No. 162), (4) Claims of North Haven Expansion Capital Co-Investment Vehicle LP, formerly known as MS Expansion Capital Co-Investment Vehicle, LP, and North Haven Expansion Capital LP, formerly known as Morgan Stanley Expansion Capital, LP (Claim Nos. 137 and 140), (5) Certain Additional Claims Among the Parties, and (6) Disallowing and Expunging Claims of Gutride Safier LLP (Claim Nos. 165, 166, 167 and 168) ("Preliminary Approval Order")*, the Court has scheduled a Final Approval Hearing for September 10, 2019, at 10:00 a.m. before the Honorable Christopher S. Sontchi. A copy of the *Order* is included on the enclosed CD.
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** Copies of the *Long Form Notice, Summary Email Notice, Summary Publication Notice, and Claim Form* to be provided to the class are included on the enclosed CD.
4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** A copy of the *Stipulation Resolving (1) Class Claim of Scott Miller and James E. Griffin, (Claim No. 177), (2) Claim of D&H Distributing Co. (Claim No. 153), (3) Claim of Wistron Corporation and Wistron Infocomm Technology (America) Corporation (Claim No. 162), (4) Claims of North Haven Expansion Capital Co-Investment Vehicle LP, formerly known as MS Expansion Capital Co-Investment Vehicle, LP, and North Haven Expansion Capital LP, formerly known as Morgan Stanley Expansion Capital, LP (Claim Nos. 137 and 140), (5) Certain Additional Claims Among the Parties, and (6) Disallowing and Expunging Claims of Gutride Safier LLP (Claim Nos. 165, 166, 167 and 168)* is included on the enclosed CD.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement:** A copy of the *Intercreditor Agreement* is included on the enclosed CD as Exhibit A to the settlement *Stipulation*.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** There is no final judgment yet.



«First» «Last»

May 31, 2019

Page 3

7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members:** Pursuant to 28 U.S.C. § 1715(b)(7)(A), at this time a complete list of each State of residence for class members is not available, because the parties presently are only in possession of email addresses and in some cases names for class members who submitted complaints or inquiries to the Fuhu, Inc. customer service department in the period prior to the fall of 2015. The parties will not learn the current addresses of proposed settlement class members. Instead, the parties will learn current addresses only of settlement class members who file a claim, after dissemination of the notice and completion of the Claim adjudication process. Pursuant to 28 U.S.C. § 1715(b)(7)(B), it is estimated that there are approximately 2,200,000 individuals in the class.
  
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** As the proposed Settlement is still pending final approval by the Court, the only judicial opinion regarding the settlement is the Preliminary Approval Order enclosed on the CD. There are no other opinions available at this time.

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Arctic Sentinel, Inc. can address any concerns or questions you may have. Additional documentation and information regarding the bankruptcy action can be obtained at <http://www.kccllc.net/fuhu>.

Thank you.

Sincerely,

/s/

Daniel Burke  
Executive Vice President

Enclosure – CD



Last	First	Company	Address 1	Address 2	City	State	Zip
Whitaker	Michael G.	Acting Attorney General of the United States	United States Department of Justice	950 Pennsylvania Avenue, NW	Washington	DC	20530-0001
Clarkson	Kevin	Office of the Alaska Attorney General	P.O. Box 110300		Jeaneau	AK	99811
Marshall	Steve	Office of the Alabama Attorney General	501 Washington Avenue	PO Box 300152	Montgomery	AL	36130-0152
Rutledge	Leslie	Arkansas Attorney General Office	323 Center Street, Suite 200		Little Rock	AR	72201-2610
Brnovich	Mark	Office of the Arizona Attorney General	2005 N. Central Avenue		Phoenix	AZ	85004
CAFA Coordinator		Office of the Attorney General	Consumer Law Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Colorado Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
Tong	William	State of Connecticut Attorney General's Office	55 Elm Street		Hartford	CT	06106
Racine	Karl A.	District of Columbia Attorney General	441 4th Street, NW, Suite 1100S		Washington	DC	20001
Jennings	Kathy	Delaware Attorney General	Carvel State Office Building	820 N. French Street	Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General of Florida	The Capitol, PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Georgia Attorney General	40 Capitol Square, SW		Atlanta	GA	30334-1300
Connors	Clare	Office of the Hawaii Attorney General	425 Queen Street		Honolulu	HI	96813
Miller	Tom	Iowa Attorney General	Hoover State Office Building	1305 E. Walnut Street	Des Moines	IA	50319
Wasden	Lawrence	State of Idaho Attorney General's Office	700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-0010
Raoul	Kwame	Illinois Attorney General	James R. Thompson Center	100 W. Randolph Street	Chicago	IL	60601
Hill, Jr.	Curtis T.	Indiana Attorney General's Office	Indiana Government Center South	302 West Washington Street, 5th Floor	Indianapolis	IN	46204
Schmidt	Derek	Kansas Attorney General	120 S.W. 10th Ave., 2nd Floor		Topeka	KS	66612-1597
Beshear	Andy	Office of the Kentucky Attorney General	700 Capitol Ave	Capitol Building, Suite 118	Frankfort	KY	40601
Landry	Jeff	Office of the Louisiana Attorney General	P.O. Box 94095		Baton Rouge	LA	70804-4095
Healey	Maura	Office of the Attorney General of Massachusetts	1 Ashburton Place	20th Floor	Boston	MA	02108-1518
Frosh	Brian	Office of the Maryland Attorney General	200 St. Paul Place		Baltimore	MD	21202-2202
Frey	Aaron	Office of the Maine Attorney General	State House Station 6		Augusta	ME	04333
Nessel	Dana	Office of the Michigan Attorney General	P.O. Box 30212	525 W. Ottawa Street	Lansing	MI	48909-0212
Keith Ellison	Attorney General	Attention: CAFA Coordinator	445 Minnesota Street	Suite 1400	St. Paul	MN	55101-2131
Schmitt	Eric	Missouri Attorney General's Office	Supreme Court Building	207 W. High Street	Jefferson City	MO	65101
Hood	Jim	Mississippi Attorney General's Office	Department of Justice	P.O. Box 220	Jackson	MS	39205
Fox	Tim	Office of the Montana Attorney General	Justice Bldg., 3rd Floor	215 N. Sanders Street	Helena	MT	59620-1401
Stein	Josh	Office of the North Carolina Attorney General	Department of Justice	9001 Mail Service Center	Raleigh	NC	27602-0629
Stenehjem	Wayne	North Dakota Office of the Attorney General	State Capitol	600 E. Boulevard Avenue	Bismarck	ND	58505-0040
Peterson	Doug	Office of the Nebraska Attorney General	2115 State Capitol	P.O. Box 98920	Lincoln	NE	68509-8920
MacDonald	Gordon	New Hampshire Attorney General	Hew Hampshire Department of Justice	33 Capitol Street	Concord	NH	03301-6397
Grewal	Gurbir S.	Office of the New Jersey Attorney General	Richard J. Hughes Justice Complex	25 Market Street, P.O. Box 080	Trenton	NJ	08625
Balderas	Hector	Office of the New Mexico Attorney General	P.O. Drawer 1508		Santa Fe	NM	87504-1508
Ford	Aaron	Nevada Attorney General	Old Supreme Ct. Bldg.	100 North Carson Street	Carson City	NV	89701
James	Lettia	Office of the New York Attorney General	Dept. of Law - The Capitol	2nd Floor	Albany	NY	12224
Yost	Dave	Ohio Attorney General	State Office Tower	30 E. Broad Street	Columbus	OH	43266-0410
Hunter	Mike	Oklahoma Office of the Attorney General	313 NE 21st Street		Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Oregon Attorney General	Justice Building	1162 Court Street, NE	Salem	OR	97301
Shapiro	Josh	Pennsylvania Office of the Attorney General	1600 Strawberry Square		Harrisburg	PA	17120
Kilmartin	Peter	Rhode Island Office of the Attorney General	150 South Main Street		Providence	RI	02903
Wilson	Alan	South Carolina Attorney General	Rembert C. Dennis Office Bldg.	P.O. Box 11549	Columbia	SC	29211-1549
Ravnsborg	Jason	South Dakota Office of the Attorney General	1302 East Highway 14, Suite 1		Pierre	SD	57501-8501
Slatery, III	Herbert H.	Tennessee Attorney General and Reporter	P.O. Box 20207		Nashville	TN	37202-0207
Paxton	Ken	Attorney General of Texas	Capitol Station	P.O. Box 12548	Austin	TX	78711-2548
Reyes	Sean	Utah Office of the Attorney General	P.O. Box 142320		Salt Lake City	UT	84114-2320
Herring	Mark	Office of the Virginia Attorney General	202 North Ninth Street		Richmond	VA	23219
Donovan	TJ	Office of the Attorney General of Vermont	109 State Street		Montpelier	VT	05609-1001
Ferguson	Bob	Washington State Office of the Attorney General	1125 Washington St SE	P.O. Box 40100	Olympia	WA	98504-0100
Kaul	Josh	Office of the Wisconsin Attorney General	Dept of Justice, State Capitol	RM 114 East P.O. Box 7857	Madison	WI	53707-7857
Morrisey	Patrick	West Virginia Attorney General	State Capitol Complex, Bldg 1	Room E-26	Charleston	WV	25305
Michael	Peter K.	Office of the Wyoming Attorney General	2320 Capitol Avenue		Cheyenne	WY	82002
Ale	Talauega Eleasalo V.	American Samoa Attorney General	Exec. Ofc. Bldg, 3rd Floor	P.O. Box 7	Utulei	AS	96799
Camacho	Leevin Taitano	Office of the Attorney General, ITC Building	590 S. Marine Corps Drive	Suite 901	Tamuning	Guam	96913
Manibusan	Edward	Northern Mariana Islands Attorney General	Administration Building	PO Box 10007	Saipan	MP	96950-8907
Vazquez Garced	Wanda	Puerto Rico Attorney General	P.O. Box 902192	San Juan	San Juan	PR	00902-0192
Walker	Claude E.	Virgin Islands Attorney General, Department of Justice	34-38 Kronprindsens Gade	GERS Bldg, 2nd Floor	St. Thomas	VI	00802
Haber	Eric J.	Cooley LLP	55 Hudson Yards		New York	NY	10001-2157
Indyke	Jay	Cooley LLP	55 Hudson Yards		New York	NY	10001-2157
Antia	Mazda	Cooley LLP	4401 Eastgate Mall		San Diego	CA	92121-1909
Heilman	Leslie C.	Ballard Spahr LLP	919 North Market Street	11th Floor	Wilmington	DE	19801-3034
Gutride	Adam J.	Gutride Safier LLP	100 Pine Street	Suite 1250	San Francisco	CA	94111



Claim Number <<ClaimID>>

**This notice concerns a class action settlement. To receive your share of the settlement funds (up to \$30 per tablet purchase), you must [file a claim](#). Read below for more information.**

### **Why Am I Receiving This Notice?**

You are receiving this notice because, according to our records, you previously submitted a complaint to Fuhu, Inc. regarding a Nabi® tablet computer that you purchased or owned.

### **What's this about?**

A lawsuit was brought by a purchaser of a Nabi® tablet computer ("Tablet") against Fuhu, Inc. ("Fuhu"), which sold the Tablets. The lawsuit claims that the Tablets were defective, in that they had a faulty charging system. Fuhu later filed for bankruptcy. With the permission of the bankruptcy court (the "Court"), the person who brought the lawsuit ("Plaintiff") filed a class action claim in the bankruptcy on behalf of all other purchasers, to obtain a portion of Fuhu's remaining assets, which are now under the control of a liquidating trustee. The Class is defined as "All persons who purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet, except persons who purchased for resale or returned such tablet for a full refund or non-defective replacement."

The Plaintiff also demanded that Wistron Corporation ("Wistron"), which manufactured some of the Tablets, and D&H Distributing Company ("D&H"), which distributed some of the Tablets, compensate the purchasers. Both Wistron and D&H deny liability. Wistron and D&H each have submitted their own claims in the bankruptcy seeking a portion of Fuhu's remaining assets, contending that they were not fully paid for their goods and services.

To avoid the costs and risks of continued litigation, the Parties have agreed to a settlement. The settlement assigns values to each of the asserted claims filed in the bankruptcy by the Class, by Wistron and by D&H. The Class, Wistron and D&H have agreed that the money they receive from the bankruptcy will go to the Class until up to \$3 million or more is paid to the Claims Administrator to distribute to the Class and pay other fees and costs. The liquidating trustee also has agreed to assign to the Class the Trust's right to seek money from one of Fuhu's former insurance companies. The settlement releases all claims by the purchasers, except it does not release claims against Wistron and D&H for personal injury or for damage to property other than damage to the Tablets themselves.

### **What can I receive?**

Each Class member is permitted to [file a claim](#) under the settlement. Claimants who file valid claims will receive an equal share of the total recovered by the Class, for each Nabi® tablet they purchased that was not returned for a full refund or a nondefective replacement tablet. There will be a maximum distribution of \$10 per tablet, or \$30 per defective tablet, out of the first \$3 million paid to the Class. Because Fuhu's records show that you previously complained about a defect in your tablet, your claim will be treated as a claim for a defective tablet. The actual amount paid to each claimant will depend on whether the tablet is defective, the number of valid claims, and the total ultimately received by the Class from the Trust, as well as the amount (if any) recovered by the Class from the insurance company. These amounts are not yet known.

### **How do I make a claim?**

To receive your payment, you must complete a [claim form](#), which is available at the [settlement website](#). You can complete the form online, or you can print it, fill it out, and mail it to the address shown on the form. Claim forms must be **received** (not just postmarked) by August 20, 2019. You must complete and submit the claim form under penalty of perjury.

### **What are my other options?**

You can [exclude yourself](#) from the Class if you want to be able to sue Wistron or D&H separately for the claims released by the settlement. If you exclude yourself, you cannot file a claim or object to the settlement. Unless you exclude yourself from the settlement, you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order upon the settlement.

Alternatively, you can object to any aspect of the settlement, the amount of attorneys' fees, costs, or the payment to the Plaintiffs by filing a written objection. If the Court denies approval of the settlement, no settlement payments will be sent out, and the bankruptcy court will decide the value of the claim submitted by the class. The actual amount distributed to the Class will then depend on the value the court assigns to other claims in the bankruptcy, including the claims by D&H and Wistron.

To exclude yourself from or object to the settlement, you must follow the instructions available at the [settlement website](#). You must ensure that your exclusion request or objection is **received**, not just postmarked, by August 20, 2019.

### **What will happen next?**

The Court will hold a hearing on September 10, 2019 at 10:00 a.m. Eastern Daylight Time to consider whether to approve the settlement. If the settlement is approved, the attorneys for Plaintiff will ask the Court for an award of (1) their out-of-pocket expenses, (2) up to \$1.5 million in attorneys' fees and (3) \$75,000 in incentive awards, all of which shall be paid out of the first \$3 million to be distributed to the Class. Additional fees may be sought if there is a further recovery for the Class.

Note that this hearing date may change without further notice to you. Consult the settlement website at [www.tabletsettlement.com](http://www.tabletsettlement.com) or the Court docket at <http://www.kccllc.net/fuhu>, for updated information on the hearing date and time.

### **How can I get more information?**

For a more detailed explanation of this settlement and your rights, please view the Long Form Notice on the settlement website: [www.tabletsettlement.com](http://www.tabletsettlement.com). On the settlement website you can also view the complete settlement agreement. You may contact class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111. You may access the Court docket in this case at <http://www.kccllc.net/fuhu>.



Claim Number <<ClaimID>>

**This notice concerns a class action settlement. To receive your share of the settlement funds (up to \$30 per tablet purchase), you must [file a claim](#). Your claim number is at the top of this email. Read below for more information.**

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The Plaintiff also demanded that Wistron Corporation ("Wistron"), which manufactured some of the Tablets, and D&H Distributing Company ("D&H"), which distributed some of the Tablets, compensate the purchasers. Both Wistron and D&H deny liability. Wistron and D&H each have submitted their own claims in the bankruptcy seeking a portion of Fuhu's remaining assets, contending that they were not fully paid for their goods and services.

To avoid the costs and risks of continued litigation, the Parties have agreed to a settlement. The settlement assigns values to each of the asserted claims filed in the bankruptcy by the Class, by Wistron and by D&H. The Class, Wistron and D&H have agreed that the money they receive from the bankruptcy will go to the Class until up to \$3 million or more is paid to the Claims Administrator to distribute to the Class and pay other fees and costs. The liquidating trustee also has agreed to assign to the Class the Trust's right to seek money from one of Fuhu's former insurance companies. The settlement releases all claims by the purchasers, except it does not release claims against Wistron and D&H for personal injury or for damage to property other than damage to the Tablets themselves.

### **What can I receive?**

Each Class member is permitted to [file a claim](#) under the settlement. Your claim number is at the top of this email. Claimants who file valid claims will receive an equal share of the total recovered by the Class, for each Nabi® tablet they purchased that was not returned for a full refund or a nondefective replacement tablet. There will be a maximum distribution of \$10 per tablet, or \$30 per defective tablet, out of the first \$3 million paid to the Class. Because Fuhu's records show that you previously complained about a defect in your tablet, your claim will be treated as a claim for a defective tablet. The actual amount paid to each claimant will depend on whether the tablet is defective, the number of valid claims, and the total ultimately received by the Class from the Trust, as well as the amount (if any) recovered by the Class from the insurance company. These amounts are not yet known.

### **How do I make a claim?**

To receive your payment, you must complete a [claim form](#), which is available at the [settlement website](#). Your

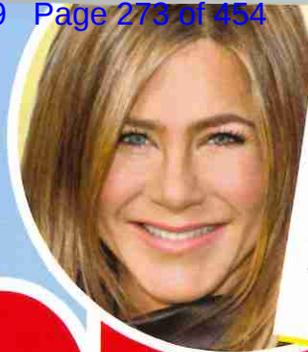


Princess Kate's  
Wild Week  
(She Sheared a Sheep!)



**NIGHTMARE  
IN PARADISE**

Mysterious Deaths  
in the Dominican  
Republic



Jen  
Aniston  
HER  
HAPPY  
SINGLE  
LIFE

DOUBLE  
ISSUE

# People

**CARRIE  
UNDERWOOD**

# How Faith & Family Made Me Stronger

**EXCLUSIVE** The country  
superstar on bouncing back  
from heartbreak and loss:  
'We are beyond blessed'

**100**  
REASONS TO  
LOVE  
America

July 1, 2019

\$5.99

26 >



**To All Purchasers of Nabi® Tablet Computers: A Class Action Settlement May Affect Your Rights**

**WHO IS AFFECTED?** You are affected by this class action settlement if you purchased, in the United States, a Nabi 2, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet ("Tablets"), unless you purchased your Tablet for resale or returned your tablet for a full refund or non-defective replacement.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see [www.TabletSettlement.com](http://www.TabletSettlement.com) or contact the Claim Administrator at the telephone number or address below.

**WHAT DOES THIS CASE INVOLVE?** A lawsuit was brought by a purchaser of a Tablet against Fuhu, Inc. ("Fuhu"), which sold the Tablets. The lawsuit claims that the Tablets were defective, in that they had a faulty charging system. Fuhu later filed for bankruptcy. The purchaser who started the lawsuit made a claim in the bankruptcy court (the "Court") on behalf of all other purchasers, for a share of Fuhu's remaining assets, which are now under the control of a liquidating trust ("Trust") managed by a liquidating trustee. The purchaser also demanded that Wistron Corporation ("Wistron"), which manufactured some of the Tablets, and D&H Distributing Company ("D&H"), which distributed some of the Tablets, compensate the purchasers. Both Wistron and D&H deny liability. Wistron and D&H each have submitted their own claims in the bankruptcy seeking a portion of Fuhu's remaining assets, contending that they were not fully paid for their goods and services.

**WHAT DOES THE SETTLEMENT PROVIDE?** The settlement assigns values to each of the asserted claims filed in the bankruptcy by the Class, by Wistron and by D&H. The Class, Wistron and D&H have agreed that the money they receive from the bankruptcy will go to the Class until up to \$3 million or more is paid to the Claims Administrator to distribute to the Class and pay other fees and costs. The liquidating trustee also has agreed to assign to the Class the Trust's right to seek money from one of Fuhu's former insurance companies.

Each Class member is permitted to file a claim under the settlement. Claimants who file valid claims will receive an equal share of the total recovered by the Class, for each Nabi® tablet they purchased that was not returned for a full refund or a nondefective replacement tablet. There will be a maximum distribution of \$10 per tablet, or \$30 per defective tablet, out of the first \$3 million paid to the Class. The actual amount paid to each claimant will depend on whether the tablet is defective, the number of valid claims, and the total ultimately received by the Class from the Trust, as well as the amount (if any) recovered by the Class from the insurance company. These amounts are not yet known.

**HOW TO GET THE REFUND:** To receive your payment, you must complete a claim form by August 20, 2019. The claim form is available at the settlement website. You can also obtain a claim form by contacting the Claim Administrator.

**HOW TO OPT OUT OF THE SETTLEMENT:** The settlement releases all claims by the purchasers, except it does not release claims against Wistron and D&H for personal injury or for damage to property other than damage to the Tablets themselves. If you wish to preserve your right to bring a separate lawsuit on the released claims, you must exclude yourself from the Class before August 20, 2019. Unless you exclude yourself from the settlement, you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order upon the settlement.

**OBJECTING TO THE SETTLEMENT:** You can also object to any aspect of the settlement, the amount of attorneys' fees, costs, or the payment to the Plaintiffs. The objection deadline is August 20, 2019. For details on how to exclude yourself or object, please visit [www.TabletSettlement.com](http://www.TabletSettlement.com) or contact the Claim Administrator.

**COURT HEARING AND ATTORNEYS' FEES:** The Court will hold a hearing on September 10, 2019 at 10:00 a.m. Eastern Daylight Time to consider whether to approve the settlement. If the settlement is approved, the attorneys for Plaintiff will ask the Court for an award of (1) their out-of-pocket expenses, (2) up to \$1.5 million in attorneys' fees and (3) \$75,000 in incentive awards, all of which shall be paid out of the first \$3 million to be distributed to the Class. Additional fees may be sought if there is a further recovery for the Class.

Note that the hearing date may change without further notice to you. Consult the settlement website at [www.TabletSettlement.com](http://www.TabletSettlement.com) or the Court docket at <http://www.kccllc.net/fuhu>, for updated information on the hearing date and time.

For further information, please visit the settlement website: [www.TabletSettlement.com](http://www.TabletSettlement.com). You may contact the Claim Administrator by phone at 1-844-269-3030 or by writing to Fuhu Tablet Settlement Claims Administrator, P.O. Box 404002, Louisville, KY 40233-4002. You may also contact class counsel at Guttridge Safer LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, or access the Court docket at <http://www.kccllc.net/fuhu>. The case is *In re Arctic Sentinel, Inc.*, United States Bankruptcy Court for the District of Delaware, Case No. 15-12465-CSS.

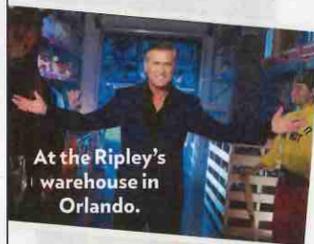


**Q&A**

**Bruce Campbell**  
The veteran actor, 61, hosts Travel Channel's reboot of Ripley's Believe It or Not!

**You're known for horror. Why did you want to host a reality show?**

It was kind of a no-brainer. I have to imagine that Ripley's is the top curator in the world of oddities. And we shot at Ripley's



At the Ripley's warehouse in Orlando.

warehouse, which is as close to an Indiana Jones-type warehouse as you're going to get.

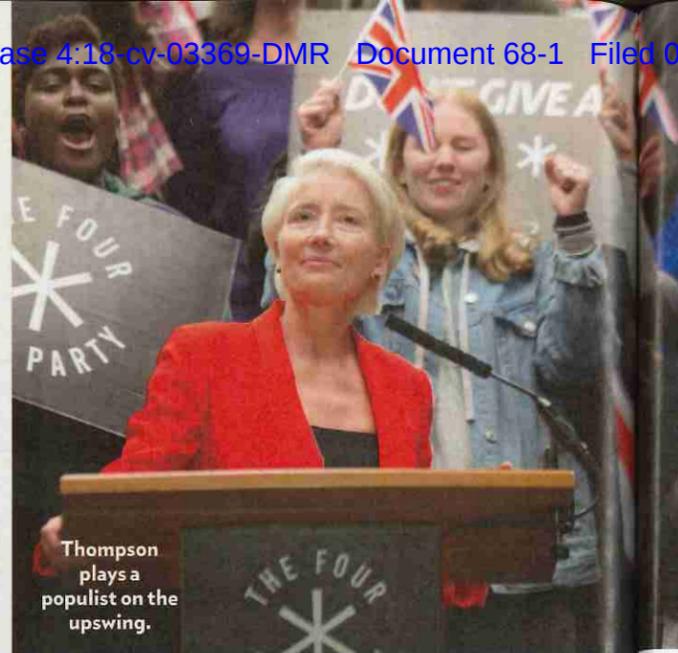
**The bar has to be set pretty high nowadays for the unusual. How did you find these folks?**

It's easier with YouTube and Instagram. These are people overcoming amazing tragedies and tremendous disabilities.

**Is there one example that blew you away?**

A boy who is blind learns to echolocate like a bat so he can ride a bike. He got so good that he can teach other kids. That isn't a freak show, that's extraordinary.

—JULIE JORDAN



Thompson plays a populist on the upswing.

**TV | Years and Years**

**DRAMA** In this unsettling miniseries, we're in Great Britain a few years in the future.

The country is flooded with Ukrainian refugees, a king now sits on the throne, and the newest notion of nonbinary identity is digital: You move your consciousness to the Cloud. As one woman puts it: "God, life got complicated." The dramatic focus is on an average family, but Emma Thompson looms over all as a brash political outsider. *Years* doesn't discourage you from drawing connections with Donald Trump. Here, at any rate, he's been given a second term. (HBO, June 24, 10 p.m.)

**MUSIC | The Raconteurs, Help Us Stranger**

**ROCK** Following his divisive 2018 solo album, Jack White has revived his back-to-basics act. From the first notes of blistering opener "Bored and Razed," he and his bandmates revel in an accessible, exhilarating blend of rock, folk and blues. (June 21)



**pick**

**TV | Instinct**

**CRIME** Season 2 begins with an entertainingly novel killing: A woman is locked inside her youth-preserving cryogenic chamber. (The cadaver is referred to as a corpsesicle.) The brilliant Dylan Reinhart (Alan Cumming) is soon on the scene with detective Lizzie Needham (Bojana Novakovic). Cumming moves through the show with quick-stepping charm, as if this were a light comedy weighed down by the occasional body. Just so. (CBS, June 30, 9 p.m. ET)



Cumming (right) with Daniel Ings.

**one to watch**

**Big Little Lies' Douglas Smith**

The actor, 34, knew costars Shailene Woodley and Zoë Kravitz before joining season 2 of the HBO hit, but he had to "keep it together" when working with the rest of the Monterey Five. "I had a poster of Nicole Kidman when I started acting," says the *Big Love* alum. "I didn't tell her that."

—DANA ROSE FALCONE

Smith (with Woodley, inset) plays a young man with a cute smile and murky motives.



**Oscar Mayer**

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\*EXCEPT THOSE NATURALLY OCCURRING IN CELERY JUICE

claim number is at the top of this email. You can complete the form online, or you can print it, fill it out, and mail it to the address shown on the form. Claim forms must be **received** (not just postmarked) by August 20, 2019. You must complete and submit the claim form under penalty of perjury.

### **What are my other options?**

You can [exclude yourself](#) from the Class if you want to be able to sue Wistron or D&H separately for the claims released by the settlement. If you exclude yourself, you cannot file a claim or object to the settlement. Unless you exclude yourself from the settlement, you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order upon the settlement.

Alternatively, you can object to any aspect of the settlement, the amount of attorneys' fees, costs, or the payment to the Plaintiffs by filing a written objection. If the Court denies approval of the settlement, no settlement payments will be sent out, and the bankruptcy court will decide the value of the claim submitted by the class. The actual amount distributed to the Class will then depend on the value the court assigns to other claims in the bankruptcy, including the claims by D&H and Wistron.

To exclude yourself from or object to the settlement, you must follow the instructions available at the [settlement website](#). You must ensure that your exclusion request or objection is **received**, not just postmarked, by August 20, 2019.

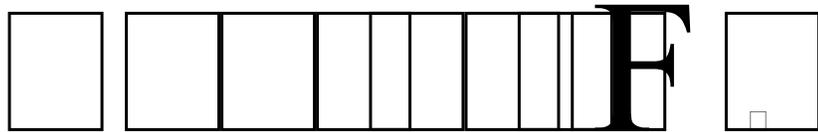
### **What will happen next?**

The Court will hold a hearing on September 10, 2019 at 10:00 a.m. Eastern Daylight Time to consider whether to approve the settlement. If the settlement is approved, the attorneys for Plaintiff will ask the Court for an award of (1) their out-of-pocket expenses, (2) up to \$1.5 million in attorneys' fees and (3) \$75,000 in incentive awards, all of which shall be paid out of the first \$3 million to be distributed to the Class. Additional fees may be sought if there is a further recovery for the Class.

Note that this hearing date may change without further notice to you. Consult the settlement website at [www.tabletsettlement.com](http://www.tabletsettlement.com) or the Court docket at <http://www.kccllc.net/fuhu>, for updated information on the hearing date and time.

### **How can I get more information?**

For a more detailed explanation of this settlement and your rights, please view the Long Form Notice on the settlement website: [www.tabletsettlement.com](http://www.tabletsettlement.com). On the settlement website you can also view the complete settlement agreement. You may contact class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111. You may access the Court docket in this case at <http://www.kccllc.net/fuhu>.



## REVIEW

**Category is: righteous fury**

WHAT A DIFFERENCE THREE YEARS makes. New York ball—culture drama *Pose* set its first season in 1987, when the scene was still mostly underground. Though gay men and trans women of color had been forming houses to compete in drag and voguing contests since the early '70s, it took the attention of white outsiders—notably Madonna's 1990 hit "Vogue"—to bring the art form into the mainstream. It's in that heady moment that creators Ryan Murphy, Brad Falchuk and Steven Canals revisit the House of Evangelista for a dazzling, crushing and intentionally infuriating second season airing Tuesdays on FX.

Though the backdrop is a pop hit that fuels their fantasies of stardom, the characters' lives remain rough. HIV-positive Evangelista mom Blanca (Mj Rodriguez) distracts herself from her declining health by focusing on Angel's (Indya Moore) nascent modeling career and her own business aspirations. MC Pray Tell (Billy Porter, still showstopping) channels righteous anger about AIDS into the activism of ACT UP, climaxing in a die-in that echoes one of the group's real actions.

What's remarkable is how much *Pose* accomplishes thematically, with-

out sacrificing the specificity of each character. The die-in doesn't just reflect the desperate bravery of the LGBT community; it centers trans women of color in a movement they'd helped lead since Stonewall, but that has often erased them from the official history. Wisely dropping the straight white characters of Season 1 to further foreground its marginalized leads, Season 2 illustrates how so many denizens of ball culture suffered and died as a blissfully ignorant pop culture co-opted their cool.

*Pose* is another mainstream representation of the scene, but it avoids appropriating it. In scripts from Janet Mock and Our Lady J, both trans women, the new season emphasizes solidarity. "When the outside world tries to shut us down," haughty O.G. Elektra (Dominique Jackson) proclaims, "this army closes ranks."

The line captures both the show's spirit and its oft-criticized lack of subtlety. But realism isn't the only path to realism. Better to think of *Pose* as a musical, with balls instead of production numbers. For crafting this uncompromising second season, everyone involved in the show deserves to take a bow. —J.B.



*Elektra (Jackson) serves more looks—and more solidarity—in the new season of Pose*

### To All Purchasers of Nabi® Tablet Computers: A Class Action Settlement May Affect Your Rights

**WHO IS AFFECTED?** You are affected by this class action settlement if you purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet ("Tablets"), unless you purchased your Tablet for resale or returned your tablet for a full refund or non-defective replacement.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see [www.TabletSettlement.com](http://www.TabletSettlement.com) or contact the Claim Administrator at the telephone number or address below.

**WHAT DOES THIS CASE INVOLVE?** A lawsuit was brought by a purchaser of a Tablet against Fuhu, Inc. ("Fuhu"), which sold the Tablets. The lawsuit claims that the Tablets were defective, in that they had a faulty charging system. Fuhu later filed for bankruptcy. The purchaser who started the lawsuit made a claim in the bankruptcy court (the "Court") on behalf of all other purchasers, for a share of Fuhu's remaining assets, which are now under the control of a liquidating trust ("Trust") managed by a liquidating trustee. The purchaser also demanded that Wistron Corporation ("Wistron"), which manufactured some of the Tablets, and D&H Distributing Company ("D&H"), which distributed some of the Tablets, compensate the purchasers. Both Wistron and D&H deny liability. Wistron and D&H each have submitted their own claims in the bankruptcy seeking a portion of Fuhu's remaining assets, contending that they were not fully paid for their goods and services.

**WHAT DOES THE SETTLEMENT PROVIDE?** The settlement assigns values to each of the asserted claims filed in the bankruptcy by the Class, by Wistron and by D&H. The Class, Wistron and D&H have agreed that the money they receive from the bankruptcy will go to the Class until up to \$3 million or more is paid to the Claims Administrator to distribute to the Class and pay other fees and costs. The liquidating trustee also has agreed to assign to the Class the Trust's right to seek money from one of Fuhu's former insurance companies.

Each Class member is permitted to file a claim under the settlement. Claimants who file valid claims will receive an equal share of the total recovered by the Class, for each Nabi® tablet they purchased that was not returned for a full refund or a nondefective replacement tablet. There will be a maximum distribution of \$10 per tablet, or \$30 per defective tablet, out of the first \$3 million paid to the Class. The actual amount paid to each claimant will depend on whether the tablet is defective, the number of valid claims, and the total ultimately received by the Class from the Trust, as well as the amount (if any) recovered by the Class from the insurance company. These amounts are not yet known.

**HOW TO GET THE REFUND:** To receive your payment, you must complete a claim form by August 20, 2019. The claim form is available at the settlement website. You can also obtain a claim form by contacting the Claim Administrator.

**HOW TO OPT OUT OF THE SETTLEMENT:** The settlement releases all claims by the purchasers, except it does not release claims against Wistron and D&H for personal injury or for damage to property other than damage to the Tablets themselves. If you wish to preserve your right to bring a separate lawsuit on the released claims, you must exclude yourself from the Class before August 20, 2019. Unless you exclude yourself from the settlement, you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order upon the settlement.

**OBJECTING TO THE SETTLEMENT:** You can also object to any aspect of the settlement, the amount of attorneys' fees, costs, or the payment to the Plaintiffs. The objection deadline is August 20, 2019. For details on how to exclude yourself or object, please visit [www.TabletSettlement.com](http://www.TabletSettlement.com) or contact the Claim Administrator.

**COURT HEARING AND ATTORNEYS' FEES:** The Court will hold a hearing on September 10, 2019 at 10:00 a.m. Eastern Daylight Time to consider whether to approve the settlement. If the settlement is approved, the attorneys for Plaintiff will ask the Court for an award of (1) their out-of-pocket expenses, (2) up to \$1.5 million in attorneys' fees and (3) \$75,000 in incentive awards, all of which shall be paid out of the first \$3 million to be distributed to the Class. Additional fees may be sought if there is a further recovery for the Class.

Note that the hearing date may change without further notice to you. Consult the settlement website at [www.TabletSettlement.com](http://www.TabletSettlement.com) or the Court docket at <http://www.kccllc.net/fuhu>, for updated information on the hearing date and time.

For further information, please visit the settlement website: [www.TabletSettlement.com](http://www.TabletSettlement.com). You may contact the Claim Administrator by phone at 1-844-269-3030 or by writing to Fuhu Tablet Settlement Claims Administrator, P.O. Box 404002, Louisville, KY 40233-4002. You may also contact class counsel at Gutridge Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, or access the Court docket at <http://www.kccllc.net/fuhu>. The case is *In re Arctic Sentinel, Inc.*, United States Bankruptcy Court for the District of Delaware, Case No. 15-12465-CSS.



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At the bottom of the page, there are three large advertisements:

- Nabi® Tablet Purchasers**: A Class Action Settlement. Text: "A Class Action Settlement May Affect You. Click Here To Learn About Your Rights and Make a Claim For Cash Refund." Includes a "Learn More" button and the website "www.TabletSettlement.com".
- FinalStraw**: An advertisement for a water straw. Includes an image of the product and a "SHOP NOW" button.
- BONE STRUCTURE**: An advertisement for a building. Text: "REBUILDING CALIFORNIA TOGETHER". Includes an image of a modern house and a "LEARN MORE" button.

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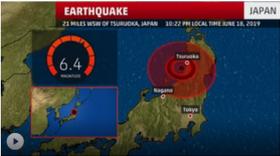
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**Attention to all purchasers of Nabi® tablets**  
**This notice may affect your rights. Please read it carefully.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

To receive your share of the settlement funds (up to \$30 per tablet purchase), you must [file a claim](#).

The notice concerns a bankruptcy proceeding involving the company Arctic Sentinel, Inc. formerly known as Fuhu, Inc. (“Fuhu”), which designed and sold the Nabi® brand children’s tablet computers.

In 2014, litigation was filed against Fuhu on behalf of a class of all consumer purchasers of the following Nabi® tablets: Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) and Nabi DreamTab (the “Class”). The Class asserted that the Nabi® tablets were defective, in that they had a faulty charging system.

After Fuhu filed for bankruptcy on December 7, 2015, the Class filed a claim in the bankruptcy case. They asked the bankruptcy court (the “Court”) to give the purchasers a portion of Fuhu’s remaining assets, which are now part of a liquidating trust (the “Trust”) and under the administration and control of a liquidating trustee.

The purchasers also contend that they are entitled to recover money from Wistron Corporation (“Wistron”), which manufactured some of the tablets, and D&H Distributing Company (“D&H”), which distributed some of the tablets. Both companies deny liability.

Wistron and D&H each have submitted their own claims in the bankruptcy seeking a portion of Fuhu’s remaining assets, contending that they were not fully paid for their goods and services.

A settlement has been reached among the liquidating trustee, the Class, Wistron and D&H. The settlement assigns values to each of the asserted claims filed in the bankruptcy case by the Class, by Wistron and by D&H. The Class, Wistron and D&H have agreed that the money they receive from the bankruptcy will go to the Class until up to \$3 million or more is paid to the Class. The liquidating trustee also has agreed to assign to the Class the Trust’s right to seek money from one of Fuhu’s former insurance companies.

Each Class member is permitted to file a claim under the settlement. Claimants who file valid claims will receive an equal share of the total recovered by the Class, for each Nabi® tablet they purchased that was not returned for a full refund or a nondefective replacement tablet. There will be a maximum distribution of \$10 per tablet, or \$30 per defective tablet, out of the first \$3 million paid to the Class. The actual amount paid to each claimant will depend on whether the tablet is defective, the number of valid claims, and the total ultimately received by the Class from the Trust, as well as the amount (if any) recovered by the Class from the insurance company. These amounts are not yet known.

