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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HIROYAKI ODA, a California resident;
COREY ROTH, a California resident,
individually, and on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

DeMARINI SPORTS, INC.; DeMARINI
SPORTS GROUP LIMITED
PARTNERSHIP; WILSON SPORTING
GOODS CO.; VARI-WALL TUBE
SPECIALISTS, INC.; JACKSON TUBE
SERVICE, INC., and DOES 1 to 10,
inclusive,

Defendants.

CASE NO. 8:15-cv-02131-JLS-JCG

**ORDER (1) GRANTING PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT(Doc.
154); AND (2) SETTING A FINAL
FAIRNESS HEARING**

1 Before the Court is an unopposed Motion for Preliminary Approval of Class Action
2 Settlement filed by Plaintiffs Hiroyaki Oda and Corey Roth. (Mot., Doc. 154.) Plaintiffs
3 ask the Court to (1) preliminarily approve the terms of the Settlement Agreement; (2)
4 certify the proposed Class for settlement purposes only; (3) approve KCC as the
5 Settlement Administrator; (4) approve the form and content of the proposed Class Notice;
6 (5) appoint as Class Counsel Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP
7 and Jesse Bablove of Dickson, Kohan, & Bablove, LLP; (6) appoint Oda and Roth as Class
8 Representatives; and (7) schedule a final fairness hearing. (Mot.; Mem. at 14.) The Court
9 finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b);
10 C.D. Cal. R. 7-15. Accordingly, the hearing set for June 8, 2018, at 2:30 p.m., is
11 VACATED. For the following reasons, the Court GRANTS Plaintiffs’ Motion and sets a
12 Final Fairness Hearing for October 19, 2018, at 2:30 p.m.

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14 **I. BACKGROUND**

15 Defendant Wilson Sporting Goods, Co. (“Wilson”) is a sporting goods retailer that
16 manufactured and sold a model of softball bat called the “White Steel” from 2013 to 2014
17 (the “13/14 White Steels”). (Mem. at 1, Doc. 154-1.) Plaintiffs are purchasers of the
18 13/14 White Steels. (Second Amended Complaint (“SAC”) ¶ 10, Doc. 81.) They allege
19 that the 13/14 White Steels “fail prematurely due to common defects” that include the
20 chemical composition of the steel, an improperly placed seam in the middle of the barrel,
21 insufficient thickness of the wall, and Wilson’s lack of quality control. (*Id.* ¶ 108.) On
22 December 23, 2015, Plaintiffs filed suit against Wilson, DeMarini Sports, Inc., and
23 DeMarini Sports Group Limited Partnership. (Compl., Doc. 1.) On December 2, 2016,
24 Plaintiffs filed a First Amended Complaint (“FAC”). (FAC, Doc. 43.) Wilson filed a
25 motion to dismiss certain causes of action in the FAC, which the Court granted with leave
26 to amend. (Doc. 70 at 4.) Thereafter, on February 15, 2017, Plaintiffs filed their Second
27 Amended Complaint (“SAC”). (SAC.) Plaintiffs alleged claims for (1) violation of the

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1 Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the “CLRA”); (2)
2 violation of California Business & Professions Code §§ 17200, *et seq.* (the “UCL”); (3)
3 violation of the Song-Beverly Warranty Act, California Civil Code §§ 1792, *et seq.* (the
4 “Song-Beverly Act”); (4) breach of implied warranty; (5) strict products liability—
5 defective design or manufacture; (6) strict products liability—failure to warn; (7) violation
6 of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(1), *et seq.*; (8) violation of the
7 Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et*
8 *seq.*; (9) violation of the New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*; (10)
9 violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et*
10 *seq.*; (11) violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann.
11 §§ 42-110A, *et seq.*; (12) violation of the Massachusetts Consumer Protection Act, Mass.
12 Gen. Laws Ch. 93A; and (13) violation of the Florida Unfair and Deceptive Trade
13 Practices Act, Fla. Stat. §§ 501.201, *et seq.* (*Id.* ¶ 11.)

14 On March 15, 2017, Wilson filed a motion to dismiss and strike portions of the
15 SAC. (MTD, Doc. 85.) The Court granted in part and denied in part the motion.
16 Specifically, the Court struck counts eight through thirteen. (Order re: MTD at 6, Doc.
17 96.) The Court dismissed count four with leave to amend and dismissed counts five and
18 six with prejudice. (*Id.*) Plaintiffs did not amend. Accordingly, Plaintiffs’ claims under
19 the CLRA, the UCL, the Song-Beverly Warranty Act, and the Magnum-Moss Warranty
20 Act are the sole remaining claims.

21 On March 28, 2017, Plaintiffs filed a motion for class certification. (MCC, Doc.
22 97.) Before Wilson opposed the motion, the parties reached a settlement agreement and
23 filed a motion for preliminary approval. (First MPA, Doc. 134.) The settlement
24 agreement provided that the putative class would receive non-transferrable, single-
25 transaction, expiring vouchers that could be used online to purchase Wilson’s products.
26 (First Suppl. Briefing Order at 2, Doc. 135.) The Court then ordered two rounds of
27 supplemental briefing, requesting Plaintiffs to address deficiencies in the briefing and
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1 explain whether the vouchers were “coupons” governed by the Class Action Fairness Act’s
2 coupon settlement provision, 28 U.S.C. § 1712 (“Section 1712”). (*Id.* at 2–4; Second
3 Suppl. Briefing Order, Doc. 146.) During the supplemental briefing period, the parties
4 renegotiated several terms of the settlement agreement and filed significant additional
5 information for the Court to consider in determining the fairness of the proposed
6 settlement. Accordingly, the Court denied the motion for preliminary approval without
7 prejudice and directed Plaintiffs to file a renewed motion that incorporated the parties’
8 supplemental briefing and the revised settlement agreement. (Order Denying MPA at 2,
9 Doc. 152.) The instant Motion followed.

10 The Settlement Agreement defines the “Settlement Class” as “[a]ll individual
11 consumers, ... who purchased from Wilson or an authorized retailer of Wilson in the
12 United States, one or more new 13/14 White Steels within four years of the filing of the
13 original Complaint (*i.e.* after December 23, 2011) to the date the Court grants preliminary
14 approval of the settlement,” excluding presiding judges, Plaintiffs’ counsel, and Wilson’s
15 employees. (Settlement Agreement § 2, Doc. 154-3.)

