LYNCH CARPENTER, LLP
Todd D. Carpenter (234464)
todd@lcllp.com
James B. Drimmer (196890)
Jim@lcllp.com
1234 Camino del Mar
Del Mar, CA 92014
Tel: 619-762-1910
Fax: 619-756-6991

KELLER POSTMAN LLC
Warren Postman (330869)
wdp@kellerpostman.com
150 N. Riverside Plaza, Suite 4100
Chicago, IL 60606
Tel: 202-918-1870

Attorneys for Plaintiff and Class Counsel

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

ROSEMARIE RIVALI, on behalf of herself and all others similarly situated,

Plaintiff,

v.

SHUTTERFLY, LLC, a Delaware limited liability company, and DOES 1- 50, inclusive,

Defendants.

Case No. 37-2023-00019221-CU-BT-NC

[E-FILE]

CLASS ACTION

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

Date: February 9, 2024
Time: 1:30 P.M.
Judge: Cynthia A. Freeland
Dept: N-27

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont.)

Page(s)

Cases (cont.)

TABLE OF AUTHORITIES (cont.)

Page(s)

Cases (cont.)

TABLE OF AUTHORITIES (cont.)

Page(s)

Cases (cont.)

TABLE OF AUTHORITIES (cont.)

Page(s)

Statutes

I. INTRODUCTION

On August 25, 2023, the Honorable Cynthia A. Freeland preliminarily approved the Settlement[1] as fair, adequate, and reasonable. Plaintiff now brings this Motion for Attorney Fees, Costs, and Incentive Award, seeking $2,400,000 for a Settlement conferring a benefit estimated to be $119,600,000.[2] This amount was part of a negotiated Settlement and is unopposed. As described in Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Provisional Class Certification (ROA Nos. 10-13), and agreed by the Court, Plaintiff achieved an outstanding Class Settlement in this false discount pricing consumer class action. This Settlement requires Shutterfly, LLC ("Defendant" or "Shutterfly"), who owns and operates an e-commerce website that makes and sells custom cards, photo books, prints, home décor, gifts, etc., to distribute to the Class a benefit of a $25.00 Voucher for each Claim-in-Class Member and a $5 Direct Benefit Voucher for each Direct Benefit Class Member.[3] The Vouchers of this Settlement provide a real economic benefit, allowing consumers to purchase hundreds of items, including photo books, cards, stationery, glassware, home décor, and other products without having to paying anything out of pocket.[4] Additionally, the Settlement protects consumer rights by providing injunctive relief and deterring retailers from engaging in similar alleged misconduct.

Following agreement on the material terms of the Settlement, the Parties negotiated Lynch Carpenter, LLP, and Keller Postman LLC's ("Class Counsel") attorneys' fees and costs of $2,400,000 and the Named Plaintiff's Individual Settlement Award in the amount of $12,500 to be paid by Defendant subject to Court approval. (See SA, §§ 2.5-2.6); Declaration of Todd D. Carpenter ("Carpenter Decl."), in support, filed concurrently herewith, ¶ 9.) Plaintiff now respectfully requests the Court award $2,400,000

[1] All capitalized terms, unless otherwise defined, have the same definition as those terms in the Settlement Agreement and Release (ROA No. 12, Ex. 1) ("SA").

[2] See *infra* fn. 5.

[3] There are several items that are valued at $5 or under on Shutterfly's website, including its Holiday Cards (750+ items), Christmas Cards (750+ items), Thank You Cards (490+ items), Personal Stationery (100+ items), Return Address Labels (1000+ items), Birthday Invitations (220+ items), Wedding Invitations (340+ items), Save the Date cards (270+ items), Wedding Announcements (160+ items), Wedding Enclosure Cards (320+items), and RSVP cards (340+ items), among other items.

[4] Class Counsel's pre-suit investigation, as well as a review of Shutterfly's website at the time of filing this motion, demonstrates that at any one time, there are thousands of items for sale at $25 or less, meaning Claim-in Class Members would not be required to come out-of-pocket to make a purchase. These items include photo books, cards and stationery, wall art, calendars, as well as home décor for the office, kitchen, and outdoors. See https://www.shutterfly.com. Furthermore, there is a category for personalized gifts under $25. See https://www.shutterfly.com/personalized-gifts/under-25-gifts/.

in attorneys' fees and costs, and an Individual Settlement Award of $12,500 to Plaintiff for her commitment in serving as Class representative.

II. SUMMARY OF CLASS COUNSEL'S WORK

Prior to the commencement of litigation on April 1, 2022, Class Counsel spent sixteen months investigating Plaintiff's claims, including extensive and daily or near-daily gathering of pricing data from Defendant's e-commerce store, Shutterfly.com. (See Carpenter Decl., ¶ 2.) Specifically, Class Counsel tracked and cataloged numerous items listed for sale on Defendant's website. (See *ibid.*) The investigation revealed that Defendant continuously discounted its products by setting an "Original" price, a "Sale" price, and a "% off" (final discount) price for well over 90 days at a time. (See *id.* at ¶ 3.) Thus, Class Counsel believes the investigation revealed Shutterfly's "Original" prices were false and used exclusively to induce consumers to believe that the merchandise was once sold at the "Original" price from which the false discount and corresponding sale prices were derived. Class Counsel further interpreted the data to show that the investigated products were "discounted" against the "Original" price for a length of time that exceeded the time allowed under California's False Advertising Law ("FAL") and the Federal Trade Commission Act ("FCTA"). As part of the investigation, Class Counsel retained an economist to develop and support the damages alleged by Plaintiff. (See *id*. at ¶ 5.) This investigative work combined with consultation with a damage expert was critical to Class Counsel's understanding of Defendant's conduct and the formation of the legal theories advanced by Plaintiff as they related to associated damages models.

