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12 Settlement Class Counsel

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 THOMAS IGLESIAS, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 FERRARA CANDY CO., and DOES 1
20 through 10, inclusive,

21 Defendants.

) Case No. 3:17-cv-00849-VC

) [CLASS ACTION]

) **DECLARATION OF RYAN J.**
) **CLARKSON IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR**
) **ATTORNEYS' FEES, EXPENSES,**
) **AND SERVICE AWARD**

) Hon. Judge Vince Chabbria

) Complaint filed: February 21, 2017

) Hearing Date: October 25, 2018

) Hearing Time: 10:00 AM

) Hearing Location: Courtroom 4

DECLARATION OF RYAN J. CLARKSON

I, Ryan J. Clarkson, declare as follows:

1. I am managing partner at Clarkson Law Firm, P.C. and Class Counsel for the settlement class in the above-captioned matter. I am licensed to practice in all state and federal courts in California and Michigan, and I am a member in good standing of the State Bars of California and Michigan. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs’ motion for attorneys’ fees, expenses, and service award submitted to the Court pursuant to the terms of the parties’ settlement agreement.

I. BACKGROUND AND OVERVIEW OF THE LITIGATION

A. Investigation of Claims and Section 1782 Negotiations

3. In the Spring of 2016, my office was contacted by Thomas Iglesias regarding a potential false advertising lawsuit against Ferrara Candy Company (“Ferrara” or “Defendant”) based on allegedly deceptive packaging. During the weeks and months that followed, my office investigated the potential claims, conducted background research on Mr. Iglesias, reviewed the products’ packaging, consulted a packaging expert, and reviewed all relevant statutory and case authority.

4. My office conducted a thorough case intake interview with Mr. Iglesias. We inquired about his motivation for seeking legal action which was to right a perceived wrong based on allegedly deceptive packaging and obtain refunds for every purchaser who was deceived like him. We performed a conflicts check. We also reviewed all online search tools and social media for information on Mr. Iglesias, including Facebook, Twitter, LinkedIn, Google, and other available tools.

5. My office also conducted background research on Ferrara. We researched their collectability and learned that they were one of the largest candy companies in the world. We also learned as much as we could about the types of products they sold, the channels of distribution through which they sold their products, their gross annual revenues, the popularity of the products

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1 at issue, their leadership structure, their advertising and marketing campaigns, their public
2 relations initiatives, among other things.

3 6. My office also reviewed all relevant statutory, case, and regulatory authority.
4 Although my firm had prior experience with slack fill litigation, the legal landscape was ever-
5 changing and required hours of additional research regarding the viability of Mr. Iglesias' claims.
6 There were a number of slack fill cases in California, New York, and Missouri. We reviewed all
7 of these authorities.

8 7. My office also ordered exemplars of the products at issue. Once we received the
9 exemplars, we reviewed the products' packaging in detail and took informal measurements of the
10 amount of empty space contained therein.

11 8. My office also researched packaging engineering design consultants. We located
12 several academics from various universities and other packaging engineering consultants from the
13 food packaging industry. We contacted a number of potential consulting experts, a number of
14 which we interviewed. We discussed the viability of the potential claims over the course of
15 several phone calls.

16 9. Based on our review of the facts and applicable law, my firm agreed to take on the
17 case on a contingency fee. We knew at the time that the case would be an expert-driven lawsuit
18 with requiring input from qualified professionals in the fields of packaging design engineering,
19 economics, conjoint analysis survey methodologies, and marketing. We also knew that there
20 would be a substantial risk of nonpayment given the fact that other cases had been dismissed on
21 pleadings challenges. But we decided that the claims were meritorious, our client was highly
22 credible, and something ought to be done to address what appeared to be an industry-wide
23 problem.

24 10. In Summer of 2018, my office prepared a statutory notice letter pursuant to the
25 California Consumers Legal Remedies Act, which we served on Ferrara on August 1, 2016. In the
26 months that followed, counsel for Ferrara and we had discussions under Section 1782(e), focused
27 on how to cure the allegedly deceptive packaging. There were many detailed conversations and
28

1 substantive settlement communications which involved evaluation of the claims and defenses.
2 The parties ultimately were unable to reach a resolution.

