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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 **ANNE WOLF, INDIVIDUALLY**
13 **AND ON BEHALF OF ALL**
14 **OTHERS SIMILARLY**
15 **SITUATED,**

16 Plaintiff,

17 v.

18 **HEWLETT PACKARD**
19 **COMPANY,**

20 Defendant.

21 **Case No.: 5:15-cv-01221-TJH-GJS**

22 **PLAINTIFS' MOTION FOR FINAL**
23 **APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**

25 **Hon. Terry J. Hatter**

26 **Date: November 5, 2018**

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

28 **Place: Courtroom 9B**

350 West 1st Street,

Los Angeles, CA 90012

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Anne Wolf, Robin Sergi, Anthony Fehrenbach and Carlos
4 Romero (hereinafter collectively referred to as “Plaintiffs” or “Class
5 Representatives”), individually and on behalf of the “Settlement Class” (as
6 defined below) hereby submit their Motion for Final approval of the proposed
7 settlement (the “Settlement”) of this action (the “Action”).¹ Defendant, HP Inc.,
8 formerly known as Hewlett-Packard Company (“HP” or “Defendant”) does not
9 oppose Plaintiffs’ motion (Plaintiffs and Defendant shall collectively be referred
10 to as the “Parties”).² This Settlement provides for significant monetary relief for
11 Class Members allegedly harmed by Defendant’s alleged violations of the Unfair
12 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (UCL), False
13 Advertising Law Cal. Bus. & Prof. Code §§ 17500 *et seq.* (FAL). California
14 Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”), and
15 Texas Deceptive Trade Practices Act, Texas Business and Commerce Code, §
16 17.50 *et seq.* (“DTPA”), which merits final approval by the Court. The terms of
17 the Settlement are set forth in the Amended Settlement Agreement and Release
18 (hereinafter the “Agreement”). *See* Dkt. No. 112-2 Declaration of Todd M.
19 Friedman (“Friedman Decl.”), ¶ 21, Ex. 1.

20 The proposed Settlement resulted from the Parties’ participation in an all-
21 day mediation session before the Honorable Louis M. Meisinger (Ret.) of ADR
22 Services, Inc. and subsequent settlement discussions.³ The Settlement provides
23

24 ¹ Plaintiff and Defendants are collectively referred to as the “Parties.”

25 ² Unless otherwise specified, capitalized terms used in this memorandum are
26 intended to have the same meaning ascribed to those terms in the Agreement.

27 ³ This was the third mediation session that the Parties engaged in in this litigation
28 over the past two and a half years. There can be no doubt that the Parties were
well-informed and thoroughly familiar with the strengths and weaknesses of their
respective positions.

1 for a substantial financial benefit to the Class Members. The Settlement Class
2 consists of all persons or entities residing in the States of California and Texas
3 who purchased an HP LaserJet Pro P1102w printer, as well as all persons or
4 entities residing in California who purchased an HP LaserJet Pro 200 Color MFP
5 M276nw printer, between April 1, 2014, and the effective date of this settlement.
6 Agreement at § 2.07. Plaintiffs were able to get records from retailers of 57,718
7 consumers who were highly likely to be class members, and which number
8 slightly exceeds the estimated 50,000 Class Printers⁴ that the Parties believed
9 were sold to Class Members in this matter based on HP’s records. Direct notice
10 was given to each and every one of these consumers, either by postcard, or, in the
11 case of Amazon.com, by way of direct email.⁵ For purposes of this Settlement,
12 the purchasers of Class Printers constitute the members of the Settlement Class.

13 The compromise Settlement reached with the guidance of Judge Meisinger
14 created Substantial benefits to the Class Members, with no cap on the amount of
15 payment to be made to Class Members who make claims. Pursuant to the terms
16 of the Settlement, Settlement Administrator Kurtzman Carson Consultants LLC
17 (“KCC”) oversaw notice to the Class, and the administration of claims made by
18 Class Members. Ultimately, The Class Members submitted claims comprising a
19 total of 8,203 printers, which represents a 16.4% take rate based on the
20 anticipated number of printers purchased by the Class being approximately
21

22 ⁴ “Class Printer” means an HP LaserJet Pro P1102w printer purchased in
23 California or Texas, or an HP LaserJet Pro 200 Color MFP M276nw printer
24 purchased in California, between April 1, 2014, and the effective date of this
25 settlement.

26 ⁵ Amazon objected to producing class member data directly to Plaintiffs’ counsel
27 or the administrator, and after a discovery dispute before Judge Standish, Amazon
28 was ordered to provide Notice directly to Class Members who purchased Class
Printers on Amazon.com, with the oversight and supervision of Plaintiffs’
counsel. Dkt. No. 127. Amazon submitted a declaration of their efforts, which is
filed contemporaneously herewith. *See* Declaration of Tammy Malley-Naslund.

1 50,000. Settlement members who submitted a timely and valid Claim Form and
2 do not opt-out (Qualified Class Members) will receive a \$20 distribution for each
3 Class Printer that they purchased. There was no cap on the total number of
4 claims accepted.⁶

5 HP also agreed to separately pay Settlement Costs, Administration Costs,
6 and reasonable Attorneys' Fees, in addition to the amounts to be paid to
7 Qualified Class Members. Consequently, the amount of money that each
8 Qualified Class Member receives will not be affected at all by the payment of
9 Attorney's Fees or any Costs. Plaintiffs move by separate Motion for counsels'
10 Reasonable Fees and Costs. It is important to note that these amounts were not
11 negotiated, that there is no clear sailing, and that the integrity of the Settlement
12 sum to Class Members cannot therefore be called into question.

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⁶ This resulted in a very small number of erroneous claims, made by individuals who were claiming to have purchased way more printers than made logical sense. The parties were able to agree on a method of identifying claims that were erroneous, which were few and far between. Claims made where more than 10 printers were claimed were subject to a secondary requirement where the claims administrator requested proof of purchase from these individuals. If no information was provided, they were assumed to have purchased one printer. If they were able to provide proof of purchase, which many did, then the number which were proven with records or other information was used by the Administrator. Ultimately, the parties are in agreement that the claims process was generally not subject to error or fraud, and that any such instances were obvious. For instance, several class members submitted the number "1102" as the number of printers purchased, which is clearly the model of the printer they owned, not the number of units purchased. These were treated as one purchase unless records were produced. One person submitted a claim for 337,686 printers, which is obviously not accurate. After a letter was sent to this class member by the claims administrator asking for proof of purchase, he provided proof that he purchased one printer. The cross check agreed to by the parties generally was successful and lends credence to the validity of the claims made.

1 This Settlement creates an incentive for Defendant and other businesses to
2 comply with state and federal false advertising laws, which benefits the Class
3 Members, consumers in general, as well as compliant competitive businesses.
4 *See* David R. Hodas, Enforcement of Environmental Law in A Triangular Federal
5 System: Can Three Not Be A Crowd When Enforcement Authority Is Shared by
6 the United States, the States, and Their Citizens? 54 Md. L. Rev. 1552, 1657
7 (1995) (“[A]llowing a violator to benefit from noncompliance punishes those who
8 have complied by placing them at a competitive disadvantage. This creates a
9 disincentive for compliance.”).

