

United States District Court  
Northern District of California

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE  
PERFORMANCE LITIGATION

Case No. [5:18-md-02827-EJD](#)

**ORDER GRANTING RENEWED  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT;  
GRANTING RENEWED MOTION FOR  
ATTORNEYS’ FEES, EXPENSES, AND  
SERVICE AWARDS**

Re: ECF Nos. 631, 632

Pending before the Court are Plaintiffs’ and Defendant’s Joint Renewed Motion for Final Approval of Class Action Settlement (hereinafter “Renewed Mot. for Final Approval,” ECF No. 631), and Plaintiffs’ Renewed Motion for Attorneys’ Fees and Expenses, and Service Awards (hereinafter “Renewed Mot. for Fees & Costs,” ECF No. 632). On January 11, 2023, the Court heard arguments from the parties on both motions. *See* ECF No. 646.

Having considered the Ninth Circuit’s mandate, the renewed motion briefing, the parties’ prior motions and briefing, the terms of the settlement agreement, the objections and response thereto, the arguments of counsel, and the other matters on file in this action, the Court APPROVES the settlement as fair, adequate, and reasonable and GRANTS the parties’ joint renewed motion for final approval. The provisional appointments of the class representatives and class counsel are confirmed. Class Counsel’s renewed requests for attorneys’ fees, expenses, and incentive awards are also GRANTED.

Case No.: [5:18-md-02827-EJD](#)  
ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

**I. BACKGROUND**

In light of this case’s procedural posture, the Court will not reiterate the entirety of the lengthy factual background. This action arises from certain software updates released by Defendant Apple, Inc. (“Apple”) for its iPhones’ system software (“iOS”) that allegedly diminished performance of the iPhone 6s and 7s running these operating systems (iOS 10.2.1 and iOS 11.2). Second Consol. Am. Compl. (“SCAC”) ¶ 2, ECF No. 244. The consolidated amended complaint (“CAC”) alleged 76 claims against Apple, including fraud-based theories, breach of contract, trespass to chattels, and violation of federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and California’s Data Access and Fraud Act, Cal. Penal Code § 502. *See generally* CAC, ECF No. 145. Many of these claims did not survive the two rounds of motions to dismiss. *See* Order Granting in Part and Den. in Part Mot. to Dismiss, ECF No. 219; Order, ECF No. 331.

On February 28, 2020, Named Plaintiffs moved for preliminary approval of the Settlement prior to class certification. Mot. for Prelim. Approval of Settlement, ECF No. 415. The nationwide Settlement Class includes the California Class represented by JCCP Counsel. On May 27, 2020, the Court granted preliminary approval, provisionally certified the nationwide Settlement Class, and directed notice to be issued to Settlement Class Members pursuant to the Settlement and preliminary approval motion (hereinafter “Prelim. Approval Order,” ECF No. 429). The Court granted preliminary certification to a settlement class of:

All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions before December 21, 2017.

Mot. for Prelim. Approval of Settlement at 2; Stipulation of Settlement § 1.32, ECF No. 416. “U.S. owners” is defined to “include all individuals who owned, purchased, leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device for personal, work, or any other purposes. Stipulation of Settlement § 1.32. The Settlement Class does not include “iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.” *Id.* It excludes “(a) directors, officers, and employees of Apple or its subsidiaries

Case No.: [5:18-md-02827-EJD](#)  
ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV. AWARDS

1 and affiliated companies, as well as Apple’s legal representatives, heirs, successors, or assigns, (b)  
2 the Court, the Court staff, as well as any appellate court to which this matter is ever assigned and  
3 its staff, (c) any of the individuals identified in paragraph 1.36 of the Settlement Agreement, as  
4 well as their legal representatives, heirs, successors, or assigns, (d) Defense Counsel, as well as  
5 their immediate family members, legal representatives, heirs, successors, or assigns, and (e) any  
6 other individuals whose claims already have been adjudicated to a final judgment.” *Id.*

7 Named Plaintiffs moved for final approval of class action settlement (hereinafter “Mot. for  
8 Final Approval,” ECF No. 470) and attorneys’ fees and costs (hereinafter “Mot. for Fees &  
9 Costs,” ECF No. 468) on August 26, 2020. The Court heard arguments presented during two days  
10 of fairness hearings on December 4, 2020 and February 17, 2021, the second hearing focusing on  
11 the attorneys’ fees and costs. *See* ECF Nos. 585, 600. In March 2021, the Court issued separate  
12 orders approving the Settlement (hereinafter “Settlement Order,” ECF No. 608) and granting in  
13 part Plaintiffs’ request for attorneys’ fees, expenses, and service awards (hereinafter “Fees &  
14 Costs Order,” ECF No. 609). The Court approved an award of \$80.6 million for attorney’s fees,  
15 representing 26% of the \$310 million Settlement Fund.

16 Five objectors appealed the Court’s settlement approval and/or award of attorneys’ fees on  
17 various grounds. *See* ECF Nos. 614–618. The orders granting final approval of the settlement and  
18 approving an award of attorneys’ fees, expenses and service awards were vacated and remanded  
19 on appeal.<sup>1</sup> *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769 (9th Cir. 2022). On remand  
20 the Ninth Circuit stated that, while “[the Court’s] probing analysis suggests that it may have  
21 applied heightened scrutiny” in finding the Settlement was fair and reasonable, *Apple*, 50 F.4th at  
22 783, its written order did not cite to the correct “higher level of scrutiny” articulated in *Roes* that is

23  
24 \_\_\_\_\_  
25 <sup>1</sup>The Ninth Circuit vacated the Court’s order granting final approval, finding that although it  
26 appeared the Court engaged in the thoughtful and deliberate analysis, it cited the wrong legal  
27 standard in presuming that the settlement was fair and reasonable. Consequently, the order  
28 granting attorneys’ fees was also vacated. The Ninth Circuit also held that non-natural persons  
received sufficient notice of proposed settlement and that the settlement’s requirement of  
attestation to an injury in order to obtain recovery was reasonable.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 required in cases where settlement precedes class certification. *Roes, 1-2 v. SFBSC Mgmt., LLC*,  
 2 944 F.3d 1035, 1049 (9th Cir. 2019). The Ninth Circuit also provided directions on remand  
 3 relating to any future award of attorneys’ fees, instructing the Court to more thoroughly explain  
 4 how the *Vizcaino* factors support an upward adjustment from 25% benchmark and that the Court  
 5 “reconsider the inclusion of JCCP work in the lodestar calculation.” *Id.* at 783–84 n.11.

6 **A. Terms of the Settlement Agreement**

7 The Settlement Agreement is a comprehensive resolution of all claims in this Action and in  
 8 the California JCCP Action, *In re Apple OS Cases*, JCCP No. 4976 (Cal. Super. Ct., S.F. Cty.).  
 9 Stipulation of Settlement § 9. The Settlement provides for a non-reversionary Minimum Class  
 10 Settlement Amount of \$310 million, with a Maximum Class Settlement Amount of \$500 million,  
 11 in cash for the benefit of the Settlement Class without admitting liability or wrongdoing. *Id.*;  
 12 Decl. of Joseph W. Cotchett and Laurence D. King in Supp. of Mot. for Settlement (“Decl. of Co-  
 13 Lead Class Counsel”), Ex. 1 ¶ 46, ECF No. 471-1. This amount includes the cost of class notice  
 14 and settlement administration, the class representative’s incentive award, attorneys’ fees and costs,  
 15 and “whether the aggregate value of Approved Claims reaches the Minimum Class Settlement  
 16 Amount or Maximum Class Settlement Amount . . . .” Stipulation of Settlement § 5.2.

17 **1. Attorneys’ Fees and Costs, Service Awards, and Costs of Settlement**  
 18 **Administration**

19 The Settlement Agreement provides that:

20 The Parties have not yet agreed upon the amount of Attorneys’ Fees  
 21 and Expenses that Class Counsel will seek, and Apple, while  
 22 recognizing that the Settlement entitles Class Counsel to seek  
 reasonable fees and expenses, reserves the right, if any, to object to  
 and oppose Class Counsel’s requests for Attorneys’ Fees and  
 Expenses.

23 Stipulation of Settlement § 8.2. The Agreement also provides that Named Plaintiffs may seek  
 24 service awards that will not exceed \$1,500 for “each Named Plaintiff who was not deposed in the  
 25 Actions,” and it will not exceed \$3,500 “for each Named Plaintiff who was deposed in the Actions  
 26 (i.e., Romeo Alba, Denise Bakke, Alisha Boykin, Steven Connolly, Alvin Davis, Loren Haller,

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 Charlene Lowery, Cynthia Stacy, and Trent Young).” *Id.* at § 8.4. The Named Plaintiffs who are  
2 Settlement Class Members must also submit Claim Forms. *Id.*

3 Pursuant to the Agreement, the aggregate cash payment to the Settlement Class Members  
4 shall not exceed the Maximum Class Settlement Amount of \$500 million. If the number of  
5 eligible devices in the approved claims multiplied by \$25.00 exceeds the Maximum Class  
6 Settlement Amount, then the cash payment for each shall be reduced on a pro rata basis.

7 If the \$25 payment for each eligible device identified in the approved claims as well as the  
8 fees, expenses, and awards do not meet the Minimum Class Settlement Amount, the residual, or  
9 the “difference between the value of the Approved Claims and the Minimum Settlement Amount,”  
10 will first pay the costs of settlement notice and administration up to \$12,750,000, plus any postage  
11 expense incurred after the \$12,750,000 cap has been reached. *Id.* §§ 1.27, 5.3.1. If there is  
12 residual after paying the costs of Settlement notice and administration, then the cash payments for  
13 each approved claim will be increased on a pro rata basis until the aggregate value equals the  
14 Minimum Class Settlement Amount. *Id.* § 5.3.2. However, the pro rata payments for approved  
15 claims are capped at \$500. *Id.*

## 16 **2. Class Relief**

17 In exchange for a release of their claims against Apple set forth in the Settlement  
18 Agreement, Settlement Class Members will receive approximately \$25 cash for each eligible  
19 iPhone, although the amount of that payment may increase or decrease depending on any  
20 Attorneys’ Fees and Expenses, Named Plaintiff Service Awards, notice expenses, and whether the  
21 aggregate value of Approved Claims reaches the Minimum Class Settlement Amount or the  
22 Maximum Class Settlement Amount. Stipulation of Settlement § 5.1; Decl. of Co-Lead Class  
23 Counsel, Ex. 1 ¶ 47. According to the Stipulation of Settlement, if the payment of \$25 for each  
24 iPhone device identified as Approved Claims plus the payment of Attorneys’ Fees and Expenses,  
25 Named Plaintiff Service Awards, and Notice and administration fees does not reach the Minimum  
26 Class Settlement Amount, then the “Residual” will be allocated according to the Stipulation of

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 Settlement (ECF No. 416), including increasing payments to Settlement Class Members on a pro  
2 rata basis. *Id.*

3 Conversely, if the number of iPhone devices identified as Approved Claims, multiplied by  
4 \$25, exceeds the Maximum Class Settlement Amount of \$500 million, then the cash payment for  
5 each device will be reduced on a pro rata basis so as not to exceed the Maximum Class Settlement  
6 Amount of \$500 million. *Id.*

### 7 **3. Residual Funds**

8 The Settlement Agreement does not provide a *cy pres* recipient; Rather, it provides that, if  
9 the settlement fund is not exhausted by the end of the claims period, the Parties will confer on the  
10 distribution of any remaining funds in the unlikely event the Minimum Class Settlement Amount  
11 is not reached, subject to Court approval. Prelim. Approval Order at 23; *see also* Stipulation of  
12 Settlement § 5.3.3. B.

