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14  
15 SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF LOS ANGELES

17 ASHLEY NOVAK,  
18 Plaintiff,

19 vs.

20 PACIFIC BIOSCIENCE LABORATORIES,  
INC. AND PACIFIC BIOSCIENCE  
21 LABORATORIES, PRODUCTS, INC., and  
DOES 1-50

22 Defendants.  
23

**CASE NO. BC582188**

**Hon. Ann I. Jones, Dept. 11**

**Class Action**

**NOTICE OF MOTION AND UNOPPOSED  
MOTION FOR AN AWARD OF  
ATTORNEY FEES, COSTS, AND  
PLAINTIFF'S INCENTIVE AWARD**

**[Filed with Joint Declaration of Class  
Counsel]**

**Date: May 17, 2019**

**Time: 10:00 a.m.**

**Dept: 11**


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TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on May 17, 2019, at 10:00 a.m., in Department 11 of this Court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Ashley Novak will move the Court for an order awarding Class Counsel \$750,000.00 for attorney fees and costs and a \$1,000.00 incentive award to Plaintiff. This Motion is made on the grounds that the amount of the requested attorney fees is reasonable and reached during an arm's-length negotiation through mediation and the proposed incentive award to Plaintiff justified and fair. The Motion will be based upon this Notice, the attached Memorandum of Points and Authorities in support, the Joint Declaration submitted by Class Counsel, and the records and files in this action.

**Dated: April 15, 2019**

**JOSEPH J. M. LANGE LAW CORPORATION**

By:   
**JOSEPH J.M. LANGE**  
**Attorney for Plaintiff**  
**Ashley Novak**

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1 **I. INTRODUCTION**

2 Class Counsel, Joseph J. M. Lange Law Corporation, Lax LLP, and Milberg Tadler Phillips  
3 Grossman LLP, submit this Memorandum in support of their unopposed application for an award of  
4 attorney fees and reimbursement of all expenses in the total amount of \$750,000.00, and a plaintiff's  
5 incentive award of \$1,000.00. As was agreed in the Settlement Agreement<sup>1</sup> resolving this matter,  
6 after an arm's-length negotiation through mediation, Defendants do not oppose this motion. These  
7 amounts were negotiated by the parties only *after* the all material elements of the consideration for  
8 the Settlement Class were fully agreed to. Good cause exists for granting this Motion and finding the  
9 requested attorney fees, reimbursement of costs, and incentive award to be fair, reasonable, and  
10 appropriate.

11 Class Counsel obtained an excellent result in the face of complex and novel technical issues  
12 and legal uncertainty. Plaintiff Novak's efforts, risk, and results achieved in prosecuting this lawsuit  
13 resulted in valuable relief available to the Settlement Class she has represented. The deadline for  
14 objections has passed and no Settlement Class Member has filed any objection to either the attorney  
15 fee and expense request or the incentive award sought herein.

16 **II. CLASS COUNSEL ACHIEVED AN EXCELLENT RESULT FOR THE  
17 SETTLEMENT CLASS**

18 This Settlement promptly provides concrete and significant relief to the Settlement Class,  
19 while avoiding further delay and litigation risk. As stated in in the accompanying Motion for Final  
20 Approval of Class Action Settlement, Settlement Class Members will automatically receive an  
21 extension and enhancement of the manufacturer's warranty to cover Battery Failure and allow them  
22 to receive a working Skin Brush at no expense to them if their own unit fails, for the following  
23 periods:

- 24 • For any Brush sold with an original manufacturer's warranty of 12 months, the  
25 warranty will be extended as to Battery Failure for 12 months from the date on which  
26 the warranty did or will expire.

27 <sup>1</sup> Unless otherwise stated, all capitalized terms have the same meanings as set forth in the Settlement Agreement.

- 1           • For any Brush sold with an original manufacturer’s warranty of two years, the  
2           warranty will be extended as to Battery Failure for nine months from the date on  
3           which the warranty did or will expire.
- 4           • For any Brush sold with an original manufacturer’s warranty of three years, the  
5           warranty will be extended as to Battery Failure for six months from the date on which  
6           the warranty did or will expire.
- 7           • In order to ensure that every Settlement Class Member has an opportunity to receive  
8           the benefits of this Settlement, each Settlement Class Member will be entitled to a  
9           warranty extension for battery failure for an underlying minimum of six months  
10          following the Effective Date.

