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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re CARRIER IQ, INC. CONSUMER PRIVACY LITIGATION This Document Relates to: ALL CASES	No. C-12-md-2330-EMC NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS TO CLASS REPRESENTATIVES Date: July 28, 2016 Time: 1:30 p.m. Judge: Honorable Edward M. Chen Dept.: Courtroom 5, 17th Floor

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 28, 2016, at 1:30 p.m., or as soon thereafter as may be heard in the courtroom of the Honorable Edward M. Chen, United States District Court for the Northern District of California, San Francisco Division, plaintiffs Patrick Kenny, Jennifer Patrick, Dao Phong, Daniel Pipkin, Ryan McKeen, Leron Levy, Luke Szulczewski, Michael Allan, Gary Cribbs, Bobby Cline, Shawn Grisham, Mark Laning, Clarissa Portales, Eric Thomas, Douglas White, Brian Sandstrom, and Colleen Fischer will and hereby do move the Court for an order granting attorneys' fees in the amount of $2.25 million, together with costs and expenses in the amount of $108,933.72 as further set forth herein; and

2. Granting each of them a service award in the amount of $5,000.

The grounds for this motion are that the proposed attorney fee, cost, and expenses award, and the proposed service awards, are fair and reasonable; that plaintiffs' entitlement to seek these awards was negotiated after relief to the class was negotiated; and that the requested relief is otherwise well-grounded in law and fact, as set forth in the attached memorandum. Defendants do not oppose plaintiffs' requests.

This motion is based on the declarations of the foregoing named plaintiffs and counsel submitted herewith, together with their exhibits; the attached memorandum in support of plaintiffs' motion; the pleadings and papers on file in this action; and the oral argument of counsel, if any, presented at the hearing on this motion.

Dated: May 13, 2016

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I. INTRODUCTION

This consumer privacy matter arose in late 2011, after news broke of the presence of Carrier iQ software on millions of U.S. Android OS devices. Consumers, troubled by depictions of the software's behavior, filed some 70 suits around the country against various combinations of Carrier iQ, Inc. and device manufacturers. In April 2012, the J.P.M.L. transferred the pending cases to this Court for consolidated pretrial proceedings.

From the beginning, the defendants have categorically denied liability. They have argued that the software at issue is benign; that plaintiffs misunderstood what they were seeing in online video demonstrations; that plaintiffs authorized use of the software; and that in other instances, certain activity was inadvertent (and therefore un-actionable) and in any event had caused no harm. The defendants also have contended that plaintiffs could not sue them in court because of arbitration provisions in the plaintiffs' contracts with their wireless carriers that defendants claimed the right to invoke.

Since consolidation, the parties have litigated this matter vigorously. Ultimately, following intense and lengthy negotiations, including five all-day, in-person mediation sessions, the parties reached a nationwide settlement of plaintiffs' claims. On March 1, 2016, the Court granted preliminary approval to the parties' agreement.

That agreement, which includes a $9 million cash component, provides qualified class members presumptively with pro-rated cash awards via a simple claims process. Alternatively, if the settlement fund is over-subscribed, the agreement provides for donations to established guardians of privacy interests for the class members' benefit. It also provides for injunctive relief that defendant Carrier iQ implemented prior to the recent acquisition of its assets by AT&T Mobility IP, LLC.

Following negotiation of the foregoing relief to the proposed class, the parties also agreed that plaintiffs could seek to recover a sum for attorneys' fees not exceeding 25% of the gross settlement sum, together with costs and expenses incurred by class counsel and plaintiffs'

Executive Committee members. Additionally, the parties agreed that plaintiffs could seek service awards for each of the named plaintiffs in sums up to $5,000 each.

Plaintiffs now seek $2.25 million in attorneys' fees—a figure that represents a significant negative multiplier to the fees accrued by class counsel alone—as well as the actual costs and expenses incurred by the referenced counsel. Additionally, they seek a $5,000 service award for each of the named plaintiffs.

Plaintiffs submit respectfully that their request is justified under the law and in light of the results obtained. For the following reasons, they ask that it be granted.

II. STATEMENT OF ISSUES TO BE DECIDED

Should the Court grant plaintiffs' request for attorneys' fees in the sum of $2.25 million, as well as costs and expenses totaling $108,933.72?

Should the Court allow service awards of $5,000 to each of the named plaintiffs?

III. STATEMENT OF RELEVANT FACTS

A. Background facts

In November 2011 news broke in the technical and mainstream press regarding the presence of Carrier iQ software and its apparent activity on mobile devices. (Third Consolidated Amended Complaint (Dkt. No. 402) ("TCAC"), ¶ 39.) These reports centered on research and Internet videos published by an independent security researcher named Trevor Eckhart. (*Id.*, ¶ 40.) Mr. Eckhart's YouTube video, which to-date has received over 2 million views, focused on his HTC mobile telephone. (*Id.*, ¶ 45.) His video appeared to show troubling activity associated with Carrier iQ software on his device, including the interception and logging of SMS text message content and Internet search terms, among other communications. (*Id.*)

Concerns arose that the content of consumers' private electronic communications was being captured and transmitted off users' devices to unintended third-party recipients. (*Id.*, ¶ 46.) Soon Congress, particularly U.S. Sen. Al Franken, became involved. (*Id.*, ¶ 47.) On December 1, 2011, Sen. Franken sent letters to Carrier iQ, certain wireless carriers, and three of the device

manufacturers that are defendants here. (*Id*.) All had responded by the end of that year, providing more insight into the design and workings of Carrier iQ Software. (*Id.*, ¶¶ 51-58.)

B. Plaintiffs' claims

By the end of 2011, consumers around the country had filed 70-plus proposed class-action suits, in multiple jurisdictions, against Carrier iQ and several device manufacturers. In April 2012 the J.P.M.L. consolidated all of the federal suits in the Northern District of California and appointed this Court as the MDL transferee venue. In August 2012 plaintiffs in the MDL proceedings, who hail from 13 states, filed their First Consolidated Amended Complaint, Dkt. No. 107, alleging six counts against the instant defendants. They dropped one of these counts in their June 2014 Second Consolidated Amended Complaint. (Dkt. No. 291.) Then, on January 22, 2016, plaintiffs filed their Third Consolidated Amended Complaint, in which they amended and re-asserted their Federal Wiretap Act ("FWA") claim against the manufacturer defendants.[1] The Court had dismissed this claim without prejudice in January 2015. (*See* MTD Order at 41-45.)

