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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE: MACBOOK KEYBOARD
21 LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

**PLAINTIFFS’ NOTICE OF MOTION AND
MOTION FOR ATTORNEYS’ FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. Edward J. Davila

Date: March 16, 2023

Time: 9:00 a.m.

Courtroom: 4 – 5th Floor

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1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on March 16, 2023 at 9:00 a.m., before the Honorable Edward
3 J. Davila of the United States District Court for the Northern District of California, Plaintiffs Zixuan
4 Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam
5 Lee, Kevin Melkowski, Lorenzo Ferguson, and Benjamin Gulker will and do hereby move the Court,
6 pursuant to Federal Rules of Civil Procedure 23(h), for an Order awarding attorneys’ fees,
7 reimbursement of litigation expenses, and service awards for the Class Representatives.

8 The Motion is based on this Notice of Motion; the incorporated memorandum of points and
9 authorities; the accompanying Joint Declaration of Simon S. Grille and Steven A. Schwartz (“Joint
10 Decl.”), Declarations of Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve
11 Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, Benjamin Gulker, and
12 Ashton Huey (collectively, “Plaintiffs” or “Class Representatives”), and Declaration of Jennifer
13 Keough (“Keough Decl.”); the record in this action; the argument of counsel, including on reply and
14 at the Final Fairness Hearing; and any other matters the Court may consider.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Plaintiffs move for an award of attorneys’ fees of 30% of the \$50 million settlement fund, and
18 reimbursement of litigation costs of \$1,559,091. We respectfully submit that an upward adjustment of
19 the 25% benchmark for attorneys’ fee awards in common fund cases is justified. First, Plaintiffs
20 litigated this case for five years against one of the largest and most sophisticated companies in the
21 world, represented by highly skilled counsel. Second, the results achieved speak for themselves: class
22 members will recover cash payments well in excess of the nominal payments sometimes associated
23 with consumer class actions. Apple’s \$50 million settlement payment will fund automatic
24 distributions of up to \$395 to individuals who experienced multiple keyboard failures, while others
25 who had unsatisfactory experiences can make claims to recover up to \$125, depending on the nature
26 of the product issues they experienced. Apple had every right to defend this case through trial and
27 appeals; absent the willingness of Class Counsel to fight protracted discovery battles, and hold out
28

1 through class certification, a Rule 23(f) petition, *Daubert* motions, and final pretrial preparation, this
2 action could not have been settled on such satisfactory terms.

3 To achieve the settlement before the Court, Plaintiffs invested over \$16.7 million in attorney
4 time at their current rates (and advanced over \$1.5 million in expenses), yielding a negative (0.89)
5 multiplier if the Court awards the full fee requested. And, as the Court has recognized, the risks that
6 Class Counsel assumed in prosecuting this action on a contingent basis were considerable.¹ The case
7 could have been effectively lost at class certification, and an adverse ruling on *Daubert* motions
8 would similarly have been disastrous. A fee award of 30% of the total recovery falls within the
9 standard 20-30% range for fees based on a percentage of the recovery, and represents less than
10 analogous contingency rates for legal services performed through dispositive motions and expert
11 discovery. In addition, Class Counsel do not expect the requested award to reduce the projected
12 payments to class members as summarized in the Notice. A fee award equal to 30% of the settlement
13 fund will ensure that Class Counsel are not penalized for investing the time needed to achieve a fair
14 settlement, furthering the objective of motivating counsel to take difficult cases and assume the risk
15 required to generate meaningful results.

16 Class Counsel's expense advances should also be reimbursed. These expenditures were
17 reasonable and necessary to achieve the \$50 million recovery; absent Class Counsel's willingness to
18 risk over \$1.5 million in out-of-pocket expenses, there would be no settlement. Finally, the Court
19 should grant Plaintiffs' motion for service awards of \$5,000 to each of the Class Representatives.
20 This amount, frequently approved by courts in class action cases, is warranted given the time devoted
21 by the Class Representatives, including sitting for depositions, and the ensuing stress for these
22 Plaintiffs.

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26 ¹ The Preliminary Approval Order notes that “[p]roceeding to trial would have been costly; recovery
27 was not guaranteed; and there was the possibility of protracted appeals. Plaintiffs faced risks
28 associated with a motion to decertify class” among other litigation challenges. Dkt. No. 426.

1 **II. STATEMENT OF THE ISSUE TO BE DECIDED**

2 Should the Court grant Plaintiffs’ request for attorneys’ fees under Fed. R. Civ. P. 23(h),
3 reimbursement of litigation expenses, and service awards?

4 **III. OVERVIEW OF WORK PERFORMED BY CLASS COUNSEL**

5 **A. Investigating the Case and Defending the Pleadings**

6 Beginning in May 2018, four lawsuits against Apple were filed in this District asserting claims
7 arising out of an alleged defect in Apple’s MacBook computers equipped with “butterfly” keyboards.
8 Joint Decl., ¶¶ 4-6. Before filing the first of these complaints, Girard Sharp LLP and Chimicles
9 Schwartz Kriner & Donaldson-Smith LLP (together, “Class Counsel”), reviewed thousands of
10 consumer complaints concerning Apple’s butterfly keyboards, responded to hundreds of consumer
11 inquiries, and investigated the technical underpinnings of the alleged defect. *Id.*, ¶ 5. Class Counsel
12 also researched publicly available sources concerning Apple’s knowledge of the alleged defect,
13 analyzed Apple’s warranty documents and terms of sale, reviewed articles reporting on the butterfly
14 keyboard, studied technical specifications and product reviews, and compiled and assessed Apple’s
15 representations about the MacBook. *Id.* Class Counsel also sent a demand letter under California’s
16 Consumers Legal Remedies Act. *Id.*

17 After filing the initial complaint, Class Counsel continued to investigate and develop the case
18 by interviewing affected consumers and reviewing consumer complaints, articles, and videos about the
19 alleged defect. Joint Decl., ¶ 7. Class Counsel also consulted with economists about damages and
20 engineering experts about the alleged defect, reviewed more patent filings relating to the MacBook
21 keyboards, and interviewed both former Apple employees and third-party repair technicians. *Id.* In
22 addition, Class Counsel worked with defense counsel and other plaintiffs’ counsel to organize the
23 related cases. *Id.*, ¶ 10. Class Counsel drafted early Rule 34 requests and drafted, negotiated, and filed
24 a stipulated protective order and an order governing the handling of electronically-stored information.
25 *Id.*, ¶ 8. Class Counsel also developed a comprehensive time-reporting protocol for all Plaintiffs’
26 counsel which required counsel to publicly file time and expense reports on a quarterly basis. *Id.*, ¶ 9.

27 The Court on June 26, 2018 consolidated the four related actions and on September 24
28 appointed Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP as Interim

1 Class Counsel. Dkt. Nos. 27, 33, 62. Plaintiffs filed their Consolidated Class Action Complaint on
2 October 11, 2018, asserting breach of warranty and consumer fraud claims. Joint Decl., ¶ 12.

3 Apple moved to dismiss the Consolidated Class Action Complaint on December 3, 2018,
4 arguing, among other things, that the Keyboard Service Program (“KSP”) it implemented after this
5 action began mooted Plaintiffs’ CLRA and Song-Beverly claims. Dkt. No. 72. The Court heard
6 arguments on February 21, 2019 (Dkt. No. 92), and on April 22, 2019, the Court granted in part and
7 denied in part the motion to dismiss with leave to amend. *In re MacBook Keyboard Litig.*, 2019 WL
8 1765817, at *1 (N.D. Cal. Apr. 22, 2019). The Court dismissed Plaintiffs’ claim for breach of the
9 covenant of good faith and fair dealing, and, based on the conclusion that Plaintiffs had not pled “any
10 facts showing that the Keyboard Service Program does not moot their claims under the CLRA and the
11 Song-Beverly Act,” the Court dismissed those claims as well as the claim under the UCL’s unlawful
12 prong. *Id.* at *4, *8-9. At the same time, the Court declined to dismiss the fraud by omission claims,
13 finding that Plaintiffs adequately alleged that Apple had a duty to disclose the alleged defect and that
14 the defect would be material to a reasonable consumer. *Id.* at *5-7. The Court also found that Plaintiffs
15 stated a claim under the UCL’s unfair prong. *Id.* at *9.

16 On May 13, 2019, Plaintiffs filed their First Amended Consolidated Class Action Complaint
17 (“FAC”), electing not to replead the claim for breach of the covenant of good faith and fair dealing but
18 otherwise asserting the same claims as in the Consolidated Class Action Complaint. Dkt. No. 117.
19 Apple moved to dismiss the FAC on June 4, arguing that Plaintiffs lacked standing and that the CLRA
20 and Song-Beverly claims should again be dismissed as moot. Dkt. No. 130. The Court heard
21 arguments on November 21 (Dkt. No. 161) and on November 22 denied Apple’s motion to dismiss
22 (Dkt. No. 164).

23 Over Apple’s opposition, on July 2, 2020, the Court granted Plaintiffs leave to file a Second
24 Amended Consolidated Class Action Complaint (“SAC”) to add two named plaintiffs and modify the
25 proposed class definition to specify the models of MacBook laptops included as Class Computers.
26 Dkt. No. 218. On July 16, Apple moved to dismiss the UCL and equitable relief claims under *Sonner*
27 *v. Premier Nutrition Corp.*, 962 F.3d 1072 (9th Cir. 2020). Dkt. No. 221. On October 13, the Court
28 granted Apple’s motion and dismissed with prejudice Plaintiffs’ UCL claims and all other claims

1 seeking an injunction, restitution, or other equitable relief. *In re MacBook Keyboard Litig.*, 2020 WL
2 6047253, at *4 (N.D. Cal. Oct. 13, 2020).

