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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

WILL KAUPELIS and FRANK  
ORTEGA, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

HARBOR FREIGHT TOOLS USA,  
INC.,

Defendant.

Case No. 8:19-cv-01203-JVS-DFM

**MEMORANDUM IN SUPPORT OF  
MOTION FOR ATTORNEYS’  
FEES, REIMBURSEMENT OF  
EXPENSES, AND PLAINTIFFS’  
REQUEST FOR SERVICE  
AWARDS**

Date: January 10, 2022  
Time: 1:30 p.m.  
Courtroom: 10C  
Judge: Hon. James V. Selna

[Filed concurrently with the  
Declarations of Joel D. Smith, Plaintiff  
Will Kaupelis, and Plaintiff Frank  
Ortega]

**TABLE OF CONTENTS**

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

		<b>PAGE(S)</b>
I.	INTRODUCTION.....	1
II.	CLASS COUNSEL’S EFFORTS ON BEHALF OF THE CLASS .....	2
III.	THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS’ FEES AND COSTS .....	5
	A. Legal Standards.....	5
	B. Fee Shifting Statutes .....	6
	C. The Lodestar Method is Appropriate Here .....	7
	D. The Requested Attorneys’ Fees Are Reasonable Under the Lodestar Method .....	8
	1. <i>Class Counsel’s Hourly Rates are Reasonable</i> .....	9
	2. <i>The Number of Hours Class Counsel Worked is Reasonable</i> .....	11
	E. Class Counsel’s Requested Fee Award is Reasonable Under the <i>Kerr</i> Factors Subsumed in the Lodestar Analysis .....	12
	1. <i>Novelty and Complexity of the Litigation</i> .....	12
	2. <i>Skill and Experience of Class Counsel and Quality of Representation</i> .....	14
	3. <i>Class Counsel Obtained a Favorable Result for the Settlement Class</i> .....	14
	4. <i>The Contingent Nature of the Litigation &amp; Preclusion from Other Work</i> .....	14
	F. A Percentage Cross-Check Demonstrates that Class Counsel’s Requested Fee is Reasonable .....	15
	G. The Requested Expenses Reimbursement is Reasonable and Should be Granted.....	16
IV.	THE REQUESTED SERVICE AWARDS ARE REASONABLE .....	17
V.	CONCLUSION .....	19

**TABLE OF AUTHORITIES**

**PAGE(S)**

**CASES**

1

2

3

4 *Alberto v. GMRI, Inc.*,

5 252 F.R.D. 652 (E.D. Cal. 2008) .....18

6 *Alvarez v. Sirius XM Radio Inc.*,

7 2021 WL 1234878 (C.D. Cal. Feb. 8, 2021) .....18

8 *Askar v. Health Providers Choice, Inc.*,

9 2021 WL 4846955 (N.D. Cal. Oct. 18, 2021) .....9

10 *Blum v. Stenson*,

11 465 U.S. 886 (1984).....9

12 *Brazil v. Dell Inc.*,

13 2012 WL 1144303 (N.D. Cal. Apr. 4, 2012).....7

14 *Broughton v. Cigna Healthplans*,

15 21 Cal. 4th 1066 (1999) .....6

16 *Bruno v. Quten Research Inst., LLC*,

17 2013 WL 990495 (C.D. Cal. Mar. 13, 2013).....7

18 *Camancho v. Bridgeport Fin., Inc.*,

19 523 F.3d 973 (9th Cir. 2008) .....9

20 *Champion Produce, Inc. v. Ruby Robinson Co.*,

21 342 F.3d 1016 (9th Cir. 2003) .....5

22 *Comcast Corp. v. Behrend*,

23 569 U.S. 27 (2013).....3

24 *Consumer Privacy Cases*,

25 175 Cal. App. 4th 545 (2009) .....7

26 *Create-A-Card, Inc. v. Intuit, Inc.*,

27 2009 WL 3073920 (N.D. Cal. Sept. 22, 2009).....7

28

1 *Faigman v. AT & T Mobility LLC,*  
 2 2011 WL 672648 (N.D. Cal. Feb. 16, 2011) .....18

3 *Farmers Ins. Exch. v. Sayas,*  
 4 250 F.3d 1234 (9th Cir. 2001) .....6

5 *Fed-Mart Corp. v. Pell Enterprises,*  
 6 111 Cal. App. 3d 215 (1980) .....8

7 *George v. TRS Staffing Sols., Inc.,*  
 8 2011 WL 13187109 (C.D. Cal. Jan. 28, 2011).....19

9 *Gonzalez v. Universal Alloy Corp.,*  
 10 2014 WL 12771120 (C.D. Cal. Nov. 10, 2014) .....18

11 *Graciano v. Robinson Ford Sales, Inc.,*  
 12 144 Cal. App. 4th 140 (2006) .....7

13 *Grant v. Martinez,*  
 14 973 F.2d 96 (2d Cir. 1992) .....11

15 *Grove v. Wells Fargo Fin. California, Inc.,*  
 16 606 F.3d 577 (9th Cir. 2010) .....16

17 *Hartless v. Clorox Co.,*  
 18 273 F.R.D. 630 (S.D. Cal. 2011) .....7

19 *Hensley v. Eckhart,*  
 20 461 U.S. 424 (1983).....8

21 *In re Amgen Inc. Sec. Litig.,*  
 22 2016 WL 10571773 (C.D. Cal. Oct. 25, 2016).....10

23 *In re Bluetooth Headset Products Liab. Litig.,*  
 24 654 F.3d 935 (9th Cir. 2011) .....6, 8

25 *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.,*  
 26 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017).....14

27 *In re Omnivision Techs., Inc.,*  
 28 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....14, 16

1 *In re Pac. Enters. Sec. Litig.*,  
 2 47 F.3d 373 (9th Cir. 1995) .....14

3 *In re Toys R Us–Delaware, Inc.-Fair & Accurate Credit Transactions Act*  
 4 *(FACTA) Litig.*,  
 5 295 F.R.D. 438 (C.D. Cal. 2014).....18

6 *Jordan v. Michael Page Int’l, Inc.*,  
 7 2020 WL 4919732 (C.D. Cal. July 2, 2020).....18

8 *Kaupelis v. Harbor Freight Tools*,  
 9 2021 WL 4816833 (C.D. Cal. Aug. 11, 2021) .....5

10 *Kerr v. Screen Extras Guild, Inc.*,  
 11 526 F.2d 67 (9th Cir. 1975) .....8

12 *Ketchum v. Moses*,  
 13 24 Cal. 4th 1122 (2001) .....7

14 *Kim v. Euromotors West/The Auto Gallery*,  
 15 149 Cal. App. 4th 170 (2007) .....6, 7