The purchasers who started and pursued the lawsuit (“Plaintiffs”) and their lawyers who brought the lawsuit will ask the Court to reimburse them for their out-of-pocket expenses, up to \$1.5 million in attorneys’ fees and \$75,000 in incentive awards, out of the first \$3 million to be distributed to the Class.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.tabletsettlement.com](http://www.tabletsettlement.com). Alternatively, you can contact the claim administrator at Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002 or Class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE  
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

<b>YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		<b>DEADLINE</b>
<b>SUBMIT A CLAIM FORM</b>	The only way to receive payment under the settlement for your Nabi tablet purchase(s).	August 20, 2019
<b>EXCLUDE YOURSELF</b>	Get out of the settlement. This is the only option that allows you to ever bring or join another lawsuit against D&H or Wistron or other Released Parties that raises the same legal claims released by this settlement. You will receive no payment. (Excluding yourself will <b>not</b> allow you to make separate claims in the bankruptcy proceeding to obtain a portion of the remaining assets of Fuhu held by the Trust, as the deadline to file such claims in the bankruptcy case has passed.)	August 20, 2019
<b>OBJECT</b>	Write to the Court about why you do not like any aspect of the settlement, the amount of attorneys' fees, costs, or the payment to the Plaintiffs.	August 20, 2019
<b>GO TO A HEARING</b>	Speak in Court about the settlement. (If you object to any aspect of the settlement, you <b>must</b> submit a written objection by the Objection Deadline.)	September 10, 2019 at 10:00 a.m., Eastern Daylight Time
<b>DO NOTHING</b>	You will receive no payment and have no right to sue later for the claims released by the settlement, and you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order on the settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court still has to decide whether to approve the settlement. Payments will be made only if the Court approves the settlement and only after distributions are made by the Trust in the ordinary course of validating and paying out other claims asserted in the bankruptcy case. If there are appeals, payment will not be sent until the appeals are resolved and the settlement becomes effective. Please be patient and continue to check the settlement website for updates.

### **Final Approval Fairness Hearing**

On September 10, 2019 at 10:00 a.m. Eastern Daylight Time, the Court will hold a hearing to determine (1) whether the proposed settlement is fair, reasonable and adequate and should receive final approval; (2) whether to grant the applications for attorneys' fees and/or expenses brought by the Plaintiffs' Counsel; and (3) whether to grant the application for a Class representative payment to the Plaintiffs who brought the lawsuit. The hearing will be held in the United States Bankruptcy Court for the District of Delaware, 824 N. Market St, Wilmington, DE 19801. The hearing will be held in the courtroom of the Honorable Christopher Sontchi. This hearing date may change without further notice to you. Consult the settlement website at [www.tabletsettlement.com](http://www.tabletsettlement.com), for updated information on the hearing date and time.

<b>Table Of Contents</b>
--------------------------

How Do I Know If I Am Affected By The Litigation and Settlement?	3
What Is The Lawsuit About?	3
What Do Plaintiffs Seek To Recover In The Lawsuit?	4
Why Is This Case Being Settled?	4
What Is The Settlement?	5
What Can I Get In The Settlement?	6
How Do I Make A Claim?	6
What Do Plaintiffs And Their Lawyers Get?	6
What Claims Are Released By The Settlement?	7
How Do I Exclude Myself From The Settlement and Litigation?	7
How Do I Object To The Settlement?	7
When Will The Court Decide If The Settlement Is Approved?	8
How Do I Get More Information?	8

<b>How Do I Know If I Am Affected By The Litigation and Settlement?</b>
-------------------------------------------------------------------------

This case involves the following Nabi® tablets: Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) and Nabi DreamTab (“Tablets”).

The Court has conditionally certified the following Class: “All persons who purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet, except persons who purchased for resale or returned such tablet for a full refund or non-defective replacement.”

The following are not members of the Class: (1) the Honorable Christina Snyder, the Honorable Gerald Rosen, and the Honorable Christopher Sontchi; (2) any member of their immediate families; (3) any government entity, (4) Fuhu and its affiliated debtors Arctic Sentinel Holdings, Inc. formerly known as Fuhu Holdings, Inc., Arctic Sentinel Direct, Inc. formerly known as Fuhu Direct, Inc. and Sentinel Arctic, Inc. formerly known as Nabi, Inc. (collectively, the “Debtors”); (5) any entity in which Debtors have a controlling interest; (6) any of Debtors’ subsidiaries, parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns; (7) Mattel, Inc. and its subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (8) counsel for the parties; and (9) any persons who timely opt out of the Class.<sup>1</sup>

<b>What Is The Lawsuit About?</b>
-----------------------------------

In July 2014, Scott Miller filed a lawsuit in California against Fuhu, Inc. Miller alleged that Fuhu engaged in false advertising, breach of warranty and other unfair practices with respect to its Nabi® brand tablets for children, because they contained a defective charging system. Miller sought to represent a class of all purchasers. Fuhu denied that there was any factual or legal basis for the lawsuit and denied liability. In 2015, James Griffin IV notified the court that he wished to join the lawsuit.

In December 2015, while the lawsuit was pending, Fuhu filed a petition for relief in Delaware under Chapter 11 of the Bankruptcy Code. In the bankruptcy, Fuhu’s assets were sold to Mattel, Inc. and in January 2017 all remaining assets and liabilities of the Debtors were transferred to the Trust for final liquidation and distribution to creditors in accordance with the Bankruptcy Code.

<sup>1</sup> If the settlement is not approved or does not become effective, then the bankruptcy case will proceed as if the settlement had not been made. The Court previously certified a class in the bankruptcy case, with certain exceptions, of “All persons, who between July 3, 2010 and September 30, 2015 purchased, in the United States, a Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (including Nabi Jr. S) or Nabi DreamTab tablet.”

In July 2016, Miller and Griffin received permission from the Bankruptcy Court to file a bankruptcy claim on behalf of the Class. They filed that claim in the amount of approximately \$455 million.

Others who were owed money by Fuhu also filed claims in the Bankruptcy Court. Among these claimants were a company that manufactured some of the Tablets, Wistron Corporation (“Wistron”) and a company that distributed some of the Tablets, D&H Distributing Company (“D&H”). Wistron filed a claim in the bankruptcy for an unliquidated amount in excess of \$30 million and D&H filed a claim for approximately \$44 million. In addition, claims totaling approximately \$24 million were submitted by certain limited partnerships organized by Morgan Stanley (“Morgan Stanley”) that bear the name North Haven Expansion Capital Co-Investment Vehicle LP and North Haven Expansion Capital LP, which lent money to Fuhu. Others also have filed claims in the bankruptcy, some of which may remain subject to review and validation; those claims currently total another approximately \$51 million (as of September 30, 2018).

The amount available in the bankruptcy estate held by the Trust for distribution to creditors is far less than the total amount of claims. As of December 6, 2018, less than \$7 million was available for distribution to creditors. In addition, some of the creditors with senior priority claims may have a right under the Bankruptcy Code to obtain payment from the Trust before the Trust distributes any money to the Class, D&H or Wistron.

In 2017, Taylor Sanchez (“Sanchez”), Carlos Munoz (“Munoz”), Vanessa Floerke (“Floerke”), Jill Aguilera (“Aguilera”), and Nell Baker (“Baker”) threatened to file lawsuits on behalf of the Class against Wistron and D&H, for their actions in connection with the Tablets.

The Court has not determined (1) whether any of the claims in the bankruptcy by the Class, Wistron or D&H should be allowed; (2) the proper amounts of those claims; or (3) whether other claims filed in the bankruptcy should be allowed or in what amounts. There also has been no decision by any court as to whether Wistron or D&H would be liable to the Class in any amount, if purchasers of the Tablets filed lawsuits against those companies.

#### **What Do Plaintiffs Seek To Recover in the Lawsuit?**

Plaintiffs allege that the Tablets were deceptively marketed as “rechargeable” and “suitable for children” and that the problems with the charging system should have been disclosed. Plaintiffs contend that by these actions, Fuhu and D&H caused people to purchase the Tablets at an inflated price. They also contend D&H and Wistron have the obligation to indemnify Fuhu and the purchasers for their losses. Plaintiffs contend that, based on their experts’ analysis of the “cost to repair” the Tablets, each purchaser may be owed up to approximately \$100. D&H and Wistron each dispute Plaintiffs’ allegations and deny any fault, wrongdoing or liability.

#### **Why Is This Case Being Settled?**

This case has been pending since July 2014. Since then, Plaintiffs’ counsel has investigated the manufacturing, marketing, and labeling of the Tablets. Plaintiffs’ counsel has reviewed hundreds of thousands of pages of documents and has taken and defended numerous depositions. Plaintiffs’ counsel also retained experts and deposed Fuhu’s experts.

Without a settlement, the Class would first need to convince the Bankruptcy Court to approve its claim of \$455 million. The Court could reject or decrease the amount of the claim once it sees and hears the evidence, including expert testimony. It could find that the Tablets were not falsely advertised or not defective, or that the purchasers did not prove that the Tablets were sold at an inflated price. Even if the Court approved the full \$100 claim per Tablet purchased, the actual amount distributed to purchasers would be small—perhaps less than \$2 per Tablet—because there is only a small amount of money available in the Trust to be distributed to creditors.

Plaintiffs would also need to initiate separate lawsuits against D&H and Wistron. Once again, Plaintiffs might not persuade a court to accept their evidence about the false advertising, the defects, or the amount of money lost by the Class. They also might not be able to prove that either D&H or Wistron was responsible for any misconduct or is obligated to pay for it.

In January 2018, the Trust, the Class, D&H and Wistron participated in a two-day mediation conducted by the Honorable Judge Gerald Rosen (retired) at JAMS in New York, New York. In the mediation, the parties agreed to this settlement.

In November 2018, the Trust and Morgan Stanley reached agreement regarding Morgan Stanley's claims. Morgan Stanley agreed to support the settlement that had been reached among the Trust, the Class, D&H and Wistron.

After taking into account the risks and costs of further litigation, Plaintiffs and their counsel believe that the terms and conditions of the settlement are fair, reasonable, adequate, and equitable, and that the settlement is in the best interest of the Class members.

### **What Is The Settlement?**

Prior to this settlement, the Court had approved a Plan of Liquidation (the "Plan") to govern how the remaining assets of the bankruptcy estates would be distributed among creditors with valid claims. Under the Plan, money is distributed to creditors only after the Court decides whether each creditor's claim should be allowed and if so, in what amount. The Plan also organizes the creditors' claims into categories (for example, secured, priority, and unsecured). All the claims in the first category are paid first, before the next category is paid. If not enough money is left to pay all the claims in a particular category, then the distribution to the claims in that category is proportional. For example, if there are \$500 million in unsecured claims, and only \$5 million available to pay those claims, each claimant will receive payment of only one cent (\$.01) per dollar value of his or her claim. To obtain a copy of the Plan, visit <http://www.kccllc.net/fuhu>.

In the settlement, the parties have agreed to set values for the Class claim, the D&H claim and the Wistron claim, which are the three largest unsecured claims filed in the bankruptcy case. The Class' claim will be valued at \$154 million, the D&H claim will be valued at just over \$44 million, and the Wistron claim will be valued at just over \$27 million. When the bankruptcy assets are distributed to unsecured creditors, these three claims will be treated as a single "pooled" claim of just over \$225 million, and the first \$3 million of the amount distributed to pay that pooled claim will go entirely to the Class. Of the next \$5 million distributed to pay the pooled claim, ten percent will go to the Class, and the other 90% will go to D&H and Wistron. Of any remaining amount distributed by the Trust to pay the pooled claim, one-third will go to the Class, and the other two-thirds will go to D&H and Wistron.<sup>2</sup>

The money received by the Class from the Trust will be used to pay: (1) the costs of administering the settlement, including providing notice to the Class, (2) attorneys' fees, costs and incentives awarded by the Court, and (3) valid claims by Class members under this settlement. If there is money left over from the bankruptcy distribution to the Class after payment of these amounts, it will be transferred to Wistron and D&H.

The liquidating trustee also has agreed to assign to the Class the Trust's rights under a \$1 million insurance policy issued by Lloyd's of London. Lloyd's refused to provide coverage to Fuhu for the Class claims, as it contended that the policy does not apply. Plaintiffs' Counsel and the liquidating trustee disagree with Lloyd's position. Plaintiffs' Counsel will be authorized to negotiate with Lloyd's or file a lawsuit against Lloyd's. Plaintiffs' Counsel could try to obtain (1) reimbursement for the legal fees incurred by Fuhu in defending against the Class claim; (2) the \$1 million policy limits; and (3) reimbursement for additional damages sustained by Fuhu because of Lloyd's refusal to provide coverage when the Class lawsuit was filed. With respect to the additional damages, for example, Plaintiffs' Counsel could try to argue that Lloyd's should have to pay the Class \$154 million, which was the amount of the Class claim allowed in the bankruptcy. There is no guarantee that any money will be obtained from Lloyd's. If money is recovered from Lloyd's, it will be added to the funds received by the Class from the Trust. The money received by the Class from Lloyd's will be used to pay: (1) any additional costs of administering the settlement that are not covered by funds received from the Trust, (2) any additional attorneys' fees, costs or incentives awarded by the Court, and (3) valid claims by Class members under this settlement. No monies recovered from Lloyd's will be transferred to Wistron or D&H.

<sup>2</sup> The settlement also sets a value for the claims by Morgan Stanley and a fixed distribution amount to Morgan Stanley to be paid within ten (10) days after the entry of a final and non-appealable order of the Bankruptcy Court approving the settlement. The distribution to Morgan Stanley is not expected to affect the amount to be distributed to the Class.

### **What Can I Get In The Settlement?**

If you timely file a valid claim that complies with the instructions on the claim form and in this notice, you will receive a cash payment. A claim can be filed for every Tablet purchased, even if the Tablet did not suffer from the defect. Each valid claim shall receive the same payment amount, except that the payment amount will be three times (3x) higher for claims where the Tablet suffered from a defect. The amount of the payment to each claimant will depend on (1) whether the tablet suffered from the defect, (2) how many other valid claims are filed; (3) how much money is actually received by the Class from the Trust and from Lloyd's; and (4) how much of that money remains after payments are made to administer the settlement (including providing this notice) and to Plaintiffs and their lawyers (as approved by the Court). The maximum amount that will be paid on each claim out of the money received from the Trust is \$30 per defective Tablet purchased, and \$10 per each other Tablet purchased. The actual amount paid on each claim could be much lower than \$30 per defective Tablet or \$10 per other Tablet purchased. It also could possibly be higher than \$30 per defective Tablet, or \$10 per other Tablet purchased, if there are a small number of claims and/or a large recovery from Lloyd's.

Cash payments will be distributed only if the Court gives final approval to the proposed settlement and only after any appeals are resolved and only after distributions are made by the Trust in the ordinary course of validating and paying out other claims asserted in the bankruptcy case. If the Court does not approve the settlement, if the settlement is overturned on appeal, or if the settlement is terminated, no cash payments will be distributed.

### **How Do I Make A Claim?**

To make a claim, you must fill out the claim form available on this settlement website, [www.tabletsettlement.com](http://www.tabletsettlement.com). In your claim, you must demonstrate that you were the purchaser of the each Tablet for which you are submitting a claim by providing (1) a control number provided to you by the Claim Administrator, showing that you previously contacted Fuhu customer service about a defect with your Tablet, (2) the serial number for your Tablet, (3) an email confirmation from Fuhu showing online registration of your Tablet, or (4) an itemized retail sales receipt showing the model of Tablet and the date, place and amount of purchase. To make a claim for a defective Tablet, then unless you submit the control number described in (1), you must also indicate on the claim form that your Tablet was defective. You must submit the claim form under penalty of perjury and follow the other instructions on the claim form.

You can submit the claim form online, or you can print it and mail it to the claim administrator at: Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002. If submitted online, claim forms must be submitted no later than August 20, 2019. If mailed, claim forms must be *received by the Claim Administrator* (not just postmarked), no later than August 20, 2019.

### **What Do Plaintiffs And Their Lawyers Get?**

To date, Plaintiffs' lawyers have not been compensated for any of their work on this case. Plaintiffs' lawyers will present evidence to the Court that they have spent more than 4,500 hours litigating this case, for which they are owed more than \$4 million at their normal hourly rates. Plaintiffs' lawyers also will present evidence that they have paid out-of-pocket expenses (including expert fees, transcript fees, court reporter fees, filing fees, service costs, copying costs, and travel expenses) of more than \$200,000. None of these expenses has yet been reimbursed.

As part of the Settlement, Plaintiffs' lawyers will apply to the Court to award them attorneys' fees and expenses. The parties have agreed not to contest an award of up to \$1,500,000.00 in attorneys' fees to be paid to Plaintiffs' lawyers out of the first \$3 million distributed from the bankruptcy assets to the Class. If additional funds are received by the Class, for example, from a recovery from Lloyd's, Plaintiffs' lawyers may seek an additional award of their actual costs, plus attorneys' fees not greater than 40% of the amount recovered. You will not be provided separate notice of any such application, although a copy of the application will be posted on the Settlement Website.

In addition, the named Plaintiffs have received no compensation for their time and effort on the case, and the risks they undertook in bringing it. Plaintiff Miller oversaw the litigation for more than a year in the California court, and then when the bankruptcy petition was filed, he was appointed to the Unsecured Creditors Committee

and then to the Liquidating Trustee Advisory Committee, where he supervised the bankruptcy lawyers to try to maximize the recovery by creditors. He has spent more than 600 hours working on this case, for which he has not been paid, and which he would be owed \$180,000 at his normal hourly rate. Plaintiff Griffin has had more limited involvement, but has spent more than 5 hours working on this case. Plaintiffs Sanchez, Munoz, Floerke, Aguilera, and Baker have each spent at least 2 hours working on this case.

As part of the Settlement, Plaintiffs will apply to the Court for incentive awards to compensate them for their time and effort and for agreeing to a release of their claims that is broader than the claims of other members of the Class. The parties have agreed not to contest an award of up to \$75,000.00 to Plaintiff Miller, out of the first \$3 million distributed from the bankruptcy assets to the Class. Plaintiff Griffin will seek an award of up to \$3,000.00. Plaintiffs Sanchez, Munoz, Floerke, Aguilera and Baker will each seek an award of up to \$1,000.00. Plaintiffs do not anticipate seeking any additional incentive awards even if there are additional recoveries, unless Plaintiffs are required to initiate litigation against Lloyd's. You will not be provided separate notice of any such application, although a copy of the application will be posted on the Settlement Website.

Plaintiffs and their lawyers will file a motion with the Court on or before July 30, 2019 in support of their applications for attorneys' fees, costs, and expenses and payments to the Plaintiffs. A copy of that motion will be available on the settlement website. The Court will determine what amounts of fees, costs, expenses, and Class representative payments to award.

#### **What Claims Are Released By The Settlement?**

The settlement releases all claims by members of the Class against the Trust, D&H, Wistron or any other released party that relate to the sale, marketing or warranties of the Tablets. However, it does not release claims for personal injury or claims for damage to property (other than damage to the Tablets themselves). This release includes claims that may not yet be known or suspected. This means that, in exchange for being eligible for the cash benefits as a Class member, you will not be able to sue, continue to sue, or be part of any other lawsuit against the released parties that involves the settled claims. For further information, please see Sections 20 and 28 of the Stipulation of Settlement.

Separate from the settlement, claims against Fuhu and certain affiliated entities will be released automatically by operation of bankruptcy law. This will occur whether or not the settlement is approved.

#### **How Do I Exclude Myself From The Settlement And Litigation?**

You can exclude yourself from the Class if you wish to retain the right to sue separately for the claims released by the settlement. If you exclude yourself, you cannot file a claim or object to the settlement.

To exclude yourself, you must complete and submit the online form at the settlement website or mail a request to exclude yourself from the settlement to the claim administrator at Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002. If mailed, the exclusion request must contain your name, address, the words "I wish to be excluded from the Fuhu Tablet Class Action Settlement," and your signature.

If submitted online, exclusion requests must be submitted by August 20, 2019. If mailed, exclusion requests must be *received by the Claim Administrator* (not postmarked) by August 20, 2019.

Excluding yourself from the settlement will not permit you to retain claims that are released automatically by operation of bankruptcy law, such as claims against Fuhu.

Unless you exclude yourself from the settlement, you will be deemed to have consented to the Court's jurisdiction and authority to enter a final order upon the settlement.

#### **How Do I Object To The Settlement?**

You can ask the Court to deny approval of the settlement, or to reject or reduce the award of attorneys' fees, costs or incentives to Plaintiffs and their lawyers. To do so, you must timely file your objection in Court using the ECF filing system, or you must timely submit an objection to the Claim Administrator, who will then

forward it to the Court. In your objection, you can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement or decide the amount of the award of attorneys' fees, costs and incentives. If the Court denies approval to the entire settlement, no cash payments will be sent out, and the bankruptcy proceeding will continue as if no settlement had been reached.

You may also appear at the final approval fairness hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an objection to the settlement at the final approval fairness hearing, you must first submit that objection in writing in accordance with the instructions contained in this notice.

Any objection must include: (1) the case name and number *In re Arctic Sentinel, Inc.*, Case No. 15-12465-CSS (Bankr. D. Del.); (2) your name, address, and telephone number; (3) documents, or testimony under penalty of perjury, sufficient to establish that you are a member of the Class; (4) a statement of your objection(s) and the basis for your objection(s); (5) a statement as to whether you are requesting the opportunity to appear and be heard at the final approval fairness hearing; (6) the name(s) and address(es) of all counsel (if any) who (a) are representing you in making the objection; (b) will appear on your behalf at the final approval fairness hearing; and/or (c) may be entitled to compensation in connection with your objection; (7) the name(s) and address(es) of all persons (if any) who will be called to testify in support of your objection; (8) copies of any papers, briefs, or other documents upon which your objection is based if not already in the court file; (9) a list of any other objections you or your counsel have submitted to any class action in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made); and (10) your signature as objector, in addition to the signature of your attorney, if an attorney is representing you with the objection. Failure to include any element of this information and documentation may be grounds for overruling and rejecting or striking your objection.

All the information listed above must be electronically filed via the Court's ECF system, or delivered to the Claim Administrator by mail, express mail, or personal delivery such that the objection is *received* by the Claim Administrator (not just postmarked or sent) on or before August 20, 2019. By submitting an objection, you consent to the jurisdiction of the Court, including to any order of the Court to produce documents or provide testimony prior to the final approval fairness hearing.

If you object to the settlement but still want to submit a claim in the event the Court approves the settlement, you must still submit a timely claim according to the instructions described above.

#### **When Will The Court Decide If The Settlement Is Approved?**

The Court will hold a hearing on September 10, 2019 at 10:00 a.m. Eastern Daylight Time, to consider whether to approve the settlement. The hearing will be held in the courtroom of the Honorable Christopher Sontchi, United States Bankruptcy Court for the District of Delaware, 824 N. Market St, Wilmington, DE 19801. The hearing is open to the public. This hearing date may change without further notice to you. Consult the Settlement Website at [www.tabletsettlement.com](http://www.tabletsettlement.com) or PACER, at [www.ecf.deb.uscourts.gov](http://www.ecf.deb.uscourts.gov), for updated information on the hearing date and time.

#### **How Do I Get More Information?**

You can inspect the documents connected with this settlement on the settlement website. Other papers related to the bankruptcy proceeding are available at <http://www.kccllc.net/fuhu>. Additional papers filed in the underlying California lawsuit by the Class are available through PACER, the online service for the United States District Courts, at [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov).

You can contact the Claim Administrator by calling 1-844-269-3030 or writing to Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002.

You can also obtain additional information by contacting Plaintiff's Counsel at Fuhu Settlement, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, [www.gutridesafier.com](http://www.gutridesafier.com).

**Do not call or contact the Court concerning this notice, the settlement or the lawsuit.**



**Atención a todos los compradores de tabletas Nabi®  
Este aviso puede afectar sus derechos. Por favor, léalo detenidamente.**

*Un tribunal autorizó este aviso. Esto no es una solicitud de un abogado.*

Para recibir su porción de los fondos del arreglo (de hasta \$30 por la compra de una tableta), tiene que [presentar una reclamación](#).

Este aviso trata de un procedimiento de quiebra que involucra a la compañía Arctic Sentinel, Inc., conocida anteriormente como Fuhu, Inc. (“Fuhu”), que diseñó y vendió las tabletas computadoras de niños de la marca Nabi®.

En 2014, se interpuso un litigio contra Fuhu en nombre de una clase de todos los compradores consumidores de las siguientes tabletas Nabi®: Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (incluyendo Nabi Jr. S) y Nabi DreamTab (la “Clase”). La Clase afirmó que las tabletas Nabi® eran defectuosas, en el sentido de que tenían un sistema de carga defectuoso.

Después de que Fuhu se declarara en quiebra el 7 de diciembre de 2015, la Clase presentó una reclamación en el caso de quiebra. Solicitaron al tribunal de quiebras (el “Tribunal”) que diera a los compradores una porción de los activos restantes de Fuhu, que forman parte ahora de un fideicomiso de liquidación (el “Fideicomiso”) y bajo la administración y control de un fideicomisario encargado de la liquidación.

Los compradores también afirman que tienen derecho a recuperar dinero de Wistron Corporation (“Wistron”), que fabricó algunas de las tabletas, y D&H Distributing Company (“D&H”), que distribuyó algunas de las tabletas. Ambas compañías niegan responsabilidad.

Tanto Wistron como D&H han presentado sus propias reclamaciones en la quiebra solicitando una porción de los activos restantes de Fuhu, argumentando que no les pagaron por completo todos sus bienes y servicios.

Se ha llegado a un arreglo entre el fideicomisario encargado de la liquidación, la Clase, Wistron y D&H. El arreglo asigna valores a cada una de las reclamaciones afirmadas presentadas en el caso de quiebra por parte de la Clase, Wistron y D&H. La Clase, Wistron y D&H han acordado que el dinero que reciban de la quiebra se destinará a la Clase hasta que \$3 millones o más sean pagados a la Clase. El fideicomisario encargado de la liquidación también ha acordado asignar a la Clase el derecho del Fideicomiso para solicitar dinero de una de las anteriores compañías de seguros de Fuhu.

Conforme al arreglo, a cada miembro de la Clase se le permite presentar una reclamación. Los reclamantes que presenten reclamaciones válidas recibirán una parte igual del total recuperado por la Clase, por cada tableta Nabi® que compraron que no fuera devuelta a cambio de un reembolso completo o una tableta de recambio no defectuosa. Habrá una distribución máxima de \$10 por tableta, o \$30 por tableta defectuosa, de los primeros \$3 millones pagados a la Clase. La cantidad real pagada a cada reclamante dependerá de si la tableta es defectuosa, el número de reclamaciones válidas, y el total recibido en última instancia por la Clase del Fideicomiso, así como la cantidad (si la hubiera) recuperada por la Clase de la compañía de seguros. Estas cantidades no se conocen todavía.

Los compradores que iniciaron y persiguieron la demanda (“Demandantes”) y sus abogados que interpusieron la demanda solicitarán al Tribunal que les reembolsen sus gastos de bolsillo, de hasta \$1.5 millones en honorarios de abogados y \$75,000 en adjudicaciones de incentivo, de los primeros \$3 millones a ser distribuidos a la Clase.

Sus derechos legales están afectados independientemente de si actúa o no. Lea este aviso detenidamente.

Este aviso resume el arreglo propuesto. Para los términos precisos y condiciones del arreglo, por favor, consulte el acuerdo del arreglo disponible en [www.tabletsettlement.com](http://www.tabletsettlement.com). Como alternativa, puede ponerse en

contacto con el administrador de reclamaciones en Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002 o con los abogados de la Clase en Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111.

**POR FAVOR, NO LLAME POR TELÉFONO AL TRIBUNAL O A LA SECRETARÍA DEL TRIBUNAL PARA CONSULTAS SOBRE ESTE ARREGLO O EL PROCESO DE RECLAMACIONES.**

<b>SUS DERECHOS Y OPCIONES EN ESTE ARREGLO</b>		<b>FECHA LÍMITE</b>
<b>PRESENTAR UN FORMULARIO DE RECLAMACIÓN</b>	La única manera de recibir un pago bajo el arreglo por la compra de su tableta Nabi.	20 de agosto, 2019
<b>EXCLUIRSE</b>	Salirse del arreglo. Esta es la única opción que le permite alguna vez interponer o unirse a otra demanda contra D&H o Wistron u otras Partes Liberadas que surja de las mismas reclamaciones legales liberadas por este arreglo. Usted no recibirá ningún pago. (Excluirse <b>no</b> le permitirá presentar reclamaciones por separado en el procedimiento de quiebra para obtener una porción de los activos restantes de Fuhu retenidos en el Fideicomiso, ya que ha finalizado el plazo para presentar dichas reclamaciones en el caso de quiebra).	20 de agosto, 2019
<b>OBJETAR</b>	Escriba al Tribunal sobre por qué no le agrada algún aspecto del arreglo, la cantidad de los honorarios de abogados, costos, o el pago a los Demandantes.	20 de agosto, 2019
<b>ASISTIR A UNA AUDIENCIA</b>	Hable en el Tribunal sobre el arreglo. (Si objeta a cualquier aspecto del arreglo, <b>tiene</b> que presentar una objeción por escrito no más tarde de la fecha límite de objeción).	10 de septiembre, 2019 a las 10:00 a.m., horario de verano del este
<b>NO HACER NADA</b>	No recibirá ningún pago y no tiene derecho a demandar más adelante por las reclamaciones liberadas por el arreglo, y se considerará que ha dado su consentimiento a la jurisdicción y autoridad del Tribunal para que dicte una orden final del arreglo.	

- Estos derechos y opciones—y los plazos para ejercerlos—se explican en este aviso.
- El Tribunal todavía tiene que decidir si aprueba el arreglo. Los pagos solamente se efectuarán si el Tribunal aprueba el arreglo y solamente después de que el Fideicomiso haga las distribuciones en el curso ordinario de validar y pagar otras reclamaciones afirmadas en el caso de quiebra. Si hay apelaciones, el pago no se efectuará hasta que las apelaciones sean resueltas y el arreglo entre en vigor. Por favor, tenga paciencia y continúe consultando el sitio web del arreglo para las actualizaciones.

### Audiencia de Equidad y Aprobación Final

El 10 de septiembre de 2019, a las 10:00 a.m., horario de verano del este, el Tribunal celebrará una audiencia para determinar (1) si el arreglo propuesto es justo, razonable y adecuado y debiera recibir la aprobación final; (2) si otorga las solicitudes de honorarios de abogados y/o gastos presentados por los Abogados de la Clase; y (3) si otorga la solicitud de un pago de representante de la Clase a los Demandantes que interpusieron la demanda. La audiencia se celebrará en el Tribunal de Quiebras de los Estados Unidos por el Distrito de Delaware, 824 N. Market St, Wilmington, DE 19801. La audiencia se celebrará en la sala del Honorable Christopher Sontchi. Esta fecha de audiencia puede cambiar sin previo aviso. Consulte el sitio web del arreglo en [www.tabletsettlement.com](http://www.tabletsettlement.com), para obtener información actualizada sobre la fecha y hora de la audiencia.

#### Tabla de Contenido

¿Cómo sé si estoy afectado por el Litigio y el Arreglo?	3
¿De qué trata la demanda?	4
¿Qué pretenden recuperar los Demandantes en la demanda?	4
¿Por qué se llega a un arreglo en este caso?	5
¿Qué es el Arreglo?	5
¿Qué puedo obtener en el Arreglo?	6
¿Cómo hago una reclamación?	6
¿Qué obtienen los Demandantes y sus abogados?	7
¿Qué reclamaciones se liberan por el Arreglo?	8
¿Cómo me excluyo del Arreglo y del Litigio?	8
¿Cómo objeto al Arreglo?	8
¿Cuándo decidirá el Tribunal si aprueba el Arreglo?	9
¿Cómo obtengo más información?	9

#### ¿Cómo sé si estoy afectado por el Litigio y el Arreglo?

Este caso trata de las siguientes tabletas Nabi®: Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (incluyendo Nabi Jr. S) y Nabi DreamTab (“Tabletas”).

El Tribunal ha certificado condicionalmente la siguiente Clase: “Todas las personas que compraron, en los Estados Unidos, una tableta Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (incluyendo Nabi Jr. S) o Nabi DreamTab, excepto las personas que compraron para la reventa o devolvieron dicha tableta por un reembolso completo o un recambio no defectuoso”.

Los siguientes no son miembros de la Clase: (1) la Honorable Christina Snyder, el Honorable Gerald Rosen, y el Honorable Christopher Sontchi; (2) cualquier miembro de sus familiares directos; (3) cualquier entidad gubernamental; (4) Fuhu y sus deudores afiliados Arctic Sentinel Holdings, Inc. anteriormente conocido como Fuhu Holdings, Inc., Arctic Sentinel Direct, Inc. anteriormente conocido como Fuhu Direct, Inc. y Sentinel Arctic, Inc. anteriormente conocido como Nabi, Inc. (conjuntamente, los “Deudores”); (5) cualquier entidad en la que los Deudores tengan una participación mayoritaria; (6) cualquiera de las subsidiarias, matrices, filiales, funcionarios, directores, empleados, representantes legales, herederos, sucesores o cesionarios de los Deudores; (7) Mattel, Inc. y sus subsidiarias, matrices, filiales, y funcionarios, directores, empleados, representantes legales, herederos, sucesores o cesionarios; (8) abogados de las partes; y (9) cualquier persona que se excluya oportunamente de la Clase.<sup>1</sup>

<sup>1</sup>Si el arreglo no se aprueba o no entra en vigor, entonces el caso de quiebra procederá como si el arreglo no se hubiera hecho. El Tribunal certificó previamente una clase en el caso de quiebra, con ciertas excepciones, de “Todas las personas que entre el 3 de julio de 2010 y el 30 de septiembre de 2015 compraron, en los Estados Unidos, una tableta Nabi 2, Nabi 2S, Nabi XD, Nabi Jr. (incluyendo Nabi Jr. S) o Nabi DreamTab”.

**¿De qué trata la demanda?**

En julio de 2014, Scott Miller interpuso una demanda en California contra Fuhu, Inc. Miller alegó que Fuhu participó en publicidad engañosa, incumplimiento de garantía y otras prácticas desleales con respecto a sus tabletas de la marca Nabi® para niños, porque contenían un sistema de carga defectuoso. Miller solicitó representar a una clase de todos los compradores. Fuhu niega que hubiera alguna base fáctica o jurídica para la demanda y negó responsabilidad. En 2015, James Griffin IV notificó al tribunal que deseaba unirse a la demanda.

En diciembre de 2015, mientras la demanda estaba pendiente, Fuhu presentó una petición de amparo en Delaware bajo el Capítulo 11 del Código de Quiebras. En la quiebra, los activos de Fuhu se vendieron a Mattel, Inc. y en enero de 2017 todos los activos y pasivos restantes de los Deudores fueron transferidos al Fideicomiso para la liquidación final y distribución a los acreedores según el Código de Quiebras.

En julio de 2016, Miller y Griffin recibieron permiso del Tribunal de Quiebras para presentar una reclamación de quiebra en nombre de la Clase. Presentaron esta reclamación en la cantidad de aproximadamente \$455 millones.

Otros a los que Fuhu les debía dinero también presentaron reclamaciones en el Tribunal de Quiebras. Entre estos reclamantes se encontraba una empresa que fabricaba algunas de las Tabletetas, Wistron Corporation (“Wistron”) y una empresa que distribuía algunas de las Tabletetas, D&H Distributing Company (“D&H”). Wistron presentó una reclamación en la quiebra por un importe por liquidar de más de \$30 millones y D&H presentó una reclamación de aproximadamente \$44 millones. Además, se presentaron reclamaciones por un total de aproximadamente \$24 millones por ciertas sociedades limitadas organizadas por Morgan Stanley (“Morgan Stanley”) que llevan el nombre de North Haven Expansion Capital Co-Investment Vehicle LP y North Haven Expansion Capital LP, que prestaron dinero a Fuhu. Otros también han presentado reclamaciones en la quiebra, algunas de las cuales pueden quedar sujetas a revisión y validación; actualmente esas reclamaciones suman en total otros \$51 millones aproximadamente (a la fecha del 30 de septiembre de 2018).

La cantidad disponible en el caudal de quiebra en poder fiduciario para la distribución a los acreedores es mucho menor que la cantidad total de reclamaciones. Al 6 de diciembre de 2018, había disponible menos de \$7 millones para la distribución a los acreedores. Además, algunos de los acreedores con reclamaciones de mayor prioridad pueden tener derecho bajo el Código de Quiebras a obtener el pago del Fideicomiso antes de que éste distribuya dinero a la Clase, a D&H o a Wistron.

En 2017, Taylor Sánchez (“Sánchez”), Carlos Muñoz (“Muñoz”), Vanessa Floerke (“Floerke”), Jill Aguilera (“Aguilera”), y Nell Baker (“Baker”) amenazaron con interponer demandas en nombre de la Clase contra Wistron y D&H, por sus acciones en relación con las Tabletetas.

El Tribunal no ha determinado (1) si debieran permitirse alguna de las reclamaciones en la quiebra por la Clase, Wistron o D&H; (2) las cantidades adecuadas de esas reclamaciones; o (3) si otras reclamaciones presentadas en la quiebra debieran permitirse o en qué cantidades. No ha habido ninguna decisión por un tribunal en cuanto a si Wistron o D&H serían responsables para con la Clase en cualquier cantidad, si los compradores de las Tabletetas interpusieran demandas contra esas compañías.

**¿Qué pretenden recuperar los Demandantes en la Demanda?**

Los Demandantes alegan que las Tabletetas se comercializaron engañosamente como “recargables” y “aptas para niños” y que los problemas con el sistema de carga deberían haber sido divulgados. Los Demandantes sostienen que, con estas acciones, Fuhu y D&H hicieron que la gente comprara las Tabletetas a un precio elevado. También sostienen que D&H y Wistron tienen la obligación de indemnizar a Fuhu y a los compradores por sus pérdidas. Los Demandantes sostienen que, basándose en el análisis de los expertos del “costo de reparar” las Tabletetas, a cada comprador se le puede deber \$100 aproximadamente. D&H y Wistron disputan las alegaciones de los Demandantes y niegan cualquier culpa, irregularidad o responsabilidad.

### **¿Por qué se llega a un arreglo en este caso?**

Este caso ha estado pendiente desde julio de 2014. Desde entonces, los abogados de los Demandantes han investigado la fabricación, comercialización y etiquetado de las Tabletas. Los abogados de los Demandantes han revisado cientos de miles de páginas de documentos y han tomado y defendido numerosas declaraciones. Los abogados de los Demandantes también han contratado a expertos y han tomado declaración a los expertos de Fuhu.

