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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 PAIGE PETKEVICIUS, on behalf of herself and
12 all others similarly situated,

13 Plaintiffs,

14 v.

15 LAMPS PLUS, INC., a California corporation,
16 and DOES 1-50, inclusive,

17 Defendants.

Case No: 37-2019-00020667-CU-MC-CTL

[E-FILE]

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR ATTORNEYS' FEES, COSTS,
AND INCENTIVE AWARD**

Date: April 3, 2020

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

1 **TO THE HON. JOEL R. WOHLFEIL, JUDGE OF THE SAN DIEGO SUPERIOR COURT:**

2 On October 11, 2019, this Court granted preliminary approval of the class action settlement
3 agreement in this matter and set a Final Fairness Hearing to be held on April 3, 2020 at 9:00 a.m. At the
4 Final Fairness Hearing, or as soon thereafter as counsel can be heard in Department C-73 of the above-
5 entitled Court, Plaintiff will and hereby does move for an Order Awarding Attorneys' Fees, Costs, and
6 Incentive Award.

7 Class Counsel requests an award of \$700,000.00 in attorneys' fees and costs to be approved by
8 this Court. Importantly, the requested fees and costs will be paid out separately and apart from any benefits
9 paid to the Class. Plaintiff also requests an incentive award of \$2,500 to Plaintiff, PAIGE PETKEVICIUS,
10 as agreed to by Defendant, in recognition of their risk in commencing this case and her efforts in litigating
11 this case.

12 Therefore, Plaintiff, on behalf of herself and the Class, submits this motion based upon the
13 memorandum of points and authorities in support of the motion filed herewith, the concurrently filed
14 declaration of Todd D. Carpenter, and the records and files in this action, and such arguments as may be
15 presented at the hearing on this motion.

16
17
18 Date: January 13, 2020

Respectfully submitted,

19
20
21 /s/ Todd D. Carpenter

Todd D. Carpenter

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CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARD**

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1 I. INTRODUCTION

2 On October 11, 2019, this Court preliminary approved the Settlement as fair, adequate, and
3 reasonable. Plaintiff now brings this motion for attorney fees representing an amount well below the 25%
4 benchmark of the Settlement floor. Plaintiff achieved an outstanding Class Settlement in this false
5 discount pricing consumer class action requiring Defendant, LAMPS PLUS, INC. (“Defendant” or
6 “Lamps Plus”), to distribute to the Class at least \$18,616,700 worth of \$20 Vouchers or \$4,654,175 in
7 cash.¹ Approximately 930,835 Direct Notice Class Members will receive *automatically* a \$20 Voucher
8 if no action is taken in response to notice, resulting in an absolute settlement floor of \$18,616,700 worth
9 of \$20 Vouchers. However, Direct Notice Class Members and those responding to notice by publication
10 may submit a claim form opting instead for a \$5 settlement check. The \$20 Voucher provides a real
11 economic benefit, allowing consumers to purchase fashionable lighting accessories and fixtures without
12 having pay out of pocket. The Settlement also requires Lamps Plus to revise its in-store product labels and
13 website descriptions to remove the offending deceptive terminology on its price tags and pricing placards.
14 (Settlement Agreement and Release (hereinafter, “Settlement Agreement” or “SA”), ¶2.2. This settlement
15 protects consumer rights by effectively deterring retailers from engaging in similar misconduct and, in
16 this case, requiring Lamps Plus to alter its offending practices.

17 Following agreement on the materials terms of the Settlement, the Parties negotiated Class
18 Counsels’ attorneys’ fees of \$700,000 (inclusive of all costs) and the named Plaintiff’s incentive award in
19 the amount of \$2,500 to be paid by Defendant subject to court approval. (SA, ¶¶ 2.4-2.5; Declaration of
20 Todd D. Carpenter (“Carpenter Decl.”), ¶4.) Plaintiff now respectfully requests the Court award \$700,000

21
22
23 ¹ As discussed in Plaintiff’s Memorandum of Points and Authorities in Support of the Motion for
24 Preliminary Approval of the Settlement and Provisional Class Certification (ROA 21), these figures
25 relate to the approximately 930,835 Class Members for whom Lamps Plus maintains valid email and/or
26 mailing addresses and will receive direct notice of the Settlement (the “Direct Notice Class Members”);
27 it does not include Class members submitting claims in response to publication, which could
28 significantly raise the total settlement value as there is no ceiling on the amount of claims that may be
made under the Settlement Agreement. According to Defense Counsel’s representation at the hearing
for Plaintiff’s Motion for Preliminary Approval on October 11, 2019, the number of Direct Notice Class
Members is now over 1,000,000, thereby increasing Voucher value to these Class Members to over
\$20,000,000 and the cash value to over \$5,000,000.

1 in attorneys' fees and costs, and incentive award of \$2,500 to Plaintiff for her commitment in serving as
2 Class Representative.

3 **II. SUMMARY OF CLASS COUNSEL'S WORK**

4 Class claims against Defendant have been ongoing since 2017. Prior to litigation, Class Counsel
5 spent substantial time investigating Plaintiff's claims. (Carpenter Decl., ¶¶ 2, 6.) Class Counsel
6 conducted factual and legal investigation that included extensive onsite gathering of pricing data in
7 Defendant's stores and its impact on consumers, including Plaintiff. (Carpenter Decl., ¶6.) Class Counsel
8 cross-checked Defendant's pricing practices over numerous locations to confirm they were systematic,
9 coordinated and universally applied. Class Counsel also retained damages expert, economist, Dr. Stephen
10 Hamilton, Ph.D., Director of Graduate Studies in the Department of Economics at California Polytechnic,
11 and principal of OnPoint Analytics, a reputable financial and economics consulting firm, to develop and
12 support the damages alleged by Plaintiff. (Carpenter Decl. ¶6.) This investigative work was critical to
13 Class Counsel's understanding of Defendant's conduct and the formation of the legal theories advanced
14 by Plaintiff.

15 On July 5, 2017, a Harley Seegert, through Plaintiff's Counsel, filed a putative class action against
16 Lamps Plus in the Superior Court of California, County of San Diego, Case No. 37-2017-00024439-CU-
17 BC-CTL, asserting false and/or deceptive advertising claims based on allegations that Lamps Plus's
18 advertisement of discounts on merchandise improperly leads consumers to believe that they are receiving
19 a discount on their purchase. On August 9, 2017, Defendant removed the action to the United States
20 District Court for the Southern District of California, contending that the complaint satisfied the
21 jurisdictional requirements under the Class Action Fairness Act ("CAFA"). On September 14, 2017,
22 Defendant answered the complaint and asserted fourteen affirmative defenses. On December 12, 2017,
23 the Parties conducted an Early Neutral Evaluation Conference ("ENE"). On February 2, 2018, the Parties
24 conducted a telephonic Case Management Conference ("CMC") during which time the Court set
25 Plaintiff's deadline to file his motion for class certification on or before July 27, 2018.

26 Plaintiff's Counsel conducted an investigation of the facts and analyzed the relevant legal issues
27 in regard to the claims asserted in the complaint and Lamps Plus's potential defenses. For instance, prior
28

1 to and following commencement of litigation, Plaintiff’s Counsel investigated the pricing of Lamps Plus
2 branded and/or trademarked merchandise for several months in San Diego County, revealing the extent to
3 which Lamps Plus was engaged in the widespread practice of continuously discounting its exclusive,
4 Lamps Plus branded and/or trademarked merchandise from an fictional reference “Compare At” price.
5 The investigated products were “discounted” for a substantial period of time, in violation of California’s
6 False Advertising Law (“FAL”) and the Federal Trade Commission Act (“FTCA”), and sometimes
7 without ever being offered for the original reference price.