3 **B. Filing of the Lawsuit and Case Assignment to Judge Vince Chhabria**

4 11. In January and February 2017, my office prepared the instant lawsuit in the United
5 States District Court for the Northern District of California, which we filed on behalf of Mr.
6 Iglesias on February 21, 2017. Plaintiff alleged violations of state and federal packaging laws and
7 consumer protections laws on behalf of all United States purchasers of the theater box candy
8 products manufactured by Ferrara. The case was assigned to the Honorable District Judge Vince
9 Chhabria. During the following days, we thoroughly researched the Honorable District Judge
10 Vince Chhabria’s background, judicial decisions, and standing orders.

11 **C. Defendant’s Pleading Challenges**

12 12. In March 2017, Ferrara requested additional time to respond to the complaint, and
13 we provided the professional courtesy of an extension.

14 13. On April 19, 2017, Defendant filed a Rule 12(b)(6) motion to dismiss Plaintiff’s
15 complaint (Dkt. 14). On May 10, 2017, Plaintiff filed his first amended complaint (“FAC”)
16 pursuant to Rule 15(a) to add additional remedies available under the statutes in lieu of an
17 opposition (Dkt. 18).

18 14. On May 24, 2017, Defendant filed a Rule 12(b)(6) motion to dismiss the FAC,
19 claiming the Products are not misleading and do not contain nonfunctional slack-fill (Dkt. 28),
20 which Plaintiff opposed on June 7, 2017 (Dkt. 34), to which Defendant replied on June 14, 2017
21 (Dkt. 37), and the Court denied on July 25, 2017 (Dkt. 40). Defendant answered Plaintiff’s FAC
22 on August 8, 2017 (Dkt. 41).

23 **D. Written Discovery, Depositions, and Motion to Compel**

24 15. In the ensuing weeks, the Parties negotiated and filed a stipulated protective order
25 for the sharing of information and documents (Dkt. 43). Plaintiff had already served multiple sets
26 of discovery by the time the pleadings were resolved, including special interrogatories, requests
27 for admissions, and document requests. Over the course of the next several months, the Parties
28 met and conferred over Plaintiff’s discovery requests and Defendant’s (supplemental) responses,

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1 which culminated in Plaintiff's motion to compel on November 15, 2017 (Dkt. 47), which the
2 Court granted on November 29, 2017 (Dkt. 48).

3 16. As a result of Plaintiff's successful motion to compel, Defendant produced over
4 6,000 documents. Many of the documents were multi-page spreadsheets which required input
5 from experts to understand. My office spent weeks thoroughly reviewing the documents before
6 taking Rule 30(b)(6) depositions, which my associate Bahar Sodaify and I traveled to Chicago for
7 from December 19-21, 2017, obtaining critical admissions from Defendant's designees.

8 17. In addition, on November 13, 2017, Plaintiff sat for a full day deposition. Our office
9 spent several hours in the days leading up to the deposition to prepare Mr. Iglesias who had never
10 sat for such a deposition before. He provided highly credible testimony under oath, such that
11 defense counsel remarked on it.

12 **E. Mediations and Class Certification**

13 18. On October 10, 2017, the Parties attended a full-day mediation in San Francisco
14 with mediator Martin Quinn. My office prepared and submitted a detailed mediation brief with
15 input from consulting experts, a detailed review of the claims and defenses, the prospects of class
16 certification and success on the merits, among other things. The parties made some progress but
17 were unable to reach an agreement.

18 19. On the heels of Plaintiff's persuasive and credible deposition testimony on
19 November 13, 2017 and Plaintiff's successful motion to compel discovery on November 29, 2017,
20 the Parties scheduled a second mediation, which was held on February 2, 2018, with the
21 Honorable William Cahill (Ret.) in San Francisco.

22 20. In January 2018, Plaintiff prepared for the possibility that the case would not settle
23 at the parties' second mediation in early February and that Plaintiff would have to file his motion
24 for class certification. Plaintiff retained four experts in various disciplines in order to proffer
25 substantial evidence on the Rule 23 elements in order to satisfy the expected rigorous analysis.

26 21. Class Counsel worked intensely with an expert in conjoint analysis survey
27 methodologies, Dr. Michael Bechtel, and commissioned a large-scale consumer survey in which
28 nearly 4,000 consumers were surveyed about their purchase decision making with respect to the

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1 products at issue. The survey results demonstrated that the size of the box was material in
2 consumers' decision-making. It also demonstrated that the amount of candy in the products'
3 boxes was inconsistent with consumers' expectations.

