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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 YEVGENIYA GRANINA, on Behalf of
12 Herself and All Others Similarly Situated,

13 Plaintiff,

14 v.

15 EDDIE BAUER, LLC and DOES 1 through
16 100, inclusive,

17 Defendants.
18 _____

) Case No: BC569111

)

) CLASS ACTION

)

) **DECLARATION OF ZEV B. ZYSMAN**

) **IN SUPPORT OF PLAINTIFF'S**

) **MOTION FOR AWARD OF**

) **ATTORNEYS' FEES,**

) **REIMBURSEMENT OF EXPENSES,**

) **CLAIMS ADMINISTRATION COSTS,**

) **AND INCENTIVE AWARD**

)

)

19 Date: April 23, 2018

20 Time: 9:00 a.m.

21 Dept: 323

22 Judge: Hon. Elihu M. Berle
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1 **DECLARATION OF ZEV B. ZYSMAN**

2 1. I am an attorney at law duly licensed to practice in the State of California. I am
3 counsel of record (“Class Counsel”) for Plaintiff Yevgeniya Granina and the Class, in the above-
4 entitled action.¹ I have personal knowledge of the matters stated herein and if called as a
5 witness, I could and would competently testify to the matters set forth herein.

6 2. I am submitting this Declaration in support of Plaintiff’s Motion for an Award of
7 Attorneys’ Fees, Expenses, Claims Administration Costs, and Incentive Award (the “Fee
8 Motion”).

9 3. To date, no objections have been filed with respect to the requested fees and
10 expenses. The deadline for filing claims, objecting to the settlement, or opting out is March 22,
11 2018.

12 4. With the assistance of a well-respected and experienced mediator, retired
13 California Supreme Court Justice Edward A. Panelli, and only *after* reaching agreement as to all
14 compensation terms and injunctive relief, Defendant Eddie Bauer, LLC (“Eddie Bauer” or
15 “Defendant”) agreed Class Counsel could seek an award of 33 1/3% of the Common Fund
16 (which is equal to \$100,000) as legal fees for services rendered on a wholly contingent basis as
17 well as reimbursement of their out-of-pocket litigation expenses reasonably incurred in the
18 prosecution of this litigation of no more than \$20,000. As discussed in the accompanying Fee
19 Motion, a fee and expense award of 33 1/3% of the benefits achieved for the Settlement Class is
20 well within the range of fees commonly awarded as a percentage-of-the-recovery in similar class
21 actions, within the Ninth Circuit, California Superior Courts and throughout the United States.

22 5. As set forth in the Fee Motion, Class Counsel has prosecuted this litigation on a
23 wholly contingent basis for more than three years and have achieved an excellent result for the
24 Class Members. As a term of the Settlement, Defendant has agreed not to oppose a request for
25 attorneys’ fees in the amount of \$100,000, plus actual out-of-pocket costs of no more than

26 _____
27 ¹ This declaration incorporates by reference the definitions in the Amended Settlement
28 Agreement and Release (“Agreement”), and all terms used herein shall have the same meanings as
set forth in the Agreement.

1 \$20,000, and an incentive award to the Plaintiff in the amount of \$5,000. Plaintiff now moves
2 for an award of attorneys' fees in the amount of \$100,000; an award of expenses in the amount
3 of \$17,415.20; and an incentive award in the amount of \$5,000. The fees, expenses and
4 incentive award sought by Class Counsel are not only imminently reasonable but are well
5 deserved.

6 6. While the fee and expense amount is agreed to between the Parties following
7 arm's-length negotiations, and is justified under the percentage-of-the-recovery method in a
8 common fund settlement, such an award also is justified under the lodestar method of analysis.
9 In this instance, the total lodestar amount for attorney time for Class Counsel is \$213,042.50
10 which actually results in a *negative* lodestar multiplier. As a result, using Class Counsel's
11 lodestar as a cross-check further supports the reasonableness of the requested fee award. As set
12 forth below, the number of hours and the hourly rates are reasonable and should be approved.

13 **WORKED PERFORMED**

14 7. Class Counsel expended a total of 335.50 attorney hours on this matter from
15 inception through February 12, 2018. No secretarial, administrative or other staff time
16 (including paralegal time) is being billed or requested.