16 *Kona Enters. v. Estate of Bishop*,  
 17 229 F.3d 877 (9th Cir. 2000) .....5

18 *Lealao v. Beneficial California, Inc.*,  
 19 82 Cal. App. 4th 19 (2000) .....15

20 *Meister v. Regents of Univ. of Calif.*,  
 21 67 Cal. App. 4th 437 (1998) .....8

22 *Meyer v. Sprint Spectrum L.P.*,  
 23 45 Cal. 4th 634 (2009) .....6

24 *Missouri v. Jenkins*,  
 25 491 U.S. 274 (1989).....10, 16

26 *Morales v. City of San Rafael*,  
 27 96 F.3d 359 (9th Cir. 1996) .....8, 12

28

1 *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*,  
 2 2021 WL 4133860 (N.D. Cal. Sep. 10, 2021) .....9

3 *Negrete v. Allianz Life Ins. Co. of N. Am.*,  
 4 2015 U.S. Dist. LEXIS 168586 (C.D. Cal. Mar. 17, 2015).....10

5 *Parkinson v. Hyundai Motor Am.*,  
 6 796 F. Supp. 2d 1160 (C.D. Cal. 2010) .....5, 7

7 *Perdue v. Kenny A.*,  
 8 130 S. Ct. 1662 (2010).....8

9 *Perez v. Rash Curtis & Assocs.*,  
 10 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020).....9, 12

11 *Reveles v. Toyota by the Bay*,  
 12 57 Cal. App. 4th 1139 (1997) .....7

13 *Rodriguez v. W. Publ’g Corp.*,  
 14 563 F.3d 948 (9th Cir. 2009) .....17

15 *Rosado v. Ebay Inc.*,  
 16 2016 WL 3401987 (N.D. Cal. June 21, 2016).....9

17 *Rutti v. Lojack Corp.*,  
 18 2012 WL 3151077 (C.D. Cal. July 31, 2012).....11, 12

19 *Schwarz v. Sec’y of Health & Human Servs.*,  
 20 73 F.3d 895 (9th Cir. 1995) .....9

21 *Serrano v. Priest*,  
 22 20 Cal. 3d 25 (1977) .....6, 8

23 *United Steelworkers of Am. v. Phelps Dodge Corp.*,  
 24 896 F.2d 403 (9th Cir. 1990) .....9

25 *Van Vranken v. Atl. Richfield Co.*,  
 26 901 F. Supp. 294 (N.D. Cal. 1995) .....17

27 *Vizcaino v. Microsoft Corp.*,  
 28 290 F.3d 1043 (9th Cir. 2002) .....5, 15

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

*Wang v. Massey Chevrolet*,  
97 Cal. App. 4th 856 (2002) .....6

*Weeks v. Kellogg Co.*,  
2013 WL 6531177 (C.D. Cal. Nov. 23, 2013) .....16

*Wershba v. Apple Computer, Inc.*,  
91 Cal. App. 4th 224 (2001) .....15

*Williams v. MGM-Pathe Commc’ns Co.*,  
129 F.3d 1026 (9th Cir. 1997) .....12

*Zakskorn v. Am. Honda Motor Co.*,  
2015 WL 3622990 (E.D. Cal. Jun. 9, 2015) .....10

*Zucker v. Occidental Petroleum Corp.*,  
968 F. Supp. 1396 (C.D. Cal. 1997) .....15

**STATUTES**

Cal. Civ. Code § 1750.....5

Cal. Civ. Code § 1760.....6

Cal Civ. Code § 1780(e) .....6

**RULES**

Fed. R. Civ. P. 23(h) .....5

Fed. R. Evid. 1006 .....13

1 **I. INTRODUCTION**

2 On August 11, 2021, this Court preliminarily approved a Settlement that  
3 provides significant relief to all Class members nationwide upon completion of a  
4 simple and straightforward claim form, regardless of whether a Class member is able  
5 to show proof of purchase. Class members are given the choice of cash, gift cards, or  
6 a replacement chainsaw. This is an excellent result for the Class, as Class members  
7 with proof of purchase are entitled to \$50 in cash or Harbor Freight gift cards (roughly  
8 the full dollar amount of the chainsaws), and Class members without proof of purchase  
9 can request either \$10 cash or a \$25 Harbor Freight gift card.

10 The significant relief made available to the Class here came after nearly two and  
11 a half years of hard-fought litigation with skilled defense attorneys who put Class  
12 Counsel through their paces at every stage of the case. In total, Class Counsel and its  
13 staff spent 1,247.3 hours on the case and \$249,604 in costs. Class Counsel litigated a  
14 motion to dismiss, class certification, numerous discovery disputes, and an  
15 interlocutory appeal under Federal Rule of Procedure 23(f); took or defended thirteen  
16 depositions and reviewed thousands of pages of documents; obtained information  
17 from third parties like the Consumer Product Safety Commission; invested substantial  
18 time and money in expert analysis; began trial preparations; engaged in lengthy  
19 settlement negotiations spanning several months; and obtained preliminary approval  
20 of the Settlement.

21 Class Counsel requests attorneys' fees and expenses of \$665,000, and service  
22 award payments of \$3,000 each for the two named Plaintiffs, Will Kaupelis and Frank  
23 Ortega. Pursuant to the Settlement Agreement, Court-awarded attorneys' fees, costs,  
24 and service awards will be paid separately by Defendant and will have no impact on  
25 or otherwise diminish the benefits paid to the Settlement Class. As detailed below, the  
26 amounts requested are less than Class Counsel's lodestar and are reasonable under  
27 Ninth Circuit law.



1 **II. CLASS COUNSEL’S EFFORTS ON BEHALF OF THE CLASS**

2 **A. Class Counsel Spent Many Hours And Incurred Substantial Costs**  
3 **Litigating and Settling This Case**

4 Class Counsel and its staff invested 1,247.3 hours and \$249,604 in necessary  
5 out-of-pocket expenses to investigate, prosecute, and resolve this complex action.  
6 Smith Decl. ¶¶ 6, 9 and Exs. A-B. As a result, Class Counsel were able to overcome  
7 many obstacles to secure benefits for the Class.

8 **Motion to Dismiss.** Substantive motion practice started early. Defendant  
9 attacked Plaintiffs’ complaint, and opposing Defendant’s motion necessitated  
10 extensive research and lengthy briefing on multiple causes of action sounding in tort  
11 and warranty. *See id.* at ¶ 2(c); *see also* Dkt. Nos. 12-14, 22-24.