4 22. Class Counsel also worked closely with an expert packaging design engineer, Dr.
5 Claire Sand, who conducted a detailed slack-fill study on the products' packaging. She
6 determined that the products' packaging contained substantial nonfunctional slack fill.

7 23. Class Counsel also worked closely with an economics expert, Dr. Justin Lenzo, who
8 evaluated Dr. Bechtel's and Dr. Sand's opinions, and determined based on their study results that
9 consumers paid a price premium for the nonfunctional empty space in the packaging.

10 24. Class Counsel also worked closely with an expert in marketing, Dr. Forrest
11 Morgeson, who opined that the number of complaints were highly underreported due to barriers to
12 complaint inherent in the stream of commerce for low cost consumer goods. Dr. Morgeson also
13 opined as to consumer purchase decision-making.

14 25. Each of Plaintiff's retained experts prepared full expert reports in support of
15 Plaintiff's motion for class certification, which was filed along with a declaration from Class
16 Counsel and Plaintiff Thomas Iglesias, on March 5, 2018.

17 26. Up through and including that time, Judge Cahill had remained involved in ongoing
18 mediation discussions following the parties' second mediation on February 2, 2018. Within weeks
19 of Plaintiff's motion for class certification being filed on March 5, 2018 (Dkt. 53-54), the parties
20 settled the case (Dkt. 58).

21 **F. The Settlement**

22 27. Based on all available sources my office has reviewed, this settlement is the largest
23 slack fill settlement on record. It provides for a common claim fund of \$2.5 million and a
24 permanent injunction in the form of changes to Ferrara's quality control procedures and target fills
25 levels to 75% for all theater box products and 50% for bag-in-the-box theater box products. This is
26 a substantial increase over what Plaintiff's packaging design engineering expert calculated the
27 slack fill levels to be and will bring the packaging more in line with consumer expectations
28 according to Plaintiff's conjoint analysis survey expert.

1 28. The settlement is the largest-ever slack-fill settlement on record¹ and provides a
 2 superior recovery for the class. Defendant will pay a total of \$2.5 million in cash to a common
 3 claim fund. Subject to court approval, the settlement fund will be used to pay the settlement
 4 payments to class members, notice and administration costs (\$522,000), a service award to Mr.
 5 Iglesias (\$5,000), reimbursement of litigation expenses (\$102,172.12), and an award of reasonable
 6 attorneys' fees (\$625,000).

7 29. On May 10, 2018, Plaintiff filed his motion for preliminary approval which included
 8 a detailed notice and administration plan and the proposed settlement which included substantial
 9 monetary relief and injunctive relief (Dkt. 72) as agreed upon by the Parties. The Court granted
 10 Plaintiff's motion for preliminary approval (Dkt. 80, 82).

11 **G. Post-Preliminary Approval Activity to Date**

12 30. Our office has closely monitored the class notice program being carried out by the
 13 notice administrator and the claims administration process with minimum weekly check-ins and
 14 discussions whenever class member questions have arisen. The class member response has been
 15 overwhelmingly positive. To date, 71,116 claims and zero objections have been submitted.

16 31. This is an important win for consumers. Plaintiff has achieved through this
 17 settlement the type of relief one might reasonably expect after a trial on the merits, making
 18 settlement at this juncture all the more enticing. As a result of Plaintiff's efforts, consumers will be
 19 able to obtain refunds that exceed the amounts they might have received through trial given the
 20 average price premium according to Plaintiff's economics expert and the average price per box as
 21 compared to the 50 cents per box refund amount. In addition, consumers will have the benefit of
 22 fill levels in line with their expectations from a highly visible competitor in the marketplace—now
 23 part of the second largest candy company in the world—which will aid in leveling the playing
 24 field among candy companies, a substantial benefit to the general public.

25 32. Class Counsel achieved this outstanding result with skill and efficiency, against the
 26 determined opposition of a deep-pocketed defendant represented by highly experienced and

27 _____
 28 ¹ Compare to *Kline v. Dymatize Enters., LLC*, No. 15-CV-2348, 2016 U.S. Dist. LEXIS 142774
 (S.D. Cal. Oct. 13, 2016) (slack-fill case involving protein powder in large opaque containers
 provided only injunctive relief).