8 Following commencement of litigation, Plaintiff served written discovery requests and noticed
9 Defendant’s deposition pursuant to FRCP Rule 30(b)(6). In the interim, and following extensive
10 negotiations, the Parties agreed to stay further formal discovery efforts and engaged in informal discovery
11 for purposes of settlement. On May 10, 2018, the Parties participated in a full day mediation. Thereafter,
12 Plaintiff’s Counsel retained an additional client, Plaintiff Paige Petkevicius, who also shopped at Lamps
13 Plus during the proposed class period. The Parties then participated in an additional full day mediation
14 session in Los Angeles, California before JAMS Mediator Robert A. Meyer on March 18, 2019 and
15 discussed resolution of both the Seegert action on an individual basis and the impending Petkevicius action
16 on a class-wide basis. As a result of the progress made at the mediation session and in subsequent
17 discussions, the Parties reached such an agreement, culminating in the Settlement Agreement currently
18 before this Court.

19 Prior to mediation, Class Counsel prepared an extensive confidential mediation brief, representing
20 the culmination of Class Counsel’s pre- and post-litigation investigative work, including information
21 related to Plaintiff purchases, class data from Defendant, Defendant’s widespread pricing practices, and
22 expert analysis thereof. During this time, Class Counsel worked closely with Dr. Hamilton to develop the
23 damages model alleged against Defendant. Following settlement in principle, Class Counsel drafted the
24 substantive terms of the settlement and notice plan and engaged in further negotiation over the structure
25 of the Settlement Agreement. (Carpenter Decl., ¶6.)

26 **III. SUMMARY OF SETTLEMENT TERMS**

27 On October 11, 2019, the Court preliminarily approved, for settlement, the following Class:
28

1 All Lamps Plus customers who purchased Lamps Plus branded or
2 trademarked merchandise bearing a “Compare At” price tag in the State of
3 California from April 22, 2015 to the date of preliminary approval.
4 Excluded from the Class are Lamps Plus’s Counsel, Lamps Plus’s officers,
5 directors and employees, and the judge presiding over the Action.
6 (SA, ¶1.9.)

7 The Settlement Agreement mandates Defendant to automatically distribute \$18,616,700 worth of
8 \$20 Vouchers to each of the approximate 930,185 Direct Notice Class Members for whom Defendant
9 maintains a valid email and/or mailing address, and who do not request exclusion from the Class, for use
10 at a California Lamps Plus retail store. (SA, ¶¶ 1.34, 2.1.) All other Class Members receiving notice via
11 publication must submit a Claim Form to receive a Voucher. Alternatively, any Class Member may submit
12 a Claim Form and elect to receive a \$5 settlement check in lieu of a Voucher. (SA, ¶ 2.1.) The Voucher
13 do not have an expiration date, may be used on sale or discounted items, and are freely transferrable. (SA,
14 ¶1.34.) The Vouchers are not redeemable for cash, stackable, and cannot be combined with any other
15 coupon or promotional offer. (*Id.*) Class Members who do not submit a timely and valid exclusion request
16 will fully release Defendant and the other Released Parties from any claims associated with Defendant’s
17 advertisement of prices or promotions in accordance with ¶¶ 1.11, 1.4, 1.33 and 2.9 of the Settlement
18 Agreement. Further, Class Representative Petkevicius has agreed to waive all rights and benefits afforded
19 by Cal. Civ. Code Section 1542. (SA, ¶2.10.)

20 Additionally, the Settlement provides for injunctive relief. If the Court approves the Settlement,
21 then, within a reasonable time, Lamps Plus will revise its in-store product labels and website descriptions
22 to remove the “Compare At” terminology on its price tags and pricing placards for its proprietary products.
23 Lamps Place may use terminology such as “Comparable Value” and/or other similar language to convey
24 the price at which *similar* goods are offered for sale. Moreover, within a reasonable time, Lamps Plus
25 agrees to remove the “X” strikeout over the value comparison price on the price tags and pricing placards
26 and/or website description for its proprietary products, but may continue to display and reference the
27 comparison price for similar products.

28 Under the Settlement, Defendant agrees to pay Class Counsel’s attorneys’ fees and costs of
\$700,000 and Plaintiff’s incentive award of \$2,500. (SA, ¶¶ 2.4, 2.5.) Unless otherwise ordered by the

1 Court, Defendant will make such Court-approved payments within 10 calendar days after the Final
2 Settlement Date and upon receiving Plaintiff’s and Class Counsels’ W-9 forms. *Id.* If the Court does not
3 award \$700,000.00 in fees and costs or \$2,500 in Plaintiff’s incentive award it shall not affect any of the
4 Parties’ other rights and obligations under the Settlement Agreement. (SA, ¶2.6.)

5
6 **IV. FEE AWARD STANDARDS**

7 **A. The Provision For Payment of Attorneys’ Fees and Costs In The Settlement Agreement
8 Is Appropriate And Should Be Enforced**

9 The United States Supreme Court in *Evans v. Jeff D* (1986) 475 U.S. 717, 738 n.30, held that the
10 parties to a class action properly may negotiate not only the settlement of the action itself, but also the
11 payment of attorney fees. The Supreme Court in *Hensley v. Eckerhart* further held that negotiated, agreed-
12 upon attorney fee provisions are the ideal towards which the parties should strive: “A request for attorney’s
13 fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a
14 fee.” (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 437.) The Court stressed that the trial court “has a
15 responsibility to encourage agreement” on fees. (*Blum v. Stenson* (1984) 465 U.S. 886, 902 n.19.)

16 Here, the requested fee of \$700,000 was negotiated during adversarial bargaining by Class Counsel
17 after the substantive terms of the settlement had been negotiated. (Carpenter Decl. ¶4.) The fee fairly
18 reflects the marketplace value of Class Counsel’s services. As the United States Supreme Court instructed:

19 Given the unique reliance of our legal system on private litigants to enforce
20 substantive provisions of law through class and derivative actions, attorneys
21 providing the essential enforcement services must be provided incentives
22 roughly comparable to those negotiated in the private bargaining that takes
23 place in the legal marketplace, as it will otherwise be economic for defendants
24 to increase injurious behavior. *Deposit Guar. Nat’l Bank v. Roper* (1980) 445
25 U.S. 326, 338.

26 Additionally, the Settlement releases Defendant from all claims that were alleged in the action,
27 including violations of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et*
28 *seq.*, which entitle Class Counsel to recover attorneys’ fees and costs as the prevailing party. (See Cal.
Civ. Code § 1780(e) (“The court shall award court costs and attorney’s fees to a prevailing plaintiff in
litigation filed pursuant to this section”).) While the CLRA does not define “prevailing plaintiff,” the
trend is toward a “pragmatic approach” that determines prevailing party status “based on which party

1 succeeded on a practical level.” (*Graciano v. Robinson Ford Sales* (2006) 144 Cal.App.4th 140, 150.)
2 Based upon the preliminarily approved Settlement, Plaintiff qualifies as the “prevailing plaintiff” under
3 the CLRA and is entitled to fees pursuant to that statute. Additionally, fees attorneys’ fees may be awarded
4 here under the substantial benefit doctrine and/or the private attorney general doctrine pursuant to Cal.
5 Code of Civ. Proc. § 1021.5.²

6 **B. Applicable Fee Award Standards**

7 California state “[c]ourts recognize two methods for calculating attorney fees in civil class actions:
8 the lodestar/multiplier and the percentage of recovery method.” (*Wershba v. Apple Computer, Inc.* (2001)
9 91 Cal.App.4th 224, 254. See also *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809
10 (recognizing that the percentage method is appropriate where “the amount was a ‘certain or easily
11 calculable sum of money’”) (internal citations omitted).) The key advantage of the percentage method,
12 applicable here, is that it focuses on the benefit conferred on the class resulting from the efforts of counsel.
13 (*Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 48 (percentage of benefit method is
14 result-oriented rather than process oriented).) Many federal courts, including the Ninth Circuit, have also
15 developed a preference for using the percentage method. (See *Six (6) Mexican Workers v. Arizona Citrus*
16 *Growers* (9th Cir.1990) 904 F.2d 1301, 1311; *In re Hydroxycut Mktg. & Sales Practices Litig.* (S.D. Cal.