#### 13 **B. Class Notice**

14 The Settlement Administrator shall provide settlement notice and administration services,  
15 in accordance with the terms of the Settlement Agreement and the Settlement Administration  
16 Protocol. Stipulation of Settlement at § 6.1. Court-approved Settlement Administrator Angeion  
17 Group (“Angeion”) disseminated Notice to the Class via (1) direct email to the email address of  
18 record on the Apple ID account of the members of the Settlement Class and/or postcard notices,  
19 (2) a case-specific website, and (3) a case-specific toll-free number. ECF No. 470-2 ¶¶ 4–12; *see*  
20 *also* Stipulation of Settlement § 6.2. Specifically, 90,119,272 class notices were emailed to  
21 potential Class Members, with 2,611,071 returned undeliverable. ECF No. 470-2 ¶¶ 6–7, 11.  
22 Angeion re-deployed 340,289 email notices that had a technical error during the initial  
23 distribution. ECF No. 551 ¶ 5. Of the 340,289 email notices that were re-deployed, 320,329 were  
24 delivered and 19,960 were not delivered. *Id.* ¶ 6. Between August 24, 2020 and September 9,

25  
26  
27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 2020, Angeion sent a second round of email notices to 89,395,480 Class Members.<sup>2</sup> *Id.* ¶ 18.2

2 Angeion also sent 5,609,281 postcard notices to potential Settlement Class Members. *Id.* ¶  
 3 11. On September 4, 2020, Angeion mailed an additional 72,282 notices. *Id.* ¶ 13. After  
 4 conducting address verification searches (“skip traces”), Angeion identified and re-mailed notices  
 5 to 275,292 updated addresses, including the records which the USPS returned with a forwarding  
 6 address. *Id.* ¶ 14. Angeion also sent a second round of post card notices to 5,609,277 Class  
 7 Members. *Id.* ¶ 17. These efforts resulted in notice being sent to 99% percent of the Class. ECF  
 8 No. 589 at 153.

9 The case-specific website devoted to the Settlement had 16,440,243 pageviews and  
 10 9,891,698 sessions through November 16, 2020. *Id.* ¶ 22. The toll-free information line for the  
 11 case received approximately 31,647 calls through November 16, 2020. *Id.* ¶ 24. The extensive  
 12 media coverage of the Settlement has also increased the likelihood that Settlement Class Members  
 13 learned of the Settlement and the process for submitting a claim. ECF No. 470-2 ¶ 26.

### 14 **C. Claims Process**

15 Settlement Class Members had up to 92 days to submit a claim, object, or opt out. Def.’s  
 16 Statement at 5. The chart below tabulates the total number of claims submitted, approved, and not  
 17 approved (including the reasons for the provisional rejections) as of January 22, 2021:

18  
 19  
 20  
 21  
 22  
 23 <sup>2</sup> During the December 4, 2020 hearing, it was reported that many email notices to Class Members  
 24 were redirected to a spam folder, and that as result, many Class Members may not have received  
 25 notice if they didn’t know to look in their spam folders. 12/4/20 Hr’g Tr. at 102. Although this is  
 26 disappointing, it is not surprising in a case of this magnitude and does not mean the notice  
 27 program failed to comport with due process. Angeion employed other methods of notice,  
 28 including establishing a case-specific website and a case-specific toll-free number. And as noted  
 previously, the extensive media coverage of the Settlement has also increased the likelihood that  
 Settlement Class Members learned of the Settlement and the process for submitting a claim.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



	Claims Submitted	Claims Withdrawn	Claims Approved (Pending Deduplication)	Claims Pending Validation Regarding Device Eligibility	Device Not Eligible – Could Not Be Matched to Class List	Claims Not Approved		
						Attestation Missing or Insufficient	Duplicate	Other (e.g., missing signature)
<b>Online</b>	2,152,228	137	2,094,916	0	0	0	57,175	0
<b>Hard Copy</b>	74,543	43	20,698	57	444,430	3,549	Pending	5,766
<b>Corporate</b>	1,058,214	66	153,246	41,522	664,675	164,053	32,533	2,119
<b>Total</b>	3,284,985	246	2,268,860	41,579	709,105	167,602	89,708	7,885

ECF No. 596 at 1. “The Settlement Administrator approved all claims that could be matched to eligible devices, provided that the other settlement requirements were satisfied.” *Id.* at 2. “For claims that could not be approved as initially submitted, the Settlement Administrator sent deficiency notices to inform the claimants of the reason(s) their claims could not be approved.” *Id.* All claimants had an opportunity to submit additional information. *Id.*

The Court later provided guidance regarding the attestation requirement for corporate and non-natural person claims. ECF No. 598. The Settlement Administrator shall submit a final report to the Court once the claims administration process is complete. *Id.*

## II. FINAL APPROVAL OF SETTLEMENT

### A. Legal Standard

A court may approve a proposed class action settlement of a certified class only “after a hearing and on finding that it is fair, reasonable, and adequate,” and that it meets the requirements for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court must balance a number of factors to gauge fairness and adequacy, including the following:

- (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV. AWARDS



1 *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

2 Furthermore, class settlements reached prior to formal class certification require a  
3 “heightened fairness inquiry.” *Roes*, 944 F.3d at 1049. When reviewing such a pre-certification  
4 settlement, the district court must not only explore the *Churchill* factors but also “look[] for and  
5 scrutinize[] any subtle signs that class counsel have allowed pursuit of their own self-interests . . .  
6 to infect the negotiations.” *Id.* at 1043 (internal quotation marks omitted).

7 **B. Analysis**

8 **1. The Settlement Class Meets the Rule 23(a) and (b)(3) Prerequisites for Certification**

9 According to Rule 23(a), all class actions must satisfy the following prerequisites: (1)  
10 numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Fed. R. Civ. P.  
11 23(a). In addition, Named Plaintiffs must show that “questions of law or fact common to class  
12 members predominate over any questions affecting only individual members, and that a class  
13 action is superior to other available methods for fairly and efficiently adjudicating the  
14 controversy.” Fed. R. Civ. P. 23(b)(3). While the Ninth Circuit did not mandate this Court to  
15 make detailed written findings on remand that Rule 23(a) and (b)(3)’s prerequisites were satisfied,  
16 the Court nonetheless memorializes its previous findings.<sup>3</sup> The Court affirms the bases for the  
17 conditional class certification in the Court’s preliminary approval order per the prerequisites in  
18 Rule 23(a)(1)–(4). *See* ECF No. 429.

19 Numerosity. The Settlement Class satisfies Rule 23(a)(1) because it includes millions of  
20 iPhones have been purchased and/or sold in the United States, making it so numerous that joinder  
21 of all members is impracticable. ECF No. 470 at 7; *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d  
22 566, 575 (9th Cir. 2004) (“The prerequisite of numerosity is discharged if ‘the class is so large that  
23 joinder of all members is impracticable.’”) (quoting Fed. R. Civ. P. 23(a)(1)).

24  
25  
26 <sup>3</sup> The Ninth Circuit rejected appellants’ argument that the Court should have made detailed  
27 findings that the Rule 23(a) and (b)(3)’s prerequisites were satisfied where “the record provides  
28 more than adequate foundation” for review.” *Apple*, 50 F.4th at 780 n.7.  
Case No.: [5:18-md-02827-EJD](#)  
ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1            Commonality. Rule 23(a)(2) commonality requires “questions of fact or law common to  
2 the class,” though “[e]ven single common question of law or fact that resolves a central issue will  
3 be sufficient to satisfy this mandatory requirement.” *Castillo v. Bank of Am., NA*, 980 F.3d 723,  
4 728 (9th Cir. 2020). “What matters to class certification . . . is not the raising of common  
5 ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate  
6 common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564  
7 U.S. 338, 350 (2011) (citation omitted); The focus of this action—whether the performance  
8 management feature that Apple introduced in iOS 10.2.1 and iOS 11.2 to avoid unexpected power-  
9 offs affected the iPhones—is common to all class members. ECF No. 470 at 7.

10            Typicality. Next, Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses  
11 of the representative parties are typical of the claims or defenses of the class.” “The test of  
12 typicality is whether other members have the same or similar injury, whether the action is based  
13 on conduct which is not unique to the named plaintiffs, and whether other class members have  
14 been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508  
15 (9th Cir. 1992) (internal quotation marks and citation omitted). The Court finds that the Named  
16 Plaintiffs are typical of the Settlement Class they seek to represent because they purchased  
17 Apple’s iPhones and were affected by the unexpected power-offs and the performance  
18 management feature Apple introduced in iOS 10.2.1 and iOS 11.2 to avoid unexpected power-  
19 offs. ECF No. 470 at 7; *see generally* SCAC.

20            Adequacy of Representation. With respect to Rule 23(a)(4), the Court finds the  
21 representative parties and class counsel have fairly and adequately represented the interests of the  
22 Class. No conflicts of interest appear as between Named Plaintiff and the members of the  
23 Settlement Class, nor is there any evidence that Class Counsel has any conflicts of interests with  
24 Settlement Class Members. Class Counsel have substantial experience prosecuting class actions.  
25 *See* ECF Nos. 415-3 (firm résumé of Kaplan Fox & Kilsheimer LLP); 415-4 (firm résumé of  
26 Cotchett, Pitre & McCarthy LLP). Named Plaintiffs are equally interested in demonstrating

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 Apple's alleged violations, and Plaintiffs and Class Counsel have litigated this Action vigorously  
2 on behalf of the Settlement Class. Mot. for Final Approval at 7.

3 Predominance. Finally, the Settlement Class further satisfies Rule 23(b)(3) in that  
4 common issues predominate and "a class action is superior to other available methods for fairly  
5 and efficiently adjudicating" the claims here. First, every Settlement Class Member alleged that  
6 their iPhones were subjected to the performance management feature that slowed it down and  
7 caused harm. Mot. for Prelim. Approval of Settlement at 8. The Court agrees that "this common  
8 question can be resolved for all members of the proposed Settlement Class in a single  
9 adjudication." Mot. for Final Approval at 8.

10 Superiority. Moreover, to satisfy the superiority requirement it must be shown that a class  
11 action is the "most efficient and effective means of resolving the controversy. . . . Where recovery  
12 on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor  
13 weighs in favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,  
14 1175 (9th Cir. 2010) (quotation marks and citation omitted). The class action mechanism is  
15 superior for resolving this matter given the "the individual remedy for each Class Member is  
16 relatively small, making the expense and burden of continued individual litigation economically  
17 and procedurally impracticable." *Noll v. eBay, Inc.*, 309 F.R.D. 593, 603 (N.D. Cal. 2015). In  
18 these situations, a "class action mechanism is superior to individual actions in consumer cases  
19 with thousands of members . . . in which the potential recovery is too slight to support individual  
20 suits, but injury is substantial in the aggregate." *Id.*

21 Based on the foregoing, the Court found that the Settlement Class satisfies the pre-  
22 requisites of Rule 23.

## 23 2. Adequate Notice Was Provided

24 A court must "direct notice [of a proposed class settlement] in a reasonable manner to all  
25 class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). The notice must  
26 be "reasonably calculated, under all the circumstances, to apprise interested parties of the

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT'YS' FEES, EXPENSES, & SERV.  
AWARDS

1 pendency of the action and afford them an opportunity to present their objections.” *Apple*, 50  
 2 F.4th at 779. However, “neither Rule 23 nor the Due Process Clause requires actual notice to each  
 3 individual class member.” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017).