12 **Class Certification.** Plaintiffs’ motion for class certification was the most hotly  
13 contested matter in this case. Defendant challenged both the propriety of certification  
14 on legal bases, as well as the propriety of Plaintiffs’ engineering proof and damages  
15 methodology. Plaintiffs ultimately overcame Defendant’s arguments and certified a  
16 multi-state breach of implied warranty class, and a California consumer protection  
17 class. Smith Decl. ¶ 2(j); *see also, e.g.*, Dkt. Nos. 34, 38, 66-74, 101, 104, 110-113,  
18 116, 120, 123-124, 126, 129, 140.

19 Defendant’s petition for appeal followed quickly after this Court’s Order  
20 granting class certification. Class Counsel successfully opposed Defendant’s Rule  
21 23(f) petition. *See* Dkt. No. 148.

22 **Fact and Expert Discovery.** Discovery was contentious, time-consuming, and  
23 resource intensive. *See* Smith Decl. ¶ 2(i). Class Counsel sought, obtained, and  
24 analyzed thousands of pages of documents produced by Defendant. *Id.* at ¶ 2(f). Class  
25 Counsel had substantial meet-and-confer exchanges with Defendant pursuant to L.R.  
26 37, including two fully briefed L.R. 37 motions to compel and a motion for a protective  
27 order. *Id.* at ¶ 2(i). In expert discovery, Plaintiffs presented 3 experts, Defendant  
28

1 presented 4 experts, and there were various *Daubert* challenges advanced against  
2 nearly every expert. *Id.* at ¶ 2(h), (j). Ultimately, the parties took or defended 13  
3 depositions. *Id.* at ¶ 2(f).

4 Of particular note is Class Counsel’s work in finding, retaining, and supporting  
5 sophisticated experts that advanced complex damages models that would yield  
6 classwide damages and satisfy the standard articulated in *Comcast Corp. v. Behrend*,  
7 569 U.S. 27 (2013). This specialized work was undertaken to withstand potential  
8 decertification efforts and merits challenges. Class Counsel devoted significant time  
9 and resources to this exercise given the breadth of the issues involved, the complexity  
10 of the economic modeling, the nature of the power tool market, and the vigorous  
11 defense Defendant mounted against Plaintiffs’ damages model. *Cf.* Smith Decl.,  
12 ¶ 2(h).

13 Class counsel also engaged in substantial factual investigations outside of  
14 discovery with Defendant. *Id.* at ¶ 2(g). These efforts included serving a  
15 subpoena/FOIA request to the Consumer Product Safety Commission (“CPSC”),  
16 interviewing potential witnesses, and researching publicly available information  
17 concerning customer experiences with the subject chainsaws and concerning Harbor  
18 Freight’s recall. *Id.*

19 **Settlement Negotiations and Preliminary Approval.** Class Counsel devoted  
20 time and resources to prepare for and participate in a mediation session with  
21 Magistrate Judge McCormick, as well as extensive negotiations over the several  
22 months that followed. *Id.* at ¶ 2(m). Following mediation, the parties also resumed  
23 active litigation, including additional expert work and depositions. The parties finally  
24 reached an agreement in principle and executed a Memorandum of Understanding on  
25 April 27, 2021. The parties negotiated all substantive terms of the settlement before  
26 negotiating attorneys’ fees, costs, and incentive awards for the Class Representatives.  
27 *Id.* at ¶ 3.

1           Once the parties reached agreement on the material settlement terms, preparing  
2 a long-form settlement agreement and related notice documents was a lengthy process.  
3 *Id.* at ¶ 2(m). Class Counsel then invested time and effort in obtaining preliminary  
4 approval. *Id.* at ¶ 2(n).

5           **Other Miscellaneous Work.** In addition to the primary significant events  
6 described above, there were numerous other tasks that Class Counsel engaged in over  
7 the course of the litigation. These tasks included, among others, conducting a pre-suit  
8 investigation and preparing a pre-suit demand letter (Smith Decl., ¶ 2(a)); drafting the  
9 complaint (*id.* at ¶ 2(b)); participating in the Rule 26(f) conference, preparing joint  
10 case management statements, and negotiating a protective order (*id.* at ¶ 2(d));  
11 analyzing Defendant’s Answer and affirmative defenses (*id.* at ¶ 2(e)); preparing for  
12 trial (*id.* at ¶ 2(l)); working with the Settlement Administrator (*id.* at ¶ 2(o)); meeting  
13 with Plaintiffs and keeping them up to date on case developments (*id.* at ¶¶ 2(a), 18);  
14 and travelling from Oakland to Orange County for court appearances (*id.* at ¶ 2(c),  
15 (d)).

16           **B. Class Counsel Negotiated a Settlement that Provides Substantial**  
17 **Benefits to Class Members With and Without Proof of Purchase**

18           Each Settlement Class members is entitled to significant relief through this  
19 Settlement through a simple, straightforward claims process. Settlement Class  
20 Members who still have their chainsaws are entitled to a choice of \$50 cash (i.e., a full  
21 refund), a replacement chainsaw (valued at approximately \$50), or a \$50 Harbor  
22 Freight gift card. Settlement Class Members who do not have their chainsaws but  
23 have proof of purchase or proof of destruction are entitled to a choice of (a) \$50 cash,  
24 or (b) a \$50 Harbor Freight gift card. Settlement Class Members who do not still have  
25 their chainsaws and do not have proof of purchase or destruction are entitled to a  
26 choice of (a) \$10 cash, or (b) a \$25 Harbor Freight gift card. Given the amount of  
27 chainsaws sold minus the number of individuals who have participated in Defendant’s  
28 recall, the Settlement relief made available is valued between \$8 million and \$40

1 million. See *Kaupelis v. Harbor Freight Tools*, 2021 WL 4816833, at \*10 (C.D. Cal.  
2 Aug. 11, 2021) (Selna, J.) (citing to 7/9/21 Smith Decl. ISO Preliminary Approval).

3 **III. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS’**  
4 **FEES AND COSTS**

5 Plaintiffs’ causes of action, and in particular, the California Consumer Legal  
6 Remedies Act, Cal. Civ. Code § 1750 *et seq.*, (“CLRA”), require attorneys’ fees and  
7 costs to prevailing plaintiffs, which includes settlements that provide for monetary  
8 relief or achieve some of the plaintiff’s litigation objectives. See *Parkinson v. Hyundai*  
9 *Motor Am.*, 796 F. Supp. 2d 1160, 1169 (C.D. Cal. 2010).