17
18 ² Under the private attorney general doctrine, attorneys’ fees are awarded in cases that enforce rights
19 affecting public policies. (See *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741 (“The
20 fundamental objective of section 1021.5 is to encourage suits effectuating a strong public policy by
21 awarding substantial attorney’s fees to those who successfully bring such suits.”) Successful litigants are
22 entitled to fees when they have: (1) enforced an important right affecting the public interest; (2) conferred
23 a significant benefit on the public or a large class of persons; and (3) imposed a financial burden on the
24 plaintiff out of proportion to his individual stake. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142.) These
25 criteria are easily met here. (See *Beasley*, 235 Cal.App.3d at 1418 (Consumer protection litigation has
26 “long been judicially recognized to be vital to the public interest.”) (internal citations omitted); *Graham*
27 *v. Daimler Chrysler Corp.* (2004) 34 Cal.4th 553, 561 (only 1,000 subject vehicles sold to California
28 consumers satisfied the “large persons” requirement of Section 1021.5); *Woodland Hills Residents Assn.,*
Inc. v. City Council (1979) 23 Cal. 3d 917, 941 (The “financial burden” criterion is met when “the cost of
the claimant’s legal victory transcends his or her personal interest, that is, when the necessity of pursuing
the lawsuit placed a burden on the plaintiff out of proportion to his or her individual stake in the matter.”).
See also *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 703 (enforcement of
California consumer protection laws as an important right affecting the public interest); *Hinojos v. Kohl’s*
Corp. (9th Cir. 2013) 718 F.3d 1098, 1101, 1107 (declaring unequivocally “price advertisements
matter.”).)

1 Nov. 18, 2014) No. 09-2087 BTM(KSC), 2014 U.S. Dist. LEXIS 162106, at *188-89 (utilizing
2 percentage-of-recovery method where settlement value was based in part on free product option).)

3 **C. The Percentage Method Is the Appropriate Method for Calculating Fees in This Case**

4 When a common fund is created for a class' benefit, Class Counsel may also request attorney fees
5 based on a percentage of that fund: “[W]hen a number of persons are entitled in common to a specific
6 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
7 preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.”
8 (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“*Serrano III*”).) The common fund doctrine is “based on the
9 commonsense notion that the ‘one who expends attorneys’ fees in winning a suit which creates a fund
10 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
11 litigation costs.” (*Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127
12 Cal.App.4th 387, 397 (citation omitted). The Supreme Court routinely awards attorney fees based on a
13 percentage of the recovery. (See *Camden I Condo. Assn., Inc. v. Dunkle* (11th Cir. 1991) 946 F.2d 768,
14 773 (citing Supreme Court cases computing fees based on a percentage of the common fund).) The
15 California Supreme Court in *Laffitte v. Robert Half Int'l Inc.* specifically addressed and held that trial
16 courts could properly use a “percentage of the fund” method for calculating attorney’s fees in a class
17 action case:

18 We join the overwhelming majority of federal and state courts in holding
19 that when class action litigation establishes a monetary fund for the benefit
20 of the class members, and the trial court in its equitable powers awards class
21 counsel a fee out of that fund, the court may determine the amount of a
22 reasonable fee by choosing an appropriate percentage of the fund created.
23 The recognized advantages of the percentage method—including relative
24 ease of calculation, alignment of incentives between counsel and the class,
a better approximation of market conditions in a contingency case, and the
encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation []—convince us the percentage
method is a valuable tool that should not be denied our trial courts.

25 (*Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503 (internal citations omitted).)

26 Further, in quantifying the value of settlement consideration, courts generally calculate the full
27 amount available under the settlement, regardless whether all Class Members claim their payment.

1 (*Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-81 (1980); *Williams v. MGM-Pathe Communs. Co.*, 129
2 F.3d 1026, 1027 (9th Cir. 1997) (district court abused its discretion by calculating fees as one-third of the
3 class members' claims rather than one-third of entire settlement fund).)

4 **V. THE REQUESTED FEE AWARD IS APPROPRIATE, FAIR AND REASONABLE**
5 **UNDER THE PERCENTAGE METHOD**

6 Here, Vouchers will be sent automatically to Direct Notice Class Members upon approval of the
7 Settlement, unless Direct Notice Class Members have submitted a Claim Form electing to receive a \$5
8 settlement check. Exclusive of claims in response to publication notice, Vouchers sent to approximately
9 930,835 Direct Notice Class Members are worth \$18,616,700. If all Direct Notice Class Members elect
10 for the \$5 cash option, the settlement value becomes \$4,654,175. These amounts may increase
11 significantly, and with no ceiling under the Settlement Agreement, depending on how many Class
12 Members respond to notice by publication. Based only on the settlement floor of 930,835 Direct Notice
13 Class Members who will automatically receive a Voucher if they do not submit a claim for \$5 cash,
14 Plaintiff's requested fee award represents approximately 3.7% of the Voucher value (\$18,616,700) or 15%
15 of the cash value (\$4,654,175). These percentages become even smaller as additional claims are submitted
16 in response to publication notice. Even under the assumption that all Direct Notice Class Members do not
17 make the cash payment election and instead automatically receive a Voucher, and only 50% of these
18 (approx. 930,835) Class Members redeem a Voucher, leaving the remaining 50% unredeemed, Class
19 Counsel's requested fee reflects less than 8% of that estimated financial impact on Defendant
20 (\$700,000/\$9,308,350 = 7.5%), still well below judicially acceptable limits.

21 The Ninth Circuit "benchmark" for awarding fees is 25 percent of the total recovery. (*Vizcaino v.*
22 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047.) The requested fee award is fair and reasonable
23 given Class Counsel's efforts in this case under the percentage method. The parties negotiated the agreed-
24 upon fees and costs only after negotiating and agreeing to all other material terms of the settlement. (See,
25 e.g., *Manual for Complex Litigation* (4th ed. 2004) at ¶ 21.7 ("Separate negotiation of the class settlement
26 before an agreement on fees is generally preferable.") By deferring the fee negotiation until that time,
27 Class Counsel aligned their interests with the interests of the Class, and Defendant had every incentive to
28 negotiate as low a fee as possible to decrease its overall costs. (See *Lealao v. Beneficial California, Inc.*,

1 82 Cal.App.4th at 33 (“The award to the class and the agreement on attorney fees represent a package
2 deal. Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the
3 class’ recovery.”.) The resulting agreed-upon fee award, which was proposed by Mediator Robert A.
4 Meyer, was the product of a non-collusive adversarial negotiation considering Class Counsel’s prior and
5 future efforts and the excellent results achieved. In agreeing to pay \$700,000 in the aggregate for fees and
6 costs, Defendant also considered the possibility that Class Counsel might apply for and receive a much
7 larger award, especially in the event of any objection or appeal of the settlement, which would necessarily
8 lead to additional protracted litigation and efforts by Class Counsel to defend the Settlement. Rather than
9 take these risks, Defendant agreed to pay the requested award subject to Court approval.

10 Plaintiff’s fee request is far below the acceptable thresholds recognized by the Ninth Circuit and
11 California state courts. California courts have been expressly authorized to award fees as “to ensure that
12 the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
13 litigation.” (*Lealao*, 82 Cal.App.4th at 50.) Indeed, the U.S. Supreme Court consistently looks to the
14 marketplace as a guide to determining reasonable fees, including contingency fee arrangements. (*Missouri*
15 *v. Jenkins* (1989) 491 U.S. 274, 285.) In defining a reasonable fee, the court should mimic the marketplace
16 for cases involving a significant contingent risk, such as this one, and emphasize the unique reliance of
17 our legal system on private litigants to enforce substantive provisions of law in class actions such that
18 attorneys providing these benefits should be paid an award equal to the amount negotiated in private
19 bargaining that takes place in the legal market place. (*Deposit Guar. Nat’l Bank*, 445 U.S. at 338.)