11 (Settlement Agreement, ¶ II(B)(1).) During the extended warranty period, the Settlement requires  
12 Defendants to repair or replace Brushes diagnosed with Battery Failure experienced and submitted  
13 during the warranty extension period. The Settlement also provides for Defendants to bear the very  
14 substantial expenses of notification and administration of the settlement.

15 **III. CLASS COUNSEL’S REQUESTED FEE AWARD IS REASONABLE**

16 Plaintiff and Settlement Class Members are entitled to recover their attorney fees and costs.  
17 Code Civ. Proc. § 1021.5; *Earley v. Super. Ct.*, 79 Cal. App. 4th 1420, 1432 (2000). A fee award is  
18 justified when class benefits are obtained via settlement. *Maria P. v. Riles*, 43 Cal. 3d 1281, 1290-91  
19 (1987); *Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal. 3d 348, 352-53 (1983). When a  
20 party is entitled to statutory fees, “the fee should ordinarily include compensation for all hours  
21 reasonably spent, including those relating solely to the fee.” *See Serrano v. Unruh*, 32 Cal. 3d 621,  
22 624 (1982) (“*Serrano V*”).

23 “Courts recognize two methods for calculating attorney fees in civil class actions: the  
24 lodestar/multiplier method and the percentage of recovery method.” *Wershba v. Apple Comput., Inc.*,  
25 91 Cal. App. 4th 224, 254 (2001). Courts have discretion to determine which method of calculation  
26 to choose. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 940 (9th Cir. 2011);  
27 *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 558 (2009) (“It is not an abuse of discretion  
28 to choose one method over another as long as the method chosen is applied consistently using



1 percentage figures that accurately reflect the marketplace”). Here, while the actuarial value of the  
2 warranty for the large Class is certainly of significant value sufficient to support the Settlement, its  
3 precise valuation into the future would be difficult or impossible and require complex mathematical  
4 analysis by an expert actuary. As such, the self-evidentiary nature and simple tangibility of the  
5 lodestar method is clearly more appropriate here. *Id.*

6 “Regardless of whether attorneys’ fees are determined using the lodestar method or awarded  
7 based on a ‘percentage-of-the-benefit’ analysis under the common fund doctrine, [t]he ultimate goal .  
8 . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the  
9 method of calculation.” *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 557–58 (alterations in  
10 original). Especially in a class action, “the district court must exercise its inherent authority to assure  
11 that the amount and mode of payment of attorneys’ fees are fair and proper.” *Zucker v. Occidental*  
12 *Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir.1999); *accord Staton v. Boeing Co.*, 327 F.3d  
13 938, 963-64 (9th Cir. 2003).

14 Here, the negotiated and mediated fee arrangement between the parties should be approved as  
15 fair and reasonable under the lodestar method.

16 **A. Courts Have Regularly Approved Negotiated Fee Arrangements as Part  
17 of Class Action Settlements**

18 Fee agreements between plaintiffs and defendants in class actions are encouraged,  
19 particularly where, as here, the attorney fees are negotiated separately from the settlement and after  
20 all settlement terms have been agreed to by the parties. *See Williams v. MGM-Pathe Commc’ns Co.*,  
21 129 F.3d 1026, 1027 (9th Cir. 1997). Code of Civil Procedure section 1021 codifies this general  
22 principle that courts should generally award attorneys’ fees pursuant to the agreement of the parties:

23 Except as attorney’s fees are specifically provided for by statute, the  
24 measure and mode of compensation of attorneys and counselors at law is  
25 left to the agreement, express or implied, of the parties.

26 Accordingly, California courts defer to the fee agreements between parties if the agreement is  
27 otherwise valid. *Cazares v. Saenz*, 208 Cal. App. 3d 279, 287 (1989). A class action fee should  
28

1 therefore approximate what a sophisticated client might have agreed to pay. *Lealao v. Beneficial*  
2 *California, Inc.*, 82 Cal. App. 4th 19, 47-48 (2000).