10 The total amount requested here, \$665,000, covers costs and part of Class  
11 Counsel’s fees. As discussed below, Class Counsel’s fee request is appropriately  
12 analyzed under the lodestar method, which shows the request to be reasonable. The  
13 lodestar in this case is \$731,768.50 and the costs were \$249,604. Thus, after deducting  
14 costs, Class Counsel’s fee request is approximately \$415,395,<sup>1</sup> which is a negative  
15 multiplier and only 56% of their total lodestar of \$731,768.50. See Smith Decl., ¶ 6  
16 and Ex. A. The fee request is also reasonable under the percentage-of-the-fund  
17 method: Class Counsel’s fee is only 8% of the lowest possible settlement value, well  
18 below the Ninth Circuit’s 25% benchmark.<sup>2</sup>

19 **A. Legal Standards**

20 “In a certified class action, the court may award reasonable attorney’s fees and  
21 nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ.  
22 P. 23(h). “An award of attorneys’ fees incurred in a suit based on state substantive  
23 law is generally governed by state law.” *Champion Produce, Inc. v. Ruby Robinson*  
24 *Co.*, 342 F.3d 1016, 1025 (9th Cir. 2003); see also *Vizcaino v. Microsoft Corp.*, 290  
25 F.3d 1043, 1047 (9th Cir. 2002); *Kona Enters. v. Estate of Bishop*, 229 F.3d 877, 883

26 <sup>1</sup> *I.e.*, \$665,000-\$249,604 = \$415,395.

27 <sup>2</sup> The payment of attorneys’ fees, class representatives’ service awards, and  
28 reimbursement of costs does not limit or reduce the class recovery in any way.

1 (9th Cir. 2000). Under California law, the Court awards reasonable attorneys’ fees  
2 and costs where, as here, a litigant proceeding in a representative capacity secures  
3 “substantial benefit of a pecuniary or nonpecuniary nature” for a class of persons.  
4 *Serrano v. Priest*, 20 Cal. 3d 25, 38 (1977).

5 “[C]ourts have an independent obligation to ensure that the award, like the  
6 settlement itself, is reasonable, even if the parties have already agreed to an amount.”  
7 *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). At  
8 the same time, “[t]he task of a federal court in a diversity action is to approximate state  
9 law [regarding attorneys’ fee awards] as closely as possible to make sure that the  
10 vindication of the state right is without discrimination because of the federal forum.”  
11 *Farmers Ins. Exch. v. Sayas*, 250 F.3d 1234, 1236 (9th Cir. 2001).

12 **B. Fee Shifting Statutes**

13 The CLRA “shall be liberally construed and applied to promote its underlying  
14 purposes, which are to protect consumers against unfair and deceptive business  
15 practices and to provide efficient and economical procedures to secure such  
16 protection.” Cal. Civ. Code § 1760; *see also Wang v. Massey Chevrolet*, 97 Cal. App.  
17 4<sup>th</sup> 856, 869 (2002). The CLRA provides a fee-shifting provision directing that “[t]he  
18 court shall award court costs and attorney’s fees to a prevailing plaintiff in litigation  
19 filed pursuant to this section.” Cal Civ. Code § 1780(e).

20 “[T]he availability of costs and attorneys fees to prevailing plaintiffs is integral  
21 to making the CLRA an effective piece of consumer legislation, increasing the  
22 financial feasibility of bringing suits under the statute.” *Meyer v. Sprint Spectrum*  
23 *L.P.*, 45 Cal. 4th 634, 644 (2009) (quoting *Broughton v. Cigna Healthplans*, 21 Cal.  
24 4th 1066 (1999)). “Accordingly, an award of attorney fees to ‘a prevailing plaintiff’  
25 in an action brought pursuant to the CLRA is mandatory, even where the litigation is  
26 resolved by a pretrial settlement agreement.” *Kim v. Euromotors West/The Auto*  
27 *Gallery*, 149 Cal. App. 4th 170, 178-79 (2007).

1 In the settlement of a CLRA claim, a plaintiff prevails if there is a “net monetary  
2 recovery,” *Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1151 (1997), or where  
3 she is “denied direct relief” but nonetheless the lawsuit “has otherwise achieved its  
4 main litigation objective.” *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th  
5 140, 151 (2006). *See also Kim*, 149 Cal. App. 4th at 178-81 (discussing *Reveles* and  
6 *Graciano* and concluding that the plaintiff prevailed if “he obtained a net monetary  
7 recovery or because he achieved most or all of what he wanted by filing the action or  
8 a combination of the two.”).

9 Here, Class Counsel has made a cash payment of, at minimum, \$10, available  
10 to approximately 800,000 Class Members. Therefore, there is a significant net  
11 recovery requiring an award of attorneys’ fees and costs. The notice program also  
12 benefited class members who may not have yet heard about the recall of the subject  
13 chainsaws.

14 **C. The Lodestar Method is Appropriate Here**

15 In cases that involve fee shifting, as under the CLRA, in which the responsibility  
16 to pay attorneys’ fees is statutorily transferred from the prevailing plaintiff or class to  
17 the defendant, “the primary method for establishing the amount of ‘reasonable’  
18 attorney fees is the lodestar method.” *In re Consumer Privacy Cases*, 175 Cal. App.  
19 4th 545, 556-557 (2009). Numerous California District Courts have applied the  
20 lodestar method in awarding attorneys’ fees in settled class actions involving  
21 California consumer protection statutes, including the CLRA. *See Bruno v. Quten*  
22 *Research Inst., LLC*, 2013 WL 990495, at \*3-4 (C.D. Cal. Mar. 13, 2013); *Parkinson*  
23 *v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160 (C.D. Cal. 2010); *Hartless v. Clorox Co.*,  
24 273 F.R.D. 630 (S.D. Cal. 2011). This is particularly true where, as here, the  
25 agreement calls for an uncapped, claims-made settlement. *See, e.g., Brazil v. Dell Inc.*,  
26 2012 WL 1144303, at \*1 (N.D. Cal. Apr. 4, 2012); *Create-A-Card, Inc. v. Intuit, Inc.*,  
27 2009 WL 3073920, at \*1 (N.D. Cal. Sept. 22, 2009).

1 California state courts are generally in accord. *See Ketchum v. Moses*, 24 Cal.  
2 4th 1122, 1131-32 (2001) (under California law, “a court assessing attorney fees  
3 begins with a touchstone or lodestar figure, based on the careful compilation of the  
4 time spent and reasonable hourly compensation of each attorney . . . involved in the  
5 presentation of the case.”) (quoting *Serrano*, at 48); *see also Hensley v. Eckhart*, 461  
6 U.S. 424, 433 (1983); *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1672-73 (2010)  
7 (expressing strong preference for lodestar approach); *Serrano, supra*, at 48-49; *Meister*  
8 *v. Regents of Univ. of Calif.*, 67 Cal. App. 4th 437, 449 (1998); *Fed-Mart Corp. v. Pell*  
9 *Enterprises*, 111 Cal. App. 3d 215 (1980).