Class Counsel also analyzed the relevant legal issues in regard to the claims asserted and Shutterfly's potential defenses. For example, Lynch Carpenter discovered the presence of an arbitration provision in the terms and conditions on Shutterfly's website, which potentially subjected its large customer base to resolving disputes on an individual basis through binding arbitration. To this end, Lynch Carpenter partnered with Keller Postman, who has substantial experience in bringing serial arbitration proceedings against defendants who assert their arbitration clause in the context of defending consumer claims. However, due to the size of Shutterfly's customer base, and in anticipation of the potential mass arbitration discussed above, Lynch Carpenter also designed and implemented its own mass arbitration capabilities to handle arbitrations at scale nationwide, and as necessary.

On April 1, 2022, Rosemarie Rivali, through Class Counsel, filed a putative class action against Shutterfly in the United States District Court for the Central District of California, No. 2:22-cv-02175-RGK-GJS (the "Federal Court Action"), asserting false advertising claims under California's Unfair Competition Law, Business and Professions Code section 17200 et seq. (the "UCL"), the FAL, and the California Consumer Legal Remedies Act, Civil Code section 1750 et seq. (the "CLRA"). Shutterfly filed a Motion to Compel Arbitration and Motion to Dismiss on May 27, 2022. The court granted Shutterfly's Motion to Compel Arbitration and denied its Motion to Dismiss on June 28, 2022.

Prior to the commencement of the arbitration proceedings, the Parties engaged in settlement discussions, including two full-day mediation sessions facilitated by JAMS Mediator Shirish Gupta, on August 4, 2022, and August 8, 2022. As a result of these mediation meetings, the Parties were able to reach a prospective settlement on a Class-wide basis. In the following months, the Parties heavily negotiated the details of the Settlement Agreement, and ultimately reached the Settlement Agreement currently before this Court.

In advance of mediation, Class Counsel prepared an extensive confidential mediation brief, representing the culmination of Class Counsel's pre- and post-litigation investigative work, including information related to Plaintiff's purchases, Class data from Defendant, Defendant's widespread pricing practices, and expert analysis thereof. During this time, Class Counsel worked closely with their expert to develop the damages model alleged against Defendant. Following settlement in principle, Class Counsel drafted the substantive terms of the Settlement and Notice plan and engaged in further negotiation over the structure of the Settlement Agreement. (See Carpenter Decl. at ¶ 8.) Only after reaching an agreement on the material terms of the Settlement, the Parties negotiated an agreement on attorneys' fees, costs, and an incentive award that Shutterfly will pay separately and apart from its payment to the Class. (See *id*. at ¶ 9.)

III. SUMMARY OF SETTLEMENT TERMS

On August 25, 2023, this Court preliminarily approved the Settlement, for the following Class:

> All persons within the United States, who, within the Class Period, (April 1, 2018, to August 25, 2023) purchased from Shutterfly's e-commerce website (www.shutterfly.com), one or more products at discounts from an advertised reference price and who have not received a refund or credit. Excluded from the Class is Shutterfly's Counsel, Shutterfly's officers, directors and employees, and the judge presiding over the Action.

(SA §§ 1.8-1.9.)

The Settlement creates dual Classes, a Direct Benefit Class, and a Claim-in Class. (See SA §§ 1.4, 1.16, 1.17, 1.36, 2.1.) The Direct Benefit Class Members will automatically receive a $5 Voucher, even if they do *nothing* in response to the Class Notice. (See *id.* at §§ 1.16-1.17.) Thus, the minimum value of the Settlement if all Class Members received only Direct Benefit Vouchers is valued at $115,000,000, which is derived from Defendant's approximation of Class Members, based on twenty-three million online purchasers. However, Claim-in Class Members will receive a Voucher worth 400% more, as Claim-in Class Members who make a valid Claim will receive a $25 Voucher (See *id.* at § 1.36). Moreover, both Classes of Vouchers are valid for one year, are transferrable, require no minimum purchase, and can be used in conjunction with an available free shipping code so that Class Members do not incur an expense when redeeming either Class of Voucher. (See *id.* at §§ 1.17, 1.36.) Lastly, Vouchers are appropriate here in this case, with this Defendant, because Shutterfly offers a deluge of products that are valued at or below $25, meaning Class Members will often not incur any out-of-pocket costs. (See Section II, *supra*, fn. 2.)

IV. FEE AWARD STANDARDS

A. The Provision For Payment of Attorneys' Fees And Costs In The Settlement Agreement Is Appropriate And Should Be Enforced

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

Here, the requested fees and costs figure of $2,400,000 was negotiated during adversarial bargaining by Class Counsel with Defendant after the substantive terms of the Settlement and corresponding Class benefits had been negotiated. Notably, in this matter, Class Counsel is responsible for providing Notice and bearing the costs of Notice which are estimated to be $350,000. (See Carpenter Decl., ¶ 10.) The fee fairly reflects the marketplace value of Class Counsel's services. As the United States Supreme Court instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

(*Deposit Guar. Nat'l Bank v. Roper* (1980) 445 U.S. 326, 338.)