C. Litigation proceedings

Following the filing of plaintiffs' FCAC, the parties in September 2012 exchanged initial disclosures. Thereafter, in November 2012, defendants filed a motion to compel arbitration. (Dkt. No. 129.) Each defendant (except for Motorola) sought to invoke the arbitration provisions in the named plaintiffs' contracts with their wireless carriers, AT&T, Cricket, and Sprint, on a theory of equitable estoppel. (*See generally id.*)

The Court allowed arbitration-related discovery, which was contentious but productive. In addition to serving discovery on all moving defendants, plaintiffs sought discovery from their wireless carriers, as well as from Google Inc. (*See* Declaration of Robert F. Lopez in Support of Motion for Fees, Costs, and Service Awards ("Lopez Decl."), ¶ 4.) Discovery proceedings involved motions to compel and follow-up efforts, including a detail-oriented, in-person meeting among counsel for all the parties, designed to lessen the claimed undue burden on Defendants and third-

[1] This iteration of plaintiffs' consolidated amended complaint includes an amended FWA claim per the Court's leave in its order on defendants' motion to dismiss, Dkt. No. 339 ("MTD Order"),

parties. (*Id.*, ¶ 5.) Ultimately, all targets produced material to the plaintiffs, the total of which was voluminous, and counsel reviewed and analyzed it with advice from their consultants. (*Id.*)

In February 2014, following the completion of arbitration-related discovery, briefing on defendants' motion was completed. Following a lengthy and in-depth hearing, the Court, on March 28, 2014, denied defendants' motion. (Dkt. No. 251.)

On April 28, 2014, defendants filed a notice of appeal with respect to the order denying their motion to compel arbitration. (Dkt. No. 261.) Defendants then moved the Court for a stay pending disposition of their appeal. Following briefing and a hearing, the Court on June 13, 2014, denied defendants' motion to stay without prejudice. (Dkt. No. 285.) In January 2015, defendants-appellants filed their 80-page opening brief. Further briefing on their appeal has been delayed by agreement of the parties pending the outcome of settlement efforts, but the appeal remains pending. (Lopez Decl., ¶ 6.)

Following denial of their motion to stay, all defendants in July 2014 moved to dismiss plaintiffs' SCAC in its entirety. (Dkt. No. 304.) Briefing was completed in early September 2014, Dkt. Nos. 309 and 311, and the Court held a hearing later that month. In January 2015 the Court issued a lengthy decision granting in part and denying in part defendants' motion. (*See generally* MTD Order.)

Thereafter, the parties agreed to private mediation. In advance of mediation, the Court permitted plaintiffs ADR-related discovery. Plaintiffs propounded written discovery to all defendants, and plaintiffs' counsel reviewed and analyzed the answers and material that defendants produced. (Lopez Decl., ¶ 8.)

Thus, before mediation, counsel conferred with consulting experts; conducted extensive factual and legal research and analysis; litigated as described above; and reviewed and analyzed discovery answers and responses, and documents and other materials, produced by the defendants and by non-parties Google, AT&T Mobility, Cricket, and Sprint, all in aid of advancing the claims of plaintiffs and the proposed class. (Lopez Decl., ¶ 9; Declaration of Daniel L. Warshaw in Support of Motion for Fees, Costs, and Service Awards ("Warshaw Decl."), ¶ 4.) Additionally,

class counsel requested, and defendant Carrier iQ provided, information regarding Carrier iQ's financial condition and its ability to satisfy a judgment in this case, as well as its ability to contribute funds to settle this matter. (Lopez Decl., ¶ 10.) Class counsel reviewed and analyzed the financial data provided by Carrier iQ as part of the process of reaching the instant settlement. (*Id.*)

D. The Settlement

1. Mediation

The parties agreed to JAMS mediation before the Hon. James Larson (U.S.M.J. Ret.). The first all-day mediation occurred in San Francisco on November 12, 2014. (Lopez Decl., ¶ 11.) Four more all-day sessions occurred in San Francisco on December 16, 2014; March 17, 2015; April 27, 2015; and September 28, 2015. (*Id.*) These sessions were conducted with the aid of mediation briefing prepared by the parties, including briefing and analyses submitted on behalf of the plaintiffs, which was prepared by class counsel. (*Id.*) Each mediation session was contentious, and several sessions went well beyond eight hours. (*Id.*, ¶ 12.) Both sides held their ground, with all parties strongly insisting on the righteousness of their positions. (*Id.*) The parties continued their negotiations following each session, sometimes with the aid of Judge Larson. (*Id.*)

2. Settlement class definition, class period, and claims period

Plaintiffs first reached terms of a proposed nationwide settlement with defendant Carrier iQ, and those parties notified the Court of their agreement on November 3, 2014. (Dkt. No. 322.)

Plaintiffs and the remaining defendants reached broad agreement on a proposed nationwide settlement at their September 28, 2015 mediation session. They advised the Court of their agreement on October 8, 2015. (Dkt. No. 391.)

The parties' settlement agreement defines the settlement class as follows:

> All persons in the United States who, during the Class Period, purchased, owned, or were an Authorized User of, any Covered Mobile Device.

(Lopez Decl. Ex. A, ¶ 2.oo.) The class period is defined as "that period of time between December 1, 2007 and the date of entry of the Court's order granting preliminary approval of the Settlement." (*Id.*, ¶ 2.o.) The agreement defines an "Authorized User" as "a person authorized by

name on the Wireless Provider account for a Covered Mobile Device during the Class Period."[2] (*Id.*, ¶ 2.d.) "Authorized User" also means "a person who, during the class period, purchased or owned a Covered Mobile Device identified on the Wireless Provider account of another person (such as the Wireless Provider account of a family member or spouse) by the telephone number assigned to it." (*Id.*)

The claims period is defined as "that period of time that expires 60 days from the date of Class Notice." (*Id.*, ¶ 2.i.) Class notice commenced on April 5, 2016. (Warshaw Decl., ¶ 7.)

3. Relief to the settlement class

Based on discovery and analysis, plaintiffs have estimated the nationwide settlement class to consist of some 79 million members. (Lopez Decl., ¶ 13.) As indicated above, the settlement provides for a gross settlement fund of $9 million in monetary relief to the proposed settlement class. (*Id.*, ¶ 14.)

Additionally, defendant Carrier iQ agreed, prior to the acquisition of its assets by AT&T Mobility IP, LLC, to provide certain injunctive relief to the proposed class. (*Id.*; Lopez Decl. Ex. A, ¶¶ 18-21.) This relief includes a revision to Carrier iQ software available going forward that will enable adoptees to avoid the software's interaction with consumers' text message content while it processes remote instructions. (*See* Lopez Decl. Ex. A, ¶ 19.) Further, Carrier iQ altered the software such that it will truncate http/s search strings it captures (when such capture is requested), the effect of which will be to remove the subjects of queries from the material processed. (Lopez Decl. Ex. A, ¶ 20.) As part of the settlement agreement, Carrier iQ warranted that it performed as agreed prior to the asset sale. (*Id.*, ¶¶ 18 and 67.b.)

