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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CASE NUMBER:

PLAINTIFF(S),
v.
DEFENDANT(S).

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that _____ hereby appeals to
Name of Appellant
the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- Conviction only [F.R.Cr.P. 32(j)(1)(A)]
- Conviction and Sentence
- Sentence Only (18 U.S.C. 3742)
- Pursuant to F.R.Cr.P. 32(j)(2)
- Interlocutory Appeals
- Sentence imposed:

Civil Matter

- Order (specify):
- Judgment (specify):
- Other (specify):

Bail status:

Imposed or Filed on _____. Entered on the docket in this action on _____.

A copy of said judgment or order is attached hereto.

Date

Signature
 Appellant/ProSe Counsel for Appellant Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK HENDRICKS,
Plaintiff,
v.
STARKIST CO, et al.,
Defendants.

Case No.13-cv-00729-HSG
**ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT;
GRANTING IN PART AND DENYING
IN PART MOTION FOR ATTORNEYS'
FEES**
Re: Dkt. Nos. 262, 347, 353, 363

United States District Court
Northern District of California

I. INTRODUCTION

Pending before the Court is Plaintiff Patrick Hendricks’ renewed motion for final approval, Dkt. No. 347. The Court held a final fairness hearing on December 17, 2015, and a second hearing on April 20, 2015.

Also pending before the Court is Plaintiff’s motion for attorneys’ fees, costs, and expenses, Dkt. No. 262; objector Eric Lindberg’s motion to remove class counsel and conduct discovery, Dkt. No. 353; and objectors Colin Moore and Kathy Durand Gore’s motion for attorneys’ fees, expenses, and incentive awards, Dkt. No. 363.

II. BACKGROUND

A. Litigation History

On February 19, 2013, Plaintiff filed this action in the Northern District of California. *See* Dkt. No. 1 (“Complaint”). The Complaint asserted claims under California Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act or “CLRA”), California Business and Professions Code § 17200 *et seq.* (Unfair Competition Law), California Business and Professions Code § 17500 *et seq.* (False Advertising Law), and for breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, negligent misrepresentation, fraud, and unjust enrichment. *Id.* The Court dismissed Plaintiff’s unjust

1 enrichment claim on March 25, 2013. *See* Dkt. No. 57.

2 The parties participated in two settlement conferences before Judge Corley, the first on
3 May 21, 2014 and the second on March 20, 2015. *See* Dkt. Nos. 67 and 126. While no settlement
4 was reached during those conferences, the case ultimately settled shortly after the second
5 settlement conference and just prior to the hearing on Plaintiff's motion for class certification on
6 April 16, 2015. *See* Dkt. No. 184 at 5. Plaintiff moved for preliminary approval of the Settlement
7 Agreement on May 14, 2015. *Id.* On July 23, 2015, the Court granted preliminary approval of the
8 settlement, provisionally certified a settlement class, appointed Scott Bursor of Bursor and Fisher
9 P.A. as lead class counsel, and directed notice to Class Members. Dkt. No. 194. After the Court's
10 preliminary approval and after class notice was distributed, the parties stipulated to a change in the
11 scope of the settlement's release, adding new claims which substantively changed the settlement's
12 terms. *See* Dkt. No. 323-2, Ex. A.

13 On October 30, 2015, Plaintiff filed a motion for attorneys' fees, Dkt. No. 262, and on
14 December 11, 2015, Plaintiff filed a motion for final approval of the settlement, Dkt. No. 326.
15 On December 17, 2015, the Court held a fairness hearing regarding final approval of the
16 settlement agreement, attorneys' fees and expenses, and incentive payments to the named plaintiff
17 and interested parties. On February 19, 2016, the Court denied final approval of the settlement
18 action without prejudice on two bases, holding (1) the settlement notice sent to Class Members did
19 not notify the Class of the amended release and thus was inadequate, and (2) the scope of the
20 original release and amended release violated the identical factual predicate rule. Dkt. No. 336.

21 On March 1, 2016, the parties executed a stipulated amendment to the settlement release,
22 or a "second amended release," Dkt. No. 338. On March 17, 2016, Plaintiff filed a renewed
23 motion for final approval, Dkt. No. 347, which is currently pending before the Court. The Court
24 set March 29, 2016 as the deadline for submission of objections to the second amended release,
25 and directed Class Counsel to post the deadline on the settlement website.

26 On March 29, 2016, Objector Eric Lindberg filed a motion to remove class counsel and
27 conduct discovery, Dkt. No. 353. The Court held a second hearing specifically on the second
28 amended release as well as on the motion to remove class counsel on April 21, 2016.

B. Settlement Agreement

Following the settlement in principle, the parties executed a Stipulation of Settlement Agreement (“Settlement Agreement”). *See* Dkt. No. 187-1. The key provisions of the Settlement Agreement are as follows.

Class: The “Class” (“Class Members”) consists of residents of the United States who, from February 19, 2009 through October 31, 2014, purchased any of the StarKist Products (*i.e.*, 5 oz. Chunk Light in Water, 5 oz. Chunk Light in Oil, 5 oz. Solid White in Water, and 5 oz. Solid White in Oil).

Payment Terms: In full settlement of the claims asserted in this lawsuit, StarKist agrees to pay \$8,000,000 in cash and \$4,000,000 in vouchers for StarKist products. *Id.* at 5. This amount includes payments to claimants for release of their claims, any award of attorneys’ fees and costs, claims administrator costs, and any incentive awards to Hendricks and interested parties. *Id.* at 7.

Attorneys’ Fees and Costs: The Settlement Agreement authorizes class counsel to apply to the Court for an award of attorneys’ fees and costs incurred in litigating this case. *Id.* at 11-12.

Incentive Payment: The Settlement Agreement provides that class counsel will petition the Court for approval of payments of no more than \$5,000 to Hendricks and “interested parties” identified as Laury Smith, Ben Hall, Brian Andcacky, Joseph Vallillo, Joseph Ebin, Kelly Maucieri, Monica Rodriguez, and Jayme Kaczmarek. *Id.* at 4, 12.

Unclaimed Settlement Funds: The Settlement Agreement provides that class counsel may petition the Court to seek approval for proposed disposition of any remaining cash and/or vouchers remaining after distribution of claims. *Id.* at 11.

Release: The second amended release provides the following:

6.1 Release by Settlement Class Members. If the Court grants final approval of the settlement, all members of the Class will release and forever discharge any and all claims or causes of action arising from the factual allegations and/or legal claims *arising from the factual allegations* made in the Action, whether in law or equity, whether seeking damages or any other relief (including attorneys’ fees), of any kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including, without limitation, claims sounding in tort, contract, and the consumer protection laws of the United States or of any state or other

United States District Court
Northern District of California

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jurisdiction within the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, misrepresentation, and false advertising law of the United States or any state or other jurisdiction within the United States (the “Released Claims”). Excluded from the Released Claims are (a) any and all claims for personal injury, wrongful death, and/or emotional distress arising from personal injury, (b) any claims of any person or entity that purchased StarKist Products for purposes of resale or commercial food preparation and not for his/her/its own consumption (i.e., “Resellers”), and (c) any antitrust claim arising from a conspiracy among, or collusive agreement between, StarKist and one or more of its competitors.

Dkt. No. 339-2 at 4 (emphasized portion was a stipulated addition resulting from the April 21, 2016 hearing).

III. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

“The claims, issues, or defenses of a certified class may be settled . . . only with the court’s approval.” Fed. R. Civ. P. 23(e). The Court may finally approve a class settlement “only after a hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To assess whether a proposed settlement comports with Rule 23(e), a district court must “determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). To make this determination, courts consider the following factors:

the strength of the plaintiff’s case; the risk expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Id. No single factor is the “most significant.” *Officers for Justice v. Civ. Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). In addition, “[a]dequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.

B. Adequacy of Notice

Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The notice must “clearly and concisely state in plain, easily understood language” the nature of the

1 action, the class definition, and class members’ right to exclude themselves from the class. Fed.
2 R. Civ. P. 23(c)(2)(B). Additionally, before granting final approval of a proposed class settlement,
3 a court must “direct notice in a reasonable manner to all class members who would be bound by
4 the proposal.” Fed. R. Civ. P. 23(e)(1). While Rule 23 requires that reasonable efforts be made to
5 reach all class members, it does not require that each individual actually receive notice. *See*
6 *Rannis v. Recchia*, 380 F. App’x 646, 650 (9th Cir. 2010) (noting that “due process requires
7 reasonable effort to inform affected class members through individual notice, not receipt of
8 individual notice”).

9 The Court previously approved the notice and notice plan proposed by the parties. Dkt.
10 Nos. 194, 196. The Court finds that the Settlement Administrator properly carried out the notice
11 plan approved by the Court. *See* Dkt. No. 187-2. Pursuant to the Court’s schedule, KCC Class
12 Action Services, LLC promulgated notice on September 25, 2015 sending both e-mail notices and
13 postcard notices. Dkt. No. 262-1, ¶ 60; Dkt. No. 187-2. The notice provided for publication in
14 *People* and the *San Francisco Examiner*; it included an Internet banner campaign, press release,
15 toll-free number, settlement website, Facebook page, and direct notice to roughly 40,600 class
16 members identifiable from Defendant’s records. *Id.* Of the Class Members who received direct
17 notice, approximately 6,090 were sent an email, and an additional 34,510 were sent a postcard by
18 U.S. Mail. *Id.* Affiliates of NBC and ABC, Time.com, Consumerist.com, and *The New York*
19 *Times* have also reported news of the settlement. *Id.* at ¶ 62. Through the deadline for submission
20 of claims, November 20, 2015, there were 2,512,034 claims submitted. Dkt. No. 325-1, ¶ 103. As
21 of December 7, 2015, KCC Class Action had processed 93 opt-outs; of those 93 requests, 16 Class
22 Members also filed a claim. Dkt. No. 322, ¶ 3.

23 Specifically, with regard to the second amended release, the Court finds additional notice
24 is not needed. Because the parties have removed the language discharging federal and state
25 antitrust claims from the release and because the latest release narrows the scope of claims
26 discharged, there is no longer a risk that Class Members have relinquished rights without
27 knowledge of new claims. Thus, additional notice was not required. *See, e.g., Shaffer v.*
28 *Continental Cas. Co.*, 362 F. App’x 627, 631 (9th Cir. 2010) (“Although changes were made to

1 the release after potential class members received the notice, the changes did not render the notice
2 inadequate because they narrowed the scope of the release.”); *Moore v. Verizon Commc’ns Inc.*,
3 No. C 09-1823 SBA, 2013 WL 4610764, at *4, 13-15 (N.D. Cal. Aug. 28, 2013) (granting final
4 approval even though parties stipulated to several modifications to the release without providing
5 new notice to the class); *Zamora v. Ryder Integrated Logistics, Inc.*, No. 13CV2679-CAB BGS,
6 2014 WL 9872803, at *3 (S.D. Cal. Dec. 23, 2014) (granting final approval to a settlement
7 agreement that included modified release language without requiring additional notice as the
8 added language did not “broaden the release being provided”).

9 In light of the foregoing, the Court finds that the parties have sufficiently provided the best
10 practicable notice to the Class Members.

11 **C. Fairness, Adequacy, and Reasonableness of Settlement**

12 Having found the notice procedures adequate under Rule 23(e), the Court next considers
13 whether the entire settlement comports with Rule 23(e).

14 **1. Scope of Second Amended Release**

15 As an initial matter, the Court notes that it is satisfied that the second amended release
16 resolves the concerns identified in its February 19, 2016 order. The release no longer discharges
17 “any and all claims . . . relating in any way to the claims asserted or the factual allegations made
18 in the Action, including without limitation the . . . purchase of any of the StarKist Products.” *See*
19 *Dkt. No. 323 at 2*. Rather than discharging claims beyond the complaint’s scope, the release
20 expressly limits the discharge to “causes of action arising from the factual allegations and/or legal
21 claims arising from the factual allegations made in the Action.” Moreover, the release no longer
22 violates the identical factual predicate rule by forcing Class Members to discharge claims under
23 antitrust laws mentioned nowhere in the complaint. Rather, it explicitly excludes from the release
24 any antitrust claim by (1) limiting the release to claims “arising from the factual allegations and/or
25 legal claims made in the Action,” and (2) excluding from the Released Claims “any antitrust claim
26 arising from a conspiracy among, or collusive agreement between, StarKist and one or more of its
27 competitors.” *Dkt. No. 339-2 at 4*. Accordingly, the release no longer poses an obstacle to the
28 fairness, adequacy, or reasonableness of the Settlement.

2. Strength of Plaintiff's Case and Risk of Continued Litigation

Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010). Courts “may presume that through negotiation, the Parties, counsel, and mediator arrived at a reasonable range of settlement by considering Plaintiff’s likelihood of recovery.” *Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-1365-CW, 2010 WL 1687832, at *9 (N.D. Cal. Apr. 22, 2010). Additionally, difficulties and risks in litigating weigh in favor of approving a class settlement. *Rodriguez v. W. Publ’g Co.*, 563 F.3d 948, 966 (9th Cir. 2009). “Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Ching v. Siemens Indus., Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014) (internal quotations omitted).

Here, the settlement amount is adequate given the expense, complexity, and duration of further litigation. To prevail, Plaintiff would be required to successfully move for class certification, survive summary judgment, and receive a favorable verdict capable of withstanding a potential appeal. The risks and costs associated with class action litigation weigh strongly in favor of settlement. *See Curtis-Bauer v. Morgan Stanley & Co.*, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) (“Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class.”).

The settlement provides \$12,000,000 as a gross settlement amount, \$8,000,000 to be paid in cash and \$4,000,000 in StarKist vouchers. Of the 2,512,034 claims submitted, 902,643 members chose to receive vouchers. Dkt. No. 325-1, ¶¶ 104-05. These Class Members will receive approximately \$4.43 per claim. *Id.* Of the claims submitted, 1,607,632 Class Members chose to receive cash. *Id.* If the motion for attorneys’ fees, costs, and incentive awards is granted in full, Class Members who chose to receive cash will be paid approximately \$1.97 per claim. *Id.* Class counsel continues to represent that this is an “excellent recovery that will fully compensate most Class members for 100% of their alleged losses, and possibly more.” *Id.* at ¶ 105. As the Court observed during the April 16, 2015 Case Management Conference, the pressed-weight testing results for StarKist cans of tuna presented a significant hurdle to establishing that

1 substantial numbers of “underweight” cans were sold to the public. The relative weakness of
2 Plaintiff’s case on the merits thus favors approval.