20 Accordingly, numerous California state and federal courts have award percentage fees of up to
21 40% or more in fund cases:

- 22 • *Adaauto v. Door Components, Inc.*, Los Angeles Superior Court Case No. BC469230 (July
23 1, 2013) (Judge Lee Edmon awarded attorney’s fees equal to 40% of the settlement fund,
24 *plus costs*);
- 25 • *Albrecht v. Rite Aid Corp.*, San Diego Superior Court Case No. 729129 (Judge Haden
26 awarded attorney’s fees equal to 35% of the settlement fund, *plus costs*);
- 27 • *Ayala v. Denbeste Manufacturing, Inc.*, Kern County Superior Court Case No. S-1500-CV-
28 275248 (February 7, 2013) (awarded attorney’s fees equal to approximately 40% of the
settlement funds, *plus costs*);

- 1 • *Crandall v. U-Haul International*, L.A. Superior Court Case No. BC 178775, (Judge Czuleger awarded plaintiffs' counsel attorney's fees equal to 40% of the settlement fund);
- 2 • *Erlandsen v. FlexCare, LLC, et al.*, Santa Barbara Superior Court Case No. 1390595
- 3 (awarding 40% of the settlement funds);
- 4 • *Birch v. Office Depot, Inc.* (S.D. Cal. Sep. 28, 2007) No. 06 CV 1690, 2007 U.S. Dist.
- 5 LEXIS 102747 (awarding a 40% fee on a \$16 million wage and hour class action);
- 6 • *Rippee v. Boston Mkt. Corp.* (S.D. Cal. Oct. 10, 2006) No. 05cv1360 BTM, 2006 U.S. Dist.
- 7 LEXIS 101136 (awarding a 40% fee on a \$3.75 million wage and hour class action).

8 Here, the fee request falls far, far below any of these judicially accepted percentages. However,

9 the ultimate inquiry is whether the end result is reasonable. (*Powers v. Eichen* (9th Cir. 2000) 229 F.3d

10 1249, 1258.) In determining whether the award is reasonable, the Ninth Circuit directs courts to consider

11 several factors, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the

12 quality of work; and (5) the contingent nature of the fee and the financial burden. (*Vizcaino*, 290 F.3d at

13 1048-50.)

14 **A. Class Counsel Achieved Excellent Results for the Class**

15 Class counsel achieved exceptional results in this case. The Parties reached an arms-length

16 settlement with the assistance of an experienced mediator and former judge after extensive investigation

17 and discovery. (Carpenter Decl., ¶6) Defendant denied liability as well as Plaintiff's ability to certify the

18 Class. Continued litigation of this lawsuit presented Plaintiff with substantial legal risks of certifying

19 the class, proving liability, presenting a viable damages model, and defeating any appeals relating

20 thereto. In the face of these significant challenges, Plaintiff secured real and valuable benefits for the

21 Class, as discussed in Section III above. As a practical matter, the costs of individual litigation would

22 likely greatly eclipse any individual recovery. Further, if this litigation were pursued further as a class

23 action, it is uncertain whether this Court would certify a class for litigation purposes. Even if the case

24 were successfully tried as a class action, the regressive analysis of class-wide damages could likely yield

25 a diminution in value (*i.e.*, damages) attributed to Defendant's false advertising of less than \$20.00 per

26 Class Member. The Settlement provides Class Members with prompt, high-value benefits at an early

27 juncture, avoiding the risks of attendant to providing liability and damages, as well as injunctive relief

28 benefitting Class Members and the public.

1 **B. Class Counsel Assumed Significant Risks**

2 The requested fee award is reasonable in light of the risks incurred by Class Counsel. From the
3 outset, Plaintiff faced significant risks, including failure to certify the putative class (or having it
4 subsequently decertified) and or failing to prove liability and/or damages. These risks are not merely
5 hypothetical. Given these considerations, Class Counsel incurred 100% of the risk, including all
6 litigation costs, devoting their time and labor to identifying Defendant’s wrongdoing, evaluating
7 Defendant’s liability, analyzing potential legal theories, drafting the complaints, engaging in significant
8 research and investigation, and attending mediation. Class Counsel forewent other employment in order
9 to devote the time necessary to pursue this litigation. (Carpenter Decl. ¶3.) Throughout this time, there
10 was no assurance of success or compensation.

11 **C. The Complexity of the Litigation and Class Counsel’s Skill**

12 Litigating this class action through trial would be time-consuming and expensive due to the
13 complexities of proving liability and damages. For instance, Defendant would oppose Plaintiff’s motion
14 for class certification, the Parties would likely move for summary adjudication, and the Parties would
15 each retain numerous experts to analyze the issues such as determining the effect of Defendant’s pricing
16 practices on consumers and the price premium attributable to Defendant’s purported sale discounts. To
17 this end, Class Counsel retained economics expert, Dr. Hamilton, to review and determine the impact of
18 Defendant’s false reference prices on consumer behavior and to assess potential economic remedies. Dr.
19 Hamilton identified several potential methodologies to measure the extent that Class Members were
20 overcharged. Class Counsel analyzed these theories against recent case law rejecting restitution-based
21 damages theories in similar deceptive discount pricing cases. (See, e.g., *Chowning v. Kohl’s Dept.*
22 *Stores, Inc.* (9th Cir. 2018) 733 Fed. Appx. 404 (affirming district court’s grant of summary judgment
23 that rejected each of plaintiff’s proposed measures of restitution); *Stathakos v. Columbia Sportswear*
24 *Company* (N.D. Cal. May 11, 2017) 2017 WL 1957063 (granting summary judgment and rejecting each
25 of plaintiff’s proposed measures of restitution).) By reaching this Settlement, the Parties avoid
26 protracted litigation of these complex issues and avoided incurring significant expert fees.

27 ///

1 **D. Class Counsel Provided High Quality Work**

2 Class Counsel are experienced in complex class litigation (Carpenter Decl. ¶¶11-12), have a
3 thorough understanding of the issues and risks presented by these types of cases, and through their skill
4 and reputation, were able to obtain a settlement that provides an outstanding result for the Class. The
5 efficient manner of this result would not have been reasonably possible were it not for the experience
6 and reputation of Class Counsel in this area of law. Class Counsel spent significant time, before and
7 after commencing litigation, investigating Defendant’s pricing practices and working with economics
8 expert, Dr. Hamilton, to assess Defendant’s liability and potential economic remedies. The Parties
9 engaged in informal discovery and eventually participated in multiple mediation with highly regarded
10 mediators, ultimately resulting in a mutually satisfactory settlement and notice plan providing an
11 excellent benefit to the Class.

12 The high quality of the Plaintiff’s opposition is a further testament to the quality of Plaintiff’s
13 representation. Defendant is a large corporation, represented by skilled counsel from a law firm with
14 significant resources and skilled in class action defense. Lead defense counsel has a well-deserved
15 reputation in class action litigation in general. Courts have repeatedly recognized that the caliber of
16 opposing counsel should be taken into consideration. (See, e.g., *In re Marsh & McLennan Cos., Inc. Sec.*
17 *Litig.* (S.D.N.Y. Dec. 23, 2009) No. 04 Cv. 8144 (CM), 2009 U.S. Dist. LEXIS 120953, at *56
18 (reasonableness of fee was supported by fact that defendants “were represented by first-rate attorneys
19 who vigorously contested Lead Plaintiffs’ claims and allegations.”).)