10 The lodestar may then be adjusted up or down to account for other factors that  
11 are not subsumed within the initial lodestar analysis.<sup>3</sup>

12 **D. The Requested Attorneys’ Fees Are Reasonable Under**  
13 **the Lodestar Method**

14 “The lodestar figure is calculated by multiplying the number of hours the  
15 prevailing party reasonably expended on the litigation (as supported by adequate  
16 documentation) by a reasonable hourly rate for the region and for the experience of  
17 the lawyer.” *In re Bluetooth*, 654 F.3d at 941. The resulting figure may be adjusted  
18 upward or downward to account for several factors including the quality of the  
19 representation, the benefit obtained for the class, the complexity and novelty of the  
20 issues presented, and the risk of nonpayment. *Hanlon v. Chrysler Corp.*, 150 F.3d

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21 <sup>3</sup> The factors already considered by the lodestar calculation are “(1) the novelty and  
22 complexity of the issues, (2) the special skill and experience of counsel, (3) the  
23 quality of representation, (4) the results obtained, and (5) the contingent nature of  
24 the fee agreement.” *Morales v. City of San Rafael*, 96 F.3d 359, 364 (9th Cir. 1996),  
25 *reh’g denied, amended on other grounds by* 108 F.3d 981 (9th Cir. 1997) (internal  
26 citations omitted). Additional factors to be considered in determining the  
27 appropriate upward or downward adjustment include: (1) the time and labor  
28 required; (2) the preclusion of other employment by the attorney due to acceptance  
of the case; (3) the ‘undesirability’ of the case; and (4) awards in similar cases. *Kerr*  
*v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S.  
951 (1976).

1 1011, 1029 (9th Cir. 1998). Here, Class Counsel’s combined lodestar (which does not  
2 include costs) is \$731,768.50. Smith Decl. ¶ 6. While the relevant factors would  
3 support a positive multiplier in this case, in accordance with the Settlement  
4 Agreement, Class Counsel requests an award of fees (and expenses) in the amount  
5 of \$665,000. This modest figure represents a steep discount from the lodestar  
6 and is a negative multiplier. “A negative multiple ‘strongly suggests the  
7 reasonableness of [a] negotiated fee.’” *Moreno v. Capital Bldg. Maint. & Cleaning*  
8 *Servs.*, 2021 WL 4133860, at \*6 (N.D. Cal. Sep. 10, 2021) (quoting *Rosado v. Ebay*  
9 *Inc.*, 2016 WL 3401987, at \*8 (N.D. Cal. June 21, 2016)); accord *Askar v. Health*  
10 *Providers Choice, Inc.*, 2021 WL 4846955, at \*6 (N.D. Cal. Oct. 18, 2021). In light  
11 of the work performed and results achieved, Class Counsel’s requested award is  
12 exceedingly fair and reasonable.

13 ***I. Class Counsel’s Hourly Rates are Reasonable***

14 To assist the court in calculating the lodestar, a plaintiff must submit  
15 “satisfactory evidence . . . that the requested rates are in line with those prevailing in  
16 the community for similar services by lawyers of reasonable comparable skill,  
17 experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984). “[R]ate  
18 determinations in other cases, particularly those setting a rate for the plaintiffs’  
19 attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers*  
20 *of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). Courts look to  
21 prevailing market rates in the community in which the court sits. *Schwarz v. Sec’y of*  
22 *Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995); see also *Camancho v.*  
23 *Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Class Counsel’s lodestar of  
24 \$731,768.50 is based on 1,247.3 attorney and staff hours, delivered over the course of  
25 close to two and a half years, and is supported by fair and reasonable rates and hours.  
26 Class Counsel’s rates for work in this case were \$250-\$300/hour for paralegals,  
27 \$315-450/hour for associates, and \$700-1,000/hour for partners. Smith Decl., Exhibit  
28 A.



1 Here, Class Counsel’s rates are reasonable and consistent with the rates charged  
2 by both plaintiffs’ and defense firms who practice in California. For this reason,  
3 numerous courts have found Bursor & Fisher’s rates reasonable. Smith Decl. ¶ 13;  
4 *see also, e.g., Perez v. Rash Curtis & Assocs.*, 2020 WL 1904533, at \*20 (N.D. Cal.  
5 Apr. 17, 2020) (approving Bursor & Fisher’s fee motion and determined that their  
6 rates were “within a reasonable range for rates charged in this district for comparable  
7 work”); *West v. Cal. Service Bureau*, Case No. 4:16-cv-03124-YGR, Dkt. No. 128  
8 (N.D. Cal. Jan. 23, 2019); *Dei Rossi v. Whirlpool*, 2:12-cv-00125-TLN-CKD, Dkt.  
9 Nos. 181-1 and 188 (2017) (approving fee request where Bursor & Fisher submitted  
10 hourly rates of up to \$875 per hour for partners and \$450 per hour for associates);  
11 *Zakskorn v. Am. Honda Motor Co.*, 2015 WL 3622990, \*13-15 (E.D. Cal. Jun. 9, 2015)  
12 (approving fee request where Bursor & Fisher submitted hourly rates of up to \$850  
13 per hour for partners and \$450 per hour for associates).

14 Additionally, the hourly rates for each of the lawyers who staffed the case,  
15 which are set forth in Exhibit 2 of the Smith Declaration, are comparable to rates  
16 charged by attorneys with similar experience, skill, and reputation, for similar  
17 services in the California legal market. *See Smith Decl.* ¶¶ 11-14 and Exhibits C-J.<sup>4</sup>  
18 *See, e.g., In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at \*9 (C.D. Cal. Oct. 25,  
19 2016) (approving “a billing rate ranging from \$750 to \$985 per hour for partners, \$500  
20 to \$800 per hour for ‘of counsels’/senior counsel, and \$300 to \$725 per hour for other  
21 attorneys”); *id.* (“The Court has reviewed the attorneys’ hourly rates and hours  
22 worked, and found them reasonable, given the duration of this litigation and the  
23 favorable settlement for the class”); *In re Toyota Motor Corp. Unintended*  
24 *Acceleration Mktg., Sales Practices, and Products Liability Litig.*, No. 10-ml- 02151

25 <sup>4</sup> The Supreme Court and other courts have held that the use of current rates is proper  
26 since such rates compensate for inflation and the loss of use of funds. *See, e.g.,*  
27 *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (recognizing “an appropriate  
28 adjustment for delay in payment—whether by the application of current rather than  
historic hourly rates or otherwise”).

