

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Smith v. Apple, Inc.

No. 21-cv-09527-HSG (N.D. Cal. May 1, 2025) · No. 21-cv-09527-HSG · Decided May 1, 2025

OPINION

Smith v. Apple, Inc.

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 6 CHRIS SMITH, et al., Case No. 21-cv-09527-HSG 7 Plaintiffs, ORDER GRANTING
MOTION FOR

FINAL APPROVAL AND MOTION

8 v. FOR ATTORNEYS' FEES

9 APPLE, INC., Re: Dkt. Nos. 168, 169 10 Defendant. 11 12 Before the Court are Plaintiffs'
unopposed motions for final approval of class action 13 settlement and for attorneys' fees, costs,
and incentive awards. Dkt. Nos. 168, 169. The Court 14 held a final fairness hearing on April 10,
2025, and now GRANTS both motions.

15 I. BACKGROUND

16 A. Factual Allegations and Procedural Background 17 This is a putative class action brought on
behalf of purchasers of Apple Watches 18 ("Plaintiffs"). See Dkt. No. 136 ("TAC") ¶ 1. Plaintiffs
allege that First Generation, Series 1 19 through Series 6, and Series SE Apple Watches contain
"an undisclosed and unreasonably 20 dangerous safety hazard." Id. ¶ 2. More specifically,
Plaintiffs allege that sudden swelling of the 21 watch batteries can cause the screen to detach,
shatter, or crack, "exposing its razor-sharp edges 22 and leading to operational failure of the
Watch and/or personal injuries" Id. Plaintiffs 23 contend that Apple ("Defendant") failed to
allocate sufficient space within the watch to prevent 24 the screen issue, "[d]espite knowing that
the battery inside the Watch can suddenly swell." Id. 25 Plaintiffs further allege that the watches
have injured Plaintiffs and putative class members, 26 creating a "substantial and material risk of
serious injury, including lacerations, cuts, abrasions, 27 and other injuries." Id. ¶¶ 5–6. 1 Plaintiffs
filed their initial complaint in December 2021, Dkt. No. 1, and an amended 2 complaint in March
2022. Dkt. No. 31. Defendant then filed a motion to dismiss the amended 3 complaint, which this
Court granted in part and denied in part. Dkt. No. 80. Plaintiffs filed a 4 second amended
complaint in March 2023, and Defendant again moved to dismiss. See Dkt. Nos. 5 84, 100. The
Court granted Plaintiffs' request to file a Third Amended Complaint and mooted the 6 second

motion to dismiss. Dkt. No. 134. 7 The operative complaint asserts the following causes of action against Defendant: 8 violations of the California Unlawful Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. 9 (“UCL”); violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq. 10 (“CLRA”); fraud by omission under various state laws; violations of the Song-Beverly 11 Consumer Warranty Act, Cal. Civ. Code § 1790 et seq.; and violations of consumer protection and 12 unfair competition laws in New York, Texas, and Florida. See FAC ¶¶ 295–396. 13 In November 2023, the parties participated in a full-day mediation with mediator Randy 14 Wulff. See Dkt. No. 155-2 ¶ 8. The parties ultimately entered into a settlement agreement. See 15 Dkt. No. 155-1. In August 2024, Plaintiffs filed their motion for preliminary approval. Dkt. No. 16 155. The Court held a hearing on the motion and took it under submission in October 2024. Dkt.