10 Plaintiff Anne Wolf is requesting an incentive payment of \$5,000.00
11 (subject to Court approval) for bringing and litigating this action, and Plaintiffs
12 Sergi, Fehrenbach, and Romero are requesting incentive payments of \$2,000 each
13 for their roles in this litigation, and the related *Sergi Matter*, *Fehrenbach Matter*,
14 and *Romero Matter*. In consideration for the Settlement Fund, Plaintiffs, on
15 behalf of the proposed Settlement Class (the “Class”), seek an entry of judgment,
16 that shall result in the unconditional release and discharge Defendant from all
17 claims relating to the Litigation.

18 While Plaintiff is confident of a favorable determination on the merits, she
19 has determined that the proposed Settlement provides significant benefits to the
20 Settlement Class and is in the best interests of the Settlement Class. Plaintiff also
21 believes that the Settlement is appropriate because Plaintiff recognizes the
22 expense and amount of time required to continue to pursue the Litigation, as well
23 as the uncertainty, risk, and difficulties of proof inherent in prosecuting such
24 claims. Similarly, as evidenced by the Agreement, HP believes that it has
25 substantial and meritorious defenses to Plaintiff’s claims, but has determined that
26 it is desirable to settle the Litigation on the terms set forth in the Agreement.

27 Plaintiff believes that the proposed Settlement satisfies all of the criteria for
28 preliminary approval. Accordingly, Plaintiff moves this Court for an order

1 preliminarily approving the proposed Settlement, provisionally certifying the
2 Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) (“Rule
3 23(b)(3)”) for settlement purposes, directing dissemination of Class Notice, and
4 scheduling a Final Approval Hearing.

5 The settlement that has been negotiated by Class Counsel is an outstanding
6 result for the Class, given that Class Members who made claims will be getting
7 \$20 per printer purchased, which represents an approximate 15.4% refund on the
8 purchase price. This is a fair number, in the context of the one feature that was
9 mislabeled on the package, and which did not render the product unfit for use,
10 merely slightly more difficult to install. This represents a significant recovery for
11 Class Members, which could even exceed what they would have received at trial.
12 The strength of this settlement is further evidenced by the fact that KCC received
13 only three opt outs and **zero objections to the settlement, while reaching 98%**
14 **of Class Members whose identities were known, with Direct Mail and Email**
15 **Notice, in addition to Publication Notice.** This is an outstanding settlement that
16 should be given final approval.

17 **II. STATEMENT OF FACTS**

18 **A. Factual Background**

19 HP is a leading manufacturer of LaserJet printers, whose printers are sold
20 in various retail settings, both brick and mortar and online, throughout the states
21 of California and Texas. On June 22, 2015, Plaintiff Wolf filed a Complaint in
22 the District Court for the Central District of California (the “Court”) entitled *Anne*
23 *Wolf, et al. v. Hewlett Packard Company*, Case No. 5:15-cv-01221-BRO-GJS (the
24 “*Wolf Action*”). The Original Complaint in the *Wolf Action* alleged that
25 Defendant violated the Unfair Competition Law, Cal. Bus. & Prof. Code §§
26 17200 *et seq.* (UCL), and the False Advertising Law Cal. Bus. & Prof. Code §§
27 17500 *et seq.* (FAL). Dkt. No. 1. Thereafter, Plaintiff Wolf filed a First
28 Amended Complaint, which added a claim under the California Consumers Legal

1 Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”), after the lapse of the
2 notice period, pursuant to Cal. Civ. Code § 1782(a). Wolf’s allegation was that
3 HP violated the CLRA by advertising its LaserJet Pro P1102w printer as coming
4 with a Smart Install function, when in reality, Smart Install had been disabled.
5 Friedman Decl. ¶ 5; Dkt. No. 15. Plaintiff alleges that on the packaging, HP
6 advertised a software installation mechanism: “Start printing right away with
7 effortless setup – no CD installation required – using HP Smart Install.” Plaintiff
8 further alleges that she experienced difficulty in installing her Printer. *Id.*

9 The evidence of the case showed that Plaintiff’s alleged difficulty installing
10 the Printer arose in part because the Windows 8 software system’s auto-run
11 capabilities could not recognize the Smart Install Feature, a feature of
12 convenience that HP developed, patented, and trademarked to simplify the
13 installation of its LaserJet printers. As a result of the technical difficulties with
14 the Smart Install Feature on Windows 8 computers, HP received complaints from
15 customers. In response, HP disabled the Smart Install Feature in all printers
16 manufactured and sold into the market. However, HP failed to coordinate the
17 timeline for deactivating Smart Install Feature with the scheduled updates to the
18 advertising on the Printers’ packaging. Friedman Decl. ¶ 7; Dkt No. 94.

19 Two months after disabling Smart Install, HP updated the pamphlet
20 included inside the Printers’ cartons explaining that the Smart Install Feature had
21 been disabled. Seven months after the disablement, HP created new artwork for
22 the packaging. Finally, approximately one year after the disablement of the
23 Smart Install Feature, HP updated the advertising on the outside of the printers’
24 cartons. The delay in updating the carton itself allegedly occurred because HP’s
25 head of technical marketing for LaserJet products determined that incurring a cost
26 to scrap and replace hundreds of thousands of stockpiled boxes bearing the Smart
27 Install Feature advertising was “hardly justified.” Friedman Decl. ¶ 8; Dkt. No.
28 94. Plaintiff contends she and the Class are entitled to restitution and actual

1 damages under the CLRA, UCL, FAL and DTPA. HP has vigorously denied and
2 continues to deny that it violated any laws, and denies all charges of wrongdoing.

3 The parties attended an early mediation in San Francisco before Hon. Judge
4 Ron Sabraw of JAMS on November 10, 2015. The mediation was unsuccessful,
5 but gave insight into the Parties' respective positions on certification, merits and
6 damages. In discovery, Defendant produced approximately 80,000 pages of
7 documents relating to merits issues, certification issues and damages issues. On
8 March 4, 2016, Defendant filed a Motion for Judgment on the Pleadings (Dkt.
9 No. 37) and on April 18, 2016, the Honorable Court granted Defendant's Motion
10 in part, dismissed Plaintiff's FAL and UCL claims, and ordered Plaintiff to file a
11 Second Amended Complaint, with only a CLRA claim. Friedman Decl. ¶ 9.
12 Plaintiff deposed Defendant's representative pursuant to F.R.C.P. 30(b)(6)., and
13 thereafter filed her Motion for Class Certification on June 20, 2016. Dkt. No. 59.

14 The Parties reengaged in settlement discussions with the assistance of
15 Judge Sabraw, throughout the month of June 2016. These discussions too were
16 unsuccessful, but further gave insight into the Parties' respective views of the
17 case. Defendant opposed class certification, and filed a Motion to Strike the
18 Declaration of Plaintiff's Expert Witness. The Honorable Court heard oral
19 argument, and thereafter granted class certification as to the following class:

20 All persons or entities residing in the States of California
21 and Texas who purchased an HP LaserJet Pro P1102w
22 printer, as well as all persons or entities residing in
23 California who purchased an HP LaserJet Pro 200 Color
24 MFP M276nw printer, between April 1, 2014, and the
effective date of this settlement

25 Friedman Decl. ¶ 10; Dkt. No. 94. Following certification, Plaintiff focused on
26 four things: 1) proving the merits of the case (primarily materiality of the
27 mislabeling to consumer purchases), 2) identifying and quantifying damages, 3)
28 providing notice to the Class, and 4) undertaking efforts to expand the scope of

1 the certified class by filing additional cases on behalf of other consumers who
2 had reached out to our office during the course of litigation regarding the same
3 alleged false advertising. Friedman Decl. ¶ 13.