3 The average retail price for a 5-ounce can of StarKist Chunk Light In Water was 86 cents
4 during the Class Period. *Id.* Testing showed that there was an average underfill between 4.5%
5 and 16.7%, resulting in damages between 3.87 cents and 14.3 cents per can. *Id.* A \$1.97 cash
6 payment would provide full recovery for 13 to 50 cans and a voucher of \$4.43 would provide full
7 recovery for 30 to 114 cans. *Id.* Accordingly, this factor weighs in favor of settlement as well.

8 **3. Risk of Maintaining Class Action Status**

9 This factor concerns whether class certification can be maintained through trial, and also
10 weighs in favor of settlement. Certifying a class of millions of consumers who may have
11 purchased some, but not all, varieties of StarKist’s tuna products over half a decade presents
12 complex and substantial issues that could undermine certification at different stages of the
13 litigation.

14 **4. Amount Offered in Settlement**

15 The \$12,000,000 settlement amount, while constituting only a single-digit percentage of
16 the maximum potential exposure, is reasonable given the stage of the proceedings and the defenses
17 asserted in this action. Based on the facts in the record and the parties’ arguments at the final
18 fairness hearing, the Court finds that the settlement is within the range of reasonableness in light
19 of the risks and costs of litigation. *See Stovall-Gusman v. Granger, Inc.*, No. 13-cv-02540-HSG,
20 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval of a net settlement
21 amount representing 7.3% of the plaintiffs’ potential recovery at trial); *see Villanueva v. Morpho*
22 *Detection, Inc.*, No. 13-cv-05390-HSG, 2016 WL 1070523 *4 (N.D. Cal. March 18, 2016) (“It is
23 well-settled law that a cash settlement amounting to only a fraction of the potential recovery does
24 not per se render the settlement inadequate or unfair.”). As explained above, the very substantial
25 litigation risks the Class Members face in this case justify an equally substantial litigation risk
26 discount.

27 **5. Extent of Discovery and Status of Proceedings**

28 This factor evaluates whether class counsel had sufficient information to make an informed

1 decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459
2 (9th Cir. 2000).

3 This matter has fully progressed through fact discovery. Class counsel has received,
4 examined, and analyzed information, documents, and materials that enabled them to assess the
5 likelihood of success on the merits. These efforts include three separate rounds of interrogatories
6 and requests for production, reviewing over 17,000 pages of responsive documents, taking the
7 depositions of StarKist employees and expert witnesses, extensive consultations with Plaintiff’s
8 own experts, numerous interviews with members of the putative class, and significant legal
9 research and briefing. The parties also attended two in-person mediations with Judge Corley. The
10 settlement is the result of fully-informed negotiations. This factor weighs in favor of approval.

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

12 The sixth factor takes into account counsel’s experience and views of the Settlement
13 Agreement. The Court has previously evaluated class counsel’s qualifications and experience and
14 concluded that counsel is qualified to represent the Class’ interests in this action. The Court notes,
15 however, that courts have taken divergent views as to the weight to accord counsel’s opinions.
16 *Compare Carter v. Anderson Merch., LP*, 2010 WL 1946784, at *8 (C.D. Cal. May 11, 2010)
17 (“Counsel’s opinion is accorded considerable weight.”) *with Chun-Hoon*, 716 F. Supp. 2d at 852
18 (“[T]his court is reluctant to put much stock in counsel’s pronouncements, as parties to class
19 actions and their counsel often have pecuniary interests in seeing the settlement approved.”). Even
20 though the Court affords only modest weight to counsel’s views, this factor tilts in favor of
21 approval.

22 **7. Presence of a Governmental Participant**

23 This factor is inapplicable because there is no governmental participant in this case.

24 **8. Reaction of the Class Members**

25 Seventh, the Court examines the reaction of the Class Members. Out of over 2.5 million
26 claims submitted, there were thirteen objections and 93 opt-outs. Following the second amended
27 release, there were an additional ten objections. “Given the amount of valid claim forms
28 submitted, and the relatively small number of objections and opt-outs, the reaction of the class to

1 the Settlement is positive, which favors approving the Settlement. *See Rodriguez*, 563 F.3d at 967
 2 (“The court had discretion to find a favorable reaction to the settlement among class members
 3 given that, of 376,301 putative class members to whom notice of the settlement had been sent,
 4 52,000 submitted claims forms and only fifty-four submitted objections.”).

5 **9. Objections to the Settlement**

6 “In determining whether to finally approve a class action settlement, the Court considers
 7 whether there are any objections to the proposed settlement and, if so, the nature of those
 8 objections.” *Moore*, 2013 WL 4610764, at *9. “The mere fact that there are objections to the
 9 settlement does not necessitate disapproval; instead, the Court must evaluate the objections to
 10 determine whether they suggest serious reasons why the proposed settlement might be unfair.”
 11 *Nwabueze v. AT & T Inc.*, No. C 09-01529 SI, 2013 WL 6199596, at *6 (N.D. Cal. Nov. 27,
 12 2013). For the following reasons, none of the objections in this case requires rejecting the
 13 Settlement.¹

14 The deadline for submission of claim forms, opt-outs, and objections was November 20,
 15 2015. Additionally, the Court allowed a second round of objections related to the second amended
 16 release only; these objections were due March 29, 2016.

17 **a. Objections Seeking a More Favorable Result**

18 Several objectors seek a more favorable result. *See, e.g.*, Dkt. No. 215 (contending he
 19 “should be reimbursed more than just what StarKist Tuna Inc. is offering after years of purchasing
 20 the StarKist Tuna Product.”); Dkt. No. 271 (contending that the settlement amount should be
 21 greater); Dkt. No. 294 (contending that the settlement amount is “paltry” for Defendant’s 2.3
 22 million injured customers); Dkt. No. 288. “That a more favorable result for some Class Members
 23 could potentially have been reached is not a sufficient reason to reject an otherwise fair and
 24 reasonable settlement.” *Nwabueze*, 2013 WL 6199596, at *7. More significantly, the request for
 25 a higher settlement fails to account for the risk, expense, complexity, and likely duration of further
 26 protracted litigation, including the pending class certification motion. Given the possibility of
 27

28 ¹ The objections related to attorneys’ fees and incentive awards are addressed in Section IV.

1 protracted litigation, potential appeals, and the risk that the case would result in no payout for
2 members due to pretrial motions practice or an unfavorable trial result, the Court finds the
3 settlement amount is reasonable. *See In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587
4 (N.D. Cal. 2015) (“Immediate receipt of money through settlement, even if lower than what could
5 potentially be achieved through ultimate success on the merits, has value to a class, especially
6 when compared to risky and costly continued litigation.”). These objections are denied.

7 **b. Objections to “Coupon” Settlements**

8 Several objectors complain that this is a coupon settlement. *See, e.g.*, Dkt. No. 286 at 2-3;
9 Dkt. No. 288 at 2; Dkt. No. 294 at 13-14.