Additionally, the Settlement releases Defendant from all claims that were alleged in the Action, including violations of the CLRA, Civil Code § 1750 et seq.; this entitles Class Counsel to recover attorneys' fees and costs as the prevailing party. (See Civ. Code, § 1780, subd. (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 succeeded on a practical level." (*Graciano v. Robinson Ford Sales* (2006) 144 Cal.App.4th 140, 150.) Based upon the preliminarily approved Settlement, securing a minimum $115,000,000 Class benefit, which is available to the Class Members regardless of whether they make a Claim, Plaintiff qualifies as the "prevailing party" under the CLRA and is therefore entitled to fees pursuant to that statute. Additionally, attorneys' fees may be awarded here under the substantial benefit doctrine and/or the private attorney general doctrine pursuant to the Code of Civil Procedure § 1021.5.[5]

[5] Under the private attorney general doctrine, attorneys' fees are awarded in cases that enforce rights affecting public policies. (See *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741 ("The fundamental objective of section 1021.5 is to encourage suits effectuating a strong public policy by awarding substantial attorney's fees to those who successfully bring such suits.").) Successful litigants are entitled to fees when they have: (1) enforced an important right affecting the public interest; (2) conferred a significant benefit on the public or a large class of persons; and (3) imposed a financial burden on the plaintiff out of proportion to his individual stake. (See *Baggett v. Gates* (1982) 32 Cal.3d 128, 142.) These criteria are easily met here. (See *Beasley v. Wells Fargo* (1991) 235 Cal.App.3d 1407, 1418 (Consumer protection litigation has "long been judicially recognized to be vital to the public interest") (internal citations omitted); *Graham v. Daimler Chrysler Corp.* (2004) 34 Cal.4th 553, 561 (only 1,000 subject vehicles sold to California 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.").)

B. Applicable Fee Award Standards

California state "[c]ourts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier and the percentage of recovery method." (See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (hereinafter, "*Wershba*"); see also *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809 (recognizing that the percentage method is appropriate where "the amount was a 'certain or easily calculable sum of money.'") (internal citations omitted).) The key advantage of the percentage method, applicable here, is that it focuses on the benefit conferred on the class resulting from the efforts of counsel. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 48 (hereinafter, "*Lealao*") (percentage of benefit method is result-oriented rather than process oriented).) Many federal courts, including the Ninth Circuit, have also developed a preference for using the percentage method. (See *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir.1990) 904 F.2d 1301, 1311; *In re Hydroxycut Mktg. & Sales Practices Litig.* (S.D. Cal. Nov. 18, 2014) No. 09-2087 BTM(KSC), 2014 WL 6473044, at *9) (utilizing percentage-of-recovery method where settlement value was based in part on free product option).)

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

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

courts could properly use a "percentage of the fund" method for calculating attorney's fees in a class action case:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative 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.

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

Further, in quantifying the value of Settlement consideration, courts generally calculate the full amount available under the Settlement, regardless of whether all Class Members claim their payment. (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 480-481; *Williams v. MGM-Pathe Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (district court abused its discretion by calculating fees as one-third of the class members' claims rather than one-third of entire settlement fund).)

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

Here, Class Members will receive a benefit of $115,000,000 regardless of whether *any* Claims are made. Moreover, if 1% of Class Members made a Claim, the total Class benefit would increase by $4,600,000 to a total of $119,600,000.[6] Plaintiff's requested fee award therefore represents approximately 2.08% of the total Class benefit, well below the Ninth Circuit's "benchmark" of 25% of the total recovery. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047 (hereinafter, "*Vizcaino*").)

In most class action matters, the defendant bears responsibility for providing notice to the class and shouldering all associated expenses. However, here, per the terms of the Settlement, Class Counsel is responsible for providing Notice and is obligated to absorb all associated costs, including administrative costs, communication costs, and other expenses related to administration of Notice to the Class. These costs are estimated to be roughly $350,000 given the number of Class Members and sheer volume of the

[6] 1% of the estimated 23,000,000 Class Members equates to 230,000 Class Members receiving a $25 Voucher (worth a total of $5,750,000), with the remaining 22,770,000 Class Members receiving a $5 Voucher (worth a total of $113,850,000). The combined value of the Vouchers equals $119,600,000.

email campaign required to provide Notice to each of them. Therefore, in viewing Class Counsel's fees in terms of a percentage of the benefit, the award is more properly viewed as approximately $2,050,000, or 1.78% of the minimum value of the Class benefit, or 1.71% if 1% of Class Members made Claims.

