

1 FINKELSTEIN, BLANKINSHIP, FREI-  
2 PEARSON & GARBER, LLP  
3 D. Greg Blankinship (*pro hac vice*)  
4 One North Broadway, Suite 900  
White Plains, NY 10601  
T.914.298.3290 F. 914.522.5561  
[gblankinship@fbfglaw.com](mailto:gblankinship@fbfglaw.com)

5 BROWN, NERI, SMITH & KHAN LLP  
6 Nathan M. Smith (SBN 255212)  
7 Nona Yegazarian (SB 316458)  
8 11601 Wilshire Blvd, Suite 2080  
Los Angeles, CA 90025  
T. 310.593.9890; F. 310.593.9980  
[nate@bnsklaw.com](mailto:nate@bnsklaw.com);  
[nona@bnsklaw.com](mailto:nona@bnsklaw.com)

9 BERGER MONTAGUE PC  
10 E. Michelle Drake (*pro hac vice*)  
11 Joseph C. Hashmall (*pro hac vice*)  
12 43 SE Main Street, Suite 505  
Minneapolis, MN 55414  
T. 612.594.5999; F. 612.584.4470  
[emdrake@bm.net](mailto:emdrake@bm.net); [jhashmall@bm.net](mailto:jhashmall@bm.net)

13 *Attorneys for Plaintiffs*

14  
15 **UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

16 MICHAEL YOUNG and DAN  
17 DOLAR, individually and on behalf  
18 of other similarly situated  
individuals,

19 Plaintiffs,

20 v.

21 MOPHIE, INC.,

22 Defendant.

Case No. 8:19-CV-00827-JVS-DFM

**CLASS ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
CLASS ACTION SETTLEMENT,  
ATTORNEYS' FEES AND  
EXPENSES, AND SERVICE  
AWARDS;**

Hon. James V. Selna

Complaint Filed: May 2, 2019

Hearing Date: October 19, 2020

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

**Table Of Contents**

**Page(s)**

Table Of Authorities .....iii

I. Background ..... 1

II. Summary Of The Proposed Settlement Agreement ..... 3

III. The Court Should Certify The Class For Settlement Purposes. .... 5

    A. The Settlement Class Satisfies Rule 23(a). .... 6

        1. The Class Is So Numerous That Joinder Of All Members Is Impracticable. .... 6

        2. There Are Questions Of Law Or Fact Common To The Class Law Or Fact Common To The Class.. .... 7

        3. Plaintiffs’ Claims Are Typical Of The Claims Of The Class. Typical Of The Claims Of The Class. .... 8

        4. Plaintiffs Will Fairly And Adequately Protect The Interests Of The Class. .... 9

        5. Ascertainability Is Not A Barrier To Certifying The Proposed Settlement Class. .... 10

    B. The Proposed Settlement Class Satisfies Rule 23(b)(2). .... 10

IV. Notice To The Class Is Not Required. .... 12

V. The Court Should Approve Settlement. .... 13

    A. The Strength of Plaintiffs’ Case. .... 15

    B. The Risks Of Continued Litigation. .... 16

    C. The Risks of Maintaining A Class Action Status Throughout Trial... 17

    D. The Amount Offered In Settlement ..... 17

    E. The Extent Of Discovery And Stage Of The Proceedings ..... 18

    F. Counsels’ Experience. .... 19

    G. Additional Factors. .... 20

VI. The Court Should Approve Plaintiffs’ Counsel’s Request For \$325,000 In Attorneys’ Fees And Costs. .... 21

VII. The Court Should Approve Plaintiffs’ Service Awards. .... 28

VIII. Conclusion ..... 30

**Table of Authorities**

		<b>Page (s)</b>
1		
2	<b>Cases</b>	
3		
4	<i>Ang v. Bimbo Bakeries USA, Inc.</i> ,	
	No. 13-01196,2018 WL 4181896 (N.D. Cal. Aug. 31, 2018) .....	11
5		
6	<i>Baby Neal for and by Kanter v. Casey</i> ,	
	43 F.3d 48 (3d Cir. 1994) .....	11
7		
8	<i>Banas v. Volcano Corp.</i> ,	
	47 F. Supp. 3d 957 (N.D. Cal. 2014) .....	22
9		
10	<i>Bellinghausen v. Tractor Supply Co.</i> ,	
	303 F.R.D. 611 (N.D. Cal. 2014) .....	6
11		
12	<i>Brown v. CVS Pharmacy, Inc.</i> ,	
	No. 15-7631, 2017 WL 3494297 (C.D. Cal. Apr. 24, 2017) .....	27
13		
14	<i>Buccellato v. AT &amp; T Operations, Inc.</i> ,	
	No. C10-00463, 2011 WL 3348055 (N.D. Cal. June 30, 2011) .....	26
15		
16	<i>Californians for Disability Rights, Inc. v. Cal. Dep’t of Transp.</i> ,	
	249 F.R.D. 334 (N.D. Cal. 2008) .....	11
17		
18	<i>Carter v. San Pasqual Fiduciary Trust Co.</i> ,	
	2018 WL 6174767 (C.D. Cal. 2018) .....	18
19		
20	<i>Chan v. Sutter Health Sacramento Sierra Region</i> ,	
	No. 15-02004, 2016 WL 7638111 (C.D. Cal. June 9, 2016) .....	9, 12, 13
21		
22	<i>Chan, v. Sutter Health Sacramento Sierra Region</i> ,	
	No. 15-02004, 2017 WL 819903, at *1 (C.D. Cal. Feb. 14, 2017) .....	<i>Passim</i>
23		
24	<i>Churchill Village, L.L.C. v. General Electric</i> ,	
	361 F.3d 566 (9th Cir. 2004) .....	14
25		
26	<i>Class Plaintiffs v. City of Seattle</i> ,	
	955 F.2d 1268 (9th Cir. 1992) .....	13
27		
28	<i>Contra Costa</i> ,	
	No. 13-03667, 2015 WL 4606078 (N.D. Cal. July 30, 2015) .....	6, 8, 9, 11

1 *De Leon v. Rocah USA, Inc.*,  
 2 No. 18-3725, 2020 WL 1531331 (N.D. Cal. Mar. 31, 2020).....22

3 *Devlin v. Ferrandino & Son, Inc.*,  
 4 No. 15-4976, 2016 WL 7178338 (E.D. Pa. Dec. 9, 2016).....24

5 *DL v. District of Columbia*,  
 6 302 F.R.D. 1 (D.D.C. 2013) .....12

7 *Dyer v. Wells Fargo Bank, N.A.*,  
 8 303 F.R.D. 326 (N.D. Cal. 2014) .....29

9 *Edwards v. First Am. Corp.*,  
 10 No. 07-03796, 2016 WL 8999934 (C.D. Cal. Oct. 4, 2016).....26

11 *Ellis v. Costco Wholesale Corp.*,  
 12 657 F.3d 970 (9th Cir. 2011).....11

13 *Evon v. Law Offices of Sidney Mickell*,  
 14 688 F.3d 1015 (9th Cir. 2012).....7

15 *Good Morning to You Prods. Corp. v. Warner/Chappell Music, Inc.*,  
 16 No. 13-4460, 2016 WL 6156076 (C.D. Cal. Aug. 16, 2016).....22

17 *Grannan v. Alliant Law Grp., P.C.*,  
 18 No. 10-02803, 2012 WL 216522 (N.D. Cal. Jan. 24, 2012).....19

19 *Grant v. Capital Mgmt. Servs., L.P.*,  
 20 No. 10-2471, 2014 WL 888665 (S.D. Cal. Mar. 5, 2014) .....15, 17

21 *Gray v. Golden Gate Nat’l Recreational Area*,  
 22 279 F.R.D. 501 (N.D. Cal. 2011) .....11

23 *Green v. Am. Express Co.*,  
 24 200 F.R.D. 211 (S.D.N.Y. 2001).....12

25 *Hanlon v. Chrysler Corp.*,  
 26 150 F.3d 1011 (9th Cir. 1998).....8, 14, 21

27

28

1 *Harris v. Marhoefer*,  
24 F.3d 16 (9th Cir. 1994).....27, 28

2

3 *Harris v. Vector Marketing Corp.*,  
4 No. C-08-5198, 2012 WL 381202 (N.D. Cal. Feb. 6, 2012) .....29

5 *Hernandez v. Cty. of Monterey*,  
6 305 F.R.D. 132 (N.D. Cal. 2015) .....9, 10

7 *In re Bluetooth Headset Prods. Liab. Litig.*,  
8 654 F.3d 935 (9th Cir. 2011).....14

9 *In re Ceradyne, Inc.*,  
10 No. 06-919, 2009 WL 10671494, at \*7 (C.D. Cal. June 9, 2009) .....27

11 *In re ConAgra Foods, Inc.*,  
12 302 F.R.D. 537 (C.D. Cal. 2014) .....11

13 *In re Heritage Bond Litig.*,  
14 No. 02-1475, 2005 WL 1594403 (C.D. Cal. June 10, 2005) .....20

15 *In re High-Tech Employee Antitrust Litig.*,  
16 No. 11-02509, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015) .....23

17 *In re HP Power Plug and Graphic Card Litig.*,  
18 No. C06-2254 RMW, 2008 WL 2697192 (N.D. Cal. Jul. 7, 2008).....26

19 *In re Magsafe Apple Power Adapter Litig.*,  
20 No. 09-1911, 2015 WL 428105 (N.D. Cal. Jan. 30, 2015) .....23

21 *In re Mego Fin. Corp. Sec. Litig.*,  
22 213 F.3d 454 (9th Cir. 2000) .....29

23 *In re Myford Touch Consumer Litig.*,  
24 No. 13-03072, 2019 WL 6877477 (N.D. Cal. Dec. 17, 2019).....26

25 *In re NJOY, Inc. Consumer Class Action Litig.*,  
26 120 F. Supp. 3d 1050 (C.D. Cal. 2015).....7

27

28

1 *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act*  
 2 *(FACTA) Litig.*,  
 295 F.R.D. 438 (C.D. Cal. 2014) .....29

3 *In re Wells Fargo Loan Processor Overtime Pay Litig.*,  
 4 No. 07-1841, 2011 WL 3352460 (N.D. Cal. Aug. 2, 2011) ..... 16, 17

5 *In re Wireless Facilities, Inc. Sec. Litig. II*,  
 6 253 F.R.D. 607 (S.D. Cal. 2008).....5