4 The Court found that adequate notice providing the best notice practicable and reasonably  
 5 calculated to apprise Class members of the settlement and their rights to object or exclude  
 6 themselves pursuant to Rule 23(e)(1). While appellants challenged the adequacy of the notice  
 7 provided to nonnatural persons, the Ninth Circuit concluded that “[t]he notice here satisfied both  
 8 Rule 23 and due process.” *Apple*, 50 F.4th at 779.

### 9 **3. The Settlement Is Fair and Reasonable**

10 The Court was thorough in its discussion but cited the incorrect legal standard in finding  
 11 the settlement “fair, adequate, and reasonable.” The Court reiterates its findings as to the Rule  
 12 23(e)(2) and *Churchill* factors in order “to evaluate the settlement under the correct standard.”  
 13 *Apple*, 50 F.4th at 783; *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

#### 14 **a. Strength of Plaintiff’s Case**

15 The parties actively and aggressively litigated this action and Class Counsel conducted a  
 16 thorough investigation and prosecution of the claims. The Named Plaintiffs firmly believe that  
 17 their liability case is strong and that class certification is warranted. ECF No. 470 at 9. In their  
 18 SCAC, Named Plaintiffs supported their claims with allegations that users of Apple devices began  
 19 reporting reduced functionality after installing iOS 10.2.1, and began experiencing marked  
 20 decrease in battery life after downloading iOS 11. ECF No. 244 ¶¶ 435, 436. Further, a study  
 21 “revealed that existing iPhones operating on the iOS 10 software on average drained to 0% battery  
 22 after 240 minutes (4 hours), whereas those operating on iOS 11 on average drained to 0% battery  
 23 after only 96 minutes (just over 1½ hours).” *Id.* ¶ 438. “In other words, iOS 11 reduced the  
 24 average iPhone’s battery life by more than 60%.” *Id.* Named Plaintiffs alleged that “[t]he study  
 25 demonstrates the substantially increased power demands that Apple foist upon users’ Devices  
 26 through its iOS update.” *Id.* Named Plaintiffs cited to multiple reports and studies finding that he

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 iOS 10.2.1 and iOS 11.2 updates caused a decrease in the iPhones’ performance. *Id.* ¶¶ 440–43.  
 2 Named Plaintiffs further alleged that Apple never asked its purchasers for their authorization to  
 3 slow down their device, nor informed them of this change. *Id.* ¶ 447.

4 Nevertheless, Named Plaintiffs recognized the real and substantial risk that they might not  
 5 be able to obtain any recovery at all given the significant legal challenges they would have to face  
 6 if the case did not settle. Apple has consistently maintained and continues to maintain that “[the]  
 7 software update prolonged the life of devices with aged batteries . . . .” Apple’s Statement In  
 8 Support of Final Approval & Response to Settlement Objections (“Def.’s Statement”) at 1, ECF  
 9 No. 555. Further, Apple has maintained and continues to maintain that “[t]he performance  
 10 management feature was only activated when the device was at risk of shutting down when power  
 11 demands were high in some temporary conditions based on environmental temperature, state of  
 12 charge, and customer usage.” *Id.* “Apple disputes that all devices were used in a way that would  
 13 have activated the performance management feature; and even when it was activated, users may  
 14 not have even noticed any differences in daily device performance.” *Id.* “Apple stands by the  
 15 performance management feature as a solution to a complex technological problem that delivered  
 16 a better experience for customers and prolonged the life of older iPhone devices.” *Id.*

17 The first factor therefore weighs in favor of approval.

18 **b. The Extent of Discovery**

19 The extent of discovery also weighs in favor of approving settlement. Apple produced  
 20 over seven million pages of material for review and Plaintiffs deposed ten Apple witnesses.  
 21 Plaintiffs also sought discovery from several non-parties. ECF No. 470 at 11. This extensive  
 22 discovery allowed Plaintiffs to evaluate the merits of their claims. *In re Volkswagen “Clean*  
 23 *Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, 2016 WL 6248426, at \*14 (N.D. Cal. Oct.  
 24 25, 2016) (“[E]xtensive review of discovery materials indicates [Plaintiffs have] sufficient  
 25 information to make an informed decision about the Settlement. Class Counsel also benefitted  
 26 from Judge Phillips’ objective assessment of the relative strengths and weaknesses of the parties’

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 positions. Thus, Class Counsel and Named Plaintiffs were well-informed before entering into the  
2 Settlement.

3 **c. Risk, Expense, Complexity, and Likely Duration of Further**  
4 **Litigation**

5 The risk, expense, complexity, and likely duration of further litigation also weigh in favor  
6 of approving the Settlement. Absent a settlement, the parties would have to proceed with more  
7 discovery, including the unresolved motions regarding additional depositions (*see* ECF No. 471 ¶  
8 33), to the summary judgment stage, to a lengthy trial including disputes over damages, as well as  
9 post-trial motions. And as Class Counsel observed, “even if anything were recovered, it would  
10 take years to secure, as Apple would undoubtedly appeal any adverse judgment.” ECF No. 470 at  
11 10. The litigation is complex, requiring the appointment of a special Discovery Master, and  
12 expensive, with Class Counsel claiming nearly \$1 million in litigation expenses alone. The related  
13 JCCP Action further multiplies the complexity and expense. The Settlement reached here with the  
14 assistance of Judge Phillips saves the parties and Class Members time, and avoids the additional  
15 financial expenditures of prolonged litigation.

16 **d. Risk of Maintaining Class Action Status Throughout the Trial**

17 This Court granted preliminary certification of the Settlement Class which, per the  
18 Stipulation of the parties, is solely for the purpose of the Settlement. If the litigation proceeded,  
19 however, there was a risk that a class would not be certified. Class Counsel anticipated a dispute  
20 over “whether a particular iPhone user was affected [based] upon how that person used the iPhone,  
21 including what ‘apps’ were on the phone, etc.” ECF No. 470 at 9. The resolution of that issue and  
22 additional potential factual disputes posed great risk to Plaintiffs maintaining a viable class. The  
23 Settlement avoids that risk in favor of great benefit to the Settlement Class. This risk of  
24 maintaining a class action therefore weighs in favor of approving the Settlement.

25 **e. Amount Offered in Settlement**

26 The Settlement is within the range of reasonableness. “Based on a damages analysis by

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS



1 Named Plaintiffs’ consultant, if Named Plaintiffs fully prevailed on every one of their remaining  
 2 claims, damages would have amounted to between \$18 and \$46 per iPhone.” ECF No. 470 at 9.  
 3 The \$25 cash payment per eligible device is comfortably in the middle of this estimated damages  
 4 range. Although the information initially presented was thin, on December 11, 2020, Named  
 5 Plaintiffs submitted a Supplemental Brief providing the underlying analysis for their calculation of  
 6 potential damages. ECF No. 591. Class Counsel’s consultant, Dr. Michael A. Williams of  
 7 Competition Economics, LLC, estimated damages by determining the decline in the resale value  
 8 of eligible devices compared to what the resale value would have been but for the alleged  
 9 “throttling” of the devices upon the installation of iOS 10.2.1 and 11.2. *See* ECF No. 552 ¶ 6. Dr.  
 10 Williams used actual sales data in the secondary market for both the resale value of eligible  
 11 devices during the relevant period and resale of previous models of iPhones. ECF No. 591 at 1–2.  
 12 He then performed a “difference-in-difference” regression analysis of the data to compare the  
 13 resale value of used iPhone 6 devices prior to and after the release of iOS 10.2.1 (January 2017).  
 14 *Id.* at 2. The regression model controlled for price differences attributed to differences in iPhone  
 15 models, storage capacity, carrier, condition and months after release. *Id.* Dr. Williams determined  
 16 that the resale value of eligible devices was 6.2-9.8% lower than expected when compared to  
 17 decline in value of previous iPhone models, and thus could be attributed to the “throttling” of  
 18 performance by iOS 10.2.1 and 11.2. ECF No. 591-1 ¶¶ 25–26. Dr. Williams concluded that the  
 19 range of damages per eligible device was between \$12.29 and \$18.99. *Id.* ¶ 27.

20 Class Counsel performed an additional calculation to determine an upper range of  
 21 estimated damages due to iOS 10.2.1 and 11.2 based on Dr. Williams’ regression and the  
 22 estimated 6-10% of impact. ECF No. 552 ¶ 6. Specifically, Class Counsel calculated the average  
 23 monthly sales price of all used eligible devices during the relevant period at \$460. ECF No. 591 at  
 24 2. Class Counsel applied the 6-10% price impact range to the \$460 average price, and concluded  
 25 that the upper range of damages is \$27.60-\$46.00 per device. *Id.*

26 A \$25 recovery per Approved Claim is in the middle of the upper range, representing 54%

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



1 of \$46 and 137% of \$18. Moreover, because of the likely pro rata increase, the actual payout will  
 2 exceed \$25. Considering the risks of further litigation and the substantial recovery amount, this  
 3 factor weighs in favor of approving the Settlement. *See, e.g., Linney v. Cellular Alaska P'ship*,  
 4 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a  
 5 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is  
 6 grossly inadequate and should be disapproved.”) (citation omitted); *Roe v. Frito-Lay, Inc.*, 2016  
 7 WL 4154850, at \*7 (N.D. Cal. Aug. 5, 2016) (noting that “the risks and costs associated with class  
 8 litigation weigh strongly in favor of settlement” where “Plaintiff would [have been] required to  
 9 successfully move for class certification under Rule 23, survive summary judgment, and receive a  
 10 favorable verdict capable of withstanding a potential appeal”).

11 **f. Experience and Views of Counsel**

12 Moreover, the experience and views of counsel also weigh in favor of approving  
 13 settlement. Class Counsel has significant experience with consumer class-actions. ECF No. 468  
 14 at 9 (citing a string of cases prosecuted by Class Counsel, including *Zepeda v. PayPal, Inc.*, 2017  
 15 WL 1113293, at \*20 (N.D. Cal. Mar. 24, 2017)). As discussed, the Settlement was reached only  
 16 after extensive arm’s-length negotiations facilitated by Judge Phillips. Class Counsel also believes  
 17 the Settlement is fair, adequate and reasonable, taking into account the risks, burdens, and expense  
 18 of continued litigation. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal.  
 19 2015) (finding that the experience of counsel in the field and counsel’s view that the settlement is  
 20 fair, adequate, and reasonable weigh in favor of approving the settlement at the pre-certification  
 21 stage).

