In Re: Lenovo Adware Litigation

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

IN RE LENOVO ADWARE LITIGATION

This Document Relates To:

ALL ACTIONS

Case No. 15-md-02624-HSG ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS FEES, EXPENSES, AND SERVICE AWARDS Re: Dkt. Nos. 248, 249 Pending before the Court are the unopposed motions for final approval of the class action settlements Bennett, Richard Krause, Robert Ravencamp, and John Whittle. Dkt. Nos. 248, 249. The Court

held a final fairness hearing on April 18, 2019. Dkt. No. 256. For the reasons set forth below, the Court GRANTS final approval. The Court also GRANTS expenses, and services awards.

I. BACKGROUND

A. Factual Background Plaintiffs bring this consumer class action against Defendants Lenovo (United States), Inc. , asserting claims under federal, California, and New York law. See Dkt. No. 162 y software, which Lenovo had preinstalled on its

laptops, created performance, privacy, and security issues. Id. Plaintiffs allege several causes of action against Superfish and Lenovo for violations of: (1) the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 et seq. §§ 17200 et seq.; (3) 1750 et seq.; (4)

Computer Crime Law, Cal. Penal Code § 502; (5) Act, Cal. Penal Code §§ 630 et seq.; (6) trespass to chattels under California law; (7) and Practices Statute, N.Y. Gen. Bus. Law § 349; and (8) trespass to chattels under New York law. Id. ¶¶ 131 152, 167 235. Plaintiffs also allege a violation of the Wiretap Act, 18 U.S.C. §§ 2510 et seq., against Superfish. Id. ¶¶ 153 66.

On January 21, 2016, Defendant Lenovo lack of standing and failure to state a claim. See Dkt. No. 98. On July 22, 2016, Plaintiffs filed a

motion for class certification. See Dkt. No. 131. T dismiss in part on October 27, 2016, holding that Plaintiffs failed to state a claim for relief under nd Practices Statute. 1

See Dkt. No. 153 at 17 18. The Court also

California class. See Dkt. No. 153 at 24 :

All persons who purchased one or more Lenovo computer models, on which VisualDiscovery was installed, in the United States from someone other than Lenovo. See id.

All persons who purchased one or more Lenovo computer models, on which VisualDiscovery was installed in California. Id.

Id at 39. In response, Plaintiffs filed their ACCAC on December 7, 2016. See ACCAC N.Y. Gen. Bus. Law § 349. See Dkt. No. 175. T on January 30, 2018. Dkt. No. 210.

Plaintiffs initially reached a settlement with Superfish and filed a motion for preliminary approval of class action settlement as to Superfish on December 9, 2016. See Dkt. No. 163. The parties agreed to hold the motion for preliminary approval of that partial settlement in abeyance

1 This action was reassigned on November 2, 2017, from the Honorable Ronald M. Whyte to the Honorable Haywood S. Gilliam, Jr. See Dkt. No. 156. until the Court ruled on further motions regarding class certification. See Dkt. No. 199; see also Dkt. No. 206 at 31 33. Plaintiffs withdrew their motion for preliminary approval of the Superfish settlement when the motion for preliminary approval covering settlements with both Superfish and Lenovo was filed on July 11, 2018. Dkt. Nos. 230, 235. The Court granted the motion for preliminary approval of the settlements on November 21, 2018. Dkt. No. 243.

B. Settlement Agreement

i. Superfish Settlement Following extensive formal discovery and with the assistance of a mediator, Plaintiffs and Superfish entered into a settlement agreement in October 2015. Dkt. No. 250 ¶ 6; Dkt. No. 250-1 48 at 2; Dkt. No. 250 ¶ 8. The key terms of the Superfish settlement are as follows:

Class Definition: The Settlement Class is defined as all persons who purchased a Lenovo computer in the United States on which VisualDiscovery was installed by Lenovo. Superfish SA ¶ 1.12.

Settlement Benefits: Superfish agreed to pay $1,000,000 to settle the claims against it. Id. ¶ 1.13. Superfish agreed to provide substantial cooperation to Plaintiffs, including producing additional documents and discovery relevant to the litigation, providing assistance to establish the authenticity and admissibility of documents, making knowledgeable persons then employed by Superfish

available for interviews, responding to requests for assistance in understanding the facts at issue, producing representatives to testify at trial (in person, by deposition or affidavit), and assisting in seeking certification of the Settlement Class. Id. ¶¶ 2.5, 4.3.

