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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 EMILY CHEBUL, individually and on behalf
11 of all others similarly situated,

12 *Plaintiff,*

13 v.

14 TUFT & NEEDLE, LLC,

15 *Defendant.*

Case No. 25CU059198N

**PLAINTIFF’S NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
ATTORNEYS’ FEES, COSTS, AND
INCENTIVE AWARD; MEMORANDUM
OF POINTS AND AUTHORITIES**

*Filed concurrently with Declaration of Simon
Franzini; [Proposed] Order*

Date: July 10, 2026
Time: 1:30 p.m.
Judge: William Y. Wood
Department: N-29

1 **Notice of Motion and Motion**

2 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on April 17, 2026, the Honorable William Y. Wood
4 granted preliminary approval of the class action Settlement Agreement in this matter and set a
5 Final Approval Hearing to be held on July 10, 2026, at 1:30 p.m. At the Final Approval Hearing,
6 Plaintiff Emily Chebul (the “Class Representative”) will, and hereby does, move for entry of an
7 order:

- 8 1. Awarding \$699,691.57 in attorneys’ fees and \$49,132.43 in cost reimbursements
9 to Class Counsel; and
10 2. Awarding a \$5,000 incentive award to the Class Representative.
11

12 This Motion is based on this Notice of Motion and Unopposed Motion for Attorneys’
13 Fees, Costs, and Incentive Award, the concurrently filed Memorandum of Points and Authorities,
14 the Declaration of Simon Franzini (“Franzini Decl.”), and all supporting exhibits, the records and
15 papers filed in this action, and any argument or evidence that may be presented at the hearing on
16 this matter.
17

18 Dated: May 29, 2026

Respectfully submitted,

19 By: /s/ Simon Franzini

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Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Introduction. 10

II. The Settlement..... 10

III. The requested fee award is fair, reasonable, and justified..... 12

 A. The Court should use the favored percentage method. 13

 B. The requested fee is reasonable under the percentage-of-recovery method..... 16

 C. The relevant factors confirm that the requested fees are reasonable..... 17

 1. Class Counsel achieved an excellent result for the Settlement
 Class. 17

 2. The case presented significant and material risks. 19

 3. The Settlement Class benefited from Counsel’s excellent work and
 significant expertise in this area. 20

 4. Class Counsel took this case on a contingency basis and has borne
 significant financial burdens. 21

 5. Courts regularly award significantly higher fees. 22

 D. A lodestar cross-check is optional, and also supports the requested fee
 award. 22

IV. The requested costs are reasonable and should be approved. 24

V. The requested incentive award is reasonable and should be approved. 25

VI. Conclusion..... 26

Table of Authorities

Cases

Aguilar v. Wawona Frozen Foods,
(E.D. Cal. May 18, 2017) 2017 U.S. Dist. LEXIS 76751 23

Ahmed v. HSBC Bank USA,
(C.D. Cal. June 21, 2019) 2019 U.S. Dist. LEXIS 104401 25, 26

Amaro v. Anaheim Arena Management, LLC,
(Cal. Ct. App. 2021) 69 Cal.App.5th 521 16

Bakhtiar v. Info. Res., Inc.,
(N.D. Cal. Aug. 4, 2020) 2020 U.S. Dist. LEXIS 258600 20

Barbosa v. Cargrill Meat Solutions Corp.,
(E.D. Cal. 2013) 297 F.R.D. 431 21

Bellinghausen v. Tractor Supply Co.,
(N.D. Cal. 2015) 306 F.R.D. 245 25

Bergara v. Bread & Cie Inc.,
(San Diego Super. Ct. Jan. 19, 2024) 2024 Cal. Super. LEXIS 4532 16

Bravo v. Gale Triangle, Inc.,
(C.D. Cal. Feb. 16, 2017) 2017 U.S. Dist. LEXIS 77714 19

Broomfield v. Craft Brew Alliance, Inc.,
(N.D. Cal. Feb. 5, 2020) 2020 U.S. Dist. LEXIS 74801 17

Buccellato v. AT&T Operations, Inc.,
(N.D. Cal. June 30, 2011) 2011 U.S. Dist. LEXIS 85699 23

Cellphone Termination Fee Cases,
(Cal. Ct. App. 2010) 186 Cal.App.4th 1380 25

Chaikin v. Lululemon USA Inc.,
(S.D. Cal. Mar. 14, 2014) 2014 U.S. Dist. LEXIS 35258 11