Sin un arreglo, la Clase primero necesitaría convencer al Tribunal de Quiebras que aprobara su reclamación de \$455 millones. El Tribunal podría rechazar o disminuir el importe de la reclamación una vez que vea y oiga las pruebas, incluyendo el testimonio de expertos. Podría encontrar que las Tabletas no fueron anunciadas falsamente o no eran defectuosas, o que los compradores no demostraran que las Tabletas fueron vendidas a un precio elevado. Incluso si el Tribunal aprobara la reclamación de \$100 por Tableta comprada, el importe real que se distribuyera a los compradores sería pequeño—tal vez inferior a \$2 por Tableta—ya que solamente hay una pequeña cantidad de dinero disponible en el Fideicomiso para ser distribuido a los acreedores.

Los Demandantes también necesitarían iniciar demandas separadas contra D&H y Wistron. Una vez más, los Demandantes no podrían persuadir a un tribunal que aceptara sus pruebas sobre la publicidad engañosa, los defectos o la cantidad de dinero perdido por la Clase. Puede que también no sean capaces de demostrar que tanto D&H como Wistron fueran responsables por cualquier conducta indebida o estén obligados a pagar por ello.

En enero de 2018, el Fideicomiso, la Clase, D&H y Wistron participaron en una mediación de dos días llevada a cabo por el Honorable juez Gerald Rosen (retirado) en JAMS en Nueva York, Nueva York. En la mediación, las partes acordaron este arreglo.

En noviembre de 2018, el Fideicomiso y Morgan Stanley llegaron a un acuerdo con respecto a las reclamaciones de Morgan Stanley. Morgan Stanley acordó respaldar el arreglo que se había logrado entre el Fideicomiso, la Clase, D&H y Wistron.

Después de tener en cuenta los riesgos y costos de más litigios, los Demandantes y sus abogados creen que los términos y condiciones del arreglo son justos, razonables, adecuados y equitativos, y que el arreglo es para el mejor beneficio de los miembros de la Clase.

### **¿Qué es el Arreglo?**

Antes de este arreglo, el Tribunal había aprobado un Plan de Liquidación (el “Plan”) que rige cómo se distribuirían los activos restantes de los caudales de quiebra entre los acreedores con reclamaciones válidas. Conforme al Plan, el dinero se distribuye a los acreedores solamente después de que el Tribunal decida si la reclamación de cada acreedor debería ser admitida y en caso afirmativo, en qué cantidad. El Plan también organiza las reclamaciones de los acreedores en categorías (por ejemplo, garantizadas, prioritarias, y no garantizadas). Todas las reclamaciones en la primera categoría se pagarían primero, antes de pagar la siguiente categoría. Si no queda suficiente dinero para pagar todas las reclamaciones en una categoría determinada, entonces la distribución para las reclamaciones en esa categoría sería proporcional. Por ejemplo, si hay \$500 millones en reclamaciones no garantizadas, y solamente \$5 millones disponibles para pagar esas reclamaciones, cada reclamante recibirá un pago de solo un céntimo (\$.01) por el valor en dólares de su reclamación. Para obtener una copia del Plan, visite <http://www.kccllc.net/fuhu>.

En el arreglo, las partes han acordado establecer valores para la reclamación de la Clase, la reclamación de D&H y la reclamación de Wistron, que son las mayores reclamaciones no garantizadas presentadas en el caso de quiebra. La reclamación de la Clase se valorará en \$154 millones, la reclamación de D&H se valorará en un poco más de \$44 millones, y la reclamación de Wistron se valorará en un poco más de \$27 millones. Cuando los activos de la quiebra se distribuyan a los acreedores no garantizados, estas tres reclamaciones se considerarán como una sola reclamación “agrupada” de un poco más de \$225 millones, y los primeros \$3 millones de la cantidad distribuida para pagar esa reclamación agrupada se destinarán enteramente a la Clase. De los próximos \$5 millones distribuidos para pagar la reclamación agrupada, el diez por ciento se destinará a la Clase y el otro 90% pasará a D&H y Wistron. De la cantidad restante distribuida por el Fideicomiso para pagar la

reclamación agrupada, un tercio se destinará a la Clase y los otros dos tercios pasarán a D&H y Wistron.<sup>2</sup>

El dinero del Fideicomiso recibido por la Clase se utilizará para pagar: (1) los costos de administrar el arreglo, incluyendo el aviso a la Clase; (2) los honorarios de abogados, costos e incentivos adjudicados por el Tribunal; y (3) las reclamaciones válidas de los miembros de la Clase conforme a este arreglo. Si hay dinero sobrante de la distribución de la quiebra a la Clase después del pago de estas cantidades, se transferirá a Wistron y D&H.

El fideicomisario encargado de la liquidación también ha acordado asignar a la Clase los derechos del Fideicomiso bajo una póliza de seguro de \$1 millón emitida por Lloyd's of London. Lloyd's se negó a brindar cobertura a Fuhu para las reclamaciones de la Clase, ya que afirmaba que la póliza no aplica. Los abogados de los Demandantes y el fideicomisario encargado de la liquidación no están de acuerdo con la postura de Lloyd's. Los Abogados de los Demandantes estarán autorizados a negociar con Lloyd's o interponer una demanda contra Lloyd's. Los Abogados de los Demandantes podrían intentar obtener (1) el reembolso de los honorarios legales incurridos por Fuhu en defensa contra la reclamación de la Clase; (2) los límites de la póliza de \$1 millón; y (3) el reembolso por daños adicionales sufridos por Fuhu debido a la negativa de Lloyd's de proporcionar cobertura cuando se presentó la demanda de la Clase. Con respecto a los daños adicionales, por ejemplo, los Abogados de la Clase podrían intentar argumentar que Lloyd's debería pagar a la Clase \$154 millones, que era la cantidad de la reclamación de la Clase permitida en la quiebra. No hay garantía de que se obtenga dinero de Lloyd's. Si se recupera dinero de Lloyd's, se añadirá a los fondos recibidos por la Clase del Fideicomiso. El dinero recibido por la Clase procedente de Lloyd's se utilizará para pagar: (1) los costos adicionales de administrar el arreglo que no están cubiertos por los fondos recibidos del Fideicomiso; (2) los honorarios de abogados, costos o incentivos adicionales adjudicados por el Tribunal; y (3) las reclamaciones válidas de los miembros de la Clase conforme a este arreglo. Ningún dinero procedente de Lloyd's será transferido a Wistron o D&H.

### **¿Qué puedo obtener en el Arreglo?**

Usted recibirá un pago en efectivo si presenta oportunamente una reclamación válida que cumpla con las instrucciones en el formulario de reclamación y en este aviso. Puede presentar una reclamación por cada Tableta comprada, incluso si la Tableta no presentaba el defecto. Cada reclamación válida recibirá la misma cantidad de pago, excepto que la cantidad de pago será tres veces (3x) mayor para las reclamaciones en las que la Tableta presentaba un defecto. La cantidad del pago para cada reclamante dependerá de (1) si la tableta presentaba el defecto; (2) cuántas otras reclamaciones válidas se presentan; (3) cuánto dinero es recibido por la Clase procedente del Fideicomiso y de Lloyd's; y (4) cuánto de ese dinero queda después de efectuar los pagos para administrar el arreglo (incluyendo el proporcionar este aviso) y para los Demandantes y sus abogados (tal como los apruebe el Tribunal). La cantidad máxima que se pagará a cada reclamación del dinero recibido del Fideicomiso es \$30 por Tableta defectuosa comprada, y \$10 por cada otra Tableta comprada. La cantidad real a pagar a cada reclamación podría ser mucho menor de \$30 por Tableta defectuosa o \$10 por otra Tableta comprada. Es también posible que pudiera ser superior a \$30 por Tableta defectuosa, o \$10 por otra Tableta comprada, si hay un pequeño número de reclamaciones y/o una mayor recaudación de Lloyd's.

Los pagos en efectivo solamente se distribuirán si el Tribunal otorga la aprobación final al arreglo propuesto y solamente después de que se hayan resuelto las apelaciones, y solamente después de que el Fideicomiso haya hecho las distribuciones en el curso ordinario de validación y pago de otras reclamaciones afirmadas en el caso de quiebra. Si el Tribunal no aprueba el arreglo, si el arreglo se anula en un recurso de apelación, o si el arreglo es terminado, no se distribuirán pagos en efectivo.

### **¿Cómo hago una reclamación?**

Para hacer una reclamación, tiene que rellenar el formulario de reclamación disponible en este sitio web del arreglo, [www.tabletsettlement.com](http://www.tabletsettlement.com). En su reclamación, tiene que demostrar que usted era el comprador de cada

<sup>2</sup> El arreglo también establece un valor para las reclamaciones de Morgan Stanley y una cantidad de distribución fija a Morgan Stanley a pagar dentro de los diez (10) días a partir de la entrada en vigor de una orden final e inapelable del Tribunal de Quiebras aprobando el arreglo. Se espera que la distribución a Morgan Stanley no afecte la cantidad que será distribuida a la Clase.

Tableta por la que está presentando una reclamación proporcionando (1) un número de control que se lo proporciona el Administrador de Reclamaciones, indicando que usted previamente se puso en contacto con el servicio al cliente de Fuhu sobre un defecto con su Tableta; (2) el número de serie de su Tableta; (3) un correo electrónico de confirmación de Fuhu indicando el registro en línea de su Tableta; o (4) un recibo detallado de venta minorista indicando el modelo de la Tableta y la fecha, lugar y la cantidad de la compra. Para hacer una reclamación por una Tableta defectuosa, a menos que presente el número de control que se describe en (1), tiene también que indicar en el formulario de reclamación que su Tableta era defectuosa. Usted tiene que presentar el formulario de reclamación bajo pena de perjurio y seguir las demás instrucciones en el formulario de reclamación.

Puede presentar el formulario de reclamación en línea, o puede imprimirlo y enviarlo por correo al Administrador de Reclamaciones a: Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002. Si lo presenta en línea, los formularios de reclamación tienen que ser presentados no más tarde del 20 de agosto de 2019. Si se envían por correo, los formularios de reclamación tienen que ser *recibidos* (no solamente llevar matasellos) *por el Administrador de Reclamaciones*, no más tarde del 20 de agosto de 2019.

### **¿Qué obtienen los Demandantes y sus abogados?**

Hasta la fecha, los abogados de los Demandantes no han sido compensados por su trabajo en este caso. Los abogados de los Demandantes presentarán pruebas al Tribunal de que han empleado más de 4,500 horas litigando este caso, por lo que se les debe más de \$4 millones de acuerdo con su tarifa normal de hora. Los abogados de los Demandantes también presentarán pruebas de que han pagado gastos de bolsillo (entre otros, honorarios de expertos, honorarios de transcripción, honorarios de taquígrafos, tasas de registro, costos de servicio, costos de copiadoras, y gastos de viaje) de más de \$200,000. Ninguno de estos gastos ha sido todavía reembolsado.

Como parte del Arreglo, los abogados de los Demandantes solicitarán al Tribunal que les adjudique los honorarios de abogados y los gastos. Las partes han acordado no impugnar una adjudicación de hasta \$1,500,000.00 como honorarios de abogados a ser pagados a los abogados de los Demandantes de los primeros \$3 millones distribuidos de los activos de la quiebra a la Clase. Si la Clase recibe fondos adicionales, por ejemplo, de una recaudación procedente de Lloyd's, los abogados de los Demandantes pueden solicitar una adjudicación adicional de sus costos reales, más honorarios de abogados no superiores al 40 % de la cantidad recaudada. No se le proporcionará un aviso por separado de dicha solicitud, aunque se publicará una copia de la solicitud en el sitio web del arreglo.

Asimismo, los Demandantes titulares no han recibido ninguna compensación por su tiempo y esfuerzo empleado en el caso, y los riesgos que asumieron al presentarlo. El Demandante Miller supervisó el litigio durante más de un año en el tribunal de California, y después, cuando la petición de quiebra fue presentada, fue nombrado para el Comité de Acreedores No Garantizados y luego al Comité Asesor del Fideicomiso de Liquidación, donde supervisó a los abogados de la quiebra para intentar maximizar la recuperación de los acreedores. Ha empleado más de 600 horas trabajando en este caso, por el que no ha sido pagado, y por lo que se le deberían \$180,000 de acuerdo a su tarifa normal por hora. El Demandante Griffin ha tenido una participación más limitada, pero ha empleado más de 5 horas trabajando en este caso. Los Demandantes Sánchez, Muñoz, Floerke, Aguilera y Baker han empleado cada uno al menos 2 horas trabajando en este caso.

Como parte del Arreglo, los Demandantes solicitarán al Tribunal adjudicaciones de incentivo para compensarles por su tiempo y esfuerzo y por acordar una liberación de sus reclamaciones que es más amplia que las reclamaciones de otros miembros de la Clase. Las partes han acordado no impugnar una adjudicación de hasta \$75,000.00 para el Demandante Miller, de los primeros \$3 millones distribuidos procedentes de los activos de la quiebra para la Clase. El Demandante Griffin solicitará una adjudicación de hasta \$3,000.00. Los Demandantes Sánchez, Muñoz, Floerke, Aguilera y Baker solicitarán una adjudicación de hasta \$1,000.00 para cada uno. Los Demandantes no prevén solicitar adjudicaciones adicionales de incentivo incluso si hay recaudaciones adicionales, a menos que los Demandantes estén obligados a iniciar un litigio contra Lloyd's. No se proporcionará un aviso por separado de dicha solicitud, aunque se publicará una copia de la solicitud en el sitio web del Arreglo.

Los Demandantes y sus abogados presentarán una moción ante el Tribunal en o antes del 30 de julio de 2019 en

apoyo de sus solicitudes de los honorarios de abogados, costos y gastos, y pagos a los Demandantes. En el sitio web del arreglo se encontrará disponible una copia de esa moción. El Tribunal determinará la cantidad a pagar por los honorarios, costos, gastos y los pagos a los representantes de la Clase.

### **¿Qué reclamaciones se liberan por el Arreglo?**

El arreglo libera todas las reclamaciones de los miembros de la Clase contra el Fideicomiso, D!H, Wistron o cualquier otra parte liberada que se relacione con la venta, la comercialización o la garantía de las Tabletas. Sin embargo, no libera las reclamaciones por lesiones personales o las reclamaciones por daños a la propiedad (que no sea el daño a la Tableta en sí). Esta liberación incluye las reclamaciones que aún puede que no se conozcan o se sospechen que existan. Esto significa que, a cambio de ser elegible para obtener beneficios en efectivo como miembro de la Clase, usted no podrá demandar, continuar demandando, o formar parte de cualquier otra demanda contra las partes liberadas que involucre las reclamaciones resueltas. Para más información, por favor, consulte las secciones 20 y 28 de la Estipulación del Arreglo.

Aparte del arreglo, las reclamaciones contra Fuhu y ciertas entidades afiliadas serán liberadas automáticamente en virtud de la ley de quiebras. Esto ocurrirá independientemente de si el arreglo es aprobado o no.

### **¿Cómo me excluyo del Arreglo y del Litigio?**

Usted puede excluirse de la Clase si desea retener el derecho a demandar por separado por las reclamaciones liberadas en el arreglo. Si se excluye, no puede presentar una reclamación u objetar al arreglo.

Para excluirse, tiene que completar y presentar el formulario en línea en el sitio web del arreglo o enviar por correo una solicitud para excluirse del arreglo al Administrador de Reclamaciones a Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002. Si la envía por correo, la solicitud de exclusión tiene que incluir su nombre, dirección, las palabras “Deseo excluirme del Arreglo de Demanda Colectiva de las Tabletas Fuhu”, y su firma.

Si se presentan en línea, las solicitudes de exclusión tienen que ser presentadas no más tarde del 20 de agosto de 2019. Si se envían por correo, las solicitudes de exclusión tienen que ser *recibidas* (no solamente llevar matasellos) *por el Administrador de Reclamaciones* para el 20 de agosto de 2019, a más tardar.

Excluirse del arreglo no le permitirá retener reclamaciones que son liberadas automáticamente en virtud de la ley de quiebras, tales como las reclamaciones contra Fuhu.

A menos que se excluya del arreglo, se considerará que da su consentimiento a la jurisdicción y autoridad del Tribunal para que dicte una orden final sobre el arreglo.

### **¿Cómo objeto al Arreglo?**

Usted puede pedirle al Tribunal que deniegue la aprobación del arreglo, o que rechace o reduzca la adjudicación de los honorarios de abogados, costos o incentivos a los Demandantes y a sus abogados. Para hacerlo, tiene que presentar oportunamente su objeción en el Tribunal utilizando el sistema de archivo ECF, o tiene que enviar oportunamente una objeción al Administrador de Reclamaciones, que la enviará entonces al Tribunal. En su objeción, no puede pedir al Tribunal un arreglo mayor; el Tribunal solamente puede aprobar o denegar el arreglo o decidir la cantidad de la adjudicación de los honorarios de abogados, costos e incentivos. Si el Tribunal niega la aprobación al arreglo por completo, no se enviarán ningunos pagos en efectivo, y el procedimiento de quiebra continuará como si no se hubiera llegado a un arreglo.

Usted también puede comparecer en la audiencia de equidad y aprobación final, ya sea en persona o mediante su propio abogado. Si comparece mediante su propio abogado, usted es responsable de pagar a ese abogado. Si desea presentar una objeción al arreglo en la audiencia de equidad y aprobación final, primero tiene que presentar dicha objeción por escrito de acuerdo con las instrucciones contenidas en este aviso.

La objeción tiene que incluir: (1) el nombre y número del caso *In re Arctic Sentinel, Inc.*, Case No. 15-12465-CSS (Bankr. D. Del.); (2) su nombre, dirección y número de teléfono; (3) documentos, o testimonio bajo pena

de perjurio, suficiente para establecer que usted es un miembro de la Clase; (4) una declaración de su(s) objeción(es) y las bases de su(s) objeción(es); (5) una declaración en cuanto a si usted está solicitando la oportunidad de comparecer y ser escuchado en la audiencia de equidad y aprobación final; (6) el nombre (o nombres) y dirección (o direcciones) de todos los abogados (si procede) que (a) le están representando en hacer la objeción; (b) comparecerán en su nombre en la audiencia de equidad y aprobación final; y/o (c) pueden tener derecho a compensación en relación con su objeción; (7) el nombre (o nombres) y dirección (o direcciones) de todas las personas (si procede) que serán llamados a testificar en apoyo de su objeción; (8) copias de cualquier documento, escrito, u otros documentos en los que se basa su objeción si no están ya en el expediente del tribunal; (9) una lista de cualquier otra objeción que usted o su abogado hayan presentado a cualquier demanda colectiva en cualquier tribunal federal o estatal en los Estados Unidos en los cinco años previos (o declarando afirmativamente que no se ha presentado previamente dicha objeción); y (10) su firma como objetor, además de la firma de su abogado, si es que le representa un abogado con la objeción. No incluir alguno de los elementos de esta información y documentación puede ser objeto de la revocación y el rechazo o anulación de su objeción.

Toda la información indicada anteriormente tiene que ser presentada electrónicamente a través del sistema ECF del Tribunal, o ser entregada al Administrador de Reclamaciones por correo, correo urgente, o entrega personal para que la objeción sea *recibida* (no solamente llevar matasellos o ser enviada) por el Administrador de Reclamaciones no más tarde del 20 de agosto de 2019. Al presentar una objeción, usted da su consentimiento a la jurisdicción del Tribunal, incluyendo cualquier orden del Tribunal para producir documentos o proporcionar testimonio antes de la audiencia de equidad y aprobación final.

Si objeta al arreglo, pero todavía desea presentar una reclamación en caso de que el Tribunal apruebe el arreglo, tiene que presentar una reclamación oportuna siguiendo las instrucciones descritas anteriormente.

#### **¿Cuándo decidirá el Tribunal si aprueba el Arreglo?**

El Tribunal celebrará una audiencia el 10 de septiembre de 2019, a las 10:00 a.m., horario de verano del este, para considerar si aprueba el arreglo. La audiencia se celebrará en la sala del Honorable Christopher Sontchi, Tribunal de Quiebra de los Estados Unidos por el Distrito de Delaware, 824 N. Market St, Wilmington, DE 19801. La audiencia está abierta al público. Esta fecha de audiencia puede cambiar sin previo aviso. Consulte el sitio web del Arreglo en [www.tabletsettlement.com](http://www.tabletsettlement.com) o PACER, en [www.ecf.deb.uscourts.gov](http://www.ecf.deb.uscourts.gov), para obtener información actualizada sobre la fecha y hora de la audiencia.

#### **¿Cómo obtengo más información?**

Usted puede inspeccionar los documentos en relación con este arreglo en el sitio web del arreglo. En <http://www.kccllc.net/fuhu> se encuentran disponibles otros documentos relacionados con el procedimiento de quiebra. Otros documentos adicionales archivados en la demanda subyacente de California por la Clase están disponibles a través de PACER, el servicio en línea de los Tribunales de Distrito de los Estados Unidos, en [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov).

Puede ponerse en contacto con el Administrador de Reclamaciones llamando al 1-844-269-3030 o escribiendo a Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002.

También puede obtener información adicional poniéndose en contacto con los Abogados de los Demandantes en el Arreglo Fuhu, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, [www.gutridesafier.com](http://www.gutridesafier.com).

**No llame ni se comunique con el Tribunal en relación con este aviso, el arreglo o la demanda.**

# Exhibit J

Fuhu Tablet Settlement Claim Administrator  
 P.O. Box 404002  
 Louisville, KY 40233-4002



# FUM

## «Barcode»

Postal Service: Please do not mark barcode

Claim#: FUM-«ClaimID»-«MailRec»

«First1» «Last1»

«Addr1» «Addr2»

«City», «St» «Zip»

«Country»

*In re: Artic Sentinel, Inc.*

U.S. Bankruptcy Court  
 for the District of Delaware  
 Case No. 15-12465-CSS  
 (Bankr. D. Del.)

**Must Be Received By  
 August 20, 2019**

## Fuhu Tablet Class Action Settlement Paper Claim Form

To make a claim under the Fuhu Tablet Class Action Settlement (the “Settlement”), you must complete this form and mail it to the address at the bottom of this form. (Alternatively, you can complete and submit a claim form online at [www.tabletsettlement.com](http://www.tabletsettlement.com).) Your claim form must be received, not just postmarked, by August 20, 2019. The information in your claim will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy). The amount you will receive depends on the number of other claims filed in the Settlement and the total amount available for distribution.

Payments will be issued only if the Court approves the Settlement and the Effective Date of the Settlement occurs. Please save a copy of this completed form and your Proof of Purchase for your records. **For further information, visit [www.tabletsettlement.com](http://www.tabletsettlement.com).**

First Name	M.I.	Last Name
Primary Address		
Primary Address Continued		
City	State	Zip Code
Email Address (optional) †		
I wish to receive my payment by:		
<input type="radio"/> Check made out to me as an individual at the address above.		
* I purchased the following Nabi® Tablet: <input type="radio"/> Nabi 2 <input type="radio"/> Nabi 2S <input type="radio"/> Nabi XD <input type="radio"/> Nabi Jr.		
<input type="radio"/> Nabi Jr. S <input type="radio"/> Nabi DreamTab		



FUMPOC2

FOR CLAIMS PROCESSING ONLY	OB	CB	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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\*Provide **one** of the following:

- My claim number is

[Empty input field for claim number]

- Tablet Serial Number

[Empty input field for tablet serial number]

- Email confirmation from Fuhu showing online registration of the tablet. You **must** forward a copy of the email confirmation to [fuhuclaimproof@tabletsettlement.com](mailto:fuhuclaimproof@tabletsettlement.com).

- Itemized retail sales receipt showing the model of tablet and the date, place and amount of purchase.

[Attach additional sheets for other purchases]

**NOTICE: YOU MUST CONFIRM THE TRUTH OF ALL OF THE FOLLOWING, UNDER PENALTY OF PERJURY, PERJURY IS A CRIME. YOUR CLAIM IS SUBJECT TO VERIFICATION:**

- \*  I did not buy my Fuhu tablet for purpose of resale.
- \*  I did not return my Fuhu tablet for a full refund.
- \*  I did not return my Fuhu tablet for a non-defective replacement.
- \* My tablet: was not defective  was defective

**\* I SWEAR OR AFFIRM THE TRUTH OF ALL THE INFORMATION ON THIS CLAIM FORM UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES, AFFIRM THE JURISDICTION OF THE BANKRUPTCY COURT OVER ALL MATTERS RELATED TO THE SETTLEMENT AND THIS CLAIM, AND CONSENT TO ITS AUTHORITY TO ENTER A FINAL ORDER APPROVING THE SETTLEMENT.**

Signature: \_\_\_\_\_ Dated (mm/dd/yyyy): \_\_\_\_\_

Print Name: \_\_\_\_\_

\* Required Field

† Providing your email address will help the Claim Administrator contact you, including if your settlement payment is returned as undeliverable.

**Mail your completed Claim Form, WITH YOUR PROOF OF PURCHASE, IF ANY, to: Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002**

**Claim Forms must be RECEIVED BY THE CLAIM ADMINISTRATOR (not just postmarked) by August 20, 2019.**



# Exhibit K

Fuhu Tablet Settlement Claim Administrator  
P.O. Box 404002  
Louisville, KY 40233-4002



**FUM**

U.S. Bankruptcy Court for the District of Delaware  
Case No. 15-12465-CSS (Bankr. D. Del.)

**Must Be Postmarked  
No Later Than  
August 20, 2019**

**OPT-OUT FORM**

**THIS DOCUMENT MUST BE SUBMITTED or POSTMARKED NO LATER THAN AUGUST 20, 2019.**

If you **DO NOT** want to be included in the Class, you must complete this form in its entirety, print and sign the form, and mail it to:

Fuhu Tablet Settlement Claim Administrator, P.O. Box 404002, Louisville, KY 40233-4002

The Court will exclude you from the Class if your request to be excluded is submitted at this website or postmarked by **August 20, 2019**.

By my signature below, I confirm that I have received, read, and understood the notice of the Fuhu Tablet Settlement Class Action lawsuit, and that I have decided to exclude myself from the Class. By excluding myself from the Class, I understand that I cannot get money or benefits, if any are awarded, from this lawsuit. But I do keep any rights to sue separately about the claims certified by the Court in this lawsuit.

I wish to be excluded from the Class described in the class notice and I **DO NOT** want to participate in this class action lawsuit.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Entity Name, if opting out on behalf of an entity (e.g., company, law firm)

*If you are opting out on behalf of an entity (e.g., a company or law firm), please provide that entity's legal name).*

\_\_\_\_\_  
Mailing Address

Mailing Address

\_\_\_\_\_  
Continuation of Mailing Address

Continuation of Mailing Address

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City

City

\_\_\_\_\_  
State

State

\_\_\_\_\_  
Zip Code

Zip Code

\_\_\_\_\_  
Email Address

Email Address

\_\_\_\_\_  
Telephone Number

Telephone Number

\_\_\_\_\_  
Email Address Where You Received Notice

Email Address Where You Received Notice

# Exhibit L

**Exclusion List**

<b>ClaimID</b>	<b>Last</b>	<b>First</b>
10011920701	ACOSTA	ANNJU
10147850101	DOWNHAM	MAGGI
10148522001	DUFF	CORA
10150300301	EDWARDS	CARL
10205781301	MALABARBA	SCOTT
10233452301	PEREIRA	JANET
10250367901	RUBY	JENIFFER

# **Exhibit K**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTHERN CALIFORNIA  
OAKLAND DIVISION

IN RE: LENOVO ADWARE LITIGATION

Case No. 4:15-md-02624-HSG

**DECLARATION OF STEVEN  
WEISBROT, ESQ. OF ANGEION  
GROUP, LLC RE: IMPLEMENTATION  
OF NOTICE PROGRAM**

Judge: Hon. Haywood S. Gilliam, Jr.

1 I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746  
2 that the following is true and correct:

3 1. I am a partner at the class action notice and settlement administration firm, Angeion  
4 Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my  
5 personal knowledge.

6 2. My credentials have been previously reported to this Court in my prior Declaration that  
7 was filed on July 11, 2018.

8 3. The purpose of this Declaration is to provide the Court with a summary of the work  
9 performed by Angeion related to the Notice Plan.

10 **CAFA NOTICE**

11 4. On July 20, 2018, pursuant to 28 U.S.C. §1715, Angeion caused the required Notice of  
12 this Settlement and related materials (“CAFA Notice”) to be sent to the Attorneys General of all  
13 states and territories, as well as the Attorney General of the United States. The CAFA Notices  
14 were in the same form as Exhibit “A” attached hereto.

15 **DIRECT NOTICE**

16 5. Prior to disseminating Notice, Angeion received class member data (the “Class List”)  
17 provided by the Defendant. Angeion reviewed the Class List information and identified 204,186  
18 records with mailing information and 686,112 email addresses.

19 **Mailed Notice**

20 6. On January 7, 2019, Angeion caused Notice of the proposed Class Action Settlement  
21 (“Notice”) to be mailed via the United States Postal Service (“USPS”) first class mail, postage  
22 prepaid, to Settlement Class Members identified in the Class List. The mailed Notices were in the  
23 same form as Exhibit “B” attached hereto.

24 7. Prior to mailing, the Class List was processed through the USPS National Change of  
25 Address database to identify updated addresses for individuals who have moved within the last  
26 four years and who filed a change of address card with the USPS.  
27

1 8. As of February 10, 2019, Angeion has received 24,178 Notices returned as undeliverable  
2 by the USPS. Notices returned with a forwarding address were sent to the updated addresses  
3 provided by the USPS. Notices returned without a forwarding address, were subjected to address  
4 verification searches in an attempt to locate updated address information. In total, 12,939 Notices  
5 were re-mailed as a result of the efforts described herein.

6 **Email Notice**

7 9. On January 7, 2019, Angeion caused Notice to be sent via email to the Class Member  
8 email addresses identified on the Class List. The emailed Notices were in the same form as  
9 Exhibit "C" attached hereto.

10 10. As of February 10, 2019, 440,275 Notices sent via email were delivered and 245,837  
11 Notices were not delivered.

12 11. Angeion was informed that Amazon also caused Notice of the Settlement to be sent via  
13 email to 15,860 unique Amazon customer email accounts. The Declaration of Brian Buckley on  
14 behalf of Amazon.com is attached hereto as Exhibit "D".

15 **MEDIA NOTICE**

16 12. On January 7, 2019, Angeion implemented a comprehensive media notice program that  
17 was designed to deliver an approximate 70.63% reach with an average frequency of 3.00 times  
18 each by serving approximately 7,161,000 impressions. The banner notices utilized in this notice  
19 program were in the same form as Exhibit "E" attached hereto.

20 13. The internet banner ad notice ran for four consecutive weeks and resulted in 7,192,779  
21 impressions served, which exceeded the targeted number of impressions described *infra*.

22 14. The direct notice program combined with the media notice delivered an approximate  
23 75.51% reach with an average frequency of 3.02 times each. This reach percentage exceeded the  
24 70.63% reach described in paragraph 13 above.

25 15. On or about January 11, 2019, Angeion caused a link to the Settlement Website to be  
26 published on two leading class action websites, [www.topclassactions.com](http://www.topclassactions.com) and  
27  
28

1 www.classaction.org. Screenshots of those class action websites are attached hereto as Exhibits  
2 “F” and “G”, respectively.

### 3 RESPONSE MECHANISMS

4 16. On January 7, 2019, Angeion established the following website devoted to this  
5 Settlement: [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) (the “Settlement Website”). The Settlement  
6 Website contains general information about the Settlement and important documents, including a  
7 downloadable Notice and Claim Form. The Settlement Website also contains a Contact Us link  
8 whereby Class Members can send an email to a dedicated email address established for this  
9 Settlement: [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com). Class Members can submit their Claim Form  
10 online via the Settlement Website. Copies of the Claim Form and Notice are attached hereto as  
11 Exhibits “H” and “I”, respectively.

12 17. Through February 10, 2019, there have been 598,427 pageviews of the Settlement  
13 website.

14 18. On January 7, 2019, Angeion established the following toll-free hotline devoted to this  
15 Settlement: 1-877-595-0389. The toll-free hotline utilizes an interactive voice response (“IVR”)  
16 system to provide Class Members with responses to frequently asked questions and inform Class  
17 Members of important dates and deadlines pertinent to the Settlement. The toll-free hotline is  
18 accessible 24 hours a day, 7 days a week.

19 19. Through February 10, 2019, the toll-free IVR received 636 calls totaling 3,072 minutes.

### 20 SUMMARY OF THE NOTICE PROGRAM

21 20. In conjunction with the direct mail and email Notice described in paragraphs 5 through 12  
22 above, the comprehensive media portion of the notice program delivered an approximate 75.51%  
23 reach with an average frequency of 3.02 times each. This 75.51% reach exceeds the 70.63% reach  
24 that was targeted. Further, the informational Settlement Website, toll-free IVR and information  
25 about the Settlement published on [www.topclassactions.com](http://www.topclassactions.com) and [www.classaction.org](http://www.classaction.org) are not  
26 calculable in reach percentage, but nonetheless aide in informing Class Members of their rights  
27 and options under the Settlement.

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**CLAIM FORM SUBMISSIONS**

21. The deadline to submit a Claim Form in this Settlement is March 25, 2019. As of February 10, 2019, Angeion has received 87,873 Claim Form submissions, including 86,922 Short Form claims and 951 Long Form claims. Angeion will continue to report the number and breakdown of Claim Form submissions to Class Counsel.

**REQUESTS FOR EXCLUSIONS & OBJECTIONS**

22. The deadline for Class Members to submit requests for exclusion from the Settlement, or to object to the Settlement is March 25, 2019. As of February 10, 2019, Angeion has received 43 requests for exclusion. The names of the individuals requesting exclusion from the Settlement are attached hereto as Exhibit “J”.

23. Angeion has been monitoring the docket in this matter, no objections have been filed. Likewise, Angeion has not received any objections to this Settlement.

24. Angeion will continue to monitor and track requests for exclusion or objections to the Settlement.

**CONCLUSION**

25. In my opinion, the Notice Program describes herein met the requirements of Rule 23 and due process requirements as the best notice practicable under the circumstances, and incorporated contemporary media and best practices to alert and engage the participation of the class members in the proposed Settlement.

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

Dated: February 14, 2019

  
\_\_\_\_\_  
STEVEN WEISBROT

Exhibit



1801 Market Street, Suite 660  
Philadelphia, PA 19103  
(p) 215-563-4116  
(f) 215-563-8839  
www.angeiongroup.com

July 20, 2018

VIA USPS PRIORITY MAIL

United States Attorney General &  
Appropriate Officials

**Re: Notice of Class Action Settlement**

*In re Lenovo Adware Litigation*, 4:15-md-02624-HSG

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of the defendants in the below-described action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement:

**Case Name:** In re Lenovo Adware Litigation

**Index Number:** 4:15-md-02624-HSG

**Jurisdiction:** United States District Court for the Northern District of California

**Date Settlement Filed with Court:** July 11, 2018

In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:

- 1. 28 U.S.C. § 1715(b)(1)-Complaint:** Amended Consolidated Class Action Complaint, filed with the Court on December 7, 2016.
- 2. 28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** A hearing on the motion for preliminary approval of the class action settlement is set for September 20, 2018 at 2:00 p.m. The Court has not yet scheduled a Final Fairness Hearing.
- 3. 28 U.S.C. § 1715(b)(3)-Notification to Class Members:** The Long Form Notice and Summary Notice and filed with the Court on July 11, 2018, which will inform class members of the settlement and their rights thereunder, including the right to request exclusion from the settlement.
- 4. 28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** The Lenovo and Superfish Class Action Settlement Agreements, filed with the Court on July 11, 2018. Also included is the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, filed with the Court on July 11, 2018.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the Lenovo and Superfish Class Action Settlement Agreements identified in paragraph 4 above, no other settlements or other agreements have been contemporaneously made between the Parties.
6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** The Court has not issued a Final Judgment or notice of dismissal as of the date of this CAFA Notice.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** Based on partial sales data available from Lenovo and certain resellers of the computers that are the subject matter of the litigation, and assuming that this sales data, which is now three years old, still reflects the domicile of the Class Members identified therein, a reasonable estimate of the number of potential Class Members residing in each state is as follows:

State	Count	Percentage	State	Count	Percentage
AK	348	0.1684%	NC	6412	3.1032%
AL	1750	0.8469%	ND	526	0.2546%
AR	980	0.4743%	NE	889	0.4302%
AZ	3679	1.7805%	NH	1694	0.8198%
CA	23543	11.3941%	NJ	7143	3.4570%
CO	4185	2.0254%	NM	950	0.4598%
CT	2450	1.1857%	NV	1419	0.6868%
DE	1139	0.5512%	NY	12868	6.2277%
FL	13685	6.6231%	OH	6379	3.0872%
GA	5371	2.5994%	OK	1794	0.8682%
HI	471	0.2279%	OR	2552	1.2351%
IA	1744	0.8440%	PA	8149	3.9439%
ID	880	0.4259%	RI	623	0.3015%
IL	9122	4.4148%	SC	2281	1.1039%
IN	3384	1.6377%	SD	421	0.2038%
KS	1441	0.6974%	TN	3047	1.4747%
KY	1705	0.8252%	TX	17066	8.2594%
LA	1850	0.8953%	UT	1557	0.7535%
MA	5540	2.6812%	VA	6144	2.9735%
MD	4561	2.2074%	VT	338	0.1636%
ME	691	0.3344%	WA	4346	2.1033%
MI	6217	3.0088%	WI	4182	2.0240%
MN	4471	2.1638%	WV	555	0.2686%
MO	2997	1.4505%	WY	213	0.1031%
MS	701	0.3393%	Unknown	11835	5.7279%
MT	337	0.1631%			

Class Member awards are subject to a number of factors, including the number of products purchased, the nature of the claim made by each Class Member and the overall number of claims filed. Therefore, it is not feasible to estimate the awards Class Members may receive at this time.

**8. 28 U.S.C. §1715(b)(8)-Judicial Opinions Related to the Settlement:** The Court has not yet issued an opinion regarding the proposed settlement as of the issuance of this CAFA Notice.

If you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact:

For Lenovo:

Daniel J. Stephenson  
K&L Gates LLP  
10100 Santa Monica Blvd., 7th Floor  
Los Angeles, CA 90067  
Telephone: (310) 552-5000  
Dan.stephenson@klgates.com

For Superfish:

Angeion Group  
1801 Market Street, Suite 660  
Philadelphia, PA 19103  
(p) 215-563-4116  
(f) 215-563-8839

Sincerely,

Angeion Group  
1801 Market Street, Suite 660  
Philadelphia, PA 19103  
(p) 215-563-4116  
(f) 215-563-8839

**Enclosure - CD**

Exhibit

Lenovo-Superfish Settlement  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

PRESORTED  
FIRST CLASS MAIL  
U.S. POSTAGE PAID  
BELLMAWR, NJ  
PERMIT #247

Electronic Service  
Requested

**NOTICE OF PROPOSED  
CLASS ACTION  
SETTLEMENT**

*In re Lenovo Adware Litigation,*  
No. 4:15-md-02624-HSG (N.D. Cal.)