The Settlement Fund will be used to: (i) pay all necessary expenses associated with the Escrow Account; (ii) pay all necessary expenses to administer the Settlement, including the cost of a settlemen and reimbursement of litigation expenses; (iv) pay class members pursuant to a plan of allocation; (v) pay any cy pres recipients; and (vi) pay any taxes and tax expenses, which are treated as costs of administration of the Settlement Fund. Dkt. No. 163 at 8. Unless the Settlement does not become final, no portion of the Settlement Fund shall revert to Superfish. Superfish SA ¶ 6.4.

Release: Class members release any and all claims arising out of the installation and operation of Superfish VisualDiscovery software on certain laptop computers as alleged in the litigation. Id. ¶ 1.8.

Class Notice, Opt-Out: Class notice will be provided in accordance with the Lenovo Settlement Agreement. See Dkt. No. 163 at 10 11 and n.4.

Incentive Award : The Superfish Settlement Agreement does

ii. Lenovo Settlement Plaintiffs and Lenovo, also after extensive discovery and with the assistance of Magistrate Judge Jacqueline S. Corley, entered into a settlement agreement on April 27, 2018. Dkt. No. 250 ¶ 19; Dkt. No. 250- The key terms of the Lenovo settlement are as follows:

Class Definition: The Settlement Class is defined as: All Persons who purchased one or more of the following computers , not for resale, within the United States between September 1, 2014 and February 28, 2015:

ies: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G50-45

-70, Y50-70 -75, Z40-70, Z50-70

-10, MIIX2-11 -13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW Lenovo SA ¶¶ 1.6, 1.7.

Excluded from the Class are Defendants, the officers, directors, and affiliates of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest. Id. ¶ 1.6

Settlement Benefits: Lenovo will make a $7,300,000 non-reversionary payment that will be added to the $1,000,000 non-reversionary payment Superfish previously made. The two payments will constitute the Settlement Fund from which any class member may make a claim. Lenovo SA ¶¶ 1.34, 1.35, 2.1; Superfish SA ¶¶ 1.13, 4.1.

Lenovo has separately entered into a consent decree with the Federal Trade Commission and 32 state attorneys general. Dkt. No. 250 ¶ 21. The consent decree forbids Lenovo from misrepresenting any features of software preloaded on laptops to inject advertising into browsing sessions or to transmit sensitive consumer information to third parties. Id. ¶ 22. If Lenovo ns on their laptops, and Lenovo also must implement a comprehensive security program for 20 years for most consumer software preloaded on its laptops. Id.

Release: All settlement class members will release:

any and all claims, rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that relate to the installation of VisualDiscovery on a Class Computer between September 1, 2014, and February 28, 2015 and that were or could have been alleged in the Litigation against Defendant, including Unknown Claims as defined in ¶ 1.39 herein. enforcement of the settlement. Lenovo SA ¶ 1.30.

Incentive Award: Although the Lenovo Settlement Agreement does not include a limit on the incentive awards that the Named Plaintiffs may seek, the exemplar notice forms indicate that each of them will apply for an incentive award of $5,000. Dkt. No. 248-1, Ex. I at 6.

: fees and costs. See Lenovo SA ¶¶ 6.1 fees will not exceed 30% of the Settlem the

September 20, 2018 preliminary approval hearing that counsel will not seek attorneys fees beyond 30% of the Settlement Fund. Dkt. No. 248-1, Ex. I at 6 request will not exceed 30% of the Settlement Fund, substantially less than the value of the time II. ANALYSIS

A. Final Settlement Approval

i. Class Certification Final approval of a class action settlement requires, as a threshold matter, an assessment of whether the class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b). Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 1022 (9th Cir. 1998). Because no facts that would affect these requirements have changed since the Court preliminarily approved the class on November 21, 2018, this Order incorporates by reference its prior analysis under Rules 23(a) and (b) as set forth in the order granting preliminary approval. See Dkt. No 243 at 6 10.

ii. The Settlement . . hearing and on fin Officers

, 688 F.2d 615, 625 (9th Cir. 1982) s role in evaluating a proposed settlement must be tailored to fulfill the objectives outlined above. s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

between, the negotiating parties . . . To assess whether a proposed settlement comports with Rule 23(e), the Court following factors: (1) the strength of plaintiffs case; (2) the risk, expense, complexity, and likely

duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. Rodriguez v. , 563 F.3d 948, 963 (9th Cir. 2009); see also Hanlon he relative degree of importance to be attached to any particular factor Officers for Justice, 688 F.2d at 625.