3 **B. Fact and Expert Discovery**

4 Class Counsel propounded four sets of document requests and three sets of interrogatories to
5 Apple and served ten subpoenas *duces tecum* on non-party resellers and repair providers. Joint Decl., ¶
6 21. After protracted negotiation, Apple produced about 1.2 million pages of documents, and non-
7 parties produced another 1,237 pages. *Id.* Class Counsel reviewed, analyzed, and coded all of these
8 documents, which served as the predicate for class certification, expert analysis, and settlement
9 discussions. *Id.* Class Counsel also negotiated responses and multiple rounds of supplemental
10 responses by Apple to Plaintiffs' interrogatories, which provided critical information concerning sales
11 volume and repair rates. Class Counsel deposed 15 Apple employees, including its Rule 30(b)(6)
12 designees, and defended depositions of each of the 11 Class Representatives. *Id.* Each Plaintiff also
13 responded to 19 document requests, eight interrogatories, a request for inspection of their MacBooks,
14 and produced responsive documents. *Id.* Expert work included 10 expert reports, two rounds of
15 depositions, and several document productions. *Id.* Plaintiffs took seven depositions of Apple's experts
16 and Apple took five depositions of Plaintiffs' experts. *Id.*

17 Class Counsel also briefed and appeared before Judge DeMarchi on several discovery disputes
18 related to Apple's document production, clawback demand, and Rule 30(b)(6) depositions. *See* Dkt.
19 Nos. 87, 89, 95, 98, 101, 170, 183, 189, 198. Discovery motions were preceded by conferral sessions
20 with Apple's counsel, allowing the parties to narrow some disputes, resolve others, and secure rulings
21 on the remaining points of disagreement. Joint Decl., ¶ 22. One such dispute, regarding production of
22 Apple's sales and revenue data, was not resolved until after Plaintiffs drafted and sent Apple their
23 portion of a joint discovery letter. *Id.* Plaintiffs also moved to compel production of nonparty
24 Amazon's MacBook sales data in the Western District of Washington. *See Rao v. Amazon.com, Inc.*,
25 No. 2:20-mc-00104-JCC (W.D. Wash.). After filing that motion, Class Counsel continued to confer
26 with Amazon and ultimately reached an agreement under which Amazon would produce the requested
27 information. *See id.* at Dkt. No. 7.

1 **C. Obtaining and Protecting the Class Certification Order**

2 In August 2020, Plaintiffs moved to certify a seven-state class of Class Computer purchasers
3 along with seven constituent state subclasses of purchasers of Class Computers in California, New
4 York, Florida, Illinois, New Jersey, Washington, and Michigan for case management purposes. Dkt.
5 No. 229. Class Counsel worked closely with Dr. Hal Singer, an economist, and Dr. David Niebuhr, an
6 engineer, who both submitted reports in support of certification. Joint Decl., ¶ 25. Dr. Singer’s report
7 included a full supply-side analysis of the pricing impact of disclosure of the alleged defect. *Id.* Dr.
8 Singer’s presentation required sophisticated econometric analysis and close communication with
9 counsel. *Id.* Apple opposed the class certification motion and also moved to strike the accompanying
10 opinions of Plaintiffs’ experts. Dkt. Nos. 235, 238, 239.

11 The Court held a hearing on class certification and related *Daubert* motions on February 4,
12 2021. Dkt. No. 287. On March 8, the Court granted Plaintiffs’ motion and certified the seven-state
13 class and subclasses under Rules 23(a) and 23(b)(3). Dkt. No. 298 at 29-30. The Court also granted in
14 part and denied in part Apple’s motion to exclude the expert opinions of Dr. Singer, excluding his
15 regression analysis but finding his conjoint analyses sufficiently reliable and relevant. *Id.* at *4-6.
16 Although the Court found Dr. Niebuhr qualified to offer his opinions, the Court excluded them as
17 “irrelevant at the class certification stage” without prejudice to offering him “as an expert witness for
18 other purposes at trial.” *Id.* at *8.

19 Apple filed a petition with the Ninth Circuit for permission to appeal the Court’s Class
20 Certification Order pursuant to Federal Rule of Civil Procedure 23(f), which Plaintiffs opposed. The
21 Ninth Circuit denied Apple’s petition on October 12, 2021.

22 In connection with class certification and other motion practice, Plaintiffs filed under seal a
23 substantial number of documents that Apple had designated as confidential or highly confidential.
24 Joint Decl., ¶ 29. Class Counsel complied with this District’s sealing procedures, reviewed each
25 document that Apple sought to seal, and opposed a large number of Apple’s requests. *Id.* Plaintiffs’
26 oppositions to Apple’s sealing motions included detailed charts identifying each document, setting out
27 Plaintiffs’ position, and identifying the basis for that position. *Id.* The Court ultimately unsealed many
28 of these documents. *See, e.g.*, Dkt. No. 299.

1 **D. Prevailing Under *Daubert* and Obtaining a Trial Date**

2 Following class certification, Plaintiffs served merits expert reports on April 13, 2021, Apple
3 served rebuttal expert reports on May 13, and Plaintiffs served reply expert reports on May 27. Joint
4 Decl., ¶ 30. Plaintiffs’ economist and engineering experts provided more detailed reports, and Class
5 Counsel also engaged an additional engineering expert who examined each of the MacBook models at
6 issue and created three-dimensional models of the alleged failure mechanism. *Id.* On July 15, 2021,
7 Apple moved to strike the expert opinions of Plaintiffs’ experts Dr. Singer, Charles Curley, and Dr.
8 Niebuhr. Dkt. Nos. 333, 334, 336. Plaintiffs opposed each of these motions, and on January 25, 2022,
9 the Court denied Apple’s motions to strike. Dkt. No. 386. The Court then held a Trial Setting
10 Conference on January 27, 2022 and set a trial date for March 21, 2023. Dkt. Nos. 390, 398.

11 **E. Negotiating the Settlement for the Benefit of the Class**

12 Settlement talks in this case were protracted, spanning more than two years. After a period of
13 factual development, the parties began discussing settlement in the spring of 2020. Judge Gandhi
14 conducted full-day mediation sessions with the parties in June and August 2020. The parties continued
15 to engage in settlement discussions under Judge Gandhi’s supervision leading up to the February 4,
16 2021 class certification hearing, but reached an impasse. The parties did not re-engage on settlement
17 until June 2021, after the Court’s decision on class certification. At that point the parties exchanged
18 multiple proposals and counterproposals but made limited progress.

19 After the Court denied Apple’s *Daubert* motions related to trial, the parties appeared before
20 Judge Infante for a third mediation, on February 8, 2022. The parties reached agreement in principle at
21 the mediation and signed a term sheet on February 10. The parties then drafted and negotiated the
22 settlement agreement, executing it on July 18, 2022. Class Counsel also developed a plan of allocation
23 for the distribution of the Net Settlement Fund. *See generally* Joint Decl., ¶¶ 33-35.

24 **F. Ensuring Adequate Relief and Distribution of the Fund**

25 Under the Settlement, Apple will pay \$50,000,000 to create a non-reversionary settlement
26 fund for Settlement Class Members. Settlement Agreement (“SA”), Dkt. No. 410-1, at § 2.1. Notice
27 costs, administration expenses, attorneys’ fees and costs, and service awards awarded by the Court will
28

1 be deducted from the fund. *Id.* at § 2.3. The balance (the “Net Settlement Fund”) will be applied to pay
2 Class Members pursuant to the plan of allocation.

3 Class Counsel developed the plan of allocation to treat Class Members fairly in relation to the
4 extent of their injuries. Joint Decl., ¶ 41. The plan balances the need to prevent fraudulent claims while
5 reasonably accounting for differing product experiences. *Id.* ¶¶ 41; 49. Class Counsel insisted on
6 substantial payments to Class Members who had to obtain multiple keyboard repairs. *Id.* at ¶ 41. As a
7 result, the Settlement ensures that those purchasers (Group 1) will receive a minimum payment of
8 \$300 and may receive payment as high as \$395, without the need to submit a claim. SA at §§ 3.4.3.1;
9 3.4.4. Settlement Class Members may also become eligible for Group 1 payment until two years after
10 preliminary approval. *Id.* at § 3.4.4. This extended payment period protects Class Computer owners
11 who will need to obtain multiple repairs in the future—a significant benefit given that the computers at
12 issue include MacBook models released as late as the end of 2019. Joint Decl., ¶ 51.

13 Class members who obtained only one repair, despite the availability of the KSP, can still
14 receive substantial payments if the repair was unsatisfactory. Class members who obtained a single
15 topcase replacement (Group 2) can get up to \$125, and those who obtained only key cap replacements
16 (Group 3) can get up to \$50. SA at § 3.4.3.2; 3.4.3.3. Group 2 and 3 claimants must submit a claim
17 attesting that the repair did not resolve their keyboard problems. *Id.* at § 3.3.1. As of this filing nearly
18 fifty thousand claims have been made. Keough Decl., ¶ 34. The claim form is prepopulated and
19 requires no documentation for Class members whose information appears in Apple’s records, a benefit
20 that makes submission simple and easy for those with verified repairs. *Id.* at § 3.3.5. Class members
21 who do not appear in Apple’s records but believe they qualify can submit a claim demonstrating their
22 eligibility with minimal documentation. *Id.* §§ 3.3.5-3.3.6. As a whole, this claim process discourages
23 fraudulent claims without erecting unreasonable barriers for qualifying claimants. Joint Decl., ¶ 49.

24 As an additional benefit for the Class, counsel secured Apple’s commitment to keep in place
25 its KSP, which provides four years of protection from the date of purchase for all manifestations of the
26 alleged defect, such as stuck keys or nonresponsive keys. SA at § 3.1.1. Depending on the keyboard
27 issues presented, Settlement Class Members may receive a free replacement of their computer topcase
28 (the laptop assembly that contains the keyboard as well as the battery, trackpad, and speakers). Joint

1 Decl., ¶ 39. The KSP guaranteed by the Settlement thus provides Class members who experience
2 product failures with a new keyboard and other major components. *Id.*

3 **IV. ARGUMENT**

4 **A. The Requested Fee Is Reasonable and Should Be Awarded.**

5 Class Counsel, working on contingency against one of the largest companies in the world,
6 overcame serious hurdles over more than four years to bring these claims to a favorable resolution.
7 Absent counsel’s efforts, the Class likely would not be receiving any monetary compensation at all.
8 Considering the Settlement achieved—which provides cash payments to all Class members who
9 encountered the alleged defect, as well as protecting them for at least two years going forward—Class
10 Counsel’s requested 30% fee is reasonable, consistent with applicable law, and well supported by the
11 record. Moreover, if granted, the requested award will not decrease projected Class Member
12 recoveries. Joint Decl., ¶ 58. Accordingly, the Court should grant this request.