22 **g. Reaction of Class Members**

23 The Settlement Administrator disseminated 90,119,272 email notices to valid emails and  
 24 5,609,281 mail notices. As of the date Named Plaintiffs first sought final approval, 3,148,999  
 25 claims had been submitted, for a response rate to the notice of approximately 3.5%. As of January  
 26 22, 2021, the total number of submitted claims grew to 3,284,985, for a response rate of

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 approximately 3.6%.

2 Angeion received 314 timely requests for exclusion. ECF No. 549 at 3. The number of  
3 requests for exclusion compared to the number of notices sent is 0.00035%, and the number of  
4 requests for exclusion when compared to the number of claims filed is 0.01%.

5 Initially, 75 timely objections (including Apple’s opposition to the attorneys’ fees  
6 requested at ECF No. 522) were filed with the Court in response to the motions for final approval  
7 and attorneys’ fees.<sup>4</sup> In response to the renewed motion for final approval, the Court received  
8 three objections from four objectors (three of whom filed joint objections), which the Court  
9 addresses in detail in Section II.B.5. *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589  
10 (N.D. Cal. 2005) (The “low number of opt-outs and objections in comparison to class size is  
11 typically a factor that supports settlement approval.”); *Churchill Vill.*, 361 F.3d at 577. Further,  
12 Class Counsel provided 57 examples of especially positive reactions to the Settlement by class  
13 members. *See* ECF No. 471-1.

14 For the foregoing reasons, the Court finds that both Named Plaintiffs and Class Counsel  
15 have adequately represented the class.

16 **4. There is No Evidence of Collusion Between Class Counsel and Apple**

17 The Ninth Circuit has articulated the following “subtle signs” of collusion of which a court  
18 should be “particularly vigilant” when scrutinizing settlements achieved prior to class  
19 certification: (1) “when counsel receive a disproportionate distribution of the settlement, or when  
20 the class receives no monetary distribution but class counsel are amply rewarded;” (2) “clear  
21 sailing” arrangements; and (3) “when the parties arrange for fees not awarded to revert to  
22 defendants rather than be added to the class fund.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654  
23 F.3d 935, 947 (9th Cir. 2011) (internal quotations and citations omitted).

24 Here, there is no evidence of conflicts of interest nor are there “subtle signs” of collusion.

25 \_\_\_\_\_  
26 <sup>4</sup> The Court previously considered all arguments raised by objectors but did not revisit duplicative  
27 objections. Settlement Order at 19 n.5, 20–36.

28 Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 *Id.* at 956; ECF No. 470 at 10. The non-reversionary Settlement was reached only after extensive  
 2 arm’s-length negotiations between experienced counsel, including several in-person mediation  
 3 sessions and additional negotiations facilitated by Judge Phillips. That the Settlement was based  
 4 upon Judge Phillips’ proposal demonstrates, in part, non-collusive conduct. *See, e.g., Ebarle v.*  
 5 *Lifelock, Inc.*, 2016 WL 234364, at \*6 (N.D. Cal. Jan. 20, 2016) (finding that acceptance of a  
 6 mediator’s proposal following mediation sessions “strongly suggests the absence of collusion or  
 7 bad faith”). Furthermore, Class Counsel did not reach an agreement with Apple regarding the  
 8 amount of attorney’s fees to which they were entitled. *See In re Hyundai & Kia Fuel Econ. Litig.*,  
 9 926 F.3d 539, 570 (9th Cir. 2019). Rather, the attorneys’ fees will be provided from the  
 10 Settlement Fund, indicating that the parties have not negotiated a “clear sailing” arrangement,  
 11 which “carries the potential of enabling a defendant to pay class counsel excessive fees and costs  
 12 in exchange for counsel accepting an unfair settlement on behalf of the class.” *Bluetooth*, 654  
 13 F.3d at 947. To the contrary, Apple opposed Plaintiffs’ initial request for \$87,730,000 in  
 14 attorneys’ fees as excessive, requesting a \$7.1 million reduction of the requested fees. *See Apple*  
 15 *Opp’n*, ECF No. 522.

### 16 5. Objections to Final Approval Are Overruled

17 Objectors Feldman, Jan, and Pantoni (“Feldman Objectors”) jointly oppose the parties’  
 18 renewed motion for final approval of settlement. *See* Feldman Objectors’ Joint Opp’n to Pls.’ and  
 19 Def.’s Joint Renewed Mot. for Final Approval of Class Action Settlement (“Feldman Obj. to Final  
 20 Approval”), ECF No. 637. The Feldman Objectors previously objected to final approval of  
 21 settlement and appealed this Court’s orders to the Ninth Circuit.<sup>5</sup> *See* ECF Nos. 512, 519. The  
 22

---

23 <sup>5</sup> The Court’s previous order responded to the 75 objections to the motion for final approval of  
 24 settlement (ECF No. 470), dividing the objections into 7 categories: (1) objections to the amount  
 25 of compensation; (2) objections to the lawsuit altogether; (3) objections to the attestation  
 26 requirement; (4) objection to the serial number requirement; (5) objections of non-natural persons  
 27 (“NNPs”); (6) miscellaneous objections; and (7) objection to CPM as Plaintiff’s Counsel. With  
 28 respect to objections to the attestation requirement and objections of NNPs, on appeal the Ninth  
 Circuit held that “[NNPs] received sufficient notice of proposed settlement in satisfaction of both  
 Rule 23(b) and due process; [and] the Settlement’s requirement of attestation to an injury in order  
 Case No.: [5:18-md-02827-EJD](#)  
 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 Court heard from the Feldman Objectors on January 11, 2023. For the reasons discussed below,  
2 the Court OVERRULES each of these objections.

3 *First*, the Feldman Objectors argue that the Court should not “rubber stamp” approval of  
4 the Settlement as allegedly suggested by the parties. Feldman Obj. to Final Approval at 2. Class  
5 Counsel and Apple jointly responds that the Feldman Objectors mischaracterize their brief. Pls.’  
6 and Def.’s Reply Brief in Support of Final Approval of Class Action Settlement (“Reply ISO Final  
7 Approval”), ECF No. 641 at 1. Rather than advocating for a rubber stamp of approval, the parties’  
8 brief asks the Court to approve settlement based on its previous analysis, stating: “[T]his Court’s  
9 approval of the settlement comports with heightened scrutiny: It conducted a ‘probing analysis’ of  
10 the settlement, carefully analyzed each of the Ninth Circuit’s settlement approval factors, provided  
11 reasoned responses to each objection, and probed for subtle signs of collusion and found none.”  
12 *Id.* at 2; *see also* 1/11/23 Hr’g Tr. 8:21–23 (“[W]e know the Court did a thorough analysis. We’re  
13 not suggesting that the court should not do a thorough analysis again. We’re not asking for a  
14 rubber stamp . . .”). The Court acknowledges the Feldman Objectors’ concern, and its approval  
15 of the Settlement is predicated on its thorough review of the Settlement.

16 *Second*, the Feldman Objectors assert that “the Settlement presents two main issues: (1)  
17 Class member standing, which implicates due process and Rule 23(a) and (b) concerns; and (2)  
18 equitable treatment of Class members, which implicates Rule 23(e) concerns.” Feldman Obj. to  
19 Final Approval at 3. The Feldman Objectors specifically ask the Court to “recertify” the class and  
20 require either removal of the attestation or the narrowing of the class definition to only those who  
21 can attest to injury. *Id.* 6–10. This objection is an iteration of what the Feldman Objectors have  
22 already raised on appeal. The Feldman Objectors objected to the attestation requirement based on

23 \_\_\_\_\_  
24 to obtain recovery was reasonable.” *See* Settlement Order at 20–36.

25 As to the remaining overruled objections, the Ninth Circuit did not disturb the Court’s findings,  
26 stating that “[t]he district court properly resolved most of the objections at issue on appeal” with  
27 the exception of those identified in its opinion. *Apple*, 50 F.4th at 776. Accordingly, the Court  
28 does not revisit them on remand.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 Article III standing and under Fed. R. Civ. P. 23(e)(2)(A), (C), (D), which the Ninth Circuit  
 2 unequivocally rejected. *Apple*, 50 F.4th at 781. The Ninth Circuit noted that: “[M]ost of [the  
 3 Feldman Objectors’] arguments boil down to the same core complaint: The Settlement  
 4 extinguishes the claims of ‘all former or current U.S. owners’ of certain devices who downloaded  
 5 iOS software before Apple disclosed potential defects but limits recovery to only the subset of  
 6 owners who can attest that ‘they experienced’ the alleged defects after updating their iPhone.”  
 7 *Apple*, 50 F.4th at 781. On remand, the Feldman Objectors attempt to relitigate the issue of  
 8 standing and the attestation requirement, arguing that “either all class members suffered harm and  
 9 should be compensated, or the Class must be narrowed to only those able to attest to injury” since  
 10 the release of claims includes all iPhones that were potentially impacted regardless of whether that  
 11 Settlement Class Member could attest to injury. Feldman Obj. to Final Approval at 3–4.

12 In concluding that the attestation requirement did not render the settlement unfair under  
 13 Rule 23(e)(2)(A), (C), (D), the Ninth Circuit reasoned that “the parties agreed to the attestation  
 14 requirement as a compromise” and that “[t]he settlement allowed Apple to limit its exposure while  
 15 ensuring that compensation was available to every class member who suffered a compensable  
 16 injury.” *Id.* The Ninth Circuit found the allegations sufficient to establish standing, noting that  
 17 “[a]t the pleading stage, general factual allegations of injury resulting from defendant’s conduct  
 18 may suffice, . . . . [a]t the time the parties settled, prior to class certification or summary judgment,  
 19 plaintiffs alleged that *all* putative class members experienced throttling from Apple’s allegedly  
 20 unlawful intrusion into their phones.” *Id.* at 782 (emphasis added). It explicitly distinguished  
 21 *TransUnion*—relied on by the Feldman Objectors—from the present case, stating “[h]ad the  
 22 parties brought the case to trial, as in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2202 (2021),  
 23 plaintiffs’ allegation of classwide injury would have been either proven or disproven.” *Apple*, 50  
 24 F.4th at 782. Accordingly, as these objections were raised and addressed on appeal, the Court  
 25  
 26

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 cannot and will not reconsider an issue decided by the panel on remand.<sup>6</sup> *United States v.*  
 2 *Kellington*, 217 F.3d 1084, 1093 (9th Cir. 2000) (quoting *In re Sanford Fork & Tool Co.*, 160 U.S.  
 3 247, 255 (1895); *see also Hall v. City of L.A.*, 697 F.3d 1059, 1067 (9th Cir. 2012) (“The law of  
 4 the case doctrine . . . precludes a court from reconsidering an issue decided previously . . . by a  
 5 higher court in the identical case.”).

6 **6. Certification is Granted and the Settlement is Approved**

7 After reviewing all required factors under the correct standard of heightened scrutiny, the  
 8 Court is satisfied that the Settlement was not the result of collusion between the parties and finds  
 9 the Settlement Agreement to be fair, reasonable, and adequate, and certification of the Settlement  
 10 Class as defined therein to be proper.