7 *In re Yahoo Mail Litig.*,  
 8 308 F.R.D. 577 (N.D. Cal. 2015) ..... 10

9 *Jermyn v. Best Buy Stores, L.P.*,  
 10 No. Civ. 214, 2012 WL 2505644 (S.D.N.Y. June 27, 2012)..... 12

11 *Jordan v. Multnomah Cty.*,  
 12 815 F.2d 1258 (9th Cir. 1987).....22

13 *Kim v. Space Pencil, Inc.*,  
 14 No. 11-03796, 2012 WL 5948951 (N.D. Cal. Nov. 28, 2012) ..... 12, 21

15 *Kline v. Dymatize Enterprises, LLC*,  
 16 No. 15-2348, 2016 WL 6026330 (S.D. Cal. Oct. 13, 2016) ..... 12, 13

17 *Kumar v. Salov N. Am. Corp., No.*,  
 18 No. 14-2411, 2017 WL 2902898 (N.D. Cal. July 7, 2017).....8, 9

19 *Lazarin v. Pro Unlimited, Inc.*,  
 20 No. 11-03609, 2013 WL 3541217 (N.D. Cal. July 11, 2013)..... 17

21 *Lealao v. Beneficial California, Inc.*,  
 22 82 Cal. App. 4th 19 (2000) (applying California law).....21

23 *Lerwill v. Inflight Motion Pictures, Inc.*,  
 24 582 F.2d 507 (9th Cir. 1978).....9

25 *Lilly v. Jamba Juice Co.*,  
 26 No. 13-02998, 2015 WL 2062858 (N.D. Cal. May 4, 2015)..... Passim

27

28

1 *Linguist v. Bowen,*  
 2 633 F. Supp. 846 (W.D. Mo. 1986).....12  
 3  
 4 *Litty v. Merrill Lynch & Co.,*  
 5 No. 14-0425, 2015 WL 4698475 (C.D. Cal. Apr. 27, 2015) .....13  
 6  
 7 *Madenlian v. Flax USA, Inc.,*  
 8 No. 13-1748, 2015 WL 13754685 (C.D. Cal. Mar. 16, 2015).....29, 30  
 9  
 10 *Mamula v. Satralloy, Inc.,*  
 11 578 F. Supp. 563 (S.D. Ohio 1983).....12  
 12  
 13 *Mazza v. Am. Honda Motor Co.,*  
 14 666 F.3d 581 (9th Cir. 2012).....7  
 15  
 16 *McCrary v. Elations Co., LLC,*  
 17 No. 13–00242, 2014 WL 1779243 (C.D. Cal. Jan. 13, 2014) .....10  
 18  
 19 *Meister v. Regents of Univ. of California,*  
 20 67 Cal. App. 4th 437 (1998).....21  
 21  
 22 *Miller v. Wise Co., Inc.,*  
 23 No. 17-0616, 2020 WL 1129863 (C.D. Cal. Feb. 11, 2020) .....22, 28  
 24  
 25 *Moreno v. San Francisco Bay Area Rapid Transit Dist.,*  
 26 No. 17-02911, 2019 WL 343472 (N.D. Cal. Jan. 28, 2019) .....14  
 27  
 28 *Negrete v. Allianz Life Ins. Co. of N. Am.,*  
 287 F.R.D. 590 (C.D. Cal. 2012) .....7  
*Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco,*  
 688 F.2d 615 (9th Cir. 1982) .....13  
*Parsons v. Ryan,*  
 754 F.3d 657 (9th Cir. 2014) .....7, 8  
*Penland v. Warren Cty. Jail,*  
 797 F.2d 332 (6th Cir. 1986) .....12  
*Perfect 10, Inc. v. Giganews, Inc.,*  
 No. 11-07098, 2015 WL 1746484 (C.D. Cal. Mar. 24, 2015) .....22

1 *Ries v. Ariz. Bevs. U.S. LLC, LLC,*  
 287 F.R.D. 523 (N.D. Cal. 2012) .....6

2

3 *Rivera v. Bio Engineered Supplements & Nutrition, Inc.,*  
 No. 07-1306, 2008 WL 4906433 (C.D. Cal. Nov. 13, 2008)..... Passim

4

5 *Rodriguez v. Bumble Bee Foods, LLC,*  
 No. 17-2447, 2018 WL 1920256 (S.D. Cal. Apr. 24, 2018).....28

6

7 *Rodriguez v. Hayes,*  
 591 F.3d 1105 (9th Cir. 2010)..... 11

8

9 *Rodriguez v. W. Publ’g Corp.,*  
 563 F.3d 948 (9th Cir. 2009).....16, 19, 29

10

11 *Rose v. Bank of Am. Corp.,*  
 No. 11-02390, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) .....23

12

13 *Stathakos v. Columbia Sportswear Co.,*  
 No. 15-04543, 2018 WL 582564 (N.D. Cal. Jan. 25, 2018)..... Passim

14

15 *Staton v. Boeing Co.,*  
 327 F.3d 938 (9th Cir. 2003)..... 14, 29

16

17 *Stevens v. Safeway Inc.,*  
 No. 05-1988, 2008 WL 11496497 (C.D. Cal. Feb. 25, 2008) .....17

18

19 *Vasquez v. Kraft Heinz Food Co.,*  
 No. 16-2749, 2020 WL 1550234 (S.D. Cal. Apr. 1, 2020).....22

20

21 *Vizcaino v. Microsoft Corp.,*  
 290 F.3d 1043 (9th Cir. 2002).....21, 26

22

23 *Wal-Mart Stores, Inc. v. Dukes,*  
 564 U.S. 338 (2011) .....5, 7, 11, 12

24

25 *Wolin v. Jaguar Land Rover N. Am., LLC,*  
 617 F.3d 1168 (9th Cir. 2010).....5

26

27 *Yeagley v. Wells Fargo & Co.,*  
 365 F. App’x 886 (9th Cir. 2010).....21

28

**Rules**

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

Fed. R. Civ. P. 23(b)(2) ..... Passim

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Michael Young (“Mr. Young”) and Dan Dolar (“Mr. Dolar”)  
3 (collectively, “Plaintiffs”), on behalf of the class (the “Class”), submit this  
4 Memorandum of Law in support of their motion for approval of a proposed class  
5 action settlement, an award of attorneys’ fees and expenses, and for Plaintiffs’  
6 service awards in the above-captioned action (the “Litigation”).

7 The proposed settlement (the “Settlement” or “Settlement Agreement”),  
8 which provides for injunctive relief only, warrants this Court’s approval.<sup>1</sup> The  
9 Settlement is momentous, in that it requires Defendant Mophie, Inc. (“Mophie” or  
10 “Defendant,” and collectively with Plaintiffs, the “Parties”) to change the way it  
11 labels every power bank (“Power Bank”) it sells in a manner that provides  
12 consumers with the information they need to make informed purchasing decisions.  
13 Approval of this Settlement and the ensuing injunctive relief obtained through  
14 Plaintiffs and their counsels’ diligent efforts is a major step towards achieving  
15 widespread changes in the power bank market that will assist consumers  
16 everywhere.

17 **I. Background**

18 Under the Powerstation and Juice Pack labels, Mophie manufactures,  
19 markets, and distributes for sale nationwide Power Banks that consumers use to  
20 charge their personal electronical devices (“PEDs”), such as laptops, tablets, and  
21 cellphones. First Am. Compl. (“FAC” or “Complaint”), ¶ 3, Dkt. No. 22. The  
22 capacity of Power Banks is measured in milliamperes-hours (“mAh”). *Id.* ¶ 2. The  
23 amount of mAh available to charge PEDs determines how frequently a consumer  
24 may charge PEDs and how much power is available to the consumer for each  
25 charge. *Id.* Therefore, this information is essential to consumers’ purchasing  
26 decisions, and Defendant prominently displays the mAh of its Power Banks on the  
27 Power Banks’ packaging. *Id.* ¶ 22.

28 <sup>1</sup> The Settlement Agreement is Exhibit 1 to the Declaration of D. Greg Blankinship (“Blankinship Decl.”).

1 Plaintiffs allege that the Products' actual capacities are lower than what  
2 Mophie represents. *Id.* ¶ 23. Plaintiffs support these allegations with results from a  
3 skilled and experienced testing company. *See* FAC ¶ 23. In fact, Defendant bases  
4 its mAh representations, not on the mAh its Power Banks are capable of delivering  
5 to recharge PEDs, but on the internal battery cells contained within a Power Bank.  
6 *See* Blankinship Decl. ¶ 3.<sup>2</sup> Because the internal circuitry in a Power Bank uses  
7 power that cannot be used to recharge a PED, and owing to voltage conversion  
8 losses, a Power Bank is incapable of delivering all of the internal battery capacity.  
9 FAC ¶ 24. Plaintiffs therefore allege that it is misleading to label a Power Bank  
10 with a specific mAh when it is only the internal battery cells that have that mAh  
11 capacity.

12 Accordingly, on April 25, 2019, Mr. Dolar filed a complaint in the Superior  
13 Court of the State of California, Orange County, Case No. 30-2019-01066228-CU-  
14 BT-CXC. On May 2, 2019, Mr. Young filed this action. Dkt. No. 1. Thereafter,  
15 on June 13, 2019, Mr. Young and Mr. Dolar joined together as Plaintiffs and filed  
16 the First Amended Complaint in this action, asserting that Mophie engaged in  
17 unfair and deceptive acts and practices in violation of the California Consumer  
18 Legal Remedies Act, California's False Advertising Law, California's Unfair  
19 Competition Law, the Florida Deceptive and Unfair Trade Practices Act,  
20 purportedly material identical state consumer protection statutes in various other  
21 states, the Magnuson-Moss Warranty Act, and in breach of express warranties  
22 resulting in unjust enrichment. FAC ¶¶ 42-127.

23 The Litigation was hard fought. The Parties engaged in substantial  
24 discovery, serving and responding to interrogatories, requests for production, and  
25 requests for admission. The parties also litigated a motion to dismiss. Dkt. Nos.  
26 30, 52, and 57. Additionally, Defendant submitted to a Rule 30(b)(6) deposition of

27 \_\_\_\_\_  
28 <sup>2</sup> A Power Bank is comprised of internal rechargeable battery cells and the circuitry  
required to safely convert battery voltage for PED use.