13 **1. The Court Should Determine Class Counsel’s Fee as a Percentage of the**
14 **Common Fund.**

15 Attorneys may recover reasonable attorneys’ fees from a common fund settlement they secure
16 on behalf of a class. The Supreme Court has explained that “a lawyer who recovers a common fund
17 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
18 the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Vizcaino v. Microsoft*
19 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d
20 1301, 1311 (9th Cir. 1990) (common fund fee is generally “calculated as a percentage of the
21 recovery”). Attorneys’ fees are awarded as a means of ensuring the beneficiaries of a common fund
22 share with those whose labor created the fund. *See In re Washington Pub. Power Supply Sys. Sec.*
23 *Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (“WPPSS”). The percentage-of-the-fund method aligns
24 class counsel’s interests with those of the class, and properly incentivizes capable counsel not only to
25 accept challenging cases but to push for the best result that can be achieved. *See, e.g., Wal-Mart*
26 *Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (percentage method “directly aligns
27 the interests of the class and its counsel”) (citation omitted). For these reasons, the percentage method
28 “is preferred when”—as here—“counsel’s efforts have created a common fund for the benefit of the

1 class.” *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018); *accord*
2 *Korean Air Lines Co. Antitrust Litig.*, 2013 WL 7985367, at *1 (C.D. Cal. Dec. 23, 2013)
3 (recognizing that “use of the percentage-of-the-fund method in common-fund cases is the prevailing
4 practice in the Ninth Circuit”); *Roe v. SFBSC Mgmt., LLC*, No. 14-CV-03616-LB, 2022 WL
5 17330847, at *19 (N.D. Cal. Nov. 29, 2022) (same).

6 The settlement amount in this case is a fixed common fund of \$50,000,000. Therefore, the
7 benefit to the class is easily quantifiable, which further favors determining the fee using the percentage
8 method. *See Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016 WL 537946, at *16 (N.D. Cal.
9 Feb. 11, 2016).

10 2. The Court Should Award a Fee of 30% of the Fund.

11 Class Counsel’s requested fee amount of 30% falls within “20-30 percent as the usual range”
12 in common fund cases. *Destefano*, 2016 WL 537946, at *16; *Vizcaino*, 290 F.3d at 1047. The Ninth
13 Circuit’s 25% “benchmark” for an attorneys’ fees award in a class action provides a starting point; the
14 Court determines the appropriate percentage by “tak[ing] into account all of the circumstances of the
15 case.” *Vizcaino*, 290 F.3d at 1048; *In re Google Inc. St. View Elec. Commc’ns Litig.*, 21 F.4th 1102,
16 1120 (9th Cir. 2021). The benchmark “should be adjusted when the percentage of recovery would be
17 either too small or too large in light of the hours devoted to the case or other relevant factors.”
18 *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2018 WL 2234598, at *3 (N.D.
19 Cal. May 15, 2018) (quotation marks and citation omitted). The benchmark is subject to adjustment
20 based on the Court’s assessment of: “(1) the results achieved for the class; (2) the complexity of the
21 case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and performance
22 of counsel on both sides; (4) the contingent nature of the fee; and (5) fees awarded in comparable
23 cases.” *In re Capacitors*, 2018 WL 4790575, at *3 (citing *Vizcaino*, 290 F.3d at 1048-50); *Durham v.*
24 *Sachs Elec. Co.*, No. 18-CV-04506-BLF, 2022 WL 2307202, at *8 (N.D. Cal. June 27, 2022)
25 (approving upward adjustment based on factors including risk and difficulty of the case). As detailed
26 below, all of these *Vizcaino* factors support the fee requested by Class Counsel here.
27
28

1 **a. The Relief Obtained for the Class Is Excellent.**

2 “The most important factor is the results achieved for the class. Outstanding results merit a
 3 higher fee.” *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 4126533, at
 4 *4 (N.D. Cal. Aug. 3, 2016) (citing *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D.
 5 Cal. 2008)); see *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting “the most critical factor is the
 6 degree of success obtained”). Class Counsel in this case obtained a large fund for the Class, which the
 7 Court found “represents approximately 9% to 28% of the total estimated damages[.]” Dkt. No. 426 at 7.
 8 The settlement provides substantial payments to Class Members, including an automatic, minimum
 9 payment of \$300 to each Class Member who had to obtain multiple repairs. SA at § 3.4.4. Class
 10 Counsel have already begun to receive praise for the Settlement from Class members, and tech
 11 journalists have characterized the settlement as “massive.” Joint Decl. ¶ 59. Class Counsel achieved
 12 this result in heavily contested litigation against skilled counsel. See, e.g., *Barbosa v. Cargill Meat*
 13 *Solutions Corp.*, 297 F.R.D. 431, 449 (C.D. Cal. 2013) (“The quality of opposing counsel is important
 14 in evaluating the quality of Class Counsel’s work.”).

15 The settlement entitles Settlement Class Members to cash relief from keyboard issues for the
 16 four-year useful life of a laptop, in addition to ensuring the protection of Apple’s KSP. See *Vizcaino*,
 17 290 F.3d at 1049 (“Incidental or nonmonetary benefits conferred by the litigation are a relevant
 18 circumstance” in determining a fee award); *Grays Harbor Adventist Christian Sch. v. Carrier Corp.*,
 19 No. 05-05437 RBL, 2008 WL 1901988, at *3 (W.D. Wash. Apr. 24, 2008). As discussed, the
 20 settlement provides for payments as high as \$395 for Class members who had to obtain multiple
 21 keyboard replacements, and payments up to \$125 for those who obtained only one unsatisfactory
 22 repair. SA at § 3.4. Other product defect class actions, including cases against Apple, have yielded
 23 significantly lower payments. See, e.g., *In re Apple iPhone 4 Prod. Liab. Litig.*, No. 5:10-MD-2188
 24 RMW, 2012 WL 3283432, at *1 (N.D. Cal. Aug. 10, 2012) (providing class members cash payments of
 25 only \$15); *Grace v. Apple, Inc.*, No. 17-CV-00551-LHK (N.D. Cal. Aug. 22, 2019), Dkt. No. 429 at 18
 26 (initial payments of \$3); *In re Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD (N.D.
 27 Cal.), Dkt. Nos. 238, 247 (paying \$35 to \$79 to class members who received replacement power
 28 adapters); *iPod Nano Cases*, Case No. BC342056 (Los Angeles Super. Ct.) (paying between \$15 to \$25

1 for Apple iPod Nano owners); *see also Horvath v. LG Electronics MobileComm U.S.A., Inc.*, Dkt. No.
 2 101 (S.D. Cal. Jan. 14, 2014) (approving settlement of \$19 per claimant in class action alleging
 3 smartphone defect). Further, by virtue of the settlement, Class members who experience multiple
 4 repairs will remain eligible for payment for two years after Preliminary Approval, ensuring
 5 compensation for those who may experience keyboard problems in the future. After deduction of the
 6 requested attorneys’ fees, costs, service awards, and administrative expenses,² \$32 million would
 7 remain in the fund, which Class Counsel anticipates will be sufficient to cover the individual Class
 8 member payments estimated in the Notice. *Id.* ¶ 58. As such, the size of the Settlement Fund and the
 9 relief for the Class strongly support the requested fee award.³

10 **b. The Product Liability Claims Against Apple Were Highly Complex**
 11 **and Risky.**

12 The risk of the litigation is another key factor in determining a reasonable fee. *See Vizcaino*, 290
 13 F.3d at 1048; *Destefano*, 2016 WL 537946, at *17 (approving the requested fee, in part, because the
 14 “risks associated with the case were substantial”); *AdTrader, Inc. v. Google LLC*, No. 17-CV-07082-
 15 BLF, 2022 WL 16579324, at *7 (N.D. Cal. Nov. 1, 2022) (33% fee award justified by “substantial

17 ² The Settlement Administrator will perform all settlement notice and administration duties at a cost
 18 not expected to exceed \$1,400,000. Joint Decl., ¶ 64.

19 ³ *See, e.g., Gergetz v. Telenav, Inc.*, No. 16-CV-04261-BLF, 2018 WL 4691169, at *7 (N.D. Cal. Sept.
 20 27, 2018) (benchmark increased to 30% of the \$3.5 million gross settlement fund in taking into
 21 account the exceptional results achieved among other factors); *Mauss v. NuVasive, Inc.*, No. 13-CV-
 22 2005 JM (JLB), 2018 WL 6421623, at *6 (S.D. Cal. Dec. 6, 2018) (settlement that was “approximately
 23 23 to 24 percent” of the maximum damages weighed in favor of upward adjustment of the benchmark
 24 to 30 percent of the common fund); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017
 25 WL 3494297, at *6 (C.D. Cal. Apr. 24, 2017) (settlement of 27% of maximum possible recovery
 26 weighed in favor of upward adjustment from the benchmark); *Smith v. Am. Greetings Corp.*, No. 14-
 27 CV-02577-JST, 2016 WL 2909429, at *8 (N.D. Cal. May 19, 2016) (“It is also notable that the
 28 settlement represents 20% of the class’s maximum possible recovery”).

1 risk” and results). “The rationale behind awarding a percentage of the fund to counsel in common fund
 2 cases is the same that justifies permitting contingency fee arrangements in general. . . . The underlying
 3 premise is the existence of *risk*—the contingent risk of non-payment.” *In re Quantum Health*
 4 *Resources, Inc. Sec. Litig.*, 962 F. Supp. 1254, 1257 (C.D. Cal. 1997) (emphasis in original).