11 **III. MOTION FOR ATTORNEYS’ FEES, COSTS, AND CLASS REPRESENTATIVE**  
 12 **AWARDS**

13 Attorneys’ fees and costs may be awarded in a certified class action under Federal Rule of  
 14 Civil Procedure 23(h). Such fees must be found “fundamentally fair, adequate, and reasonable” in  
 15 order to be approved. Fed. R. Civ. P. 23(e); *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir.  
 16 2003). To “avoid abdicating its responsibility to review the agreement for the protection of the  
 17 class, a district court must carefully assess the reasonableness of a fee amount spelled out in a  
 18 class action settlement agreement.” *Id.* at 963. “[T]he members of the class retain an interest in  
 19 assuring that the fees to be paid class counsel are not unreasonably high,” since unreasonably high  
 20 fees are a likely indicator that the class has obtained less monetary or injunctive relief than they  
 21 might otherwise.” *Id.* at 964.

22 Here, Named Plaintiffs seek the Court’s previously awarded \$80.6 million in attorneys’

---

23 <sup>6</sup> The Feldman Objectors do not raise any “subsequent factual discoveries or changes in  
 24 the law” that would enable the Court to revisit the Ninth Circuit’s rulings. *United States v.*  
 25 *Thongsouk Theng Lattanaphom*, 159 F. Supp. 3d 1157, 1160 (E.D. Cal. 2016) (quoting *EEOC v.*  
 26 *Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005)); *see* 1/11/23 Hr’g Tr. 17:12–13 (“[W]e  
 27 believe that the Ninth Circuit got this wrong.”); 24:3–7 (“[W]e believe this panel made a  
 28 fundamental error . . . .”); 26:25–27:1 (“[Y]ou asked am I bound by the panel’s – and in our  
 opinion it’s dicta, your Honor.”).



1 fees and \$995,244.93 in unreimbursed expenses. ECF No. 632. Each Named Plaintiff who was  
 2 not deposed will receive \$1,500 and each Named Plaintiff who was deposed will receive \$3,500 as  
 3 Class Representative Service Awards. Stipulation of Settlement at § 8.4. The residual, or the  
 4 “difference between the value of the Approved Claims and the Minimum Settlement Amount,”  
 5 will pay the costs of settlement notice and administration up to \$12,750,000, plus any postage  
 6 expense incurred after the \$12,750,000 cap has been reached. *Id.* §§ 1.27, 5.3.1.

7 **A. Attorneys’ Fees**

8 Named Plaintiffs request \$80.6 million in attorneys’ fees. ECF No. 632. Defendants do  
 9 not oppose the renewed fee request.<sup>7</sup>

10 The Court analyzes an attorneys’ fee request based on either the “lodestar” method or a  
 11 percentage of the total settlement fund made available to the class, including costs, fees, and  
 12 injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth  
 13 Circuit encourages courts to use another method as a cross-check in order to avoid a “mechanical  
 14 or formulaic approach that results in an unreasonable reward.” *Bluetooth*, 654 F.3d at 944 (citing  
 15 *Vizcaino*, 290 F.3d at 1050–51).

16 Under the lodestar approach, a court multiplies the number of hours reasonably expended  
 17 by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) (“[A] court  
 18 calculates the lodestar figure by multiplying the number of hours reasonably expended on a case  
 19

20 \_\_\_\_\_  
 21 <sup>7</sup> Apple opposed Class Counsel’s previously requested fee award of \$87,730,000, arguing that the  
 22 parties negotiated a claims-made settlement and that there is no common fund because the  
 23 Settlement is not mathematically ascertainable until after the claims process has been completed.  
 24 See Apple Opp’n. This Court found that Apple lacks standing to object to the proposed fee  
 25 awards as “a settling defendant in a class action [that] has no interest in the amount of attorney  
 26 fees awarded when the fees are to be paid from the class recovery rather than the defendant’s  
 27 coffers.” *Tennille v. Western Union Co.*, 809 F.3d 555, 559 (10th Cir. 2015) (citing *Boeing Co. v.*  
 28 *Van Gemert*, 444 U.S. 472, 481, n.7 (1980)). Nevertheless, the Court addressed Apple’s  
 arguments, finding that the Settlement is more appropriately characterized as a common fund  
 because the fee request is based on the fixed, certain, and non-reversionary Minimum Class  
 Settlement Amount of \$310 million, rather than the potential but uncertain \$500 million. The  
 Ninth Circuit did not disturb the Court’s findings as to the selection of the percentage-of-the-fund  
 method, and the Court does not revisit it on remand.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



1 by a reasonable hourly rate. A reasonable hourly rate is ordinarily the ‘prevailing market rate [] in  
2 the relevant community.’”). Under the percentage-of-the-fund method, courts in the Ninth Circuit  
3 “typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing  
4 adequate explanation in the record of any ‘special circumstances’ justifying a departure.”  
5 *Bluetooth*, 654 F.3d at 942 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d  
6 1301, 1311 (9th Cir. 1990)).

7 The Settlement Agreement does not contemplate the attorneys’ fee award. Instead, Apple  
8 reserved the right to object to and oppose Class Counsel’s requests for Attorneys’ Fees and  
9 Expenses, which it exercised in opposing Class Counsel’s original fee request. *See* Stipulation of  
10 Settlement § 8.2; *see also* Apple Opp’n. Class Counsel previously sought an award of  
11 \$87,730,000 in attorneys’ fees that constituted 28.3% of the Minimum Class Settlement Fund  
12 (\$310,000,000). In their renewed motion, Class Counsel seeks an award of \$80.6 million in  
13 attorneys’ fees constituting 26% of the Minimum Class Settlement Fund—the amount awarded by  
14 the Court in the previous fee award. Using both the percentage-of-the-fund and the lodestar  
15 methods as a cross-check, the Court finds an award of \$80.6 million in attorneys’ fees to be  
16 reasonable.

17 Here, the Settlement provides for a non-reversionary minimum lump-sum of \$310 million.  
18 Thus, the Settlement has the characteristics of a common fund insofar as the \$310 million is fixed,  
19 certain, and non-reversionary. *Destefano v. Zynga, Inc.*, 2016 WL 537946, at \*17 (N.D. Cal. Feb.  
20 11, 2016) (“Because this case involves a common settlement fund with an easily quantifiable  
21 benefit to the Class, the Court will primarily determine attorneys’ fees using the percentage  
22 method . . .”); *see also Thomas v. MagnaChip Semiconductor Corp.*, 2018 WL 2234598, at \*3  
23 (N.D. Cal. May 15, 2018). Further, “[t]he use of the percentage-of-the-fund method in common-  
24 fund cases is the prevailing practice in the Ninth Circuit for awarding attorneys’ fees and permits  
25 the Court to focus on showing that a fund conferring benefits on a class was created through the  
26 efforts of plaintiffs’ counsel.” *In re Korean Air Lines Co., Ltd. Antitrust Litig.*, 2013 WL

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 7985367, at \*1 (C.D. Cal. Dec. 23, 2013). Accordingly, the Court applies the percentage-of-the-  
2 fund method.

### 3 **1. Departure from the 25% Benchmark**

4 In applying the percentage-of-the-fund method, the Ninth Circuit has established 25% as a  
5 “benchmark” percentage, which may be adjusted depending on the circumstances of a case.  
6 *Vizcaino*, 290 F.3d at 1047; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).  
7 “Selection of the benchmark or any other rate must be supported by findings that take into account  
8 all of the circumstances of the case.” *Id.* The benchmark should be adjusted when the percentage  
9 recovery would be “either too small or too large in light of the hours devoted to the case or other  
10 relevant factors.” *Six (6) Mexican Workers*, 904 F.2d at 1311. When using the percentage-of-  
11 recovery method, courts consider a number of factors, including whether class counsel ““achieved  
12 exceptional results for the class,’ whether the case was risky for class counsel, whether counsel’s  
13 performance ‘generated benefits beyond the cash settlement fund,’ the market rate for the  
14 particular field of law (in some circumstances), the burdens class counsel experienced while  
15 litigating the case (*e.g.*, cost, duration, foregoing other work), and whether the case was handled  
16 on a contingency basis.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954–55 (9th Cir.  
17 2015). “[T]he most critical factor [in determining appropriate attorney’s fee awards] is the degree  
18 of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

19 While Class Counsel seek only 26% of the percentage-of-the-fund on remand, the Court  
20 clarifies its reasoning in denying Named Plaintiffs’ previous request of 28.3% of the Settlement  
21 Fund.<sup>8</sup> The Ninth Circuit provided directions on remand relating to any future award of attorneys’  
22 fees, mandating that the Court more thoroughly explain how the *Vizcaino* factors support an  
23 upward adjustment from 25% benchmark: “If, on remand, the district court again awards  
24

---

25 <sup>8</sup> Because the Ninth Circuit did not disturb the Court’s findings with respect to objections based on  
26 the *Vizcaino* factors and/or awarding a percentage of the recovery fund above the benchmark, the  
27 Court addresses prior objections only to the extent necessary in this order.

Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 attorney's fees and uses the percentage-of-recovery method, it should more clearly explain why a  
 2 deviation from the benchmark is or isn't appropriate before proceeding to a lodestar cross-check.”  
 3 *Apple*, 50 F.4th at 784. The Court restates its prior findings with respect to these factors and  
 4 provides additional clarification where warranted.

5 **a. Vizcaino Factors**

6 **i. The Results Achieved Support an Upward Adjustment**

7 The \$310 million Settlement floor, with a maximum Settlement amount of \$500 million, is  
 8 a substantial result. According to Named Plaintiffs' damages calculations, the anticipated  
 9 damages if Named Plaintiffs had fully prevailed on every one of their claims would have  
 10 amounted to between \$18 to \$46 per device. ECF No. 468 at 7. A \$25 per device recovery  
 11 “represents approximately between 54% and 137% recovery” per device. *Id.* Named Plaintiffs  
 12 argued that their efforts and the result achieved support an upward adjustment of 3.3% to the  
 13 benchmark. To support their request for an upward adjustment of the benchmark to 28.3%,  
 14 Named Plaintiffs relied on *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at \*4 (N.D. Cal. July  
 15 11, 2014). In *Larsen*, the court concluded that an award of attorneys' fees equal to 28% of the  
 16 settlement fund was warranted because, among other things, the amount offered in settlement was  
 17 “50% of the recovery plaintiffs' could have received had the case gone to trial.” *Id.* at \*4. Named  
 18 Plaintiffs relied on *Larsen* to support their requested fee award because the results achieved in this  
 19 case, *i.e.*, a cash payment equal to between 54% and 137% of the estimated damages, is  
 20 comparable to the 50% of estimated damages achieved in *Larsen*. ECF No. 468 at 7.

21 In determining whether this factor supported an upward adjustment from the benchmark—  
 22 and if so, to what extent—the Court distinguished *Larsen's* results from this action. The Court  
 23 found that the Settlement in this case, while substantial in amount, does not provide comparable  
 24 comprehensive benefits to the Class as the results achieved in *Larsen*. The settlement in *Larsen*  
 25 included additional forms of relief: class members with proof of purchase received a full  
 26 reimbursement for each product purchased during the class period; each class member without a

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT'YS' FEES, EXPENSES, & SERV.  
 AWARDS

1 proof of purchase was “remunerated up to 10 products with a maximum claim range from \$27.00  
 2 to \$39.90”; and any amounts left in the fund were distributed in the form of products to class  
 3 members at Trader Joe’s retail locations throughout the United States. *Id.* at \*4. The settlement in  
 4 *Larsen* also provided equitable relief. In contrast, benefits to the Class in this case are limited,  
 5 albeit fairly and reasonably, to only claimants able to provide a serial number (or other  
 6 identification) for their devices and to provide the required attestation.