Both class counsel firms have endorsed the value of the settlement reached on behalf of the plaintiffs and class. (Lopez Decl., ¶ 15.) So do all named plaintiffs themselves. (*Id.*) And so do plaintiffs' Executive Committee members. (Declaration of J. Paul Gignac in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards ("Gignac Decl."), ¶ 7;

[2] "Wireless Provider" means "AT&T Mobility, Cricket, Sprint, or T-Mobile." (*Id.*, ¶ 2.qq.) "Covered Mobile Device" means "a telephone or tablet manufactured or marketed by any Manufacturer Defendant that was equipped with Carrier IQ software at the time of sale to end users of the Covered Mobile Device." (*Id.*, ¶ 2.q.)

Declaration of Paul R. Kiesel in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards ("Kiesel Decl."), ¶ 11; Declaration of Charles E. Schaffer in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards ("Schaffer Decl."), ¶ 22.)

The settlement agreement provides that proceeds payable to the class are net of the cost of notice and administration; service awards to 17 named plaintiffs (if approved); attorneys' fees, costs, and expenses as specified (if approved); and any taxes. (Lopez Decl. Ex. A, ¶¶ 25-27.)

With respect to the funds directly available to class members, the proposed settlement is claims-made in nature. (Lopez Decl. Ex. A, ¶ 28.) Class members may submit claims during the claims period for a pro-rated share of the net settlement fund. (*Id*.)

The agreement provides that in the event the net settlement fund is subscribed to the point that qualified class-member claimants would receive less than approximately $4 per claimant, then, after consultation among class counsel and defendants' counsel, and after notice to, and approval by, the Court, the entire net settlement fund will be donated in three equal shares to three *cy pres* recipients with national reach and reputations—the Electronic Frontier Foundation ("EFF"), the Center for Democracy and Technology, and CyLab Usable Privacy and Security Laboratory at Carnegie Mellon University—each of which is an established guardian of, and advocate for, consumer privacy interests such as those at stake in this litigation. (*Id.*) Notably, the EFF was involved in this matter from the outset; its counsel represented Mr. Eckhart early on, and it did much work to help consumers, *i.e.*, the proposed class, understand Carrier iQ software. (*See*, *e.g.*, TCAC, ¶¶ 42-44.)

The agreement also provides that in the event the net settlement fund is *not* over-subscribed, then any leftover funds following payments to qualified claimants (*e.g.*, the value of uncashed checks) will be split among those three *cy pres* recipients. (Lopez Decl. Ex. A, ¶ 32.)

4. Notice, opt-out procedures, and release

Additionally, the settlement provides for robust notice to class members. (*E.g.*, Warshaw Decl., ¶ 7.) The notice program calls for intensive Internet notice via banner ads and search-related

advertising, all selected and administered in consultation with class counsel by an expert notice provider, Gilardi & Co. LLC, which the Court has appointed as Settlement Administrator. (Lopez Decl. Ex. A at Ex. B thereto; Warshaw Decl., ¶ 7.) Further, the program calls for the settlement administrator to establish a settlement website, where notice of the parties' agreement and key documents will be available, including the long- and short-form notices. (Warshaw Decl., ¶ 7.) And it provides that class counsels' websites will include links to this website. (*Id.*) It also provides for a joint press release advising of the settlement. (*Id.*) All of the foregoing commenced on April 5, 2016, per the Court's order of March 1, 2016. (*Id.*; Dkt. No. 421.) To reiterate, costs of notice is to be paid from the $9 million gross settlement fund. (Lopez Decl. Ex. A, ¶ 38.)

Further, the settlement agreement provides for opt-out and objection procedures, as well as a negotiated release. (Lopez Decl. Ex. A, ¶¶ 45-46.) The notice program has been designed to publicize these as well. (*Id.*, ¶ 41.)

5. Service awards and attorneys' fees, costs, and expenses

The parties have agreed that plaintiffs may apply for service awards of up to $5,000 per named plaintiff. (*Id.*, ¶ 36.) As set forth in their supporting declarations,[3] the named plaintiffs have assisted counsel with the investigation of their claims and preparation of complaints in this matter; have consulted with counsel at various times throughout the pendency of this case; have monitored the proceedings on their own behalf and on behalf of the putative class; and have worked with counsel to prepare, review, and submit declarations in support of their claims and those of the proposed class. In addition, each worked with plaintiffs' counsel in preparing initial disclosures. (Lopez Decl., ¶ 32.) Various named plaintiffs also have consulted on more than one

[3] *See* Declaration of Patrick Kenny ("Kenny Decl."), ¶¶ 3-5; Declaration of Daniel Pipkin ("Pipkin Decl."), ¶¶ 3-5; Declaration of Jennifer Patrick ("Patrick Decl."), ¶¶ 3-5; Declaration of Dao Phong ("Phong Decl."), ¶¶ 3-5; Declaration of Ryan McKeen ("McKeen Decl."), ¶¶ 3-5; Declaration of Leron Levy ("Levy Decl."), ¶¶ 3-5; Declaration of Luke Szulczewski ("Szulczewski Decl."), ¶¶ 3-5; Declaration of Michael Allan ("Allan Decl."), ¶¶ 3-4; Declaration of Gary Cribbs ("Cribbs Decl."), ¶¶ 3-5; Declaration of Shawn Grisham ("Grisham Decl."), ¶¶ 3-5; Declaration of Bobby Cline ("Cline Decl."), ¶¶ 3-5; Declaration of Mark Laning ("Laning Decl."), ¶¶ 3-5; Declaration of Clarissa Portales ("Portales Decl."), ¶¶ 3-5; Declaration of Douglas White ("White Decl."), ¶¶ 3-5; Declaration of Eric Thomas ("Thomas Decl."), ¶¶ 3-5; Declaration of Brian Sandstrom ("Sandstrom Decl."), ¶¶ 3-5; Declaration of Colleen Fischer ("Fischer Decl."), ¶¶ 3-5; *see also* Lopez Decl., ¶ 32; Warshaw Decl., ¶ 11.

occasion with class counsel, with Executive Committee counsel, or with their own counsel (as requested by class counsel) regarding the proposed terms of the settlement. (*Id*.) Finally, with respect to relief, none of the plaintiffs will receive anything more from this settlement than any other class member. Instead, he or she will only be entitled to the same relief, subject to the same conditions, as any other class member. (*See generally* Lopez Decl. Ex. A.)

As for plaintiffs' attorneys' fees, costs, and expenses, the parties addressed the recovery of these following negotiation of the substantive terms of the proposed class settlement. (Lopez Decl. ¶ 16; Warshaw Decl., ¶ 8.) Regarding attorneys' fees specifically, the parties have agreed that class counsel may request (and distribute) the Ninth Circuit benchmark of 25% of the net settlement fund by way of this motion. (Lopez Decl. Ex. A, ¶ 37.)