United States District Court for the  
Northern District of California

*A court authorized this notice. This is  
not a solicitation from a lawyer.*



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Notice ID: <<Notice ID>>

<<Name>>  
<<Addr1>>  
<<Addr2>>  
<<City>>, <<St>> <<Zip>>  
<<Country>>

BLIND PERF DOES NOT PRINT

Lenovo-Superfish Settlement  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

Name/Address Changes:



Notice ID: <<Notice ID>>

<<Name>>  
<<Addr1>>  
<<Addr2>>  
<<City>>, <<St>> <<Zip>>  
<<Country>>

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IF YOU MOVE, send your CHANGE OF ADDRESS to ADMINISTRATOR at the above address.

An \$8.3 million settlement has been reached with Lenovo and Superfish in a class action lawsuit involving certain Lenovo laptop computers. Lenovo and Superfish agreed to install software called VisualDiscovery on some Lenovo laptop computers. Plaintiffs say the software slowed down the computers, invaded user privacy, and exposed users to security risks. Defendants deny these claims.

**WHO IS INCLUDED?**

You are a member of the class and eligible for payment if you bought one or more of the following Non-Think branded Lenovo computer models, not for resale, within the United States between September 1, 2014 and February 28, 2015 ("Class Computers"):

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

**WHAT CAN I GET?**

There are two ways to make a claim to receive money from the Settlement:

**Option 1:** Short Form Claim (No Proof of Loss) – estimated at \$40 per Class Computer. If you submit a claim for one Class Computer, you only

need to confirm your contact information and computer purchase to receive this payment. If you wish to submit a claim for more than one Class Computer, you need to confirm your contact information and show proof of payment for each computer.

**Option 2:** Long Form Claim (Documented Proof of Loss) up to \$750 per Class Computer. If you incurred an expense or loss in response to a computer-related performance, privacy, or security concern and that expense or loss is reasonably attributable to VisualDiscovery software being installed on your computer. You must submit an itemized claim and attach proof (for example, receipts or other proof of payment for credit monitoring or technical service assistance) showing your expenses or losses. The Claims Administrator will review your submission and determine your payment. The most you can claim is \$750 per Class Computer.

**DO I HAVE TO SUBMIT A CLAIM?**

In order to receive money from this Settlement, you must submit a completed Claim Form postmarked by March 25, 2019. If you bought an affected computer, you can submit a claim form at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You may also contact the Claims Administrator to request a paper claim form by telephone at 1-877-595-0389, by email at [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com), or U.S. mail at Lenovo-Superfish Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. You may submit your claim form online, by email or by mail.

**YOUR OTHER OPTIONS**

If you wish to be excluded from the Settlement class, you must submit your exclusion request online or mail your written exclusion request postmarked by March 25, 2019. If you submit a Claim Form or do nothing, you will be bound by the Settlement terms and the orders issued by the Court concerning the Settlement. If you do not exclude yourself from the Settlement class, you may object to the Settlement by submitting a written objection by March 25, 2019. For specific information on how to submit a written exclusion request or objection, and the requirements for each, please visit [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing on April 18, 2019 at 2:00 p.m to consider whether to approve the Settlement, and to further consider requests by the Class Counsel for attorneys' fees and expenses and for incentive awards for the named plaintiffs. The date and/or time of the hearing may change. Please check [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) for updates.

**FOR ADDITIONAL INFORMATION ABOUT THE SETTLEMENT**

**THIS IS ONLY A SUMMARY.** For more information regarding your rights and options, you can visit the Settlement website: [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You may also call toll-free 1-877-595-0389, or write to: Lenovo-Superfish Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

**For a copy of the Settlement Agreement or Claim Form, visit [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) or call toll-free 1-877-595-0389.**

BLIND PERF DOES NOT PRINT

\_\_\_\_\_  
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AFFIX  
STAMP  
HERE

Lenovo-Superfish Settlement  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

Exhibit

Subject: Lenovo Laptop Settlement

You are receiving this email because Defendant’s records indicate that you may have purchased a Lenovo Laptop in 2014 or 2015. If so, you may be eligible to receive money from a class action settlement.

If you are a member of the Class as defined below, and you wish to receive payment from this lawsuit, you must file a valid claim by March 25, 2019.

To File Your Claim please visit: [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) and log-in using the below:

Claim Number: <Notice ID>  
Confirmation Code: <Confirmation Code>

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*In re Lenovo Adware Litigation*, No. 4:15-md-02624-HSG (N.D. Cal.)  
United States District Court for the Northern District of California

*A court authorized this notice. This is not a solicitation from a lawyer.*

An \$8.3 million settlement has been reached with Lenovo and Superfish in a class action lawsuit involving certain Lenovo laptop computers. Lenovo and Superfish agreed to install software called VisualDiscovery on some Lenovo laptop computers. Plaintiffs say the software slowed down the computers, invaded user privacy, and exposed users to security risks. Defendants deny these claims.

**WHO IS INCLUDED?**

You are a member of the class and eligible for payment if you bought one or more of the following Non-Think branded Lenovo computer models, not for resale, within the United States between September 1, 2014 and February 28, 2015 (“Class Computers”):

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

**WHAT CAN I GET?**

There are two ways to make a claim to receive money from the Settlement:

**Option 1:** Short Form Claim (No Proof of Loss) – estimated at \$40 per Class Computer. If you submit a claim for one Class Computer, you only need to confirm your contact information and computer purchase to receive this payment. If you wish to submit a claim for more than one Class Computer, you need to confirm your contact information and show proof of payment for each computer.

**Option 2:** Long Form Claim (Documented Proof of Loss) up to \$750 per Class Computer. If you incurred an expense or loss in response to a computer-related performance, privacy, or security concern and that expense or loss is reasonably attributable to VisualDiscovery software being installed on your computer. You must submit an itemized claim and attach proof (for example, receipts or other proof of payment for credit monitoring or technical service assistance) showing your expenses or losses. The Claims Administrator will review your submission and determine your payment. The most you can claim is \$750 per Class Computer.

**DO I HAVE TO SUBMIT A CLAIM?**

In order to receive money from this Settlement, you must submit a completed Claim Form postmarked by March 25, 2019. If you bought an affected computer, you can submit a claim form at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You may also contact the Claims Administrator to request a paper claim form by telephone at 1-877-595-0389, by email at [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com) or U.S. mail at Lenovo-Superfish Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. You may submit your claim form online, by email or by mail.

**YOUR OTHER OPTIONS**

If you wish to be excluded from the Settlement class, you must submit your exclusion request online or mail your written exclusion request postmarked by March 25, 2019. If you submit a Claim Form or do nothing, you will be bound by the Settlement terms and the orders issued by the Court concerning the Settlement. If you do not exclude yourself from the Settlement class, you may object to the Settlement by submitting a written objection by March 25, 2019. For specific information on how to submit a written exclusion request or objection, and the requirements for each, please visit [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

**THE COURT’S FAIRNESS HEARING**

The Court will hold a hearing on April 18, 2019 at 2:00 p.m. to consider whether to approve the Settlement, and to further consider requests by the Class Counsel for attorneys' fees and expenses and for incentive awards for the named plaintiffs. The date and/or time of the hearing may change. Please check [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) for updates.

**FOR ADDITIONAL INFORMATION ABOUT THE SETTLEMENT**

**THIS IS ONLY A SUMMARY.** For more information regarding your rights and options, you can visit the Settlement website: [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You may also call toll-free 1-877-595-0389, email [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com), or write to: Lenovo-Superfish Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

**For a copy of the Settlement Agreement or Claim Form, visit [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) or call toll-free 1-877-595-0389.**

# Exhibit D

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

In re: Lenovo Adware Litigation

Pending in the U.S. District Court for the  
N.D. California, Oakland Division

No. 4:15-MD-02624-HSG

DECLARATION OF AMAZON.COM,  
INC. CUSTODIAN OF RECORDS

I, Brian Buckley, declare as follows:

1. I am Senior Corporate Counsel, Litigation and Regulatory, for Amazon.com, Inc. (“Amazon”). I make this declaration based on personal knowledge, and if called and sworn as a witness, I could and would testify as set forth below.

2. I am a custodian of the relevant records for Amazon. I was responsible for directing email notices to be sent to Amazon customers who made valid purchases of products at issue between August 1, 2014 - January 18, 2015.

3. On January 8, 2019, Amazon sent emails to 15,860 unique customer email accounts with the following text:

**Subject: Lenovo Laptop Settlement**

Amazon is sending you this email because our records indicate that you purchased a Lenovo Laptop in 2014 or 2015. You may be eligible to receive money from a class action settlement.

DECLARATION OF AMAZON.COM, INC.  
CUSTODIAN OF RECORDS (USDC ND CA 15-MD-02624) - 1

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A federal court approved this notice to inform you that a proposed settlement has been reached in a class action lawsuit brought against Lenovo and Superfish. The case involves certain Lenovo laptop computers on which software called VisualDiscovery was installed. Under the settlement, owners of certain non-Think branded Lenovo computers may get an estimated \$40 payment (by confirming purchase of computer) or up to \$750 (by proving additional expenses). If you are a member of the class and you wish to receive money from this settlement, you must file a valid claim by March 25, 2019.

Amazon is sending this email on behalf of the parties to the lawsuit, and as required by the court. Because Amazon is not involved in the lawsuit, however, we cannot assist you directly. You must file a claim through the Claims Administrator. To get more information please go to [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

4. Amazon received no return (bounce-back) messages indicating that emails did not go through.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED this 31<sup>st</sup> day of January, 2019 at Seattle, Washington.

  
Brian Buckley

DECLARATION OF AMAZON.COM, INC.  
CUSTODIAN OF RECORDS (10-CV-00258-SLR-MPT) - 2

# Exhibit E

If You  
Bought a  
**Lenovo**  
Laptop in  
2014 or  
2015, You  
Could Be  
Eligible for a  
Payment  
from a Class  
Action  
Settlement.



[Click Here](#)

for more information

If You Bought a **Lenovo** Laptop in 2014 or  
2015, You Could Be Eligible for a Payment  
from a Class Action Settlement.



[Click Here](#)

for more  
information

If You Bought a **Lenovo**  
Laptop in 2014 or 2015, You  
Could Be Eligible for a  
Payment from a Class  
Action Settlement.



[Click Here](#)

for more  
information

If You Bought a  
**Lenovo** Laptop in  
2014 or 2015,  
You Could Be  
Eligible for a  
Payment from a  
Class Action  
Settlement.



[Click Here](#)

for more information

If You Bought a **Lenovo** Laptop in 2014 or 2015, You Could Be Eligible for a Payment from a Class Action Settlement.



Click Here

for more  
information

If You Bought a **Lenovo** Laptop in 2014 or 2015, You Could Be Eligible for a Payment from a Class Action Settlement.



Click Here

for more  
information

# Exhibit F

## Lenovo Laptop Adware Class Action Settlement

FOLLOW ARTICLE

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By Top Class Actions  
January 11, 2019

...



An \$8.3 million settlement has been reached in a Lenovo laptop adware class action alleging that company software inhibited performance.

The Lenovo laptop adware class action lawsuit claimed that Lenovo computers were equipped with software created by Superfish called VisualDiscovery which allegedly created problems with performance and allowed the company to monitor user activity for advertisement purposes.

According to the Lenovo adware class action lawsuit, about 800,000 laptops were sold with the VisualDiscovery software.

The plaintiffs claim that monitoring online interests as a way to target specific advertisements to laptop owners is an invasion of privacy as well as causes the computers to work inefficiently.

The suit was consolidated in California federal court in 2015, and the Class won certification in 2016. The settlement was proposed only months after [a federal judge trimmed claims in the class action](#).

The [Lenovo laptop adware settlement was proposed](#) in July 2018 after three years of litigation.

Under the Lenovo laptop adware settlement, eligible Class Members include consumers who purchased certain Non-Think-branded Lenovo laptops between Sept. 1, 2014 and Feb. 28, 2015. Models included in the settlement are:

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

Consumers can check what model they purchased by looking at the barcode sticker on the bottom of the laptop model. This information may also be available in the Systems Information application on the laptop. Further information for determining model information is available on the Lenovo website.

Class Members in the Lenovo laptop adware settlement will receive an estimated payment of \$40 or up to \$750 if they can provide “proof of loss” with their Claim Form.

“Given that plaintiffs’ expert estimated that average damages per computer range from \$16.67 to \$100.02, the \$40 that class counsel anticipate as a minimum settlement cash payment represents a favorable recovery on a per-computer basis,” the motion to approve the Lenovo class action settlement states.

Class Members who want to object to the settlement or wish to be excluded from its terms, have until March 25, 2019 to do so.

---

**Who's Eligible**

Consumers who purchased one or more of the following Non-Think-branded Lenovo computer models between Sept. 1, 2014 and Feb. 28, 2015:

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

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**Potential Award**

**\$40 – \$750.**

Class Members have two options in the Lenovo class action settlement. Without providing a “proof of loss” with the Claim Form, consumers are expected to get about \$40.

Those who provide an itemized claim and “proof of loss,” which includes receipts showing consumers had to pay for credit monitoring or technical assistance, can get up to a maximum of \$750.

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**Proof of Purchase**

Not required, unless the Class Member wants reimbursement for “computer-related performance, privacy, or security concern and that expense or loss is reasonably attributable to VisualDiscovery software being installed on your computer.”

**Claim Form**

[CLICK HERE TO FILE A CLAIM »](#)

**NOTE:** If you do not qualify for this settlement do NOT file a claim.

Remember: you are submitting your claim *under penalty of perjury*. You are also harming other eligible Class Members by submitting a fraudulent claim. If you're unsure if you qualify, please read the FAQ section of the Settlement Administrator's website to ensure you meet all standards (Top Class Actions is not a Settlement Administrator). If you don't qualify for this settlement, check out our database of other [open class action settlements](#) you may be eligible for.

---

**Claim Form  
Deadline**

3/25/2019

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**Case Name**

*In re: Lenovo Adware Litigation*, Case No.: 4:15-CV-02624-HSG, in the U.S. District Court for the Northern District of California

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**Final Hearing**

4/18/2019

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**Settlement Website**

[www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com)

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**Claims  
Administrator**

Lenovo Adware Settlement  
c/o Angeion Group  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103  
1-877-595-0389  
[info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com)

---

**Class Counsel**

Jonathan K. Levine  
Elizabeth C. Pritzker  
PRITZKER LEVINE LLP

Stephanie D. Biehl  
COTCHETT PITRE & MCCARTHY LLP

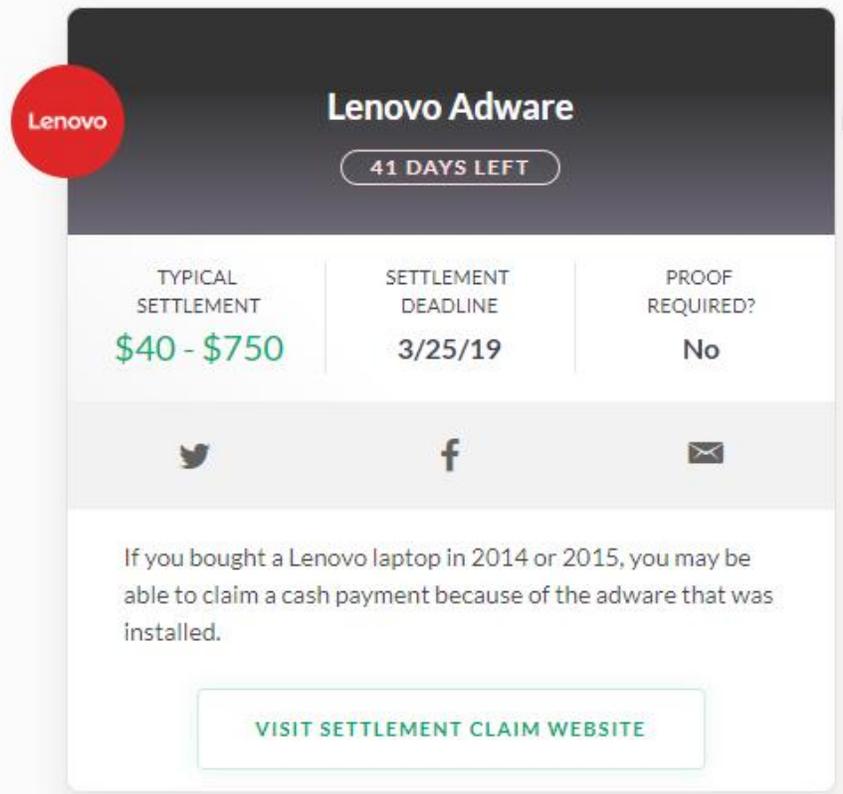
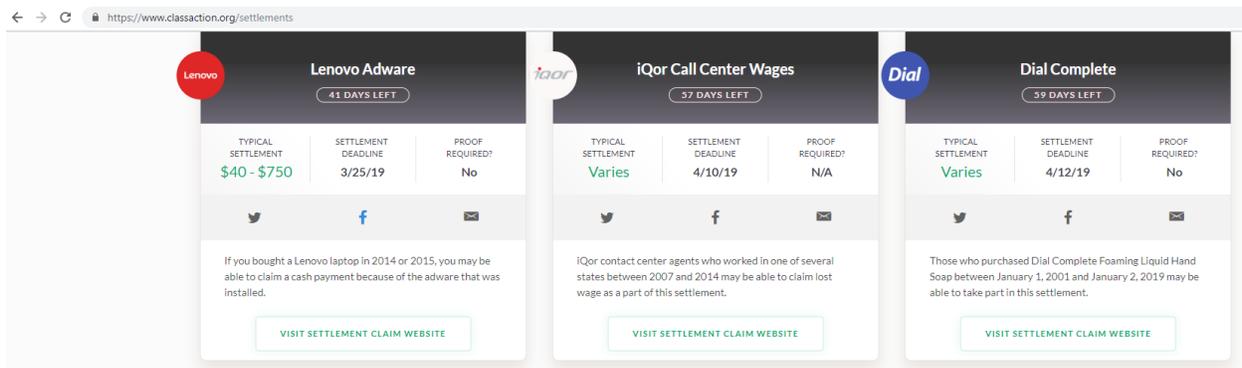
Daniel C. Girard  
Elizabeth A. Kramer  
Andre M. Mura  
GIRARD GIBBS LLP

---

**Defense Counsel**

Daniel J. Stephenson  
Matthew N. Lowe  
K&L GATES LLP

# Exhibit G



# Exhibit H

**Your claim must  
be submitted  
online or  
postmarked by:  
MARCH 25, 2019**

*In re Lenovo Adware Litigation*  
c/o Claims Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103  
Email: [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com)  
[www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com)

**LEN**  
INSTR

## **CLAIM FORM INSTRUCTIONS**

### **IMPORTANT: PLEASE READ BEFORE COMPLETING THIS CLAIM FORM**

You are a member of the class and eligible for a Settlement payment if you bought one or more of the following Lenovo computer models, not for resale, within the United States between September 1, 2014 and February 28, 2015 (“Class Computers”):

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

You can tell what model you bought by looking at the bar code on the sticker on the bottom of your computer, or in the Systems Information application on the computer interface. More information on how to determine your computer model is available at: <https://support.lenovo.com/us/en/solutions/find-product-name>.

**If you are a member of the class based on the above definition, you may submit a Claim Form. Please complete Sections A, B and C, and return the completed Claim Form to the Claims Administrator by mail at the address above. You may also submit your claim online at [LenovoAdwareSettlement.com](http://LenovoAdwareSettlement.com).**

### **PAYMENT OPTIONS AND DOCUMENTATION**

There are two ways to make a claim. If you purchased multiple affected computers, you may make both Short Form and Long Form Claims. Each affected computer, however, may be the subject of only one Short Form Claim or one Long Form Claim.

#### **Option 1: Short Form Claim (No Proof of Loss) – estimated at \$40 per Class Computer**

First, you are eligible for an estimated payment of \$40 per Class Computer. If you make a claim for one computer, you only need to confirm your contact information and computer purchase to get this payment. No other information is required. If you wish to submit a claim for more than one Class Computer, you need to confirm your contact information and show proof of payment for each computer.

#### **Option 2: Long Form Claim (Documented Proof of Loss) – up to \$750 Class Computer**

Second, you may be eligible for a larger payment if you incurred an expense or loss in response to a computer-related performance, privacy, or security concern and that expense or loss is reasonably attributable to VisualDiscovery software being installed on your computer. You must submit an itemized claim and attach proof of purchase of the Class Computer and proof of expense or loss (such as a receipt, an itemized invoice or other documentation that establishes the fact, date of purchase, and the price paid) showing your expenses or losses. The Claims Administrator will review your submission and determine your payment. The most you can claim is \$750 per Class Computer. Only submit a claim under Option 2 if your proof of loss is over \$40.

**If you have any questions about the Claim Form, the payment options, or the documentation requirements, please read the full Notice available at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You may also contact the Claims Administrator with any questions at Lenovo Adware Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103 or by email at [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com).**

**Your claim must  
be submitted  
online or  
postmarked by:  
MARCH 25, 2019**

*In re Lenovo Adware Litigation*  
c/o Claims Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103  
Email: [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com)  
[www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com)

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**CLAIM FORM**

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**SECTION A: NAME AND CONTACT INFORMATION**

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Provide your name and contact information below. If your name or contact information changes after you submit this Claim Form, please notify the Claims Administrator of the new information.

**FIRST NAME**

**LAST NAME**

**STREET ADDRESS**

**CITY**

**STATE**

**ZIP CODE**

**EMAIL ADDRESS**

**CONTINUE TO THE NEXT PAGE**

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**SECTION B: PAYMENT OPTIONS**

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There are two possible payment options. Please read the **Claim Form Instructions** for more information about these options.

**OPTION 1 – SHORT FORM CLAIM (NO PROOF OF LOSS) – ESTIMATED \$40 PER COMPUTER**

I am submitting a short form claim for ONE Class Computer.  
You do not need to provide proof of purchase.

I am submitting a short form claim for MORE THAN ONE Class Computer.  
Enter the number of Class Computers you are claiming: \_\_\_\_\_  
You must provide proof of purchase for **each** Class Computer.

**OPTION 2 – LONG FORM CLAIM (DOCUMENTED PROOF OF LOSS) – UP TO \$750 PER COMPUTER**

I am submitting a long form claim for one or more Class Computers with documented proof of loss.  
You must provide an explanation of the costs incurred, attach proof of them (such as a receipt, an itemized invoice or other documentation that establishes the fact, date of purchase, and the price paid) and a short statement showing that those costs were incurred in response to security, privacy, and/or performance concerns or problems associated with the Class Computer and reasonably attributable to VisualDiscovery. Eligible costs may include, without limitation, payments for technical support or credit monitoring services.

Provide the total number of Class Computers you are claiming: \_\_\_\_\_

Provide the total amount of documented losses you are claiming: \$\_\_\_\_\_

**PAYMENT ELECTION:**

Please indicate below whether you would like to receive your payment in the form of a check mailed to the address provided in Section A, or if you would like your payment emailed to you to digitally deposit. Please choose only one. If you do not complete this section, payment will be sent via mail.

I would like to receive a check via mail. I understand it is my responsibility to inform the Claims Administrator of any changes to my contact information provided in Section A of this Claim Form.

I would like my payment emailed to me to digitally deposit. Please issue my payment to the following email address:

**CONTINUE TO THE NEXT PAGE**

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**SECTION C: VERIFICATION**

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By signing below and submitting this Claim Form, I hereby affirm that: (1) I am the person identified above and the information provided in this Claim Form is true and accurate; and (2) I purchased one or more of the following Lenovo computer models, not for resale, within the United States between September 1, 2014 and February 28, 2015:

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10
- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

**SIGNATURE**

**DATE**

**PRINTED NAME**

**CLAIM FORM REMINDER CHECKLIST:**

1. Complete sections A, B and C of the Claim Form.
2. Remember to attach only **copies** of supporting documents, as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and supporting documents for your records.
5. If your name or contact information changes after you submit this Claim Form, please notify the Claims Administrator of the new information.
6. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, or by emailing [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com).

THIS CLAIM FORM MUST BE SUBMITTED ONLINE AT [WWW.LENOVOADWARESETTLEMENT.COM](http://WWW.LENOVOADWARESETTLEMENT.COM) NO LATER THAN **MARCH 25, 2019**, OR MAILED TO THE CLAIMS ADMINISTRATOR BY PREPAID, FIRST-CLASS MAIL POSTMARKED NO LATER THAN **MARCH 25, 2019** TO:

*In re Lenovo Adware Litigation*  
c/o Claims Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

# Exhibit I

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

*A court authorized this notice. This is not a solicitation from a lawyer.*

### **If You Bought a Lenovo Laptop in 2014 or 2015, You Could Be Eligible for a Payment from a Class Action Settlement**

- You could receive an estimated \$40 payment from an \$8.3 million class action Settlement.
- The lawsuit is about software created by Superfish called VisualDiscovery that was placed on certain Lenovo computers. Plaintiffs allege that this software created problems with performance, privacy, and security.
- Visit [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) to make a claim. You can also opt out of, object to, or comment on the Settlement.
- Please read this notice carefully. Your legal rights will be affected, and you have a choice to make now.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment.	<b>March 25, 2019</b>
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Lenovo and Superfish for claims related to this case.	<b>March 25, 2019</b>
<b>OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b>	You can write the Court about why you like or do not like the Settlement. You can't ask the Court to order a larger settlement. You can also ask to speak to the Court at the hearing on March 25, 2019 about the fairness of the Settlement, with or without your own attorney.	<b>March 25, 2019</b>
<b>DO NOTHING</b>	Get no payment. Give up rights.	No Deadline

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.

**WHAT THIS NOTICE CONTAINS**

BASIC INFORMATION ..... 3

WHO IS IN THE SETTLEMENT ..... 3

THE SETTLEMENT BENEFITS ..... 4

SUBMITTING A CLAIM FORM ..... 4

THE LAWYERS REPRESENTING YOU ..... 5

EXCLUDING YOURSELF FROM THE SETTLEMENT ..... 6

OBJECTING TO THE SETTLEMENT ..... 7

THE COURT’S FAIRNESS HEARING ..... 8

IF YOU DO NOTHING ..... 8

GETTING MORE INFORMATION ..... 9

## BASIC INFORMATION

### 1. Why did I get this notice?

A Court authorized this notice because people described in paragraph 5 of this notice have the right to know about an \$8.3 million settlement. If you qualify, you could be eligible to receive a payment.

**To know if you qualify, see the answer to Question 5.**

The people who sued are called the Plaintiffs. The companies they sued, Lenovo (United States), Inc. (“Lenovo”) and Superfish, Inc. (“Superfish”), are called Defendants.

### 2. What is this lawsuit about?

Lenovo and Superfish agreed to install software called VisualDiscovery on some Lenovo laptop computers. Plaintiffs say the software slowed down the computers, invaded user privacy, and exposed users to security risks. Defendants deny these claims.

### 3. What is a class action?

In a class action the Plaintiffs act as “class representatives” and sue on behalf of themselves and other people who have similar claims. This group of people is called the “class,” and the people in the class are called “class members.” One court resolves the issues for all class members, except for people who exclude themselves from the class. Judge Haywood S. Gilliam of the United States District Court for the Northern District of California is in charge of this case. The case is *In re Lenovo Adware Litigation*, No. 4:15-md-02624-HSG (N.D. Cal.).

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and class members get compensation. The class representatives and their attorneys think the settlement is best for everyone affected.

## WHO IS IN THE SETTLEMENT

### 5. Who is in the Settlement?

To get money from the settlement, you have to be a class member. You are a class member if you bought one or more of the following Non-Think-branded Lenovo computer models, not for resale, within the United States between September 1, 2014 and February 28, 2015:

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45
- U Series: U430P, U430Touch, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z50-75, Z40-70, Z50-70
- Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 15, Flex2 15(BTM), Flex 10

- MIIX Series: MIIX2-10, MIIX2-11
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

You can tell what computer model you bought by looking at the bar code on the sticker on the bottom of your computer or in the Systems Information application on the computer. Additional information on how to determine your computer model is available at: <https://support.lenovo.com/us/en/solutions/find-product-name>.

#### **6. What should I do if I am still not sure whether I am included?**

If you are not sure whether you are included in the class, you can ask for free help by calling the Claims Administrator at 1-877-595-0389 for more information.

### **THE SETTLEMENT BENEFITS**

#### **7. What does the Settlement provide?**

Defendants will pay \$8,300,000 into a Settlement Fund. After deductions for attorneys' fees, litigation costs, and other expenses (*see* Question 15), the Fund will be distributed to class members who submit valid claims.

#### **8. How much money can I get from the Settlement?**

Class members who make a claim without supporting documents will get an estimated \$40. Class members who make a properly documented claim could get more than the estimated \$40. The amount you actually get will depend on how many computers you purchased, how many claims are submitted, and how much the Court allows in fees, costs, and expenses. For information on how to make claim, see Question 10 and [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). For information on the Plan of Allocation, see [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

#### **9. What am I giving up if I stay in the class?**

Unless you exclude yourself with an opt-out request (*see* Question 16), you cannot sue, continue to sue, or be part of any other lawsuit against Lenovo or Superfish about the issues in this case. The "Release of Claims" in the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement. The Settlement Agreement can be viewed at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

### **HOW TO GET A PAYMENT—MAKING A CLAIM**

#### **10. How can I get a payment?**

If you bought an affected computer, you can make a claim at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). You can also contact the Claims Administrator to request a paper claim form by telephone 1-877-595-0389, email [info@LenovoAdwareSettlement.com](mailto:info@LenovoAdwareSettlement.com) or U.S. mail Lenovo-Superfish Settlement, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, and submit the claim form to the same email or U.S. mail address.

There are two ways to make a claim to receive money from the Settlement.

**Option 1:** Short Form Claim (No Proof of Loss) – estimated at \$40 per Class Computer. If you submit a claim for one Class Computer, you only need to confirm your contact information and computer purchase to receive this payment. If you wish to submit a claim for more than one Class Computer, you need to confirm your contact information and show proof of payment for each computer.

**Option 2:** Long Form Claim (Documented Proof of Loss) up to \$750 per Class Computer. If you incurred an expense or loss in response to a computer-related performance, privacy, or security concern and that expense or loss is reasonably attributable to VisualDiscovery software being installed on your computer. You must submit an itemized claim and attach proof (for example, receipts or other proof of payment for credit monitoring or technical service assistance) showing your expenses or losses. The Claims Administrator will review your submission and determine your payment. The most you can claim is \$750 per Class Computer.

#### **11. What is the deadline for submitting a claim form?**

To be eligible for payment, claim forms must be submitted electronically or postmarked no later than March 25, 2019.

#### **12. When will I get my payment?**

The Court will hold a hearing on April 18, 2019 at 2:00 p.m., to decide whether to approve the Settlement. If the Court approves the Settlement, there still may be appeals of that decision. It is hard to estimate how long it might take for any appeals to be resolved. If the Settlement is approved and no appeals are filed, the Claims Administrator anticipates that payments will be sent out within 3 months.

Updates regarding the Settlement and when payments will be made will be posted on the Settlement website, [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com).

### **THE LAWYERS REPRESENTING YOU**

#### **13. Do I have a lawyer in the case?**

Yes. The Court appointed the law firms of Cotchett, Pitre & McCarthy LLP, Girard Sharpe LLP, and Pritzker Levine LLP to represent you and the other class members. These firms are called Class Counsel. You will not be charged for their services.

#### **14. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer's services. For example, you can ask your own lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

**15. How will the lawyers be paid?**

You do not have to pay Class Counsel. Class Counsel, who have not been paid for their services since this case began, will seek an award of attorneys' fees out of the Settlement Fund, as well as reimbursement for litigation costs they advanced in pursuing the claims. The fees will compensate Class Counsel for investigating the facts, litigating the case, and negotiating and administering the Settlement. Class Counsel's attorneys' fee request will not exceed 30% of the Settlement Fund, substantially less than the value of the time Class Counsel have devoted to this case. Additionally, Class Counsel will seek reimbursement of their out-of-pocket litigation expenses, not to exceed \$350,000, to be paid out of the Settlement Fund.

Class Counsel will also ask the Court to approve service award payments of \$5,000 to each of the individual class representatives, who are Jessica Bennett, Richard Krause, John Whittle, and Robert Ravencamp.

The costs of providing this notice and administering the Settlement are being paid from the Settlement Fund.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want benefits from the Settlement, and you want to keep your right, if any, to sue Lenovo or Superfish on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or "opting out" of—the class.

**16. How do I get out of the Settlement?**

You may opt out of the Settlement online by March 25, 2019, at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com). Click on the "Opt Out" tab and provide the requested information.

You may also opt out of the Settlement by sending a letter that includes the following to the address below:

- Your name and address;
- A statement that you want to be excluded from the Settlement; and
- Your signature.

Class Action Opt Out  
Attn: Lenovo-Superfish Settlement  
P.O. Box 58220  
1500 John F Kennedy Blvd  
Suite C31  
Philadelphia, PA 19102

Mailed opt-out requests must be postmarked no later than **March 25, 2019**.

**17. If I don't opt out, can I sue Defendants for the same thing later?**

No. Unless you opt out, you give up the right to sue Defendants for the claims the Settlement resolves. You must exclude yourself from the class if you want to try to pursue your own lawsuit.

### 18. What happens if I opt out?

If you opt out of the Settlement, you will not have any rights as a member of the Settlement Class under the Settlement; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right to sue, if any, on the claims alleged in the case by filing or continuing your own lawsuit at your own expense.

## OBJECTING TO THE SETTLEMENT

### 19. How do I tell the Court if I don't like the Settlement?

If you're a class member and do not opt out of the Settlement, you can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed Settlement in writing. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

To object, you must file a document with the Court saying that you object to the proposed Settlement in *In re Lenovo Adware Litigation*, Case No. 4:15-md-02624-HSG. Be sure to include:

- Your name, address, and signature; and
- A detailed statement of your objection, including the grounds for the objection together with any evidence you think supports it.

You can mail the objection by First Class U.S. Mail, postmarked no later than **March 25, 2019**, to the following address:

Clerk of the Court  
U.S. District Court for the Northern  
District of California  
1301 Clay Street, Oakland, CA 94612  
Case No. 4:15-md-02624-HSG

If you do not mail the objection, you must either deliver it in person to this address or file it electronically at <https://www.cand.uscourts.gov/cm-ecf>, no later than **March 25, 2019**.

### 20. What's the difference between objecting and excluding?

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the

Settlement is opting out and telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it no longer affects you. You cannot both opt out and object to the Settlement.

## THE COURT'S FAIRNESS HEARING

### 21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 2:00 p.m. on April 18, 2019 in Courtroom 2 of the Oakland federal courthouse, located at 1301 Clay Street, Oakland, CA 94612.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing.

The Court may also decide how much to pay to Class Counsel in fees and expense reimbursements. After the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to the class members. Be sure to check the website, [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com), for news of any such changes. You can also access the case docket via the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

### 22. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 23. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include a statement in your written objection (discussed above at Question 19) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the class.

## IF I DO NOTHING

### 24. What happens if I do nothing at all?

If you do nothing, you'll be a member of the Settlement Class, you'll get no money from this Settlement, and you won't be able to sue Defendants for the conduct alleged in this case.

## GETTING MORE INFORMATION

### 25. Are more details about the Settlement available?

Yes. This notice summarizes the proposed Settlement—more details are in the Settlement Agreement, the Plan of Allocation, and other important case documents. You can get a copy of these and other documents at [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com), by contacting Class Counsel at [jkl@pritzkerlevine.com](mailto:jkl@pritzkerlevine.com), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

### 26. How do I get more information?

The website [www.LenovoAdwareSettlement.com](http://www.LenovoAdwareSettlement.com) has the claim form, answers to questions about the Settlement and other information to help you determine whether you are eligible for a payment.

You can also call or write to the Claims Administrator at:

Lenovo-Superfish Settlement  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103  
1-877-595-0389

Class Counsel can be reached by calling Jonathan Levine at (415) 692-0772 or emailing [jkl@pritzkerlevine.com](mailto:jkl@pritzkerlevine.com).

Dated: November 21, 2018

By Order of the Court

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The Honorable Haywood S. Gilliam  
United States District Judge

# Exhibit J

**EXCLUSION REQUESTS**

<b>NUMBER</b>	<b>SIGNATURE</b>
1	ALICE COOKSEY
2	ANA DS
3	ANDREA M BAILIE
4	ASHLEY MATTALIANO
5	BARBARA TERRELL POA FOR CAROL KLINE
6	BHARATH KV
7	CARLOS PRADO
8	CHARLENE GODINEZ
9	DALE ODERMAN
10	DANNY L MARTIN
11	DENISE REINHOLTZ
12	EDWINA GERENA
13	ELMER E BUSTILLO
14	EMMA HOBDEN
15	ERIC WOLD
16	GREGORY KNIPP
17	ISIS WOZNAK
18	JERRY LABERGE
19	JOSIP FLEISCHER
20	JULIE ANDERSON
21	KATHERINE MURPHY
22	KIRSTEN DOMINGUEZ
23	LINDA MAITA
24	MARIA KRITIKOS
25	MARILYN ANNETTE COLE
26	MARVIN MEYER
27	MARY PHILLIPS
28	MATT DUDEK
29	MEGAN CAREY
30	MUNTAKIM M CHOUDHURY
31	NICHOLAS G WIMME
32	PATRICIA ALBRECHT
33	PAUL HNIZDIL
34	RACHEL MOELLER
35	RANDALL J. VERLIN
36	ROBERT JOSEPH MONTEAGUDO
37	RONALD HOLCOMB
38	RUPA KOKILAM LOGANATHAN
39	SHARON HARRIGAN
40	SHELDON LITWILLER
41	TESSA PELTIER
42	TIA COLLINGS
43	VANESSA CARDONA

# Exhibit L

	<b>ASUS Power</b>				
<b>Delivery Svcs &amp; Msgs (E107)</b>	101.63				
		4/15/19	Lone Star Legal LLC	Courtesy copy delivery to Oakland	50.49
		5/23/19	Lone Star Legal LLC	Courtesy copy delivery to Oakland	51.14
					101.63
<b>Litigation Sup Vendors (E118)</b>	15.17				
		5/2/19	CS Disco	Database management	2.28
		6/2/19	CS Disco	Database management	7.25
		7/2/19	CS Disco	Database management	3.61
		8/2/19	CS Disco	Database management	2.03
					15.17
<b>Local Travel (E109)</b>	22.40				
		8/22/19	S. Safier	Mileage and Toll for preliminary approval hearing	22.40
<b>Meals (E111)</b>	62.88				
		3/19/19	Royal Exchange Rest	S. Safier - Mediation	62.88
<b>Online Research (E106)</b>	30.50				
		5/6/19	Pacer Service Center	S. Raab	30.50
<b>Postage (E108)</b>	1.10				
		3/18/19	USPS	S. Safier	1.10
<b>Total Supplemental Expenses</b>	233.68				

# Exhibit M

**AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

This Amended Class Action Settlement Agreement is entered into this \_\_\_th day of September, 2019, between Plaintiff, individually and on behalf of the Class he seeks to represent, on the one hand, and Defendants, on the other hand, subject to both the terms and conditions hereof and the approval of the Court.