20 **E. Class Counsel Took This Case on a Contingent Basis**

21 “The risk that an attorney takes in the underlying public interest litigation has two components:
22 the risk of not being a ‘successful party,’ i.e., not prevailing on the merits, and the risk of not establishing
23 eligibility for an attorney fee award.” (*Graham*, 34 Cal.4th at 583.) Class Counsel undertook this matter
24 solely on a contingent basis, with no guarantee of recovery. Despite such a challenge, Class Counsel
25 demonstrated to Defendant that it faced significant exposure, compelling it to enter into the Settlement
26 Agreement and provide a significant benefit to the Class. (See *Downey Cares v. Downey Community Dev.*
27 *Comm’n.* (1987) 196 Cal. App. 3d 983, 997 (enhanced fees in contingent fee cases recognize the delay in
28

1 receipt of full payment of fees); Posner, *Economic Analysis of Law* (4th ed. 1992) at 534, 567 (“A
2 contingent fee must be higher than a fee for the same legal services paid as they are performed.”).

3 For these reasons, the requested fee award is appropriate under the percentage method.

4 **VI. LODESTAR/MULTIPLIER CROSS-CHECK SUPPORTS THE FEE AWARD**

5 Courts may “cross-check” the proposed fee award against the counsel’s lodestar to ensure its
6 reasonableness. (*Vizcaino*, 290 F.3d at 1050.) The goal of both the lodestar and percentage of the recovery
7 methodologies is the determination of a reasonable fee that is consistent with market rates. California
8 courts also use the lodestar multiplier method to award fees in a class action settlement. (See, e.g., *Ketchum*
9 *v. Moses* (2001) 24 Cal.4th 1122, 1132-33; *Serrano III*, 20 Cal.3d at 48; *Lealao*, 82 Cal.App.4th at 49-
10 50.) The method begins with a calculation of time spent and reasonable hourly compensation of each
11 attorney and paralegal who worked on the case. (*Wershba*, 91 Cal.App.4th at 254.) To compensate counsel
12 for risk, quality, and result, courts commonly apply a “multiplier” to the lodestar. *Id.* The hourly rates used
13 must be based on the hourly rates charged by private attorneys of comparable experience, expertise, and
14 reputation for comparable work. (See *Serrano v. Unruh* (1982) 32 Cal.3d 621, 640.) Additionally, the
15 lodestar should include out-of-pocket expenses of the type normally billed by an attorney to a fee-paying
16 client. (*Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 1166.) It should also include time spent on the fee
17 application itself. (*Serrano*, 32 Cal.3d at 632-38.) Class Counsel’s rates here reflect the current market
18 rates by attorneys of comparable experience, skill, and reputation for comparable work. (Carpenter Decl.
19 ¶9.)

20 The requested fee award, inclusive of costs, of \$700,000 is fair and reasonable given Class
21 Counsel’s actual fee lodestar of \$562,600.00 and costs of \$33,082.00 with a very modest multiplier of
22 approximately 1.185. (See Carpenter Decl. ¶¶ 5-6.) Class Counsel spent a total of 791.2 hours in partner
23 and associate time (not including additional prospective time to be spent attending and preparing for the
24 final approval hearing) plus 760.4 hours of paralegal time and \$33,082.00 in costs in the investigation and
25 prosecution of this action, and expect to spend an additional time not included through the conclusion of
26 the action. (Carpenter Decl. at ¶ 6.) Todd D. Carpenter, Esq., a shareholder in the law firm of Carlson
27 Lynch LLP, has expended a total of 436.7 hours on the case to date. (*Id.*) Mr. Carpenter’s hourly rate for
28

1 complex class action litigation is \$750. (Carpenter Decl., ¶¶ 5, 6, 9.) Associate attorneys spent a total of
2 354.5 hours on the case at an hourly rate of \$395. (Carpenter Decl., ¶¶ 5, 6.) The hourly rates for these
3 attorneys are reasonable for consumer class action attorneys with similar experience and have been
4 approved by various California State and Federal Courts. (Carpenter Decl., ¶¶ 5, 9-11.)

5 **A. Class Counsel’s Hourly Rates are Reasonable**

6 The reasonable market value of the attorneys’ services sets the standard measure of a reasonable
7 hourly rate. (See *Ketchum*, 24 Cal.4th 1122.) Courts determine the reasonable market value by examining
8 whether the rates are “within the range of reasonable rates charged by and judicially awarded comparable
9 attorneys for comparable work.” (*Children’s Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740,
10 783.) Rates awarded to Class Counsel in previous actions and rates awarded to other attorneys practicing
11 complex class action litigation in California are appropriate guides for establishing reasonable market
12 rates. (*Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 904. See e.g., *Carr v. Tadin, Inc.* (S.D.
13 Cal. 2014) 51 F.Supp.3d 970, 978–80 (awarding rates of \$650 for partner and \$335-375 for associates in
14 2014 consumer class action); *Hazlin v. Botanical Labs, Inc.* (S.D. Cal. May 20, 2015) No. 13cv0618-KSC,
15 2015 WL 11237634, at *7 (approving rate of \$750 in 2015 consumer class action).)

16 Class Counsel specialize in complex consumer class actions and regularly litigate cases in federal
17 and state courts. (Carpenter Decl., ¶¶ 9-13.) Moreover, their lodestars are calculated using rates that have
18 been accepted in other class action cases. (*Id.*)

19 **B. Class Counsel’s Hours are Reasonable**

20 Class Counsel must demonstrate that their hours were reasonable and necessary to the litigation.
21 (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1320.) Hours are reasonable if they
22 were “reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney
23 traditionally is compensated by a fee-paying client for all time reasonably expended on a matter. (*Hensley*,
24 461 U.S. at 431.) In addition to time spent during litigation, reasonable hours include time spent before
25 the action was filed, including to interview clients, investigate facts and the law, and prepare the initial
26 pleadings. (*Webb v. Board of Educ.* (1985) 471 U.S. 234.) The fee award also includes time spent to
27 prepare and litigate the attorneys’ fee claim. (*Serrano*, 32 Cal.3d at 639.)

1 Class Counsel spent approximately 791.2 hours in attorney time and 760.4 hours in paralegal time
2 investigating and litigating this case to date. (Carpenter Decl., ¶ 6.) The Declaration of Todd Carpenter,
3 Esq. outlines the extensive work performed by Class Counsel and its staff. (See Carpenter Decl. ¶¶ 2, 6.)
4 The hours expended were wholly reasonable given the issues and complex nature of this action.

5 **C. The Requested Multiplier is Reasonable**

6 Once the lodestar is calculated, it may be enhanced with a multiplier. (*Wershba*, 91 Cal.App.4th
7 at 254.) The objective of any multiplier is to provide lawyers involved in public interest litigation with a
8 financial incentive. (*Ketchum*, 24 Cal.4th at 1123.) “If this ‘bonus’ methodology did not exist, very few
9 lawyers could take on the representation of a class client given the investment of substantial time, effort,
10 and money, especially in light of the risks of recovering nothing.” (*In re Washington Public Power Supply*
11 *System Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300. Only when courts properly compensate experienced
12 counsel for successful results can they assure the continuing effectiveness of class actions. To accomplish
13 this objective, the fee award must be large enough “to entice counsel to undertake difficult public interest
14 cases.” (*San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d
15 738, 755. The fee requested here represents a multiplier of approximately 1.185 – an amount well within
16 the accepted range for class action cases. (See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 60
17 (multiplier of 2.5); *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (multiplier of 1.75); *Sutter*
18 *Health Insured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (multiplier of 2.52).)

19 When determining a multiplier, courts should consider all factors relevant to a given case. (*Serrano*
20 *III*, 20 Cal.3d at 49.) Here, this action supports the public interest outlined in California’s consumer
21 protection laws and federal regulations regarding deceptive and misleading price discount advertising.
22 The Settlement effectively provides a significant financial benefit to Class Members, injunctive relief
23 benefitting the public at large, and creates a real deterrence against future violations. This result alone
24 justifies the requested multiplier. However, courts also consider additional factors, such as (1) the novelty
25 and difficulty of the questions involved; (2) the skills displayed by Class Counsel and the results obtained;
26 and (3) the contingent nature of the fee award. (*Ketchum*, 24 Cal.4th at 1132.) These factors also support
27 the requested multiplier.