The requested fee award is also fair and reasonable under the percentage of the benefit method given Class Counsel's efforts in this case. The Parties negotiated the agreed-upon fees and costs only after negotiating and agreeing to all other material terms of the Settlement. (See, e.g., *Manual for Complex Litigation* (4th ed. 2004) at ¶ 21.7 ("Separate negotiation of the class settlement before an agreement on fees is generally preferable.").) By deferring the fee negotiation until that time, Class Counsel aligned their interests with the interests of the Class, and Defendant had every incentive to negotiate as low a fee as possible to decrease its overall costs. (See *Lealao*, *supra*, 82 Cal.App.4th 19, 33 ("The award to the class and the agreement on attorney fees represent a package deal. Even if the fees are paid directly to the attorneys, those fees are still best viewed as an aspect of the class' recovery.").) The resulting agreed-upon fees and costs award was the product of a non-collusive adversarial negotiation considering Class Counsel's prior and future efforts and the excellent results achieved. In agreeing to pay $2,400,000 in the aggregate for attorneys' fees and costs, Defendant also considered the possibility that Class Counsel might apply for and receive a ***much*** larger award, especially in view of the significant direct Class benefit and/or in the event of any objection or appeal of the Settlement, which would necessarily lead to additional protracted litigation and efforts by Class Counsel to defend the Settlement. Rather than take these risks, Defendant agreed to pay the requested award subject to Court approval.

As stated above, Plaintiff's fees and costs request is in line with the traditionally acceptable thresholds recognized by the Ninth Circuit and California state courts. California courts have been expressly authorized to award fees as "to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Lealao*, *supra*, 82 Cal.App.4th 19, 50.) Indeed, the U.S. Supreme Court consistently looks to the marketplace as a guide to determining reasonable fees, including contingency fee arrangements. (See *Missouri v. Jenkins* (1989) 491 U.S. 274, 285.) In defining a reasonable fee, the court should mimic the marketplace for cases involving a significant contingent risk, such as this one, and emphasize the unique reliance of our legal system on private litigants to enforce substantive provisions of law in class actions such that attorneys providing these benefits should

be paid an award equal to the amount negotiated in private bargaining that takes place in the legal marketplace. (See *Deposit Guar. Nat'l Bank v. Roper*, *supra*, 445 U.S. 326, 338.)

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

- *Adauto v. Door Components, Inc.*, Los Angeles Superior Court No. BC469230 (July 1, 2013) (Judge Lee Edmon awarded attorney's fees equal to 40% of the settlement fund, *plus costs*);
- *Albrecht v. Rite Aid Corp.*, San Diego Superior Court No. 729129 (2001) (Judge Haden awarded attorney's fees equal to 35% of the settlement fund, *plus costs*);
- *Ayala v. Denbeste Manufacturing, Inc.*, Kern County Superior Court No. S-1500-CV-275248 (Feb. 7, 2013) (awarded attorney's fees equal to approximately 40% of the settlement funds, *plus costs*);
- *Crandall v. U-Haul International*, Los Angeles Superior Court No. BC 178775 (Sept. 30, 1997) (Judge Czuleger awarded plaintiffs' counsel attorney's fees equal to 40% of the settlement fund);
- *Erlandsen v. FlexCare, LLC, et al.*, Santa Barbara Superior Court No. 1390595 (awarding 40% of the settlement funds);
- *Birch v. Office Depot, Inc.*, No. 06 CV 1690, 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a $16 million wage and hour class action);
- *Rippee v. Boston Mkt. Corp.*, No. 05cv1360 BTM, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a $3.75 million wage and hour class action);
- *Turman v. Parent* (Cal. Ct. App., July 6, 2022, No. G060330) 2022 WL 2448115 at *8 (Affirming an "attorney fee award of $880,000 that equaled 40 percent of the gross settlement amount of $2.2 million");
- *Augustus v. American Commercial Sec. Services*, Los Angeles Superior Court No. BC336416, 2017 WL 11417614 at *1 (July 6, 2017) (Judge John Shepard Wiley, Jr. awarding attorney fees exceeding 30% of the common fund);
- *Antonio Barocio, et al. v. Monterey Gourmet Foods, Inc., et al*, Monterey County Superior Court No. M121666 (2015) (Awarding attorney fees equating to 35% of the common fund);
- *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. 2013) 297 F.R.D. 431, 450 (Approving an attorney fee award equating to 30% of the common fund and collecting cases where attorney's fees exceeded 30% of the common fund); and
- *Williams v. Udemy, Inc.*, San Diego Superior Court No. 37-2023-00003666-CU-BT-NC (Judge Dahlquist awarding attorney's fees equating to 25% of the common fund).

Here, while the fee request represents substantially less than these judicially accepted percentages, the ultimate inquiry is whether the end result is reasonable. (See *Powers v. Eichen* (9th Cir. 2000) 229

F.3d 1249, 1258.) In determining whether the award is reasonable, the Ninth Circuit directs courts to consider several factors, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the quality of work; and (5) the contingent nature of the fee and the financial burden. (See *Vizcaino*, *supra*, 290 F.3d 1043, 1048-1050.) Applied here, each of these factors supports approval of the fee request.

A. Class Counsel Achieved Excellent Results for the Class

Class counsel achieved exceptional results in this case. The Parties reached an arms-length Settlement with the assistance of an experienced mediator after extensive investigation of Plaintiff's claims and negotiated discovery of Defendant's sales data, leading to the Settlement worth an estimated $119,600,000[7] in benefits to the Class. Defendant denied liability, Plaintiff's ability to certify the Class, and whether Class Counsel could administer a mass arbitration campaign. Continued litigation presented Plaintiff with substantial legal risks of certifying the Class, proving liability, presenting a viable damages model, and defeating any appeals relating thereto. In the face of these significant challenges, Plaintiff secured real and valuable benefits for the Class, as discussed in Section III above. Even if the case were successfully tried as a class action, the regression analysis of Class-wide damages could likely yield a diminution in value (*i.e.*, damages) attributed to Defendant's false advertising of much less than the minimum Class benefit value of $115,000,000 that was achieved in this Settlement. Additionally, as a practical matter, the costs of *individual* litigation would undoubtedly eclipse any individual recovery, making a class action the only viable means of achieving redress for harmed consumers. Thus, the Settlement provides Class Members with prompt, high-value benefits prior to trial, avoiding the risks attendant to proving liability and damages.