5 Consumer fraud class actions tend to be riskier than most other types of class actions. *Kakani v.*
 6 *Oracle Corp.*, No. 06-06493-WHA, 2007 WL 4570190, at *4 (N.D. Cal. Dec. 21, 2007). For example,
 7 consumer plaintiffs suing device manufacturers often have been unable to maintain a class action on a
 8 developed record. *See, e.g., Haag v. Hyundai Motor Am.*, 2019 WL 1029002, at *4 (W.D.N.Y. Mar. 5,
 9 2019) (finding common issues did not predominate in a putative product defect class action, as “there
 10 is no basis for the Court to infer that a reasonable consumer—let alone an entire class of consumers—
 11 would have demanded a lower purchase or lease price”).⁴ Class Counsel likewise took on risk in
 12 undertaking this representation and challenging Apple, committing their time, money, and energy to
 13 the prosecution of a multi-year consumer products case against one of the world’s most successful
 14 companies. *See Fischel v. Equitable Life Assur. Soc’y of the United States*, 307 F.3d 997, 1009 (9th
 15 Cir. 2002) (holding that “risk should be assessed when an attorney . . . elects to pursue the claim on the
 16 client’s behalf.”).

17 Absent settlement, Apple would have funded a trial defense and in all likelihood moved to
 18 decertify the Class. Plaintiffs faced major risks associated with decertification, trial, and a post-trial
 19

20 ⁴ *See also, e.g., Davidson v. Apple*, No. 16-cv-04942-LHK, 2019 WL 2548460, at *1 (N.D. Cal. June
 21 20, 2019) (denying class certification for the third time in a consumer case involving smartphones); *In*
 22 *re iPhone Application Litig.*, 6 F. Supp. 3d 1004, 1007 (N.D. Cal. 2013) (granting summary judgment
 23 and denying class certification as moot in case involving Apple’s data collection practices); *Yastrab v.*
 24 *Apple Inc.*, 173 F. Supp. 3d 972, 976 (N.D. Cal. 2016) (dismissing with prejudice claims based on
 25 software updates that purportedly removed features from phones); *Waller v. Hewlett-Packard Co.*, 295
 26 F.R.D. 472, 484 (S.D. Cal. 2013); *Opperman v. Kong Techs., Inc.*, No. 13-CV-00453-JST, 2017 WL
 27 3149295, at *1 (N.D. Cal. July 25, 2017) (denying class certification in case based on alleged security
 28 flaws in Apple’s mobile applications).

1 appeal, especially given Apple’s vast resources and technical expertise. The “battle of the experts” on
2 both liability and damages would have been heated, with unpredictable results, and the outcome of a
3 Ninth Circuit appeal uncertain. *See Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at *10 (C.D.
4 Cal. 2014) (“In the absence of a settlement, it is very likely that this case could ultimately be decided
5 at trial by a ‘battle of the experts’ over the existence of a [defect] . . . taking those issues to trial might
6 be more challenging for Plaintiffs than for BMW, given complex technical nature of the CVT
7 system.”).

8 Plaintiffs would have had to overcome daunting defenses, including Apple’s arguments that the
9 failure rate was low, the keyboards embedded in the computer models significantly differed over the
10 product generations, and it lacked sufficient knowledge to create a duty to disclose. *See, e.g., In re*
11 *Seagate Tech. LLC*, 326 F.R.D. 223, 245 (N.D. Cal. 2018) (evidence of defendant’s knowledge from
12 later in class period did not show requisite knowledge for class members who purchased earlier in the
13 period). Apple also would have maintained that the KSP moots or, at a minimum, substantially
14 decreases the value of Plaintiffs’ claims because it already offers an effective remedy. *See Looper v.*
15 *FCA US LLC*, 2017 WL 11650429, at *6 (C.D. Cal. 2017) (the manufacturer’s recalls made the
16 plaintiffs’ recovery uncertain, which supported the settlement). And Apple vigorously contested
17 Plaintiffs’ complex damage theory, which they would have had to persuade a lay jury to accept.

18 Seeing this case through to verdict would have required countless additional attorney hours and
19 expense. Especially given the risks—as well as the fact that the aging laptops will soon be obsolete—
20 the Settlement is a clear win for consumers. *See, e.g., Skeen v. BMW of N. Am., LLC*, 2016 WL
21 4033969, at *9 (D.N.J. July 26, 2016) (noting that “the warranty on Ms. Williams’s vehicle . . . has
22 already expired even under the extended terms of the settlement.”). Class members have the
23 opportunity now to share in the fund and obtain “a significant, easy-to-obtain benefit”—cash
24 recoveries—through automatic payment or with minimal effort using a simplified claim process. *In re*
25 *Haier Freezer Consumer Litig.*, No. 5:11-CV-02911-EJD, 2013 WL 2237890, at *4 (N.D. Cal. 2013).
26 The risk of little or no recovery, together with the complexity of the case and likelihood of significant
27 additional expense and delay, weigh in favor of granting the requested fee.

1 **c. Class Counsel Litigated the Case on a Fully Contingent Basis to the**
 2 **Eve of Trial.**

3 “When counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of
 4 non-payment . . . justifies a significant fee award.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D.
 5 245, 261 (N.D. Cal. 2015). Success in this case was far from a sure thing at the outset. Class
 6 Counsel’s fee was entirely contingent. Joint Decl., ¶ 71. *See Pelletz v. Weyerhaeuser Co.*, 592 F.
 7 Supp. 2d 1322, 1328 (W.D. Wash. 2009) (approving 1.82 fee multiplier in part because “the
 8 demanding nature of this action precluded Class Counsel from accepting other potentially profitable
 9 work.”). Since 2018, Class Counsel advanced all necessary expenses, and the representation
 10 precluded their work on other matters. Joint Decl., ¶ 71. The potential that Class Counsel would
 11 receive nothing supports approval of their requested fee. *See WPPSS*, 19 F.3d at 1299 (“It is an
 12 established practice in the private legal market to reward attorneys for taking the risk of non-payment
 13 by paying them a premium over their normal hourly rates for winning contingency cases.”).⁵

14 Class Counsel held out for an optimal result for the Class and pursued the claims against Apple
 15 to the eve of trial. *See Martinelli v. Johnson & Johnson*, No. 2:15-CV-01733-MCE-DB, 2022 WL
 16 4123874, at *9 (E.D. Cal. Sept. 9, 2022) (33.3% award justified based on contingent risk assumed by
 17 counsel in case involving “extensive discovery” and “contested motion practice”). A 30% fee is less
 18 than the percentage fee provided for in a standard contingency agreement, and “when deciding on
 19 appropriate fee levels in common-fund cases, courts must do their best to award counsel the market
 20

21 ⁵ *See also Ching v. Siemens Indus.*, No. 11-CV-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. Jun.
 22 27, 2014) (“Courts have long recognized that the public interest is served by rewarding attorneys who
 23 assume representation on a contingent basis with an enhanced fee to compensate them for the risk that
 24 they might be paid nothing at all for their work.”); *Brown v. 22nd Dist. Agric. Ass’n*, No. 15-CV-
 25 02578-DHB, 2017 WL 3131557, at *8(S.D. Cal. July 21, 2017) (recognizing that “class counsel was
 26 forced to forgo other employment in order to devote necessary time to this litigation” and concluding
 27 that the substantial risk associated with taking the matter on a contingent basis warranted “an upward
 28 adjustment to the fee award”).

1 price for legal services, in light of the risk of nonpayment and the normal rate of compensation”
 2 *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001); *see Blum v. Stenson*, 465 U.S. 886,
 3 904 (1984) (Brennan, J., concurring) (noting that “[i]n tort suits, an attorney might receive one-third of
 4 whatever amount the Plaintiff recovers.”); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *29
 5 (D.N.J. Nov. 15, 2016) (“If this were an individual action, the customary contingent fee would likely
 6 range between 30 and 40 percent of the recovery.”); Robinson, *An Empirical Study of Settlement*
 7 *Conference Nuts and Bolts*, 17 Harv. Negot. L. Rev. 97, 112 (2012) (“In many instances, the
 8 attorney’s fee would be 33% of a settlement, but 40% if it goes to trial.”). Hence the contingency risk
 9 and the stage of litigation further support Class Counsel’s request.

10 **d. Successfully Prosecuting the Case Against Apple Required a High**
 11 **Level of Skill.**

12 Class Counsel’s experience and the result delivered also support granting the requested fee.
 13 *See Norris v. Mazzola*, No. 15-CV-04962-JSC, 2017 WL 6493091, at *13 (N.D. Cal. Dec. 19, 2017)
 14 (noting that the skill required in extensive motion practice and discovery as well as the quality of
 15 work performed by highly experienced counsel supported the fee award). The “prosecution and
 16 management of a complex national class action requires unique legal skills and abilities.” *In re*
 17 *Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19
 18 (C.D. Cal. June 10, 2005) (citation omitted), and “the stated goal in percentage fee-award cases [is]
 19 ensuring that competent counsel continue to be willing to undertake risky, complex and novel
 20 litigation.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (internal quotation
 21 marks and citations omitted); *see Zepada v. PayPal, Inc.*, No. C 10-1668 SBA, 2017 WL 1113293, at
 22 *20 (N.D. Cal. Mar. 24, 2017) (class counsel’s expertise allowed for a result that “would have been
 23 unlikely if entrusted to counsel of lesser experience or capability” given the “substantive and
 24 procedural complexities” and the “contentious nature” of the case).⁶

25
 26 ⁶ *See also Allagas v. BP Solar Int’l, Inc.*, No. 3:14-CV-00560-SI (EDL), 2016 WL 9114162, at *2
 27 (N.D. Cal. Dec. 22, 2016); *Carlin v. DairyAm. Inc.*, 380 F. Supp. 3d 998, 1021 (E.D. Cal. 2019) (the
 28