1 **1. The Novelty and Difficulty of the Questions Involved**

2 This action presented novel and difficult questions regarding liability under California’s consumer
3 protection laws and federal regulations regarding transparency in discount price advertising. Plaintiff’s
4 allegations presented difficult and novel legal issues related to proving liability, damages and remedial
5 measures to address the alleged harm. At trial, Plaintiff would be tasked with proving that Defendant’s
6 price advertisements were deceptive and material inducements to consumers’ purchasing decision(s), as
7 well as presenting a viable damages model to calculate the amount customers were overcharged as a result
8 of that deception, all of which would require significant expert testimony and expense. (See Section V.C.
9 above.)

10 **2. The Skills Displayed by Class Counsel and the Exceptional Results Obtained**

11 Class Counsel, Carlson Lynch LLP, specializes in complex class actions and regularly litigate
12 cases in California federal and state courts. (Carpenter Decl., ¶¶ 11-12.) Historically, Class Counsel has
13 achieved excellent results for millions of consumers in contested consumer class actions. Equipped with
14 this significant background, Class Counsel worked efficiently and effectively toward a satisfactory and
15 reasonable resolution of the action. Class Counsel investigated the case, assessed its value, and weighed
16 the risks and uncertainties arising from protracted litigation against the certain benefits of the preliminarily
17 approved settlement. (See Sections V.A. and V.D. above.)

18 **3. The Contingent Nature of the Fee Award Warrants the Requested Multiplier**

19 “[A] contingent fee contract, since it involves a gamble on the result, may properly provide for a
20 larger compensation than would otherwise be reasonable.” (*Rader v. Thrasher* (1962) 57 Cal. 2d 244, 253
21 (citations omitted).) Class Counsel assumed substantial risk in agreeing to litigate this case on a pure
22 contingency basis, including loss of time spent investigating and litigating and costs incurred. With no
23 guarantee of success, the contingent nature of this action heavily supports the application of a positive
24 multiplier, as is consistent with California Supreme Court precedence:

25 Under our precedents, the unadorned lodestar reflects the general local hourly rate for a
26 *fee-bearing case*; it does *not* include any compensation for contingent risk ... The
27 adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that
28 the attorney will not receive payment if the suit does not succeed, constitutes earned
compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is

1 intended to approximate market-level compensation for such services, which typically
2 includes premium for the risk of nonpayment or delay in payment of attorney's fees.

3 (*Ketchum*, 24 Cal.4th at 1138. See also Section V.E. above.)

4 **4. Class Counsel's Efforts in Achieving an Expedient Resolution Support Multiplier**

5 Class Counsel secured an outstanding settlement instead of engaging in additional years of
6 protracted litigation through trial and certain appeal. Accordingly, the requested positive multiplier is
7 warranted. "Considering that our Supreme Court has placed an extraordinarily high value on settlement,
8 it would seem counsel should be rewarded, not punished, for helping to achieve that goal." (*Lealao*, 82
9 Cal.App.4th at 52 (internal citations omitted); *Bowling v. Pfizer, Inc.* (S.D. Ohio 1996) 922 F.Supp. 1261,
10 1282-1283 (Courts should reward attorney in case settled "in swift and efficient fashion").)

11 Class Counsel litigated these matters diligently and took on substantial risk in time, expense and
12 opportunity cost. Accordingly, imposition of a modest multiplier as a cross-check against Plaintiff's
13 reasonable percent-of-recovery fee request is entirely reasonable and should be awarded.

14 **VII. THE REQUESTED LITIGATION COSTS ARE REASONABLE**

15 Out-of-pocket expenses are compensable under Cal. Code Civ. P. § 1021.5 if they would normally be
16 billed to a fee-paying client. (*See Beasley v. Wells Fargo* (1991) 235 Cal.App.3d 1407, 1419; Cal. Civ.
17 Code. § 1780(d) (providing for costs to prevailing plaintiff in CLRA action).) Class Counsel's requested
18 reimbursement of \$33,082.00 in litigation costs incurred to date, which is included in the fee request of
19 \$700,000 is wholly reasonable. These expenses were necessary to conduct the litigation and are
20 reasonable and modest in light of the benefit conferred on the Class. (Carpenter Decl. ¶ 5.) Costs include,
21 *inter alia*, (1) two mediation fees, (2) court filing fees, (3) electronic legal research fees, (4) scanning,
22 photocopying, printing, and extraneous office-related expenses, and (5) expert costs. (*Id.*) These types of
23 costs are typical to those billed by attorneys to fee-paying clients. (*See Beasley*, 235 Cal.App.3d at 1421.)

24 **VIII. PLAINTIFF IS ENTITLED TO A REASONABLE INCENTIVE AWARDS**

25 Plaintiff requests a reasonable service award of \$2,500. "[I]ncentive awards are fairly typical in
26 class action cases" and are "designed" to compensate class representatives for work done on behalf of the
27 class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to
28 recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th

1 Cir. 2009) 563 F.3d 948, 958-59. See also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
2 Cal.App.4th 399, 412 (“[I]t is established that named plaintiffs are eligible for reasonable incentive
3 payments to compensate them for the expense or risk that they have incurred in conferring a benefit on
4 other members to the class.”.) An incentive award is appropriate “if it is necessary to induce an individual
5 to participate in the suit.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395.)

6 Here, Plaintiff maintained continued involvement in the litigation, including reviewing initial
7 pleadings and continuously communicating with Class Counsel. In agreeing to serve as class
8 representatives, Plaintiff undertook substantial risks to her reputation in the public domain and thrust
9 herself into active litigation to enforce an important right for the benefit of the general public. Moreover,
10 Plaintiff risked potential judgment against herself if this case had been unsuccessful. In class action losses,
11 class representatives are deemed the losing party liable for the prevailing party’s costs. (*Earley v. Superior*
12 *Court* (2000) 79 Cal.App.4th 1420, 1433–34.) Few individuals are willing to undertake that risk,
13 particularly since courts have entered judgments against class representatives. (See *In re Tobacco Cases*
14 *II* (2015) 240 Cal.App.4th 779, 805–07 (upholding cost award in favor of defendant against class
15 representative in her personal capacity in the amount of \$764,552.73).) Lastly, the incentive award sought
16 by Plaintiff is very relatively low and implicitly reasonable in comparison to other consumer class action
17 settlements. (See e.g., *Morey v. Louis Vuitton North America, Inc.* (S.D. Cal. Jan. 9, 2014) 2014 WL
18 109194 (\$5,000 incentive award in Song-Beverly settlement); *Williams v. Costco Wholesale Corp.* (S.D.
19 Cal. Jul. 7, 2010) 2010 WL 2721452, at *7 (\$5,000 incentive award in antitrust case settled for \$440,000);
20 *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393–94 (\$10,000 incentive awards to each of the
21 four class representatives).)

22 IX. CONCLUSION

23 For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s unopposed
24 motion for attorneys’ fees and costs in the amount of \$700,000 and incentive awards to Plaintiff in the
25 amount of \$2,500.

26 Date: January 13, 2020

Respectfully submitted,

27 /s/ Todd D. Carpenter
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10 *Attorneys for Plaintiff and the Settlement Class*

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 PAIGE PETKEVICIUS, on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 LAMPS PLUS, INC., a California corporation,
18 and DOES 1-50, inclusive,

19 Defendants.

Case No: 37-2019-00020667-CU-MC-CTL

[E-FILE]

CLASS ACTION

**DECLARATION OF TODD D. CARPENTER
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR ATTORNEYS'
FEES, COSTS AND INCENTIVE AWARDS**

Date: April 3, 2020

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

20 I, Todd D. Carpenter, declare:

21 1. I am an attorney duly admitted to practice law before all courts of the State of California,
22 and I am a shareholder in the law firm of Carlson Lynch LLP, for Plaintiff and the Class herein. I make
23 this declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Incentive
24 Award. If called as a witness, I could and would competently testify to the following:

25 2. I have personally been involved in the investigation and prosecution of this class action
26 from its inception through to the present. I oversaw the investigation into several locations of the
27 Defendant's stores. I directed the investigation through the use of my paralegals and reviewed their entries
28

1 accordingly. I was also actively involved in the management of the litigation. I assigned litigation tasks to
2 my associates, but performed the high-level negotiation of the settlement and oversaw the approval
3 process law & motion work.