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1 capable counsel. Plaintiff’s claims were complex and raised difficult legal questions. Prosecuting
2 these claims required a high degree of skill, experience, and diligence, and presented daunting
3 risks. While vigorously litigating this case, Class Counsel had to navigate the ever-changing legal
4 terrain and overcome pitfalls common to other slack-fill lawsuits. As reflected in hotly contested
5 pleadings challenges, this case raised novel issues, which Plaintiff and Class Counsel astutely
6 addressed and overcame. For example, this case asked whether Defendant’s product packaging
7 contains nonfunctional slack-fill and is considered deceptive to reasonable consumers. There was
8 (and is) no appellate decision in any circuit that dealt with these specific issues. Resolution of the
9 issues therefore involved researching and analyzing conflicting district court opinions and
10 statutory interpretation.

11 33. Plaintiffs earned this settlement after investing substantial time and personnel
12 resources (accumulating a lodestar to date of \$523,702.50), and advancing considerable costs
13 (totaling \$102,172.12). As discussed herein, Plaintiffs’ request is reasonable given the exceptional
14 result obtained after hard-fought litigation, the efforts of Class Counsel, and the costs incurred.

15 **II. BACKGROUND AND EXPERIENCE OF CLASS COUNSEL**

16 34. Our firm is comprised of highly-respected and experienced leaders in the field of
17 consumer class action litigation.

18 35. I graduated from the Michigan State University School of Law, *summa cum laude*,
19 in 2005 and received my B.A. from University of Michigan at Ann Arbor in 1999.

20 36. Prior to founding Clarkson Law Firm, P.C. (and its predecessor firm) in 2011 and
21 serving as its managing attorney, I was a senior associate at a prominent Southern California class
22 action firm where I exclusively litigated consumer class actions against pharmaceutical
23 companies, insurance carriers, food manufacturers, and other consumer goods manufacturers.
24 Clarkson Law Firm, P.C. has focused on large-scale class action litigation from its inception.

25 37. The following are some of my representative cases:

26 a. ***Fluoroquinolone Antibiotic Cases***. I was the first attorney in the country to
27 take on clients in connection with claims for permanent and disabling nerve damage caused by
28

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1 Levaquin, Cipro, and Avelox antibiotics manufactured by Johnson & Johnson and Bayer
2 Pharmaceuticals. Mr. Clarkson represents dozens of clients across the country.

3 b. ***Garcia v. Iovate et al., Santa Barbara Superior Court, Case No. 1402915.***
4 I successfully intervened in this case on behalf of a class of consumers of the popular
5 “Hydroxycut” weight loss supplement and, along with the efforts of co-counsel, increased the size
6 of the settlement by more than ten-fold to a total settlement value of over \$10 million.

7 38. My law partner Shireen M. Clarkson received her Juris Doctorate from University of
8 California Hastings College of the Law in 2004. Prior to joining Clarkson Law Firm, P.C., she
9 was a senior associate at a prominent Southern California class action firm where she also
10 exclusively litigated consumer class actions and mass torts cases against pharmaceutical
11 companies, insurance carriers, food manufacturers, and other consumer goods manufacturers. In
12 2014, Mrs. Clarkson joined Clarkson Law Firm P.C.

13 39. The following are some of Mrs. Clarkson’s representative cases:

14 a. ***Imburgia, et al vs. DirecTV Inc., Los Angeles County Superior Court,***
15 **Case No. BC398295.** Mrs. Clarkson was actively involved in obtaining class certification of a
16 matter involving unlawful termination fees against the satellite television giant, DirecTV, and was
17 among the attorneys appointed as co-lead class counsel for the certified class. Most notably, she
18 played an integral role in defeating DirecTV’s motion to compel arbitration following the United
19 States Supreme Court’s 2011 decision in *AT&T Mobility v. Concepcion* – the only case in the
20 nation to overcome *Concepcion*’s broad impact on consumer contracts with arbitration provisions.
21 Mrs. Clarkson participated in the further defeat of DirecTV’s appeal in the Ninth Circuit. The
22 decision was ultimately reversed by the United States Supreme Court, although Justices Thomas,
23 Ginsburg, and Sotomayor filed dissents, consistent with plaintiffs’ position, writing that the
24 majority’s decision “again expanded the scope of the FAA, further degrading the rights of
25 consumers and further insulating already powerful economic entities from liability for unlawful
26 acts.”