1 Taylor Smith, Mophie’s Chief Financial Officer. Blankinship Decl. ¶ 5. Plaintiffs  
2 reviewed Defendant’s production, consisting of thousands of pages of documents  
3 and substantial data, and the Parties conferred multiple times. Blankinship Decl. ¶  
4 6. Plaintiffs also conferred with experts concerning the merits of the case. *Id.*  
5 Both Plaintiffs and the Defendant (collectively, “the Parties”) participated in a  
6 mediation before Judge Thierry Colaw on May 14, 2020. Blankinship Decl. at ¶ 7.  
7 The Parties were able to subsequently reach a proposed settlement for the Court’s  
8 consideration. *Id.*

9 **II. Summary Of The Proposed Settlement Agreement**

10 Under the Settlement, Mophie will agree to entry of a permanent injunction  
11 in the Federal Lawsuit for all Covered Products ordered by Mophie from  
12 manufacturers 90 days or more after the date of final approval of this settlement. In  
13 circumstances where Mophie includes the mAh rating on its package, where the  
14 rating is determined based on the capacity of the internal battery, Mophie agrees to  
15 use the following or substantially similar language: “contains a XXXX mAh  
16 battery.” If Mophie references the mAh rating on its website for a product where  
17 the rating is determined based on the capacity of the internal battery, not later than  
18 90 days or after the date of final approval of this settlement, Mophie will include  
19 the following or substantially similar language on the website for that product:  
20 “contains a XXXX mAh battery.” Settlement Agreement ¶ 2. These changes will  
21 make clear to consumers that the mAh ratings are based on the internal battery  
22 contained in each Power Bank, not the mAh the Power Bank itself is capable of  
23 producing.

24 This is an exceptional achievement, resulting in the corrective action sought  
25 by Plaintiffs without causing the Parties to incur the immeasurable expense and  
26 risks associated with trial and appeal and the resulting use of scarce judicial  
27 resources. It requires Defendant to modify the allegedly false product labels and  
28 product descriptions in website listings to better convey that the displayed mAh

1 reflects the internal battery capacity contained in a Power Bank. Plaintiffs and their  
2 counsel have therefore achieved a significant agreement that may well help to  
3 establish a more fair market for Power Banks in which consumers are provided with  
4 true and accurate information regarding Power Bank capacity. Thus, the proposed  
5 Settlement offers substantial benefits to all consumers in the market for Power  
6 Banks and avoids the delay, expense, and risks inherent in litigating claims through  
7 trial and appeal.

8 The Parties also request that the Court approve the payment of a \$5,000  
9 service award to both Mr. Young and Mr. Dolar, the named Plaintiffs, for the time  
10 and effort spent assisting the prosecution of the action on behalf of the Class.  
11 Plaintiffs demonstrated an understanding of both the basis of the claims and the role  
12 of a class representative. Blankinship Decl. ¶ 8. They conferred with Plaintiffs’  
13 counsel concerning the status of the litigation, the complaint and amendments  
14 thereto, discovery responses, and the Settlement Agreement. *Id.* They responded  
15 to written discovery requests, produced documents relating to their purchases of  
16 Defendant’s Products, and sat for lengthy depositions for which they had to travel.  
17 *Id.* Finally, the requested service awards, like all other relief sought in the instant  
18 motion, was subject to arm’s length negotiation and is comparable to other awards  
19 in other class actions in this Circuit and District.

20 The Parties agree that the Court should issue an award of attorneys’ fees and  
21 costs to Plaintiffs’ counsel, not to exceed \$325,000.00. Settlement Agreement ¶ 7.  
22 As discussed below, Plaintiffs’ counsel’s request for \$325,000.00 in attorneys’ fees  
23 and costs is amply supported by the remarkable result achieved and by Plaintiffs’  
24 counsel’s lodestar (which is \$876,219.54) and costs (which are \$145,449.86).

25 The Settlement was the product of arm’s length negotiations aided by an  
26 independent mediator and conducted by experienced counsel who obtained  
27 extensive discovery in the action and, as such, were well-positioned to evaluate the  
28 strengths and weaknesses of the claims and defenses asserted, the potential to

1 achieve a more fair marketplace, and the fairness of the Settlement Agreement.

2 Notably, the Settlement Agreement in no way limits the ability of class  
3 members to seek monetary relief. The Settlement Agreement only prohibits  
4 Plaintiffs, and not members of the proposed settlement class (the “Settlement  
5 Class”), from pursuing individual monetary claims against Defendant. Plaintiffs  
6 respectfully submit that the Court should approve the Settlement because it  
7 provides broad injunctive relief while expressly preserving the rights of the  
8 Settlement Class to seek monetary relief if they so choose.

9 **III. The Court Should Certify The Class For Settlement Purposes.**

10 Plaintiffs respectfully request that the Court certify the proposed class under  
11 Rule 23(b)(2) for settlement purposes. There is no question that “Parties may settle  
12 a class action before class certification and stipulate that a defined class be  
13 conditionally certified for settlement purposes.” *In re Wireless Facilities, Inc. Sec.*  
14 *Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (citing *Molski v. Gleich*, 318 F.3d  
15 93d 937 (9th Cir. 2003)).

16 Under Rule 23(a), a party intending “to certify a class must demonstrate that  
17 ‘(1) the class is so numerous that joinder of all members is impracticable; (2) there  
18 are questions of law or fact common to the class; (3) the claims or defenses of the  
19 representative parties are typical of the claims or defenses of the class; and (4) the  
20 representative parties will fairly and adequately protect the interests of  
21 the class.’” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th  
22 Cir. 2010). As discussed below, ascertainability does not apply to class actions  
23 under Rule 23(b)(2). Rule 23(b)(2) is satisfied if “‘the party opposing the class has  
24 acted or refused to act on grounds that apply generally to the class, so that final  
25 injunctive relief or corresponding declaratory relief is appropriate respecting the  
26 class as a whole [.]’” Fed. R. Civ. P. 23(b)(2); *see also Wal-Mart Stores, Inc. v.*  
27 *Dukes*, 564 U.S. 338, 359 (2011). Here, Plaintiffs seek certification of the  
28 following settlement class pursuant to Rule 23(b)(2): All purchasers of Mophie

1 juice packs or powerstations (the “Covered Products”) in the United States.  
2 Because all the certification requirements for settlement purposes are met and  
3 Defendant consents to certification of a class action for settlement purposes,  
4 Plaintiffs respectfully request that the Court certify the action.

5 **A. The Settlement Class Satisfies Rule 23(a).**

6 There are five Rule 23(a) requirements (numerosity, commonality, typicality,  
7 adequacy, and ascertainability). The proposed settlement class meets these  
8 requirements.

9 **1. The Class Is So Numerous That Joinder Of All Members Is Impracticable.**

10  
11 Rule 23(a)(1) requires a finding that “the class is so numerous that joinder of  
12 all members is impracticable.” Further, “[a]lthough the absolute number of class  
13 members is not the sole determining factor, where a class is large in numbers,  
14 joinder will usually be impracticable.” *Rivera v. Bio Engineered Supplements &*  
15 *Nutrition, Inc.*, No. 07-1306, 2008 WL 4906433, at \*5 (C.D. Cal. Nov. 13, 2008).  
16 “No specific number is required, although there is a presumption that a class with  
17 more than 40 members is impracticable to require joinder.” *Ries v. Ariz. Bevs. U.S.*  
18 *LLC*, 287 F.R.D. 523, 536 (N.D. Cal. 2012); *see also Bellinghausen v. Tractor*  
19 *Supply Co.*, 303 F.R.D. 611, 616 (N.D. Cal. 2014) (“Where the exact size of the  
20 class is unknown but general knowledge and common sense indicate that it is large,  
21 the numerosity requirement is satisfied.”); *Contra Costa*, No. 13-03667, 2015 WL  
22 4606078, at \*9 (N.D. Cal. July 30, 2015) (in certifying a class under Rule 23(b)(2),  
23 finding numerosity because “the class contains at least 40”). Because Defendant  
24 has sold thousands of Power Banks to thousands of consumers, the proposed  
25 settlement class is sufficiently numerous. Blankinship Decl. ¶ 9.

1                   2.     **There Are Questions Of**  
2                                   **Law Or Fact Common To The Class.**

3                   Rule 23(a)(2) provides that there must be “questions of law or fact common  
4 to the class” for a suit to be certified as a class action. Fed. R. Civ. P. 23(a)(2).  
5 “The existence of shared legal issues with divergent factual predicates is sufficient,  
6 as is a common core of salient facts coupled with disparate legal remedies within  
7 the class.” *Rivera*, 2008 WL 4906433, at \*6 (C.D. Cal. Nov. 13, 2008).

8                   Generally, courts have liberally construed the commonality requirement to  
9 require just *one* issue common to all class members. “[F]or purposes of Rule  
10 23(a)(2)[,] even a single common question will do.” *Wal-Mart*, 564 U.S. at 359;  
11 *see also Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)  
12 (“[C]ommonality only requires a single significant question of law or fact.”). Thus,  
13 “[w]here the circumstances of each particular class member vary but retain a  
14 common core of factual or legal issues with the rest of the class, commonality  
15 exists.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (*quoting Evon v. Law*  
16 *Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012)). This provision is  
17 easily satisfied, especially in consumer protection class actions where, as in the  
18 present case, all class members were exposed to similar false or misleading  
19 statements regarding a company’s products. *See, e.g., In re NJOY, Inc. Consumer*  
20 *Class Action Litig.*, 120 F. Supp. 3d 1050, 1096-97 (C.D. Cal. 2015) (“There is no  
21 question that all class members were exposed to the product packaging; this  
22 suffices to show commonality.”). Minor differences in the offending  
23 representations do not preclude certification. *See Negrete v. Allianz Life Ins. Co. of*  
24 *N. Am.*, 287 F.R.D. 590, 602 (C.D. Cal. 2012) (“The minor differences in the  
25 language of these alleged misrepresentations may present individual issues, but any  
26 such issues ‘go to predominance under Rule 23(b)(3), not to whether there are  
27 common issues under Rule 23(a)(2).’”) (*quoting Mazza*, 666 F.3d at 589).