17 No. 159. The Court subsequently directed the parties to submit additional evidence including: 1) a

18 sufficiently detailed estimate of the potential class recovery at trial; and 2) the actual terms of the 19 opt-out provision that triggers Defendant’s ability to reject the settlement agreement. See Dkt. 20 at 1–2. The parties submitted timely responses. See Dkt. Nos. 161, 162. The Court then granted 21 the motion for preliminary approval on October 25, 2024. Dkt. No. 164. 22 Plaintiffs now seek final approval of the class action settlement, and Class Counsel seeks 23 attorneys’ fees, costs, and incentive awards for the named Plaintiffs. See Dkt. Nos. 168, 169. The 24 Court held a final fairness hearing on April 10, 2025. See Dkt. No. 172. At the hearing, the Court 25 directed Class Counsel to file declarations in support of the requested service awards summarizing 26 the hours that the Lead Plaintiff and other named Plaintiffs spent on the case and the tasks they 27 completed. See *id.* Counsel timely filed the declarations, but they did not include any accounting 1 of Plaintiffs’ hours. See Dkt. Nos. 173, 174. At the Court’s direction, see Dkt. No. 175, counsel 2 provided this information in two additional declarations. See Dkt. Nos. 176, 177. 3 B. Settlement Agreement 4 The key terms of the Settlement Agreement are as follows: 5 Class Definition: The Settlement Class is defined as “[a]ll natural persons who reside in 6 the United States, who own or owned any model First Generation, Series 1, Series 2 or Series 3 7 Apple Watch (i.e. “Covered Devices”) for personal and/or household use, and who are reflected in 8 Apple’s records as having reported Covered Issues in the United States,” between April 24, 2015, 9 and February 6, 2024. Dkt. No. 169-1 (“Settlement Agreement,” or “SA”) at 1 ¶ 24. “Covered 10 Issue(s)” are defined as “issues reported to Apple regarding the Covered Watches reflected in 11 Apple’s records as having reported symptoms potentially associated with battery swell.” *Id.* 12 Settlement Benefits: Defendant will make a \$20,000,000 non-reversionary payment. SA 13 at 1 ¶ 27. This gross settlement fund will cover Court-approved attorneys’ fees and costs, 14 settlement administration fees, incentive payments to the Lead Plaintiff and the other named 15 Plaintiffs, and payments to class members. *Id.* at § B.2. Class members who make a payment 16 selection by the response deadline, or whose valid, current payment information is confirmed by

17 the Settlement Administrator, will receive either \$20 for each Covered Device or, if necessary, a 18 pro rata portion of the settlement fund less than \$20. Id. at § B.4. If there is more than \$50,000 19 remaining in the settlement fund after all costs have been allocated, class members may receive up to \$50 per Covered Device. See id. The parties propose that any remaining funds would go to the 21 Rose Foundation's Consumer Products Fund as the cy pres recipient. SA § B.9.1 22 Release: The Named Plaintiffs and the Settlement Class release and discharge Defendant 23 24 1 Where a class action settlement contains a cy pres award provision, the "cy pres award must be guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent Class 25 Members, and must not benefit a group too remote from the plaintiff class." Dennis v. Kellogg Co., 697 F.3d 858, 865 (9th Cir. 2012) (internal quotations omitted). The proposed cy pres 26 recipient here shares the interests of the settlement Class Members in promoting truth in advertising and preventing consumer fraud in the context of required warnings and disclosures. 27 See Dkt. No. 169 at 14. Accordingly, the Court finds that identifying the Rose Foundation's 1 and its subsidiaries from: 2 "any and all damages, suits, claims, debts, demands, assessments, obligations, liabilities, attorneys' fees, costs, expenses, rights of action and causes of action, of any kind or 3 character whatsoever, whether based on contract (express, implied, or otherwise), statute, 4 or any other theory of recovery, and whether for compensatory or punitive damages, and whether known or unknown, suspected or unsuspected, occurring before the Effective Date 5 of the Settlement (the "Released Matters") arising out of or related to the claims made in this Lawsuit. This release will include claims relating to the Released Matters of which the 6 Releasing Parties are presently unaware or which the Releasing Parties do not presently suspect to exist which, if known to the Releasing Parties, would materially affect the 7 Releasing Parties' release of the Apple Released Parties." 8 SA § H.1. Notice to class members will include the following language: 9 "Unless you exclude yourself with an opt-out request (see Question ____), you cannot sue, 10 continue to sue, or be part of any other lawsuit against Apple arising out of or related to the claims in this case. The "Releases" section in the Settlement Agreement describes the legal 11 claims that you give up if you remain a Settlement Class Member. The Settlement 12 Agreement can be viewed at www.watchsettlement.com." 13 SA, Ex. C, at 33. 14 Incentive Award: Class counsel may apply for an incentive award for the lead Named 15 Plaintiff of no more than \$5,000, and for awards for the ten remaining Named Plaintiffs of up to 16 \$2,000 each. SA § G.1. 17 Attorneys' Fees and Costs: The Settlement Agreement does not provide for an agreed- 18 upon amount of attorney's fees and costs. SA § G.2. Plaintiffs' motion for preliminary approval 19 stated that Plaintiffs' counsel would request up to \$5,000,000 in attorneys' fees. Dkt. No. 155 at 20 14.2 21 Opt-Out Procedure: Class members must object to the Settlement Agreement or opt out 22 (via regular mail or the settlement website) within 60 days after the date that the mailing date of 23 the email and postcard notice. SA § G.2; 1 ¶ 24. In addition, Defendant may reject the settlement 24 if "the number of Settlement Class members who elect to exclude themselves from the Settlement 25 Class exceeds the threshold agreed to by the Parties and