4 3. The law firm of Carlson Lynch LLP has expended a substantial amount of time and effort
5 in prosecuting this action and achieving an adequate benefit for the Class. The requested fee is reasonable
6 and appropriate based on the risks of litigation, Class Counsel's refusal of alternative employment
7 opportunities with guaranteed payment, and the benefit obtained for the Class.

8 4. After reaching agreement on the material terms of the Settlement, the Parties negotiated an
9 agreement on attorneys' fees, costs, and incentive awards that Lamps Plus will pay separate and apart
10 from its payment to the Class.

11 5. My firm's hourly rates are as follows: \$750.00 per-partner hour; \$395.00 per-associate
12 hour; and \$125 per-paralegal hour as of the date of this declaration. I have established my billable rate
13 through an annual, informal survey of similarly experienced consumer class action attorneys in the
14 Southern California legal market and in consulting defense counsel with respect to their hourly rates in
15 defense of similar matters. I expect to spend additional time to conclude this action, including following
16 up with the Notice Administrator, responding to objector(s) and preparing for and attending the Final
17 Fairness Hearing. Further, my firm has spent approximately \$33,082 in un-reimbursed expenses incurred
18 in connection with this case. A breakdown of my firm's additional costs incurred in this action is set forth
19 below:

20 **COSTS**

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No.	General Description	Cost:	
1.	Two Mediations	\$7,625.00	
2.	Court fees	\$2,893.00	
3.	Electronic research	\$3,219.00	
4.	Scanning, photocopying, printing, and other office related costs	Waived	

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5.	Expert Report On Point Analytics	\$19,345.00	
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TOTAL: **\$ 33,082.00**

6. My lodestar billing time records are available if required by the Court. A general summary of my firm's accrued time is as follows:

No.	General Description	Hours	Rate	Lodestar
1.	Pre-filing investigation; research establishing theory of liability: (Partner Time) Designed the pre-suit investigation, including in-person observation and recording of pricing practices and sales transactions. Coordinated the strategy and execution for the investigation at all Lamps Plus locations in California, two locations in Washington State and one in Arizona; including the surveillance of pricing strategies and practices on a near-daily basis for 14 consecutive months and a total 16 months out of a 24 month time-period. Assessed investigation-acquired pricing against Lamps Plus website and WaybackMachine.org. Designed and implemented the pre-suit comparison market investigation – identifying items sold and comparing against retail channel stores. Research regarding statutory liability for false reference pricing; impact /damages analysis.	162.2	\$750	\$121,650
2.	Pleadings: (Associate Time) Research case law and review case database for filings regarding fraudulent sale discounting complaints; gather factual information for complaint and review corresponding investigation data; draft complaints and circulate for edits; gather and incorporate exhibits; incorporate revisions, revise, finalize, and file; issue for service; draft mediation statements; draft first amended complaint; circulate for review and incorporate edits; finalize, file, and e-serve. Evaluate Removal and draft subsequent motion for remand.	142.3	\$395	\$56,208
3.	Investigation Time (Paralegal time): Observed market pricing practices for 132 SKU items identified at the regular retail channel stores for 16 total months prior to suit and subsequent months preceding the initial mediation.	760.4	\$125	\$95,050
4.	Discovery: (Associate time) Draft written discovery requests including Requests for Production of Documents and Special Interrogatories; circulate to co-counsel and partner for review and comment; incorporate suggested revisions; finalize and serve; calendar response deadline; draft notices of deposition for Defendant's corporate representative and percipient witness; circulate to partner for edits to topics regarding FRCP 30(b)(6) notice and incorporate same; serve and correspond with opposing counsel regarding scheduling.	73.9	\$395	\$29,190
5.	Discovery: (Partner time): Strategize with team regarding goals of discovery; provide input into 30b6 topics; potential subpoena issues; Review written discovery;	19.2	\$750	\$14,400
6.	Evaluation, Retention and substantive work with Experts (Partner time): Screened, vetted and interviewed consumer behavior consultants / human factors experts and economists.	173.2	\$750	\$129,900

1	Conference calls and email correspondence with consumer survey expert regarding consumer survey design with respect to Defendant's pricing scheme; use of false reference prices; impact on consumer behavior. Drafted memorandum regarding substantive liability issues; scope of consumer purchase pattern and behavior impacted by false reference prices; correlating survey issues. Follow up correspondence and discussion regarding the use of open-ended survey questions; recall bias issues for consumer survey.			
2	Summarized and provided granular investigation data to OnPoint Analytics; conference calls, email and discussion regarding the proposed damages models; use of regression analysis and conjoint theory for damages determination; market price impact analysis. Drafted numerous memorandums regarding critiques of damages models, summary of data acquired in investigation; assigning and ranking product attributes; comparison market data – items sold at competitive retail chains. Review of expert declaration / report in support of Plaintiffs' mediation statement. Follow up conference calls regarding substance of report; assessment of range of potential damages.			
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12	7. Law and Motion: (Associate time): Conduct legal research and draft motion to remand, motion for preliminary approval; motion for final approval; circulate drafts to partner and incorporate edits. Drafted revised Complaint for State Court action; drafted additional Washington State Court Complaint.	43.5	\$395	\$17,182
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15	8. Law and Motion: (Partner time) Reviewed drafts as referenced above.	8.2	\$750	\$6,150
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17	9. Settlement Agreement and Mediation: (Associate time) Prepare for early neutral evaluation conference; prepare for Rule 26(f) conference; attend two full-day mediation sessions; follow-up telephonic conferences and email correspondence with mediator regarding final terms of settlement; draft settlement agreement and notices; conduct several telephonic meet and confer conferences with opposing counsel regarding various drafts of settlement agreement and notices; receive revisions and incorporate same; correspondence with claims administrator regarding settlement notices, website, and dissemination of notice.	57.9	\$395	\$22,870
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22	10. Mediation / Settlement: (Partner time) Prepared two mediation brief; coordinated with expert from On Point Analytics to support available damages analysis; attended two full day mediations; follow up settlement issues; negotiated settlement details through multiple revisions and phone calls with opposing counsel. Post mediation settlement discussions and teleconferences; multiple revisions to Settlement Agreement; Notices.	53.2	\$750	\$39,900
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26	11. Motions for Settlement Approval (Associate Time): research regarding motion in support of preliminary approval of class action settlement and draft the same; incorporate edits from partner; finalize, file, and serve; prepare for preliminary approval hearing; research and draft instant fee motion;	17.7	\$395	\$6,991
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1		circulate to partner for review and incorporate edits; finalize and filed; prepared for and attended oral argument for preliminary approval.			
2	12.	Motions for Settlement Approval (Partner Time): Made revisions to motion for Preliminary Approval; met with client; prepared for and instructed associate on attending oral argument for preliminary approval.	3.2	\$750	\$2,400
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5	13.	General Case Management Issues: (Partner time) Preparation and participation in status conferences; periodic teleconferences.	11.2	\$750	\$8,400
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7	14.	Motion for Attorneys' Fees / Motion for Final Approval (Associate Time): research regarding motion for attorneys' fees and motion for final approval of class action settlement and draft the same; incorporate edits from partner; prepare for final approval hearing; research and draft instant fee motion; circulate to partner for review and incorporate edits; finalize and file.	19.2	\$395	\$7,584
8					
9					
10	15.	Motion for Attorneys' Fees / Motion for Final Approval: (Partner time) Evaluated and provided revisions to motion for attorneys' fees; prepared declaration.	6.3	\$750	\$4,725
11					
12	16.	Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time):	--	\$750	---
13					
14		TOTAL FEES:			\$562,600.00
15		Expenses:			\$33,082.00

17 7. Plaintiff Paige Petkevicius maintained continued involvement in the litigation, including
18 reviewing initial pleadings and communicating with Class Counsel on the status of the action.