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**I. RECITALS**

1.1. On May 4, 2018, Plaintiff through his counsel Gutride Safier LLP and Migliaccio & Rathod LLP filed a Class Action Complaint in Alameda County Superior Court against Defendants alleging claims for violations of the California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*; the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, *et seq.*; the Song-Beverly Consumer Warranty Act, California Civil Code § 1790, *et seq.*; false advertising under California Business and Professions Code § 17500, *et seq.*; and unfair business practices under California Business and Professions Code § 17200 *et seq.*; breach of express warranty; breach of implied warranty of merchantability; deceit and fraudulent concealment; and unjust enrichment, and seeking damages, an injunction and other relief. Plaintiff sought to pursue these claims on behalf of himself and all purchasers of the Laptops in the United States.

1.2. On June 7, 2018, Defendant ASUS Computer International (“ACI”) timely removed the Litigation to the United States District Court for the Northern District of California and answered the Complaint, denying Plaintiff’s allegations and asserting several affirmative defenses. The Litigation was assigned to the Honorable Magistrate Donna Ryu.

1.3. On February 27, 2019, Plaintiff served the Complaint on ASUSTeK Computer Inc. (“ASUSTeK”).

1.4. Plaintiff alleges in the Complaint that Defendants marketed the Laptops as powerful, portable machines ideal for gaming and video editing and represented that the Laptops' independent cooling system "maximizes cooling efficiency" to give the Laptops "stability required for intense gaming sessions." Plaintiff further alleges that the Laptops are not suitable for their ordinary and advertised purpose of gaming and video editing because they uniformly suffer from a defect that causes the Laptops' batteries to drain even when the Laptops are connected to, and drawing power from, electrical outlets. Plaintiff also alleges that contrary to Defendants' marketing representations, the Laptops' cooling system uses a unitary set of heatsinks to dissipate heat from the graphics processing unit ("GPU") and computational processing unit ("CPU"). Plaintiff alleges that heat generated by computationally or graphically demanding programs overloads the unitary cooling system's ability to dissipate heat from the CPU and GPU and causes the Laptop to overheat to the point of causing physical discomfort and/or diminishing the Laptops' performance and durability. Plaintiff additionally alleges that Defendants failed to honor their warranties for the Laptops because Defendants responded to requests for warranty repairs by replacing the Laptops' defective components with identical and equally defective components.

1.5. Plaintiff's Counsel and Defendants' Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation. Such investigation and discovery included the retention and consultation of an electrical engineering expert by Plaintiff's Counsel, requesting and receiving written discovery responses by Plaintiff from ACI, Plaintiff examining Defendants' documents, Plaintiff questioning Defendants about their documents, and Defendants deposing Plaintiff.

1.6. On March 19, 2019, the Parties participated in an all-day mediation conducted by Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in a term sheet and the settlement memorialized in this Agreement. This Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties, and is supported by Plaintiff. The Parties did not discuss or negotiate Attorneys' Fees and Costs until after relief had been fashioned for the Settlement Class.

1.7. Defendants deny all of Plaintiff's Allegations and charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also deny that Plaintiff, the Class, any Class Members, the Settlement Class, or any Settlement Class Member have suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendants. Defendants further deny that the Litigation meets the requisites for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability on any of Plaintiff's claims in the Litigation.

1.8. Plaintiff's Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing: (1) that all the Laptops uniformly experienced the Power Defect and Overheating Issues, (2) that Defendants' marketing materials were likely to deceive reasonable consumers, (3) that omissions in the marketing materials were material to reasonable consumers, (4) the amount of damages or restitution due to the class or to any class member, and (5) that common questions predominate

over individual issues such that a class may be certified. Plaintiff and Plaintiff's Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Class are in the best interest of the Class Members.

1.9. Defendants agree that the Settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendants consider it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, uncertainty, inconvenience, and interference with its ongoing business operations in defending the Litigation and put to rest the Released Claims. Therefore, Defendants and Defendants' Counsel have determined that settlement of this Litigation on the terms set forth herein is in Defendants' best interests.

1.10. This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendants, and all such Allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.11. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiff, on the one hand, and Defendants, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement.

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[1.12. This Agreement modifies, amends, and supersedes the Class Action Settlement Agreement dated June 21, 2019.](#)

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Settlement, subject to Court approval, under the following terms and conditions.

## **II. DEFINITIONS**

A. Capitalized terms in this Agreement shall be defined as follows:

2.1. “Administration Costs” means the actual and direct costs reasonably charged by the Claim Administrator for its services as provided for in this Agreement or as otherwise agreed to by the Parties and the Claim Administrator or as ordered by the Court.

2.2. “Agreement” means this [Amended](#) Class Action Settlement Agreement, including all exhibits thereto.

2.3. “Allegations” means the allegations described in Sections 1.1 and 1.4 above and claims that could be pursued under the laws of the United States or any state on the basis of one or more of those allegations.

2.4. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiff’s Counsel as determined by the Court and described more particularly in Section 8 of this Agreement. Any such award will also include a reimbursement of costs and expenses incurred by Plaintiff’s Counsel, arising from their representation in the Litigation, as determined and awarded by the Court. In no event shall the Attorneys’ Fees and Expenses exceed Seven Hundred Eighty Seven Thousand Five Hundred Dollars (\$787,500.00).

2.5. “Cash Payment” means a check, which shall be made payable and delivered to a Claimant, as required by this Agreement.

2.6. “Claim” means a request for relief pursuant to this Settlement submitted on a Claim Form by a Class Member to the Claim Administrator in accordance with the terms of this Settlement.

2.7. “Claimant” means a Class Member who submits a Claim seeking a Settlement Benefit under this Agreement.

2.8. “Claim Administrator” means the independent third-party administrator to be retained by Defendants to provide services in the administration of this Settlement, including providing Class Notice to the Class Members, the processing and evaluation of Claims, and the processing of other documents or tasks as provided for in this Agreement or as otherwise agreed to by the Parties or as ordered by the Court.

2.9. “Claim Filing Deadline” means sixty (60) days after the Notice Date.

2.10. “Claim Form” means a claim form in substantially the same form as Exhibit A, and/or Exhibit A1.

2.11. “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.12. “Class” or “Class Members” means all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered. Excluded from the Class are (a) the Honorable Magistrate Donna Ryu and any member of her immediate family; (b) any government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e) any entity in which

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Defendants have a controlling interest; (f) any of Defendants' parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from the Power Defect or Overheating Issue; and (k) any person who signed a release regarding their Laptop.

2.13. "Class Notice" means all types of notice that will be provided to Class Members pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), the Preliminary Approval Order, and this Agreement, including Email Notice, Postcard Notice, Long Form Notice, Published Notice, Online Notice, the Settlement Website, and any additional notice the Court may order.

2.14. "Class Period" means the period between May 4, 2014 and the date Preliminary Approval is entered.

2.15. "Class Representative" means Plaintiff Joseph Carlotti.

2.16. "Court" means the United States District Court for the Northern District of California.

2.17. "Credit Certificate" means a certificate that a Class Member who submits a timely and proper Claim can elect to receive via email from the Claim Administrator, and a certificate that a member of Group B can automatically receive without the need to file a Claim, that can be redeemed towards the purchase of any one or more products at <https://store.asus.com/us>, not including shipping costs or taxes, consistent with the terms and

conditions of this Agreement. Credit Certificates are fully transferrable and are stackable, meaning that more than one Credit Certificate may be used towards any purchase. No minimum purchase is required to redeem a Credit Certificate. If the total amount of the purchase (before shipping and taxes) is less than the amount of the Credit Certificate(s) redeemed during the purchase transaction, the Credit Certificates shall have no residual value. The Credit Certificate shall be capable of being combined with any other credit, voucher, coupon, sale, or other discount of any kind and shall expire no less than two (2) years after issuance. Credit Certificates have no cash value and cannot be used for any purpose other than as stated in this Agreement.

2.18. “Defendants” means ACI and ASUSTeK, collectively.

2.19. “Defendants’ Counsel” means the law firm of Sacks, Ricketts & Case LLP.

2.20. “Defendants’ Website” means all digital content and webpages hosted by Defendants at the domain name, <https://www.asus.com>.

2.21. “Effective Date” means the latest of the following: (a) thirty-one (31) days after the entry of the Final Approval Order and Judgment if no objections are filed or if objections are filed and overruled and no appeal is taken from the Final Approval Order and Judgment; or (2) if a timely appeal is made, three (3) business days after the date of the final resolution of that appeal (i.e., the issuance of remittitur) and any subsequent appeals or petitions for certiorari from Final Approval of the Settlement.

2.22. “Email Notice” means a notice by email in substantially the same form as Exhibit B2.

2.23. “Extended Warranty” means the warranty extension as further described in Section 5 of this Agreement.

2.24. “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to Class Members in accordance with this Settlement, and where the Court will: (a) determine whether to grant Final Approval to the Settlement and enter the Final Approval Order and Judgment; (b) determine whether to approve an Incentive Award and in what amount; (c) rule on Plaintiff’s Counsel’s application for Attorneys’ Fees and Expenses; and (d) consider the merits of any objections to this Agreement and/or any aspect of the Settlement itself.

2.25. “Final Approval” or “Final Approval Order” means an order, substantially in the form of Exhibit D, granting final approval of this Settlement as binding upon the Parties.

2.26. “Group A Valid Claim” means a claim in compliance with Section 6.1(a) of this Agreement.

2.27. “Group B Valid Claim” means a claim in compliance with Section 6.1(b) of this Agreement.

2.28. “Group C Valid Claim” means a claim in compliance with Section 6.1(c) of this Agreement.

2.29. “Incentive Award” means any award sought by application to and approval by the Court that is payable to Plaintiff to compensate him for his efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Section 8. In no event shall the Incentive Award exceed Five Thousand Dollars (\$5,000.00).

2.30. “Judgment” means the final judgment dismissing the Litigation against Defendants with prejudice.

2.31. “Laptop” and “Laptops” means the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK laptop computers at issue in the Litigation.

2.32. “Laptop Proof of Purchase” means a receipt or other documentation from any Defendant or a third-party commercial source that reasonably establishes the fact and date of purchase of a Laptop by a Class Member during the Class Period in the United States.

2.33. “Litigation” means *Carlotti v. Asus Computer International Inc., et al.*, United States District Court for the Northern District of California, Case No. 4:18-cv-03369-DMR.

2.34. “Long Form Notice” means a notice in substantially the same form as Exhibit B1 that the Claim Administrator shall make available on the Settlement Website.

2.35. “Notice Date” means the day on which the Claim Administrator initiates the Notice Plan, which shall be no later than forty-five (45) days following provision of the information required under Section 7.2 by Defendants to the Claim Administrator.

2.36. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Section 7.

2.37. “Objection/Exclusion Deadline” means the deadline by which Class Members must submit objections to the Settlement or requests to be excluded from the Settlement, subject to the terms set forth in the Preliminary Approval Order, which is the date sixty (60) days after the Notice Date or such date otherwise ordered by the Court.

2.38. “Online Notice” means notice to Class Members in substantially the same form as Exhibit B3.

2.39. “Overheating Issue” refers to Plaintiff’s allegations in the Litigation that the Laptops produce excessive heat such that the Laptop becomes hot to the touch during use.

2.40. “Parties” means the Class Representative and Defendants, collectively.

2.41. “Party” means either the Class Representative or Defendants.

2.42. “Plaintiff” means Joseph Carlotti.

2.43. “Plaintiff’s Counsel,” “Class Counsel” or “Settlement Class Counsel” mean the law firms of Gutride Safier LLP and Migliaccio & Rathod LLP who are counsel for the Class Representative and who seek to be appointed as counsel for the Class Members in this Litigation.

2.44. “Power Defect” refers to Plaintiff’s allegations in the Litigation that the Laptops’ power supply unit does not provide sufficient power to the Laptops such that the Laptops’ batteries drain during use even when the Laptops are plugged into electric outlets; the Laptops experience reductions in computational performance when they are low on battery power or when the battery is removed, even when the Laptops are connected to an electrical outlet; and that there is accelerated degradation of the Laptops’ batteries.

2.45. “Postcard Notice” means a notice substantially in the form of Exhibit B5.

2.46. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court, substantially in the form of Exhibit C, preliminarily approving the terms and conditions of this Agreement and the Settlement.

2.47. “Published Notice” means the public notice of this Settlement that is contemplated by this Agreement, substantially in the form of Exhibit B4.

2.48. “Qualifying Repairs” means repairs to and/or replacement of the motherboard and/or AC power adaptors to resolve the Power Defect.

2.49. “Released Claims” include each Settlement Class Member’s release of Defendants and the Released Parties from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, liens, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of the Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the Laptops arising out of relating in any way to the Allegations that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that Defendants engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; (c) for breach of contract and breach of the covenant of good faith and fair dealing arising out of relating in any way to the Allegations; (d) for breach of express warranty and breach of implied warranty arising out of relating in any way to the Allegations; and/or, without limiting the foregoing, (e) are based, in any way, on which the facts and claims asserted in the Litigation are based upon and depend upon. The Released Claims shall not release any Settlement Class Member’s claims for personal injury allegedly arising out of use of the Laptops or rights to enforce this Agreement. The Released Claims shall be accorded the broadest preclusive scope and effect permitted by law against the Settlement Class Members and this definition of Released Claims is a material term of this Agreement.

2.50. “Released Parties” include Defendants and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated

individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and future, and all persons acting under, by, through, or in concert with any of them.

2.51. "Serial Number" means the serial number of the Laptop; the following webpage on Defendants' Website provides information about how to determine the Laptop's Serial Number: <https://www.asus.com/us/support/article/566/>.

2.52. "Settlement" means the terms and conditions of this Agreement.

2.53. "Settlement Benefit" means a Credit Certificate or Cash Payment, as further described in Section 6 of this Agreement.

2.54. "Settlement Class" or "Settlement Class Members" means all Class Members excepting persons who properly excluded themselves from the Settlement pursuant to the terms of this Agreement and the Preliminary Approval Order.

2.55. "Settlement Fund" means the total of (a) Administration Costs, in an amount not to exceed \$200,000.00; (b) any Incentive Award the Court approves to be paid to Plaintiff, in an amount not to exceed \$5,000.00; (c) any Attorneys' Fees and Expenses the Court approves to be paid to Class Counsel, in an amount not to exceed \$787,500.00; and (d) the total of Cash Payments to be made to Settlement Class Members who submit a Valid Claim for Cash Payments.

2.56. "Settlement Website" means an internet website created and maintained by the Claim Administrator consistent with the entry of the Preliminary Approval Order to

provide information regarding the Settlement and where Class Members can obtain information concerning requesting exclusion from or objecting to the Settlement and/or can submit a Claim. The URL of the Settlement Website shall be agreed to by the Parties.

2.57. “Valid Claim” means Group A Valid Claims, Group B Valid Claims, and Group C Valid Claims.

B. Conventions. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

### **III. CONSIDERATION FROM DEFENDANTS**

3.1. In full, complete and final settlement and satisfaction of the Litigation, and all Released Claims, and subject always to all of the terms, conditions and provisions of this Agreement, including Court approval, Defendants agree to provide the following consideration:

(a) Within ten (10) days after the Effective Date, Defendants shall fund the Settlement Fund. The Settlement Fund shall be established by the Claim Administrator as a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code, and all regulations promulgated thereunder for the purpose of administering the Settlement.

(b) In the event the Settlement is cancelled pursuant to this Agreement, the Court denies Final Approval, or an appeal leaves the Settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement, and all

funds in the Settlement Fund provided for in this Section shall be returned to Defendants, with the exception of amounts paid or owing to the Claim Administrator for Administration Costs actually incurred for services already performed.

**IV. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

4.1. The Parties reached this Agreement before Plaintiff filed a motion for class certification. Accordingly, Plaintiff shall include a request for conditional certification as part of his motion for Preliminary Approval that seeks certification of the Class for settlement purposes only.

4.2. As a material part of this Settlement, Defendants, while reserving all defenses if this Agreement is not finally approved, hereby stipulate and consent, solely for purposes of and in consideration of the Settlement, to provisional certification of the Class. Defendants' stipulation and consent to class certification is expressly conditioned upon the entry of a Preliminary Approval Order, a Final Approval Order and Judgment, and as otherwise set forth in this Agreement. As part of their provisional stipulation, Defendants further consent to the appointment of Class Counsel and the Class Representative to represent the Class. The provisional certification of the Class, the appointment of the Class Representative, and the appointment of Class Counsel shall be binding only with respect to this Settlement and this Agreement. If the Court fails to enter a Preliminary Approval Order or a Final Approval Order and Judgment, or if this Agreement and the Settlement proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, or the Court enters any order that increases the cost or burden of the Settlement on Defendants beyond what is set forth in this Agreement, the class certification, to which the Parties have stipulated solely for the purposes of

this Settlement, this Agreement, and all of the provisions of any Preliminary Approval Order or any Final Approval Order shall be vacated by their own terms and the Litigation will revert to its status as it existed prior to the date of this Agreement with respect to class certification, the appointment of the Class Representative, and the appointment of Class Counsel. In that event, Defendants shall retain all rights they had immediately preceding the execution of this Agreement to object to the maintenance of the Litigation as a class action, the appointment of the Class Representative, and the appointment of Class Counsel and, in that event, nothing in this Agreement or other papers or proceedings related to this Settlement shall be used as evidence or argument by any of the Parties concerning whether the Litigation may properly be maintained as a class action under applicable law, whether the Class Representative is an adequate or typical class representative, or whether Class Counsel is adequate or may be appointed to represent the Class or any Class Members.

#### **V. EXTENDED WARRANTY FOR QUALIFYING REPAIRS**

5.1. Defendants will extend the warranty on all ASUS Rog Strix GL502VS laptops to cover all Qualifying Repairs until the later of: (i) three (3) years from the date of purchase; (ii) ninety (90) days from Final Approval and Judgment; or (iii) one-hundred eighty (180) days from the date of a prior replacement of the internal power supply and/or AC power adaptor by Defendants. This extended warranty shall not apply to the ASUS Rog Strix GL502VSK laptops.

5.2. To obtain a Qualifying Repair, the Class Member must contact Defendants' technical support toll free number to be stated in the Class Notice, and follow Defendants' protocol for shipping the ASUS Rog Strix GL502VS laptop to a repair facility for repairs. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility to be entitled

to a Qualifying Repair, Defendants will repair the laptop at no charge. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility not to be entitled to a Qualifying Repair, and the laptop is not eligible for other repairs under any existing warranty, Defendants will offer to repair the laptop at the Class Member's expense.

5.3. A Class Member shall be entitled to the Extended Warranty as described in this Section 5 whether or not the Class Member files a Claim as set forth in Section 6.

## **VI. SETTLEMENT BENEFITS**

6.1. In full, complete, and final settlement and satisfaction of the Litigation and all Released Claims, and subject always to all of the terms, conditions, and provisions of this Agreement, including Court approval, Defendants agree to cause the following settlement benefits to be provided as follows:

(a) **Group A.** A Claimant who submits a Group A Valid Claim shall have the option to select either a \$210 Credit Certificate or a \$110 Cash Payment. In order to submit a Group A Valid Claim, Claimant must comply with the requirements in Section 6.6 and must either: (1) provide the Laptop's Serial Number and have registered the Laptop with Defendants prior to the Notice Date, as reflected by Defendants' records; (2) provide the Laptop's Serial Number and have purchased the Laptop from the ASUS Website; or (3) submit a Laptop Proof of Purchase.

(b) **Group B.** Class Members who submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department and for whom Defendants possess contact information shall automatically receive a \$210 Credit Certificate, without the necessity of filing a Claim. If such a Class Member prefers a \$110 Cash Payment instead of a \$210 Credit Certificate, then they must submit a Group B Valid

Claim, [using the Claim Form attached as Exhibit A1](#). A Claimant who submits a Group B Valid Claim shall receive a \$110 Cash Payment. In order to submit a Group B Valid Claim, the Claimant must comply with the requirements in Section 6.6 [except as otherwise stated](#).

(c) **Group C.** A Claimant who submits a Group C Valid Claim shall have the option to select either a \$105 Credit Certificate or a \$55 Cash Payment. In order to submit a Group C Valid Claim, Claimant must comply with the requirements in Section 6.6 and must provide the Laptop's Serial Number.

6.2. Any Class Member who submits an otherwise Valid Claim without electing a Settlement Benefit will receive the applicable Credit Certificate. Any Class Member who does not meet the requirements for a Group A Valid Claim, but does meet the requirements for a Group C Valid Claim will receive the Group C Settlement Benefit.

6.3. For Group A Valid Claims only, Defendants have the right to demand inspection of the Laptop to verify whether it suffers from the Power Defect and/or Overheating Issue. No inspection may be demanded by Defendants if Claimant made a posting on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 and submits a copy of such Postings with the Claim Form.

(a) The inspection referred to in Section 6.3 must be conducted by Defendants, unless both Defendants and the Claimant agree to a third-party to conduct the inspection.

(b) At the election of Defendants, the inspection shall be conducted either (1) at the home or business of the Claimant or (2) at an alternative inspection site, so long as Defendants pay any shipping costs incurred in delivering the Laptop.

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(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless otherwise agreed by Claimant.

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(d) Any demand for inspection must be accompanied by instructions informing the Claimant of the conditions set forth herein and of the right to refuse the inspection entirely. If the Claimant refuses the request for inspection, the Claim will be treated as a Group C Valid Claim.

6.4. If a Class Member does not timely submit a Valid Claim to the Claim Administrator, the Class Member is not entitled to any Settlement Benefit, except as otherwise provided in Sections 6.1(b).

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6.5. A Claim shall be deemed to be a Valid Claim only if submitted on the Claim Form pursuant to the procedures set forth herein. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms to be mailed must be postmarked, and Claim Forms to be submitted online through the Settlement Website must be submitted, no later than the Claim Filing Deadline. Claim Forms that are postmarked or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Laptop Proof of Purchase and Postings image files (e.g. jpg, tif, pdf).

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6.6. On the Claim Form, the Class Member must certify the truth and accuracy of each of the following under the penalty of perjury, unless otherwise stated, including by signing the Claim Form physically or by e-signature, or the claim will not be considered a Valid Claim by the Claim Administrator:

(a) The Class Member's name and mailing address;

- (b) The Class Member's email address, if the Class Member selects a Credit Certificate or otherwise elects to provide the information;
- (c) That the claimed purchase was not made for the purpose of resale;
- (d) That the Laptop suffered from the Power Defect and/or experienced the Overheating Issue, (except for members of Group B that choose a Cash Payment);
- (e) That any additional information provided by the Claimant to demonstrate membership in Group A, as set forth above in this Section, is true and correct; and
- (f) That any documentation provided by the Claimant, i.e., Laptop Proof of Purchase or Postings, is a true and correct copy of the original.

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6.7. Cash Payment. The Claim Administrator shall mail a check sixty (60) days after the Effective Date to the mailing address provided for each Settlement Class Member who timely submits a Valid Claim for a Cash Payment. Any check issued to any Settlement Class Member shall remain valid and negotiable for ninety (90) days from the date of its issuance, but will thereafter automatically be canceled if not cashed by the Settlement Class Member within that time, in which case the Settlement Class Member's claim will be deemed null and void and of no further force and effect and the funds represented by such check shall be returned to Defendants.

6.8. Credit Certificate. The Claim Administrator shall email the Credit Certificate sixty (60) days after the Effective Date to the email address provided for each Class Member who timely submits a Valid Claim for a Credit Certificate and to Group B Settlement

Class Members, who do not file a Claim to receive a Cash Payment. Any Credit Certificate shall conspicuously state its expiration date.

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6.9. No Settlement Class Member shall have any claim against Defendants, Defendants' Counsel, the Class Representative, Class Counsel, or the Claim Administrator based on the mailings, distributions, or process of awarding a Settlement Benefit made in accordance with this Agreement or any order of the Court.

6.10. Each Settlement Class Member is solely responsible for any tax consequence, including but not limited to penalties and interest, relating to or arising out of the receipt of any benefit under this Settlement.

## VII. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

7.1. Subject to Court approval, the Parties have agreed that providing Long Form Notice, Email Notice, Postcard Notice, Published Notice and Online Notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances. Class Counsel will not of their own initiative advocate for content or methods of Class Notice beyond that to which the Parties have agreed in this Section 7 of the Agreement.

7.2. The Parties agree to the following procedures for giving notice of this Settlement to the Class Members:

(a) Within thirty (30) days of entry of the Preliminary Approval Order or on such date otherwise ordered by the Court, Defendants shall provide the Claim Administrator with an electronic list that includes the following information with respect to each Class Member for which Defendants have information: (i) first and last name; (ii) email address; (iii) last known mailing address (if available); (iv) phone number (if available); (v) whether the

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Class Member registered the Laptop with Defendants prior to the Notice Date; (vi) whether the Class Member purchased the Laptop from the ASUS Website; and (vii) whether the Class Member submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department. Defendants agree to utilize reasonable efforts to provide accurate data to the Claim Administrator, which the Claim Administrator will rely upon in sending Class Notice and administering this Settlement as described herein and will provide a sworn declaration with the motion for Final Approval of the Settlement that Defendants utilized reasonable efforts to provide accurate data (and a description of those efforts) to the Claim Administrator.

(b) No later than the Notice Date, the Claim Administrator shall send Direct Notice to Class Members as follows: the Claim Administrator shall send: (i) a copy of the Email Notice in the form approved by the Court to those Class Members for whom an email address is available, and (ii) a copy of the Postcard Notice in the form approved by the Court to those Class Members for whom a physical mailing address is available.

(c) The Claim Administrator shall utilize the national change of address database to update the mailing list of the Class Members for whom a mailing address is available prior to sending Postcard Notice via First Class U.S. Mail.

(d) If no physical address is available in the list provided to the Claim Administrator, the Claim Administrator shall perform a single skip trace using information identifying the Class Member, as necessary, to identify the Class Member's mailing address to allow Postcard Notice to be sent using an industry-accepted source such as Accurant, and shall send the Postcard Notices to the mailing address identified by the skip tracing.

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(e) Any mailed Postcard Notices returned to the Claim Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Claim Administrator within five (5) business days following receipt of the returned mail. Further, if no forwarding address is available, the Claim Administrator shall perform a single skip trace using an industry-accepted source such as Accurant, to conduct an address update and send the Postcard Notices to the mailing addresses identified by the skip-tracing.

(f) No later than the Notice Date, the Claim Administrator also shall launch the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiff's Counsel and Defendants' Counsel; the Agreement; the signed Preliminary Approval Order and the publicly filed motion papers and declarations in support thereof; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Class Members may exclude themselves from the Settlement Class; and (when they become available) the publicly filed motion for Final Approval of the Settlement, Plaintiff's request for Attorneys' Fees and Expenses and Incentive Award, and supporting declarations. The Claim Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with the opportunity to review the Settlement Website at least five (5) days prior to the scheduled launch date and the Claim Administrator will make any revisions requested by counsel. The Settlement Website shall remain accessible until one-hundred eighty (180) days after all Settlement Benefits are distributed. When the Settlement Website is taken down, the Claim Administrator shall immediately transfer ownership of the URL for the

Settlement Website to Defendants. Defendants will not thereafter add any content or otherwise revise the Settlement Website or use the URL for the Settlement Website for any other purposes.

(g) No later than the Notice Date, the Claim Administrator also shall distribute the Online Notice. The Online Notice shall be distributed utilizing methods such as internet banner advertising, social media sponsored posts, and/or paid search placements and shall be designed to reach 80% of the Class consistent with other effective court-approved notice programs and the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language guide.

(h) No later than the Notice Date, Defendants shall post the Online Notice on Defendants' Website, social media accounts, and the ASUS ROG online forms. The online Notice shall link to the Settlement Website.

(i) On the Notice Date, the Claim Administrator shall cause the Published Notice to be published in the manner ordered by the Court.

(j) CAFA Notice. The Claim Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Claim Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.

(k) The Claim Administrator shall provide any information or declaration requested by the Parties to assist with seeking Preliminary Approval and Final Approval.

(l) The Parties each represent that he or it does not and will not have any financial interest in the Claim Administrator ultimately appointed and otherwise will not

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have a relationship with the Claim Administrator ultimately appointed that could create a conflict of interest.

(m) The Parties acknowledge and agree that the Claim Administrator is not an agent of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel and that the Claim Administrator is not authorized by this Agreement or otherwise to act on behalf of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel.

(n) If a Class Member requests that the Claim Administrator and/or its agent or employee refer him/her to Class Counsel, or if a Class Member requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a Claim Form or other Settlement-related forms for which the Claim Administrator does not have an approved response, then the Claim Administrator and/or its agent or employee shall promptly refer the inquiry to Class Counsel and Defendants' Counsel.

(o) The Claim Administrator is responsible for:

- (1) Sending the Email Notice approved by the Court;
- (2) Printing and distributing the Postcard Notice approved by the Court;
- (3) Causing the Published Notice to the Class Members approved by the Court to be published;
- (4) Causing the Online Notice to the Class Members approved by the Court to be published;
- (5) Performing physical mailing address and email address updates and verifications prior to the distribution of the Postcard Notice;

- (6) [Performing a single skip trace to identify Class Members' addresses and to follow up on any returned Postcard Notices;](#)
- (7) Creating and maintaining the Settlement Website and a toll-free number that Class Members can contact to request a copy of this Agreement, a Long Form Notice, and/or a Claim Form, and/or to obtain any other information concerning this Settlement or this Agreement;
- (8) Consulting with Defendants' Counsel and/or Class Counsel concerning any relevant issues, including (without limitation) distribution of the Class Notice and processing of Claim Forms;
- (9) Processing and recording timely and proper requests for exclusion from or objections to the Settlement;
- (10) Processing and recording Claim Forms;
- (11) Preparing, drafting, and serving the CAFA Notice;
- (12) Emailing Credit Certificates to Class Members who submit a timely and proper Claim Form requesting a Credit Certificate;
- (13) Emailing Credit Certificates to Class Members in Group B [that do not file a Claim for a Cash Payment;](#)

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(14) Mailing Cash Payments to Class Members who submit a timely and proper Claim Form requesting a Cash Payment; and

(15) Such other tasks as the Parties mutually agree or the Court orders the Claim Administrator to perform in connection with this Agreement.

(p) The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section.

(q) At least fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

(r) Defendants shall be responsible for paying all reasonable costs of notice as set forth in this Section and all costs of the Claim Administrator in processing objections and exclusion requests in an amount not to exceed \$200,000.00.

(s) Within two hundred and ten (210) days after the Effective Date, the Claim Administrator shall destroy all Class Member's identifying information received from Defendants and otherwise in connection with the implementation and administration of this Settlement.

(t) Upon completion of the implementation and administration of the Settlement, the Claim Administrator shall provide written certification of such completion to Class Counsel and Defendants' Counsel.

### VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

8.1. Plaintiff's Counsel may make application to the Court for an award of Attorneys' Fees and Expenses as compensation for the time and effort, undertaken in and risks of pursuing this Litigation, but agree that, combined, the requested Attorneys' Fees and Expense Award shall not aggregately exceed \$787,500.00. Plaintiff's Counsel shall not be permitted to petition the Court for any additional payments for fees, costs or expenses from Defendants. Attorneys' Fees and Expenses shall be for all claims for attorneys' fees, costs and expenses, past, present, and future incurred in the Litigation in connection with claims against Defendants.

8.2. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for Attorneys' Fees and Expenses is consistent with Section 8.1 and does not collectively exceed \$787,500.00, they and the Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; or (c) encourage or assist any person to appeal from an order awarding Attorneys' Fees and Expenses.

8.3. Any Attorneys' Fees and Expenses awarded by the Court which does not exceed \$787,500.00 shall be paid by the Claim Administrator to Class Counsel within ten (10) days after Defendants fund the Settlement Fund.

8.4. Payment of any Attorneys' Fees and Expenses to Plaintiff's Counsel shall constitute full satisfaction by Defendants of any objection to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses, or costs in the Litigation incurred by any attorney on behalf of Plaintiff, the Class, or the Settlement Class, and shall relieve Defendants

and Defendants' Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff, the Class, and/or the Settlement Class.

8.5. Any Attorneys' Fees and Expenses paid to Plaintiff and Plaintiff's Counsel under this Section shall be paid separate and apart from the Valid Claims and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class.

8.6. Plaintiff's Counsel may also make application to the Court for an Incentive Award for Plaintiff in an amount not to exceed \$5,000.00, as compensation for Plaintiff's time and effort undertaken in and risks of pursuing this Litigation, including preparing for and participating in a nearly 7-hour deposition.

8.7. The Incentive Award shall be the total obligation of Defendants to pay money to Plaintiff, in connection with the Litigation and this Settlement, other than amounts due to Plaintiff for any Valid Claim he submits pursuant to Section 6 of this Agreement.

8.8. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for an Incentive Award is consistent with Section 8.6, they and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; or (c) encourage or assist any person to appeal from an order making an Incentive Award.

8.9. Any Incentive Award awarded by the Court which does not exceed \$5,000.00 shall be paid by the Claim Administrator to Plaintiff within ten (10) days after

Defendants fund the Settlement Fund provided Plaintiff has executed the General Release substantially in the form attached as Exhibit E.

8.10. Plaintiff's Counsel and Plaintiff agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Incentive Award shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

8.11. Except as set forth in this Agreement, each Party shall bear his or its own fees, costs, and expenses.

#### **IX. CLASS SETTLEMENT PROCEDURES**

9.1. Preliminary Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall move, with the support of Defendants, solely for purposes of this Settlement, for a Preliminary Approval Order, substantially in the form of Exhibit C. The Parties shall seek to schedule a Final Approval Hearing to occur four (4) weeks after the Objection Deadline.

9.2. Exclusions and Objections. The Preliminary Approval Order and Class Notice shall advise prospective Class Members of their rights to exclude themselves from the Settlement, forego the benefits of this Settlement and reserve the right to pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the Final Approval Hearing.

(a) Exclusions. Class Members and persons purporting to act on their behalf who decide to be excluded from this Settlement must submit to the Claim Administrator a written statement requesting exclusion from the Settlement by the Objection/Exclusion Deadline or by such date otherwise ordered by the Court. Such written request for exclusion must (i)

contain the name and address of the person requesting exclusion, (ii) be made by submitting the online form on the Settlement Website or by mailing a valid exclusion request by First Class U.S. Mail to the Claim Administrator at the specified address as described in the Class Notice, and (iii) be submitted online or postmarked on or before the Objection/Exclusion Deadline in order to be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

(b) Class Members who fail to submit a timely and valid written request for exclusion consistent with this Section shall be deemed to be a member of the Settlement Class and as such shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(c) A Class Member who is excluded from this Settlement shall not be bound by this Settlement or any Final Approval Order entered by the Court approving this Settlement, shall not be permitted to object to this Settlement, and shall not be entitled to receive any of the benefits of the Settlement.

(d) If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

(e) Within fifteen (15) days following the Objection/Exclusion Deadline, the Claim Administrator shall provide in writing to Defendants' Counsel and Class Counsel the names of those Class Members who have requested exclusion from the Settlement in

a valid and timely manner, and Plaintiff's Counsel shall file that list with the Court, with service on Defendants' Counsel.

(f) The Class Representative acknowledges and agrees that he will not exclude himself from this Settlement.

9.3. Objections. Class Members and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the Settlement or this Agreement, any request for Attorneys' Fees and Expenses, or any request for an Incentive Award shall submit a written notice of objection in accordance with the following procedures:

(a) Class Members who wish to object must submit a written statement of objection to the Class Action Clerk, United States District Court for the Northern District of California, postmarked on or before the Objection/Exclusion Deadline.

(b) To be valid, an Objection must include: (a) a reference at the beginning to this case, *Carlotti v. Asus Computer International Inc., et al.*, Case No. 4:18-cv-03369-DMR, and the name of the presiding judge, the Hon. Donna Ryu, United States District Court for the Northern District of California; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any

court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. Failure to include this information and documentation may be grounds for overruling and rejecting the Objection.

(c) Subject to the Court's approval, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why this Settlement and this Agreement should not be approved as fair, adequate, and reasonable or to object to any request for a Attorneys' Fees and Expenses or Incentive Award. To appear in person or by counsel at the Final Approval Hearing, fourteen (14) days prior to the Final Approval Hearing, the objecting Class Member must file with the Court and serve upon Class Counsel and Defendants' Counsel a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing.

(d) Any Class Member who fails to submit a proper Notice of Intention to Appear prior to fourteen (14) days before the Final Approval Hearing, along with copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing, will not be heard during the Final Approval Hearing.

(e) Any Class Member who fails to timely submit a written objection prior to the Objection/Exclusion Deadline will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and will not be considered by the Court.

(f) Any Class Member who submits a timely written request for exclusion from the Settlement shall not be permitted to object to the Settlement. Any written

objection submitted by a Class Member who has submitted a timely written request for exclusion from the Settlement will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and shall not be considered by the Court at the Final Approval Hearing.

(g) The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice in accordance with each Class Member's due process rights. Such procedures are designed to identify whether any person making an objection has standing to do so and to identify "professional objectors."

(h) Any Class Member who submits a written objection in accordance with this Section shall be entitled to all of the benefits of the Settlement and this Agreement, provided the objecting Class Member complies with all the requirements set forth in this Agreement for submitting a timely and valid Claim, and shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(i) Class Counsel shall serve on Defendants' Counsel and file with the Court any written objections to the Settlement received within fifteen (15) days following the Objection/Exclusion Deadline.

9.4. Conditions Impacting Finality of Settlement.

(a) If more than 1,000 Class Members submit a timely and valid request to exclude themselves from the Settlement, Defendants shall have the unilateral right to terminate and withdraw from the Settlement in its entirety; provided, however, that Defendants must notify Class Counsel and the Court that it is exercising such option within seven (7)

business days of the filing with the Court of the opt-out list described in Section 9.2 of this Agreement. Furthermore, except for changes to the time periods set forth in Section 6.3, all other terms and limitations set forth in this Agreement and in the documents referred to or incorporated herein (including but not limited to the Long Form Notice, the Published Notice, the Online Notice and the Claim Form) shall be deemed material to the Parties' agreement, and in the event any such other term is altered or amended by the Court (including if the Court refuses to certify the Settlement Class and/or modifies the definition of the class), or any other court, or if any federal or state authority objects to or requires modifications to the Agreement, any Party whose rights or obligations are affected by the alteration or amendment may terminate this Agreement upon written notice to the other Party.

(b) The Parties expressly agree that in the event of any of the following conditions: (i) the Court does not preliminarily approve the Settlement; (ii) the Court does not finally approve the Settlement; (iii) the Court does not enter the Final Approval Order and Judgment; (iv) Defendants withdraw and cancel the Settlement pursuant to Section 9.4(a); and/or (v) this Settlement does not become final for any reason; then this Agreement shall be null and void *ab initio* and any order entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties (subject to Court approval) and Defendants shall have no further obligation under this Agreement; provided, however, that in the event of the denial of Preliminary Approval or Final Approval, the Class Representative and/or Defendants may seek appellate review through a writ or pursue any other available appellate remedy in support of the Settlement or this Agreement. Nothing herein is intended to restrict or limit the rights of either Defendants or the Class Representative to appeal any order of this Court in the event the Settlement is not finally approved for any reason. During the pendency of any

appeal of the denial of Preliminary Approval or Final Approval, this Agreement shall remain valid and binding.