1 *Chavez v. Netflix, Inc.*,

2 (Cal. Ct. App. 2008) 162 Cal.App.4th 43 16, 22, 23, 25

3 *Chowning v. Kohl’s Dep’t Stores, Inc.*,

4 (C.D. Cal. Apr. 1, 2016) 2016 U.S. Dist. LEXIS 188341 20

5 *Cinto v. Asendia United States*,

6 (L.A. Super. Ct. June 2, 2022) 2022 Cal. Super. LEXIS 87143 16

7 *Cody v. SoulCycle Inc.*,

8 (C.D. Cal. Oct. 3, 2017) 2017 U.S. Dist. LEXIS 163965 14

9 *Consumer Privacy Cases*,

10 (Cal. Ct. App. 2009) 175 Cal.App.4th 545 12, 13, 16, 25

11 *Corzine v. Whirlpool Corp.*,

12 (N.D. Cal. Dec. 31, 2019) 2019 U.S. Dist. LEXIS 223341 24

13 *Defrees v. Kirkland*,

14 (C.D. Cal. July 26, 2018) 2018 U.S. Dist. LEXIS 125462 21

15 *Ebarle v. Lifelock, Inc.*,

16 (N.D. Cal. Sept. 20, 2016) 2016 U.S. Dist. LEXIS 128279 22

17 *Farrell v. Bank of Am., N.A.*,

18 (9th Cir. Sept. 2, 2020) 827 F. App’x 628 22

19 *Farrell v. Bank of Am., N.A.*,

20 (S. D. Cal. 2018) 327 F.R.D. 422 22

21 *Flores v. Heritage Bag Co.*,

22 (San Bernardino Super. Ct. Apr. 7, 2023) 2023 Cal. Super. LEXIS 52808 16

23 *Graciano v. Robinson Ford Sales, Inc.*,

24 (Cal. Ct. App. 2006) 144 Cal.App.4th 140 12

25 *Hernandez v. Restoration Hardware, Inc.*,

26 (2018) 4 Cal.5th 260 16

27

28

1 *In re Apple Inc. Device Performance Litig.*,
2 (N.D. Cal. Mar. 17, 2021) 2021 U.S. Dist. LEXIS 50546 12, 13
3 *In re Cendant Corp. Litig.*,
4 (3d Cir. 2001) 264 F.3d 201 15
5 *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching: Grades 7-12 Litig.*,
6 (E.D. La. 2006) 447 F. Supp. 2d 612 15
7 *In re Immune Response Sec. Litig.*,
8 (S.D. Cal. 2007) 497 F. Supp. 2d 1166 25
9 *In re Omnivision Techs. Inc.*,
10 (N.D. Cal. 2007) 559 F.Supp.2d 1036 13, 17
11 *In re Vicks*,
12 (2013) 56 Cal.4th 274..... 16
13 *Jacobo v. Ross Stores, Inc.*,
14 (C.D. Cal. Aug. 6, 2019) 2019 U.S. Dist. LEXIS 247426 18
15 *Johnson v. Moss Bros. Auto Grp., Inc.*,
16 (C.D. Cal. June 24, 2022) 2022 U.S. Dist LEXIS 112361 14
17 *Kangas v. Volkswagen Grp. of Am. Inc. (In re Volkswagen “Clean Diesel” Mktg., Prod. Liab.*
18 *Litig.)*,
19 (9th Cir. July 23, 2018) 746 F. App’x 655 24
20 *Karton v. Ari Design & Constr., Inc.*,
21 (Cal. Ct. App. 2021) 61 Cal.App.5th 734 13
22 *Ketchum v. Moses*,
23 (2001) 24 Cal.4th 1122..... 21
24 *Laffitte v. Robert Half Int’l Inc.*,
25 (2016) 1 Cal.5th 480..... 12, 13, 14, 15, 16, 22
26 *Lealao v. Beneficial California, Inc.*,
27 (Cal. Ct. App. 2000) 82 Cal.App.4th 19 14, 15
28

1 *Lopez v. Youngblood*,

2 (E.D. Cal. Sept. 1, 2011) 2011 U.S. Dist. LEXIS 99289 14, 15

3 *McKillop v. Onehalloweennight Inc.*,

4 (Sacramento Super. Ct.) 2022 Cal. Super. LEXIS 71655 17

5 *Moodie v. Maxim Healthcare Servs.*,

6 (C.D. Cal. Nov. 12, 2019) 2019 U.S. Dist. LEXIS 196098 23

7 *O’Keefe v. Mercedes-Benz United States, LLC*,

8 (E.D. Pa. 2003) 214 F.R.D. 266 15

9 *Ochoa v. Cke Rests. Holdings*,

10 (Los Angeles Super. Ct. Oct. 7, 2022) 2022 Cal. Super. LEXIS 85630 23

11 *Odom v. ECA Mktg.*,

12 (C.D. Cal. Dec. 22, 2021) 2021 U.S. Dist. LEXIS 246032..... 23

13 *Perez v. DIRECTV Grp. Holdings, LLC*,

14 (C.D. Cal. Jan. 23, 2023) 2023 U.S. Dist. LEXIS 13920..... 20

15 *Ramirez v. Yin Mgmt*,

16 (Sacramento Super. Ct. Sept. 9, 2022) 2022 Cal. Super. LEXIS 55975 23

17 *Rankin v. Am. Greetings, Inc.*,

18 (E.D. Cal. July 5, 2011) 2011 U.S. Dist. LEXIS 72250..... 22

19 *Rawlings v. Prudential-Bache Properties, Inc.*,

20 (6th Cir. 1993) 9 F.3d 513 14

21 *Resnick v. Frank*,

22 (*In re Online DVD-Rental Antitrust Litig.*) (9th Cir. 2015) 779 F.3d 934 26

23 *Reyes v. Bakery & Confectionery Union & Indus. Int’l Pension Fund*,

24 (N.D. Cal. 2017) 281 F. Supp. 3d 833 24

25 *Rivali v. Shutterfly, LLC*,

26 (San Diego Super. Ct. Feb. 16, 2024) 2024 Cal. Super. LEXIS 6956 17

27

28

1 *Rodriguez v. Cal. Payroll Group,*
2 (San Bernardino Super. Ct. Jan. 24, 2022) 2022 Cal. Super. LEXIS 47539..... 16
3 *Roos v. Honeywell International, Inc.,*
4 (Cal. Ct. App. 2015) 241 Cal.App.4th 1472 16
5 *Russell v. Kohl’s Dep’t Stores,*
6 (C.D. Cal. Feb. 22, 2019) 2019 U.S. Dist. LEXIS 241132 18
7 *Spann v. J.C. Penney Corp.,*
8 (C.D. Cal. 2016) 314 F.R.D. 312 18
9 *Spencer-Ruper v. Scientiae,*
10 (C.D. Cal. Sept. 24, 2021) 2021 U.S. Dist. LEXIS 20424 20, 21
11 *Sperling v. Stein Mart, Inc.,*
12 (C.D. Cal. 2018) 291 F. Supp. 3d 1076..... 19, 20
13 *Steele v. Legoland Cal. LLC,*
14 (San Diego Super. Ct. Nov. 17, 2023) 2023 Cal. Super. LEXIS 91704 23
15 *Sutter Health Uninsured Pricing Cases,*
16 (Cal. Ct. App. 2009) 171 Cal.App.4th 495 24
17 *Tait v. BSH Home Appliances Corp.,*
18 (C.D. Cal. July 27, 2015) 2015 U.S. Dist. LEXIS 98546 14
19 *Team Design v. Reliant Energy, Inc. (Coordination Proceeding Special Title (Rule 1550(b)),*
20 (San Diego Super. Ct. June 19, 2007) 2007 Cal. Super. LEXIS 2160 23
21 *Vasquez v. Coast Valley Roofing, Inc.,*
22 (E.D. Cal. 2010) 266 F.R.D. 482..... 17
23 *Vianu v. AT&T Mobility LLC,*
24 (N.D. Cal. Nov. 8, 2022) 2022 U.S. Dist. LEXIS 203520 13
25 *Vizcaino v. Microsoft Corp.,*
26 (9th Cir. 2002) 290 F.3d 1043 17, 19, 23
27
28

1 *Walter v. Farfetch*,
2 (Orange County Super. Ct. Aug. 11, 2023) 2023 Cal. Super. LEXIS 6121824
3 *Watson v. Jones Fin. Cos.*,
4 (Sacramento Super. Ct. Nov. 16, 2020) 2020 Cal. Super. LEXIS 1769 16
5 *Wershba v. Apple Computer, Inc.*,
6 (Cal. Ct. App. 2001) 91 Cal.App.4th 224 13, 24
7 **Statutes**
8 Cal. Civ. Code § 1780(e)..... 12
9 Evidence Code Section 452(c) 16
10 Evidence Code Section 452(d) 16
11 **Other Authorities**
12 Manual for Complex Litigation 4th Ed. §14.121 15
13 Newberg On Class Actions § 14.723

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1 **Memorandum of Points and Authorities**

2 **I. Introduction.**

3 After substantial litigation and settlement negotiations, and despite the numerous risks
4 present in this case, Class Counsel achieved an excellent Settlement that will provide more than
5 \$3.7 million in benefits to the Settlement Class, including significant and automatic direct relief.

