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

In re SONY PS3 “OTHER OS” LITIGATION

Case No. 4:10-CV-01811-YGR

**[PROPOSED] ORDER AWARDING
ATTORNEYS’ FEES, COSTS, AND
INCENTIVE AWARDS**

Date: January 24, 2017
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1 – 4th floor

1 1. This matter came before the Court on Plaintiffs’ Motion for Award of Attorneys’
2 Fees, Costs, and Incentive Awards. By separate order, the Court has determined that the proposed
3 class action settlement reached by the Parties in the Stipulation of Class Action Settlement and
4 Release is fair, reasonable and adequate and is finally approved.

5 2. The Court exercises diversity jurisdiction over this action pursuant to 28 U.S.C. §
6 1332(d). *See Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 571 (2005) (“CAFA
7 confers federal diversity jurisdiction over class actions . . . [.]”). In diversity actions, “state law
8 governs both the right to recover attorney’s fees and the computation of their amount.” *Collado v.*
9 *Toyota Motor Sales, U.S.A., Inc.*, 550 Fed. Appx. 368, 369 (9th Cir. 2013); *Gezalyan v. BMW of*
10 *North America, LLC*, 697 F. Supp. 2d 1168, 1169 (C.D. Cal. 2010) (citing *Mangold v. California*
11 *Public Utilities Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995)). As Plaintiffs’ claims in this
12 lawsuit are for alleged violations of California’s consumer protection statutes, including the
13 Consumers Legal Remedies Act, the False Advertising Law and the Unfair Competition Law,
14 California state law has governed Plaintiffs’ claims in this action and thus applies to Plaintiffs’
15 motion for an award of attorney fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.
16 2002) (“Because Washington law governed the claim, it also governs the award of fees.”).

17 3. The Court finds that Plaintiffs are “prevailing plaintiff[s]” entitled to a fee award
18 under the CLRA because they obtained a net monetary recovery for the Proposed Class and
19 succeeded in achieving a major goal of the litigation. *Kim v. Euromotors West/The Auto Gallery*, 149
20 Cal. App. 4th 170, 179 (2007); *see also Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th
21 140, 150-51 (2006). The Court also finds that Plaintiffs have benefited the public by vindicating
22 consumer protection statutes and are a “successful party” under California Code of Civil Procedure §
23 1021.5, and otherwise meet its requirements, for the same reasons they qualify as “prevailing
24 plaintiff[s]” under the CLRA—they have achieved one of the primary benefits sought in bringing the
25 lawsuit. *See Lyons v. Chinese Hosp. Ass’n*, 136 Cal. App. 4th 1331, 1346 (2006) (“A ‘successful’
26 party means a ‘prevailing’ party.”). Therefore, Interim Co-Lead Counsel are entitled to a fee award.

1 4. The Court applies California’s lodestar method to calculate the appropriate attorneys’
2 fees to be awarded to Class Counsel. *See Meister v. Regents of Univ. of California*, 67 Cal. App. 4th
3 437, 448-49 (1998) (“the California Supreme Court intended its lodestar method to apply to a
4 statutory attorney’s fee award unless the statutory authorization for the award provided for another
5 method of calculation”); *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 26 (2000) (“the
6 primary method for establishing the amount of ‘reasonable’ attorney fees [in fee-shifting cases] is
7 the lodestar method”).

8 5. I have reviewed the sworn testimony of Rosemary M. Rivas, James Pizzirusso, and
9 Kathleen Fisher as to the work conducted by Class Counsel, the hourly rates, and the lodestar and
10 find they are reasonable. Class Counsel’s lodestar of \$2,549,922.00, and the aggregate lodestar of
11 all Plaintiffs’ firms (\$4,673,012) is a greater amount than the requested award of fees of
12 \$2,186,105.41 and therefore the Court finds that the requested fee award is reasonable. The Court
13 also finds that the request for reimbursement of expenses in the amount of \$63,894.59 is reasonable
14 as mandatory and discretionary costs pursuant to Cal. Civ. Proc. Code § 1033.5 and should be
15 awarded. Accordingly, as stipulated in Paragraph 109 of the Stipulation of Class Action Settlement
16 and Release, Defendant shall pay Class Counsel a total of \$2.25 million for attorneys’ fees and costs.

17 6. Furthermore, the Court finds that Plaintiffs’ request for incentive awards of \$3,500 to
18 Plaintiffs Derrick Alba, Jason Baker, James Girardi, Jonathan Huber, and Anthony Ventura is
19 appropriate. The Court has the discretion to award class representatives service payments for work
20 they did on behalf of the class and the amount Plaintiffs request is within range of what has been
21 approved. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (“Incentive
22 awards are fairly typical in class action cases.”); *Morris v. Affinity Health Plan, Inc.*, 928 F. Supp. 2d
23 805, 812 (S.D.N.Y. 2013) (service award of \$20,000 found reasonable); *Spicer v. Chi. Bd. Options*
24 *Exchange, Inc.*, 844 F. Supp. 1226, 1266-68 (N.D. Ill.1993) (awarding \$10,000 to each named
25 plaintiff and citing cases approving service awards ranging as high as \$100,000). Accordingly,
26 having reviewed the Declaration of Rosemary M. Rivas as to the Plaintiffs’ efforts and other
27

1 submissions, the Court finds that Plaintiffs Derrick Alba, Jason Baker, James Girardi, Jonathan
2 Huber, and Anthony Ventura should each be awarded \$3,500 for their efforts.

3 **IT IS SO ORDERED.**

4 Dated: _____

5 _____
6 The Hon. Yvonne Gonzalez Rogers
7 United States District Court Judge
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