3 Here, the Court need not speculate as to what amount a sophisticated litigant might agree to  
4 pay in such a negotiation; such negotiation and agreement has already occurred. Consistent with the  
5 foregoing precedents, subsequent to and separate from their substantive settlement negotiations, the  
6 parties negotiated the amount of fees and expenses Defendants would pay Class Counsel for their  
7 work on behalf of the Settlement Class. In light of how the award is structured – with Defendants  
8 paying the fee on top of the Settlement consideration – Defendants had a direct interest in keeping  
9 the fee as low as possible. Defendants also no doubt appreciated the risk of a larger fee being  
10 awarded in a contested fee application. Under these circumstances, the negotiated fee is entitled to a  
11 great deal of weight, because Defendants had a particular incentive to, and did, bargain strenuously  
12 to minimize the fee award. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 720 (5th  
13 Cir. 1974). The result is an amount that reflects a compromise reached through extensive arm’s-  
14 length bargaining by informed and sophisticated parties. As such, the negotiated fee is entitled to a  
15 presumption of propriety and warrants the approval of the Court. *Hensley v. Eckerhart*, 461 U.S.  
16 424, 437 (1983) (“Ideally, of course, litigants will settle the amount of a fee”). This is particularly  
17 true when, as is the case here, a neutral third-party mediator is involved in the parties’ negotiations.  
18 *McBean v. City of New York*, 233 F.R.D. 377, 386 (S.D.N.Y. 2006) (involvement of judicial  
19 mediator weighs strongly in favor of approval of negotiated fee). Here, the fact that the parties were  
20 able to avoid a “second major litigation,” through extensive negotiations, militates in favor of the  
21 award. *Hensley* 461 U.S at 437.

21 **B. Class Counsel’s Lodestar Is Reasonable**

22 Under the lodestar method, the Court computes the “lodestar” amount by multiplying the  
23 number of hours reasonably expended by each attorney by his or her reasonable hourly rates.  
24 *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977) (“*Serrano II*”), *aff’d sub nom. Serrano v. Unruh*, 32 Cal.  
25 3d 621 (1982). Although the Court may enhance this lodestar figure by a “multiplier” to account for  
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1 a range of factors,<sup>2</sup> here Class Counsel does not request any multiplier, as the requested fee  
2 represents a discount to the actual lodestar – which does not account for the unknown amount of  
3 additional work Class Counsel have undertaken to perform in their continued representation of the  
4 Class during the claims process.

5 Class Counsel have devoted considerable time and effort to prosecute and resolve this case  
6 on terms highly beneficial to the Settlement Class. To date, Class Counsel have collectively spent  
7 1,263.5 hours for a total lodestar of \$862,539.50. The details of the hours worked (including the  
8 names of the persons performing the services, the hours and work performed by each, and the non-  
9 contingent billing rate for each attorney) are set forth in the Declarations of Joseph J. M. Lange,  
10 Robert I. Lax, and David E. Azar, attached as Exhibits 1-3 to the Joint Declaration of Joseph J. M.  
11 Lange, Robert I. Lax, and David E. Azar in Support of Motion for Final Approval and Unopposed  
12 Motion for an Award of Attorneys' Fees, Costs, and Plaintiff's Incentive Award ["Joint Decl."]. The  
13 Court's discretion in awarding attorney fees is "to be exercised so as to fully compensate counsel for  
14 the prevailing party for services reasonably provided to his or her client." See *Horsford v. Bd. of*  
15 *Trustees of Cal. State Univ.*, 132 Cal. App. 4th 359, 395 (2005); see also *In re Bluetooth*, 654 F.3d at  
16 994 ("Under the lodestar method, the district court must calculate the lodestar figure based on the  
17 number of hours reasonably expended on the litigation, adjusting the figure to account for the degree  
18 of success class counsel attained, among other factors").