6 Per the Settlement, Class Counsel requests an award of \$699,691.57 in attorneys’ fees.
7 Such an award is expressly permitted by the Settlement Agreement, and Defendant has agreed to
8 pay it on top of the relief it has agreed to distribute to the Settlement Class. Plus, the requested
9 fee award amounts to less than 19% of the value of the total benefits that Settlement Class
10 Members will receive under the Settlement—well below the 33.3% typically awarded by
11 California courts in class actions. Class Counsel also seeks reimbursement of \$49,132.43 in
12 reasonable costs, all of which were reasonably incurred for the litigation and settlement of this
13 matter. Finally, Class Counsel also moves for a \$5,000 incentive award for the Class
14 Representative, for her significant service to the Settlement Class. This award too is well within
15 the accepted range for incentive awards in consumer class actions (and is considered by many
16 courts to be presumptively reasonable). And Plaintiff has been a model class representative and
17 helped to achieve an excellent result for the Settlement Class.

18 The requested fees, costs, and incentive award are fair, reasonable, and justified
19 considering the significant efforts of Class Counsel, the substantial risks present in the case, and
20 the excellent results obtained for the Settlement Class. The Court should award them in full.

21 **II. The Settlement.**

22 On April 17, 2026, the Court preliminarily approved the Settlement, finding that it
23 appears to be “fair, reasonable and adequate.” (April 17, 2026, Preliminary Approval Order
24 [ROA #25] [“Preliminary Approval Order”] at p. 3.) Under the Settlement, Defendant will
25 provide every Settlement Class Member with direct compensation—in either cash or as flexible
26 store credit, at their election (the “Settlement Awards”)—in an amount equal to 45% of the total
27 discount Defendant represented they would receive on mattress purchases they made on
28

1 Defendant’s website during the Class Period. (Franzini Declaration in Support of Preliminary
2 Approval Motion [ROA #20], Exhibit 1 [“Agreement”] § III(C)(1).) Based on the Class List
3 compiled by Defendant to provide notice to the Class, the total discount Defendant represented
4 that Settlement Class Members would receive on relevant mattress purchases was \$6,591,803.47.
5 (Franzini Decl. ¶ 16.) So, the total direct compensation provided by the Settlement will be
6 \$2,966,311.56 (45% of \$6,591,803.47). (*Ibid.*) And the average Settlement Award will be about
7 \$74 per relevant mattress purchase.¹ (*Ibid.*)

8 If Settlement Class Members prefer to receive their Settlement Award in cash, they can
9 easily file a Claim Form online (or by mail if they prefer). (Agreement §§ III (C)(1-3), IV(D).)
10 Alternatively, Settlement Class Members can do nothing and will automatically receive
11 compensation as a Website Credit. (*Id.* § III(C)(4).) Website Credits can be used to purchase any
12 product on tuftandneedle.com. (*Id.* § III(C)(5).) They can be combined with any other discount
13 or offer, are freely transferable, and can be used at any time, with no blackout dates, for a period
14 of three years after the Court’s final approval of the Settlement. (*Ibid.*; cf. *Chaikin v. Lululemon*
15 *USA Inc.* (S.D. Cal. Mar. 14, 2014) 2014 U.S. Dist. LEXIS 35258, at *20 [approving settlement
16 where credit vouchers could be used at any time during a six-month period].) And, to ensure that
17 Settlement Class Members remember to use their Credits, the Settlement requires that Defendant
18 send reminder emails to all Settlement Class Members who have not used the Credits prior to
19 their expiration. (Agreement § III(C)(5).)

20 In addition to the nearly \$3 million in direct Settlement Awards provided by the
21 Settlement, Defendant will also pay for notice and administration costs estimated to be between
22

23 ¹ In her Motion for Preliminary Approval, Plaintiff estimated that Settlement Class
24 Members made approximately 40,147 relevant mattress purchases, that the total discounts
25 Defendant represented that Settlement Class Members would receive was approximately
26 \$6,656,216.62, and that the average Settlement Award would be approximately \$75 per relevant
27 purchase. (Plaintiff’s Motion for Preliminary Approval [ROA #17] [“Preliminary Approval
28 Motion”] at p. 11.) Defendant has now finalized a Class List identifying 39,930 relevant mattress
purchases placed by Settlement Class Members, who received total discounts equal to
\$6,591,803.47. This type of non-material change is common in class settlements after parties
finalize a class list, and does not in any way impact the relief provided by the Settlement.
(Franzini Decl. ¶¶ 16, 16 n.2.)

1 \$42,500 and \$48,000, an incentive award of up to \$5,000 to the Class Representative, as
2 approved by the Court, and reasonable attorneys’ fees and costs of up to \$748,824, as awarded
3 by the Court. (Agreement §§ IV(B) [administration costs], III(E) [attorneys’ fees and incentive
4 awards].) Once these additional costs are factored in, the Settlement will provide more than \$3.7
5 million in total value to the Settlement Class. (Franzini Decl. ¶ 16.) And, because Defendant will
6 pay these costs on top of the direct Settlement Awards provided to the Settlement Class, these
7 costs will not detract from the direct compensation that each Settlement Class Member will
8 receive under the Settlement.

9 **III. The requested fee award is fair, reasonable, and justified.**

10 The Settlement Agreement allows Class Counsel to request that the Court award
11 reasonable attorneys’ fees and costs up to \$748,824. (Agreement § III(E); see *Consumer Privacy*
12 *Cases* (Cal. Ct. App. 2009) 175 Cal.App.4th 545, 552-53 [holding attorneys’ fee provisions in
13 class action settlements are “proper” and affirming fee award].) And Class Counsel now requests
14 \$699,691.57 in attorneys’ fees. These fees, as detailed throughout this Motion, are fair and
15 justified as compensation for the substantial time and effort spent on this case, and the excellent
16 Settlement achieved for the Settlement Class.

17 The Court can award the requested attorneys’ fees under the common fund doctrine. That
18 doctrine applies when—like here—the settlement value is easily quantifiable, and when each
19 class member has an “undisputed and mathematically ascertainable claim” to the judgment. (*In*
20 *re Apple Inc. Device Performance Litig.* (N.D. Cal. Mar. 17, 2021) 2021 U.S. Dist. LEXIS
21 50546, at *20 [explaining common funds]; *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480,
22 503 [awarding fees based on common fund doctrine].)²

23
24
25 ² Attorneys’ fees are also properly awarded here under the Consumer Legal Remedies
26 Act (CLRA). Plaintiff’s complaint includes a cause of action under the CLRA (See Complaint
27 [ROA #4] ¶¶ 76-94). The CLRA provides for attorneys’ fees to a prevailing plaintiff. (See Cal.
28 Civ. Code § 1780(e).) Here, Plaintiff prevailed because she secured a substantial settlement on
[attorneys’ fees may be awarded under the CLRA based “on a pragmatic definition of the extent

1 California “[c]ourts recognize two methods for calculating” reasonable “attorney fees in
2 civil class actions: the lodestar/multiplier method and the percentage of recovery method.”
3 (*Wershba v. Apple Computer, Inc.* (Cal. Ct. App. 2001) 91 Cal.App.4th 224, 254.) “The
4 percentage method calculates the fee as a percentage share of a recovered common fund or the
5 monetary value of plaintiffs’ recovery.” (*Laffitte*, 1 Cal.5th at p. 489.) The lodestar/multiplier
6 method multiplies the number of hours counsel spent on the matter by an hourly rate, and adjusts
7 the fee award up or down using a multiplier. (*Ibid.*) Here, the requested fees are reasonable under
8 either approach, but the Court, like other courts considering similar settlements, should use the
9 favored percentage method.