B. Class Counsel Assumed Significant Risks

The requested fee award is reasonable in light of the risks incurred by Class Counsel. From the outset, Plaintiff faced significant risks, including failure to certify the putative Class (or having it subsequently decertified) as well as in proving liability and/or damages. These risks are not merely hypothetical. (See, e.g., *Chowning v. Kohl's Dept. Stores, Inc.* (9th Cir. 2018) 733 Fed. Appx. 404, 405 (affirming summary judgment that rejected each of plaintiff's proposed measures of restitution in false discounting case).) Given these considerations, Class Counsel incurred 100% of the risk, including all

[7] See *supra* fn. 5.

litigation costs, devoting their time and labor to identifying Defendant's wrongdoing, evaluating Defendant's liability, analyzing potential legal theories, drafting the Complaint, engaging in significant research and investigation, and attending multiple mediations. Class Counsel forewent other employment in order to devote the time necessary to pursue this litigation. (See Carpenter Decl., ¶ 6.) Throughout this time, there was no assurance of success or compensation. In addition, as discussed above, as to the Lynch Carpenter firm, it spent significant time and resources in further developing their mass arbitration practice that may have never paid off in this case.

C. The Complexity of the Litigation and Class Counsel's Skill and Mass Arbitration Capability

Litigating this class action through trial would be time-consuming and expensive due to the complexities of proving liability and damages. For instance, Defendant would oppose Plaintiff's Motion for Class Certification, the Parties would likely move for Summary Adjudication and would each retain numerous experts to analyze issues such as the effect of Defendant's pricing practices on consumers and the price premium attributable to Defendant's fictional discounts. To this end, Class Counsel retained an economics expert to review and determine the impact of Defendant's false reference prices on consumer behavior and to assess potential economic remedies. The expert identified several potential methodologies to measure the extent that Class Members were overcharged. Class Counsel analyzed these theories against recent case law rejecting restitution-based damages theories in similar false discount pricing cases. (See, e.g., *Chowning v. Kohl's Dept. Stores, Inc.*, *supra*, 733 Fed. Appx. 404, 405; see also *Stathakos v. Columbia Sportswear Company* (N.D. Cal., May 11, 2017) No. 15-CV-04543-YGR, 2017 WL 1957063, at *7-8 (granting summary judgment and rejecting each of plaintiff's proposed measures of restitution).) By reaching this Settlement, the Parties avoided protracted litigation of these complex issues and significant expert fees.

Furthermore, this class action Settlement and the outstanding result would not have been achieved absent the experience and preparedness of Lynch Carpenter and Keller Postman to arbitrate thousands of individual claims against Shutterfly if necessary to do so. Indeed, consumers who purchased Shutterfly's products online were likely subject to Shutterfly's Terms and Conditions, which required customers to waive their rights to bring a class action lawsuit and bring the claims that are the subject of this Settlement

exclusively in the arbitration context. Had it not been for the joint efforts of Lynch Carpenter and Keller Postman, Class Members would have potentially been forced to litigate individual claims in arbitration, which no Class Member would likely have done on their own, and no counsel, other than Lynch Carpenter and Keller Postman would likely have agreed to their representation. In short, nobody would have obtained the relief that was achieved here by Class Counsel on a class-wide basis.

D. Class Counsel Provided High Quality Work

Class Counsel are experienced in complex class litigation (See Carpenter Decl., ¶¶ 18-22), have a thorough understanding of the issues and risks presented by this type of case (false discount pricing), and, through their skill and reputation, were able to obtain a Settlement that provides an outstanding result for the Class. The efficient manner of this result would not have been reasonably possible were it not for the experience and reputation of Class Counsel in this area of law. Class Counsel spent significant time, before and after commencing litigation, investigating Defendant's pricing practices, including working with an economics expert to assess Defendant's liability and potential economic remedies. In connection with the mediation, the Parties engaged in discovery of critical information to evaluate this complex class action matter, including information regarding Class size, contact information in Defendant's possession, and other information about Defendant's business practices. Only after thorough consideration of this information, and assessing this data in light of Class Counsel's robust investigation, did the Parties eventually mediate the case. The mediator on this matter is highly regarded and has experience in both reference pricing cases, as well as matters that had the potential for serial litigation through individual arbitrations. This ultimately resulted in a mutually satisfactory Settlement and Notice plan which provides an excellent benefit to the Class.

The high quality of Plaintiff's opposition is a further testament to the quality of Plaintiff's representation. Defendant is a large corporation, represented by experienced counsel from a law firm with significant resources and skilled in class action defense. Lead defense counsel has a well-deserved reputation in class action litigation in general. Courts have repeatedly recognized that the caliber of opposing counsel should be taken into consideration. (See, e.g., *In re Marsh & McLennan Cos., Inc. Sec. Litig.* (S.D.N.Y. Dec. 23, 2009) No. 04 Cv. 8144 (CM), 2009 WL 5178546, at *19) (reasonableness of fee

was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations.").)