27 b. ***Grair vs. Johnson v. GlaxoSmithKline, Inc., 166 Cal. App. 4th 1497***
28 **(2009), Los Angeles County Superior Court, Case No. BC288536.** While at her former law

1 firm, Mrs. Clarkson assisted in achieving a class settlement of over \$3.5 million for a class of
 2 California consumers of the drug Paxil. This was a hard-fought lawsuit that spanned over the
 3 course of eight years. The settlement changed the general perception of sleeping pills which are no
 4 longer regarded as “non-habit forming” as falsely advertised by GlaxoSmithKline.

5 c. ***Penos vs. Zell, et al., Los Angeles County Superior Court, Case No.***
 6 **BC398686.** Mrs. Clarkson assisted in uncovering Labor Code violations on behalf of employees
 7 in this certified class action lawsuit. She was an integral part of the discovery, briefing, and
 8 negotiations that ultimately led to a class action settlement of this matter, resulting in hundreds of
 9 thousands of dollars to the employee class.

10 40. A copy of my firm’s resume, which includes more detailed information about our
 11 practice and the qualifications of the other Clarkson Law Firm, P.C. lawyers who worked on this
 12 case, is attached as **Exhibit 1**. Not included on my law firm’s resume are four other slack fill
 13 cases my firm is prosecuting on behalf of consumer classes in California state and federal court
 14 involving theater box candy products against highly visible competitors in the confectionery
 15 industry.

16 **III. CLASS COUNSEL’S LODESTAR AND EXPENSES**

17 41. I have personally reviewed all of my firm’s time entries, and have used billing
 18 judgment to ensure that duplicative or unnecessary time has been excluded and that only time
 19 reasonably devoted to the litigation has been included. The time and descriptions displayed in
 20 these records were regularly and contemporaneously recorded by me and the other timekeepers of
 21 the firm pursuant to firm policy and have been maintained in the ordinary course of business.

22 42. As of September 5, 2018, Clarkson Law Firm, P.C. expended 1,081.8 hours in this
 23 case. Clarkson Law Firm, P.C.’s lodestar fee in this case, based on current billing rates, is
 24 \$523,702.50. Notably, my firm has not increased our billing rates since 2016 when billing on this
 25 matter commenced.

26 43. Our firm maintains a system for entering daily billing entries disaggregated by date,
 27 description, hours, amount, and Uniform Task-Based Management System (“UTBMS”) Codes
 28 and Sub-codes, which will be made available for *in camera* review upon request of the Court.

1 Below is a summary chart of each of my firm's timekeepers who have billed to this matter,
 2 disaggregated by number of hours billed, billing rate, and total fees. Notably, I assigned as many
 3 tasks to lower-rate paralegals and associate attorneys as possible.

Timekeeper (Year of Bar Admission) (Title)	Hours	Rate (\$)	Total (\$)
Ryan J. Clarkson (2005) (Managing Attorney)	390	650	253,390
Shireen M. Clarkson (2005) (Senior Partner)	112.4	650	73,060
Bahar Sodaify (2013) (Associate)	462.6	375	173,860
Shalini Dogra (2016) (Associate)	8	290	2,320
Rita Mansuryan (Law Clerk)	6.6	245	1,617
Brandon Mata (Law Clerk)	7.3	245	1,788.5
Lauren Mayes (Law Clerk)	9	245	2,205
Sarah Longalong (Litigation Support)	57.3	180	10,314
Stephanie Satow (Litigation Support)	27.4	180	4,392
Christine Williams (Litigation Support)	1.2	180	216
Totals	1,081.8	484	523,702.50

14
 15 44. In addition to the time enumerated above, I estimate that Plaintiffs' counsel will
 16 incur dozens of additional hours of future work in connection with this case through final approval
 17 and to ensure the claims administrator satisfied its duties to the settlement class and the Court.