1 NS (FMOx), Dkt. No. 3933 (C.D. Cal. June 24, 2013) (finding that “[c]lass counsel’s  
2 experience, reputation, and skill, as well as the complexity of the case” justified their  
3 rates that ranged from \$150 to \$950); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 2015  
4 U.S. Dist. LEXIS 168586, at \*51-52 (C.D. Cal. Mar. 17, 2015) (finding hourly rates  
5 ranging from \$335 to \$905 “reasonable for complex class action litigation in Los  
6 Angeles”).

7 **2. The Number of Hours Class Counsel Worked is**  
8 **Reasonable**

9 Class Counsel are entitled to be compensated for reasonable time spent at all  
10 points in the litigation. Courts should avoid engaging in an “*ex post facto*  
11 determination of whether attorney hours were necessary to the relief obtained.”  
12 *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992). The issue “is not whether  
13 hindsight vindicates an attorney’s time expenditures, but whether at the time the  
14 work was performed, a reasonable attorney would have engaged in similar time  
15 expenditures.” *Id.* Moreover, courts need not “engage in armchair quarterbacking,  
16 nor [should it] encourage attorneys to litigate in a way that may jeopardize the  
17 quality of their representation.” *Rutti v. Lojack Corp.*, 2012 WL 3151077, at \*9  
18 (C.D. Cal. July 31, 2012) (citation omitted).

19 Here, Class Counsel worked very efficiently and without co-counsel. Class  
20 Counsel’s detailed daily billing records, which show what work was done and by  
21 whom, confirm Bursor & Fisher’s efficient billing in this case. *See* Smith Decl. Ex.  
22 A. Class Counsel’s total expenditure of 1,247.3 hours includes, *inter alia*, time billed  
23 for: pursuing pre-litigation investigation of the claims; researching and drafting the  
24 pleadings; motion practice associated with the motion to dismiss, motion for class  
25 certification, and discovery-related motions; briefing resulting from Defendant’s 23(f)  
26 petition; drafting and responding to discovery; reviewing thousands of documents  
27 produced in discovery; taking or defending 13 depositions; interviewing and retaining  
28 engineering, damages, and marketing survey experts; preparing for trial; preparing for

1 and participating in a mediation and settlement-related meetings; working on the  
2 settlement agreement and related notice documents; drafting preliminary approval-  
3 related documents; communicating with Plaintiffs and third party witnesses; and  
4 overseeing settlement administration, including communicating with class members  
5 in connection with settlement administration, which remains ongoing. *See* Smith  
6 Decl., ¶ 2(a)-(o).

7 **E. Class Counsel’s Requested Fee Award is Reasonable**  
8 **Under the *Kerr* Factors Subsumed in the Lodestar**  
9 **Analysis**

10 “There is a strong presumption that the lodestar method results in a  
11 reasonable fee.” *Rutti v. Lojack Corp.*, 2012 WL 3151077, at \*1 (C.D. Cal. July  
12 31, 2012) (internal citation omitted).<sup>5</sup> Furthermore, the reasonableness of the fee  
13 requested here is also established under the relevant *Kerr* factors, including the  
14 novelty and complexity of the litigation, counsel’s skill and experience, the quality  
15 of representation, the results obtained, and the contingent nature of the fee  
16 agreement. *See Morales*, 96 F.3d at 364.<sup>6</sup>

17 **1. Novelty and Complexity of the Litigation**

18 This litigation was novel and complex. First, Class Counsel undertook the task  
19 of investigating how chainsaws operated, the cause of the defective nature of the  
20 chainsaws, and what disclosures about the chainsaws were made by Defendant at the  
21 time of sale and were in the public domain during the time chainsaws were sold. *See*  
22 Smith Decl. ¶ 2(g). This litigation had added difficulties created by the process of  
23 finding an engineering expert qualified and available to investigate the product,  
24 analyze its internal components, and determine whether the product is defective. *Cf.*

25 <sup>5</sup> Moreover, “in the Ninth Circuit it is an abuse of discretion to base attorney’s fees  
26 ‘on the class members’ claims against the fund rather than on a percentage of the  
27 entire fund or on the lodestar.” *Perez v. Rash Curtis Assocs.*, 2020 WL 1904533, at  
28 \*6 (N.D. Cal. April 17, 2020) (quoting *Williams v. MGM-Pathe Commc ’ns Co.*, 129  
F.3d 1026, 1027 (9th Cir. 1997)).

<sup>6</sup> Class Counsel does not seek a multiplier, and therefore does not address the  
additional *Kerr* factors that discuss whether a multiplier is appropriate.

1 *id.* at ¶ 2(h). The attorneys who primarily work on this case do not have an engineering  
2 background, and thus had to gain a basic familiarity with certain engineering principles  
3 to understand how the subject chainsaws worked and the cause of the alleged defect  
4 at issue here. *Id.* at ¶ 2(g). Class counsel also worked with consumer survey and  
5 economics experts to establish a viable damages model that survived Daubert  
6 challenges. *See* Dkt. No. 140 (denying motions to exclude Plaintiffs' experts).

7 Second, both in its motion to dismiss and at class certification, Defendant relied  
8 heavily on its existing recall as a defense and cited authorities that Defendant argued  
9 supported its position. *See generally* Dkt. Nos. 13, 74. As a result, unlike most  
10 consumer protection class actions, this case required discovery and legal research  
11 targeted towards Defendant's arguments that its recall furnished an affirmative defense  
12 and supported denial of class certification.

13 Third, Plaintiffs were able to win class certification despite vigorous opposition,  
14 and that part of the case required significant efforts. On March 2, 2020, Plaintiffs filed  
15 an opening brief supported by 30 exhibits. Dkt. No. 34. Plaintiffs' reply brief, filed  
16 on September 8, 2020, was supported by 61 exhibits, including a detailed timeline/  
17 summary of evidence pursuant to FRE 1006 that required extensive work to prepare.  
18 Dkt. No. 116; *see also* Smith Decl., ¶ 2(j). In connection with class certification,  
19 Plaintiffs' counsel also prepared and filed oppositions to two separate *Daubert*  
20 motions seeking to exclude all of Plaintiffs' expert witnesses. Dkt. Nos. 101, 104.  
21 Seven of the thirteen depositions in this case were taken in connection with the class  
22 certification briefs. Smith Decl., ¶ 2(j). Harbor Freight also filed objections to certain  
23 evidence that Plaintiffs submitted in support of their oppositions to Harbor Freight's  
24 *Daubert* motions, as well as certain evidence submitted in support of Plaintiffs' reply  
25 brief, and Class Counsel prepared and filed responses to these objections. Dkt. Nos.  
26 123, 124.