E. Class Counsel Took This Case on a Contingency Basis

"The risk that an attorney takes in the underlying public interest litigation has two components: the risk of not being a 'successful party,' i.e., not prevailing on the merits, and the risk of not establishing eligibility for an attorney fee award." (*Graham v. Daimler Chrysler Corp.*, *supra*, 34 Cal.4th 553, 583.) Class Counsel undertook this matter solely on a contingency basis, with no guarantee of recovery. Despite such a challenge, Class Counsel demonstrated to Defendant that Defendant faced significant exposure, compelling Defendant to enter into the Settlement and provide a significant benefit to the Class. (See *Downey Cares v. Downey Community Dev. Comm'n.* (1987) 196 Cal.App.3d 983, 997 (enhanced fees in contingent fee cases recognize the delay in receipt of full payment of fees); Posner, *Economic Analysis of Law* (4th ed. 1992) at 534, 567 ("A contingent fee must be higher than a fee for the same legal services paid as they are performed.").)

For these reasons, the requested fee award is eminently reasonable under the percentage method.

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

Courts may "cross-check" the proposed fee award against the counsel's lodestar to ensure its reasonableness. (See *Vizcaino*, *supra*, 290 F.3d 1043, 1050.) The goal of both the lodestar and percentage of the recovery methodologies is the determination of a reasonable fee that is consistent with market rates. California courts also use the Lodestar multiplier method to award fees in a class action settlement. (See, e.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133 (hereafter, "*Ketchum*"); *Serrano III*, *supra*, 20 Cal.3d 25, 48; *Lealao*, *supra*, 82 Cal.App.4th 19, 49-50.) The method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked on the case. (See *Wershba*, *supra*, 91 Cal.App.4th 224, 254.) To compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar. (See *ibid*.) The hourly rates used must be based on the hourly rates charged by private attorneys of comparable experience, expertise, and reputation for comparable work. (See *Serrano v. Unruh* (1982) 32 Cal.3d 621, 640 (hereafter, "*Serrano*").) Additionally, the lodestar should include out-of-pocket expenses of the type normally billed by an attorney to a fee-paying client. (See *Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 1166.) It should also include time spent

on the fee application itself. (See *Serrano*, *supra*, 32 Cal.3d 621, 632-638.) Class Counsel's rates here reflect the current market rates by attorneys of comparable experience, skill, and reputation for comparable work. (See Carpenter Decl., ¶¶ 18-19.)

The requested fee award, inclusive of costs, of $2,400,000 is fair and reasonable given Class Counsel's collective actual fee lodestar of $899,270 and costs of $410,801.62 with a modest multiplier of 1.53[8]. (See Carpenter Decl., ¶¶ 10-15). The Lynch Carpenter firm spent a total of 996.5 hours in partner and associate time (not including additional prospective time to be spent attending and preparing for the Final Fairness Hearing) plus 174.8 hours of paralegal time and $373,351.18 in costs in the investigation and prosecution of this matter, and expect to spend an additional amount of time not included through the conclusion of the case. (See *id*. at ¶ 10-11.) Partner level attorneys at Lynch Carpenter expended a total of 581 hours on the case to date and expect to expend an additional 3.5 hours relating to the Fairness Hearing. (*See ibid.*) Lynch Carpenter's partner rate for complex class action litigation is $995 per partner hour. (*See id*. at ¶¶ 10-11.) Associate attorneys spent a total of 412 hours on the case at an hourly rate of $450. (*See ibid.*) The hourly rates for these attorneys are reasonable for consumer class action attorneys with similar experience and have been approved by various California State and Federal Courts. (*See id*. at ¶¶ 18-19.)

The Keller Postman firm spent a total of 134.6 hours in associate time as well as paralegal time, and had $37,450.44 in costs in the investigation and prosecution of this matter. Associate attorneys at Keller Postman expended 129.1 hours on this matter to date while the paralegals at the firm spent 5.5 hours. The rate for complex class action litigation at Keller Postman is $775 per hour for associates and is $300 per hour for paralegals. (*See id*. at ¶ 14.) The fee lodestar generated by Keller Postman was $101,702.50. (*See id*. at ¶ 15.)

A. Class Counsel's Hourly Rates are Reasonable

The reasonable market value of the attorneys' services sets the standard measure of a reasonable hourly rate. (See *Ketchum*, *supra*, 24 Cal.4th 1122.) Courts determine the reasonable market value by examining whether the rates are "within the range of reasonable rates charged by and judicially awarded

[8] 1.53 presumes attorney fees' of approximately $2,000,000, which incorporates the Class Notice costs (approximately $350,000, see *supra* p. 8) borne by Class Counsel in this matter; excluding this cost, the multiplier is approximately 1.83.