10 These objections are denied. This is not a coupon settlement. Unlike coupons, the
11 vouchers do not provide a small discount that requires “class members to hand over more of their
12 own money before they can take advantage of the coupon.” *See In re Online DVD-Rental*
13 *Antitrust Litig.*, 779 F.3d 934, 951 (9th Cir. 2015). Contrary to the objectors’ contentions, this
14 case is unlike *Davis v. Cole Haan, Inc.*, No. 11-CV-01826-JSW, 2015 WL 7015328, at *5 (N.D.
15 Cal. Nov. 12, 2015). The discounts in *Cole Haan* expired six months after issuance and were
16 limited to use in a retail store; moreover, the “parties did not provide Class Members with the
17 option to receive cash in lieu of a settlement voucher.” *Id.* Rather, like the gift cards in *Online*
18 *DVD-Rental*, the vouchers here have sufficient value to allow Class Members to obtain product
19 without spending their own money. Moreover, like the *Online DVD-Rental* class members, the
20 Class Members here were given a choice between receiving a cash settlement or the vouchers.
21 Additionally, the vouchers have no expiration date, are freely transferrable, are redeemable at any
22 retailer that sells StarKist products, and are redeemable in exchange for StarKist products. These
23 are characteristics of vouchers, not coupons.

24 **c. Objections Relating to the Claims Process**

25 Objector Sweeney argues that the claims process is “cumbersome, unreasonable, and
26 designed to deprive Class Members of [] relief.” Dkt. No. 299. She further contends that the
27 process does not have “reliable oversight, accountability, and reporting about whether the claims
28

1 essential terms of the settlement and alerted Class Members to follow up if they had concerns, these
 2 objections lack merit. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)
 3 (“Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert
 4 those with adverse viewpoints to investigate and to come forward and be heard.” (internal quotation
 5 marks omitted)); *see also Keirsev v. eBay, Inc.*, 2013 WL 5755047, at *4 (N.D. Cal. Oct. 23, 2013)
 6 (declining to find notice inadequate based on argument that “neither the notice nor the files of
 7 th[e] case explicitly disclose[d] to the Proposed Class the size of the class”).

8 **e. Objections Regarding Undistributed Cash and Vouchers**

9 Objector Spann contests the proposed use of undistributed cash and vouchers. Citing
 10 *Dennis v. Kellogg Co.* 697 F.3d 858, 865 (9th Cir. 2012), Spann contends that the Settlement
 11 Agreement fails to identify the cy pres beneficiaries for undistributed settlement. *Id.* at 13.
 12 Objector Sweeney also contests the lack of “direction regarding cy pres funds.” Dkt. No. 299.

13 Because the settlement funds are fully subscribed, these objections are moot. *See*
 14 *Rodriguez*, 563 F.3d at 966 (“[Cy pres] issue becomes ripe only if the entire settlement fund is not
 15 distributed to class members.”).

16 **f. Dylan L. Jacobs**

17 The Court does not consider objections from Dylan L. Jacobs because he failed to follow
 18 the procedures set forth in the class notice. Dkt. No. 315; *see San Francisco NAACP v. San*
 19 *Francisco Unified Sch. Dist.*, 59 F.Supp.2d 1021, 1028 (N.D. Cal. 1999) (providing that one must
 20 comply with the procedures required by the notice in order to have standing to object to a
 21 settlement). Jacobs filed his objection on November 25, 2015, five days after the deadline.

22 **g. Objections Relating to the Scope of the Second Amended**
 23 **Release**

24 Objector Spann readopts her previous objection to the release, Dkt. No. 349, but Spann did
 25 not contest the scope of the release in her previous objection, *see* Dkt. No. 288. Thus, the Court
 26 disregards her latest objection.

27 The Graham objectors incorporate paragraphs 1, 2, 3, 4, 6, 7, and 8 of their original
 28 objection, Dkt. No. 297. Dkt. No. 350. The earlier objection requested that the parties be required

1 “to craft a new settlement that, as a minimum, includes a specific release tailored to the claims
2 made in this class action.” Dkt. No. 297. As discussed *supra*, the Court finds that the second
3 amended release addresses these objections by limiting the scope of the release to the factual
4 predicate in the operative complaint.

5 Objectors Colin Moore, Carla Lown, and Kathy Durand Gore (“PSP Objectors”) identify
6 five concerns with the second amended release. Dkt. No. 352. First, they contend that the use of
7 “and/or” language (“all claims or causes of action arising from the factual allegations *and/or* legal
8 claims made in the Action”) “untethers the claims alleged from the facts alleged, in violation of
9 the identical factual predicate rule.” *Id.* at 9. Objector Twitchell raises a similar concern. Dkt.
10 No. 351 at 4-5.

11 Plaintiff responds that this language “ensures that only claims based on the identical
12 factual predicate as the claims in the lawsuit are being released.” Dkt. No. 347 at 3; *see also* Dkt.
13 No. 358 at 2 (“Should the Court find that the revised release language currently proposed by the
14 parties already adequately protects Objector and the End-User Purchaser Plaintiffs she seeks to
15 represent, [Twitchell] respectfully requests that any order approving the parties’ settlement so
16 state.’ Plaintiff views this as a reasonable request, and would support the inclusion of such
17 language in the final approval order.” (citation omitted)). Defendant also submits that this is the
18 reasonable construction of the release language. Dkt. No. 357 at 3 (“[The] reference to ‘legal
19 claims made in the Action’ merely sets forth—explicitly—that the release reaches the very legal
20 claims that were asserted in the action.”). To this end, at the April 21, 2016 hearing, the parties
21 agreed on the record to change the phrase “all claims or causes of action arising from the factual
22 allegations and/or legal claims made in the Action” to “all claims or causes of action arising from
23 the factual allegations and/or legal claims *arising from the factual allegations* made in the
24 Action.”

25 Second, the PSP Objectors argue that the antitrust carve-out, expressly excluding from the
26 release “any antitrust claims arising from a conspiracy among, or collusive agreement between,
27 StarKist and one or more of its competitors,” results in the release of claims brought under state
28 unfair competition and consumer protection laws. Dkt. No. 352 at 11-12; *see also* Dkt. No. 351 at

1 4-5. The Court denies these objections. That the release expressly excludes antitrust claims, but
2 not other claims, does not mean that all unspecified claims are released. The narrowing language,
3 releasing only those claims that arise from this action, sufficiently protects class members who
4 want to pursue other actions based on unfair competition or consumer protection claims not
5 arising from the underlying facts in this lawsuit.

6 Third, they contend that notice of the amended release was inadequate, because the second
7 amended release is not narrower. Dkt. No. 352 at 13. Objector Sweeney’s latest objection seems
8 to raise similar concerns. *See* Dkt. No. 355 at 2 (“National members of the class were given no
9 meaningful notice of the ‘renewed final settlement.’”). For the reasons discussed above, however,
10 the Court finds that additional notice was not required because the new release is narrower. It
11 removes the expansive language in earlier releases, which discharged “all claims or causes of
12 actions that have been, might have been, are now, or could have been brought relating to this
13 action or settlement, arising from or related to the under filling of tuna in the StarKist Product.”
14 The discharge now is limited to a release of only those causes of action “arising from the factual
15 allegations and/or legal claims arising from the factual allegations made in the Action.” These
16 objections are overruled.