27 The successful outcome of the class certification motion was also due, in large  
28 part, to Class Counsel's ability to work with damages experts who developed robust

1 damages models that withstood Defendant’s *Daubert* motions. The damages issue  
2 consumed significant time and resources paid to economic and marketing experts.  
3 Lastly, the granting of class certification also faced the prospect of appellate review,  
4 which Plaintiffs successfully opposed.

5 Accordingly, Class Counsel faced and surmounted numerous novel and  
6 complex issues.

7 **2. Skill and Experience of Class Counsel and Quality**  
8 **of Representation**

9 Class Counsel are all experienced and skilled class action practitioners. Indeed,  
10 “[t]he Court has already concluded that attorneys from Bursor & Fisher, [P.A.] are  
11 adequate class counsel.” Order Granting Preliminary Approval, at 11 (Dkt. No. 179);  
12 *see also* Smith Decl., Exhibit K (firm resume).

13 **3. Class Counsel Obtained a Favorable Result for the**  
14 **Settlement Class**

15 Approximately 800,000 chainsaw purchasers are eligible to make a claim for a  
16 cash payment (or gift card if they so choose), making anywhere from \$8 million to  
17 \$40 million available to class members. In addition to the monetary relief available,  
18 Defendant agreed to pay up to \$665,000 in Court-awarded attorneys’ fees and costs,  
19 plus Court-awarded service awards to the Named Plaintiffs.

20 **4. The Contingent Nature of the Litigation &**  
21 **Preclusion from Other Work**

22 Despite their investment of more than 1,200 hours and nearly \$250,000 in  
23 litigation expenses, there was significant risk that Class Counsel would not receive any  
24 compensation for their legal services or recover their out-of-pocket costs. Class  
25 Counsel’s ability to collect compensation was entirely contingent upon prevailing on  
26 Plaintiffs’ claims. The substantial risk of non-recovery inherent in class litigation  
27 merits the Court’s consideration. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d  
28 1036, 1046-47 (N.D. Cal. 2008) (“The risk that further litigation might result in

1 [p]laintiffs not recovering at all, particularly a case involving complicated legal issues,  
2 is a significant factor in the award of fees.”); accord *In re Nat’l Collegiate Athletic*  
3 *Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at \*3 (N.D. Cal.  
4 Dec. 6, 2017), aff’d, 768 F. App’x 651 (9th Cir. 2019); see also *In re Pac. Enters. Sec.*  
5 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (holding fees justified “because of the  
6 complexity of the issues and the risks”).

7 Over the course of the litigation, there were extended periods of time when  
8 attorneys from Bursor & Fisher worked on this litigation to the exclusion of work on  
9 their other matters. Smith Decl., ¶ 8. This was particularly true during the intensive  
10 weeks when the parties’ experts were being deposed, as well as months during which  
11 counsel were preparing for expert depositions, preparing Plaintiffs’ motion for class  
12 certification, opposing Defendant’s *Daubert* motions, and preparing Plaintiffs’ reply  
13 in support of class certification. *Id.*

14 In sum, Class Counsel’s requested fee readily satisfies the *Kerr* factors.

15 **F. A Percentage Cross-Check Demonstrates that Class**  
16 **Counsel’s Requested Fee is Reasonable**

17 In California, “[c]ourts recognize two methods for calculating attorneys’ fees in  
18 civil class actions: the lodestar/multiplier method and the percentage of recovery  
19 method. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001) (citing  
20 *Zucker v. Occidental Petroleum Corp.*, 968 F. Supp. 1396, 1400 (C.D. Cal. 1997));  
21 see also *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). In cases  
22 such as this one, where “the value of the class recovery can be monetized with a  
23 reasonable degree of certainty,” the trial court may cross check the reasonableness of  
24 a fee by considering the amount to be awarded as a percentage of the benefit received  
25 by the class. *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 50 (2000).  
26 Here, the minimum value of the Settlement is approximately \$8 million in cash relief  
27 to Class Members (i.e. \$10 x approximately 800,000 Class Members), and the  
28 maximum value of the Settlement is \$40 million in cash relief to Class Members (i.e.

1 \$50 x 800,000 Class Members). The total request of \$665,000 in fees and costs, at  
2 most, represents only 8% of the total Settlement value—well below the accepted range  
3 generally awarded in class actions. *See, e.g., Vizcaino, supra.* Moreover, the  
4 requested \$665,000 is inclusive of \$249,604.16 in litigation costs, making the fee  
5 portion of the requested award \$415,000, or 5% of the Settlement value.

6 Courts within this District have held that fees and costs may be included for  
7 purposes of calculating the total settlement value. *E.g., Weeks v. Kellogg Co.*, 2013  
8 WL 6531177, at \*29 (C.D. Cal. Nov. 23, 2013) (recognizing that a settlement that  
9 prevents costs from being paid from the settlement fund confers a concrete benefit on  
10 the class, and including such costs in calculating settlement value). If fees and costs  
11 are included, which will be paid by Defendant separate and apart from monetary relief  
12 to the Class, the Settlement is properly valued at \$8.665 million (at minimum). Using  
13 that figure, the fee portion of the requested award is only 4.8% of the Settlement value.

14 Accordingly, Plaintiffs’ fee request is fair and reasonable when measured as a  
15 percentage of the benefit, is consistent with California and Ninth Circuit precedent,  
16 and is warranted given the outstanding result Class Counsel obtained on behalf of the  
17 Class.

18 **G. The Requested Expenses Reimbursement is Reasonable**  
19 **and Should be Granted**

20 In addition to appropriate attorneys’ fees, all expenses that are typically billed  
21 by attorneys to paying clients in the marketplace are compensable. *See Missouri v.*  
22 *Jenkins by Agyei*, 491 U.S. 274, 286 (1989); *accord Grove v. Wells Fargo Fin.*  
23 *California, Inc.*, 606 F.3d 577, 580 (9th Cir. 2010); *see also Omnivision*, 559 F. Supp.  
24 2d at 1048 (“[a]ttorneys may recover their reasonable expenses that would typically  
25 be billed to paying clients in non-contingency matters.”).