19 Class Counsel does not request a multiplier. In fact, the cumulative lodestar of \$862,539.50  
20 represents a discount of 15% (0.85) times the cumulative lodestar.<sup>3</sup> Considering the excellent results  
21 achieved, the significant complexity of the issues, the potential magnitude of the litigation  
22  
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24 <sup>2</sup> The factors to consider in applying a multiplier include: (i) the quality of the representation; (ii) the contingent nature of  
25 the matter, both from the point of view of eventual success on the merits and from the point of view of securing a fee  
26 award; (iii) the extent to which the litigation precluded other employment by the attorneys; (iv) the amount involved and  
27 the results obtained on behalf of the class; and (v) the continuing obligation of plaintiffs' counsel to devote time and  
28 effort to the litigation. *Serrano II*, 20 Cal. 3d at 49. Application of these factors reinforces the conclusion that Class  
Counsel's request for attorneys' fees and costs is reasonable and appropriate.

<sup>3</sup> The multiplier of 0.85 is calculated using the requested \$750,000.00, less the unreimbursed litigation expenses of  
\$18,470.43, for a total fee of \$731,529.57, divided by the lodestar amount of \$862,539.50.

1 undertaken against well-funded multi-national corporations, the risks of this litigation and the  
2 contingent nature of the fee,<sup>4</sup> the amount sought by Class Counsel here is more than reasonable.

3 **C. Class Counsel's Hourly Rates are Reasonable**

4 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable  
5 market value of their legal services, based on their experience and expertise. *See Serrano V*, 32 Cal.  
6 3d at 640-43 n.31. Payment at full market rates is essential to entice well-qualified counsel to  
7 undertake difficult cases such as this one. *See San Bernardino Valley Audubon Soc'y, Inc., v. San*  
8 *Bernardino*, 155 Cal. App. 3d 738, 755 (1984). Class Counsel is entitled to recover fees for all hours  
9 reasonably spent working on the case. *Vo v. Las Virgines Mun. Water Dist.*, 79 Cal. App. 4th, 440,  
10 446 (2000) ("Under the lodestar method, a party who qualifies for a fee should recover for all hours  
11 reasonably spent unless special circumstances would render the award unjust"); *Weeks v. Baker &*  
12 *McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998) ("an attorney who takes on [a complex] case can  
13 anticipate receiving full compensation for every hour spent litigating a claim against even the most  
14 polemic opponent").

15 Additionally, calculation of a lodestar based on current hourly rates is appropriate as a means  
16 of compensating for delay in payment. *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991). An  
17 attorney's actual billing rate for similar work is presumptively appropriate. *See People Who Care v.*  
18 *Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996); *accord In re Animation Workers*  
19 *Antitrust Litig.*, No. 14-cv04062, 2016 U.S. Dist. LEXIS 156720, at \*20 (N.D. Cal. Nov. 11, 2016).  
20 See also *Wershba*, 91 Cal. App. 4th at 254-55.

21 The court may consider other factors when determining reasonable hourly rates, e.g., the  
22 attorney's skill and experience, the nature of the work performed, the relevant area of expertise, and

23 \_\_\_\_\_  
24 <sup>4</sup> Even putting the particular novelty of this litigation to one side, the commencement and prosecution of class action  
25 litigation is an inherently high-risk proposition due to: (1) the contingent nature of class counsel's representation, and (2)  
26 the great barriers to achieving success posed by procedural issues unique to class action litigation. As a result, courts  
27 have recognized that the contingent nature of an attorney's fee is an important factor to be considered in determining the  
28 appropriateness of the fee requested. *See Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). Class Counsel  
risked a great deal of time and money, forgoing alternative work, to represent Plaintiff in this litigation, with no  
guarantee of success. All of the hours expended on this case not only reflect the amount of work put into this case, but  
they also show how much time Class Counsel could have devoted to other work.