17 Fourth, the PSP Objectors contend that there is inadequate notice to members who opted
18 out of the class, and argue that the phrase “except opt-outs” should be put back into the second
19 amended release. Dkt. No. 352 at 14. Objector Twitchell makes a similar argument, requesting
20 that “all members of the Class” be changed to “Settlement Class Members (except any such
21 person who has filed a proper and timely request for exclusion).” Dkt. No. 351 at 5. Twitchell
22 contends that these changes will remove ambiguity as to the nature of the claims released and will
23 preserve the rights of others “she seeks to represent in [] unrelated [antitrust] litigation.” *Id.* The
24 Court is not persuaded. Although “class” is not defined, “Settlement Class” and “Settlement Class
25 Members” are defined, and the definition expressly excludes all members who excluded
26 themselves from the Settlement. Dkt. No. 187-1 at 5. The release is titled “Release by Settlement
27 Class Members,” which by definition limits the release to those individuals who were Class
28 Members who did not exclude themselves from the Settlement. The Court finds this to be clear.

1 The objection is denied.

2 Fifth, the Court rejects the PSP Objectors' contention that the parties were required to
3 negotiate with the objectors before amending the release. Dkt. No. 352. They cite the following
4 for support: "Objections of substance which after a proper hearing are found by the trial court to
5 require modification of the proposed settlement prior to judicial approval undoubtedly will bring
6 about additional negotiations in which the class attorney and the dissenters and their attorneys, if
7 any, will participate." *Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 836 (9th Cir.
8 1976). Although it certainly would have been reasonable for counsel to consult with the
9 "dissenters" following the Court's denial of the first final approval motion, the Court does not read
10 *Mandujano* as imposing a requirement on the parties to do so. Accordingly, this objection is
11 denied.

12 Lindberg also submitted objections following the second amended release. Dkt. No. 354.
13 The latest objection period was limited to the second amended release, and not the settlement as a
14 whole. Accordingly, the Court only considers his latest objection as it relates to the second
15 amended release. Objector Lindberg makes one argument about the release, contending that the
16 attorneys' expansion of the first amended release to include antitrust claims evinces collusion.
17 Dkt. No. 354 at 14. Although the Court noted that the "final-hour amendment expressly requiring
18 the class to release conspiratorial-underfilling claims" was cause for concern, *see* Dkt. No. 336,
19 the Court is satisfied that the second amended release addresses those concerns. The Court finds
20 that the favorable nature of the settlement in light of the risks of continued litigation, especially the
21 obstacles the putative class would face in certifying a class of this size, negates any collusion
22 concerns.² This objection is also denied.

23 * * *

24 After considering and weighing all of the above factors, the Court finds that the proposed
25 class action settlement is fair, adequate, and reasonable, and that the Class Members received
26 adequate notice. Accordingly, Plaintiff's renewed motion for final approval of the Settlement is
27 granted, Dkt. No. 347.

28 ² Section V, *infra*, further elaborates on why the Court does not have concerns regarding collusion.

1 **IV. MOTION FOR ATTORNEYS' FEES AND COSTS**

2 Class counsel asks the Court to approve an award of attorneys' fees of 33.3% of the
3 \$12,000,000 Settlement Fund,³ or \$4,000,000. Dkt. No. 262 at 2. Class counsel also seeks
4 reimbursement of \$155,779.96 in costs. Counsel also requests \$5,000 for Class Representative
5 Hendricks and an award of \$1,000 for each of eight interested parties.

6 **A. Legal Standard**

7 "In a certified class action, the court may award reasonable attorney's fees and nontaxable
8 costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Plaintiff
9 asserted claims under California law, including the CLRA, which mandates payment of attorneys'
10 fees to successful plaintiffs. *See* Cal. Civ. Code § 1780(e). Because California law governed the
11 claims here, it also governs the award of attorneys' fees. *See Vizcaino v. Microsoft Corp.*, 290
12 F.3d 1043, 1047 (9th Cir. 2002).

13 Additionally, class counsel is entitled to "recover as part of the award of attorney's fees
14 those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v.*
15 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks omitted).

16 **A. Class Counsel's Request for Fees**

17 Under California law, courts have the power to award reasonable attorneys' fees and costs
18 where, as here, a litigant proceeding in a representative capacity secures a "substantial benefit" for
19 a class of persons. *Serrano v. Priest*, 20 Cal. 3d 25, 38 (1977). The two methods for determining
20 reasonable fees in the class action settlement context are the "lodestar/multiplier" method and the
21 "percentage of recovery" method. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 254
22 (2001); *accord Hanlon*, 150 F.3d at 1029.

23 The Court considers the percentage method first. According to the Ninth Circuit, an
24 attorney fee of 25% of the recovery is the "benchmark" that should be awarded in common fund
25 cases. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Vizcaino*, 290 F.3d at 1050. "The
26 benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special

27 _____
28 ³ The Court values the product vouchers at \$4 million. Contrary to the objectors' contentions, the
vouchers are valued at 100 cents on the dollar. *See Online DVD-Rental*, 779 F.3d at 949-50
(valuing gift cards at 100 cents on the dollar for purposes of estimating the common fund).

1 circumstances indicate that the percentage recovery would be either too small or too large in light
2 of the hours devoted to the case or other relevant factors.” *Six (6) Mexican Workers v. Arizona*
3 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). California courts, however, do not formally
4 recognize the 25% benchmark that is established under federal law in the Ninth Circuit as a
5 starting point to evaluate fee requests. *See Schiller v. David’s Bridal, Inc.*, No. 1:10-CV-00616-
6 AWI, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) (citing 1 Richard M. Pearl, California
7 Attorney Fee Awards, §§ 8.12-8.15 (3d ed. 2012)); *see also In re Consumer Privacy Cases*, 175
8 Cal. App. 4th 545, 558 n.13 (2009) (recognizing that most fee awards in California are based on
9 either a lodestar or percentage calculation ranging from 25% to 33%).

10 The 25% benchmark nonetheless is a helpful assessment tool in evaluating the requested
11 fee award, even where use of the benchmark is not required. *Schiller*, 2012 WL 2117001 at *47.
12 As there is no definitive set of factors that California courts require to be considered in
13 determining the reasonableness of attorneys’ fees under a percentage-of-the-fund approach, the
14 Court considers the reasonableness of the percentage requested in light of the factors endorsed by
15 the Ninth Circuit, with the 25% award as a starting point. The Ninth Circuit has identified several
16 factors a court should consider to determine whether to adjust a fee award from the benchmark: (1)
17 the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the
18 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made
19 in similar cases. *See Vizcaino*, 290 F.3d at 1048-50.

20 Here, class counsel requests an upward departure from the 25% benchmark (*i.e.* \$3 million
21 in attorneys’ fees) to 33.3%. The Court relies on the *Vizcaino* factors as its guide in assessing the
22 reasonableness of the request.

23 *The Results Achieved.* Class counsel argues that it achieved extraordinary results, noting
24 the number of claims filed and the fact that the settlement represents full recovery for cans of tuna
25 purchased during the class period. Although the Court agrees that this was a favorable settlement,
26 it believes class counsel places too much weight on the raw numbers. The fact that over 2 million
27 claims were submitted can be attributed not only to class counsel’s development and management
28 of the class notice process, but also to StarKist’s brand recognition in the community and the

1 possibility that Class Members could receive \$25 in cash or \$50 in vouchers. Accordingly, this
2 factor only slightly supports an upward departure from the 25% benchmark.