26 Here, Class Counsel have incurred and paid, and seek reimbursement of,  
27 recoverable costs and expenses totaling \$249,604.16. As noted above, these costs are  
28 already included within the total \$665,000 requested here. These costs were

1 reasonably and necessarily incurred by Class Counsel despite the risk that they would  
2 not be recovered. They include typical litigation costs, such as: videographer and court  
3 reporter fees for depositions, expert witness fees, court fees, travel, and other  
4 customary litigation expenses. A more detailed accounting of the costs and expenses  
5 is set forth in the Smith Declaration submitted herewith. *See* Smith Decl., Exhibit B.  
6 Defendant has agreed to reimburse Plaintiffs' litigation expenses and fees not to  
7 exceed \$665,000 pursuant to the Settlement Agreement.

#### 8 **IV. THE REQUESTED SERVICE AWARDS ARE REASONABLE**

9 In recognition of their efforts on behalf of the Class, and subject to the approval  
10 of the Court, Defendant has agreed to pay the Class Representatives up to \$3,000 each  
11 (for a total of \$6,000), as appropriate compensation for their time and effort serving as  
12 the class representatives in this litigation.

13 Incentive awards "are fairly typical in class action cases." *Rodriguez v. W.*  
14 *Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Such awards "are intended to  
15 compensate class representatives for work done on behalf of the class, to make up for  
16 financial or reputational risk undertaken in bringing the action, and, sometimes, to  
17 recognize their willingness to act as a private attorney general." *Id.* at 958-59.  
18 Incentive awards are committed to the sound discretion of the trial court and should  
19 be awarded based upon the court's consideration of, *inter alia*, the amount of time and  
20 effort spent on the litigation, the duration of the litigation and the degree of personal  
21 gain obtained as a result of the litigation. *See Van Vranken v. Atl. Richfield Co.*, 901  
22 F. Supp. 294, 299 (N.D. Cal. 1995).

23 The requested amount of \$3,000 each for the Class Representatives is  
24 appropriate to compensate them for their efforts in bringing this action for the benefit  
25 of hundreds of thousands of Class Members. Both Class Representatives sat for a  
26 deposition in this case, which required substantial time spent on preparation, travel,  
27 attendance, and transcript review. Kaupelis Decl., ¶ 6; Ortega Decl., ¶ 6. Throughout  
28 the litigation, the Class Representatives were frequently in contact with Class Counsel



1 to discuss the case, work on discovery issues, and provide declarations. Kaupelis  
2 Decl., ¶¶ 5, 7(c); Ortega Decl., ¶¶ 5, 7(c). They assisted in Class Counsel’s pre-suit  
3 investigation by discussing their experiences and providing information on their  
4 purchase and use of the chainsaws, and performed their own independent research  
5 before hiring counsel Kaupelis Decl., ¶ 7(a); Ortega Decl., ¶ 7(a). They provided  
6 information necessary for drafting the Complaint filed in this litigation, and they  
7 reviewed it for accuracy before it was filed. See Kaupelis Decl., ¶ 7(a), (f); Ortega  
8 Decl., ¶ 7(a), (f). They worked with Class Counsel to respond to written discovery  
9 and to search for requested documents. See Kaupelis Decl., ¶ 7(c)-(e); Ortega Decl.,  
10 ¶ 7(c)-(f). They were involved in the settlement process. Kaupelis Decl., ¶ 7(c);  
11 Ortega Decl., ¶ 7(c). In short, their involvement in this case “has been nothing short  
12 of essential,” and their participation has resulted in a significant benefit to purchasers  
13 of the chainsaws across the United States. Smith Decl., ¶ 18.

14 Importantly, the amount of service awards here is less than or comparable to  
15 service awards that this Court has approved in other class actions, and the same holds  
16 true for courts throughout this Circuit.<sup>7</sup> In *Alvarez v. Sirius XM Radio Inc.*, 2021 WL  
17 1234878, at \*13 (C.D. Cal. Feb. 8, 2021) (Selna, J.), for example, this Court awarded  
18 a \$3,000 service fee for Paul Wright, who submitted a declaration that he had spent  
19 approximately 20 hours on the case. In comparison, Plaintiffs Kaupelis spent  
20 approximately 24-25 hours working on this matter, and Mr. Ortega spent  
21 approximately 23 hours working on this matter, but they are seeking the same amount  
22 awarded to Mr. Wright in the *Alvarez* matter. See Kaupelis Decl., ¶¶ 5-7; Ortega  
23 Decl., ¶¶ 5-7. There are several other decisions from this Court granting final approval

24 \_\_\_\_\_  
25 <sup>7</sup> *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008) (“Courts have  
26 generally found that \$5,000 incentive payments are reasonable”); *Faigman v. AT & T*  
27 *Mobility LLC*, 2011 WL 672648, \*5 (N.D. Cal. Feb.16, 2011) (“incentive payments  
28 of \$5,000 are presumptively reasonable”); *In re Toys R Us–Delaware, Inc.-Fair &*  
*Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 472 (C.D. Cal.  
2014) (approving \$5,000 incentive award).

1 of \$5,000-\$7,500 in service awards, which further underscores that the amount  
2 requested here is within the reasonable range. *See, e.g., Jordan v. Michael Page Int'l,*  
3 *Inc.*, 2020 WL 4919732, at \*8 (C.D. Cal. July 2, 2020) (Selna, J.) (“The Court finds  
4 that an enhancement award of \$7,500 for Jordan is appropriate.”); *Gonzalez v.*  
5 *Universal Alloy Corp.*, 2014 WL 12771120, at \*4 (C.D. Cal. Nov. 10, 2014) (Selna,  
6 J.) (approving \$5,000 and \$7,500 service fees); *George v. TRS Staffing Sols., Inc.*,  
7 2011 WL 13187109, at \*4 (C.D. Cal. Jan. 28, 2011) (Selna, J.) (approving \$7,500  
8 service fee).

9 **V. CONCLUSION**

10 Class Counsel’s request for attorneys’ fees and costs in the amount of  
11 \$665,000 is reasonable and justified given the substantial discount to actual  
12 lodestar and the results achieved on behalf of the Class. Furthermore, a service  
13 award of \$3,000 to each named Plaintiff is fair and reasonable, given their respective  
14 efforts undertaken in pursuing this litigation.<sup>8</sup> Accordingly, Class Counsel  
15 respectfully requests that this Court award the requested fees, costs and expenses,  
16 and service awards.

17  
18 Dated: October 25, 2021

**BURSOR & FISHER, P.A.**

19 By:           /s/ Joel D. Smith            
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<sup>8</sup> More detail regarding named Plaintiffs’ contributions to the outcome of this case is set forth in their Declarations, filed concurrently herewith.

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