confidentially submitted to the Court in 26 27 1 camera.” Id. § E.6.

2 II. FINAL SETTLEMENT APPROVAL

3 A. Class Certification 4 Final approval of a class action settlement requires, as a threshold matter, an assessment of 5 whether the class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b). 6 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019–1022 (9th Cir. 1998). Because no facts that 7 would affect these requirements have changed since the Court preliminarily certified the class on

8 October 25, 2024, this order incorporates by reference the Court’s prior analysis under Rules 23(a)

9 and (b) as set forth in the order granting preliminary approval. See Dkt. No. 163 at 4–6. 10 B. The Settlement 11 “The claims, issues, or defenses of a certified class . . . may be settled . . . only with the 12 court’s approval.” Fed. R. Civ. P. 23(e). The Court may finally approve a class settlement “only 13 after a hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 14 23(e)(2). Where the parties reach a class action settlement prior to class certification, the Ninth 15 Circuit has cautioned that such settlement agreements “must withstand an even higher level of 16 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under

17 Rule 23(e) before securing the court’s approval as fair.” *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 18 F.3d 1035, 1049 (9th Cir. 2019) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 19 935, 946 (9th Cir. 2011)). “This more exacting review is warranted to ensure that class 20 representatives and their counsel do not secure a disproportionate benefit at the expense of the 21 unnamed plaintiffs who class counsel had a duty to represent.” Id. (internal quotations marks and 22 citations omitted). 23 The Ninth Circuit has identified several “subtle signs” the Court should consider in 24 determining whether “class counsel have allowed pursuit of their own self-interests . . . to infect 25 the negotiations.” *Roes*, 944 F.3d at 1043 (citations omitted). These include: “(1) when counsel 26 receive[s] a disproportionate distribution of the settlement; (2) when the parties negotiate a clear- 27 sailing arrangement, under which the defendant agrees not to challenge a request for an agreed- 1 unawarded fees to the defendant, rather than the class.” *McKinney-Drobnis v. Oreshack*, 16 F.4th 2 594, 607–08 (9th Cir. 2021) (citation omitted). 3 To assess whether a proposed settlement comports with Rule 23(e), the Court may also 4 consider some or all of the following factors: 5

(1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining 6 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the 7 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class 8 members to the proposed settlement. 9 10 *McKinney-Drobnis*, 16 F.4th at 609 (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 11 (9th Cir. 2004)) (emphasis omitted). In addition, “[a]dequate notice is critical to court approval