28                   Here, all class members were exposed to the same false or misleading

1 statement -- that the Power Banks have a specific mAh rating, when, in fact, the  
2 actual mAh they produce is significantly lower. This results in many common  
3 questions of fact or law, including: whether Defendant misrepresents Power Banks’  
4 mAh rating; whether Defendant’s conduct was unfair or deceptive in violation of  
5 state consumer protection statutes; whether Defendant’s representations constitute a  
6 breached express warranty; whether Defendant is unjustly enriched; whether class  
7 members will be harmed by Defendant’s actions; and whether future  
8 misrepresentations can be prevented.

9 In short, “the proposed class members share sufficient commonality to satisfy  
10 Rule 23(a)(2). *Rivera*, 2008 WL 4906433 at \*6; *see also Kumar v. Salov N. Am.*  
11 *Corp.*, No. 14-2411, 2017 WL 2902898, at \*6 (N.D. Cal. July 7, 2017), *aff’d*, 737  
12 F. App’x 341 (9th Cir. 2018) (“The focus of this action -- whether the . . .  
13 representation misled reasonable consumers -- is common to all class members.”).  
14 Accordingly, commonality exists.

15 **3. Plaintiffs’ Claims Are**  
16 **Typical Of The Claims Of The Class.**

17 Rule 23(a)(3) provides that Plaintiffs’ claims must be “typical of the claims  
18 of . . . the class.” Fed. R. Civ. P. 23(a)(3). “Under this rule’s permissive standards,  
19 representative claims are typical if they are reasonably co-extensive with those  
20 absent class members; they need not be substantially identical.” *Parsons*, 754 F.3d  
21 at 685 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). In  
22 the context of a Rule 23(b)(2) class action, typicality is shown where the  
23 “representative claims are [ ] reasonably co-extensive with those of absent class  
24 members; they need not be substantially identical.” *Rivera*, 2008 WL 4906433, at  
25 \*6; *see also Contra Costa*, 2015 WL 4606078, at \*10 (“Like the proposed class  
26 representatives, all members of the proposed Settlement Class are being or will be  
27 subjected to the systematic policies and practices . . . and have or will likely suffer  
28 injuries as a result.”).

1 Here, the claims of Plaintiffs and all class members arise out of a singular  
2 course of conduct, namely uniform false and deceptive representatives regarding  
3 mAh capacity made in connection with the sale of Power Banks. Class members'  
4 claims are also premised on the same theories of liability -- that Defendant's  
5 conduct constitutes violations of consumer protection laws, breaches of express  
6 warranty, and unjust enrichment. Under such circumstances, certification is  
7 warranted. *See Kumar*, 2017 WL 2902898, at \*6 (“[Plaintiffs] and  
8 other consumers around the country were all exposed to the same product and the  
9 same alleged misrepresentations, making [them] typical of class members  
10 nationwide.”).

11 **4. Plaintiffs Will Fairly And Adequately Protect The Interests Of The Class.**  
12

13 Rule 23(a)(4) requires that “the representative parties fairly and adequately  
14 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Representation is  
15 adequate if [:] (1) class counsel are qualified and competent and (2) the class  
16 representative and his or her counsel are not disqualified by conflicts of interest.”  
17 *Rivera*, 2008 WL 4906433, at \*7 (quoting *Lerwill v. Inflight Motion Pictures, Inc.*,  
18 582 F.2d 507, 512 (9th Cir. 1978)) (internal quotations omitted); *see also Chan v.*  
19 *Sutter Health Sacramento Sierra Region*, No. 15-02004, 2016 WL 7638111, at \*6  
20 (C.D. Cal. June 9, 2016) (same); *Contra Costa*, 2015 WL 4606078, at \*10 (internal  
21 citations omitted) (“Two questions must be considered in this determination: (1) do  
22 the named plaintiffs and their counsel have any conflicts of interest with other class  
23 members, and (2) will the named plaintiffs and their counsel prosecute the action  
24 vigorously on behalf of the class?”).

25 Here, Plaintiffs have adequately represented the Settlement Class, and they  
26 will continue to do so. There exists no conflict, and, in any event, “[c]lass  
27 representatives have less risk of conflict with unnamed class members when they  
28 seek only declaratory and injunctive relief.” *Hernandez v. Cty. of Monterey*, 305

1 F.R.D. 132, 160 (N.D. Cal. 2015). Moreover, Plaintiffs have worked diligently  
2 with counsel in their preparation of pleadings, responding to numerous requests for  
3 discovery, and they sat for lengthy depositions. Blankinship Decl. ¶ 8.

4 Likewise, Plaintiffs’ counsel are qualified and experienced in prosecuting  
5 complex class actions nationwide, in both state and federal courts, including  
6 customer protection class actions against Power Bank distributors like Defendant.  
7 Blankinship Decl. ¶ 14; Declaration of E. Michelle Drake at ¶ 10; Declaration of  
8 Nathan M. Smith ¶ 3–4. Thus, Plaintiffs’ counsel are capable of fairly and  
9 adequately representing the Class.

10  
11 **5. Ascertainability Is Not A Barrier**  
12 **To Certifying The Proposed Settlement Class.**

13 “The ascertainability requirement does not apply to Rule 23(b)(2) actions.” *In*  
14 *re Yahoo Mail Litig.*, 308 F.R.D. 577, 597 (N.D. Cal. 2015); *see also Rivera*, 2008  
15 WL 4906433, at \*8 (C.D. Cal. Nov. 13, 2008) (same). To the extent that one might  
16 apply, the class definition sufficiently satisfies that ascertainability requirement. “In  
17 this Circuit, it is enough that the class definition describes a set of common  
18 characteristics sufficient to allow a prospective plaintiff to identify himself or herself  
19 as having a right to recover based on the description.” *McCrary v. Elations Co.*,  
20 LLC, No. 13–00242, 2014 WL 1779243, at \*8 (C.D. Cal. Jan. 13, 2014) (collecting  
21 cases). Here, all plaintiffs need to know to determine if they are in the proposed  
22 settlement class is whether they purchased a Mophie-branded Power Bank.

23 **B. The Proposed Settlement Class Satisfies Rule 23(b)(2).**

24 Rule 23(b)(2) is satisfied if “the party opposing the class has acted or refused  
25 to act on grounds that apply generally to the class, so that final injunctive relief or  
26 corresponding declaratory relief is appropriate respecting the class as a whole.”  
27 Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) is “almost automatically satisfied in  
28 actions primarily seeking injunctive relief.” *Hernandez*, 305 F.R.D. at 151 (citing

1 *Gray v. Golden Gate Nat'l Recreational Area*, 279 F.R.D. 501, 520 (N.D. Cal.  
2 2011) (quoting *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir.  
3 1994)); see, e.g., *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010);  
4 *Californians for Disability Rights, Inc. v. Cal. Dep't of Transp.*, 249 F.R.D. 334,  
5 345 (N.D. Cal. 2008)).

6 Thus, to satisfy Rule 23(b)(2), Plaintiffs need only show that Defendant's  
7 "policies and practices . . . constitute shared grounds for all of the individuals in the  
8 proposed class, demonstrating that Defendants have acted or refused to act on  
9 grounds that apply generally to the class." *Contra Costa*, 2015 WL 4606078, at  
10 \*11. Defendant uniformly labelled and advertised its Power Banks by representing  
11 that they had a certain mAh when they did not. A single injunction requiring  
12 Defendant to clarify its mAh representation to prevent consumer confusion applies  
13 to the entire class, rendering certification under Rule 23(b)(2) appropriate. See *Ang*  
14 *v. Bimbo Bakeries USA, Inc.*, No. 13-01196, 2018 WL 4181896, at \*12 (N.D. Cal.  
15 Aug. 31, 2018) ("The . . . question, then, is whether 'a single injunction . . . would  
16 provide relief to each member of the class.' Based on the alleged mislabeling, the  
17 Court finds that it would, and grants certification of all four classes under Rule  
18 23(b)(2).") (citing *Dukes*, 564 U.S. at 360).

19 Certifying this class under Rule 23(b)(2) will redress Defendant's misleading  
20 policies and encourage a more fair marketplace for all consumers. Accordingly,  
21 Rule 23(b)(2) is satisfied.<sup>3</sup>

22 <sup>3</sup> That Plaintiffs' Complaint pled a Rule 23(b)(2) and a Rule 23(b)(3) class is of no  
23 moment because Plaintiffs are only now seeking certification of Rule 23(b)(2)  
24 settlement class. Cf. *Ang*, 2018 WL 4181896, at \*11) ("Defendant appears to argue  
25 that Plaintiffs' attempt to certify a damages class under Rule 23(b)(3) bars  
26 certification under Rule 23(b)(2). The Court, however, reads *Algarin* and *Ellis* to  
27 preclude Rule 23(b)(2) certification where the primary relief sought under Rule  
28 23(b)(2) is monetary -- not where a plaintiff seeks certification under both Rule  
23(b)(2) and (b)(3).") (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 986  
(9th Cir. 2011); see also *In re ConAgra Foods, Inc.*, 302 F.R.D. 537, 573 (C.D. Cal.  
2014) ("Ninth Circuit precedent indicates that the court can separately certify an  
injunctive relief class and if appropriate, also certify a Rule 23(b)(3) damages  
class.")).

1 **IV. Notice To The Class Is Not Required.**

2 Because this action will be certified under Rule 23(b)(2), notice is  
3 unnecessary. *Chan*, 2016 WL 7638111 at \*14 (“Because notice is optional for a  
4 Rule 23(b)(2) class, *see* Fed. R. Civ. P. 23(c)(2)(A), and the Class Members’ rights  
5 will not be prejudiced by the Settlement Agreement, notice is not required for  
6 purposes of the proposed Settlement Agreement.”). Rule 23 “provides no  
7 opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige  
8 the District Court to afford them notice of the action.” *Wal-Mart Stores, Inc. v.*  
9 *Dukes*, 131 S. Ct. 2541, 2558 (2011).

10 “[N]otice to the class of the settlement is not necessary because under the  
11 settlement, Plaintiffs and the class release only those claims they may have for  
12 injunctive relief -- relief they will receive through the settlement -- but not claims  
13 for statutory damages or other monetary awards.” *Kline v. Dymatize Enterprises,*  
14 *LLC*, No. 15-2348, 2016 WL 6026330 at \*6 (S.D. Cal. Oct. 13, 2016). “When a  
15 class is certified under Rule 23(b)(2) and only provides for injunctive relief, no  
16 notice of class certification is required. *Id.* (citing *Kim v. Space Pencil, Inc.*, No.  
17 11-03796, 2012 WL 5948951, at \*4 (N.D. Cal. Nov. 28, 2012)).