16 Under the Agreement, each Class Member will receive a transferrable, non-expiring
17 voucher of either \$35.00 or \$85.00 for online purchases on the websites of either Wilson or
18 DeMarini. (*Id.* § 3.) If a consumer uses less than the stated value of the voucher in the
19 initial purchase, she will be re-issued a voucher valued at the remaining balance. (*Id.*) The
20 \$85.00 voucher, “Benefit A,” is available to Class Members who either started¹ or
21 completed the warranty claim process with Wilson for their 13/14 White Steels. (*Id.* §
22 3(a).) The \$35.00 voucher, “Benefit B,” is available to Class Members who purchased a
23 13/14 White Steel and have a proof of purchase but did not start or complete a warranty
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26 ¹ In order to qualify as an individual who “started” the warranty claim process, the Class
27 Member must have at least “contacted Wilson and provided their [contact information] ... and
28 identified the White Steel bat as the reason for their claim.” (Settlement Agreement § 3(a)(ii).)

1 claim. (*Id.* § 3(b).) The Settlement Agreement authorizes a total of 10,240 vouchers, the
2 total number of 13/14 White Steels manufactured and sold by Wilson. (*Id.* § 3(c).)

3 Class Members who wish to receive a voucher must submit a Claim Form no later
4 than 60 days after the date of issuance of the Class Notices, either by mail, email, or
5 publication. (*Id.* § 10(d).) Class Members who wish to object or opt out must also do so
6 within the 60-day claims period. (*Id.* § 10(d)(3).) Within fourteen days of the Court’s
7 final approval of the Settlement Agreement, the Settlement Administrator will issue
8 vouchers to Class Members who submitted timely and valid Claim Forms. (*Id.* § 12(c).)
9 The parties estimate that there are approximately 6,000 known Class Members, 2,903 of
10 whom qualify for Benefit A. (Mem. at 14.)

11 Further, Wilson agrees not oppose a request from Class Counsel for attorneys’ fees
12 not to exceed \$440,000 and for Class Representative enhancement awards of up to \$10,000
13 for each Plaintiff. (Settlement Agreement § 10(a)–(b).) The parties also estimate that the
14 costs of administration will be approximately \$62,500, payable to the Settlement
15 Administrator. (*Id.* § 4.)

16 In return for the consideration described above, the Class Members release:

17 any and all claims or causes of action that are asserted, that were at any time
18 asserted, or that could have been asserted in the Lawsuit including, but not
19 limited to, the Released Claims,² violations of the CLRA, UCL, Song-
20 Beverly Warrant Act and the Magnuson Moss Warranty Act and any and all
21 provisions, rights and benefits of any similar state or federal laws or the
common law.

22 (*Id.* § 5(b).) In addition to this release, Plaintiffs specifically release all claims, “whether
23 known or unknown,” that they may have against Wilson. (*Id.* § 5(a).)

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27 ² The “Released Claims” are defined as all causes of action “that in any way arise from or
28 relate to the 13/14 White Steels” (Settlement Agreement § 5(a).)

1 The Settlement Agreement also enumerates the process for Class Notice. Within
2 fourteen days following preliminary approval of the Settlement Agreement, the Settlement
3 Administrator will email the Class Notice and the Claim Form (the “Notice Package”) to
4 Class Members for whom the parties have an email address. (*Id.* § 6(a).) To those Class
5 Members for whom the parties do not have an email address or the initial email is returned
6 as undeliverable, within fourteen days of either preliminary approval or the date of the
7 email’s return as undeliverable, the Settlement Administrator will mail the Notice Package
8 via U.S. mail to Class Members with known mailing addresses. (*Id.* § 6(b).) Finally, no
9 later than fourteen days following preliminary approval, the Settlement Administrator will
10 begin Publication Notice. (*Id.* § 6(c).) Publication Notice will proceed through the
11 dissemination of 20 million banner ads across the Google Display Network, which
12 includes more than two million websites. (*See* Class Notice Plan at 6, Doc. 154-3.) The
13 banner ads state, “If you bought a Wilson-DeMarini 2013 or 2014 White Steel softball bat,
14 you could get a Wilson Voucher from a class action settlement,” and invite viewers to
15 click the ad to “Learn More.” (*See* Publication Notice, Doc. 154-3.) The ads link to the
16 case Website, which includes all relevant information about the case, provides case
17 documents, and allows Class Members to file claims online or request to have the Notice
18 Package mailed to them. (Mem. at 13; Class Notice Plan at 7.)

19 On April 13, 2018, Plaintiffs filed the instant Motion.

21 **II. CONDITIONAL CERTIFICATION OF THE CLASS**

22 Plaintiffs ask the Court to conditionally certify the Settlement Class for settlement
23 purposes under Rule 23(a) and 23(b)(3). (Mem. at 14–17.)

24 “A party seeking class certification must satisfy the requirements of Federal Rule of
25 Civil Procedure 23(a) and the requirements of at least one of the categories under Rule
26 23(b).” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a)
27 “requires a party seeking class certification to satisfy four requirements: numerosity,
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1 commonality, typicality, and adequacy of representation.” *Id.* (citing *Wal-Mart Stores,*
2 *Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

3 One or more members of a class may sue or be sued as representative parties
4 on behalf of all members only if:

5 (1) the class is so numerous that joinder of all members is impracticable;

6 (2) there are questions of law or fact common to the class;

7 (3) the claims or defenses of the representative parties are typical of the
8 claims or defenses of the class; and

9 (4) the representative parties will fairly and adequately protect the interests
10 of the class.

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12 Fed. R. Civ. P. 23(a).

13 “Rule 23 does not set forth a mere pleading standard. A party seeking class
14 certification must affirmatively demonstrate his compliance with the Rule—that is, he
15 must be prepared to prove that there are *in fact* sufficiently numerous parties, common
16 questions of law or fact, etc.” *Dukes*, 564 U.S. at 350. This requires a district court to
17 conduct a “rigorous analysis” that frequently “will entail some overlap with the merits of
18 the plaintiff’s underlying claim.” *Id.* at 350–51.

19 “Second, the proposed class must satisfy at least one of the three requirements listed
20 in Rule 23(b).” *Id.* at 345. Here, Plaintiffs seek certification of the class under Rule
21 23(b)(3), which permits maintenance of a class action if “the court finds that the questions
22 of law or fact common to class members predominate over any questions affecting only
23 individual members, and that a class action is superior to other available methods for fairly
24 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

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26 **A. The Proposed Class Meets All Rule 23(a) Requirements**

27 **1. Numerosity**

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1 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
2 impracticable.” Fed. R. Civ. P. 23(a)(1). There are up to 10,240 putative Class Members
3 based on the total number of 13/14 White Steels manufactured and sold by Wilson.
4 (Settlement Agreement §3(c)), approximately 6,000 of whom are known to the parties.
5 (Mem. at 14.) Therefore, numerosity is plainly met for the proposed Class.