3 *The Risks of Litigation.* Counsel contends that they took on substantial risk. As discussed
4 *supra*, if the case had continued through pretrial litigation, Plaintiff would have faced significant
5 opposition, threatening the likelihood of a favorable outcome for Class Members. Counsel further
6 argues there were risks associated with litigation given the novelty of the claims, but the Court
7 does not view the case as particularly novel. As counsel acknowledges, his firm was first exposed
8 to the underlying facts of this case when it learned of a complaint filed in state court in August
9 2012 raising similar causes of action regarding misrepresentations about the quantity of canned
10 tuna products. Dkt. No. 262-1 at ¶¶ 3-4. Following the state case and the resulting stipulated
11 judgment, class counsel pursued the underlying issues that led to the filing of this action.

12 Moreover, even if the Court were to accept counsel's characterization, there still is nothing to
13 suggest that the legal issues here were particularly complex compared to other large class action
14 matters, or that exceptional skill was required to address those issues. Thus, this factor only
15 slightly favors an upward enhancement as well.

16 *The Skill Required and the Quality of the Work.* The Court rejects class counsel's claim
17 that it generated significant benefits for the class by using a bidding process to select a claims
18 administrator. Bargaining to find a reasonably-priced claims administrator is part of counsel's
19 responsibility to the Class. These facts do not compare to those in cases finding that a settlement
20 generated significant non-monetary benefits for class members. *See, e.g., Vizcaino*, 290 F.3d at
21 1049 ("Microsoft agreed to hire roughly 3000 class members as regular employees and to change
22 its personnel classification practices, a benefit counsel valued at \$101.48 million during the 1999–
23 2001 period alone. The court observed that the litigation also benefitted employers and workers
24 nationwide by clarifying the law of temporary worker classification. Moreover, it noted that as a
25 result of this litigation, many workers who otherwise would have been classified as contingent
26 workers received the benefits associated with full time employment." (citations omitted)).

27 *The Financial Burden Carried By Plaintiff.* The Court agrees that class counsel and his
28 firm carried a substantial financial burden both in advancing out-of-pocket costs and in

1 representing Plaintiff and the Class Members on a contingency basis. This factor favors a fee
2 enhancement from the 25% benchmark.

3 *Awards Made in Similar Cases.* In support of its fee request, counsel cites several cases in
4 which courts awarded 33% of the recovery. *See In re Activision Sec. Litig.*, 723 F. Supp. 1373
5 (N.D. Cal. 1989); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 375 (9th Cir. 1995); *Williams v.*
6 *MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (per curiam); *Vasquez v. Coast Valley*
7 *Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

8 Having considered the *Vizcaino* factors, the Court is not persuaded that an upward
9 departure to 33.3% is warranted for a total of \$4 million in attorneys' fees, especially given that
10 such an award would substantially reduce the cash settlement pool available to the individual
11 Class Members. That said, the *Vizcaino* factors confirm that some fee enhancement is justified in
12 recognition of the favorable settlement, the substantial risks of litigation, and the financial burden
13 assumed. Accordingly, under the percentage-of-fund method, the Court finds that 30% of the total
14 recovery, or \$3.6 million, is appropriate.

15 The Court also considers the lodestar method. The first step in the lodestar analysis is to
16 multiply the number of hours counsel reasonably expended on the litigation by a reasonable
17 hourly billing rate. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004); *Hanlon*,
18 150 F.3d at 1029. Once this raw lodestar figure is determined, the Court may apply a multiplier to
19 the lodestar if warranted after the consideration of certain enhancement factors like (1) the results
20 obtained; (2) the novelty and difficulty of the questions involved; (3) the requisite legal skill
21 necessary to litigate the case; (4) the preclusion of other employment due to acceptance of the
22 case; and (5) whether the fee is fixed or contingent. *See Serrano*, 20 Cal. 3d at 48.

23 Here, class counsel expended 3,366.8 total hours on this case, Dkt. No. 262-1, ¶ 73; Dkt.
24 No. 360, ¶ 4. At a reasonable hourly billing rate, the lodestar amount is \$1,583,532. *See* Dkt. No.
25 262-1 at 27; Dkt. No. 360 ¶ 5. The Court has reviewed class counsel's time records and billing
26 reports, and finds that the number of hours devoted to this case was reasonable. Dkt. No. 262-1;
27 Dkt. Nos. 360-1, 360-2. The Court further finds that the billing rates used by class counsel to
28 calculate the lodestar are reasonable and in line with prevailing rates in this District for personnel

1 of comparable experience, skill, and reputation. *Id.*

2 The Court does not dispute that the settlement amount is favorable, that counsel conducted
3 extensive work in pursuit of settlement, and that counsel assumed risk in working this case on a
4 contingency basis while foregoing other work. The Court has taken into account these factors in
5 determining that class counsel's hours expended and rates charged were reasonable. The size of
6 the lodestar is calculated on current billing rates, which account for the experience and quality of
7 work as well as the length of the litigation. Additionally, the Court finds some multiplier is
8 warranted to reflect the substantial risks of litigation in this case and the financial risks class
9 counsel assumed. The Court accordingly approves a multiplier of 2.27, resulting in \$3.6 million in
10 fees, consistent with the 30% benchmark discussed above.

11 The Court finds that an attorneys' fees award of \$3.6 million is reasonable and fair in light
12 of the circumstances of this case, and that the Court's consideration and rejection of a 33.3%
13 departure addresses the objectors' contentions that the attorneys' fee award is excessive. *See, e.g.,*
14 Dkt. No. 286 at 3-4 (arguing that class counsel failed to provide a reasonable justification for a fee
15 award over the 25% benchmark); Dkt. No. 299 at 2 (contending that the fees "are disproportionate
16 to the value of the recovery of the class" and that the fees "do not depend on how much relief is
17 actually paid to the class members") Dkt. No. 294 at 19 (same). The Court further rejects those
18 objections arguing that the settlement agreement contains a clear sailing provision. *See, e.g.,* Dkt.
19 No. 288 at 8. There is no clear sailing provision. Although the Settlement permits class counsel
20 to request attorneys' fees, the fees are not guaranteed as a part of the Settlement. In fact, Defense
21 counsel opposed class counsel's fee motion, asking the Court to reduce the request by \$1 million
22 at a minimum. *See* Dkt. No. 285.

23 Additionally, some objectors request that the Court "calculate the award based on the
24 number of class members that redeem the coupons for canned tuna and the cash fund created for
25 the class members after subtracting the costs of administration." Dkt. No. 288 at 8; *see also* Dkt.
26 Nos. 286, 288, 297. Defendant makes a similar argument. Dkt. No. 285. The Court denies the
27 objection. *See Online DVD-Rental*, 779 F.3d at 953 ("The district court did not abuse its
28 discretion in calculating the fee award as a percentage of the total settlement fund, including notice

1 and administrative costs, and litigation expenses”); *Staton v. Boeing Co.*, 327 F.3d 938, 974-75
 2 (9th Cir. 2003) (holding that the court did not “abuse its discretion by including the cost of
 3 providing notice to the class of the proposed consent decree as part of its putative fund
 4 valuation”). *See also Williams*, 129 F.3d at 1027 (holding that calculation of attorneys’ fees may
 5 be based on the entire common fund created for the class, even if some class members make no
 6 claims against the fund).