1 Class Counsel are experienced in high-stakes consumer class actions. *See* Dkt. No. 30; Joint
2 Decl., ¶ 70. In granting preliminary approval, this Court found that Class Counsel “vigorously
3 prosecuted the case” and that “Counsel for both parties are highly experienced in complex class
4 litigation.” Dkt. No. 426 at 6-7. The quality of Class Counsel’s representation is reflected in their work
5 throughout the action and in the settlement before the Court. *See Moreyra v. Fresenius Med. Care*
6 *Holdings, Inc.*, No. SACV-10517-JVS-RZx, 2013 WL 12248139, at *3 (C.D. Cal. Aug. 7, 2013) (the
7 result obtained is “[t]he single clearest factor reflecting the quality of class counsels’ services”)
8 (citation omitted). Class Counsel applied their experience from case inception forward by actively
9 investigating the underlying facts, interviewing class members, and filing and pursuing the claims
10 against Apple. Joint Decl., ¶ 5. Among other work benefiting Plaintiffs and the other computer
11 purchasers, Class Counsel: (a) opposed three motions to dismiss, (b) certified a seven-state class, (c)
12 submitted 10 expert reports and defended their experts against multiple *Daubert* challenges, (d)
13 reviewed over 1.2 million pages of documents, (e) briefed discovery motions in this Court and in other
14 jurisdictions, and (f) took 22 depositions. *Id.* ¶¶ 7-32. Class Counsel held out through multiple
15 mediations and negotiations over two years to secure a settlement providing for automatic payments of
16 up to \$395 for persons who obtained multiple keyboard repairs, and recoveries of up to \$50 or \$125
17 for Class Computer purchasers who remained unsatisfied after obtaining a single repair, against a
18 capable and determined team of Morrison & Foerster attorneys who, unlike Class Counsel, were not
19 operating on a contingency. *See Andrews v. Plains All Am. Pipeline L.P.*, 2022 WL 4453864, at *3
20 (C.D. Cal. Sept. 20, 2022) (“[E]specially when considering that Defendants were represented by a
21 prominent litigation firm, Class Counsel’s ability to get the case this far along evinces their high
22 quality of work.”); *Barbosa*, 297 F.R.D. at 449 (same); *Wing v. Asarco Inc.*, 114 F.3d 986, 988–89
23 (9th Cir. 1997) (approving a 2.0 fee multiplier in part because of “the quality of the [defendant’s]
24 opposition”).

25
26
27 “breadth and depth” of plaintiffs’ counsel’s experience and their “prosecution and management of a
28 complex national class action” justified upward departure from 25% benchmark).

1 Class Counsel were unable to piggyback on investigations or enforcement actions of
 2 governmental officials, instead securing the relief through their efforts alone. *See Rodriguez v. West*
 3 *Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (court justified use of a multiplier based in part on
 4 finding that “counsel faced substantial risk in prosecuting this action” and “did not have the benefit of
 5 fruits from underlying government actions”). Thus, the skill and expertise brought to bear by Class
 6 Counsel support the requested fee.

7 **e. A Comparison to Awards in Similar Cases Demonstrates That the**
 8 **Requested Fee Is Reasonable.**

9 The 30% fee requested by Class Counsel is within the usual range of “20-30%” in common
 10 fund cases. *Vizcaino*, 290 F.3d at 1047. “[C]ourts in this Circuit often award fees at or exceeding 30
 11 percent, and such awards are routinely upheld.” *In re: Volkswagen “Clean Diesel” Mktg., Sales*
 12 *Pracs., & Prod. Liab. Litig.*, No. 15-MD-02672-CRB, 2022 WL 17730381, at *11 (N.D. Cal. Nov. 9,
 13 2022) (citing *Hernandez v. Dutton Ranch Corp.*, No. 19-cv-817, 2021 WL 5053476, at *6 (N.D. Cal.
 14 Sept. 10, 2021)). “[T]he request for attorneys’ fees in the amount of 30% of the common fund falls
 15 within the range of acceptable attorneys’ fees in Ninth Circuit cases.” *Ching*, 2014 WL 2926210, at *8
 16 (30% awarded) (collecting cases); *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-CV-
 17 04960-VC, 2015 WL 12977077, at *1 (N.D. Cal. Aug. 21, 2015).⁷ The requested 30% also is within
 18 the range awarded specifically in consumer class actions, which, as noted above, pose unique risks.
 19 *See, e.g., In re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2019 WL 1791420, at *9 (N.D. Cal.

21 ⁷ *See also, e.g., Cabiness v. Educ. Fin. Sols., LLC*, 2019 WL 1369929, at *8 (N.D. Cal. Mar. 26, 2019)
 22 (30%); *Lalli v. First Team Real Est.-Orange Cnty.*, 2022 WL 8207530, at *14 (C.D. Cal. Sept. 6,
 23 2022) (30%); *Gergetz*, 2018 WL 4691169, at *7 (30%); *Nelson v. Avon Prods.*, No. 13-CV-02276-
 24 BLF, 2017 WL 733145, at *6 (N.D. Cal. Feb. 24, 2017) (awarding 33.3% and collecting cases
 25 awarding 30% or more); *Jarrell v. Amerigas Propane, Inc.*, No. 16-CV-01481-JST, 2018 WL
 26 1640055, at *3 (N.D. Cal. Apr. 5, 2018) (30%); *Betancourt v. Advantage Human Resourcing, Inc.*, No.
 27 14-CV-01788-JST, 2016 WL 344532, at *9 (N.D. Cal. Jan. 28, 2016) (34.3%); *Carlin*, 380 F.Supp.3d
 28 at 1023 (33.3%).

1 Apr. 24, 2019) (awarding 30% in consumer privacy litigation); *In re: Cathode Ray Tube (CRT)*
 2 *Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 183285, at *2 (N.D. Cal. Jan. 14, 2016) (awarding a
 3 30% fee); *Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2016 WL 5462423, at *12 (N.D. Cal.
 4 Sept. 29, 2016) (finding award of 30% reasonable in consumer fraud case).⁸

5 Class Counsel’s requested fee award is in line with fees approved in connection with
 6 comparable settlements throughout the Ninth Circuit. It is reasonable and should be approved as such.

7 **3. A Lodestar Cross-Check Confirms the Reasonableness of the Fee**
 8 **Application.**

9 Class Counsel’s negative multiplier in relation to the fee request confirms its reasonableness.
 10 A lodestar cross-check may be used to ensure that class counsel performed the work necessary to
 11 justify the fee sought and will not receive an undeserved windfall. *Vizcaino*, 290 F.3d at 1050; *see*
 12 *also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (“[T]he lodestar cross-check
 13 calculation need entail neither mathematical precision nor bean-counting. The district courts may rely
 14 on summaries submitted by the attorneys and need not review actual billing records.”) (citation
 15 omitted). Lodestar method involves “multiplying the number of hours the prevailing party reasonably
 16 expended on the litigation by a reasonably hourly rate.” *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th
 17 Cir. 2003). In the Ninth Circuit, lodestar multipliers of up to four are frequently awarded in common
 18 fund cases like this one. *See, e.g., Vizcaino*, 290 F.3d at 1051 (multiplier of 3.65 held “within the
 19 range of multipliers applied in common fund cases”).

20 Class Counsel’s rates are reasonable in their prevailing markets for comparable legal services.
 21 *See Lenovo*, 2019 WL 1791420, at *9; *Fleming v. Impax Lab ’ys Inc.*, 2022 WL 2789496, at *9 (N.D.
 22 Cal. July 15, 2022) (approving rates of up to \$1,325 for partners). For example, a court recently found
 23 “billing rates of \$895 to \$1,295 per hour for partners and counsel, and between \$565 and \$985 for
 24

25 ⁸ *See also, e.g., Johnson v. General Mills, Inc.*, No. SACV 10-00061-CJC, 2013 WL 3213832, at *6
 26 (C.D. Cal. June 17, 2013) (awarding 30% in false advertising case under the CLRA and UCL); *Peel v.*
 27 *Brooksam. Mortg. Corp.*, 2015 WL 12745788, at *6 (C.D. Cal. Apr. 6, 2015) (approving 29.3% in
 28 case involving fraudulent omissions).

1 associates is reasonable within the legal community of Los Angeles for attorneys of similar skill.”
 2 *Hope Med. Enters., Inc. v. Fagron Compounding Serv., LLC*, 2022 WL 826903, at *3 (C.D. Cal. Mar.
 3 14, 2022); *see also In re Auto. Parts Antitrust Litig.*, 2019 WL 13090127, at *3 (E.D. Mich. Dec. 29,
 4 2019) (“In national markets, partners routinely charge between \$1,200 and \$1,300 an hour, with top
 5 rates at several large law firms exceeding \$1,400.”) (citations and quotations omitted); *Vista Outdoor*
 6 *Inc. v. Reeves Fam. Tr.*, 2018 WL 3104631, at *6 (S.D.N.Y. May 24, 2018). Class Counsel’s hourly
 7 rates have been repeatedly approved by courts in MDLs and other complex cases.⁹ Joint Decl., ¶ 76.
 8 Class Counsel’s rates used in the lodestar calculation are the same rates currently being paid by our
 9 fee-paying clients in other complex litigation matters. Joint Decl., ¶ 77.

10 Applying their current rates in view of the lengthy delay in payment,¹⁰ Class Counsel’s and
 11 the Executive Committee’s cumulative lodestar as of December 31, 2022 is \$16,777,146.75. Joint
 12 Decl., ¶ 74. This cumulative lodestar does not include any time spent on the related *Huey v. Apple*
 13 action, pending in the District of Columbia. *Id.* The requested fee is thus several hundred thousand
 14 dollars *below* Plaintiffs’ counsel’s lodestar accrued from prosecuting the litigation since 2018. If the
 15 Court grants the requested \$15,000,000 in fees, the nominal multiplier on Class Counsel’s lodestar

17 ⁹ *See, e.g., In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 4620695, at *2 (N.D.
 18 Cal. Sept. 20, 2018) (Girard Sharp); *Rodman v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL
 19 4030558, at *6 (N.D. Cal. Aug. 23, 2018) (CSKDS).

20 ¹⁰ *Hurtado v. Rainbow Disposal Co.*, 2021 WL 2327858, at *5 (C.D. Cal. May 21, 2021) (“[T]he
 21 Court conducts the lodestar crosscheck by applying Class Counsel’s current, rather than historic,
 22 hourly rates to all hours reasonably billed. This higher billing rate effectively compensates Class
 23 Counsel for any delay in receiving payment.”); *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th
 24 Cir. 2007) (holding “delay in payment . . . a factor properly considered in arriving at a reasonable
 25 hourly rate”); *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (“The lodestar should be
 26 computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to
 27 compensate class counsel for delays in payment inherent in contingency-fee cases, or using historical
 28 rates and compensating for delays with a prime-rate enhancement.”).