6. Post-settlement work and preliminary approval

On January 22, 2016, after class counsel conducted research and drafted briefing and ancillary documents, plaintiffs moved for preliminary approval of the parties' settlement. (*E.g.*, Dkt. No. 403.) The Court responded with an order on January 26, 2016, requesting additional briefing or evidence on certain questions. (Dkt. No. 408.) The parties conferred and negotiated in response, and on February 2, 2016, they filed a joint response, with additional papers to follow. (Dkt. Nos. 411, 411-1, 411-2, 411-3, 411-4, 411-5, 412, 418.)

Next, on February 16, 2016, the Court held a hearing on plaintiffs' motion. (Dkt. No. 417.) The Court issued its order preliminarily approving the parties' settlement on March 1, 2016. (Dkt. No. 421.)

Further, in connection with notice and the claims process, class counsel have continued to meet and confer with the settlement administrator and to work on various documents, forms, and notice materials. (Lopez Decl., ¶ 17; Warshaw Decl., ¶ 11.) Additionally, class counsel has continued to coordinate with opposing counsel and the Ninth Circuit regarding defendants-appellants' still pending appeal. (Lopez Decl., ¶ 17; Warshaw Decl., ¶ 11.)

IV. ARGUMENT

A. Applicable standards

This is a common fund case. In the Ninth Circuit, the district court has discretion in such cases "to choose either the percentage-of-the-fund or the lodestar method" for fee awards. *E.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Under the percentage-of-the-fund method, the court may award class counsel a given percentage of the common fund recovered for the class." *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *16 (N.D. Cal. Feb. 11, 2016) (citing *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002)). "'The percentage method is particularly appropriate in common fund cases where "the benefit to the class is easily quantified."'" *Destefano*, 2016 WL 537946, at *16 (citations omitted). Plaintiffs seek its application here.

In common fund cases in this circuit, "the 'benchmark' award is 25 percent of the recovery obtained, with 20-30 percent as the usual range." *Id.* (citing, *inter alia*, *Vizcaino*, 290 F.3d at 1047). When the percentage-of-the-fund method is chosen, the Ninth Circuit has "encouraged district courts to cross-check any calculations done in one method against those of another method." *See Perkins v. LinkedIn Corp.*, 2016 WL 613255, at *13 (N.D. Cal. Feb. 16, 2016) (citing *Vizcaino*, 290 F.3d at 1050-51).

B. The Court should award 25% of the gross settlement fund as attorneys' fees.

Plaintiffs seek an award of 25% of the $9 million gross settlement fund, *i.e.*, $2.25 million.

> In assessing whether the percentage requested is fair and reasonable, courts generally consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of the work performed; (4) the contingent nature of the fee and the financial burden; and (5) the awards made in similar cases.

Destefano, 2016 WL 537946, at *17 (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015); *Vizcaino*, 290 F.3d at 1047).

1. Results achieved

The results achieved for the class are the most significant factor to be considered as the Court considers whether a fee request is fair and reasonable. *Id.* (citations omitted). Here, after

much investigation, research, analysis, arbitration-related and pre-ADR discovery; motions practice, including motions to compel against all defendants and third-party Google; a motion to refer all claims to arbitration; an omnibus motion to dismiss; and five day-long, in-person mediation sessions helmed by a retired federal magistrate judge, plaintiffs, facing determined opponents, achieved a $9 million cash settlement for the class. (*See* Declaration of Robert F. Lopez in Support of Plaintiffs' Motion for Preliminary Approval (Dkt. No. 404) ("Lopez Prelim. Appr. Decl."), ¶¶ 2-20; *see also generally* Plaintiffs' Memorandum in Response to Court's Order of February 16, 2016 (Dkt. No. 418) ("Pls' Memo. in Response to Court's Order of Feb. 16, 2016".) The hard-won settlement agreement that plaintiffs entered into makes millions of dollars available for *pro rata* distribution to class members or to three appropriate *cy pres* recipients in the event that the settlement fund is subscribed to the point that it would be economically infeasible to send checks to individual claimants.

Along with cash benefits, plaintiffs achieved significant non-monetary relief as well. This relief includes significant revisions to the software at issue, which defendant Carrier iQ has represented it performed prior to the sale of its assets. (Lopez Decl. Ex. A, ¶ 18.)

Given the sensitivities raised in significant part by this litigation, plaintiffs believe that these measures will go a long way toward protecting consumers' privacy in the future, including the privacy of class members who go on to buy other mobile devices equipped with the software. Though Carrier iQ sold its software assets after effecting these changes, *id.*, nonetheless, it would make sense if these changes were implemented in deployed software, in order to avoid a repeat of consumer outcry. "Ninth Circuit courts consistently have held that, where class counsel achieves significant benefits that are not accounted for in the dollar value of the common settlement fund, the court "'should consider the value of [such] relief obtained as a "relevant circumstance" in determining what percentage of the common fund class counsel should receive as attorneys' fees.'" *LinkedIn*, 2016 WL 613255, at *14 (citing, *inter alia*, *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003)).

2. The risk of litigation

The foregoing results were obtained notwithstanding the significant legal odds captured by the Court's order on defendants' motion to dismiss, in which some claims were sustained while others were dismissed with or without prejudice—including plaintiffs' FWA claim. (*See generally* Order Granting in Part and Denying in Part Defendants' Motion To Dismiss Second Consolidated Amended Complaint (Dkt. No. 339).) Plaintiffs and their experienced counsel engaged in settlement discussions after having undertaken meaningful pre-ADR discovery, and pertinent third-party discovery with Google, beforehand. The Court's January 2015 decision on defendants' motion to dismiss provided further guidance to add to their careful analysis of the risks, including that posed by defendants' appeal of the Court's decision denying their motion to compel arbitration, as well as the potential benefits of going forward with litigation. (*See* Pls' Memo. in Response to Court's Order of Feb. 16, 2016 (Dkt. No. 418).)

Moreover, all defendants promised to contest class certification vigorously—a consideration not to be taken lightly in a case dependent in part on several states' laws, with a myriad of mobile devices at issue, especially after plaintiffs' FWA claim was dismissed without prejudice. Furthermore, defendant Carrier iQ's financial condition, *see id.* at 9, and the bankruptcy of defendant Pantech's corporate parent, also were important considerations. Even so, it was only after five lengthy mediation sessions with Judge Larson that plaintiffs could agree to a settlement they considered reasonable under all the circumstances. *See, e.g.*, *LinkedIn*, 2016 WL 613255, at *15 (defendant "contested its liability, and intended to contest class certification as well," such that the risk factors at issue "favor[ed] granting Class Counsel's request" for fees).