10 **A. The Court should use the favored percentage method.**

11 Courts have discretion over which method they use to assess attorneys’ fees. (*Consumer*
12 *Privacy Cases*, 175 Cal.App.4th at p. 558.) Regardless of the method used, the Court’s “ultimate
13 goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts.” (*Id.* at p. 557
14 [quotes omitted].) The percentage of recovery method, however, is the preferred and routine
15 approach of courts across the country in cases that generate a settlement with an easily
16 ascertainable value. (*In re Omnivision Techs. Inc.* (N.D. Cal. 2007) 559 F.Supp.2d 1036, 1046
17 [“Despite [court’s] discretion, use of the percentage method in common fund cases appears to be
18 dominant.”]; *Laffitte*, 1 Cal.5th at p. 499 [“[T]he vast majority of courts nationwide . . . favor, or
19 at least [] allow, use of the percentage-of-the-fund method in common fund cases.”]; *Karton v.*
20 *Ari Design & Constr., Inc.* (Cal. Ct. App. 2021) 61 Cal.App.5th 734, 744 [same, citing American
21 Law Institute]; *Vianu v. AT&T Mobility LLC* (N.D. Cal. Nov. 8, 2022) 2022 U.S. Dist. LEXIS
22 203520, at *22. [“In common-fund cases, . . . [t]he ‘percentage of the fund’ method is typically
23 used.”]; *In re Apple Inc. Device Performance Litig.* (N.D. Cal. Mar. 17, 2021) 2021 U.S. Dist.
24 LEXIS 50546, at *21 [“[T]he use of the percentage-of-the-fund method in common-fund cases is
25 the prevailing practice in the Ninth Circuit for awarding attorneys’ fees and permits the Court to
26

27 _____
28 to which each party has realized its litigation objectives, whether by judgment, settlement, or
otherwise.”.]

1 focus on showing that a fund conferring benefits on a class was created through the efforts of
2 plaintiffs’ counsel.”]; *Cody v. SoulCycle Inc.* (C.D. Cal. Oct. 3, 2017) 2017 U.S. Dist. LEXIS
3 163965, at *17 [applying the percentage of recovery method where the settlement provided class
4 members with automatic class credits]; *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) 2011 U.S.
5 Dist. LEXIS 99289, at *9 [noting that the “percentage of the available fund analysis is the
6 preferred approach in class action fee requests”].)

7 The percentage method has numerous and substantial benefits that have led to its
8 widespread acceptance. It “aligns the interests of the counsel and the class, i.e., class counsel
9 directly benefit from increasing the size of the class fund and working in the most efficient
10 manner.” (*Lopez*, 2011 U.S. Dist. LEXIS 99289, at *9; *Laffitte*, 1 Cal.5th at p. 503 [percentage
11 method is “a valuable tool” because of the “alignment of incentives between counsel and the
12 class”].) It encourages early settlement and discourages bloating hours to reach a higher lodestar.
13 (*Laffitte*, 1 Cal.5th at p. 503.) It maintains “consistency with contingency fee calculations in the
14 private market.” (*Tait v. BSH Home Appliances Corp.* (C.D. Cal. July 27, 2015) 2015 U.S. Dist.
15 LEXIS 98546, at *34; see *Lealao v. Beneficial California, Inc.* (Cal. Ct. App. 2000) 82
16 Cal.App.4th 19, 47-48 [awarded fees should approximate what the market would set].) It
17 “eliminate[s] the cumbersome, enervating, and often surrealistic process of preparing and
18 evaluating fee petitions that [used to] plague[] the Bench and Bar” before the percentage method
19 was widely accepted. (*Laffitte*, 1 Cal.5th at p. 493.) And finally—and importantly—compared to
20 the lodestar method, it “more accurately reflects the results achieved” by class counsel. (*Laffitte*,
21 1 Cal.5th at p. 489, quoting *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d
22 513, 516.)

23 In contrast, “[t]he lodestar method is typically utilized when the relief obtained is
24 ‘not easily monetized,’ such as when injunctive relief is part of the settlement.” (*Johnson v. Moss*
25 *Bros. Auto Grp., Inc.* (C.D. Cal. June 24, 2022) 2022 U.S. Dist LEXIS 112361, at *16). Thus, the
26 method is not preferred in cases like this, where the total value of the Settlement is easily
27 ascertainable. Courts also disfavor the lodestar method because it “inadequately responds to the
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1 problem of risk,” “increases the amount of fee litigation,” “lacks objectivity,” “can result in
2 churning, padding of hours, and inefficient use of resources,” and can discourage early
3 settlement. (*Lopez*, 2011 U.S. Dist. LEXIS 99289, at *11.) For all of these reasons, courts across
4 the country have harshly criticized the lodestar method. (See *Laffitte*, 1 Cal.5th at p. 494
5 [summarizing American Law Institute view that the lodestar method is difficult to apply and
6 incentivizes extended litigation so attorneys can accrue additional hours and fees]; *Lealao*, 82
7 Cal.App.4th at p. 29 [summarizing critiques: “[T]he lodestar approach . . . is insufficiently
8 objective and produces results that are far from homogenous . . . [and] encourages lawyers to
9 expend excessive hours, and . . . engage in duplicative and unjustified work” (cleaned up;
10 citation and quotation marks omitted)]; *In re Cendant Corp. Litig.* (3d Cir. 2001) 264 F.3d 201,
11 256 [“[T]he lodestar method can be quite subjective” despite “creating the illusion of
12 mathematical precision.”]; *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching:
13 Grades 7-12 Litig.* (E.D. La. 2006) 447 F. Supp. 2d 612, 628-629 [“[T]he lodestar method
14 creates inherent incentive to prolong the litigation until sufficient hours have been expended”
15 and is “acutely susceptible to manipulation.” (internal quotes and citations omitted)]; *O’Keefe v.
16 Mercedes-Benz United States, LLC* (E.D. Pa. 2003) 214 F.R.D. 266, 304 [collecting cases] [“The
17 parties and the court are well aware of the demise of the pure lodestar method because it
18 encouraged inefficient behavior, turned judges into bean counters and created antagonistic
19 interests between the class and class counsel.”]; see *Manual for Complex Litigation* 4th Ed.
20 §14.121 (2004) [explaining that the lodestar method is “difficult to apply, time-consuming to
21 administer, inconsistent in result, and capable of manipulation . . . [and] creates inherent incentive
22 to prolong the litigation”].)

23 Here, Class Counsel’s efficient and extensive efforts, in the face of serious risks,
24 generated an outstanding Settlement for the Class with an easily quantifiable monetary value of
25 more than \$3.7 million. (Franzini Decl. ¶ 16 [discussing Settlement value].) In light of this, as
26 well as the numerous benefits offered by the percentage method, the Court should follow
27 prevailing practice and use that method to assess the fee request.