(c) If any of the conditions outlined in Section 9.4(b) occur such that this Settlement does not become final, the Parties shall proceed in all respects as if this Agreement had not been executed; provided, however, that Defendants shall be responsible for the payment of reasonable Administration Costs actually incurred for services already incurred up to such time. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fees and Expenses or Incentive Award shall constitute grounds for cancellation or termination of this Agreement.

(d) If Preliminary Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events (i) the thirty-first (31st) day following the denial of Preliminary Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Preliminary Approval. In either of these events, within thirty (30) days, the Parties will jointly file a stipulation regarding a revised proposed schedule for briefing Plaintiffs' motion for class certification and for class-related discovery.

(e) If Final Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events: (i) the thirty-first (31st) day following the denial of Final Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Final Approval. In either of these events, within thirty (30) days, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on Plaintiffs' motion for class certification and for class-related discovery.

9.5. Effect if Settlement Not Approved or Agreement is Terminated. This Agreement is entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this Agreement does not occur for any reason, including without limitation termination of this Agreement pursuant to Section 9.4, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding; the Litigation may continue as if the Settlement had not occurred; and any orders conditionally certifying or approving certification of the Settlement Class shall be vacated, and the Parties returned to their pre-Settlement litigation posture. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation.

9.6. Final Approval and Judgment. After Preliminary Approval, Class Notice is provided to the Class Members, and the expiration of the Objection/Exclusion Deadline, a Final Approval Hearing shall be held on a date set by the Court. The Parties shall request that the Court enter the Final Approval Order, substantially in the form of Exhibit D.

**X. RELEASES**10.1. Releases Regarding Settlement Class Members and Released Parties.

As of the Effective Date, the Class Representative and Settlement Class Members hereby expressly fully release and forever discharge the Released Parties and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the Released Parties, either directly or indirectly, on their own behalf or on behalf of any class or other person or entity, in any action, regulatory action, arbitration, or court or other proceeding of any kind, any causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights, or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the Released Parties, whether based on federal, state, or local law, statute, ordinance, regulation, constitution, contract, common law, or any other source, that relate to the Released Claims.

(a) The Class Representative and Settlement Class Members expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the Released Parties. It is the intention of the Class Representative in executing this release on behalf of himself and the Settlement Class to fully, finally, and forever settle and release all matters and all claims relating to the Released Claims in every way.

(b) Without limiting the foregoing, nothing in this Agreement shall release, preclude, or limit any claim or action by the Parties to enforce the terms of this Agreement.

(c) To the fullest extent permitted by law, the Class Representative and the Settlement Class Members agree not to commence or participate in any claim, demand, grievance, action, or other proceeding against any of the Released Parties based on, concerning, or arising out of any of the Released Claims.

10.2. Waiver of Provisions of California Civil Code Section 1542. The Class Representative and Defendants shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth Section 10.1 above. Section 1542 provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

10.3. Effectuation of Settlement. None of the above releases include releases of claims to enforce the terms of the Settlement provided for in this Agreement.

10.4. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the Allegations. Neither this Agreement, nor the fact of

settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

## **XI. ADDITIONAL PROVISIONS**

11.1. Defendants' Representation. Defendants represent and warrant that they ceased sales and distribution of the Laptops prior to the Settlement in the ordinary course of business because the Laptops reached the end of their life.

11.2. Non-Disparagement. The Parties, Plaintiffs' Counsel, and Defendants' Counsel agree that they will not make or cause to be made any statements that disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. The Parties, Plaintiffs' Counsel, and Defendants' Counsel also agree that they will not encourage any person to disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. Disparagement includes, but is not limited to, statements made by any internet posting or use of social media. Disparagement does not include statements that recite or refer to the Allegations of the Lawsuit or terms of the Agreement, nor does it include any good faith claim or allegation of a legal violation in the future.

11.3. Cooperation. All of the Parties, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain Court approval of this Agreement and to effectuate the Settlement, and to provide declarations to facilitate the Court's Preliminary Approval and Final Approval of the Settlement. The Parties further agree to

cooperate in the Settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

11.4. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendants' Counsel, without notice to Class Members.

11.5. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

11.6. Governing Law. This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

11.7. Entire Agreement. The terms and conditions set forth in this Agreement and its exhibits constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this Agreement. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge

and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement. All exhibits to this Agreement as set forth herein are integrated herein and are to be considered terms of this Agreement as if fully set forth herein.

11.8. Modifications. Any amendment or modification of the Agreement must be in writing signed by all of the Parties to this Agreement or their counsel. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval. If the Court indicates, prior to Preliminary Approval or Final Approval, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) days after the Court indicates that the Settlement will not be approved unless certain changes are made, then the Class Representative or Defendants may terminate and withdraw from this Agreement. If this Agreement is terminated under such circumstances, the Class Representative, Defendants, and the Class Members shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by Defendants and the Class Representative into this Agreement and any and all other understandings and agreements between the Parties and their respective counsel relating to the Settlement shall be deemed to be null and void and of no force and effect. Upon termination under this Section of the Agreement, within thirty (30) days of the Agreement's termination, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on the Plaintiffs' motion for class certification and for class-related discovery. Without further order of the Court, the Parties may agree in writing to reasonable

extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

11.9. No Admissions. If this Agreement does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Litigation or any proceedings between the Parties or in any other action related to the Released Claims or otherwise involving the Parties or any Released Party. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representative that any of his claims are without merit. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendants of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. Defendants continue to affirmatively deny all liability and all of the claims, contentions, Released Claims, and each and every allegation made by the Class Representative in the Litigation.

11.10. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after extensive arm's-length, bilateral negotiations, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

11.11. No Tax Advice. Neither Class Counsel nor Defendants' Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

11.12. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

11.13. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

11.14. Warranties. Each signatory to this Agreement hereby warrants that he/it has the authority to execute this Agreement and thereby bind the respective Party. The Class Representative warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

11.15. Binding Effect of the Agreement. This Agreement shall be valid and binding as to the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon signing by all Parties.

11.16. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

11.17. Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

11.18. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiff or Plaintiff's Counsel:

Seth Safier, Esq.  
Gutride Safier LLP  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Telephone: (415) 639-9090  
Fax: (415) 449-6469  
Email: asuspower@gutridesafier.com

If to Defendants or Defendants' Counsel:

Luanne Sacks  
Sacks, Ricketts & Case LLP  
177 Post Street, Suite 650  
San Francisco, CA 94108  
Telephone: (415) 549-0581  
Fax: (415) 549-0640  
Email: lsacks@srclaw.com

11.19. Confidentiality. The Parties, Plaintiff's Counsel, and Defendants' Counsel agree to keep the existence and contents of the term sheet, Agreement, and all related settlement communications confidential until the filing of the motion for Preliminary Approval. This provision will not prevent the disclosure of such information prior to the filing of the motion for Preliminary Approval with the Court to: (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, co-counsel, the Released Parties, any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Claims Administrator as may reasonably be required to effectuate the Settlement, and/or as otherwise required to comply with any applicable law or regulation; (2) any person or entity to whom the Parties agree in writing disclosure must be made

to effectuate the Settlement; and/or (3) Defendants or any of the Released Parties as necessary for any reasonable commercial purpose.

(a) If contacted by a Class Member, Class Counsel may provide advice or assistance regarding any aspect of the Settlement requested by the Class Member. At no time shall any of the Parties or their counsel or their agents seek to solicit Class Members or any other persons to submit written objections to the Settlement, requests for exclusion from the Settlement, or to encourage Class Members or any persons to appeal from the Preliminary Approval Order and/or the Final Approval Order and Judgment.

(b) The Class Representative and Class Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties (other than experts or consultants retained by the Class Counsel in connection with the Litigation), that they not be the subject of public comment, and that they not be publicly disclosed or used by the Class Representative or Class Counsel in any way in the Litigation should it not settle or in any other proceeding.

11.20. Confidential Documents. All of the Parties agree to cooperate and to work with one another to protect any confidential materials produced in discovery in the Action. This includes, but is not limited to, promptly complying with all aspects of the Stipulated Protective Order (Dkt. 24) regarding such information and stipulating that any confidential information submitted, whether in the past or in the future, to any court in the Litigation will be sealed. Class Counsel are entitled to retain an archival copy of the entire file (paper and/or electronic), including all pleadings, motion papers, transcripts, legal memoranda, correspondence, discovery, expert reports and exhibits thereto, or attorney work product, even if such materials contain

material designated as confidential, provided Class Counsel complies with all aspects of the Stipulated Protective Order (Dkt. 24). Said archival copy will not be used or disclosed for any purpose other than: (1) in this Litigation (including the Settlement approval process and/or Settlement administration), (2) in responding to or defending against any objection or complaint by or on behalf of any Class Member as to the adequacy of Class Counsel's representation of the Settlement Class, or (3) in response to a court order or legal process requiring disclosure of such materials. Prior to disclosing any such materials to any third party, Class Counsel will provide written notice to Defendants' Counsel as early as feasible, and no later than three (3) business days after receipt of such order or legal process, so as to permit Defendants to seek appropriate relief and otherwise comply with all aspects of the Stipulated Protective Order (Dkt. 24). Class Counsel shall destroy the foregoing electronic and paper archival copy on the date six (6) years after the Effective Date, unless during that time period a Settlement Class Member or other person entitled to or potentially entitled to relief under this Settlement, or a legally authorized representative acting on their behalf, asserts any claim of malpractice or otherwise challenges the adequacy of Class Counsel's representation of the Settlement Class in this Litigation, in a lawsuit, or otherwise. If such a claim is asserted, Class Counsel may retain an archival copy until the date (i) six (6) years after the Effective Date, (ii) such claim is finally resolved, or (iii) five (5) years after the assertion of such a claim, whichever is latest, provided Class Counsel otherwise complies with all aspects of the Stipulated Protective Order (Dkt. 24). The Parties agree that if there is anything inconsistent in this Section and the Stipulated Protective Order (Dkt. 24), the provisions of the Stipulated Protective Order (Dkt. 24) shall control.

11.21. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

11.22. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

**APPROVED AND AGREED:**

| DATED: September \_\_\_\_, 2019 JOSEPH CARLOTTI

\_\_\_\_\_  
Joseph Carlotti

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| DATED: September \_\_\_\_, 2019 ASUS COMPUTER INTERNATIONAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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| DATED: September \_\_\_\_, 2019 ASUSTEK COMPUTER, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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**APPROVED AS TO FORM:**

DATED: [September](#) \_\_\_\_, 2019 GUTRIDE SAFIER LLP

\_\_\_\_\_  
Adam Gutride, Esq.  
Seth Safier, Esq.  
Attorneys for Plaintiff

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DATED: [September](#) \_\_\_\_, 2019 MIGLIACCIO & RATHOD LLP

\_\_\_\_\_  
Jason Rathod, Esq.  
Nicholas A. Migliaccio, Esq.  
Esfand Nafisi, Esq.  
Attorneys for Plaintiff

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DATED: [September](#) \_\_\_\_, 2019 SACKS, RICKETTS & CASE LLP

\_\_\_\_\_  
Luanne Sacks, Esq.  
Michele Floyd, Esq.  
Robert B. Bader, Esq.  
Jacqueline Young, Esq.  
Attorneys for Defendants

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Your claim must be submitted online or postmarked by: XXXXX XX, 2020

Carlotti v. ASUS Computer International, Case No. 4:14-cv-03369

ASU

ELIGIBILITY AND GENERAL INSTRUCTIONS FOR SUBMITTING A CLAIM

PLEASE READ THIS ENTIRE CLAIM FORM CAREFULLY. To obtain financial benefits from the Settlement, you are required to complete and return this Claim Form. Your completed Claim Form can be mailed to the Claim Administrator at ASUS Laptop, Settlement Administrator, PO Box xxx, Philadelphia, PA 19103 or submitted electronically via the Settlement Website, at www.asuslaptopsettlement.com. Your Claim Form must be POSTMARKED BY [DATE] or SUBMITTED ONLINE NO LATER THAN [DATE] at 11:59 p.m., Pacific Time.

You are eligible to submit a Claim to receive a Cash Payment or Credit Certificate under this Settlement if you have purchased any new ASUS Rog Strix GL502VS or GL502VSK laptop (the "Laptops") from ASUS Computer International or ASUSTeK Computer Inc. (collectively, "Defendants" or "ASUS") or an authorized ASUS retailer in the United States after May 4, 2014. If you purchased more than one Laptop, you can submit more than one claim but you must submit a separate Claim Form for each purchase.

Please read the Settlement Notice ("Notice") before you complete and submit this Claim Form. The Notice is available on the Settlement Website at www.asuslaptopsettlement.com. Defined terms (with initial capitals) used in the Notice have the same meaning as set forth in the Settlement Agreement, which is also available on the Settlement Website. By submitting this Claim Form, you acknowledge that you have read and understand the Notice and the Settlement Agreement. To receive the most current information and regular updates, please visit the Settlement Website at www.asuslaptopsettlement.com.

If you fail to timely submit a Claim Form, you may be precluded from receiving settlement benefits. If you are a member of the Class and you do not timely and validly seek to Opt Out of the Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form.

The information you provide on this Claim Form will not be disclosed to anyone other than the Court, the Claim Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

BENEFIT INFORMATION

Cash Payment or Credit Certificate. You may file a claim to receive a Cash Payment or Credit Certificate under Group A, B, or C as described below. You do not have to submit a Claim Form to obtain repairs under the Extended Warranty. Information regarding the Extended Warranty is provided on the Settlement Website at www.asuslaptopsettlement.com.

Group A: Group A Class Members may receive a Credit Certificate for \$210.00 or a Cash Payment of \$110.00. To submit a Group A Claim, you must either (1) provide your Laptop's Serial Number and have registered your Laptop with Defendants prior to [Notice Date], as reflected by Defendants' records; (2) provide your Laptop's Serial Number and have purchased your Laptop from the ASUS website; or (3) submit a Proof of Purchase, which is a receipt or other documentation from ASUS or a third-party commercial source that reasonably establishes the fact

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and date of purchase of your Laptop during the Class Period in the United States. You must also complete and submit the information on the Claim Form below.

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**Group B:** Group B includes those Class Members who submitted a complaint about the Power Defect and/or Overheating Issue with their Laptop prior to March 19, 2019 to Defendants’ customer service department and for whom Defendants possess contact information. Group B Class Members were sent a separate claim form and should not complete the Claim Form below.

**Group C:** Group C Class Members include all Class Members that are not included in Group A and Group B. Group C Class Members may receive a Credit Certificate for \$105.00 or a Cash Payment of \$55.00. To submit a Group C Claim, you must provide your Laptop’s Serial Number. You must also complete and submit the information on the Claim Form below.

**Serial Number.** “Serial Number” means the serial number of the Laptop. The following webpage on Defendants’ Website provides information about how to determine the Laptop’s Serial Number: <https://www.asus.com/us/support/article/566/>.

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**Inspection.** In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants’ have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

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(a) Defendants must conduct the inspection, unless both Defendants and you agree to another party to conduct the inspection.

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(b) At the election of Defendants, the inspection must be conducted (1) at your home or business; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

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(c) The inspection must be conducted within twenty (20) days of Defendants’ demand for the inspection, unless otherwise agreed by you.

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(d) Any demand for inspection must be accompanied by instructions informing you of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Claim.

Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on the ASUS website, forums, or chat room prior to March 19, 2019 (collectively, “Postings”) and you submit a copy of such Postings with your Claim Form.

**Claim Administrator’s Discretion.** Claims will be paid only if deemed valid and only after the Court finally approves the Settlement. The Claim Administrator has discretion that will be exercised in good faith to determine whether your Claim Form is complete and valid and whether the Proof of Purchase you submit, where required, is sufficient.

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**Change of Residence.** You are responsible for keeping your contact information up to date with the Claim Administrator. The Claim Administrator will use the email address that you provide on this Claim Form to communicate with you if communication is necessary. If you move, or if your email address or other contact information changes after you submit this Claim Form, please contact the Claim Administrator at: [INFO].

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CLAIM FORM

CLASS MEMBER INFORMATION

FIRST NAME	LAST NAME	
STREET ADDRESS 1		
STREET ADDRESS 2		
CITY	STATE	ZIP CODE
PHONE NUMBER	EMAIL ADDRESS	

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1. Please select the Class Member Group you belong to.

Group A: If you are submitting a Claim under Group A, you must provide Proof of Purchase, unless you provide your Laptop’s Serial Number below and either registered your Laptop with Defendants before [Notice Date] or purchased your Laptop from the ASUS website. **To provide Laptop Proof of Purchase, if required, attach it to this form (if mailed) or upload it to the Settlement Website (if submitted online).**

If you are submitting a Claim under Group A, your Claim to receive a Settlement Benefit is subject to Defendants’ right to demand inspection of your Laptop at their cost to verify whether it suffers from the Power Defect and/or Overheating Issue. By selecting to submit a Claim under Group A, you are agreeing to provide your Laptop to Defendants for inspection per the terms discussed above, unless you submit Postings. **To provide Postings, print and attach them to this form (if mailed) or upload them to the Settlement Website (if submitted online).**

Group C: If you are submitting a Claim under Group C, you must provide the Serial Number for your Laptop below.

If you received a Notice by email or a postcard from the Claim Administrator, please provide your Claim Number:

*The Claim Number is located on the top of the email or in the address block of the postcard.*

2. If you purchased an ASUS Rog Strix GL502VS or GL502VSK laptop from Defendants or an authorized ASUS retailer since May 4, 2014 in the United States, which model Laptop did you purchase and what is the Serial Number? You are not required to provide a Serial Number if you a Group A Class Member and are providing Proof of Purchase.

ASUS Rog Strix GL502VS

ASUS Rog Strix GL502VSK

Benefit Election

3. Do you wish to receive a Cash Payment or a Credit Certificate good toward the future purchase of Defendants' products?

Credit Certificate

Cash Payment

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**Certification under Penalty of Perjury**

**By signing below, you are signing under penalty of perjury. Signing under penalty of perjury means that the information you have provided in the Claim Form is true and correct to the best of your knowledge. It is a crime to submit a false Claim Form and sign under penalty of perjury.**

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**I hereby certify under penalty of perjury that:**

1. My Laptop suffered from the Power Defect and/or the Overheating Issue;
2. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
3. The additional documentation information provided to the Claim Administrator to support my Claim is original or else a complete and true copy of the original(s);
4. I am not (a) a Person who purchased or acquired the Laptop for resale purposes; (b) an employee, principal, legal representative, successor, or and assign of Defendants or their affiliated entities; (c) a government entity; (d) the mediator in this case or any member of his immediate family; nor (e) a judge to whom this Action is assigned, or any member of the judge's immediate family;
5. I have not submitted any other Claim for the same purchase and have not authorized any other Person or entity to do so, and know of no other Person or entity having done so on my behalf;
6. I understand that by not opting out of the Settlement, I have given a complete Release of all Released Claims; and
7. I understand that Claims will be audited for veracity, accuracy, and fraud. Claims Forms that are not valid and/or illegible can be rejected.

Signature: \_\_\_\_\_ Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

Your claim must be submitted online or postmarked by: XXXXX XX, 2020

Carlotti v. ASUS Computer International, Case No. 4:14-cv-03369

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**ELIGIBILITY AND GENERAL INSTRUCTIONS FOR SUBMITTING A CLAIM**

PLEASE READ THIS ENTIRE CLAIM FORM CAREFULLY.

You are automatically eligible to receive a \$210 Credit Certificate under this Settlement because you purchased a new ASUS Rog Strix GL502VS or GL502VSK laptop (the "Laptops") from ASUS Computer International or ASUSTeK Computer Inc. (collectively, "Defendants" or "ASUS") or an authorized ASUS retailer in the United States after May 4, 2014, and you submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department.

If you want to receive a \$110 Cash Payment, rather than a \$210 Credit Certificate, then you are required to complete and return the Claim Form below. If you want to receive the \$210 Credit Certificate, which is good toward the future purchase of Defendants' products, you do not need to complete this Claim Form. Your completed Claim Form can be mailed to the Claim Administrator at ASUS Laptop, Settlement Administrator, PO Box xxx, Philadelphia, PA 19103 or submitted electronically via the Settlement Website, at www.asuslaptopsettlement.com. Your Claim Form must be POSTMARKED BY [DATE] or SUBMITTED ONLINE NO LATER THAN [DATE] at 11:59 p.m., Pacific Time.

You do not have to submit a Claim Form to obtain repairs under the Extended Warranty. Information regarding the Extended Warranty is provided on the Settlement Website at www.asuslaptopsettlement.com.

Please read the Settlement Notice ("Notice") before you complete and submit the Claim Form. The Notice is available on the Settlement Website at www.asuslaptopsettlement.com. Defined terms (with initial capitals) used in the Notice have the same meaning as set forth in the Settlement Agreement, which is also available on the Settlement Website. By submitting this Claim Form, you acknowledge that you have read and understand the Notice and the Settlement Agreement. To receive the most current information and regular updates, please visit the Settlement Website at www.asuslaptopsettlement.com.

If you fail to timely submit a Claim Form, you may be precluded from receiving a Cash Payment. If you are a member of the Class and you do not timely and validly seek to Opt Out of the Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form.

The information you provide on the Claim Form will not be disclosed to anyone other than the Court, the Claim Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

**Claim Administrator's Discretion.** Claims will be paid only if deemed valid and only after the Court finally approves the Settlement. The Claim Administrator has discretion that will be exercised in good faith to determine whether your Claim Form is complete and valid.

**Change of Residence.** You are responsible for keeping your contact information up to date with the Claim Administrator. The Claim Administrator will use the email address that you provide on this Claim Form to communicate with you if communication is necessary. If you move, or if your email address or other contact information changes after you submit this Claim Form, please contact the Claim Administrator at: [INFO].

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**CLAIM FORM**

**CLASS MEMBER INFORMATION**

FIRST NAME	LAST NAME	
STREET ADDRESS 1		
STREET ADDRESS 2		
CITY	STATE	ZIP CODE
PHONE NUMBER	EMAIL ADDRESS	

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Do you wish to receive a \$110 Cash Payment instead of receiving a \$210 Credit Certificate good toward the future purchase of Defendants’ products?

Yes                      No

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If you received a Notice by email or a postcard from the Claim Administrator, please provide your Claim Number:

CLAIM NUMBER

*The Claim Number is located on the top of the email or in the address block of the postcard.*

**Certification under Penalty of Perjury**

**By signing below, you are signing under penalty of perjury. Signing under penalty of perjury means that the information you have provided in the Claim Form is true and correct to the best of your knowledge. It is a crime to submit a false Claim Form and sign under penalty of perjury.**

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**I hereby certify under penalty of perjury that:**

- The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
- I am not (a) a Person who purchased or acquired the Laptop for resale purposes; (b) an employee, principal, legal representative, successor, or and assign of Defendants or their affiliated entities; (c) a government entity; (d) the mediator in this case or any member of his immediate family; nor (e) a judge to whom this Action is assigned, or any member of the judge’s immediate family;
- I have not submitted any other Claim for the same purchase and have not authorized any other Person or entity to do so, and know of no other Person or entity having done so on my behalf;
- I understand that by not opting out of the Settlement, I have given a complete Release of all Released Claims; and
- I understand that Claims will be audited for veracity, accuracy, and fraud. Claims Forms that are not valid and/or illegible can be rejected.

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Signature: \_\_\_\_\_ Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_

EXHIBIT B1 – LONG FORM NOTICE

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**Attention purchasers of ASUS Rog Strix GL502VS and GL502VSK  
Laptops In the United States After May 4, 2014**

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**This notice may affect your rights. Please read it carefully.**

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

- The notice concerns a lawsuit called *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, pending in the United States District Court for the Northern District of California (the “Lawsuit”).
- A class action Settlement will resolve the Lawsuit against ASUS Computer International (“ACI”) and ASUSTeK Inc. (collectively, “Defendants”). The Settlement affects all Persons who purchased an ASUS Rog Strix GL502VS or GL502VSK laptop (the “Laptops”) in the United States from Defendants or an authorized ASUS retailer after May 4, 2019.
- The Lawsuit contends that the Laptops were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”).
- Defendants deny any wrongdoing. They contend that the Laptops have always been truthfully marketed and labeled and do not suffer from any common defects.
- To settle the case, Defendants will extend the warranty on the ASUS Rog Strix GL502VS laptops that experienced the Power Defect. In addition, Defendants will provide all eligible Class Members a Cash Payment or Credit Certificate. Class Members who are eligible for Qualifying Repairs under the Extended Warranty can also obtain either a Cash Payment or a Credit Certificate by filing a Claim, (unless they qualify for an Automatic Credit Certificate as discussed below). Instructions are set forth below.
- Defendants have the right to terminate the Settlement if more than 1,000 Class Members submit a timely and valid request to exclude themselves from the Settlement. If the Settlement is terminated, then the Lawsuit will proceed to trial.
- Plaintiff’s lawyers will ask the Court for an Attorneys’ Fee and Expense award of up to \$787,500 which will be paid by Defendants. The Attorneys’ Fees and Expenses award is compensation for investigating the facts, litigating the case, and negotiating the Settlement. They will also ask for \$5,000 to be awarded to Plaintiff for bringing this Lawsuit. This payment is called an “Incentive Award.”
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

This notice contains a summary of proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or contact the Claim Administrator at [address] and [phone number].

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

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**EXHIBIT B1 – LONG FORM NOTICE**

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO  
INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

## EXHIBIT B1 – LONG FORM NOTICE

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>Obtain Repairs Under the Extended Warranty</b>	<p>If your ASUS Rog Strix GL502VS model laptop suffered from the Power Defect, you can contact ACI technical support using the following toll free number ([NUMBER]) for repairs.</p> <p>You can use the Extended Warranty regardless of whether you file a claim form for the Cash Payment or Credit Certificate, or whether you qualify for an Automatic Credit Certificate.</p>	The later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS.
<b>Submit a Claim Form</b>	<p>You can receive a Cash Payment or a Credit Certificate for a future purchase from ASUS. To get these benefits, you must submit a Claim Form (unless you qualify for an Automatic Credit Certificate as explained in the next paragraph).</p> <p>If you already sent a customer service request to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, as reflected by Defendants' records, you will get an Automatic Credit Certificate, and you are not required to submit a Claim Form. You must still submit a Claim Form under Group B if you want to receive a Cash Payment instead.</p>	[60 days after the Notice Date]
<b>Opt Out</b>	Get out of the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against the Defendants. You will receive no Cash Payment or Credit Certificate under this Settlement, and no right to obtain a Qualifying Repair under the Extended Warranty.	[60 days after the Notice Date]
<b>File Objection</b>	Write to the Court about any aspect of the Settlement you don't like or you don't think is fair, adequate, or reasonable. (If you object to any aspect of the Settlement, you must submit a written Objection by the Objection Deadline noted above. Your objection must follow all the procedures stated in the body of this notice under "How Do I Object To the Settlement?")	[60 days after the Notice Date]
<b>Go to a Hearing</b>	Speak in Court about the Settlement. (If you object to any aspect of the Settlement, you <b>must</b> submit a written Objection by the Objection Deadline noted above.)	[Final Approval Hearing Date]
<b>Do Nothing</b>	You will not receive any payment; also, you will have no right to sue later for the claims released by the Settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this notice.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

**EXHIBIT B1 – LONG FORM NOTICE**

- The Court in charge of this case still has to decide whether to approve the Settlement. Cash Payments and Credit Certificates will be sent to Settlement Class Members only if the Court approves the Settlement. If there are appeals, payments will not be made until the appeals are resolved and the Settlement becomes effective. Please be patient.
- **Final Approval Hearing**  
 On [DATE], the Court will hold a hearing to determine: (1) whether the proposed Settlement should be approved as fair, reasonable, and adequate and should receive final approval; (2) whether Plaintiff’s Counsel’s application for an award of Attorneys’ Fees and Expenses should be granted; and (3) whether Plaintiff’s application for an Incentive Award payment should be granted. The hearing will be held in the United States District Court of the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. This hearing date may change without further notice to you. Consult the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or the Court docket in this case available through Public Access to Court Electronic Records (“PACER”) (<http://www.pacer.gov>), for updated information on the hearing date and time.

**Important Dates**

[60 days after the Notice Date]	Claims Deadline
[60 days after the Notice Date]	Objection Deadline
[60 days after the Notice Date]	Opt-Out Deadline
[DATE]	Final Approval Hearing

**Table of Contents**

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1. How Do I Know If I Am Affected by the Settlement? .....	1
2. What Is the Lawsuit About? .....	1
3. Why Is There a Lawsuit? .....	1
4. Why Is This Case Being Settled?.....	2
5. What Can I Get In the Settlement? .....	2
6. How Do I Make A Claim? .....	5
7. When Do I Get My Benefits? .....	5
8. What Do Plaintiff and His Lawyers Get?.....	6
9. What Happens If I Do Not Opt-Out of the Settlement?.....	6
10. How Do I Opt-Out From the Settlement?.....	7
11. Can I Object To the Settlement?.....	8
12. When Will The Court Decide If the Settlement Is Approved?.....	8
13. How Do I Get More Information? .....	9

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

**1. How Do I Know If I Am Affected by the Settlement?**

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This case involves the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK laptop computers (the “Laptops”) purchased in the United States since May 4, 2014.

The Parties will ask the Court to certify a Settlement Class defined as “all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered.” Excluded from the Class are: (i) the Honorable Magistrate Ryu and any member of her immediate family; (ii) any government entity; (iii) Martin Quinn and any member of his immediate family; (iv) Defendants; (v) any entity in which Defendants have a controlling interest; (vi) any of Defendants’ parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (vii) any persons who timely opt out of the Settlement Class; (viii) any Person who received a full refund of the entire purchase price from ASUS or a retailer in connection with the Power Defect or Overheating Issue alleged in the Lawsuit; (ix) any Person who received a full refund of the Laptop’s entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues alleged in the Lawsuit; and (x) Any Person who signed a release regarding their Laptop.

If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this litigation will continue.

**2. What Is the Lawsuit About?**

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A lawsuit was brought by Plaintiff against Defendants for marketing the Laptops as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose of gaming and video editing because they uniformly suffer from a defect that causes the Laptops’ batteries to drain even when the Laptops are connected to, and drawing power from, electrical outlets (the “Power Defect”). Plaintiff also alleges that contrary to Defendants’ marketing representations, the Laptops’ cooling system uses a unitary set of heatsinks to dissipate heat from the graphics processing unit (“GPU”) and computational processing unit (“CPU”). Plaintiff alleges that heat generated by computationally or graphically demanding programs overloads the unitary cooling system’s ability to dissipate heat from the CPU and GPU and causes the Laptop to overheat to the point of causing physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). Plaintiff additionally alleges that Defendants failed to honor their warranties for the Laptops because Defendants responded to requests for warranty repairs by replacing the Laptops’ defective components with identical and equally defective components. Defendants deny that there is any factual or legal basis for Plaintiff’s allegations. Defendants contend that its Laptops do not suffer from the Power Defect or Overheating Issue, deny making any misrepresentations and, therefore, deny any liability. They also deny that Plaintiff or any other members of the Settlement Class have suffered any injury or are entitled to monetary or other relief. The Court has not determined whether Plaintiff or Defendants are correct.

**3. Why Is There a Lawsuit?**

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While Defendants deny that there is any legal entitlement to a refund or any other monetary relief, Plaintiff contends that the Defendants caused consumers to purchase the Laptops when they

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

would not otherwise have done so and/or the Defendants caused consumers to pay more for the Laptops as a result of Defendants' failure to disclose the Power Defect or Overheating Issues. The lawsuit seeks to recover, on behalf of all Settlement Class Members, monetary damages as a result of the alleged misrepresentations.

#### **4. Why Is This Case Being Settled?**

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Plaintiff filed his original lawsuit on May 4, 2018 in Alameda Superior Court. This lawsuit was removed to the United States District Court of the Northern District of California on June 7, 2018.

Plaintiff's Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive formal and informal discovery, the retention and consultation of an electrical engineering expert, requesting and receiving written discovery responses from ACI, examining Defendants' documents, and questioning Defendants about their documents.

On March 19, 2019, the Parties participated in an all-day mediation conducted by Honorable Martin Quinn at JAMS in San Francisco, California.

Counsel for both Plaintiff and Defendants have determined that there is significant risk in continuing the litigation. In particular, Plaintiff may have substantial difficulty establishing: (1) that all the Laptops uniformly experienced the Power Defect and Overheating Issues, (2) that Defendants' marketing materials were likely to deceive reasonable consumers, (3) that omissions in the marketing materials were material to reasonable consumers, (4) the amount of damages or restitution due to the class or to any class member, and (5) that common questions predominate over individual issues such that a class may be certified. After considering the risks and costs of further litigation, the Parties have concluded that it is desirable that the Plaintiff's claims be settled and dismissed on the terms of the Settlement Agreement.

Plaintiff and his counsel believe that the terms and conditions of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Settlement Class Members.

#### **5. What Can I Get In The Settlement?**

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##### ***Extended Warranty***

ACI agreed to extend the warranty on all ASUS Rog Strix GL502VS laptops to cover all "Qualifying Repairs" until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS ("Extended Warranty"). The "Qualifying Repairs" are replacements of the motherboard and/or AC power adapters as necessary to resolve the Power Defect.

To obtain a Qualifying Repair, the you must contact ACI technical support using the following toll free number ([NUMBER]), and follow ACI's instructions for shipping your ASUS Rog Strix GL502VS to a repair facility for repairs. If ASUS determines that your Rog Strix GL502VS Laptop is entitled to a Qualifying Repair, then ACI will repair it at no charge to you. If ASUS determines that your Rog Strix GL502VS Laptop is not entitled to a Qualifying Repair, and the laptop is not eligible for other repairs under its existing warranty, then ACI will offer to repair the laptop at your expense.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

You are entitled to Extended Warranty repairs without filing a Claim Form. Additionally, you can also choose to use the Extended Warranty and separately obtain the Cash Payment or Credit Certificate by filing a Claim Form ([or if you qualify for an Automatic Credit Certificate](#)) as set forth below.

**Cash Payment or Credit Certificate**

You may [receive an Automatic Credit Certificate if you qualify or](#) file a claim to receive a Cash Payment or Credit Certificate regardless of whether you opt to receive Qualifying Repairs under the Extended Warranty described above.

**To receive a Cash Payment, you must fill out and submit a Claim Form.** Cash Payments will be paid by check sent via first-class mail to the mailing address you provide on the Claim Form or by direct deposit into your bank account, or another form of electronic transfer (such as Paypal, Venmo, Google Wallet, or Square Cash). Instructions are provided on the Claim Form.

**Credit Certificates can be redeemed towards the purchase of any one or more ASUS products** at <https://store.asus.com/us>, not including shipping costs or taxes. Credit Certificates are fully transferrable and are stackable, meaning that more than one Credit Certificate may be used towards a single purchase. No minimum purchase is required to redeem a Credit Certificate. If the total amount of the purchase (before shipping and taxes) is less than the amount of the Credit Certificate(s) redeemed during the purchase transaction, the Credit Certificates shall have no residual value. The Credit Certificate can be combined with any other credit, voucher, coupon, sale, or other discount of any kind and will not expire for two years after issuance. Credit Certificates have no cash value and cannot be used for any purpose other than as stated in this section.

The amount and type of Settlement Benefit that Settlement Class Members are entitled to receive depends on whether [you are](#) a member of Group A, B, or C.

**Group A:** You are in Group A if you are a Settlement Class Member and you (1) have a Laptop Proof of Purchase; or (2) purchased a Laptop directly from the ASUS Website; or (3) registered a Laptop with ASUS prior to the Notice Date, as reflected by ASUS' records. Members of Group A can choose between a \$210 Credit Certificate or a \$110 Cash Payment. To submit a Group A Claim, you must provide the Laptop's Serial Number and, if the you did not purchase the Laptop directly from the ASUS website or register the Laptop with ASUS prior to the Notice Date, then you must also provide a Laptop Proof of Purchase. [In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims](#), Defendants have the right to demand inspection of your Laptop to verify whether it suffers from the Power Defect and/or Overheating Issue. However, Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 [and](#) you submit a copy of such Postings with your Claim Form.

**Group B:** You are in Group B if you submitted a complaint about the Power Defect and/or Overheating Issue to Defendants' customer service department prior to March 19, 2019. If Defendants have your contact information, then you will automatically receive a \$210 Credit Certificate. You do not need to submit a Claim Form. You may opt to receive a \$110 Cash Payment instead, but if you want the Cash Payment, then you have to submit a Claim Form [for Group B](#).

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

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**Group C:** You are in Group C if you are a Class Member but you are not in Group A or B. Members of Group C can receive either a \$105 Credit Certificate or a \$55 Cash Payment. You must fill out a Claim Form and you must provide your Laptop's Serial Number.

<b>Summary of Group Membership</b>			
<b>Group</b>	<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
<b>How do I know if I am included?</b>	If you (1) have the Laptop Proof of Purchase; (2) purchased the Laptop from the ASUS Website; or (3) registered the Laptop with ASUS prior to the Notice Date, as reflected by ASUS' records.	If you sent a customer service request to Defendants about the Power Defect and/or the Overheating Issue prior to March 19, 2019.	All other purchasers of the Laptop.
<b>What can I receive?</b>	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$105 Credit Certificate <i>or</i> \$55 Cash Payment
<b>Do I need to submit a Claim Form to receive benefits?</b>	Yes	No, <b>unless</b> you choose to receive a Cash Payment instead of the Automatic Credit Certificate.	Yes
<b>Am I required to swear that my Laptop had the Power Defect and/or Overheating Issue?</b>	Yes	No	Yes
<b>What information must I provide with my Claim?</b>	You must provide your Laptop Serial Number and, if you did not purchase your Laptop directly from the ASUS website or register your Laptop with ASUS prior to the Notice Date, you must also provide a Laptop Proof of Purchase.	None	You must provide your Laptop Serial Number.
<b>Can ASUS inspect my Laptop?</b>	Yes, subject to certain conditions, unless you submit a copy of a posting you made on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019.	No	No

"Serial Number" means the serial number of the Laptop. The following webpage on Defendants' Website provides information about how to determine the Laptop's Serial Number: <https://www.asus.com/us/support/article/566/>.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants’ have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

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(a) The inspection must be conducted by ACI, unless both Defendants and the Settlement Class Member agree otherwise.

(b) At the election of the Defendants, the inspection must be conducted (1) at the home or business of the Settlement Class Member; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants’ demand for the inspection, unless otherwise agreed by Settlement Class Member.

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(d) Any demand for inspection must be accompanied by instructions informing the Settlement Class Member of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Valid Claim.

Defendants may not demand to inspect your Laptop if you made a Posting regarding the Power Defect or Overheating Issue online prior to March 19, 2019 and you submit a copy of such Postings with your Claim Form.

Claims will be paid only if deemed valid and only after the Court finally approves the Settlement.

**6. How Do I Make A Claim?**

To make a Claim for a Group A or Group C Cash Payment or Credit Certificate, you must fill out a Claim Form. Claim Forms are available on the Settlement Website at www.asuslaptopsettlement.com/.