18 45. Our firm maintains an itemized listing of the primary out-of-pocket expenses my
 19 firm incurred in this case disaggregated by date, description, amount, and Uniform Task-Based
 20 Management System ("UTBMS") Codes and Sub-codes, which will be made available for *in*
 21 *camera* review upon request of the Court. Plaintiffs' total litigation expenses of \$102,172.12 were
 22 reasonably incurred in this case. These expenses are reflected in the records of Clarkson Law
 23 Firm, P.C., and were necessary to prosecute this litigation. All expenses were carefully and
 24 reasonably expended, and they reflect market rates for various categories of expenses incurred.
 25 Most of these expenses were incurred for expert opinions and testimony, court fees, survey fees,
 26 mediation fees, discovery costs, travel costs, copying costs, and courier costs. Expense items were
 27 billed separately and such charges were not duplicated in my firm's billing rates. Below is a
 28 summary chart of the litigation expenses by category:

Category of Litigation Expenses	Total
Courier Services	\$1,767.25
Filing Fees	\$842.60
Airfare, Hotel, and Taxis	\$6,040.23
Copy Services	\$1,951.40
Discovery Management	\$2,344.69
Expert Fees	\$78,527.38
Deposition and Court Reporting Services	\$6,863.64
Mediation Fees	\$3,783.33
Total	\$102,172.12

46. Our firm has prepared a chart setting forth the hourly rates charged for lawyers and staff at our firm. Based on my knowledge and experience, the hourly rates charged by my firm are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. These are the same hourly rates that we actually charge to our regular hourly clients who have retained us for non-contingent matters, and which are actually paid by those clients. I have personal knowledge of the range of hourly rates typically charged by counsel in our field in San Francisco, California, and throughout the United States, both on a current basis and in the past. In determining my firm's hourly rates from year to year, Mrs. Clarkson and I have consciously taken market rates into account and have aligned our rates with the market.

47. Through my practice, we have become familiar with the non-contingent market rates charged by attorneys in California. This familiarity has been obtained in several ways: (1) by litigating attorneys' fee applications; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates filed by other attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises. The information we have gathered shows that our firm's rates are in line with, and in fact less than, the *non-contingent* market rates charged by attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable

1 class action work. In fact, comparable hourly rates have been found reasonable by various courts
2 for reasonably comparable services, including:

3 a. *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M 07 1827 SI, MDL,
4 No. 1827 (N.D. Cal. 2013), an antitrust class action, in which the court found blended hourly rates
5 of \$1000, \$950, \$861, \$825, \$820, and \$750 per hour reasonable.

6 b. *Williams v. H&R Block Enterprises, Inc.*, Alameda County Superior Ct. No.
7 RG08366506, Order of Final Approval and Judgment filed November 8, 2012, a wage and hour
8 class action, in which the court found the hourly rates of \$785, \$775, and \$750 reasonable for the
9 more senior counsel.

10 c. *Luquetta v. The Regents of the Univ. of California*, San Francisco Superior
11 Ct. No. CGC-05-443007, Order Granting Plaintiff's Motion for Common Fund Attorneys' Fees
12 and Expenses, filed October 31, 2012, a class action to recover tuition overcharges, in which the
13 court found the hourly rates of \$850, \$785, \$750, and \$700 reasonable for plaintiffs' more
14 experienced counsel.

15 d. *Pierce v. County of Orange*, 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil
16 rights class action brought by pre-trial detainees, in which the court approved a lodestar- based on,
17 *inter alia*, rates of \$850 and \$825 per hour in 2011.

18 e. *Holloway et. al. v. Best Buy Co., Inc.*, No. 05-5056 PJH (N.D. Cal. 2011)
19 (Order dated November 9, 2011), a class action alleging that Best Buy discriminated against
20 female, African American and Latino employees by denying them promotions and lucrative sales
21 positions, in which the court approved lodestar-based rates of up to \$825 per hour.

22 f. *Californians for Disability Rights, Inc., et al. v. California Department of*
23 *Transportation, et al.*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010), adopted by Order
24 Accepting Report and Recommendation filed February 2, 2011, a class action in which the court
25 found reasonable 2010 hourly rates of up to \$835 per hour.