4 Regarding point four, Plaintiff Fehrenbach filed a class action complaint
5 on September 12, 2016, alleging similar counts relating to the purchase of a HP
6 LaserJet Pro 200 Color MFP M276nw printer, entitled *Anthony Fehrenbach v.*
7 *H.P. Inc.*, Case No. 3:16-cv-02297-MMA-MDD, (the “*Fehrenbech* Action”).
8 Plaintiff Sergi filed a class action complaint on December 20, 2016, alleging
9 similar counts regarding the purchase of an HP LaserJet Pro P1102w printer
10 online, entitled, *Robin Sergi. v. HP, Inc.*, Case No. 8:16-cv-02225-CJC-DFM
11 (the “*Sergi* Action”). Plaintiff Romero filed a class action complaint on
12 September 21, 2016, entitled, *Carlos Romero v. HP Inc.* Case No. 5:16-cv-
13 05415-EJD (the “*Romero* Action”).⁷ These cases sought to expand the scope of
14 the claims beyond those which were certified in *Wolf*. Defendant filed Motions
15 to dismiss in these additional actions, attempting to narrow the scope of the
16 classes, resulting in extensive briefing on the pleadings. Friedman Decl. ¶ 14.

17
18 As to these points 1-3 above, Plaintiff engaged in further discovery, which
19 included additional requests to HP, as well as third party subpoenas to retailers
20 who carried HP products, and competitors who sold competitive printers.
21 Plaintiff also hired a damages expert, Dr. Anand Bodapati, who is a Marketing
22 PHD from UCLA, and retained his services in order to perform a conjoint survey
23 of consumers, to assist with damages calculations. Dr. Bodapati also assisted
24 greatly in counseling Plaintiff with respect to damages issues, including how
25 damages would ultimately be evaluated by experts, the Court and a jury. These
26

27
28 ⁷ Plaintiff Romero’s case involves claims under the Texas Deceptive Trade
Practices Act, Texas Business and Commerce Code, § 17.50 *et seq* (“DTPA”)

1 discussions framed Plaintiffs' views as to what would constitute a reasonable and
2 fair settlement value for the Class. Friedman Decl. ¶ 16.

3 Regarding third party discovery, Plaintiff served two rounds of subpoenas
4 to roughly a dozen retailers, and engaged in protracted meet and confer efforts in
5 order to gather as much data as possible about the identities of Class Members,
6 as well as sales data on Class Printers.⁸ Plaintiff also served subpoenas on
7 several competitors of HP, on the advice of her expert. *Id.* at ¶ 17. Wolf filed a
8 Motion for approval of class notice plan on November 6, 2016. Dkt. No. 100.
9 The Honorable Court approved the notice plan on December 1, 2016. Dkt. No.
10 104. Plaintiff thereafter hired KCC to provide Notice, and incurred the cost of
11 sending out notice to the class (\$53,960.53). Friedman Decl. ¶ 18.
12

13 Following these efforts, the parties reengaged in settlement discussions
14 and agreed to attend a third mediation session, this time with the Hon. Louis M.
15 Meisinger, Ret. of ADR Services, Inc. on April 4, 2017. The mediation was a
16 success, and the parties worked out the details of a memorandum of
17 understanding. With Judge Meisinger's guidance, a Settlement Agreement and
18 Release ("Settlement Agreement") was ultimately agreed upon in principle by
19 the Parties on or about April 4, 2017. *Id.* at ¶¶ 19-20.⁹
20

21
22 ⁸ Plaintiff obtained detailed sales records via numerous subpoenas and extensive
23 meet and confer efforts with retailers, including names, addresses, and sales
24 records of over 40,000 individuals who purchased Class Printers. Plaintiff has
25 also secured agreements from Amazon, eBay, and Office Depot/Office Max to
26 produce Class Contact Data as well, which we anticipate could be another 10,000
27 or possibly more individuals. This data will be used to send direct mail notice by
28 postcard to every person identified, i.e. as many Class Members as possible.

⁹ The Parties spent several months discussing the terms and negotiating the
precise language of the agreement (Friedman Decl. Ex. 1), as well as the
Proposed Final Judgment (Friedman Decl. Ex. 1-A), the Proposed Long Form
Class Notice (Friedman Decl. Ex. 1-B), a Proposed Press Release to be issued by

1 On March 23, 2018, The Honorable Court granted Preliminary Approval of
2 the class settlement, finding the terms fair adequate and reasonable, and finding
3 the Notice to satisfy the requirements of due process. Dkt. No. 120.

4 **B. Statement of Facts**

5 **1. The Settlement Class**

6 The “Settlement Class” is defined in the Agreement as follows:

7 All persons or entities residing in the States of California and Texas
8 who purchased an HP LaserJet Pro P1102w printer, as well as all
9 persons or entities residing in California who purchased an HP
10 LaserJet Pro 200 Color MFP M276nw printer, between April 1,
2014, and the effective date of this settlement

11 **2. Class Membership Determination**

12 The Settlement Class consists of all persons who purchased a Class Printer
13 in California or Texas during the Class Period. Based on data confirmed by third
14 party retailers as well as by HP, the number of unique Class Printers purchased
15 during that time period was approximately 50,000. This data was confirmed by
16 Plaintiff via discovery, including subpoenas issued to third party retailers, as well
17 as testimony and documentation regarding the number of such printers sold
18 nationwide during the same time period as compared with proportionate
19 population data of Texas and California. Thus, the Plaintiff was able to verify
20 from a source other than Defendant the number of Class Members.
21

22 **3. Settlement Payment**

23 Under the Proposed Settlement, Defendant has agreed that every Class
24

25
26 my Office (Friedman Decl. Ex. 1-C), the Proposed Postcard Notice (Friedman
27 Decl. Ex. 1-D), the Proposed Notice to be published in the L.A. Times (Friedman
28 Decl. Ex. 1-E), the Proposed Order Granting Preliminary Approval (Friedman
Decl. Ex. 1-F), and the Proposed Online Claim Form to be available on the
Settlement Website (Friedman Decl. Ex. 1-G).

1 Member who made a valid claim will receive \$20 per Class Printer they claimed.
2 Administration costs, attorney's fees, litigation costs, and incentive awards would
3 all be paid separately by Defendant, pursuant to the Order of the Court.
4 Ultimately, 8,203 printers were claimed by Class Members, meaning that the
5 Class will collectively receive \$164,060 in total benefits. Friedman Decl. ¶ 61-
6 72.