1 **B. The requested fee is reasonable under the percentage-of-recovery method.**

2 “[F]ee awards in class actions average around one-third of the recovery.” (*Chavez v.*
3 *Netflix, Inc.* (Cal. Ct. App. 2008) 162 Cal.App.4th 43, 66 n.11; *Amaro v. Anaheim Arena*
4 *Management, LLC* (Cal. Ct. App. 2021) 69 Cal.App.5th 521, 545 [same].) California courts
5 regularly award fees in this range or higher. (E.g., *Laffitte*, 1 Cal.5th at pp. 487, 506 [affirming
6 33.33% fee award based on the percentage method]; *Roos v. Honeywell International, Inc.* (Cal.
7 Ct. App. 2015) 241 Cal.App.4th 1472, 1488 [affirming 37.5% fee award in \$8,150,000 million
8 class settlement], *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.*
9 (2018) 4 Cal.5th 260; *Bergara v. Bread & Cie Inc.* (San Diego Super. Ct. Jan. 19, 2024) 2024
10 Cal. Super. LEXIS 4532, at *1-2³ [awarding one-third of gross settlement fund in fees]; *Cinto v.*
11 *Asendia United States* (L.A. Super. Ct. June 2, 2022) 2022 Cal. Super. LEXIS 87143, at *4
12 [same]; *Flores v. Heritage Bag Co.* (San Bernardino Super. Ct. Apr. 7, 2023) 2023 Cal. Super.
13 LEXIS 52808, at *6 [same]; *Watson v. Jones Fin. Cos.* (Sacramento Super. Ct. Nov. 16, 2020)
14 2020 Cal. Super. LEXIS 1769, at *1-2 [same]; *Rodriguez v. Cal. Payroll Group* (San Bernardino
15 Super. Ct. Jan. 24, 2022) 2022 Cal. Super. LEXIS 47539, at *4-5 [collecting cases where
16 California courts approved 33.3%; 35%; 40%; 40%; 40%; and up to 45% of the fund].)

17 Here, the Settlement provides benefits to Class Members worth more than \$3.7 million in
18 total. That amount includes nearly \$3 million in direct relief to the Settlement Class, as well as
19 the additional costs of providing notice and administration, and paying for attorneys’ fees, costs,
20 and an incentive award. (See *Consumer Privacy Cases*, 175 Cal.App.4th at pp. 553-54 “[T]he
21 total settlement amount, including fees, [should] be used as a yardstick to measure the
22 reasonableness of the fees.”]; *Broomfield v. Craft Brew Alliance, Inc.* (N.D. Cal. Feb. 5, 2020)
23 2020 U.S. Dist. LEXIS 74801, at *80 [noting that, to calculate the value of a settlement for
24

25 ³ The Court may take judicial notice of Superior Court orders under Evidence Code
26 sections 452(c) and section 452(d) as these are “records of” a “court of this state” and “[o]fficial
27 acts” of the California judiciary. The Court may also take notice under section 452(h) because
28 the existence and result of these orders is not reasonably subject to dispute, and because the
orders are available through trustworthy sources like Lexis. (See *In re Vicks* (2013) 56 Cal.4th
274, 314 [explaining that courts may take “judicial notice of court records” including “the
existence of each document in a court file” and “the truth of results reached”].)

1 purposes of evaluating fees, courts “have included attorneys’ fees, settlement administration
2 costs, and litigation expenses” in the total value[.] So, Class Counsel’s fee request of
3 \$699,691.57 amounts to less than 19% of the total value of the Settlement—far below the typical
4 33.3% fees regularly awarded in class action cases in California. Accordingly, under the
5 percentage of the fund method, Class Counsel’s requested fee award is substantially lower than
6 what courts have regularly approved as reasonable, and it should be granted in full.

7 **C. The relevant factors confirm that the requested fees are reasonable.**

8 To further assess whether fees are reasonable, California courts often consider the
9 following factors, which are relevant here: “(a) the results achieved; (b) the risk of litigation; (c)
10 the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial
11 burden; and (f) the awards made in similar cases.” (*Vasquez v. Coast Valley Roofing, Inc.* (E.D.
12 Cal. 2010) 266 F.R.D. 482, 492 [citing *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
13 1043, 1047].)⁴ Each of these factors support the requested fees here.

14 **1. Class Counsel achieved an excellent result for the Settlement Class.**

15 “The overall result and benefit to the class from the litigation is the most critical factor in
16 granting a fee award.” (*In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at p. 1046.) Here, Class
17 Counsel achieved an excellent result that will provide meaningful and comprehensive relief to
18 the Settlement Class.

19 As discussed above, the Settlement will provide a total of more than \$3.7 million in
20 benefits to the Settlement Class, with direct relief of nearly \$3 million. (Franzini Decl. ¶ 16.)
21 Under the Settlement, each Settlement Class Member will receive either a Cash Benefit or
22 Website Credit equal to 45% of the total discount Defendant represented they would receive on
23 mattress orders during the Class Period.⁵ (Agreement § III(C)(1).) Based on the total discounts

24
25 ⁴ California Superior Courts have applied the same factors laid out in *Vasquez* and
26 *Vizcaino*. (See, e.g., *McKillop v. Onehalloweennight Inc.* (Sacramento Super. Ct. Oct. 26, 2022)
27 2022 Cal. Super. LEXIS 71655, at *7; *Rivali v. Shutterfly, LLC* (San Diego Super. Ct. Feb. 16,
28 2024) 2024 Cal. Super. LEXIS 6956, at *16.)

⁵ For example, if a Settlement Class Member purchased two mattresses advertised at a
discount and Defendant represented that they would receive a total discount of \$200 on the
purchases, that Class Member will receive \$90 in compensation under the Settlement.

1 advertised by Defendant to Settlement Class Members on the relevant purchases, the Settlement
2 Class will receive direct Settlement Awards equal to \$2,966,311.56, with an average award of
3 about \$74 per relevant mattress purchase. (Franzini Decl. ¶ 16.) This recovery exceeds the per-
4 class-member and aggregate recoveries made available in many other deceptive pricing
5 settlements. (See Preliminary Approval Motion at pp. 17-18 [discussing settlements in
6 comparable cases].) And, unlike many settlements in similar cases—where class members are
7 required to submit a claim to receive any relief—the Settlement will provide direct relief in the
8 form of a highly flexible Website Credit even to Class Members who do nothing in response to
9 class notice. (Cf., *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 314 F.R.D. 312, 332 [approving a
10 deceptive pricing settlement where consumers had to file a claim to receive relief]; *Jacobo v.*
11 *Ross Stores, Inc.* (C.D. Cal. Aug. 6, 2019) 2019 U.S. Dist. LEXIS 247426, at *10 [same]; *Russell*
12 *v. Kohl's Dep't Stores* (C.D. Cal. Feb. 22, 2019) 2019 U.S. Dist. LEXIS 241132, at *5-6 [same].)