3. Skill required and quality of the work performed

As courts have recognized, "[the] 'prosecution and management of a complex national class action requires unique legal skills and abilities.'" *Destefano*, 2016 WL 537946, at *17 (citation omitted). This Court appointed two firms that specialize in such litigation, each with proven track records, to act as interim co-lead counsel on behalf of plaintiffs and the proposed nationwide class.

Counsel in this matter have litigated vigorously against 10 corporate opponents, some foreign, each with top defense lawyers, and with the laws of numerous jurisdictions at issue, all in a case involving complicated technical issues. The defendants' lawyers often worked in concert with one another, only amplifying the challenges and time and effort necessary to prosecute plaintiffs' claims. Counsel also worked with 18 (and then 17) named plaintiffs from states around the country, many of whom were represented by separate counsel. Along the way, plaintiffs faced a grave motion to refer their cases to arbitration, and a complex motion to dismiss, not to mention key discovery efforts against Google. These are some of the challenges inherent in this sort of litigation that were referenced by the court in *Destefano*.

Yet plaintiffs with the aid of counsel staved off defendants' voluminously supported arbitration motion, defeated a motion to stay proceedings while defendants appealed the result, won key discovery motions that allowed them to do their due-diligence and to gather evidence necessary for going forward, prevailed as to several claims against defendants' motion to dismiss, and lived to fight another day with respect to their FWA claim. And then class counsel managed complex settlement negotiations involving 10 defendant entities, leading to the instant settlement.

The qualifications of class counsel and plaintiffs' executive committee members are set forth in declarations submitted with this motion. (*See* Lopez Decl., ¶¶ 19-22 and Ex. B thereto; Warshaw Decl., ¶¶ 20-22 and Ex. G thereto; Gignac Decl., ¶ 6 and Ex. 1 thereto; Kiesel Decl., ¶¶ 3-4 and Ex. A thereto; Rivas Decl., ¶¶ 3-5 and Ex. 1 thereto; Schaffer Decl., ¶¶ 2-4 and Ex. A thereto.) Where, as here, counsel are highly experienced in class action litigation; shepherded this case through several key motions; have a record of success in this type of litigation; and faced high caliber opposing counsel throughout, this factor, too, "supports the fee award sought." *Destefano*, 2016 WL 537946, at *17 (citations omitted).

4. Contingent nature of the fee and the financial burden

Further, plaintiffs' counsel undertook this matter on a contingent fee basis, with all of the financial risk that arrangement entailed, including the risk of no recovery. *See LinkedIn*, 2016 WL 613255, at *15. Given the relatively small stakes at issue for each plaintiff and class member, this

case could not have gone forward but as a proposed class action, with lawyers experienced in complex class actions to lead it. *See Destefano*, 2016 WL 537946, at *18. Thus, courts have observed that "when counsel takes on a contingency fee case and the litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award." *Id.* (citation omitted). Here, the MDL portion of this litigation has gone on since April 2012, such that class counsel have accrued significant lodestar, costs, and expenses along the way. *See id.* (describing a similar situation). "Additionally, Class Counsel was, to an extent, precluded from taking and devoting resources to other cases or potential cases, with no guarantee that the time expended would result in any recovery or recoupment of costs." *LinkedIn*, 2016 WL 613255, at *15. "Thus, that Lead Counsel here have significant experience in this field and took on this matter on a contingent basis further indicates that the 25 percent benchmark fee request is reasonable." *See Destefano*, 2016 WL 537946, at *18.

5. Awards made in similar cases

Finally, the 25% award sought here is similar to that awarded in other cases involving consumer privacy and technology issues. *See, e.g.*, *LinkedIn*, 2016 WL 613255, at *14-17 (25% award) (citing *In re Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1128, 1132 (N.D. Cal. 2015) (granting 25% benchmark attorney's fees); *Fraley v. Facebook, Inc.*, 2013 WL 4516806, at *3 (N.D. Cal. Aug. 26, 2013) (same); *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *9-10 (N.D. Cal. Mar. 18, 2013) (same). This, too, supports the fee award sought by plaintiffs.

C. Under a lodestar cross-check, plaintiffs' attorneys' fee request is fair and reasonable.

A lodestar cross-check confirms that the instant attorneys' fees request is fair and reasonable. "The lodestar figure[4] is calculated by multiplying the number of hours the prevailing

[4] "[T]he court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors, 'including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011) (citation omitted) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (which in turn cited *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975))). Such factors, which are included in the so-called *Kerr* factors, many of which are "'subsumed within the initial calculation of hours reasonably expended at a reasonable rate,'" only warrant a departure from "the lodestar figure in 'rare and exceptional cases.'" *Id.* at 942 n.7 (citations omitted).

party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Bluetooth*, 654 F.3d at 941 (citation omitted).

As discussed below, 25% of the common fund represents a significant negative multiplier to the lodestar of plaintiffs' two class counsel firms alone, based on an average of these firms' historic rates. The negative multiplier is even greater if the lodestars of plaintiffs' Executive Committee members, at historic rates, are factored in. A negative multiplier further supports the reasonableness of plaintiffs' requested percentage-of-fund award. *See Williams v. SuperShuttle Int'l, Inc.*, 2015 WL 685994, at *2 (N.D. Cal. Feb. 12, 2015) ("In terms of a lodestar cross-check, the attorneys' fees requested, 25% of the common fund amount of $300,000, equates to $75,000, which is less than 52% of the lodestar amount of $144,918. The Court finds that Class Counsel's hours and hourly rates are reasonable, thus, the requested fee award results in a 'negative multiplier' and supports a finding that the requested percentage of the fund, 25%, is reasonable and fair.").

1. Counsels' hourly rates are reasonable.

For purposes of the lodestar method, reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). "[T]he relevant community is the forum in which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The rates applied should be in line with those commanded by lawyers of reasonably comparable skill, experience, and reputation. *Blum*, 465 U.S. at 895 n.11. Here, plaintiffs' class counsel attorneys have extensive experience in prosecuting complex litigation, including consumer class actions.[5] So do plaintiffs' Executive Committee attorneys.[6]

Declarations of counsel regarding prevailing fees in the community and rate determinations in other cases "are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The district court also may consider

[5] *See* Lopez Decl., ¶¶ 19-22 and Ex. B thereto; Warshaw Decl., ¶¶ 20-22 and Ex. G thereto.