7
8 Defendant agrees to pay, subject to Court approval, an incentive award of
9 up to \$5,000 to Plaintiff Anne Wolf, and \$2,000 each to Plaintiffs Anthony
10 Fehrenbach, Carlos Romero and Robin Sergi. Defendant will also pay reasonable
11 administration costs, reasonable costs of litigation and reasonable attorney's fees
12 to Plaintiffs' counsel, in amounts awarded by The Court. There is no clear sailing
13 cap or floor on these expenses, and Defendant has retained the right to challenge
14 the reasonableness of Plaintiffs' counsels fees, but agreed that for purposes of
15 settlement, that Plaintiffs were the prevailing parties. Plaintiffs separately move
16 for fees and costs in a contemporaneous filing.

17 The amount of the Settlement benefits received by Class Members shall not
18 in any way be impacted by fees, costs, or incentive payments, and the structure of
19 this agreement was completely separately negotiated after the Class Member
20 recovery was fully negotiated.

21 **4. Monetary Benefit to Class Members and Class Notice**

22 The Settlement Agreement provides for \$20 per Class Printer, with no cap,
23 based on the number of valid claims received during the claims period. The
24 compromise Settlement reached with the guidance of Judge Meisinger created
25 Substantial benefits to the Class Members, with no cap on the amount of payment
26 to be made to Class Members who make claims. Pursuant to the terms of the
27 Settlement, Settlement Administrator Kurtzman Carson Consultants LLC
28 ("KCC") oversaw notice to the Class, and the administration of claims made by

1 Class Members.

2 Pursuant to the Agreement, the Claims Administrator provided notice first
3 via First Class U.S. Mail following the Preliminary Approval Order. Thomas
4 Decl. ¶¶ 3-9. Claims Forms were also made available on the Settlement Website.
5 KCC also gave notice by Publication Notice and banner advertising on the
6 Internet. Thomas Decl. Ex C

7 The Claims Period ended August 7, 2018,¹⁰ which is more than 120 days
8 after the Preliminary Approval Order was issued. The opt out and objection
9 deadline was set for June 21, 2018. Dkt. No. 120.¹¹ To date, there have been
10 valid claims for 8,203 printers, which represents a 16.4% take rate based on the
11 anticipated number of printers purchased by the Class being approximately
12 50,000. Friedman Decl. ¶ 69. The Class Members who file a Claims Form and
13 do not Opt Out and/or Object will each receive \$20 per Class Printer claimed.
14 This equates to \$164,060 in Class Member benefits to be distributed to the Class.
15

16 **III. ACTIVITY IN THE CASE AFTER PRELIMINARY APPROVAL**

17 The Claims Administrator's compliance is described below.

18 **A. CAFA Notice**

19 The CAFA notice was mailed by KCC in compliance with the Settlement
20 Agreement. Counsel have received no communications from any state Attorney
21 Generals' Offices.

22 **B. Direct Mail Notice Provided**

23 KCC complied with the notice procedure set forth in the Preliminary
24 Approval Order. Dkt. No. 120. As required by the Preliminary Approval Order,
25

26
27 ¹⁰ The claims period was extended due to a discovery dispute between Plaintiffs
and Amazon with respect to class member data. Dkt. No. 129

28 ¹¹ The objection deadline as to the fee motion was extended to October 15, 2018.
Dkt. No. 131

1 KCC mailed individual postcard notices by direct mail to the settlement Class
2 Members that included a summary of the Settlement's terms. Thomas Decl., ¶ 3-
3 9 Ex B. The direct mail notice also informed the Class Members of the
4 Settlement Website address: (<http://www.wolfmartinstallclassaction.com>) and
5 the Claims Administrator's toll-free telephone, where Class Members could
6 obtain further information about the Settlement and also make a claim. As part of
7 the preparation for mailing, all names and addresses contained in the Class were
8 processed against the National Change of Address ("NCOA") database,
9 maintained by the United States Postal Service ("USPS"), for purposes of
10 updating and confirming the mailing addresses of the Class Members before
11 mailing the Notice postcard. *See Id.* at ¶ 3. To the extent an updated address for
12 an individual identified as a Class Member was found in the NCOA database, the
13 updated address was used for the mailing of the Notice Packet. *Id.*

14 Plaintiff and most of the third party retailers (all except Amazon, discussed
15 below) provided data to KCC containing names, addresses and phone numbers of
16 individuals who were identified in business records as having purchased a Class
17 Printer during the Class Period. This data contained information that was used by
18 KCC to send out 35,963 mail notice postcards. After the returned mail
19 undeliverable postcards were returned and new addresses were found and
20 re-mailing occurred, notice ultimately reached all but 1,316 of those Class
21 Members.

22 **C. The Necessity of Email Notice By Amazon, and Publication**

23 As described above, Amazon objected to producing class member data,
24 after agreeing to produce such data in the months leading up to Preliminary
25 Approval. This change in position was due to developments in privacy issues,
26 that were ongoing in the nationwide news cycle at the time. After the preliminary
27 approval order was granted, Plaintiff and Amazon met and conferred about the
28 dispute, and ultimately went to Magistrate Judge Standish to mediate the dispute.

1 Judge Standish ordered that Amazon could withhold the data, but would need to
2 send the notice out at its own expense, in a manner that could be verified and
3 overseen by Plaintiffs' counsel. Ultimately, the middle ground agreed upon, and
4 approved by both Judge Standish and This Honorable Court was that Amazon
5 could email notice to Class Members who purchased Class Printers through
6 Amazon.com, in a form that was drafted by Class Counsel.

7
8 Thereafter, Amazon sent direct email notice, as approved by Judge
9 Standish, to 21,755 potential Class Members identified in its records, and every
10 email was delivered successfully. All but a small percentage of Class Members
11 was reached, ultimate resulting in 98% of Class Members having received direct
12 mail or email notice of the settlement. See Thomas Decl., ¶¶ 3-9; Declaration of
13 Tammy Malley-Naslund.

14 Notice was also given by way of publication in the LA Times and using
15 Internet banner ads. Thomas Decl. at Ex C. Looked at another way,
16 approximately 98% of the potential Class Members were sent direct mail notice,
17 not even including publication notice, which clearly satisfies due process. See
18 *e.g., Wilson v. Airborne, Inc.*, 2008 U.S. Dist. LEXIS 110411, *13-14 (C.D. Cal.
19 Aug. 13, 2008) (court granted final approval of settlement where measurements
20 used to estimate notice reach suggested that 80% of adults learned of the
21 settlement). This was excellent notice and the best notice practicable for the
22 Class Members.

23
24 **D. Formal Notice Posted On The Settlement Website**

25 In compliance with the Preliminary Approval Order, KCC posted on the
26 Settlement Website the detailed and full notice in a question and answer format,
27 the Complaint, the approval papers and fee request papers, the settlement
28 agreement, the answer to the complaint, and the long form notice. Thomas Decl.

¶ 4. The Settlement Website provided notice of the proposed Settlement to the Class Members, in addition to the Direct Mail Notice.