6 7 **2. Commonality**

8 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.”
9 Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate that the class
10 members have suffered the same injury.” *Dukes*, 564 U.S. at 349–50 (citation and internal
11 quotation marks omitted). The plaintiff must allege that the class injuries “depend upon a
12 common contention” that is “capable of classwide resolution.” *Id.* at 350. In other words,
13 the “determination of [the common contention’s] truth or falsity will resolve an issue that
14 is central to the validity of each one of the claims in one stroke.” *Id.* “What matters to
15 class certification . . . is not the raising of common questions—even in droves—but, rather
16 the capacity of a classwide proceeding to generate common *answers* apt to drive the
17 resolution of the litigation.” *Id.* (internal quotation marks and citation omitted).

18 Here, Plaintiffs’ claims stem from their purchase of the allegedly defective 13/14
19 White Steels. (*See* Mem. at 15.) Questions such as whether the 13/14 White Steels
20 actually fail prematurely and whether Wilson fulfilled the duties under the terms of its
21 warranties are common to each Class Member. Because the 13/14 White Steels were
22 manufactured and sold uniformly with uniform warranties, “resolution of these questions
23 will resolve ‘in one stroke’ issues that are ‘central to the validity’ of each [C]lass
24 [M]ember’s claims.” *Guido v. L’Oreal, USA, Inc.*, 284 F.R.D. 468, 477 (C.D. Cal. 2012)
25 (*citing Dukes*, 564 U.S. at 350.).

26 Plaintiffs have therefore satisfied the commonality requirement.

27 **3. Typicality**

28

1 Rule 23(a)(3) requires “the claims or defenses of the representative parties [to be]
2 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “[U]nder the
3 rule’s permissive standards, representative claims are ‘typical’ if they are reasonably
4 coextensive with those of absent class members; they need not be substantially identical.”
5 *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting
6 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev’d on other grounds*,
7 564 U.S. 338 (2011). As to the representative, “[t]ypicality requires that the named
8 plaintiffs be members of the class they represent.” *Id.* (citing *Gen. Tech. Co. of Sw. v.*
9 *Falcon*, 457 U.S. 147, 156 (1982)). The commonality, typicality, and adequacy-of-
10 representation requirements “tend to merge” with each other. *Dukes*, 564 U.S. at 349 n.5
11 (citing *Falcon*, 457 U.S. at 157–58 n.13).

12 Here, Plaintiffs’ claims, like those of the proposed Settlement Class, are based on
13 their purchase of the 13/14 White Steels and Wilson’s alleged breach of warranties as to
14 the bats’ merchantable quality. Because the claims arise from the same alleged conduct,
15 and Plaintiffs fall within the Settlement Class definition, (*see* Mem. at 15–16), typicality is
16 met.

17 **4. Adequacy**

18 Rule 23(a)(4) permits certification of a class action only if “the representative
19 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
20 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named
21 plaintiffs and their counsel have any conflicts of interest with other class members and
22 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of
23 the class?” *Hanlon*, 150 F.3d at 1020.

24 Plaintiffs’ claims arise out of the same set of facts as the claims for the proposed
25 Class, and their interests in obtaining the maximum recovery are coextensive with the
26 interests of the Class Members. However, the Court does note that Plaintiffs seek
27 enhancement awards of \$10,000 each, an amount which far exceeds the value of the
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1 vouchers that Class Members will receive. (*See* Settlement Agreement § 10(b).) Courts
2 recognize a potential conflict of interest between the named plaintiffs and the class “when,
3 as here, there is a large difference between the enhancement award and individual class
4 member recovery.” *Mansfield v. Sw. Airlines Co.*, No. 13CV2337 DMS (KSC), 2015 WL
5 13651284, at *7 (S.D. Cal. Apr. 21, 2015). However, the concern is tempered where, as
6 here, there is no common fund and therefore the enhancement awards do not reduce the
7 funds available for payments to class members. *Cf. Campbell v. Best Buy Stores, L.P.*, No.
8 LACV-1207794-JAK (SHX), 2015 WL 12744268, at *4 (C.D. Cal. June 23, 2015).
9 Recognizing these principles, at the final approval stage, the Court will “be vigilant in
10 scrutinizing all incentive awards to determine whether they destroy the adequacy of the
11 class representatives.” *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir.
12 2013). Nevertheless, at this preliminary stage and in the absence of any apparent actual
13 conflict, the Court concludes that Plaintiffs are adequate class representatives.

14 As to the adequacy of Plaintiffs’ counsel, the Court must consider “(i) the work
15 counsel has done in identifying or investigating potential claims in the action;
16 (ii) counsel’s experience in handling class actions, other complex litigation, and the types
17 of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv)
18 the resources that counsel will commit to representing the class.” Fed. R. Civ. P.
19 23(g)(1)(A). Plaintiffs ask the Court to appoint Brian Chase and Jerusalem Beligan of
20 Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP. (Mot. at 1.)
21 Chase, Beligan, and Bablove have provided declarations describing their experience
22 litigating class actions, as well as a “Firm Resume” for Bisnar | Chase LLP, which
23 describes the firm’s experience in consumer class action matters. (Beligan Decl ¶¶ 16–18,
24 154-2; Chase Decl. ¶¶ 3–4, Doc. 154-3; Bablove Decl. ¶¶ 4–6, Doc. 154-6; “Firm
25 Resume,” Ex. B to Beligan Decl., Doc. 154-4.) From this experience, it appears that
26 Chase, Beligan, and Bablove have knowledge of the applicable law in this area. They also
27 identify the results they have obtained in many of these consumer class actions, including
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1 class certification, final approval of class settlements, and favorable jury verdicts.
2 (Bablove Decl. ¶ 4; Firm Resume at 6–7.) Based on the experience and work of Plaintiffs’
3 proposed Class Counsel, the Court concludes that they have satisfied the adequacy
4 requirement. The Court therefore appoints Brian Chase and Jerusalem Beligan of Bisnar |
5 Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP as Class Counsel in
6 this action.

7
8 **B. The Proposed Class Meets the Rule 23(b) Requirements**

9 Plaintiffs seek certification under Rule 23(b)(3). (Mem. at 16.) For the reasons set
10 forth below, the Court holds that certification of the proposed Settlement Class is
11 appropriate under Rule 23(b)(3).