[6] *See* Gignac Decl., ¶ 6 and Ex. 1 thereto; Kiesel Decl., ¶¶ 3-4 and Ex. A thereto; Rivas Decl., ¶¶ 3-5 and Ex. 1 thereto; Schaffer Decl., ¶¶ 2-4 and Ex. A thereto.

evidence of counsel's customary hourly rate. *See People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996) (holding that an attorney's actual billing rate for similar work is presumptively appropriate). Here, declarations from counsel provide such evidence.[7]

In declarations submitted with this motion, class counsel and plaintiffs' Executive Committee members set forth their professional and para-professional rates in effect when work was performed in the MDL portion of this matter.[8] These historic rates, which average $519 per hour,[9] are reasonable and appropriate for complex, nationwide litigation conducted in the Northern District of California. *See, e.g., Stuart v. Radioshack*, 2010 WL 3155645, at *6-7 (N.D. Cal. Aug 9, 2010) (approving 25% percentage-of-fund award with rates at and exceeding $800 per hour, where average hourly rate was $708, "an amount the Court deem[ed] appropriate, particularly when no multiplier is being sought on top of the lodestar"); *G.F. v. Contra Costa Cty.*, 2015 WL 7571789, at *14 (N.D. Cal. Nov. 25, 2015) (referring to Bay Area litigation where rates "of between $475-$975 for partners, $300-$490 for associates, and $150-$430 for litigation support and paralegals" were found reasonable) (citation omitted); *see also* Lopez Decl., ¶ 23(describing instances of rates approved in this judicial district at up $900 and $975 per hour for attorneys and at up to $170 per hour for para-professionals).

Class counsels' reasonable rates, when multiplied by the number of hours expended on the tasks described in the immediately following section of this memorandum, and in their supporting declarations, result in a lodestar of $3,497,967.75.[10] Executive Committee members' rates, when

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[7] *See* Lopez Decl., ¶¶ 22-23; Warshaw Decl., ¶ 14; *see also* Kiesel Decl., ¶ 6; Rivas Decl., ¶¶ 12-13; Schaffer Decl., ¶¶ 11-13 (setting forth approval of rates in other judicial districts).

[8] *See* Lopez Decl., ¶ 22 and Ex. C thereto; Warshaw Decl., ¶ 13 and Ex. A thereto; *see also* Gignac Decl. Ex. 2; Kiesel Decl., ¶ 6 and Ex. B thereto; Rivas Decl., ¶ 12; Schaffer Decl., ¶ 13 and Ex. B thereto. Plaintiffs' class counsel firms present their historic rates as average rates per timekeeper, as set forth in Ex. A to the Lopez declaration and Ex. C to the Warshaw declaration

[9] Warshaw Decl. Ex. D.

[10] In their supporting declarations, Lopez Decl., ¶ 17 and Ex. C thereto; Warshaw Decl., ¶ 11 and Ex. A thereto, counsel submit narrative summaries of time reasonably expended, together with charts showing their time multiplied by their hourly rates. *Cf. Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (concluding that a "summary of the time spent on a broad category of tasks such as pleadings and pretrial motions" met "basic requirement" of documentation). Counsel have categorized their time as they did in response to the Court's order of February 26, 2016 (Dkt. No. 408), and have added two additional categories to capture more recent work.

multiplied by the number of hours expended on certain of the tasks summarized immediately below, and as set forth in their supporting declarations, result in a lodestar of $574,817.50.[11]

2. The number of hours that counsel has worked, and will need to work, is reasonable.

The number of hours worked by class counsel to-date also is reasonable. As explained in the declarations of counsel submitted with this motion,[12] work on this matter has included:

Investigation and research and preparation of complaints: Investigation and analysis of fact, legal, and technical issues pertaining to plaintiffs' claims; legal and factual research, including analysis of public statements on Carrier iQ; extensive review and analysis of technical documents; and drafting of the FCAC and subsequent versions of the complaint;

Discovery: Work on initial disclosures and review and analysis of defendants' disclosures; arbitration-related discovery, consultation with defendants and the third-party carriers and Google, motions practice (including hearings), and document review (including review and analysis of the voluminous materials produced by Google); and pre-ADR discovery, including conferences with defendants, and review of the material produced;

Experts: Work pertaining to and with consulting experts;

Motions practice: Research and drafting of the opposition to defendants' voluminous motion to compel arbitration, including work on declarations from the plaintiffs; preparation for, and oral argument, at the hearing on defendants' motion to compel arbitration; research and the response to defendants' motion to stay the case in light of the Court's order denying defendants' motion to compel arbitration, and oral argument on the same; research and drafting in response to defendants' comprehensive motion to dismiss, and preparation for, and oral argument at, the hearing;

If the Court wishes to review detailed time entries, plaintiffs will provide them promptly for *in camera* review.

[11] *See* Gignac Decl., ¶ 9 and Ex. 2 thereto; Kiesel Decl., ¶ 5 and Ex. B thereto; Rivas Decl., ¶ 12 and Ex. 2 thereto; Schaffer Decl., ¶ 14 and Ex. B thereto.

[12] *See* Lopez Decl., ¶ 17; Warshaw Decl., ¶ 11; *see also* Gignac Decl., ¶ 9 and Ex. 2 thereto; Kiesel Decl., ¶ 8; Rivas Decl., ¶ 6; Schaffer Decl., ¶ 7.

Appeal and other actions relevant to this case: Work related to defendants' appeal to the Ninth Circuit; review and analysis of the FTC's action against defendant HTC; attending to miscellaneous matters that arose during the course of this litigation, including research and briefing regarding the bankruptcy of defendant Pantech's corporate parent;

Settlement and settlement administration (including notice): Research regarding suitable potential *cy pres* recipients; consultation with the named plaintiffs regarding settlement issues; drafting and revision of settlement-related documents, including the first and amended settlement agreements; settlement negotiations and mediations, and the drafting of mediation briefing, as well as five all-day mediations in San Francisco; interviewing prospective settlement administrators; conferring with notice providers regarding a suitable notice program in this case; work with Carrier iQ counsel as liaison to the carriers regarding contact information for class members; working with the settlement administrator on notice documents and the claim form; continuing work with the settlement provider regarding notice and claims processing;

Approval of settlement (preliminary and final): Research for, and drafting of, the motion for preliminary approval and related papers; further negotiation and supplemental briefing in response to the Court's inquiries relating to plaintiffs' motion for preliminary approval; working with the 17 current plaintiffs or their counsel to prepare their declarations in support of the instant motion; research toward, and drafting of, the instant motion;

Case management: Consultation with the named plaintiffs and members of the putative class throughout the pendency of the case; innumerable telephone conferences and emails with opposing counsel regarding case and settlement issues; coordination with plaintiffs' Executive Committee members and counsel for certain named plaintiffs re: work assignments; research regarding defendants' financial condition and insurance issues; and coordination with Executive Committee members regarding time maintenance and recordkeeping.