comparable attorneys for comparable work." (*Children's Hosp. & Med. Ctr. V. Bonta* (2002) 97 Cal.App.4th 740, 783.) Rates awarded to Class Counsel in previous actions and rates awarded to other attorneys practicing complex class action litigation in California are appropriate guides for establishing reasonable market rates. (See *Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 904; see, e.g., *Carr v. Tadin, Inc.* (S.D. Cal. 2014) 51 F.Supp.3d 970, 978-980 (awarding rates of $650 for partner and $335-375 for associates in 2014 consumer class action); *Hazlin v. Botanical Labs, Inc.* (S.D. Cal. May 20, 2015) No. 13cv0618-KSC, 2015 WL 11237634, at *7) (approving rate of $750 in 2015 consumer class action); *Mount v. Wells Fargo Bank, N.A.* (Cal. Ct. App., Feb. 10, 2016) No. B260585, 2016 WL 537604) (hourly rates ranging from $300 to $1,100 were reasonable in a 2016 consumer class action case)*; In re Vitamin Cases* (Cal. Super. Ct., Apr. 12, 2004) No. 301803, 2004 WL 5137597) (finding a $1,000 per hour rate reasonable in a 2004 consumer class action case); *Computer Service Tax Cases* (Cal. Ct. App., Dec. 10, 2014) No. A139445, 2014 WL 6972268) (a rate of $650 to $825 per hour for attorneys who had more than 25 years of litigation experience and had served as lead counsel in seven consumer class actions was reasonable).)

Class Counsel specializes in complex consumer class actions and regularly litigate cases in federal and state courts. (See Carpenter Decl., ¶¶ 18-21.) Moreover, their lodestars are calculated using rates that have been accepted in other class action cases. (See *ibid.*)

B. Class Counsel's Hours are Reasonable

Class Counsel must demonstrate that their hours were reasonable and necessary to the litigation. (See *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1320.) Hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter." (*Hensley v. Eckerhart*, *supra*, 461 U.S. 424, 431.) In addition to time spent during litigation, reasonable hours include time spent before the Action was filed, including to interview clients, investigate facts and the law, and prepare the initial pleadings. (See *Webb v. Board of Educ.* (1985) 471 U.S. 234, 243, 250 ("Most obvious examples are the drafting of the initial pleading and the work associated with *the development of the theory of the case*.") (emphasis added).) Here, Class Counsel had spent considerable time, including, but not limited to: (1) legal research and collaboration with other firms and attorneys and

(2) building out a mass arbitration capability that was helpful in achieving Settlement in this case. Lastly, the fee award also includes time spent to prepare and litigate the attorneys' fee claim. (See *Serrano, supra*, 32 Cal.3d 621, 639.)

C. The Requested Multiplier is Reasonable

Once the lodestar is calculated, it may be enhanced with a multiplier. (See *Wershba*, *supra*, 91 Cal.App.4th 224, 254.) The objective of any multiplier is to provide lawyers involved in public interest litigation with a financial incentive. (See *Ketchum*, *supra*, 24 Cal.4th 1122, 1123.) "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." (*In re Washington Public Power Supply System Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300.) "Multipliers are often imposed to reflect counsel's risk in taking on such protracted litigation or its deserved reward from the benefits its extracts for the class." (*Zucker v. Occidental Petroleum Corp.* (C.D. Cal. 1997) 968 F.Supp. 1396, 1401, *aff'd* (9th Cir. 1999) 192 F.3d 1323.) Only when courts properly compensate experienced counsel for successful results can they assure the continuing effectiveness of class actions. To accomplish this objective, the fee award must be large enough "to entice counsel to undertake difficult public interest cases." (*San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 755.) "Multipliers can range from 2 to 4 or even higher." (*Wershba*, *supra*, Cal.App.4th 224, 225; *see also Vizcaino*, *supra*, 290 F.3d 1043, 1051, fn. 6 (finding that most approved class action settlements had multipliers in the 1.5 to 3 range).) The fee requested here represents a multiplier of approximately 1.53[9]—an amount well within the accepted range for class action cases. (See *Ferrell v. Buckingham Property Management* (E.D. Cal., Jan. 25, 2022) No. 119CV00332JLTBAKEPG, 2022 WL 224025, at *3) ("[C]ourts typically approve percentage awards based on lodestar cross-checks of 1.9 to 5.1 or even higher, and 'the multiplier of 1.9 is comparable to multipliers used by the courts.'"); *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., July 25, 2022) No. 119CV00062DADEPG, 2022 WL 2918361, at *14) ("Multipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation.") (quoting *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 298; see, e.g., *Chavez v. Netflix, Inc.* (2008) 162

[9] See *supra* fn. 8.

Cal.App.4th 43, 60 (multiplier of 2.5); *Sutter Health Insured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (multiplier of 2.52).)

When determining a multiplier, courts should consider all factors relevant to a given case. (See *Serrano III*, *supra*, 20 Cal.3d 25, 49.) Here, this case supports the public interest outlined in California's consumer protection laws and federal regulations regarding deceptive and misleading price discount advertising. The Settlement effectively provides a significant financial benefit to Class Members and creates a real deterrence against future violations. This result alone justifies the requested multiplier. However, courts also consider additional factors, such as (1) the novelty and difficulty of the questions involved; (2) the skills displayed by Class Counsel and the results obtained; and (3) the contingent nature of the fee award. (See *Ketchum*, *supra*, 24 Cal.4th 1122, 1132.) These factors, addressed below, also support the requested multiplier.