7 Based on the claims information from the Claims Administrator, each claimant is likely to  
 8 receive more than \$25 per device, and therefore is likely to receive more than 54% of the  
 9 estimated damages per device. While this recovery is significant and facially comparable to the  
 10 result in *Larsen*, this increase in recovery may be a result of the response rate; it was not  
 11 guaranteed to the Class.<sup>9</sup> Based on these differences, the Court concluded that the results achieved  
 12 did not support Named Plaintiffs’ initial request for 28.3% of the Settlement Fund. Nonetheless,  
 13 the results achieved are an excellent result for the size of the class given the harm, and thus weigh  
 14 in favor of a slight upward adjustment from the benchmark.

15 **ii. The Risks of Litigation Supports an Upward Adjustment**

16 Next, the Court found that the risk of the litigation was significant in this case. Named  
 17 Plaintiffs’ original complaint was expansive. Apple vigorously challenged the sufficiency of the  
 18 complaints and succeeded in substantially narrowing the scope of case. After repeated challenges  
 19 to the pleadings, only claims for trespass to chattels and claims under the CDADA and CFAA  
 20 survived. If the litigation continued beyond the pleading stage, Named Plaintiffs faced risks  
 21 attendant to prosecuting a case with relatively unique subject matter involving application of  
 22 statutory computer intrusion and common law trespass to chattels to iPhone devices. There was  
 23

---

24 <sup>9</sup> Pursuant to the terms of the Settlement, “if the aggregate value of the valid claims submitted falls  
 25 below \$310 million (which is now very likely), Apple will increase each claimant’s payment on a  
 26 pro rata basis to ensure a minimum settlement amount of \$310 million, after deducting the costs of  
 27 notice and settlement administration and any award of attorneys’ fees, costs, and service awards.”  
 28 Def. Apple Inc.’s Opp’n to Pls.’ Mot. for Att’ys’ Fees, Expenses, and Serv. Awards (“Apple  
 Opp’n”) at 6.

1 also a serious risk that a class would not be certified because the parties dispute whether the iOS  
 2 systems at issue impacted all users, and even if it did, whether users were impacted in the same  
 3 way.<sup>10</sup> Without a settlement, Named Plaintiffs would also have faced risks at the summary  
 4 judgment stage, at trial, and potentially on appeal. *See Bower v. Cycle Gear, Inc.*, 2016 WL  
 5 4439875, at \*7 (N.D. Cal. Aug. 23, 2016) (noting risks of litigation were substantial); *see also*  
 6 *Destefano*, 2016 WL 537946, at \*17 (noting “substantial” risk of “obtaining [and maintaining]  
 7 class certification”). If litigation had continued, the Settlement Class also faced the prospect of  
 8 receiving little to no recovery whatsoever.

9 Apple explained the reasons it was willing to settle. Specifically, Apple stated: “While  
 10 Apple remains confident that it would have prevailed on its defense of all of Plaintiffs’ claims if  
 11 this litigation had continued, Apple agreed to resolve this case to avoid the expenses, uncertainties,  
 12 delays and other risks inherent in continued litigation of the MDL.” ECF No. 555 at 7. Not one of  
 13 Apple’s stated reasons suggests Named Plaintiffs’ risks were likely low if the litigation had  
 14 continued. Based on the foregoing, this factor favors an upward adjustment to the benchmark.

### 15 **iii. Skill and Quality of the Work Supports an Upward** 16 **Adjustment**

17 Class Counsel’s skill and the quality of their work also support a fee award above the  
 18 benchmark. The Settlement Class benefitted from Class Counsel’s significant expertise in the  
 19 prosecution of consumer class action litigation. That the case withstood two motions to dismiss is  
 20 “some testament to [Class] Counsel’s skill.” *In re Nexus 6P Products Liab. Litig.*, 2019 WL  
 21 6622842, at \*12 (N.D. Cal. Nov. 12, 2019) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d  
 22 1036, 1047 (N.D. Cal. 2008)). Further, during the three years the case was pending before  
 23 Settlement, Class Counsel diligently developed the facts, propounded discovery, took depositions,  
 24 and engaged a damages consultant, all of which was of great benefit to the Class. *See Wallace v.*

25 \_\_\_\_\_  
 26 <sup>10</sup> According to Apple, not all devices were used in a way that would have activated the  
 27 performance management feature. Apple also contends that even if the feature was activated, users  
 28 may not have noticed any differences in their device performance.

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 *Countrywide Home Loans, Inc.*, 2015 WL 13284517, at \*9 (C.D. Cal. Apr. 17, 2015) (noting  
 2 factors reflecting counsel’s skill, such as developing the facts and legal claims, conducting  
 3 discovery, reviewing documents, retaining experts, motion practice, and negotiating and drafting  
 4 the settlement). The high quality of Class Counsel’s representation is also reflected in the  
 5 favorable settlement achieved relatively early in the life of the case. The Settlement in this case  
 6 “was not reached lightly.” *Moreyra v. Fresenius Med. Care Holdings, Inc.*, 2013 WL 12248139,  
 7 at \*3 (C.D. Cal. Aug. 7, 2013).

8 Courts also consider “the quality of opposing counsel as a measure of the skill required to  
 9 litigate the case successfully.” *In re American Apparel, Inc. S’holder Litig.*, 2014 WL 10212865,  
 10 at \*22 (C.D. Cal. 2014); *see also Wing v. Asarco*, 114 F.3d 986, 989 (9th Cir. 1997) (noting the  
 11 district court’s evaluation of class counsel’s “first-rate job”). Here, Class Counsel faced a  
 12 company with significant financial and legal resources. Apple was represented in this case by two  
 13 national, highly respected law firms, Gibson, Dunn & Crutcher LLP and Covington and Burling  
 14 LLP, which weighs in favor of a fee award. *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*20  
 15 (C.D. Cal. June 10, 2005) (noting that quality of opposing counsel is important in evaluating the  
 16 quality of plaintiff’s counsel’s work, and stating “[t]here is also no dispute that the plaintiffs in this  
 17 litigation were opposed by highly skilled and respected counsel with well-deserved local and  
 18 nationwide reputations for vigorous advocacy in the defense of their clients.”).

19 **iv. The Contingent Nature of the Representation Supports**  
 20 **an Upward Adjustment**

21 The contingent nature of representation in this case—in combination with the  
 22 aforementioned factors—supports an award of attorneys’ fees above the benchmark. Class  
 23 Counsel took the matter on a contingency basis and advanced all necessary professional time and  
 24 expenses for approximately three years. ECF No. 468 at 9. “When counsel takes cases on a  
 25 contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation  
 26 justifies a significant fee award.” *Bellinghausen*, 306 F.R.D. at 261 (applying 25% benchmark).

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



1 “It is an established practice in the private legal market to reward attorneys for taking the risk of  
 2 non-payment by paying them a premium over their normal hourly rates for winning contingency  
 3 cases.” *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

4 Courts differ on the adjustment to the benchmark that is warranted, if any, based on the  
 5 contingent nature of representation. *See, e.g., Luna v. Universal City Studios, LLC*, 2016 WL  
 6 10646310, at \*7 (C.D. Cal. Sept. 13, 2016) (awarding attorneys’ fees in the amount of 29.6% of  
 7 \$1.8 million settlement in light of the results achieved, the risk of litigation, the contingent nature  
 8 of the fee, and the financial burden carried by class counsel); *Nexus 6P*, 2019 WL 6622842, at \*13  
 9 (approving award of attorneys’ fees in the amount of 30% of \$9,750,000 common fund);  
 10 *Omnivision Techs.*, 559 F. Supp. 2d at 1047 (awarding attorneys’ fees in the amount of 28% of  
 11 \$13.75 million settlement); *Ching v. Siemens Indus. Inc.*, 2014 WL 2926210, at \*8 (N.D. Cal. June  
 12 27, 2014) (awarding attorneys’ fees in the amount of 30% of \$425,000 settlement). Here, Named  
 13 Plaintiffs’ request for attorneys’ fees equal to 28.3% of the \$310,000,000 non-reversionary portion  
 14 of the Settlement is within the range of the cases cited above. Nevertheless, the Court finds that,  
 15 while a slight upward adjustment is appropriate in light of the *Vizcaino* factors, an upward  
 16 adjustment of the benchmark to 28.3% is not warranted.

17 **v. Awards in Similar Cases Weigh Neutral**

18 That this case resolved with a “megafund” settlement is an important factor in assessing  
 19 the reasonableness of attorneys’ fees. Named Plaintiffs assert that an extraordinarily large  
 20 settlement warrants an award of attorneys’ fees above the 25% benchmark, citing numerous cases  
 21 awarding between 27% to 36% of settlements ranging from \$105 million to \$1.075 billion. ECF  
 22 No. 468 at 11–12. Although the cases cited by Named Plaintiffs provide some guidance, the cases  
 23 cited are arguably “outlier megafund settlements” and most are from outside this Circuit.

24 The Court found that the better approach is to look to empirical research on megafund  
 25 cases. *In Alexander v. FedEx Ground Package Sys.*, Judge Chen took this approach. 2016 WL  
 26 3351017, at \*2 (N.D. Cal. June 15, 2016). Judge Chen began by observing that fee awards in

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



1 megafund cases present difficult questions because application of a benchmark or standard  
 2 percentage may result in a fee that is unreasonably large relative to the benefits conferred. *Id.* at  
 3 \*1. This is because in many cases, the size of the settlement is merely a factor of the size of the  
 4 class and has no direct relationship to the efforts of counsel. *Id.* (quoting *In re Prudential Ins. Co.*  
 5 *Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998). Next, Judge Chen  
 6 found that “[a]lthough a percentage award in a megafund case can be 25% or even as high as 30-  
 7 40%, typically the percentage award in such a case is substantially less than the 25% benchmark  
 8 applicable to typical class settlements in this Circuit.” *Id.* Judge Chen also cited to Judge Koh’s  
 9 finding that there is “persuasive evidence that the median attorney’s fee award in a sample of 68  
 10 ‘megafund’ class action settlements over a 16-year period was 10.2%.” *Id.* (quoting *In re High-*  
 11 *Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at \*13 (N.D. Cal. Sept. 2, 2015)). Judge Koh  
 12 relied on an Eisenberg & Miller study spanning sixteen (16) years of 68 “megafund” cases that  
 13 found the median attorneys’ fees award in megafund cases was 10.2% of the fund and the mean  
 14 was 12%. *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at \*13. Notably, Judge Koh  
 15 relied on the Eisenberg & Miller study over another study, the Fitzpatrick study, because the  
 16 Fitzpatrick study spanned only two years (2006–2007) and eight class actions. *Id.* at \*13 (citing  
 17 Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees and Expenses in Class Action  
 18 Settlements: 1993–2008, 7 J. EMPIRICAL LEGAL STUD. 248 (2010); Brian T. Fitzpatrick, An  
 19 Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. EMPIRICAL L. STUD.  
 20 811 (2010) (finding a median percentage of 19.5% and a mean percentage of 17.8% for  
 21 settlements ranging between \$250 million and \$500 million.)). In *Alexander*, Judge Chen  
 22 ultimately applied a multiplier of 3 to the lodestar to arrive at an attorneys’ fees award  
 23 representing 16.4% of the \$226,500,000 common fund. *Alexander*, 2016 WL 3351017, at \*3.