12 Under Rule 23(b)(3), a class action may be maintained if: “[1] the court finds that
13 the questions of law or fact common to class members *predominate* over any questions
14 affecting only individual members, and [2] that a class action is *superior* to other available
15 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. R. 23(b)(3)
16 (emphases added). When examining a class that seeks certification under Rule 23(b)(3),
17 the Court may consider:

18 (A) the class members’ interests in individually controlling the prosecution
19 or defense of separate actions;

20 (B) the extent and nature of any litigation concerning the controversy
21 already begun by or against class members;

22 (C) the desirability or undesirability of concentrating the litigation of the
23 claims in the particular forum; and

24 (D) the likely difficulties in managing a class action.

25
26 *Id.* The Court finds that Plaintiffs’ proposed Class satisfies both the predominance
27 and superiority requirements.

1 **1. Predominance**

2 “[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship
3 between the common and individual issues in the case, and tests whether the proposed
4 class is sufficiently cohesive to warrant adjudication by representation.” *Abdullah v. U.S.*
5 *Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (citations and internal quotation
6 marks omitted). “Rule 23(b)(3) requires [only] a showing that questions common to the
7 class predominate, not that those questions will be answered, on the merits, in favor of the
8 class.” *Id.* (alterations in original).

9 Here, as discussed above, Class Members’ claims turn on whether the 13/14 White
10 Steels were actually defective and whether Wilson breached its warranties regarding the
11 merchantable quality of the 13/14 White Steels. These common questions and the
12 common legal remedies will predominate in this action.

13 **2. Superiority**

14 The Court further finds that a class action would be a superior method of
15 adjudicating Plaintiffs’ claims for the proposed Class. “The superiority inquiry under Rule
16 23(b)(3) requires determination of whether the objectives of the particular class action
17 procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023. “This
18 determination necessarily involves a comparative evaluation of alternative mechanisms of
19 dispute resolution.” *Id.* Here, each member of the proposed Class pursuing a claim
20 individually would burden the judicial system and run afoul of Rule 23’s focus on
21 efficiency and judicial economy. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d
22 935, 946 (9th Cir. 2009) (“The overarching focus remains whether trial by class
23 representation would further the goals of efficiency and judicial economy.”). Further,
24 litigation costs would likely exceed potential recovery if each Class Member litigated
25 individually. “Where recovery on an individual basis would be dwarfed by the cost of
26 litigating on an individual basis, this factor weighs in favor of class certification.” *Wolin v.*
27 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citations omitted).

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1 Considering the non-exclusive factors under Rule 23(b)(3)(A)–(D), the Court finds
2 that Class Members’ potential interests in individually controlling the prosecution of
3 separate actions and the potential difficulties in managing the class action do not outweigh
4 the desirability of concentrating this matter in one litigation. *See* Fed. R. Civ. P.
5 23(b)(3)(A), (C), (D). Therefore, the Court finds that the proposed Class may be certified
6 under Rule 23(b)(3).

7
8 **C. Rule 23(g) – Appointment of Class Counsel**

9 Under Rule 23(g), “a court that certifies a class must appoint class counsel.” Fed.
10 R. Civ. P. 23(g)(1). As previously stated in this Order, the Court is satisfied that Plaintiffs’
11 counsel is adequate and thus may be appointed as Class Counsel in this case.

12 Having found that the proposed Class satisfies the remaining elements of Rule
13 23(a), the Court conditionally certifies the Class for settlement purposes only.

14
15 **III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

16 To preliminarily approve a proposed class action settlement, Rule 23(e)(2) requires
17 the Court to determine whether the proposed settlement is fair, reasonable, and adequate.
18 Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two
19 stages, with preliminary approval followed by a final fairness hearing. Federal Judicial
20 Center, *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

21 “To determine whether a settlement agreement meets these standards, a district
22 court must consider a number of factors, including: the strength of plaintiffs’ case; the risk,
23 expense, complexity, and likely duration of further litigation; the risk of maintaining class
24 action status throughout the trial; the amount offered in settlement; the extent of discovery
25 completed, and the stage of the proceedings; the experience and views of counsel; the

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1 presence of a governmental participant;³ and the reaction of the class members to the
2 proposed settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal
3 citation and quotation marks omitted). “The relative degree of importance to be attached
4 to any particular factor will depend upon and be dictated by the nature of the claim(s)
5 advanced, the type(s) of relief sought, and the unique facts and circumstances presented by
6 each individual case.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.*,
7 688 F.2d 615, 625 (9th Cir. 1982). “‘It is the settlement taken as a whole, rather than the
8 individual component parts, that must be examined for overall fairness,’ and ‘the
9 settlement must stand or fall in its entirety.’” *Staton*, 327 F.3d at 960 (quoting *Hanlon*,
10 150 F.3d at 1026) (alterations omitted).

11 In addition to these factors, where “a settlement agreement is negotiated *prior* to
12 formal class certification,” the Court must also satisfy itself that “the settlement is not the
13 product of collusion among the negotiating parties.” *In re Bluetooth Headset Prods. Liab.*
14 *Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011) (quotation marks and citation omitted).
15 Accordingly, the Court must look for explicit collusion and “more subtle signs that class
16 counsel have allowed pursuit of their own self-interests and that of certain class members
17 to infect the negotiations.” *Id.* at 947. Such signs include (1) “when counsel receive a
18 disproportionate distribution of the settlement,” (2) “when the parties negotiate a ‘clear
19 sailing’ arrangement providing for the payment of attorneys’ fees separate and apart from
20 class funds,” and (3) “when the parties arrange for fees not awarded to revert to defendants
21 rather than be added to the class fund.” *Id.* (quotation marks and citations omitted).

22 At this preliminary stage and because Class Members will receive an opportunity to
23 be heard on the Settlement Agreement, “a full fairness analysis is unnecessary.” *Munday*
24 *v. Navy Fed. Credit Union*, No. SACV-151629-JLS (KESx), 2016 WL 7655807, at *7
25 (C.D. Cal. Sept. 15, 2016). Instead, preliminary approval and notice of the settlement

27 ³ This factor does not apply in this case.
28

1 terms to the proposed Class are appropriate where “[1] the proposed settlement appears to
2 be the product of serious, informed, non-collusive negotiations, [2] has no obvious
3 deficiencies, [3] does not improperly grant preferential treatment to class representatives or
4 segments of the class, and [4] falls within the range of *possible* approval” *In re*
5 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal
6 quotation marks and citation omitted) (emphasis added); *see also Acosta v. Trans Union,*
7 *LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (“To determine whether preliminary approval
8 is appropriate, the settlement need only be *potentially* fair, as the Court will make a final
9 determination of its adequacy at the hearing on the Final Approval, after such time as any
10 party has had a chance to object and/or opt out.”) (emphasis in original).