18 “In injunctive relief only class actions certified under Rule 23(b)(2), federal  
19 courts across the country have uniformly held that notice is not required.”  
20 *Stathakos v. Columbia Sportswear Co.*, No. 15-04543, 2018 WL 582564 at \*3  
21 (N.D. Cal. Jan. 25, 2018) (citing *Penland v. Warren Cty. Jail*, 797 F.2d 332, 334  
22 (6th Cir. 1986)); *see also DL v. District of Columbia*, 302 F.R.D. 1, 17 (D.D.C.  
23 2013); *Jermyn v. Best Buy Stores, L.P.*, No. Civ. 214, 2012 WL 2505644, \*12  
24 (S.D.N.Y. June 27, 2012); *Green v. Am. Express Co.*, 200 F.R.D. 211, 212-13  
25 (S.D.N.Y. 2001); *Linguist v. Bowen*, 633 F. Supp. 846, 862 (W.D. Mo. 1986);  
26 *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563, 572 (S.D. Ohio 1983)).

1 As Judge Rogers explained:

2 Unlike a Rule 23(b)(3) class where notice is mandatory, Rule 23(c)(2)  
3 states that, “[f]or any class certified under Rule 23(b)(1) or (b)(2), the  
4 court may direct appropriate notice to the class.” Fed. R. Civ. P.  
5 23(c)(2). Because of this, courts typically require less notice in Rule  
6 23(b)(2) actions, as their outcomes do not truly bind class members  
and there is no option for class members to opt out . . . Here, the terms  
of the Agreement provide for injunctive relief only and further  
expressly preserve the rights of the class to bring claims for monetary  
relief.

7 *Stathakos*, 2018 WL 582564, at \*3-4 (quotations omitted). The Settlement  
8 Agreement here also explicitly provides that class members do not release any  
9 monetary claims they might have and it expressly preserves the rights of the class to  
10 bring claims for monetary relief. Settlement Agreement ¶ 5.

11 Therefore, Plaintiffs respectfully request that the Court approve the  
12 Settlement without requiring that notice be issued to class members. *See Chan*,  
13 2016 WL 7638111 at \*13-14 (holding that notice was unnecessary for settlement in  
14 a Rule 23(b)(2) action because “notice is optional for a Rule23(b)(2) class” and “the  
15 Class Members’ rights [would] not be prejudiced[.]”; *Kline*, 2016 WL 6026330, at  
16 \*6 (holding that “no notice of class certification is required . . . when a class I  
17 certified under Rule 23(b)(2) and only provides for injunctive relief.”); *Lilly v.*  
18 *Jamba Juice Co.*, No. 13-02998, 2015 WL 2062858, at \*3 (N.D. Cal. May 4, 2015)  
19 (approving of a class action settlement under Rule 23(b)(2) and finding notice  
20 unnecessary).

21 **V. The Court Should Approve Settlement.**

22 “The Ninth Circuit has declared that a strong judicial policy favors  
23 settlement of class actions.” *Litty v. Merrill Lynch & Co.*, No. 14-0425, 2015 WL  
24 4698475, at \*8 (C.D. Cal. Apr. 27, 2015) (citing *Class Plaintiffs v. City of Seattle*,  
25 955 F.2d 1268, 1276 (9th Cir. 1992). This applies “particularly where complex  
26 class action litigation is concerned.” *Class Plaintiffs*, 955 F.2d at 1276 (citing  
27 *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688  
28 F.2d 615, 625 (9th Cir. 1982)). Indeed, “rejection of a settlement creates not only

1 delay but also a state of uncertainty on all sides, with whatever gains were  
2 potentially achieved for the putative class put at risk.” *Staton v. Boeing Co.*, 327  
3 F.3d 938, 952 (9th Cir. 2003).

4 Courts asked to approve a class action settlement determine whether it is fair,  
5 reasonable, and adequate. “In making this determination, a court typically  
6 considers the following factors: ‘(1) the strength of the plaintiff’s case; (2) the risk,  
7 expense, complexity, and likely duration of further litigation; (3) the risk of  
8 maintaining class action status throughout the trial; (4) the amount offered in  
9 settlement; (5) the extent of discovery completed and the stage of the proceedings;  
10 (6) the experience and views of counsel; (7) the presence of a governmental  
11 participant; and (8) the reaction of the class members of the proposed  
12 settlement.’” *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th  
13 Cir. 2004)); *see also Moreno v. San Francisco Bay Area Rapid Transit Dist.*, No.  
14 17-02911, 2019 WL 343472, at \*3 (N.D. Cal. Jan. 28, 2019) (quoting same in  
15 approving Rule 23(b)(2) injunctive relief only settlement). “The court need not  
16 consider all of these factors, or may consider others.” *Id.* (citing *In re Bluetooth*  
17 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)).<sup>4</sup> *See also*  
18 *Stathakos*, 2018 WL 582564, at \*4 (approving injunctive relief only class  
19 settlement based on same factors and *citing Hanlon*, 150 F.3d at 1026).

20 Courts in the Ninth Circuit have consistently held that a settlement involving  
21 injunctive relief is fair, adequate, and reasonable where the parties’ injunctive relief  
22 settlement “stops the allegedly unlawful practices, bars Defendant from similar  
23 practices in the future, and does not prevent class members from seeking

24 <sup>4</sup> As Magistrate Judge Corley noted, “[i]n considering whether a class action  
25 settlement agreement is fair, adequate, and reasonable courts typically also examine  
26 whether the settlement agreement was the result of collusion between the parties.  
27 *Bluetooth*, 654 F.3d at 947. However, the Bluetooth collusion analysis does not  
28 apply where, as here, the settlement is for injunctive relief purposes only and class  
members do not release any monetary claims.” *Moreno*, 2019 WL 343472 at \*3 n.2  
(citing cases). Of course, the proposed Settlement here is not the result of  
collusion. To the contrary, the Parties used an experienced mediator, and even then  
they were unable to resolve this case for many weeks after that mediation.

1 [monetary] legal recourse.” *Grant v. Capital Mgmt. Servs., L.P.*, No. 10-2471,  
2 2014 WL 888665, at \*4 (S.D. Cal. Mar. 5, 2014) (approving injunctive relief only  
3 settlement); *Stathakos*, 2018 WL 582564 at \*4 (same); *Chan v. Sutter Health*  
4 *Sacramento Sierra Region*, No. 15-02004, 2017 WL 819903, at \*5 (C.D. Cal. Feb.  
5 14, 2017) (“Although the Settlement does not include monetary relief for the class,  
6 it stops Defendant's allegedly unlawful practices, bars Defendant from similar  
7 practices in the future, and does not prevent the class members from seeking legal  
8 recourse.”). The Settlement here does precisely that.

9 **A. The Strength of Plaintiffs’ Case**

10 To prevail on their claims, Plaintiffs would have to prove that a reasonable  
11 consumer would be deceived by Defendant’s mAh representations. As Judge  
12 Rogers noted, “any time that liability hinges on reasonableness, a favorable verdict  
13 cannot be certain. Because of the uncertainty of the recovery or injunctive relief  
14 after trial, this factor weighs in favor of approval.” *Stathakos*, 2018 WL 582564, at  
15 \*5; *Lilly*, 2015 WL 2062858, at \*3 (same). This issue was hotly contested by both  
16 sides. Had the case proceeded to trial, Defendant would likely have claimed that  
17 consumers understood the current language on the packaging to refer to the  
18 capacity of the internal batteries, and not the pack as a whole. Defendant also  
19 would have argued that the representations at issue were not material, and that  
20 consumers buying decisions were influenced by myriad other factors. Further,  
21 Defendant would have argued that any consumer misunderstanding about the mAh  
22 was cured by other representations on the packaging which were more salient to  
23 consumers’ purchasing decisions, specifically, Defendant would have relied heavily  
24 on the packages’ device-specific representations about the numbers of hours of use  
25 a consumer could expect from the product if the consumer was engaged in certain  
26 specified activities (talking on the phone, surfing the web, etc.). Plaintiff would  
27 have presented evidence about the ubiquitous nature of representations about mAh,  
28 likely an economic analysis, and information about the placement and importance

1 of the representations on the packaging. But, ultimately, the question of whether a  
2 reasonable consumer would have been misled would have been one for a finder of  
3 fact.

4 The novel nature of this litigation renders Plaintiffs' case all the more  
5 challenging. This case, filed on May 2, 2019, is among the first of its kind ever  
6 filed in the Ninth Circuit. Prior to November 2018, no consumer had ever brought  
7 a proposed class action alleging that a defendant misrepresented the mAh capacity  
8 of its power banks. Courts routinely recognize that "fact-intensive inquiries and  
9 developing case law present significant risks to Plaintiffs' claims and potential  
10 recovery." *Lilly*, 2015 WL 2062858, at \*3 (approving injunctive relief settlement  
11 and quoting *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. 07-1841,  
12 2011 WL 3352460, at \*4 (N.D. Cal. Aug. 2, 2011)). To date, no fact finder has  
13 addressed whether a reasonable consumer would be deceived by mAh  
14 representations on Power Banks, and no court has addressed whether a class should  
15 be certified under Rule 23 in any class action against a power bank manufacturer,  
16 distributor, or seller (other than in connection with proposed settlements). This  
17 factor augers in favor of approving the Settlement Agreement.

18 **B. The Risks Of Continued Litigation**

19 The risks, expense, complexity, and likely duration of litigation also weigh in  
20 favor of approving the Settlement, because the proposed injunctive relief would  
21 promptly result in relabeling Power Banks, and further litigation would be inevitable  
22 absent the Settlement Agreement. *See Chan*, 2017 WL 819903 at \*4 (holding that  
23 "an early settlement was appropriate in light of the risks, costs and uncertainty that  
24 would attend further litigation by the parties."); *see also Lilly*, 2015 WL 2062858, at  
25 \*3 (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009)). In *Lilly*,  
26 a consumer protection class action in the Northern District, this factor weighed in  
27 favor of approving a settlement solely involving injunctive relief, because the  
28 "settlement will result in complete relabeling of the challenged products." *Id.* Here,

1 as in *Lilly*, current and future Power Banks will reflect the agreed-upon  
2 modifications, while “continued litigation could not result in any greater injunctive  
3 relief to the class and would only deprive the class of immediate relief.” *Id.*  
4 Accordingly, this factor supports approval of the Settlement.