of 12 a class settlement under Rule 23(e).” Hanlon, 150 F.3d at 1025. As discussed below, the Court 13 finds that class members received adequate notice, and that the proposed settlement is fair, 14 adequate, and reasonable. 15 i. Adequacy of Notice 16 The Court finds that the notice plan previously approved by the Court was implemented 17 and complies with Rule 23(c)(2)(B). See Dkt. No. 163 at 12–14. Angeion, the Settlement 18 Administrator, posted copies of the Settlement Agreement, Plaintiffs’ Motion for Preliminary 19 Approval, the Third Amended Class Action Complaint, the Order Granting the Motion for 20 Preliminary Approval, and the Joint Submission of Stipulated Schedule to the settlement website. 21 See Dkt. No. 169-3 (“Weisbrot Decl.”) ¶ 18. Angeion sent email notice to the Class Members for 22 whom Defendant provided email address information, and postcard notice to those who did not 23 have an email address or whose email address was invalid. Id. ¶¶ 12, 14. For Class Members 24 whose postcards were returned, Angeion sent additional postcard notices to any forwarding 25 address provided or to an updated address if such information could be found. Id. at 16. Angeion 26 also received 1,285 calls totaling 4,614 minutes to the toll-free Settlement telephone number. Id. ¶ 27 20. As of March 19, 2025, 525,542 Class Members, or 97.05% of the Class have received direct 1 19, 2025, Angeion received no objections to the settlement, and only nineteen Class Members 2 requested exclusion. Id. ¶¶ 23–24. 3 ii. Fairness, Adequacy, and Reasonableness 4 Having found the notice procedures adequate under Rule 23(e), the Court next considers 5 whether the entire settlement comports with Rule 23(e). 6 In evaluating the motion for preliminary approval, the Court considered all three signs of 7 collusion that the Ninth Circuit has identified. See Dkt. No. 163 at 7–11; see also McKinney- 8 Drobnis, 16 F.4th at 607–608. Nothing in the record changes the Court’s preliminary conclusion 9 regarding these factors. The proposed settlement is non-reversionary; there is no clear sailing 10 agreement; the majority of the monetary settlement will be distributed to the class; and the Court 11 still carefully scrutinizes the request for attorneys’ fees and costs to ensure class members’ 12 interests are protected under the settlement. See Section II.A. The Court further finds that other 13 factors discussed in McKinney-Drobnis also indicate that the proposed settlement is fair, adequate, 14 and reasonable. 15 a. Strength of Plaintiffs’ Case, Litigation Risk, and Risk of Maintaining Class Action Status 16 17 Approval of a class settlement is appropriate when plaintiffs must overcome significant 18 barriers to make their case. See Chun-Hoon v. McKee Foods Corp., 716 F. Supp. 2d 848, 851 19 (N.D. Cal. 2010). Difficulties and risks in litigating weigh in favor of approving a class 20 settlement. See Rodriguez v. W. Publ’g Corp., 563 F.3d 948, 966 (9th Cir. 2009). “Generally, 21 ‘unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy 22 and expensive litigation with uncertain results.’” Ching v. Siemens Indus., Inc., Case No. 11-cv- 23 04838-MEJ, 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014) (citation omitted). 24 The Court finds that the amount offered in settlement is reasonable in light of the 25 complexity of this litigation and the substantial risk that Plaintiffs would face in litigating the case 26 given the nature of the asserted claims. Were this case to proceed, Plaintiffs anticipate significant 27 risks to recovery. See Dkt. No. 169 at 22–25. Plaintiffs