1 the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629,  
2 632 (1998). Hourly rates are considered reasonable if they are within the range of rates charged by  
3 and awarded to attorneys of comparable experience, reputation, and ability for similar work.  
4 *Children's Hosp. & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 782-83 (2002); *Trs. of Constr. Indus.*  
5 *& Laborers Health & Welfare Tr.t v. Redlands Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006).  
6 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community,  
7 and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are  
8 satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge*  
9 *Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

10 Class Counsel's skill and experience justify the requested rates. These rates are in line with  
11 comparable hourly rates charged by other firms that handle complex litigation in California. Class  
12 Counsel commands a high hourly rate due to their success in litigating consumer class actions --  
13 particularly those involving consumer electronics products -- and take pride in being held in very  
14 high regard by the legal community. Here, Class Counsel's lodestar is calculated using rates that  
15 have been accepted in numerous other class action cases. *See, e.g., Chambers v. Whirlpool Corp.*,  
16 No. 11-cv-01733, 2016 U.S. Dist. LEXIS 140839, at \*52 (C.D. Cal. Oct. 11, 2016) (finding Los  
17 Angeles to be the legal market for the Central District and citing with approval the "National Law  
18 Journal survey of regional billing rates published in 2014, showing standard partner rates among top  
19 Los Angeles firms ranges from \$490 to \$975"); *Makaeff v. Trump Univ., L.L.C.*, No. 10CV0940  
20 GPC(WVG), 2015 WL 1579000, at \*4-5 (S.D. Cal. Apr. 9, 2015) (approving rates "ranging from  
21 \$250 to \$440 for associates, and \$600 to \$825 for partners" as "consistent with . . . those previously  
22 approved by this Court and this District in class action settlements, and with this Court's familiarity  
23 of the rates charged in the San Diego community).

24 In determining what constitutes a reasonable rate, courts have often reviewed the National  
25 Law Journal's survey of billing rates. (*See, e.g., Orde Ridgeway v. Wal-Mart Stores Inc.*, 269  
26 F.Supp.3d 975, 985 (N.D. Cal. 2017) (discussing cases approving hourly rates of \$800 for attorneys  
27 admitted in 1996, \$875 for attorneys admitted for 22 years, \$895 for attorneys admitted in 1985, and  
28 rates for partners in the range of \$490 to \$950).

1 Class Counsel have submitted sworn declarations attesting to their hourly rates and total  
2 hours devoted to the case, their extensive experience litigating complex class action litigation, and  
3 describing their efforts to prosecute this case. (Joint Decl., Exs. 1-3.)

4 **D. The Hours Expended Are Reasonable**

5 Counsel for prevailing parties are entitled to be compensated “for all time reasonably  
6 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally  
7 is compensated by a fee-paying client for all time reasonably expended on a matter.” *Hensley v.*  
8 *Eckerhart*, 461 U.S. 424, 431 (1983) (internal citation omitted). The amount of time spent on this  
9 case (1263.50 hours), culminating in a favorable Settlement, is entirely reasonable given (i) the  
10 complexity, novelty, and difficulty of detection of the issues involved, (ii) the highly resourceful  
11 Defendants’ defense by eminent counsel, and (iii) the substantial benefits made available to the large  
12 Settlement Class which will guarantee all of them the properly working Brushes – which cost over  
13 \$100.00 to otherwise replace – that they bargained for.

14 Class Counsel litigated this action with great efficiency in light of the amount of work  
15 required to prosecute a novel case such as this. All Class Counsel’s time is supported by the fee and  
16 expense descriptions contained in the respective declarations of Counsel and is based upon records  
17 that are maintained contemporaneously in the normal course of counsel’s practice. It is well  
18 established that “California courts do not require detailed time records, and trial courts have  
19 discretion to award fees based on declarations of counsel describing the work they have done and the  
20 court’s own view of the number of hours reasonably spent. [Citations.]” *See, e.g., Syers Properties*  
21 *III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 698 (2014) (citing Pearl, Cal. Attorney Fee Awards, §  
22 9.83, p. 9-70, and authorities cited therein; *see, e.g., Raining Data Corp. v. Barrenechea*, 175 Cal.  
23 App. 4th 1363, 1375–76 (2009) (declarations sufficient and detailed billing records not required);  
24 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 64 (2008) (same); *Weber v. Langholz*, 39 Cal. App. 4th  
25 1578, 1587 (1995) (same); *Trs. of Cent. States, Southeast & Southwest Areas Pension Fund v.*  
26 *Golden Nugget, Inc.*, 697 F. Supp. 1538, 1558-59 (C.D. Cal. 1988) (noting more lenient California  
27 rule on time records in setting fees under Civ. Code § 1717).  
28