1 will be only 0.89—and this negative multiplier confirms the requested fee is reasonable. *See In re*
2 *DRAM Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12387371, at *12-13 (N.D. Cal. Nov. 5, 2013)
3 (observing that a negative multiplier “is virtually sufficient to satisfy the cross-check requirement”);
4 *see also Schiller v. David’s Bridal*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *23 (E.D.
5 Cal. June 11, 2012) (explaining that a negative lodestar multiplier strongly supports the
6 reasonableness of a percentage fee request); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138
7 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (noting that a negative multiplier in a
8 lodestar cross-check “suggests that the percentage-based amount is reasonable and fair based on the
9 time and effort expended by class counsel.”). California district courts recently have awarded much
10 higher, positive multipliers. *See, e.g., Fleming*, 2022 WL 2789496, at *9 (awarding 30% in attorneys’
11 fees and noting that 2.6 lodestar multiplier confirmed reasonableness of the request); *Kendall v.*
12 *Odonate Therapeutics, Inc.*, No. 3:20-CV-01828-H-LL, 2022 WL 1997530, at *7 (S.D. Cal. June 6,
13 2022) (2.36 lodestar cross-check multiplier confirmed reasonableness of 33.3% fee award); *Blount v.*
14 *Host Healthcare, Inc.*, 2022 WL 1094616, at *10 (S.D. Cal. Apr. 12, 2022) (approving 30% fee
15 award representing a 2.4 multiplier).

16 **B. The Expense Reimbursements Should Be Approved.**

17 “Reasonable costs and expenses incurred by an attorney who creates or preserves a common
18 fund are reimbursed proportionately by those class members who benefit[.]” *In re Media Vision Tech.*
19 *Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S.
20 375, 391-92 (1970)); *see also Floyd v. First Data Merch. Servs. LLC*, No. 5:20-CV-02162-EJD, 2022
21 WL 6173122, at *6 (N.D. Cal. Oct. 7, 2022) (“Class counsel is entitled to reimbursement of
22 reasonable out-of-pocket expenses.”). “The prevailing view is that expenses are awarded in addition
23 to the fee percentage.” *Williams v. SuperShuttle Int’l, Inc.*, No. 12-CV-06493-WHO, 2015 WL
24 685994, at *2 (N.D. Cal. Feb. 12, 2015) (citations omitted). Reasonable reimbursable litigation
25 expenses include those incurred for document production and database maintenance, experts and
26 consultants, depositions, translation services, travel, mailing and postage expenses. *See Media Vision*,
27 913 F. Supp. 1362 at 1366; *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982),
28 *remanded on other grounds*, 461 U.S. 952 (1983).

1 In prosecuting this case since 2018, Class Counsel have incurred \$1,559,090.75 in litigation
2 expenses including as part of the lengthy expert-witness proceedings. Joint Dec., ¶ 81. These
3 expenses, which are detailed in the accompanying Joint Declaration, were advanced for the benefit of
4 the Class and were reasonably incurred and necessary to achieving the result. They should be
5 reimbursed in full.

6 **C. The Court Should Award \$5,000 Service Awards for the Class Representatives.**

7 Finally, Class Counsel respectfully request that the Court approve a \$5,000 service award to
8 each of the twelve named Plaintiffs. These awards are “intended to compensate class representatives
9 for work done on behalf of the class, to make up for financial or reputational risk undertaken in
10 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
11 general.” *Gergetz*, 2018 WL 4691169, at *7 (quoting *Rodriguez*, 563 F.3d at 958-59). As summarized
12 in their declarations filed herewith, Plaintiffs devoted significant time to this case, assisting counsel in
13 preparing the complaints, monitoring and communicating with counsel about case developments,
14 responding to written discovery requests served by Apple, gathering and producing documents, and
15 preparing for and testifying at a deposition. *See also* Joint Decl., ¶¶ 83-85.

16 The requested service awards are consistent with Ninth Circuit practice: “[A] \$5,000 payment
17 is presumptively reasonable,” and awards “typically range from \$2,000 to \$10,000.” *Bellinghausen v.*
18 *Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases); *see, e.g., In re Zoom*
19 *Video Commc’ns, Inc. Priv. Litig.*, 2022 WL 1593389, at *12 (N.D. Cal. Apr. 21, 2022) (approving
20 \$5,000 awards); *In re Toys R Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 470–72 (C.D. Cal. 2014)
21 (awarding three plaintiffs \$5,000 each, “consistent with the amount courts typically award as
22 incentive payments.”); *Nelson*, 2017 WL 733145, at *7 (noting that courts “routinely grant requests
23 for an award over \$5,000 where the particular circumstances warrant.”). The proposed \$5,000 awards
24 for the Class Representatives are proportional to the range of settlement awards for individual class
25 members in this case and should be approved as reasonable.
26
27
28

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court award attorneys' fees
3 in the amount of \$15,000,000, reimbursement of litigation expenses in the amount of \$1,559,090.75,
4 and service awards of \$5,000 to each of the Class Representatives.

5
6 Dated: January 6, 2023

Respectfully submitted,

7 **GIRARD SHARP LLP**

8 */s/ Simon Grille*

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10 Jordan Elias (SBN 228731)

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25 *Plaintiffs' Co-Lead Class Counsel*

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16 *Class Counsel*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 IN RE: MACBOOK KEYBOARD
22 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF KYLE BARBARO IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Kyle Barbaro, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Class Action Complaint filed on May 11, 2018,
10 among other case documents. I reviewed and approved a draft of this complaint before it was filed with
11 the Court, and have been closely involved and continuously attentive to this litigation since then.

12 4. Prior to the filing of the Class Action Complaint, I was interviewed by counsel several
13 times and searched for emails and other documents regarding my purchase and the problems I
14 experienced with my MacBook's keyboard.

15 5. After the Class Action Complaint was filed, I continued to stay in contact with Class
16 Counsel regarding developments in the litigation. Over the past few years, I have had numerous telephone
17 calls and email exchanges with Class Counsel. I worked with my attorneys to discuss the facts of this
18 case, frame the issues, and to assist them in preparing for mediation, moving for class certification, and
19 in every other aspect they needed.

20 6. I also worked with my counsel to prepare discovery responses, including responses to
21 multiple requests for production and interrogatories, and a request for inspection of my computer. I
22 searched for and gathered documents for production in this case.

23 7. I provided several hours of deposition testimony on September 4, 2020. I prepared for the
24 deposition with my attorneys before it took place.

25 8. I have kept my MacBook and any other relevant documentation throughout the duration
26 of this lawsuit.

27 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15
16 Executed on January 3, 2023 in Salem _____, Massachusetts _____.

17
18 By:  _____

19
20 KYLE BARBARO

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF JOSEPH BARUCH IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Joseph Baruch, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on September 8, 2020. I prepared for the
25 deposition with my attorneys before it took place.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15
16 Executed on January 3, 2023 in Encino, California.

17 By: 
18 _____
19 JOSEPH BARUCH

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF STEVE EAKIN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Steve Eakin, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on September 9, 2020. I prepared for the
25 deposition with my attorneys before it took place.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

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16 *Class Counsel*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20

21 IN RE: MACBOOK KEYBOARD
22 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF LORENZO FERGUSON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICE AWARDS**

1 I, Lorenzo Ferguson, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I consulted with my attorneys on the preparation of the Consolidated Class Action
10 Complaint filed on October 11, 2018, among other case documents. I reviewed and approved a draft of
11 this complaint before it was filed with the Court, and have been closely involved and continuously
12 attentive to this litigation since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I remained in contact with Class
17 Counsel regarding developments in the litigation. Over the past few years, I have had numerous
18 telephone calls and email exchanges with Class Counsel. I worked with my attorneys to discuss the facts
19 of this case, frame the issues, and to assist them in preparing for mediation, moving for class certification,
20 and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I devoted several hours to preparing for my deposition in consultation with counsel, and
25 appeared for a deposition on August 26, 2020.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple's defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 5, 2023 in New York, New York.

16
17 By:



18 LORENZO FERGUSON

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF BENJAMIN GULKER
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICE AWARDS**

1 I, Benjamin Gulker, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on September 8, 2020. I prepared for the
25 deposition with my attorneys before it took place.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 4, 2023 in Lansing, Michigan.

16
17 By: 
18 _____

19 BENJAMIN GULKER

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF MICHAEL HOPKINS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICE AWARDS**

1 I, Michael Hopkins, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on September 15, 2020. I prepared for
25 the deposition with my attorneys before it took place.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.


28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15
16 Executed on January 3, 2023 in Rockford, IL.

17 By:  _____
18 MICHAEL HOPKINS

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1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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14 Steven A. Schwartz (*pro hac vice*)
15 Beena M. McDonald (*pro hac vice*)

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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF ASHTON HUEY IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Ashton Huey, declare as follows:

2 1. I am a named Plaintiff to the settlement in this case and the named plaintiff in *Huey v.*
3 *Apple Inc.*, 2018 CA 004200 (D.C. Super. Ct.).

4 2. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees,
5 Reimbursement of Litigation Expenses, and Service Awards. I have personal knowledge of the facts in
6 this declaration, and I could and would testify to these facts.

7 3. I agreed to serve as a class representative in this action. I understand that in my role as a
8 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
9 models to make decisions in their best interests. I believe that I have served as an adequate class
10 representative for the affected group of consumers.

11 4. I consulted with my attorneys on the preparation of the Private Attorney General
12 Complaint that was filed on June 13, 2018 in the Superior Court of the District of Columbia on behalf of
13 myself and the general public of the District of Columbia (the "Complaint"), among other case
14 documents. I reviewed and approved a draft of this complaint before it was filed, and have been closely
15 involved and continuously attentive to my case and this litigation since then.

16 5. Prior to the filing of the Complaint, I was interviewed by counsel several times and
17 searched for emails and other documents regarding my purchase and the problems I experienced with my
18 MacBook's keyboard.