7 **B. Class Counsel’s Request for Costs**

8 Class counsel seeks reimbursement of \$155,799.96 in out-of-pocket costs. Dkt. No. 262 at
 9 2; Dkt. No. 360 at 2. The Court has reviewed counsel’s itemized listing of each expense incurred
 10 during this case and determines that the costs were reasonable and properly expended. *See Gaudin*
 11 *v. Saxon Mortgage Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 7454183, at *9 (N.D. Cal. Nov.
 12 23, 2015) (“To support an expense award, Plaintiffs should file an itemized list of their expenses
 13 by category and the total amount advanced for each category, allowing the Court to assess whether
 14 the expenses are reasonable.”).

15 **C. Class Representative’s Request for Incentive Award**

16 “[N]amed plaintiffs . . . are eligible for reasonable incentive payments.” *Staton*, 327 F.3d
 17 at 977. The district court must evaluate a Plaintiff’s incentive award using “relevant factors
 18 includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to
 19 which the class has benefitted from those actions, . . . [and] the amount of time and effort the
 20 plaintiff expended in pursuing the litigation” *Id.* at 977. Many courts in the Ninth Circuit
 21 have held that a \$5,000 incentive award is “presumptively reasonable.” *See, e.g., In re Toys-R-Us*
 22 *Delaware, Inc. FACTA Litig.*, 295 F.R.D. 438, 470-72 (C.D. Cal. 2014); *Harris v. Vector*
 23 *Marketing Corp.*, No. 08-cv-5198-EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012)
 24 (“Several courts in this District have indicated that incentive payments of \$10,000 or \$25,000 are
 25 quite high and/or that, as a general matter, \$5,000 is a reasonable amount.”). “Such payments,
 26 however, must be reasonable in light of applicable circumstances, and not ‘unfair’ to other class
 27 members.” *W. v. Circle K Stores, Inc.*, No. CIVS040438WBSGGH, 2006 WL 1652598, at *12
 28 (E.D. Cal. June 13, 2006); *see In re Oracle Secs. Litig.*, No. C-90-0931-VRW, 1994 WL 502054

1 at *1 (N.D. Cal. June 18, 1994) (reducing requested payment of \$2,500 to \$500 for spending
2 “between two and five hours undergoing depositions and . . . respond[ing] to a few narrow
3 document discovery requests”).

4 Plaintiffs request a service award of \$5,000 to Plaintiff Hendricks, and a service award of
5 \$1,000 to the eight interested parties. Dkt. No. 262 at 21-22. There were several objections
6 related to the incentive awards, contending the awards were unreasonably high and not warranted.
7 For example, one objector argued that the settlement should not be approved because of the
8 disparity between each class member’s recovery and the class representative and interested
9 parties’ recoveries. Dkt. No. 294 at 11-13.

10 The Court finds that a \$5,000 service award for Plaintiff Hendricks is reasonable to
11 compensate him for bringing the action. Contrary to the objectors’ arguments, the incentive award
12 was not conditioned on the class representative’s support for the settlement, and there is no
13 evidence that Hendricks’ interests diverged from those of the Class Members, thus undermining
14 his ability to fairly and adequately protect the interests of the Class. Moreover, the Court finds
15 that Hendricks added substantial value to the case. He participated in regular meetings with class
16 counsel, discussed case strategy, and shared his experiences using StarKist Tuna. Dkt. No. 262-1,
17 ¶¶ 94-95. Hendricks assisted in drafting and reviewing the complaint, helped form responses to all
18 proffered discovery requests, and gathered documents for production. *Id.* He also sat for a day-
19 long deposition and prepared a declaration in support of class certification. *Id.* Finally, he was
20 intimately involved in the settlement process and took time away from personal and work
21 activities to pursue and litigate this action. *Id.* In light of his participation and commitment to the
22 litigation and his service to the Class, the Court finds that the service award is fair and reasonable,
23 and accordingly rejects the objectors’ arguments that the amount is unreasonably high.

24 The Court denies the request for \$1,000 for each of the eight interested parties. The Court
25 disagrees that the filing of a motion to intervene, the preparation of a class action complaint that
26 was never filed, or the willingness to stand by and represent statewide classes should it become
27 necessary warrants the requested award, which is grossly disproportionate to what other Class
28 Members are receiving. The Court has found that the settlement is a good and fair deal, and thus it

1 is an equally good and fair deal for these “interested party” Class Members.

2 **V. MOTION TO REMOVE CLASS COUNSEL AND CONDUCT DISCOVERY**

3 Objector Eric Lindberg moves to remove class counsel and conduct discovery.⁴ Dkt. No.
4 353. The objector contends that the first amended release confirms the existence of collusion and
5 that class counsel’s interests are adverse to the Class.

6 The Ninth Circuit has identified three signs of collusion: (1) “when counsel receive a
7 disproportionate distribution of the settlement, or when the class receives no monetary distribution
8 but class counsel are amply rewarded,” (2) “when the parties negotiate a ‘clear sailing’
9 arrangement,” and (3) “when the parties arrange for fees not awarded to revert to defendants rather
10 than be added to the class fund.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 947
11 (9th Cir. 2011).

12 None of these factors are present here. Moreover, the fact that at the final fairness hearing
13 class counsel advanced some similar arguments to those made by Defendant’s counsel does not
14 establish that class counsel is not an adequate representative. Although the Court expressed its
15 concerns over counsel’s motives underlying the first amended release, Dkt. No. 336 at 6, the Court
16 is satisfied that the second amended release addressed its concerns. Because the *In re Bluetooth*
17 *Headset* factors are not present in this case, and because the objector has presented no other
18 evidence of collusion, the Court DENIES the motion to remove class counsel. *See In re Google*
19 *Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015) (“[O]bjectors to a
20 class action settlement bear the burden of proving any assertions they raise challenging the
21 reasonableness of a class action settlement.”).

22 For similar reasons, the Court denies the objector’s request to conduct additional discovery
23 with respect to the sufficiency of the notice. As described *supra*, the notice was adequate and
24 informed the Class Members of the maximum possible recovery. Accordingly, the objector has
25 not demonstrated any basis to support the need for further discovery, and the motion is denied.

26
27
28

⁴ The Court finds this motion suitable for disposition without oral argument, *see* Civ. L.R. 7-1(b).

1 **VI. OBJECTORS' MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE**
 2 **AWARDS**

3 Objectors Colin Moore and Kathy Durand Gore ("Objectors"), through their counsel the
 4 Kralowec Law Group and Robert Taylor-Manning, move for attorneys' fees, expenses, and
 5 incentive awards.⁵ Dkt. No. 363.

6 "Under certain circumstances, attorneys for objectors may be entitled to attorneys' fees
 7 from the fund created by class action litigation." *Rodriguez v. Disner (Rodriguez II)*, 688 F.3d
 8 645, 658 (9th Cir. 2012). In order to receive an award of attorneys' fees, objectors must show that
 9 they increased the fund or "substantially enhanced the benefits to the class" under the settlement.
 10 *Vizcaino*, 290 F.3d at 1052. Generally, objectors who "do not add any new legal argument or
 11 expertise, and do not participate constructively in the litigation" are not entitled to attorneys' fees.
 12 *Rodriguez II*, 688 F.3d at 659.