1 Here, Class Counsel have performed a total of 1,263.50 hours of work in connection with this  
2 litigation. Based on the hourly rates charged by Class Counsel, the value of the time expended by  
3 Class Counsel is \$862,539.50. As evidenced by the declarations of Class Counsel submitted  
4 concurrently herewith, the time expended litigating this matter was reasonable in amount and  
5 necessary to ensure the successful prosecution and resolution of this action. It should also be noted  
6 that Class Counsel's work is not over, as Class Counsel have undertaken to advocate for Class  
7 Members during the claims process, to attempt to resolve or submit any disputes arising within it for  
8 Court determination - a process which will be ongoing for several years. (Joint Decl., ¶ 12.)

9 The 1,263.50 hours expended by Class Counsel represent extensive efforts incurred in the  
10 litigation since 2014, without any guarantee of success or remuneration for their efforts to date. Class  
11 Counsel thoroughly investigated and researched the claims in controversy, the defenses, and the  
12 developing body of law. (Joint Decl., ¶ 11.) Class Counsel expended not only their time, but also  
13 made significant financial investments in expert analysis and testing, without even a guarantee that  
14 the resulting analysis would support the filing of a case, much less guarantee that they would prevail  
15 and be reimbursed for their investment on behalf of the Class. Class Counsel's investigation entailed  
16 not only this expert analysis and testing by an engineering laboratory by PhD level consultants, but  
17 also work with investigators, conducting numerous interviews, exchange of information, numerous  
18 telephonic conferences, and in persons meetings and mediation session between Class Counsel and  
19 Defendants' Counsel, and Class Counsel's independent research including communications with  
20 Class Members. (*Id.* ¶¶ 8 and 11.) Class Counsel also seeks compensation for their time spent  
21 working with Defendants' Counsel and the Settlement Administrators once the Court provided  
22 preliminary approval of the Settlement.

23 Overall, Class Counsel performed an exhaustive investigation into the claims at issue, which  
24 included: (i) determining Plaintiff's suitability as a putative class representative through an interview  
25 and analyses of her records; (ii) evaluating Plaintiff's potential claims; (iii) retaining an investigator  
26 to locate and interview persons with first-hand knowledge of the Battery Failures; (iv) retention of  
27 the Engineering testing laboratory and the expert consultants in mechanical and electrical  
28 engineering and material science; (v) interviewing Settlement Class Members to acquire information

1 about the subject defects and their experiences with attempting to seek repair and/or parts to repair  
2 their Brushes, including communications with Defendants and/or their authorized dealers; (vi)  
3 analyzing Defendants' advertising of the Brushes and the applicable product warranties; (vii)  
4 researching and analyzing other state and federal laws and remedies which might be implicated by  
5 the facts alleged and preparing pleadings for cases in other jurisdictions; (viii) researching  
6 settlements in similar cases; (ix) participating in numerous telephonic conference calls, in person  
7 meetings with Defendants' Counsel, and the in person mediation; (x) drafting discovery at the early  
8 stages of the case while at the same time conferring about the possibility of settlement; and (xi)  
9 finalizing the Settlement Agreement and designing the Electronic Notice program and other forms of  
10 Notice. (Joint Decl., ¶ 11.)

11 Further, Class Counsel spent a significant amount of time involved in the settlement process -  
12 - both negotiating the Settlement in principle and then finalizing the actual terms of the Settlement  
13 Agreement. During this entire process, Class Counsel have fought hard to protect the interests of  
14 Plaintiff and the Settlement Class Members. The extensive negotiations with Defendants' counsel,  
15 communications with Settlement Class Members and third parties, and research of the law have  
16 allowed Class Counsel to appreciate the strengths and weaknesses of the claims against the  
17 Defendants and the benefits of the proposed Settlement. (*Id.*)

18 Class Counsel's job is not finished with approval. Class Counsel will continue to work with  
19 Settlement Class Members, the Settlement Administrators, and Defendants' Counsel, with regard to  
20 the continuing claims process, which will extend more than another year, and will remain available  
21 to advocate for Settlement Class Members with claims issues in the claims dispute process created in  
22 the Settlement Agreement. (*Id.* at ¶ 12.) As such, Class Counsel's lodestar does not represent an end  
23 to the work that they have undertaken, rendering this fee application even more reasonable.