Further, additional work remains to be performed. The final approval hearing is scheduled for July 28, 2016, and class counsel presently estimates that before then, they will need to work approximately 30 additional hours to answer questions posed by class members or the settlement

administrator, to draft and file final approval papers, to draft responses to any objections by class members, and to prepare for argument. (Lopez Decl., ¶ 18; Warshaw Decl., ¶ 11.m.) And beyond the final approval hearing, assuming final approval is granted, class counsel presently estimates an additional 40 hours of work will be necessary to attend to the issues that will arise during administration of the settlement, to field inquiries from class members regarding the settlement, to work with defendants to address any class-member appeals or concerns under the settlement, and to work with defendants to determine the total value of claims against the net settlement funds available, among other activities, including potentially the preparation of filings with the Court in the event the settlement fund is subscribed to the point that funds must be distributed to the three proposed *cy pres* recipients instead of to individual class members. (Lopez Decl., ¶ 18; Warshaw Decl., ¶ 11.m These are conservative projections; counsel could be required to spend much more time on any or all of these tasks, as matters develop.

3. Counsels' fees are reasonable pursuant to the *Kerr* factors subsumed in the lodestar analysis.

In considering the reasonableness of plaintiffs' lodestar figure, courts also may consider the quality of representation, the benefit obtained for the class, and the complexity and novelty of the issues presented, among other factors. *Bluetooth*, 654 F.3d at 941-42. Each of these factors supports plaintiffs' lodestar here.

(1) Novelty and complexity of the litigation

Given the foregoing history and lack of precedent on several issues; the opposing parties' many defenses and their resources; and questions regarding individual issues, this case was novel and complex. (*See* Lopez Decl., ¶ 28; *see also generally* Pls' Memo. in Response to Court's Order of Feb. 16, 2016.)

(2) Skill and experience of class counsel and quality of representation

The "prosecution and management of a complex national class action requires unique legal skills and abilities." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005). The courts consider counsel's skill alongside the quality of work performed by counsel.

See In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007). In this case, success required experienced and skilled class-action attorneys. As attested in the declarations cited above, class counsel are members of the bar with extensive experience in consumer class-action litigation, which they utilized to obtain the best recovery for the class.

The Court also should consider the quality of opposing counsel in evaluating the quality of class counsel's work. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *20. Class counsel faced a who's who of renowned and highly skilled defense firms in this matter, all with well-deserved reputations for vigorous advocacy in the defense of their clients. *See id*.

(3) Favorability of result

In a case with numerous legal and technical complexities, and facing determined, well-financed, and well-represented defendants, plaintiffs and their counsel were able to achieve a settlement including a $9 million cash component and significant non-monetary relief. This result was genuinely favorable to the class and their privacy concerns. (*See, e.g.*, Lopez Decl., ¶¶ 14-15.)

4. The presence of negative multipliers further supports the reasonableness of plaintiffs' fee request.

Furthermore, plaintiffs seek no extraordinary award, except to the negative side. Lodestar is presently at $3,497,967.75 for class counsel, such that the multiplier is 0.64. If one considers lodestar reported by Executive Committee members, at $574,817.50, and includes it in the calculus, the multiplier drops further, to 0.55. The presence of these negative multipliers further supports the reasonableness of plaintiffs' request. *Williams*, 2015 WL 685994, at *2.

D. Costs and expenses

The settlement agreement also provides for the recovery of costs and expenses incurred by class counsel and plaintiffs' Executive Committee members. (Lopez Decl. Ex. A, ¶ 37.)

Class counsel and plaintiffs' Executive Committee members have incurred costs and expenses in the amount of $108,933.72. These expenses are set forth in the declarations of counsel submitted with this motion. (*See* Lopez Decl., ¶ 26 and Ex. D thereto; Warshaw Decl., ¶¶ 17-18 and Ex. E thereto; Gignac Decl., ¶ 14; Kiesel Decl., ¶¶ 9-10 and Ex. C thereto; Rivas Decl., ¶ 15;

Schaffer Decl., ¶ 18 and Ex. C thereto.) Class counsel anticipate that they may expend more on behalf of the class before the close of this matter, but the sums are unclear at this time.

All expenses that are typically billed by attorneys to paying clients in the marketplace are compensable. *See Missouri v. Jenkins*, 491 U.S. 274, 286 (1989); *accord Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010); *see also Omnivision*, 559 F. Supp. 2d at 1048 ("[a]ttorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters"). As detailed in the declarations of counsel, plaintiffs incurred substantial costs on court reporters, travel (including to five in-person mediation sessions and numerous hearings), consulting expert fees, computer-aided research, photocopies, postage, court fees, and telephone charges. These costs were necessarily and reasonably incurred to bring this case to a successful outcome.

E. The class representatives each should receive $5,000 incentive awards.

Finally, plaintiffs seek service awards to the long-serving named plaintiffs in this matter. "Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (2009) (citing 4 ALBA CONTE ET AL., NEWBERG ON CLASS ACTIONS § 11:38 (4th ed. 2008)). These awards, generally sought after a settlement has been reached, "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958-59. The Court has discretion to approve incentive awards, and its consideration includes factors such as the amount of time and effort spent by the class representatives, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Wilson v. Airborne, Inc.*, 2008 WL 3854963, at *12 (C.D. Cal. Aug. 13, 2008).

Broadly speaking, the named plaintiffs have assisted counsel with counsel's investigation, analysis, and prosecution of their potential and actual claims; the preparation of pleadings (including the complaints filed in this matter and declarations); settlement negotiations and considerations; and review and analysis of the parties' settlement papers. (Lopez Decl., ¶ 32.)

They also have monitored this case on behalf of their fellow putative class members. (*Id.*) Greater specifics, and time estimates, are included in the 17 named-plaintiff declarations submitted with this motion.[13] Further, as attested in their declarations, time spent on this case has meant time spent away from family, friends, work, and various other activities.

$5,000 service awards are presumptively reasonable in this judicial district,[14] even where there is the prospect of minimal damages recoveries by individual class members. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015) (approving $5,000 incentive awards where class members would receive $12); *Weeks v. Kellogg Co.*, 2013 WL 6531177, *3, 34-37 (C.D. Cal. Nov. 23, 2013) (approving incentive awards of $5,000 per named plaintiff, where settlement provided for the recovery by class members of $5 per box of cereal purchased during the class period, up to a maximum of $15 per class member, all subject to proportional reduction if all eligible claims exceeded the settlement fund); *see also Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *31-37 (N.D. Cal. Apr. 1, 2011) (making $5,000 service awards to 20 named plaintiffs "where average award to class members was $207.69"). Also, the awards sought are modest compared with incentive awards in other cases. *See, e.g.*, *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, at *9 (S.D. Cal. June 1, 2010) ($25,000 award); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) ($300,000 award).

Here, given the valuable and time-consuming aid rendered to the class by each of the named plaintiffs in this long-running case, plaintiffs respectfully submit that the requested awards are fair and reasonable, and that they ought to be awarded.