E. Objections, Opt Outs, and Settlement Payouts

Class Members were provided no less than 90 days to review the Settlement, make timely opt outs and objections. After this time period had lapsed, KCC has reported that, to date, there were only three opt outs and zero objectors to the Settlement. Friedman Decl. ¶ 70. The deadline to submit a Request for Exclusion or Object was June 21, 2018. Friedman Decl. ¶ 71. The fact that there were not only three opt outs, but zero objections, out of approximately 50,000 Class Members highly supports the adequacy of the proposed Settlement. *Id. See In re Diamond Foods, Inc.*, 2014 U.S. Dist. LEXIS 3252, *9 (N.D. Cal. Jan. 10, 2014) (“Also supporting approval is the reaction of class members to the proposed class settlement. After 67,727 notices were sent to potential class members, there have been only 29 requests to opt out of the class and no objection to the settlement or the requested attorney's fees and expenses.”).

F. The High Claims Rate Demonstrates The Strength of Settlement

Ultimately, The Class Members submitted claims comprising a total of 8,203 printers, which represents a 16.4% take rate based on the anticipated number of printers purchased by the Class being approximately 50,000. Settlement members who submitted a timely and valid Claim Form and do not opt-out (Qualified Class Members) will receive a \$20 distribution for each Class Printer that they purchased.

There was no cap on the total number of claims accepted. As expected in any settlement, there are always a few cases of claims made that were in error. Here, there were a very small number of erroneous claims, which were easy to spot and weed out. For instance, several individuals claimed that they purchased 1102 printers. Clearly such individuals were confused and put the number of

1 their printer model in the data field box, instead of the number of Class Printers
2 that they purchased. Such individuals were treated as if they purchased one
3 printer. There were a small handful of individuals who claimed that they
4 purchased a very high number of printers that raised a red flag. The parties easily
5 were able to come to agreement over how to treat such instances, and gave
6 instructions to KCC on how to flag those instances. The process was as follows:
7 Claims made where more than 10 printers¹² were claimed were subject to a
8 secondary requirement where the claims administrator sent a letter requesting
9 proof of purchase from these individuals. If no information was provided, they
10 were assumed to have purchased one printer. If they were able to provide proof
11 of purchase, which dozens did, then the number which were proven with records
12 or other information was used by the Administrator.¹³ Ultimately, the parties are
13 in agreement that the claims process was generally not subject to error, and that
14 any such instances were apparent and handled appropriately.
15

16 **G. Settlement Checks and Credits**

17 The net Settlement Fund available to pay Class Members is \$164,060,
18 which was determined by multiplying the number of Class Printers claimed by
19 Class Members who submitted valid claims by \$20 each. Class Counsels' fees
20 and costs are requested under separate cover. The Settlement Administration
21

22 ¹² Lots of class members turned out to be business purchases, so there were
23 numerous instances where a high volume of printers were claimed by a Class
24 Member, though not all of them set off alarms, because most were valid.

25 ¹³ For instance, one person submitted a claim for 337,686 printers, which is
26 obviously not accurate. After a letter was sent to this class member by the claims
27 administrator asking for proof of purchase, he provided proof that he purchased
28 one printer. The number clearly was entered in error. The cross check agreed to
by the parties generally was successful and lends credence to the validity of the
claims made. In the grand scheme of claims, these types of circumstances
represented a very small percentage of the claims.

1 costs are also separately being paid by Defendant, pursuant to the terms of the
2 Settlement.

3 **H. Class Representative's Incentive Payment**

4 District Courts in California have opined that in many cases, an incentive
5 award of \$5,000 is presumptively reasonable. *See Bellinghausen v. Tractor*
6 *Supply Co.*, 306 F.R.D. 245, 266-67 (N.D. Cal. Mar. 20, 2015) – finding that “[i]n
7 this district, a \$5,000 payment is presumptively reasonable. *See also In re Online*
8 *DVD-Rental Antitrust Litigation*, 779 F.3d 934, 942-43 (9th Cir. Feb. 27, 2015)
9 (finding that the District court did not abuse its discretion in approving settlement
10 class in antitrust class action, despite objector's contention that the nine class
11 representatives were inadequate because their representatives' awards, at \$5,000
12 each, were significantly larger than the \$12 each unnamed class member would
13 receive); *In re Toys R Us – Delaware, Inc. – Fair and Accurate Credit*
14 *Transactions Act (FACTA) Litigation*, 295 F.R.D. 438, 472 (C.D. Cal. Jan. 17,
15 2014) (finding that Request for recovery of \$5,000 incentive award for each
16 named plaintiff in consumers' action against children's toy retailer alleging retailer
17 violated the Fair and Accurate Credit Transactions Act (FACTA) by printing
18 more than the last four digits of consumers' credit card numbers on customer
19 receipts, was reasonable; parties' settlement agreement provided for incentive
20 payments of \$5,000 to each named plaintiff, those awards were consistent with
21 the amount courts typically awarded as incentive payments).

22 Pursuant to the Agreement and the Preliminary Approval Order, and
23 subject to Court's final approval, Defendant has agreed that Plaintiff Anne Wolf
24 can separately apply for an incentive award of \$5,000, which will be separately
25 paid by Defendant, and that Plaintiffs Carlos Romero, Robin Sergi and Anthony
26 Fehrenbach can apply for awards of \$2,000 each, in recognition of Plaintiffs'
27 services as the Class Representatives. The Court should approve the incentive
28 payments to compensate Plaintiffs for their time and efforts in litigating this case

1 on behalf of the Class because it is in in line with the Ninth Circuit’s directives in
2 *Radcliffe v. Experian Info. Solutions, Inc.*, 2013 U.S. App. LEXIS 9126 (9th Cir.
3 Mar. 4, 2013). Plaintiff’s efforts in this litigation are outlined in Plaintiffs’
4 contemporaneously filed Declarations in support of Motion for Final Approval.

5 **I. Attorneys’ Fees and Costs**

6 The Agreement permits Class Counsel to file an application for reasonable
7 attorneys’ fees and costs, in an amount to be determined by The Honorable Court,
8 and which will be paid separately by Defendant. Defendant agreed that for
9 purposes of the settlement and final approval of the class judgment, Plaintiffs
10 would be treated as the prevailing parties. There is an attorneys’ fees shift for
11 reasonable fees and costs incurred under both the CLRA, and DTPA, as well as
12 under California Civ. Code § 1021.5.¹⁴

13 Plaintiffs’ counsel will be requesting only their reasonable Lodestar in this
14 case, to be paid at hourly rates that have been approved by numerous courts, for
15 hours that were reasonably and necessarily incurred in litigating the rights of the
16 Class, and for costs that were necessary in this Class Action matter to advance the
17

18
19 ¹⁴ Plaintiffs can request reasonable attorney’s fees and costs of suit in addition to
20 any recovery, pursuant to California Code of Civil Procedure. Under Cal. C. Civ.
21 Proc. § 1021.5, a plaintiff may recover attorneys’ fees if: (1) the lawsuit “has
22 resulted in the enforcement of an important right affecting the public interest”; (2)
23 “a significant benefit” is “conferred on the general public or a large class of
24 persons”; (3) “the necessity and financial burden of private enforcement . . . are
25 such as to make the award appropriate”; and (4) the fees “should not in the
26 interest of justice be paid out of the recovery, if any.” *See Conservatorship of*
27 *Whitley*, 50 Cal. 4th 1206, 1211 (2010) (“[T]he purpose of section 1021.5 is not
28 to compensate with attorney fees only those litigants who have altruistic or lofty
motives, but rather all litigants and attorneys who step forward to engage in
public interest litigation when there are insufficient financial incentives to justify
the litigation in economic terms.”). This case is a prototypical example of a case
in the public interest where there are not significant financial incentives to justify
the litigation in economic terms.