11 In evaluating all applicable factors below, the Court finds that the proposed
12 Settlement Agreement should be preliminarily approved.

13
14 **A. Strength of Plaintiffs’ Case**

15 The principal claims at issue here involve the alleged defectiveness of the 13/14
16 White Steels and Wilson’s warranties. While Plaintiffs are confident they would prevail
17 on the merits of their claims, Wilson disputes the above claims and would “vigorously
18 assert that it performed its warranty obligations to consumers” (*See* Mem. at 19.) For
19 example, Wilson claims that consumers were aware that the 13/14 White Steels had a
20 higher-than-average incidence of denting and cracking, but that they knowingly paid a
21 premium because the 13/14 White Steels were especially “high performing” and increased
22 a user’s “prospect of hitting a winning home run.” (Wilson’s First Mem. in Support at 5,
23 Doc. 140.) Moreover, Wilson cites to evidence that the 13/14 White Steels continued to
24 increase in market value because of their performance, and thus Plaintiffs would be unable
25 to show damages. (Ryan Decl. ¶¶ 5–16, Doc. 142-3.) The Court finds that given these
26 potential obstacles, this factor weighs in favor of granting preliminary approval.

27

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1 **B. Risk, Complexity, and Likely Duration of Further Litigation**

2 Plaintiffs argue that continued litigation would be time-consuming and uncertain.
3 (Mem. at 18–19.) Plaintiffs point to the risks of losing on their motion for class
4 certification or at the summary judgment stage as well as the possibility of Wilson
5 appealing a jury verdict. (*Id.* at 19.) Settlement eliminates the risks inherent in certifying
6 a class, prevailing at trial, and withstanding any subsequent appeals, and it may provide the
7 last opportunity for class members to obtain relief. This factor therefore weighs in favor of
8 granting preliminary approval. *See Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
9 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations, unless the settlement is clearly
10 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
11 with uncertain results.” (citation omitted)).

12

13 **C. Risk of Maintaining Class Certification**

14 Plaintiffs have identified some specific risks involved in obtaining and maintaining
15 class certification. Namely, Wilson contends that whether the 13/14 White Steels are
16 “defective” is a question that must be considered “individually, class member by class
17 member” (Wilson’s First Mem. in Support at 3.) According to Wilson, each class
18 member purchases the bat for individual reasons, and many found the bats to be effective
19 for their intended purpose – hitting homeruns. (*Id.* at 3–4.) Additionally, some putative
20 Class Members already obtained new bats after filling out their warranty forms and thus
21 have no damages. (*Id.* at 4.) Therefore, the Court finds that there is some risk of
22 maintaining class certification in this action and that this factor weighs in favor of
23 preliminary approval.

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1 **D. Amount Offered in Settlement**

2 Upon reviewing Plaintiffs’ Memorandum in support of their Motion and the
3 accompanying declarations, and for the purpose of preliminary approval, the Court finds
4 sufficient indicia that the amount offered in settlement is reasonable.

5 As an initial matter, the Court must determine whether the vouchers offered to Class
6 Members should be considered “coupons” under the Class Action Fairness Act (the
7 “CAFA”). Section 1712 of the CAFA places special restrictions on the use of coupon
8 settlements because they “decoupl[e] the interests of the class and its counsel” (First
9 Suppl. Briefing Order at 1.) However, CAFA does not define the word “‘coupon,’ leaving
10 courts to decipher the scope of section 1712.” (*Id.* at 1–2.) In *In re HP Inkjet Printer*
11 *Litigation*, the Ninth Circuit classified a defendant’s “e-credits” as “coupons,” observing
12 that they “expire six months after issuance, are non-transferable, and cannot be used with
13 other discounts or coupons.” 716 F.3d 1173, 1180 (9th Cir. 2013). By contrast, in *In re*
14 *Online DVD-Rental Antitrust Litigation*, the Ninth Circuit found that a defendant’s gift
15 cards were not coupons because the gift cards were freely transferrable, did not expire, and
16 did not require consumers to spend their own money. 779 F.3d 934, 950–51 (9th Cir.
17 2015). The vouchers in this settlement more closely resemble the gift cards in *In re Online*
18 than the e-credits in *In re HP*. The vouchers are transferrable and non-expiring.
19 (Settlement § 3(b).) Moreover, they may be used in multiple transactions and may be
20 spent on thousands of products on Wilson’s and DeMarini’s websites without forcing
21 Class Members to spend their own money.⁴ (*Id.*) “Under these circumstances, the gift
22 cards are more like ‘cash’ than ‘coupons.’” *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d
23 241, 256 (E.D. Pa. 2011). *Cf. Hofmann v. Dutch LLC*, 317 F.R.D. 566, 575 (S.D. Cal.

24
25 _____
26 ⁴ The parties have provided the Court with evidence that Wilson.com and DeMarini.com offer
27 1,600 products that cost less than \$85.00 and 1,200 products that cost less than \$35.00. (Ryan
28 Decl. ¶ 19.)

1 2016). Accordingly, the Court determines that the instant settlement is not a “coupon
2 settlement” within the meaning of Section 1712 of the CAFA.

3 The Court next considers whether the amount offered in settlement is fair.
4 Plaintiffs’ economic expert opined that Wilson’s maximum potential liability is
5 \$1,078,374.40 based on the average value lost by purchasers. (Wilson’s Second Mem. in
6 Support at 2, Doc. 149.) Wilson conducted an economic analysis of the actual value of the
7 vouchers to Class Members and determined that the \$85.00 vouchers have an actual value
8 of \$72.25 and the \$35.00 vouchers have an actual value of \$29.75; these conclusions are
9 based primarily on the price that consumers are willing to pay for similar sporting goods
10 vouchers. (Mem. at 10, *citing* Dudy Report at A-5–A-8, Doc. 149-1.) Thus, the parties
11 calculate that the total value of the settlement to the Settlement Class is the \$428,017.50,⁵
12 which is approximately 39.6% of Wilson’s maximum potential liability. (Mem. at 20.) Of
13 course, this figure is inflated insofar as it presumes that a claim will be filed for every
14 single 13/14 White Steel manufactured and sold by Wilson over the Class Period.
15 However, as the Court previously recognized, the Ninth Circuit instructs district courts to
16 calculate the value of a claims based settlement by its total potential value, not the total
17 value of claims actually filed. (First Suppl. Briefing Order at 3 n.1.) *See also Lee v. Enter.*
18 *Leasing Co.-W.*, No. 3:10-CV-00326-LRH, 2015 WL 2345540, at *5 n.5 (D. Nev. May 15,
19 2015) (“[T]he Ninth Circuit considers the value *available* to the class in determining total
20 value, rather than merely the amount redeemed.”)