17 8. The individual tasks performed by Class Counsel includes, *inter alia*: (1) time
18 spent in the pre-suit investigation and drafting of the class action Complaint and Amended
19 Complaint, which included researching of the applicable law with the respect to the claims
20 asserted therein and the potential defenses thereto; (2) investigating consumer complaints;
21 (3) drafting multiple sets of formal discovery requests including special interrogatories, request
22 for production of documents, and requests for admissions; (4) reviewing Defendant's written
23 responses to discovery, and documents otherwise obtained through independent investigation;
24 (5) engaging in lengthy meet and confer sessions with Defendant's counsel over a period of
25 many months regarding the scope of discovery, the sufficiency of discovery responses and
26 production, the retention of electronic documents during the pendency of the litigation, and the
27 timing of production; (6) consulting with potential privacy rights experts and IT specialists;

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1 (7) drafting detailed PMK deposition notices regarding class certification issues; purposes for
2 which Defendant recorded telephone calls with California customers (current, former and
3 prospective); Defendant's policy directives relevant to the handling, recording and monitoring of
4 telephone calls with California customers; Defendant's customer relationship management
5 ("CRM") system; Defendant's written policies, procedures, and practices for providing recording
6 warnings or disclosures in connection with telephone calls received from or made to California
7 customers; Defendant's written policies, procedures, and practices for maintaining and
8 preserving actual telephone recordings and other relevant documents during the Class Period;
9 the number of unique telephone numbers with a California area code that were received and/or
10 recorded during the Class Period; and Defendant's call recording software and hardware,
11 archiving software, and any related software and hardware utilized by Defendants during the
12 Class Period; (8) Researching viability of preserving cell site location information vis-a-vis
13 cellular communication carriers, including Verizon, AT&T, T-Mobile, and Sprint; (9) reviewing
14 relevant data produced by Defendant in advance of the Mediation; (10) analyzing proposed post-
15 litigation changes in Defendant's corporate policies and practices relative to recording of
16 customer service telephone calls; (11) preparing for and attending Status Conferences; (12)
17 drafting Stipulated Protective Order; (13) researching, drafting and filing Opposition to
18 Demurrer and Motion to Strike as to original Complaint; (14) researching, drafting and filing
19 Supplemental brief in Opposition to Motion to Strike; (15) researching, drafting and filing
20 Opposition to Motion to Strike as to First Amended Complaint; (16) researching, drafting and
21 filing Plaintiff's Preliminary Opposition in response to Eddie Bauer's Petition for Writ of
22 Mandate filed with the Court of Appeal challenging the Order on the motion to strike; (17)
23 researching and drafting Motion for Class Certification (withheld filing after the Parties'
24 tentative agreement to settle at the Mediation); (18) Researching and drafting potential Motion
25 for Summary Judgment based on certain asserted affirmative defense; (19) drafting Mediation
26 brief, preparing detailed analysis and presentation of Plaintiff's claims and evidence in
27 conjunction with the Mediation session, and attending full day Mediation before Justice Panelli;
28

1 (20) negotiating, drafting, editing and finalizing the terms of the Settlement, including the
2 Settlement Agreement and Amended Settlement Agreement, Class Notices, Settlement Website,
3 and Proposed Orders; (21) fielding and responding to numerous Class Member inquiries
4 regarding Settlement and implementation issues; (22) preparing and filing this Fee Motion, and
5 supporting documentation; and (23) preparing Final Approval Motion, and supporting
6 documentation.

7 9. Importantly, Class Counsel was intimately involved in the drafting, editing and
8 approval of the Settlement Agreement and Amended Settlement Agreement, including the terms
9 of the monetary relief, *cy pres* relief, and change in business practices that Defendant ultimately
10 agreed to provide as a direct result of this Settlement and the exact language in the various forms
11 of notice to the Class. This process which spanned several months following the Mediation
12 before Justice Panelli involved extensive email and telephonic communications between counsel,
13 as Class Counsel reviewed and edited drafts of these documents throughout the drafting process.