19 6. After the Complaint was filed, I remained in contact with my counsel regarding
20 developments in the litigation. Over the past few years, I have had numerous telephone calls and email
21 exchanges with Class Counsel. I worked with my attorneys to discuss the facts of this case, frame the
22 issues, and to assist them in the prosecution and resolution of the litigation, and in every other aspect they
23 needed.

24 7. I also worked with my counsel to prepare discovery responses, including responses to
25 multiple requests for production and interrogatories. I searched for and gathered documents for
26 production in this case.

27 8. I have kept ownership of my MacBook and any other relevant documentation throughout
28 the duration of this lawsuit.

1 9. I was prepared to appear and testify at trial, if necessary.

2 10. I have reviewed the complaints, settlement agreement and other related materials, and
3 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
4 the potential risks of going forward with this litigation, particularly in light of Apple's defenses. My
5 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
6 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
7 reasonable, and a win for the class.

8 11. I have devoted substantial time and attention to working on this case, always with the best
9 interests of the general public and class in mind. I am therefore respectfully asking the Court to approve
10 a service award of \$5,000 for myself, even though I will support the settlement regardless of whether the
11 Court awards any service award. I understand that my attorneys took this case on a contingency basis,
12 and neither they nor I have received any compensation from anyone for the work we performed on this
13 matter.

14
15 I declare under penalty of perjury under the laws of the United States that the foregoing is true
16 and correct.

17 Executed on 01/04/2023 in Pembroke pines FL.

18
19 By: 
20 ASHTON HUEY

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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16 *Class Counsel*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 IN RE: MACBOOK KEYBOARD
22 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF BO LAURENT IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Bo Laurent, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I consulted with my attorneys to prepare the Second Amended Complaint filed on July 2,
10 2020, among other case documents. I reviewed and approved a draft of this complaint before it was filed
11 with the Court, and have been closely involved and continuously attentive to this litigation since then.

12 4. Prior to the filing of the Second Amended Complaint, I was interviewed by counsel
13 several times and searched for emails and other documents regarding my purchase and the problems I
14 experienced with my MacBook's keyboard.

15 5. After the Second Amended Complaint was filed, I remained in contact with Class Counsel
16 regarding developments in the litigation. Over the past few years, I have had numerous telephone calls
17 and email exchanges with Class Counsel. I worked with my attorneys to discuss the facts of this case,
18 frame the issues, and to assist them in preparing for mediation, moving for class certification, and in
19 every other aspect they needed.

20 6. I also worked with my counsel to prepare discovery responses, including responses to
21 multiple requests for production and interrogatories, and a request for inspection of my computer. I
22 searched for and gathered documents for production in this case.

23 7. I devoted several hours to preparing for my deposition in consultation with counsel, and
24 appeared for a deposition on September 15, 2020.

25 8. I have kept my MacBook and any other relevant documentation throughout the duration
26 of this lawsuit.

27 9. I was prepared to appear and testify at trial, if necessary.
28

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
 2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
 3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
 4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
 5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
 6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
 8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
 9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
 10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
 11 I have received any compensation from anyone for the work we performed on this matter.
 12

13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
 14 and correct.

15 Executed on January 5, 2023 in Santa Rosa, California.

16
 17 By: *Bo Laurent*
 18 BO LAURENT
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1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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22 bmm@chimicles.com

23 *Class Counsel*

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

26 IN RE: MACBOOK KEYBOARD
27 LITIGATION

28 Case No. 5:18-cv-02813-EJD

**DECLARATION OF ADAM LEE IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Adam Lee, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on September 4, 2020. I prepared for the
25 deposition with my attorneys before it took place.

26 8. I have kept relevant documentation throughout the duration of this lawsuit. Per Apple's
27 instructions, I sent my MacBook Pro to Apple on or around November 4, 2020.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 3, 2023 in Orlando, Florida.

16
17
18 By:  _____
 ADAM LEE

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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16 *Class Counsel*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 IN RE: MACBOOK KEYBOARD
22 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF ASHLEY MARIN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Ashley Marin, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Second Amended Complaint filed on July 2,
10 2020, among other case documents. I reviewed and approved a draft of this complaint before it was filed
11 with the Court, and have been closely involved and continuously attentive to this litigation since then.

12 4. Prior to the filing of the Second Amended Complaint, I was interviewed by counsel
13 several times and searched for emails and other documents regarding my purchase and the problems I
14 experienced with my MacBook's keyboard.

15 5. After the Second Amended Complaint was filed, I continued to stay in contact with Class
16 Counsel regarding developments in the litigation. Over the past few years, I have had numerous
17 telephone calls and email exchanges with Class Counsel. I worked with my attorneys to discuss the facts
18 of this case, frame the issues, and to assist them in preparing for mediation, moving for class certification,
19 and in every other aspect they needed.

20 6. I also worked with my counsel to prepare discovery responses, including responses to
21 multiple requests for production and interrogatories, and a request for inspection of my computer. I
22 searched for and gathered documents for production in this case.

23 7. I provided several hours of deposition testimony on September 11, 2020. I prepared for
24 the deposition with my attorneys before it took place.

25 8. I have kept my MacBook and any other relevant documentation throughout the duration
26 of this lawsuit.

27 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 3, 2023 in Azusa, CA.

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17 By:



18 _____
19 ASHLEY MARIN
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1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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24 *Class Counsel*

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

27 IN RE: MACBOOK KEYBOARD
28 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF KEVIN MELKOWSKI
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICE AWARDS**

1 I, Kevin Melkowski, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I worked with my attorneys to prepare the Consolidated Class Action Complaint filed on
10 October 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before
11 it was filed with the Court, and have been closely involved and continuously attentive to this litigation
12 since then.

13 4. Prior to the filing of the Consolidated Class Action Complaint, I was interviewed by
14 counsel several times and searched for emails and other documents regarding my purchase and the
15 problems I experienced with my MacBook's keyboard.

16 5. After the Consolidated Class Action Complaint was filed, I continued to stay in contact
17 with Class Counsel regarding developments in the litigation. Over the past few years, I have had
18 numerous telephone calls and email exchanges with Class Counsel. I worked with my attorneys to
19 discuss the facts of this case, frame the issues, and to assist them in preparing for mediation, moving for
20 class certification, and in every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I provided several hours of deposition testimony on August 20, 2020. I prepared for the
25 deposition with my attorneys before it took place.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 3, 2023 in King of Prussia, Pennsylvania.

16
17 By: 
18 KEVIN MELKOWSKI

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (SBN 273000)
4 Simon S. Grille (State Bar No. 294914)

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16 *Class Counsel*

17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

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21 IN RE: MACBOOK KEYBOARD
22 LITIGATION

Case No. 5:18-cv-02813-EJD

**DECLARATION OF ZIXUAN RAO IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND
SERVICE AWARDS**

1 I, Zixuan Rao, declare as follows:

2 1. I am a named Plaintiff in this case. I submit this declaration in support of Plaintiffs'
3 Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards. I have
4 personal knowledge of the facts in this declaration, and I could and would testify to these facts.

5 2. I agreed to serve as a class representative in this action. I understand that in my role as a
6 class representative, I have a duty to all people who bought any of the allegedly defective MacBook
7 models to make decisions in their best interests. Throughout this case, I believe that I have served as an
8 adequate class representative for the affected group of consumers.

9 3. I consulted with my attorneys on the preparation of the Class Action Complaint filed on
10 May 11, 2018, among other case documents. I reviewed and approved a draft of this complaint before it
11 was filed with the Court, and have been closely involved and continuously attentive to this litigation since
12 then.

13 4. Prior to the filing of the Class Action Complaint, I was interviewed by counsel several
14 times and searched for emails and other documents regarding my purchase and the problems I
15 experienced with my MacBook's keyboard.

16 5. After the Class Action Complaint was filed, I remained in contact with Class Counsel
17 regarding developments in the litigation. Over the past few years, I have had numerous telephone calls
18 and email exchanges with Class Counsel. I worked with my attorneys to discuss the facts of this case,
19 frame the issues, and to assist them in preparing for mediation, moving for class certification, and in
20 every other aspect they needed.

21 6. I also worked with my counsel to prepare discovery responses, including responses to
22 multiple requests for production and interrogatories, and a request for inspection of my computer. I
23 searched for and gathered documents for production in this case.

24 7. I devoted several hours to preparing for my deposition in consultation with counsel, and
25 appeared for a deposition on September 3, 2020.

26 8. I have kept my MacBook and any other relevant documentation throughout the duration
27 of this lawsuit.

28 9. I was prepared to appear and testify at trial, if necessary.

1 10. I have reviewed the complaints, settlement agreement and other related materials, and
2 discussed them with my attorneys. I believe the settlement represents an outstanding result considering
3 the potential risks of going forward with this litigation, particularly in light of Apple’s defenses. My
4 attorneys advised me of the risk of not prevailing at trial, the risk of decertification, and the delay
5 associated with a possible appeal. Given these considerations, I believe that the settlement is fair,
6 reasonable, and a win for the class.

7 11. I have devoted substantial time and attention to working on this case, always with the best
8 interests of the class in mind. I am therefore respectfully asking the Court to approve a service award of
9 \$5,000 for myself, even though I will support the settlement regardless of whether the Court awards any
10 service award. I understand that my attorneys took this case on a contingency basis, and neither they nor
11 I have received any compensation from anyone for the work we performed on this matter.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed on January 5, 2023 in Jiangsu _____, China _____.

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17 By: Zixuan Rao
18 ZIXUAN RAO
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: MACBOOK KEYBOARD
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES, REIMBURSEMENT OF LITIGATION
EXPENSES, AND SERVICES AWARDS**

1 Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service
2 Awards came on for hearing before this Court on March 16, 2023. The Court, having considered the
3 briefing and materials submitted in support of the motion, the briefing and materials submitted in
4 support of Plaintiffs' Motion for Preliminary Approval and Motion for Final Approval, the relevant
5 legal authorities, the record in this action, and the arguments presented at the hearing, and having
6 determined the fairness and reasonableness of the award of attorneys' fees, expenses, and service
7 awards requested, hereby **ORDERS** as follows:

8 1. The Court has jurisdiction to enter this Order and over the subject matter of this action
9 and over all parties to the action, including Plaintiffs, Defendant Apple, Inc., and all Class Members.