5 **C. The Risks of Maintaining A Class Action Status Throughout Trial**

6 Courts also consider whether uncertainty remains as to class certification.  
7 Here, where Plaintiffs have yet to move for class certification, there is a substantial  
8 risk that the Court may not certify the class. *Chan*, 2017 WL 819903 at \*4 (“While  
9 both sides strongly believe in the merits of their respective cases, there are risks to  
10 both sides in continuing the Action. These risks included whether a motion for  
11 class certification would have been granted if contested by Defendant.”); *see also*  
12 *Stevens v. Safeway Inc.*, No. 05-1988, 2008 WL 11496497, at \*6 (C.D. Cal. Feb.  
13 25, 2008) (“Given the possibility that the court might have granted defendants’  
14 motion, and decertified the class, this factor weighs in favor of approval of the  
15 proposed settlement.”); *Lazarin v. Pro Unlimited, Inc.*, No. 11-03609, 2013 WL  
16 3541217, at \*7 (N.D. Cal. July 11, 2013) (“Named Plaintiffs contend that the  
17 claims in this case are appropriate for class certification, but Defendants would  
18 certainly have an argument against certification in the absence of this Settlement.”);  
19 *Grant v. Capital Mgmt. Servs., L.P.*, No. 10-2471, 2014 WL 888665, at \*4 (S.D.  
20 Cal. Mar. 5, 2014) (“The scope and detail of the injunctive relief agreed upon in the  
21 settlement would also be at risk if the case proceeded to trial.”). On the other hand,  
22 “the class settlement successfully removes these risks from the class members . . .”  
23 *Wells Fargo*, 2011 WL 3352460, at \*6;. Here, this factor also favors Settlement.

24 **D. The Amount Offered In Settlement**

25 The Settlement Agreement provides for significant and meaningful  
26 injunctive relief. See Settlement Agreement ¶ 2. Specifically, the Settlement holds  
27 that in circumstances where Mophie includes the mAh rating on its package, where  
28 the rating is determined based on the capacity of the internal battery, Mophie agrees

1 to use the following or substantially similar language: “contains a XXXX mAh  
2 battery.” Further, if Mophie references the mAh rating on its website for a product  
3 where the rating is determined based on the capacity of the internal battery, not later  
4 than 90 days or after the date of final approval of this settlement, Mophie will  
5 include the following or substantially similar language on the website for that  
6 product: “contains a XXXX mAh battery.” Settlement Agreement ¶ 2.

7 This language provides significant value because it informs class members of  
8 the Power Banks’ true capabilities. Unlike Defendant’s “hours of use”  
9 representations, which Defendant uses to inform consumers how many hours of use  
10 they can expect for specific functions and which differ based on phone type and  
11 usage patterns, mAh ratings provide an objective measure of electrical output about  
12 which there is nothing vague or unclear. FAC ¶ 2. The added language offers a  
13 more concrete and truthful representation of the Power Banks’ capabilities. These  
14 changes make clear to consumers that the mAh ratings are based on the internal  
15 battery contained in each Power Bank, not the mAh the Power Bank itself is  
16 capable of producing. Accordingly, the injunctive relief provided is fair and  
17 reasonable for purposes of final approval.

18 **E. The Extent Of Discovery And Stage Of The Proceedings**

19 This factor favors Settlement if “Plaintiffs conducted an extensive amount of  
20 formal discovery prior to the settlement agreement.” *Lilly*, 2015 WL 2062858, at  
21 \*4. “The more the discovery completed, the more likely it is that the parties have  
22 “a clear view of the strengths and weaknesses of their cases.” *Carter v. San Pasqual*  
23 *Fiduciary Trust Co.*, 2018 WL 6174767 at \*5 (C.D. Cal. 2018). Here, Plaintiffs  
24 engaged in extensive, formal discovery. The Parties served and responded to  
25 interrogatories, requests for production, and requests for admission, Plaintiffs were  
26 deposed, and their counsel deposed a corporate representative of Defendant under  
27 Rule 30(b)(6). Blankinship Decl. ¶¶ 4-5. Plaintiff also consulted with an expert  
28 who tested Defendant’s Power Banks to verify that they did not have the capacity

1 of producing the promised mAh. FAC at ¶ 23. Thus, discovery in the case prior to  
2 settlement negotiations informed Plaintiffs’ and Plaintiffs’ counsel’s understanding  
3 of the case and the Parties’ decision to settle. Plaintiffs therefore have sufficiently  
4 developed an understanding of the strengths and weaknesses of the case. *See Chan*,  
5 2017 WL 819903 at \*4 (“[T]he parties were in a position to assess the strengths  
6 and weaknesses of their arguments and evidence, and make an informed decision  
7 about the risks associated with proceeding to trial.”) (further citations and  
8 quotations omitted) and *Grannan v. Alliant Law Grp., P.C.*, No. 10-02803, 2012  
9 WL 216522, at \*7 (N.D. Cal. Jan. 24, 2012) (finding that the extent of discovery  
10 weighed in favor of granting approval of a settlement agreement where discovery  
11 consisted solely of the plaintiff subpoenaing documents, because “plaintiffs argue  
12 (and defendant does not oppose) that even this limited discovery gives them a clear  
13 view of the strengths and weaknesses of the case. While more extensive discovery  
14 could have been done, the information currently before the Court suggests that the  
15 Settlement represents a substantial benefit to plaintiffs, especially when compared  
16 with the risks of further litigation.”). Accordingly, this factor also favors approval  
17 of the Settlement.

18 **F. Counsels’ Experience**

19  
20 “The recommendations of plaintiffs’ counsel should be given a presumption  
21 of reasonableness,” because “[p]arties represented by competent counsel are better  
22 positioned than courts to produce a settlement that fairly reflects each party’s  
23 expected outcome in litigation[.]” *Rodriguez*, 563 F.3d at 967 (further citations and  
24 internal quotations omitted). Thus, courts heavily consider the competence of  
25 counsel, which is demonstrated by “their experience in litigating similar consumer  
26 class actions.” *Lilly*, 2015 WL 2062858, at \*4. Here, it is undisputed that  
27 Plaintiffs’ counsel are experienced in litigating similar consumer class actions.  
28 FBFG is a leading class action law firm. It regularly prosecutes consumer claims,

1 and its attorneys are regularly appointed as class counsel in such actions. *See*  
2 Blankinship Decl. ¶ 14. Indeed, FBFG has and is currently prosecuting several  
3 different actions around the country alleging similar claims premised on  
4 misrepresentations regarding the mAh capacity of Power Banks from  
5 manufacturers, distributors, and sellers of Power Banks. *See Burgos et al v.*  
6 *Sunvalleytek International, Inc.*, No. 18-06910 (N.D. Cal.); *Hester v. Walmart, Inc.*,  
7 No. 18-05225 (W.D. Ark.); *Mancuso v. RFA Brands*, No. 18-0687 (W.D.N.Y.);  
8 *Hester v. Walmart, Inc.*, 18-05225 (W.D. Ark.); *Brady, et al. v. Anker Innovations*  
9 *Limited, et al.*, 18-11396; *Geske v. PNY Technologies, Inc.*, 19-05170 (N.D. Ill.).  
10 Berger Montague PC Berger Montague PC is also a nationally recognized law firm  
11 that has extensive experience in complex class action litigation, as is Brown, Neri,  
12 Smith & Khan LLP. *See Drake Decl. ¶ 4 & Ex.A; Smith Decl. ¶ 4, Ex. A.*  
13 Accordingly, the experience of Plaintiffs’ counsel supports approval of the  
14 Settlement. *Chan*, 2017 WL 819903 at \*5 (holding that where “[c]lass [c]ounsel  
15 has substantial experience in class action litigation related to consumer protection  
16 statutes[,] . . . provides further support for approval.”).

17  
18 **G. Additional Factors**

19 While courts may consider the opinion of the government, this factor is not  
20 weighed unless the government is a participant, which is not the case here. *See*  
21 *Lilly*, 2015 WL 2062858, at \*5 (“[N]o government participant is involved, so the  
22 court does not weigh this factor.”); *Stathakos*, 2018 WL 582564, at \* 6 (same); *In*  
23 *re Heritage Bond Litig.*, No. 02-1475, 2005 WL 1594403, at \*11 (C.D. Cal. June  
24 10, 2005) (“[T]here is no government participant in this class action. As a result,  
25 this factor does not apply to the [c]ourt's analysis.”).

1 Similarly, because notice is not necessary (as discussed above), “the reaction  
2 of the class is not considered in weighing the fairness factors. *Stathakos*, 2018 WL  
3 582564, at \*6; *Kim v. Space Pencil, Inc.*, No. 11-03796, 2012 WL 5948951, at \*6  
4 (N.D. Cal. Nov. 28, 2012) (“The final factor, the reaction of class members is not  
5 relevant here because notice [sic] not required under Federal Rule of Civil  
6 Procedure 23(e) and there is no binding effect on the Class nor is there a release  
7 being provided.”).

8 Accordingly, and as set forth above, all the relevant factors favor approval of  
9 the Settlement.

10  
11 **VI. The Court Should Approve Plaintiffs’**  
12 **Counsel’s Request For \$325,000 In Attorneys’ Fees And Costs.**

13 “In a certified class action, the court may award reasonable attorney’s fees  
14 and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed.  
15 R. Civ. P. 23(h). When state substantive law applies, attorneys’ fees are to be  
16 awarded in accordance with state law. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,  
17 1047 (9th Cir. 2002). “California courts apply the lodestar method in class actions  
18 governed by California law.” *Lilly*, 2015 WL 2062858, at \*5 (citing *Lealao v.*  
19 *Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000) (applying California  
20 law); *Meister v. Regents of Univ. of California*, 67 Cal. App. 4th 437, 448-49  
21 (1998)). Similarly, under federal law, in “injunctive relief class actions, courts  
22 often use a lodestar calculation because there is no way to gauge the net value of  
23 the settlement or any percentage thereof.” *Lilly*, 2015 WL 2062858, at \*4.