13 As described above, Settlement Class Members who prefer to receive a Cash Benefit can
14 easily do so by filing a Claim Form. And there is no penalty for choosing to receive one's
15 Settlement Award in cash. (Agreement § III(C)(3) [Class Members will receive the same amount
16 in compensation regardless of whether they choose to receive a Cash Benefit or Website
17 Credit].) Moreover, for Settlement Class Members who choose not to submit a Claim Form,
18 Website Credits will be distributed automatically, and are designed to afford Class Members
19 maximum flexibility. Under the Agreement, Website Credits can be used to purchase any of
20 Defendant's products, with no restrictions; they are freely transferrable; they can be combined
21 with other discounts or offers; and they are valid for three years after the Settlement's approval
22 and can be used at any time during that period, with no blackout dates. (Agreement § III(C)(5).)
23 Plus, to ensure that Class Members remember to use their Website Credits, the Settlement
24 requires Defendant to send a reminder email to any Class Member who has not used their Credit
25 within two years and eleven months of the Settlement's final approval. (*Ibid.*) Thus, the Website
26 Credits provide Settlement Class Members with substantial flexibility to use them how and when
27
28

1 they want. And, if Class Members do not want a Website Credit, they can easily file a Claim
2 Form and choose to receive their Settlement Award in cash instead.

3 **2. The case presented significant and material risks.**

4 “The risk that further litigation might result in no recovery is a ‘significant factor’ in
5 assessing the fairness and reasonableness of an award of attorneys’ fees.” (*Bravo v. Gale*
6 *Triangle, Inc.* (C.D. Cal. Feb. 16, 2017) 2017 U.S. Dist. LEXIS 77714, at *46; see *Vizcaino*, 290
7 F.3d at p. 1048 [“Risk is a relevant circumstance” in determining an attorney fee award.]) Here,
8 the litigation presented a number of significant obstacles that created a real risk that Settlement
9 Class Members would receive no recovery (and thus, that Class Counsel would engage in
10 substantial litigation without receiving any compensation for their efforts). These risks are
11 evident from the extensive litigation of this case prior to settlement and the numerous challenges
12 presented by deceptive pricing cases like this one.

13 After filing her initial case in the Central District of California, Plaintiff filed a First
14 Amended Complaint in response to a motion to dismiss filed by Defendant, and ultimately
15 briefed a second motion to dismiss. (Franzini Decl. ¶¶ 8-9.) That motion was granted in part and
16 denied in part. (*Id.* ¶ 9.) After that, the Parties engaged in extensive discovery in the lead up to
17 Plaintiff’s motion for class certification. (*Id.* ¶ 10.) Plaintiff then filed her motion for class
18 certification, which was fully briefed and pending when the Parties reached this Settlement. (*Id.*
19 ¶ 11.) And, given Defendant’s forceful opposition and arguments as to why Plaintiff could not
20 successfully certify a class—as well as courts’ repeated denials of class certification in deceptive
21 pricing cases—there was meaningful risk that the motion could be denied. (See e.g., *Sperling v.*
22 *Stein Mart, Inc.* (C.D. Cal. 2018) 291 F. Supp. 3d 1076, 1087 [denying plaintiffs’ motion for
23 class certification in a deceptive pricing case]; *Chowning v. Kohl’s Dep’t Stores, Inc.* (C.D. Cal.
24 Apr. 1, 2016) 2016 U.S. Dist. LEXIS 188341, at *1 [denying motion for class certification in a
25 deceptive pricing case].) And, had that happened, Plaintiff would have been unable to seek relief
26 for the Class at all.

1 Plus, even in a best-case scenario for Plaintiff and the Settlement Class—where she
2 succeeded entirely on class certification—the next steps in the case would have required Plaintiff
3 to expend tremendous time and expense, and face additional risk, to defeat potential summary
4 judgment motions, win at trial, and potentially beat back appeals, to obtain any recovery
5 whatsoever. (*Sperling*, 291 F. Supp. 3d at p. 1087 [granting defendant’s motion for summary
6 judgment in a deceptive pricing case]; see *Bakhtiar v. Info. Res., Inc.* (N.D. Cal. Aug. 4, 2020)
7 2020 U.S. Dist. LEXIS 258600, at *26 “[C]ontinued litigation carries significant risk and could
8 result in no recovery for the settlement classes [and] would require investing additional time and
9 resources on discovery, class certification, dispositive and discovery motions, trial, and
10 appeals.”.) And Class Counsel recognized and weighed these risks appropriately in negotiating
11 this Settlement.

12 In short, Class Counsel took on significant risk by prosecuting this case, including the
13 risk of getting no recovery at all. And this weighs in favor of awarding Counsel’s fee request.

14 **3. The Settlement Class benefited from Counsel’s excellent work and**
15 **significant expertise in this area.**

16 “The ‘prosecution and management of a complex [] class action requires unique legal
17 skills and abilities’ that are to be considered when evaluating fees.” (*Spencer-Ruper v. Scientiae*
18 (C.D. Cal. Sept. 24, 2021) 2021 U.S. Dist. LEXIS 204246, at *6 [alteration in original].) And
19 Class Counsel’s experience with and expertise in class actions, and in the particular area of law
20 at issue, are relevant factors when assessing fee awards. (See e.g., *Perez v. DIRECTV Grp.*
21 *Holdings, LLC* (C.D. Cal. Jan. 23, 2023) 2023 U.S. Dist. LEXIS 13920 at *25.) Here, Class
22 Counsel has substantial experience with complex class actions generally, and deceptive pricing
23 litigation specifically. (Franzini Decl. ¶¶ 3-7.) This experience bolstered Class Counsel’s ability
24 to successfully settle this case.

25 Moreover, “the quality of Class Counsel’s work is evidenced by the favorable settlement
26 achieved.” (*Defrees v. Kirkland* (C.D. Cal. July 26, 2018) 2018 U.S. Dist. LEXIS 125462, at
27 *14.) Before ever filing a case against Defendant, Class Counsel conducted a thorough
28

1 investigation into Defendant’s sales and advertising strategies. (Franzini Decl. ¶ 8.) This required
2 gathering and analyzing historical pricing and sales data from archival sources like the Internet
3 Archive. (*Ibid.*; Complaint ¶ 22 [detailing some of this investigation].) Counsel’s investigation,
4 their efforts in litigating this case (including briefing a motion to dismiss, serving and responding
5 to substantial discovery requests, taking multiple depositions, retaining and working with well-
6 regarded experts to produce expert reports, and drafting a motion for class certification and a
7 reply in support of that motion), and their work preparing for the mediation (including evaluating
8 Defendant’s data and drafting a strong mediation brief), made them well-prepared for the
9 settlement negotiations, and ensured that they had a firm understanding of all pertinent issues
10 before reaching the Settlement. (Franzini Decl. ¶¶ 8-12.) And they arduously negotiated the
11 terms of the Settlement during, and after, the mediation. (*Id.* ¶ 13.) So, Class Counsel’s “skill,
12 diligence, and expertise played significant roles in the parties’ reaching a settlement,” and
13 “support[s] the requested fees.” (*Spencer-Ruper*, 2021 U.S. Dist. LEXIS 204246, at *7-8.)