24 In light of case law supporting both upward and downward departures from the 25%  
 25 benchmark, the Court finds that this factor neither weighs for nor against Named Plaintiffs.

26  
 27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 **vi. The Vizcaino Factors Weigh in Favor of an Upward**  
 2 **Adjustment**

3 In sum, four of the five *Vizcaino* factors support an upward adjustment from the 25%  
 4 benchmark. In weighing the *Vizcaino* factors, however, the Court found that they did *not* support  
 5 an upward adjustment to 28.3% as the Named Plaintiff's had initially requested.

6 Class Counsel obtained a significant benefit for the Class, whether measured by the total  
 7 recovery of \$310 million or by reference to the estimated damages Named Plaintiffs could have  
 8 recovered if they had fully prevailed on every one of their claims at trial. Moreover, a Settlement  
 9 of \$310 million for computer intrusion and trespass to chattels claims was exceptional at the time  
 10 of Settlement. Class Counsel provided diligent and highly skilled representation of the Class,  
 11 litigating two rounds of motions to dismiss and many discovery disputes against equally diligent  
 12 and highly skilled defense counsel. While Class Counsel bore the risk and expense throughout the  
 13 case and at the end achieved a substantial result for their clients, in the final analysis, the Court  
 14 found that no single factor or combination of factors supports the requested 28.3%. The requested  
 15 28.3% exceeds the mean and median percentages reported in both the Eisenberg & Miller study  
 16 and the Fitzpatrick study.

17 Accordingly, the Court finds that a modest 1% upward departure from the benchmark, or  
 18 26% of the Settlement Fund, is more appropriate. *See Bluetooth*, 654 F.3d at 942 (“where  
 19 awarding 25% of a ‘megafund’ would yield windfall profits for class counsel in light of the hours  
 20 spent on the case, courts should adjust the benchmark percentage.”).

21 **2. Lodestar Cross-Check**

22 “As a final check on the reasonableness of requested attorneys’ fees, courts often compare  
 23 the amount counsel would receive under the percentage-of-recovery method with the amount  
 24 counsel would have received under the lodestar method.” *In re Nexus 6P Prods. Liab. Litig.*, 2019  
 25 WL 6622842, at \*13; *see also Vizcaino*, 290 F.3d at 1050 (“Calculation of the lodestar, which  
 26 measures the lawyers’ investment of time in the litigation, provides a check on the reasonableness  
 27 of the percentage award.”). The aim is to “do rough justice, not to achieve auditing perfection.”

28 Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 *Id.*; see also *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at \*6 (N.D. Cal. Sept. 21, 2018)  
 2 (the cross-check does not require “mathematical precision nor bean-counting”) (citation omitted).

3 Class Counsel provided an extensive declaration as to their work and expenses, their  
 4 billing process, and more. Declaration of Mark J. Dearman (“Dearman Decl.”), ECF No. 469. In  
 5 response to a variety of objections, Class Counsel submitted a supplemental declaration from Mr.  
 6 Dearman. Suppl. Decl. of Mark J. Dearman, ECF No. 553. Originally, Class Counsel calculated  
 7 their lodestar (combined with JCCP Counsel) to be \$36,408,575.05. ECF No. 468 at 15  
 8 (combining Class Counsel’s lodestar of \$32,415,420.50, (Dearman Decl. ¶ 10), with JCCP  
 9 Counsel’s lodestar of \$3,993,154.55, (Decl. of Andrew J. Brown and Thomas J. Brandi in Supp. of  
 10 Mot. for Settlement (“Decl. of JCCP Counsel”) ¶ 42, ECF No. 471-2). Mr. Dearman’s  
 11 supplemental declaration includes “summaries, by law firm, that reflect each timekeeper’s title,  
 12 billing rate, and total lodestar broken down by Court approved activity code,” as well as  
 13 summaries “reflecting the total hours and total lodestar for all MDL Counsel broken down by  
 14 Court-approved activity code.” Suppl. Decl. of Mark J. Dearman ¶¶ 3–4. Mr. Dearman represents  
 15 that only two timekeepers were contract attorneys and not firm employees, and their total lodestar  
 16 is \$179,745.00. *Id.* ¶ 4. After excluding all contract attorney time and capping all document  
 17 review at \$350/hour regardless of the individual attorney’s billing rate, Mr. Dearman arrived at a  
 18 total revised lodestar of \$36,103,148.05.<sup>11</sup> *Id.* ¶ 5 and Decl. of JCCP Counsel at ¶ 42. This  
 19 revised lodestar takes into consideration the various objections that were previously submitted to  
 20 the Court.

21 The Court reviewed the underlying records and is satisfied that the revised lodestar is  
 22 supported. Class Counsel applied their customary professional rates. Joint Decl. of Joseph W.  
 23 Cotchett and Laurence D. King In Support of Motion ¶ 66, ECF No. 471. Those rates are

24  
 25 \_\_\_\_\_  
 26 <sup>11</sup> At the time of drafting the order, time spent between July 31, 2020 and the present, including  
 27 time spent working on the settlement approval process, class notice, claims submissions, and  
 28 responding to class inquiries, has not been included. *Id.* ¶ 5

1 consistent with rates that have been awarded in this District. *See, e.g., Dickey v. Advanced Micro*  
 2 *Devices, Inc.*, 2020 WL 870928, at \*8 (N.D. Cal. Feb. 21, 2020) (finding rates between \$275 and  
 3 \$1,000 for attorneys reasonable); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at \*2 (N.D.  
 4 Cal. Sept. 20, 2018) (finding rates between \$300 and \$1,050 for attorneys reasonable). Further,  
 5 the Court finds that the 68,731 hours expended by Class Counsel (Joint Decl. ¶ 65) was reasonable  
 6 and necessary, taking into consideration the amount of substantive litigation activity.

7 Further, the Court acknowledges that Class Counsel in this case are among the very best in  
 8 their practice area. They are highly regarded in the Northern District and have earned and enjoy a  
 9 reputation for zealously representing their clients in difficult and complex cases. The leadership  
 10 team exceeded the efficiencies in costs, efficiencies in communications, and efficiencies in the  
 11 litigation that the Court expected. Class Counsel’s strategic and efficient lawyering in the instant  
 12 action encouraged a just and efficient determination of this litigation. The results achieved in this  
 13 case are laudable.

14 Class Counsel’s initial fee request of \$87,730,000 represented a multiplier of 2.43 based on  
 15 a lodestar of \$36,103,148.05. Alternatively, \$80,600,000 in attorneys’ fees (26%-of-the-fund)  
 16 with the adjusted lodestar of \$36,103,148.05 yields a lodestar multiplier of 2.232. “Multipliers of  
 17 1 to 4 are commonly found to be appropriate in common fund cases.” *Aboudi v. T-Mobile USA,*  
 18 *Inc.*, 2015 WL 4923602, at \*7 (S.D. Cal. Aug. 18, 2015) (citing *Vizcaino*, 290 F.3d at 1051 n.6).

19 **a. Inclusion of JCCP Work in the Lodestar Calculation**

20 Class Counsel included 9,679 hours of JCCP time in the lodestar presented in its original  
 21 fee motion. On appeal, the Ninth Circuit noted that “the district court’s explanation for  
 22 considering JCCP-related work conflicted with the court’s overall rationale for its fee award.”  
 23 *Apple*, 50 F.4th at 783–84. The Court had previously found that a “2.43 multiplier is high” when  
 24 analyzing Class Counsel’s original unadjusted fee request of \$87,730,000, but if the JCCP time is  
 25 excluded, the lodestar multiplier increases to 2.51. *Id.* at 785. The Court found that an award  
 26 exceeding a 2.232 multiplier would result in “windfall profits for class counsel in light of the

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 hours spent on the case.” *Bluetooth*, 654 F.3d at 942. The order subsequently stated that “JCCP  
2 Counsel’s hours does not have any bearing on the Court’s percentage-of-the-fund calculation,”  
3 noting that “[e]ven if JCCP Counsel’s roughly \$4 million in attorneys’ fees are excluded from the  
4 lodestar, the lodestar would decrease to \$32,103,148.05 and this adjusted lodestar would have an  
5 insignificant impact on the multiplier.” In light of these conflicting findings, the Ninth Circuit  
6 noted that the Court should reconsider whether the JCCP time should be included in the lodestar  
7 without “express[ing] [] [an] opinion as to whether the inclusion of JCCP-related work was  
8 reasonable.” *Apple*, 50 F.4th at 783.

9 The Court finds ample evidence in the record that JCCP Counsel contributed to this action  
10 to the benefit of the class such that their time is properly included in the lodestar. Class Counsel  
11 has repeatedly emphasized JCCP Counsel’s significant assistance with document review and  
12 deposition examination of Apple witnesses to maximize efficiency. *See, e.g.*, Renewed Mot. for  
13 Fees & Costs at 8; Pls. Reply in Support of Renewed Mot. for Fees & Costs (“Reply”) at 4–5,  
14 ECF No. 642 (“JCCP counsel assisted in, among other ways, the coordinated review of documents  
15 and in the preparation and taking of joint depositions, as well as in pursuing potential additional  
16 claims that were included in the Stipulation . . . .”); 1/11/23 Hr’g Tr. 47:7–20. At least one other  
17 court in this district included JCCP time in calculating the lodestar under similar facts where JCCP  
18 counsel “filed a consolidated complaint [asserting overlapping causes of action], opposed a motion  
19 to stay, opposed a demurrer, and filed a motion for class certification. . . . [and] coordinated  
20 discovery across the JCCP Case and MDL Case, including through shared depositions and  
21 document production.” *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-  
22 LHK, 2020 WL 4212811, at \*28 (N.D. Cal. July 22, 2020) (finding that Class Counsel in the  
23 JCCP Case benefitted from the work of Class Counsel in the MDL Case), *aff’d*, No. 20-16633,  
24 2022 WL 2304236 (9th Cir. June 27, 2022). Similarly, during the course of this litigation, JCCP  
25 Counsel reportedly:

26 (i) conducted a wide-ranging investigation into the JCCP Action  
27 Class’s claims; (ii) filed three comprehensive complaints; (iii)  
28 Case No.: [5:18-md-02827-EJD](#)  
ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS

1 successfully opposed Defendant's demurrers as to certain theories of  
 2 liability, as well as three separate motions to stay the proceedings (iv)  
 3 engaged in a comprehensive discovery program, including 10  
 4 depositions and reviewing more than 7 million pages of documents;  
 5 and (v) coordinating with counsel for all parties among the JCCP  
 6 Action and this MDL action.