24 The lodestar calculation consists of the multiplication of the number of hours  
25 reasonably expended by a reasonable hourly rate. *Hanlon*, 150 F.3d at 1029;  
26 *Yeagley v. Wells Fargo & Co.*, 365 F. App’x 886, 887 (9th Cir. 2010) (finding the  
27 lodestar method to be appropriate in calculating attorney’s fees where injunctive  
28 relief was sought and no common fund was created). *Chan*, 2017 WL 819903 at \*6

1 (“To calculate fees under the lodestar method, a court multiplies the number of  
2 hours the prevailing party reasonably expended on the litigation (as supported by  
3 adequate documentation) by a reasonable hourly rate for the region and for the  
4 experience of the lawyer.”) (citations and internal quotations omitted). Here,  
5 pursuant to the Settlement, Plaintiffs’ counsel seek attorneys’ fees and costs in the  
6 amount of \$325,000.00. Settlement Agreement ¶ 7.

7 Plaintiffs’ counsels’ hourly rates are reasonable. An hourly rate will be  
8 approved as long as “the requested rates are in line with those prevailing in the  
9 community for similar services of lawyers of reasonably comparable skill and  
10 reputation.” *Miller v. Wise Co., Inc.*, No. 17-0616, 2020 WL 1129863, at \*9 (C.D.  
11 Cal. Feb. 11, 2020) (citing *Jordan v. Multnomah Cty.*, 815 F.2d 1258, 1263 (9th  
12 Cir. 1987)). Here, counsels’ hourly rates (which range from \$300 to \$850) are  
13 consistent with prevailing rates in the community of attorneys with similar levels of  
14 experience in complex commercial litigation. *See Good Morning to You Prods.*  
15 *Corp. v. Warner/Chappell Music, Inc.*, No. 13-4460, 2016 WL 6156076, at \*7  
16 (C.D. Cal. Aug. 16, 2016) (finding reasonable hourly rates of up to \$820 per hour);  
17 *Perfect 10, Inc. v. Giganews, Inc.*, No. 11-07098, 2015 WL 1746484, at \*19-20  
18 (C.D. Cal. Mar. 24, 2015) (approving as reasonable hourly rates ranging from \$350  
19 for the lowest-paid associate to \$930 for the highest-paid partner); *Banas v.*  
20 *Volcano Corp.*, 47 F. Supp. 3d 957, 965 (N.D. Cal. 2014) (finding rates ranging  
21 from \$355 to \$1,095 per hour for partners and associates were within the range of  
22 prevailing rates in the Northern District); *Miller*, 2020 WL 1129863, at \*9-10  
23 (finding reasonable hourly rates of up to \$900 per hour for Class Counsel); *Vasquez*  
24 *v. Kraft Heinz Food Co.*, No. 16-2749, 2020 WL 1550234, at \*7 (S.D. Cal. Apr. 1,  
25 2020) (finding reasonable rates of \$200 per hour, \$400 per hour, and \$900 for  
26 paralegals, junior attorneys, and experienced attorneys, respectively); *De Leon v.*  
27 *Rocah USA, Inc.*, No. 18-3725, 2020 WL 1531331, at \*15 (N.D. Cal. Mar. 31,  
28 2020) (“Mr. Clark’s standard litigation rate is \$800 per hour ... Clark Law Group

1 attorneys Monique R. Rodriguez (California Bar admission 2015), Andrea Torres-  
2 Figueroa (California Bar admission 2017), and Paige D. Chretien (California Bar  
3 admission 2018) also worked on this case with hourly rates of \$475, \$415, and  
4 \$395 per hour, respectively.”); *In re Magsafe Apple Power Adapter Litig.*, No. 09-  
5 1911, 2015 WL 428105, at \*12 (N.D. Cal. Jan. 30, 2015) (“In the Bay Area,  
6 reasonable hourly rates for partners range from \$560 to \$800, for associates from  
7 \$285 to \$510, and for paralegals and litigation support staff from \$150 to \$240.”);  
8 *Rose v. Bank of Am. Corp.*, No. 11-02390, 2014 WL 4273358, at \*12 (N.D. Cal.  
9 Aug. 29, 2014) (finding reasonable partners rates between \$350–\$775 per hour;  
10 associates at \$325–\$525 per hour; and paralegal rates between \$100–\$305 per  
11 hour); *In re High-Tech Employee Antitrust Litig.*, No. 11-02509, 2015 WL  
12 5158730, at \*9 (N.D. Cal. Sept. 2, 2015) (finding reasonable senior attorneys’ rates  
13 “from about \$ 490 to \$ 975” and more junior attorneys’ rates “from about \$ 310 to  
14 \$ 800”).

15 As the declarations of Plaintiffs’ counsel set forth, their rates are  
16 commensurate with their level of expertise and experience and match the prevailing  
17 rates in the Central District of California. *See* Blankinship Decl. ¶ 10; Drake Decl.  
18 ¶ 12; Smith Decl. ¶ 8.

19 Indeed, FBFG has been awarded fees based on its standard hourly rates in  
20 numerous prior cases, including in California and the Ninth Circuit. *See, e.g., IN*  
21 *RE: Zappos.com, Inc., Customer Data Sec. Breach Litig.*, No. 3:12-cv-00325, Dkt.  
22 No. 418 (D. Nev. Dec. 23, 2019) (approving fees including FBFG’s hourly rates of  
23 \$850 for partners, \$350-\$575 for associates, and \$190 for professional staff);  
24 *Castillo, et al. v. Bank of the West*, No. CGC-16-551997 (Cal. Sup. Ct. Jul. 24,  
25 2018); *St. Joseph Health Sys. Med. Info. Cases*, JCCP No. 4716 (Cal. Sup. Ct. Feb.  
26 3, 2016); *Winstead v. ComplyRight, Inc.*, No. 1:18-cv-04990, Dkt. No. 101 (N.D.  
27 Ill. Oct. 7, 2019); *Hamlen v. Gateway Energy Svcs. Corp.*, No. 16-03526 (S.D.N.Y.  
28 2019), Dkt. No. 141; *Goldemberg v. Johnson & Johnson Consumer Cos., Inc.*, No.

1 13-3073 (S.D.N.Y. Nov. 1, 2017), Dkt. No. 132; *Villanueva v. Wells Fargo Bank*,  
2 N.A., No. 13-5429 (S.D.N.Y. Feb. 13, 2017), Dkt. No. 116; *Whittenburg v. Bank of*  
3 *America, N.A.*, No. 14-947 (S.D.N.Y. July 20, 2016), Dkt. No. 119.

4 Similarly, the hourly rates for the attorneys and professional support staff at  
5 Berger Montague that are included in Drake Declaration at paragraph 12 are the  
6 same as the regular rates charged for their services in non-contingent matters and/or  
7 which have been accepted in other collective or class action litigation by district  
8 courts across the country, including courts in California. *See, e.g., Devlin v.*  
9 *Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, \*10 (E.D. Pa. Dec. 9,  
10 2016) (“[T]he hourly rates for Class Counsel [including Berger Montague] are well  
11 within the range of what is reasonable and appropriate in this market.”); *In re:*  
12 *Domestic Drywall Antitrust Litigation*, No. 2:13-md-2437-MMB, Dkt. No. 767 at  
13 39 (E.D. Pa. July 17, 2018) (finding rates claimed by Berger Montague among  
14 others to be “well within the range of rates charged by counsel in this district in  
15 complex cases”); *In re: CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-  
16 02270-TON (E.D. Pa. Mar. 20, 2014); *Howell v. Checkr, Inc.*, No. 3:17-cv-04305-  
17 SK (N.D. Cal. Dec. 13, 2018); *Lee v. The Hertz Corp.*, No. CGC-15-547520 (Cal.  
18 Super. Ct., San Fran. Cnty. Aug. 30, 2019); *Douglas v. Dice.com*, No. 2018-1-CV-  
19 331732 (Cal. Super. Ct., Santa Clara Cnty., Aug. 6, 2019). The same is true for the  
20 attorneys at Brown, Neri, Smith & Kahn. *See* Smith Decl. ¶ 4.

21 Plaintiffs’ counsel worked efficiently and diligently in pursuing this novel  
22 matter. Below is a table identifying each FBFG attorney and paralegal who worked  
23 on the case, their billing rates, year of graduation from law school, and the total  
24 number of hours billed in prosecution of this Litigation.

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>Attorney/Staff</b>	<b>Years of Experience</b>	<b>Billing Rate</b>	<b>Total Hrs.</b>	<b>Lodestar</b>
<b>Finkelstein, Blankinship, Frei-Pearson &amp; Garber, LLP</b>				
D. Greg Blankinship (Partner)	18	\$850	285.1	\$242,335
Earl Kirkland (Associate)	7	\$450	103	\$46,350
Scott Terrell (Associate)	7	\$450	102.05	\$45,922.50
Sami Ahmad (Associate)	2	\$300	148.6	\$44,580
Sara Bonaiuto (Associate)	2	\$300	26.2	\$7,860
Evelyn Ozuna (Paralegal)	N/A	\$190	59.1	\$5865
<b>Berger Montague P.C.</b>				
Albanese, John G (Associate)	6	\$485	4.3	\$2,085.50
Caplan, Zachary D (Associate)	9	\$510	0.7	\$357
Drake, E. Michelle (Shareholder)	19	\$760	171.6	\$130,416
Fox, Barry J. (Software Engineer)	N/A	\$83.49	.7	\$58.44
Gebo, Rachel (Case Intake)	N/A	\$250	52.2	\$13,050
Hashmall, Joseph C (Associate)	11	\$540	408.1	\$220,374
Hibray, Jean K (Paralegal)	N/A	\$305	151.4	\$46,177
Kahana, Peter R (Shareholder)	40	\$820	0.9	\$738
Kiener, Ariana B (Law Clerk)	N/A	\$355	9.2	\$3,266
Lechtzin, Eric (Attorney)	29	\$680	2.4	\$1,632
McCollum, Sandy (Litigation Support)	N/A	\$57.5	6	\$345
Paul, Russell D (Shareholder)	30	\$720	1	\$720
Rajendran, Arun (Litigation Support)	N/A	\$43	4.2	\$180.6

1	Sarvady, Jocelyn (Legal Assistant)	N/A	\$255	44.1	\$11,245.50
2	Stein, Mark R. (Research)	N/A	\$345	9.5	\$3,277.5
3	Stock, Arthur M (Attorney)	28	\$685	0.6	\$411
4	Twersky, Martin I (Shareholder)	40	\$820	2.7	\$2,214
5	Walker, Daniel J (Shareholder)	14	\$645	0.5	\$322.50
6	Xiong, Mai (Paralegal)	N/A	\$290	74.8	\$21,692
7	<b>Brown, Neri, Smith &amp; Khan LLP</b>				
8	Nathan M. Smith (Partner)	16	\$700	10.7	\$7,490
9	Nona Yegazarian	3	\$350	49.3	\$17,255
10					

Total: \$876,219.54

Attached as Exhibit 2 to the Blankinship Declaration is a table that summarizes the total time expended on various types of tasks by each attorney. See also Drake Decl. ¶ 12.