14 10. Under the Settlement, Defendant will establish a non-reversionary Common
15 Fund of \$300,000. After settlement administration expenses, attorneys' fees and costs, and an
16 enhancement payment are deducted from the Common Fund, settlement benefits will be paid
17 from remaining funds (the "Net Settlement Amount") to Class Members who submit timely and
18 valid claims.

19 11. Each participating Class Member who submits a timely and valid claim will
20 receive a one-time distribution payment which is equal to the Individual Settlement Amount, by
21 way of a check (*i.e.*, a payment equal to the Net Settlement Amount divided by the number of
22 participating Class Members).

23 12. Moreover, the Common Fund is non-reversionary. In the event that any portion
24 of the Settlement Amount remains unclaimed, or any check issued remains uncashed for more
25 than 180 days after issuance, then such unclaimed or uncashed funds will revert to the Class for
26 *cy pres* distribution as follows: (1) 50% being distributed to the Alliance for Children's Rights
27 which is a 501(c)(3) non-profit child advocacy organization; (2) 25% of such funds being
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1 distributed to the California State Treasury for deposit in the Trial Court Improvement and
2 Modernization Funds; and (3) 25% of such funds being distributed to the California State
3 Treasury for deposit into the Equal Access Fund of the Judicial Branch. Any *cy pres* funds
4 distributed to the Alliance for Children’s Rights will be used for child advocacy programs within
5 the meaning of California Code of Civil Procedure § 384(b). (Agreement 11). The Parties
6 carefully selected these organizations in compliance with the requirements of California Code of
7 Civil Procedure § 384(b).

8 13. Finally, as a result of Class Counsel’s efforts, the Settlement of this action
9 benefits not only Class Members but the public generally. In addition to all of the foregoing
10 benefits, the Settlement provides for important changes in Defendant’s business practices.
11 Specifically, Eddie Bauer agrees, that in response to this Action, it has re-implemented an
12 automated verbal notice that informs persons calling it at the outset of the call that the call
13 maybe monitored and recorded.

14 14. Class Counsel understood that it was undertaking complex, lengthy and
15 expensive litigation and nonetheless prosecuted this case on a contingency fee basis with no
16 guarantee of ever being compensated for the investment of time and money the case would
17 require. During its pendency, Class Counsel was obligated to assure that sufficient resources
18 were dedicated to the prosecution of this litigation and that funds were available to compensate
19 staff and to pay for out-of-pocket expenses required in a case like this.

20 15. Moreover, Class Counsel’s involvement in this case is not at an end. Even
21 following final approval of the Settlement, Class Counsel will continue to oversee Defendant’s
22 compliance with the terms of the Settlement.

23 16. For the Court’s convenience, the chart below breaks out and summarizes the
24 hours expended by Class Counsel into categories and provides detailed descriptions, grouping
25 the time entries by the nature of the activity. This information, coupled with the descriptions set
26 forth herein and in Plaintiff’s Memorandum filed concurrently justifies Class Counsel’s fee
27 request and is sufficient to permit the Court to review the time spent. No secretarial,
28

1 administrative or other staff time (including paralegal time) is being billed or requested.
 2 Moreover, it should be noted, that the following lodestar analysis does not include additional
 3 work to be performed in this case through and even following the Final Approval Hearing as
 4 described further in ¶ 18 below.

Name (Status)	1	2	3	4	Total Hours	Rate	Total Lodestar
Zev B. Zysman	23.00	105.50	110.50	96.50	335.50	\$635.00	\$213,042.50
Attorney Total:	23.00	105.50	110.50	96.50	335.50		\$213,042.50