24 Because Defendants agreed to pay attorney fees apart from the relief available to the  
25 Settlement Class, and only after arm's-length negotiations, reasonableness of the time expended may  
26 be presumed and the Court may approve the fee request based upon the summary exhibits and  
27 declarations submitted by Class Counsel.



1 **IV. AWARDING ATTORNEYS' FEES AND COSTS IN CLASS ACTIONS IS AN**  
2 **IMPORTANT MEANS OF PROTECTING CONSUMER RIGHTS**

3 Both the United States Supreme Court and the California Supreme Court have long  
4 recognized the need for class actions in consumer cases where recoveries are too small to warrant  
5 individual prosecution. Over a quarter of a century ago, the California Supreme Court explained:

6 Modern society seems increasingly to expose men to . . . group injuries  
7 for which individually they are in a poor position to seek legal redress,  
8 either because they do not know enough or because such redress is  
9 disproportionately expensive. If each is left to assert his rights alone if  
10 and when he can, there will at best be a random and fragmentary  
11 enforcement, if there is any at all. This result is not only unfortunate in  
12 the particular case, but it will operate seriously to impair the deterrent  
13 effect of the sanctions which underlie much contemporary law.

14 *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 807 (1971) (citations omitted.); *see also Linder v. Thrifty Oil*  
15 *Co.*, 23 Cal. 4th 429, 434-35 (2000) (“Courts long have acknowledged the importance of class  
16 actions as a means to prevent a failure of justice in our judicial system”). The concerns articulated by  
17 the *Vasquez* Court apply precisely to this action. Individual consumers could or would not have  
18 undertaken the investigation and litigation necessary to prosecute individual claims against  
19 Defendants. Here, a class action was necessary to vindicate the rights of the consumers.

20 **V. CLASS COUNSEL’S REQUESTED EXPENSES ARE REASONABLE**

21 Class Counsel incurred reasonable litigation costs and expenses in bringing this matter to a  
22 resolution before trial. To date these out-of-pocket costs and expenses are \$18,470.43. (Joint Decl.,  
23 Exs. 1-3.) This amount includes only costs incurred in connection with the litigation of the sort  
24 charged to fee-paying clients. *In Re Toys “R” Us – Del., Inc. Fair & Accurate Credit Transaction*  
25 *Act (FACTA) Litig.*, 295 F.R.D. 438, 469 (C.D. Cal. 2014) (approving reimbursement for process  
26 server fees, filing fees, postage and delivery fees, fees for research on Westlaw and Pacer, telephone  
27 and fax charge, travel expenses, and photocopying). Here, Class Counsel respectfully requests  
28 \$18,670.43 be awarded as reimbursement of their reasonable costs. “Attorneys may recover their

1 reasonable expenses that would typically be billed to paying clients in non-contingency matters.” *In*  
2 *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008).

3 Class Counsel have submitted declarations attesting to the expenses incurred in this litigation  
4 - in the aggregate, \$18,470.43 was invested over the nearly four years spent investigating and  
5 prosecuting this litigation. (Joint Decl., Exs. 1-3.) As detailed in the Joint Declaration, Class Counsel  
6 incurred costs relating to the expert scientific analysis, travel, filing fees, computer research,  
7 photocopies, postage, filing fees, and telephone charges only to the limited extent those charges  
8 would have been passed on to fee paying clients, and not charged otherwise. (*Id.*) Therefore all of  
9 these expenses were reasonably and necessarily incurred and are of the sort that would typically be  
10 billed to paying clients in the marketplace.