14 **4. Class Counsel took this case on a contingency basis and has borne**
15 **significant financial burdens.**

16 “A contingent fee must be higher than a fee for the same legal services paid as they are
17 performed.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [quotes and internal citation
18 omitted]; *Barbosa v. Cargrill Meat Solutions Corp.* (E.D. Cal. 2013) 297 F.R.D. 431, 450 [“No
19 one expects a lawyer whose compensation is contingent on the success of his services to charge,
20 when successful, as little as he would charge a client who in advance of the litigation has agreed
21 to pay for his services, regardless of success.”].) All of Class Counsel’s efforts in this case have
22 been done on a contingency basis. Counsel thoroughly investigated Defendant’s sales practices
23 without any assurance that this would reveal actionable sales practices, and with the knowledge
24 that they may never receive payment for the work. (See Franzini Decl. ¶ 25 [only a small fraction
25 of Counsel’s deceptive pricing investigations results in filed cases].) Counsel then devoted
26 substantial time to investigating, litigating, mediating, and settling the matter. (*Id.* ¶¶ 8-13, 23.)
27 To do so, Counsel bore out-of-pocket expenses, including court, expert, and mediator fees. (*Id.*
28

¶ 31.) And Counsel has yet to receive payment for any of their substantial work on this matter, or the out-of-pocket costs they incurred. (*Id.* ¶ 20.) All this too weighs in favor of granting the fee request in full.

5. Courts regularly award significantly higher fees.

As discussed above, the requested fee award is well below the “average [of] around one-third of the recovery.” (See *Chavez*, 162 Cal.App.4th at p. 66 n.11.) California courts regularly award one-third or more of the total benefits of a settlement in attorneys’ fees, including in similar deceptive pricing cases. (See *supra* § III(B) [collecting cases].) This too supports the requested fee award.

D. A lodestar cross-check is optional, and also supports the requested fee award.

The lodestar method looks at the hours Class Counsel expended on the case and reasonable hourly rates, and then adjusts that lodestar with a multiplier based on various factors. (*Laffitte*, 1 Cal.5th at p. 489.) Courts utilizing the percentage-of-recovery method sometimes utilize a lodestar “cross-check” to verify that a fee award is reasonable. California courts, however, “retain the discretion to forgo a lodestar cross-check.” (*Id.* at p. 506.)

In circumstances such as these, where Counsel secured excellent relief for the Settlement Class and seeks a fee award substantially below the typical 33.3%, a lodestar cross-check is not necessary, and is often skipped by courts. (See *Farrell v. Bank of Am., N.A.* (S. D. Cal. 2018) 327 F.R.D. 422, 432 [holding that “[b]ecause the requested 21.1% [was] significantly below the [federal] benchmark rate of 25%,” the court did not need to “apply the lodestar cross check.”] *aff’d* 827 F. App’x 628 (9th Cir. Sept. 2, 2020); *Ebarle v. Lifelock, Inc.* (N.D. Cal. Sept. 20, 2016) 2016 U.S. Dist. LEXIS 128279, at *33 [similar]; see also *Rankin v. Am. Greetings, Inc.* (E.D. Cal. July 5, 2011) 2011 U.S. Dist. LEXIS 72250, at *6 [awarding a fee award amounting to 25% of the benefits to class members without performing a cross-check]; *Moodie v. Maxim Healthcare Servs.* (C.D. Cal. Nov. 12, 2019) 2019 U.S. Dist. LEXIS 196098, at *18 [no cross-check required where counsel sought the benchmark in fees]; *Odom v. ECA Mktg.* (C.D. Cal. Dec. 22, 2021) 2021 U.S. Dist. LEXIS 246032, at *18 [same].)

1 In any event, a lodestar cross-check here confirms that Class Counsel’s requested fees are
2 reasonable. Courts considering a lodestar routinely approve fees with multipliers ranging from 2
3 to 4, and often even higher. (See *Chavez*, 162 Cal.App.4th at p. 66; *Aguilar v. Wawona Frozen*
4 *Foods* (E.D. Cal. May 18, 2017) 2017 U.S. Dist. LEXIS 76751, at *14-15 [quoting Newberg On
5 Class Actions § 14.7] [“[C]ourts typically approve percentage awards based on lodestar cross-
6 checks of 1.9 to 5.1 or even higher.”]; e.g., *Steele v. Legoland Cal. LLC* (San Diego Super. Ct.
7 Nov. 17, 2023) 2023 Cal. Super. LEXIS 91704, at *3 [“The reasonableness is confirmed when
8 double checked against the lodestar, which results in a 3.9 multiplier”]; *Ochoa v. Cke Rests.*
9 *Holdings* (Los Angeles Super. Ct. Oct. 7, 2022) 2022 Cal. Super. LEXIS 85630, at *15-16
10 [granting fees resulting in 4.1 multiplier]; *Ramirez v. Yin Mgmt* (Sacramento Super. Ct. Sept. 9,
11 2022) 2022 Cal. Super. LEXIS 55975, at *10-11 [granting 33.3% of gross settlement fund in
12 attorneys’ fees with lodestar multiplier of 3.57]; *Team Design v. Reliant Energy, Inc.*
13 *(Coordination Proceeding Special Title (Rule 1550(b))* (San Diego Super. Ct. June 19, 2007)
14 2007 Cal. Super. LEXIS 2160, at *7-8 [granting fee award with multiplier of 3.66 and citing
15 cases that “have applied multipliers of between 4 and 12”]; see also *Vizcaino*, 290 F.3d at pp.
16 1051-52 and n.6 [noting survey of class settlements with multipliers up to 19.6]; *Buccellato v.*
17 *AT&T Operations, Inc.* (N.D. Cal. June 30, 2011) 2011 U.S. Dist. LEXIS 85699, at *4-5 [citing
18 cases applying multipliers ranging from 4.4 to 9.3].)

19 Here, Class Counsel litigating this matter extensively, dedicating substantial firm
20 resources, while still prioritizing efficiency. Currently, the lodestar for past work on this case is
21 \$465,425.50.⁶ (Franzini Decl. ¶ 23.) And this amount will increase to approximately
22 \$482,813.92 as a result of future work Class Counsel will have to do to finalize the Settlement
23 (and up to approximately \$500,202.35 if there is an appeal). (*Id.* ¶ 24; see *Kangas v. Volkswagen*
24 *Grp. of Am. Inc. (In re Volkswagen “Clean Diesel” Mktg., Prod. Liab. Litig.)* (9th Cir. 2018) 746
25 F. App’x 655, 659 [affirming district court’s inclusion of future time in its lodestar cross check];
26

27 ⁶ Counsel’s rates are in line with the non-contingent market rates charged by attorneys of
28 reasonably comparable experience, skill, and reputation for trial work, and are reasonable.
(Franzini Decl. ¶¶ 26-30.)

1 *Reyes v. Bakery & Confectionery Union & Indus. Int'l Pension Fund* (N.D. Cal. 2017) 281 F.
2 Supp. 3d 833, 856-57 [including, over the defendants' objection, "125 anticipated future hours"
3 to be spent on "communicating with the settlement administrator or responding to inquiries from
4 class members" in the lodestar calculation]; *Corzine v. Whirlpool Corp.* (N.D. Cal. Dec. 31,
5 2019) 2019 U.S. Dist. LEXIS 223341, at *32 [including "an estimate of 250 hours for future
6 work to complete Settlement's claims process" in the lodestar calculation]; e.g., *Walter v.*
7 *Farfetch* (Orange County Super. Ct. Aug. 11, 2023) 2023 Cal. Super. LEXIS 61218, at *16
8 [including future work in the lodestar figure.]