11 **Categories:**

12 (1) **Pre-Filing Investigation/Initial Complaint/Amended Complaint:** This includes: initial
 13 contact with the named Plaintiff; extensive pre-suit investigation of potential claims; pre-filing
 14 research and review of civil dockets and the California Secretary of State; research of applicable
 15 Penal Code §630 *et seq.* violations and potential invasion of privacy rights relating to the
 16 recording of customer service telephone calls with California consumers; review of Defendant’s
 17 press releases; review of other publicly available information relating to Defendant’s company
 18 profile; monitoring/tracking of legal developments in the California Supreme Court/Courts of
 19 Appeal and Trial/District Courts relative to California’s Invasion of Privacy Act; researching
 20 viability of preserving cell site location information vis-a-vis major cellular communication
 21 carriers (Verizon, AT&T, T-Mobile, and Sprint) based on California Public Utility Code §2891;
 22 investigation of Eddie Bauer’s practices/policies regarding the recording of telephone calls and
 23 Defendant’s privacy policies based on publicly available information; researching, drafting and
 24 filing class action Complaint and Amended Complaint; drafting demand letters to Eddie Bauer and
 25 evaluating scope of proposed post-litigation modifications to Defendant’s policies and practices of
 26 recording of telephone calls with California customers.

27 (2) **Pleadings and Briefs:** This includes: researching legislative history of California’s Invasion
 28 of Privacy Act regarding the practice of recording and monitoring of telephone calls with
 California callers; researching legal issues based on California Court of Appeal decisions in *Kight*
v. CashCall, Inc. and *Hataishi v. First American Home Buyers Prot. Corp.*, the California
 Supreme Court decision in *Kearney v. Salomon Smith Barney*, and the Ninth Circuit decisions in

1 *Faulkner v. ADT* and *Young v. Hilton Worldwide Inc.*, and subsequent case law (state and federal)
2 interpreting and applying California Penal § 630 *et. seq.*, including *Quesada v. Bank of America*
3 *Investment Svcs.*, and *Torres v. Nutrisystem, Inc.*; evaluating recent changes in law and potential
4 impact on specific legal claims alleged in the operative Amended Complaint; researching viability
5 of Eddie Bauer's numerous affirmative defenses in Answer to Amended Complaint; researching
6 potential constitutional and due process challenges based on aggregation of statutory damages
7 under California Penal § 637.2; researching amendments to California Penal § 637.2; researching
8 applicability of Penal Code § 632 to cellular telephones and landline telephones based on
9 legislative history and current case law; preparation of legal memo re: potential range of statutory
10 penalties and factors (mitigating and aggravating) impacting an award of aggregated statutory
11 damages pursuant to Penal Code §637.2; preparing Joint Status Reports and miscellaneous
12 stipulations and court filings; preparing for and attending Status Conferences; researching,
13 drafting and filing Opposition to Demurrer and Motion to Strike certain portions of original
14 Complaint; preparing for and attending hearing on Demurrer and Motion to Strike; researching
15 and drafting Supplemental Brief in Opposition to Motion to Strike; researching, drafting and
16 filing Opposition to Motion to Strike certain portions of First Amended Complaint; drafting,
17 researching and filing Plaintiff's Preliminary Opposition in response to Eddie Bauer's Petition
18 for Writ of Mandate and Request for Stay filed with the Court of Appeal challenging the motion
19 to strike order; researching and drafting Motion for Class Certification (withheld filing following
20 tentative agreement to settle); researching legal issues related to summary judgment/summary
21 adjudication based on liability issues.

22 (3) **Discovery:** This includes: researching and preparing detailed discovery plan on class
23 certification and merits issues, and drafting multiple sets of formal class and merits discovery to
24 Defendant, including special interrogatories, request for production of documents, and requests
25 for admissions; reviewing and analyzing documents, data and information produced by Eddie
26 Bauer, and otherwise obtained by Class Counsel in preparation for Mediation before Justice
27 Panelli and in drafting Motion for Class Certification; drafting and serving discovery directed to
28 Eddie Bauer which requested information concerning: (1) the names and contact information of
putative class members, and (2) non-content detail for each telephone call, including the class
members' telephone numbers, and the date, time, and duration of the subject call; preparing for
and defending the deposition of Plaintiff Yevgeniya Granina; consulting with potential privacy
rights experts and IT specialists; meeting and conferring with Defense Counsel over a period of
several months regarding the scope of discovery, the sufficiency of discovery responses and
production, the retention of electronic documents during the pendency of the litigation, and the
timing of production; preparing and drafting PMK deposition notices regarding class certification

1 issues; purpose(s) for which Defendant recorded telephone calls with California consumers;
2 Defendant's policy directives related to the handling, recording and monitoring of telephone calls
3 with California customers; Defendant's policies, procedures, and practices for providing recording
4 disclosures in connection with customer service telephone calls; Defendant's written policies,
5 procedures, and practices for maintaining and preserving telephone recordings and other relevant
6 documents during the Class Period; the number of unique telephone numbers associated with
7 California customers that were received and recorded during the Class Period.