emphasize that had the parties not reached 1 two cases involving the same Apple Watch issue as the defect alleged in this case were dismissed 2 at the pleading stage. See *id.* at 22. Plaintiffs similarly anticipate that Defendant would have 3 vigorously opposed class certification. See *id.* Further, even if a class were certified, Plaintiffs 4 faced exposure at summary judgment or trial to Defendant's argument that no actionable defect 5 exists in the Covered Watches. See *id.* In short, despite having confidence in their claims, 6 Plaintiffs acknowledge facing uncertainty in establishing liability. *Id.* at 23. In reaching a 7 settlement, Plaintiffs have ensured a favorable recovery for the class and avoided these risks. See 8 *Rodriguez*, 563 F.3d at 966 (finding litigation risks weigh in favor of approving class settlement). 9 Accordingly, this factor also weighs in favor of approving the settlement. See *Ching*, 2014 WL 10 2926210, at *4 (favoring settlement to protracted litigation). 11 b. Settlement Amount 12 The Court previously concluded that the amount of the settlement was within the range of 13 possible approval. See Dkt. No. 163 at 11. Its opinion has not changed. Based on the facts in the 14 record and the parties' arguments at the final fairness hearing, the Court finds that the settlement 15 amount falls "within the range of reasonableness" in light of the risks and costs of litigation. See 16 *Villanueva v. Morpho Detection, Inc.*, Case No. 13-cv-05390-HSG, 2016 WL 1070523, at *4 17 (N.D. Cal. Mar. 18, 2016) (citing cases). 18 Here, Plaintiffs estimate that each Settlement Class Member will receive approximate \$25 19 per Covered Device, without the burden of having to make a claim. See Dkt. No. 169 at 24, 26. 20 Plaintiffs contend that this amount is appropriate based on both "cost of repair" and "impairment 21 in value" damages analyses. First, the cost of repair for customers without Apple's service plan 22 who experienced issues related to their Apple Watch batteries would have been \$79. *Id.* at 26. 23 But Plaintiffs point out that any amount actually spent on service costs would be offset because 24 some consumers received a free replacement watch instead of paying for service. See *id.* Second, 25 using a choice-based conjoint analysis of class-wide impairment in value damages, Plaintiffs 26 determined that consumers would have required a discount of \$156 per unit to accept the alleged 27 defect. *Id.* at 25. However, any final impairment damages amount would be substantially less 1 defect. *Id.* at 25–26. Based on these damage models, the Court agrees that the estimated 2 settlement amount of approximately \$25 per Covered Device is appropriate, particularly as "[i]t is 3 well-settled law that a cash settlement amounting to only a fraction of the potential recovery does 4 not per se render the settlement inadequate or unfair." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 5 454, 459 (9th Cir. 2000) (citation omitted). 6 c. Extent of Discovery Completed and Stage of Proceedings 7 The Court finds that Class Counsel had sufficient information to make an informed 8 decision about the merits of the case. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459. The 9 parties settled after conducting significant discovery and investigation into Plaintiffs' claims. See 10 Dkt. No. 169 at 9. Plaintiffs' counsel reviewed approximately 1.4 million pages of documents 11 produced by Defendant and extensive analysis by experts. See Dkt. No. 169-2 ("Tufts Decl.") ¶ 7. 12 Thus, the Court is persuaded that Class Counsel entered the settlement discussions with a 13 substantial

understanding of the factual and legal issues, so as to allow them to assess the likelihood of success on the merits. This factor weighs in favor of approval. d. Reaction of Class Members

The reaction of the Class Members supports final approval. “[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (citations omitted); see also *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) (“A low number of opt-outs and objections in comparison to class size is typically a factor that supports settlement approval.”) (citation omitted). As discussed above, the settlement terms were publicized through a notice process that the Court has deemed adequate. Only nineteen members requested exclusion from the settlement, and no Class Members objected. See *Weisbrot Decl.* ¶¶ 23–24.; see also *Martin v. AmeriPride Servs., Inc.*, Case No. 08cv440–MMA (JMA), 2011 WL 2313604, at *7 (S.D. Cal. June 9, 2011) (“The absence of any objector strongly supports the fairness, reasonableness, and adequacy of the settlement.”) After considering and weighing the above factors, the Court finds that the Settlement Agreement is fair, adequate, and reasonable, and that the Settlement Class Members received adequate notice. Accordingly, Plaintiffs’ motion for final approval of the class action settlement is GRANTED.

III. MOTION FOR ATTORNEYS’ FEES, COSTS, AND INCENTIVE AWARDS

In its unopposed motion, Class Counsel ask the Court to approve an award of \$5,000,000 in attorneys’ fees and \$433,417.83 in litigation expenses. See Dkt. No. 168 at 7. Class Counsel additionally requests incentive awards in the amount of \$5,000 for Lead Plaintiff Chris Smith and \$2,000 for each of the remaining eleven named Plaintiffs, totaling \$27,000. Id. at 28.