13 The Court finds that the Kralowec Law Group and Taylor-Manning contributed materially
 14 to the Settlement, benefitting not only the Court, but also Class Members in this action. Although
 15 there were many objectors in this case, the Court finds that Objectors offered a unique and
 16 substantial benefit to the class in providing the first substantive objection to the scope of the
 17 release, which the Court found to be overbroad. *See* Dkt. No. 336. Starting with their initial 12-
 18 page brief filed in November 2015, Dkt. No. 293, Objectors brought to the Court's attention
 19 crucial flaws in the release language. They filed a second brief in March 2016, Dkt. No. 352, and
 20 counsel appeared at both the final fairness hearing and the April hearing concerning the second
 21 amended release. At each step, they presented well-reasoned arguments supported by authority.
 22 These arguments significantly contributed to the Court's initial order denying final approval, in
 23 which the Court adopted and cited a number of Objectors' contentions. *See* Dkt. No. 336.

24 Thus, these efforts conferred a substantial benefit by (1) thoroughly briefing and arguing
 25 an issue that the parties had overlooked, (2) bringing to the Court's attention flawed release
 26 language that made the Settlement vulnerable to legal challenges that could have delayed or
 27 prevented the Settlement's distribution to Class Members, and (3) ensuring that the scope of the

28 ⁵ The Court finds this motion suitable for disposition without oral argument, see Civ. L.R. 7-1(b).

1 settlement's release was narrowly tailored to the claims in this action, thereby preserving claims
2 that were not at issue in this case. While the Court has no way of knowing how much, if any,
3 monetary value those claims will have, preserving Class Members' ability to pursue such claims
4 provided a significant service to the Class. Class counsel's contention that the claims are a "jack-
5 a-lope" that "does not exist," Dkt. No. 369 at 5, again ignores the fundamental rule that a release
6 should be limited to the factual allegations and legal claims arising from the action, without regard
7 to the potential merits or monetary value of those claims. There was no reason for the Class
8 Members to be required to release these unrelated claims without compensation, and Objectors'
9 efforts helped ensure that the Class Members did not have to do so. For these reasons, the Court
10 finds that the Kralowec Law Group and Taylor-Manning substantially enhanced the benefits to the
11 Class, and that attorneys' fees are warranted.

12 The motion seeks a combined lodestar of \$153,525.5: the Kralowec Law Group seeks
13 \$138,360.5 for 205.9 hours expended, and Taylor-Manning seeks \$15,165 for 33.7 hours
14 expended. The Court finds that the submitted time records provide sufficient information from
15 which the Court can assess the reasonableness of the request. The attached declarations illustrate
16 the scope of litigation work performed, such as conducting multiple meet-and-confer sessions with
17 class counsel and Defendant's counsel, communicating with counsel through telephonic and
18 written correspondence, researching the underlying law, preparing two sets of substantive formal
19 objections that were 12 and 17 pages in length, drafting client declarations, and preparing for two
20 oral arguments at which counsel presented well-reasoned and well-supported arguments. The
21 Court is satisfied that the 239.6 hours expended from August 2015 through February 2016 was
22 reasonable given the extent and quality of work performed. Moreover, the hourly rates are within
23 the range of prevailing rates within the community, *see* Dkt. No. 363-1 at ¶¶ 19-27, Dkt. No. 363-
24 2 at ¶¶ 15-16, and class counsel does not contest the reasonableness of these rates in its opposition,
25 *see* Dkt. No. 369.

26 The motion also requests that the Court award the same fee multiplier that it approved for
27 class counsel. The Court declines to do so. As explained above, the fee multiplier was an
28 appropriate award for class counsel, given the risks his firm faced and the financial burdens

1 assumed over three years of litigation. Although the Court finds that the Objectors provided a
2 substantial benefit that warrants compensation, a similar multiplier is not warranted given the
3 comparatively short duration of counsel's work and the minimal risks assumed.

4 The motion also seeks an award of costs in the amount of \$927.18 to the Kralowec Law
5 Group and \$534.97 to Taylor-Manning. To support this request, the attached declarations include
6 an itemized list of expenses, including copies, computer research, transcription, and travel
7 expenses. The Court finds that the expenses claimed were reasonably related to advancing the
8 interests, and thus approves \$1,462.15 in costs.

9 The Court orders the combined lodestar and costs of \$154,987.65 be deducted directly
10 from class counsel's fee award of \$3.6 million. This is an appropriate and justified result. If not
11 for class counsel's acquiescence to the overbroad release (including repeated avowals that post-
12 notice changes to the release were reasonable and insistence that releasing claims different from
13 the scope of alleged liability was not cause for concern), the Kralowec Law Group and Taylor-
14 Manning would not have needed to become involved at this level. And the Court strongly
15 believes that this expense should not be paid from money that otherwise would have gone to the
16 Class Members. Accordingly, the Court reduces class counsel's fee award from \$3.6 million to
17 \$3,445,012.35.

18 Finally, the Court denies the Objectors' request for incentive awards. Any benefit that the
19 Objectors themselves may have added to the settlement does not approach the "substantial
20 benefit" threshold to warrant an incentive award, and this is especially true given that such an
21 award would reduce the funds available for Class Members.

22 **VII. CONCLUSION**

23 For the foregoing reasons, the Court GRANTS Plaintiff's renewed motion for final
24 approval. Dkt. No. 347. The Court GRANTS IN PART AND DENIES IN PART Plaintiff's
25 motion for attorneys' fees and costs. Dkt. No. 262.⁶ The Court approves the settlement amount of
26 \$12 million, payments of attorneys' fees in the amount of \$3,445,012.35, and service award in the

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28 ⁶ Plaintiff's renewed their motion for attorneys' fees, Dkt. No. 262, in the motion for settlement,
Dkt. No. 347.

United States District Court
Northern District of California

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amount of \$5,000 for Plaintiff Hendricks. The Court also approves \$155,779.96 in reimbursement for class counsel’s expenses.


The Court GRANTS the Objectors’ motion for attorneys’ fees, Dkt. No. 363, awarding a combined total of \$154,987.65 in fees and costs to the Kralowec Law Group and Robert Taylor-Manning.

The Court DENIES the motion to remove class counsel and conduct discovery, Dkt. No. 353.

Finally, the Court DENIES the following motions as MOOT: motion to certify class, Dkt. No. 94, and related motions to file under seal, Dkt. Nos. 95, 111, 155; motion to intervene, Dkt. No. 96; administrative motion to file joint case management statement under seal, Dkt. No. 109; discovery letter briefs, Dkt. Nos. 147, 148; Plaintiff’s administrative motion to file under seal, Dkt. No. 155; Plaintiff’s motion for sanctions and related motions to file under seal, Dkt. Nos. 141, 142, 168.

IT IS SO ORDERED.

Dated: 9/29/2016


HAYWOOD S. GILLIAM, JR.
United States District Judge

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**FEDERAL RULE OF APPELLATE PROCEDURE 12(b) AND CIRCUIT RULE 3-2.
REPRESENTATION STATEMENT**

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Referred to: Magistrate Judge Jacqueline Scott Corley (Settlement)
Cause: 28:1332 Diversity - Account Receivable
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party through the Court's electronic filing service on this 27th Day of October, 2016.

/s/ Alan J. Sherwood
Alan J. Sherwood