In addition, dequate notice is critical to court approval of a class settlement under Rule Hanlon, 150 F.3d at 1025. As discussed below, the Court finds that the proposed settlements are fair, adequate, and reasonable, and that Class Members received adequate notice.

a. Adequacy of Notice Under Feder ces, including

class definition, and the ht to exclude themselves from the class. Fed. R. Civ. P. 23(c)(2)(B). Although Rule 23 requires that reasonable efforts be made to reach all class members, it does not require that each class member actually receive notice. See Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994)

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B). See Dkt. No. 243 at 5, 13 14. The Court ordered that the third-party settlement administrator send class notice via email and U.S. mail based on Class Member data lists Lenovo and third parties provided. Id. at 5. The settlement administrator was also ordered to implement a digital media campaign that was estimated to target approximately 3,410,000 Lenovo users. Id.

Angeion represents that class notice was provided as directed. Dkt. No. 248-1 ¶¶ 5 11. Prior to sending class notice, Angeion reviewed the Class Member data list and identified 204,186 records with mailing information. Id. ¶ 5. Angeion also verified the mailing addresses with the National Change of Address Database and performed an address verification search for any returned Notice Packets that did not have a forwarding address. Id. ¶¶ 7 8. As of March 25, 2019, a total of 25,101 Notice Packets were returned as undeliverable. Dkt. No. 253-1 ¶ 3. 432 were re-mailed to a forwarding address and 13,143 were re-mailed with updated addresses through Id. ¶¶ 4 5. It appears that notices were successfully delivered to approximately 192,660 people via direct mail. 2

Angeion also identified 686,112 records with email addresses. Dkt. No. 241-1 ¶ 5. Although 245,837 of the email addresses were undeliverable, Angeion successfully sent Notices via email to 440,275 email address. Dkt. No. 248-1 ¶ 10. Amazon.com, Inc. declaration states that it sent email notices to 15,860 Amazon customers who made valid purchases of the Class Computers, and it received no

undeliverable messages. Dkt. No. 248-2 ¶¶ 2 4. Finally, Angeion implemented the approved comprehensive media notice program, including running internet banner ad notices for four consecutive weeks, which resulted in 7,192,779 impressions served. Dkt. No. 248-1 ¶¶ 12 13. In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.

b. Fairness, Adequacy, and Reasonableness Having found the notice procedures adequate under Rule 23(e), the Court next considers whether the entire settlement comports with Rule 23(e).

1. Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case. Chun-Hoon v. McKee Foods Corp., 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010). Garner v. State Farm Mut. Auto. Ins. Co., No. 08-cv-1365-CW, 2010 WL 1687832, at *9 (N.D.

Cal. Apr. 22, 2010). Additionally, difficulties and risks in litigating weigh in favor of approving a class settlement. Rodriguez, 563 F.3d at inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with

Ching v. Siemens Indus., Inc., No. 11-cv-04838-MEJ, 2014 WL 2926210, at *4

2 states that notices were successfully delivered to 192,947 people via direct mail. Dkt. No. 249 at 5. This appears to have been calculated based on data as of February 10, 2019 from the Declaration of Steven Weisbrot, Esq. (Angeion). See Dkt. No. 248- 1 ¶¶ 5 8. The Court considered the updated data as of March 25, 2019 to calculate the final number of notices successfully delivered via direct mail. See Dkt. No. 253-1 ¶¶ 3 5. For purposes of determining the adequacy of the notice plan, the Court finds that any disparity is not material. (N.D. Cal. June 27, 2014) (quotations omitted).

The Court finds that the amount offered in settlement is reasonable in light of the complexity and length of this litigation, and the substantial risk Plaintiffs would face in litigating the case given the nature of the asserted claims. See Dkt. No. 248 at 9; see also Dkt. No. 230 at 13. Given defend this action, including through a renewed motion to dismiss, a decertification motion, and a

Further, Superfish has since been dissolved, and had Plaintiffs not reached a settlement with Superfish in 2016, there was a significant risk of Superfish declaring bankruptcy and Plaintiffs receiving nothing from Superfish. Id. at 8. In reaching a settlement, Plaintiffs have ensured a favorable recovery for the class. See Rodriguez, 563 F.3d at 966 (finding litigation risks weigh in favor of approving class settlement). Accordingly, these factors weigh in favor of approving the settlement. See Ching, 2014 WL 2926210, at *4 (favoring settlement to protracted litigation).