21 A “settlement amounting to only a fraction of the potential recovery does not per se
22 render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
23 454, 459 (9th Cir. 2000) (internal quotation marks and citation omitted). The Court finds
24 that a 39.6 percentage of recovery is consistent with recoveries that courts have found
25 reasonable in other consumer class actions. *Weeks v. Kellogg Co.*, No. CV 09-08102

26
27 ⁵ This total is based on the approximately 2,903 Class Members eligible for Benefit A (\$72.25
28 x 2,903) and the 7,337 Class Members eligible for Benefit B (7,337 x \$29.75). (Mem. at 14.)

1 MMM RZX, 2013 WL 6531177, at *15 n.85 (C.D. Cal. Nov. 23, 2013) (approving
2 settlement amount of 10% of consumers’ average total damages); *Retta v. Millennium*
3 *Prod., Inc.*, No. CV15-1801 PSG AJWX, 2017 WL 5479637, at *5 (C.D. Cal. Aug. 22,
4 2017) (finding settlement amount of 21% of estimated damages to be reasonable and
5 beneficial to the class); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal.
6 2015) (approving a settlement of approximately 30% of what consumers could have
7 expected to receive at trial); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d at 833 (approving a
8 consumer settlement of 42% of the plaintiffs’ total potential recovery).

9 Finally, the amount of the settlement also appears fair, adequate, and reasonable in
10 light of the claims released by Plaintiffs and Class Members. Each Class Member will
11 release the claims that were or could have been asserted in this action, including all of
12 those “that in any way arise from or relate to the 13/14 White Steels.” (Settlement
13 Agreement § 5(a)–(b).) The scope of this release weighs in favor of preliminary approval.
14 *See Retta*, 2017 WL 5479637, at *8 (approving a similar release in a consumer class
15 action). *See also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement
16 agreement may preclude a party from bringing a related claim in the future even though
17 the claim was not presented and might not have been presentable in the class action, but
18 only where the released claim is based on the identical factual predicate as that underlying
19 the claims in the settled class action.” (internal quotation marks and citation omitted)).

20 **1. The Court’s Concerns**

21 Although the Court does not approve the proposed attorneys’ fees and service
22 enhancements to Plaintiffs at this stage, the Court raises its concerns with Plaintiffs’
23 proposed awards. The settlement provides for attorneys’ fees of \$440,000, subject to court
24 approval, an amount which *exceeds* the value of the settlement to the Class. (Settlement
25 Agreement § 10(a).) As the Court already indicated in its first Order for Supplemental
26 Briefing, the Court will likely apply the percentage-of-recovery method to determine any
27 award of attorneys’ fees. (First Suppl. Briefing Order at 3.) In the Ninth Circuit, the
28

1 benchmark for fees is 25% of the value of the settlement. *See In re Bluetooth*, 654 F.3d at
2 942. Accordingly, before final approval, the court will “scrutinize closely the relationship
3 between attorneys’ fees and benefit to the class” and will not “award[] unreasonably high
4 fees simply because they are uncontested.” *In re Bluetooth*, 654 F.3d at 948. Class
5 Counsel is reminded that they must make a sufficient showing to justify an award of fees,
6 particularly an award that exceeds the Ninth Circuit’s benchmark, and they should identify
7 relevant legal authority that supports the percentage of the award that they propose.

8 As already discussed, Plaintiffs seek representative enhancements of \$10,000, an
9 amount which is more than 135 times the value of Benefit A. (Settlement Agreement §
10 10(b).) The enormous disparity between these proposed enhancement awards and the
11 recovery of individual Class Members raises the specter of conflict between Plaintiffs and
12 the Class. *Mansfield*, 2015 WL 13651284, at *7. Accordingly, Plaintiffs must similarly
13 justify why such large awards would be warranted, particularly in light of the risk of
14 conflict.

15
16 **E. Stage of the Proceedings and Extent of Discovery Completed**

17 This factor requires the Court to evaluate whether “the parties have sufficient
18 information to make an informed decision about settlement.” *Linney v. Cellular Alaska*
19 *P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal.
20 *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. CV-10-3873-JLS
21 (RZX), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011). Here, the parties engaged in
22 extensive discovery and investigation, including exchanging almost 3,000 pages of
23 documents, issuing 25 subpoenas to third-party retailers, retaining liability and damages
24 experts, interviewing class members, and taking several depositions. (Mem. at 3–4;
25 Beligan Decl. ¶¶ 3, 5–7.) Armed with this information, the parties engaged in settlement
26 discussions through a mediator. (Beligan Decl. ¶ 9.) At the time of settlement, Plaintiffs
27 had filed their motion for class certification with the Court. (*Id.* ¶ 8.)

1 Given these facts, the Court concludes that the parties possess sufficient information
2 to make an informed settlement decision. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
3 at 459 (finding plaintiffs had “sufficient information to make an informed decision about
4 the [s]ettlement” where formal discovery had not been completed but class counsel had
5 “conducted significant investigation, discovery and research, and presented the court with
6 documentation supporting those services.”). Accordingly, this factor weighs in favor of
7 granting preliminary approval.

8
9 **F. Experience and Views of Counsel**

10 “The recommendations of plaintiffs’ counsel should be given a presumption of
11 reasonableness.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.
12 2008) (citation omitted). As discussed above, Class Counsel have experience serving as
13 plaintiffs’ counsel in consumer class actions, and they have endorsed the Settlement
14 Agreement as fair, reasonable, and adequate. (Beligan Decl. ¶ 17.) Thus, this factor
15 favors preliminary approval.

16
17 **G. Reaction of Class Members to Proposed Settlement**

18 Plaintiffs have not provided evidence of the Class Members’ reactions to the
19 proposed Settlement Agreement. However, the Court recognizes that the lack of such
20 evidence is not uncommon at the preliminary approval stage. Before the final fairness
21 hearing, Class Counsel shall submit a sufficient number of declarations from Class
22 Members discussing their reactions to the proposed Settlement Agreement. A small
23 number of objections at the time of the fairness hearing may raise a presumption that the
24 Settlement Agreement is favorable to the Class. *See In re Omnivision Techs., Inc.*, 559 F.
25 Supp. 2d at 1043.