A. Attorneys’ Fees and Costs

i. Legal Standard

Class counsel is entitled to an award of reasonable attorneys’ fees and reimbursement of litigation expenses from the common fund they created for the benefit of a class. See Fed. R. Civ. P. 23(h); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). The purpose of the “common fund” doctrine is to avoid unjust enrichment by requiring “those who benefit from the creation of the fund [to] share the wealth with the lawyers whose skill and effort helped create it.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (citation omitted). The district court has discretion over the amount of attorney fees to award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). The “touchstone” for the court’s reasonableness analysis is “the benefit to the class—class counsel can only reap rewards if they have delivered results for class members.” *In re California Pizza Kitchen Data Breach Litig.*, 129 F.4th 667, 679 (9th Cir. 2025) (quoting *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 998 (9th Cir. 2023)). The court must independently calculate the benefit to the class, and may not approve fees “that appear excessive of settlement value.” *In re California Pizza Kitchen*, 129 F.4th at 679.

attorneys’ fees in class actions. *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 506 (2016). In common

fund cases, 25% of the total pool is the “benchmark” for a reasonable fee award. See, e.g., *In re Bluetooth*, 654 F.3d at 942. However, even where the benchmark is requested, the award “must be supported by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. These circumstances include: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. See *id.* at 1048–50.

In addition, “trial courts have discretion to conduct a lodestar cross-check on a percentage fee.” *Laffitte*, 1 Cal. 5th at 506. “The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth*, 654 F.3d at 941 (citing *Staton*, 327 F.3d at 965). Class Counsel is also entitled to recover “those out-of-pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citations omitted).

ii. Discussion

Class Counsel here seek an award of \$5,000,000 in attorneys’ fees and \$433,417.83 in litigation expenses. See Dkt. No. 168 at 7. Class Counsel argue that their requested fees are appropriate under the “percentage of the fund” method, in that they represent the 25% benchmark that is generally accepted by courts in the Ninth Circuit for common fund cases. *Id.* at 13.

However, even though Class Counsel requests the benchmark amount and Defendant does not object, the Court may not simply issue a “[r]ubber-stamp approval” of the request. *Vizcaino*, 290 F.3d at 1052 (internal quotation marks and citation omitted). After analyzing the relevant factors and considering the overall circumstances of the case, the Court finds that Class Counsel’s request is reasonable.

The first and most critical factor in assessing an attorneys’ fee request is “the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); see also *Lowery v. Rhapsody* 1 of attorneys’ fees in a class action is the benefit to the class.”). As discussed, Class Counsel 2 obtained a significant recovery for the class by securing a \$20,000,000 non-reversionary 3 settlement fund. Further, Class Members will receive cash payments without having to make a 4 claim. The Court agrees that this is a good result that confers benefits on the class. The fact that 5 no Class Members have objected and only nineteen Class Members opted out buttresses this 6 conclusion.

7 This recovery also must be considered in light of the significant risks that Plaintiffs would 8 face in further litigation. The risk that further litigation might result in Plaintiffs not recovering at 9 all is a significant factor in the award of fees. See *Vizcaino*, 290 F.3d at 1048.

Counsel here 10 acknowledged that there is a substantial risk that Defendant could succeed in reducing or 11 eliminating recoverable damages by asserting credible defenses, including that Defendant lacked a 12 duty to disclose any defect or that the Watch failure rate was low. See Dkt. No. 168 at 17–18.

13 Given these challenges, this factor weighs in favor of awarding substantial fees. See *Vizcaino*, 290 14 F.3d at 1048.

15 Class Counsel also litigated this case skillfully and professionally. The risk that counsel 16 took in litigating this case on a contingency basis for the