19 8. I agreed to accept Plaintiff's cases on a pure contingency fee basis.

20 9. My hourly rate of \$750.00 per hour is in line with comparable hourly rates charged by other
21 law firms that handle class action litigation in Southern California. Indeed, my current hourly rate of
22 \$750.00 per hour was recently approved by this Courtroom on September 27, 2019 in *Rael v. RTW*
23 *Retailwinds, Inc., et al*, Case No. 37-2019-00003850-CU-MC-CTL, and on July 12, 2019 by Judge Ronald
24 F. Frazier in *Dennis v. Ralph Lauren Corporation, et al.*, Case No. 37-2018-00058462-CU-MC-CTL, both
25 on unopposed fee applications in similar false and deceptive sale discounting class action cases. My hourly
26 rate was also recently approved on April 5, 2019 in an \$8,000,000 all-cash FACTA Settlement in *Mocek,*
27 *Varoz, et al v. AllSaints USA Limited* (Case No. 2016-CH-10056; Circuit Court of Cook County, Illinois;
28

1 County Dept. Chancery Div.). My previous hourly rate of \$650.00 per hour was approved in 2017 by
2 Judge Judith Hayes on an unopposed fee application in a Song-Beverly Credit Card Act case, *Manner v.*
3 *Summit Pizza West, LLC*, Case No. 37-2015-5909-CU-MC-CTL. My rate has increased over the last two
4 years commensurate with other plaintiff's class action practitioners in Southern California with my level
5 of experience and success.

6 10. My hourly rate is consistent with my level of expertise in consumer class actions. I have
7 extensive experience in class actions: During the course of my career, I have taken and defended over 100
8 depositions in personal injury, complex and class action cases. I have successfully participated in
9 mediations resulting in more than \$100,000,000 in settlements or awards in class action cases. I have
10 drafted, filed, and argued multiple motions in complex consumer class actions, including all forms of
11 discovery, dispositive and certification motions. My practice focuses exclusively on consumer class action
12 and complex litigation, representing plaintiff classes in major insurance fraud, unfair business practices,
13 false and deceptive advertising, product liability and anti-trust violations.

14 11. I have represented plaintiffs in numerous class action proceedings in California and
15 throughout the country, in both state and federal courts. I have represented thousands of purchasers of
16 consumer products, food, food supplements and over-the-counter drugs in state and federal courts
17 throughout the United States in cases arising out of various false advertising claims made by
18 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean
19 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite.
20 As a shareholder, I was also counsel of record at my prior firm in the MDL proceeding, *In re: Hydroxycut*
21 *Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.), wherein my previous firm was
22 designated as co-lead counsel for the class. I was also class counsel for the Settlement Class in FACTA
23 cases against Hugo Boss, U.S.A. Inc. in the Southern District of California; *Travis Benware v. Hugo Boss,*
24 *U.S.A., Inc.*, Case No. 3:12-cv-01527-L-MDD and Southwest Airlines (*Lumos v. Southwest Airlines, Co.*,
25 Case No. C-13-1429-CRB) and *Mocek, Varoz, et al v. AllSaints USA Limited* (Case No. 2016-CH-10056;
26 Circuit Court of Cook County, Illinois; County Dept. Chancery Div.)

27 12. I have represented thousands of consumer credit cardholders against several major retailers
28 arising from violations of the Song-Beverly Credit Card Action section 1747.08 and have achieved

1 excellent results, including, but not limited to a class benefit of a retail gift valued between \$40 and \$120
2 in a class action settlement with Gucci America, Inc. I have also represented thousands of consumer debit
3 card holders against major commercial banks, including assuming a leadership role as prosecuting counsel
4 in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank* and *Dee v. Bank of the West*, MDL
5 No. 2036 (S.D. Fl.). I have filed similar actions against several other banks and credit unions across the
6 country, alleging that each institution manipulated the processing of customer debit card purchases to
7 maximize overdraft fees, including actions against Northwest Savings Bank, (*Toth v. Northwest Savings*
8 *Bank*, Case No. GD-12-8014, In the Court of Common Pleas of Allegheny County, Pittsburgh,
9 Pennsylvania), Pinnacle National Bank (*John Higgins v. Pinnacle Bank*, Case No. 11-C4858, in the Circuit
10 Court for the State of Tennessee, Twentieth Judicial District in Nashville) and Mission Federal Credit
11 Union (*Taylor v. Mission Federal Credit Union*, Case No. 37-2012-00092073-CU-BT-CTL, San Diego
12 Superior Court, Department 75, San Diego, California).

13 13. I was also appointed class counsel in *Plantier, et al. v. Ramona Municipal Water District*,
14 San Diego, Superior Court Case No. 37-2014-00083195-CU-BT-CTL, and *Mendoza v. The Gar Wood*
15 *Restaurant, LLP*, Placer County Case No. SCV 0034158.

16 14. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the
17 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” in 2015, 2016,
18 2017, 2018 and 2019.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct, and that this declaration was executed on January 13, 2020, in San Diego, California.

21
22 Dated: January 13, 2020

CARLSON LYNCH LLP

23
24 /s/ Todd D. Carpenter
25 Todd D. Carpenter

26 **CARLSON LYNCH LLP**
27 Todd D. Carpenter (CA 234464)
28 Scott G. Braden (CA 305051)
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Attorneys for Plaintiff and the Settlement Class

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

PAIGE PETKEVICIUS, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

LAMPS PLUS, INC., a California corporation,
and DOES 1-50, inclusive,

Defendants.

Case No: 37-2019-00020667-CU-MC-CTL

[E-FILE]

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARD**

Date: April 3, 2020

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

1 **PROPOSED ORDER**

2 On April 3, 2020, this Court heard Plaintiff’s Unopposed Motion for Attorneys’ Fees, Costs, and
3 Incentive Award filed by Plaintiff Paige Petkevicius (“Plaintiff”). This Court reviewed the motion and the
4 supporting papers. As such, having reviewed the foregoing and based on the findings below, the Court
5 found good cause to grant the unopposed motion.

6 The requested attorneys’ fees and costs in the amount of \$700,000.00 is fair and reasonable in light
7 of the nature of the case, Class Counsel’s experience and efforts in prosecuting this action, and the
8 significant benefit obtained for Class Members. Class Counsel may elect to have a portion of the Court
9 Approved Attorneys’ Fees and Costs paid in periodic payments through a structured settlement entered
10 into prior to payment of any such fees and costs to Class Counsel. The Settlement Administrator and
11 Qualified Settlement Fund are authorized to execute and issue all documents necessary to effectuate any
12 such structured settlement, including W-9 form(s) for any portion of Fees and Costs that are paid through
13 a structured settlement fund. Any Class Counsel who make this election shall be solely and legally
14 responsible to pay all applicable taxes on any payment made pursuant to this Paragraph.

15 An incentive award in the amount of \$2,500.00 to Plaintiff is fair and reasonable in light of the
16 risks in commencing this action, and the time and effort spent litigating this action as the Class
17 Representative.

18 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 19 1. Class Counsel is awarded attorneys’ fees and costs in the total amount of \$700,000.00. Defendant
20 must pay Class Counsel this amount no later than ten (10) calendar days after the Final Settlement
21 Date as set forth in Paragraph 2.5 of the Settlement Agreement;
- 22 2. Plaintiff is awarded an incentive award in the amount of \$2,500.00. Defendant must pay Plaintiff
23 this amount no later than ten (10) calendar days after the Final Settlement Date as set forth in
24 Paragraph 2.4 of the Settlement Agreement.

25
26 DATED: _____

_____ San Diego Superior Court Judge
Hon. Joel R. Wohlfeil