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To obtain the Group B Cash Payment, you must fill out the Claim Form for a Group B Cash Payment, which is available on the Settlement Website at: www.asuslaptopsettlement.com/. You do not need to complete a Claim Form to obtain the Automatic Credit Certificate.

You can submit the Claim Form online, or you can print it and mail it to the Claim Administrator at: [address]. Claim Forms must be submitted online or postmarked by [DATE]. Cash Payments and Credit Certificates will be issued only if the Court gives final approval to the proposed Settlement and after the Final Approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

**7. When Do I Get My Benefits?**

The Court will decide whether to approve the settlement at a Final Approval Hearing. That hearing is currently scheduled for [DATE].

Extended Warranty: If the Court approves the Settlement, the Extended Warranty will be made available beginning on the date of Final Approval. The Extended Warranty will continue to be honored unless the approval of the Settlement is reversed on appeal.

Cash Payments and Credit Certificates: If the Court approves the Settlement and there are no appeals, then Cash Payments and Credit Certificates will be distributed approximately 45 days after the

Questions? Visit www.asuslaptopsettlement.com or call [phone number]

Settlement is no longer subject to appeal or review, unless otherwise ordered by the Court. If the Court does not approve the Settlement, or if the Settlement is overturned on appeal, no benefit checks or credit certificates will be issued.

**8. What Do Plaintiff and His Lawyers Get?**

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To date, Plaintiff's Counsel has not been compensated for any of their work on this case. As part of the Settlement, Plaintiff's Counsel may apply to the Court for an award of up to \$787,500 from Defendants to pay their Attorneys' Fees and Expenses. An award to Plaintiff's Counsel does not affect the funds available to pay Valid Claims.

In addition, the Plaintiff in this case may apply to the Court for an Incentive Award up to \$5,000. This payment is designed to compensate Plaintiff for the time, effort, and risks he undertook in pursuing this litigation.

A copy of Plaintiff's Counsel's request for an award of Attorneys' Fees and Expenses and an Incentive Award is available on the Settlement Website. The Court will determine the amount of Attorneys' Fees and Expenses as well as the amount of the Incentive Award.

**9. What Happens If I Do Not Opt Out of the Settlement?**

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If you are a Settlement Class Member and you do not Opt Out of the Settlement, you will be legally bound by all orders and judgments of the Court, and you will also be legally bound to the Releases of the claims in the Settlement. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against ASUS Computer International Inc., ASUSTeK Inc., and/or any of the Released Parties that involves the same legal allegations as those resolved through this Settlement.

**You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Settlement Class.**

Staying in the Settlement Class means that you give up the following legal claims:

- a) Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Settlement Class Members (except any such Person who has filed a proper any timely request for exclusion from the Settlement Class), including any Person claiming derivative rights of the Settlement Class Member as the Settlement Class Member's parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate, shall release and forever discharge the Released Parties from any and all actions, causes of actions, claims, administrative claims, demands, rights, damages, obligations, suits, debts, liens, penalties, fines, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature and description, whether known or unknown, suspected or unsuspected, existing now or arising in the future that were or could have been asserted in the Action regarding the labeling, advertising, or formulation of the Products (the "Released Claims").

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

- b) With respect to the released claims set forth in the preceding paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

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The Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

- c) The Parties shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims.
- d) Nothing in this release shall operate to bar or release any claim for personal injury or property damage arising out of the use of the Product, nor shall anything in this release operate to bar any defense, cross-claim or counter-claim in any action initiated by any of the Released Parties against any Settlement Class Member.

#### 10. **How Do I Opt Out of the Settlement?**

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You can Opt Out of the Settlement Class if you wish to retain the right to sue Defendants separately for the Released Claims. If you Opt Out, you cannot file a Claim or Objection to the Settlement.

To Opt Out, you must complete the online form at the Settlement Website or mail an Opt-Out request to the Claim Administrator at [info], with copies mailed to Plaintiff's Counsel and counsel for Defendants. If mailed, the Opt-Out request must be signed by you, contain your full name, address, and phone number(s), and the following statement: "I/We request to Opt Out from the settlement in the ASUS Action." The Opt-Out request must be submitted online or postmarked by the Opt-Out Deadline set forth above.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

## 11. Can I Object to the Settlement?

You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court. You can't ask the Court to change the terms of the Settlement or order a larger Settlement Benefits; the Court can only approve or disallow the Settlement as it is written. If the Court does not approve the Settlement, then no Cash Payments or Credit Certificates will be sent out, and the Lawsuit will continue.

You can also ask the Court to deny Plaintiff's request for Attorneys' Fees and Expenses and the Incentive Award. If the Court does not approve those payments, then Plaintiff and/or his counsel will not get paid. Denying Plaintiff's motion for Attorneys' Fees and Expenses and Incentive Award will not increase the amount of money paid to the Settlement Class.

You may appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an objection to the Settlement at the Final Approval Hearing, you must first submit that objection in writing to the Clerk of the Court as set forth below. **Your objection must be postmarked and received on or before the Objection Deadline.**

Your objection must be mailed to: Class Action Clerk, United States District Court for the Northern District of California, Oakland Courthouse, Suite 400 S, 1301 Clay Street, Oakland, CA 94612, by the Objection Deadline set forth above. Your Objection must include the following information: (a) a reference at the beginning to this case, *Carlotti v. ASUS Computer International et al.*, Case No. 4:18-cv-03369, and the name of the presiding judge, the Magistrate Judge Donna M. Ryu, United States District Court for the Northern District of California; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any federal or state court in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. If you fail to include this information, then your objection may be rejected and/or overruled.

You can file a Claim even if you object to the Settlement. If you want to receive benefits in the event that the Court approves the Settlement, then you must submit a Claim Form according to the instructions described above.

## 12. When Will The Court Decide If the Settlement Is Approved?

The Court will hold a hearing on [DATE], to consider whether to approve the Settlement. The hearing will be held in the United States District Court of the Northern District of California, before the Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court.

The hearing is open to the public. This hearing date may change without further notice to you.

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

Consult the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or the Court docket in this case available through Public Access to Court Electronic Records PACER (<http://www.pacer.gov>), for updated information on the hearing date and time.

**13. How Do I Get More Information?**

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You can inspect many of the court documents connected with this case on the Settlement Website. Other papers filed in this lawsuit are available by accessing the Court docket in this case available through PACER (<http://www.pacer.gov>).

You can contact the Claim Administrator at [info] or by telephone at [info].

You can also obtain additional information by contacting Plaintiff's Counsel:

Seth A. Safier  
GUTRIDE SAFIER LLP  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
Tel: 415-639-9090  
[www.gutridesafier.com](http://www.gutridesafier.com)

**DO NOT CONTACT THE ATTORNEYS FOR THE DEFENDANTS.**

Questions? Visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or call [phone number]

To: [Class member email address]  
From: ASUS Class Action Claim Administrator  
Subject: Notice of Class Action Settlement

<<Class Member ID>>

**IF YOU BOUGHT A NEW ASUS ROG STRIX GL502VS OR GL502VSK LAPTOP AFTER MAY 4, 2014 IN THE UNITED STATES, THIS CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

*A federal court authorized this notice. This is not a solicitation from a lawyer and you aren't being sued.*

- A proposed Settlement has been reached in a class action lawsuit against ASUS Computer International (“[ACI](#)”) and ASUSTek Computer, Inc. (collectively “[Defendants](#)”). As explained in greater detail below, the lawsuit challenged the marketing of ASUS ROG Strix GL502VS and GL502VSK laptops (collectively referred to as the “Laptops”). ASUS denies that it did anything wrong. The Court has not decided who is right in the lawsuit.
- If you purchased a Laptop in the United States after May 4, 2014 from ASUS or one of its authorized retailers, then you are a Class Member and may be eligible to submit a claim to receive your choice of a Cash Payment (in the amount of either \$110 or \$55) or a Credit Certificate (in the amount of either \$210 or \$105), [unless you qualify for an Automatic Credit Certificate as discussed below](#). In addition, all Class Members who purchased a ROG Strix GL502VS model Laptop will be entitled to obtain Qualifying Repairs under an Extended Warranty. The Extended Warranty is explained in greater detail below.
- Your legal rights are affected whether you act or do not act. Read this Notice and the information on this Settlement Website carefully. Your rights and options, and the deadlines to exercise them, are explained in this Notice.
- The Court will decide whether to approve the Settlement. Proposed payments to Class Members who do not exclude themselves from the Settlement will be made if the Court approves the Settlement. Please be patient and check this Settlement Website ([www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com)) to find out when the [Cash Payments and Credit Certificates](#) may be available.
- The following chart summarizes your rights and options under the Settlement. Your rights and options under the Settlement are more fully explained in the remainder of this Notice, so please read it in its entirety.

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YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<p><b>Obtain Repairs Under the Extended Warranty</b></p>	<p>If your ASUS Rog Strix GL502VS model laptop suffered from the Power Defect, you can contact ACI technical support using the following toll free number ([NUMBER]) for repairs.</p> <p>You can use the Extended Warranty regardless of whether you file a claim form for the Cash Payment or Credit Certificate, or whether you qualify for an Automatic Credit Certificate.</p> <p><b>NOTE: The Extended Warranty applies only to model GL502VS Laptops.</b></p>	<p>The later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS.</p>
<p><b>Submit a Claim Form</b></p>	<p>You can receive a Credit Certificate for a future purchase from ASUS or a Cash Payment. To get these benefits, you must submit a Claim Form (unless you qualify for an Automatic Credit Certificate as explained in the next paragraph).</p> <p>If you already sent a customer service request to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, as reflected by Defendants' records, you will receive an Automatic Credit Certificate, without submitting a Claim Form. You must still submit a Claim Form under Group B if you want a Cash Payment instead of the Credit Certificate.</p>	<p>[60 days after the Notice Date]</p>
<p><b>Opt Out</b></p>	<p>Get out of the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against the Defendants. You will receive no Cash Payment or Credit Certificate under this Settlement, and no right to obtain a Qualifying Repair under the Extended Warranty.</p>	<p>[60 days after the Notice Date]</p>
<p><b>File Objection</b></p>	<p>Write to the Court about any aspect of the Settlement you don't like or you don't think is fair, adequate, or reasonable. If you object to any aspect of the Settlement, you must submit a written Objection by the Objection Deadline noted above. Your Objection must follow all the procedures stated in the body of this notice under "How Do I Object To the Settlement?"</p>	<p>[60 days after the Notice Date]</p>
<p><b>Go to a Hearing</b></p>	<p>Speak in Court about the Settlement. If you object to any aspect of the Settlement, you <b>must</b> submit a written Objection by the Objection Deadline noted above.</p>	<p>[Final Approval Hearing Date]</p>
<p><b>Do Nothing</b></p>	<p>You will not receive a Cash Payment, but you may receive a Credit Certificate if you previously sent a customer service request to Defendants regarding the Power Defect or the Overheating Issue. You will have no right to sue later for the claims released by the Settlement.</p>	

## EXHIBIT B2 – EMAIL NOTICE

**Why Am I Receiving This Notice?**

You are receiving this notice because, according to our records, you may have purchased an ASUS Rog Strix GL502VS or GL502VSK laptop (collectively, the “Laptops”) in the United States after May 4, 2014. This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com), or contact the Claim Administrator at [address] and [phone number].

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**What’s This Litigation About?**

A proposed class action Settlement has been reached in a case against ASUS Computer International and ASUSTeK Computer Inc., entitled *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, filed in the United States District Court for the Northern District of California. Plaintiff alleges that the Laptops were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). Defendants deny any wrongdoing. If the Settlement is approved by the Court, then you may be eligible to receive either a Credit Certificate or Cash Payment. In addition, Defendants will provide eligible purchasers of the ASUS Rog Strix GL502VS model laptops that experienced the Power Defect an Extended Warranty for Qualifying Repairs.

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**Am I A Class Member?**

You are a Class Member if you purchased a new Laptop in the United States from Defendants or an authorized ASUS retailer after May 4, 2014 and you did not make your purchase for the purpose of resale.

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**What are the Settlement Benefits?**

There are three different types of settlement benefits: the Extended Warranty, a Cash Payment, and a Credit Certificate. The type and amount of benefits that you are eligible to receive depends on the model of the Laptop that you purchased and whether you have proof that you purchased the Laptop.

**Extended Warranty.** If you purchased an ASUS Rog Strix GL502VS laptop, then you are automatically eligible for extended warranty service for Qualifying Repairs. The Extended Warranty will remain in effect until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii) 180 days from the date of a prior replacement of the internal power supply and/or power adapter by ASUS (“Extended Warranty”). The Qualifying Repairs are repairs to and/or replacements of the motherboard and/or AC power adapters as necessary to resolve the Power Defect.

To obtain a Qualifying Repair, you must contact Defendants’ technical support using the following toll free number ([NUMBER]), and follow Defendants’ procedure for shipping your ASUS Rog Strix GL502VS laptop to a repair facility for repairs.

You do not need to file a Claim Form to obtain Qualifying Repairs under the Extended Warranty. However, you may still file a Claim Form to receive a [Cash Payment](#) or a Credit Certificate regardless of whether you obtain Qualifying Repairs under the Extended Warranty.

**Cash Payment or Credit Certificate.** You can receive a Cash Payment or a Credit Certificate that can be redeemed towards the purchase of any one or more products from Defendants at <https://store.asus.com/us>, not including shipping or taxes, consistent with the terms of the

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**EXHIBIT B2 – EMAIL NOTICE**

Settlement. As explained in the chart below, you must submit a Claim to receive a Cash Payment. If you choose a Credit Certificate instead, then you still must submit a Claim Form *unless* you submitted a complaint to Defendants regarding the Power Defect or Overheating issue before March 19, 2019. If you submitted a complaint to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019, and that complaint is reflected in Defendants' records, then you will get [an Automatic Credit Certificate](#), and need not submit a Claim Form unless you want the Cash Payment instead. The following chart summarizes eligibility for a Cash Payment or Credit Certificate [for Class Members](#):

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<b>Summary of Group Membership</b>			
<b>Group</b>	<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
<b>Am I included?</b>	If there is proof that you purchased the Laptop. The following are acceptable forms of proof of purchase: (1) Proof of Purchase, such as a receipt; or (2) you purchased the Laptop from the ASUS Website; or (3) you registered the Laptop with Defendants prior to the Notice Date, as reflected by Defendants' records.	If you submitted a complaint to Defendants about the Power Defect and/or the Overheating Issue prior to March 19, 2019.	All other purchasers of the Laptop.
<b>What can I receive?</b>	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$210 Credit Certificate <i>or</i> \$110 Cash Payment	\$105 Credit Certificate <i>or</i> \$55 Cash Payment
<b>Do I need to submit a Claim Form to receive benefits?</b>	Yes	No, <b>unless</b> you choose to receive a Cash Payment instead of the Automatic Credit Certificate.	Yes
<b>Am I required to state under penalty of perjury that my Laptop had the Power Defect and/or Overheating Issue?</b>	Yes	No	Yes
<b>What information must I provide with my Claim?</b>	You must provide your Laptop Serial Number and, if you did not purchase your Laptop directly from the ASUS website or register your Laptop with Defendants prior to the Notice Date,	None	You must provide your Laptop Serial Number.

EXHIBIT B2 – EMAIL NOTICE

	you must also provide a Laptop Proof of Purchase.		
<b>Can ASUS inspect my Laptop?</b>	Yes, subject to certain conditions, unless you submit a copy of a posting you made on Defendants’ Website, forums, or chat room complaining about the Power Defect and/or the Overheating Issue (collectively, “Postings”) prior to March 19, 2019.	No	No

**Serial Number.** “Serial Number” means the serial number of the Laptop. The following webpage on Defendants’ Website provides information about how to determine the Laptop’s Serial Number: <https://www.asus.com/us/support/article/566/>.

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**Inspection.** In order to confirm the validity of Claims made under Group A and to protect against fraudulent Claims, Defendants have the right to demand a Laptop inspection for Claims made under Group A, subject to the following conditions:

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(a) Defendants must conduct the inspection, unless both Defendants and you agree to another party to conduct the inspection.

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(b) At the election of Defendants, the inspection must be conducted (1) at your home or business; or (2) at an alternative inspection site, in which case Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants’ demand for the inspection, unless you agree otherwise.

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(d) Defendants’ demand for inspection must be accompanied by instructions informing you of the conditions set forth herein and of the right to refuse the inspection entirely, in which case the claim will be treated as a Group C Claim (see chart above for details).

Defendants may not demand to inspect your Laptop if you made a posting regarding the Power Defect or Overheating Issue on Defendants’ Website, forums, or chat room (collectively, “Postings”) prior to March 19, 2019 and you submit a copy of such Postings with your Claim Form.

Valid claims will be paid only after the Court finally approves the Settlement.

**How Do I Make A Claim for a Cash Payment or Credit Certificate?**

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To obtain any benefit other than the Group B Cash Payment or the Automatic Credit Certificate, you must fill out the Claim Form which is available on the Settlement Website at: [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/).

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To obtain the Group B Cash Payment, you must fill out the Group B Cash Payment Claim Form which is available on the Settlement Website at: [www.asuslaptopsettlement.com/](http://www.asuslaptopsettlement.com/). You do not need to complete a Claim Form to obtain the Automatic Credit Certificate.

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You can submit the Claim Form online, or you can print it and mail it to the Claim Administrator.

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**EXHIBIT B2 – EMAIL NOTICE**

at: [address]. Claim Forms that are submitted online must be received by the Claim Administrator by 11:59 p.m. Pacific Time on [DATE], and [Claim](#) Forms that are mailed must be postmarked by [DATE]. Cash Payments and Credit Certificates will be issued only if the Court grants Final Approval to the proposed Settlement and after Final Approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

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**What are my rights?**

[Depending on whether you are a member of Group A, B or C, you may make a Claim or receive an Automatic Credit Certificate. All Class Members may](#) receive Qualifying Repairs under the Extended Warranty, Object, Opt Out, or do nothing. **To receive a Cash Payment or Credit Certificate**, you must [submit a Claim](#), online or by mail, by [DATE] [\(unless you qualify for an Automatic Credit Certificate\)](#). **To receive a Qualifying Repair under the Extended Warranty**, you must contact Defendants’ technical support using the following toll free number ([NUMBER]), and follow Defendants’ instructions for shipping the laptop to a repair facility. If you **Opt Out of the Settlement**, you may pursue a separate lawsuit, but you will receive no payment. Your Opt-Out request must be submitted online or postmarked by [DATE]. If you do not Opt Out, you give up your right to bring a separate lawsuit. **To Object**, you must submit a written Objection that complies with the requirements in the applicable Settlement Notice available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Your Objection must be filed with the Court by [DATE]. **Do nothing**, and you will not receive a [Cash Payment or Credit Certificate \(unless you qualify for an Automatic Credit Certificate\)](#) and you will release claims against Defendants that relate to the Allegations in the lawsuit. Please see the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) for more details for submitting an objection or opt-out request.

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**What Will Happen Next?**

The Court will hold a Final Approval Hearing on [DATE] to consider whether to approve the Settlement. The hearing will be held in the United States District Court for the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. The date may change without further notice to you. You are advised to check the Settlement Website at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or the Court’s Public Access to Court Electronic Records (“PACER”) system at <https://ecf.uscourts.gov> site to confirm that the date has not been changed. The Court will decide whether to approve the Settlement and whether to award Attorneys’ Fees and Expenses of up to \$787,500 and an Incentive Award of up to \$5,000 to Plaintiff. The motion for Attorneys’ Fees and Expenses and an Incentive Award will be posted on [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) after it is filed. You may, but don’t have to, attend the hearing. Cash Payments and Credit Certificates will be issued to Settlement Class Members only if the Settlement is approved and after any Objections are resolved. Please be patient.

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**How Can I Get More Information?**

For more information, visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or contact the Claim Administrator at [info] or by telephone at [info]. You can access the Court docket in this case, for a fee, through the Court’s PACER, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also obtain additional information by contacting Class Counsel at: Seth A. Safier, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111/Tel: 415-639-9090.

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**PLEASE DO NOT CONTACT DEFENDANTS OR TELEPEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIMS PROCESS.**

## EXHIBIT B4 – PUBLICATION NOTICE

**IF YOU PURCHASED AN ASUS ROG STRIX GL502VS OR GL502VSK LAPTOP AFTER MAY 4, 2014, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

A proposed class action settlement has been reached in a case entitled *Carlotti, et al. v. ASUS Computer International, et al.*, No. 4:18-cv-03369, filed in the United States District Court for the Northern District of California. In the lawsuit, Plaintiff alleges that the ASUS Rog Strix GL502VS and GL502VSK laptops (the “Laptops”) were deceptively marketed as powerful, portable machines ideal for gaming and video editing with independent cooling systems to give the Laptops “stability required for intense gaming sessions.” Plaintiff alleges that the Laptops are not suitable for their ordinary and advertised purpose because the Laptops’ batteries drain even when the Laptops are connected to electrical outlets (the “Power Defect”). Plaintiff also alleges that the Laptops’ cooling systems are not independent because they use one set of heatsinks to dissipate heat from both the graphics processing unit and computational processing unit, so the Laptops overheat, leading to physical discomfort and/or diminishing the Laptops’ performance and durability (the “Overheating Issue”). ASUS Computer International and ASUSTeK Computer Inc. are the defendants (“Defendants”) and deny any wrongdoing.

If the settlement is approved and you are a Class Member, you may be eligible to receive a Cash Payment in the amount of either \$110 or \$55 or a Credit Certificate in the amount of either \$210 or \$105 at your option. You are a Class Member if you purchased a new ASUS Rog Strix GL502VS or GL502VSK laptop from Defendants or an authorized ASUS retailer after May 4, 2014 in the United States. Additionally, Defendants have extended the warranty for GL502VS laptops that suffered from the Power Defect. Call Defendants’ technical support at ([NUMBER]) to receive instructions for obtaining Extended Warranty service. You may receive a Cash Payment or Credit Certificate even if you obtain Extended Warranty service.

To obtain a Cash Payment, you must submit a valid Claim Form. To obtain a Credit Certificate, you must submit a valid Claim Form unless you complained to Defendants about a Power Defect and/or Overheating Issue prior to March 19, 2019. If your complaint is reflected in Defendants’ records, then you will automatically receive a \$210 Credit Certificate, (“Automatic Credit Certificate”). If you prefer a Cash Payment, then you must submit a Claim Form. Claim Forms are available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Depending on the benefit you request, Defendants may have the right to demand an inspection of your Laptop [to confirm that your Claim is valid](#) and you may have to provide proof of purchase. [Visit \[www.asuslaptopsettlement.com\]\(http://www.asuslaptopsettlement.com\) for more information about the inspection process and conditions.](#)

You may make a Claim and/or receive Qualifying Repairs under the Extended Warranty, Object, Opt Out, or do nothing. **To receive a Cash Payment or Credit Certificate**, you must submit a Claim, [\(unless you qualify for an Automatic Credit Certificate\)](#), online or by mail, by [DATE]. **To receive a Qualifying Repair under the Extended Warranty**, you must contact Defendants at [NUMBER], and follow their instructions. If you **Opt Out of the Settlement**, you may pursue a separate lawsuit, but you will receive no settlement benefit. Your Opt-Out request must be submitted online or postmarked by [DATE]. If you do not Opt Out, you give up your right to bring a separate lawsuit. **To Object**, you must submit a written Objection that complies with the requirements set forth in the Settlement Notice available at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com). Your Objection must be filed with the Court by [DATE]. **Do nothing**, and you will not receive a settlement benefit (unless you qualify for an [Automatic Credit Certificate](#)) and you will release claims against Defendants that relate to the Allegations in the lawsuit. You may still obtain repairs under the Extended Warranty, if applicable.

The Court will hold a Final Approval Hearing on [DATE], to consider whether to approve the Settlement. The hearing will be held in the United States District Court for the Northern District of California, before Magistrate Judge Donna M. Ryu, in the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, in courtroom 4 on the 3rd floor, or such other judge assigned by the Court. The Court will decide whether to approve the Settlement and whether to award Attorneys’ Fees and Expenses of up to \$787,500 and an

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**EXHIBIT B4 – PUBLICATION NOTICE**

Incentive Award of up to \$5,000 to Plaintiff. The motion seeking Attorneys' Fees and Expenses and an Incentive Award will be posted on [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) after it is filed. You may, but don't have to, attend the hearing. Cash Payments and Credit Certificates will be issued to the Settlement Class Members only if the Settlement is approved and after any Objections are resolved. Please be patient.

For more information, visit [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com) or contact the Claim Administrator at [info]. You can also obtain additional information by contacting Class Counsel at: Seth A. Safier, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111/Tel: 415-639-9090.

**PLEASE DO NOT CONTACT DEFENDANTS OR THE COURT TO INQUIRE ABOUT THE SETTLEMENT.**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; PROVISIONALLY  
CERTIFYING THE NATIONWIDE  
SETTLEMENT CLASS; AND  
DIRECTING DISSEMINATION OF  
CLASS NOTICE**

The Parties to the above-captioned action have entered into a Settlement Agreement (submitted to the Court concurrently with the Declaration of Adam J. Gutride) to settle the above-captioned putative class action in its entirety, and Plaintiff Joseph Carlotti (“Plaintiff”) has filed an unopposed Motion for Approval of Class Settlement Provisional Certification of Nationwide Settlement Class, and Approval of Procedure For and Form of Notice to Settlement Class, and a supporting memorandum (“Motion”). All capitalized terms used in this Order have the meaning as defined in the Settlement Agreement.

**RECITALS**

This case concerns Defendant ASUSTeK Computer Inc. (“ASUSTeK”) and ASUS Computer International (“ACI”) (collectively, “ASUS” or “Defendants”) marketing, selling, and warranting of the ASUS Rog Strix GL502VS laptop and the ASUS Rog Strix GL502VSK laptop (“Laptop” or “Laptops”) from May 4, 2014 to the date of this order (“Class Period”).

Plaintiff contends that Defendants deceptively advertised the suitability of the Laptops as

1 portable gaming computers. In particular, Plaintiff alleges that the Laptop he purchased suffered  
2 from the following two defects: (1) the Laptop's power supply unit did not provide sufficient power  
3 to the Laptop such that the Laptop's battery drained during use even when the Laptop was plugged  
4 into an electrical outlet; the Laptop experienced reductions in computational performance when it  
5 was low on battery power or when the battery was removed, even when the Laptop was connected  
6 to an electrical outlet; and there was accelerated degradation of the Laptop's battery (the "Power  
7 Defect"); and (2) the Laptop's cooling systems inadequately dissipated heat generated by the  
8 Laptop during computationally demanding tasks such that the Laptop became hot to the touch  
9 during use (the "Overheating Issue"). Plaintiff alleges that all the Laptops experienced the Power  
10 Defect and Overheating Issue. Plaintiff alleged claims for violations of the breach of express  
11 warranty; breach of implied warranty; violation of the Magnuson-Moss Warranty Act; deceit and  
12 fraudulent concealment; unjust enrichment; violations of the California Consumer Legal Remedies  
13 Act, Civil Code § 1750, *et seq.*; false advertising under Bus. and Prof. Code § 17500, *et seq.*; and  
14 unfair business practices under Cal. and Prof. Code § 17200, *et seq.* He sought to pursue these  
15 claims on behalf of himself and a nationwide class of purchasers of the Laptops and sought money  
16 damages and an injunction.

17 Defendants deny Plaintiff's allegations. They contend that the advertising of the Laptops is,  
18 and has always been, truthful and not misleading. Defendants also dispute that the Laptops suffered  
19 from the Power Defect or the Overheating Issue. Defendants deny that the written warranty covers  
20 any alleged design defects. Defendants also dispute that Laptop purchasers suffered any damages  
21 because they claim that the Laptops performed as good as, or better than, other laptops in the  
22 market. Defendants therefore deny any liability, and deny that Plaintiff or any class members have  
23 suffered injury. Defendants further deny that this case meets the requirements for class certification  
24 under Fed. R. Civ. P. 23, except for purposes of settlement.

25 The history of this litigation is summarized in Part 1 of the Settlement Agreement. In brief,  
26 this case was filed on May 4, 2018 in California Superior Court, and ACI removed the case to this  
27 Court on June 7, 2018. Plaintiff moved for, and the Court entered, an order authorizing service on  
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1 Defendant ASUSTeK, a Taiwanese corporation, using alternative means. The Parties engaged in  
2 significant discovery. Plaintiff served ACI with discovery requests and noticed its deposition under  
3 Rule 30(b)(6) of Federal Rule of Civil Procedure. ACI produced documents in response to  
4 Plaintiff's discovery requests, including documents providing sales and warranty data and hardware  
5 and software engineering reports. ACI deposed Plaintiff.

6 On March 19, 2019, the Parties to this case participated in an all-day mediation conducted  
7 by the Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in the  
8 Settlement that is the subject of this Order.

9 On July 8, 2019, Plaintiff filed a Motion for Preliminary Approval of Settlement. (Dkt. #  
10 59.) After the August 22, 2019 hearing on Plaintiff's Motion for Preliminary Approval, the Court  
11 issued an order requesting additional information regarding the Settlement. (Dkt. # 65.) Plaintiff  
12 filed a supplemental brief in support of Plaintiff's Motion for Preliminary Approval and supporting  
13 declarations on September 12, 2019. The parties entered into an Amended Settlement Agreement,

14 The terms of the Settlement are summarized in the proposed Long Form Notice to  
15 Settlement Class Members, which is attached as Exhibit B1 to the Amended Settlement Agreement.  
16 Defendants have agreed to provide an extended warranty on all ASUS Rog Strix GL502VS laptops  
17 to cover Qualifying Repairs, which includes a motherboard replacement and new power adapter,  
18 until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii)  
19 180 days from the date of a prior replacement of the internal power supply and/or AC power  
20 adaptor by ASUS.

21 Defendants have also agreed to make up to approximately \$5.2 million in cash benefits  
22 available to Class Members as follows. All Class Members who previously complained of the  
23 Power Defect or Overheating Issue to Defendants will automatically receive a \$210 Credit  
24 Certificate without the necessity of filing a claim (or a \$110 Cash Payment if the Class Member  
25 files a claim). Class Members can receive a \$210 Credit Certificate or a \$110 Cash Payment if they:  
26 (a) registered their Laptop with ASUS; (b) purchased their Laptop from ASUS's website; or (c)  
27 submit Proof of Purchase of the Laptop with their Claim Form. Class Members who cannot meet  
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1 any of these proof requirements can obtain a \$105 Credit Certificate or \$55 Cash Payment as long  
2 as they provide the Laptop's Serial Number with the Claim Form.

3 As part of the Settlement, Class Counsel may apply to this Court for an award of attorneys'  
4 fee and expenses of up to \$787,500.00, as well as up to \$5,000 as an Incentive Award to Plaintiff.  
5 Such amounts must be approved by the Court, and the Court will defer any ruling on the  
6 appropriateness of such awards until the Final Approval Hearing.

7 Class Notice is to be provided as described in the Amended Settlement Agreement  
8 consistent with a notice plan designed by Angeion Group, the Claim Administrator, a well-known  
9 and experienced class action administrator. The Claim Administrator also will receive and process  
10 Claim Forms. In brief, Class Notice will be provided via: (1) direct Email Notice to those Class  
11 Members for whom an email address is available; (2) direct Postcard Notice mailed to those Class  
12 Members for whom a physical mailing address is available; (3) Publication Notice in *People*  
13 magazine and the California regional edition of *USA Today*; (4) publication of Online Notice  
14 targeted at likely Class Members served across relevant internet websites and social media  
15 platforms; (5) publication of Online Notice on Defendant's websites and social media platforms;  
16 and (6) publication on a Settlement Website, located at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

17 All of the notices will link or point to the Settlement Website, which will contain a detailed  
18 class notice, including the procedures for class members to exclude themselves from the Settlement  
19 or object, as well as a copy of the Amended Settlement Agreement and motion papers filed in  
20 connection with the Settlement.

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FINDINGS AND CONCLUSIONS

The Court has read and considered the Motion and all of the supporting documents, including the Settlement Agreement, the Amended Settlement, and their Exhibits, including the proposed Class Notice. The Court finds that there is a sufficient basis for granting preliminary approval of the Amended Settlement Agreement, authorizing dissemination of the Class Notice, and authorizing the steps needed to determine whether the Amended Settlement Agreement should be finally approved and the Litigation dismissed.

Accordingly, it is HEREBY ORDERED that:

1. The Amended Settlement Agreement, filed on September 12, 2019, is preliminarily approved as likely to be approved under Federal Rule of Civil Procedure ("Rule") 23(e)(2) and as meriting notice to the Class for its consideration. Considering the factors set forth in Rule 23(e)(2), the Court preliminarily finds as follows:

- a. Class Representatives and Class Counsel have adequately represented the Class.
b. The Settlement was negotiated at arm's length with the assistance of a well-respected and experienced private mediator.
c. The relief provided to the Class in the form of injunctive and monetary relief is adequate given the risks and uncertainty of trial.
d. The proposal treats all Class Members equally relative to each other.

2. Based upon the submissions of the Parties, and for the purposes of this Settlement only, the Court conditionally makes the following findings:

- a. Members of the Class are so numerous as to make joinder impracticable.
b. There are questions of law and fact common to the Class, and such questions predominate over any questions affecting only individual Class Members for purposes of the Settlement.
c. Plaintiff's claims and the defenses thereto are typical of the claims of the Class Members and the defenses thereto for purposes of the Settlement.

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- 1 d. Plaintiff and his counsel have, and will continue to, fairly and adequately protect  
2 the interests of the Class Members in this action with respect to the Settlement.  
3 e. The proposed Settlement is superior to all other available methods for fairly and  
4 efficiently resolving this action.

5 Accordingly, for settlement purposes only, the Court conditionally certifies a Class  
6 comprised of all persons who purchased a new ASUS ROG Strix GL502VS or GL502VSK laptop  
7 computer in the United States from Defendants or an authorized retailer of Defendants between  
8 May 4, 2014 and the date Preliminary Approval is entered.

9 3. The Court finds it appropriate to establish the following exclusions from the  
10 Settlement Class: the undersigned judge and any member of her immediate family; (b) any  
11 government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e)  
12 any entity in which Defendants have a controlling interest; (f) any of Defendants' parents, affiliates,  
13 and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person  
14 whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the  
15 Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from  
16 ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues  
17 alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from  
18 the Power Defect or Overheating Issue; (k) any person who signed a release regarding their Laptop;  
19 and (l) all persons who file a timely request for exclusion from the Class.

20 4. The Court appoints Plaintiff Joseph Carlotti to serve as Class Representative for the  
21 Class.

22 5. The Court appoints the law firms of Gutride Safier LLP and Miglaccio & Rathod  
23 LLP to serve as Class Counsel.

24 6. The Court finds that the terms of the Amended Settlement Agreement are  
25 sufficiently fair, reasonable, and adequate to allow dissemination of the Class Notice to members of  
26 the Class. This determination is not a final finding that the Settlement is fair, reasonable and  
27

1 adequate, but it is a determination that probable cause exists to disseminate Class Notice to the  
2 Class Members and hold a hearing on final approval of the proposed Settlement.

3 7. The Court appoints and designates Angeion Group as the Claim Administrator.

4 8. The Court approves, as to form and content, the Claim Forms and the Class Notice,  
5 substantially similar to the forms attached as Exhibits A – B5 to the Amended Settlement  
6 Agreement. The Claim Forms and the Class Notice are written in plain English, are easy to  
7 comprehend, and fully comply with the requirements of the Due Process Clause of the United States  
8 Constitution, Rule 23, and any other applicable law. The Parties shall have discretion to jointly  
9 make non-material minor revisions to the Claim Forms or the Class Notice. Responsibility  
10 regarding settlement administration, including, but not limited to, notice and related procedures,  
11 shall be performed by the Claim Administrator, subject to the oversight of the Parties and this Court  
12 as described in the Amended Settlement Agreement. The costs of providing Class Notice to the  
13 Class Members shall be borne by ASUS.

14 9. ASUS shall pay the Claim Administrator’s reasonable costs associated with the  
15 administration of the Settlement up to \$200,000, distribution of Class Notice pursuant to the  
16 Amended Settlement Agreement, and any other tasks assigned to the Claim Administrator under the  
17 Amended Settlement Agreement, by ASUS’s and the Class Representative’s mutual written  
18 agreement, or as this Court may order.

19 10. Pursuant to Rule 23(e)(2) and 28 U.S.C. § 1715(d), a Final Approval Hearing shall  
20 be held on \_\_\_\_\_, at \_\_\_\_:00 a.m. / p.m. before the undersigned at the Ronald V.  
21 Dellums Federal Building and U.S. Courthouse, 1301 Clay St., Oakland, California, for the purpose  
22 of finally determining whether (a) this action meets each of the prerequisites for class certification  
23 set forth in Federal Rule of Civil Procedure 23(a) and may properly be maintained as a class action  
24 on behalf of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the Amended  
25 Settlement Agreement should receive final approval as fair, reasonable, adequate, and is in the best  
26 interests of the Settlement Class in light of any objections presented by Class Members and the  
27 Parties’ responses to any such objections; (c) the Court should grant final approval of the Amended  
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1 Settlement Agreement, entering final judgment and dismissing the Class Action Complaint,  
2 including dismissing the claims concerning the Laptops identified in the Amended Settlement  
3 Agreement to be dismissed with prejudice), as provided in the Amended Settlement Agreement; and  
4 (d) the applications of Class Counsel for the payment of Attorneys' Fees and Expenses to Class  
5 Counsel and the payment of an Incentive Award to Plaintiff are reasonable and should be approved.  
6 The Final Approval Hearing may be postponed, adjourned, or continued by further order of this  
7 Court, without further notice to the Parties or the members of the Settlement Class.

8 11. The Claim Administrator shall provide a declaration attesting to its compliance with  
9 the Notice obligations set forth herein and the Amended Settlement Agreement not less than seven  
10 (7) days prior to the Final Approval Hearing. The declaration shall include: the total number of  
11 Class Members; a sample copy of the Class Notice; the process by which ASUS provided a list of  
12 Class Member information to the Claim Administrator for sending Email Notice and Postcard  
13 Notice; the number of Email Notices emailed and Postcard Notices mailed and the range of dates  
14 within which such Notices were sent; and the number of Postcard Notices returned to the Claim  
15 Administrator by the United States Postal Service.

16 12. Each Class Member who wishes to be excluded from the Settlement must submit to  
17 the Claim Administrator a written statement requesting exclusion from the Settlement. Such  
18 requests for exclusion must be made by submitting the online form on the Settlement Website or by  
19 mailing a valid exclusion request by First Class U.S. Mail to the address specified in the Class  
20 Notice. Such requests for exclusion must be submitted online or postmarked on or before . To  
21 be effective, the request for exclusion must:

- 22 a. Include the Class Member's full name and address;
- 23 b. Explicitly and unambiguously state his or her desire to be excluded from the  
24 Settlement; and
- 25 c. Be individually and personally signed by the Class Member (if the Class Member  
26 is represented by counsel, it must also be signed by such counsel).