last few years weighs in favor of a 17 substantial attorneys’ fee award. See *Vizcaino*, 290 F.3d at 1050. Counsel spent considerable time 18 on this case without any certainty that they would be compensated. See Dkt. No. 168-1 (“Tufts 19 Decl. II”) at ¶¶ 16–17. Counsel conducted an extensive investigation, engaged in voluminous and 20 highly technical fact and expert discovery, and defended against two motions to dismiss. See *id.* 21 ¶¶ 8–10. 22 The reasonableness of an award of the benchmark 25% of the settlement fund is also 23 confirmed by a lodestar cross-check. As a final check on the reasonableness of fees, the Court 24 may compare the requested fees with counsel’s bills under the lodestar analysis. See, e.g., 25 *Vizcaino*, 290 F.3d at 1050 (“Calculation of the lodestar, which measures the lawyers’ investment 26 of time in the litigation, provides a check on the reasonableness of the percentage award.”). The 27 Court must “exclude from this initial fee calculation hours that were not ‘reasonably expended.’” 1 Class Counsel represent that they expended 5,893.10 hours on this case, resulting in a 2 lodestar of \$5,545,004.80 in fees. See Tufts Decl. II ¶ 14. Counsel’s hourly rates range from 3 \$1000 to \$1,300 for senior attorneys, \$450 to \$850 for associates, \$350 to \$381 for law clerks, and 4 \$225 for paralegals. See *id.* This is in line with prevailing rates in this district in similar cases for 5 personnel of comparable experience, skill, and reputation. See, e.g., *Hefler v. Wells Fargo & Co.*, 6 Case No. 16-cv-05479-JST, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (finding rates 7 ranging from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates, and \$245 8 to \$350 for paralegals to be reasonable); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & 9 Prods. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 10 2017) (finding rates ranging from \$275 to \$1,600 for partners, \$150 to \$790 for associates, and 11 \$80 to \$490 for paralegals to be reasonable). Further, the requested amount represents a 0.9 12 negative multiplier to Class Counsel’s anticipated lodestar, i.e., less than the fees actually incurred. 13 See Dkt. No. 168 at 24–25. And in other class actions, courts have approved higher multipliers 14 ranging from 1.0 to 4.0. See *Vizcaino*, 290 F.3d at 1051 n.6 (finding a range of 0.6 to 19.6 in a 15 survey of 24 cases, with 83% in the 1.0 to 4.0 range and 54% in the 1.5 to 3.0 range). Overall, the 16 lodestar cross-check supports the reasonableness of the fee Class Counsel requests. 17 An attorney who has created a common fund for the benefit of the class is also entitled to 18 reimbursement of reasonable litigation costs from that fund. See *Harris*, 24 F.3d 16 at 19. Here, 19 Class Counsel request \$433,417.83 in costs. Dkt. No. 168 at 7. To support their request, counsel 20 summarized the major categories of expenses and associated costs for each, which include expert 21 fees (\$377,978.67); mediation expenses (\$12,849.88); court fees (\$951); travel (\$22,052.23); 22 copies and postage fees (\$4,030.02); research and investigation (\$14,070.03); and fees related to 23 third party subpoenas (\$1,486). See Tufts Decl. II ¶ 18. The Court finds that counsel’s requested 24 expenses are reasonable, including the largest claimed cost for expert fees given the extensive 25 technical analysis and testing that the experts performed. See *id.* ¶ 10. The Court thus GRANTS 26 the request as to litigation costs. 27 * * * 1 Class Counsel \$5,000,000.00 in attorneys’ fees and \$433,417.83 in costs. 2 B. Service Awards 3