2. Risk of Maintaining Class Action Status In considering this factor, the Court looks to the risk of maintaining class certification if the litigation were to proceed. Certifying a class encompassing approximately 797,000 purchasers of the Lenovo computer models at issue presents complex issues

that could undermine certification. See Dkt. No. 230 at 8. Accordingly, this factor also weighs in favor of settlement.

3. Settlement Amount The amount offered in the settlement is another factor that weighs in favor of approval. Based on the facts in the record ng, the Court finds that the $8,300,000 settlement amount recoverable damages, falls well of litigation. See Dkt. No. 250 ¶¶ 24, 31 33; see, e.g., Hendricks v. Starkist Co., No. 13-CV-

00729-HSG, 2016 WL 5462423, at *12 (N.D. Cal. Sept. 29, 2016), . Hendricks v. Ference ; Villanueva v. Morpho Detection, Inc., No. 13-cv- 05390-HSG, 2016 WL 1070523 *4 (N.D. Cal. March 18, 2016) (citing cases); Stovall-Gusman v. Granger, Inc., No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval of a net settlement amount representing 7.3% of the plaintiffs' potential recovery at trial). The parties have estimated that the recovery of each individual Class Member will be a minimum of $45 (for those filing . Dkt. No. 253-1 at 4. Class Members who have a documented proof of loss (presented in will recover all of their out-of-pocket expenses, up to $750. Id. This factor therefore weighs in favor of approval.

4. Extent of Discovery Completed and Stage of Proceedings The Court finds that Class Counsel had sufficient information to make an informed decision about the merits of the case. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000). Here, Plaintiffs were able to reach this settlement only after Plaintiffs conducted extensive discovery, with the assistance of Superfish, including reviewing over 100,000 pages of documents and deposing eight Lenovo employees. Dkt. No. 248 at 9. Both sides fully briefed and lass certification. Dkt. Nos. 98, 106, 108, 131, 136, 142. The Court finds that the parties have received, examined, and analyzed information, documents, and materials that sufficiently enabled them to assess the likelihood of success on the merits. This factor weighs in favor of approval.

5. Experience and Views of Counsel The Court next considers the experience and views of counsel, and finds that this factor

positio Rodriguez, 563 F.3d at 967 (quotations In re

Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). The Court has previously evaluated qualifications and experience and concluded that Class Counsel is qualified to represent the interests in this action. See Dkt. No. 44 at 3 4. As discussed, Class Counsel initiated settlement discussions only after assessing the risks of continuing the litigation. The Court recognizes, however, that courts have diverged on the weight to assign s opinions. Compare Carter v. Anderson Merch., LP, 2010 WL 1946784, at *8 (C.D. Cal. May 11, , with Chun- Hoon pr

6. Reaction of Class Members The reaction of the Class Members supports final approval. number of objections to a proposed class action settlement raises a strong presumption that the

Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 29 (C.D. Cal. 2004); In re Linkedin

User Privacy Litig. -outs and objections in comparison to class size is typically a factor that su

Class notice, which was served on each Class Member in accordance with the methods approved by the Court, advised the class of the requirements to object or opt out of the settlement. The deadline to submit a claim was on March 25, 2019. Dkt. No. 253-1 ¶ 7; Dkt. No. 248-1, Ex. B. Angeion received 130,058 claim form submissions, 1 objection, and 77 opt-outs. See Dkt. No. 253-1 ¶¶ 7, 14; Dkt. No. 254. The one objection received took issue with the settlement amount [the] full rep , but did not articulate any other reason why the settlement should be denied. Dkt. No. 254. The individual objecting did not appear at the hearing. See Dkt. No. 256. For the reasons discussed above, the Court finds that the objection does not affect its conclusion that the settlement is fair and reasonable. The Court finds that the small number of objections and opt-outs in comparison to the large size of the class indicate overwhelming support among the Class Members and weigh in favor of approval. See, e.g., Churchill Village LLC v. Gen. Elec., 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement where 45 of approximately 90,000 class members objected); Rodriguez v. West Publ. Corp., Case No. CV05 3222 R, 2007 WL 2827379, at *10 (C.D. Cal. Sept. 10, 2007) (finding favorable class reaction where 54 of 376,301 class members objected).