10 2. Plaintiffs' Motion seeks an award of attorneys' fees in the amount of \$15,000,000,
11 which is 30% of the \$50,000,000 non-reversionary settlement fund. Class Counsel¹ also request
12 reimbursement of their out-of-pocket litigation costs of \$1,559,090.75 and service awards of \$5,000
13 for each of the 12 Class Representatives.

14 3. Where Class Counsel's efforts have helped create a common fund, the doctrine of unjust
15 enrichment entitles them to reasonable attorneys' fees from the fund. *See Staton v. Boeing Co.*, 327
16 F.3d 938, 967 (9th Cir. 2003) ("the common fund doctrine ensures that each member of the winning
17 party contributes proportionately to the payment of attorneys' fees"); *Boeing Co. v. Van Gemert*, 444
18 U.S. 472, 478 (1980). Courts in the Ninth Circuit have discretion in a common fund case to choose
19 either the percentage-of-the-fund or lodestar method to determine reasonable attorneys' fees. *See*
20 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Using either method, the ultimate
21 inquiry is whether the end result is reasonable." *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-
22 JD, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018). The percentage method is preferred when
23 there is a common fund for the benefit of the class. *Roe v. SFBSC Mgmt., LLC*, No. 14-CV-03616-LB,
24 2022 WL 17330847, at *19 (N.D. Cal. Nov. 29, 2022). Class Counsel seek fees under the "common
25 fund" method, and the Court finds it is the appropriate method for determining a reasonable fee award
26

27 ¹ Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP.

1 as there is a fixed common fund of \$50 million. *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016
2 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016).

3 4. In applying the percentage of the fund method, the Ninth Circuit has established 25% as
4 a benchmark percentage, which may be adjusted depending on the circumstances of a case. *Vizcaino*,
5 290 F.3d at 1047. To assess whether a requested fee percentage is reasonable, courts consider: “(1) the
6 result achieved; (2) the risk involved in the litigation; (3) the skill required by and quality of work
7 performed by counsel; (4) the contingent nature of the fee; and, (5) awards made in similar cases.” *Id.*
8 at 1048-50. Each of these factors weigh in favor of an upward adjustment from the benchmark in this
9 case to 30%, which is within the usual range in common fund cases. *Id.* at 1047.

10 5. The \$50 million common fund constitutes an excellent result under the circumstances of
11 this case. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting “the most critical factor is the
12 degree of success obtained”). The settlement entitles Settlement Class Members to cash relief from
13 keyboard issues for the four-year useful life of a laptop, in addition to guaranteeing the protections of
14 Apple’s Keyboard Service Program. Every Class Member who has experienced multiple repairs will
15 automatically receive payments of \$300—and they may receive as much as \$395—while Class
16 Members who obtained only one unsatisfactory repair will receive as much as \$125. These results
17 compare favorably to other product defect cases, including cases against Apple. *See, e.g., In re Apple*
18 *iPhone 4 Prod. Liab. Litig.*, No. 5:10-MD-2188 RMW, 2012 WL 3283432, at *1 (N.D. Cal. Aug. 10,
19 2012) (providing class members cash payments of \$15); *Grace v. Apple, Inc.*, No. 17-CV-00551-LHK
20 (N.D. Cal. Aug. 22, 2019), Dkt. No. 429 at 18 (initial payments of \$3); *In re Magsafe Apple Power*
21 *Adapter Litig.*, No. 5:09-CV-01911-EJD (N.D. Cal.), Dkt. Nos. 238, 247 (paying \$35 to \$79 for class
22 members who received replacement power adapters); *iPod Nano Cases*, Case No. BC342056 (Los
23 Angeles Super. Ct.) (paying between \$15 to \$25 for iPod nano owners); *see also, e.g., Horvath v. LG*
24 *Electronics MobileComm U.S.A., Inc.*, Dkt. No. 101 (S.D. Cal. Jan. 14, 2014) (approving settlement of
25 \$19 per claimant in class action alleging smartphones had a defect).

26 6. The substantial risk Class Counsel took on in connection with the litigation and the high
27 level of skill required to achieve a successful result also support an upward adjustment. *See Durham v.*
28

1 *Sachs Elec. Co.*, 2022 WL 2307202, at *8 (N.D. Cal. June 27, 2022) (approving upward adjustment
2 based on factors including the risk and difficulty of the case). The settlement was reached after more
3 than four years of extensive litigation. Defendant vigorously defended itself throughout the course of
4 the case, filing multiple motions to dismiss, *Daubert* motions, opposing class certification, and filing a
5 Rule 23(f) petition with the Ninth Circuit. *AdTrader, Inc. v. Google LLC*, No. 17-CV-07082-BLF,
6 2022 WL 16579324, at *7 (N.D. Cal. Nov. 1, 2022) (33% fee award justified by “substantial risk” and
7 results); *Martinelli v. Johnson & Johnson*, No. 2:15-CV-01733-MCE-DB, 2022 WL 4123874, at *9
8 (E.D. Cal. Sept. 9, 2022) (33.3% award justified based on contingent risk assumed by counsel in case
9 involving “extensive discovery” and “contested motion practice”).

10 7. Class Counsel’s lengthy representation was risky and carried out on an entirely
11 contingent basis. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015) (“When
12 counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment . . .
13 justifies a significant fee award.”). Class Counsel was opposed throughout by skilled and respected
14 counsel for Defendant, resulting in substantial and difficult litigation, discovery, and settlement
15 negotiations. *See Andrews v. Plains All Am. Pipeline L.P.*, 2022 WL 4453864, at *3 (C.D. Cal. Sept.
16 20, 2022) (“Class Counsel’s ability to get the case this far along evinces their high quality of work.”).

17 8. The requested 30% award is on par with similar cases and consistent with this Circuit’s
18 applicable law regarding percentage-based fee awards. *See Vizcaino*, 290 F.3d at 1047; *In re:*
19 *Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 15-MD-02672-CRB, 2022
20 WL 17730381, at *11 (N.D. Cal. Nov. 9, 2022) (“[C]ourts in this Circuit often award fees at or
21 exceeding 30 percent, and such awards are routinely upheld.”) (citing *Hernandez v. Dutton Ranch*
22 *Corp.*, No. 19-cv-817, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021)); *see, e.g., In re Lenovo*
23 *Adware Litig.*, No. 15-MD-02624-HSG, 2019 WL 1791420, at *8 (N.D. Cal. Apr. 24, 2019) (awarding
24 30%); *Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2016 WL 5462423, at *12 (N.D. Cal. Sept.
25 29, 2016) (same).

26 9. The Court has confirmed the reasonableness of the 30% fee request by conducting a
27 lodestar cross-check which shows that the requested fee will not result in an undeserved windfall for
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1 Class Counsel. *See Peel v. Brookamerica Mortg. Corp.*, No. SACV-1179 JLS (RNBx), 2015 WL
2 12745788, at *7 (C.D. Cal. April 6, 2015); *Vizcaino*, 290 F.3d at 1050. Class Counsel’s lodestar as of
3 December 31, 2022 is \$16,777,146.65 and does not account for ongoing work performed after this
4 date or the work performed in the related *Huey v. Apple* action. An award of 30% or \$15 million
5 amounts to a negative multiplier of 0.9. *See In re DRAM Antitrust Litig.*, No. C 06-4333 PJH, 2013
6 WL 12387371, at *12-13 (N.D. Cal. Nov. 5, 2013) (observing that a negative multiplier “is virtually
7 sufficient to satisfy the cross-check requirement”). Thus, the lodestar cross-check further supports the
8 reasonableness of the award. *See, e.g., Rosado v. Ebay Inc.*, No. 5:12-CV-04005-EJD, 2016 WL
9 3401987, at *8 (N.D. Cal. June 21, 2016).

10 10. The Court finds the hourly rates of Class Counsel to be reasonable and within the market
11 rates for this district for counsel of comparable expertise. *See, e.g., Fleming v. Impax Lab’ys Inc.*, 2022
12 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (approving rates of up to \$1,325 for partners). The Court
13 further finds the number of hours expended reasonable based on the work performed in the case as set
14 forth in the joint declaration of Class Counsel, the necessity and reasonableness of that work to
15 achieving the excellent result, and the novelty and complexity of this litigation.

16 11. For the foregoing reasons, the Court concludes that Class Counsel are entitled to a fee
17 award in the amount of \$15,000,000 or 30% of the \$50,000,000 non-reversionary settlement fund.

18 12. The Court further finds that the Class Counsel have incurred \$1,559,090.75 in
19 reasonable costs and expenses in this matter. These costs and expenses were reasonably incurred in the
20 ordinary course of prosecuting this case and were necessary given the complex nature of this matter
21 and because Apple contested liability from the outset of the case. Accordingly, the Court orders these
22 litigation expenses reimbursed from the fund. *See Floyd v. First Data Merch. Servs. LLC*, No. 5:20-
23 CV-02162-EJD, 2022 WL 6173122, at *6 (N.D. Cal. Oct. 7, 2022) (“Class counsel is entitled to
24 reimbursement of reasonable out-of-pocket expenses.”).

25 13. The Court also approves a service award of \$5,000 to each of the 12 Class
26 Representatives in this matter. These awards are proportional to the recoveries for absent class
27 members under the settlement. The awards are supported by the record in this case, the joint
28

1 declaration of Class Counsel and by the declaration submitted by each of the Class Representatives.
2 The payment is further justified by the time and effort spent by the class representatives on this matter
3 on behalf of the Class; the duration of this matter; and the other factors set forth in their supporting
4 declarations, as well as the results achieved in the case. *See, e.g., In re Zoom Video Commc'ns, Inc.*
5 *Priv. Litig.*, 2022 WL 1593389, at *12 (N.D. Cal. Apr. 21, 2022) (approving \$5,000 awards).

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7 **IT IS SO ORDERED.**

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9 DATED: _____
10 HON. EDWARD J. DAVILA
11 UNITED STATES DISTRICT JUDGE
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