26 g. *Credit/Debit Card Tying Cases*, San Francisco County Superior Court, JCCP
27 No. 4335, Order Granting Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive
28 Awards, filed August 23, 2010, an antitrust class action, in which the court, before applying a 2.0

1 lodestar multiplier, found reasonable 2010 hourly rates of \$975 for a 43-year attorney, \$950 for a
2 46-year attorney, \$850 for 32 and 38 year attorneys, \$825 for a 35-year attorney, \$740 for a 26-
3 year attorney, \$610 for a 13-year attorney, and \$600 for a 9-year attorney, and \$485 for a 5-year
4 attorney.

5 48. The reasonableness of my firm's hourly rates are also supported by several surveys
6 of legal rates, including the following:

7 a. In an article entitled "On Sale: The \$1,150-Per Hour Lawyer," written by
8 Jennifer Smith and published in the Wall Street Journal on April 10, 2013, the author describes the
9 rapidly growing number of lawyers billing at \$1,150 or more revealed in public filings and major
10 surveys. The article also notes that in the first quarter of 2013, the 50 top-grossing law firms billed
11 their partners at an average rate between \$879 and \$882 per hour. A true and correct copy of this
12 article is attached hereto as **Exhibit 2**.

13 b. In an article published April 16, 2012, the Am Law Daily described the 2012
14 Real Rate Report, an analysis of \$7.6 billion in legal bills paid by corporations over a five-year
15 period ending in December 2011. A true and correct copy of that article is attached hereto as
16 **Exhibit 3**. That article confirms that the rates charged by experienced and well-qualified attorneys
17 have continued to rise over this five-year period, particularly in large urban areas like the San
18 Francisco Bay Area. It also shows, for example that the top quartile of lawyers bill at an average
19 of "just under \$900 per hour."

20 c. Similarly, on February 25, 2011, the Wall Street Journal published an on-line
21 article entitled "Top Billers." A true and correct copy of that article is attached hereto as **Exhibit**
22 **4**. That article listed the 2010 and/or 2009 hourly rates for more than 125 attorneys, in a variety of
23 practice areas and cases, who charged \$1,000 per hour or more. Indeed, the article specifically
24 lists *eleven* (11) Gibson Dunn & Crutcher attorneys billing at \$1,000 per hour or more.

25 d. On February 22, 2011, the ALM's Daily Report listed the 2006-2009 hourly
26 rates of numerous San Francisco attorneys. A true and correct copy of that article is attached
27 hereto as **Exhibit 5**. Even though rates have increased significantly since that time, my firm's
28 rates are well within the range of rates shown in this survey.

1 e. The Westlaw CourtExpress Legal Billing Reports for May, August, and
2 December 2009 (a true and correct copy of which is attached hereto as **Exhibit 6**) show that as far
3 back as 2009, attorneys with as little as 19 years of experience were charging \$800 per hour or
4 more, and that the rates requested here are well within the range of those reported. Again, current
5 rates are significantly higher.

6 f. The National Law Journal's December 2010, nationwide sampling of law
7 firm billing rates (a true and correct copy of which is attached hereto as **Exhibit 7**) lists 32 firms
8 whose highest rate was \$800 per hour or more, eleven firms whose highest rate was \$900 per hour
9 or more, and three firms whose highest rate was \$1,000 per hour or more.

10 g. On December 16, 2009, The AmLaw Daily published an online article
11 entitled "Bankruptcy Rates Top \$1,000 in 2008-2009." That article is attached hereto as **Exhibit**
12 **8**. In addition to reporting that several attorneys had charged rates of \$1,000 or more in bankruptcy
13 filings in Delaware and the Southern District of New York, the article also listed 18 firms that
14 charged median partner rates of from \$625 to \$980 per hour.

15 h. The hourly rates of all billing attorneys from my firm are less than the rates
16 reflected in the Laffey Index *before adjustment* for the roughly plus-20% cost of living increase
17 necessary for the San Francisco market over Washington, D.C. A true and correct copy of the
18 Laffey Index is attached hereto as **Exhibit 9**. The methodology of calculation and benchmarking
19 for the Laffey Matrix has been approved in a number of cases. *See, e.g., McDowell v. District of*
20 *Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4,
21 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

22 49. Given Clarkson Law Firm, P.C.'s track record of success, our firm's hourly rate for
23 partners is set at \$650, which is the same rate that my firm charges to clients who retain us on an
24 hourly basis and comprises about 10% of our billings.