1. The Novelty and Difficulty of the Questions Involved

This case presented novel and difficult questions regarding liability under California's consumer protection laws and federal regulations regarding transparency in discount price advertising. Plaintiff's allegations presented difficult and novel legal issues related to proving liability, damages, and remedial measures to address the alleged harm. At trial, or alternatively, in thousands of individual arbitrations, Plaintiff would be tasked with proving that Defendant's price advertisements were deceptive and material inducements to consumers' purchasing decision(s), as well as presenting a viable damages model to calculate the amount customers were overcharged as a result of that deception, all of which would require significant expert testimony and expense. (See Section V.C., *supra*.)

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

Class Counsel, Lynch Carpenter and Keller Postman specialize in mass arbitration and complex class actions and regularly litigate cases in California federal and state courts. (See Carpenter Decl., ¶¶ 6, 12, 18-21.) Historically, Class Counsel has achieved excellent results for millions of consumers in contested consumer class actions. Equipped with this significant background, Class Counsel worked efficiently and effectively toward a satisfactory and reasonable resolution of the matter. Class Counsel investigated the case, assessed its value, and weighed the risks and uncertainties arising from protracted

litigation against the certain benefits of the preliminarily approved Settlement. (See Sections V.A. and V.D., *supra*.)

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

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

> Under our precedents, the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk … The adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that 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 intended to approximate market-level compensation for such services, which typically includes premium for the risk of nonpayment or delay in payment of attorney's fees.

(*Ketchum*, *supra*, 24 Cal.4th 1122, 1138; see also Section V.E., *supra*.)

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

Class Counsel secured an outstanding Settlement instead of engaging in additional years of protracted litigation through trial and certain appeal. Accordingly, the requested positive multiplier is warranted. "Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal." (*Lealao*, 82 82 Cal.App.4th 19, 52 (internal citations omitted); *Bowling v. Pfizer, Inc.* (S.D. Ohio 1996) 922 F.Supp. 1261, 1282-1283 (courts should reward attorney in case settled "in swift and efficient fashion.").)

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

VII. THE REQUESTED LITIGATION COSTS ARE REASONABLE

Out-of-pocket expenses are compensable under § 1021.5 of the Code of Civil Procedure if they would normally be billed to a fee-paying client. (See *Beasley v. Wells Fargo*, *supra*, 235 Cal.App.3d

1407, 1419; Civ. Code, § 1780, subd. (d) (providing for costs to prevailing plaintiff in CLRA action).) Class Counsel's collective requested reimbursement of $410,801.62 in litigation costs incurred to date, which is included in the fee request of $2,400,000, is wholly reasonable. These expenses were necessary to conduct the litigation and are reasonable and modest in light of the benefit conferred on the Class. (See Carpenter Decl., ¶¶ 6, 10, 13.) Costs include, *inter alia*, (1) mediation fees, (2) court filing fees, (3) service of process, (4) scanning, photocopying, printing, and extraneous office-related expenses (which have been waived), (5) expert costs, (6) travel, and (7) Class Notice and claims administration. (See *id*, ¶ 10.) These types of costs are typical to those billed by attorneys to fee-paying clients. (See *Beasley v. Wells Fargo*, *supra*, 235 Cal.App.3d 1407, 1421.)

VIII. PLAINTIFF IS ENTITLED TO A REASONABLE INCENTIVE AWARD

Plaintiff requests a reasonable service award of $12,500. "Incentive awards are fairly typical in class action cases" and are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959; *see also Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 412 ("[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk that they have incurred in conferring a benefit on other members to the class").) An incentive award is appropriate "if it is necessary to induce an individual to participate in the suit." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395.)

Here, Plaintiff maintained continued involvement in the litigation, including providing input on the pleadings and continuously communicating with Class Counsel. In agreeing to serve as Class representative, Plaintiff undertook substantial risks to her reputation in the public domain and thrust herself into active litigation to enforce an important right for the benefit of the general public. Moreover, Plaintiff risked potential judgment against herself if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party liable for the prevailing party's costs. (See *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433-1434.) Few individuals are willing to undertake that risk, particularly since courts have entered judgments against class representatives. (See *In re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 805-807 (upholding cost award in favor of defendant against class

representative in her personal capacity in the amount of $764,552.73).) Lastly, the incentive award sought by Plaintiff is relatively low and implicitly reasonable by comparison to other consumer class action settlements. (See e.g., *Williams v. Costco Wholesale Corp.* (S.D. Cal. July 7, 2010) No. 02CV2003 IEG(AJB), 2010 WL 2721452, at *7) ($5,000 incentive award in antitrust case settled for $440,000); *Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th 1380, 1393-1394 ($10,000 incentive awards to each of the four class representatives).)

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Unopposed Motion for Attorneys' Fees and Costs in the amount of $2,400,000 and Individual Settlement Award to Plaintiff in the amount of $12,500.

Dated: November 7, 2023

LYNCH CARPENTER, LLP

By: */s/Todd D. Carpenter*

Todd D. Carpenter (234464)
todd@lcllp.com
James B. Drimmer (196890)
Jim@lcllp.com
1234 Camino del Mar
Del Mar, CA 92014
Tel.: 619-762-1900
Fax: 619-756-6991

KELLER POSTMAN LLC
Warren Postman (330869)
wdp@kellerpostman.com
150 N. Riverside Plaza, Suite 4100
Chicago, IL 60606
Tel: 202-918-1870

Attorneys for Plaintiff and Class Counsel