#### 11 **VI. THE INCENTIVE AWARD IS REASONABLE**

12 A named plaintiff is eligible for a payment that reasonably compensates her for undertaking  
13 and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases*,  
14 186 Cal. App. 4th 1380, 1393-94 (2010) (“*Cellphone Fee II*”); *Bell v. Farmers Ins. Exch.*, 115 Cal.  
15 App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in  
16 bringing the case). Incentive awards are “intended to compensate class representatives for work done  
17 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,  
18 and, sometimes, to recognize their willingness to act as a private attorney general.” Importantly,  
19 enhancement awards “are fairly typical in class action cases.” *Id.*

20 Plaintiff undertook and fulfilled her duties to the Settlement Class when she: (i) gathered  
21 evidence necessary for preparing the Complaint and investigating and prosecuting the claims on  
22 behalf of the Settlement Class; (ii) remained “on call” throughout the litigation to answer questions  
23 regarding the case and evaluate and approve any potential settlement; (iii) preserved all relevant  
24 evidence; (iv) subjected herself to reputational risk by initiating a lawsuit; and (v) regularly  
25 consulted with her Class Counsel throughout the litigation to remain apprised of developments in the  
26 case. (Joint Decl., ¶ 15.)

27 Class Counsel believe that no action would likely have been taken by Settlement Class  
28 Members individually, and no compensation would have been recovered for them, but for Plaintiff’s

1 service on the Settlement Class' behalf. By pursuing this action, Plaintiff formally agreed to accept  
2 the duties and responsibilities of representing the interests of all Settlement Class Members and  
3 assumed risks and exposure to potential costs that were not accepted or assumed by any other  
4 Settlement Class Members in this case. Plaintiff should be compensated for the risk she has incurred  
5 in conferring a benefit on other members of the Settlement Class. *Cellphone Fee II*, 186 Cal. App.  
6 4th at 1394. It follows that the proposed incentive award of \$1,000.00 for Ms. Novak's service as a  
7 class representative, and for her general release of claims, is reasonable and should be approved in its  
8 entirety.

9 **VII. CONCLUSION**

10 Class Counsel's request for an award of attorney fees in the total amount of \$750,000.00  
11 comprised of \$731,529.57 in attorney fees and unreimbursed costs of \$18,470.43 are reasonable and  
12 justified considering the superb settlement secured for the Settlement Class Members, the novelty  
13 and difficulty of detecting and pursuing the claims, the contingent nature of the fee, the arm's-length  
14 negotiation of the amount of fees only after the material relief to the class had been decided, and the  
15 involvement of a neutral mediator in bringing the parties together to avoid a contested fee motion.  
16 Further, Class Counsel respectfully request approval of an award to Plaintiff in the Amount of  
17 \$1,000 as fair, reasonable and justified. Thus, Class Counsel respectfully request that this Court  
18 award Class Counsel's requested Attorney fees and Costs and approve the award to Plaintiff.

19 **Dated: April 15, 2019**

**JOSEPH J. M. LANGE LAW CORPORATION**

20  
21 By: 

~~JOSEPH J.M. LANGE~~  
Attorneys for Plaintiff  
Ashley Novak

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**PROOF OF SERVICE**

I, Joseph J. M. Lange, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 222 North Sepulveda Boulevard, Suite 2000, El Segundo, California 90245.

On **April 15, 2019**, I served the foregoing document described as **MOTION AND UNOPPOSED MOTION FOR AN AWARD OF ATTORNEY FEES, COSTS, AND PLAINTIFF'S INCENTIVE AWARD** on the interested parties in this action as follows:

ATTORNEY	EMAIL	PARTY
M. D. Scully Justin Lewis Gordon & Rees, L.L.P. 101 West Broadway, Suite 2000 San Diego, CA 92101	mscully@grsm.com jlewis@grsm.com	Defendants Pacific Bioscience Laboratories, Inc., and Pacific Bioscience Laboratories Products, Inc.

- BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope addressed as above, with postage thereon fully prepaid in the United States mail, at El Segundo, California. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at El Segundo, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this affidavit. C.C.P. §1013a(3).
- BY ELECTRONIC MAIL:** I transmitted a copy of the foregoing document(s) this date via electronic email to the email addresses shown herein.
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **April 15, 2019**, at Manhattan Beach, California.



\_\_\_\_\_  
Joseph J. M. Lange