In addition, Plaintiffs’ counsel are not seeking a multiplier on their lodestar even though they would be entitled to one given the novelty of this Litigation and the superlative result achieved by the Settlement. See *Vizcaino*, 290 F.3d at 1051 n. 6 (noting awards with multipliers are often issued); *Edwards v. First Am. Corp.*, No. 07-03796, 2016 WL 8999934, at \*2 (C.D. Cal. Oct. 4, 2016) (holding that “the lodestar method takes into account counsel’s reasonable hours and counsel’s reasonable hourly rate and, if necessary, a multiplier thought to compensate for various factors.”); *In re HP Power Plug and Graphic Card Litig.*, No. C06-2254 RMW, 2008 WL 2697192 (N.D. Cal. Jul. 7, 2008) (awarding a 1.24 multiplier); *In re Myford Touch Consumer Litig.*, No. 13-03072, 2019 WL 6877477, at \*1 (N.D. Cal. Dec. 17, 2019) (“The Ninth Circuit has observed that lode star multipliers ranging from one to four are frequently awarded in complex class action cases.”); *Buccellato v. AT & T Operations, Inc.*, No. C10-00463, 2011 WL 3348055, at \*2

1 (N.D. Cal. June 30, 2011) (awarding 4.3 multiplier). Applying counsel’s hourly  
2 rates to the hours expended yields a lodestar of \$876,219.54, and therefore an award  
3 of \$325,000.00 is fair and reasonable.

4 Indeed, this amount is more than reasonable as it encompasses counsels’  
5 expenses of \$145,449.86 as well. These expenses were reasonably incurred and  
6 necessary to the prosecution of this Action. *See* Blankinship Decl. ¶ 13. In fact,  
7 FBFG incurred \$24,727.25, Berger Montague P.C. incurred \$116,309.66, and  
8 Brown, Neri, Smith & Khan LLP incurred \$ 4,412.95. *See* Blankinship Decl. ¶ 13;  
9 Drake Decl. ¶ 13 & Ex. C. Smith Decl. ¶ 10. An attorney is entitled to “recover as  
10 part of the award of attorney’s fees those out-of-pocket expenses that would  
11 normally be charged to a fee-paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19  
12 (9th Cir. 1994). To support an expense award, Plaintiffs need only file an “itemized  
13 list of their expenses by category and the total amount advanced for each category  
14 in order for the Court to assess whether the expenses are reasonable.” *Lilly*, 2015  
15 WL 2062858, at \*6; *see also In re Ceradyne, Inc.*, No. 06-919, 2009 WL  
16 10671494, at \*7 (C.D. Cal. June 9, 2009) (“The summary tables provide a sufficient  
17 breakdown of how expenses were generally incurred.”); *see also Brown v. CVS*  
18 *Pharmacy, Inc.*, No. 15-7631, 2017 WL 3494297, at \*9 (C.D. Cal. Apr. 24, 2017)  
19 (“Attorneys are typically permitted to recover their reasonable expenses that would  
20 typically be billed to paying clients in non-contingency matters[.] Here, [p]laintiff  
21 has provided the [c]ourt with a record of all costs incurred to date in this  
22 litigation[.] The Court is satisfied that these costs are reasonable, and therefore, the  
23 Court grants Plaintiff’s motion for costs.”). *Chan*, 2017 WL 819903 at \*6 (“These  
24 [expense] amounts are supported by [d]eclarations from [c]lass [c]ounsel, and  
25 include costs for filing fee, service of process, subpoena fees, payment to the  
26 neutral, travel and parking; Veritext; CAFA notice; printing; and payments for the  
27 work of identifying wireless phone numbers. . . These costs are appropriate and  
28 reasonable[.]”). The itemized lists are attached as Exhibit 3 to the Blankinship

1 Decl., Exhibit C to the Drake Decl., and Exhibit D to the Smith Decl.

2 In this Circuit, “reasonable expenses, [even] though greater than taxable costs,  
3 may be proper.” *Harris*, 24 F.3d at 20. Reimbursement of litigation expenses is  
4 warranted whenever “[t]here is no showing or suggestion that the expenses incurred  
5 were excessive or unnecessary.” *Miller*, 2020 WL 1129863, at \* 13. Here, “all  
6 [expenses] are ones commonly and necessarily incurred in the litigation of claims  
7 like those asserted in this action.” *Id.*; *Lilly*, 2015 WL 2062858, at \*6 (“Roughly  
8 half of class counsel’s expenses (\$7,118.30) stemmed from mediation fees, which  
9 the Court finds reasonable in light of the expert mediator hired to assist in  
10 settlement negotiations and the successful result of the negotiations. Similarly, the  
11 Court finds reasonable the requested travel costs, document expenses, research  
12 costs, and filing fees. Based on the declarations of counsel, the Court awards the  
13 requested legal expenses of \$14,326.87.”).

14 Here, all the expenses were reasonable and necessary to the prosecution of  
15 this litigation and are of the type that law firms typically bill to their clients and that  
16 courts typically approve for reimbursement. These expenses include travel related  
17 to court appearances, a mediation, three depositions, research costs, and filing fees.  
18 *See Rodriguez v. Bumble Bee Foods, LLC*, No. 17-2447, 2018 WL 1920256, at \*8  
19 (S.D. Cal. Apr. 24, 2018) (“Class Counsel’s expenses include[d] filing fees, mailing  
20 costs, meals, airfare, and Uber transportation costs,” and the Court found that Class  
21 Counsel’s out-of-pocket costs were “reasonably incurred in connection with the  
22 prosecution of th[e] litigation, were advanced by Class Counsel for the benefit of  
23 the class, and should be reimbursed in full in the amount requested.”).

24 **VII. The Court Should Approve Plaintiffs’ Service Awards.**

25 Class Counsel respectfully requests that the Court approve the payment of  
26 incentive awards to named Plaintiffs Mr. Young and Mr. Dolar in the amount of  
27 five thousand dollars (\$5,000) each. Pursuant to the Settlement, Defendant has  
28 agreed to not object to Plaintiffs’ request for these awards. Settlement Agreement ¶

1 7. The requested payments are well deserved and fall well within the range of  
2 incentive awards approved in prior cases. “[N]amed plaintiffs, as opposed to  
3 designated class members who are not named plaintiffs, are eligible for reasonable  
4 incentive payments.” *Staton*, 327 F.3d at 977. They “are intended to compensate  
5 class representatives for work done on behalf of the class, to make up for financial  
6 or reputational risk undertaken in bringing the action, and, sometimes, to recognize  
7 their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958-  
8 59 (internal citation omitted).

9 In the Central District of California, and the Ninth Circuit more generally, a  
10 service award of \$5,000 is presumptively reasonable. *In re Toys R Us-Delaware,*  
11 *Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438,  
12 470 (C.D. Cal. 2014) (holding that incentive awards of \$5,000 to each named  
13 plaintiff “are consistent with the amount courts typically award as incentive  
14 payments.”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)  
15 (approving a \$5,000 incentive award for each class representative); *see also Dyer v.*  
16 *Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D. Cal. 2014) (“In this circuit ...  
17 \$5,000 is presumptively reasonable”); *Harris v. Vector Marketing Corp.*, No. C-08-  
18 5198, 2012 WL 381202, at \*7 (N.D. Cal. Feb. 6, 2012) (“Several courts in this  
19 District have indicated that incentive payments of \$10,000 or \$25,000 are quite  
20 high and/or that, as a general matter, \$5,000 is a reasonable amount.”) (citations  
21 omitted); *Madenlian v. Flax USA, Inc.*, No. 13-1748, 2015 WL 13754685, at \*6  
22 (C.D. Cal. Mar. 16, 2015) (finding that “an incentive award in the amount of \$5,000  
23 is fair, adequate, and reasonable.”).

24 Plaintiffs’ request of \$5,000 each should be granted. Plaintiffs each  
25 reviewed, and discussed with Plaintiffs’ counsel, the pleadings and discovery  
26 demands, they assisted in responding to those requests, and they sat for lengthy  
27 depositions. Blankinship Decl. ¶ 8. Plaintiffs also conferred with Class Counsel  
28 regarding the settlement negotiations, and always encouraged Class Counsel to

1 obtain the best possible result for the absent class members. *Id.* These actions  
2 warrant an award of service fees.

3 **VIII. Conclusion**

4 For all the foregoing reasons, Plaintiffs and Class Counsel respectfully request  
5 that the Court grant final approval of the Settlement and approve the requested  
6 attorneys' fees and incentive awards to be paid by Defendant.

7 Respectfully submitted,

8 **FINKELSTEIN, BLANKINSHIP,  
9 FREI-PEARSON & GARBER, LLP**

10 Dated: October 1, 2020

By: /s/ D. Greg Blankinship  
D. Greg Blankinship

11 FINKELSTEIN, BLANKINSHIP, FREI-  
12 PEARSON & GARBER, LLP  
D. Greg Blankinship (pro hac vice)  
13 One North Broadway, Suite 900  
White Plains, NY 10601  
14 T. 914.298.3290 F. 914.522.5561  
gblankinship@fbfglaw.com

15 BROWN, NERI, SMITH & KHAN LLP  
Nathan M. Smith (SBN 255212)  
16 Nona Yegazarian (SB 316458)  
11601 Wilshire Blvd, Suite 2080  
17 Los Angeles, CA 90025  
T. 310.593.9890; F. 310.593.9980  
18 nate@bnsklaw.com; nona@bnsklaw.com

19 BERGER MONTAGUE PC  
E. Michelle Drake (pro hac vice)  
20 Joseph C. Hashmall (pro hac vice)  
43 SE Main Street, Suite 505  
21 Minneapolis, MN 55414  
T. 612.594.5999; F. 612.584.4470  
22 emdrake@bm.net; jhashmall@bm.net

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28