* * * After considering and weighing the above factors, the Court finds that the settlement agreements are fair, adequate, and reasonable, and that the settlement Class Members received the class action settlements is GRANTED.

B. , Settlement Administrator Costs, and Incentive

Award In its unopposed motion, Class Counsel asks the Court to approve an award of $2,490,000 340,798.70 in costs. Dkt. No. 249. Class Counsel also seeks $5,000 service awards for each of the four Named Plaintiffs Dkt. No. 249 at 1.

i.

a. Legal Standard

has discretion in a common fund case to choose either (1) the lodestar method or (2) the percentage-of-the-fund . Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002).

Under the percentage-of-recovery method, twenty-five percent of a common fund is the benchmark for fees awards. See, e.g., In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011)

Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990). Whether the Court awards the benchmark amount or some other rate, Vizcaino, 290 F.3d at 1048.

destar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate In re Bluetooth, 654 F.3d at 941(citing Staton v. Boeing Co., 327 F.3d 938, 965 (9th Cir. 2003)).

community for similar work performed by attorneys of comparable skill, experience, and Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008) (quotations Id. (citing Barjon v. Dalton, 132 F.3d 496, 5 , and rate

United Steelworkers of Am. v. Phelps Dodge Corp. affidavits from the fee applicant, other evidence of prevailing market rates may include affidavits from other area attorneys or examples of rates awarded to counsel in Schuchardt v. Law Office of Rory W. Clark, 314 F.R.D. 673, 687 (N.D. Cal. 2016).

circumstances, [ ] either method may [ ] have its place in determining what would be reasonable Six Mexican Workers, 904 F.2d at 1311 (quotations omitted). To guard against an unreasonable result, the Ninth Circuit has encouraged district courts to cross-check any calculations done in one method against those of another method. Vizcaino, 290 F.3d at 1050 51.

b. Discussion Class Counsel here seeks $2,490,000 in fees, or 30% of the settlement amount. See Dkt. No. 249 at 1. That is higher than the benchmark for a reasonable fee award under the percentage-of-recovery method, but still within the 30%. See Vizcaino, 290 F.3d at 1047. The Court considers the reasonableness of the percentage requested in light of the factors endorsed by the Ninth Circuit, with the 25% award as a starting point. The Ninth Circuit has identified several factors a court should consider to determine whether to adjust a fee award from the benchmark: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. See Vizcaino, 290 F.3d at 1048 50.

Although this request is 5% higher than the benchmark, the Court finds the requested award appropriate given the circumstances of this multi-district litigation . Having reviewed the time Class Counsel spent litigating this action, the Court notes that counsel worked efficiently and diligently to reach this result. See Dkt. No. 248 8 13; Dkt. No. 250-3. This MDL has been actively litigated for the past four years, and required complex legal and factual research and analysis by Class Counsel. See Dkt. No. 249 at 9 12. Class Counsel obtained significant results for the class: under the settlement agreement, individual Class Members will receive at least approximately $45 for short form claims and up to $750 for long form claims. Dkt. No. 253-1 at 4. Defense counsel were highly skilled law firms with substantial resources and vigorously litigated the case on behalf of Defendants, denying liability and challenging standing, the sufficiency of the complaint to state a claim for relief, and the appropriateness of class certification. Dkt. No. 249 at 9 13. Class Counsel, therefore, assumed substantial risk in litigating this action on a contingency fee basis.

Further, in appointing lead counsel, the Court selected Class Counsel from a group of eight highly

qualified law firms, based in part on their presence in this district, but also because of the . Dkt. No. 44 at 3. This reflected Class Counsel would advocate in their best interests. Id. at 3 4. Further, no Class Member has objected to the Class Counsel s requested fee award. Dkt. No. 253 at 3; see Dkt. No. 254 (objection only to settlement amount). The Court finds that the percentage requested is consistent with other awards in this district in comparable cases. See Hendricks, 2016 WL 5462423, at *12 (finding 30%

and the financial ; Valentine v. NebuAd Inc., No. C 08-05113 TEH (LB), 2011 WL 13244509, at *2 (N.D. Cal. Nov. 21, 2011) (report and recommendation finding 30%