7 **(4) Settlement Negotiations/Mediation/Preparation of Agreement and Exhibits/Preliminary**
8 **Approval/Motion for Attorneys' Fees:** Extensive discussions among the Parties' counsel
9 regarding the legal and factual bases for Plaintiff's claims and Defendant's affirmative defenses;
10 researching potential settlement options based on case developments and other call recording
11 cases in state/federal courts; engaging in settlement discussions with Defense Counsel, which
12 included discussing potential settlement terms prior to Mediation; drafting detailed Confidential
13 Mediation brief; preparing detailed analysis and presentation of Plaintiff's claims and evidence
14 in conjunction with the Mediation session; attending full day Mediation before Justice Panelli at
15 JAMS; negotiating, drafting, editing, reviewing and finalizing Settlement Agreement and
16 Amended Settlement Agreement, along with all corresponding Exhibits, including Class Notices,
17 Settlement Website, Proposed Preliminary Approval and Proposed Final Judgment; meeting and
18 conferring with numerous potential *cy pres* recipients; researching, drafting and filing Motion for
19 Preliminary Approval of Settlement; working extensively with the Settlement Administrator
20 (KCC) pre and post-preliminary approval hearing; personally responding to all Class Members
21 who contacted our office requesting information and documentation about the settlement
22 following effectuation of Class Notices; preparing for and attending hearings on Motion for
23 Preliminary Approval and renewed Motion for Preliminary Approval; researching and drafting
24 Motion for Attorneys' Fee, Expenses, Claims Administration Fees, and Incentive Award and
25 Motion for Final Approval of Settlement; preparing detailed supporting declarations and exhibits
26 (includes only work completed through **February 12, 2018**; does **not** include time preparing for
27 and attending Final Approval Hearing, fielding and responding to numerous Class Member
28 inquiries regarding Settlement and implementation issues, potential objectors and any appeals).

17. As the Court can conclude, this matter was efficiently and leanly prosecuted. At
all times, Class Counsel litigated this action in a manner that maximized the efficiency in the
prosecution of the litigation and pursued discovery to achieve substantial benefits for the Class in
a highly efficient manner while avoiding burdening this Court. The time in this case was spent –

1 and necessarily so – by a single attorney. I was responsible for conducting discovery and drafting
2 pleadings, engaging in actual settlement discussions and preparing the settlement papers.

3 18. Class Counsel’s involvement in this case is not at an end. Indeed, Class Counsel
4 will also incur additional time in this case through its conclusion, preparing for and attending the
5 hearing on Final Approval of Settlement and Attorneys’ Fees, Expenses, Claims Administration
6 Costs, and Incentive Award, fielding and responding to Class Member inquiries regarding the
7 Settlement and implementation issues, potential objectors and any appeals that is *not* reflected in
8 the request for fees. Even following Final Approval of the Settlement, Class Counsel will
9 continue to oversee Defendant’s compliance with the terms of the Settlement. I estimate that my
10 firm will spend a minimum of twenty (20) hours on this case through its conclusion. Accordingly,
11 Class Counsel’s actual lodestar will increase.

12 **RATES**

13 19. The following is a list of the total hours and billing rates for work performed on
14 this matter:

Lodestar - Inception through February 12, 2018			
<u>Attorney</u>	<u>Number of</u> <u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Zev B. Zysman	335.50	\$635.00	
Total:			\$213,042.50

21 20. All of the matters undertaken by Class Counsel’s firm are class actions. I have
22 been practicing for almost 23 years. While the use of current hourly rates is appropriate because it
23 accounts for the time value of money where, as here, Class Counsel has not been paid
24 contemporaneously for its work on this case, for the purpose of this Motion, Class Counsel relies
25 on the lower rates in effect in *2015* when the case was initiated.