9 This yields a lodestar multiplier of about 1.50 if only past work is considered, and
10 approximately 1.45 if future work is factored in (or lower, if there is an appeal).⁷ (Franzini Decl.
11 ¶¶ 23-24.) This is well within the range of multipliers regularly approved by courts. So, a
12 lodestar cross-check supports the reasonableness of Class Counsel's requested fee award, too.

13 * * *

14 In sum, Class Counsel achieved an excellent Settlement for the Settlement Class. Counsel
15 litigated the matter arduously, and leveraged their experience and expertise litigating similar
16 cases to achieve this result while working on a contingency fee basis with no guarantee of
17 success or payment. For this, Counsel seeks a fee award far below the typical percentage
18 awarded fee in class actions in California. Plus, Counsel litigated this matter extensively, and
19 Counsel's requested fees fall well within the range of commonly accepted lodestar multipliers.

20 **IV. The requested costs are reasonable and should be approved.**

21 In addition to attorneys' fees, the Settlement requires that Defendant reimburse Class
22 Counsel for reasonable litigation costs. (Agreement § III(E)(1) [Defendant agreed to pay up to
23 \$748,824 in reasonable fees and costs, as approved by the Court].) And courts routinely award
24 litigation costs on top of attorneys' fees awards. (See, e.g., *Chavez*, 162 Cal.App.4th at p. 67;

25
26 ⁷ California courts often assess lodestars using attorney declarations attesting to their
27 hours worked. (See *Sutter Health Uninsured Pricing Cases* (Cal. Ct. App. 2009) 171
28 Cal.App.4th 495 at p. 512; *Wershba*, 91 Cal.App.4th at pp. 254-55 ["California case law permits
fee awards in the absence of detailed time sheets."].) But Counsel can provide billing records
upon request.

1 *Consumer Privacy Cases*, 175 Cal.App.4th at pp. 559-560.) Here, Class Counsel have incurred a
2 total of \$49,132.43 in out-of-pocket litigation and settlement expenses. (Franzini Decl. ¶ 31.)
3 These expenses include, for example, filing fees, expert costs, and mediation fees. (*Ibid.*) Each
4 expense was reasonably necessary, and the total costs are modest given the benefits to the
5 Settlement Class. (*Ibid.*; e.g., *In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F. Supp. 2d
6 1166, 1177-78 [finding that costs such as filing fees, photocopy costs, travel expenses, postage,
7 telephone and fax costs, computerized legal research fees, and mediation expenses are relevant
8 and necessary expenses in class action litigation].) They should be reimbursed in full.

9 **V. The requested incentive award is reasonable and should be approved.**

10 Defendant has also agreed to pay a court-approved incentive award to the Class
11 Representative of up to \$5,000. (Agreement § III(E)(2).) “[I]ncentive awards are fairly typical in
12 class action cases.” (*Cellphone Termination Fee Cases* (Cal. Ct. App. 2010) 186 Cal.App.4th
13 1380, 1393-94 [citation omitted].) They are intended to compensate class representatives for
14 work done, for risks taken, and to recognize their willingness to act as a private attorney general.
15 (*Ibid.*) Incentive awards “typically range from \$2,000 to \$10,000.” (*Bellinghausen v. Tractor*
16 *Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 267.) And in many courts, \$5,000 incentive awards
17 are “presumptively reasonable.” (*Ahmed v. HSBC Bank USA* (C.D. Cal. June 21, 2019) 2019
18 U.S. Dist. LEXIS 104401, at *34; e.g., *Cellphone Termination Fee Cases*, 186 Cal.App.4th at
19 pp. 1393-96 [affirming \$10,000 incentive award].)

20 Here, the Class Representative’s involvement in this litigation significantly contributed to
21 the Settlement’s success, and the requested \$5,000 incentive award is exactly in line with awards
22 regularly granted in class settlements. Plaintiff Emily Chebul dedicated significant time to this
23 matter, including providing documents and information needed to file the case; reviewing the
24 pleadings and consulting with Counsel on her experiences with Defendant; working with
25 Counsel to respond to discovery requests served on her by Defendant; providing a declaration in
26 support of class certification; communicating with Counsel about the case and during settlement
27 negotiations; making herself available during settlement negotiations and discussing the
28

1 negotiated class-wide resolution with counsel; and reviewing and approving the terms of the
2 Settlement Agreement. (Chebul Declaration in Support of Preliminary Approval Motion [ROA
3 #18] ¶ 6.) In agreeing to serve as Class Representative, Ms. Chebul thrust herself into litigation
4 for the benefit of the Class with no guarantee that the litigation would be successful or that her
5 efforts would bear fruit. She was willing to continue to litigate the case as Class Representative
6 had negotiations broken down and the Parties failed to settle, and she has no known conflicts
7 with the Settlement Class. (*Id.* ¶ 5.) Her efforts and dedication justify the requested incentive
8 award. (See Franzini Decl. ¶ 32.)

9 Plus, the requested award amounts to just over 0.1% of the Settlement’s total value. (See
10 *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)* (9th Cir. 2015) 779 F.3d 934, 947-
11 48 [upholding reasonableness of \$5,000 incentive awards that were roughly 417 times larger than
12 \$12 individual awards because the number of representatives was relatively small, and the total
13 amount of incentive awards “ma[de] up a mere .17% of the total settlement fund”]; *Ahmed*, 2019
14 U.S. Dist. LEXIS 104401, at *35 [incentive award “amounting to less than one percent of the
15 settlement fund” was “warranted given the substantial efforts plaintiffs [had] undertaken on
16 behalf of the class”].)

17 Thus, a \$5,000 award is typical and justified in this situation, and should be awarded in
18 full.

19 **VI. Conclusion.**

20 The Class Representative and Class Counsel obtained an excellent result for the
21 Settlement Class. They should be awarded the requested fees, costs, and incentive award in full.

23 Dated: May 29, 2026

Respectfully submitted,

24 By: /s/ Simon Franzini

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PROOF OF SERVICE

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to the within action. My business address is 201 Santa Monica Blvd., Suite 600, Santa Monica, CA 90401.

On May 29, 2026, I served the foregoing document(s) described as PLAINTIFF’S NOTICE OF MOTION AND UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS, AND INCENTIVE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES on all interested parties in this action as follows:

CHRISTINA R. SNIDER
christina.snider@quarles.com
MATTHEW J. SPLITEK
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Attorneys for Defendant

[X] (VIA E-MAIL): On May 29, 2026, a true and correct portable document format (“pdf”) copy of the document described above was electronically served on the above recipients, at their respective email addresses. My electronic service address is rachel@dovel.com.

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

Executed on May 29, 2026, at Santa Monica, California.

/s/ Rachel Ong
Rachel Ong