1 **H. Signs of Collusion**

2 As noted above, because this settlement was reached prior to certification of the
3 class, the Court must be “particularly vigilant” for signs of collusion, including: (1) a
4 disproportionate distribution of the settlement fund to counsel, or when the class receives
5 no monetary compensation but counsel receive an ample award of attorneys’ fees⁶; (2)
6 negotiation of a “clear sailing provision” according to which defendants agree not to
7 oppose an attorney’s fee award up to a certain amount; and (3) an arrangement for funds
8 not awarded to revert to defendants rather than to be added to the common settlement fund.
9 *In re Bluetooth*, 654 F.3d at 946–47. Ultimately, the Court must determine whether class
10 counsel “permitted self-interest to trump their obligation to ensure a fair settlement for the
11 class as a whole.” *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions*
12 *Act (FACTA) Litig.*, 295 F.R.D. 438, 457 (C.D. Cal. 2014).

13 As to the first sign of collusion, the Court has already noted its concerns with the
14 amount of attorneys’ fees that Class Counsel plans to request and will ensure a reasonable
15 relationship between attorneys’ fees awarded and the benefit of the settlement to the Class.
16 *See In re Bluetooth*, 654 F.3d at 948. The second sign of collusion is present, as the parties
17 have negotiated a clear sailing provision. (*See* Settlement Agreement § 10(a).) The third
18 sign of collusion is also present, as any unawarded fees will revert to Wilson. (*Id.*)
19 However, this “kicker” provision is of less concern where, as here, the “attorneys’ fees
20 payment is separate and is not deducted from the calculated class recovery.” *Georgino v.*
21 *Sur la Table, Inc.*, No. CV-11-03522-MMM (JEMx), 2013 WL 12122430, at *16 (C.D.
22 Cal. May 9, 2013). While it is certainly possible that the value of the vouchers was
23 determined, in part, with reference to the amount Wilson was going to have to pay Class

24 _____
25 ⁶ Because the vouchers have monetary value, the Court considers “whether the settlement
26 terms result in class counsel receiving a disproportionate share of the settlement, and does not treat
27 this as a situation in which the class receives no monetary compensation... .” *In re Toys R Us-*
28 *Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 457
n.87 (C.D. Cal. 2014).

1 Counsel, “the fact that the settlement does not contemplate a common fund from which
2 both class members and counsel will be paid mitigates, to some extent, the collusive nature
3 of the kicker provision.” *Id.*

4 The Court concludes that “despite the clear sailing and kicker provisions, the
5 [C]lass stands to receive a sufficiently large award that these indications of collusion do
6 not warrant invalidating the agreement as a whole.” *Id.* See also *Knapp*, 283 F. Supp.3d at
7 835 (finding that the *Bluetooth* factors did not indicate collusion when fully analyzed, even
8 though “[t]he potential for two of the three signs of collusion” existed). Moreover, the
9 settlement was the result of arm’s length negotiations during a full-day mediation with an
10 experienced mediator. (See Beligan Decl. ¶ 9.) A “mediator’s involvement in the
11 settlement supports the argument that it is non-collusive.” *Graham v. Capital One Bank*
12 (*USA*), N.A., No. SACV-13743 JLS (JPRx), 2014 WL 12579809, at *6 (C.D. Cal. July 29,
13 2014).

14 Considering all of the factors together, the Court preliminarily concludes that the
15 Settlement Agreement is fair, reasonable, and adequate.

16
17 **IV. APPROVAL OF THE PROPOSED SETTLEMENT ADMINISTRATOR**

18 The parties agreed to appoint Kurtzman Carson Consultants (“KCC”) as the
19 Settlement Administrator in this action, subject to the Court’s approval. (See Mot. at 1.)
20 Plaintiffs have provided sufficient documentation of KCC’s competence in carrying out
21 the duties of a settlement administrator. (See Perry Decl., Doc. 154-7.) Moreover, this
22 Court has previously approved KCC as Claims Administrator in other class action
23 settlements. See, e.g., *Tawfilis et al. v. Allergan, Inc.*, 8:15-cv-00307-JLS (JCG), ECF No.
24 388 at 13 (C.D. Cal. Mar. 8, 2018). Accordingly, the Court approves KCC as the
25
26
27
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1 Settlement Administrator in this action.⁷

2

3 **V. PRELIMINARY APPROVAL OF CLASS NOTICE FORM AND METHOD**

4 For a class certified under Rule 23(b)(3), “the court must direct to class members
5 the best notice that is practicable under the circumstances, including individual notice to all
6 members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).
7 However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir.
8 1994).

9 Pursuant to the Settlement Agreement, within fourteen days following preliminary
10 approval, the Claims Administrator will email the Notice Package to Class Members for
11 whom the parties have an email address on file. (Settlement Agreement § 6(a).) To those
12 Class Members for whom the parties do not have an email address or the initial email is
13 returned as undeliverable, within fourteen days of either Preliminary Approval or the date
14 of the email’s return as undeliverable, the Settlement Administrator will mail the Notice
15 Package via U.S. mail to Class Members with known mailing addresses. (*Id.* § 6(b).)
16 Finally, no later than fourteen days following preliminary approval, the Settlement
17 Administrator will begin Publication Notice. (*Id.* § 6(c).) As described above, Publication
18 Notice will supplement the individual notice through 20 million banner ads that will be
19 distributed across more than two million websites. (*See* Class Notice Plan at 6.) The
20 banner ads state, “If you bought a Wilson-DeMarini 2013 or 2014 White Steel softball bat,
21 you could get a Wilson Voucher from a class action settlement,” and invite viewers to
22 click the ad to “Learn More.” (*See* Publication Notice.) The ads link to the case Website,
23 which includes all relevant information about the case, provides case documents, and
24 allows Class Members to file claims online or request to have the Notice Package mailed

25

26 ⁷ The Court does not approve any award of costs to KCC at this time. Plaintiffs shall apply
27 for approval of an award of costs for claims administration concurrently with their application for
28 attorneys’ fees and service payments.

1 to them. (Mem. at 13; Class Notice Plan at 7.) Claims, objections, and requests for
2 exclusion must be filed no later than 60 days after notice is issued either by email, mail, or
3 publication notice, or, where the initial email is returned as undeliverable, 60 days after
4 mailing. (Settlement Agreement § 10(d).)