26 21. Class Counsel’s rates are the rates established for all cases in 2015. The hourly
27 rates charged are based, in part, on delay in payment that results from the firm’s contingency-

1 based system of representation, and the skill and experience of counsel in prosecuting class
2 actions.

3 22. Based on my experience in litigating class action cases with co-counsel, my
4 familiarity with the class action practice in Southern California, and my review of rates charged
5 by my class action colleagues, my firm's hourly rates are in line with the rates prevailing in the
6 community for similar services of lawyers of reasonable comparable skill and reputation.

7 23. Further, based on my experience in litigating class action cases against opposing
8 counsel, and my review of rates charged by defense lawyers in class action cases, my firm's
9 hourly rates are lower than the rates charged by major law firms who serve as opposing counsel in
10 class action cases. Unlike the defense bar, whose attorneys are paid regularly for each hour of
11 service and are reimbursed on a current basis for expenses incurred, plaintiffs' lawyers normally
12 have no steady flow of income. The financial burden on contingent counsel is far greater than that
13 on a firm that is paid on an ongoing basis. Attached hereto as Exhibit 1 is a true and correct copy
14 of the relevant sections of a survey of attorneys fees provided by the National Law Journal in
15 2009, which includes fee ranges charged by prominent law firms nationwide. Highlighted are the
16 following firms based or with major presence in Southern California that regularly litigate
17 complex class action cases:

<u>Firm Name</u>	<u>Partner Range</u>	<u>Associate Range</u>
19 Cozen O'Connor	up to \$880	up to \$695
20 Loeb & Loeb	up to \$950	up to \$550
21 Manatt Phelps & Phillips	up to \$850	up to \$505
22 Sheppard Mullin Richter & Hampton	up to \$715	up to \$525
23 Winston & Strawn	up to \$995	up to \$670

24 24. Class Counsel's rate has been approved by numerous other courts. For example,
25 in a consumer class action entitled *Furman v. Station Casinos LLC, et al.*, Case No. 56-2013-
26 00446134-CU-BT-VTA, pending in Ventura County Superior Court, Judge Vincent J. O'Neill
27 approved Class Counsel's hourly rate which is the *same* as the rate charged here. Attached hereto
28 as Exhibit 2 is a copy of the Order Granting Final Approval of Class Action Settlement and

1 Judgment dated June 1, 2016 by Judge Vincent J. O'Neill.

2 25. In addition, in *Brown v. Defender Security, Co.*, Case No. 12-cv-07319-CAS,
3 pending in Los Angeles in the Central District of California, District Judge Christina A. Snyder
4 approved Class Counsel's hourly rate which is the *same* as the rate charged here. Attached hereto
5 as Exhibit 3 is a copy of the Final Order Approving Class Action Settlement and Judgment dated
6 March 18, 2014 by Judge Christina A. Snyder.

7 26. Moreover, in a consumer class action entitled *Sosinov v. RadioShack, Corp.*,
8 Case No. BC449675, pending in the Los Angeles Superior Court, Central Civil West, Judge
9 William F. Highberger specifically approved Class Counsel's hourly rate which is the *same* as
10 Class Counsel is seeking here. Attached hereto as Exhibit 4 is a copy of the Final Order
11 Approving Class Action Settlement and Judgment dated March 27, 2013 by Judge William F.
12 Highberger.

13 27. Further, in a consumer class action entitled *Pomerants v. Skechers*
14 *U.S.A. Inc.*, Case No. BC436360, pending in the Los Angeles Superior Court, Central Civil West,
15 Judge John S. Wiley approved Class Counsel's rate which is the *same* as Class Counsel is seeking
16 here. Attached hereto as Exhibit 5 is a copy of the Final Order Approving Class Action
17 Settlement and Judgment dated February 7, 2012 by Judge John S. Wiley.

18 28. Moreover, in a consumer class action entitled *Konevskya v. Tommy Bahama*
19 *Group, et al.*, Case No. BC424931, pending in the Los Angeles Superior Court, Central Civil West,
20 Judge Jane L. Johnson approved Class Counsel's rate which is the *same* as Class Counsel is
21 seeking here. Attached hereto as Exhibits 6 and 7, respectively, are copies of the Final Order
22 Approving Class Action Settlement and Judgment and Order Awarding Attorneys' Fees, Expenses
23 and Incentive Award dated December 12, 2011 by Judge Jane L. Johnson.