1 rights of Class Members. Several points are worth mentioning as to why these
2 fees should be awarded in full.

- 3
- 4 • The case was litigated for three years, which included numerous
5 dispositive motions, four separate lawsuits, a class certification
6 motion which was granted, class notice paid for by Class Counsel, the
7 hiring of two experts, and after three mediation sessions. The amount
8 of fees incurred were necessary and reasonable.
- 9 • There is no clear sailing provision for the fees, because undersigned
10 counsel incurred a very high fee bill as of the time that the mediation
11 was agreed upon. It was important due to the disproportionate nature
12 of fees to recovery that there be no agreement to a number between
13 the parties. This was the most ethical approach.
- 14 • The Class was certified by contested motion, heightening both the
15 amount of time and expenditure in the case, as well as the care and
16 detail given by counsel under their fiduciary duty to class members.
17 This is important under *Bluetooth*.
- 18 • There are three fee shifting statutes at issue in this matter, and
19 Plaintiffs were deemed the “prevailing party” as a condition of
20 settlement, which means that only the reasonableness of the fees
21 incurred can be analyzed or disputed.
- 22 • The class will not receive even a penny more or less regardless of the
23 amount of fees awarded to Class Counsel. Given the intentional
24 nature of the conduct by HP, full fees should be awarded to deter HP
25 from engaging in false advertising in the future.

26 The Court should approve the award of the requested attorneys’ fees and
27 costs to compensate Class Counsel for their time and efforts in litigating this case
28 on behalf of the Class and the named Plaintiff, having obtained good results for
the Class.

24 **J. Administrator’s Expenses For Notice and Administration**

25 Defendant has agreed to pay all costs of notice and claims administration
26 separate and apart from the Settlement Fund.

1 **IV. ARGUMENT**

2 **A. Final Approval of The Proposed Settlement Is Warranted**

3 The Court has already preliminarily found the requirements of Fed. R. Civ.
4 P. 23 are satisfied. *See generally* Preliminary Approval Order, Dkt. No. 68. The
5 relevant factors demonstrate that the proposed Settlement should be finally
6 approved as fair, reasonable and adequate. Since preliminary approval, Plaintiffs
7 have continued to serve as adequate Class Representatives by reviewing
8 documents and submitting declarations in support of motions, including the
9 present motion; and Plaintiffs support final approval of the proposed settlement.
10 Moreover, Class Counsel have also continued to adequately represent the interests
11 of the Class Members and the named Plaintiffs, having, among other things,
12 timely disseminating Class Notice, communicating promptly with class members
13 who contacted class counsel with questions, preparing a motion to compel against
14 Amazon to ensure diligent dissemination of the Notice, answering questions from
15 Class Members, meeting and conferring with HP regarding the notice and claims
16 process, and assisting with settlement administration.

17 “Unlike the settlement of most private civil actions, class actions may be
18 settled only with the approval of the district court.” *Officers for Justice v. Civil*
19 *Service Com’n of City and County of San Francisco*, 688 F.2d 615, 623 (9th Cir.
20 1982). “The court may approve a settlement . . . that would bind class members
21 only after a hearing and on finding that the settlement . . . is fair, reasonable, and
22 adequate.” Fed. R. Civ. P. 23(e)(1)(C). The Court has broad discretion to grant
23 such approval and should do so where the proposed settlement is “fair, adequate,
24 reasonable, and not a product of collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d
25 1011, 1026 (9th Cir. 1998).

26 “To determine whether a settlement agreement meets these standards, a
27 district court must consider a number of factors, including: ‘the strength of
28 plaintiffs’ case; the risk, expense, complexity, and likely duration of further
litigation; the risk of maintaining class action status throughout the trial; the

1 amount offered in settlement; the extent of discovery completed, and the stage of
2 the proceedings; the experience and views of counsel; the presence of a
3 governmental participant; and the reaction of the class members to the proposed
4 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). “The
5 relative degree of importance to be attached to any particular factor will depend
6 upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief
7 sought, and the unique facts and circumstances presented by each individual
8 case.” *Officers for Justice*, 688 F.2d at 625. The Court must balance against the
9 continuing risks of litigation and the immediacy and certainty of a substantial
10 recovery. *See Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warner*
11 *Communications Sec. Litig.*, 618 F. Supp. 735, 741 (S.D. N.Y. 1985).

12 The Ninth Circuit has long supported settlements reached by capable
13 opponents in arms’ length negotiations. In *Rodriguez v. West Publishing Corp.*,
14 563 F.3d 948 (9th Cir. 2009), the Ninth Circuit expressed the opinion that courts
15 should defer to the “private consensual decision of the [settling] parties.” *Id.* at
16 965 (citing *Hanlon*, 150 F.3d at 1027 (9th Cir. 1998)). The district court must
17 exercise “sound discretion” in approving a settlement. *See Torrisi v. Tucson Elec.*
18 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Ellis v. Naval Air Rework Facility*,
19 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d* 661 F.2d 939 (9th Cir. 1981). However,
20 “where, as here, a proposed class settlement has been reached after meaningful
21 discovery, after arm’s length negotiation conducted by capable counsel, it is
22 presumptively fair.” *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671
23 F.Supp. 819, 822 (D. Mass. 1987); *In re Ferrero Litig.*, 2012 U.S. Dist. LEXIS
24 15174, *6 (S.D. Cal. Jan. 23, 2012) (“Settlements that follow sufficient discovery
25 and genuine arms-length negotiation are presumed fair.”) (citing *Nat’l Rural*
26 *Telcoms. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

27 Application of the relevant factors here confirms that the proposed
28 settlement should be finally approved. Notably, this Settlement was reached with

1 the assistance of experienced mediator Hon. Louis M. Meisinger (Ret.), which
2 shows a lack of collusion between the Parties. *See Jones v. GN Netcom, Inc. (In*
3 *re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 948 (9th Cir. Cal. 2011).
4 There was also no agreement on the amount of fees that Plaintiffs' counsel would
5 recover, and no clear sailing provision. Moreover, the class was certified by
6 contested motion, not by stipulation of the parties, which means there is no basis
7 under the *Bluetooth* factors to find collusion in any respect.

8 Based on the facts of this case, Class Counsel and the named Plaintiff agree
9 that this settlement is fair and reasonable; among other things, the settlement will
10 avoid costly and time-consuming additional litigation and the need for trial.
11

12 **1. The Strength of The Lawsuit And The Risk, Expense,**
13 **Complexity, And Likely Duration of Further Litigation**

14 Defendant has vigorously contested the claims asserted by Plaintiff in this
15 Action. Although Plaintiff feels strongly about the merits of her case, there are
16 risks to continuing the Action. Class Counsel understands, despite its confidence
17 in its positions, that there are uncertainties associated with complex class action
18 litigation and that no one can predict the outcome of the case. If the Action were
19 to continue, Defendant would likely file a decertification motion prior to trial,
20 thereby placing in doubt whether a class certification status would remain through
21 trial. Defendant also indicated that it would file a summary judgment motion on
22 the issue of whether the mislabeling was material to a reasonable consumer.