25 50. No court has ever cut my firm's fee application by a single dollar on the ground that
26 our hourly rates were not reasonable.

27 51. My firm undertook this representation on a wholly contingent basis recognizing that
28 the risk of non-payment has been high throughout this litigation. There were some uncertainties in

1 the viability of this case as a class action, as well as uncertainties in the merits of the underlying
 2 claims. Although we believed the case to be meritorious, a realistic assessment shows that the
 3 risks inherent in the resolution of the liability issues, protracted litigation in this action as well as
 4 the probable appeals process, were great. Indeed, as a result of taking on Mr. Iglesias' case, my
 5 firm turned down other potentially profitable matters, including hourly work, and devoted
 6 resources to this case that could have been devoted to other potentially income-generating matters.

7 52. Had we not resolved this matter through settlement, we would have vigorously
 8 prosecuted the case through class certification, summary judgment, trial, and appealed any
 9 determinations that may have been adverse to the class's interests. We were therefore at great risk
 10 for non-payment. In addition, as described above, we have advanced significant expenses that
 11 would have continued to grow and would not have been reimbursed absent a successful result.

12 53. Due to the commitment of time and capital required to litigate this action, my firm
 13 had to forego significant other work from the beginning late-2016 through the present, including
 14 work for paying clients billed by the hour on a non-contingent basis, as well as other class action
 15 cases.

16 **IV. THE CLASS REPRESENTATIVE'S ROLE IN THIS LITIGATION**

17 54. Plaintiff requests approval of incentive awards of \$5,000 each for their service. In
 18 light of his efforts, this request is exceedingly reasonable.

19 55. Under California law, it is well-established that named class representatives are
 20 eligible for reasonable incentive payments. *See Munoz v. BCI Coca-Cola Bottling Co. of Los*
 21 *Angeles*, 186 Cal.App.4th 399, 412 (2010); *In re Cellphone Fee Termination Cases*, 186
 22 Cal.App.4th 1380, 1393 (2010); *Clark v. American Residential Services LLC*, 175 Cal.App.4th
 23 785, 804-06 (2009); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004); *Newberg* §
 24 11:38 (4th ed. 2008). These awards are discretionary, and "the rationale for making enhancement
 25 or incentive awards to named plaintiffs is that they should be compensated for the expense or risk
 26 they have incurred in conferring a benefit on other members of the class." *Clark*, 175 Cal.App.4th
 27 at 806; *see also Munoz*, 186 Cal.App.4th at 412. Such awards compensate class representatives
 28 and others for actual costs in time, money, and the disruption of life incurred in the prosecution of

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1 the litigation. They also serve to encourage future plaintiffs to come forward and vindicate the
2 rights of other injured parties.

3 56. Here, the involvement of class representative Mr. Iglesias was critical to the
4 prosecution of the case. Throughout the litigation, Mr. Iglesias held regular meetings with my firm
5 by phone, in person, and through email to receive updates on the progress of the case, to discuss
6 strategy, and to review and approve documents for filing. He assisted in my firm's pre-lawsuit
7 investigation by providing information regarding his background and purchase information.

8 57. Mr. Iglesias coordinated with my firm to form responses to discovery requests,
9 including written documents requests, and he searched for responsive documents. Mr. Iglesias also
10 sat for a full-day deposition. He was intimately involved in the settlement process, and has
11 continued to keep abreast of settlement progress to date.

12 58. Mr. Iglesias assisted in the drafting of pleadings and papers, including complaints,
13 class certification motion, opposition to motions to dismiss, and he reviewed each for accuracy
14 before they were filed.

15 59. Mr. Iglesias also took significant time away from work and personal activities to
16 initiate and litigate this action. He was prepared to litigate this case to a verdict if necessary. His
17 dedication and efforts have conferred a significant benefit on millions of purchasers of the
18 products across the United States and the general public.

19 60. In light of his contributions and efforts, an incentive award of \$5,000 for acting as
20 the class representative is appropriate and should be approved. Mr. Iglesias' contributions are
21 described in more detail in his declaration, filed herewith.

22 I declare under penalty of perjury under the laws of the United States and the State of
23 California that the foregoing is true and correct.

24 Executed on September 6, 2018 at Los Angeles, California.

25
26 

27 Ryan J. Clarkson, Esq.
28