24 29. Additionally, in a consumer class action entitled *Burcham v. Welch Foods, Inc.*,
25 Case No. CV-10-01427-AHM, pending in Los Angeles in the Central District of California, Judge
26 A. Howard Matz approved Class Counsel's hourly rate which is the *same* rate as charged here.
27 Attached hereto as Exhibit 8 is a copy of the Order and Final Judgment dated June 27, 2011 by
28

1 Judge A. Howard Matz.

2 30. Further, attached hereto as Exhibit 9 is a copy of a Judgment and Order of
3 Dismissal dated September 23, 2008 by Judge William F. Fahey in a consumer class action
4 entitled *Brand v. Simple Tech, Inc.*, Case No. BC360001, pending in Los Angeles Superior Court.
5 In that case, Judge Fahey approved Class Counsel's hourly rate which is similar to the rate
6 charged here.

7 31. Attached hereto as Exhibit 10 is a sworn statement by a class action attorney in
8 the matter entitled *Lundell v. Dell Inc.*, Case No. C05-03970 JW (N.D. Cal.) evidencing that
9 firm's hourly rates for class litigation in 2006. Those 2006 rates are consistent with (and even
10 higher than) the rates charged by Class Counsel now in 2016.

11 32. Class Counsel has extensive experience in complex business litigation and class
12 actions. Class Counsel has successfully served as Class Counsel prosecuting numerous consumer
13 class actions to Judgment, including *Furman v. Station Casinos LLC, et al.*, Case No. 56-2013-
14 00446134-CU-BT-VTA (Ventura County Superior Court); *Brown v. Defender Security Co.*, Case
15 No. 12-CV-7310-CAS (Central District of California); *Press v. DS Waters of America, Inc.*, Case
16 No. BC489552 (Los Angeles Superior Court, Central Civil West); *Big 5 Sporting Goods Song-
17 Beverly Cases*, Case No. JCCP4667 ((Los Angeles Superior Court, Central Civil West); *Burcham
18 v. Welch Foods, Inc.*, Case No. CV-10-01427-AHM, (Central District of California); *Sosinov v.
19 RadioShack, Corp.*, Case No. BC449675 (Los Angeles Superior Court, Central Civil West);
20 *Pomerants v. Skechers U.S.A. Inc.*, Case BC436360 (Los Angeles Superior Court, Central Civil
21 West); *Yu v. Microsoft Corp.*, Case No. BC316448 (Los Angeles Superior Court, Central Civil
22 West); *Zilberman v. Netgear, Inc.*, Case No. 1-04-CV-021230 (Santa Clara Superior Court);
23 *Satsuta v. The Linksys Group*, Case No. 1-03-CV002896 (Santa Clara Superior Court); *Brand v.
24 Simple Tech, Inc.*, Case No. BC360001 (Los Angeles Superior Court); and *In Re Wireless Product
25 Cases*, JCCP Case No. 4381 (San Francisco Superior Court).

26 33. All of the foregoing supports Class Counsel's representation that the hourly rate is
27 reasonable and should be approved.

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1 37. These expenses are those which are normally charged to paying clients: Court
2 filing fees (Superior Court and Court of Appeal), complex fees, jury fees, E-Service fees,
3 mediation fees (JAMS), reporter and transcription fees, postage and courier services, computer
4 and database research, photocopying/external reproduction fees, and facsimile charges, overnight
5 delivery and messenger services, long-distance phone calls, and travel for mediation, deposition,
6 court appearances and settlement discussions.

7 38. The following is additional information regarding certain expenses for which we
8 are seeking reimbursement:

9 (a) Photocopying: In-house copying is billed at the rate of \$.25 per page. Out-
10 sourced copying is billed at the charged rate.

11 (b) Faxes are billed at the rate of \$1.00 per page.