23 This case is about Defendant's alleged practice of mislabeling the boxes of
24 Class Printers with these printers including the Smart Install feature, when HP
25 had disabled that feature due to incompatibility issues with Windows. The
26 printers still worked, they were just harder to install than advertised, resulting in
27 alleged inconvenience and frustration to the Class.
28

1 While Plaintiff strongly disagrees that the mislabeling was not material,
2 and asserts that class certification would have been maintained through trial,
3 Defendant's arguments raise a risk to the claims at issue in the case, and were
4 given due weight in settlement discussions.

5 In considering the Settlement, Plaintiff and Class Counsel carefully
6 balanced the risks of continuing to engage in protracted and contentious litigation
7 against the benefits to the Class including the significant benefit and the deterrent
8 effects it would have. As a result, Class Counsel supports the Settlement and
9 seeks its Final Approval. Similarly, Defendant believes that it has strong and
10 meritorious defenses to the action as a whole, as well as to class certification and
11 the amount of damages sought. The negotiated Settlement is a compromise
12 avoiding the risk that the class might not recover and presents a fair and
13 reasonable alternative to continuing to pursue the Action as a class action for
14 alleged violations of the FAL, UCL, CLRA and DTPA. What is more, Judge
15 Meisinger, who is intimately familiar with the instant litigation as well as the
16 current climate of false advertising litigation as a whole, and who served as a
17 California state court judge in numerous false advertising actions during his
18 tenure, agrees with the parties.

21 **2. The Amount Offered In Settlement**

22 As set forth above, Defendant has agreed to a settlement where every Class
23 Member who made a valid claim will receive \$20 per Class Printer they claimed.
24 Administration costs, attorneys fees, litigation costs, and incentive awards would
25 all be paid separately by Defendant, pursuant to the Order of the Court.
26 Ultimately 8,203 printers were claimed by Class Members, meaning that the
27 Class will collectively receive \$164,060 in total benefits. Class Member recovery
28 will not be impacted by the amount of fees awarded. Friedman Decl. ¶ 25-29.

1 This is a highly favorable per-person recovery for the Class. Moreover,
2 this outstanding result was achieved without having to subject Settlement Class
3 members to the substantial risks ahead in litigation, which include having to
4 maintain class certification through trial, and surviving a motion for summary
5 judgment premised on Defendant’s arguments, including the arguments raised
6 herein regarding whether the mislabeling was material to a reasonable consumer,
7 among other risks.

8 The settlement award that each Class Member will receive is fair,
9 appropriate, and reasonable given the purposes of the UCL, FAL, CLRA, and
10 DTPA, the limitations of class-wide liability, and in light of the anticipated risk,
11 expense, and uncertainty of continued litigation. Although it is well-settled that a
12 proposed settlement may be acceptable even though it amounts to only a small
13 percentage of the potential recovery that might be available to the class members
14 at trial, here, the Settlement provides significant and meaningful relief that is
15 comparable to what the Class Members would receive if Plaintiff was able to
16 prevail on class certification, took the case to trial and obtained a judgment.¹⁵
17 Moreover, Class Members were able to avoid the time, expense and risk
18 associated with bringing their own individual actions, where they would not
19 necessarily recovery any more than they would recovery under this settlement.
20

21 _____
22 ¹⁵ *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal.
23 2004) (“well settled law that a proposed settlement may be acceptable even
24 though it amounts to only a fraction of the potential recovery”); *In re Global*
25 *Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact
26 that a proposed settlement constitutes a relatively small percentage of the most
27 optimistic estimate does not, in itself, weigh against the settlement; rather, the
28 percentage should be considered in light of strength of the claims”); *In re*
Omnivision Tech., Inc., 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) (court-
approved settlement amount that was just over 9% of the maximum potential
recovery); *In re Mego Fin’l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).

1 The relief afforded to the Class Members here is in line with the relief
2 given in other similar false advertising class settlements. Class Members were
3 provided with the best notice possible, which provided them all of the information
4 necessary to decide whether to participate in the Settlement.

5 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3),
6 the court must direct to class members the “best notice practicable” under the
7 circumstances. Rule 23(c)(2)(B) does not require “actual notice” or that a notice
8 be “actually received.” *Silber v. Mabon*, 18 F. 3d 1449, 1454 (9th Cir. 1994).
9 Final approval of the Settlement should be granted when considering the terrific
10 notice provided to the Class Members, i.e., 98% of the potential Class Members
11 successfully received direct mail or email notice, and notice was also given by
12 publication in the LA Times, and through Internet banner ads *See Thomas Decl.*,
13 Ex. C.
14

15 It is also noteworthy that the settlement received highly positive responses
16 from Class Members, as illustrated by the relatively high claims rate of 15.3%. It
17 is well-settled that a proposed settlement may be accepted where the recovery
18 represents a fraction of the maximum potential recovery. *See e.g., Nat’l Rural*
19 *Tele. Coop v. DIRECTV, Inc.*, 221 F.R.D 523, 527 (C.D. Cal. 2004) (“well settled
20 law that a proposed settlement may be acceptable even though it amounts to only
21 a fraction of the potential recovery”); *In re Global Crossing Sec. ERISA Litig.*,
22 225 F.R.D. 436, 460 (E.D. Pa. 2000) (“the fact that a proposed settlement
23 constitutes a relatively small percentage of the most optimistic estimate does not,
24 in itself, weigh against the settlement; rather, the percentage should be considered
25 in light of strength of the claims”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
26 454, 459 (9th Cir. 2000) (approving a settlement that comprised one-sixth of
27 plaintiffs’ potential recovery). However, a 15.4% refund off the purchase price
28

1 seems like the appropriate remedy that the Class would have recovered if
2 Plaintiffs had prevailed at trial.

3 The context of the mislabeling is important – The Smart Install feature was
4 a feature of convenience that allowed people to have an easier time installing their
5 printers to their computers. The printers still functioned perfectly without this
6 feature, except that they took a little bit longer to install. Consumers who
7 encountered difficulty in installing the printers had the ability to return the
8 product if they chose to do so. The nature of the false advertising was a mild
9 annoyance and inconvenience, but not something that rendered anything close to
10 a full refund appropriate as a remedy. Plaintiffs were in the midst of gathering
11 the documentation necessary for the conjoint survey, after having had several
12 discussions with their expert about what considerations should be given.
13 Common sense and intuition, along with an informed record, and expert
14 considerations all helped form the opinions of Class Counsel in assigning a value.
15

16 This is an outstanding settlement in every respect. Class Members could
17 have recovered nothing if HP successfully argued that the mislabeling was not
18 material. Any recovery would have been a fraction of the purchase price, given
19 how false advertising cases’ damages are typically proven, and given that the
20 damages are primarily restitutionary, as thoroughly briefed in the class
21 certification papers.