7 Decl. of JCCP Counsel ¶ 8.

8 Class Counsel further contends "resolution of the JCCP action was a material term in the  
 9 global settlement." Renewed Mot. for Fees & Costs at 9; *see also* Reply at 4–5. "[T]he  
 10 Stipulation was designed to be a global resolution of the MDL Action and the JCCP action. The  
 11 consideration to be paid as a result of the Settlement . . . was designed to include resolution of  
 12 theories and claims that were still pending in the JCCP action." Reply at 4. At the hearing, Class  
 13 Counsel explained that during the rounds of motions to dismiss, this Court dismissed multiple  
 14 claims with leave to amend which were ultimately not included in the SCAC, but the same claims  
 15 were alive in the state case at the time of Settlement. 1/11/23 Hr'g Tr. 46:9–17. Class Counsel  
 16 asserts that JCCP Counsel's joint prosecution of the state action thus directly benefitted class  
 17 members because the global settlement was intended to "resolve[] everything," including claims  
 18 brought in state court. 1/11/23 Hr'g Tr. 46:18–47:3.

19 The Court therefore agrees with Class Counsel that JCCP Counsel directly benefitted the  
 20 Class and inclusion of JCCP Counsel's hours in the lodestar is appropriate.

21 **b. The Lodestar Cross-Check Supports 26%-of-the-Fund**

22 For the foregoing reasons, the Court finds that the totality of the factors supports approval  
 23 of a lodestar multiplier of 2.232.

24 **B. Costs Award**

25 Class counsel is entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R.  
 26 Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may  
 27 recover reasonable expenses that would typically be billed to paying clients in non-contingency  
 28 matters). Costs compensable under Rule 23(h) include "nontaxable costs that are authorized by  
 law or by the parties' agreement." Fed. R. Civ. P. 23(h). In this case, Class Counsel has

Case No.: [5:18-md-02827-EJD](#)

ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT'YS' FEES, EXPENSES, & SERV.  
 AWARDS



1 substantiated \$995,244.93 in unreimbursed litigation expenses, including costs advanced in  
 2 connection with consultants, legal research, court reporting services, travel for depositions,  
 3 copying and mailing, and other customary litigation expenses.” ECF No. 468 at 16 (citing  
 4 Dearman Decl. ¶ 11, Exs. 41-42, and Decl. of JCCP Counsel, Ex. C).

5 The Court finds Class Counsel’s declarations (*see* ECF No. 469) adequately support their  
 6 requests and “that the expenses are typical for this type of class litigation, including for experts,  
 7 mediations, legal research, court reporting services, travel, and copying.” *See In re Lending Club*  
 8 *Sec. Litig.*, 2018 WL 4586669, at \*3 (N.D. Cal. Sept. 24, 2018). The Court therefore finds the  
 9 requested expenses reasonable, fair, and adequate.

### 10 C. Service Awards

11 Service awards are “intended to compensate class representatives for work undertaken on  
 12 behalf of a class” and “are fairly typical in class action cases.” *DVD-Rental*, 779 F.3d 934, 943  
 13 (9th Cir. 2015) (internal quotation marks and citation omitted). The district court must evaluate  
 14 the Named Plaintiff’s requested award using relevant factors including “the actions the plaintiff  
 15 has taken to protect the interests of the class, the degree to which the class has benefitted from  
 16 those actions . . . [and] the amount of time and effort the plaintiff expended in pursuing the  
 17 litigation.” *Staton*, 327 F.3d at 977; *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958–59 (9th  
 18 Cir. 2009) (“Such awards are discretionary . . . and are intended to compensate class  
 19 representatives for work done on behalf of the class, to make up for financial or reputational risk  
 20 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private  
 21 attorney general.”). Service awards of \$5,000 are “presumptively reasonable” in this district.  
 22 *Bellinghausen*, 306 F.R.D. at 266. District courts must “scrutiniz[e] all incentive awards to  
 23 determine whether they destroy the adequacy of the class representatives.” *Radcliffe v. Experian*  
 24 *Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013).

25 Here, Named Plaintiffs request service awards of \$1,500 for those who were not deposed  
 26 and \$3,500 for the nine Named Plaintiffs who were deposed. “Named Plaintiffs were willing to

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS



1 step forward to represent and protect the interests of the Settlement Class by actively monitoring  
 2 the status of the litigation, communicating regularly with Class Counsel, searching for and  
 3 producing responsive documents, responding to interrogatories, and reviewing significant  
 4 pleadings prior to their filing.” ECF No. 468 at 20. The Court finds that the requested service  
 5 awards are reasonable in light of Named Plaintiffs’ efforts in this case. The requested service  
 6 awards are also below the presumptively reasonable amount of \$5,000 and are consistent with  
 7 precedent. *See Allagas v. BP Solar Int’l*, 2016 WL 9114162, at \*4 (N.D. Cal. Dec. 22, 2016)  
 8 (awarding \$7,500 to named plaintiffs who were deposed and \$3,500 to one named plaintiff who  
 9 was not deposed). The Court finds that the requested service awards are appropriate in this case.

10 **D. Objections to Attorneys’ Fees and Costs Are Overruled**

11 Objector Anna St. John and the Feldman Objectors oppose the renewed motion for  
 12 attorneys’ fees, costs, and service awards.

13 *First*, both Objector St. John and the Feldman Objectors oppose the requested fees, arguing  
 14 that an upward adjustment in the Ninth Circuit Benchmark is unsupported by the results achieved  
 15 and awards in similar cases. Feldman Objectors’ Joint Opp’n to Pls.’ and Def.’s Renewed Mot.  
 16 for Att’ys’ Fees, Expenses, and Serv. Awards (“Feldman Obj. to Fee Request”) at 2–4, ECF No.  
 17 ECF No. 638; Obj. of Anna St. John to Pls.’ Renewed Mot. for Att’ys’ Fees, Expenses, and Serv.  
 18 Awards (“St. John Obj.”) at 5, ECF No. 639. The Feldman Objectors assert that the *Vizcaino*  
 19 factors and case law supports a significant downward adjustment. Feldman Obj. to Fee Request at  
 20 4. Likewise, St. John argues that the *Vizcaino* factors support a downward—not upward—  
 21 departure from the benchmark (below 17.7%) because this is a “megafund” and the 25%  
 22 benchmark would result in a windfall to Class Counsel. St. John Obj. at 5. Instead, she argues a  
 23 downward adjustment is appropriate because (1) Class Counsel failed to maximize total recovery  
 24 that defendant was willing to pay and (2) the size of the settlement fund is a function of the class  
 25 size (the number of eligible devices). *Id.* at 6. This objection largely reiterates St. John’s previous  
 26 objection (*see* ECF No. 523), which the Court rejected. The Ninth Circuit directed the Court to

27 Case No.: [5:18-md-02827-EJD](#)

28 ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
 AWARDS

1 “more clearly explain” its analysis regarding the *Vizcaino* factors, which the Court has done.  
 2 *Apple*, 50 F.4th at 784 n.11. As discussed in Section III.A.1., the Court finds that the *Vizcaino*  
 3 factors support a modest 1% upward adjustment.

4 *Second*, Objector St. John opposes the 26% fee request as unsupported by the lodestar  
 5 cross-check. St. John Obj. at 7. She argues that the (1) JCCP Counsel work should be excluded  
 6 and (2) Plaintiff failed to “submit any meaningful breakdown of the aggregated lodestar  
 7 information to class members.” *Id.* at 8. She argues that a lodestar multiplier of 1.64 is  
 8 appropriate. *Id.* at 9. The Court finds, however, that JCCP time was properly considered,  
 9 supported by the record, and included in the lodestar. *See supra* Section III.A.2.a. A 2.232  
 10 lodestar multiplier is appropriate and within the “1 to 4” range “commonly found to be appropriate  
 11 in common fund cases.” *Aboudi*, 2015 WL 4923602, at \*7 (S.D. Cal. Aug. 18, 2015) (citing  
 12 *Vizcaino*, 290 F.3d at 1051 n.6). Class Counsel and JCCP Counsel submitted sufficient records of  
 13 their billing and lodestar calculations. *See* Decl. of JCCP Counsel; Dearman Decl.

14 Similarly, the Feldman Objectors assert that JCCP Counsel’s work is largely duplicative of  
 15 class counsel and should not be included in the lodestar. *Id.* at 5–9, 11–12. As the Court  
 16 previously discussed, JCCP Counsel’s time was beneficial to the class and is supported by the  
 17 record. At the hearing, the Feldman Objectors explored the potential of duplicative efforts to no  
 18 avail, and the Court found that this speculation is unsupported by the record. 1/11/23 Hr’g Tr.  
 19 45:4–46:3; 50:18–52:9.

20 *Third*, the Feldman Objectors oppose the inclusion of paralegal charges, totaling  
 21 \$2,846,443, and international liaison fees in the lodestar.<sup>12</sup> Feldman Obj. to Fee Request at 11.  
 22 As to the inclusion of paralegal fees, the Feldman Objectors previously raised this argument (*see*  
 23 ECF No. 512). They failed to present evidence that the paralegal hours may not be included in the  
 24 lodestar, and the Court once again declines to exclude them. The Feldman Objectors also contend  
 25

26 <sup>12</sup> This argument was raised on appeal and the Ninth Circuit did not address international liaison  
 27 fees in its opinion.

1 that international liaison counsel fees are undocumented and unsupported and thus should be  
2 removed from the lodestar. *Id.* at 10. This argument was raised on appeal. To be clear,  
3 international liaison counsel did, in fact, submit declarations in support of their expenses. *See*  
4 ECF Nos. 469-24, 469-27. Class Counsel also addressed the inclusion of international liaison fees  
5 at the hearing. 1/11/23 Hr’g Tr. 74:11–75:4.

6 *Finally*, the Feldman Objectors argue that non-class members should not receive service  
7 awards as Named Plaintiffs. Feldman Obj. to Fee Request at 16. Service awards to non-class  
8 members are permitted. *See Chambers v. Whirlpool Corp.*, 980 F.3d 645, 670 (9th Cir. 2020)  
9 (allowing service award payments to non-class members).

10 For these reasons, the Court **OVERRULES** the aforementioned objections.

11 **IV. CONCLUSION**

12 Based upon the foregoing, the Renewed Motion for Final Approval of Class Action  
13 Settlement is **GRANTED**. The Renewed Motion for Attorneys’ Fees, Expenses, and Service  
14 Awards is also **GRANTED**, as follows:

- 15 • Class Counsel is awarded \$995,244.93 in costs;
- 16 • Each Named Plaintiff who was not deposed is granted a \$1,500 service award and each  
17 Named Plaintiff who was deposed is granted a \$3,500 service award: and,
- 18 • Class Counsel is awarded \$80,600,000 million as attorneys’ fees.

19 Without affecting the finality of this order in any way, the Court retains jurisdiction of all  
20 matters relating to the interpretation, administration, implementation, effectuation and  
21 enforcement of this order and the Settlement, including the designation of a *cy pres* recipient  
22 should the need arise.

23 The parties shall file a post-distribution accounting in accordance with this District’s  
24 Procedural Guidance for Class Action Settlements.

25  
26  
27 Case No.: [5:18-md-02827-EJD](#)  
28 **ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT’YS’ FEES, EXPENSES, & SERV.  
AWARDS**

United States District Court  
Northern District of California

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

**IT IS SO ORDERED.**

Dated: February 17, 2023



EDWARD J. DAVILA  
United States District Judge

Case No.: [5:18-md-02827-EJD](#)  
ORDER GRANTING RENEWED MOT. FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT; GRANTING RENEWED MOT. FOR ATT'YS' FEES, EXPENSES, & SERV.  
AWARDS