The fee amount requested is significantly less than Class C calculated using the lodestar method. In calculating its lodestar, Class Counsel contends that it

expended a combined total of 8,446.1 hours. Dkt. No. 249 at 9. With respect to hourly rates, the rates requested are between $150 and $225 per hour for paralegals and $365 to $950 per hour for attorneys. Dkt. No. 250-3. According to Class Counsel, this yields a lodestar of $4,860,099. 3 Dkt. No. 249 at 16. Class Counsel thus is seeking fees approximately 51% lower than their lodestar. Id. The Court finds that the billing rates used by Class Counsel to calculate the lodestar are reasonable and in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation. See, e.g., Hefler v. Wells Fargo & Co., No. 16-CV-05479-JST, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (rates from $650 to $1,250 for partners or senior counsel, $400 to $650 for associates, and $245 to $350 for paralegals were reasonable); In re Volkswagen Clean Diesel Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (billing rates ranging from $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paral complexities of this case and

The Court finds that Class C achieved for the class, the work performed, and the complexity of this MDL, and finds that the requested award is appropriate. The Court accordingly GRANTS Class C $2,490,000.

ii. Class Counsel seeks reimbursement of $340,798.70 in out-of-pocket costs, with . See Dkt. No. 249 at 17. Class Counsel is entitled to recover those out-of-pocket expenses that would normally be Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994) (quotations omitted).

Plaintiffs have submitted exhibits to their joint declaration summarizing the costs and expenses incurred. Dkt. No. 250-4. These expenses include professional service fees (experts, investigators, accountants), travel fees, and discovery-related fees. Dkt. No. 250-4. Given the

3 Per Class Counsel, this lodestar is not based on any of the hours expended by Class Counsel prior to their appointment as lead counsel counsel that assisted in this litigation. Dkt. No. 249 at 16 n.5. Class Counsel contends that the counsel, approximately $505,000, was factored into the calculation.

Id. Class Counsel represents that it intends to compensate the other plaintiffs from Id. length and complexity of the case, the Court is satisfied that these costs were reasonably incurred and GRANTS the motion for costs in the amount of $340,798.70.

iii. Incentive Award Class Counsel requests a service award of $5,000 for each Named Plaintiff. plaintiffs . . . Staton, 327 F.3d at 977; Rodriguez, 563 F.3d at 958 ( ). They are designed to reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness

Rodriguez, 563 F.3d at 958 59. Nevertheless, the Ninth Circuit has cautioned determine whether they destroy the adequacy of the class representatives . . . Radcliffe v. Experian Info. Solutions, Inc., 715 F.3d 1157, 1165 (9th Cir. 2013) (quotations omitted). This is particularly true where Id. The district court must evaluate an includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation . . . . Id. at 977.

The Court finds that a $5,000 service award is reasonable to compensate Plaintiffs given their contributions to this case. Plaintiffs were closely involved in the case: they actively monitored the litigation, communicated frequently with Class Counsel, searched for and produced responsive documents, worked with Class Counsel to respond to interrogatories, prepared for and attended depositions, reviewed documents, and participated in the settlement process. Dkt. No. 250-1 ¶¶ 62 65. Moreover, a $5,000 incentive award is not unduly disproportionate to Class Based on the facts presented, including the named Plaintiffs substantial contributions to the class, Class Crequest for an incentive award is GRANTED in the amount of $5,000 for each of the Named Plaintiffs. III. CONCLUSION

For the foregoing reasons it is hereby ordered that: 1. Plaintiffs Motion for Final Approval of Class Action Settlements is hereby GRANTED.

2. Plaintiffs Motion for Class C , Expenses, and Service Awards is hereby GRANTED.

3. The Court approves the settlement amount of $8,300,000, including payments of fees in the amount of $2,490,000; costs in the amount of $340,798.70; and an incentive fee for the four Named Plaintiffs in the amount of $5,000 each, for a total of $20,000.

The parties and settlement administrator are directed to implement this Final Order and the settlement agreement in accordance with the terms of the settlement agreement. The parties are further directed to file a stipulated final judgment within 21 days from the date of this Order.

IT IS SO ORDERED. Dated: _____

HAYWOOD S. GILLIAM, JR. United States District Judge 4/24/2019