12 (c) Online Research: This includes research charges through Lexis Nexis,
13 Westlaw and PACER. The computerized research charges were warranted in this matter. It is
14 standard practice for attorneys to use Lexis-Nexis and Westlaw to assist them in researching legal
15 and factual issues, and the use of such tools creates efficiency in litigation and saves the Class
16 time and money.

17 39. The expenses incurred pertaining to this case are reflected in the books and records
18 of this firm. These books and records are prepared from expense vouchers and check records and
19 are an accurate record of the expenses incurred based on information provided to me.

20 40. The requested award of attorneys' fees to Class Counsel is \$100,000. The requested
21 award is supported by a lodestar of \$213,042.50, which is based on 335.50 hours of attorney hours
22 expended by Class Counsel over a period close to three and one-half years. Under the
23 circumstances, given that Class Counsel's request actually represents a *negative multiplier*, the fee
24 request is more than reasonable. Additionally, considering the significant settlement achieved by
25 Class Counsel which offers broad and comprehensive monetary and injunctive relief in the face of
26 very serious legal and factual obstacles, the requested fee is imminently reasonable. It is also
27 reasonable because Class Counsel devoted substantial resources to this litigation to the exclusion
28

1 of other matters that they could have accepted in lieu of this case. The fact that Class Counsel was
2 able to resolve this matter through settlement, without the need for additional litigation and trial,
3 does not negate the reasonableness of the fee. Counsel should not have to run up unnecessary
4 lodestar in order to justify a fee. *See, e.g., Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th
5 19, 52 (2000).

6 41. Moreover, as stated in the Fee Motion, the amount of the attorneys' fees and costs
7 was negotiated at arm's-length, with the assistance of Justice Panelli, and only *after* agreement
8 was reached on all substantive terms of the Settlement. Throughout the negotiations, Defendant
9 was represented by highly-skilled lawyers from a nationally-recognized defense firm who are very
10 experienced in this type of consumer litigation, have litigated on the defense side for many years
11 and are aware of fees paid in other actions of a similar nature. The result is an arm's-length
12 negotiated and market-set reasonable fee which under the circumstances is more than reasonable.

13 42. Accordingly, Class Counsel requests that the Court grant the Fee Motion and award
14 the requested fees and costs.

15 **THE CLASS REPRESENTATIVE'S REQUESTED INCENTIVE AWARD IS**
16 **REASONABLE AND SHOULD BE APPROVED**

17 43. Furthermore, as part of the Settlement, Defendant has agreed to pay a modest
18 incentive award to the Class Representative, Yevgeniya Granina in the amount of \$5,000 for the
19 time and effort she expended in the representation of the Class. This incentive award was agreed
20 to through arm's-length negotiations, with the assistance of Justice Panelli, only *after* the Parties
21 had agreed to all material terms relating to Class compensation. Plaintiff has dedicated a
22 substantial amount of time and effort representing the Class and diligently fulfilled her obligations
23 in a representative capacity over the course of the litigation by spending approximately thirty-
24 three (33) hours, *inter alia*: (1) assisting in the pre-filing investigation of the case (explaining her
25 telephone interaction with Defendant as well as Defendant's telephone ordering system);
26 (2) reviewing the original Complaint and Amended Complaint; (3) reviewing other pleadings,
27 including the Demurrer and Motion to Strike; (4) providing documents to counsel; (5) preparing
28 for and attending her deposition; (6) responding to detailed discovery, including special

1 interrogatories and requests for production of documents; (7) regularly engaging in numerous
2 telephonic conferences and in-person meetings with Class Counsel throughout the litigation
3 concerning all developments; (8) actively monitoring the Mediation process; (9) consulting with
4 Class Counsel on the parameters of the proposed Settlement; and (10) reviewing and approving
5 the Settlement of this litigation.

6 44. Additionally, she bore the risk of an adverse judgment should this case prove
7 unsuccessful, thereby risking her own assets and credit. Ms. Granina has been an outstanding
8 Class Representative and I stand fully behind her concurrently-filed declaration. Thus, it is
9 respectfully submitted that under the circumstances present here, approval of this award is
10 reasonable.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 13th day of February, 2018 at Encino, California.

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17 _____
18 Zev B. Zysman

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