1 13. Any Class Member who fails to submit a timely and valid written request for  
2 exclusion consistent with this Order shall be deemed to be a member of the Settlement Class and as  
3 such shall be bound by all terms of the Settlement proceedings, orders, and judgments of this Court  
4 pertaining to the Settlement Class pursuant to the Amended Settlement Agreement unless  
5 determined otherwise by the Court.

6 14. Class Members (whether styled as an exclusion request, an objection, or a comment)  
7 as to which it is not readily apparent whether the Class Member meant to request an exclusion from  
8 the Class will be evaluated jointly by counsel for the Parties, who will make a good-faith evaluation  
9 if possible. Any uncertainties about whether a Class Member requested to exclude himself, herself,  
10 or itself from the Settlement Class will be resolved by the Court.

11 15. The Claim Administrator shall provide in writing to Defendants' Counsel and Class  
12 Counsel the names and of those Class Members who have requested exclusion from the Settlement  
13 in a valid and timely manner within fifteen (15) days following the Objection/Exclusion Deadline,  
14 and Plaintiff's Counsel shall file that list with the Court, with service on Defendants' Counsel.

15 16. Any member of the Class who elects to be excluded shall not receive any benefits of  
16 the Settlement, shall not be bound by the terms of the Amended Settlement Agreement or any Final  
17 Approval Order, and shall have no standing to object to the Settlement or intervene in the  
18 Litigation. Members of the Class who do not wish to be bound by a judgment in favor of or against  
19 the Class must exclude themselves from the Litigation.

20 17. Any Class Member who does not submit a valid and timely request for exclusion  
21 may submit an objection to the Amended Settlement Agreement. Any Class Member (if the Class  
22 Member is represented by counsel, the objection additionally must be signed by such counsel) who  
23 intends to object to the Settlement or the Amended Settlement Agreement (including Class  
24 Counsel's requested Attorneys' Fees and Expense application) must submit a written notice of  
25 objections to the Class Action Clerk for this Court by [DATE], which must be individually and  
26 personally signed by the Class Member, and must include:  
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- a. The case name and number (*Carlotti v. Asus Computer Intl.*, Case No. 18-cv-03699-DMR);
- b. The objecting Class Member’s full name, address, and telephone number, and, if available, email address;
- c. An attestation that the objector is a member of the Class;
- d. The model and serial number of the objecting Class Member’s Laptop, along with proof of membership in the Class;
- e. A written statement of all grounds for the Objection, accompanied by any legal support for the Objection;
- f. Copies of any papers, briefs, or other documents upon which the Objection is based;
- g. The name, address, email address, and telephone number of every attorney representing the objector;
- h. A list of all cases in which the Class Member and/or his or her counsel filed or in any way participated—financially or otherwise—objecting to a class settlement in any court in the United States during the preceding five (5) years;
- i. If the Class Member or his or her counsel has not objected to any other class settlement in any court in the United States in the previous five (5) years, he or she shall affirmatively state; and
- j. A statement indicating whether the objector and/or his or her counsel intends to appear at the Final Approval Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the Objection.

18. Any Class Member wishing to make a claim must submit a Claim Form to the Claim Administrator, pursuant to the instructions set forth in the Class Notice. Claim Forms to be mailed must be postmarked, and Claims Forms to be submitted online through the Settlement Website must be submitted, no later than [DATE].

19. Objecting Class Members or their counsel who wish to appear at the Final Approval Hearing must make such request by filing with the Court and serving upon Class Counsel and Defendants’ Counsel at the following addresses a Notice of Intention to Appear at least fourteen (14) days prior to the Final Approval Hearing:

Settlement Class Counsel

1 Adam Gutride  
2 Gutride Safier LLP  
3 100 Pine St., Suite 1250  
San Francisco, California 94111

4 ASUS's Counsel

5 Luanne Sacks  
6 Michele Floyd  
7 Robert Bader  
8 Sacks Ricketts & Case LLP  
177 Post Street  
Suite 650  
San Francisco, CA 94108

9 20. The Parties to this Litigation and to the Settlement Agreement shall file any  
10 memoranda or other materials in support of Final Approval of the Settlement Agreement, including  
11 in response to any timely and valid objection to the Settlement Agreement, no later than seven (7)  
12 days prior to the Final Approval Hearing. Such materials shall be served on Class Counsel,  
13 Defendants' Counsel, and on any member of the Settlement Classes (or their counsel, if represented  
14 by counsel) to whose objection to the Settlement Agreement the memoranda or other materials  
15 respond.

16 21. Following the Final Approval Hearing, and based upon the entire record in this  
17 matter, the Court will decide whether the Amended Settlement Agreement should be finally  
18 approved and, if so, whether an award of Attorneys' Fees and Expenses of up to \$787,500 should be  
19 awarded to Class Counsel, and whether an Incentive Award of up to \$5,000 should be awarded to  
20 Plaintiff.

21 22. If the Court determines the Settlement is reasonable, fair, and adequate, the Court  
22 will issue a Final Order and Judgment memorializing its decision in the form contemplated by  
23 Exhibit D of the Amended Settlement Agreement. The Court will also issue an Order awarding  
24 reasonable fees and expenses to Class Counsel in an amount determined by the Court but in no  
25 event more than \$787,500.

26 23. Plaintiff's claims against Defendants are hereby stayed.  
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1           24. Pending final determination of whether the Settlement should be approved, Plaintiff  
2 and each Class Member, and any person purportedly acting on behalf of any Class Member(s), are  
3 hereby enjoined from commencing, pursuing, maintaining, enforcing, or proceeding, either directly  
4 or indirectly, any Released Claims in any judicial, administrative, arbitral, or other forum, against  
5 any of the Released Parties, provided that this injunction shall not apply to the claims of Class  
6 members who have timely and validly requested to be excluded from the Class. This injunction will  
7 remain in force until the Effective Date or until such time as the Parties notify the Court that the  
8 Settlement has been terminated. This injunction is necessary to protect and effectuate the  
9 Settlement, this Order, and this Court, authority regarding the Settlement, and is ordered in aid of  
10 this Court's jurisdiction and to protect its judgments.

11           25. In the event that the proposed Settlement is not finally approved by the Court, or in  
12 the event that the Amended Settlement Agreement becomes null and void or terminates pursuant to  
13 its terms, this Order and all orders entered in connection herewith shall become null and void, shall  
14 be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in  
15 this Litigation or in any other case or controversy, in such event the Settlement Agreement and all  
16 negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the  
17 rights of any and all of the Parties, who shall be restored to their respective positions as of the date  
18 and time immediately preceding the execution of the Amended Settlement Agreement.

19           26. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in  
20 connection with the administration of the Settlement which are not materially inconsistent with  
21 either this Order or the terms of the Amended Settlement Agreement.

22  
23 Dated: \_\_\_\_\_, 2019

24  
25 \_\_\_\_\_  
26 Hon. Donna M. Ryu  
27 U.S. Magistrate Judge

1 MIGLIACCIO & RATHOD LLP  
2 Nicholas Migliaccio, (appearing pro hac vice)  
3 Jason Rathod (appearing pro hac vice)  
4 Esfand Nafisi (State Bar No. 320119)  
412 H Street NE, Suite 302  
Washington, D.C. 20002

5 GUTRIDE SAFIER LLP  
6 Adam J. Gutride (State Bar No. 181446)  
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13 Counsel for Plaintiff

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 JOSEPH CARLOTTI, individually and on  
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 ASUS COMPUTER INTERNATIONAL;  
22 ASUSTEK COMPUTER INC., and DOES 1-  
23 50,

24 Defendants.

CASE NO. 18-CV-03369-DMR

**JOINT SUPPLEMENTAL  
DECLARATION OF NICHOLAS  
MIGLIACCIO AND ESFAND NAFISI IN  
SUPPORT OF PLAINTIFF’S MOTION  
FOR APPROVAL OF CLASS  
SETTLEMENT, PROVISIONAL  
CERTIFICATION OF NATIONWIDE  
SETTLEMENT CLASS, AND  
APPROVAL OF PROCEDURE FOR  
AND FORM OF NOTICE TO  
SETTLEMENT CLASS**

25 We, Nicholas A. Migliaccio and Esfand Nafisi, declare as follows pursuant to 28 U.S.C. §  
26 1746:

27 1. Nicholas Migliaccio is the founding partner of Migliaccio & Rathod LLP (“M&R”)  
28 and one of attorneys of record for Plaintiff Joseph Carlotti (“Plaintiff”). Mr. Migliaccio submits this

1 declaration in further support of Plaintiff’s motion for preliminary approval of a class action  
2 settlement with Defendants ASUS Computer International (“ACI”) and ASUSTeK Computer Inc.  
3 (collectively, “Defendants” or “ASUS”). Mr. Migliaccio makes this declaration based on his own  
4 personal knowledge, and if called to do so, could testify to the matters contained herein.

5  
6 2. Esfand Nafisi is Of Counsel at M&R and an attorney of record for Plaintiff. Mr.  
7 Nafisi submits this declaration in support of Plaintiff’s motion for preliminary approval of a class  
8 action settlement with ASUS based on his own personal knowledge. If called to do so, Mr. Nafisi  
9 could testify to the matters contained herein.

10 3. Mr. Nafisi’s July 8, 2018 Declaration in Support of Plaintiff’s Motion for Preliminary  
11 Approval (Dkt.62) provided a conservative estimate of the value of the Extended Warranty as \$700  
12 per VS Laptop. Mr. Nafisi’s estimate was based on the estimated retail cost of a replacement  
13 motherboard and power supply upgrade, which are the Qualifying Repairs offered under the  
14 Extended Warranty Program. (Dkt. 62 ¶ 18). Mr. Nafisi’s estimate did not include any cost  
15 associated with the labor for installing the replacement motherboard. As detailed below, these  
16 estimates are significantly lower than the actual costs a Class Member would be charged by ACI’s  
17 Service Department for a replacement motherboard and upgraded power supply outside the  
18 warranty.  
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20  
21 4. Following the August 22, 2019 hearing and the Court’s request for additional  
22 information about the value of the Settlement, Mr. Nafisi asked Defendants’ counsel to provide the  
23 actual costs consumers would otherwise be required to pay to obtain the Extended Warranty benefits  
24 from ACI’s Service Department. Absent the Extended Warranty program, a consumer seeking to  
25 replace a VS Laptop’s motherboard through ACI’s Service Department would be charged \$1,153.63,  
26 and the 250-watt power adapter the upgraded motherboard requires would cost an additional \$39.72.  
27 *See Declaration of Jaime Morcheco ¶¶ 2-3.* It is unlikely that consumers would pursue these costly

1 repairs—which cost a total of \$1193.35—absent this Settlement.

2           5.       Using the actual prices ACI’s Service Department charges for the Extended Warranty  
3 benefits, the aggregate value of the Extended Warranty to Class Members with VS Laptops equals  
4 the number of Class Members who purchased VS Laptops (13,500) multiplied by the cost of a  
5 replacement motherboard and power adapter through ACI’s Service Center (\$1,153.63+ \$39.72).  
6 The revised value of the Extended Warranty program is thus \$16,110,225. This far exceeds the  
7 \$6,700,000 estimate provided in Mr. Nafisi’s July 8, 2019 Declaration. (Dkt. 62 ¶ 18.).

8           6.       As detailed in the accompanying billing records, which have been submitted to the  
9 court for *in camera* review, the total number of billable hours spent on this litigation by M&R’s  
10 attorneys and professional staff from its inception in August 2017 through September 10, 2019 has  
11 been 435.4 hours of lawyer and legal assistant time, for a total lodestar of \$279,456.20. If a locality-  
12 based modifier is applied to the time of M&R’s Bay Area attorney, Mr. Nafisi, M&R’s lodestar is  
13 \$294,576.21.

14           7.       M&R undertook to represent the Plaintiff in this action on a pure contingency basis  
15 and would not have received any fees absent the firm’s success in obtaining a recovery in this action.  
16 Additionally, Plaintiff’s Counsel agreed to advance all costs incurred in connection with this action.

17           8.       M&R’s lodestar is calculated using the firm’s current rates, which are based on  
18 experience and are: \$742 an hour for Mr. Migliaccio, who has been in practice since 2002, \$658 an  
19 hour for Jason S. Rathod and Mr. Nafisi who have been in practice since 2010 and 2009,  
20 respectively,<sup>1</sup> \$371 an hour for Erick Quezada, an associate who has been in practice since 2018,<sup>2</sup>

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24 \_\_\_\_\_  
25 <sup>1</sup> Mr. Nafisi, who is the sole M&R attorney residing in the San Francisco Bay Area, respectfully  
26 requests an 8.6% locality-based adjustment of the firm’s rate due to the higher living costs of the San  
27 Francisco Bay Area compared to Washington D.C., where M&R is headquartered. (Dkt. 62 ¶¶ 26 -  
28 27).

1 \$202 an hour for former law clerk Dominique Reid, and \$202 an hour for paralegal Bruno Ortega.  
2 M&R's rates are based upon a rate scale that uses the number of years of experience to determine the  
3 timekeeper's hourly rate. M&R has requested fee awards using these rates and has had fee awards  
4 approved using these rates in numerous comparable class action litigations over the past six years as  
5 set forth below.

6  
7 9. For example, in *Singer, et al. v. Postmates*, No. 4:15-cv-01284-JSW (N.D. Cal. April  
8 25, 2018) (Dkt. 98), M&R served as co-counsel in a multistate wage theft class and collective action  
9 in which couriers alleged they were misclassified as exempt from minimum wage and overtime  
10 laws. That suit settled on a common fund basis for \$8.75 million. M&R proffered a declaration  
11 detailing our lodestar and rates, which were consistent with those sought here: between \$636 and  
12 \$718 for the firm's senior attorneys. (*see* Dkt. 89-3). The full attorneys' fee request was ultimately  
13 approved (*see* Dkt. 98).

14  
15 10. Attorneys at M&R recently served as co-lead counsel in *Matthews, et al. v. TCL*,  
16 3:17-cv-95 (W.D.N.C.), a consumer class action suit in which purchasers of Alcatel OneTouch Idol  
17 3 smartphones alleged that the manufacturer removed a material feature of the phone that reduced  
18 the phone's functionality. The suit settled for injunctive relief that permitted class members who  
19 filed a valid claim to have the feature reinstated or receive a comparable replacement Alcatel phone.  
20 M&R proffered a declaration detailing our lodestar and the same rates as those sought here – i.e.,  
21 between \$658 and \$742 an hour for the firm's senior attorneys. (*See* Dkt. 32-4). The full attorneys'  
22 fee request was ultimately approved (*see* Dkts. 37 and 38).

23  
24 11. Attorneys at M&R recently served as lead counsel in *Nelson et al. v. Sabre*

25  
26 <sup>2</sup> Due to an administrative error, five hours of Mr. Quezada's time were previously improperly  
27 categorized as law clerk time using M&R's law clerk rate. In light of this error, M&R will not seek  
28 the higher associate rate for these hours.

1 *Companies LLC*, No. 1:15-cv-00314 (N.D.N.Y.), where M&R represented approximately 59  
2 equipment operators in a collective action against an oilfield services provider, culminating in a \$2.1  
3 million settlement. The Court in *Nelson* awarded M&R our requested fee award after we provided  
4 our lodestar using rates consistent with the foregoing rate scale. (*See* Dkts. 183-2 and 189).

5  
6 12. Attorneys at M&R also recently served as co-lead counsel in *Corbin v. CFRA, LLC*,  
7 Case No. 1:15-cv-00405 (M.D.N.C.), where we represented approximately 1,520 servers in a  
8 collective action against a major IHOP franchise for wage theft violations, culminating in a \$1.725  
9 million settlement. The Court in *Corbin* awarded M&R our requested fee award after we provided  
10 our lodestar using rates consistent with the foregoing rate scale (*see* Dkts. 92-3 and 93).

11  
12 13. In 2016, attorneys at M&R also served co-counsel in *Snodgrass v. Bob Evans*, Civil  
13 No. 12-cv-768 (S.D. Ohio), which involved class and collective action claims brought on behalf of  
14 assistant managers against Bob Evans. After extensive litigation, the *Snodgrass* action settled on a  
15 collective and class-wide basis for \$16.5 million. In issuing the order granting final approval, the  
16 court took special note of the “competence of Plaintiffs’ Counsel in prosecuting this complex  
17 litigation, and the risks associated with the prosecution of the claims of the settlement class.” The  
18 Court in *Snodgrass* also awarded M&R our requested fee award after we provided our lodestar using  
19 rates consistent with the foregoing rate scale (*see* Dkts. 216-3 and 219).

20  
21 14. Attorneys at M&R additionally recently served as co-counsel in *Bland v. Calfrac*,  
22 Civil No. 2:12-cv-1407 (W.D. Pa.), which involved class and collective action claims brought on  
23 behalf of field operators who worked in the oil and gas industry. After extensive litigation, the  
24 *Bland* action settled on a collective and class-wide basis for \$6 million. The Court in *Bland* also  
25 awarded M&R our requested fee award after we provided our lodestar using rates consistent with the  
26 foregoing rate scale. (*see* Dkts. 93-1, 93-2 and 95).

27  
28 15. Should the foregoing evidence not persuade the Court that the rates for M&R’s D.C.-

1 based attorneys are reasonable, the caselaw allows the Court to exercise its discretion to determine  
2 reasonable hourly rates based on the court's experience and knowledge of prevailing rates in the  
3 community. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

4           16.       Accordingly, we respectfully submit in the alternative that the rates for M&R's  
5 attorneys are reasonable based on the prevailing rates in the community. *See, e.g., Prison Legal*  
6 *News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (finding district court did not abuse its  
7 discretion in awarding hourly rates for Bay Area attorneys of up to \$875 for a partner); *G. F. v.*  
8 *Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 U.S. Dist. LEXIS 159597, 2015 WL 7571789, at  
9 \*13-14 (N.D. Cal. Nov. 25, 2015) (civil rights class action settlement approving rates as high as  
10 \$975 per hour for senior litigators); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA,  
11 2015 U.S. Dist. LEXIS 67298, at \*14 (N.D. Cal. May 21, 2015) (finding reasonable rates for Bay  
12 Area attorneys of between \$475-\$975 for partners, \$300-\$490 for associates, and \$150-\$430 for  
13 litigation support and paralegals). The Northern District of California has even awarded comparable  
14 rates sought by M&R's attorneys to other Washington D.C. based plaintiff-side law firms in  
15 consumer class action settlements. *See, e.g., Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-YGR,  
16 2017 U.S. Dist. LEXIS 105463, at \*24 (N.D. Cal. July 7, 2017) (awarding similar rates to  
17 Washington D.C. based law firm of Tycko & Zavareei LLP).  
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1 Pursuant to 28 U.S.C. Section 1746, we declare under penalty of perjury that the foregoing is  
2 true and correct.

3 Executed on this 12<sup>th</sup> day of September 2019, in Washington, D.C. and San Francisco,  
4 California.

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7 /s/ Nicholas A. Migliaccio \_  
8 Nicholas A. Migliaccio

Esfand Y. Nafisi  
Esfand Y. Nafisi

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**CERTIFICATE OF SERVICE**

I, Esfand Nafisi, certify that on September 12, 2019, I caused the foregoing to be filed using the Court's CM/ECF system, thereby causing it to be served on all registered ECF users in this case.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**DECLARATION OF JAIME  
MORQUECHO**

1 I, Jaime Morquecho, declare and state that:

2 1. I am Senior Manager of Service at ASUS Computer International ("ACI"). Unless otherwise  
3 noted, I have personal knowledge of the facts set forth in this declaration and could and would  
4 testify competently to them if called upon to do so.

5 2. If ACI charged a consumer to replace the original motherboard included in the ASUS ROG  
6 Strix GL502VS laptop with an upgraded motherboard outside the warranty period, the current cost  
7 would be \$1,153.63.

8 3. If ACI charged a consumer to provide a 230-watt power adapter that is compatible with the  
9 ASUS ROG Strix GL502VS laptop outside the warranty period, the current cost would be \$39.72.

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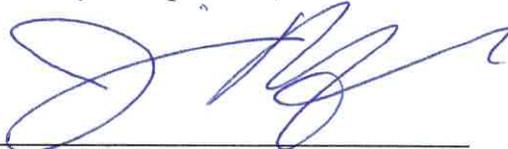
11 I declare under penalty of perjury under the laws of the United States that the foregoing is  
12 true and correct.

13 Executed at Fremont, California this 12th day of September, 2019.

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Jaime Morquecho

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; PROVISIONALLY  
CERTIFYING THE NATIONWIDE  
SETTLEMENT CLASS; AND  
DIRECTING DISSEMINATION OF  
CLASS NOTICE**

The Parties to the above-captioned action have entered into a Settlement Agreement (submitted to the Court concurrently with the Declaration of Adam J. Gutride) to settle the above-captioned putative class action in its entirety, and Plaintiff Joseph Carlotti (“Plaintiff”) has filed an unopposed Motion for Approval of Class Settlement Provisional Certification of Nationwide Settlement Class, and Approval of Procedure For and Form of Notice to Settlement Class, and a supporting memorandum (“Motion”). All capitalized terms used in this Order have the meaning as defined in the Settlement Agreement.

**RECITALS**

This case concerns Defendant ASUSTeK Computer Inc. (“ASUSTeK”) and ASUS Computer International (“ACI”) (collectively, “ASUS” or “Defendants”) marketing, selling, and warranting of the ASUS Rog Strix GL502VS laptop and the ASUS Rog Strix GL502VSK laptop (“Laptop” or “Laptops”) from May 4, 2014 to the date of this order (“Class Period”).

Plaintiff contends that Defendants deceptively advertised the suitability of the Laptops as

1 portable gaming computers. In particular, Plaintiff alleges that the Laptop he purchased suffered  
2 from the following two defects: (1) the Laptop's power supply unit did not provide sufficient power  
3 to the Laptop such that the Laptop's battery drained during use even when the Laptop was plugged  
4 into an electrical outlet; the Laptop experienced reductions in computational performance when it  
5 was low on battery power or when the battery was removed, even when the Laptop was connected  
6 to an electrical outlet; and there was accelerated degradation of the Laptop's battery (the "Power  
7 Defect"); and (2) the Laptop's cooling systems inadequately dissipated heat generated by the  
8 Laptop during computationally demanding tasks such that the Laptop became hot to the touch  
9 during use (the "Overheating Issue"). Plaintiff alleges that all the Laptops experienced the Power  
10 Defect and Overheating Issue. Plaintiff alleged claims for violations of the breach of express  
11 warranty; breach of implied warranty; violation of the Magnuson-Moss Warranty Act; deceit and  
12 fraudulent concealment; unjust enrichment; violations of the California Consumer Legal Remedies  
13 Act, Civil Code § 1750, *et seq.*; false advertising under Bus. and Prof. Code § 17500, *et seq.*; and  
14 unfair business practices under Cal. and Prof. Code § 17200, *et seq.* He sought to pursue these  
15 claims on behalf of himself and a nationwide class of purchasers of the Laptops and sought money  
16 damages and an injunction.

17 Defendants deny Plaintiff's allegations. They contend that the advertising of the Laptops is,  
18 and has always been, truthful and not misleading. Defendants also dispute that the Laptops suffered  
19 from the Power Defect or the Overheating Issue. Defendants deny that the written warranty covers  
20 any alleged design defects. Defendants also dispute that Laptop purchasers suffered any damages  
21 because they claim that the Laptops performed as good as, or better than, other laptops in the  
22 market. Defendants therefore deny any liability, and deny that Plaintiff or any class members have  
23 suffered injury. Defendants further deny that this case meets the requirements for class certification  
24 under Fed. R. Civ. P. 23, except for purposes of settlement.

25 The history of this litigation is summarized in Part 1 of the Settlement Agreement. In brief,  
26 this case was filed on May 4, 2018 in California Superior Court, and ACI removed the case to this  
27 Court on June 7, 2018. Plaintiff moved for, and the Court entered, an order authorizing service on  
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1 Defendant ASUSTeK, a Taiwanese corporation, using alternative means. The Parties engaged in  
2 significant discovery. Plaintiff served ACI with discovery requests and noticed its deposition under  
3 Rule 30(b)(6) of Federal Rule of Civil Procedure. ACI produced documents in response to  
4 Plaintiff's discovery requests, including documents providing sales and warranty data and hardware  
5 and software engineering reports. ACI deposed Plaintiff.

6 On March 19, 2019, the Parties to this case participated in an all-day mediation conducted  
7 by the Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in the  
8 Settlement that is the subject of this Order.

9 On July 8, 2019, Plaintiff filed a Motion for Preliminary Approval of Settlement. (Dkt. #  
10 59.) After the August 22, 2019 hearing on Plaintiff's Motion for Preliminary Approval, the Court  
11 issued an order requesting additional information regarding the Settlement. (Dkt. # 65.) Plaintiff  
12 filed a supplemental brief in support of Plaintiff's Motion for Preliminary Approval and supporting  
13 declarations on September 12, 2019. The parties entered into an Amended Settlement Agreement.

14 The terms of the Settlement are summarized in the proposed Long Form Notice to  
15 Settlement Class Members, which is attached as Exhibit B1 to the Amended Settlement Agreement.  
16 Defendants have agreed to provide an extended warranty on all ASUS Rog Strix GL502VS laptops  
17 to cover Qualifying Repairs, which includes a motherboard replacement and new power adaptor,  
18 until the later of: (i) three years from the date of purchase; (ii) 90 days from Final Approval; or (iii)  
19 180 days from the date of a prior replacement of the internal power supply and/or AC power  
20 adaptor by ASUS.

21 Defendants have also agreed to make up to approximately \$5.2 million in cash benefits  
22 available to Class Members as follows. All Class Members who previously complained of the  
23 Power Defect or Overheating Issue to Defendants will automatically receive a \$210 Credit  
24 Certificate without the necessity of filing a claim (or a \$110 Cash Payment if the Class Member  
25 files a claim). Class Members can receive a \$210 Credit Certificate or a \$110 Cash Payment if they:  
26 (a) registered their Laptop with ASUS; (b) purchased their Laptop from ASUS's website; or (c)  
27 submit Proof of Purchase of the Laptop with their Claim Form. Class Members who cannot meet  
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1 any of these proof requirements can obtain a \$105 Credit Certificate or \$55 Cash Payment as long  
2 as they provide the Laptop's Serial Number with the Claim Form.

3 As part of the Settlement, Class Counsel may apply to this Court for an award of attorneys'  
4 fee and expenses of up to \$787,500.00, as well as up to \$5,000 as an Incentive Award to Plaintiff.  
5 Such amounts must be approved by the Court, and the Court will defer any ruling on the  
6 appropriateness of such awards until the Final Approval Hearing.

7 Class Notice is to be provided as described in the Amended Settlement Agreement  
8 consistent with a notice plan designed by Angeion Group, the Claim Administrator, a well-known  
9 and experienced class action administrator. The Claim Administrator also will receive and process  
10 Claim Forms. In brief, Class Notice will be provided via: (1) direct Email Notice to those Class  
11 Members for whom an email address is available; (2) direct Postcard Notice mailed to those Class  
12 Members for whom a physical mailing address is available; (3) Publication Notice in *People*  
13 magazine and the California regional edition of *USA Today*; (4) publication of Online Notice  
14 targeted at likely Class Members served across relevant internet websites and social media  
15 platforms; (5) publication of Online Notice on Defendant's websites and social media platforms;  
16 and (6) publication on a Settlement Website, located at [www.asuslaptopsettlement.com](http://www.asuslaptopsettlement.com).

17 All of the notices will link or point to the Settlement Website, which will contain a detailed  
18 class notice, including the procedures for class members to exclude themselves from the Settlement  
19 or object, as well as a copy of the Amended Settlement Agreement and motion papers filed in  
20 connection with the Settlement.  
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**FINDINGS AND CONCLUSIONS**

The Court has read and considered the Motion and all of the supporting documents, including the Settlement Agreement, the Amended Settlement, and their Exhibits, including the proposed Class Notice. The Court finds that there is a sufficient basis for granting preliminary approval of the Amended Settlement Agreement, authorizing dissemination of the Class Notice, and authorizing the steps needed to determine whether the Amended Settlement Agreement should be finally approved and the Litigation dismissed.

Accordingly, it is HEREBY ORDERED that:

1. The Amended Settlement Agreement, filed on September 12, 2019, is preliminarily approved as likely to be approved under Federal Rule of Civil Procedure (“Rule”) 23(e)(2) and as meriting notice to the Class for its consideration. Considering the factors set forth in Rule 23(e)(2), the Court preliminarily finds as follows:

- a. Class Representatives and Class Counsel have adequately represented the Class.
- b. The Settlement was negotiated at arm’s length with the assistance of a well-respected and experienced private mediator.
- c. The relief provided to the Class in the form of injunctive and monetary relief is adequate given the risks and uncertainty of trial.
- d. The proposal treats all Class Members equally relative to each other.

2. Based upon the submissions of the Parties, and for the purposes of this Settlement only, the Court conditionally makes the following findings:

- a. Members of the Class are so numerous as to make joinder impracticable.
- b. There are questions of law and fact common to the Class, and such questions predominate over any questions affecting only individual Class Members for purposes of the Settlement.
- c. Plaintiff’s claims and the defenses thereto are typical of the claims of the Class Members and the defenses thereto for purposes of the Settlement.

- 1 d. Plaintiff and his counsel have, and will continue to, fairly and adequately protect  
2 the interests of the Class Members in this action with respect to the Settlement.  
3 e. The proposed Settlement is superior to all other available methods for fairly and  
4 efficiently resolving this action.

5 Accordingly, for settlement purposes only, the Court conditionally certifies a Class  
6 comprised of all persons who purchased a new ASUS ROG Strix GL502VS or GL502VSK laptop  
7 computer in the United States from Defendants or an authorized retailer of Defendants between  
8 May 4, 2014 and the date Preliminary Approval is entered.

9 3. The Court finds it appropriate to establish the following exclusions from the  
10 Settlement Class: the undersigned judge and any member of her immediate family; (b) any  
11 government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e)  
12 any entity in which Defendants have a controlling interest; (f) any of Defendants' parents, affiliates,  
13 and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person  
14 whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the  
15 Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from  
16 ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues  
17 alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from  
18 the Power Defect or Overheating Issue; (k) any person who signed a release regarding their Laptop;  
19 and (l) all persons who file a timely request for exclusion from the Class.

20 4. The Court appoints Plaintiff Joseph Carlotti to serve as Class Representative for the  
21 Class.

22 5. The Court appoints the law firms of Gutride Safier LLP and Miglaccio & Rathod  
23 LLP to serve as Class Counsel.

24 6. The Court finds that the terms of the Amended Settlement Agreement are  
25 sufficiently fair, reasonable, and adequate to allow dissemination of the Class Notice to members of  
26 the Class. This determination is not a final finding that the Settlement is fair, reasonable and  
27

1 adequate, but it is a determination that probable cause exists to disseminate Class Notice to the  
2 Class Members and hold a hearing on final approval of the proposed Settlement.

3 7. The Court appoints and designates Angeion Group as the Claim Administrator.

4 8. The Court approves, as to form and content, the Claim Forms and the Class Notice,  
5 substantially similar to the forms attached as Exhibits A – B5 to the Amended Settlement  
6 Agreement. The Claim Forms and the Class Notice are written in plain English, are easy to  
7 comprehend, and fully comply with the requirements of the Due Process Clause of the United States  
8 Constitution, Rule 23, and any other applicable law. The Parties shall have discretion to jointly  
9 make non-material minor revisions to the Claim Forms or the Class Notice. Responsibility  
10 regarding settlement administration, including, but not limited to, notice and related procedures,  
11 shall be performed by the Claim Administrator, subject to the oversight of the Parties and this Court  
12 as described in the Amended Settlement Agreement. The costs of providing Class Notice to the  
13 Class Members shall be borne by ASUS.

14 9. ASUS shall pay the Claim Administrator’s reasonable costs associated with the  
15 administration of the Settlement up to \$200,000, distribution of Class Notice pursuant to the  
16 Amended Settlement Agreement, and any other tasks assigned to the Claim Administrator under the  
17 Amended Settlement Agreement, by ASUS’s and the Class Representative’s mutual written  
18 agreement, or as this Court may order.

19 10. Pursuant to Rule 23(e)(2) and 28 U.S.C. § 1715(d), a Final Approval Hearing shall  
20 be held on \_\_\_\_\_, at \_\_\_\_:00 a.m. / p.m. before the undersigned at the Ronald V.  
21 Dellums Federal Building and U.S. Courthouse, 1301 Clay St., Oakland, California, for the purpose  
22 of finally determining whether (a) this action meets each of the prerequisites for class certification  
23 set forth in Federal Rule of Civil Procedure 23(a) and may properly be maintained as a class action  
24 on behalf of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the Amended  
25 Settlement Agreement should receive final approval as fair, reasonable, adequate, and is in the best  
26 interests of the Settlement Class in light of any objections presented by Class Members and the  
27 Parties’ responses to any such objections; (c) the Court should grant final approval of the Amended  
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1 Settlement Agreement, entering final judgment and dismissing the Class Action Complaint,  
2 including dismissing the claims concerning the Laptops identified in the Amended Settlement  
3 Agreement to be dismissed with prejudice), as provided in the Amended Settlement Agreement; and  
4 (d) the applications of Class Counsel for the payment of Attorneys' Fees and Expenses to Class  
5 Counsel and the payment of an Incentive Award to Plaintiff are reasonable and should be approved.  
6 The Final Approval Hearing may be postponed, adjourned, or continued by further order of this  
7 Court, without further notice to the Parties or the members of the Settlement Class.

8           11. The Claim Administrator shall provide a declaration attesting to its compliance with  
9 the Notice obligations set forth herein and the Amended Settlement Agreement not less than seven  
10 (7) days prior to the Final Approval Hearing. The declaration shall include: the total number of  
11 Class Members; a sample copy of the Class Notice; the process by which ASUS provided a list of  
12 Class Member information to the Claim Administrator for sending Email Notice and Postcard  
13 Notice; the number of Email Notices emailed and Postcard Notices mailed and the range of dates  
14 within which such Notices were sent; and the number of Postcard Notices returned to the Claim  
15 Administrator by the United States Postal Service.

16           12. Each Class Member who wishes to be excluded from the Settlement must submit to  
17 the Claim Administrator a written statement requesting exclusion from the Settlement. Such  
18 requests for exclusion must be made by submitting the online form on the Settlement Website or by  
19 mailing a valid exclusion request by First Class U.S. Mail to the address specified in the Class  
20 Notice. Such requests for exclusion must be submitted online or postmarked on or before . To  
21 be effective, the request for exclusion must:

- 22           a. Include the Class Member's full name and address;
- 23           b. Explicitly and unambiguously state his or her desire to be excluded from the  
24 Settlement; and
- 25           c. Be individually and personally signed by the Class Member (if the Class Member  
26 is represented by counsel, it must also be signed by such counsel).



- a. The case name and number (*Carlotti v. Asus Computer Intl.*, Case No. 18-cv-03699-DMR);
- b. The objecting Class Member's full name, address, and telephone number, and, if available, email address;
- c. An attestation that the objector is a member of the Class;
- d. The model and serial number of the objecting Class Member's Laptop, along with proof of membership in the Class;
- e. A written statement of all grounds for the Objection, accompanied by any legal support for the Objection;
- f. Copies of any papers, briefs, or other documents upon which the Objection is based;
- g. The name, address, email address, and telephone number of every attorney representing the objector;
- h. A list of all cases in which the Class Member and/or his or her counsel filed or in any way participated—financially or otherwise—objecting to a class settlement in any court in the United States during the preceding five (5) years;
- i. If the Class Member or his or her counsel has not objected to any other class settlement in any court in the United States in the previous five (5) years, he or she shall affirmatively state; and
- j. A statement indicating whether the objector and/or his or her counsel intends to appear at the Final Approval Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the Objection.

18. Any Class Member wishing to make a claim must submit a Claim Form to the Claim Administrator, pursuant to the instructions set forth in the Class Notice. Claim Forms to be mailed must be postmarked, and Claims Forms to be submitted online through the Settlement Website must be submitted, no later than [DATE].

19. Objecting Class Members or their counsel who wish to appear at the Final Approval Hearing must make such request by filing with the Court and serving upon Class Counsel and Defendants' Counsel at the following addresses a Notice of Intention to Appear at least fourteen (14) days prior to the Final Approval Hearing:

Settlement Class Counsel

1 Adam Gutride  
2 Gutride Safier LLP  
3 100 Pine St., Suite 1250  
4 San Francisco, California 94111

4 ASUS's Counsel

5 Luanne Sacks  
6 Michele Floyd  
7 Robert Bader  
8 Sacks Ricketts & Case LLP  
9 177 Post Street  
10 Suite 650  
11 San Francisco, CA 94108

12 20. The Parties to this Litigation and to the Settlement Agreement shall file any  
13 memoranda or other materials in support of Final Approval of the Settlement Agreement, including  
14 in response to any timely and valid objection to the Settlement Agreement, no later than seven (7)  
15 days prior to the Final Approval Hearing. Such materials shall be served on Class Counsel,  
16 Defendants' Counsel, and on any member of the Settlement Classes (or their counsel, if represented  
17 by counsel) to whose objection to the Settlement Agreement the memoranda or other materials  
18 respond.

19 21. Following the Final Approval Hearing, and based upon the entire record in this  
20 matter, the Court will decide whether the Amended Settlement Agreement should be finally  
21 approved and, if so, whether an award of Attorneys' Fees and Expenses of up to \$787,500 should be  
22 awarded to Class Counsel, and whether an Incentive Award of up to \$5,000 should be awarded to  
23 Plaintiff.

24 22. If the Court determines the Settlement is reasonable, fair, and adequate, the Court  
25 will issue a Final Order and Judgment memorializing its decision in the form contemplated by  
26 Exhibit D of the Amended Settlement Agreement. The Court will also issue an Order awarding  
27 reasonable fees and expenses to Class Counsel in an amount determined by the Court but in no  
28 event more than \$787,500.

23. Plaintiff's claims against Defendants are hereby stayed.

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24. Pending final determination of whether the Settlement should be approved, Plaintiff and each Class Member, and any person purportedly acting on behalf of any Class Member(s), are hereby enjoined from commencing, pursuing, maintaining, enforcing, or proceeding, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral, or other forum, against any of the Released Parties, provided that this injunction shall not apply to the claims of Class members who have timely and validly requested to be excluded from the Class. This injunction will remain in force until the Effective Date or until such time as the Parties notify the Court that the Settlement has been terminated. This injunction is necessary to protect and effectuate the Settlement, this Order, and this Court, authority regarding the Settlement, and is ordered in aid of this Court’s jurisdiction and to protect its judgments.

25. In the event that the proposed Settlement is not finally approved by the Court, or in the event that the Amended Settlement Agreement becomes null and void or terminates pursuant to its terms, this Order and all orders entered in connection herewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Litigation or in any other case or controversy, in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Amended Settlement Agreement.

26. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Amended Settlement Agreement.

Dated: \_\_\_\_\_, 2019

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Hon. Donna M. Ryu  
U.S. Magistrate Judge