5 The Supreme Court has found notice by mail to be sufficient if the notice is
6 “reasonably calculated . . . to apprise interested parties of the pendency of the action and
7 afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank &*
8 *Trust Co.*, 339 U.S. 306, 314 (1950); *accord Sullivan v. Am. Express Publ’g Corp.*, No.
9 SACV 09-142-JLS ANx, 2011 WL 2600702, at *8 (C.D. Cal. June 30, 2011) (quoting
10 *Mullane*). Notice by email satisfies the “reasonably calculated” standard where, as here,
11 the parties previously provided their email addresses to facilitate their business dealings.
12 *See Kissel v. Code 42 Software, Inc.*, No. SACV-151936 JLS (KESx), ECF No. 47 at 20
13 (C.D. Cal. Oct. 4, 2017); *D.Light Design, Inc. v. Boxin Solar Co.*, No. C-13-5988 EMC,
14 2015 WL 526835, at *3 (N.D. Cal. Feb. 6, 2015) (finding service by email appropriate, in
15 part, because it was a past mode of communication between the parties and the emails did
16 not bounce back as undeliverable). Thus, the parties’ proposed plan for providing notice
17 by email and mail is sufficient as to known Class Members. Further, the proposed
18 Publication Notice is reasonably calculated to reach unknown Class Members, as it
19 provides sufficient information to induce eligible consumers to follow the link to the
20 website where they can access all of the necessary information regarding the Settlement
21 and their options. (*See* Publication Notice, Doc. 154-3.) Thus, the Court finds that the
22 proposed procedure for class notice satisfies Due Process.

23 Plaintiffs have provided the Court with a copy of the proposed Class Notice. (Class
24 Notice, Doc. 156.⁸) Under Rule 23, the notice must include, in a manner that is

25 _____
26 ⁸ Plaintiffs initially filed a copy of the proposed Class Notice that omitted two sections. (*See*
27 Exhibit A, Doc. 154-3.) Thereafter, pursuant to the Court’s order, Plaintiffs filed a revised copy
28 that corrected the omission. (Doc. 156.)

1 understandable to potential class members: “(i) the nature of the action; (ii) the definition
2 of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member
3 may enter an appearance through an attorney if the member so desires; (v) that the court
4 will exclude from the class any member who requests exclusion; (vi) the time and manner
5 for requesting exclusion; and (vii) the binding effect of a class judgment on members
6 under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The Court notes several deficiencies in
7 the proposed Class Notice. First, the proposed Class Notice does not make clear that Class
8 Members may enter an appearance through an attorney. Thus, the Court requires that
9 Section 13 (“How do I get out of the Settlement?”), Section 18 (“How Do I tell the Court
10 that I do not like the Settlement?”), Section 20 (“When and where will the Court decide
11 whether to approve the Settlement?”), and Section 22 (“May I speak at the hearing”) be
12 modified to notify Class Members that they may enter an appearance through an attorney if
13 they so choose.

14 The Court also requires the Class Notice to be modified as follows:

- 15 • The “Exclude Yourself” option in the textbox titled “Your Legal Rights and
16 Options in this Settlement” should clearly instruct Class Members that they must
17 write to the Claims Administrator in order to be excluded from the settlement.
18 The current language does not explain what action Class Members must take in
19 order to be excluded.
- 20 • The “Object” option in the textbox titled “Your Legal Rights and Options in this
21 Settlement” must eliminate any reference to filing a written objection with the
22 Court and should instruct Class Members to file written objections with the
23 Claims Administrator.
- 24 • Section 16 (“Do I have a lawyer in this case?”) should include the contact
25 information for Class Counsel.
- 26 • Section 18 (“How do I tell the Court that I do not like the Settlement?”) should
27 be revised to include only the address of the Claims Administrator, as this is the
28

1 only address to which Class Members are instructed to submit their objections.
2 The Claims Administrator will then be responsible for disseminating the
3 objections to counsel and the Court.

- 4 • Section 24 (“How do I get more information?”) should also state that all papers
5 filed in this action, including a copy of the application for fees and costs and
6 service awards, will be available for review via the Public Access to Court
7 Electronic Resources System (PACER), available online at
8 <http://www.pacer.gov>.

9 Subject to the changes discussed above, the Court approves the form and method of
10 class notice. The Court **ORDERS** the parties to file a revised version of the Class Notice
11 **within 10 days** of entry of this Order.

12 The Court also requires that any motion for attorneys’ fees, costs, and service
13 payments be filed with the Court **no later than 15 days before** the latest exclusion
14 deadline. Plaintiffs shall file their motion for final approval no later than **September 21,**
15 **2018**, including a brief responding to any submitted objections and otherwise summarizing
16 Class Members’ participation in the settlement to date.

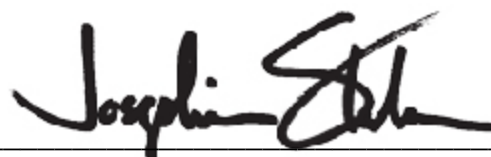
17 Finally, the Court notes that its jurisdiction over this matter arises in part from the
18 Class Action Fairness Act. (*See* SAC ¶ 1.) In their papers for final approval of the
19 settlement, the parties must also include a declaration reflecting that they provided
20 appropriate notice of the proposed settlement to relevant state and federal authorities per
21 the terms of 28 U.S.C. § 1715(b) at least 90 days prior to the date for the final fairness
22 hearing. 28 U.S.C. § 1715(d). *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1059
23 n.5 (C.D. Cal. 2010) (recognizing that the Class Action Fairness Act “requires that notice
24 [of a proposed settlement] be sent to ‘the appropriate State official of each State in which a
25 class member resides and the appropriate Federal official.’” (quoting 28 U.S.C § 1715(b)).

26
27 **VI. CONCLUSION**
28

1 For the reasons discussed above, the Court (1) preliminarily approves the
2 Settlement Agreement, (2) conditionally certifies the Class for settlement purposes only,
3 (3) approves KCC as Settlement Administrator, (4) appoints as Class Counsel Brian Chase
4 and Jerusalem Beligan of Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, &
5 Bablove, LLP, (5) appoints Oda and Roth as Class Representatives, and (6) approves the
6 form and method of class notice, subject to the changes discussed above. The Court
7 ORDERS the parties to file a revised version of the Class Notice **within 10 days** of this
8 Order.

9 The Court sets a final fairness hearing for **October 19, 2018, at 2:30 p.m.**, to
10 determine whether the settlement should be finally approved as fair, reasonable, and
11 adequate to Class Members. Plaintiffs shall file their motion for final approval no later
12 than **September 21, 2018**. Class Counsel shall file applications for fees and representative
13 enhancement awards **no later than 15 days before** the latest exclusion deadline. The
14 Court reserves the right to continue the date of the final fairness hearing without further
15 notice to class members.

16
17
18 DATED: June 06, 2018



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21 JOSEPHINE L. STATON
22 UNITED STATES DISTRICT JUDGE
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