22 The Claims Administrator sent postcard notice to 35,963 potential Class
23 Members, identified by Defendant’s records and records of third party retailers
24 (explained above). Ultimately notice reached all but 1,316 of those Class
25 Members after remailings. Amazon sent direct email notice, as approved by
26 Judge Standish, to 21,755 potential Class Members identified in its records, and
27 every email was delivered successfully.
28

1 The number of Class Members (approximately 50,000 Class Printers) was
2 smaller than the number of notices sent, because Class Counsel wanted to ensure
3 that the Notice was, if anything, over-inclusive and not under-inclusive. All but a
4 small percentage of Class Members was reached, ultimately resulting in 98% of
5 Class Members having received direct mail or email notice of the settlement. See
6 Thomas Decl., ¶¶ 3-9. This was excellent notice and the best notice practicable
7 for the Class Members.
8

9 **3. The Extent of Discovery Completed**

10 The proposed Settlement is the result of intensive arms-length negotiations,
11 which included two years of discovery into the nature of the practices, and the
12 size of the Class affected by them. The parties also engaged in a full-day
13 mediation session before Hon. Judge Meisinger, after previously engaging in
14 mediations with Judge Sabraw twice. The parties had nearly completed all
15 discovery that would have been necessary for trial, with the only remaining issues
16 in the case being a battle of the experts as to the assessment of damages, and a
17 series of cross summary judgment motions by Plaintiff, and by Defendant on the
18 issue of materiality as to the mislabeling at issue. Plaintiffs had information from
19 Defendant as well as from third party retailers about the class size, and the prices
20 paid for Class Printers by Class Members. There was very little, if any remaining
21 evidence that had yet to be subject to discovery, at least insofar as would inform
22 settlement discussions. In addition to the three mediation sessions, the Parties
23 also participated in direct discussions about possible resolution of this litigation,
24 including numerous telephonic conferences, which ultimately resulted in a
25 general understanding of the Settlement terms.
26

27 The important information needed in these cases is primarily how many
28 Class Members' were subjected to the practices at issue, what prices were paid

1 for the Class Printers, and what alleged wrongful conduct of HP was directed at
2 said class members. This information was obtained through both formal and
3 informal discovery. Thus, the litigation here had reached the stage where “the
4 parties certainly have a clear view of the strengths and weaknesses of their cases.”
5 *Warner Communications*, 618 F. Supp. at 745.

6 Considering that the main disputed issues between the Parties are legal
7 (i.e., was the mislabeling material to a reasonable consumer, what damages
8 should be applied to the mislabeling under the circumstances) and not factual in
9 nature, and given that the parties engaged in three years of litigation, including
10 the majority of discovery that would have been conducted through trial, as well as
11 the benefit of a class certification order, the Parties have exchanged sufficient
12 information to make an informed decision about settlement. See *Linney v.*
13 *Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998).

14 **4. The Experience And Views of Class Counsel**

15
16 “The recommendations of plaintiff’s counsel should be given a
17 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622
18 (N.D. Cal. 1979). This is even more true in light of the fact that Class Counsel
19 was appointed as adequate Class Counsel by the Honorable Court’s Order
20 granting Class Certification on a contested Class Certification Motion. Dkt. No.
21 94. There have now been two rounds of scrutiny as to Class Counsel’s diligence
22 and dedication to the recovery of the Class. The presumption of reasonableness
23 in this action is also fully warranted because the settlement is the product of arm’s
24 length negotiations conducted by capable, experienced counsel. See *M. Berenson*
25 *Co.*, 671 F. Supp. at 822; *Ellis*, 87 F.R.D. at 18 (“that experienced counsel
26 involved in the case approved the settlement after hard-fought negotiations is
27 entitled to considerable weight”); 2 Newberg on Class Actions § 11.24 (4th Ed. &
28

1 Supp. 2002); Manual for Complex Lit., Fourth § 30.42. It took three mediation
2 sessions and three years of hard fought and contentious litigation to reach this
3 result.

4 Here, it is the considered judgment of experienced counsel that this
5 settlement is a fair, reasonable and an adequate settlement of the litigation. See
6 Friedman Decl., ¶ 31-32. Class Counsel are experienced consumer class action
7 lawyers. Friedman Decl. ¶¶74-82. This Settlement was negotiated at arms'
8 length by experienced and capable Class Counsel who now recommend its
9 approval. Moreover, the Settlement was reached after the assistance of Judge
10 Meisinger (Ret.). Given their experience and expertise, Class Counsel are well-
11 qualified to not only assess the prospects of a case, but also to negotiate a
12 favorable resolution for the class. *Id.* Class Counsel have achieved such a result
13 here in this class action, and unequivocally assert that the proposed Settlement
14 should receive final approval.
15

16 **5. The Reaction of Class Members To The Settlement**

17 The fact that there are now zero objections, and only three valid outs from
18 the approximately 50,000 Class Members should say all that needs to be said
19 about the outstanding settlement that was reached here for the Class. *See Detroit*
20 *v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974); *Warner Communications*,
21 618 F. Supp. at 746; *Steinfeld v. Discover Fin. Servs.*, 2014 U.S. Dist. LEXIS
22 44855, *21 (N.D. Cal. Mar. 31, 2014) (only specific objections or comments from
23 9 class members, and 239 out of the approximately 8 million class members
24 chose to opt out). There has absolutely zero resistance to the Settlement.
25 Friedman Decl. ¶¶ 70-73; Thomas Decl ¶ 3-9. Moreover, there was a 16.4% take
26 rate on this case, based on the total estimated number of Class Printers sold to
27 Class Members, and the number of Class Printers validly claimed by Class
28

1 Members, which is considerably higher than typical in these types of cases, and
2 indicates that Class Members were very interested in receiving settlement
3 benefits. Friedman Decl. ¶¶ 61-73; Thomas Decl ¶¶ 3-9.

4
5 **V. CONCLUSION**

6 In sum, the Parties have reached this Settlement following extensive arms'
7 length negotiations, including with the assistance of Judge Louis M. Meisinger
8 (Ret.). The Settlement is fair and reasonable to the Class Members who were
9 afforded notice that complies with due process. For the foregoing reasons,
10 Plaintiff respectfully requests that the Court:

- 11 • Grant final approval of the proposed settlement;
- 12 • Order payment to the Class in compliance with the Court’s Preliminary
13 Approval Order and the Agreement;
- 14 • Grant the Motion For Attorney’s Fees, Costs, and Incentive Payment;
- 15 • Enter the proposed Final Judgment and Order of Dismissal With Prejudice
16 submitted herewith; and,
- 17 • Retain continuing jurisdiction over the implementation, interpretation
18 administration and consummation of the Settlement.

19 Date: September 4, 2018

**The Law Offices of Todd M.
Friedman, PC**

21 By: /s/ Todd M. Friedman
22 Todd M. Friedman
23 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Filed electronically on this 4th day of September, 2018, with:

3
4 United States District Court CM/ECF system

5 Notification sent electronically on this 4th day of September, 2018, to:

6
7 Honorable Judge Terry J. Hatter
8 United States District Court
9 Central District of California

10 Michael J. Stortz
11 Marshall L. Baker
12 AKIN GUMP STRAUSS HAUER & FELD LLP

13 s/Todd M. Friedman
14 Todd M. Friedman, Esq.