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[13] *See* Declaration of Patrick Kenny ("Kenny Decl."), ¶¶ 3-5; Declaration of Daniel Pipkin ("Pipkin Decl."), ¶¶ 3-5; Declaration of Jennifer Patrick ("Patrick Decl."), ¶¶ 3-5; Declaration of Dao Phong ("Phong Decl."), ¶¶ 3-5; Declaration of Ryan McKeen ("McKeen Decl."), ¶¶ 3-5; Declaration of Leron Levy ("Levy Decl."), ¶¶ 3-5; Declaration of Luke Szulczewski ("Szulczewski Decl."), ¶¶ 3-5; Declaration of Michael Allan ("Allan Decl."), ¶¶ 3-4; Declaration of Gary Cribbs ("Cribbs Decl."), ¶¶ 3-5; Declaration of Shawn Grisham ("Grisham Decl."), ¶¶ 3-5; Declaration of Bobby Cline ("Cline Decl."), ¶¶ 3-5; Declaration of Mark Laning ("Laning Decl."), ¶¶ 3-5; Declaration of Clarissa Portales ("Portales Decl."), ¶¶ 3-5; Declaration of Douglas White ("White Decl."), ¶¶ 3-5; Declaration of Eric Thomas ("Thomas Decl."), ¶¶ 3-5; Declaration of Brian Sandstrom ("Sandstrom Decl."), ¶¶ 3-5; Declaration of Colleen Fischer ("Fischer Decl."), ¶¶ 3-5.

[14] *See Camberis v. Ocwen Loan Serv. LLC*, 2015 WL 7995534, at *3 (N.D. Cal. Dec. 7, 2015) ("As this Court has recognized, . . . as a general matter, '$5,000 is a reasonable amount' [for service awards.") (citation omitted).

V. CONCLUSION

For all of the foregoing reasons, plaintiffs ask respectfully that the Court grant their motion for attorneys' fees, costs and expenses, and named-plaintiff service awards.

Dated: May 13, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2016, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the email addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

Dated: May 13, 2016

/s/ *Steve W. Berman*
Steve W. Berman

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re Carrier IQ, Inc. Consumer Privacy Litigation	No. C-12-md-2330-EMC **[PROPOSED]** ORDER GRANTING PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS
This Document Relates to: ALL CASES	Date: July 28, 2016 Time: 1:30 p.m. Place: Courtroom 5, 17th Floor Judge: Hon. Edward M. Chen

The Court, having reviewed the motion of Michael Allan, Bobby Cline, Gary Cribbs, Colleen Fischer, Shawn Grisham, Patrick Kenny, Mark Laning, Leron Levy, Ryan McKeen, Jennifer Patrick, Dao Phong, Daniel Pipkin, Clarissa Portales, Brian Sandstrom, Luke Szulczewski, Eric Thomas, and Douglas White's for an award of attorneys' fees, costs, expenses, and service awards; the declarations of the foregoing named plaintiffs and counsel submitted herewith, together with their exhibits; the attached memorandum in support of plaintiffs' motion; the pleadings and papers on file in this action; and the oral argument of counsel, if any, presented at the hearing on this motion, hereby finds that plaintiffs' motion should be GRANTED.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. For purposes of this order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the Amended Stipulation of Settlement and Release (Dkt. No. 419) ("Amended Settlement Agreement").

2. The Court finds that plaintiffs' requested fee award of $2,250,000 is fair and reasonable in light of the results obtained by class counsel in this case; the risks and complex issues involved, and the skill and high-quality work required to overcome them; the burdens borne by counsel in pursuing this litigation on a pure contingency basis; and the range of awards made in similar cases. The Court finds that the requested fee award, which represents the Ninth Circuit's benchmark of 25% of the gross settlement fund created by the Amended Settlement Agreement, comports with the applicable law and is justified by the circumstances of this case.

3. The Court has confirmed the reasonableness of plaintiffs' fee request by conducting a lodestar cross-check. The Court finds that plaintiffs' counsel's reasonable lodestar as of the date they filed their Motion for Attorneys' Fees, Litigation Costs, and Incentive Awards was $4,072,785.25 based on their historic hourly rates. The Court has considered the combined lodestar of class counsel—Hagens Berman Sobol Shapiro LLP and Pearson, Simon & Warshaw, LLP—as of the date they filed plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards to Class Representatives, which was $3,497,967.75 based on their historic hourly rates. The Court also has considered the lodestar of plaintiffs' Executive Committee members as of the date plaintiffs filed their Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards to

Class Representatives, which was $574,817.50 based on their historic hourly rates. Considering class counsels' lodestar at historic rates, the calculation yields a negative multiplier of 0.64. Adding in plaintiffs' Executive Committee members' lodestars at historic rates, in conjunction with the combined lodestar of class counsel, the calculation yields an even greater negative multiplier of 0.55. These negative multipliers further justify the award sought, given the novelty and difficulty of this litigation, counsel's skillful handling of the difficult factual and legal issues presented, the significant contingent risks in this case, and the quality of the result achieved. Furthermore, class counsel has advised that it expected to perform more work after filing plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards to Class Representatives, and even after entry of the instant order.

4. The Court finds that class counsel and plaintiffs' Executive Committee members incurred $108,933.72 in litigation costs and expenses as of the date plaintiffs filed their Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards to Class Representatives. Based upon supplemental declarations of these counsel submitted in advance of the Fairness Hearing, which supplemental declarations set forth additional costs and expenses incurred since the filing of that motion, in the amount of $[_____], the Court finds that these counsel incurred a total of $[_____] in litigation costs and expenses in prosecuting the MDL portion of this litigation. The Court finds that these costs and expenses were reasonably incurred in the ordinary course of prosecuting this case and were necessary given the complex nature and nationwide scope of the case. Accordingly, the Court approves a payment to these counsel in the amount of $ [_____]to reimburse them for such costs and expenses.

5. Finally, the Court approves an incentive award of $5,000 each to current named plaintiffs and class representatives Michael Allan, Bobby Cline, Gary Cribbs, Colleen Fischer, Shawn Grisham, Patrick Kenny, Mark Laning, Leron Levy, Ryan McKeen, Jennifer Patrick, Dao Phong, Daniel Pipkin, Clarissa Portales, Brian Sandstrom, Luke Szulczewski, Eric Thomas, and Douglas White. These incentive awards are reasonable and justified given: the time and effort expended and the work performed and the active participation in the litigation and settlement processes by the class representatives on behalf of the members of the settlement class; the time the

class representatives spent away from family and work and other responsibilities while working on this matter on behalf of the settlement class; the benefit to settlement class members of the named plaintiffs' actions on their behalf; the length of this case; and the risks—reputational, financial, and otherwise—faced by the class representatives in bringing this lawsuit.

6. The attorneys' fees, costs, expenses, and service awards set forth in this order shall be paid from the gross settlement fund and distributed at class counsel's sole discretion per the terms of the Amended Settlement Agreement.

IT IS SO ORDERED.

DATED this ___ day of _____, 2016

_____
Honorable Edward M. Chen
United States District Judge