Lastly, Class Counsel request an incentive award of \$5,000 for Lead Plaintiff Chris Smith 4 and \$2,000 for each remaining named Plaintiff. Dkt. No. 168 at 28. While awards are 5 discretionary, “[i]t is well-established in this circuit that named plaintiffs in a class action are 6 eligible for reasonable incentive payments, also known as service awards.” *Harris v. Vector Mktg. 7 Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *6 (N.D. Cal. Feb. 6, 2012) (citation omitted). 8 Service awards are designed to “compensate class representatives for work done on behalf of the 9 class, to make up for financial or reputational risk undertaken in bringing the action, and, 10 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 11 F.3d at 958–59. To evaluate the reasonableness of a proposed service award, courts look to 12 factors such as the representative’s service to the class, investment of time, and reputational harm. 13 See *Staton*, 327 F.3d at 977. Another important consideration is the proportionality between the 14 incentive award and the range of class members’ settlement awards. See, e.g., *Burden v. 15 SelectQuote Ins. Servs.*, No. C 10-5966 LB, 2013 WL 3988771, at *6 (N.D. Cal. Aug. 2, 2013) 16 (declining to award a \$10,000 incentive award where the requested award was nearly three times 17 the largest amount paid to any class member). 18 Here, the Court finds that Class Counsel’s requests are reasonable because they are 19 commensurate with Plaintiffs’ service to the class and investment of time. Class Counsel 20 describes that each of the named Plaintiffs contributed significantly to the case by reviewing 21 pleadings and other filings, remaining informed during all stages of the litigation, responding to 22 discovery, searching for and producing documents, and playing an active role in approving 23 settlement terms. *Tuft Decl. II* at ¶ 19. In his declarations, Lead Plaintiff Smith reports that he 24 spent approximately 40 total hours researching issues related to his Apple Watch screen, meeting 25 with Class Counsel throughout the litigation, and reviewing and approving several sets of 26 documents, including all filings and four sets of discovery responses. See Dkt. Nos. 174 ¶¶ 4–25; 27 177 ¶ 2. The remaining named Plaintiffs (residents of several states) spent approximately 8 hours 1 requests, and exchanging communications with counsel on several occasions during the litigation. 2 See Dkt. Nos. 173 ¶¶ 3–16; 176 ¶ 2. Further, no Class Members objected to the proposed service 3 awards, which tends to suggest that the class is satisfied that their representatives did confer a 4 benefit. Finally, the Court finds that the relationship between the size of the awards and class 5 recovery is not so disproportionate as to be unreasonable. Cf. *Crump v. Hyatt Corp.*, No. 20-CV- 6 00295-HSG, 2023 WL 1997770 (N.D. Cal. Feb. 14, 2023) (holding that where the lead plaintiff 7 invested 35 hours on the case and requested a recovery 400 times greater than the average class 8 member’s recovery, a \$10,000 service award was unsupportable). Accordingly, the Court 9 GRANTS the requested service award of \$5,000 for Lead Plaintiff Chris Smith and \$2,000 for 10 each remaining named Plaintiff, for a total of \$27,000.

11 IV. CONCLUSION

12 In sum, the Court GRANTS the motion for final approval of class action settlement, Dkt.

13 No. 169, and GRANTS the motion for attorneys’ fees and incentive award, Dkt. No. 168. The

14 Court awards attorneys' fees in the amount of \$5,000,000 and litigation expenses in the amount
of 15 \$433,417.83. The Court further awards \$5,000 as an incentive award to Lead Plaintiff Chris
16 Smith and \$2,000 to each of the remaining named Plaintiffs. 17 The parties and settlement
administrator are directed to implement this Final Order and the 18 settlement agreement in
accordance with the terms of the settlement agreement. The parties are 19 further directed to file a
short stipulated proposed final judgment of two pages or less within 21 20 days from the date of
this order. The judgment need not, and should not, repeat the analysis in this 21 order. 22 Class
counsel shall file a Post-Distribution Accounting within 21 days after the settlement 23 checks
become stale (or, if no checks are issued, all funds have been paid to class members, cy 24 pres
beneficiaries, and others pursuant to the Settlement Agreement). In addition to the 25 information
contained in the Northern District of California's Procedural Guidance for Class 26 Action
Settlements, available at [https://cand.uscourts.gov/forms/procedural-guidance-for-class-27 action-](https://cand.uscourts.gov/forms/procedural-guidance-for-class-27-action-settlements/)
settlements/, the Post-Distribution Accounting shall discuss any significant or recurring 1
approval, any other issues in settlement administration since final approval, and how any concerns
2 || or issues were resolved. Counsel are directed to summarize this information in an easy-to-read
3 chart that allows for quick comparisons with other cases. The parties shall post the Post- 4 ||
Distribution Accounting, including the easy-to-read chart, on the settlement website. The Court 5 ||
may hold a hearing following submission of the parties' Post-Distribution Accounting. 6 The
Court will withhold 10% of the attorney's fees granted in this Order until the Post- 7 Distribution
Accounting has been filed. Class counsel shall file a proposed order releasing the 8 || remainder of
the fees when they file their Post-Distribution Accounting. 9 IT IS SO ORDERED. 10 || Dated:
5/1/2025 i Abate SMe HAYWOOD S. GILLIAM, JR. 12 United States District Judge 15 16 = 17
Z 18 19 20 21 22 23 24 25 26 27 28